

No. 83156  
Supreme Court of Nevada

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MARIA DEL ROSARIO CERVANTES-GUEVARA,

Petitioner,

VS.

CLARK COUNTY DISTRICT COURT, THE HONORABLE  
JUDGE ERIKA BALLOU, DISTRICT JUDGE, DEPARTMENT 23  
Respondents,

AND

MARK THOMAS ANDERSON; THOR DEVELOPMENT, LLC, a  
limited liability corporation;  
Real Parties In Interest

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**PETITIONER'S MOTION FOR EXTENSION  
OF TIME TO FILE SUPPLEMENTAL  
APPENDIX**

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**DECLARATION IN SUPPORT OF PETITION FOR WRIT  
OF MANDAMUS**

STATE OF NEVADA )  
 ) ss:  
COUNTY OF CLARK)

Evan K. Simonsen Esq., being first duly sworn, deposes and states the following:

1. I am an attorney, duly licensed to practice law in the State of Nevada, and an Associate Attorney with the Law Offices of BIGHORN LAW.

2. On July 6, 2021, my office filed a Petition for Writ of Mandamus regarding an Order Denying Plaintiff/Petitioner's *Ex Parte* Motion to Enlarge Time to Serve and Serve by Publication.

3. The signed Order denying said Motion was filed on July 13, 2021.

4. On August 2, 2021, this honorable court issued an Order directing a Supplemental Appendix be filed within 7 days; that an Answer was due within 30 days of the Supplemental Appendix; and that a Reply was due within 14 days of service of the Answer.

5. Through an inadvertent scheduling error, the date for filing the Supplemental Appendix was mis-calendared at 14 days from the date of the Order, rather than 7.

6. Upon recognizing the inadvertent error, undersigned counsel sought to rectify the error and submit the Supplemental Appendix.

7. This Declaration is made in good faith, and not for the purposes of delay.

FURTHER YOUR DECLARANT SAYETH NAUGHT.

/s/ *Evan K. Simonsen*  
**EVAN K. SIMONSEN, ESQ.**

## PETITION FOR WRIT OF MANDAMUS

### I. INTRODUCTION

This is a personal injury case resulting from a car crash. Petitioner sought an enlargement of time within which to serve the defendant driver out of an abundance of caution, given the ambiguity in the various relevant Emergency Directives and Administrative Orders placed in response to the novel COVID-19 coronavirus. PA-I 0077-0098.

Petitioner's underlying motion was denied without any determination of whether good cause existed regarding the timing of the motion, and was further absent any determination regarding whether there was good cause for the motion to be granted. PA-I 0099; Petitioner filed a Motion for Reconsideration, which was subsequently denied. PA-I 0112-0134; *and*, PA-I 0144-0152.

As such, petitioner filed the instant Petition for Writ of Mandamus. On record herein as filed on July 6, 2021, document 2021-19227.

On August 6, 2021, this honorable court issued an Order directing a Supplemental Appendix containing the filed Order Denying Petitioner/Plaintiff's underlying Motion to Enlarge Time. Due to an unfortunate scheduling error, the deadline for this supplemental appendix was set at 14 days, rather than 7, as directed by the Court.

On August 12, 2021, upon realizing the inadvertent mis-calendaring, undersigned counsel submitted a supplemental appendix which was rejected as untimely and was directed to file the instant Motion for Extension of Time, which follows herein.

## **II. LEGAL ARGUMENT AND ANALYSIS**

On August 2, 2021, this Court issued an order stating the following:

“...while petitioner provided this court with a copy of the district court order denying petitioner's motion for reconsideration, petitioner failed to provide this court with the district court order denying the motion for an extension of time to effectuate service on Anderson. Petitioner only provided a minute order. This court normally will not consider a petition for extraordinary relief in the absence of the challenged written order. *See Rust v. Clark Cty. Sch. Dist.*, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987) (noting that an oral pronouncement is ineffective in the absence of a written order). Accordingly, petitioner shall obtain from the district court a copy of the order denying her

motion for an extension of time to serve real party in interest and serve a supplemental appendix containing a copy of the district court's full order..."

See, Order on record herein as issued on August 2, 2021.

Unfortunately, the due date for this supplemental appendix was inadvertently scheduled as 14 days from the date of the above-referenced order, rather than 7.

On August 12, 2021, undersigned counsel came across the order in what was served as his "backup" email account and recognized the calendaring error. After looking into the issue, petitioner noted that the underlying order the Court was seeking was not filed until *after* the Petition for Writ of Mandamus was filed with this Court. Petitioner also filed a Supplement to the Writ briefly noting the disjunctive timing. These filings were subsequently rejected by the Court as untimely, with the rejection noting that a Motion to Extend was required. Petitioner notes that if the Court grants the instant Motion to Extend, this Supplement to the Writ and Supplemental Appendix will be submitted immediately.

NRAP 26(b)(1) notes that "for good cause" the Court may extend deadlines:

(1) By Court Order.

(A) For good cause, the court may extend the time prescribed by these Rules or by its order to perform any act, or may permit an act to be done after that time expires. But the court may not extend the time to file a notice of appeal except as provided in Rule 4(c).

(B) 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.

Petitioner notes that good cause exists to grant this extension: Petitioner is clearly not seeking to delay these proceedings—Petitioner already attempted to file the sought after supplemental appendix, only 3 days after the initial deadline, and will refile said supplemental appendix immediately should the Court see fit to grant the instant motion; The deadline was missed as the result of excusable neglect—undersigned counsel inadvertently mis-calendared the deadline, and as soon as the error was discovered sought to correct the oversight; There is no



harm or prejudice to the real parties in interest herein—the order directing the supplemental appendix states that any Answering Brief is due 30 days from the filing of the appendix, thus, any Answering Brief would still be due 30 days after the timely filing of the supplemental appendix pursuant to the Court’s granting of the instant motion.

As such, Petitioner would respectfully request that the court grant an extension of 7 days from the date of granting this motion such that petitioner can resubmit the supplemental appendix as requested by the Court.

### **III. CONCLUSION**

Based on the above, Petitioner Respectfully Requests that this Honorable Court GRANT Petitioner’s Motion to Extend Time to File Supplemental Appendix.

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Further, Petitioner Respectfully Requests that in GRANTING Petitioner's Motion, the Court provide 7 days from the Order granting the instant motion for petitioner to file said supplemental appendix.

DATED this 13th day of August, 2021.

**BIGHORN LAW**

By: /s/ Evan K. Simonsen  
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## **CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of **BIGHORN LAW**, and on the 13th day of August, 2021, an electronic copy of the ***PETITIONER'S MOTION FOR EXTENSION OF TIME TO FILE SUPPLEMENTAL APPENDIX*** as follows:

- ☒ Electronic Service – By serving a copy thereof through the Court's electronic service system; and/or
- ☒ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below:

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*Respondent*

/s/ Erickson Finch  
An employee of **BIGHORN LAW**