

SUPREME COURT OF THE STATE OF NEVADA

DANIEL JAMES RODRIGUEZ,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

No. 71920

Electronically Filed
May 01 2017 08:26 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appeal From the Second Judicial District Court

**APPELLANT'S MOTION FOR EXTENSION OF TIME
TO FILE OPENING BRIEF ON APPEAL**

Appellant, through undersigned counsel, respectfully requests an extension of three judicial days, until May 3, 2017, in which to file the opening brief on appeal.

Respondent's counsel, Washoe County Deputy District Attorney Terrence McCarthy, has informed the undersigned counsel that he has no objection to the requested extension.

The opening brief is scheduled to be filed today, Friday, April 28, 2017.

One previous 14-day extension was requested and granted telephonically, under NRAP 26(b)(1)(B). The brief had been scheduled for filing on April 14, 2016.

That request for extension was made because Appellant's counsel's aunt, Evelyn Sternberg, died unexpectedly on Monday, April 10, 2016, in Florida. She was the sole surviving sibling of counsel's deceased mother. Counsel and his wife had to fly to Florida on Tuesday, April 11, for the memorial service and funeral, making it impossible to meet the April 14 briefing deadline.

Counsel respectfully submits that the following facts justify the requested extension of three judicial days, and that they meet the requirement in NRAP 26(b)(1)(B) that this request must demonstrate extraordinary and compelling circumstances.

During the two-week extension granted, three events occurred which necessitate this extension request: First, on Monday, April 24, counsel's older son, a student at a Philadelphia-area college, had to make an extremely important court appearance on criminal charges in Delaware County, Pennsylvania. A decision would be made that day on whether he would be prosecuted or could enter a diversion program to avoid prosecution. Substantial time was spent consulting with his Pennsylvania counsel and preparing his son for his court hearing. After his son was granted the diversion program, it then required substantial additional time to make arrangements for him to perform the program requirements in Nevada, rather than have to remain in Pennsylvania.

Second, counsel's wife has two sisters; Richard Grady was the husband of one of her sisters, and had been battling stage 4 (inoperable) brain cancer. During the time of the 14-day opening brief extension, Mr. Grady was moved in a hospital bed from a treatment center in Los Angeles to a hospice center in Seattle, after treatment was ceased. He was in hospice care with no life support for several days, and he died on Tuesday, April 25. Counsel and his wife were in daily contact with her sister during this period; his wife then flew to Seattle for 5 nights, and was there when he died. Substantial time was spent each of those days in communications between counsel, his wife, and her sister, and in dealing with the emotional impact before and after Mr. Grady's death.

Finally, the Appendix was completed and ready for filing yesterday. While finalizing the opening brief today, the office's computer server kept shutting off, making it impossible to access the office's documents, all of which are stored on that server. The firm's computer technician/consultant is George Golbov, of Premier IT Support. Mr. Golbov came to counsel's office today and determined that one of the server's two hard drives had failed; it caused the server to keep shutting off, and hopefully, the data can either be retrieved from the remaining hard drive or restored from backup media. Unfortunately, securing a replacement drive or server, or restoring the data from the surviving hard drive or backup media, cannot be done

until the next judicial day, Monday, May 1. Until then, necessary data and documents will not be accessible to complete the final version of the opening brief.

The requested three-judicial day extension will allow time to remedy the technology failure, although counsel will make diligent efforts to find a way to file the opening brief and already-finalized Appendix before then.

The foregoing factual statements are made under penalty of perjury.

DATED: April 28, 2017.

/s/ Martin H. Wiener
MARTIN H. WIENER
NBN 2115
316 South Arlington Avenue
Reno, Nevada 89501
(775) 322-4008
mw@pinecrest.reno.nv.us
ATTORNEY FOR APPELLANT

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Law Office of Martin H. Wiener, and that on April 28, 2017, I electronically filed with the Nevada Supreme Court the foregoing document. Electronic Service of the foregoing document was made by email on:

Terrence P. McCarthy, for State of Nevada

Matthew Lee, for State of Nevada

Paul Young, for State of Nevada

/s/ Martin H. Wiener