

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROBERT CLARKE, an individual,  
Appellant,

v.

SERVICE EMPLOYEES  
INTERNATIONAL UNION, a nonprofit  
cooperative corporation; and CLARK  
COUNTY PUBLIC EMPLOYEES  
ASSOCIATION, A/K/A SEIU 1107, a  
non-profit cooperative corporation,

Respondents.

SERVICE EMPLOYEES  
INTERNATIONAL UNION, an  
unincorporated association; and NEVADA  
SERVICE EMPLOYEES UNION A/K/A  
CLARK COUNTY PUBLIC  
EMPLOYEES ASSOCIATION, SEIU  
1107, a non-profit cooperative corporation,

Appellants,

v.

DANA GENTRY, AN INDIVIDUAL; and  
ROBERT CLARKE, an individual,

Respondents.

Supreme Court No. 80520  
District Case No. A764942  
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Supreme Court No. 81166  
District Case No. A764942

**MOTION TO EXCEED TYPE-VOLUME LIMITATION and  
DECLARATION OF JONATHAN COHEN IN SUPPORT THEREOF**

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Service Employees International Union (“SEIU”) and Clark County Public Employees Association a/k/a SEIU 1107 (“Local 1107”) (collectively, “Unions”) respectfully request permission to file a joint opening/answering brief that is 14,722 words, 722 words in excess of the applicable type-volume limitation. As described below, the Unions’ request is supported by diligence and good cause. *See* NRAP 32(a)(7)(D)(i). Accompanying this motion is the (1) Declaration of Jonathan Cohen; and (2) a certification as required by NRAP 32(a)(9)(C). *See* NRAP 32(a)(7)(D)(ii).

The Union’s joint opening/answering brief concerns two appeals that have been consolidated. In docket number 805020, Robert Clarke appeals from the grant of summary judgment in favor of the Unions. In docket number 81166, the Unions jointly appeal from the denial of their motions for attorneys’ fees.

On September 9, 2020, this Court issued an order consolidating the appeals in docket numbers 80520 and 81166. That order also required the Unions to file a single joint brief that both responds to Clarke’s opening brief in docket number 80520, and analyzes the issues raised by the Unions’ joint appeal in docket number 81166. The Court’s order also declined the parties’ request to treat the appeals as cross-appeals. Thus, two separate parties must address two appeals in a single brief that meets the 14,000-word limit applicable to a single opening or answering brief. *See* NRAP 32(a)(7)(A)(ii).

Diligence and good cause support this request for the following reasons. First, SEIU and Local 1107 would ordinarily have each been allowed to file a separate answering brief in docket number 80520, and opening brief in docket number 81166, with a combined total of 28,000 words. *See* NRAP 32(a)(7)(A)(ii) (“An opening or answering brief is acceptable if it contains no more than 14,000 words . . .”). Their joint opening/answering brief contains 14,722 words, almost half that amount. Thus, although the Unions request to exceed the applicable type-volume limitation, their combined brief is actually much shorter than what they could have filed if they filed separate opening and answering briefs.

Second, this consolidated appeal concerns, among other things, an important issue of first impression in Nevada regarding federal law preemption. The Unions believe their request to exceed the applicable type-volume limitation is supported by the need to present that issue fully and adequately, and still address the other important issues in these appeals.

Finally, the Unions are mindful that this Court “looks with disfavor on motions to exceed the applicable . . . type-volume limitation . . .” NRAP 32(a)(7)(D)(i). Thus, the Unions have worked persistently to trim and edit their



**DECLARATION OF JONATHAN COHEN IN SUPPORT OF**  
**MOTION TO EXCEED TYPE-VOLUME LIMITATION**

I, Jonathan Cohen, declare as follows:

1. I am a member of the law firm Rothner, Segall & Greenstone and am counsel to Service Employees International Union (“SEIU”). I make this declaration in support of a motion to exceed the type-volume limitation in accordance with Nevada Rule of Appellate Procedure 32(a)(7)(D)(ii).

2. SEIU and Clark County Public Employees Association a/k/a SEIU 1107 (“Local 1107”) (collectively, “Unions”) are appellees in docket number 80520. That appeal concerns the grant of summary judgment against Robert Clarke and in favor of the Unions. Among other things, the appeal involves a matter of first impression in Nevada, namely, whether the federal Labor Management Reporting and Disclosure Act, 29 U.S.C. § 401, *et seq.*, preempts Clarke’s claims. The appeal also involves separate grounds for summary judgment in favor of SEIU, and whether SEIU and Local 1107 were alter-egos.

3. SEIU and Local 1107 are appellants in docket number 81166. That appeal concerns the denial of the Unions’ motions for attorneys’ fees following their unaccepted joint offers of judgment under NRCP 68.

4. On September 9, 2020, this Court consolidated the appeals in docket numbers 80520 and 81166, and required SEIU and Local 1107 to file a single joint



**CERTIFICATE OF COMPLIANCE**

I certify that the joint opening/answering brief of Service Employees International Union and Clark County Public Employees Association a/k/a SEIU 1107, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), is proportionately spaced, has a typeface of 14 points or more, and contains 14,722 words.

DATED: October 7, 2020

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By                   /s/ Jonathan Cohen                    
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**SERVICE EMPLOYEES INTERNATIONAL  
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EMPLOYEES UNION A/KA CLARK  
COUNTY PUBLIC EMPLOYEES  
ASSOCIATION, SEIU 1107**

