

CASE NOS. 05-17257, 05-17344, 06-15093

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

MICHAEL A. NEWDOW; et al.,

Plaintiffs-Appellees,

v.

JOHN CAREY; et al.,

Defendant-Intervenors-Appellants.

**On Appeal from the United States District Court
for the Eastern District of California
(District Court No. CV-05-00017-LKK)**

**SUPPLEMENT TO MOTION OF PLAINTIFFS-APPELLEES TO EXCEED
THE TYPE-VOLUME LIMITATION FOR THEIR ANSWERING BRIEF**

Michael Newdow, CA SBN: 220444
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On July 17, 2006, Plaintiffs-Appellees (pursuant to *Circuit Rule* 32-2, *Circuit Rule* 28-4, and *FRAP* 27) moved for leave to file an Answering Brief in excess of the type-volume limitation provided in *FRAP* 32(a)(7)(B)(i). In their Motion, Plaintiffs-Appellees inadvertently neglected to include an explanation for not having submitted the Motion “at least 7 days prior to the brief’s due date.” This Supplement to the Motion provides that explanation.

As the attached Declaration of Michael Newdow explains, the failure to submit the Motion with the requisite 7 day notice was due to a scheduling matter that simply made it impossible to determine in advance that the Motion would be necessary. After Plaintiffs received the two-week phone extension from the Calendar Clerk, counsel literally spent virtually every free moment attempting to complete the Brief without exceeding the 14,000 word limitation. It was not until the final day that he realized that meeting that limitation would not be possible without detracting too severely from the presentation of the issues.

Respectfully submitted,

July 17, 2006

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**DECLARATION OF MICHAEL NEWDOW IN SUPPORT OF
SUPPLEMENT TO MOTION OF PLAINTIFFS-APPELLEES TO EXCEED
THE TYPE-VOLUME LIMITATION FOR THEIR ANSWERING BRIEF**

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I, Michael Newdow, declare as follows:

- (1) I am counsel for the Plaintiffs-Appellees in the case at bar.
- (2) To date, I have never received any payment for my work as an attorney.

Thus, I earn my livelihood in other ways.

- (3) That main such way is as an emergency physician. I work in that capacity on what is known as a “*locum tenens*” basis.
- (4) This means that my shifts are variable, scheduled usually one to two months in advance.
- (5) My shifts for June and July were so scheduled. Because I believed I would be able to finish Plaintiffs-Appellants’ Answering Brief by the original July 3 due date, I scheduled my ER shifts heavily for the first half of July.
- (6) In fact, from July 4, 2006 through July 16, 2006, I was scheduled for nine 12-hour ER shifts. Additionally, I had to make two round-trip airline flights from Sacramento to El Paso, TX, between July 3 and July 17.
- (7) Accordingly, when I received the 14-day phone extension on July 3, I did not, in fact, end up with much in terms of additional time.
- (8) Nonetheless, I continued working on the Brief virtually every spare minute, with the hope and expectation that I would be able to meet the 14,000 word limitation by July 17.

(9) It was not until the early hours of that day (i.e., July 17), however – when, after working all night subsequent to finishing (at 7:00 pm on the 16th) the last of the nine ER shifts – that I realized I wouldn't be able to meet the 14,000 word limit without detracting too severely from the presentation of the issues.

(10) It is for this reason – i.e., that I hoped to be able to meet the 14,000 word limit, but did not until the last moment have time to foresee that this could not be done – that I did not provide the requisite 7-day notice specified in Circuit Rule 28-4.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 21st day of July, 2006, at Sacramento, California.

Michael Newdow
Attorney for Plaintiffs-Appellees

CERTIFICATE OF SERVICE
Case #05-17257, 05-17344, 06-15093

I HEREBY CERTIFY that on this 21st day of July, 2006, true and correct copies of:

- (1) SUPPLEMENT TO MOTION OF PLAINTIFFS-APPELLEES
TO EXCEED THE TYPE-VOLUME LIMITATION FOR
THEIR ANSWERING BRIEF**
- (2) DECLARATION OF MICHAEL NEWDOW IN SUPPORT OF
MOTION**

were delivered by e-mail to the following individuals:

Terence John Cassidy (tcassidy@pswdlaw.com)
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Jill Bowers (jill.bowers@doj.ca.gov)

Pursuant to Ninth Circuit *Rule* 25-3.3, the undersigned has received a completed and signed Form 13 (Consent to Electronic Service) from counsel for each of the parties.

July 21, 2006

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