IN THE SUPREME COURT OF THE STATE OF NEVADA

PAOLA M. ARMENI, JONAH J. HORWITZ, and DEBORAH A. CZUBA,

Petitioners,

v.

THE EIGHTH JUDICIAL DISTRICT COURT of the STATE of NEVADA, in and for the COUNTY of CLARK; and THE HONORABLE MICHAEL P. VILLANI,

Respondents,

and

TIMOTHY FILSON, Warden, ADAM PAUL LAXALT, Attorney General for the State of Nevada, and THE STATE OF NEVADA,

Real Parties in Interest.

Supreme Court Case No. 73462

Underlying Case: Clark County Dist. Ct. No. 81C053867

REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE REPLY

The State's opposition to the motion for leave to file a reply, filed January 5, 2018 ("Oppo."), attempts to prevent this case from receiving the thorough review it demands. Its effort should be rebuffed, and the Reply should be allowed.

The State begins by suggesting that the Reply can only be permitted by "ignoring the plain text of" NRAP 21. Oppo. at 4. Not so. The fact that a reply is

not given automatically by the rule means simply that it is up to the Court to decide whether to entertain one, as its past practice confirms. *See Bradley v. Eighth Jud. Dist. Ct.*, Nev. S. Ct., No. 70522, Order, filed Aug. 24, 2016 (granting a motion for leave to file such a reply). The State's reliance on NRAP 21 is misplaced.

It is more relevant, but no less convincing, when the State insists that the petitioners should not have a reply because they have already addressed in their mandamus petition ("Petition") some of the issues discussed in the Reply. *See* Oppo. at 4–6. The State's logic is flawed. Every appellant gets a chance to engage with the opposing party's response brief. *See* NRAP 28(c). The case at bar involves the sanctioning of capital defense attorneys and thus carries with it "a heightened appellate concern." *Young v. Ninth Jud. Dist. Ct.*, 107 Nev. 642, 649, 818 P.2d 844, 850 (1991) (per curiam). If a case challenging a shoplifting conviction warrants a reply, then so too does this one.

Even taken on its own terms, the State's theory does not hold up. Just because a general topic was touched upon in the Petition does not mean that it was fully explored there, or that the State's fifty-page answer did not make necessary rejoinders to specific points. Furthermore, although the State claims that certain subjects that are contained in the Reply were also examined in the Petition, it does not say so about *all* of them. Nor could it. For instance, the Reply refutes the State's assertion that the petitioners received adequate notice of the sanctions

because they were told about them in a proposed order *after* they had been imposed. *See* Reply at 9–13. That notion was not considered in the Petition because it first came up in the State's answer. *See* Ans. to Pet. for Writ of Mandamus, filed Dec. 21, 2017 ("Answer") at 30–32. In effect, then, the State concedes that there are items in the Reply that are not in the Petition, and the existence of some overlap is not a basis to reject the Reply in its entirety.

Also on the question of notice and the proposed order, the State posits that it "is essentially a timing argument and as such the record speaks for itself." Oppo. at 5. It is not at all a timing issue, as the chronology is undisputed. What is disputed is the State's *legal* argument that notice was sufficient because the petitioners could have objected to the proposed order. That argument is specious, for under Nevada law one cannot challenge the substance of a ruling that has already been rendered by objecting to a proposed order. *See* Reply at 9–13. The State wants to invent frivolous new arguments in its Answer without having to worry about someone pointing out their frivolity, but that is not how the adversarial system works.

The State believes the Petition adequately assesses whether counsel were sanctioned for not seeking leave, citing a single footnote in the Petition that was included in an abundance of caution. *See* Oppo. at 6. Now that the State has asserted this ground as a basis for the sanctions, though, *see* Answer at 25, the

petitioners should have an opportunity to defend themselves against it. Similarly, the State contends that because it accused the petitioners of delay below, and because it charged them below with participation in a conspiracy of federal defender offices, the petitioners have no right now to rebut these misrepresentations. *See* Oppo. at 6. But these misconceptions of the State were not relied upon by the district court for the sanctions, *see* Reply at 17–18, so the Petition did not engage at length with them. In drafting their Petition, counsel were not required to predict all of the explanations for the sanctions that the State would improperly inject into the case later on. A reply is the proper place for them to respond, and they should have that opportunity.

The State's effort to avoid a comprehensive airing of the issues in this case is an unfortunate reflection of its general approach: doing its utmost to keep the courts from even *hearing* perspectives that might contradict its own. *See* Reply at 12; *see also* Oppo., filed Oct. 20, 2017; Oppo., filed Oct. 16, 2017. Such an approach is inconsistent with the State's duty to see that justice is done, inconsistent with the heightened appellate standard that applies here, inconsistent with the Court's decisions to order an answer and to allow amici briefs, and inconsistent with the need for searching review of sanctions imposed without any notice on capital defense attorneys in the performance of their duties. The petitioners respectfully ask the Court to allow the Reply.

DATED this 9th day of January, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document on January 9th, 2018. Electronic service of the document shall be made in accordance with the Master Service List to:

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