

IN THE SUPREME COURT OF THE STATE OF NEVADA
Case No. 85926

ABEL CANTARO CASTILLO

Appellant,

v.

WESTERN RANGE ASSOCIATION

Respondent.

Electronically Filed
Apr 10 2023 03:57 PM
Elizabeth A. Brown
Clerk of Supreme Court

Legal question certified to the Supreme Court of the State of Nevada under NRAP
5, by the United States District Court for the District of Nevada.

U.S. District Court Case No.: 3:16-cv-00237-RCJ-CLB

United States District Court

District of Nevada

Honorable Robert C. Jones, United States District Judge

RESPONDENT'S FIRST MOTION FOR EXTENSION OF TIME

WOODBURN AND WEDGE

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MEMORANDUM OF POINTS AND AUTHORITIES

I INTRODUCTION

This case was originally filed by Appellant Abel Cantaro Castillo (“Castillo”) on behalf of a putative class, in the United States District Court, District of Nevada on May 3, 2016. It was then amended twice, dismissed on Jurisdictional grounds and thereafter remanded by the Ninth Circuit Court of Appeals to the Nevada Federal District Court.

Respondent Western Range Association (“Western Range”) filed a Motion for Summary Judgment on April 13, 2022. On September 26, 2022, the Federal District Court entered an Order in which it deferred decision on Western Range’s Motion for Summary Judgment pending an interpretation from this Court on a certified question of Nevada law. This Court accepted the certified question on February 10, 2023 in its Order Accepting Certified Question and Directing Briefing.

In its February 10, 2023 Order, this Court ordered Appellant Castillo’s opening brief due 30 days from the date of the Order, with Respondent Western Range’s answering brief due 30 days after that. On March 1, 2023, Appellant Castillo sought and obtained a telephonic extension of time to file his opening brief, making his opening brief due March 27, 2023. The parties were unable to agree on

a Joint Appendix. Appellant Castillo filed his opening brief and separate Appendix on March 27, 2023.

Respondent Western Range's answering brief is currently due on April 26, 2023. Western Range seeks a 60-day extension of time from the April 26, 2023 deadline to file its answering brief on June 26, 2023.

II ARGUMENT

When a party seeks an extension of time beyond 30 days, the moving party must seek the extension by motion. NRAP 31(b)(3)(B). This Court may grant initial extensions of time for filing a brief upon a showing of good cause; any additional extensions of time are granted upon a showing of extraordinary circumstances and extreme need. NRAP 31. The Court considers a number of factors when deciding a motion to extend time to file a brief.

i. NRAP 31(b)(3)(A)(i) The Date When the Brief is Due

Castillo filed his opening brief on March 27, 2023, making Western Range's answering brief due on April 26, 2023. An additional 60 days does not impose any prejudice on Appellant, who initially filed this action almost seven years ago.

ii. NRAP 31(b)(3)(A)(ii) The Number of Extensions Previously Granted and Previous Extensions Sought

This Court granted Appellant a 14-day telephonic extension. Respondent

Western Range has not previously sought, nor has it been granted any extensions by this Court.

iii. NRAP 31(b)(3)(A)(iii) Whether any previous requests for extensions of time have been denied or denied in part

Respondent Western Range Association has not requested nor been denied any extensions.

iv. NRAP 31(b)(3)(A)(iv) The reasons or grounds why an extension is necessary (including demonstrating extraordinary and compelling circumstances under Rule 26(b)(1)(B), if required)

Castillo filed his opening brief on March 27, 2023. Within the months of April and May, Respondent's counsel has significant pre-planned (or scheduled) family commitments, trips abroad, religious holidays (including Passover) and Court filing deadlines. *See* Declaration of Jose Tafoya, Esq. in Support of Western Range's Motion for Extension of Time, attached hereto as Exhibit 1. Such commitments would make it extremely difficult or impossible for Western Range to properly respond to the complex legal issues of first impression, certified to this Court and discussed in Castillo's opening brief by the current April 26, 2023 deadline. *Id.* at ¶ 4.

Given the significant conflicts in April and May, Western Range would require an extension to June 26, 2023 to file its answering brief. Western Range has communicated its need for a 60-day extension to Castillo's counsel. *Id.* at ¶ 8.

Castillo's counsel indicated there is no objection to the 60-day extension, but this motion is required for a 60-day extension. *Id.* at ¶ 8; NRAP 31(b)(2).

v. NRAP 31(b)(3)(A)(v) The length of the extension requested and the date on which the brief would become due.

Western Range's 60-day extension from the current April 26, 2023 deadline would make its answering brief due on June 26, 2023.

This Request is made in good faith and not for purposes of delay.

Affirmation pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the personal information of any person.

Dated: April 10, 2023.

WOODBURN AND WEDGE


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EXHIBIT 1

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**DECLARATION OF JOSE TAFOYA, ESQ. IN SUPPORT OF
RESPONDENT'S FIRST MOTION FOR EXTENSION OF TIME**

I, Jose Tafoya, Esq., declare and state under the penalty of perjury:

1. I, Jose Tafoya am an attorney with Woodburn and Wedge, duly licensed to practice law in the State of Nevada and am counsel along with Ellen Jean Winograd of Woodburn and Wedge for Respondent Western Range Association.

2. The instant case was filed by Plaintiff Abel Cantaro Castillo as a putative class representative on May 3, 2016. On September 26, 2022, the United States District Court for the District of Nevada entered an Order in which it denied Class Certification.

3. The Federal District Court deferred decision on Western Range Association's Motion for Summary Judgment, pending an interpretation from this Court on a certified question of Nevada law.

4. Following the events mentioned above, Plaintiff/Appellant filed its Opening Brief on March 27, 2023. During the months of April and May, however, when Respondent Western Range Association's response brief would be due, Respondent's counsel, Ellen Jean Winograd and Jose Tafoya have different but somewhat overlapping preexisting family commitments, trips abroad, family medical school graduation and religious holidays (including Passover).

5. The issue before this Court has been characterized by the Nevada Federal District Court as an issue of first impression on which guidance is required by the Nevada Supreme Court. It is therefore a complex legal issue.

6. Ordinarily, the parties could stipulate to a 30-day extension. NRAP 31(b)(2). However, as Western Range's counsel requires more time due to personal and professional conflicts in May, Western Range Association requires an extension to June 26, 2023 in which to file its Answering Brief.

7. Respondent Western Range Association must also file a responsive pleading in an unrelated but somewhat similar action against Respondent Western Range Association in *Alvarado vs. Western Range Association*, Case No. 3:22-cv-00249. The responsive pleading to this 32-page Complaint is due on May 19, 2023.

8. Western Range Association counsel has communicated its need for a 60-day extension to Castillo's counsel who indicated that there would be no objection to the 60-day extension. As NRAP 31(b)(2) requires a Motion instead of a stipulation for a 60-day extension, Western Range Association files this motion.

9. This is Respondent Western Range Association's first request or motion for an extension of time within which to file briefing and this request is filed in good faith and not for purposes of delay.

DATED this 10th day of April, 2023.



JOSE TAFOYA, ESQ.