

IN THE SUPREME COURT OF THE STATE OF NEVADA

APCO CONSTRUCTION, INC., A
NEVADA CORPORATION,

Appellant,

vs.

ZITTING BROTHERS CONSTRUCTION,
INC.,

Respondent.

Case No.: 75197

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Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Eighth Judicial
District Court, the Honorable Mark
Denton Presiding

MOTION FOR EXTENSION OF TIME TO FILE
APPELLANT'S REPLY BRIEF
(Second Request)

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MAC:05161-019 3844167_1

Appellant, APCO Construction, Inc. (“APCO”), by and through its counsel of record, Marquis Aurbach Coffing and Fennemore Craig, P.C., hereby moves this Court pursuant to NRAP 31(b) for a 30-day extension of time to file its reply brief.

APCO’s reply brief was originally due on July 31, 2019. On August 2, 2019, this Court granted a 45-day extension of time, making APCO’s reply brief currently on due September 16, 2019. This is APCO’s second request for extension. If this Court grants this request for a 30-day extension, APCO’s reply brief will be due on October 16, 2019. Good cause exists for allowing APCO to extend the filing deadline until October 16, 2019:

1. The underlying litigation involves approximately 90 parties bringing hundreds of claims, cross-claims, counterclaims, third-party claims, and claims in intervention, throughout 16 consolidated cases, spanning over a decade in the district court and this Court. The record on appeal consists of 31 volumes and nearly 7,000 pages.

2. Respondent, Zitting Brothers Construction, Inc. (“Zitting”), filed an overlength brief of almost 17,000 words on July 1, 2019. In order to adequately respond to the arguments presented by Zitting, especially in light of the complexity of the record, APCO will need the additional time to complete its reply brief and circulate a draft to all counsel and the client. Additionally, given the nature of the

assertions and arguments raised in Zitting's answering brief, APCO will need to prepare a reply appendix to include the documents necessary to adequately address and respond the issues currently before the Court.

3. Appellate counsel, Tom Stewart, Esq., has been heavily involved in unexpected, emergency briefing before the federal district court (*Martinez-Paris et al v. Clark County School District et al*, Case No. 2:19-cv-00403-JAD-VCF), as well as unexpected emergency briefing before this Court (*Superpumper, Inc. v. Leonard*, Docket No. 79355) and before the Second Judicial District Court in post-trial motion practice in the same matter, (*Leonard v. Superpump, Inc.*, Case No. CV13-02663), in addition to his normal workload, which has caused an unexpected delay in the preparation of the emergency of the opening brief in the instant case.

4. In addition, over the last 30 days, Mr. Stewart has prepared the answering brief in Court of Appeals Docket No. 76650-COA (*In re Paul D. Burgauer Revocable Living Trust*), as well as preparing the opening brief and other appellate documents in a complex, out-of-state mining appeal (*Mercy Mountain, et al. v. Milap Society, et al.*, Case No. CV-19-0564).

5. Finally, Mr. Stewart has emergency dental surgery set for September 16, 2019, that will leave him unable to finalize the brief should an extension not be granted.

6. The additional time will also allow any requested revisions to be incorporated into APCO's reply brief prior to finalization and submission to this Court for filing.

Therefore, APCO respectfully requests that this Court grant its motion and extend the deadline for its reply brief to October 16, 2019. This Motion is submitted in good faith and for good cause shown in accordance with NRAP 31(b).

Dated this 16th day of September, 2019.

MARQUIS AURBACH COFFING

By /s/ Tom W. Stewart
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **MOTION FOR EXTENSION OF TIME TO FILE APPELLANT'S REPLY BRIEF** was filed electronically with the Nevada Supreme Court on the 16th day of September, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

I-Che Lai
Jorge Ramirez



An employee of Marquis Aurbach Coffing