

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

JENNIFER V. ABRAMS; AND THE  
ABRAMS & MAYO LAW FIRM,  
Appellants,

vs.

STEVE W. SANSON; AND VETERANS  
IN POLITICS INTERNATIONAL, INC.,  
Respondents.

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JENNIFER V. ABRAMS; AND THE  
ABRAMS & MAYO LAW FIRM,  
Appellants,

vs.

LOUIS C. SCHNEIDER; AND THE  
LAW OFFICES OF LOUIS C.  
SCHNEIDER, LLC,  
Respondents.

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CASE NO.: 73838

CASE NO.: 75834

**RESPONDENTS STEVE W. SANSON AND  
VETERANS IN POLITICS INTERNATIONAL, INC.'S OPPOSITION TO  
MOTION FOR LEAVE TO FILE REPLY IN SUPPORT OF PETITION  
FOR EN BANC RECONSIDERATION AND MOTION TO STRIKE**

Appeal from Eighth Judicial District Court, Clark County

The Honorable Michelle Leavitt, District Judge

District Court Case No. A-17-749318-C

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## I. INTRODUCTION

This Court must deny Appellants Jennifer Abrams and the Abrams & Mayo Law Firm's ("Abrams") Motion (the "Motion") for Leave to File a Reply in Support of Petition for En Banc Reconsideration (the "Petition"). The Motion is wholly unauthorized by the Nevada Rules of Appellate Procedure. This Court's rules mandate that the Court *request* a reply from the petitioner and therefore disallows motions for leave to file a reply. *See* NRAP 40A(e). This Court is more than capable of reading the Petition and the Answer and deciding for itself whether a reply is warranted without Abrams' fugitive, unsupported arguments intruding upon its decision. As further detailed below, the Motion is an improper attempt to have the last word and delay proceedings in this free speech case. Further, because the Motion contains substantive arguments, this Court must order it stricken as a fugitive reply.

More briefing is not warranted in this matter. Abrams has had ample opportunity to litigate this free speech case, and further delay undermines the central purpose of the anti-SLAPP statute: ensuring that litigation like this does not interfere with First Amendment activity. Should this Court entertain Abrams' arguments, they should be rejected out of hand. As has been her wont in this litigation, Abrams offers nothing more substantive than uncited misrepresentations that Respondents engaged in an "extortionate scheme" and then "failed to deny as such." As repeatedly noted in the Answer, Sanson's declaration and exhibits (III AA 406-469) directly refuted

such accusations by, *inter alia*, denying that Sanson or VIPI ever took money from anyone in exchange for the publication of their non-actionable criticism. This, combined with the fact that Sanson's communications were non-actionable as a matter of law, is more than enough to meet Sanson's burden of showing by a preponderance of the evidence that his communications fell under NRS 41.637. Abrams' position that this Court should parse Sanson's opinions and engage in mental gymnastics to extract defamatory meaning from them is exactly at odds with *Rosen* and should not be adopted. Finally, Abrams' arguments regarding the Fair Report Privilege misrepresents the Answer and repeats already proffered arguments. It should likewise be rejected.

For all these reasons, this Court should deny the Motion and sanction Abrams and her counsel for multiplying the proceedings in the case increasing costs in this matter unreasonably and vexatiously. *See* NRAP 40A(g). Should this Court nonetheless grant the Motion, it must further grant Respondents leave to file a sur-reply.

## **II. ARGUMENT**

### **A. The Motion Is Not Permitted, Serves to Delay, and Should Be Stricken.**

#### **1. NRAP 27(a)(1) and NRAP 40A(e) Do Not Authorize the Motion.**

The Nevada Rules of Appellate Procedure provide that "[a]n application for an order or other relief is made by motion unless these Rules prescribe another

form.” NRAP 27(a)(1). In the context of petitions *en banc*, NRAP 40A(e) expressly prescribes another procedure—for ***the Court*** to solicit such a reply: “[n]o answer to a petition for *en banc* reconsideration or reply to an answer shall be filed unless ***requested by the court.***” NRAP 40A(e) (emphasis added). As the more specific provision, NRAP 40A’s requirement that this Court request a reply controls and should prohibit reliance upon NRAP 27, which generally governs motion practice before this Court. *See In re Resort at Summerlin Litigation*, 122 Nev. 177, 185, 127 P.3d 1076, 1081 (2006) (“where a general statutory provision and a specific one cover the same subject matter, the specific provision controls”).

Here, the Court has not requested such a reply, which it easily could have done when requesting an answer.<sup>1</sup> Thus, the Motion must be denied and stricken to the extent that it comprises a fugitive reply. Abrams’ Motion is an improper attempt to use motion practice to secure the “last word” in contravention of NRAP 40A(c) and NRAP 40A(e). Indeed, this tactic justifies the very opinions Sanson expressed about Ms. Abrams that gave rise to this lawsuit: that she is overzealous, seeks disfavored remedies, and is disrespectful to the Court.

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<sup>1</sup> *Compare Martinorellan v. State*, Case No. 58904, Doc. No. 14-10817 (order directing both answer ***and*** reply to petition for en banc reconsideration) (available at <http://caseinfo.nvsupremecourt.us/document/view.do?csNameID=27055&csIID=27055&deLinkID=460060&onBaseDocumentNumber=14-10817>) (last accessed August 12, 2020).

## 2. The Motion Is an Effort to Delay.

The Motion represents yet another attempt by Abrams to delay and multiply the proceedings in this free speech matter. This is evidenced by Abrams’ failure to even attach a proposed reply<sup>2</sup> to the Motion. The purpose of Nevada’s anti-SLAPP statute is to make SLAPP defendants immune<sup>3</sup> from suits such as Abrams’, and quickly so.<sup>4</sup> This Court should not countenance being forced to wait—in contravention of the Rules of Appellate Procedure<sup>5</sup>—for Abrams to submit a reply

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<sup>2</sup> A review of similar motions reveals that litigants generally submit proposed replies concurrently with motions for leave, presumably to minimize delay and expenditure of this Court’s resources. *See, e.g., LVMPD v. Blackjack Bonding*, Case Nos. 62864/63541, Doc. No. 15-12776, p. 1 (noting attached proposed reply) (available at

<http://caseinfo.nvsupremecourt.us/document/view.do?csNameID=31726&csIID=31726&deLinkID=506897&onBaseDocumentNumber=15-12776>) (last accessed August 12, 2020); *Principal Investments, Inc. v. Eighth Judicial District Court*, Case No. 57371, Doc. No. 12-10778, p. 1 (proposed reply submitted concurrently with motion) (available at <http://caseinfo.nvsupremecourt.us/document/view.do?csNameID=25516&csIID=25516&deLinkID=372780&onBaseDocumentNumber=12-10778>) (last accessed August 12, 2020); *In re Cay Clubs*, Case Nos. 58176/59751, Doc. No. 14-24331, (proposed reply submitted as Exhibit 1 to motion) (available at <http://caseinfo.nvsupremecourt.us/document/view.do?csNameID=26325&csIID=26325&deLinkID=474261&onBaseDocumentNumber=14-24331>) (last accessed August 13, 2020).

<sup>3</sup> “A person who engages in a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern is immune from any civil action for claims based upon the communication.” NRS 41.650.

<sup>4</sup> *See Metabolic Research, Inc. v. Ferrell*, 693 F.3d 795, 802 (9th Cir. 2012) (Nevada’s anti-SLAPP law is “a mechanism ... to obtain **prompt** review of potential SLAPP lawsuits and have them dismissed **before** she is forced to endure the burdens and expense of the normal litigation process.”) (emphases added).

<sup>5</sup> *See* NRAP 1(c) (“These Rules shall be liberally construed to secure the **proper and efficient** administration of the business and affairs of the courts and to promote and

(and, as fairness would dictate, for Respondents to submit a sur-reply).

### **3. The Motion Should Be Stricken.**

While Abrams did not provide a proposed reply, she provides a “sneak preview” of yet-to-be-written arguments (with few citations to case law and zero citations to the record<sup>6</sup>). Abrams’ conclusory arguments are not properly before the Court and offer no basis to independently review them. Thus, because the Motion not only seeks leave to file a reply but also includes substantive arguments, this Court must exercise its inherent authority to order it stricken as fugitive reply.

#### **B. No Further Briefing Is Warranted in This Case.**

Abrams has had more than enough opportunities to explain to the district court and to this Court how her frivolous lawsuit should escape dismissal under Nevada’s anti-SLAPP statute. Now, Abrams seeks an unknown amount of time to file a reply of unknown length—essentially asking this Court for a “blank check” to keep this matter perpetually before this Court. Sanson’s Answer more than adequately explained why the panel’s decision comports with precedent and why *en banc* consideration is not warranted in this matter. This Court should not entertain Abrams’ improper attempt to further delay resolution and have the “last word” in

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facilitate the administration of justice by the courts.”) (emphasis added).

<sup>6</sup> Cf. *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 997, 860 P.2d 720, 725 (1993) (“This court need not consider the contentions of an appellant where the appellant’s opening brief fails to cite to the record on appeal.”)

defiance of this Court's rules.

**C. The Arguments Made in the Motion Are Incorrect.**

If the Court considers the arguments in the Motion, they do not support reconsideration for the reasons set forth below.

**1. The *Flatley* Exception Does Not Apply.**

In the Petition, Abrams cited *Flatley v. Mauro*, 39 Cal. 4th 299, 139 P.3d 2 (2006), for the proposition that speech in furtherance of an “extortion scheme”—which, contrary to Abrams’ repeated uncited assertions (Motion, pp. 3-4) Respondents have denied engaging in—is not protected by the anti-SLAPP statute. (Petition, pp. 9-10.) In Sanson’s Answer, he tracked how California courts interpreting the *Flatley* exception had narrowly tailored it to specifically exclude speech. (Answer, pp. 4-9.)

Abrams now argues, without any citation, that “Respondents ignore the crucial difference between Nevada and California's anti-SLAPP statutes [sic]: in Nevada, on the Prong 1 analysis, Respondents carry the burden of establishing by a preponderance of the evidence that their speech was in furtherance of anti-SLAPP protected First Amendment speech and was made in good faith (meaning it was truthful or not knowingly false). California's anti-SLAPP statute places no such burden on defendants.” (Petition, p. 3.)

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Even if this uncited distinction matters (*id.*), Sanson met his evidentiary burden of demonstrating by a preponderance of the evidence that Abrams’ claim is “based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern.” NRS 41.660(3)(a), as this Court correctly held.<sup>7</sup> As noted in Sanson’s Answering Brief, if allegations of extortion alone—such as Abrams’—were sufficient to evade the anti-SLAPP statute, its protections would be eviscerated “because the plaintiff could preclude the statute’s application simply by alleging criminal conduct by the defendant.” *Safari Club Int’l v. Rudolph*, 845 F.3d 1250, 1259 (9th Cir. 2017).

**2. Sanson’s Declaration and Exhibits Carried the Burden of Demonstrating Good Faith Communication by a Preponderance of the Evidence.**

Abrams misrepresents the facts and the record in her Motion. Contrary to Abrams’ assertions that “denied or otherwise refuted the evidence Abrams submitted that both Sanson and Schneider admitted their extortion scheme” (Petition, p. 4), Sanson’s declaration makes clear that he has never accepted payment in exchange for VIPI’s articles. Abrams’ allegations and “documentary evidence” did not clearly overcome this. The district court and the panel correctly held that a

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<sup>7</sup> “We therefore determine that Sanson showed that his statements were either truthful or made without knowledge of their falsity. As Sanson also showed that his statements concerned matters of public concern and were made in a public forum, we conclude that he met his burden under the first prong of the anti-SLAPP analysis.” *Abrams v. Sanson*, 136 Nev. Adv. Op. 9, 458 P.3d 1062, 1069 (2020).



preponderance of the evidence reflected that Sanson’s and VIPI’s communications were in furtherance of their right to free speech in direct connection with an issue of public concern—Sanson’s opinions of Abrams’ behavior in Court.

### **3. The Court Did Not Misapply *Rosen*.**

In her Motion, Abrams asserts that Sanson made “false accusations of fact ... to support his opinion while he was parsing words to create a false message.” (Motion, p. 6.) Abrams did not—and cannot—provide support for this proposition. As Abrams’ counsel admitted<sup>8</sup> in district court, without Abrams’ imaginative reading—or “parsing”—of Sanson’s communications, his opinions cannot be transformed into statements of fact. Thus, as explained in the Answer (at pp. 9-11), the Court did not misapply *Rosen* and correctly found that the “gist” or “sting” of the complained-of communications was non-actionable opinion.

### **4. The Panel’s Decision Is Consistent with the Fair Report Privilege.**

Abrams’ arguments regarding the Fair Report privilege are repetitions of arguments raised in the Petition. (*Compare* Petition, pp. 11-16.) This demonstrates that a reply is unnecessary and Abrams repeated arguments do not merit further response, except to note that Sanson did not “admit (on pages of 11 and 12 of his

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<sup>8</sup> “THE COURT: . . . I’m just – there’s nowhere in here does it say Ms. Abrams is unethical.

MR. GILMORE: Point blank, you’re right.” (VI AA 924.)

Answer) to abusing the fair report privilege, even if it applied.” (Motion, p. 7.)

**D. If This Court Considers a Reply, Respondents Should Be Allowed to File a Sur-Reply.**

As noted above, Abrams has not even submitted a proposed reply brief to this Court, much less to Respondents, placing Respondents in the unfair position of not knowing how Abrams will support her conclusory arguments or if her arguments are within the scope of her Petition. If this Court is inclined to consider Abrams’ reply (whenever counsel gets around to making it “fulsome” enough) fairness dictates that Respondents be afforded the opportunity to file a sur-reply.

**III. CONCLUSION**

Based on the foregoing and the extensive briefing already before this Court, Abrams’ Petition for En Banc Reconsideration should be denied without permitting Abrams leave to file an unrequested reply. Should the Court allow a reply, Respondents must be given an opportunity to file a sur-reply.

DATED this 13<sup>th</sup> day of August, 2020.

/s/ Margaret A. McLetchie

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## **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing RESPONDENTS STEVE W. SANSON AND VETERANS IN POLITICS INTERNATIONAL, INC.'S OPPOSITION TO MOTION FOR LEAVE TO FILE REPLY IN SUPPORT OF PETITION FOR EN BANC RECONSIDERATION AND MOTION TO STRIKE was filed electronically with the Nevada Supreme Court on the 13<sup>th</sup> day of August, 2020. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

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