

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST;
AMERICAN GRATING, LLC,

Appellants,

v.

DANIEL S. SIMON, AND THE
LAW OFFICE OF DANIEL S.
SIMON, A PROFESSIONAL
CORPORATION,

Respondents.

Electronically Filed
Sep 19 2021 04:16 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case Nos. 83258

District Court Case Nos.
A-16-738444-C and
A-18-767242-C

AMENDED DOCKETING
STATEMENT
CIVIL APPEALS¹

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. Id. Failure to fill out the statement completely or to file it in a timely manner

¹ Amended #21 on pages 8-9 to add additional reference to NRAP 3A(b)(8) as the basis for review of the special order entered on the same day as the district court's final judgment. The supporting documents to this docketing statement remain the same and are being omitted from this filing in the interest of efficiency.

constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department X
County Clark Judge Tierra Jones
District Court Case No. A-16-738444-C consolidated with A-18-767242-C

2. Attorney filing this docketing statement:

Attorney: Steve Morris (1543) Telephone: 702-474-9400

Firm: MORRIS LAW GROUP

Address: 801 South Rancho Dr., Ste. B4
Las Vegas, Nevada 89106
(702) 474-9400

Client: Edgeworth Family Trust and American Grating, LLC

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorneys representing respondents:

Attorney: Peter S. Christiansen and Kendelea L. Works

Firm: Christiansen Law Offices

Address: 810 S. Casino Center Blvd., Ste. 104, Las Vegas, Nevada 89101

Clients: Respondents Daniel S. Simon, Law Office of Daniel S. Simon

Attorney: James R. Christensen

Firm: n/a

Address: 601 S. Third Street, Las Vegas, Nevada 89101

Clients: Respondents Daniel S. Simon, Law Office of Daniel S. Simon

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of Jurisdiction |
| <input type="checkbox"/> Summary Judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default Judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input checked="" type="checkbox"/> Other (specify) Failure to Properly Adjudicate Lien Amount on Remand and Denial of Motion to Release Client Funds Not Subject to Lien and Client File |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify)____ |

5. Does this appeal raise issues concerning any of the following? No.

- ☐ Child custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

- (1) *Edgeworth Family Trust; and American Grating, LLC, Appellants v. Daniel S. Simon and Law Office of Daniel S. Simon, Appeal, Respondents*, Case No. 77678;
- (2) *Edgeworth Family Trust; and American Grating, LLC, Appellants*

- v. Daniel S. Simon and Law Office of Daniel S. Simon*, Appeal Case No. 78176; and
(3) *Law Office of Daniel S. Simon, Petitioner; Eighth Judicial District Court, the Hon. Tierra Jones, Respondent*, Writ Proceeding, Case No. 79821.

7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition: N/A.
8. **Nature of the action.** Briefly describe the nature of the action and the result below:

This appeal, like the proceedings referenced in #6 above, arise from the attorney lien adjudication proceedings that followed settlement of the underlying action. This Court affirmed the district court's lien adjudication, its finding that the attorney, Daniel Simon, was constructively discharged, and remanded for the district court to (1) explain the basis of the \$200,000 quantum meruit award of an attorney fee and its reasonableness under *Brunzell*; and (2) to also explain the reasonableness under *Brunzell* of the \$50,000 attorney's fees award entered by the district court.

On remand, the district court entered an order explaining the basis of the \$50,000 attorney fee award and remitted the \$5,000 in costs to the actual amount incurred (\$2,520). With respect to No. 1, however, the district court entered an amended order awarding the same \$200,000 in quantum meruit that was the subject of remand without offering any explanation as to its basis or its reasonableness under *Brunzell*, as the Supreme Court expressly directed it to do. The district court also refused to enter an order releasing the excess between the more than \$2M in funds being withheld from Appellants since 2018, and the unpaid judgments arising out of liens as adjudicated by the district court. The district court also refused to order Respondents to turn over the complete Edgeworth client file to Appellants, despite the fact that Respondent Simon's fees were fully secured.

9. **Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):
1. Did the district court err in merely restating its prior decision

rather than responding to this Court's mandate to state the basis for and the reasonableness of its \$200,000 *quantum meruit* award in the face of evidence provided by the respondent that a "reasonable" fee under *Brunzell* would not be more than \$33,811.25.

2. Did the district court err in refusing to release to the Appellants the \$1.5M+, which is the difference between funds withheld from the client due to the amount of the amended charging lien and \$484,982.50, which is the amount that the district court entered as a judgment on the lien after hearing Respondent Simon's evidence.
 3. Did the district court err in refusing to release, pursuant to NRS 7.055, the complete client file to the appellants, who have provided more than adequate security for the attorney fees in dispute and who are bound by the protective order in the substantive action.
10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issue raised:

Appellants are not aware of any pending proceedings raising the same or similar issues.

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

- ☒ N/A
☐ Yes
☐ No

If no, explain:

12. **Other Issues.** Does this appeal involve any of the following issues?

- ☐ Reversal of well-settled Nevada precedent (identify the case(s))
- ☐ An issue arising under the United States and/or Nevada Constitutions.
- ☒ A substantial issue of first impression
- ☒ An issue of public policy
- ☒ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
- ☐ a ballot question

13. **Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

The Nevada Supreme Court should retain this appeal under NRAP 17(a)(12), because it involves the district court's failure to adhere to this Court's mandate in Case Nos. 77678 and 78176. *Edgeworth Family Trust v. Simon*, 477 P.3d 1129 (table) 2020 WL 7828800 (unpublished) (Nev. 2020). This appeal also raises important questions of first impression and statewide importance that the Court has not previously reached concerning two issues. First, what is the length of time that an attorney can encumber client funds under NRS 18.015 when the lien amount claimed was not based on a written agreement, was unreasonable when filed, and was adjudicated by the district court in a five-day hearing for a fraction of the amount for which the lien was filed. Second, whether NRS 7.055 permits an attorney who is adequately secured for his/her attorney fees to refuse to produce a complete client file under the guise that he has not been paid or that portions of the file are protected under a standard confidentiality and protective order to which he and his client are parties.

NRS 18.015 allows attorneys the protection of a charging lien. The statute tries to balance the rights of the attorney and client by

requiring that liens be imposed only for the amount of the fee agreed to by the parties or, if no agreement, for a reasonable amount *and* by requiring prompt adjudication of the parties' respective rights. NRS 18.015(2) (lien may be for amount agreed or reasonable amount); and NRS 18.015(6) (the "court shall, **after five days** notice to all interested parties, adjudicate the rights of the attorney, client, or other parties and enforce the lien."). The purpose of the lien is not to give license to lawyers to tie up client funds **for years** when they do not acquiesce to an attorney's unreasonable demands for more money than he agreed to accept as a fee, as Respondent threatened and has done here.

14. **Trial.** If this action proceeded to trial, how many days did the trial last? N/A.

Was it a bench or jury trial? N/A

15. **Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/her from participation in this appeal? If so, which Justice? No.

TIMELINESS OF NOTICE OF APPEAL

16. **Date of entry of written judgment or order appealed from**

The district court entered its decision and orders on June 17, 2021 and notice of entry of the orders was given on June 18, 2021.

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review: N/A.

17. **Date written notice of entry of judgment or order was served**

June 18, 2021.

Was service by:

- ☐ Delivery
☒ Mail/electronic/fax

18. **If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing: Motion for Reconsideration

- ☐ NRCP _____
☐ NRCP 52(b)
☐ NRCP 59

Date of filing _____
Date of filing _____
Date of filing: N/A

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal *See AA Primo Builders v. Washington*, 126 Nev. ___, 245 P.3d 1190 (2010)

(b) Date of entry of written order resolving tolling motion: N/A.

(c) Date written notice of entry of order resolving tolling motion was served: N/A.

Was service by:

- ☐ Delivery
☐ Mail/electronic/fax

19. Date notice of appeal filed

July 17, 2021.

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other:

NRAP 4(a).

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

- (a) ☒ NRAP 3A(b)(1) ☐ NRS 38.205
☐ NRAP 3A(b)(2) ☐ NRS 233B.150
☐ NRAP 3A(b)(3) ☐ NRS 703.376
☒ Other (specify) NRAP 3A(b)(8) Special order entered after final judgment.

(b) Explain how each authority provides a basis for appeal from the judgment or order:

Under NRAP 3A(b)(1), an appeal may be taken from a "final judgment entered in an action . . . commenced in the court in which the judgment is rendered." The Edgeworth Family Trust and American Grating, LLC (collectively the "Edgeworths") commenced this case in the Eighth Judicial District Court. On June 18, 2021, the district court entered its Decision and Order Denying the Edgeworth's motion styled Plaintiff's Renewed Motion for Reconsideration of April 19, 2021 Third-Amended Decision and refusing to obey the mandate this Court expressed in its Order of December 30, 2020 (Remittitur Issued April 13, 2021) in Case Nos. 77678/78176). Also on June 18, 2021 following entry of final judgment, the district court entered a special order denying the Edgeworths' Motion for Order Releasing Client funds in Excess of the Judgment and Requiring Production of Complete Client File. This special order is reviewable under NRAP 3A(b)(8).

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties: Plaintiffs Edgeworth Family Trust and American Grating, LLC

Lange Plumbing, LLC; Viking Automatic Sprinkler Co., Doe and Roe Defendants (Defendants in Case No. A-16-738444-C);

Daniel S. Simon and Law Office of Daniel S. Simon (Defendants in Case No. A-18-767242-C).

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

All claims against all defendants, including Lange Plumbing, LLC and Viking Automatic Sprinkler Co., in Case No. A-16-738444-C were fully adjudicated in the district court. The issues that remain and that form the basis for this appeal is from the dispute between plaintiffs and their original attorney that arose following settlement of the substantive claims.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Plaintiffs' Claims for Relief:

- (1) Plaintiff's original claims for conversion, declaratory relief, breach of contract, and breach of the covenant of good faith and fair dealing were dismissed, and that dismissal was affirmed in the prior appellate proceedings; the case was remanded in part for reconsideration of the basis and reasonableness of the *quantum meruit* award for an attorney fee and a separate attorney fee award. The issues that remain and that form the basis for this appeal are from the dispute between plaintiffs and their original attorney that arose following settlement of the substantive claims.
 - (2) Motion to Release Client Funds and Client File – appellants challenge the district court's refusal to release amounts in excess of the judgments she entered, and refusal to order the release of the complete client file.
24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below:
- ☒ Yes
☐ No
25. If you answered "No" to question 23, complete the following:
- N/A
26. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (e.g. order is independently appealable under NRAP 3A(b)):
- N/A.
27. Attach file-stamped copies of the following documents:
- The latest-filed complaint, counterclaims, cross-claims, and third-party claims.
 - Any tolling motion(s) and order(s) resolving tolling motion(s)
 - Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue

- on appeal.
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Edgeworth Family Trust;
American Grating, LLC
Name of Appellant

Steve Morris
Name of counsel of record

September 20, 2021
Date

/s/ STEVE MORRIS
Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25 and NEFR 9(f), I certify that I am an employee of Morris Law Group; that on this date I electronically filed the foregoing **DOCKETING STATEMENT CIVIL APPEALS** with the Clerk of the Court for the Nevada Supreme Court by using the Nevada Supreme Court's E-Filing system (Eflex). Participants in the case who are registered with Eflex as users will be served by the Eflex system as follows:

TO:

James R. Christensen, Bar No. 3861
601 S. 6th Street
Las Vegas, NV 89101

Peter S. Christiansen, Bar No. 5254
Kendele L. Works, Bar No. 9611
CHRISTIANSEN LAW OFFICES
810 S. Casino Center Blvd., Ste. 104
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Attorneys for Respondent Law Office of Daniel S. Simon, A Professional Corporation; and Daniel S. Simon

Dated this 20th day of September, 2021.

/s/ GABRIELA MERCADO