

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2 RICHARD A. HUNTER, an individual,

3 Appellant,

4 vs.

5 WILLIAM GANG, an individual,

6 Respondent.

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Case No.: 63804 Tracie K. Lindeman
Clerk of Supreme CourtAppeal from the Eighth Judicial
District Court, The Honorable Douglas
E. Smith Presiding.8 **RESPONSE TO MOTION TO CONSOLIDATE WITH CASE NO. 59691**9 **Marquis Aurbach Coffing**

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16 Respondent William Gang (“Gang”), through the law firm of Marquis
17 Aurbach Coffing, hereby responds to Appellant Richard A. Hunter’s (“Hunter”)
18 Motion to Consolidate.

19 **I. INTRODUCTION**

20 Gang does not agree with Hunter that this appeal should remain on the
21 Court’s docket. Instead, Gang believes the Court should disregard Hunter’s
22 Motion to Consolidate and take action consistent with the precedent the Court
23 established in Weddell v. Stewart, 127 Nev. ___, 261 P.3d 1080 (2011). In

1 Weddell, the Court indicated “that failure to pay the required fees and comply
2 with this court’s directives in a timely fashion is not without consequence,”
3 which consequence in Weddell for failing to pay filing fees was the “loss of the
4 right to appeal two independently appealable special orders after final
5 judgment.”¹

6 Similar to the Appellant in Weddell, Hunter failed to timely pay filing
7 fees associated with an independently appealable special order. On August 13,
8 2013, the Court entered its Notice of Potential Dismissal for Failure to Pay
9 Supreme Court Filing Fee.² The Notice advised Hunter that: “Your failure to
10 pay the requisite Supreme Court filing fee within 10 days will result in
11 DISMISSAL OF THIS MATTER.”³ Hunter failed to comply with the Notice
12 because he did not pay the filing fee within 10 days.⁴ Thus, the consequence
13 for Hunter should be consistent with that of the appellants in Weddell.

14 If the Court is not inclined to take action consistent with its holding in
15 Weddell, Gang does not oppose the Motion to Consolidate and agrees that Case
16 No. 63804 should be consolidated with Case No. 59691.

17 **II. LEGAL ARGUMENT**

18 The Court should disregard the Motion to Consolidate and take action
19 consistent with the precedent the Court established in its Weddell decision. In

20 ¹ 261 P.3d at 1082.

21 ² See August 13, 2013 Notice on Court’s Docket.

22 ³ Id.

23 ⁴ Hunter did not pay the requisite filing fee until over seven months later.

1 Weddell, the district court issued a final judgment against the appellants in
2 consolidated civil cases.⁵ The appellants filed a notice of appeal and paid the
3 requisite filing fee.⁶ The appellants later filed additional appeals; one “from a
4 subsequent award of attorney fees entered in the same district court case” and
5 one from the district court’s order denying a motion to set aside a judgment.⁷
6 The appellants did not pay the requisite filing fees for either of the subsequent
7 appeals regarding the special orders.⁸ As a result, this Court issued notices in
8 each appeal for the appellants to pay the filing fees within 10 days, warning that
9 failure to do so could result in dismissal.⁹ The appellants did not pay the fees.¹⁰
10 As a result, the Court issued orders dismissing the appeals and denied
11 subsequent motions for reconsideration.¹¹

12 The Court indicated in Weddell that procedural rules promote cost-
13 effective and timely access to the courts, and it runs contrary to these goals
14 when parties fail to abide by rules and directives.¹² Further, it is highly
15 counterproductive when the Court is required, “sometimes repeatedly, to

16 ⁵ Id. at 1082.

17 ⁶ Id.

18 ⁷ Id. at 1082-1083.

19 ⁸ Id.

20 ⁹ Id. at 1083.

21 ¹⁰ Id.

22 ¹¹ Id. at 1083 and 1085.

23 ¹² Id. at 1084.

1 remind parties of their filing and financial obligations in the appellate
2 process.”¹³ Moreover, the Court indicated “[w]e will no longer” tolerate
3 procedural derelictions, “including failure to timely submit fees.”¹⁴ “Parties are
4 not at liberty to disobey notices, orders, or any other directives issued by this
5 court.”¹⁵

6 As a result, the Court confirmed filing fees are due to be paid “upon
7 filing a notice of appeal.”¹⁶ Further, if the appeal is docketed without payment
8 of the filing fee, the clerk “will issue a single notice to remit the filing fee.”¹⁷
9 The failure to pay the filing fee within the time the notice specifies, “will result
10 in dismissal of the matter.”¹⁸

11 Here, like in Weddell, the district court entered a final judgment from
12 which Hunter appealed and paid the filing fee. Further, like Weddell, the
13 district court then entered a special order regarding fees and costs against
14 Hunter from which Hunter appealed, but did not pay the filing fee. As a result,
15 like Weddell, the Court entered a Notice of Potential Dismissal for Failure to
16 Pay Supreme Court Filing Fee.¹⁹ The Notice advised Hunter that: “Your failure

17 ¹³ Id.

18 ¹⁴ Id.

19 ¹⁵ Id. at 1085.

20 ¹⁶ See NRAP 3(e), NRS 2.250(1), and Weddell, at 1082.

21 ¹⁷ Weddell, at 1084 (emphasis added).

22 ¹⁸ Id. (emphasis added).

23 ¹⁹ See August 13, 2013 Notice on Court’s Docket.

1 to pay the requisite Supreme Court filing fee within 10 days will result in
2 DISMISSAL OF THIS MATTER.”²⁰ Like the Weddell appellants, Hunter
3 failed to comply with the Notice because he did not pay the filing fee within 10
4 days.²¹ However, instead of dismissing Hunter’s appeal consistent with the
5 precedent the Court established in Weddell, the Court denied Hunter’s
6 subsequently filed Motion to Transfer and provided Hunter with an additional
7 10 days to pay the filing fee – after Hunter had already failed to pay the filing
8 fee for almost seven months. Hunter then paid the filing fee and the appeal is
9 now continuing. However, Gang submits that the consequence for Hunter for
10 failing to pay the filing fee for over seven months should be consistent with that
11 of the appellants in Weddell.²² Thus, the Court should disregard the Motion to
12 Consolidate and take action consistent with the rule in Weddell.

13 If for some reason the Court is not inclined to take action consistent with
14 the holding in Weddell, Gang does not oppose the Motion to Consolidate and
15 agrees that Case No. 63804 should be consolidated with Case No. 59691.

16 **III. CONCLUSION**

17 In summary, the Court should disregard Hunter’s Motion to Consolidate
18 and take action consistent with the precedent the Court established in Weddell.
19 If the Court is not inclined to take action consistent with the holding in

20 ²⁰ Id.

21 ²¹ Hunter did not pay the requisite filing fee until over seven months later.

22 ²² Not only is such a course proper pursuant to Weddell, but judicial economy
23 also favors this approach as it will limit the ongoing litigation/briefings between
the parties. Further, the Court can easily return the \$250 filing fee to Hunter.

1 Weddell, Gang does not oppose the Motion to Consolidate and agrees that Case
2 No. 63804 should be consolidated with Case No. 59691.

3 Dated this 7th day of April, 2014.

4 MARQUIS AURBACH COFFING

5
6 By /s/ Tye. S. Hanseen

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I hereby certify that this response complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally-spaced typeface using Microsoft Word 2007 in 14-point Times New Roman font.

Dated this 7th day of April, 2014.

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