

**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  
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Case No.: 74604  
  
Appeal from the Eighth Judicial  
District Court, the Honorable  
Jim Crockett Presiding

**OPPOSITION TO MOTION FOR LEAVE TO FILE SUR-REPLY**

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## **I. INTRODUCTION**

Appellant, Clark County Office of the Coroner/Medical Examiner (“the Coroner”), opposes the Las Vegas Review-Journal’s (“LVRJ”) motion for leave to file sur-reply. LVRJ does not identify any authority under which it has brought the motion for sur-reply briefing. According to NRAP 28, briefs filed in an appeal are the appellant’s opening brief, the respondent’s answering brief, and appellant’s reply brief. NRAP 28(a)–(c). Furthermore, LVRJ has failed to cite to any authority that permits it to supplement the amici brief on behalf of the amicus curiae. Indeed, NRAP 29(g) prohibits an amicus curiae from filing a reply. Thus, LVRJ should not be permitted to file a reply on behalf of an amicus curiae. Finally, LVRJ asserts that its sur-reply is necessary to address this Court’s recent opinion *Clark County School District v. Las Vegas Review-Journal*, 134 Nev. Adv. Op. 84, 429 P.3d 313 (October 25, 2018). LVRJ, however, ignores NRAP 31(e), which specifies how to address supplemental authorities after a party has submitted its brief. Therefore, the Court should deny LVRJ’s motion for leave to file a sur-reply. Alternatively, if the Court allows the proposed sur-reply to be filed, the Court should allow the Coroner 20 days to file a response to the sur-reply brief without further briefing.

## **II. LEGAL ARGUMENT**

### **A. LVRJ SHOULD NOT BE PERMITTED TO FILE A REPLY BRIEF ON BEHALF OF THE AMICUS CURIAE.**

The proposed sur-reply raises new issues on behalf of the amicus curiae for the first time on appeal, which is prohibited. *See Wyoming Farm Bureau Federation v. Babbitt*, 199 F.3d 1224, 1230 n.2 (10th Cir. 2000). LVRJ complains that the Coroner inaccurately represented that the Denver Post and Denver television stations did not receive juvenile autopsy reports. *See* Mot. at 1–2. The Coroner, however, merely referenced the article the amici brief relied upon. *See* Reply Brief at 37–38. Indeed, the article cited to in the amici brief makes no mention of juvenile autopsy reports, as the Coroner pointed out in its reply brief. 1 Appellant’s Reply Appendix 5–33.

In reality, LVRJ wants to step in the shoes of the amicus curiae and submit a reply brief on its behalf, supplementing the amici brief with citations and news articles that were not initially relied upon by the amicus curiae. NRAP 29(g) specifically prohibits an amicus curiae from submitting a reply. Thus, LVRJ should also be prohibited from submitting a “reply” brief on behalf of the amicus curiae with citations to additional authorities. LVRJ’s motion to file a sur-reply should also be denied because it raises new issues that were not presented in the

amici brief, and NRAP 29(g) specifically prohibits the amicus curiae from filing a reply brief.

**B. LVRJ’S SUR-REPLY IS NOT NECESSARY BECAUSE NRAP 31(e) ALLOWS LVRJ TO FILE A NOTICE OF SUPPLEMENTAL AUTHORITIES.**

LVRJ asserts that its sur-reply is also necessary because this Court’s opinion, *CCSD v. LVRJ*, was issued on October 25, 2018 after it filed its answering brief. While LVRJ claims that the purpose of its sur-reply is to address the new balancing test established by *CCSD v. LVRJ*, LVRJ seeks to take another bite at the apple and attack the Coroner’s reply brief. To be sure, LVRJ, relying on the District Court’s order, essentially argues that the privacy interest balancing test recently established by this Court does not apply because the lower court determined that the Coroner did not meet its burden. *See* Sur-reply at 2. LVRJ continues by asserting that this privacy interest balancing test is limited to the complaining party himself. *Id.* at 6–8. Importantly, this Court did not limit the privacy balancing interest to the “complaining party itself.” *See CCSD v. LVRJ*, 134 Nev. Adv. Op. 84, 429 P.3d 313 (October 25, 2018). LVRJ is simply presenting a sur-reply to rebut the Coroner’s arguments in its reply and not to address the new balancing test this Court articulated in *CCSD v. LVRJ*.

It is also worth noting that if LVRJ believed that *CCSD v. LVRJ* applied to this instant case, it had over a month to file a notice of supplemental authorities pursuant to NRAP 31(e). In fact, the proper procedural mechanism is to file a notice of supplemental authorities if a new opinion is issued after a party submits its brief. NRAP 31(e). Instead, LVRJ waited until the Coroner filed its reply brief and now attempts to rebut the Coroner's arguments. Thus, if LVRJ seeks to address the *CCSD v. LVRJ* opinion, it must do so pursuant to NRAP 29(g). Otherwise, there is not authority that permits LVRJ to file a sur-reply simply to rebut the Coroner's arguments in its reply brief. Accordingly, the Court should deny LVRJ's motion to file a sur-reply.

**C. ALTERNATIVELY, THE COURT SHOULD PERMIT THE CORONER TO FILE A RESPONSE TO THE SUR-REPLY.**

NRAP 28 permits the filing of appellant's opening brief, respondent's answering brief, and appellant's reply brief. LVRJ fails to cite to any authority to support the filing of a sur-reply brief. Thus, on this ground alone, the Court should deny LVRJ's request to file a sur-reply. However, if the Court permits LVRJ's sur-reply to be filed, the Coroner, as the appellant, should have the last word in accordance with NRAP 28. *See* NRAP 28(a)–28(c). Thus, if the Court allows LVRJ's sur-reply to be filed, the Court should be allowed the Coroner 20 days to file a response to the sur-reply brief without further briefing.

### III. CONCLUSION

LVRJ's request for sur-reply briefing should be denied. There is simply no authority that permits LVRJ to file a sur-reply brief. Moreover, LVRJ seeks to step in the shoes of the amici curiae and submit a reply on their behalf. NRAP 29(g) specifically prohibits an amicus curiae from submitting a reply brief. Thus, LVRJ should also be prohibited from submitting a sur-reply to defend the amici brief with additional citations and authorities. Finally, LVRJ ignores the proper procedural mechanism to supplement its submitted Answering Brief with new authorities. If LVRJ seeks to reply on *CCSD v. LVRJ*, it should be required to file a notice of supplemental authorities pursuant to NRAP 31(e) rather than submit an entire sur-reply attacking the Coroner's reply brief. Alternatively, if the Court allows the proposed sur-reply to be filed, the Court should allow the Coroner 20 days to file a response to the sur-reply brief without further briefing.

Dated this 17th day of January, 2019.

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## **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **OPPOSITION TO MOTION FOR LEAVE TO FILE SUR-REPLY** was filed electronically with the Nevada Supreme Court on the 17th day of January, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Margaret A. McLetchie, Esq.  
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Kristen Gallagher, Esq.

/s/ Leah Dell  
Leah Dell, an employee of  
Marquis Aurbach Coffing