

1 John P. Aldrich, Esq.
Nevada Bar No. 6877
2 **ALDRICH LAW FIRM, LTD.**
1601 S. Rainbow Boulevard, Suite 160
3 Las Vegas, NV 89146
Tel (702) 853-5490
4 Fax (702) 227-1975
Attorneys for Appellants

Electronically Filed
Mar 25 2016 01:05 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

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

7 ESTATE OF MICHAEL DAVID
8 ADAMS, BY AND THROUGH HIS
9 MOTHER JUDITH ADAMS,
INDIVIDUALLY AND ON
BEHALF OF THE ESTATE,

10 Appellant,

11 v.

12 SUSAN FALLINI,

13 Respondent.

Supreme Court No.: 68033

District Court Case No.: CV24539

**RESPONSE TO RESPONDENT'S
MOTION TO STAY BRIEFING
SCHEDULE**

15 Appellant Judith Adams, Individually and on Behalf of The Estate of Michael
16 David Adams, ("Appellant"), by and through her attorney of record, John P.
17 Aldrich, Esq. of the Aldrich Law Firm, Ltd., hereby responds to Defendant/
18 Appellant's Motion to Stay Briefing Schedule.

19 In her Motion, Respondent claims she filed a Motion to Dismiss for Lack of
20 Appellate Jurisdiction "in accordance with Nevada Rules of Appellate Procedure
21 14(f)," and then quotes only a portion of the rule. As noted in Appellant's Response
22 to Respondent's Motion to Dismiss, the entire content of that rule is as follows:

23 **Response by Respondent(s).** Respondent, **within 7 days after**
24 **service of the docketing statement,** may file an original and 1 copy
25 of a single-page response, together with proof of service on all parties,
26 if respondent strongly disagrees with appellant's statement of the case
27 or issues on appeal. If respondent believes there is a jurisdictional
defect, respondent should file a motion to dismiss. In cases involving
more than one respondent, any number of respondents may join in a
single response. Multiple respondents are encouraged to consult with
each other and, whenever possible, file only one response.

28 NRAP 14(f) (emphasis added). Thus, by rule, Respondent had to file her Motion

1 to Dismiss within seven days after Appellant filed her Docketing Statement.
2 Respondent actually did so, and that motion was denied in the Order Reinstating
3 Briefing filed on December 2, 2015. The instant Motion to Dismiss was filed
4 approximately nine months after the Docketing Statement was filed. Respondent's
5 Motion to Stay Briefing Schedule, as well as the Motion to Dismiss, are merely
6 delay tactics.

7 Respondent further asserts that "the Court's jurisdictional determination will
8 have a material impact on the scope and substance of Respondent's Answering
9 Brief." Again, the Court already made a jurisdictional determination, so this
10 statement is incorrect.

11 Respondent's final "substantive" comment in support of the Motion to Stay
12 Briefing Schedule is that "It would be expensive and inefficient to have Respondent
13 prepare her Answering Brief prior to the Court's determination as to its
14 jurisdiction." While asking the Court to spare her the expense of having to file an
15 Answering Brief, Respondent ignores the fact that Appellant already incurred the
16 expense of drafting a brief, with Appellant having already filed her Opening Brief
17 in this matter. Again, after litigating this exact jurisdictional issue, this Court
18 reinstated the briefing. On February 11, 2016, Appellant filed her Opening Brief
19 and a seven-volume appendix. Appellant drafted her brief based on the status of the
20 case at the time the Opening Brief was due. Respondent has now read through the
21 brief and apparently determined she needed to renew her motion to dismiss and
22 delay filing her Answering Brief.

23 Appellant asks this Court to consider that on March 3, 2016, Respondent's
24 counsel sent an e-mail to Appellant's counsel and asked if Appellant's counsel
25 would "grant us a 30-day extension to respond to your opening brief." (See
26 Declaration of John P. Aldrich, Esq., attached hereto as Exhibit 1; E-mail from
27 David Hague, Esq., to John P. Aldrich, Esq., dated March 3, 2016, attached hereto
28 as Exhibit 2.) The next day, Respondent's counsel called Appellant's counsel to

1 reiterate the request. At no time in either the e-mail or during the telephone
2 conference did Respondent's counsel disclose that he intended to file a motion to
3 dismiss after the original deadline had passed, and then further seek to delay this
4 appeal by requesting a stay, once again, of the briefing schedule. (Exhibit 1.)
5 Consequently, as a professional courtesy, and based on the understanding that
6 Respondent would be timely filing an Answering Brief by the agreed-upon date,
7 Appellant's counsel agreed to the extension, and this Court approved the stipulation.
8 (Exhibit 1.) The stipulation changed the due date of Respondent's Opening Brief
9 from March 14, 2016 to April 13, 2016. The instant Motion to Dismiss was filed
10 on March 18, 2016 – four business days after the original due date of Respondent's
11 Answering Brief. Respondent then filed the instant motion, seeking further delay
12 of this case. Had Appellant's counsel known of Respondent's true intentions, he
13 would not have granted the professional courtesy. (Exhibit 1.)

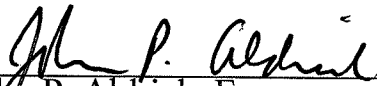
14 Finally, Appellant Judith Adams is elderly. This case was originally filed in
15 2007. (AA I, 0001-00006.) This case has been up on appeal once already, and
16 Plaintiff/Appellant prevailed. Respondent has already delayed the briefing with the
17 first motion to dismiss. Respondent should not be permitted to delay the case any
18 further.

19 Respondent's Motion to Stay Briefing Schedule should be denied.

20 DATED this 25th day of March, 2016.

21 Respectfully submitted,

22 **ALDRICH LAW FIRM, LTD.**

23
24 
25 _____
26 John P. Aldrich, Esq.
27 Nevada Bar No. 6877
28 1601 S. Rainbow Blvd., Suite 160
Las Vegas, NV 89146
(702) 853-5490
(702) 227-1975
Attorneys for Appellant

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that the foregoing **RESPONSE TO RESPONDENT'S**
3 **MOTION TO STAY BRIEFING SCHEDULE** was filed electronically with the
4 Nevada Supreme Court on the 25th day of March, 2016.

5 I further certify that I served a copy of this document by mailing a true and
6 correct copy thereof, postage prepaid, addressed to:

7 David R. Hague
8 Fabian VanCott
9 215 S. State Street, Suite 1200
Salt Lake City, UT 84111-2323
Attorney for

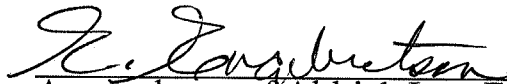
10
11 
12 An employee of Aldrich Law Firm, Ltd.

EXHIBIT 1

EXHIBIT 1

DECLARATION OF JOHN P. ALDRICH

State of Nevada }
County of Clark }ss:

Pursuant to NRS 53.045, Declarant hereby declares and states the following:

1. I, John P. Aldrich, am an attorney licensed to practice in the State of Nevada. I am currently a shareholder in Aldrich Law Firm, Ltd.

2. My current office address is 1601 S. Rainbow Boulevard, Suite 160, Las Vegas, Nevada 89146.

3. I have personal knowledge of the contents of this document, or where stated upon information and belief, I believe them to be true, and I am competent to testify to the facts set forth herein.

4. On March 3, 2016, Respondent’s counsel sent an e-mail to me and asked if I would “grant us [Respondent] a 30-day extension to respond to your opening brief.”

5. The next day, Respondent’s counsel called me to reiterate the request. At no time in either the e-mail or during the telephone conference did Respondent’s counsel disclose that he intended to file a motion to dismiss after the original deadline had passed, and then further seek to delay this appeal by requesting a stay, once again, of the briefing schedule.

6. Consequently, as a professional courtesy, I agreed to the extension, and this Court approved the stipulation.

7. The stipulation changed the due date from March 14, 2016 to April 13, 2016.

8. The Motion to Dismiss was filed on March 18, 2016 – four business days after the original due date of Respondent’s Answering Brief. The

1 Motion to Stay Briefing Schedule was filed on March 22, 2016.

2 9. Had Appellant's counsel known of Respondent's intentions, he would
3 not have granted the professional courtesy.

4 10. I drafted the Appellant's Opening Brief based on the issues as they
5 existed at the time the brief was due, as this Court had already ruled on the
6 jurisdiction issue Respondent raised for the second time in the instant Motion to
7 Dismiss.

8 11. Appellant Judith Adams is elderly. This case was originally filed in
9 2007. This case has been up on appeal once already, and Plaintiff/Appellant
10 prevailed. Respondent has already delayed the briefing with the first motion to
11 dismiss.

12 Pursuant to NRS 53.045, I declare under penalty of perjury that the foregoing
13 is true and correct to the best of my knowledge.

14 DATED this 25th day of March, 2016.


15
16 
17 JOHN P. ALDRICH

EXHIBIT 2

EXHIBIT 2

John Aldrich

From: David R. Hague [dhague@fabianvancott.com]
Sent: Thursday, March 03, 2016 9:49 AM
To: John P. Aldrich
Cc: James C. Waddoups; Andy Sellers
Subject: Fallini--Appeal Extension

John:

Will you please grant us a 30-day extension to respond to your opening brief? If so, I will prepare a stipulation for your review.

Thanks,

Dave

DAVID R. HAGUE
FabianVanCott
Mobile: 801.558.2822

No virus found in this message.

Checked by AVG - www.avg.com

Version: 2015.0.6189 / Virus Database: 4537/11741 - Release Date: 03/03/16