

IN THE SUPREME COURT OF THE STATE OF NEVADA

ALBERT H. CAPANNA, M.D.,
Appellant/Cross-Respondent,

vs.

BEAU R. ORTH,
Respondent/Cross-Appellant.

Electronically Filed
Jun 19 2017 09:11 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

No. 69935

ALBERT H. CAPANNA, M.D.,
Appellant,

vs.

BEAU R. ORTH,
Respondent.

No. 70227

**MOTION FOR EXTENSION FOR REPLY BRIEF ON APPEAL AND
ANSWERING BRIEF ON CROSS-APPEAL**

Appellant hereby moves for an open extension of time for his combined reply brief on appeal and answering brief on cross-appeal, pending the outcome of his motion to strike respondent's appendix and portions of respondent's answering brief. Alternatively, if the court does not grant an open extension, appellant requests an extension of at least 30 days for his combined brief.

Appellant's combined brief is presently due for filing on June 26, 2017. This is appellants' first requested extension for the combined brief.

PROCEDURAL BACKGROUND

On February 1, 2017, respondent submitted a motion to exceed the word-count for his combined answering brief and opening brief on cross-appeal. He also

filed a respondent's appendix. Appellant moved to strike portions of respondent's appendix and portions of his combined respondent's brief, on the ground that his appendix contained documents that were not appropriate for an appeal appendix. At respondent's request, appellant stipulated to an extension of time for respondent's opposition to the motion to strike.

On May 10, 2017, this court issued an order denying respondent's motion to exceed the word-count limit. The court ordered respondent to file a replacement brief within 15 days. The court also granted the entirety of appellant's motion to strike. The court ordered the clerk to strike 14 tabbed documents from respondent's appendix.

On May 26, 2017, respondent filed his replacement brief. He also filed a second appendix containing numerous documents, including three documents that this court had previously ordered stricken from his appendix. His replacement brief contains numerous references to the previously-stricken documents that are now duplicated in his new appendix.

On June 1, 2017, appellant moved to strike respondent's entire second appendix, or alternatively, the documents that were previously stricken. Appellant also moved to strike portions of respondent's replacement brief that reference the

offending documents. Respondent filed opposition on June 8, 2017, and appellant filed a reply on June 14, 2017. The motion to strike is still pending.¹

In the meantime, the 30-day limit for appellant's combined reply/answering brief is still running, and appellant's brief is due on June 26, 2017.

ARGUMENT

Appellant's counsel cannot prepare his combined reply/answering brief until he knows whether the court will be striking respondent's second appendix (or portions thereof), and whether the court will be striking portions of respondent's replacement brief (or perhaps ordering respondent to file a second replacement brief). In other words, appellant's counsel needs to know the final appendix and brief to which he needs to reply, before he can prepare his reply brief. Accordingly, appellant requests that the 30-day time limit for his combined reply/answering brief should commence when this court rules on the pending motion to strike.

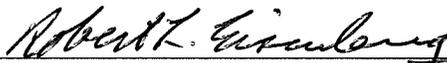
If the court is unwilling to give an open extension, appellant seeks an extension of at least 30 days from the present due date of June 26, 2017. The undersigned counsel for appellant needed to be out of town and away from his office

¹ Respondent's replacement brief also contains a citation to a pre-2016 unpublished order in an unrelated case. The unpublished order was in respondent's first appendix. This court's order of May 10, 2017, struck the unpublished order from respondent's appendix. He nevertheless cited and discussed the old unpublished order in his replacement brief. This is also part of appellant's pending motion to strike.

during prolonged periods of time during the last two weeks in May and the first two weeks of June, 2017, due to a family medical situation. Although counsel has now returned to work, he has a long-standing vacation planned from June 19 through June 27. This trip has been planned for several months, with arrangements that are not changeable and not refundable. Counsel will be on vacation on the date on which his reply/answering brief is due. Thus, appellant's counsel will not be able to complete and file the brief by the current deadline of June 26, 2017.

Accordingly, appellant requests an open extension for his next brief, pending the court's ruling on the motion to strike, or in the alternative, a 30-day extension. This request is being made in good faith, and without the intent to delay this appeal unnecessarily.

DATED: June 16, 2017


ROBERT L. EISENBERG (NV Bar #0950)
Lemons, Grundy & Eisenberg
6005 Plumas Street, Third Floor
Reno, Nevada 89519
775-786-6868
Email: rle@lge.net

ATTORNEYS FOR APPELLANTS

CERTIFICATE OF SERVICE

I certify that I am employee of Lemons, Grundy & Eisenberg and that on this date the foregoing 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:

Robert Eglet reglet@egletlaw.com
Dennis Prince dprince@egletlaw.com
Tracy Eglet teglet@egletlaw.com
Attorneys for Respondent

Anthony Lauria alauria@ltglaw.net
Kimberly Johnson kjohnson@ltglaw.net
Attorneys for Appellant

DATED: June 16, 2017

Margie Florin