

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDGEWORTH FAMILY TRUST; AND
AMERICAN GRATING, LLC,

PETITIONERS,

VS.

CLARK COUNTY DISTRICT COURT,
THE HONORABLE TIERRA JONES,
DISTRICT JUDGE, DEPT. 10,

Respondents,

DANIEL S. SIMON; THE LAW OFFICE
OF DANIEL S. SIMON,

Real Parties in Interest.

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Case Number:

Dist. Ct. Case No. A-18-767242-C
Consolidated with A-16-738444-C

**PETITION FOR WRIT OF
MANDAMUS TO RELEASE
CLIENT FUNDS IN EXCESS OF
ADJUDICATED LIEN
AMOUNT AND TO RELEASE
THE COMPLETE CLIENT FILE**

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RULE 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in Nev. R. App. P. 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.

Petitioners Edgeworth Family Trust is a trust formed under the laws of the State of Nevada. American Grating, LLC, is a Limited Liability Company formed under the laws of the State of the Nevada. American Grating, LLC is wholly owned by Brian Edgeworth and Angela Edgeworth, who are also the Trustees of the Edgeworth Family Trust. These Petitioners were represented below by Vannah & Vannah, Messner Reeves, LLP and Morris Law Group. Petitioners are represented in this proceeding by Morris Law Group.

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ROUTING STATEMENT

The Nevada Supreme Court has jurisdiction over this Petition pursuant to Nev. R. App. P. 17(a)(12). This Petition raises important questions of first impression and statewide importance to lawyers, litigants, and the district courts involving statutory questions that the Court has not previously addressed.

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I. INTRODUCTION

This Petition concerns approximately \$1.5 million in excess attorney lien funds and client-file materials being withheld by a discharged attorney who no longer claims a right to either the excess lien funds or his former clients' file. Petitioners, the Edgeworth Family Trust and American Grating, LLC (collectively, "the Edgeworths"), have no other avenue for relief to obtain the excess funds that belong to them or their complete client file in their former attorney's possession.

The Edgeworths and their discharged counsel/Real Parties in Interest Daniel S. Simon and the Law Office of Daniel S. Simon (collectively, "Simon"), were adverse parties in a five-day evidentiary hearing before the district court in August and September 2018. The primary purpose of the hearing was to adjudicate Simon's charging lien for fees. The lien was filed against several million dollars received by the Edgeworths in settlement of a property damage lawsuit (hereafter referred to as the "Viking" action) in which Simon represented them from May 2016 until he was discharged on November 29, 2017. The Viking action was concluded by the Edgeworths using the services of Simon's successor, the law firm of Vannah and Vannah

(hereafter referred to as "Vannah"). For a brief period after his discharge, Simon continued to render nominal administrative services.

Nearly \$2 million of the settlement proceeds received by the Edgeworths were initially deposited in a bank account (since transferred to Morris Law Group's trust account) to secure payment of whatever amount the district court decided was due Simon for his work on behalf of the Edgeworths. Release of funds from the account required Simon's consent.

On November 19, 2018, the district court adjudicated Simon's lien for a fraction of the almost \$2 million deposited to secure payment of his fees, resulting in nearly \$1.5 million in excess funds in the account. By not appealing the lien adjudication, Simon has abandoned any claim to the excess funds. Nevertheless, neither he nor the district court will permit release of the funds in excess of the amount necessary to fully satisfy Simon's lien. With no basis in law or logic, the district court accepted Simon's contention that the excess funds he makes no claim to cannot be released to the Edgeworths while the case remains pending on appeal on *any* issue.

The Edgeworths also seek the Court's intervention to obtain their complete client file from Simon under NRS 7.055. Although Simon is fully secured for the full amount of all fees and costs awarded to him by the district court (the Edgeworths have appealed a portion of the fees awarded for post-discharge work to this Court in case number 83258, consolidated with case number 83260), Simon declined to submit to the statute's command to turn over the Edgeworths's file. He contends, again with the district court's support, that a stipulated protective order to which the Edgeworths are parties in the long-concluded Viking action prevents him from complying with the statute. But the confidentiality required by the protective order is directed to third parties; it does not and cannot preclude the Edgeworths from *obtaining* their own file materials from their former attorney. This is especially true where the file materials may be essential to not only challenging the lien adjudication, but also to defending against Simon's SLAPP litigation against them, which is the subject of yet another appeal before this Court (Case No. 82058).

II. ISSUES PRESENTED BY THIS WRIT PETITION

This writ petition raises two important questions of first impression and statewide importance to lawyers, litigants, and the district courts involving statutory questions that the Court has not previously addressed:

- (1) Can client funds deposited to secure payment of an attorney's charging lien be retained under NRS 18.015 after the lien has been adjudicated for an amount less than the amount the client deposited, especially when the adjudicated amount is not being contested by the attorney?
- (2) Does NRS 7.055 permit an attorney who is adequately secured for his/her attorney fees to refuse to produce his/her complete client file to a former client based on a protective order imposing confidentiality of discovery against disclosure to third parties in a concluded underlying action?

III. STATEMENT OF RELEVANT FACTS

This case has a long and contentious history, much of which is in this Court's records due to prior appeals regarding the lien amount claimed by Simon. *See* Case Nos. 77678 and 78176 (including this Court's December 30, 2020 Order in those consolidated cases). The essential facts for this writ petition are summarized below.

A. The District Court's Order that Gives Rise to this Petition and the Edgeworths' Efforts to Obtain Their Uncontested Settlement Funds and Their File

The district court's erroneous order entered on June 18, 2021 denied the Edgeworths' motion for release of their funds in excess of the amount for which the district court adjudicated Simon's attorney lien in 2018. The order also denied their request that their entire client file be turned over to them by Simon under NRS 7.055. That order on these two subjects gives rise to this writ petition. P000425-32. The district court denied reconsideration of her erroneous order on September 9, 2021. P000706-14.

1. Simon's Representation.

Simon was retained by the Edgeworths to represent them in the Viking action. P000128; P000144-45. He billed the Edgeworths \$368,588.70

for his time and \$114,864.39 for costs. P000145. Simon failed to memorialize the terms of his representation in writing, P000128, but he consistently billed the Edgeworths for his services at the hourly rate *he selected* (\$550), and the Edgeworths promptly paid each of Simon's invoices in full. P000128. After a multi-million settlement had been reached in the Viking action and while it was being memorialized, Simon demanded that he be compensated as if he had a contingent fee agreement that would yield him over a \$1 million windfall in addition to his \$550 per hour fees. P000210-218. He told the Edgeworths that if they did not accept his post-settlement demand, "*then I cannot continue to lose money to help you.*" P000215 (emphasis added). After Simon made this demand, the Edgeworths asked Simon to provide them with all documentation he had regarding the Viking settlement, the terms of which had been finalized but not yet memorialized. P000281; P000179-86; P000187-95. On November 30, 2017, Simon provided two versions of the final settlement drafts, one in the morning before becoming aware that the Edgeworths had retained other counsel in fear Simon would implode the settlement, and the other that afternoon following a call with

his successor counsel. P000179-86; P000187-95. The Edgeworths signed the settlement on December 1, 2017, with Simon's successor advising them on the settlement. P000043; P000049:2 – 4. When Simon's lien was adjudicated in 2018, the district court found that Simon was constructively discharged on November 29, 2017. P000051. That finding was affirmed on appeal. P000130.

2. Simon's Charging Lien.

At the same time the Viking action was settled, Simon filed an attorney's charging lien against the Edgeworths' settlement proceeds. P000001. He initially claimed costs in excess of the actual amount he could support. P000002 (compare with P000007). On January 2, 2018, he amended the lien to reduce the amount of costs claimed, and confirmed that he was claiming \$2,345,450 in attorney fees, less the amount paid by the Edgeworths, for a net lien of \$1,977,843.80. P000006-7. The Edgeworths disagreed with Simon's demand, but in order to obtain the remainder of their settlement funds, and relying on the statute which provides that the funds could be held in trust until lien adjudication had been completed, they

agreed to deposit the exorbitant additional amount Simon was claiming into a special bank account controlled by Simon and Robert Vannah, the Edgeworths' counsel who succeeded Simon. P000468-69.

3. Adjudication of Simon's Charging Lien.

The district court adjudicated Simon's charging lien for \$484,982.50 (P000061); at the same time it granted a motion to dismiss claims asserted by the Edgeworths. The Edgeworths appealed both rulings and asked Simon to release the extra \$1.5 million in the account i.e., the difference between the amount the district court adjudicated as the total lien amount and the \$1.977 million initially deposited to secure Simon's lien claim (plus interest since accrued). He refused their request. The Edgeworths then filed a motion to release the excess funds. P000029 - 70. However, because the Edgeworths had appealed the orders dismissing their claims and adjudicating the lien amount, the district court determined it lacked jurisdiction to entertain the motion to release the excess funds. P000124 ("This Court does not have Jurisdiction as this case has been appealed to the Supreme Court, and the main issue is the funds.").

4. *Simon's Misrepresentation of the District Court's Ruling.*

Notwithstanding the district court's determination that it was without jurisdiction to release the Edgeworths' funds pending appeal, Simon repeatedly and falsely reported in subsequent pleadings in the SLAPP suit he initiated against the Edgeworths that the district court in the Viking action (Judge Jones) had *ordered him* not to release the funds.¹ Ex. P000313 (reporting to a different court that "[t]he disputed funds remain held in trust not because Simon unilaterally refuses to release money, but because the Court ordered that the money should not be distributed pending appeal"); P000314 (falsely reporting to another district court that "Judge Jones ordered the funds remain in the account after Edgeworths appealed to the Supreme Court."); P000317 (again falsely reporting in other proceedings he initiated that "Only the disputed funds remain in the special trust account. Simon is following the District Court order to keep the disputed funds safe pending

¹ On May 18, 2021, Simon agreed to transfer the funds from the account controlled by him and Vannah to the Morris Law Group Client Trust Account, provided the full amount of the lien he claimed (\$1,977,843.80) was not released. P000387. That transfer was effectuated on May 26, 2021. P000393. The funds remain in this account today.

appeal."). Simon has never pointed to any order of the district court to support these false assertions; the minute order declining to consider the Edgeworths' motion to release the funds for lack of jurisdiction is the only order on this point in the record. P000124.

B. The Edgeworths' Renewed Efforts to Obtain Their Funds and Client File

1. *The Edgeworths' Renewed but Unsuccessful Efforts to Obtain Their Funds and File.*

On May 3, 2021, the Edgeworths again asked Simon to consent to the release of the funds in excess of the adjudicated amounts and demanded that he turn over their complete client file. Simon refused to do either. P000261 ¶ 3; P000276. He said that because the Edgeworths were disputing a portion of the adjudicated lien amount, he could continue to assert that his original lien amount was due and thus prevent release of the excess funds. P000262 ¶¶ 7-8. Importantly, Simon has not appealed the district court's order on remand and no longer claims he is entitled to the excess funds that he refuses to release to the Edgeworths.

The Edgeworths also made a formal demand for their file on May 4, 2021. P000294; *see also* P000262 ¶ 9. Through his counsel Simon said

he could retain the file because he had not been paid, although he was fully secured for the lien amount awarded by the district court. P000296. The Edgeworths had previously requested their file and Simon provided portions of it in 2019;² the Edgeworths made formal demand for the complete file in 2020 under NRS 7.055(2) (P000286). After much haggling, what Simon then provided on a portable hard drive was incomplete; it included only selected portions of the file and was otherwise disorganized and indecipherable. *See* P000250:21-28; P000261¶ 6. Simon also dishonored his promise to deposit with the district court additional material that he claimed was "protected confidential material." P000288 – 91; *see also* P000257:9 - 58:5.

2. Post-appeal Efforts in the District Court.

On May 13, 2021, after this Court had decided the Edgeworths' appeal on December 30, 2020, and remanded the case with instructions to

² Simon disputed that the file was requested before 2020, and claimed he previously "voluntarily" produced portions of the file (P000324); however, testimony from Simon's associate confirms that Vannah requested the file for the Edgeworths at least by May 2019, although the Edgeworths believed that request was made in late 2018. P000487. In any event, Simon produced a partial file on June 10, 2019. P00283 – 84.

the district court, the Edgeworths renewed their motion to compel Simon to release the funds in excess of the \$484,982.50 that he was entitled to under his lien. They also asked the district court to compel Simon to turn over their *complete* client file. P000248 - 60.

In advance of motion practice, the Edgeworths' counsel pointed out the deficiencies in the file previously produced to Simon's counsel and again made formal demand for production of the *complete file*, as required by NRS 7.055(2). P000294; P000262 ¶ 9. Among the deficiencies noted in the allegedly "complete" but in fact "incomplete" file produced in 2020 were missing attachments to emails Simon sent to or received from opposing counsel or other third parties in the settled Viking action, which the Edgeworths had been requesting since 2017. Missing from the file was correspondence, including email, with third parties regarding the Viking action, as well as earlier drafts of the settlement agreements with Viking and Lange (a co-defendant in the Viking action), and communications to and from the experts, including their reports and research memos prepared on

behalf of the Edgeworths, all of which they had paid for.³ P000294. Simon's counsel resurrected the same excuses raised the previous year for not producing the file. P000296 – 97. These excuses included the claimed retaining lien on the file and alleged confidentiality issues, both of which had presumably been resolved in 2020 when Simon produced what turned out to be an incomplete file. P000288 – 89 (confirming agreement for Simon to produce all portions of the file not deemed confidential, and to deposit the confidential portions with the district court).

The absence of documents in Simon's production and his own testimony confirm substantial omissions in the file. For example, Simon produced very little email: in particular, he did not turn over emails concerning the settlement negotiations, or even the fully executed settlement agreements that resulted in the settlement funds on which Simon based his

³ The Edgeworths are interested in the expert materials because of Simon's misrepresentations to the district court as to when experts were retained, and because on at least three occasions, Simon has "billed" them more than the amount he incurred, or for expenses unrelated to their case. *Compare, e.g.,* P000002 (claiming out of pocket costs of \$80,326.86), *with* P000007 (reducing out of pocket costs to \$76,535.93; *compare also* P000135 (obtained a judgment for retainer amount of \$5,000, rather than actual costs incurred) *with* P000124B (agreeing in post-remand proceedings that district court should remit the amount to costs actually incurred).

charging lien. Notably, when he was seeking to substantiate his "super bill," he proffered testimony from his associate that she spent extensive time going through what she described as a "huge" client file, much of which was in paper form with extensive email. *See, e.g.*, P000302; P000304-05; P000307-09. During the August 29, 2018 hearing before the district court, Simon claimed all email that supported billing entries describing email had been reviewed and "ha[d] been produced." P000309 - 11. Simon's associate testified the email supporting the billings "were in a whole bunch of *additional* boxes" in addition to the 25 boxes of discovery Simon brought to the lien adjudication hearing. P000305 (emphasis added). The complete email file is among the items missing from the file Simon produced. P000294.

Although Simon raised burden and proportionality arguments in gathering the file, the testimony he offered on August 29, 2018 confirms the file was compiled and included at least 25 discovery boxes and a "whole bunch of additional boxes" of email that Simon had gathered and reviewed but did *not* produce. *See* P000297 (raising proportionality issue); P000328:16 – 29:8 (raising burden issues); *but see* P000305 – 09 (confirming file had been

gathered and extensively reviewed to compile Simon's "superbill" and describing contents). Simon disputed that the partial file previously produced was incomplete or disorganized (P000329), but contradicting examples of categories of missing documents and specific examples of the lack of organization in what he did produce were provided to the court that show otherwise. P000494:16 – 96:1.

3. *Edgeworths' Post-Appeal Efforts are Rebuffed.*

The district court refused to compel Simon to release the excess funds or turn over his file. P000425 – 30. With respect to the excess funds, and without identifying the alleged "bilateral agreement" it referred to, the district court said the request was "*premature . . . as the litigation in this case is still ongoing . . .*" P000429 (emphasis added). The court went on to say, however, "there is a *bilateral agreement* to hold the disputed funds in an interest-bearing account at the bank and until new details are agreed to invalidate said agreement and a new agreement is reached, the bilateral agreement is controlling and the disputed funds will remain in accordance

with that agreement."⁴ P000429 – 30 (emphasis added). There is nothing in the record that would support the Court's characterization of an agreement that was not before the court. Nor is there anything in the record that would support Simon continuing to block the release of funds to the Edgeworths in excess of the maximum amount of his lien as determined by the court, particularly when he is no longer contesting that amount. Notably, prior to the hearing of the Edgeworths' motion to compel the release of the funds and before the June 18 order, the funds had already been moved to the Morris Law Group Trust Account, where the parties agreed they would remain pending an order of the court regarding the disposition of the funds. P000387; *see also* P000392 – 93.

⁴ This holding was not based on evidence of the alleged agreement; it appears to have been in response to the argument of Simon's counsel on May 27, 2021. No "bilateral agreement" was presented to the court, although the imaginary agreement was the highlight of counsel's argument at that time. Simon also did not refer to such an agreement when he opposed the motion to release the excess funds in 2019. *See* P000331 (Simon's 2021 Opposition raising the bilateral agreement issue without citation or reference to the alleged agreement); P000071 – 77 (Simon's 2019 Opposition); *see* P000468 – 69 (email exchanges regarding setting up the special bank account for funds to secure the lien amount pending adjudication).

With respect to the client file, the district court found that "requiring the production of the complete file is prevented by the Non-Disclosure Agreement (NDA) [referring to the stipulated protective order in the concluded Viking action] and the request is DENIED." P000430. On September 13, 2021, the district court denied reconsideration of her order denying the Edgeworths' request to release the excess funds and client file, saying there was no basis to reconsider the "bilateral agreement finding" or the "order regarding the client file." P000711. The district court also denied, without explanation, the Edgeworths' request to stay execution of the restated judgment on the lien adjudication pending appeal for her failure to follow this Court's mandate.⁵ *Id.*

IV. STATEMENT OF REASONS THE WRIT SHOULD ISSUE

"This court has original jurisdiction to issue writs of prohibition and mandamus" and "also all writs necessary or proper to the complete

⁵ When moving to reconsider the district court's June 18, 2021 order denying the motion to release the file and excess funds, the Edgeworths also moved to stay execution of the order denying reconsideration of her post-remand lien order, which is the subject of a direct appeal (Nos. 43258/43260). P000435 – 37.

exercise of its appellate jurisdiction." Nev. Const. Art. 6, § 4. A writ of mandamus is available to compel the performance of an act that the law requires or to control an arbitrary or capricious exercise of discretion. NRS 34.160; *Int'l Game Tech. v. Second Jud. Dist. Ct.*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008).

Mandamus is the appropriate, and indeed the only, avenue available to the Edgeworths to challenge the district court's order permitting their former counsel to withhold their client file and their settlement funds in excess of the amount for which Simon's attorney lien was adjudicated. *See Pengilly v. Rancho Santa Fe Homeowners Ass'n*, 116 Nev. 646, 5 P.3d 569 (2000) (absent a rule or statute, Court lacked appellate jurisdiction to review a district court's contempt order; must proceed by writ); *City of Sparks v. Second Jud. Dist.*, 112 Nev. 952, 954, 920 P.2d 1014, 1015 (1996) (a writ of mandamus will lie to control a discretionary act where the district court's "discretion is abused or is exercised arbitrarily or capriciously") (overturning order imposing monetary sanction). Extraordinary relief is warranted where, as

here, there is no plain, speedy, and adequate legal remedy available to the Edgeworths to obtain their money or their file. NRS 34.170; NRS 34.330.

In this case, unless this Court intervenes and accepts this Petition to order the release of undisputed excess funds "held" for *years* after Simon's lien was adjudicated, clients like the Edgeworths will be denied the benefit of the very statute that allows attorneys to file a charging lien. NRS 18.015. Without the availability of a writ, attorneys may, as Simon has done here, disregard the statute to prevent distribution of settlement proceeds to former clients for years, as punishment for asserting their legal rights, as Simon threatened and has now effectively accomplished in this case.

Writ relief is warranted. This Court has determined that the district court's order declining to release the Edgeworths' money and order Simon to produce his former clients' file under NRS 7.055 are not final determinations that can be appealed. This leaves the Edgeworths and any other similarly situated former clients without a plain, speedy, or adequate legal remedy to obtain their funds and file. The Edgeworths need their funds and file to effectively defend themselves in the SLAPP suit Simon

commenced in retaliation for the Edgeworths' challenge of his strong-arm tactics briefly described in the foregoing sections of this Petition.⁶

A. The District Court's June 18, 2021 Order is Contrary to Law

NRS 18.015(1) permits a charging lien, but only in "the amount of any fee which has been agreed upon by the attorney and client." NRS 18.015(1)(b); *see also, Hoff v. Walters*, 129 Nev. 1122, *1 (2013) (unpublished) (recognizing statute sets the limit on amount of charging lien). The statute, attempts 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). NRS 18.015(6) states that 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," all of which has been done here. The statute does not license lawyers or the district court to tie up a client's funds for years when they have not submitted to their

⁶ An appeal of the Order denying the Edgeworths' anti-SLAPP motion to dismiss is pending under Case No. 82058.

attorney's unreasonable demand for more money, particularly when the attorney's disputed fee has been adjudicated for much less than the amount demanded *and* the attorney has not appealed that adjudication. Simon's interpretation of the statute, which the district court incorrectly accepted, abolishes the balance the Nevada Legislature wrote into the statute by permitting attorneys to tie up excess client funds for years after the lien amount has been determined by the court.

Consider NRCP 62, which controls civil matters. It provides for a stay from enforcement of a district court judgment as a matter of right by posting a supersedeas bond in the amount of the full judgment, which has been done in this case by the deposit of funds sufficient to pay Simon's lien. The district court's acceptance of Simon's argument allows him to thwart distribution of undisputed excess client funds and goes against the speedy resolution of the lien amount contemplated by NRS 18.015(6). Enabling this obstructive conduct by Simon, if not overturned, unfairly confers special status on lawyers compared to other lien claimants and civil litigants, which

has no relationship to the purpose of the lien: the prompt resolution of fee disputes.

Simon was given every opportunity to litigate the amount of his lien, which was adjudicated for much less than the \$2.4 million in fees (less payments received) he claimed was due to him. Once the district court determined that Simon was not entitled to a contingent-like or flat fee, but to approximately \$485,000 in fees as the *reasonable* value for his services, he should have immediately released the Edgeworths' excess funds on deposit. The district court should have ordered him to do so when he refused. Requiring the immediate release of deposited funds in excess of the amount adjudicated by the district court would place lawyers like Simon on the same footing as other attorney litigants who are entitled to security for payment of their fees as determined by the district court under statute. Simon's interpretation of the statute, endorsed by the court, gives him preferential status. Nothing in NRS 18.015, however, permits a lawyer to withhold more of the client's funds than what was agreed for attorney fees and certainly not more than the Court determined the attorney's lien was worth. To hold

otherwise, as the district court did, relieves a lawyer of his ethical duty to communicate the basis or rate of his compensation "to [his] client, preferably in writing, before or within a reasonable time after commencing the representation." RPC 1.5.

The alleged "bilateral agreement" invoked by Simon as an impediment to releasing the Edgeworths excess funds was a compromise in 2018 to place the maximum amount Simon claimed for fees into a special dual-signature account pending the court's prompt adjudication of the lien under NRS 18.015(6), which has been done. P000468 – 69. *Nothing* in the bilateral agreement precludes releasing the funds once the lien has been adjudicated in an amount less than the amount deposited, and which Simon has not appealed. This agreement is now moot. It did not and does not deprive the district court of authority to order the release of the excess funds.

By allowing Simon to prevent the release of funds he makes no claim to, the district court's June 18, 2021 order placed him in a superior position to other litigants who can secure only the district court's judgment amount while appeals of that amount are pending. Nothing in the statute

evidences a legislative intent to give lawyers such as Simon such undeserved preferential status.

B. The District Court Also Erred in Refusing to Compel Simon to Turn Over the Edgeworths' Complete Client File.

NRS 7.055 requires that "an attorney who has been discharged . . . upon demand and payment of the fee due from the client, immediately deliver to the client all papers, documents, pleadings and items of tangible personal property which belong to or were prepared for that client." The statute expressly states that "if there is doubt as to the ownership" of any portions of the file, it may be deposited with the clerk of the court. NRS 7.055. Simon paid lip service to the statute in 2020 when he said he would deposit the file with the court; however, he failed to do so, and refuses to do so now. He continues to hold the Edgeworths' complete file hostage, likely because its contents could disprove some of the allegations he has made in SLAPP litigation he initiated against the Edgeworths and their former counsel, Vannah & Vannah.

The Edgeworths have been requesting portions of their file since 2017. P000281 (Angela Edgeworth asked Simon to "[p]lease send over

whatever documentation you have or tell us what [Viking has] verbally committed to" regarding the Viking settlement). The Edgeworths' file was again requested in 2018, and Simon produced portions of it in 2019. P000283 – 84. Although Simon claimed the file was not requested before 2020, the record shows otherwise. P000487 – 88. In any event, he cannot dispute that the Edgeworths made clear and unambiguous demands for their complete file by May 17, 2020. P000286. Nor can he dispute that he had previously told the district court that the file had been produced, when it had not been. P000124C (under the heading "The Edgeworths have the file." Simon goes on to say: "In 2020, a different Edgeworth lawyer asked for the file and the file was given directly to Brian Edgeworth as requested"). *Id.* This false representation to the district court was made in response to the Edgeworths' contention that they did not have their complete file.

1. *Simon's Excuses for Not Producing the File.*

Following the 2020 demands for the complete file, Simon threw up bogus obstacles to its production. He claimed the existence of a retaining lien (which he knew was secured many times over by the amount of the

settlement funds still tied up due to his refusal to release the account). He also demanded that counsel sign a protective order already signed and in place in the Viking action that had been settled and concluded in 2017. P000286 (re retaining lien); P000290 (re protective order issue). The Edgeworths' counsel appropriately reminded Simon that they were already bound by the protective order and entitled to receive their complete file. P000319. Ultimately, Simon's counsel agreed to produce the file, less the "confidential material" from third parties, and said he would deposit "the balance of the file with the Clerk," which he did not do. P000289; P000291. While an electronic drive with a portion of the file was sent to Mr. Edgeworth (P000299), no significant portion of the "huge" paper file has been provided, and there is no indication in the record that the rest—or any—of the file was deposited with the court clerk, as Simon promised to do.

When the Edgeworths' counsel again demanded the file in 2021 pursuant to NRS 7.055 (P000294), Simon's counsel claimed it had been previously produced, and when informed that significant gaps remained, he asked for a list of what was believed to be missing. P000296 – 97. Examples

of the file's incompleteness were provided as requested, in response to which Simon again raised the false retaining lien and bogus confidentiality issues that had been raised, addressed, and presumably disposed of in 2020. P000296; *see also* P000286, P000290.

The retaining lien issue should have been a non-starter given the \$2+ million held on deposit in this case greatly exceeds the amount necessary to secure Simon's adjudicated fees. *Morse v. Eighth Judicial District Court*, 65 Nev. 275, 291, 195 P.2d 199, 206-07 (1948) (recognizing that "a district court should have no trouble in fixing a proper amount for bond or other security and in passing on the sufficiency thereof."); *Figliuzzi v. Eighth Judicial Dist.*, 111 Nev. 338, 343, 890 P.2d 798, 801 (1995) (recognizing "substitute payment or security" satisfies statute (citing *Morse*)). The district court order does not mention the retaining lien as a reason to withhold the file, so she appears to have recognized the lack of merit to that nonsensical contention.

The order refusing to compel Simon to turn over the Edgeworths' complete file said the stipulated protective order in the underlying action precluded it. P000430. The stipulated protective order in

the underlying case, however, is a typical stipulated order "to prevent the unnecessary disclosure or dissemination of such confidential, proprietary, or trade secret information" to *third parties*. P000339. The Edgeworths are not third parties; they are specifically defined as parties in the protective order, and through Simon, who was their lawyer, they are signatories to the order (P000338, 000341). As "parties" they are entitled to receive information that Simon, as their former lawyer, now falsely says he is prohibited from disclosing to them, his former clients. Nothing in the Viking action protective order says that parties to the order are precluded from access to documents that the order makes confidential as to outsiders—third parties, such as "competitors, licensees, or others." P000339. Moreover, the stipulated protective order does not regulate communications *between* the Edgeworths and their former counsel, nor could it. *See* P000338 – 51.

There is simply no legal reason to support Simon's suppression of his former clients' access to their complete client file, particularly in light of the fact that Simon has sued them in a separate lawsuit which they cannot adequately defend without access to their complete file. The district court

flatly erred in refusing to compel the production of the complete file, consistent with NRS 7.055.

V. CONCLUSION

The Edgeworths respectfully request the Court to grant this Petition, and enter an order: (i) vacating the district court's June 18, 2021 order declining to release funds in excess of the lien amount; and (ii) instructing Simon to produce the complete file of his former clients.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that I have read this PETITION FOR WRIT OF MANDAMUS TO RELEASE CLIENT FUNDS IN EXCESS OF ADJUDICATED LIEN AMOUNT AND TO RELEASE THE COMPLETE CLIENT FILE, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

2. I also certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the typestyle requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Palatino 14 point font and contains 5,531 words.

3. Finally, I certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular Nev. R. App. P. 28(e), which requires every section of the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied is to be found.

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VERIFICATION

1. I, Steve Morris, declare:
2. I am one of the attorneys, one of the Petitioners herein;
3. I verify that I have read the foregoing **PETITION FOR**

**WRIT OF MANDAMUS TO RELEASE CLIENT FUNDS IN EXCESS OF
ADJUDICATED LIEN AMOUNT AND TO RELEASE THE COMPLETE
CLIENT FILE**; that the same is true my own knowledge, except for those
matters therein stated on information and belief, and as to those matters, I
believe them to be true.

I declare under penalty of perjury of the laws of Nevada, that
the foregoing is true and correct.

/s/ STEVE MORRIS
Steve Morris

CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of MORRIS LAW GROUP; that, in accordance therewith, I caused a copy of the PETITION FOR WRIT OF MANDAMUS TO RELEASE CLIENT FUNDS IN EXCESS OF ADJUDICATED LIEN AMOUNT AND TO RELEASE THE COMPLETE CLIENT FILE to be electronically filed and served by the following method(s):

☒ Supreme Court's EFlex Electronic Filing System

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DATED this 1st day of February, 2022.

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