

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

**DAVID ALVAREZ VENTURA,**

*Appellant,*

vs.

**JOHN H. GANSER, M.D. LIC #9279;  
GOMEZ KOZAR; AND  
MCELREATH AND SMITH, A  
PROFESSIONAL CORPORATION,**

*Respondents.*

No.: **81850**

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Elizabeth A. Brown  
Clerk of Supreme Court

**APPELLANT DAVID ALVAREZ VENTURA'S  
RESPONSE TO RESPONDENTS' MOTION FOR  
SECOND EXTENSION OF TIME TO FILE ANSWERING BRIEF**

## **INTRODUCTION**

The Court should deny Respondents’ request for additional time to file their answering brief. Respondents’ motion does not contain “the legal argument necessary to support it.” NRAP 27(a)(2). Respondents did not even attempt to demonstrate “extraordinary circumstances and extreme need.” *Id.* at 31(b)(3)(B). Unspecified “professional and family commitments and unforeseen scheduling conflicts” do not meet this exacting standard.

## **PERTINENT PROCEDURAL HISTORY**

David Alvarez Ventura filed this lawsuit on January 13, 2020. (J.App.001-J.App.019).<sup>1</sup> Believing the Complaint was legally deficient, the Respondents filed a motion to dismiss on June 8, 2020. (J.App.032-J.App.036).

The district court dismissed this lawsuit on September 4, 2020. (J.App.091-J.App.097). Ventura filed a timely notice of appeal on September 24, 2020. (J.App.107-J.App.108). Ventura filed a timely opening brief on June 1, 2021.

In this appeal, the Respondents were originally required to file their answering brief (if any) on or before July 2, 2021. *See* NRAP 31(a)(1)(B). However, they were unable to meet that deadline. Thus, the parties agreed to a thirty-day extension, as permitted by Nevada Rule of Appellate Procedure

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<sup>1</sup> J.App.\_\_\_\_ refers to documents in the Joint Appendix filed on June 1, 2021.

31(b)(2). Presently, Respondents must file their answering brief on or before August 2, 2021. *See* Notice Motion/Stipulation Approved (Docket 21-18283).

On July 29, 2021, four days before their brief is due, Respondents have asked the Court for an additional thirty days. According to Attorney Campos,

Respondents' counsel has been diligently working on the answering brief, which still needs additional preparation and finalization. Unfortunately, due to professional and family commitments and unforeseen scheduling conflicts, respondents' attorney will be unable to complete the answering brief by the August 2, 2021 due date, despite her best efforts.

Attorney Campos did not provide any explanation regarding how much work she has completed, why she needs thirty additional days to complete whatever work remains, what commitments she has that supposedly trump the Court's rules, or what "unforeseen scheduling conflicts" have supposedly arisen on her calendar. Likewise, Attorney Campos makes no effort to explain why one of her colleagues cannot timely complete whatever work still must be completed.

### **ARGUMENT**

"A motion must state with particularity the grounds for the motion, the relief sought, *and the legal argument necessary to support it.*" NRAP 27(a)(2) (italics added). To that end, given the prior extension, to obtain even more time, Respondents were required to show "extraordinary circumstances and extreme need." *Id.* at 31(b)(3)(B). Respondents did not attempt to meet this standard.

Respondents did not cite a single legal authority that suggests that “professional and family commitments and unforeseen scheduling conflicts” constitute “extraordinary circumstances and extreme need.” This vague, unsworn assertion does not satisfy such an exacting standard. As the Court has noted in a similar context: ““The fact that appellant’s counsel is professionally engaged in other matters does not show excusable neglect . . . .” *Varnum v. Grady*, 90 Nev. 374, 376, 528 P.2d 1027, 1029 (1974) (citation omitted). After all, Respondents “cannot expect this court to continue to keep . . . matters on its docket and then consider the merits of the appeals when [respondents] eventually decide to submit their brief for consideration.” *Huckabay Props. v. NC Auto Parts, LLC*, 130 Nev. 196, 206, 322 P.3d 429, 436 (2014) (alteration in brackets).

This appeal is an exercise in error correction. The primary issue in this appeal requires the application of a single precedent (*Syzdel v. Markman*, 121 Nev. 453, 117 P.3d 200 (2005)) to a single document – the complaint. The second and third issues are similarly straightforward. Although “a thorough analysis of the law and facts” is important, presumably, Respondents performed that analysis (or should have done so) more than more than a year ago, preceding the date on which they filed their motion to dismiss, the focus of this appeal. Even if Respondents failed to review the applicable law before filing their motion to dismiss, certainly, sixty days was plenty of time during which they could do so.

## **CONCLUSION**

Respondents have not demonstrated “extraordinary circumstances and extreme need” for more time. NRAP 31(b)(3)(B). To ensure that standard remains meaningful and is respected by litigants, the Court should deny this motion.

DATED this 29th day of July, 2021.

BY: /s/Neal S. Krokosky  
Neal S. Krokosky  
Nevada Bar No. 14799C  
*Attorney for Appellant*

## **CERTIFICATE OF SERVICE**

Pursuant to NRAP 25(c)(1)(E), on July 29, 2021, the undersigned electronically filed (through the Supreme Court of Nevada's eFlex system) Appellant David Alvarez Ventura's Response to Respondents' Motion for Second Extension of Time to File Answering Brief, thereby providing a copy to the following individuals:

Edward J. Lemons  
Alice Campos Mercado  
Lemons, Grundy & Eisenberg  
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/s/Neal S. Krokosky  
Neal S. Krokosky  
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