

IN THE SUPREME COURT OF THE STATE OF NEVADA

VALLEY HEALTH SYSTEM, LLC (doing business as
“Centennial Hills Hospital Medical Center”), a foreign limited
liability company,
Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE
OF NEVADA ex rel. THE COUNTY OF CLARK, AND THE
HONORABLE JUDGE JERRY A. WIESE II,
Respondent,
and

ESTATE OF REBECCA POWELL, through BRIAN POWELL, as
Special Administrator; DARCI CREECY, individually and as Heir;
TARYN CREECY, individually and as an Heir; ISAIAH
KHOSROF, individually and as an Heir; LLOYD CREECY,
individually,

Real Parties In Interest,
and

DR. DIONICE S. JULIANO, M.D., an individual; DR. CONRADO
C.D. CONCIO, M.D., an individual; DR. VISHAL S. SHAH,
M.D., an individual,
Additional Parties In Interest.

Supreme Court
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Dec 15 2021 11:38 a.m.
Elizabeth A. Brown
Clerk of Supreme Court
District Court
No.: A-19-
788787-C

**PETITIONER’S OPPOSITION TO REAL PARTIES IN INTEREST’S
MOTION TO EXTEND TIME TO FILE FOR EN BANC
RECONSIDERATION**

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Real Parties' motion to extend time to file for en banc reconsideration is unsupported by extraordinary and compelling circumstances as required by NRAP 26(b)(1)(B).

II. ARGUMENT

NRAP 26(b)(1)(B) states as follows:

Except as otherwise provided in these Rules, a party may, on or before the due date sought to be extended, request by telephone a single 14-day extension of time for performing any act except the filing of a notice of appeal. If good cause is shown, the clerk may grant such a request by telephone or by written order of the clerk. **The grant of an extension of time to perform an act under this Rule will bar any further extensions of time to perform the same act unless the party files a written motion for an extension of time demonstrating extraordinary and compelling circumstances why a further extension of time is necessary.**

(emphasis supplied).

This case was prosecuted in bad faith from its commencement. Real Parties' counsel filed a case at least 8 months beyond the statute of limitations. Said counsel provided clear documentary evidence to Petitioner, which this Court reviewed, considered and ruled upon, that demonstrated clearly and convincingly, that his clients possessed inquiry notice at multiple points in this case, the latest of which occurred within a month of decedent's death. This Court noted that Real Parties

sought and received a complete set of decedent's medical records within one month of decedent's death which was just one among multiple triggers that started the statute of limitations clock running.

Real Parties placed two separate State agencies on notice of their suspected, but unfounded, accusations of medical malpractice in Petitioner's part, specifically requesting and receiving acknowledgement of separate investigations. Said investigations were called for by Real Parties within a few days of decedent's death, providing further evidence of their inquiry notice.

Said counsel vehemently opposed the stay of any proceedings in the underlying case while Petitioner's appeal was prosecuted. Said counsel refused to postpone expert exchanges, forcing Petitioner to incur substantial expenses during the pendency of this appeal in order to comply with Court ordered deadlines.

In opposition to Petitioner's motion for summary judgment in the District Court, Real Parties in Interest's counsel manufactured his own standard for proof of receipt of medical records, suggesting to the court below that the law required Petitioner to prove the medical records were received by his clients, when the rebuttable presumption created by statute required that the Real Parties demonstrate the documents were never received after Petitioner's underlying motion contained unrebutted declarations of proper mailing. Moreover, the very documents at issue, which counsel knew were received by his clients, were actually utilized by him to

obtain an expert affidavit to support his Complaint, and they could have been obtained no other way except directly from Petitioner since litigation had not yet ensued.

In an even more blatant violation of practice standards and evidentiary requirements, counsel for the Real Parties concocted a theory that his clients were confused by the decedent's cause of death. Said counsel never bothered to obtain any affidavit or declaration from any Real Party In Interest substantiating that claim, demonstrably further evidence of his failure to properly and timely comport with rules, evidentiary and statutory requirements, and professional rules of practice.

After losing on appeal, said counsel unsuccessfully moved for reconsideration. Without notice to Petitioner's counsel, said counsel telephonically appealed to this Court for an extension of time to submit his motion to en banc reconsideration. He was given until December 13, 2021 to submit his motion by this Court. On the expiration date for submission, said counsel moved this Court for a further extension of time, this time claiming he has a cold and could not devote the necessary time to the motion.

What is interesting to note is that Mr. Padma has not actively participated in any of the motion or appellate practice here. His associate, Ms. Shah, was detailed with that task. Interestingly, there is no mention why someone other than he was unable to timely file his first motion, or do so within the time permitted by the rules.

As noted above, after receipt of a telephonic extension, a party is required to demonstrate “extraordinary and compelling circumstances” to further qualify for any additional time. A cold would hardly fall within that category.

As this Court previously stated, it expects 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).

Mr. Padda and his firm prosecuted a case which was dead on arrival. They did so in bad faith, they did so without evidentiary substantiation for the procedural deficiencies they advanced, and now want more time, after obtaining an ex parte extension, to prosecute an unfounded motion without demonstrating the extremely high standard necessary to obtain it. Counsel’s motion is wholly deficient and should be denied. Real Parties In Interest have been afforded every courtesy by the Courts throughout the pendency of this litigation. 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 this court's directives. *Weddell v. Stewart*, 127 Nev. 645, 650, 261 P.3d 1080, 1084 (2011); *White v. Conaghan*, 445

P.3d 856 (Nev. 2019) (Emphasis supplied).¹ The fact remains, they have no case. Counsel for Real Parties In Interest is wasting judicial resources and causing more expense to be incurred, seeking a judicial to remedy for practice failure. This should not be tolerated any longer, and said motion should be summarily denied.

III. CONCLUSION

Petitioner ends where he began – counsel for Real Parties In Interest failed to demonstrate the requisite level of extraordinary and compelling circumstances to obtain yet a further extension. Rules are established for good reason and ignoring them or failing to familiarize oneself with those rules results in outcomes which may not be pleasant for the rule breaker, but which ultimately protects all parties equally.

DATED this 15th day of December, 2021

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¹ Per N.R.A.P. 36(c)(2), on or after January 1, 2016, an unpublished decision may be cited for its persuasive value, if any. Supreme Court Rule 123 prohibiting citation to unpublished decisions was repealed on November 12, 2015.

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of December, 2021, a true and correct copy of **PETITIONER’S OPPOSITION TO REAL PARTIES IN INTEREST’S MOTION TO EXTEND TIME TO FILE FOR EN BANC RECONSIDERATION** was served upon the following parties by electronic service through this Court’s electronic service system and also by placing a true and correct copy thereof in the United States Mail in Las Vegas, Nevada with first class postage fully prepaid:.

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