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Tracie K. Lindeman  
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**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,

No. 64463

vs.

STEPHEN C. BALKENBUSH, ESQ.; AND  
THORNDahl ARMSTRONG DELK  
BALKENBUSH & EISINGER, A NEVADA  
PROFESSIONAL CORPORATION,  
Respondents.

***OPPOSITION TO MOTION TO COMPEL TRANSCRIPT ORDER  
OR, IN THE ALTERNATIVE, TO DISMISS APPEAL;  
AND REQUEST FOR ATTORNEYS' FEES***

COME NOW, Appellants, ANGELA DECHAMBEAU AND  
JEAN-PAUL DECHAMBEAU, BOTH INDIVIDUALLY AND AS  
SPECIAL ADMINISTRATORS OF THE ESTATE OF NEIL  
DECHAMBEAU (the "DeChambeaus"), by and through their Attorney of  
Record, CHARLES R. KOZAK, ESQ., and hereby oppose Respondents'

Motion to Compel Transcript Order, or in the alternative, to Dismiss Appeal on grounds that the subject transcript of a motion for summary judgment hearing is not necessary to this Court's De Novo review on appeal.

The DeChambeaus base their opposition on the following Memorandum of Points and Authorities, the Declaration of Charles R. Kozak and the pleadings and papers on file with this Court, and, if this Court so requests, any oral arguments presented at hearing on this motion.

### **Memorandum of Points and Authorities**

#### **A. Factual Background**

Respondents sought for the DeChambeaus to order and pay for the transcript of the September 24, 2013 summary judgment motion hearing before the District Court. (Exhibit 2, attached to Respondents' Motion to Compel Transcript Order.)

Counsel for the DeChambeaus explained in his meet and confer letter, dated February 6, 2014, that since this Court will review the appeal De Novo, the requested transcripts and their contents would be superfluous. (Exhibit 3, attached to Respondents' Motion to Compel Transcript Order.)

#### **B. Legal Discussion**

NRAP Rule 10(b)(1) states that "the parties shall submit to the Supreme Court copies of the portions of the trial court record to be used on appeal, including **all transcripts necessary to the Supreme Court's review...**" (emphasis added). "This court reviews a district court's grant of summary judgment de novo, without deference to the findings of the lower court." Wood v. Safeway, Inc., 121 P.3d 1026, 1029, 121 Nev. 724 (2005).

The transcript of the summary judgment hearing is not necessary because this Court will conduct a fresh review of the parties' proffered



evidence and make its own determination as to whether a genuine issue of material fact exists. Therefore, the District Court's views and findings at the motion hearing have no bearing on or necessity with respect to the instant appeal. Since Respondents seek to place irrelevant material before this Court, they should do so at their own risk of violating the NRAP, without involving the DeChambeaus, and their efforts should be backed by their own dime.

Moreover, Respondents have not shown that the common law cited in the Dechambeaus' meet and confer letter have either been overruled by the NRAP or subsequent cases. (See Exhibits 3 and 4, attached to Respondents' Motion to Compel Transcript Order.) The Nevada District and Supreme Courts have yet to make any ruling stating that NRAP Rules 9 or 10 trump the common law application of the rules, particularly as to whether NRAP 9(a)(5) affords Respondents an unqualified right to any transcript they deem necessary (irrelevant or not). This makes logical sense. If the right were unqualified, then there would be no need for Rule 10(b)(1)'s requirement that the transcripts submitted to the Court be necessary.

### **C. Attorney Fees**

Rule 28(j) of the NRAP provides that "[a]ll briefs under this Rule must be concise, presented with accuracy, logically arranged with proper headings and free from burdensome, irrelevant, immaterial or scandalous matters. Briefs that are not in compliance may be disregarded or stricken, on motion or sua sponte by the court, and the court may assess attorney fees or other monetary sanctions against the offending lawyer."

By requiring the DeChambeaus to order and pay for a District Court transcript that will be disregarded as superfluous on appeal, and then by filing their motion regarding the same, it is apparent that the Respondents

intend to include material from the irrelevant and immaterial transcript in their appellate briefing.

Additionally, based on the above facts and legal discussion, the motion to compel itself is irrelevant and material because the law is clear that (1) transcripts *necessary* to the Court's review be submitted NRAP Rule 10(b)(1); and (2) Respondents have presented no case law showing that the cases cited by the DeChambeaus' counsel have been overruled or overturned either in the case law or by NRAP Rules 9 or 10. (See Exhibits 3 and 4, attached to Respondents' Motion to Compel Transcript Order.)

Respondents have yet to provide any on-point explanation as to why a transcript of a motion for summary judgment hearing would be relevant or necessary to this Court's De Novo review.

#### **D. Conclusion**

Based on the foregoing, the DeChambeaus respectfully request that this Court deny Respondents' motion to compel and motion to dismiss and, instead, grant the DeChambeaus payment for attorney fees and costs in the amount of \$1,500.00 for having to oppose Respondents' motions.

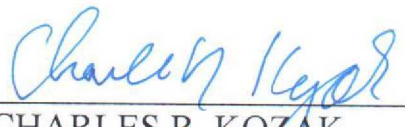
**Declaration of Charles R. Kozak**

STATE OF NEVADA     )  
                                      ) ss:  
COUNTY OF WASHOE )

I, Charles R. Kozak, declare that the following statements are true, and if required, I could testify to the following:

1. I am counsel of record for the Dechambeau Appellants in the appeal of *DeChambeau v. Balkenbush et al.* (Case No. 64463).
2. My hourly rate is \$250.00. To date I have spent six (6) hours preparing the Appellants' opposition to Respondents' Motion to Compel Transcript Order, or in the alternative, to Dismiss this appeal.
3. My fees for the preparation of this motion total \$1,500.00

Dated this 24th day of February, 2014.

  
\_\_\_\_\_  
CHARLES R. KOZAK

Pursuant to NRS 239B.030 the undersigned certifies no Social Security numbers are contained in this document.

Dated: February 24, 2014

/s/ Charles R. Kozak

CHARLES R. KOZAK, ESQ.

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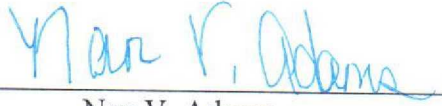
**CERTIFICATE OF SERVICE**

I, Nan V. Adams, certify that on the 24th day of February, 2014, I caused to be delivered by:

\_\_\_\_\_ MESSENGER SERVICE  
\_\_\_\_\_ FASCIMILE to the following number: \_\_\_\_\_  
XXX U.S. MAIL  
\_\_\_\_\_ CERTIFIED MAIL, RETURN RECEIPT REQUESTED  
\_\_\_\_\_ FEDERAL EXPRESS or other overnight delivery

A true and correct copy of the within document: **OPPOSITION TO MOTION TO COMPEL TRANSCRIPT ORDER OR, IN THE ALTERNATIVE, TO DISMISS APPEAL; AND REQUEST FOR ATTORNEYS' FEES, CASE NO. 64463**, addressed as follows:

Margo Piscevich, Esq.  
Mark J. Lenz, Esq.  
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\_\_\_\_\_  
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