

IN THE SUPREME COURT OF NEVADA

FIRST STREET FOR BOOMERS &
BEYOND, INC.; AITHR DEALER, INC.,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT, IN AND FOR THE COUNTY
OF CLARK, STATE OF NEVADA, AND
THE HONORABLE CRYSTAL ELLER,
DISTRICT JUDGE,

Respondents,

And

ROBERT ANSARA, as Special
Administrator of the Estate of SHERRY
LYNN CUNNISON, Deceased; ROBERT
ANSARA, as Special Administrator of
the Estate of MICHAEL SMITH,
Deceased heir to the Estate of SHERRY
LYNN CUNNISON, Deceased; and
DEBORAH TAMANTINI individually,
and heir to the Estate of SHERRY LYNN
CUNNISON, Deceased, HALE
BENTON, Individually, HOMECLICK,
LLC; JACUZZI INC., doing business as
JACUZZI LUXURY BATH; BESTWAY
BUILDING & REMODELING, INC.;
WILLIAM BUDD, Individually and as
BUDDS PLUMBING; DOES 1 through

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20; ROE CORPORATIONS 1 through 20;
DOE EMPLOYEES 1 through 20; DOE
MANUFACTURERS 1 through 20; DOE
20 INSTALLERS I through 20; DOE
CONTRACTORS 1 through 20; and DOE
21 SUBCONTRACTORS 1 through 20,
inclusive,

Real Party in Interest.

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable RICHARD SCOTTI, District Judge
District Court Case No. A-16-731244-C

PETITION FOR REHEARING

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualifications or recusal.

Robert Ansara is an individual and is Special Administrator to the Estate of Sherry Lynn Cunnison. Robert Ansara is also Special Administrator to the Estate of Michael Smith.

Deborah Tamantini is an individual.

Benjamin P. Cloward, Esq. and Ian C. Estrada, Esq. at Richard Harris Law Firm represent the above mentioned before this Court.

Dated this 4th day of April, 2022.

RICHARD HARRIS LAW FIRM LLP

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LYNN CUNNISON, Deceased; and
DEBORAH TAMANTINI individually,
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TABLE OF CONTENTS

<i>NRAP 26.1 DISCLOSURE</i>	<i>I</i>
<i>TABLE OF CONTENTS</i>	<i>III</i>
<i>TABLE OF AUTHORITIES</i>	<i>V</i>
<i>PETITION FOR REHEARING</i>	<i>1</i>
<i>ISSUES ON REHEARING</i>	<i>2</i>
<i>ARGUMENT</i>	<i>3</i>
I. REHEARING STANDARD	3
II. THE COURT OVERLOOKED AND MISAPPREHENDED THE BASIS OF THE ORDER BY ONLY EVALUATING NRCP 16.1 AND NOT INTERPRETING THE ORDER AS A WHOLE	3
A. THE SANCTION ORDER EXPRESSLY RELIED ON BASES IN ADDITION TO AND ASIDE FROM NRCP 16.1(e)(3).....	5
1. The district court expressly relied on NRCP 37 as an independent basis for sanctions, which was not evaluated by this Court.	6
2. The district court expressly relied on its inherent equitable powers as an independent basis for sanctions, which was not evaluated by this Court.	8
3. The district court rejected Petitioners’ discovery order violation argument and expressly provided other bases to support the sanction.	10
B. IF THE EXPRESS TERMS OF THE SANCTION ORDER WERE UNCLEAR, THIS COURT SHOULD HAVE READ AND INTERPRETED THE SANCTION ORDER AS A WHOLE.....	11
1. Rules of construction required this Court to interpret the Sanctions Order as a whole.....	13
III. THE COURT OVERLOOKED THAT THE MINUTE ORDER WAS IN FACT A DISCOVERY ORDER BECAUSE THE DISTRICT COURT HAD ASSUMED ALL DISCOVERY MATTERS AT THAT POINT.	17
<i>CONCLUSION</i>	<i>21</i>
<i>CERTIFICATE OF COMPLIANCE</i>	<i>V</i>

<i>CERTIFICATE OF SERVICE.....</i>	<i>VI</i>
---	------------------

TABLE OF AUTHORITIES

CASES

<u>Allstate Ins. Co. v. Thorpe</u> , 123 Nev. 565, 170 P.3d 989 (2007)	12
<u>Bahena v. Goodyear Tire & Rubber Co.</u> , 235 P.3d 592, 126 Nev. 243 (2010).	20
<u>Daval Steel Prod., a Div. of Francosteel Corp. v. M/V Fakredine</u> , 951 F.2d 1357 (2d Cir. 1991)	19
<u>Oxbow Constr. v. Eighth Jud. Dist. Ct.</u> , 130 Nev. 867, 335 P.3d 1234 (2014)	12
<u>Penthouse Int'l, Ltd. v. Playboy Enterprises, Inc.</u> , 663 F.2d 371 (2d Cir. 1981)	19
<u>Pope Invs., LLC v. China Yida Holding, Co.</u> , 137 Nev. Adv. Op. 33, 490 P.3d 1282 (2021).....	13
<u>Rust v. Clark Cty. Sch. Dist.</u> , 103 Nev. 686, 747 P.2d 1380 (1987)	18
<u>State v. Eighth Jud. Dist. Ct.</u> , 131 Nev. 411, 351 P.3d 736 (2015).....	14
<u>Vegas United Inv. Series 105, Inc. v. Celtic Bank Corp.</u> , 135 Nev. 456, 453 P.3d 1229 (2019).....	15
<u>Vegas United Inv. Series 105, Inc. v. Celtic Bank Corp.</u> , 135 Nev. 456, 453 P.3d 1229, 1231-32 (2019).....	13
<u>Young v. Johnny Ribeiro Bldg., Inc.</u> , 106 Nev. 88, 787 P.2d 777 (1990).8, 11, 18	

RULES

EDCR 7.60	11
NRAP 40(c)(2)	3
NRCP 16.1.....	3, 5, 16
NRCP 16.1(e)(3)	passim
NRCP 37.....	passim
NRCP 37(b)(1).....	8
NRCP 37(c)(1)	15

PETITION FOR REHEARING

A party has no reason to comply with NRCP 16.1 to affirmatively and cooperatively produce any evidence in litigation; it is only after violation of an Order will any consequence attach.

While the foregoing two sentences were not the conclusion of this Court, they are, in fact, the result of this Court's decision if rehearing is not granted. More importantly, rehearing is necessary because the Court overlooked or misapprehended the basis of the district court's Order Striking Defendants First Street for Boomers & Beyond, Inc. and AITHR Dealer, Inc.'s Answer as to Liability Only ("Sanctions Order"). In overlooking or misapprehending the Sanctions Order, this Court found that NRCP 16.1(e)(3) was the sole basis for the imposition of sanctions. Based on this misapprehension, the Court then overlooked Cunnison's arguments and legal authorities showing that NRCP 16.1(e)(3) was only one of several bases the district court relied on when striking firstSTREET's answer. District courts have multiple sources of authority to impose sanctions when a party violates its discovery obligations under NRCP 16.1—not just NRCP 16.1(e)(3). Here, while NRCP 16.1(e)(3) was

one of the bases used by the district court to sanction firstSTREET, it was not the “only” basis.

Second, rehearing is necessary because the Court overlooked that the district court had assumed all discovery matters in the case such that the Discovery Commissioner was no longer involved in the case. As such, the minute order functioned as a discovery order that supports sanctions under NRCP 16.1(e)(3). This Court has stated that even oral discovery orders are effective the moment they are given. As such, the minute order was a binding and effective discovery order which properly formed the basis for sanctions. Yet, here, this Court concluded that the district court’s minute order is “ineffective for any purpose.”

ISSUES ON REHEARING

1. The district court relied on bases other than NRCP 16.1 to impose sanctions against firstSTREET, but This Court overlooked those other bases and instead found that, “NRCP 16.1(e)(3) is the **only** rule the district court relied on as a basis for imposition of sanctions in its order.” (Emphasis added).

2. At the time of the Sanction Order, the district court had assumed all discovery matters in the case. Under Nevada caselaw and

Rules, the March 4, 2019, minute order (“the Minute Order”) which dealt with discovery, was a binding order. The Court erred when it overlooked that the district court had assumed all matters and instead held that the district court’s Minute Order was “ineffective for any purpose” and thus cannot be a discovery order for purposes of NRCP 16.1(e)(3).

ARGUMENT

I. REHEARING STANDARD

NRAP 40(c)(2) provides that the Court may consider rehearing in the following circumstances:

- (i) When the court has overlooked or misapprehend a material fact in the record or a material question of law in the case, or
- (ii) When the court has overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case.

II. THE COURT OVERLOOKED AND MISAPPREHENDED THE BASIS OF THE ORDER BY ONLY EVALUATING NRCP 16.1 AND NOT INTERPRETING THE ORDER AS A WHOLE

The district court struck firstSTREET’s Answer because of

repeated, egregious, willful violations of NRCP 16.1.¹ After NRCP 16.1 is violated, a Court has at its disposal several rules by which to impose sanctions. First, there is no question that firstSTREET violated NRCP 16.1, as even firstSTREET agrees that the basis of the sanction was the district court's finding of NRCP 16.1 violations.² Once the district court found firstSTREET violated NRCP 16.1, it relied on several sources of authority to impose sanctions. And the Sanction Order expressly set forth those several sources of authority.

However, in interpreting the Sanctions Order, this Court erroneously concluded that NRCP 16.1(e)(3) was the district court's sole

¹ PA 1011:18-19 (“in violation of their discovery obligations under NRCP 16.1”); PA 1013:5-7 (“But the First Street Defendants substantially ignore and overlook their obligations under NRCP 16.1 and NRCP 26”); PA 1014:21-22 (“Even so, that does not excuse First Street’s failure to produce the evidence earlier in accordance with NRCP 16.1”); PA 1015:14-15 (“The First Street Defendants are in violation of NRCP 16.1 and NRCP 26 because they have not produced significant portions of the above-mentioned evidence.”); PA 1017:3 (stating that striking a pleading is appropriate where there is “a willful failure to produce documents as required under NRCP 16.1”)

² Even firstSTREET acknowledges that NRCP 16.1 was the reason the district court sought fit to strike firstSTREET’s answer. See firstSTREET’s Writ at 1:8-12; 13:24-27 (“Yet, the basis for the District Court’s ruling—the violations of NRCP 16.1’s disclosure requirements ...”).

basis for carrying out sanctions against firstSTREET. This Court's Order Granting Petition for a Writ of Mandamus ("Mandamus Order") states:

We decline to consider the parties arguments relative to other rules justifying the district court's action, **as NRCP 16.1(e)(3) is the only rule the district court relied on** as a basis for imposition of sanctions in its order.³

This Court misapprehended or overlooked the Sanction Order's express language stating that the sanctions were being imposed pursuant to **multiple** bases in **addition to** NRCP 16.1(e)(3).

A. **THE SANCTION ORDER EXPRESSLY RELIED ON BASES IN ADDITION TO AND ASIDE FROM NRCP 16.1(e)(3).**

On its face, the Sanction Order relies on multiple bases to sanction firstSTREET for its violations of NRCP 16.1.

This Court appears to rely on the following sentence in the introduction of the Sanction Order to conclude that NRCP 16.1(e)(3) was the only basis for the imposition of sanctions: "Accordingly, pursuant to NRCP 16.1(e)(3) and NRCP 26, the Court strikes First Street and AITHR's Answer as to liability[.]"⁴ While the foregoing sentence does make specific reference to NRCP 16.1(e)(3), the Sanctions Order goes on

³ Mandamus Order at 4, fn. 2 (emphasis added).

⁴ PA 1011:20-22.

to state the other independent bases for sanctions. In fact, the district court specifically and expressly stated that it was utilizing other authorities to impose sanctions.

In the Sanctions Order, the district court first set out its factual findings in Section I: “I. FINDINGS OF FACT.” Then, after setting out the factual findings regarding firstSTREET’s discovery violations, the district court set out the various legal standards it relied on to sanction firstSTREET in Section II: “APPLICABLE STANDARDS.” The “Applicable Standards” section of the Sanctions Order set forth three independent bases for sanctions.

First, the district court set out NRCP 16.1(e)(3) as a basis for sanctions.⁵ Then, the district court expressly set forth two separate and independent bases to sanction firstSTREET: (1) NRCP 37 and (2) its inherent equitable powers to control abusive litigation practices.⁶

1. The district court expressly relied on NRCP 37 as an independent basis for sanctions, which was not evaluated by this Court.

⁵ This Court’s Order has found that the district court misinterpreted and misapplied NRCP 16.1(e)(3) in this case and, therefore, this brief will not address the interpretation of NRCP 16.1(e)(3).

⁶ PA 1015-1017; Cunnison Answering Brief (“CAB”) 14, fn. 9.

The Sanction Order expressly states that sanctions were appropriate under NRCP 37 due to firstSTREET's violations of NRCP 16.1. In the very first paragraph of the "APPLICABLE STANDARDS" section of the Sanctions Order, the district court explained:

The First Street Defendants are in violation of NRCP 16.1 and NRCP 26 because they have not produced significant portions of the above-mentioned evidence. Accordingly, sanctions under NRCP 16.1(e)(3) **and** NRCP 37 are appropriate.⁷

Under a plain reading of this language, it is apparent that the district court sanctioned firstSTREET under *both* NRCP 16.1(e)(3) *and* NRCP 37. This express language is contrary to this Court's finding that "NRCP 16.1(e)(3) is the **only** rule the district court relied on as a basis for imposition of sanctions in its order." It cannot be said that the district court "only" relied on NRCP 16.1(e)(3) when the express language of the Sanctions Order states that it sanctions under NRCP 16.1(e)(3) "and" NRCP 37 were appropriate.

NRCP 37 is a basis the Court expressly discusses in the Sanction Order that supports the imposed sanction and is independent from NRCP

⁷ PA 1015:14-16 (emphasis added).

16.1(e)(3).⁸ There is every indication that the Court overlooked this argument and basis for imposing sanctions, as it did not address NRCP 37 or explain why NRCP 37 was an insufficient basis to support the sanction.

Under NRCP 37(c)(1), there is no prerequisite for a prior order. NRCP 37(c)(1) sets forth that where “a party fails to provide information ... as required by Rule 16.1(a)(1)” the court may impose sanctions, “including any of the orders listed in Rule 37(b)(1).” And in turn, one of the listed items in NRCP 37(b)(1) is striking a party’s pleading.

In sum, the Court overlooked that the district court expressly stated that “sanctions ... under NRCP 37 are appropriate.” This rule requires no prior court order. Rather, under NRCP 37(c)(1), sanctions may issue when a party withholds information under NRCP 16.1, i.e., the situation here. Therefore, this Court misapprehended the basis of the Sanctions Order and, as a result, the Court overlooked that the sanctions were valid.

2. The district court expressly relied on its inherent equitable powers as an independent basis for sanctions, which was not evaluated by this Court.

⁸ CAB 27.

The district court also expressly sanctioned firstSTREET pursuant to the court's inherent equitable powers. In the "Applicable Standards" section of the Sanctions Order, the district court specifically cited to its inherent equitable powers as an **additional** basis for entering sanctions:

Additionally, in *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 787 P.2d 777 (1990), the Supreme Court of Nevada held that courts have "inherent equitable powers to dismiss actions or enter default judgments for ... abusive litigation practices. Litigants and attorneys alike should be aware that these powers may permit sanctions for discovery and other litigation abuses not specifically proscribed by statute."⁹ (Emphasis added).

Notably, the district court expressly stated that its inherent equitable powers were an "additional" applicable standard. Thus, the Sanctions Order's discussion of the court's inherent equitable powers is an express basis for sanctions that was separate and independent of NRCP 16.1(e)(3). Under this authority, there is no rigid requirement that the trial judge can only impose sanctions if and only if there is a prior discovery order. In this light, it is simply incorrect that "NRCP 16.1(e)(3) is the only rule the district court relied on." Again, this Court overlooked

⁹ PA1017:6-10 (emphasis added).

this point as the Order does not explain how or why the court's inherent equitable powers are not a basis to support the imposition of sanctions.¹⁰

3. The district court rejected Petitioners' discovery order violation argument and expressly provided other bases to support the sanction.

The district court also considered whether an order was necessary before imposing sanctions and expressly concluded it had authority to issue sanctions without the prerequisite of a court order:

Throughout its opposition to the Plaintiff's Renewed Motion to Strike, First Street Defendants advance the arguments that they did not violate any Court Order, that they did not violate any Discovery Commissioner Order, and that they timely responded to Plaintiff Cunnison's written discovery requests. These things have all been considered by this Court in the analysis of the degree of willfulness of the First Street Defendants' actions. **But the First Street Defendants substantially ignore and overlook their obligations under NRCP 16.1 and NRCP 26, which triggered the duty to disclose and supplement prior discovery responses with all relevant evidence when the relevance should have been known no later than February 2018. The First Street Defendants repeatedly violated these duties.**¹¹

¹⁰ CAB 28.

¹¹ PA 1013:1-9 (emphasis added).

This shows that the district court based the sanctionable conduct on firstSTREET's "willful failure to produce documents as required under NRCP 16.1."¹² And once the district court found that firstSTREET violated NRCP 16.1, it had several sources of authority available to impose sanctions, including the court's inherent equitable powers and NRCP 37. Thus, contrary to the Court's conclusion in footnote two of its Mandamus Order, the district court did not solely rely on NRCP 16.1(e)(3).

B. IF THE EXPRESS TERMS OF THE SANCTION ORDER WERE UNCLEAR, THIS COURT SHOULD HAVE READ AND INTERPRETED THE SANCTION ORDER AS A WHOLE.

Independent of the above, this Court, at minimum, should have interpreted the Sanctions Order as a whole to find that NRCP 16.1(e)(3) was not the district court's only basis for imposing sanctions.

While the introduction section of the Sanctions Order states that the district court strikes firstSTREET's Answer "pursuant to NRCP 16.1(e)(3) and NRCP 26," the Sanctions Order also specifically listed numerous other authorities in the Applicable Standards. As noted above, the district court expressly stated:

¹² PA 1017:3.

- “Accordingly, sanctions under NRCP 16.1(e)(3) and NRCP 37 are appropriate.”¹³
- “Additionally, in *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 787 P.2d 777 (1990), the Supreme Court of Nevada held that courts have “inherent equitable powers to dismiss actions or enter default judgments for ... abusive litigation practices.”¹⁴
- “EDCR 7.60 permits a court to impose all of the sanctions provided under NRCP 37(b).”¹⁵

Additionally, as discussed above, the Sanctions Order expressly stated that the district court considered and rejected firstSTREET’s argument that a discovery order was a prerequisite to sanctions.

Each of these express statements, at minimum, makes the Sanctions Order unclear as to whether NRCP 16.1(e)(3) was the **only** basis for the imposition of sanctions. Accordingly, at minimum, this Court should have applied the rules of construction in interpreting the Sanctions Order. By failing to do so, this Court misapprehended the district court’s basis for sanctions.

¹³ PA 1015:15–16.

¹⁴ PA 1017:6–8.

¹⁵ PA 1016:20–1017:1.

1. Rules of construction required this Court to interpret the Sanctions Order as a whole.

When a district court's order is unclear, its interpretation is a question of law that this Court reviews de novo. *Oxbow Constr. v. Eighth Jud. Dist. Ct.*, 130 Nev. 867, 875, 335 P.3d 1234, 1240 (2014), *citing Allstate Ins. Co. v. Thorpe*, 123 Nev. 565, 570, 170 P.3d 989, 992–93 (2007). In *Allstate Ins. Co. v. Thorpe*, this Court held:

When reviewing a district court's judgment, we apply the rules of construction that pertain to interpreting other written instruments. We have previously explained that when unclear, a judgment's interpretation is a question of law for this court. Additionally, we have stated that a judgment's legal effect must be determined by construing the judgment **as a whole, and that, in the case of ambiguity, the interpretation that renders the judgment more reasonable and conclusive and brings the judgment into harmony with the facts and law of the case will be employed.** *Allstate Ins. Co. v. Thorpe*, 123 Nev. 565, 570, 170 P.3d 989, 992–93 (2007)

Similarly, in interpreting an order, “[t]he court should harmonize [its] provisions and seek to ensure that no provision is rendered meaningless. *Vegas United Inv. Series 105, Inc. v. Celtic Bank Corp.*, 135 Nev. 456, 459, 453 P.3d 1229, 1231-32 (2019); see also, *Pope Invs., LLC*

v. China Yida Holding, Co., 137 Nev. Adv. Op. 33, 490 P.3d 1282, 1289 (2021).

Here, the provisions of the Sanctions Order, the facts and as described above, the Sanction Order can be interpreted to encompass several authorities that serve as the basis for the imposition of sanctions.

Here, the district court's references to other authorities, when taken together, show that the Sanctions Order was based on multiple authorities. For instance, the introductory section of the Sanction Order states that sanctions are appropriate "pursuant to NRCP 16.1(e)(3) and NRCP 26."¹⁶ Additionally, the "Applicable Standards" section discusses NRCP 37 and expressly sets out the court's inherent equitable powers.¹⁷ Further, in the conclusion section of the Sanction Order, the district court ultimately concludes that "[i]n *sum* [...] the only fair remedy is to strike the First Street Defendants' Answer[.]"¹⁸ By reading the Sanctions Order to be solely based on NRCP 16.1(e)(3), this Court rendered these other provisions meaningless.

¹⁶ PA 1011:20-22.

¹⁷ PA 1015:16, 7:8-8:20.

¹⁸ PA 1021:1-2.

Additionally, this Court should have considered the Sanction Order as a whole to carry out the district court's purpose: striking firstSTREET's answer under multiple authorities. *See State v. Eighth Jud. Dist. Ct.*, 131 Nev. 411, 416, 351 P.3d 736, 740 (2015) ("Although the district court's order was somewhat opaque about its granting summary judgment in favor of Ad America on the takings issue, our review of the hearing transcripts confirms that this was the district court's intended disposition.").

Here, the record supports that the Court intended to impose sanctions under NRCP 37.¹⁹ In its opposition to Plaintiffs' Renewed Motion to Strike, firstSTREET argued that NRCP 16.1(e)(3) requires a prior court order.²⁰ In reply, Cunnison argued that sanctions were also appropriate under NRCP 37(c)(1).²¹ And in the district court's minute order, the district court ordered Cunnison to draft the Sanction Order consistent with the briefing.²² Contrary to firstSTREET's assertion that

¹⁹ *See* CAB 29.

²⁰ PA 0410-0417

²¹ PA 0416:19-20.

²² PA 1009. Cunnison pointed this out in the Answering Brief before this court. CAB 29.

the district court solely relied on NRCP 16.1(e)(3), the record supports that the Sanction Order intended to impose sanctions under NRCP 37.

The record also supports that the Court intended to impose sanctions under the court's inherent equitable powers. There simply would be no need for a discussion of the court's inherent powers if the district court truly relied on only one basis. *See Vegas United Inv. Series 105, Inc. v. Celtic Bank Corp.*, 135 Nev. 456, 459, 453 P.3d 1229, 1231 (2019) ("The court should harmonize contractual provisions and seek to ensure that no provision is rendered meaningless.")

Finally, an interpretation is not reasonable if it makes any contract provisions meaningless, or if it leads to an absurd result. *See Washoe Cty. Sch. Dist. v. White*, 133 Nev. 301, 305, 396 P.3d 834, 839 (2017). Here, by finding that NRCP 16.1(e)(3) was the "only" rule the district court relied on to impose sanctions, this Court rendered language regarding NRCP 37 and the district court's inherent equitable powers meaningless.

When read holistically, the district court's intent was to sanction firstSTREET for its violations of NRCP 16.1. The bases used to carry out that intent included NRCP 37 and the court's inherent equitable

powers—not just NRCP 16.1(e)(3). Rehearing is necessary because the Court misapprehended the basis of the Sanction Order and therefore overlooked Cunnison’s arguments supporting the same.

III. THE COURT OVERLOOKED THAT THE MINUTE ORDER WAS IN FACT A DISCOVERY ORDER BECAUSE THE DISTRICT COURT HAD ASSUMED ALL DISCOVERY MATTERS AT THAT POINT.

In its Order, the Court stated that the minute order issued by the district court was not effective for any purpose, including as a discovery order:

The Cunnison real parties in interest identify a minute order wherein the district court directed petitioners to make certain additional disclosures, arguing petitioners purported violation of that minute order supports the sanctions under NRCP 16.1. We disagree, as a minute order is not effective for any purpose, *Rust v. Clark Cty. Sch. Dist.*, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987) (concluding that "the clerk's minute order, and even an unfiled written order is ineffective for any purpose"), which would include for the purpose of imposing sanctions under NRCP 16.1(e)(3). Furthermore, the minute order was not issued pursuant to NRCP 16.3 as required by NRCP 16.1(e)(3) and the district court did not find that it was a facially clear discovery order that petitioners disobeyed.²³

²³ Order at 4.

The Court overlooks that the district court's minute order dealt with discovery and because the district court had assumed all discovery issues in the case, it was a binding, effective *discovery* order. Cunnison pointed out that the district court had assumed discovery in this case, a point this Court overlooked.²⁴

In *Bahena I*, this Court held that a Discovery Commissioner's rulings are effective and must be complied with once it is made, **orally or written**, unless the party seeks a stay of the ruling pending review by the district court:

A ruling by the discovery commissioner is effective and must be complied with for discovery purposes once it is made, orally or written, unless the party seeks a stay of the ruling pending review by the district court. *Id.*; EDCR 2.34(e). Goodyear failed to seek a stay of the ruling or an expedited review by the district court prior to the time to comply with the ruling, and was therefore required to comply with the discovery commissioner's directive. **The failure to do so was tantamount to a violation of a discovery order as it relates to NRCP 37(b)(2).** *Young*, 106 Nev. at 92, 787 P.2d at 779 (holding that a court's oral ruling was sufficient to “constitute an order to provide or permit discovery under NRCP 37(b)(2)”).

²⁴ CAB 12.

Bahena v. Goodyear Tire & Rubber Co., 235 P.3d 592, 597, 126 Nev. 243, 250–51 (Nev. 2010). Here, the district court had assumed all discovery issues in the case. Thus, the district court’s minute order, which dealt with discovery, was effective the moment it was issued. This Court’s comment that “a minute order is not effective for any purpose,” would seem to suggest that a discovery commissioners’ oral order must be complied with, whereas a district court’s minute order can be ignored because it is “not effective for any purpose.”²⁵ A result with such contradiction should give this court serious pause.

The Court’s cites to *Rust v. Clark Cty. Sch. Dist.*, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987) to supports its holding that the minute order is not effective. That case is distinguishable. There, the Court considered whether Rust had filed a premature notice of appeal. The district court orally pronounced judgment against Rust and Rust filed the notice of appeal without waiting for or requesting the written judgment. The Court concluded that the oral order has no effect and could not be appealed. *Id.* Thus, that case dealt with the appealability of orders, not

²⁵ Order at 4.

whether a discovery order was binding at the district court level where the district court judge had assumed discovery.

To that point, it seems that the Court overextended the reach of *Rust*. For example, to hold that a district court's discovery order, written or not, does not have any effect until a written order is issued is irreconcilable with *Bahena I*, which states that oral written orders are to be given immediate effect. *See also Penthouse Int'l, Ltd. v. Playboy Enterprises, Inc.*, 663 F.2d 371, 388 (2d Cir. 1981) ("The fact that [a discovery] order was oral rather than written, and that it was not entered pursuant to a formal written Rule 37(a) motion, does not deprive it of any of its binding force and effect."); *see also Daval Steel Prod., a Div. of Francosteel Corp. v. M/V Fakredine*, 951 F.2d 1357, 1363 (2d Cir. 1991) (sanctions for violation of oral order to produce appropriate witness who would answer questions at deposition were "well within [the district court's] authority in prescribing sanctions pursuant to Rule 37(b)(2)").

In sum, the minute order was a binding discovery order, as the district court had assumed all discovery matters in the case. The failure to comply with that minute order was tantamount to a violation of a

discovery order. *Bahena v. Goodyear Tire & Rubber Co.*, 235 P.3d at 597, 126 Nev. at 250–51.

CONCLUSION

Respondent Cunnison respectfully requests rehearing and contends that rehearing is warranted under NRAP 40 because (1) the Court overlooked that the Sanction Order was based on multiple sources of authorities, and (2) the district court’s minute order relating to discovery issues was a binding, effective order.

Dated this 4th day of April, 2022.

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CERTIFICATE OF COMPLIANCE

1. I certify that this brief compiles with the formatting, typeface requirements, and type-style requirements of NRAP 32(a)(4)–(6) because it was prepared in Microsoft Word 2010 with a proportionally spaced typeface in 14-point font, double-spaced Century Schoolbook font.

2. I certify that this brief complies with the type-volume limitations of NRAP 40(b)(3) because it contains 3,933 words.

3. I certify that I have read this brief, that it is not frivolous or interposed for any improper purpose, and that it complies with all applicable rules of appellate procedure, including NRAP 28(e). I understand that if it does not, I may be subject to sanctions.

Dated this 4th day of April, 2022.

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CERTIFICATE OF SERVICE

I certify that on April 4, 2022, I submitted the foregoing “Petition for Rehearing” for filing via the Court’s eFlex electronic filing system.

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I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, at Las Vegas, Nevada, addressed as follows:

The Honorable Crystal Eller
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Respondent

NOTE – DEFENDANTS HOMCLICK, LLC; BESTWAY BUILDING & REMODELING, INC.; WILLIAM BUDD, Individually and as BUDDS PLUMBING, have previously been dismissed from this lawsuit, but the caption has not been amended/revised to reflect this. Therefore, there has been no service on these parties.

/s/ Catherine Barnhill
An Employee of Richard Harris Law Firm