

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALBERT H. CAPANNA, M.D.,

Appellant/Cross-Respondent,

vs.

BEAU R. ORTH,

Respondent/Cross-Appellant.

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Elizabeth A. Brown
Clerk of Supreme Court
Case Nos. 69935/70227
District Court Case No. A648041

**RESPONDENT/CROSS-APPELLANT'S MOTION FOR PERMISSION TO
EXCEED TYPE-VOLUME LIMITATION FOR COMBINED ANSWERING
BRIEF ON APPEAL AND OPENING BRIEF ON CROSS-APPEAL**

COMES NOW, Respondent/Cross-Appellant, Beau R. Orth ("Beau"), acting by and through his counsel, Dennis M. Prince, Esq. and Kevin T. Strong, Esq., of Eglet Prince, and hereby moves the Court for permission to exceed the type-volume limitation for his combined Answering Brief on Appeal and Opening Brief on Cross-Appeal. NRAP 28.1 governs cross-appeals and states the respondent's combined answering brief and opening brief is acceptable if it contains no more than 18,500 words. *See* NRAP 28.1(e)(2)(B)(i). This Court will grant a request to exceed the applicable type-volume limitation "only upon a showing of diligence and good cause." *See* NRAP 32(a)(7)(D)(ii).

Beau respectfully requests that this Court allow him to exceed the type-volume limitation from 18,500 words up to 20,699 words. Appellant/Cross-Respondent Albert H. Capanna, M.D.'s ("Capanna") appeal concerns numerous legal issues that revolve around several distinct aspects of the case including the scope of Beau's medical experts' testimony, the admissibility of their medical opinions on future damages, the district court's instructions to the jury, attorney misconduct, and the district court's award of attorneys' fees and costs for experts. Further, Beau's cross-appeal concerns a particularly complex and important legal issue for Nevada: the constitutionality of NRS 42.021. Thus, 18,500 words will not sufficiently allow counsel for Beau to properly provide this Court with the requisite factual bases and legal arguments necessary to address both Capanna's opening brief and Beau's issue on appeal. Due to the complexities involved in both the appeal and cross-appeal, a short increase in the word count of Beau's combined brief will further help this Court evaluate the legal issues presented by this appeal and cross-appeal. Thus, good cause supports Beau's request to exceed the type-volume limitation of his combined answering brief and opening brief.

Based on the foregoing, counsel for Respondent/Cross-Appellant Beau Orth respectfully requests this Court to allow him to exceed the applicable type-volume limitation of 18,500 words by an additional 2,199 words to 20,699 words.

DATED this 31st day of January, 2017.

EGLT PRINCE

/s/ Dennis M. Prince
DENNIS M. PRINCE, ESQ.
Nevada Bar No.: 5092
KEVIN T. STRONG, ESQ.
Nevada Bar No.: 12107
400 South Seventh Street, Suite 400
Las Vegas, Nevada 89101

**DECLARATION OF KEVIN T. STRONG IN SUPPORT OF
RESPONDENT/CROSS-APPELLANT'S MOTION FOR PERMISSION TO
EXCEED TYPE VOLUME LIMITATION FOR COMBINED ANSWERING
BRIEF ON APPEAL AND OPENING BRIEF ON CROSS-APPEAL**

1. I am an attorney licensed to practice law in the State of Nevada and an Associate with the law firm, Eglet Prince, counsel for Respondent/Cross-Appellant Beau R. Orth ("Beau") in this matter.

2. Counsel for Beau respectfully requests this Court allow him to exceed the type-volume limitation of 18,500 words by an additional 2,201 words to 20,701 words. Beau's answering brief on appeal is 14891 words and his opening brief on cross-appeal is 5,808 words.

3. Counsel requests to exceed the type-volume limitation due to the number of legal issues on appeal before this Court. Appellant/Cross-Respondent Albert H. Capanna, M.D.'s ("Capanna") appeal covers several distinct legal issues regarding: (1) the district court's preclusion of defense counsel from cross-examining Beau's treating medical provider; (2) the district court's allowance of medical opinions regarding future medical treatment; (3) the district court's instruction to the jury regarding insurance; (4) the district court's award of a portion of Beau's attorney's fees based on a frivolous liability defense and award of costs for two of Beau's medical experts; and (5) whether Beau's trial counsel engaged in attorney misconduct. These legal issues are very fact-intensive relative to events that

happened before, during, and after the trial as evidenced by Capanna's submission of 23 volumes to the appendix accompanying his opening brief.

4. Respondent/Cross-Appellant's cross-appeal relates to the constitutionality of NRS 42.021, which is a very important and complex legal issue that will have a great impact on future medical malpractice actions filed in Nevada.

5. A short increase in the type-volume limitation will allow counsel to adequately respond to the arguments set forth in Appellant/Cross-Respondent's opening brief and present this Court with a thorough analysis of the constitutionality of NRS 42.021.

6. A short increase in the type-volume limitation will also give this Court a more complete picture of all the issues on appeal and further assist this Court when it renders its decision.

7. This request is not meant to prejudice Appellant/Cross-Respondent or cause undue delay.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Dated this 31st day of January 2017.



KEVIN T. STRONG

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6). This brief has been prepared in a proportionally spaced typeface using Microsoft Word for Mac 2011, Version 14.4.1, in 14 point, double-spaced Times New Roman font.

2. I further certify that this brief exceeds the type-volume limitations of NRAP 28.1(e)(2)(B)(i) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points and contains 20,699 words.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of Nevada Rules of Appellate Procedure.

DATED this 31st day of January, 2017.

EGLT PRINCE

/s/ Dennis M. Prince
DENNIS M. PRINCE, ESQ.
Nevada Bar No.: 5092
KEVIN T. STRONG, ESQ.
Nevada Bar No.: 12107
400 South Seventh Street, Suite 400
Las Vegas, Nevada 89101

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this document was filed electronically with the Nevada Supreme Court on the 31st day of January 2017. Electronic service of the foregoing **RESPONDENT/CROSS-APPELLANT'S MOTION FOR PERMISSION TO EXCEED TYPE-VOLUME LIMITATION FOR COMBINED ANSWERING BRIEF ON APPEAL AND OPENING BRIEF ON CROSS-APPEAL** shall be made in accordance with the Master Service List as follows:

Anthony D. Lauria, Esq.
LAURIA, TOKUNAGA GATES & LINN, LLP
601 South Seventh Street, 2nd Floor
Las Vegas, Nevada 89101
Alauria@ltglaw.net

Robert L. Eisenberg, Esq.
LEMONS, GRUNDY & EISENBERG
6005 Plumas Street, Suite 300
Reno Nevada 89519
rle@lge.net

/s/ Kimberly Culley

An Employee of EGLET PRINCE