

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 28 2017 02:01 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
No. 69935

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

vs.

BEAU R. ORTH,
Respondent.

No. 70227

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

Appellant has moved to strike respondent's second appendix, which was filed without permission. Alternatively, appellant has moved to strike documents within respondent's second appendix, namely, documents that this court already ordered stricken in this case. Appellant's present motion simply asks the court not to require appellant to file his reply/answering brief until after the court rules on the motion to strike.

Respondent's opposition argues that an extension is not necessary because appellant can file the brief now, without knowing the outcome of the motion to strike. Respondent's argument ignores reality. When respondent filed his second appendix, he did not request the court to allow him to withdraw the first one; nor has

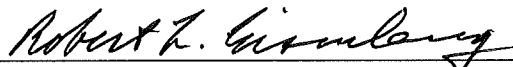
he requested the court to ignore the first one. Consequently, there are now two separate respondents' appendices on file with the court clerk: the first one, from which the court ordered 14 documents stricken, but which contains the remaining 29 documents; and the second one, which is the subject of appellant's most recent motion to strike. Many of the documents in respondent's second appendix on file with the clerk are also contained in the first appendix on file with the clerk—but with different volume and page numbers. These documents include motion papers relating to the cross-appeal issues. Respondent's replacement brief contains numerous appendix citations, which appear to be citations to respondent's second appendix.

Respondent's opposition to the motion for extension focusses primarily on the three documents that this court already ordered stricken, but which respondent nevertheless included in his second appendix. The opposition, however, largely ignores the fact that appellant's motion to strike is not limited to the three already-stricken documents. Instead, the motion requests the court to strike respondent's second appendix **in its entirety**. If the court grants the motion and strikes respondent's entire second appendix, then appellant's reply/answering brief will only need to deal with—and cite to—respondent's first appendix that is still on file with the clerk's office. And if the court grants the motion only as to the three already-stricken documents, appellant's reply/answering brief will not need to deal

with these documents. Either way, appellant's counsel is entitled to know which appendix and which documents he needs to address in his reply/answering brief.¹

Accordingly, appellant requests that the time for his next brief (i.e., his combined reply brief on appeal and answering brief on the cross-appeal), should be established after the court rules on the pending motion to strike respondent's second appendix.

DATED: June 28, 2017



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¹ Additionally, the motion to strike also deals with respondent's improper citation to an old unpublished decision, which this court already ordered stricken from respondent's first appendix, but which respondent nevertheless cited and discussed in his replacement brief. Appellant's counsel needs to know whether the court will be striking the improper citation, when appellant's counsel prepares the reply/answering brief.

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:

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DATED: June 28, 2017

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