

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE FERNANDO MONAY-PINA,  
A/K/A JOSE FERNANDO MONAYPINA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 74199

**FILED**

APR 30 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER REMOVING COUNSEL, REFERRING COUNSEL TO STATE  
BAR FOR INVESTIGATION, REMANDING TO SECURE APPELLATE  
COUNSEL, AND SUSPENDING BRIEFING*

This appeal from a judgment of conviction was docketed on October 12, 2017. Accordingly, the transcript request form and docketing statement were due to be filed by October 30, 2017, and November 1, 2017, respectively. NRAP 9(a)(3)(A); NRAP 14(b). Appellant failed to file these documents and on November 16, 2017, the clerk of this court issued a notice directing appellant to file and serve these documents by December 4, 2017.<sup>1</sup> When appellant still failed to file the documents, we entered an order on December 21, 2017, directing appellant to file and serve the transcript request form and docketing statement by January 2, 2018, or face

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<sup>1</sup>A copy of this notice is attached.

sanctions.<sup>2</sup> Appellant did not file the documents. Thus, on January 26, 2018, we entered an order conditionally imposing sanctions on appellant's counsel, Thomas D. Boley.<sup>3</sup> We directed Mr. Boley to pay \$250 to the Supreme Court Law Library by February 6, 2018. The sanction would be automatically vacated if Mr. Boley filed and served the transcript request form and docketing statement by that same date. We cautioned that failure to comply with our order or any other filing deadlines would result in the removal of Mr. Boley as counsel of record in this appeal and in his referral to the State Bar of Nevada for investigation. Mr. Boley filed the transcript request form and docketing statement on February 6, 2018. Accordingly, the conditional sanctions were automatically vacated.

On February 22, 2018, Mr. Boley filed a motion for a 90-day extension of time to file the opening brief. We denied the motion on March 1, 2018, and directed Mr. Boley to file and serve the opening brief and appendix by April 2, 2018.<sup>4</sup> We cautioned that failure to comply could result in the imposition of sanctions. To date, Mr. Boley has not filed the opening brief and appendix or otherwise communicated with this court.

We have repeatedly stated that we expect all appeals to be "pursued in a manner meeting high standards of diligence, professionalism, and competence." *Cuzdey v. State*, 103 Nev. 575, 578, 747 P.2d 233, 235 (1987); accord *Polk v. State*, 126 Nev. 180, 184, 233 P.3d 357, 359 (2010); *Barry v. Lindner*, 119 Nev. 661, 671, 81 P.3d 537, 543 (2003); *State, Nev. Emp't Sec. Dep't v. Weber*, 100 Nev. 121, 123, 676 P.2d 1318, 1319 (1984). It

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<sup>2</sup>A copy of this order is attached.

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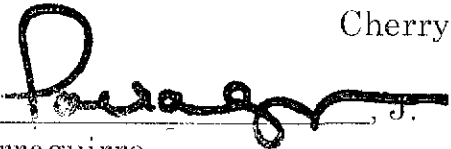
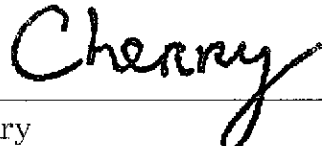

is incumbent upon Mr. Boley, as part of his professional obligations of competence and diligence to his clients, to know and comply with all applicable court rules. See RPC 1.1; RPC 1.3. These rules have been implemented to promote cost-effective, timely access to the courts; it is “imperative” that he follow these rules and timely comply with our directives. *Weddell v. Stewart*, 127 Nev. 645, 650, 261 P.3d 1080, 1084 (2011). Mr. Boley is “not at liberty to disobey notices, orders, or any other directives issued by this court.” *Id.* at 652, 261 P.3d at 1085.

Mr. Boley’s failure to comply with our rules, notice, and orders has forced this court to divert our limited resources to ensure his compliance and needlessly delayed the processing of this appeal. Therefore, we remove Mr. Boley as counsel in this appeal. Because it appears that Mr. Boley’s conduct in this appeal may constitute violations of RPC 1.3 (diligence), 3.2(a) (expediting litigation), and 8.4 (misconduct), we refer Mr. Boley to the State Bar of Nevada for investigation pursuant to SCR 104-105.

We remand this appeal to the district court for the limited purpose of securing appellate counsel for appellant. See *Evitts v. Lucey*, 469 U.S. 387 (1985). If appellant is indigent, the district court shall have 30 days from the date of this order to appoint counsel for appellant. Otherwise, within 30 days from the date of this order, the district court shall order that appellant must retain counsel and that retained counsel must enter an appearance in the district court on appellant’s behalf within 30 days from the date of the district court’s order. Within 5 days from the appointment or appearance of counsel, the district court clerk shall transmit to the clerk of this court: (1) a copy of the district court’s written or minute order appointing appellate counsel; or (2) a copy of the notice of appearance filed by retained counsel.

Briefing of this appeal shall be suspended pending further order of this court.

It is so ORDERED.

 _____, J. Parraguirre	 _____, J. Cherry	 _____, J. Stiglich
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cc: Hon. Linda Marie Bell, District Judge  
Boley & Aldabbagh Ltd.  
Attorney General/Carson City  
Clark County District Attorney  
Eighth District Court Clerk  
Jose Fernando Monay-Pina  
Bar Counsel  
Thomas D. Boley

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

JOSE FERNANDO MONAY-PINA, A/K/A  
JOSE FERNANDO MONAYPINA,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

**Supreme Court No. 74199**  
District Court Case No. C313118

**NOTICE TO FILE DOCKETING STATEMENT AND REQUEST TRANSCRIPTS**

TO: Boley & Aldabbagh Ltd. \ Joshua U. Aldabbagh

To date, appellant has not filed the Docketing Statement and the Transcript Request Form in this appeal. NRAP 14(b); NRAP 9(a).

Please file and serve the Docketing Statement and either a Transcript Request Form or, alternatively, a certificate that preparation of transcripts is not requested within 10 days from the date of this notice. See NRAP 10(b); NRAP 30 (b)(1). Failure to file a Docketing Statement or the appropriate transcript document may result in the imposition of sanctions, including the dismissal of this appeal. See NRAP 9(a)(7); NRAP 14(c).

DATE: November 16, 2017

Elizabeth A. Brown, Clerk of Court

By: Niki Wilcox  
Deputy Clerk

**Notification List**

**Electronic**

Boley & Aldabbagh Ltd. \ Thomas D. Boley

Clark County District Attorney \ Steven S. Owens, Chief Deputy District Attorney

Attorney General/Carson City \ Adam Paul Laxalt, Attorney General

Boley & Aldabbagh Ltd. \ Joshua U. Aldabbagh

**Paper**

Boley & Aldabbagh Ltd. \ Joshua U. Aldabbagh

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSE FERNANDO MONAY-PINA,  
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Respondent.

No. 74199

**FILED**

DEC 21 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER TO FILE DOCUMENTS*

On November 16, 2017, we directed counsel for appellant to file and serve a transcript request form and a docketing statement within 10 days. To date, the required documents have not been filed with the clerk of this court. NRAP 9(a)(3) ("The appellant shall file an original transcript request form with the district court clerk and 1 file-stamped copy of the transcript request form with the clerk of the Supreme Court . . ."); NRAP 14(b). Appellant's counsel shall have 11 days from the date of this order to file and serve the transcript request form or a certificate that no transcripts will be requested and a docketing statement. *See* NRAP 9(a)(1); NRAP 14. We caution appellant's counsel that failure to comply with this order may result in the imposition of sanctions. NRAP 9(a)(7); NRAP 14(c).

It is so ORDERED.

Cherry C.J.

cc: Boley & Aldabbagh Ltd.  
Attorney General/Carson City  
Clark County District Attorney

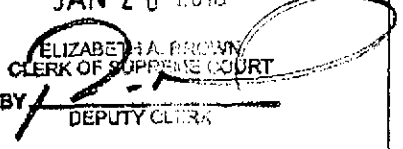
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A/K/A JOSE FERNANDO MONAYPINA,  
Appellant,  
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THE STATE OF NEVADA,  
Respondent.

No. 74199

FILED

JAN 26 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

ORDER CONDITIONALLY IMPOSING SANCTIONS

Appellant's counsel, Thomas D. Boley, did not file the transcript request form and docketing statement within the time periods provided by NRAP 9(a)(3) and 14(b). On November 16, 2017, we directed Mr. Boley to file the missing documents within 10 days or face sanctions.<sup>1</sup> See NRAP 9(a)(7); NRAP 14(c). When Mr. Boley failed to comply with the notice, on December 21, 2017, we entered an order directing him to file the transcript request form and docketing statement within 11 days or face sanctions.<sup>2</sup> To date, Mr. Boley has not complied or otherwise communicated with this court.

Mr. Boley's failure to file the transcript request form and docketing statement warrants the *conditional* imposition of sanctions. Mr. Boley shall pay the sum of \$250 to the Supreme Court Law Library and provide this court with proof of such payment within 11 days from the date of this order. The conditional sanction will be automatically vacated if Mr. Boley files and serves the transcript request form and docketing statement

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<sup>1</sup>A copy of this notice is attached.

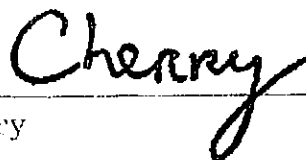
<sup>2</sup>A copy of this order is attached.


or a properly supported motion to extend time, *see* NRAP 14(d); NRAP 26(b)(1)(A), within the same time period.

If the required documents are not timely filed, the sanction will no longer be conditional and must be paid. Failure to comply with this order or any other filing deadlines will result in Mr. Boley's removal as counsel of record in this appeal. *See* NRAP 9(a)(7); NRAP 14(c). Further, because it appears that Mr. Boley's conduct in this appeal may constitute violations of RPC 1.3 (diligence), 3.2(a) (expediting litigation), and 8.4 (misconduct), failure to comply with this order or any other filing deadlines will also result in Mr. Boley's referral to the State Bar of Nevada for investigation pursuant to SCR 104-105.

We remind Mr. Boley that the opening brief and appendix are due February 9, 2018.

It is so ORDERED.

  
Cherry, J.

  
Parraguirre, J.

  
Stiglich, J.

cc: Boley & Aldabbagh Ltd.  
Attorney General/Carson City  
Clark County District Attorney  
Thomas D. Boley  
Joshua U. Aldabbagh  
Supreme Court Law Librarian



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No. 74199

**FILED**

MAR 01 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

*ORDER DENYING MOTION*

Appellant has filed a motion for a 90-day extension of time to file the opening brief. In support of the motion, counsel states that "it would be prudent" to conference with counsel for appellant's codefendant or read the opening brief in the appeal filed by the codefendant before filing the opening brief in this matter. Counsel also notes that due to his own actions, the relevant transcripts were only recently delivered.

We are not convinced that counsel demonstrates good cause in support of the requested extension of time. This appeal has been pending for over 4 months. Counsel does not explain why he has not already conferred with counsel for appellant's codefendant. Moreover, the transcripts were filed in the district court on December 7, 2017. Counsel's failure to properly and timely request transcripts or check the district court docket entries does not warrant a 90-day extension of time. And we are not

willing to delay the briefing of this appeal so that counsel may read the opening brief of appellant's codefendant. Accordingly, the motion is denied.

Appellant shall have 30 days from the date of this order to file and serve the opening brief and appendix. Failure to comply with this order may result in the imposition of sanctions.

It is so ORDERED.



C.J.

cc: Boley & Aldabbagh Ltd.  
Attorney General/Carson City  
Clark County District Attorney