

**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  
May 11 2018 01:52 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**RESPONDENT/CROSS-APPELLANT'S MOTION TO STRIKE  
APPELLANT/CROSS-RESPONDENT'S NOTICE OF SUPPLEMENTAL  
AUTHORITIES**

Respondent/Cross-Appellant Beau R. Orth, ("Orth") by and through his counsel of record, Dennis M. Prince, Esq. and Kevin T. Strong, Esq. of EGLET PRINCE, hereby moves to strike Appellant/Cross-Respondent Albert H. Capanna, M.D.'s ("Capanna") May 11, 2018 Notice of Supplemental Authorities. Capanna's May 11, 2018 Notice is duplicative of his prior Notice of Supplemental Authorities filed on December 29, 2017. As such, Capanna's May 11, 2018 Notice fails to comply with the express purpose to file supplemental authorities allowed by NRAP 31(e).

## I.

### **FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

On December 29, 2017, a little less than one month *before* Orth filed his Reply Brief on Cross-Appeal, Capanna filed his Notice of Supplemental Authorities in which he included this Court’s decision in *Peck v. Zipf*, 133 Nev. Adv. Op. 108, 407 P.3d 775 (Dec. 28, 2017). Capanna cited to *Peck* for several legal propositions. On January 17, 2018, Orth filed his Reply Brief on Cross-Appeal in which he addressed *Peck* and the legal propositions Capanna set forth in his Notice of Supplemental Authorities. *See* Orth’s Reply Brief, at p. 26.

## II.

### **ARGUMENT**

NRAP 31(e) allows parties to file a notice of supplemental authorities “[w]hen pertinent and significant authorities come to a party’s attention after the party’s brief has been filed....” This Court’s decision in *Peck* came to Capanna’s attention on December 29, 2017, which is why Capanna first raised this decision and supplemented his Reply/Answering Brief on the same day. Yet, Capanna conspicuously overlooks this fact in his second Notice of Supplemental Authorities that only lists the *Peck* decision and the same legal propositions as the prior notice:

Capanna did not cite *Peck* in his Reply/Answering Brief dealing with the statutory constitutional issue in the cross-appeal, because *Peck* was not decided until shortly after Capanna had already filed his brief.

Then, after *Peck* was decided, respondent filed his Reply Brief on Cross-Appeal, in which Respondent was able to cite and discuss *Peck*. Capanna never had a chance to deal with *Peck* in his last brief. Consequently, he is filing this notice of supplemental authorities.

*See* 5/11/18 Appellant's Notice of Supp. Auth., at pp. 2-3.

After *Peck* was decided, Capanna supplemented his Reply/Answering Brief with the *Peck* decision. *See* 12/29/17 Appellant's Notice of Supp. Auth., at pp. 1-2. Orth specifically addressed the *Peck* decision in his January 17, 2018 Reply Brief on Cross-Appeal in part because of Capanna's December 29, 2017 Notice. *See* Orth's Reply Brief, at p. 26. Capanna clearly had a chance to address the *Peck* decision and did so in his December 29, 2017 Notice. This renders Capanna's May 11, 2018 Notice superfluous because both parties directly addressed the *Peck* decision and brought it to this Court's attention. For these reasons, Orth requests this Court to strike Capanna's May 11, 2018 Notice of Supplemental Authorities.

DATED this 11th day of May, 2018.

**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 11th day of May 2018. Electronic service of the foregoing **RESPONDENT/CROSS-APPELLANT'S MOTION TO STRIKE APPELLANT/CROSS-RESPONDENT'S NOTICE OF SUPPLEMENTAL AUTHORITIES** shall be made in accordance with the Master Service List as follows:

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/s/ Nicole Littlejohn  
An Employee of EGLET PRINCE