

IN THE SUPREME COURT OF NEVADA

Case Nos. 58504, 59208 and 59423

JENNY RISH,

Appellant,

vs.

WILLIAM JAY SIMAO, individually; and
CHERYL ANN SIMAO, individually and as
husband and wife,

Respondents.

Electronically Filed
Jun 08 2012 04:49 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

**STATUS REPORT REGARDING TRIAL TRANSCRIPTS
AND UNOPPOSED MOTION FOR EXTENSION**

As appellant has previously apprised the Court, completion of the opening brief is hindered by the fact that material portions of the trial transcript are missing. Specifically, transcripts of many bench conferences are not finished. While the court reporter filed a notice in this Court that all requested transcripts of the proceedings had been delivered—and, in fact, all days of trial were transcribed—only some of the transcripts included the bench conferences.

As the court reporter now assures that the transcripts will be completed by June 22, 2012, appellant moves to extend the deadline to file the opening brief until July 16. NRAP 31(b)(3).¹ (The brief is due to be filed on June 15.)

¹ While, technically, this is appellant's fourth motion for extension (and the deadline had previously been extended by stipulation), these are very unusual circumstances. Appellant simply should not have to proceed with filing the opening brief without an opportunity to address a complete set of trial transcripts.

Respondent's counsel represents that they not oppose this motion.

(Undersigned appreciates their courtesy.)

I.

**The Court Reporter Represents that the Transcripts
Will Be Completed and Delivered by Friday, June 22**

The reporter at Verbatim Digital Reporting charged with completing the transcripts informs that she received only recently the audio recordings of the trial from the court reporter in Department 10. (Because the court reporter in District Court Department 10 has been occupied with trials, the court reporter outsourced completion of the transcripts to Verbatim Digital Reporting.) Now that the reporter possesses the audio recordings, she anticipates completing and delivering the transcripts no later than Friday, June 22, and hopefully sooner.²

II.

**Appellant's Counsel Will Need Sufficient Time
With the Transcripts to Complete the Opening Brief**

Appellant's counsel request to have a reasonable amount of time with the transcripts before the opening brief must be filed. In this case, the transcripts of the bench conferences are material. This is an appeal from an order striking defendant's answer based upon defense counsel's purported failure to abide by pre-

² Undersigned counsel requested that the missing bench conferences be transcribed immediately upon learning that they were missing. Ever since then, counsel's office has been in continuous contact with the court reporters to encourage

(continued)

trial orders. When Judge Walsh issued that sanction, she expressly referred to warnings she claimed to have given during bench conferences. (*See* 3/31/11 Tr. 112.) Thus, the transcripts of bench conferences may be as significant in this case as they were in *Bayerische Motoren Werke Aktiengesellschaft v. Roth*, 127 Nev. ___, 252 P. 3d 649, 656 (2011).

Appellant's appellate counsel, moreover, were not at trial when these bench conferences took place. Thus, counsel must have adequate time to digest the transcripts, and give them reasonable attention in both the factual discussion and arguments in the opening brief.

III.

The Opening Brief Should Be Due on Monday, July 16

If the transcripts are delivered by June 22, extending the deadline on the opening brief until July 16 will afford counsel three weeks to address the transcripts. But, practically speaking, counsel will have even less time. First, the state bar convention will fall during that period (June 26 through July 1), at which Mr. Polsenberg has been asked to present a C.L.E. program with Justice Hardesty. Secondly, counsel also will be preparing for and participating in two *en banc* oral arguments during that time—*Franchise Tax Board of the State of California v. Hyatt* (53264) and *Holcomb v. Georgia Pacific, LLC* (56510). Thus, appellant

completion of the transcripts.

respectfully requests that the deadline for filing the opening brief and appendix be extended until Monday, July 16.

DATED this 8th day of June 2012.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this document was filed electronically with the Nevada Supreme Court on the 8th day of June, 2012, Electronic service of the foregoing STATUS REPORT REGARDING TRIAL TRANSCRIPTS AND UNOPPOSED MOTION FOR EXTENSION shall be made in accordance with the Master Service List as follows:

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