

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

**REPLY TO RESPONSE TO MOTION TO STRIKE RESPONSE TO
NOTICE OF SUPPLEMENTAL AUTHORITIES**

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NOTICE OF SUPPLEMENTAL AUTHORITIES**

COMES NOW the State of Nevada, by STEVEN B. WOLFSON, Clark County District Attorney, through his Chief Deputy, JONATHAN E. VANBOSKERCK, and files this Reply to Response to 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 23rd day of February, 2018.

Respectfully submitted,

STEVEN B. WOLFSON
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BY */s/ Jonathan E. VanBoskerck*

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ARGUMENT

Petitioners maintain that the prohibition on argument found in Rule 31(e) of the Nevada Rules of Appellate Procedure (NRAP) does not apply to them. This Court should cure this misapprehension by striking the Response to Notice of Supplemental Authorities.

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). Further, a party may not raise new issues in a notice of supplemental authorities. Id. Relevant here, “[a]ny response ... must be similarly limited.” Id. (emphasis added).

Petitioners’ response was not “similarly limited.” Id. Instead, Petitioners’ offered extensive argument. (Response to Notice of Supplemental Authorities, filed February 16, 2018, p. 1-3). Without bothering to present a single citation to authority, Petitioners maintain that the “similarly limited” language of NRAP 31(e) does not preclude argument because “responses by definition do not just recite authority.” (Opposition to Motion to Strike, filed February 23, 2018, p. 3).

However, this Court must avoid any construction that leads to an absurd result. Williams v. Clk. Co. Dist. Attorney, 118 Nev. 473, 485, 50 P.3d 536, 543 (2002) (in interpreting statutes, courts should avoid reaching absurd results and should not render any part of a statute ineffective if it can be avoided); Pellegrini v. State, 117 Nev. 860, 874, 34 P.3d 519, 528-29 (2001) (“must construe statutory language to avoid absurd or unreasonable results, and, ... avoid any interpretation that renders nugatory part of a statute”); L.V. Sun v. Dist. Ct., 104 Nev. 508, 511, 761 P. 849, 851 (1988) (“Statutes should be interpreted so as to ... avoid absurd results”). It makes absolutely no sense to preclude one side of a dispute from offering argument while allowing the other side to do so. This would be an absurd reading of the rule that also offends basic constitutional values related to an opportunity to be heard. Instead, a rational reading of NRAP 31(e) would allow a party to respond with citations addressing the supplemental authority raised by the notice.

If Petitioners’ pleading is not struck the State will be penalized for bringing new authority to the attention of this Court. The State complied with the rule and merely offered the page numbers of the Answer to be supplemented with Moore v. State, Supreme Court of Nevada Case Number 66652, filed February 9, 2018. The State did not explain why Moore is relevant in this matter because to do so would violate NRAP 31(e). Nor will the State misuse the Rule 27 Motion process to try to do so now. Instead, the State will trust this Court to be fair, to hold the parties to

the same standard. If the State is not permitted to offer argument by way of supplemental authority under NRAP 31, Petitioners should not be permitted to do so.

Petitioners suggests that if the State wants to be treated fairly it should have to pursue leave to file a reply. (Opposition to Motion to Strike, filed February 23, 2018, p. 3-4). Petitioners offers only an unpublished order as support for their contention. Id. Obviously this Court has the authority to permit a reply argument. However, NRAP 31(e) does not allow for such a request and it is worth noting that this Court's decision to permit a reply was made sua sponte, without the request of either party. (Ford Motor Company v. Trejo, Supreme Court Case Number 67843, Order, filed August 14, 2017). Indeed, if Petitioners wanted to offer more than responsive citations they should have requested this Court direct supplemental briefing.

Ultimately, why would any party ever file supplemental authorities if they were limited to mere naked citation but doing so opened the door to the opposing party filing pages of argument. Petitioners' construction of NRAP 31(e) is absurd. Basic fairness requires that Petitioners' Response to Notice of Supplemental Authorities be struck.

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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.

Dated this 23rd day of February, 2018.

Respectfully submitted,

STEVEN B. WOLFSON
Clark County District Attorney
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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 23, 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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