

IN THE SUPREME COURT OF THE

STATE OF NEVADA

E&T VENTURES, LLC,
Petitioner,

vs

EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK, THE
HONORABLE JOANNA KISHNER,

Respondents,

EUPHORIA WELLNESS, LLC a
Nevada limited liability company,

Real Party in Interest.

Electronically Filed
Apr 01 2022 03:48 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No. 84336

District Court Case: A-19-796919-B

NOTICE OF MOTION TO STAY FILED IN DISTRICT COURT

LAW OFFICE OF MITCHELL STIPP
MITCHELL STIPP, ESQ. (Nevada Bar No. 7531)
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Counsel for Petitioner

Petitioner hereby provides notice of its motion to stay filed in the district court. See Exhibit 1.

DATED this 1st day of April, 2022

LAW OFFICE OF MITCHELL STIPP

/s/ Mitchell Stipp

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of April, 2022, I filed the foregoing **NOTICE**, using the court's electronic filing system. Notice of the filing of the Petition was made upon acceptance by the Nevada Supreme Court using the District Court's electronic filing system to the following e-service participants in District Court Case and by mail to the addresses as indicated:

Judge Joanna Kishner:

Dept31lc@clarkcountycourts.us

Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89155

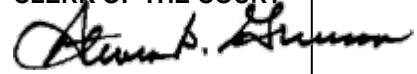
Euphoria Wellness, LLC as Real Parties-in- Interest:

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By: /s/ Mitchell Stipp

An employee of Law Office of Mitchell Stipp

EXHIBIT 1



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Attorneys for Plaintiff, E&T Ventures, LLC

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

E&T VENTURES, LLC, a Nevada limited liability company,

Plaintiff,

v.

EUPHORIA WELLNESS, LLC, a Nevada limited liability company; DOE Individuals I-X, inclusive; and ROE ENTITIES 1-10, inclusive;

Defendants.

ET AL.

CASE NO.: A-19-796919-B
DEPT. NO.: XXXI

**MOTION FOR STAY OF PROCEEDINGS
PENDING DECISION OF THE NEVADA
SUPREME COURT ON PETITION FOR
WRIT AND REQUEST TO CLARIFY
BASIS FOR COURT'S DECISION TO
PRESIDE**

HEARING REQUESTED

E&T Ventures, LLC ("E&T"), by and through Mitchell Stipp, Esq., of the Law Office of Mitchell Stipp, files the above-referenced motion.

This motion is based on the papers and pleadings on file in this case, the memorandum of points and authorities that follow, the exhibits attached hereto or filed separately but concurrently herewith, and the argument of counsel at the hearing. The facts set forth in the motion are true and accurate.

For the reasons set forth in this motion, E&T hereby requests the following relief:

1. The district court should grant a stay pending the decision of the Nevada Supreme Court on E&T's petition for a writ. See Case No. 84336. Notice of E&T's petition and request to transfer case pursuant to NRS 1.235(5)(A) was filed on March 4, 2022. See Dkt. No. 323. If the court denies the stay, E&T will request intervention by the Nevada Supreme Court. There is no dispute that Chief Judge Linda Bell's decision

1 was premature and that the district court also failed to respond to the motion (which requires that the case be
2 transferred).

3 2. If the district court fails to grant the stay, the district court should set forth its power and
4 authority to preside.

5
6 DATED this 1st day of April, 2022.

7
8 **LAW OFFICE OF MITCHELL STIPP**

9
10 /s/ Mitchell Stipp

11 _____
12 MITCHELL STIPP, ESQ.
13 Nevada Bar No. 7531
14 1180 N. Town Center Drive, Suite 100
15 Las Vegas, Nevada 89144
16 *Attorneys for Plaintiff, E&T Ventures, LLC*

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MEMORANDUM OF POINTS AND AUTHORITIES

The Nevada Rules of Appellate Procedure provide a mechanism for seeking a stay pending a
decision from the Supreme Court. Under NRAP 8(a)(1), a party must ordinarily first seek a stay from
the district court. In considering whether to grant the requested stay, the Nevada Supreme Court
considers: “(1) whether the object of the ... writ petition will be defeated if the stay ... is denied; (2)
whether [] petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3)
whether respondent/real party in interest will suffer irreparable or serious injury if the stay ... is
granted; and (4) whether [] petitioner is likely to prevail on the merits in the appeal or writ petition.”
NRAP 8(c); Hansen v. Eighth Jud. Dist. Ct., 116 Nev. 650, 657, 6 P.3d 982, 986 (2000). Any one factor
is not more important than the others; however, where “one or two factors are especially strong, they
may counterbalance other weak factors.” Mikohn Gaming Corp. v. McCrea, 120 Nev. 248, 251, 89

1 P.3d 36, 38 (2004). Here, these factors, both individually and collectively, justify granting E&T's
2 requested stay.

3
4 The Nevada Supreme Court has long recognized the importance of a neutral tribunal, stating
5 that "any tribunal permitted by law to try cases and controversies not only must be unbiased but also
6 must avoid even the appearance of bias." Matter of Ross, 656 P.2d 832 (Nev. 1983) (quoting
7 Commonwealth Coat. Corp. v. Continental Cas. Co., 393 U.S. 145, 150 (1968). Due process – basic
8 fairness – requires E&T's questions regarding statutory disqualification be addressed before they are
9 forced to continue litigating before a judge whose impartiality, they have a reasonable basis to question.
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12 "The right to an impartial judge is not one to be lightly disregarded. It has real constitutional
13 significance. Marshall v. Jerrico, Inc., 446 U.S. 238, 242, 100 S. Ct. 1610, 1613 (1980) (emphasis
14 added). An impartial and disinterested forum ""helps to guarantee that life, liberty, or property will not
15 be taken on the basis of an erroneous or distorted conception of the facts or the law,"" while at the same
16 time ""it preserves both the appearance and reality of fairness, 'generating the feeling, so important to
17 a popular government, that justice has been done.'"" Id. (quoting Anti- Fascist Committee v. McGrath,
18 341 U.S. 123, 172 (1951) (Frankfurter, J., concurring))."
19

20
21 Absent the requested stay, E&T will be irreparably prejudiced by being required to continue
22 litigating before a judge whose impartiality is subject to reasonable doubt. The brief delay in
23 proceedings that would be occasioned by the requested stay will not harm Euphoria in any way and
24 should not affect the trial date. In any event, a reasonable delay is warranted to ensure E&T of an
25 impartial tribunal and impartial case management as this case moves through contentious discovery
26 and to trial.
27
28

1 Chief Judge Bell's initial decision was premature. Despite the lack of knowledge of whether
2 the parties reached or failed to reach an agreement on the district court judge to decide the issue, she
3 issued her decision. Chief Judge Bell's power and authority to decide the matter was conditional by
4 the plain meaning of the statute. See NRS 1.235(6) ("if they are unable to agree"). Chief Judge Bell
5 also did not consider the new bases for disqualification set forth in the motion as supported by E&T's
6 new affidavit pursuant to NRS 1.235(1). The court had the right to respond to the motion as supported
7 by the new affidavit in accordance with NRS 1.235(6). The court failed to do so. Therefore, NRS
8 1.235(5) required the court to "immediately transfer the case to another department of the court[.]" As
9 of the date of this motion, the court without explanation has failed to do so.
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12 All decisions made by the court after the affidavit (Dkt. No. 293) are void. Debiparshad v. The
13 Eighth Judicial Dist. Court of State, 137 Nev. Adv. Op. 71, 8 (Nev. 2021) (citing Christie v. City of El
14 Centro, 37 Cal.Rptr.3d 718, 725 (Ct. App. 2006) ("[Disqualification occurs when the facts creating
15 disqualification arise, not when disqualification is established.]), Hoff v. Eighth Judicial Dist. Court, 79
16 Nev. 108, 110, 378 P.2d 977, 978 (1963) ("That the actions of a district judge, disqualified by statute,
17 are not voidable merely, but void , has long been the rule in this state."); and Frevert v. Smith, 19 Nev.
18 363, 11 P. 273 (1886) ("[T]he general effect of the statutory prohibitions ... [is] to render those acts of
19 a judge involving the exercise of judicial discretion, in a case wherein he is disqualified from acting,
20 not voidable merely, but void ."). E&T has not located any case, statute, rule or other precedent which
21 would support the court continuing to preside over this case on these facts.
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25 For the reasons set forth above, E&T respectfully requests the case be stayed pending a decision
26 on the writ petition before the Nevada Supreme Court. If the court denies the stay, E&T will file an
27 emergency motion for a stay, but E&T would like the court to clarify its power and authority to
28 preside under these circumstances.

1
2 **AFFIDAVIT/DECLARATION/CERTIFICATION**

3 The undersigned, MITCHELL STIPP, ESQ., declares under penalty of perjury, as follows:

4 1. I am counsel of record for E&T Ventures, LLC, a Nevada limited liability company (“E&T”)—
5 the Plaintiff in the above-referenced case.

6 2. The facts set forth in the above motion are true and accurate. Such facts support a stay pending
7 resolution of E&T’s writ petition.

8 3. Judge Kishner has and continues to entertain actual bias or prejudice in favor of Euphoria
9 Wellness, LLC and against E&T in this case.

10 4. The motion is filed in good faith and not interposed for delay.

11 5. I have personal knowledge of the facts contained in this filing unless otherwise qualified by
12 information and belief or such knowledge is based on the record in this case, and I am competent to
13 testify thereto, and such facts are true and accurate to the best of my knowledge and belief.
14

15
16 Dated: April 1, 2022

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18 /s/ Mitchell Stipp
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20 _____
21 Mitchell Stipp
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