

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

PAOLA M. ARMENI, JONAH J.  
HORWITZ, and DEBORAH A.  
CZUBA,

Petitioners,

v.

THE EIGHTH JUDICIAL  
DISTRICT COURT of the STATE of  
NEVADA, in and for the COUNTY  
of CLARK; and THE HONORABLE  
MICHAEL P. VILLANI,

Respondents,

and

TIMOTHY FILSON, Warden,  
ADAM PAUL LAXALT, Attorney  
General for the State of Nevada, and  
THE STATE OF NEVADA,

Real Parties in Interest.

Supreme Court Case No. 73462

Electronically Filed  
Jul 17 2017 11:37 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Underlying Case: Clark County Dist.  
Ct. No. 81C053867

**PETITIONERS' MOTION TO CONSOLIDATE**

This is a mandamus proceeding challenging the imposition of attorney's fees as sanctions against several attorneys for pleadings they filed on behalf of Samuel Howard, their death-sentenced client, in his post-conviction action in Clark County case number 81C053867. *See generally* Pet. for Writ of Mandamus, filed July 14, 2017 (hereinafter "Petition" or "Pet."). The petitioners in the mandamus action are the sanctioned attorneys. In case number 73223, the petitioners are representing Mr. Howard in his appeal from the denial of post-conviction relief in Clark County case number 81C053867.

The issues in the mandamus case are closely intertwined with the issues in the appeal, and the petitioners therefore respectfully move for the two proceedings to be consolidated.

First, the two cases involve the same attorneys, the same judge, and the same lower court action. Second, the sanctions were imposed in the same order that denied post-conviction relief. *See* Appendix to Petition, filed July 17, 2017, Vol. 3, at 508–37. Third, the district court issued the sanctions order because of certain arguments that were made in support of the post-conviction claims and, potentially, because a motion for leave to amend the petition was filed. *See* Pet. at 15–19. Undersigned counsel will likewise be litigating those same arguments in their appellate briefs in case number 73223, where they will be advocating for the same claims and contesting the district court's decision to deny leave to amend.

Because the issues in the two cases are so closely related, it would serve the interests of judicial economy and efficiency for the Court to consolidate them. *See Pub. Emps. Ret. Sys. of Nev. v. Gitter*, 393 P.3d 673 (Nev. 2017) (following that course in another case where a direct appeal intersected with a mandamus action targeting the award of attorney fees as sanctions); *see also Matter of Beatrice B. Davis Family Heritage Trust*, 394 P.3d 1203 (Nev. 2017) (deciding an appeal along with a related mandamus petition after consolidating the two); *MDC Rests., LLC v. Eighth Jud. Dist. Ct.*, 132 Nev. Adv. Op. 76, 383 P.3d 262 (2016) (same).

More specifically, if the Court consolidates the cases, it will not then be required to duplicate the work it does in analyzing the same post-conviction issues implicated by both the mandamus matter and the appeal. Instead, the Court would be able to consider and resolve those issues in one fell swoop. In addition, consolidation would assist the Court's final resolution of the mandamus petition by giving it a full presentation from the parties on the underlying post-conviction issues. Such a thorough and careful review is particularly appropriate here, where the mandamus petition challenges sanctions imposed on attorneys for work they performed while representing a death row prisoner. *See Young v. Ninth Jud. Dist. Ct.*, 107 Nev. 642, 649, 818 P.2d 844, 850 (1991) (per curiam) (explaining that this Court's determination to avoid "chilling or unduly temporizing ethical representation by counsel will inevitably trigger a heightened appellate concern

and scrutiny when a trial court imposes monetary sanctions on counsel for a client facing the death penalty”).

For the stated reasons, the petitioners respectfully request that the Court consolidate this case with case number 73223, set a briefing schedule for the consolidated appeal, hear oral argument on the consolidated appeal, and decide the appeal issues along with the mandamus issues in a single opinion.<sup>1</sup>

DATED this 17th day of July 2017.

GENTILE CRISTALLI  
MILLER ARMENI SAVARESE

*/s/ Paola M. Armeni*

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PAOLA M. ARMENI, ESQ.  
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<sup>1</sup> In the appeal from the denial of post-conviction relief, case number 73223, the briefing deadlines are established by NRAP 31(a)(4). If this motion to consolidate is granted, undersigned counsel respectfully suggest that the Court retain the due dates set forth by NRAP 31(a)(4) while instructing the State to address both the appellate issues and the mandamus issues in its response brief (which would then also be an answer to the petition) and instructing Mr. Howard to do the same in his reply. *See Gitter*, 393 P.3d 673. Undersigned counsel believe that approach would facilitate the most efficient disposition of the issues raised by both the appeal and the mandamus proceeding.

FEDERAL DEFENDER  
SERVICES OF IDAHO

/s/ Jonah Horwitz

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**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing document on July 17, 2017. Electronic service of the document shall be made in accordance with the Master Service List to:

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In addition, I mailed the foregoing document to:

Michael P. Villani  
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/s/ Joy L. Fish

Joy L. Fish