

RONNEKA ANN GUIDRY,)
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Appellant,)
)
vs.)
)
THE STATE OF NEVADA,)
)
Respondent.)
_____)

Electronically Filed
Jul 12 2021 08:08 a.m.
Elizabeth A. Brown
Clerk of Supreme Court
Case No. 80156

Comes Now Appellant, RONNEKA ANN GUIDRY, by and through Chief Deputy Public Defender, SHARON G. DICKINSON, and pursuant to NRAP 27(a)(3) and NRAP 32 and moves this Honorable Court to deny State's Motion seeking to file an Answering Brief in excess of type-volume limitations, consisting of 27,392 words and 109 pages. This Motion is based upon the Points and Authorities presented and all papers and pleadings filed herein.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

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POINTS AND AUTHORITIES

A. State failed to provide detail or to show good cause and diligence as required by NRAP 32(a)(7)(D).

NRAP 32 (a)(7)(A) requires an Answering Brief in a noncapital case not exceed 30 pages or contain no more than 14,000 words. In this instance, State seeks to file an Answering Brief consisting of 27,392 words and 109 pages.

Permission to file a more lengthy Answering Brief may be obtained pursuant to NRAP 32(a)(7)(D). NRAP 32(a)(7)(D)(i) states in pertinent part:

(i) The court looks with disfavor on motions to exceed the applicable page limit or type-volume limitation, and therefore, permission to exceed the page limit or type-volume limitation will not be routinely granted. A motion to file a brief that exceeds the applicable page limit or type-volume limitation will be granted only **upon a showing of diligence and good cause**. The court will not consider the cost of preparing and revising the brief in ruling on the motion. (Emphasis added).

State must attach a declaration to the motion listing “in **detail the reasons** for the motion...” NRAP 32(a)(7)(D)(ii)(Emphasis added).

Here, in seeking permission to file a more lengthy Answering Brief, the State did not follow the requirements of NRAP 32. State provided no detail explaining the diligence it used to follow the rules and listed few

specifics, if any, as to how it tried but was unable to comply. Thus, State did not show good cause or diligence as needed for filing an Answering Brief containing 27,392 words rather than 14,000 words; or, for filing a brief with 109 pages rather than 30 pages.

1. No diligence shown.

To show diligence, State needed to outline the actions it took to comply with Court's rules. See *Joseph John H. v. State*, 113 Nev. 621, 623–24 (1997)(addressing diligence by analyzing the prosecutor's actions in compelling a witness' attendance for the preliminary hearing); also see NRCrP 15. In civil actions involving service, "due diligence is measured by the qualitative efforts of a specific plaintiff seeking to locate and serve a specific defendant." *Abreu v. Gilmer*, 115 Nev. 308, 313 (1999).

Here, State provided no specific facts detailing actions it took to comply with the 14,000 word limit or 30 page limit. Instead, the prosecutor cited its own conclusions as to why it was not complying.

Accordingly, Court was given insufficient facts to allow for an evaluation of diligence and State's motion must be denied.

2. No good cause.

A review of the declaration shows State failed to show good cause for needing to use **27,392 words** to respond to Appellant's Opening Brief of

16,643 words. State did not ask for 25,000 or 20,000 or even 16,643. It specifically asked for 27,392. However, State provided no detailed reason as to why 27,392 was the correct amount of words required. The words “good cause” are not even mentioned in State’s declaration.

Basically, State contends it needed to use 27,392 words because of Appellant’s brief. Although Appellant’s 16,643 worded Opening Brief raised multiple issues in depth, State provided no reason as to why it needed to use 10,649 more words than the amount of words used by the Appellant in the Opening Brief. Accordingly, State failed to show good cause for filing an Answering Brief containing 27,392 words.

3. Too late to change.

The rules require that a motion seeking the enlargement of the page limitation or word count “shall be filed on or before the brief’s due date...” NRAP 32((a)(D)(ii). Accordingly, it is too late for State to amend its motion because the amendment would be effective after the brief’s due date.

It is also too late for the State to provide the Court with a more detailed declaration in a Reply. Again, the detailed specific facts to support the State’s request were required to be put in a motion prior to the due date of the State’s Brief.

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B. Prejudice.

If Court allows State to file an Answering Brief that contains 27,392 then the Court is allowing the State to argue almost double what the rules provide. Essentially, State would be filing two Answering Briefs which would allow for 28,000 words.

Appellant will be prejudiced if the Court grants State's request. Appellant has the burden of proof on appeal and to allow the State twice the number of words under the rules prejudices Appellant's ability to respond and carry her burden in a 7,000 worded Reply Brief. This results in giving the State an unfair advantage in violation of due process. Court would never issue an oral argument giving the Appellant 15 minutes to argue and the Respondent 30 minutes – it would not be fair. Court should treat the briefing process the same.

C. Conclusion.

The Appellate rules were established to provide “cost-effective, timely access to the courts...” *Jorcin v. Allen*, 484 P.3d 275 (Nev. 2021)(unpublished).

On 06/21/21, this Court ordered State to file its Answering Brief on or before 07/09/21. Although State submitted its Answering Brief on 07/09/21, the brief is almost two times the limit allowed. Based on the above,

Appellant asks this Court to deny State's motion requesting to file an Answering Brief consisting of 27,392 words and 109 pages.

DATED this 12th day of July, 2021.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By: /s/ Sharon G. Dickinson
SHARON G. DICKINSON, #3710
Chief Deputy Public Defender

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 12th day of July 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
ALEXANDER CHEN

SHARON G. DICKINSON

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

RONNEKA ANN GUIDRY
NDOC NO: 1138388
c/o Florence McClure Womens Correctional Center
4370 Smiley Road
Las Vegas, NV 89115

BY /s/ Carrie M. Connolly
Employee, Clark County Public
Defender's Office

