

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

VENETIAN CASINO RESORT,  
LLC; AND LAS VEGAS SANDS,  
LLC,

Petitioners,

vs.

THE EIGHTH JUDICIAL  
DISTRICT COURT OF THE STATE  
OF NEVADA, IN AND FOR THE  
COUNTY OF CLARK; AND THE  
HONORABLE KATHLEEN E.  
DELANEY, DISTRICT JUDGE,

Respondents,

and

JOYCE SEKERA, AN INDIVIDUAL,  
Real Party in Interest.

No. 83600-COA

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Clerk of Supreme Court

*OPPOSITION TO EMERGENCY MOTION UNDER NRAP 27 AND NRAP 8  
STAYING EXECUTION OF ORDER*

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*NRAP 26.1 DISCLOSURE*

The undersigned counsel of record certifies that the following are persons or entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

1. Joyce Sekera is an individual.
2. The Galliher Law Firm represents Joyce Sekera in the district court.
3. Claggett & Sykes Law Firm represents Joyce Sekera in the district court and before this court.

Dated this 18th day of October, 2021.

Claggett & Sykes Law Firm

By /s/ Micah S. Echols  
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## *INTRODUCTION*

Petitioners Venetian Casino Resort, LLC, and Las Vegas Sands, LLC, (Venetian) filed an emergency motion under NRAP 27(e) seeking to stay the execution of a district court order pending resolution of their original mandamus petition<sup>1</sup> under NRAP 8. As Venetian’s motion is both procedurally defective and fails on its merits, Sekera urges this court to deny this motion.

## *ARGUMENT*

### *I. Standard of Review*

The decision to issue a stay pending the resolution of a petition is within this court’s sound discretion. *Kress v. Corey*, 65 Nev. 1, 16-17, 189 P.3d 352, 360 (1948). An abuse of discretion occurs when a court exercises its discretion “in clear disregard of the guiding legal principles.” *Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 80, 319 P.3d

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<sup>1</sup>A writ of prohibition is unavailable to petitioners as the district court has original jurisdiction over the underlying matter. *See* Nev. Const. art. 6, § 6 (providing that district courts “have original jurisdiction in all cases excluded by law from the original jurisdiction of justices’ courts”); NRS 4.370(1)(b) (providing that justice courts lack jurisdiction over actions for damages for injury to the person exceeding \$15,000); NRS 34.320 (providing that a writ of prohibition is available to “arrest the proceedings of any tribunal . . . when such proceedings are without or in excess” of the tribunal’s jurisdiction).

606, 615 (2014) (internal quotations omitted).

In seeking emergency relief from this court that was otherwise available in the district court, Venetian must state whether it submitted “all grounds advanced in support of the motion . . . to the district court,” and, if not, why this court should not deny the motion. NRAP 27(e)(4). In seeking a stay pending the resolution of an original writ proceeding, Venetian must “ordinarily move first in the district court.” NRAP 8(a)(1)(A). If it fails to do so, Venetian must “show that moving first in the district court would be impracticable.” NRAP 8(a)(2)(A)(i). When ruling on such a motion in a civil matter not involving child custody, this court must consider the following factors:

(1) whether the object of the . . . writ petition will be defeated if the stay . . . is denied; (2) whether [petitioners] will suffer irreparable or serious injury if the stay . . . is denied; (3) whether [Sekera] will suffer irreparable or serious injury if the stay . . . is granted; and (4) whether [petitioners are] likely to prevail on the merits in the . . . writ petition.

NRAP 8(c).<sup>2</sup>

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<sup>2</sup>In the context of a writ petition, Venetian may alternatively satisfy the fourth factor under NRAP 8(c) by “present[ing] a substantial case on the merits when a serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay.” *Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 659, 6 P.3d 982, 987 (2000) (internal quotations omitted).

**II. *Venetian failed to move for a stay pending resolution of their original mandamus petition in district court, provide no argument that doing so would be impracticable, and provide no argument as to why this court should not deny the motion***

Both NRAP 27(e)(4) and NRAP 8(a) require Venetian to move for a stay in district court pending resolution of an original petition prior to moving for the same in this court.<sup>3</sup> Here, Venetian could have sought a stay in district court pending resolution of its original mandamus petition under NRCP 62(d). It did not.<sup>4</sup> It fails to direct this court's attention to where it advanced all grounds in support of its emergency motion in the district court and it fails to present any argument as to why this court should not deny the motion. NRAP 27(e)(4). Venetian likewise fails to show why moving for a stay pending resolution of its original

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<sup>3</sup>Nevada courts recognize the necessity of this rule, as the district court has “vastly greater familiarity with the facts and circumstances of the particular case.” *Nelson v. Heer*, 121 Nev. 832, 836, 122 P.3d 1252, 1254 (2005). Thus, “the district court is better positioned to resolve any factual disputes” involving the requested stay, which appellate courts are ill suited to resolve in the first instance. *Id.*

<sup>4</sup>The record before this court demonstrates that Venetian orally moved for a stay “to allow [them] an opportunity to bring [their grievance] back to the [a]ppellate [c]ourt if necessary,” 16 PA 3537, which the district court granted, *id.* at 3570. Venetian did not cite NRCP 62(d) nor did it explicitly request a stay pending resolution of its original mandamus petition. *Id.* at 3537. Thus, the record belies Venetian's statement that it “moved for a stay of execution in district court.” Pet's Mot. (PM) 3.

mandamus petition in the district court would have been impractical. NRAP 8(a)(2)(A)(i). Thus, the instant motion is procedurally defective, as it does not comply with the express language of NRAP 27(e)(4) or NRAP 8(a)(2)(A)(i). Accordingly, this court should not sanction Venetian’s “lackadaisical practices” and summarily deny the motion.<sup>5</sup> *Miller v. Wilfong*, 121 Nev. 619, 625, 119 P.3d 727, 731 (2005).

### III. Venetian fails to meet the NRAP 8(c) factors

Venetian’s motion makes no argument regarding the NRAP 8(c) factors. Indeed, the motion does not even cite NRAP 8(c). Notwithstanding Venetian’s failure, Sekera nonetheless engages in the required NRAP 8(c) analysis for the benefit of this court.

Sekera does not dispute that this court’s decision to not issue a stay would defeat the object of Venetian’s petition. However, Venetian does not warrant a stay on that factor alone, as the “other stay factors also apply in the stay analysis.” *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 253, 89 P.3d 36, 39 (2004). A brief analysis of the remaining factors follows.

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<sup>5</sup>Nevada appellate courts expect counsel to pursue appellate relief “with high standards of diligence, professionalism, and competence” and do not tolerate “flagrant [NRAP] violations.” *Miller*, 121 Nev. at 625, 119 P.3d at 731 (alteration in original) (internal quotations omitted).

**A. *Venetian fails to demonstrate that it will suffer irreparable or serious injury if the stay does not issue***

Venetian fails to articulate what harm it will suffer in complying with the district court's order. Rather, Venetian argues that "innocent third parties will have their privacy rights irreparably damaged." PM 10. The interests of non-parties are simply not within the plain language of NRAP 8(c). The rule plainly states that the second factor is "whether appellant/petitioner will suffer irreparable or serious injury if the stay or injunction is denied."<sup>6</sup> Moreover, Venetian fails to argue how it has standing to raise the privacy interests of non-parties in the instant motion. *See High Noon at Arlington Ranch Homeowners Ass'n v. Eighth Judicial Dist. Court*, 133 Nev. 500, 507, 402 P.3d 639, 646 (2017) (noting that "a party has standing to assert only its own rights and cannot raise the claims of a third party not before the court" absent express statutory authorization). Accordingly, Venetian has failed to

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<sup>6</sup>Had the Supreme Court of Nevada intended for the rule to contemplate harm to non-parties, it would have expressly included such language in the rule. *See Weddell v. Stewart*, 127 Nev. 645, 651, 261 P.3d 1080, 1084 (2011) (holding that "[r]ules of statutory construction apply to court rules"); *City Council of Reno v. Reno Newspapers, Inc.*, 105 Nev. 886, 891, 784 P.2d 974, 977 (1989) (noting that Nevada courts, when the language of a statute is plain and unambiguous, "give that language its ordinary meaning and [will] not go beyond it").

demonstrate it will suffer any harm should the stay not issue. Thus, this factor weighs against Venetian.

**B. *Sekera will suffer serious injury if the stay issues***

While increased litigation costs and delay do not ordinarily constitute serious injury, *Mikon Gaming Corp.*, 120 Nev. at 253, 89 P.3d at 39 (noting that increased litigation costs and delay did not constitute serious injury in an appeal seeking to compel arbitration), here the continuous delays in trial cause actual and serious injuries to Sekera. Sekera suffered her injury on November 4, 2016. 1 PA 2. As the district court found, she alleges that she suffered spinal and brain injuries from her fall, causing her wage loss and loss of earning capacity. 16 PA 3565. She has incurred \$114,009.27 in past medical expenses and will require \$457,936.99 in future medical expenses. *Id.* She is unable to work due to her injury and lives with her elderly mother. Ex. A. Thus, this court may distinguish the instant matter's facts from *Mikon Gaming Corp.*, as the continuous delays in litigation place an onerous burden on Sekera. Accordingly, this factor weighs in favor of Sekera.

**C. *Venetian fails to demonstrate a probability of success on the merits or, alternatively, fails to present a substantial case on the merits involving a serious legal question***

Venetian's underlying original mandamus petition challenges



the district court's discovery ruling, which this court reviews for an abuse of discretion. *Cotter v. Eighth Judicial Dist. Court*, 134 Nev. 247, 249, 416 P.3d 228, 231-32 (2018). To prevail, Venetian must demonstrate that the district court's ruling constituted "[a] clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule." *Id.* at 249, 416 P.3d at 232 (alteration in original) (internal quotations omitted). In determining whether petitioners made such a showing, this court reviews legal questions de novo and gives the district court's findings of fact deference. *Id.*

The gravamen of Venetian's motion is that the at-issue information regarding former patrons that slipped and fell on the same floor and under the same conditions as Sekera is not relevant under *Eldorado Club, Inc. v. Graff*, 78 Nev. 507, 377 P.2d 174 (1962). PM 7. Thus, Venetian contends that the district court erred in applying the NRCP 26(b)(1) proportionality analysis. *Id.* at 7-9.

In *Eldorado Club*, the Supreme Court of Nevada noted that evidence of prior slip and fall accidents involving temporary conditions that "might or might not exist from one day to the other" is ordinarily inadmissible to demonstrate notice. 78 Nev. at 511, 377 P.2d 176. However, the court also noted that such evidence is admissible where

“there is proper showing that the conditions surrounding the prior occurrences have continued and persisted.” *Id.* The record before this court demonstrates that the conditions surrounding Sekera’s slip and fall has happened on numerous occasions and has continued and persisted with Venetian’s knowledge.<sup>7</sup> 1 PA 174-85. The district court relied upon this evidence and concluded that the at-issue information was relevant to Sekera’s claims and to rebut Venetian’s affirmative defense of comparative negligence. 16 PA 3564. Venetian’s motion does not demonstrate how substantial evidence does not support the district court’s factual finding nor does it demonstrate how the district court misapplied *Eldorado Club*.

Alternatively, Venetian contends that Sekera failed to meet her burden under NRCP 26(b)(1). PM 7-8. However, the district court weighed each of the six proportionality factors under NRCP 26(b)(1) and made findings of fact in support of its ruling. 15 PA 3564-67. Venetian’s motion does not demonstrate how substantial evidence does not support the district court’s factual findings nor does it demonstrate how the

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<sup>7</sup>Indeed, Venetian disclosed a spreadsheet demonstrating at least 59 slip and fall incidents involving water on its floors between November 24, 2013, and August 5, 2016. 1 PA 174-85.

district court misapplied controlling law in so doing.<sup>8</sup> Finally, Venetian fails to cogently argue how the district court's order fails to comply with this court's order in *Venetian Casino Resort, LLC v. Eighth Judicial District Court*, 136 Nev., Adv. Op. 26, 467 P.3d 1 (App. 2020), as the district court found that Venetian demonstrated good cause and redacted all information to which the former patrons had a reasonable expectation of privacy.<sup>9</sup>

Alternatively, Venetian fails to demonstrate that the instant motion presents a substantial case on the merits involving a serious legal question as they cite no controlling statute or caselaw which clearly demonstrates that the at-issue information is not subject to discovery. Venetian further fails to engage in any equitable balancing

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<sup>8</sup>Venetian's reliance upon *Schlatter v. Eighth Judicial District Court* is misplaced, as the court vacated the district court's discovery order on relevance grounds, not privacy interests. 93 Nev. 189, 193, 561 P.2d 1342, 1344 (1977). Venetian's reliance upon *Clark Cty. Office of the Coroner/Med. Exam'r v. Las Vegas Review-Journal* is similarly misplaced, as the court's holding applied to government agencies responding to public records requests, not private corporations responding to discovery requests. 136 Nev., Adv. Op. 5, 458 P.3d 1048, 1057-58 (2020).

<sup>9</sup>Specifically, the district court redacted social security numbers, dates of birth, driver license numbers, and certain private health information provided to medical providers.

demonstrating that the equities heavily weigh in favor of issuing a stay.

*Fritz Hansen A/S*, 116 Nev. at 659, 6 P.3d at 987.

Venetian has failed to demonstrate a likelihood of prevailing on their original mandamus petition. It has also failed to demonstrate a substantial case on the merits involving a serious legal question and that the equities heavily weigh in favor of issuing a stay. Accordingly, this factor weighs in favor of Sekera.

#### CONCLUSION

“Extraordinary relief should be extraordinary.” *Walker v. Second Judicial Dist. Court*, 136 Nev., Adv. Op. 80, 476 P.3d 1194, 1195 (2020). Here, through their procedurally and substantively deficient motion, Venetian has failed to demonstrate they merit a stay, let alone extraordinary relief, from this court. Accordingly, Sekera urges this court to deny the motion.

Dated this 18th day of October, 2021.

Claggett & Sykes Law Firm

By /s/ Micah S. Echols

Micah S. Echols, Esq.  
Nevada Bar No. 8437

*Attorneys for Real Party in Interest,  
Joyce Sekera*

*CERTIFICATE OF COMPLIANCE*

I hereby certify that I have read this opposition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this opposition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the opposition regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is found. I understand that I may be subject to sanctions if the accompanying opposition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 18th day of October, 2021.

Claggett & Sykes Law Firm

By /s/ Micah S. Echols  
Micah S. Echols, Esq.  
Nevada Bar No. 8437

*CERTIFICATE OF SERVICE*

I hereby certify that I electronically filed the foregoing Opposition to Emergency Motion Under NRAP 27 and NRAP 8 Staying Execution of Order with the Nevada Court of Appeals on the 18th day of October, 2021. I will electronically serve the foregoing document in accordance with the Master Service List as follows:

Michael A. Royal, Esq.

Gregory A. Miles, Esq.

I further certify that I emailed the foregoing document to the following:

Hon. Kathleen E. Delaney, D.J.

[dept25lc@clarkcountycourts.us](mailto:dept25lc@clarkcountycourts.us)

/s/ Anna Gresl  
Anna Gresl, an employee of  
Claggett & Sykes Law Firm

**EXHIBIT 1**

**EXHIBIT 1**

DISTRICT COURT  
CLARK COUNTY, NEVADA

**CERTIFIED COPY**

JOYCE SEKERA, an Individual, )

Plaintiff, )

vs. )

CASE NO.: A-18-772761-C

DEPT NO.: XXV

VENETIAN CASINO RESORT, LLC, )

d/b/a, THE VENETIAN LAS )

VEGAS, a Nevada Limited )

Liability Company; LAS VEGAS )

SANDS, LLC d/b/a THE )

VENETIAN LAS VEGAS, a Nevada )

Limited Liability Company; )

YET UNKNOWN EMPLOYEE; DOES I )

through X, inclusive, )

Defendants. )

DEPOSITION OF JOYCE P. SEKERA

Taken on Thursday, March 14, 2019

By a Certified Court Reporter

At 1522 West Warm Springs Road

Henderson, Nevada

At 10:00 a.m.

Reported by: Blanca I. Cano, CCR No. 861, RPR

Job No.: 31775



1 MR. KUNZ: Let him finish.

2 THE WITNESS: Oh, I'm sorry.

3 BY MR. ROYAL:

4 Q. Okay. So she has two boys.

5 So you have two grandchildren?

6 A. Yes.

7 Q. And do they live with you?

8 A. No.

9 Q. So you just live with your mother?

10 A. Yes.

11 Q. Where does Marissa live? In Las Vegas?

12 A. Yes.

13 Q. What's her husband's name?

14 A. Brian.

15 Q. And so Marissa and Brian live in Las Vegas,  
16 they have two boys, and do you see them frequently?

17 A. Yes.

18 Q. Okay. Those are your only grandchildren, those  
19 two boys?

20 A. Yes.

21 Q. And what are the ages of the boys?

22 A. Five and seven.

23 Q. Okay. Does Marissa work?

24 A. No.

25 Q. What's her husband do?

1 A. He's a dentist.

2 Q. Okay. Is he a young dentist? How long has he  
3 been practicing?

4 A. Let's see. They got married in...  
5 About ten years.

6 Q. Okay. I understand that you are not employed.

7 A. Yes.

8 Q. And I've read in some of the records you're  
9 retired, but you would work if you were healthy?

10 A. If I could, yes.

11 Q. Okay. So you're retired or you're unemployed  
12 because of your health; is that right?

13 A. I'm what?

14 Q. You're not working because of your health?

15 A. Yes.

16 Q. And as I understand it, you've not worked since  
17 November 4, 2016?

18 A. Yes.

19 Q. And that's because of your health?

20 A. Correct.

21 Q. Are you still getting -- is there a doctor who  
22 has told you recently within the last 60 days that you  
23 cannot work?

24 A. I mean, I don't have any documents to that.

25 Q. Okay. When's the last time a doctor that you