

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

ALBERT H. CAPANNA, M.D.,

Appellant/Cross-Respondent,

vs.

BEAU R. ORTH,

Respondent/Cross-Appellant.

Case No. 69935

Case No. 70227

District Court Case No. A048041

Electronically Filed  
Jun 26 2017 04:10 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**RESPONDENT/CROSS-APPELLANT’S OPPOSITION TO MOTION FOR  
EXTENSION FOR REPLY BRIEF ON APPEAL AND ANSWERING  
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 opposes Appellant/Cross-Respondent’s Motion for Extension for Reply Brief on Appeal and Answering Brief on Cross-Appeal.

**I.**

**ARGUMENT**

Appellant/Cross-Respondent Albert H. Capanna, M.D. (“Capanna”) moves for an extension to file his reply brief on appeal and answering brief on cross-appeal because his motion to strike Beau’s new appendix and portions of Beau’s revised answering brief on appeal and opening brief on cross-appeal is still

pending. Good cause must be established to extend the time prescribed by the Nevada Rules of Appellate Procedure to perform any act. *See Nev. R. App. P. 26(b)(1)A*).

Capanna fails to provide this Court with good cause. Specifically, Capanna does not articulate why he needs to know whether the documents contained within Beau's revised combined answering brief/opening brief will be struck before he drafts his combined reply brief/answering brief. The main documents in Beau's appendix at issue are: (1) Albert H. Capanna, M.D.'s deposition transcript; (2) Beau Orth's deposition transcript; and (3) Albert H. Capanna, M.D.'s Designation of Expert Witnesses and exhibits attached thereto.<sup>1</sup> Beau's citations to these documents in his combined brief are, by and large, made in support of facts about Beau's treatment and the scope of Capanna's retained experts' opinions. The inclusion of these documents should not have any impact on Capanna's ability to respond to the substance of Beau's legal arguments in this case, which is evidenced by Capanna's failure to state as much. The documents at issue are similarly unrelated to the legal issue outlined in Beau's cross-appeal, namely whether NRS 42.021 denies medical malpractice victims equal protection under the law. Thus, Capanna can adequately respond to Beau's brief and file his combined reply

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<sup>1</sup> Although Beau included additional documents in his new appendix, those documents are part of the trial court record because they are trial transcripts and a pleading filed with the district court. *See Nev. R. App. P. 10(a)*.

brief/answering brief *before* this Court rules on his pending motion to strike Beau's new appendix.

Beau does not oppose Capanna's request for a 30-day extension from the June 26, 2017 deadline to file his combined reply brief/answering brief to accommodate his family medical situation and vacation. However, Beau does not agree to an open extension of time for Capanna to file his combined brief until after this Court rules on the pending motion to strike.

## **II.**

### **CONCLUSION**

Based on the foregoing, counsel for Respondent/Cross-Appellant Beau Orth respectfully requests that this Court deny Appellant/Cross-Respondent Albert H. Capanna, M.D.'s Motion for Extension for Reply Brief on Appeal and Answering Brief on Cross-Appeal.

DATED this 26<sup>th</sup> day of June, 2017.

**EGLET PRINCE**

/s/ Dennis M. Prince  
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## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that this document was filed electronically with the Nevada Supreme Court on the 26<sup>th</sup> day of June 2017. Electronic service of the foregoing **RESPONDENT/CROSS-APPELLANT'S OPPOSITION TO MOTION FOR EXTENSION FOR REPLY BRIEF ON APPEAL AND ANSWERING BRIEF ON CROSS-APPEAL** shall be made in accordance with the Master Service List as follows:

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