

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLARK COUNTY OFFICE OF THE
CORONER/MEDICAL EXAMINER,

Appellant,

vs.

LAS VEGAS REVIEW-JOURNAL,

Respondent.

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Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Eighth Judicial
District Court, the Honorable
Jim Crockett Presiding

**REPLY IN SUPPORT OF MOTION TO STRIKE RESPONDENT'S
APPENDIX**

AND

REPLY IN SUPPORT OF MOTION TO STAY BRIEFING

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I. INTRODUCTION

In its motion to strike and motion to stay briefing, the Coroner argued that NRAP 10(a); NRAP 30(c)(1); and *Carson Ready Mix, Inc. v. First Nat'l Bank of Nevada*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981) prevent LVRJ from filing its respondent's appendix that only includes documents **not** presented to the District Court and that do **not** bear a file stamp from this case. The Coroner also asked this Court to stay briefing and allow a 30-day extension of time for the Coroner's reply brief from the date of the Court's order resolving the Coroner's motion to strike.

LVRJ opposes the Coroner's motion by going into the substantive reasons why some of its arguments rely upon documents outside the record. LVRJ claims that principles of judicial notice allow it to draw from documents not presented in the District Court. In essence, LVRJ argues that a judicial notice exception should be written into NRAP 10(a), NRAP 30(c)(1), and *Carson Ready Mix* to allow for documents to be presented for the first time on appeal.

If allowed, LVRJ's proposed judicial notice exception would eviscerate NRAP 10(a), NRAP 30(c)(1), and *Carson Ready Mix*. By allowing such an exception, any party to an appellate proceeding in Nevada could expand the record by claiming a judicial notice exception. In any event, LVRJ's cited law on judicial notice does not reflect this Court's more recent inclination to disallow judicial

notice on appeal. *See In re Amerco Derivative Litig.*, 127 Nev. 196, 221 n.9, 252 P.3d 681, 699 n.9 (2011). Therefore, the Court should grant the Coroner's motion and strike the respondent's appendix. The Court should also either disregard LVRJ's references in its answering brief to the respondent's appendix or strike the answering brief and require a corrected answering brief to be filed.

Finally, the Court should also stay briefing and allow the Coroner a 30-day extension of time from the date of this Court's order resolving the Coroner's motion to strike.

II. LEGAL ARGUMENT

A. LVRJ'S PROPOSED JUDICIAL NOTICE EXCEPTION CANNOT BE WRITTEN INTO THIS COURT'S RULES.

LVRJ's proposed judicial notice exception cannot be written into this Court's rules. LVRJ does not dispute the controlling law in NRAP 10(a): "The trial court record consists of the papers and exhibits *filed in the district court*, the transcript of the proceedings, if any, the district court minutes, and the docket entries made by the district court clerk." (emphasis added); and NRAP 30(c)(1) mandates, "All documents included in the appendix shall be placed in chronological order by the dates of filing beginning with the first document filed, and *shall bear the file-stamp of the district court clerk*, clearly showing the date the document was filed in the proceedings below." (emphasis added). LVRJ

attempts to excuse itself from these rules by claiming that a judicial notice exception should be written in. However, court rules are construed the same way as statutes. *See Webb ex rel. Webb v. Clark Cnty. Sch. Dist.*, 125 Nev. 611, 618, 218 P.3d 1239, 1244 (2009) (“[T]he rules of statutory interpretation apply to Nevada’s Rules of Civil Procedure.”). As a matter of interpretation, nothing in the plain language of NRAP 10(a), NRAP 30(c)(1), or any other court rules supports LVRJ’s claimed judicial notice exception.

LVRJ also attempts to distinguish *Carson Ready Mix* based upon the notion that since the opinion does not address judicial notice, LVRJ can include whatever it wants in an appendix. For the same reason LVRJ’s judicial notice exception fails, its attempt to distinguish *Carson Ready Mix* also fails. *See Carson Ready Mix*, 97 Nev. at 476, 635 P.2d at 277 (“We cannot consider matters not properly appearing in the record on appeal.”). Therefore, the Court should strike the respondent’s appendix.

B. THIS COURT’S PRECEDENT DISFAVORS JUDICIAL NOTICE FOR APPELLATE MATTERS.

This Court’s precedent disfavors judicial notice for appellate matters. The fundamental problem with LVRJ’s position is that it is attempting to raise new information for the first time on appeal. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52–53, 623 P.2d 981, 983–984 (1981). Additionally, LVRJ’s cited

law on judicial notice does not reflect this Court's more recent inclination to disallow judicial notice on appeal. *See In re Amerco Derivative Litig.*, 127 Nev. at 221 n.9, 252 P.3d at 699 n.9 (“[G]enerally, this court will **not** take judicial notice of facts in a different case, even if connected in some way, unless the party seeking such notice demonstrates a valid reason for doing so.”) (emphasis added and citations omitted). LVRJ does not offer any valid reason for attempting to expand the record, except that it wants to make new arguments that are not supported by the existing record. Therefore, LVRJ's proposed judicial notice exception would not even apply under the facts of this case.

C. GOOD CAUSE EXISTS TO STAY BRIEFING AND EXTEND THE DEADLINE FOR THE CORONER'S REPLY BRIEF.

Good cause exists to stay briefing and extend the deadline for the Coroner's reply brief. The Court should also stay briefing and allow the Coroner a 30-day extension of time from the date of this Court's order resolving the Coroner's motion to strike. LVRJ suggests that its arguments relative to the respondent's appendix are “minimal.” But, the “minimal” arguments entail three appendix volumes of information that the Coroner may have to process and respond to in its reply brief—in a case with only two joint appendix volumes. Also pending before the Court is whether the Coroner will need to address in its reply brief the proposed

amici brief. Therefore, the Court should also allow the Coroner's requested 30-day extension for its reply brief.

III. CONCLUSION

In summary, the Court should grant the Coroner's motion and strike the respondent's appendix. The Court should also either disregard LVRJ's references in its answering brief to the respondent's appendix or strike the answering brief and require a corrected answering brief to be filed. Finally, the Court should also stay briefing and allow the Coroner a 30-day extension of time from the date of this Court's order resolving the Coroner's motion to strike.

Dated this 28th day of September, 2018.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **REPLY IN SUPPORT OF MOTION TO STRIKE RESPONDENT'S APPENDIX AND REPLY IN SUPPORT OF MOTION TO STAY BRIEFING** was filed electronically with the Nevada Supreme Court on the 28th day of September, 2018. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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