

**EXHIBIT “6”**

---

**EXHIBIT “6”**

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

ANGELA DeCHAMBEAU AND JEAN-PAUL DeCHAMBEAU, BOTH INDIVIDUALLY AND AS SPECIAL ADMINISTRATORS OF THE ESTATE OF NEIL DeCHAMBEAU,  Appellants,  vs.  STEPHEN C. BALKENBUSH, ESQ.; AND THORNDahl ARMSTRONG DELK BALKENBUSH & EISINGER, A NEVADA PROFESSIONAL CORPORATION,  Respondents	No. 64463
---	-----------

**REQUEST FOR TRANSCRIPT OF PROCEEDINGS**

TO: Stephanie Koetting  
1822 Fox Run Rd.  
Reno, Nevada 89523


Respondent requests preparation of a transcript of the proceedings before the district  
court, as follows:

The Hon. Patrick Flanagan  
Second Judicial District Court, D7

Date of Proceeding: September 24, 2013  
Case No.: CV12-00571  
Transcript Requested: Summary Judgment Hearing – entire  
Copies: 1

I hereby certify that on the 12<sup>th</sup> day of February, 2014, I ordered the transcript listed above from the court reporter named above, and paid the deposit on the 12<sup>th</sup> day of February, 2014

Dated this 12<sup>th</sup> day of February, 2014

  
Mark J. Lenz  
SBN 004672  
Piscevich & Fenner  
499 W. Plumb Ln., Ste. 201  
Reno, NV 89509  
775-329-0958

**PISCEVICH & FENNER**

~~ATTORNEYS AT LAW~~  
DATE: Feb/11/2014  
CHE # : 27599  
AMOUNT : \$166.85  
ACCOUNT: GENERAL - 1  
PAID TO: Stephanie Koetting CCR #207  
1822 Fox Run Road  
Reno  
NV  
89523

27599

Stephanie Koetting CCR / Reporting Fee and Transcript

CLIENT: 100180 - ALPS  
MATTER: 30-5267

**PISCEVICH & FENNER**  
ATTORNEYS AT LAW  
499 W. PLUMB LANE, SUITE 201  
RENO, NV 89509  
(775) 329-0958

**Bank of America.**

ACH R/T 122400724  
94-72-1224



 E-Shield<sup>SM</sup> Check Fraud  
Protection for Business

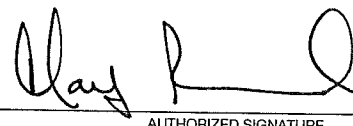
27599

27599

One Hundred Sixty Six \*\*\*\*\* DATE \*\*\*\*\* AMOUNT 100

PAY  
TO THE ORDER OF Stephanie Koetting CCR #207  
1822 Fox Run Road  
Reno, NV 89523

Feb/11/2014 \$166.85

  
AUTHORIZED SIGNATURE

⑈027599⑈ ⑆122400724⑆ 501008615844⑈

**EXHIBIT “5”**

**EXHIBIT “5”**

CHARLES R. KOZAK  
ATTORNEY AT LAW  
3100 MILL STREET, SUITE 115  
RENO, NEVADA 89502  
PH: (775) 322-1239  
FAX: (775) 800-1767  
E-Mail: chuck@kozaklawfirm.com

February 10, 2014

*Via E-mail to: [mlenz@pf-reno.com](mailto:mlenz@pf-reno.com)*

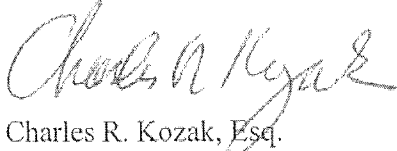
Mark J. Lenz, Esq.  
Piscevich & Fenner  
499 West Plumb Lane, Suite 201  
Reno, Nevada 89509

**Re: Stephen vs. Angela DeChambeau  
Case No. CV12-00571**

Dear Mr. Lenz:

Until you can explain why the transcript is necessary under the Supreme Court's NRAP 10 admonition not to include irrelevant and unnecessary transcripts or portions thereof, we cannot accede to your request without violating NRAP ourselves. If you have such an explanation, please send it to us, and we will reconsider your position.

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles R. Kozak".

Charles R. Kozak, Esq.  
Attorney at Law

CRK/na

**EXHIBIT “4”**

**EXHIBIT “4”**

PISCEVICH & FENNER

ATTORNEYS AT LAW  
499 WEST PLUMB LANE  
SUITE 201  
RENO, NEVADA 89509

MARGO PISCEVICH  
KIMBERLEY FENNER  
MARK J. LENZ

AREA CODE 775  
TELEPHONE 329-0958  
FACSIMILE 329-2666  
LAWFIRM@PF-RENO.COM

Reply to:  
mlenz@pf-reno.com

February 7, 2014

VIA E-mail and U.S. Mail

Charles R. Kozak  
3100 Mill Street #115  
Reno, NV 89523

Re: **Stephen Balkenbush adv. Angela DeChambeau**  
**File No. 30-5267**  
**Case No. CV12-00571**

Dear Mr. Kozak:

We are in receipt of your correspondence declining to order the transcript of the summary judgment hearing held September 24, 2013 in Department 7 of the Second Judicial District Court. We believe the transcript is necessary for this appeal. Your citation to *Wichinsky v. Mosa*, 109 Nev. 84, 847 P.2d 727 (1993) is inapposite. First, *Wichinsky* does not stand for the proposition you assert. *Wichinsky* says nothing about an "unqualified right" to a full trial transcript. Second, although *Fernandez v. Admirand*, 108 Nev. 963, 843 P.2d 354 (1992) provides that "NRAP 10 does not invest the party who prevailed in the lower court with the unqualified right to require the appellant to file a full trial transcript...", both *Wichinsky* and *Admirand* predate NRAP 9 by five years or more. NRAP 9 was promulgated in 1996, and amended in 2008 and 2010. Moreover, the transcript at issue is certainly not a "full trial transcript."

Accordingly, we would ask you to reconsider your position, and "file and serve a supplemental transcript request form and pay any additional deposit required." We would expect compliance no later than February 11, 2014.

Piscevich & Fenner

By:

  
Mark J. Lenz

Attorneys for Defendants/Respondents

MJL/mjl  
c. Stephanie Koetting, via email

**EXHIBIT “3”**

**EXHIBIT “3”**



CHARLES R. KOZAK  
ATTORNEY AT LAW  
3100 MILL STREET, SUITE 115  
RENO, NEVADA 89502  
PH: (775) 322-1239  
FAX: (775) 800-1767  
E-Mail: chuck@kozaklawfirm.com

February 6, 2014

*VIA E-mail: [mlenz@pf-reno.com](mailto:mlenz@pf-reno.com)*

Mark J. Lenz, Esq.  
Piscevich & Fenner  
Attorneys at Law  
499 West Plumb Lane, Suite 201  
Reno, Nevada 89509

**Re: Stephen Balkenbush v. Angela DeChambeau**  
**Case No. CV12-00571**  
**Certificate of No Transcript Request**

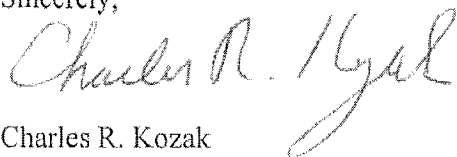
Dear Mr. Lenz:

Our research indicates a Respondent does not have an unqualified right to require an appellant to file a full trial transcript. Where an appellant did not include a trial transcript in the designation of the record on appeal because he reasonably believed it to be unessential, the burden was on the respondent to supply the transcript if he desired it in the absence of a trial determination of who should supply it, because the provisions of former rule 75 (cf. NRAP 10) did not give the respondent an unqualified right to require an appellant to file a full trial transcript. *Wichinsky v Moss, 109 Nev 84, at 87, 847 P.2d 727 (1993)*.

A transcript of Judge Flanagan's discussion at the hearing on the motion to dismiss is "matter not essential to the decision of the questions presented by the appeal", and as such should be omitted. Judge Flanagan entered his order, and no objection to the form of the order was filed by either party. He explained in detail in his order the reasons for granting the motion. His comments other than what he has in his order are not evidence, and since the Supreme Court will be reviewing the appeal De Novo, they are superfluous. (See also *Bailey v Thomas, 668 P.2d 268 (1983)* where appellant was not required to supply transcript of opening and closing statements on appeal because they were not evidence). See also *Fernandez v Admirand, M.D. 843 P.2d 354 (1992)* which is exactly on point. "Only those portions of the transcript that are essential to the questions need be designated..." Citing *Driscoll v Erreguible, 87 Nev. 97, 482 P.2d 291 (1971)* (Appellant has a duty to omit all matter from transcript not essential to decision of questions presented on appeal). P 6.

Unless you can demonstrate why a transcript of the oral argument before Judge Flanagan is essential to the questions on appeal, we decline to order this transcript.

Sincerely,

A handwritten signature in cursive script that reads "Charles R. Kozak". The signature is written in dark ink and is positioned above the printed name.

Charles R. Kozak

CRK/na

**EXHIBIT “2”**

**EXHIBIT “2”**

PISCEVICH & FENNER

MARGO PISCEVICH  
KIMBERLEY FENNER  
MARK J. LENZ

ATTORNEYS AT LAW  
499 WEST PLUMB LANE  
SUITE 201  
RENO, NEVADA 89509

AREA CODE 775  
TELEPHONE 329-0958  
FACSIMILE 329-2666  
LAWFIRM@PF-RENO.COM

Reply to:  
mlenz@pf-reno.com

January 28, 2014

VIA E-mail and U.S. Mail

Charles R. Kozak  
3100 Mill Street #115  
Reno, NV 89523

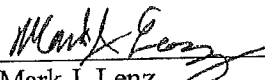
Re: **Stephen Balkenbush adv. Angela DeChambeau**  
**File No. 30-5267**  
**Case No. CV12-00571**

Dear Mr. Kozak:

We are in receipt of your "Certificate of No Transcript Request." This will serve as notification pursuant to NRAP 9(a)(5) that we believe the entire transcript of the summary judgment hearing held September 24, 2013 in Department 7 of the Second Judicial District Court is necessary for this appeal. Pursuant to Rule 9(a)(5), you have ten (10) days from the date of this notification in which to "file and serve a supplemental transcript request form and pay any additional deposit required."

Piscevich & Fenner

By:

  
Mark J. Lenz

Attorneys for Defendants/Respondents

MJL/mjl  
c. Stephanie Koetting, via email

**EXHIBIT “1”**

**EXHIBIT “1”**

**DECLARATION OF MARK J. LENZ**

STATE OF NEVADA       )  
  )ss:  
COUNTY OF WASHOE     )

I, Mark J. Lenz, declare in accordance with NRS 53.045 that the following statements are true, and that:

1. I am an employee of Piscevich & Fenner, counsel for Defendants/Respondents in Case No. 64463, *DeChambeau v Balkenbush et al.*

2. I am familiar with the facts and circumstances surrounding the assertions in this Declaration and could, if required, testify competently to them.

3. The documents attached to Respondents' Motion to Compel / Dismiss as Exhibits "2" through "5" are true and correct copies of the correspondence referred to.

4. Exhibit "6" is a Transcript Order form and check in the amount of \$166.85 payable to the court reporter, Stephanie Koetting, for the Transcript of the hearing held September 24, 2013.

5. Following Plaintiffs' appeal of the Order granting Summary Judgment, on or about January 27, 2014, Appellants filed a Certificate of No Transcript Request.

6. By letter dated January 28, 2014, I advised Plaintiffs' counsel, Mr. Kozak, that I disagreed with his determination that the full transcript was unnecessary, and requested that he order the full transcript of the September 24, 2013 hearing, pursuant to NRAP 9(a)(5). [Exhibit "2"].

7. By letter dated February 6, 2014, Mr. Kozak advised he would not order the transcript unless I could "demonstrate why a transcript of the oral argument is essential ...." [Exhibit "3."].

- 2 -

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

<p>ANGELA DeCHAMBEAU AND JEAN-PAUL DeCHAMBEAU, BOTH INDIVIDUALLY AND AS SPECIAL ADMINISTRATORS OF THE ESTATE OF NEIL DeCHAMBEAU, Appellants,</p> <p>vs.</p> <p>STEPHEN C. BALKENBUSH, ESQ.; AND THORNDahl ARMSTRONG DELK BALKENBUSH &amp; EISINGER, A NEVADA PROFESSIONAL CORPORATION,</p> <p>Respondents</p>	<p>Electronically Filed No. 64463 b 12 2014 03:54 p.m. Tracie K. Lindeman Clerk of Supreme Court</p>
---	--

**Motion to Compel Transcript Order or in the alternative,  
to Dismiss Appeal**

Respondents, by and through their undersigned counsel of record, move the Court for an Order compelling Appellants to order and provide a copy of the transcript of the summary judgment hearing held September 24, 2013 pursuant to NRAP 9(a)(5) on the grounds Respondents consider the transcript of the hearing to be necessary, they have requested that Appellants order the transcript, and Appellants have failed and refused to do so.


In the alternative, Respondents request an Order, pursuant to NRAP 9(a)(6), dismissing this appeal.



This Motion is made and based on the Declaration in support, the Memorandum of Points and Authorities in support, and on all the records, papers and pleadings on file in this action.

Dated this 12<sup>th</sup> day of February, 2014

PISCEVICH & FENNER

By:   
Mark J. Lenz  
Attorneys for Respondents

## **Memorandum of Points and Authorities**

### **I. Nature of the Case and Statement of Relevant Facts.**

This is an appeal from an order granting summary judgment in favor of Respondents (“Balkenbush”) in a legal malpractice action. Balkenbush filed his Motion for Summary Judgment on August 14, 2013. Plaintiffs opposed the Motion on September 3, 2013. Balkenbush filed his Reply on September 6, 2013, and submitted the Motion for decision. The District Court heard oral argument on September 24, 2013, and issued its decision from the bench.

The District Court requested Balkenbush’ counsel to prepare the written Order. Counsel therefore ordered a partial transcript, i.e., the portion containing Judge Flanagan’s ruling, in order to prepare a thorough order.

The District Court issued its written Order on October 17, 2013, and Balkenbush filed a Notice of Entry on October 18, 2013. Appellants timely appealed. The mandatory settlement conference was unsuccessful, and on January 10, 2014, this Court ordered briefing reinstated, and informed Appellants they had fifteen (15) days in which to file and serve a transcript request form, or file a certificate of no transcript to be requested.

On or about January 27, 2014, Appellants filed a Certificate of No Transcript Request. Counsel for Balkenbush advised Plaintiffs' counsel that he disagreed with Plaintiffs' counsel's determination that the full transcript was unnecessary, and requested that he order the full transcript of the September 24, 2013 hearing, pursuant to NRAP 9(a)(5). [**Exhibit "2"**]. Plaintiffs' counsel advised he would not order the transcript unless Balkenbush' counsel could "demonstrate why a transcript of the oral argument is essential . . . ." [**Exhibit "3."**]. Balkenbush responded that the rule and case authorities Plaintiffs relied on predated NRAP 9, and he considered the transcript necessary, which is all the Rule required. [**Exhibit "4."**]. Plaintiffs' counsel again refused to order the transcript. [**Exhibit "5."**]. [*See*, Declaration of Mark J. Lenz, attached hereto as **Exhibit "1."**]. This Motion followed.

## **II. Argument**

### **A. Standard of Review**

This Court will review an order compelling compliance with court rules for an abuse of discretion. *See, e.g., Moon v. McDonald*, 126 Nev. Adv. Op. No. 47, 245 P.3d 1138 (2010). In addition, NRAP 9(a)(6) carries its own consequences for failure to comply with “the provisions of this Rule,” including dismissal of the appeal.

### **B. Appellants’ refusal to order the transcript is unwarranted and contrary to law.**

NRAP 9(a)(5) provides:

If the parties cannot agree on the transcripts necessary to the Supreme Court’s review, and appellant requests only part of the transcript, appellant shall request any additional parts of the transcript that the respondent considers necessary. Within 10 days from the date the initial transcript request is filed, respondent shall notify appellant in writing of the additional portions required. Appellant shall have 10 days thereafter within which to file and serve a supplemental transcript request form and pay any additional deposit required.

The only transcript in this case is that of the September 24, 2013 hearing. Plaintiffs’ counsel’s intransigent and dogged refusal to comply with the rule is inexplicable. First, his demand that Balkenbush’ counsel “explain” anything is at the least an improper excursion into protected work product, i.e., “the mental

impressions, conclusions, opinions or legal theories” of counsel. *See*, NRCP 26(b)(3). The reasons Balkenbush’s counsel may have for considering the full transcript necessary may be vastly different from Plaintiffs’ counsel’s opposing reasons, but the Rule does not require Balkenbush’s counsel to disclose such reasons.

Second, the cost of the transcript is negligible. The entire hearing consumed less than two hours, and there were no other recorded proceedings in the case. Third, although the arguments of counsel are not evidence, the transcript may contain concessions, admissions and representations of the parties, all of which may be necessary for this Court’s *de novo* review.

Fourth, Plaintiffs’ counsel’s reliance on the “admonition [under NRAP 10] not to include irrelevant and unnecessary transcripts” [*see*, Exhibit “4,”] is misplaced. Rule 10 no longer contains the language cited by Plaintiffs’ counsel, and has not since 1996. While taking care not to burden the Court with superfluous documents is laudable, it cannot justify counsel’s failure to comply with the Rules or perform competent legal inquiry, including ascertaining whether a Rule may have been modified in the past eighteen years.

In this case, given Plaintiffs’ counsels unjustified refusal to comply with a plain and simple rule, even after having been advised that the rule on which he relied was outdated, warrants the only expressed sanction in NRAP 9, i.e.,

dismissal of the appeal. At the very least, Plaintiffs should be required to pay the costs of the transcript [\$166.85 – *see* Transcript Request Form and check, attached hereto as **Exhibit “6”**], and the fees incurred in researching and preparing this otherwise unnecessary motion to compel.

#### **IV. Conclusion**

Plaintiffs/Appellants’ refusal to order and pay for the only transcript of the only proceeding in the district court is unwarranted, unjustifiable and sanctionable. The Court should dismiss this appeal, or compel compliance with the Rules, including paying the costs and fees associated with this Motion.

**WHEREFORE**, Respondents request relief as follows:

1. For an Order dismissing this appeal pursuant to NRAP 9(a)(6);
  2. In the alternative, for an Order compelling Appellants to pay the costs and fees associated with filing this Motion to Compel, in the amount of **\$1,570.85**;
- and

///

//

/

3. For such other and further relief as the Court deems appropriate in the circumstances.


**AFFIRMATION**

**Pursuant to NRS 239B.030**

The undersigned does hereby affirm that the preceding document **DOES NOT CONTAIN THE SOCIAL SECURITY NUMBER OF ANY PERSON.**

Dated this 12<sup>th</sup> day of February, 2014.

Piscevich & Fenner

By:   
Mark J. Lenz  
SBN 004672  
499 W. Plumb Ln., Ste. 201  
Reno, NV 89509  
775-329-0958  
Attorneys for Respondents

## CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of PISCEVICH & FENNER, and that on this date I caused to be served a true and correct copy of the document described herein by the method indicated below, addressed to the following:

Document Served:


MOTION TO COMPEL / DISMISS

Person(s) Served:

Charles R. Kozak  
3100 Mill Street, Suite 115  
Reno, NV 89502

<input type="checkbox"/>	Hand Deliver
<input checked="" type="checkbox"/>	U.S. Mail
<input type="checkbox"/>	Overnight Mail
<input type="checkbox"/>	Facsimile (775)
<input type="checkbox"/>	Electronic Filing

DATED this 12th day of February, 2014.

  
Beverly Chambers

## **EXHIBIT LIST**

- Exhibit "1" - Declaration of Mark J. Lenz
- Exhibit "2" - Correspondence dated January 28, 2014
- Exhibit "3" - Correspondence dated February 6, 2014
- Exhibit "4" - Correspondence dated February 7, 2014
- Exhibit "5" - Correspondence dated February 10, 2014
- Exhibit "6" - Transcript Order Form and check