

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
COUNTY OF CLARK, STATE OF
NEVADA, THE HONORABLE MICHAEL
P. VILLANI, DISTRICT COURT JUDGE,

Respondents,

And

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

Real Party in Interest.

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CASE NO: 73462

D.C. NO: 81C053867

MOTION TO STRIKE RESPONSE
TO NOTICE OF SUPPLEMENTAL AUTHORITIES

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COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Chief Deputy, JONATHAN E. VANBOSKERCK, and files this Motion to Strike Response to Notice of Supplemental Authorities. This motion is filed pursuant to NRAP Rule 27 and Rule 31(e) and is based on the following memorandum and all papers and pleadings on file herein.

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Dated this 16th day of February, 2018.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
Nevada Bar # 001565

BY */s/ Jonathan E. VanBoskerck*

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ARGUMENT

Petitioners' Response to Notice of Supplemental Authorities is a perfect illustration of why Judge Villani imposed a \$250.00 sanction. Blatant disregard for basic procedural rules should not be tolerated by any court. Petitioners have an obligation to *learn* the rules and *comply* with them. Their Response to Notice of Supplemental Authorities is just more proof of their unwillingness to do so.

Glaringly absent from Petitioners' Response to Notice of Supplemental Authorities is any authority for filing such a document. Petitioners are utterly silent as to which rule of the Nevada Rules of Appellate Procedure (NRAP) allows them to file a pleading offering argument in response to a mere Notice of Supplemental Authorities. Petitioner offers no authority because there is none.

Presumably Petitioners rely upon NRAP 31(e), since that was the rule cited as authority for the filing of the Notice of Supplemental Authorities. (Notice of Supplemental Authorities, filed February 13, 2018, p. 3).

NRAP 31(e) does not authorize a response to a notice of supplemental authorities. Where a responsive pleading is allowed as a matter of right, the rules of this Court make the existence of such a privilege clear. See, NRAP 27(a)(3); NRAP 28(b). The text of NRAP 31(e) does not provide for any response to a notice of supplemental authorities and as such none is permissible.

Even if such a response were allowed by the rule, Petitioners surely have exceeded the scope of any such privilege. NRAP 31(e) allows a party to raise “pertinent and significant authorities” that “come to a party's attention after the party's brief has been filed, but before a decision,” for consideration by this Court. Id. However, this privilege is limited to “setting forth the citations[.]” providing “references to the page(s) of the brief that is being supplemented” and stating “concisely and *without argument* the legal proposition for which each supplemental authority is cited[.]” Id. (emphasis added). Petitioners do not limit themselves to citation to a responsive case or statute. No, Petitioners groundlessly impose several pages of argument in direct violation of the requirement that any filing be offered “*without argument.*” Id. (emphasis added). Not only does this violate the rule, it punishes Real Party in Interest for complying with the rule. The

State could have offered arguments in light of Moore v. State, Supreme Court of Nevada Case Number 66652, filed February 9, 2018. However, the State complied with the rule and is now at a disadvantage because Petitioners' either intentionally ignored the rule or failed to learn the rules of this Court before practicing here. Basic fairness requires that this Court strike Petitioners' Response to Notice of Supplemental Authorities.

Petitioners have repeatedly denigrated undersigned counsel for allegedly acting out of malice towards federal public defenders and other such nonsense. (Petition for Writ of Mandamus, filed July 14, 2017, p. 6 ("Mr. VanBoskerck reiterated his enmity toward the Federal Public Defender ..."), p. 47 ("If indigent defense organizations have to pay such prosecutors directly, assistant district attorneys who follow the approach taken by Mr. VanBoskerck here will become even more overheated and unrestrained in their polemics against public defense as an institution"))). This is simply not the issue. Petitioners' complaint that they are being bullied by the big bad prosecutor is nothing more than deflection. Petitioners, just like every other attorney practicing in Nevada, are ethically obligated to comply with the rules of procedure. Attorneys should not be held to a lower standard merely because they work for the Federal Public Defender. People facing a death sentence deserve lawyers who are dedicated and competent enough to *learn* the rules and *comply* with them. Indeed, if appellate or prior habeas

counsel had so blatantly ignored NRAP 31(e), it is a near certainty that Petitioners would have accused them of professional incompetence for doing so.

CONCLUSION

NRAP Rule 31(e) is designed to promote fairness and judicial economy. This Court has warned that rules exist for a reason and that violating them comes with a price:

In the words of Justice Cardozo,

Every system of laws has within it artificial devices which are deemed to promote ... forms of public good. These devices take the shape of rules or standards to which the individual though he be careless or ignorant, must at his peril conform. If they were to be abandoned by the law whenever they had been disregarded by the litigants affected, there would be no sense in making them.

Benjamin N. Cardozo, *The Paradoxes of Legal Science* 68 (1928). The district court should have upheld the requirements mandated in *Hill* and therefore should have dismissed the case against Scott.

Scott E. v. State, 113 Nev. 234, 239, 931 P.2d 1370, 1373 (1997).

WHEREFORE, the State respectfully requests that this Court strike the Response to Notice of Supplemental Authorities filed on February 16, 2018.

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Dated this 16th day of February, 2018.

Respectfully submitted,

STEVEN B. WOLFSON
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Nevada Bar # 1565

BY */s/ Jonathan E. VanBoskerck*

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on February 16, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

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