

WILEY PETERSEN
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Attorneys for Respondents

Electronically Filed
Apr 03 2020 04:55 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

PARVIZ SAFARI, an individual;
MANDANA ZAHEDI, an individual;
and on behalf of MEDITEX, LLC, a
Nevada limited liability company,

Appellants,

vs.

HAMID MODJTAHED, individually
and derivatively on behalf of
MEDITEX,
LLC, a Nevada limited liability
company; and MOHAMMAD
MOJTAHED, individually and
derivatively on behalf of MEDITEX,
LLC, a Nevada limited liability
company,

Respondents.

Case No. 79926

RESPONDENTS' OPPOSITION TO
MOTION TO VOLUNTARILY
DISMISS APPEAL

Appeal from the Eighth Judicial
District Court, The Honorable Mark R.
Denton Presiding.

**RESPONDENTS' OPPOSITION TO MOTION TO VOLUNTARILY
DISMISS APPEAL**

I. INTRODUCTION

Following a bench trial that stretched over approximately three months in the summer of 2019, on September 27, 2019, the District Court issued Findings and Fact and Conclusions of Law and Judgment in favor of Respondents, with the Notice of Entry of Order filed on September 30, 2019 ("Findings of Fact"). The Findings of Fact stated, in part,

"Attorneys' fees may be sought per motion pursuant to NRCP 54(d); and that a subsequent proceeding, pursuant to NRS 42. 005(3), shall be conducted to determine the amount of punitive damages to be assessed."

See Findings of Fact, page 49:11-13 & 49:17-18.

The Findings of Fact was not a final order, leaving several matters outstanding. Respondents filed their Motion for Attorneys' Fees on October 16, 2019,¹ and filed their Motion for Punitive Damages on October 17, 2019.²

Notwithstanding the fact that no final order had been entered by the District Court, no NRCP 54(b) certification was sought or granted, and multiple issues

¹ A Decision granting the Motion for Attorneys' Fees was filed on December 23, 2019, with a subsequent formal Order filed on February 26, 2020, and Notice of Entry of Order filed on the same day.

² The hearing regarding punitive damages was recently continued from April 1, 2020 until the July 7, 2020 trial stack due to the Corona Virus situation.

including attorneys' fees and punitive damages were outstanding and/or still in the briefing stage, Appellants filed their Notice of Appeal on October 24, 2019. Appellants now seek to dismiss their appeal, without prejudice, and would have each party bear their own attorneys' fees and costs.

As stated clearly by Appellants,

[T]he October 24, 2019 Notice of Appeal did not properly invoke this Court's subject matter jurisdiction based on the non-existence of a final order.

See Motion, p. 3 (emphasis added).

However, Appellants did not get around to seeking to dismiss their untimely appeal until more than five months after filing their Notice of Appeal, and only after forcing Respondents to incur yet more attorneys' fees and costs. Instead of quickly dismissing the untimely appeal, Appellants' delay forced Respondents to evaluate the appeal's merits, research various issues, and participate in months of back and forth communications with Settlement Judge Kuzemka regarding the appropriateness and timing of a settlement conference. To this day, however, a final order has not issued from the District Court, and Appellants admit that this Court lacks subject matter jurisdiction.

Respondents do not oppose the dismissal of this untimely and frivolous appeal, but seek the attorneys' fees incurred pursuant to NRAP 38. Specifically,

Respondents have incurred \$2,190.00³ as a direct result of this appeal, which should be reimbursed by Appellants.

II. ARGUMENT

A. NRAP 42(b) and NRAP 38 Allow for an Award of Attorneys' Fees

NRAP 42(b) states,

The clerk may dismiss an appeal or other proceeding if the parties file a signed dismissal agreement specifying how costs are to be paid and pay any fees that are due. ... An appeal may be dismissed on the appellant's motion on terms agreed to by the parties **or fixed by the court.** (emphasis added).

NRAP 38 states,

(a) Frivolous Appeals; Costs. If the Supreme Court or Court of Appeals determines that an appeal is frivolous, it may impose monetary sanctions.

(b) Frivolous Appeals; Attorney Fees as Costs. **When an appeal has frivolously been taken** or been processed in a frivolous manner, when circumstances indicate that an appeal has been taken or processed solely for purposes of delay, when an appeal has been occasioned through respondent's imposition on the court below, or whenever the appellate processes of the court have otherwise been misused, the court may, on its own motion, require the offending party to pay, as costs on appeal, **such attorney fees as it deems appropriate to discourage like conduct in the future.** (emphasis added).

Respondents seek attorneys' fees incurred directly as a result of the appeal. This

³ Respondents' undersigned counsel spent 4.5 hours at \$300 per hour related to this appeal, plus 2.8 hours on this Opposition, for a total of \$2,190 and 7.3 hours.

Court has invoked NRAP 38 and imposed attorneys' fees on frivolous appellants numerous times. See e.g. *Works v. Kuhn*, 103 Nev. 65, 69, 732 P.2d 1373, 1376, (1987); *Holiday Inn Downtown v. Barnett*, 103 Nev. 60, 65 (1987).

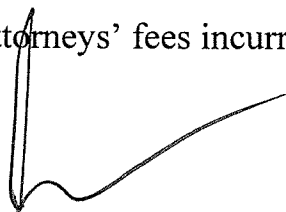
B. Appellants Should be Assessed \$1,350 in Attorneys' Fees as a Result of this Frivolous Appeal

Respondents have incurred \$2,190 in attorneys' fees since October, 2019 in this appeal. *See* Declaration of Jonathan Blum, attached hereto as Exhibit A. Redacted invoices evidencing the attorneys' fees incurred are attached thereto. Unredacted invoices can be provided upon the Court's request for in camera review.

III. CONCLUSION

Based on NRAP 38, and the argument set forth above, Respondents respectfully request a Dismissal of the appeal, along with an order that the Appellants reimburse Respondents \$2,190 in attorneys' fees incurred.

Dated this 3 day of April, 2020.



Jonathan D. Blum, Esq.
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Attorneys for Respondents

CERTIFICATE OF SERVICE

I hereby certify that the foregoing OPPOSITION TO MOTION TO VOLUNTARILTY DISMISS APPEAL was filed electronically with the Nevada Supreme Court on the 3rd day of April, 2020. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

James Beckstrom, Esq.
Chad Clement, Esq.
Kristine Kuzemka, Esq.
Andrew Flahive, Esq.

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

N/A

/s/ Ivette Bautista
An employee of Wiley Petersen

EXHIBIT A

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EXHIBIT A-1



INVOICE

Invoice # 1014
Date: 04/02/2020
Due On: 05/02/2020

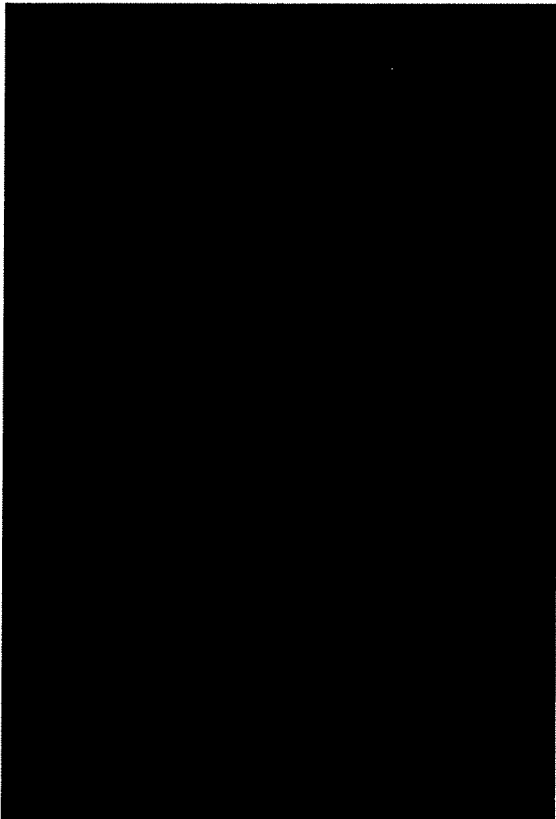
Wiley Petersen

1050 Indigo Drive, Suite 200B
Las Vegas, Nevada 89145
Phone: 702.910.3329

Mohammad Mojtahed

00463-Mojtahed

Appeal from Meditex Case 1 - A729030 NV S. Ct. Docket No. 79926

Type	Date	Notes	Quantity	Rate	Total
Service	03/04/2020		0.30	\$300.00	\$90.00
Service	03/06/2020		0.10	\$300.00	\$30.00
Service	03/07/2020		0.10	\$300.00	\$30.00
Service	03/09/2020		0.10	\$300.00	\$30.00
Service	03/10/2020		0.10	\$300.00	\$30.00
Service	03/11/2020		0.30	\$300.00	\$90.00
Service	03/12/2020		0.40	\$300.00	\$120.00
Service	03/12/2020		0.20	\$300.00	\$60.00
Service	03/13/2020		0.10	\$300.00	\$30.00
Service	03/18/2020		0.20	\$300.00	\$60.00
Service	03/20/2020		0.10	\$300.00	\$30.00
Service	03/23/2020		0.10	\$300.00	\$30.00

Service	03/26/2020		0.10	\$300.00	\$30.00
Service	03/27/2020		0.30	\$300.00	\$90.00
Service	04/01/2020		0.20	\$300.00	\$60.00
Total					\$810.00

Detailed Statement of Account

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
1014	05/02/2020	\$810.00	\$0.00	\$810.00
Outstanding Balance				\$810.00
Total Amount Outstanding				\$810.00

Please make all amounts payable to: Wiley Petersen

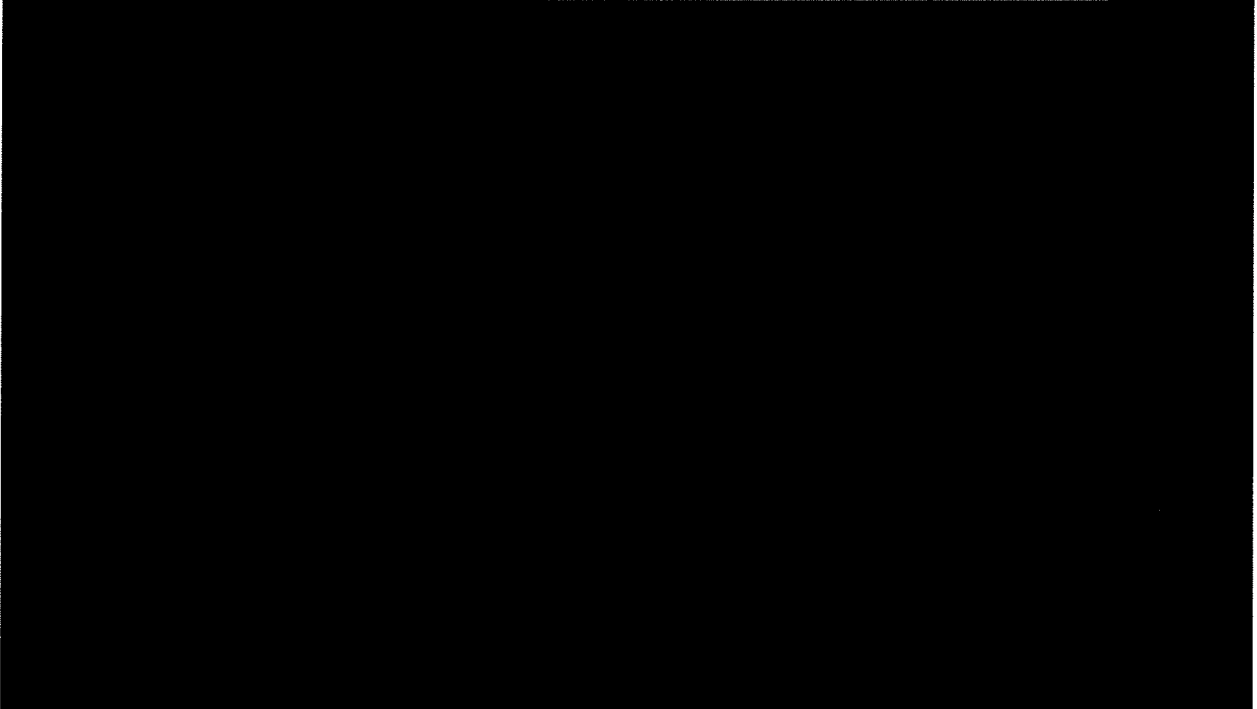
Please pay within 30 days.

Kolesar & Leatham

Hamid Mojtahed
I.D. 9639-000003 - ARM
Re: adv. Mahshid Zahedi & Hossein Adkhoo

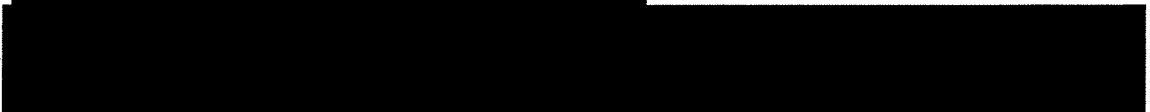
January 10, 2020
Invoice 206175
Page 3

Date	Description of Services	Atty	Hours	Amount
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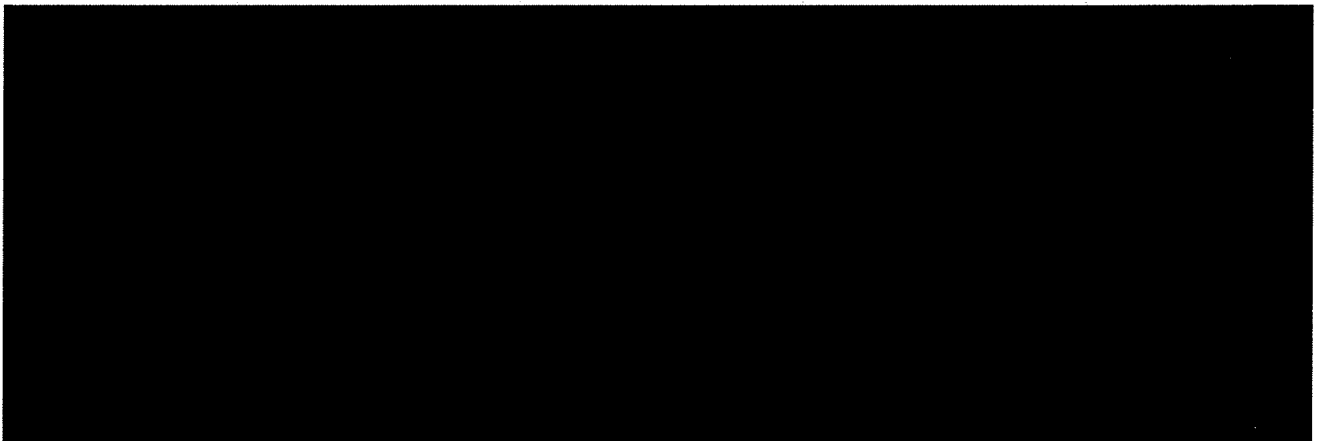
12/31/19		appeal, JDB	0.70	210.00
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12/31/19



Disbursements

Date	Description	Amount
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Kolesar & Leatham

Hamid Mojtahed
I.D. 9639-000001 - ARM
Re: adv. Parviz Safari & Mandana Zahedi

February 12, 2020
Invoice 206832
Page 2

Fees

Date	Description of Services	Atty	Hours	Amount
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12/31/19	[REDACTED] docketing statement; [REDACTED]	JDB	0.20	60.00
01/02/20	[REDACTED] appeal; [REDACTED]	JDB	0.30	90.00

01/28/20	Draft email to settlement judge re. status and request for continuance of briefing.	JDB	0.20	60.00
01/28/20	communications with settlement judge re. scheduling issues; telecon with James Beckstrom	JDB	0.20	60.00

Disbursements

Date	Description	Amount
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Kolesar & Leatham

Hamid Mojtahed
I.D. 9639-000001 - ARM
Re: adv. Parviz Safari & Mandana Zahedi

March 10, 2020
Invoice 207527
Page 2

Fees

Date	Description of Services	Atty	Hours	Amount
02/04/20	telecon with James Beckstrom re. appeal issues [REDACTED]	JDB	0.20	60.00

Disbursements

Date	Description	Amount
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