

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

SUPERPUMPER, INC., an Arizona corporation; EDWARD BAYUK, individually and as Trustee of the EDWARD BAYUK LIVING TRUST; SALVATORE MORABITO, an individual; and SNOWSHOE PETROLEUM, INC., a New York corporation,

Appellants,

vs.

WILLIAM A. LEONARD, Trustee for the Bankruptcy Estate of Paul Anthony Morabito,

Respondent.

Case No. 79355

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Elizabeth A. Brown  
Clerk of Supreme Court

Appeal from the Second Judicial District Court, the Honorable Connie J. Steinheimer Presiding

**REPLY IN SUPPORT OF MOTION TO STRIKE  
RESPONDENT'S AMENDED APPENDIX AND RESPONDENT'S  
AMENDED ANSWERING BRIEF**

**AND**

**REPLY IN SUPPORT OF MOTION TO STAY BRIEFING**

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## **I. INTRODUCTION**

In Appellants' motion to strike and motion to stay briefing, they 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), prevents the Trustee from including in its amended appendix documents outside the District Court record and documents that do not bear the file-stamp of the District Court clerk. Appellants also asked this Court to stay briefing in this matter pending the resolution of this motion.

The Trustee opposes Appellants' motion, claiming that the documents included in its amended answering appendix are not included to supplement the record from the District Court, but instead to clarify Appellants' misleading statements and omissions. Although, the Trustee agrees that according to NRAP 10(a) the record on appeal 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." The Trustee argues that NRAP 30 does not limit Respondent's appendix to only those matters in the record. *See* NRAP 30(b)(4). Thus, under the Trustee's interpretation, parties on appeal could insert all manner of documents into the record under the guise that they are "responsive" to the opposing party's arguments. However, the Court should deny such an interpretation and grant Appellants' motion to strike.

## II. LEGAL ARGUMENT

The Trustee admits that the two documents included in its amended answering appendix are outside the record. Procedurally, it is well known that if a party wishes to include matters outside of the record on appeal, they must make a formal motion to supplement the record. NRAP 10(c); *Russo v. Gardner*, 114 Nev. 283, 286–287, 956 P.2d 98, 100 (1998). Such a motion must be resolved by the District Court. However, the Trustee cannot make such a motion at this time since the unfiled transcript lacks even basic notions of authenticity.

Moreover, except in limited circumstance the Court “will not take judicial notice of records in another and different case, even though the cases are connected.” *Mark v. Estate of Mark*, 125 Nev. 80, 91, 206 P.3d 98, 106 (2009). But, the unfiled transcript has not actually been filed in another case. Thus, the Court would similarly be prohibited from taking judicial notice of a document that does not actually appear in the docket of another case.

The Trustee fails to appreciate that its insertion of fugitive documents into the record for this appeal creates an issue that needs to be resolved before Appellants can file their reply brief. In any event, Appellants have not previously requested any extension of time for their reply brief. So, the Trustee’s request for an immediate deadline for the reply is misplaced, particularly given that this Court has approved each of the past extensions for Appellants’ opening brief and appendix.

### III. CONCLUSION

In summary, the Court should grant Appellants' motion and strike the Trustee's amended answering appendix according to NRAP 10(a), NRAP 30(c)(1), and *Carson Ready Mix* and either strike Respondent's amended answering brief or disregard the legal arguments based upon the new documents referenced in Trustee's amended appendix. Finally, the Court should also stay briefing pending the resolution of Appellants' motion to strike.

Dated this 12th day of October, 2020.

CLAGGETT & SYKES LAW FIRM

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## **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing ***REPLY IN SUPPORT OF MOTION TO STRIKE RESPONDENT'S AMENDED APPENDIX AND RESPONDENT'S AMENDED ANSWERING BRIEF AND REPLY IN SUPPORT OF MOTION TO STAY BRIEFING*** was filed electronically with the Supreme Court of Nevada on the 12th day of October, 2020. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

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