

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

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3       RAYMOND RIAD KHOURY,

4                                   Appellant,

5       vs.

6       MARGARET SEASTRAND,

7                                   Respondent.

) Supreme Court No.: 64702  
) Supreme Court No.: 65007  
) Supreme Court No. 65172  
) Electronically Filed  
) Oct 13 2014 08:47 a.m.  
) Tracie K. Lindeman  
) District Court Clerk of Supreme Court  
)  
) **OPPOSITION TO APPELLANT'S**  
) **MOTION FOR EXTENSION TO FILE**  
) **APPELLANT'S OPENING BRIEF**  
) **AND APPENDIX AND**  
) **COUNTERMOTION TO DISMISS**  
) **APPEAL**

11               Respondent MARGARET SEASTRAND, by and through her counsel of record,  
12 BENJAMIN P. CLOWARD, ESQ. and ALISON BRASIER, ESQ. of the RICHARD HARRIS  
13 LAW FIRM, hereby submits her Opposition to Appellant's Motion for Extension to File  
14 Appellant's Opening Brief and Appendix and Countermotion to Dismiss Appeal. This  
15 Opposition and Countermotion is based on the following Memorandum of Points and  
16 Authorities, the papers and pleadings on file, and any oral argument entertained by this Court.

17                                   **MEMORANDUM OF POINTS AND AUTHORITIES**

18                                   **I.       INTRODUCTION**

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20               On September 24, 2014, this Court granted Appellant's **fourth** request for extension of  
21 time to file his Opening Brief. In granting the Motion, the Court specifically stated that "We  
22 grant the requested relief, however, **no further extensions of time will be granted.**"<sup>1</sup> The new  
23 due date was October 6, 2014. On October 6, 2014 — instead of filing an Opening Brief as  
24 directed by the Court — Appellant showed flagrant disregard for this Court's prior Order and  
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<sup>1</sup> Order Granting Motion for Extension of Time, attached as Exhibit 1 (emphasis added).

1 the rules of appellate procedure and filed a fifth request for extension of time.<sup>2</sup> Enough is  
2 enough. Appellants fail to provide any legitimate basis for this continued delay and the Court  
3 must uphold its prior Order — denying Appellant’s Motion and dismissing the Appeal for  
4 failure to timely file an Opening Brief.  
5

## 6 II. STATEMENT OF FACTS

### 7 A. Consolidation of Cases.

8 On December 24, 2013, Appellant filed his first Notice of Appeal. The case was  
9 deemed inappropriate for the Settlement Program. On February 6, 2014, the Court issued an  
10 Order removing the case from the Settlement Program and reinstated the briefing schedule —  
11 ordering the Opening Brief be filed within 90 days (May 6, 2014).<sup>3</sup> Subsequent Notices of  
12 Appeal were filed on February 10, 2014 and March 4, 2014 based on additional issues. A  
13 Motion to consolidate the briefing schedule for the three appellate cases (case numbers listed  
14 above) was filed on April 22, 2014. Respondent did not oppose this Motion.  
15  
16

### 17 B. Appellant’s First Request for Additional Time.

18 On May 8, 2014, Appellant filed his Motion for Extension of Time to file Opening  
19 Brief. Appellant requested up to and including July 8, 2014 to file his Opening Brief based on  
20 the consolidation of the cases and the delay receiving the trial transcripts. On May 14, 2014, this  
21 Court granted Appellant’s Motion — and ordered that “Appellant shall have until July 8, 2014,  
22 to file and serve the opening brief and appendix addressing these consolidated appeals.”<sup>4</sup>  
23

24 ///

25  
26 <sup>2</sup> Appellant’s Motion indicates it is a *fourth* request; however, as outlined below, this is actually the *fifth* request for  
extension of time.

27 <sup>3</sup> See Order Removing from Settlement Program and Reinstating Briefing, attached as Exhibit 2.

28 <sup>4</sup> Order Consolidating Appeals and Granting Motions for Extensions of Time, attached as Exhibit 3 (emphasis  
added).

1 **C. Appellant's Second Request for Additional Time.**

2 During the last week of June 2014, Appellant's counsel contacted Respondent's counsel  
3 to request a stipulation for additional time to file the Opening Brief. In an effort to work  
4 amicably with opposing counsel, Respondent's counsel agreed and a stipulation was entered.  
5 On July 18, 2014, this Court approved the stipulation and ordered that "Appellant shall have  
6 until August 7, 2014, to file and serve the opening brief and appendix."<sup>5</sup>

8 **D. Appellant's Third Request for Additional Time.**

9 On August 7, 2014 — the day the Opening Brief was due — Appellant filed a third  
10 request for an extension of time to file the Opening Brief. This request was based upon a  
11 counsel's work load and loss of associates at Appellant's counsel's firm. Appellant requested  
12 an additional 45 days to file the Opening Brief.  
13

14 On August 18, 2014, this Court granted Appellant's Motion, but explicitly cautioned  
15 Appellant regarding additional requests for an extension:  
16

17 Appellant has filed a motion for a second extension of time to file the opening  
18 brief, requesting an additional 45 days. Having considered the motion, we  
19 grant the requested relief, however, **no further extensions of time will be**  
20 **granted absent extreme and unforeseeable circumstance and counsel's**  
21 **caseload will not be deemed such a circumstance.** *Varnum v. Grady*, 90  
22 Nev. 374, 528 P.2d 1027 (1974). Accordingly, Appellant shall have until  
23 September 22, 2014, to file and serve the opening brief and appendix.<sup>6</sup>

24 **E. Appellant's Fourth Request for Additional Time.**

25 On September 22, 2014 — the day the Opening Brief was due — again, instead of filing  
26 the Opening Brief, Appellant filed another Motion for Extension of Time. This Motion was  
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28 <sup>5</sup> Order Approving Stipulation for Extension of Time, attached as Exhibit 4 (emphasis added).

<sup>6</sup> Order Granting Motion for Extension of Time, attached as Exhibit 5 (emphasis added).

1 based upon counsel's family issues necessitating that he be out of the office leading up to the  
2 filing deadline. Appellant requested a 10 day extension.

3 On September 24, 2014, this Court granted Appellant's request due to the unexpected  
4 personal circumstances surrounding it, but explicitly instructed: "**No further extensions of**  
5 **time will be granted. Appellant shall have until Monday, October 6, 2014, to file and serve**  
6 **the opening brief and appendix.**"<sup>7</sup>

7  
8 **F. Appellant's Fifth Request for Additional Time.**

9 Despite the Court's generous granting of four prior extensions, and clear instruction that  
10 the October 6, 2014 deadline was the end of the road for extensions, on October 6, 2014,  
11 Appellant brazenly filed another Motion requesting additional time to file the Opening Brief.  
12 Appellant's Motion is based upon counsel's workload, loss of associates at the firm, and family  
13 issues (circumstances for which this Court has already allowed additional time) creating a  
14 "more significant logjam than originally anticipated."<sup>8</sup> Boiled down, essentially, counsel had  
15 more work to do than "originally anticipated" after returning from family situations and trial.  
16

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18 **G. Appellant's Failure to Timely File His Opening Brief.**

19 As discussed above, the Court previously extended the deadline to file Opening Brief to  
20 October 6, 2014. This Order specifically instructed that "**no further extensions of time will be**  
21 **granted.**"<sup>10</sup> Thus, October 6, 2014 was the deadline for filing. It is now four days past the  
22 deadline and Appellant still has not filed Opening Brief and Appendix.  
23

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27 <sup>7</sup> Exhibit 1 (emphasis added).

28 <sup>8</sup> Appellant's Mtn. at 1:21.

<sup>10</sup> Exhibit 1 (emphasis added).

### III. LEGAL ARGUMENT

A. **This Court Should Deny Appellant's Request for Additional Time and Dismiss Appellant's Appeal for Failure to Timely File his Opening Brief and Appendix.**

NRCP 31(d) instructs that dismissal of the appeal is an available remedy for an appellant's failure to adhere to the Court's deadline:

If an appellant fails to file an opening brief or appendix within the time provided by this rule, or within the time extended, a **respondent may move for dismissal of the appeal.**

In Weddell v. Stewart<sup>11</sup>, this Court recently articulated the need to enforce such a harsh sanction when a party disregards its orders and filing deadlines. In Weddell, this Court dismissed an appeal for failure to timely pay the filing fees. In the Weddell ruling, this Court took the opportunity to warn future appellants of the penalties of failing to follow rules and deadlines.<sup>12</sup>

We take this opportunity to elucidate the importance of following the rules pertaining to appellate procedure and to emphasize that failure to pay required fees and comply with this court's directives in a timely fashion is **not without consequence.**

...

(F)or this court to be able to continue to fulfill its responsibility of resolving legal disputes in a fair, efficient, and timely manner, **it is imperative that the parties follow the applicable procedural rules and that they comply in a timely fashion with our directives.** For far too long, we have tolerated procedural derelictions . . . . We will no longer.

...

Moreover, parties are not at liberty to disobey notices, orders, or any other directives issued by this Court.

<sup>11</sup> 127 Nev. Adv. Op. 58, 261 P.3d 1080 (2011).

<sup>12</sup> Id. at 1082, 84-85 (emphasis added).

The consequences for disobeying the Court's orders include "loss of the right to appeal."<sup>13</sup>

Earlier this year, this Court again addressed the need to dismiss an appeal when an appellate fails to abide by the Court's deadlines. In Huckaby Props. V. NC Auto Parts<sup>14</sup>, consolidated appeals were dismissed for failure to timely file the opening brief and appendix. In Huckaby, this Court explained:

(T)he sound policy preference for deciding cases on the merits . . . is not boundless and must be weighed against other policy considerations, including the public's interest in expeditious appellate resolution, which coincides with the parties' interests in bringing litigation to a final and stable judgment; prejudice to the opposing party; and judicial administration concerns, such as the court's need to manage its large and growing docket.<sup>15</sup>

The Court found that dismissal of an appeal for failure to comply with the Court's orders is not inconsistent with the policy preference to decide cases on the merits.<sup>16</sup>

Further, in Huckaby this Court noted that dismissal of an appeal based on the conduct of counsel does not unfairly punish the appellant.<sup>17</sup> Quoting to a Third Circuit ruling, this Court noted that "unlike a defendant in a criminal case, an aggrieved party in a civil case involving private litigants 'does not have a constitutional right to the effective assistance of counsel.'"<sup>18</sup> Thus, counsel's failure to follow the Court's orders is not a sufficient basis to deny a request for dismissal.

<sup>13</sup> Id. at 1082.

<sup>14</sup> 130 Nev. Adv. Op. 23, 322 P.3d 429 (2014).

<sup>15</sup> Id. at 433-34 (citing Link v. Wabash R.R. Co., 370 U.S. 626, 630-31, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962); Kushner v. Winterhur Swiss Ins. Co., 620 F.2d 404, 406-08 (3<sup>rd</sup> Cir. 1980); GCIU Emp'r Ret. Fund v. Chi. Tribune Co., 8 F.3d 1195, 1199 (7<sup>th</sup> Cir. 1993) (noting that courts must "perpetually balance the competing interests of keeping a manageable docket against deciding cases on their merits")).

<sup>16</sup> See id. at 434.

<sup>17</sup> See id. at 435.

<sup>18</sup> Id. (quoting Kushner, 620 F.2d at 408).

1 In the conclusion of the Huckaby ruling, this Court cautioned:

2 While Nevada's jurisprudence expresses a policy preference for merits-based  
3 resolution of appeal, and our appellate procedure rules embody this policy,  
4 among others, litigants should not read the rules or any of this court's  
5 decisions as endorsing noncompliance with court rules and directives, as to do  
6 so **risks forfeiting appellate relief**.<sup>19</sup>

7 As discussed above, the original deadline ordered by this Court was May 6, 2014.  
8 Ultimately, this deadline was extended on four occasions to October 6, 2014 — with this Court  
9 explicitly instructing that "**no further extensions of time will be granted**."<sup>20</sup> There was  
10 nothing ambiguous about the deadline and yet Appellant chose not to file an Opening Brief and  
11 Appendix by that deadline.

12 Appellant's most recent Motion for extension of time not only flies in the face of this  
13 Court's September 24, 2014 Order, but also the Court's August 18, 2014 Order — instructing  
14 that counsel's workload is not a sufficient basis for additional time.<sup>21</sup> This is absolutely  
15 inexcusable. On four prior occasions, Appellant has requested additional time to file the  
16 Opening Brief. On four prior occasions, Appellant has requested a specific period of time for  
17 that extension. And, on four prior occasions, this Court has granted Appellant with the  
18 additional time Appellant requested. Appellant has always gotten the time he requested, but  
19 inexplicably continues asking for more time. Apparently Appellant got used to getting what he  
20 asked for because he now ignores the Court's two most recent Orders and is asking for more  
21 time. And, Appellant completely disregarded the Court's October 6, 2014 filing deadline.

22 This Court provided Appellants 90 days from the time of removal from the Settlement  
23 Program to file his Opening Brief. Appellants have received an additional five months beyond  
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27 <sup>19</sup> Id. at 437 (emphasis added).

28 <sup>20</sup> Exhibit 1.

<sup>21</sup> See Exhibits 1 and 5.

1 that time period — receiving a total of almost three times more time than was originally  
2 provided — and still he asks for more. Respondent respectfully contends that enough is  
3 enough. The Rules and Orders of this Court must be enforced to promote the public policy of  
4 expeditious resolution of matters; to prevent continued prejudice to Respondent in this matter  
5 remaining unresolved and her inability to receive the judgment awarded to her; and to prevent  
6 unnecessary clogging of this Court's docket.<sup>22</sup> Appellant's Motion should be denied and this  
7 appeal should be dismissed.  
8

9  
10 **IV. CONCLUSION**

11 Based on the foregoing, Respondent respectfully requests that this Court deny  
12 Appellant's Motion for Extension of Time to File Appellant's Opening Brief and Appendix and  
13 grant Respondent's Countermotion to Dismissal this consolidated Appeal.

14 DATED THIS 10<sup>th</sup> day of October 2014.

15  
16 **RICHARD HARRIS LAW FIRM**

17 

18 BENJAMIN P. CLOWARD, ESQ.

19 Nevada Bar No. 11087

20 ALISON BRASIER, ESQ.

21 Nevada Bar No. 10522

22 801 South Fourth Street

23 Las Vegas, NV 89101

24 *Attorneys for Respondent*

25  
26  
27  
28 <sup>22</sup> See fn. 11, 13-18, supra.



**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of RICHARD HARRIS LAW FIRM, and that on this 10 day of October, 2014, I served a copy of the foregoing

**OPPOSITION TO APPELLANT'S MOTION FOR EXTENSION TO FILE**

**APPELLANT'S OPENING BRIEF AND APPENDIX AND COUNTERMOTION TO**

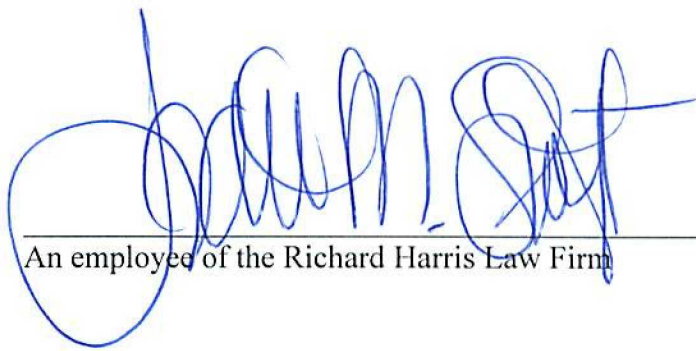
**DISMISS APPEAL** as follows:

☒ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below; and/or

☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile number(s) shown below and in the confirmation sheet filed herewith. Consent to service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by facsimile transmission is made in writing and sent to the sender via facsimile within 24 hours of receipt of this Certificate of Service; and/or

☐ Hand Delivery—By hand-delivery to the addresses listed below.

Steve Jaffe, Esq.  
Hall, Jaffe & Clayton  
7425 Peak Dr.  
Las Vegas, NV 89128  
*Attorney for Defendant*

  
\_\_\_\_\_  
An employee of the Richard Harris Law Firm

**EXHIBIT 1**

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND RIAD KHOURY,  
Appellant,

No. 64702

vs.

MARGARET SEASTRAND,  
Respondent.

RAYMOND RIAD KHOURY,  
Appellant,

No. 65007

vs.

MARGARET SEASTRAND,  
Respondent.

RAYMOND RIAD KHOURY,  
Appellant,

No. 65172 **FILED**

vs.

MARGARET SEASTRAND,  
Respondent.

SEP 24 2014

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER GRANTING MOTION FOR EXTENSION OF TIME*

Appellant has filed a motion for a fourth extension of time to file the opening brief, citing counsel's personal circumstances as a basis for the additional extension. Having considered the motion, we grant the requested relief, however, no further extensions of time will be granted. Appellant shall have until Monday, October 6, 2014, to file and serve the opening brief and appendix.

It is so ORDERED.

 , C.J.

cc: Hall Jaffe & Clayton, LLP  
Richard Harris Law Firm

**EXHIBIT 2**


IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND RIAD KHOURY,  
Appellant,  
vs.  
MARGARET SEASTRAND,  
Respondent.

No. 64702

FILED

FEB 06 2014

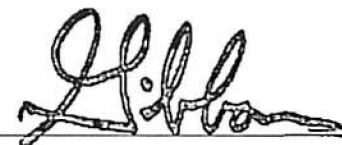
TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

**ORDER REMOVING FROM SETTLEMENT PROGRAM  
AND REINSTATING BRIEFING**

Pursuant to the recommendation of the settlement judge and good cause appearing, this appeal is removed from the settlement program. See NRAP 16. Accordingly, we reinstate the deadlines for requesting transcripts and filing briefs.

Appellant shall have 15 days from the date of this order to file and serve a transcript request form. See NRAP 9(a).<sup>1</sup> Further, appellant shall have 90 days from the date of this order to file and serve the opening brief and appendix.<sup>2</sup> Thereafter, briefing shall proceed in accordance with NRAP 31(a)(1).

It is so ORDERED.

 C.J.

<sup>1</sup> If no transcript is to be requested, appellant shall file and serve a certificate to that effect within the same time period. NRAP 9(a).

<sup>2</sup> In preparing and assembling the appendix, counsel shall strictly comply with the provisions of NRAP 30.

cc: John Walter Boyer, Settlement Judge  
Hall Jaffe & Clayton, LLP  
Richard Harris Law Firm

**EXHIBIT 3**

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND RIAD KHOURY,  
Appellant,

No. 64702

vs.

MARGARET SEASTRAND,  
Respondent.

RAYMOND RIAD KHOURY,  
Appellant,

No. 65007

vs.

MARGARET SEASTRAND,  
Respondent.

RAYMOND RIAD KHOURY,  
Appellant,

No. 65172

vs.

MARGARET SEASTRAND,  
Respondent.

**FILED**

MAY 14 2014

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

**ORDER CONSOLIDATING APPEALS AND  
GRANTING MOTIONS FOR EXTENSIONS OF TIME**

The parties have stipulated to consolidate these three appeals, which arise from the same district court case and involve the same parties. The stipulation is approved, and these appeals are hereby consolidated. NRAP 3(b).

In addition, court reporter Kristy Clark's motions to extend the deadline for filing the transcripts in these consolidated appeals are granted; the transcript delivery and notice of transcript delivery filed in this court on May 12, 2014, are deemed timely.

Finally, in light of this order, appellant's motions for an extension of time to file the opening brief and to modify the briefing schedule in these consolidated appeals are granted. Appellant shall have



until July 8, 2014, to file and serve the opening brief and appendix addressing these consolidated appeals. Thereafter, briefing shall proceed in accordance with NRAP 31(a)(1).

It is so ORDERED.

\_\_\_\_\_, C.J.

cc: Hall Jaffe & Clayton, LLP  
Richard Harris Law Firm  
Kristy Clark, Court Reporter

**EXHIBIT 4**

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND RIAD KHOURY,  
Appellant,  
vs.  
MARGARET SEASTRAND,  
Respondent.

No. 64702

RAYMOND RIAD KHOURY,  
Appellant,  
vs.  
MARGARET SEASTRAND,  
Respondent.

No. 65007

RAYMOND RIAD KHOURY,  
Appellant,  
vs.  
MARGARET SEASTRAND,  
Respondent.

No. 65172

**FILED**

JUL 18 2014

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY R. Malone  
DEPUTY CLERK

*ORDER APPROVING STIPULATION FOR EXTENSION OF TIME*

On July 2, 2014, the parties filed a stipulation for an extension of time to file the opening brief and appendix. The stipulation is approved. Appellant shall therefore have until August 7, 2014, to file and serve the opening brief and appendix.

It is so ORDERED.

, C.J.

cc: Hall Jaffe & Clayton, LLP  
Richard Harris Law Firm

**EXHIBIT 5**

IN THE SUPREME COURT OF THE STATE OF NEVADA

RAYMOND RIAD KHOURY,  
Appellant,  
vs.  
MARGARET SEASTRAND,  
Respondent.

No. 64702

RAYMOND RIAD KHOURY,  
Appellant,  
vs.  
MARGARET SEASTRAND,  
Respondent.

No. 65007

RAYMOND RIAD KHOURY,  
Appellant,  
vs.  
MARGARET SEASTRAND,  
Respondent.

No. 65172 **FILED**

AUG 18 2014

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

**ORDER GRANTING MOTION FOR EXTENSION OF TIME**

Appellant has filed a motion for a second extension of time to file the opening brief, requesting an additional 45 days. Having considered the motion, we grant the requested relief, however, no further extensions of time will be granted absent extreme and unforeseeable circumstances and counsel's caseload will not be deemed such a circumstance. *Varnum v. Grady*, 90 Nev. 374, 528 P.2d 1027 (1974). Accordingly, appellant shall have until September 22, 2014, to file and serve the opening brief and appendix.

It is so ORDERED.

, C.J.

cc: Hall Jaffe & Clayton, LLP  
Richard Harris Law Firm