IN THE SUPREME COURT OF THE STATE OF NEVADA

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RICHARD JUSTIN,
JUSTIN BROS BAIL BONDS,
and INTERNATIONAL FIDELITY
INSURANCE COMPANY,

CASE NO. 67786

Petitioners,

v.

JANET J. BERRY, IN HER OFFICIAL
CAPACITY AS DEPARTMENT 1 OF
THE SECOND JUDICIAL DISTRICT
OF THE STATE OF NEVADA,

Respondent,
_____/

THE STATE OF NEVADA,

Respondent.
_____/

REPLY TO ANSWER OF RESPONDENT, JUDGE JANET BERRY AND REAL PARTY IN INTEREST, THE STATE OF NEVADA

COMES NOW, Petitioners, Richard Justin dba Justin Bros. Bail Bonds and International Fidelity Insurance Company, and replies to the Answers of Respondent, the Honorable Janet Berry ("Judge Berry") filed June 15, 2015, and

the State of Nevada ("The State"), Real Party in Interest, filed June 16, 2015.

INTRODUCTION

This Writ Petition must be adjudicated on its merits with several abiding principles of law in mind:

1. The legal maxim that "equity abhors a forfeiture" hardly needs citation to any authority. McCall v. Carlson, 63 Nev. 390, 406, 172 P.2d 171, 179 (1946); Humphrey v. Sagouspe, 50 Nev. 157, 254 P. 1074, 1079 (1927). Hence, the law does not favor forfeitures, and statutes imposing them must be strictly construed. Wilshire Insurance Company v. State, 94 Nev. 546, 550, 582 P.2d 372, 375 (1978) [reversing order forfeiting bail bond]; Harris v. State, 104 Nev. 246, 247, 756 P.2d 556, 557 (1988).

2. The ultimate goal of interpreting statutes is to effectuate the Legislature's intent. This Court interprets clear and unambiguous statutes based on their plain meaning. But when a statute is ambiguous, this Court consults other sources, such as legislative history, reason, and policy to identify and give effect to the Legislature's intent. Critically, this Court interprets statutes to conform to reason and public policy. In so doing, this Court avoids interpretations that lead to absurd results. **Whenever possible, this Court will interpret a rule or a statute in harmony with others rules or statutes.** Statutes dealing with the same

subject as the one being construed are an aid for interpretation. In Re City Center Construction & Lien Master Litigation, 129 Nev. Ad. Op. 70, 310 P.3d 574, 578, 580 (2013), and cases and authorities cited therein.

3. It is true that the district court has no discretion to exonerate a bail bond if there is no statutory authority in support thereof. All Star Bail Bonds, Inc. v. District Court, 130 Nev. Ad. Op. 45, 326 P.3d 1107, 1110 (2014), and cases cited therein. However, the notion of automatic exoneration of a bail bond upon a surety's surrender of the defendant to the custody of the sheriff prior to entry of judgment of conviction is not only statutorily based, it goes back to when Nevada was first formed as a state! NRS 31.580, which has as its basis NCL §8654, specifically states:

> "For the purposes of surrendering the defendant, the bail at any time or a place before they are finally charge made themselves arrest the defendant; or by a written authority, endorsed on a certified copy of the undertaking, may empower the sheriff to do so. Upon the arrest of the defendant by the sheriff, **or upon delivery of the defendant to the sheriff by the bail, or upon the defendant's own surrender, the bail shall be exonerated**; provided, such arrest, delivery or surrender shall take place before the expiration of ten days after judgment; but if such arrest, delivery or surrender be not made within ten days after judgment, the bail shall be finally charged on their undertaking, and be bound to pay the amount of the judgment within ten days thereafter."

4. As pointed out in the Memorandum of Points and Authorities in support of the Petition, but as apparently needs to be repeated since it was ignored by both

Judge Berry and the State, the responsibilities of a surety are based upon its constructive custody of the person bailed. But once that person has been remanded into formal custody, the surety cannot any longer have custody over the accused. Kiperman v. Klenshetyn, 35 Cal. Rptr.3d 178, 182 (Cal. App. 2005), and cases cited therein. That is, once the previously - bailed accused is delivered into the sheriff's custody, there is nothing left for the surety to do. His job is over.

5. As sixth-sevenths of this Court consists of former district court judges, this Court well knows that in the routine case of imposition of a felony sentence after the posting of bail, from the bench the court automatically exonerates the bail bond at time of sentencing. The surety does not have to file a motion; it is just done. That being so, this fact pattern begs the question: Where in the statute is the burden placed on the surety to file a motion to exonerate when the accused is delivered into custody, in order to obtain exoneration?

Judge Berry would appear to acknowledge that if this case with this fact pattern occurred in California, the law would solidly and unquestionably be in favor of exoneration of the bail bond on these facts; indeed, in California it would be a "virtual no-brainer". However, Judge Berry and the State believe the statutory scheme in Nevada is different. As we shall show below, it absolutely is not based upon the applicable principles of interpretation.

The facts of this case truly are not in dispute. At the time of filing and service of the Notice to Intent to Forfeit the Bond on March 18, 2014, the accused, Norman Dupree, had already had his bail revoked and had already been remanded to the custody of the sheriff before that date. There was nothing left for these Petitioners to do on March 18, 2014 relative to bail bond no. 1S30K-151744.

But because Judge Berry technically had not seen "the whites of Dupree's eyes" on March 18, 2014, the State and Judge Berry would have this Court hold that that fact is irrelevant.

But that is not all. After Dupree was remanded to the Washoe County Jail on January 31, 2014, his bail was reset in the amount of $20,000.00. Bonafide Bail Bonds, not affiliated with these Petitioners, posted bail for Dupree on that bond, and Dupree was released. Dupree again failed to appear. Within 180 days of that date, or by May 14, 2014, Bonafide Bail Bonds arrested Dupree and remanded him to the custody of the Washoe County Sheriff.

Somehow, Judge Berry and the State believe that the law allows them to stack bail bonds, thus making the "*de facto*" amount of Dupree's bail greater than the $20,000 ordered, and to exonerate Bonafide once they remanded Dupree into custody but not exonerate the stacked bail bond of these Petitioners. Their reasoning justifying this result quite frankly is mystifying and escapes these

Petitioners; but evidently their reasoning is to keep 1S30K-151744 alive as a matter of law because it was Bonafide, and not these Petitioners, who caused Dupree to be remanded into custody. Apparently, believes Judge Berry and the State, in order for exoneration of both bonds to occur, an agent of Bonafide should have grabbed Dupree by one arm and an agent of these Petitioners should have grabbed Dupree by the other, and together they should walked Dupree into the arms of the Washoe County Sheriff. Absent that absurd scenario, they posit, Judge Berry had the discretion to stack bail bonds, so as to make the actual amount of bail higher than what was ordered, and exonerate only one. Of course, there is no statute that even arguably authorizes such a stacking procedure.

To make matters worse, when Bonafide surrendered Dupree into the custody of the Sheriff in May of 2014, Judge Stiglich had entered a "$50,000.00 cash only warrant" from the bench; but somehow her order did not make its way into the Washoe County Jail's computer system. Had the system acted correctly, nobody - whether these Petitioners, Bonafide, or any other bondsman - could possibly have bailed Dupree. But Judge Berry and the State evidently believe that the Sheriff is blameless for its errors, and once again the risk falls on these Petitioners for not knowing the Sheriff's unilateral mistake of that date.

On May 16, 2014 Petitioners posted a $20,000.00 bond on behalf of

Dupree, 1S30K-16345, and the Sheriff erroneously released Dupree. It is undisputed that after Dupree again failed to appear and Respondent's Clerk sent another Notice of Intent for Forfeit, these Petitioners caused Dupree to be placed into custody within 180 days of that date. However, the State and Judge Berry take the position that because they did not do so within 180 days of March 18, 2014, that fact is irrelevant. Again, the State and Judge Berry believe that on a $20,000.00 bail order they can "stack" two bonds to make the total bail greater the that ordered, but not have the first bond relate forward to the Notice of Intent to Forfeit date as to the second bond. Again, there is no statute that authorizes that kind of "stacking".

The State and Judge Berry further believe that the state of the law is that where the 180 days have passed and the accused is not in the Sheriff's custody on "day 180", the bondsmen has nothing to do but pay the face amount of the bond. The fact that the bondsmen ultimately surrender the accused to the Sheriff, the accused appears before the district court, pleads guilty, and is sentenced to prison, is irrelevant. And the fact that the surety causes the accused to be surrendered to the custody of the Sheriff within weeks of the entry of a judgment of forfeiture is also irrelevant under all circumstances. They believe that the state of the law is that there is nothing left to do but for the surety to pay the money or be shut off if

he or it fails to do so.

We would hope that one who has just read this reply to this point, would react with "if that is the law, the law is a ass." However, Petitioners need not rely on Charles Dickens as authority; the entire statutory scheme would tell this Court that Judge Berry's and the State's positions would effectuate an unreasonable, indeed absurd, result, and thus cannot be right.

REPLY TO JUDGE BERRY'S ANSWER

Judge Berry narrowly focuses on NRS 178.509 and her interpretation thereof. In so doing she violates the above basic principles of statutory interpretation, because she fails to take into account the rest of the Nevada statutory scheme regarding exoneration or forfeiture of bail. Specifically, she fails to take into account NRS 178.522 and the above applicable principles. NRS 178.522 specifically states:

> "1. When the condition of the bond has been satisfied or the forfeiture thereof has been set aside or remitted, the court shall exonerate the obligors and release any bail. The court shall exonerate the obligors and release any bail at the time of sentencing the defendant, if the court has not previously done so unless the money deposited by the defendant as bail must be applied to satisfy a judgment pursuant to NRS 178.528.
>
> 2. A surety may be exonerated by a deposit of cash in the amount of the bond or **by a timely surrender of the defendant into custody**."
>
> What does this statute mean?

First the legislature's use of the word "shall" demonstrates its intent to prohibit judicial discretion. Otak Nevada, LLC v. Eighth Judicial District Court, 127 Nev. Ad. Op. 53, p.5, 260 P.3d 408, 411 (2011). Therefore, when one of two things happens - either the condition of the bond has been satisfied or the forfeiture thereof has been set aside or remitted - the judge has no discretion. She must exonerate the obligators and release any bail.

Secondly, there is nothing in NRS 178.522 that requires the surety to file a motion in order for the judge to exonerate the obligors. It is a self - imposed obligation. Exoneration happens by operation of law. (And the same is also true viz. NRS 31.580)

Third, exoneration of the bond happens in one of two ways: Either a deposit of cash in the amount of the bond or a timely surrender of the defendant into custody. NRS 178.522(2) is noteworthy for what it does not say. It does not say that the obligor himself must cause the surrender of the defendant into custody; if he is surrendered by anybody, or self-surrendered, then exoneration happens. When Bonafide Bail Bonds timely placed Dupree into custody, NRS 178.522(2) mandated that Judge Berry exonerate these Petitioners' bond.

Fourthly, the words "if the court has not previously done so" means that exoneration of a bail bond can happen prior to sentencing. As such, NRS 178.522

modifies 178.509. A surety can be exonerated before the date of forfeiture if the defendant is placed into custody before the final date of forfeiture. It does not matter whether the judge has "locked eyes" with the defendant or not. NRS 178.522(2) does not require that condition.

As indicated above, NRS 178.522 as it should be interpreted is completely consistent with NRS 31.580. When the defendant is arrested and placed into the sheriff's custody prior to entry of judgment, the bail shall be exonerated.

Dupree was placed into the custody of the Washoe County Sheriff in January of 2014. Judge Berry had the duty, pursuant to both NRS 179.522 and NRS 31.580, to exonerate Petitioner's bond. She failed and refused to do so.

When Dupree was put into custody the second time in May of 2014 by Bonafide, Judge Berry again had the same duty to exonerate Petitioner's bond. She failed and refused the second time.

The fact that she did not "lock eyes" with Dupree on either occasion does not matter; neither statute requires that. And the fact these Petitioners did not file a motion also does not matter; neither statute requires that, either. The Nevada statutory scheme is just like California's, under which all agree, exoneration must happen by operation of law.

Petitioners cannot be faulted for failing to point this out to Judge Berry. In

their "Motion to Declare Judgment of October 6, 2014 Unenforceable and/or Completely Satisfied, and to Exonerate Bail Bond No. 1S30K-151744" filed February 17, 2015, Petitioners specifically brought to Judge Berry's attention NRS 178.522. (PA: 72) She chose to ignore the governing statute, and assumes that this Court shall continue to honor said ignorance.

Faced with that, Judge Berry proposes an alternate view of the law: Even if Dupree was in custody during the 180 days from March 19, 2014, he was not in custody on the 180th day. Therefore, posits Judge Berry, forfeiture must happen, and the question of what happens thereafter is irrelevant.

Once again, Judge Berry fundamentally misapprehends the statutory and rule scheme.

To begin with, the bail forfeiture judgment was filed October 6, 2014. PA: 27-28) Within 17 days of the judgment, Petitioner filed a Motion for Reconsideration or a Motion pursuant to NRCP 60(b). (PA: 29) Unquestionably, NRCP 60(b) applies to any final judgment, order or proceeding. To the extent that Petitioners argued a clerical error by Judge Berry (PA: 58), their motion was timely since it was filed within six months per NRCP 60(b). However, at PA: 32, Petitioner argued, as he argues here, that the bond was automatically exonerated, and therefore the forfeiture judgment was void. Per Moore v. Moore, 75 Nev. 189,

193-94 n. 2, 336 P.2d 1073 (1959), a motion to set aside an order on the basis that it is void can be brought at any time.[1] And the record clearly reflects that by the time Petitioners submitted their Rule 60(b) motion, Petitioners surrendered Dupree into custody, Dupree appeared before Judge Berry, and Dupree plead guilty. Pursuant to NRS 178.512(1)(a)(1) and NRS 31.580, then, Judge Berry had no discretion but to set aside the forfeiture at that point. Again, Petitioners placed NRS 178.512 in front of Judge Berry in their motion filed February 17, 2015 (PA: 71-72), but she ignored it.

But if that were not enough we have Attorney General Opinion No. 96-05, attached hereto. When a bond forfeiture is paid into the state treasury pursuant to NRS 178.518 but the bondsman causes the defendant placed into custody thereafter, pursuant to NRS 353.115 the bondsman has the ability to request a refund of the payment and may do so even more than one year from the date of the forfeiture's deposit into the treasury. So, to say that the surety has no remedy if the accused is not in custody on the 180th day following the notice is to ignore that statute as well!

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[1]As a dramatic example of that, recently in Henson v. Henson, 130 Nev. Ad. Op. 79, 334 P.3d 933, 935 n. 3 (2014), this Court affirmed the granting of relief to a party attacking a void order 13 years after its entry and 8 years after the party attacking the "void order" knew about it.

Beyond any doubt, then Judge Berry has given this Court no reason to deny the within Writ Petition, unless the Court chooses to ignore the statutes on point. That, of course, would be plain error[2] at least in part, and since we are here on original writ jurisdiction and not appellate jurisdiction, presumably this Honorable Court will not be interested in overlooking plain error.

REPLY TO THE STATE'S ANSWER

We have an interesting situation here. When Petitioners filed their timely Motion for Exoneration of Bond (PA: 15-19), the State filed its response. At PA: 21 the State specifically stated:

> "Assuming for the purposes of this Motion only the truth of the matters asserted by the bondsman, and reserving all objections of any kind to the same and future filings, the State has no objection to the Motion for Exoneration of Bond."

In other words, assuming everything the bondsman stated to that point was true (which it was), the correct ruling was to exonerate the bond. The State was absolutely correct in that regard for reasons stated above.

But when Judge Berry ignored the position of the State and entered her judgment of forfeiture, the Petitioners filed their Rule 60(b) motion 17 days later. (PA: 29-54) The State this time simply did not respond. The Petitioners then

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[2]See: Bradley v. Romeo, 102 Nev. 103, 105, 716 P.2d 227, 228 (1986).

filed their "Reply" response to the "non-response," using that opportunity to point out that Dupree as of that day (December 4, 2014) had been surrendered into the custody of the Washoe County Sheriff pursuant to the third bond. (PA: 59)

Even in response to the Motion to Declare Judgment of October 6, 2014 unenforceable and/or completely satisfied, and to exonerate bail bond IS39K-151744, the State's response was that it would not shift positions from its previous non-opposition. (PA: 100)

Now, the State has dramatically shifted its position. The question is whether the State may properly do so.

Luciano v. Marshall, 95 Nev. 276, 278, 593 P.2d 751, 752 (1979) suggests that a party may not take a position on an extraordinary writ petition that he waived to the court below; and also that this Court may consider legal arguments not addressed to the court below. I.e., the principle of Bradley v. Romeo, *supra* certainly applies to an original writ petition proceeding.

In International Fidelity Insurance Company v. State of Nevada, 122 Nev. 39, 126 P.3d 1133 (2006) this Court held that an order of forfeiture - or an order of exoneration - is not an appealable order. Instead, the bondsman or a bondman's surety seeking to challenge a district court order entered in a bail bond proceeding should do so by filing an original petition for writ relief. 122 Nev. at 42. In such

a petition the Court looks to whether the court below manifestly abused its discretion. (Id. at 42-43) I.e., the respondent is the court (judge) who issued the order(s) being reviewed.

And finally, this Court suggested in both California State Auto Association Inter-Insurance Bureau v. Eighth Judicial District, 106 Nev. 197, 198-99, 788 P.2d 1367, 1368 (1990) and Falconi v. Secretary of State, 129 Nev. Ad. Op. 28, 299 P.3d 378, 387 (2013) that a petitioner (and by logical extension, any party) may not raise an issue to this Court not raise to the court below, where that issue *requires* the court below to make *findings of fact* addressing the new claim.

With these principles in mind, we submit that the State should not be allowed to change its legal positions, and to the extent that it has, that portion of its argument should be ignored or stricken. In so saying, however, we note that at pp. 10-23 of its Answer, the State essentially parrots Judge Berry's Answer by focusing upon NRS 178.509, in ignorance of NRS 178.522. Likewise, the State does not address either NRS 31.580 or NRS 353.115.

However, the State makes a subject matter jurisdiction - type of argument which of course can be raised at any time and therefore necessitates a response. The State argues that now that the named Respondent has complied with NRS 178.518 and paid the $25,000.00 - paid by the Petitioners "under protest" to the

Clerk of the Second Judicial District, who in turn paid it to the State Controller - there is no longer a justiciable controversy between Petitioners and these parties. Because the Clerk did so without notifying Petitioners, such that the Petition was filed shortly after the Clerk transmitted the money to the State Controller, the State argues both that the petition is untimely and that it has not named the proper party, to wit, the Controller of the State of Nevada.

These arguments need not detain this Court for very long.

The real party in interest in this case is the State of Nevada. When the case was in litigation before Judge Berry, it was the State of Nevada on relation of the Washoe County District Attorney's Office, who was prosecuting Mr. Dupree. Now, because of the Clerk's compliance with NRS 178.518, it is the State of Nevada on relation of the controller. Of course, the controller is also an employee of the State of Nevada. But it is the same State of Nevada!

The Court permits an amendment of a pleading that is not a jurisdictional defect in order to promote the policy objectives of the statute. See: Miles v. State, 120 Nev. 383, 387, 91 P.3d 588, 590 (2004) [court permits cure of improper verification of writ petition]. And the Court may act within its inherent power and add a party where the existing parties in the added party are not prejudiced. See: Agrifinance, Inc. v. Senter, 481 N.Y. Supp.2d 504, 506 (N.Y.A.D. 1984);

Suchomel v. University of Wisconsin Hospital & Clinics, 708 N.W.2d 13, 17-18 (Wis. App. 2005).

Accordingly, if it really and truly matters, the Court *sua sponte* can amend the name of both the Respondent and the Real Party in Interest to be the State of Nevada, on relation of the controller of the State of Nevada. In that way, this Court will retain jurisdiction, since it has already heard the positions of "the State."

Following the State's argument to its logical consequence, though, the State would further argue that the Attorney General's Office, not the Washoe County District Attorney's Office, represents the State Controller; but the Attorney General has not weighed in yet. But the consequence of that argument, if it is made, would be: Therefore, this Court should strike Judge Berry's answer; strike Mr. Munro's answer on behalf of "the State"; order Petitioners to serve the Writ Petition, Memorandum of Points and Authorities, and Exhibits upon the Attorney General; and adjudicate the case based on the Attorney General's answer.

It is difficult for the undersigned to imagine why the Controller would particularly care about this case - especially since "the State" previously expressed non-opposition to exoneration of Petitioners' bond. It seems intuitively obvious that if the Controller receives a certified copy of an order from this Court to pay

over money to a party, the Controller will cut the check without litigating the matter. But while the State's "position" seems to lack common sense, if that is how we must proceed, then let's proceed that way.

However we proceed, it is clear beyond doubt that at the end of the day Petitioners are entitled to relief.

DATED this 22 day of June, 2015.

Respectfully submitted,

LAW OFFICES OF RICHARD F. CORNELL
150 Ridge Street, Second Floor
Reno, NV 89501

By: _____
Richard F. Cornell

OPINION NO. 96-05 REFUND; BAIL; FORFEITURES; TREASURER: The State Board of Examiners must approve a request for refund of bail bond forfeitures which are paid into the state treasury pursuant to NRS 178.518(2) when the request is made pursuant to a final judgment entered by a court more than one year from the date of the forfeiture's deposit into the treasury.

Carson City, March 13, 1996

Mr. John P. Comeaux, Director, Department of Administration, Capitol Complex, Carson City, Nevada 89710

Dear Mr. Comeaux:

You have requested our interpretation as to the effect NRS 353.115 may have with reference to certain requests for refunds of bond forfeitures.

QUESTION

May the State Board of Examiners (Board) approve a request for refund of bond forfeitures which are paid into the state treasury pursuant to NRS 178.518 when the request for refund is made pursuant to a final judgment entered by a court more than one year after the date of the forfeiture's deposit into the treasury?

ANALYSIS

NRS 178.518 provides in relevant part: "Money collected pursuant to NRS 178.506 to 178.516, inclusive, which was collected: . . . . (2) From a person who was charged with a gross misdemeanor or a felony must be paid over to the state treasurer for deposit in the fund for the compensation of victims of crime."

A refund of money from the state treasury is subject to approval by the Board when the Board is "satisfied with the correctness and justice" of the claim. NRS 353.120(1). A statute which imposes conditions on refunds from the state treasury is NRS 353.115, which provides:

A claim for refund of money deposited in the state treasury or paid to a state agency or officer shall be made within 1 year from the date of such deposit or payment unless:

1. Payment was made under protest; or
2. The statute applicable to claims against or refunds by a particular state agency or officer prescribes a different period.

The clear purpose of the statute is to provide for finality of claims against the state treasury. Statutes of limitation are common in Nevada Revised Statutes. *See* chapter 11 of NRS. It would be easy to end our inquiry here by holding that NRS 353.115 precludes payment of bail bond forfeitures which were deposited more than a year ago, but you have provided materials which may argue against that result.

The provisions of NRS 178.506-.516 address forfeiture of bail bonds due to breach of a bond condition by a defendant or failure of a defendant to make a court appearance. NRS 178.512 sets forth certain conditions under which a court shall set aside a forfeiture and order return of the forfeited money to the surety. The statute does not specifically address any period of limitation within which a surety must apply for a return of a forfeiture. However, despite the legislative restrictions placed upon courts, the Nevada Supreme Court has held: "The decision to grant exoneration or discharge of a bond rests with the discretion of the trial judge, as long as the sureties do not aid in the defendant's absence." *State v. American Bankers Ins.*, 106 Nev. 880, 883, 802 P. 2d 1276 (1990)(citing NRS 178.512).

You have provided us with backup materials including several court orders which were forwarded to the State Controller from the Clark County Department of Finance (County) in support of the County's requests for refund of forfeitures. These orders show the State of Nevada as a party in the underlying criminal cases. While these orders were issued in late 1995, some of them order refund of bail which was forfeited to the state treasury as long ago as 1989. There are several possible reasons for such a delay between a bond forfeiture and an order setting aside the forfeiture. We are advised that it is a common occurrence for a defendant to "skip" to a location outside Nevada to avoid a court appearance, thereby failing to appear and causing forfeiture of bail. It may be years before the defendant

is either extradited back to Nevada or returns voluntarily and is arrested on some other crime, at which point the surety is notified of the defendant's presence in the state and has a right to arrest the defendant for the purpose of surrendering the defendant to the court. NRS 178.526. In three of the examples which you supplied, we are advised that it was the Gaming Control Board who requested that the district attorney move to quash outstanding bench warrants on the defendants and to dismiss the case, reportedly after a year-long investigation failed to produce evidence sufficient to support a conviction. In any event, actions seeking the setting aside of forfeitures are often filed and heard more than one year after bail has been forfeited to the state treasury.

At proceedings for setting aside bail forfeitures, the state is represented by the district attorney. It is at this time that any defense of the state treasury based on NRS 353.115 should be raised. The former and current deputy district attorneys which we have discussed the issue with admit to not being familiar with provisions of NRS 353.115 and therefore to not having raised the statute in court. Even if properly raised and argued, it is not clear that every court would be convinced by the legal argument that NRS 353.115 prohibits such a refund from the state treasury in light of the standards for obtaining a refund of bail forfeiture set forth in NRS 178.512 and especially in light of the fact that the statute itself does not have any specific period of limitation within which an action to set aside a forfeiture must be filed and in light of the broad discretion granted to trial judges to discharge a bond in *American Bankers, Inc.* Absent legislative clarification as to the proper balance between the competing provisions of chapters 178 and 353 of NRS, there is a real potential for conflicting decisions in courts of first impression and in courts of appeal. Further, in many cases the relatively small amounts at issue would probably not warrant a serious appellate effort by the district attorney. Accordingly, it is our suggestion that the most feasible long-term solution to this issue is a legislative amendment to relevant provisions of chapter 178 of NRS to clarify that actions to set aside bond forfeitures which have been deposited into the state treasury either are, or are not, subject to the one-year refund limitation provision of NRS 353.115.

In the several examples of justice court and district court judgments which you have provided, all have apparently been received by the State

Controller after the expiration of time for appeal. *See* Justices' Courts' Rules of Civil Procedure 72B(a); *State v. Eighth Judicial District Court*, 97 Nev. 34, 623 P. 2d 976 (1981); Nev. R. App. P. 4(a). Accordingly, the state is bound by these final judgments and must pay over the refunds from the state treasury as ordered. The Board must acknowledge and comply with these unappealed orders by allowing refunds of forfeitures ordered.

CONCLUSION

The State Board of Examiners must approve a request for refund of bail bond forfeitures which are paid into the state treasury pursuant to NRS 178.518(2) when the request is made pursuant to a final judgment entered by a court more than one year from the date of the forfeiture's deposit into the treasury. We suggest that the issue of the legislature's intent as to the scope of protection of NRS 353.115 be presented to the 1997 Legislature for clarification.

FRANKIE SUE DEL PAPA
Attorney General

By: JAMES T. SPENCER
Senior Deputy Attorney General

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICHARD JUSTIN,
JUSTIN BROS BAIL BONDS,
and INTERNATIONAL FIDELITY
INSURANCE COMPANY,

CASE NO. 67786

Appellant,

v.

JANET J. BERRY, IN HER OFFICIAL
CAPACITY AS DEPARTMENT 1 OR
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OF THE STATE OF NEVADA,

Respondent,
_____/

THE STATE OF NEVADA,

Respondent.
_____/

ATTORNEY'S CERTIFICATE

I, RICHARD F. CORNELL, hereby certify as follows, pursuant to NRAP 28A, and NRAP 32(a)(8):

I have read this *Reply to Answer of Respondent, Judge Janet Berry and Real Party in Interest, The State of Nevada* before signing it;

To the best of my knowledge, information and belief, the Petition is not frivolous or interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

The Reply complies with all applicable Nevada Rules of Appellate Procedure, including the requirements of NRAP 28(e) that every factual assertion in the brief regarding matters in the record is supported by appropriate references to the record on appeal.

Further, I certify that the document complies with the formatting requirements of Rule 32(a)(4)-(6). Specifically, the brief is 2.0-spaced; it uses a mono-spaced type face which is Times New Roman 14-point; it is in a plain style; and the margins on all four sides is at least one (1)inch.

The Reply also meets the applicable page limitation of NRAP 40(b)(3). It is 22 pages in length, and it contains 4,102 words (less than 4,667 words).

DATED this 22nd day of June, 2015.

Richard F. Cornell,
Attorney for Appellant

CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of LAW OFFICES OF RICHARD F. CORNELL, and that on this date I caused a true and correct copy of the foregoing document to be delivered by Reno Carson Messenger Service, addressed to:

Keith Munro
Washoe County District Attorney's Office
Civil Division
One S. Sierra St., 7th Floor
Reno, NV 89501

Robert Eisenberg, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas St., 3rd Floor
Reno, NV 89519

DATED this 2nd day of June, 2015.

Marianne Tom
Legal Assistant