IN THE SUPREME COURT OF THE STATE OF NEVADA

NATHAN OHM,
Petitioner,

vs.

HON. KATHLEEN DELANEY, and the EIGHTH JUDICIAL DISTRICT COURT,
Respondents,

and,

CITY OF HENDERSON,
Real Party in Interest.

CASE NO: 81960

District Court Case No: A-20-816453-W
Dept. No: 25

HMC Case No: 19CR002297
19CR002298

Dept. No: 1

Electronically Filed
Mar 30 2021 01:53 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

MOTION TO STRIKE REPLY AS UNTIMELY

NICHOLAS VASKOV, ESQ.
HENDERSON CITY ATTORNEY
MARC M. SCHIFALACQUA, ESQ.
Senior Assistant City Attorney
Nevada State Bar No. 010435

CITY ATTORNEYS' OFFICE – CRIMINAL DIVISION
243 WATER STREET, MSC 711
HENDERSON NV 89015

Docket 81960 Document 2021-09208

MEMORANDUM OF POINTS AND AUTHORITIES

STATEMENT OF THE CASE AND FACTS

On December 17, 2020, this Court issued an order granting in part, Nathan Ohm's ("Ohm") motion to exceed type-volume limitations. See Order Granting In Part, Motion To Exceed Type-Volume Limitation And Directing Answer (Exhibit #1). The order also included deadlines to file the petition, answer, and any reply. Id. On December 28, 2020, Ohm filed a motion to extend time to file his petition by thirty days. See Motion To Extend Time To File Original Petition (Exhibit #2). The following day, the City filed a non-opposition to Ohm's motion to extend time to file his petition. Ohm then filed his petition on January 25, 2021. This Court granted Ohm's motion to extend time to file his petition on February 3, 2021. See Order Granting Motion (Exhibit #3). The February Order did not modify the fixed amount of time allowed for filing set forth in the December order. In response, on February 22, 2021, City timely filed an answer to Ohm's petition. Ohm then waited sixteen days past his deadline to file an untimely reply on March 24, 2021. His reply did not include any explanation of good cause for a late filing. He also failed to explain any extraordinary circumstances and extreme need to file an untimely reply.

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ARGUMENT

I. OHM FAILED TO PROVIDE THIS COURT ANY GOOD CAUSE, EXTRAORDINARY CIRCUMSTANCES, OR EXTREME NEED FOR NOT FOLLOWING THE BRIEFING SCHEDULE.

Pursuant to Nevada Rules of Appellate Procedure ("NRAP"), this Court may order parties to file responses to a petition for writ of mandamus within a fixed amount of time. See NRAP 21(b)(1). For computing time, NRAP 26 provides a specific rule to help parties comply with filing deadlines. See NRAP 26(a)(1). NRAP 26 also allows two methods to extend time. First, an extension may be granted by court order. NRAP 26(b)(1)(A). Second, on or before the due date, the clerk may grant an extension by way of a telephonic request.[1] NRAP 26(b)(1)(B). Each method to extend time requires good cause for an extension. Id.

Good cause generally requires a party to provide a substantial reason that would afford a legal excuse for missing the filing deadline. Hathaway v. State, 119 Nev. 248, 252, 71 P.3d 503, 506 (2003). To demonstrate good cause to the Court, "a petitioner must show that an impediment external to the defense prevented him…from complying with the state procedural default rules." Id. For a petition of mandamus or prohibition, mere oversight or overlooking a deadline does not constitute good cause. State v. Second Jud. Dist. Ct. ex rel. Cty. of Washoe, 116

[1] An extension may be granted by stipulation of the parties; however, City did not receive a request to stipulate and does not stipulate to extend time. NRAP 26(b)(2).

Nev. 953, 966-67, 11 P.3d 1209, 1216-17 (2000) (explaining workload of prosecutor and lack of prejudice to defendant is not good cause for untimely filing of notice of intent to seek death penalty). This Court also possesses the discretion to treat an untimely filing as a confession of error. State of R. I. v. Prins, 96 Nev. 565, 566, 613 P.2d 408, 409 (1980).

Under NRAP 31, a party may motion the Court to extend time for filing a brief. NRAP 31(b)(3)(B). However, if a previous extension was granted, NRAP 31 prevents additional extensions of time "except upon a showing of extraordinary circumstances and extreme need." Id. The rule also requires that the motion for extension to "be made no later than the due date for the brief." NRAP 31(b)(3)(A). Finally, to allow the Court to evaluate the request, NRAP 31 sets forth specific content to include in the motion to extend time. Id.

This Court should strike Ohm's reply because it is untimely, and he failed to provide good cause to extend time under NRAP 26. City also requests that this Court treat his untimely reply as a confession of error. The December order established clear deadlines for the parties to follow. This Court allowed Ohm fourteen days from the date of the December order to file his petition. See Exhibit 1. The date Ohm filed his petition started the computation of time for the City's answer because the City was given twenty-eight days from date of service of Ohm's petition to file an answer. Id. If Ohm chose to file a reply, the order

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allowed him fourteen days from the date of service of the City's answer. Id. Its important to note at this point that the Court's order used the mandatory "shall" instead of the permissive "may" to establish the deadlines for filing. See NRAP 1(e)(9). Ohm's request for an extension of time shifted the deadlines; however, the February order granting his extension did not modify the days allowed for filing any documents. The order simply granted his request to extend time to file his petition by thirty days. As a result, after Ohm filed his petition, the deadlines for the parties were as follows:

Ohm's Opening Petition:	*Filed on January 25, 2021*
City's Answer:	Due on February 22, 2021
Ohm's Reply:	**Due on March 8, 2021**

Ohm filed the untimely reply on March 24, 2021. He waited sixteen days past the Court's deadline to file a reply. Even more, Ohm failed to provide any justification to this Court for it to consider an untimely filing. He failed to offer any good cause to allow an extension of time pursuant to NRAP 26. He also failed to comply with the requirements of NRAP 31 because he did not file a motion explaining "the extraordinary circumstances and extreme need" that this Court requires. Thus, City requests that this Court strike his reply as untimely and treat it as a confession of error.

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CONCLUSION

Based upon the above arguments, the City of Henderson respectfully requests that this Court strike Ohm's reply and treat it as a confession of error.

DATED this 30 day of March, 2021.

NICHOLAS VASKOV
Henderson City Attorney

By: _____ for
MARC M. SCHIFALACQUA, ESQ.
Sr. Assistant City Attorney
Nevada Bar 10435
Attorney for Real Party in Interest,
CITY OF HENDERSON

CITY ATTORNEYS' OFFICE – CRIMINAL DIVISION
243 WATER STREET, MSC 711
HENDERSON NV 89015

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30 day of March, 2021, a true and correct copy of the foregoing MOTION TO STRIKE REPLY was served via electronic service through the Court's electronic filing system per NEFCR 9 to the following:

Kelsey Bernstein, Esq.
Damian Sheets, Esq.

and that the same was served via US mail, certified postage prepaid, and addressed as follows:

N/A

City of Henderson Employee

CITY ATTORNEYS' OFFICE – CRIMINAL DIVISION
243 WATER STREET, MSC 711
HENDERSON NV 89015

EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

NATHAN OHM,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE KATHLEEN E. DELANEY, DISTRICT JUDGE,
Respondents,
and
THE CITY OF HENDERSON,
Real Party in Interest.

No. 81960

FILED

DEC 17 2020

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER GRANTING, IN PART, MOTION TO EXCEED TYPE-VOLUME LIMITATION AND DIRECTING ANSWER

Petitioner has moved for leave to file a petition for writ of certiorari in excess of type-volume limitation pursuant to NRAP 32(a)(7)(D). The proposed petition consists of 15,874 words—more than double the length allowed—and seeks a writ directing the district court to grant its writ petition and order the municipal court to either grant petitioner Nathan Ohm's motion to divest itself of jurisdiction or, alternatively, provide him with a jury trial on the charges of domestic battery as required by this court's decision in *Andersen v. Eighth Judicial District Court*, 135 Nev. 321, 448 P.3d 1120 (2019).

NRAP 21(d) limits writ petitions to 15 pages or 7,000 words, unless leave is obtained to file a lengthier petition. This court "looks with disfavor on motions to exceed the applicable page limit or type-volume

20-45691

limitation, and therefore, permission to exceed the page limit or type-volume limitation will not be routinely granted." NRAP 32(a)(7)(D)(i).

Having considered the motion, we conclude that while petitioner has failed to demonstrate "diligence and good cause" warranting the filing of such a lengthy petition, he has demonstrated good cause for exceeding the page limit or type-volume limitation to some extent. *See id.* ("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."). We therefore grant petitioner's motion, in part, and will permit him to file a petition not to exceed 10,000 words. Petitioner shall have 14 days from the date of this order to file and serve a petition that complies with this order. The clerk of this court shall strike the petition filed on October 19, 2020.

In the event petitioner timely files a petition in accordance with this order, real party in interest, on behalf of respondents, shall have 28 days from the date petitioner serves his petition to file and serve an answer, including authorities, against issuance of the requested writ. In the interest of fairness, real party in interest's answer may include up to 10,000 words. In addition to addressing the merits of the petition in its answer, real parties in interest should also address the propriety of writ relief.

Petitioner shall have 14 days from service of the answer to file and serve any reply. No further motions to exceed the page limit or type-volume limitation will be granted.

It is so ORDERED.[1]

_____, C.J.
Pickering

_____, J.
Hardesty

_____, J.
Silver

cc: Hon. Kathleen E. Delaney, District Judge
Nevada Defense Group
Henderson City Attorney
Eighth District Court Clerk

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[1]Real party in interest has filed a motion to consolidate the petition in this docket with the writ petition in *City of Henderson v. Eighth Judicial Dist. Court*, Docket No. 81714. Petitioner filed a non-opposition to that motion. Having considered the motion and the non-opposition, we conclude that consolidation is not warranted. The motion to consolidate is therefore denied. This case shall, however, be clustered with that case and any others based on overlapping legal issues to ensure that the issues are resolved in a consistent and efficient manner.

EXHIBIT 2

IN THE SUPREME COURT OF THE STATE OF NEVADA

Nathan Ohm, Petitioner, vs. Eighth Judicial District Court, and the Honorable Kathleen Delaney, District Court Judge, Respondents, And City of Henderson, Real Party in Interest.	Supreme Court Case No.: 81960 **PETITIONER'S MOTION TO EXTEND TIME TO FILE ORIGINAL PETITION** **Extension Requested: 30 days**

Electronically Filed
Dec 28 2020 05:42 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

COMES NOW, Petitioner NATHAN OHM, by and through is attorney of record, KELSEY BERNSTEIN, ESQ., of Nevada Defense Group, hereby moves this Court for an extension of time within which to file the Original Petition. This Motion is based on the following memorandum, declaration of counsel and all pleadings and papers on file herein.

RESPECTFULLY SUBMITTED this 28th day of December, 2020.

By: _____

Alexis Minichini, Esq.
Nevada Bar No.: 15438
Nevada Defense Group
714 S. Fourth Street
Las Vegas, NV 89101
Attorney for Petitioner

MEMORANDUM/DECLARATION

Counsel, Alexis Minichini, Esq., is a duly licensed attorney in the State of Nevada and is an associate of Nevada Defense Group, which has been retained to represent Appellant Nathan Ohm in the instant appeal.

Appellant's Opening Brief on Jury Trial Petition is due on December 29, 2020.

Counsel handling this matter, Kelsey Bernstein, has contracted COVID-19 and is currently undergoing treatment for the same.

This is the first written request for an extension of time filed by Appellant in this matter.

No parties in this appeal will suffer prejudice or harm as a result of the requested extension.

I declare under penalty of perjury that the information set forth in this Memorandum is true and correct.

DATED this 28 day of December, 2020.

NEVADA DEFENSE GROUP

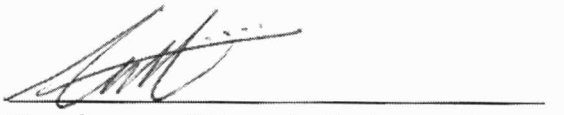
By: _____

Alexis Minichini, Esq.
Nevada Bar No.: 15438
Nevada Defense Group

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of December, 2020, a true and correct copy of the foregoing **MOTION FOR EXTENSION OF TIME** was served via electronic service through the Court's electronic filing system per NEFCR 9 and/or that the same was served via US mail, certified postage prepaid, and addressed as follows:

Marc Schifalacqua, Esq.
243 S. Water Street, MSC 711
Henderson, Nevada 89015
Attorney for Real Party in Interest
City of Henderson



Employee of Nevada Defense Group

EXHIBIT 3

IN THE SUPREME COURT OF THE STATE OF NEVADA

NATHAN OHM,
Petitioner,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE KATHLEEN E. DELANEY, DISTRICT JUDGE,
Respondents,
and
THE CITY OF HENDERSON,
Real Party in Interest.

No. 81960

FILED

FEB 03 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER GRANTING MOTION

Petitioner's motion for an extension of time to file the original writ petition is granted. *See* NRAP 31(b)(3)(B). The petition was filed on January 25, 2021.

It is so ORDERED.

_____, C.J.

cc: Nevada Defense Group
Henderson City Attorney

21-03299