

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
Oct 09 2017 11:36 a.m.
Elizabeth A. Brown
Clerk of Supreme Court
No. 69935

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

No. 70227

**AMENDED MOTION FOR EXTENSION OF TIME FOR COMBINED
REPLY/ANSWERING BRIEF (SECOND REQUEST)**

Note regarding amended motion: On October 6, 2017, Appellant/Cross-Respondent (Capanna) electronically filed a motion for an extension of time for the reply/answering brief in this docket. Due to an inadvertent error, the wrong motion (from another case) was attached to the electronic filing. Thus, the wrong motion was e-filed in this docket. Accordingly, Capanna hereby submits this amended motion, which was the one that should have been e-filed on October 6, 2017.

Motion: Appellant/Cross-Respondent (Capanna) hereby moves for a 30-day extension of time for filing his combined reply brief on appeal and answering brief on cross-appeal. The brief is presently due on October 9, 2017, and Capanna requests an extension until November 8, 2017. This is the second requested extension.

Capanna filed his opening brief on November 4, 2016. After multiple extensions and motions, respondent/cross-appellant (Orth) filed his answering brief approximately six months later. The court subsequently struck Orth's appendix, and he filed a new multi-volume appendix on August 8, 2017, along with a new answering brief (which included his opening brief on his cross-appeal).

Capanna filed a motion to dismiss Orth's cross-appeal, on jurisdictional grounds, contending that Orth is not an aggrieved party, and he lacks standing to present his cross-appeal issues. Capanna subsequently filed a motion for an extension of time for his reply/answering brief, primarily because the court had not yet ruled on the motion to dismiss the cross-appeal when the due date for the reply/answering brief was approaching. In the absence of a ruling on the motion to dismiss, Capanna's counsel did not know whether he needed to include an answering brief on the cross-appeal in his brief. Counsel did not want to waste time, effort and money writing the answering brief on the cross-appeal, until he found out whether the court would dismiss the cross-appeal.

The court issued an order on October 3, 2017, denying the motion to dismiss, without prejudice. The court indicated that the merits panel would ultimately determine whether to consider the cross-appeal. Consequently, Capanna's counsel now needs to include arguments regarding the cross-appeal in his combined

reply/answering brief. But the court's order on the motion to dismiss was issued only six days before the due date for Capanna's brief.

As indicated in Capanna's prior motion for an extension, Capanna's appellate counsel has already finished much of the work on the portion of the combined brief dealing with Capanna's reply brief on the appeal. Because of the court's recent ruling on the motion to dismiss the cross-appeal, counsel has now started work on the arguments relating to the cross-appeal. These arguments deal with Orth's constitutional challenges to a statute that was part of the package of statutes relating to medical malpractice cases.

The constitutional issues in Orth's opening brief on the cross-appeal require research and study of cases from around the country dealing with similar statutes and similar constitutional challenges. Orth's cross-appeal portion of his brief consists of approximately 20 pages, with dozens of citations to legal authorities and statutes. Preparing the answering brief on the cross-appeal will require a tremendous amount of time and effort. And the issue could have significant precedential value in numerous medical malpractice cases throughout Nevada.

Capanna's counsel cannot complete the brief within the present time limit, and other commitments (including preparation for an en banc argument in early November) dictate that counsel will need 30 days more for the brief.

Accordingly, Capanna requests a 30-day extension for filing his combined reply brief on appeal and answering brief on cross-appeal, until November 8, 2017. This motion is made in good faith and is not intended to delay the appeal unnecessarily.

DATED: 10/9/17

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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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