

IN THE SUPREME COURT OF THE STATE OF NEVADA

IRWIN GONOR, DECEASED; THE
ESTATE OF IRWIN GONOR; AND
ROBERT WOMBLE, SPECIAL
ADMINISTRATOR,

Appellants,

vs.

RICHARD J. DALE; KELLY
MAYER; RICK'S RESTORATIONS,
INC.; KIKI T'S LLC; MAKING
HISTORY LLC; AND BOOKIN' IT
LLC,

Respondents.

SUPREME COURT NO. 72949

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APPEAL

From the Eighth Judicial District Court, Clark County
The Honorable William Kephart, District Judge
District Court Case No. A-11-653755-C

APPELLANT'S REPLY BRIEF

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*Irwin Gonor, deceased; The Estate of Irwin Gonor; and Robert Womble, Special
Administrator*

1
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4 ESTATE OF IRWIN GONOR; AND
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7 RICHARD J. DALE; KELLY
8 MAYER; RICK'S RESTORATIONS,
9 INC.; KIKI T'S LLC; MAKING
HISTORY LLC; AND BOOKIN' IT
LLC,

10 Respondents.
11

SUPREME COURT NO. 72949

RULE 26.1 DISCLOSURE

12 The undersigned counsel of record certifies that the following includes all
13 necessary disclosures as required by NRAP 26.1(a):

- 14 1. Appellant IRWIN GONOR, DECEASED, an individual, is a proper
15 person.
- 16 2. Appellant THE ESTATE OF IRWIN GONOR, an estate, is a proper
17 person.
- 18 3. Appellant ROBERT WOMBLE, SPECIAL ADMINISTRATOR, an
19 individual, is a proper person.
20

1 2. Appellants IRWIN GONOR, DECEASED, THE ESTATE OF IRWIN
2 GONOR, and ROBERT WOMBLE, SPECIAL ADMINISTRATOR were
3 represented by Ryan Alexander of RYAN ALEXANDER, CHTD., at the trial court
4 level and are represented by the same counsel in this Appeal.

5
6 Dated April 23, 2018.

RYAN ALEXANDER, CHTD.



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TABLE OF CONTENTS

I.	SUMMARY OF THE ARGUMENT	1
II.	ARGUMENT	4
A.	Appellants Submitted a Valid Motion for Substitution Identifying a Proper Party Under NRS 41.100	4
B.	The District Court Abused Its Discretion in Denying Appellants' Petition Under the Theory That Appellants Failed to File a Timely Motion for Substitution, Because Appellants Filed the Motion for Substitution Within 90 Days of Filing the Notice of Death.	6
C.	Respondents Are Attempting to Use Procedural Rules to Prevent Respondents from Paying a Settlement They Already Agreed to Paying in October 2016.	9
III.	CONCLUSION	11

TABLE OF AUTHORITIES

<i>Barto v. Weishaar</i> , 101 Nev. 27, 28-29, 692 P.2d 498, 498-91 (1985).....	6
<i>Costello v. Casler</i> , 127 Nev. 436, 254 P.3d 631, 127 Nev. Adv. Rev. 36 (2011)	4
<i>Int'l Game Tech., Inc. v. Second Judicial Dist. Court</i> , 124 Nev. 193, 179 P.3d 556 (2008)	7
<i>Jones v. Las Vegas Metro. Police Dep't</i> , 873 F.3d 1123, 1128 (9th Cir. 2017)	3
NRCP 25	1-4, 6-13
NRCP 15	4
NRS 7.075	2, 6-9, 11-12
NRS 41.100	3-4
<i>Sheriff v. Smith</i> , 91 Nev. 729, 542 P.2d 440 (1975)	7

1 **I. SUMMARY OF THE ARGUMENT**

2 It should be noted as a preliminary matter that Respondents' counsel argued
3 so fervently that Appellants were not timely in filing their motion for substitution,
4 yet Respondents filed their Answering Brief on March 23, 2018, one day after the
5 filing deadline. Respondents attempt to throw distracting and inflammatory analysis
6 at this Court to draw attention away from the heart of this argument: did the District
7 Court abuse its discretion in dismissing this case in response to Appellants motion
8 to substitute party or in the alternative, to extend filing deadlines to allow the opening
9 of an estate? The answer is yes, the District Court did abuse its discretion.

10 As presented to the trial court in the first motion to substitute, after nearly five
11 years of contentious litigation, GONOR died suddenly on June 2, 2016. See
12 Certificate of Death, Appendix 23. GONOR died intestate, had never married and
13 had no children. On June 6, 2016, Counsel met personally with SHIRLEY ANN
14 HOFFNER (nee Silverman), Gonor's mother and next-of-kin. As Gonor's sole heir,
15 HOFFNER directed Counsel to resolve this case. A. 19. Counsel for GONOR
16 contacted Defendants through their counsel and negotiated a settlement by June 20,
17 2016; after review of the terms with HOFFNER and her own personal counsel,
18 Defendants' settlement offer was accepted without conditions by Counsel by email
19 in the early hours of June 21, 2016. *Id.* Counsel informed the trial court on June 21,
20 2016 that the matter had settled. *Id.*

1 Defendants prepared the settlement documents and provided them by e-mail
2 on September 9, 2016. *Id.* HOFFNER executed the settlement documents that were
3 returned on October 25, 2016. *Id.* Defendants filed a Suggestion of Death on October
4 26, 2016. *Id.* Defendants began to perform according to the settlement agreement.
5 *Id.*

6 It should be noted that the trial court told Appellants' counsel to bring an order
7 *granting* the motion to substitute Shirley Ann Hoffner as Plaintiff to the December
8 6, 2016 Order to Show Cause hearing, and after Respondents expressed their
9 position about the substitution pending, it was Appellants' counsel who told the trial
10 court in colloquy that it would be better to keep the January 2017 hearing on calendar
11 to let Respondents file a formal opposition to the motion to substitute party. A.
12 28:18-29:4. Respondents then took the offense with their countermotion to dismiss,
13 and the trial court flipped on its prior position.

14 Before the 90 day deadline ran from the Suggestion of Death, Appellants
15 named a proper party in the second motion for substitution. Although "the estate"
16 is listed on the motion document, Mr. Womble presented himself in the motion
17 hearing as the special administrator, and the District Court judge understood that
18 Appellants were moving to substitute Mr. Womble for Mr. Gonor. There was no
19 confusion about the Administrator. Respondents argue that the second motion was
20 ambiguous as to whether a proper party was named; however, although the motion

1 named “the estate,” Appellants’ counsel made clear that Mr. Womble was the special
2 administrator being substituted for Mr. Gonor.

3 Second, the District Court abused its discretion by denying Appellants’
4 motion to substitute and by granting Respondents’ motion to dismiss the case,
5 because the District Court ruled that Appellants did not comply with NRCP 25 by
6 notifying Respondents of Mr. Gonor’s death in an untimely manner. Respondents
7 are attempting to prove that Appellants’ counsel breached his duty to inform
8 opposing counsel of Mr. Gonor’s death under NRS 7.075, and thus, the District
9 Court did not abuse its discretion. This Court should not consider argument under
10 NRS 7.075 since it was not brought before the trial court. However, NRS 7.075 has
11 never been interpreted to justify a case dismissal; moreover, it has not been
12 interpreted in any case to impose a deadline to file a suggestion of death under NRCP
13 25. Appellants have filed this appeal because the District Court abused its discretion
14 when dismissing this case. Although Appellants’ counsel failed to comply with NRS
15 7.075, that failure to compliance does not make the District Court’s ruling any less
16 of an abuse of discretion in interpreting NRCP 25, a completely different statute.
17 Appellants followed NRCP 25 as closely as they could have, and they complied with
18 the timeline required by the statute.

19 Third, Respondents are attempting to use procedural rules to prevent them
20 from paying damages that they owe to Mr. Gonor’s estate. Prior to learning of Mr.

1 Gonor's estate, Respondents were prepared to finalize a settlement. Notably,
2 Respondents had already begun paying the settlement in September 2016. As
3 previously stated, dismissing this case is not an adequate sanction for Appellants'
4 counsel violating NRS 7.075, and a violation of NRS 7.075 should not prevent
5 Respondents from paying money that is owed to Mr. Gonor's estate.

6 Therefore, because the District Court had been notified that Mr. Womble was
7 being named as special administrator of Mr. Gonor's estate, because Appellants
8 complied with the requirements outlined in NRCP 25, and because Respondents are
9 attempting to use procedural rule to avoid paying damages owed to Mr. Gonor's
10 estate, this Court should find that the District Court abused its discretion when
11 dismissing this case.

12 13 **II. ARGUMENT**

14 **A. Appellants Submitted a Valid Motion for Substitution Identifying a** 15 **Proper Party Under NRS 41.100.**

16 Respondents' counsel has cited a myriad of non-binding, persuasive
17 authority in attempting to interpret the meaning of "proper parties" under NRS
18 41.100 and NRCP 25. Notably, Respondents rely on the Ninth Circuit ruling in
19 *Jones v. Las Vegas Metro. Police Dep't*, 873 F.3d 1123, 1128 (9th Cir. 2017) to
20 determine that an estate is not a proper party in a motion for substitution. This
federal case is subsequent to the dismissal here. However, even if this court accepts

1 the ruling in *Jones* as binding authority, the Ninth Circuit ruled that the federal
2 district court abused its discretion in failing to give plaintiffs a reasonable
3 opportunity to substitute the administrator of the deceased plaintiff's estate. The
4 Ninth Circuit's discussion is useful to include:

5 "We have held that Rule 17 relief is available where counsel makes an
6 "understandable" error in naming the real party in interest. *Goodman*,
7 298 F.3d at 1053-54. Plaintiffs claim they made an "honest and
8 understandable mistake" by naming Jones's estate and father as
9 plaintiffs (rather than naming the father as administrator of Jones's
10 estate) because the district court had approved a stipulation amending
11 their complaint to name Jones's estate as a plaintiff.² While this is
12 hardly the best excuse, it was not unreasonable for plaintiffs to have
13 construed the district court's approval of the stipulation as a
14 determination that they had named the proper party. The district
15 court's summary judgment ruling disabused plaintiffs of this
16 notion. Once this occurred, Rule 17 required the district court to give
17 plaintiffs a reasonable opportunity to cure their error: A court "*may*
18 *not* dismiss an action for failure to prosecute in the name of the real
19 party in interest until, after an objection, a reasonable time has been
20 allowed." Fed. R. Civ. P. 17(a)(3) (emphasis added). Rather than enter
judgment immediately after noting the deficiency, the district court
should have given plaintiffs a reasonable opportunity to substitute the
right party. *See, e.g., Esposito*, 368 F.3d at 1272 (reversing district
court's dismissal because plaintiff's mistake was honest, even if not
understandable, so court was required to give plaintiff an opportunity
to substitute); *Jaramillo v. Burkhardt*, 999 F.2d 1241, 1246 (8th Cir.
1993) (reversing district court's dismissal because plaintiff wasn't
given a reasonable opportunity to substitute); *Kilbourn v. West. Sur.*
Co., 187 F.2d 567, 571-72 (10th Cir. 1951) (reversing summary
judgment so that real party in interest could be substituted); *cf. Kuelbs*
v. Hill, 615 F.3d 1037, 1042-43 (8th Cir. 2010) (holding that district
court gave plaintiffs reasonable time to substitute party when it
ordered them to address the issue and waited six months before
dismissing).

The district court noted a "disconnect" between the date plaintiffs
claimed their probate order appointing Jones's father as administrator

1 was filed and the actual filing date of that order. *See supra* note 2. But
2 this "disconnect" had little to do with plaintiffs' honest mistake —
3 naming the estate, not the administrator of the estate, as a plaintiff —
4 for which our case law requires relief under Rule 17. *See, e.g.,*
5 *Goodman*, 298 F.3d at 1053-54. Plaintiffs explained that they thought
6 they had named the proper plaintiffs, and they did have the probate
7 order signed — though not filed — at the time of the first amended
8 complaint. They were entitled to a reasonable amount of time to
9 correct their error.”

10 *Jones v. Las Vegas Metro. Police Dep’t*, 873 F.3d 1123, 1138 (9th Cir. 2017).

11 The court in the case that Respondents are using to allege that Appellants
12 failed to meet their burden under NRS 41.100 ruled that a reasonable opportunity
13 should be given to allow substitution of the administrator of a deceased plaintiff’s
14 estate. Thus, even if this Court adopts the case law that Respondents have
15 presented, this Court should also adopt the theory that Appellants are owed a
16 reasonable opportunity to file a proper substitution naming a proper party.

17 As previously stated in Appellants’ Opening Brief, the relation back effect
18 of NRCP 15(c) applies to the addition or substitution of parties pursuant to NRCP
19 25. *Costello v. Casler*, 127 Nev. 436, 254 P.3d 631, 127 Nev. Adv. Rev. 36
20 (2011). Moreover, “except as otherwise provided in this section, no cause of
action is lost by reason of the death of any person, but may be maintained by or
against the person’s executor or administrator.” Nev. Rev. Stat. Ann. § 41.100(1).
The purpose of NRS 41.100 is to prevent a cause of action from being dismissed
because a party to the action passes away.

1 Respondents are arguing that because Robert Womble's name was not
2 explicitly stated in the motion that was filed on January 14, 2017, the substitution
3 of Robert Womble as special administrator of Mr. Gonor's estate was ineffective.
4 However, on March 28, 2017, when oral argument was heard on the second
5 motion, the District Court judge did not base his ruling on ineffectively naming a
6 party to be substituted. It was clear to the District Court that Robert Womble was
7 the special administrator whom Appellants' counsel was moving to substitute for
8 Mr. Gonor. Respondents are attempting to bring in a new issue that was not
9 present at the time of the motion for substitution hearings.

10 When Mr. Gonor passed away, Appellants' counsel was operating under the
11 direction of Shirley Ann Hoffner, Mr. Gonor's sole heir. During the process of
12 deciding who would become the special administrator for Mr. Gonor's estate,
13 Appellants' counsel was waiting on documents from Ms. Hoffner. Once Ms.
14 Hoffner provided the necessary documents and approved Mr. Womble becoming
15 special administrator, Appellants' counsel was able to move forward, file the
16 motion for substitution, and file the necessary petition in probate court.
17 Respondents are attempting to present a story in which Appellants failed to name a
18 special administrator in the motion for substitution; however, when Mr. Womble
19 showed up to court on March 28, 2017, and the District Court ruled on the motion
20 for substitution, it was clear that Mr. Womble was appointed the special

1 administrator of Mr. Gonor's estate. Furthermore, the fact that the District Court
2 did not address the issue of an improper party being named in the motion
3 demonstrates that there was no issue in that regard; the motion was moving for Mr.
4 Womble, as the representative of Mr. Gonor's estate, to be substituted for Mr.
5 Gonor in this case.

6 Therefore, because Mr. Womble appeared in District Court at the second
7 motion for substitution hearing, and because the District Court judge clearly knew
8 that Mr. Womble, as special administrator, was being substituted for Mr. Gonor,
9 Appellants named a proper party in their second motion for substitution.

10
11 **B. The District Court Abused Its Discretion in Denying Appellants' Petition**
12 **Under the Theory That Appellants Failed to File a Timely Motion for**
13 **Substitution, Because Appellants Filed the Motion for Substitution**
14 **Within 90 Days of Filing the Notice of Death.**

15 As previously stated in the Appellants' Opening Brief, the 90-day period to
16 file a motion for substitution is not triggered until the suggestion of death is filed.

17 *Barto v. Weishaar*, 101 Nev. 27, 28-29, 692 P.2d 498, 498-91 (1985).

18 Respondents present two main arguments rebutting Appellants' claim that a
19 motion for substitution was timely filed: (1) the analogous federal statute for
20 substitution of parties, Federal Rules of Civil Procedure ("FRCP") 25, has been
interpreted to grant federal judges discretion to deny a motion for substitution if the
motion is made long after the actual death of the party; and (2) NRS 7.075 places

1 an affirmative duty on attorneys to timely file a notice of death and motion for
2 substitution.

3 As to the first argument, FRCP 25 statutory interpretation is only persuasive
4 authority in this Court. Moreover, the phrase “long after death” is ambiguous and
5 open-ended. As stated in Appellant’s Opening Brief, if this Court interprets NRC
6 25 to impose a restriction on the length of time a plaintiff’s attorney has to file a
7 notice of death, then Appellants will be retroactively prejudiced. At the time
8 Appellants filed the notice of death, the statute was unambiguous in requiring
9 Appellants to file a motion for substitution within 90 days of filing the notice of
10 death. As stated in Appellants’ Opening Brief, this Court has recognized that “[a]
11 fundamental rule of statutory interpretation is that the unreasonableness of the result
12 produced by one among alternative possible interpretations of a statute is reason for
13 rejecting that interpretation in favor of another that would produce a reasonable
14 result.” *Int’l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 202,
15 179 P.3d 556, 562 (2008) (citing *Sheriff v. Smith*, 91 Nev. 729, 733, 542 P.2d 440,
16 443 (1975)). Even if this Court finds that the issue of how long a plaintiff has to file
17 a suggestion of death falls under the statutory interpretation of NCRP 25, this Court
18 should still hold that NRC 25 does *not* impose a deadline to file a suggestion of
19 death. As previously stated, if there is an unreasonable result in the interpretation of
20 a statute, then that interpretation must not be adopted by this Court. Retroactively

1 requiring Appellants to file the suggestion of death within a certain period of time
2 would unfairly prejudice Appellants, because they abided by NRCP 25 in promptly
3 filing two motions to substitute a representative for Mr. Gonor after his suggestion
4 of death had been filed. Moreover, retroactively requiring Appellants to have filed
5 the suggestion of death within a certain period of time would burden Appellants with
6 a rule that they were not aware of when the case was heard in District Court.

7 As to the second argument, NRS 7.075 is a statute that is separate from the
8 issue of whether Appellants filed a timely motion for substitution. NRS 7.075 was
9 not the basis of Respondents' Opposition or Countermotion. The case had already
10 settled in principle prior to 90 days following Gonor's death. To the contrary,
11 Appellants told the trial court, "Now Mr. Alexander notes we don't have a case
12 that require -- that says he's required to file a suggestion of death. That's true."
13 Appendix 51:18-19. Generally, this Court is limited to a review of the records
14 made and considered in the district court and cannot consider matters that were not
15 presented to and considered by the trial court. See, *Old Aztec Mine, Inc. v. Brown*,
16 97 Nev. 49, 52, 623 P.2d 981, 983 (1981); *Carson Ready Mix v. First Nat'l Bk.*, 97
17 Nev. 474, 635 P.2d 276 (1981); *State Emp. Sec. Dep't. v. Weber*, 100 Nev. 121,
18 676 P.2d 1318 (1984). Respondents cited NRS 7.075 in their appeal brief without
19 painting a full picture of the statute. NRS 7.075(2) states, "The court may, upon
20 motion, impose any sanctions it considers appropriate, including costs and

1 attorney's fees, against an attorney who fails to comply with the provisions of
2 subsection 1." Although Appellants' counsel did not technically abide by NRS
3 7.075 when notifying Respondents of Gonor's death on October 25, 2016 - as the
4 case had already purportedly settled under the direction of Gonor's sole heir by
5 June 21, 2016 – it was his mother who directed counsel through her own attorney
6 to have the matter settled and controlled the terms. Appendix 52:22-25. Dismissing
7 the case between Appellants and Respondents based *solely* on the delayed notice of
8 death was an abuse of discretion of the District Court judge. The ruling dismissing
9 the case before the 90 days from the Suggestion of Death was a drastic turn from
10 the course and tone of the case as discussed at the December 6, 2016 hearing.
11 Appendix 25-29. The trial court had already been told in the Summer of 2016 that
12 the matter had settled. *Id.* 19:9-15; 26:14-22. Before the time that the Defendants
13 brought their countermotion to dismiss, the parties had appeared before the court
14 and discussed that the motion to substitute had been filed and that a probate and
15 executor would follow. *Id.* 27:1-28:17.

16 Respondent's counsel: "I assume Mr. Alexander will be going to probate
17 opening, or someone will be going to probate to get the mother appointed as
18 an executor. But right now my clients would be subject to suit by potential
19 creditors, or others, if they sign this agreement and paid the money to his
20 mother because she's not -- has no authority to bind the estate. And that's
my primary concern is that has to be fixed first.

Right now we have an unsupported representation that he died intestate and
there's no heirs, but my client's need more than that to ensure they're not
going to be sued again and that some creditor isn't going to -- of Mr.

1 Gonor's isn't going to come back and pursue them. So that needs to be fixed
first and foremost."

2 Appendix 28:6-17. The trial court was told that Ms. Hoffner would open the estate
3 in the meantime *Id.* 28:25. Dismissing this case and preventing Appellants from
4 recovering for the damages Mr. Gonor suffered was an inappropriate sanction.

5 Even if this Court finds that NRCP 25's language is ambiguous as to the
6 issue of filing a suggestion of death after a plaintiff's death, this Court would
7 follow legislative history to determine whether an interpretation is proper. This
8 Court has had multiple opportunities to impose a requirement that either party file
9 a suggestion of death notice within a reasonable period of time after a party's
10 death; however, this Court has clearly established that the 90-day period applies
11 *only* to the date the suggestion of death has been filed. Nothing in the legislative
12 history has interpreted NRCP 25 to impose a time limit for a party in litigation to
13 file a suggestion of death. Forcing Appellants to abide by an interpretation of the
14 statute that was not on record when the motions for substitution were made would
15 not only be an abuse of discretion, but it would be an injustice that blatantly
16 prejudices Appellants.

17 Therefore, even though Appellants did not follow the timeline outlined in
18 NRS 7.075, this Court should find that the District Court judge abused his
19 discretion when dismissing the case, because Appellants followed NRCP 25 as it
20 has been previously interpreted by this Court.

1 **C. Respondents Are Attempting to Use Procedural Rules to Prevent**
2 **Respondents from Paying a Settlement.**

3 Respondents had conceded during the course of the litigation that they owed
4 Appellant money. Appendix 19:6-7. Prior to Irwin Gonor's death, Respondents'
5 counsel was negotiating with Appellants' counsel to arrive at a settlement for the
6 damages Respondents caused to Mr. Gonor. At that point, Respondents had all but
7 admitted that they were ready to move forward with a settlement. Appendix 26-29.
8 On October 25, 2016, During September and October 2016, Respondents made
9 payments on the settlement amount that they were planning on finalizing in
10 October 2016. Appendix 19.

11 Although it is understandable that Respondents would be frustrated that they
12 were not immediately informed of Mr. Gonor's death, their frustration does not
13 give them the right to nullify a settlement agreement that they had arrived at
14 separate from knowing about Mr. Gonor's passing. Upon finding that Appellants'
15 counsel had not informed Respondents' counsel of Mr. Gonor's death until
16 October 26, 2016, Respondents represented that they would not abide the
17 settlement until Appellants filed the necessary motion for substitution with the
18 District Court. In a good faith effort to finalize the settlement through proper
19 channels, Appellants filed a motion for substitution. When Appellants were told
20 that the first motion was defective, they filed a second motion for substitution, still
 within the 90 day time period required by NRCP 25. The District Court made

1 clear in its ruling that Appellants' first and second motions were denied because
2 Appellants' counsel failed to inform opposing counsel of Mr. Gonor's death.

3 There may be adequate remedies for resolving the fact that Appellants'
4 counsel did not inform opposing counsel of Mr. Gonor's death until October 2016;
5 however, dismissing this case is not one of those remedies. Mr. Gonor was owed
6 breach of contract and tort damages, and Respondents were prepared to finalize a
7 settlement. Mr. Gonor's death should not affect that settlement in any way.

8 Therefore, because Respondents were prepared to settle this case before
9 learning of Mr. Gonor's death, and because dismissing this case is not an adequate
10 remedy for resolving the issue of Appellants' counsel waiting four months to
11 notify opposing counsel of Mr. Gonor's death, this Court should not allow
12 Respondents to be admonished from paying the damages that they owe to Mr.
13 Gonor's estate.

14 15 **III. CONCLUSION**

16 The main issue in this case is whether the District Court abused its discretion
17 by denying Appellants' motion to substitute Mr. Womble, as special administrator,
18 for Mr. Gonor, under the theory that Appellants' counsel did not timely file the
19 motion for substitution under NRCP 25. Appellants filed not one, but *two* motions
20 for substitution within 90 days after filing the suggestion of death. The District

1 Court judge clearly based his decision on the fact that Appellants' counsel waited
2 approximately four months after Mr. Gonor's death to notify opposing counsel of
3 his death. Appellants are attempting to use smoke and mirrors by throwing in an
4 improper party argument and by alleging a violation of NRS 7.075, as a new
5 argument on appeal, to prove that the District Court judge was within his discretion
6 in denying the motion for substitution and in granting the motion to dismiss this
7 case. However, Appellants have established that dismissing this case is not an
8 adequate sanction for a violation of NRS 7.075, and under NRCP 25, Appellants
9 filed a timely motion for substitution within 90 days of filing a suggestion of death.

10 As to Respondents' argument that Appellants failed to name a proper party
11 in the motion for substitution, the District Court judge was aware that Mr. Womble
12 was being substituted as special administrator for Mr. Gonor. Respondents are
13 attempting to add a new issue that was non-existent in the District Court case; the
14 issue of improper party is non-dispositive to the analysis of whether the District
15 Court abused its discretion. Thus, because the District Court understood that Mr.
16 Womble was being substituted for Mr. Gonor, and because the issue of improper
17 party was not present in the original case, this Court should find that Appellants
18 met their burden of naming a proper party in their second motion for substitution.

19 As to the fact that Appellants' counsel did not comply with NRS 7.075,
20 Appellants' case should not be dismissed because Mr. Gonor's death was disclosed

1 to opposing counsel more than 90 days after his death. As analyzed above,
2 dismissing this case under NRS 7.075 is not an adequate sanction, and dismissing
3 this case would unfairly prejudice Appellants. Appellants conformed to the
4 requirements of NRCP 25 by timely filing two motions for substitution within 90
5 days of the suggestion of death being filed. Thus, because Appellants abided by
6 NRCP 25 as legislative history had previously interpreted the statute, the District
7 Court abused its discretion in dismissing the case.

8 Respondents are attempting to use these procedural rules to avoid paying a
9 settlement that they had already agreed to prior to learning about Mr. Gonor's
10 death, or to otherwise renegotiate. Using procedural rules to prevent paying
11 damages that are owed to Mr. Gonor's estate is an unjust use of the legal system –
12 if the trial court merely granted the motion to substitute but that the settlement is
13 not ripe, then Appellants cannot claim any type of prejudice because they would be
14 allowed to renegotiate with Mr. Womble. Moreover, even if Respondents and
15 frustrated that Appellants' counsel failed to inform them of Mr. Gonor's death
16 during the negotiations, avoiding paying breach of contract and torts damages
17 owed to Mr. Gonor is not the adequate remedy. Respondents had already begun
18 paying the settlement in September 2016, and in theory, they would have
19 continued paying the settlement but for Appellants' counsel delaying on informing
20 them of Mr. Gonor's death. Thus, Respondents should not be granted a way out of

1 paying damages owed to Appellants, just because Appellants' counsel waited four
2 months to inform them of Mr. Gonor's death.

3 The purpose of NRCP 25 is to **prevent** the extinguishing of claims upon
4 death of a party. Therefore, considering that the District Court judge imposed an
5 interpretation of NRCP 25 on Appellants that has not been recorded in legislative
6 or case history, and because Appellants complied with NRCP 25 by filing two
7 motions for substitution within 90 days, the District Court judge abused his
8 discretion by dismissing this case. Appellants should be given the chance to
9 amend any documents necessary to comply with the meaning of NRCP 25 that this
10 Court has set forth, so that Appellants can proceed towards trial under Mr.
11 Womble's direction.

12
13 Dated April 23, 2018.

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1 **CERTIFICATE OF COMPLIANCE**

2 1. I hereby certify that this brief complies with the formatting requirements
3 of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style
4 requirements of NRAP 32(a)(6) because:

5 [X] This brief has been prepared in a proportionally spaced typeface using
6 Microsoft Word in 14 point Times New Roman;

7 2. I further certify that this brief complies with the page- or type-volume
8 limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted
9 by NRAP 32(a)(7)(C), it is either:

10 [X] Proportionately spaced, has a typeface of 14 points or more, and contains
11 **4,290** words;

12 [] Does not exceed _____ pages.

13 3. Finally, I hereby certify that I have read this appellate brief, and to the
14 best of my knowledge, information, and belief, it is not frivolous or interposed for
15 any improper purpose. I further certify that this brief complies with all applicable
16 Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which
17 requires every assertion in the brief regarding matters in the record to be
18 supported by a reference to the page and volume number, if any, of the transcript
19 or appendix where the matter relied on is to be found. I understand that I may be
20 subject to sanctions in the event that the accompanying brief is not in conformity
with the requirements of the Nevada Rules of Appellate Procedure.

Dated April 23, 2018.

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