

# IN THE SUPREME COURT OF THE STATE OF NEVADA

## INDICATE FULL CAPTION:

ALBERT H. CAPANNA, M.D.,  
Appellant,  
vs.  
BEAU R. ORTH,  
Respondent.

No. 70227

Electronically Filed  
Apr 26 2016 11:13 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

DOCKETING STATEMENT  
CIVIL APPEALS

## GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

## 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 fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

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 KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Judicial Department III  
County Clark Judge Hon. Douglas W. Herndon  
District Ct. Case No. A-11-648041-C

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

Attorney Robert L. Eisenberg, Esq. Telephone 775-786-6868  
Firm Lemons, Grundy & Eisenberg  
Address 6005 Plumas Street, Third Floor  
Reno, Nevada 89519

Client(s) Appellant Albert H. Capanna, M.D.

If this is a joint statement by 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. Attorney(s) representing respondents(s):**

Attorney Dennis M. Prince, Esq. Telephone 702-450-5400  
Firm Eglet Prince  
Address 400 South Seventh Street, #400  
Las Vegas, Nevada 89101

Client(s) Respondent Beau R. Orth

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

Client(s) \_\_\_\_\_

(List additional counsel on separate sheet if necessary)

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

- |   |  |
|---|--|
| <input type="checkbox"/> Judgment after bench trial         | <input type="checkbox"/> Dismissal:  |
| <input type="checkbox"/> Judgment after jury verdict        | <input type="checkbox"/> Lack of jurisdiction  |
| <input type="checkbox"/> Summary judgment                   | <input type="checkbox"/> Failure to state a claim  |
| <input type="checkbox"/> Default judgment                   | <input type="checkbox"/> Failure to prosecute  |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief  | <input type="checkbox"/> Other (specify): _____  |
| <input type="checkbox"/> Grant/Denial of injunction         | <input type="checkbox"/> Divorce Decree:   |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification                          |
| <input type="checkbox"/> Review of agency determination     | <input checked="" type="checkbox"/> Other disposition (specify): <u>Award of attorneys' fees</u> |

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

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

**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:

Capanna v. Orth; No. 69935.

**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 and the result below:  
Medical malpractice; this appeal involves post-judgment award of attorneys' fees.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):  
Whether the district court erred by awarding attorneys' fees.

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:  
None known.

**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:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (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:

**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This appeal is related to No. 69935, which involves a judgment in excess of \$250,000.

**14. Trial.** If this action proceeded to trial, how many days did the trial last? 8 \_\_\_\_\_

Was it a bench or jury trial? Jury Trial \_\_\_\_\_

**15. 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?  
None.

## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from** 4/15/2016

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

**17. Date written notice of entry of judgment or order was served** 4/18/2016

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**18. 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, the date and method of service of the motion, and the 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 may 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 \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail

**19. Date notice of appeal filed** 4/18/2016

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

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

NRAP 4(a)(1)

**SUBSTANTIVE APPEALABILITY**

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

(a)

- |  |                                       |
|--|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1)                                   | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)                                   | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)                                   | <input type="checkbox"/> NRS 703.376  |
| <input checked="" type="checkbox"/> Other (specify) <u>NRAP 3A(b)(8)</u> |                                       |

(b) Explain how each authority provides a basis for appeal from the judgment or order:  
Special orders after final judgment are appealable under NRAP 3A(b)(8).



**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

Plaintiff Beau R. Orth and  
Defendant Albert H. Capanna, M.D.

(b) 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:

All parties in the district court are parties to this appeal.

**23. 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.**

Plaintiff claims medical malpractice and negligence; the complaint was filed on 09/08/2011. There are no counterclaims, cross-claims, or third-party claims.

**24. 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 or consolidated actions below?**

☒ Yes

☐ No

**25. If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:  
Not applicable.

(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

**26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**  
Not applicable.

**27. 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

This is a supplemental appeal; documents regarding the appeal from the judgment were provided with the docketing statement in No. 69935. Attached are copies of the attorneys' fees order and the notice of entry of that 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.

Albert H. Capanna, M.D.

Name of appellant

Robert L. Eisenberg, Esq.

Name of counsel of record

April 26, 2016

Date

Robert L. Eisenberg

Signature of counsel of record

Washoe County, Nevada

State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 26 day of April, 2016, I served a copy of this completed 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): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

**SEE ATTACHED**

Dated this

26 day of April, 2016

Ulrich Stupen

Signature

**CERTIFICATE OF SERVICE**

I certify that I am employee of Lemons, Grundy & Eisenberg and that on this date Appellant's Docketing Statement was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

Dennis Prince      [dprince@egletlaw.com](mailto:dprince@egletlaw.com)  
Tracy Eglet      [teglet@egletlaw.com](mailto:teglet@egletlaw.com)  
*Attorneys for Respondent*

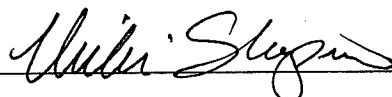
Anthony Lauria      [alauria@ltglaw.net](mailto:alauria@ltglaw.net)  
Kimberly Johnson [kjohnson@awslawyers.com](mailto:kjohnson@awslawyers.com)  
*Attorneys for Appellant*

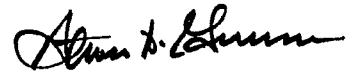
I further certify that on this date I served copies of this document was mailed, postage prepaid, by U.S. mail to:

Danielle Tarmu  
Eglet Prince  
400 S. Seventh Street  
#400  
Las Vegas, Nevada 89101  
*Attorneys for Respondent*

Stephen Haberfeld (Settlement Judge)  
8224 Blackburn Avenue  
# 100  
Los Angeles, CA 90048

DATED: 4/26/16





CLERK OF THE COURT

1 **NEOJ**

2 DENNIS M. PRINCE, ESQ.

3 Nevada Bar No. 5092

4 TRACY A. EGLET, ESQ.

5 Nevada Bar No. 6419

6 DANIELLE TARMU, ESQ.

7 Nevada Bar No. 11727

8 **EGLET PRINCE**

9 400 South Seventh Street, #400

10 Las Vegas, Nevada 89101

11 *eservice@egletlaw.com*

12 (702) 450-5400 phone

13 (702) 450-5451 facsimile

14 Attorneys for Plaintiff

15 *Beau R. Orth*

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 **BEAU R. ORTH,**

19 Plaintiff,

20 vs.

21 **ALBERT H. CAPANNA, M.D.;**  
22 **DOES I through X; ROE BUSINESS**  
23 **ENTITIES I through X, inclusive,**

24 Defendants.

CASE NO. : A-11-648041-C

DEPT. NO. : III

**NOTICE OF ENTRY OF ORDER**

**EGLET PRINCE**

1 PLEASE TAKE NOTICE that an Order Granting Plaintiff's Motion for Attorney's Fees  
2 was signed on April 11, 2016 and entered in the above-entitled action on April 15, 2016, a copy  
3 of which is attached hereto as **Exhibit "1."**

4  
5 Respectfully submitted this 18th day of Aril, 2016.

6 **EGLET PRINCE**

7  
8 /s/ Danielle Tarmu  
9 DENNIS M. PRINCE, ESQ.  
10 Nevada Bar No.: 5092  
11 TRACY A. EGLET, ESQ.  
12 Nevada Bar No.: 6419  
13 DANIELLE TARMU, ESQ.  
14 Nevada Bar No.: 11727  
15 *Attorneys for Plaintiff*  
16  
17  
18  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of EGLET PRINCE, and that on April 18th, 2016, I caused the foregoing document entitled **NOTICE OF ENTRY OF ORDER** to be served upon those persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

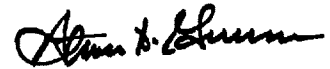
Anthony D. Lauria, Esq.  
 Kimberly L. Johnson, Esq.  
 LAURIA, TOKUNAGA GATES &  
 LINN, LLP  
 601 South Seventh Street  
 2<sup>nd</sup> Floor  
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 Office: (702) 387-8633  
 Fax: (702) 387-8635  
[Alauria@ltglaw.net](mailto:Alauria@ltglaw.net)  
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 Attorneys for Defendant  
*Albert H. Capanna, M.D.*

Robert L. Eisenberg, Esq.  
 LEMONS, GRUNDY & EISENBERG  
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 Reno Nevada 89519  
[rle@lge.net](mailto:rle@lge.net)  
 Attorneys for Defendant  
*Albert H. Capanna, M.D.*

/s/ Brittney Glover  
 an Employee of EGLET PRINCE

# **EXHIBIT “1”**





CLERK OF THE COURT

EGLET PRINCE

1 **ORDR**  
2 **DENNIS M. PRINCE, ESQ.**

3 Nevada Bar No.: 5092

4 **TRACY A. EGLET, ESQ.**

5 Nevada Bar No.: 6419

6 **DANIELLE TARMU, ESQ.**

7 Nevada Bar No.: 11727

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14 Attorneys for Plaintiff

15 *Beau R. Orth*

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 **BEAU R. ORTH,**

19 Plaintiff,

20 vs.

21 **ALBERT H. CAPANNA, M.D.;**  
22 **DOES I through X; ROE BUSINESS**  
23 **ENTITIES I through X, inclusive,**

24 Defendants.

CASE NO. : A-11-648041-C

DEPT. NO. : III

**ORDER GRANTING PLAINTIFF'S**  
**MOTION FOR ATTORNEY'S FEES**

25 Plaintiff BEAU ORTH, after prevailing at trial, filed a Motion for Attorney's Fees,  
26 which was opposed by Defendant ALBERT H. CAPANNA, M.D. and heard in Chambers on  
27 December 21, 2015. The Court, having read the papers and pleadings on file herein, hereby  
28 **GRANTS** Plaintiff's Motion for Attorney's Fees pursuant to NRS 18.010(2)(b) in the amount  
of \$169,989.58, as follows:

1 Pursuant to NRS 18.010(2)(b), attorney's fees are awardable to the prevailing party  
2 when the Court finds the opposing party's claims were brought without reasonable grounds or  
3 to harass the prevailing party. Moreover, the court is to liberally construe the provisions of  
4 NRS 18.010(2)(b).  
5

6 Plaintiff has alleged that all, and/or at least the liability part, of Defendant's defenses  
7 were maintained without reasonable grounds and therefore Plaintiff should be awarded his  
8 appropriate attorney's fees. As with most, if not all, medical malpractice actions, issues  
9 regarding liability and damages are separate. Even when one issue or the other is agreed upon  
10 between the parties, evidence regarding each issue requires a different presentation to the jury.  
11 Generally speaking, where both issues are contested, the liability portion requires much more  
12 time and effort as the parties never even reach the issue of damages without first establishing  
13 liability. This case was no different. Although certain witnesses addressed both issues, the  
14 manner of the presentation on each issue was different and the time spent on presenting each  
15 issue was different. Understanding this is important in the instant case because the Court  
16 cannot find that Defendant's liability defense was maintained with reasonable grounds,  
17 although defending the issue of damages was made in good faith and with reasonable grounds.  
18 The presentation of evidence on Defendant's liability, which it should be noted included  
19 evidence and opinions from some of Defendant's own experts, was overwhelming. It could  
20 not only be characterized as clearly exceeding the civil burden of proof standard but, arguably,  
21 the totality of evidence showing that the original surgery was performed at the wrong level of  
22 the spine would meet a "beyond a reasonable doubt" standard.  
23  
24  
25

26 Turning to the issue of time, it is difficult to ascertain with precision exactly how much  
27 time and effort is spent on liability issues versus damages issues over the course of a jury trial,  
28 particularly one such as this that spans the course of three weeks. However, a review of

1 available information allows the Court to conclude that it is reasonable to characterize the  
2 presentation of liability issues (through jury selection, opening statements, evidence  
3 presentation, and argument) as encompassing at least 80% of plaintiff's trial presentation. The  
4 Court has further evaluated the requested amounts, the documentation provided and, pursuant  
5 to *Schouweiler v. Yancey Co.*, 101 Nev. 827 (1985), has taken into account the complexity of  
6 the case, the quality of the advocacy, the character of the work, the work actually performed,  
7 and the results. The Court also finds that the application of NRS 7.095 is an appropriate  
8 mechanism to address attorney's fees. Based upon that, the Court finds that the total attorney's  
9 fees award of \$212,486.98 as requested in plaintiff's reply brief (which is less than the original  
10 amount requested in the motion) is an appropriate figure to which to apply the 80% designation  
11 described above.  
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EGLET PRINCE

1 Therefore, having found pursuant to NRS 18.010(2)(b) that Defendant maintained a  
2 liability defense without reasonable grounds and that Plaintiff's liability presentation at trial  
3 encompassed at least 80% of their time and effort, the Court HEREBY GRANTS Plaintiff's  
4 Motion for Attorney's Fees and ORDERS that attorney's fees will be awarded in the amount  
5 of \$169,989.58.  
6

7 **IT IS SO ORDERED.**

8 Dated this 11 day of <sup>April</sup> March, 2016.


9  
10  
11   
DISTRICT COURT JUDGE

12 DATED this 8 day of <sup>April</sup> March, 2016.


13 Respectfully Submitted By:

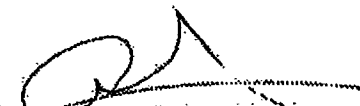
14 EGLET PRINCE

15  
16  
17 DATED this 3 day of March, 2016.

18 Approved as to Form and Content: 

19 LAURIA TOKUNAGA GATES & LINN

20   
DENNIS M. PRINCE, ESQ.  
Nevada Bar No. 5092  
TRACY A. EGLET, ESQ.  
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