

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 68450

Electronically Filed
Sep 14 2015 01:37 p.m.

HONORABLE CATHERINE RAMSEY, Clerk of Supreme Court
NORTH LAS VEGAS MUNICIPAL JUDGE,

Appellant,

vs.

CITY OF NORTH LAS VEGAS AND BARBARA A. ANDOLINA
City Clerk of NORTH LAS VEGAS, BETTY HAMILTON,
MICHAEL WILLIAM MORENO, and BOB BORGERSEN, individually
and as Members of "REMOVE RAMSEY NOW"

Respondents.

Eighth Judicial District Court, Clark County
The Honorable Eric Johnson, District Court Judge
District Court Case A-15-719406-P
Consolidated with District Court Case A-15-719651-C

**OPPOSITION TO MOTION TO STRIKE PORTIONS OF APPELLANT'S
REPLY BRIEF AND REQUEST FOR SANCTIONS**

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North Las Vegas Municipal Judge*

**OPPOSITION TO MOTION TO STRIKE PORTIONS OF
APPELLANT'S REPLY BRIEF**

The Appellant hereby tenders her response to the Respondent's motion filed on September 11, 2015. Appellant opposes the motion seeking to strike portions of the Reply Brief. All three arguments were raised by Respondents and/or addressed by Respondents in their Answering Brief. Alternatively, the three arguments expand on issues raised in the Opening Brief. Appellant was permitted to file a Reply Brief by Supreme Court Orders dated July 27 and August 25, 2015, which was timely filed. These are not new arguments. Appellant does not oppose a sur-reply, if this Court deems it necessary. It is more important that the full range of argument be presented to this court on significant issues rather than artificially excluded from consideration by the Court.

DATED this 14 day of September, 2015.

MUELLER, HINDS & ASSOCIATES,
CHTD.

By  ⁶³¹⁸
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POINTS AND AUTHORITIES

The normal appeal involves evidence, legal positions and arguments advocated by the parties and rulings on the same by the trial judge resulting in a final judgment or an appealable order. The bulk of appeals are based on asserted legal errors and are not personal in nature. There is nothing normal about this appeal. It includes Constitutional issues, Statutory construction, and was a Writ that was prepared before the hearing transcript was available (due to the unavailability of the court reporter being hospitalized). To expedite the appeal process, the Writ then became Appellant's Opening Brief. This Court graciously permitted Appellant to supplement that Brief. Appellant read, believed and understood that to mean, and based on good faith, that Appellant should supplement the Opening Brief with issues which now become known as the hearing transcript was since made available by the court reporter. It was later realized that the intent of the requested supplement by this Court was to provide the hearing transcript and other documents in support the Writ and its' assertions. The Court struck the filing of a Supplemental Brief and allowed the Appendix. Appellant was not and should not be prevented or precluded from asserting legal arguments to refute issues raised in the Answering Brief or ones that support or expand an issue in the Opening Brief.

The Respondents contend in their motion that three arguments should be stricken because they allegedly were not included in Appellants' Opening Brief, and Respondents could not properly answer the points. Nothing could be further from the proof. Those arguments are: (1) that judges are not public officers; (2) that the trial court lacked jurisdiction based on alleged flaws in the recall petition (3) the application of the doctrine of cumulative error warrants the requested relief.

The first contention involves whether a judge is a public officer as defined under Art. 2 Sec. 9. That issue is the very crux of this case. The broader, more Constitutional argument was raised in the introduction as the very first paragraph on page 10 of the Opening Brief. It was Respondents who raised the specific issue as to this argument in their Answering Brief. On page 1, Respondent asks "Are municipal court judges public officers subject to recall?" On pages 8, 9 and 10, Respondent asks this question again and this time adding within the context of Art 2, Sec. 9, and then goes on to give assertions. NRAP 28(c) provides the reply brief must be limited to answering any new matter set forth in the opposing brief. Respondent's Answering Brief raised a specific question within the broader confines of the Constitutional Argument in the Opening Brief. The Reply Brief simply answered this new matter raised by Respondent. Respondent raised the issue in detail and, thus, had the opportunity to argue it.

The second contention is that the Reply Brief alleges for the first time that the Trial Court lacked jurisdiction based on the alleged flaws in the Recall Petition. The flaws in the Petition included the Petition not being consecutively numbered and wrongfully accepted by the clerk. These facts were, in fact, raised on page 36 to 38 of the Opening Brief. Respondent addressed the concern of the sequentially numbered Petition and deficiencies in their Answering Brief, starting with page 19, 20 and 21. Additionally, it is those exact flaws in the Petition is what gives rise to the Trial Court's lack of jurisdiction in this matter. Jurisdiction is an issue that can be raised at any time, even on appeal. Case law cited in the Reply Brief supports that assertion of jurisdiction, and the fact that it can be raised at any time, even on appeal. The argument regarding flaws in the Petition and acceptance is supported by the statutory laws relating to petitions and their acceptance by the clerk.

The purpose of inclusion in the Reply Brief was to expand on issues already raised in the Opening Brief and addressed in the Answering Brief regarding the fatal flaws in the Petition. It is fatal to the point where the Trial Court lacked jurisdiction to even hear this matter and is important to point out to this Court. Respondent addressed the issue of the flaws in the Petition and specifically the numbering of it, thus, Respondents also argued this issue in their Answering Brief.

The third contention, the application of the Doctrine of Cumulative Error, is directly in response and on point to an issue raised by Respondent. The Opening

Brief outlined statutory and procedural due process right violations starting on Page 11, and discusses issues with the process. One of those issues concerned the City Attorney Morgan's presence during City Clerk Andolina's testimony. To which, and specifically, Respondent answered on page 25 of their Answering Brief that the "assertions of procedural impropriety on the part of Judge Johnson concerning Morgan are clearly insufficient to support a request that this Court reverse Judge Johnson's determinations." (emphasis supplied). This comment is a new matter set forth in the Opposing Brief which is permitted to be addressed by Appellant under NRCP 28(c).

Appellant points out that the Morgan instance, coupled with Respondent's other arguments on pages 34-40 in the Answering Brief regarding the process as a whole, triggers the Doctrine of Cumulative Error. Thus, the doctrine arises in response to Respondent's own argument concerning one instance of impropriety while ignoring all the others which were raised in the Opening Brief. Respondent also had a chance to, and did, address the other issues with the process in their Answering Brief at pages 21-25. Additionally, Respondent received a copy of the City's Answering Brief, which addressed issues with the process as a whole and in more detail. Appellant also had to reply to the City's Answering Brief. Appellant contends that not only does their assertion support reversal, but when combined with other issues identified with the process and from both Respondents (by

addressing them or raising them in Answering Briefs), does warrant dismissal under the Doctrine of Cumulative Error.

Appellant filed one Reply but had to address two Answering Briefs with multiple arguments. There were multiple significant issues to address. The most significant issues were selected for the Writ. It was edited many times but not every legal citation or argument could be included. The Appellant wanted to further develop those issues in the Opening Brief with information obtained after a review of the hearing transcripts. Their ability to do that before the Opening Brief curtailed that effort due to the court reporters hospitalization.

The Reply Brief did not raise new points per se; it simply answered those new matters raised by Respondents in their Answering Briefs, were closely tied to, or elaborated further to similar points to issues raised in the Opening Brief.

Appellants bear the responsibility to present cogent arguments and relevant authority in support of their appellate concerns. Edwards v. Emperor's Garden Rest., 122 Nev. 317, 330 n. 38 (2006). If the Respondent's motion is granted in whole or in part, it would effectively remove significant cogent legal arguments from consideration by this Court and prejudicially impair the appeal.

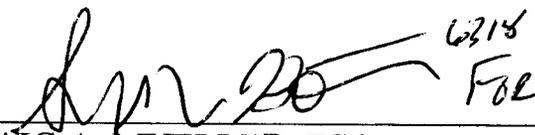
Appellant contends these are not new matters and are proper before the Court. Thus, for the foregoing reasons, the request for sanctions should also be denied. While it is correct that this Court does not have to consider points raised

for the first time in a Reply Brief, the Court still has the discretion to consider those points; the Court is not precluded from doing so. This Court has considered such points in at least one other appeal because the alleged new points were closely tied to the major issues on appeal. See Dickinson v. American Medical Response, 124 Nev. 460, 470 (2008). All three arguments are closely tied to those in the Opening Brief. Each argument alone justifies dismissal of this matter.

Respondent attempts to strike arguments they themselves raised, and had an opportunity to address simply because those arguments work against their desired position. The better course of action would be to allow a sur-reply on any issue this Court deems as point raised for the first time. That provides due process of law for both parties and a stronger assurance to the litigants that all significant arguments have been raised.

DATED this 14th day of September, 2015.

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By  6/21/15
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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On September 14th, 2015, I caused to be served a true and correct copy of the foregoing **OPPOSITION TO MOTION TO STRIKE PORTIONS OF APPELLANT’S REPLY BRIEF AND REQUEST FOR SANCTIONS** upon the following by BY ELECTRONIC SUBMISSION: submitted to the above-entitled Court for electronic filing and service upon the following:

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