



In the Supreme Court of the State of Nevada

RAYMOND DELUCCHI and
TOMMY HOLLIS,

Appellants,

v.

PAT SONGER,

Respondent.

Electronically Filed
Nov 03 2015 03:51 p.m.
Case No. 68994
District Court
Tracie K. Lindeman
Clerk of Supreme Court

DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for *en banc*, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to attach documents as requested in this statement, completely fill out the statement, or to fail to file it in a timely manner, will constitute grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See Moron v. Bonneville Square Assocs.*, 117 Nev. 525, 25 P.3d 898 (2001); *KDI Sylvan Pools v. Workman*, 107 Nev. 340, 810 P.2d 1217 (1991). Please use tab dividers to separate any attached documents.

1. **Judicial District:** Fifth **Department:** II **County:** Nye

Judge: Kimberly A. Wanker **District Ct. Docket No.** CV35969

2. **Attorney filing this docketing statement:**

Attorney: Adam Levine, Esq. Telephone: (702) 386-0536
Firm: Law Office of Daniel Marks
Address: 610 South Ninth Street
Las Vegas, Nevada 89101

Clients: Raymond Delucchi and Tommy Hollis

If this is a joint statement completed on behalf of multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. **Attorneys representing Respondents:**

Attorney: Joseph P. Garin, Esq. Telephone: (702) 382-1500
Siria L. Gutierrez, Esq.
Firm: LIPSON, NEILSON, COLE, SELTZER GARIN
Address: 9900 Covington Cross Drive, Suite 120,
Las Vegas, Nevada 89144

Client: Pat Songer

4. **Nature of disposition below (check all that apply):**

- | | |
|--|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Grant/Denial of injunction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Grant/Denial of declaratory relief |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Review of agency determination |
| <input type="checkbox"/> Dismissal | <input type="checkbox"/> Divorce decree: |
| <input type="checkbox"/> Lack of jurisdiction | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Failure to state a claim | <input checked="" type="checkbox"/> Other disposition (specify): |
| <input type="checkbox"/> Failure to prosecute | Grant of a special motion to dismiss |
| | pursuant to NRS 41.660 |
| <input type="checkbox"/> Other | |

5. **Does this appeal raise issues concerning any of the following:**

- ☐ Child custody
- ☐ Venue
- ☐ Termination of parental rights

No

6. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Delucchi et al v. Songer et al Docket No. 66858
Songer v Delucchi et al Docket No. 67414

7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None

8. **Nature of the action.** Briefly describe the nature of the action, including a list of the causes of action pleaded, and the result below:

Appellant's filed suit in the District Court alleging defamation and intentional infliction of emotional distress arising out of an investigatory report authored by the Respondent under a contract of hire by Appellants' employer. False and defamatory statements contained within the report led to Appellants' termination. Appellants were subsequently reinstated with back pay and benefits when a neutral labor arbitrator determined that the report contained intentional misrepresentations.

Respondent filed Special Motions to Dismiss citing to Nevada's Anti-SLAPP statutes, claiming that the report generated under a contract for hire constituted "Good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern". The District Court's Order Granted the Special Motion to Dismiss.

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9. **Issues on appeal.** State concisely the principal issue(s) in this appeal:

1. Whether the District Court erred in granting the special motion to dismiss pursuant to NRS 41.660.

2. Whether the protections of NRS 41.635 through NRS 41.670 apply to persons acting under a contract of hire (as opposed to a citizen engaging in the First Amendment right to petition the government or speech on a matter of public concern).

3. What portions, if any, of the 2013 statutory amendments to NRS 41.635 through NRS 41.670 apply retroactively to communications made in 2012?

4. Whether the decision of an arbitrator should be afforded issue preclusion with regard to whether the statements of Respondent was "truthful or [were] made without knowledge of [their] falsehood" for purposes of NRS 41.637.

5. What are the standards for determining whether a statement is "truthful or is made without knowledge of its falsehood" for purposes of NRS 41.637?

10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issues raised:

No

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain

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12. **Other issues.** Does this appeal involve any of the following issues?
- ☐ Reversal of well-settled Nevada precedent (on an attachment, identify the case(s))
 - ☐ An issue arising under the United States and/or Nevada Constitutions
 - ☒ A substantial issue of first-impression
 - ☒ An issue of public policy
 - ☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
 - ☐ A ballot question
- If so, explain:

Nevada's anti-SLAPP statute is intended to protect "well-meaning citizens who petition [the] government and then find themselves hit with retaliatory suits". *Johnson v. Douglas County School District*, 125 Nev. 746, 753, 219 P.3d 1276 (2009). The purpose of the anti-SLAPP is to protect "good-faith communications in furtherance of the right to petition" it also provide immunity from liability for "those who petition all departments of the government for redress". *Id.*

In this case the district court extended the protection of anti-SLAPP to individuals who were hired by the town Pahrump to conduct an internal investigation against two firefighters despite the absence of any First Amendment related conduct (i.e. petitioning the government for redress or speaking out as a citizen on a matter of public concern).

In 2012, when the report at issue in this case was generated, Nevada's anti-SLAPP only applied to a "Good faith communication in furtherance of the right to petition". The October 2013 amendments enacted after the report containing the false statements was generated, but before suit was filed, expanded the protection to include "the right to free speech in direct connection with an issue of public concern". It is an issue of first impression as to whether the expanded protections with regard to "the right to free speech in direct connection with an issue of public concern" should be applied retroactively to a report generated in 2012 which was clearly not in furtherance of "the right to petition".

13. **Trial.** If this action proceeded to trial, how many days did the trial last?

Was it a bench or jury trial? N/A

14. **Judicial disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal. If so, which Justice?

No.

TIMELINESS OF NOTICE OF APPEAL

15. **Date of entry of written judgment or order appealed from.** September 15, 2015.

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

16. **Date written notice entry of judgment or order was served.** September 24, 2015.

Was service by

☐ Delivery

☒ Mail/electronic/fax

17. **If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59),**

(a) Specify the type of motion, and the date and method of service of the motion, and date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration do not toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. __, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion

N/A

(c) Date written notice of entry of order resolving motion served including proof of service.

N/A.

Was service by

☐ Delivery

☐ Mail

18. **Date notice of appeal was filed:** October 9, 2015

If more than one party has appealed from the judgment or order, list date each notice of appeal was filed and identify by name the party filing the notice of appeal:

19. **Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a), NRS 155.190, or other:**

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

20. **Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

NRAP 3A(b)(1)

Explain how each authority provides a basis for appeal from the judgment or order:

The Order of Dismissal is a final judgment.

21. **List all parties involved in the action in the district court:**

(a) Parties:

Raymond Delucchi, Appellant

Tommy Hollis, Appellant

Pat Songer, Respondent

Erickson, Thorpe & Swainston, Ltd., Respondent

- (a) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

The action against Erickson, Thorpe & Swainston was settled as part of a Supreme Court settlement conference in Docket No. 66858.

- 22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims or third-party claims, and the date of formal disposition of each claim.**

Delucchi and Hollis: Defamation and Intentional Infliction of Emotional Distress – Dismissed on September 15, 2015.

- 23. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action below:**

☒ Yes

☐ No

- 24. If you answered "No" to the immediately previous question, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b):

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

25. If you answered “No” to any part of question 24, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):

26. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims and third party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

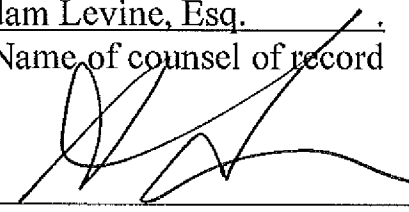
Raymond Delucchi and Tommy Hollis

Name of appellant

Adam Levine, Esq.

Name of counsel of record

11-3-15
Date


Signature of counsel of record

Clark County, Nevada

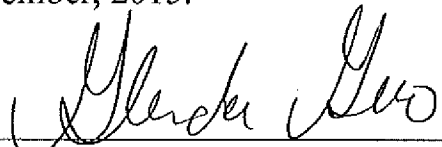
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 3rd day of November, 2015, I served a copy of this completed Amended Docketing Statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es):
- ☒ By serving it upon him/her via electronic filing as mandated by the Court to the email address as provided to the Court by opposing counsel.

Dated this 3rd day of November, 2015.


Signature