

**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,
Respondent,

EUPHORIA WELLNESS, LLC a
Nevada limited liability company,
Real Party in Interest.

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Clerk of Supreme Court

Supreme Court Case No. 84336

District Court Case No. A-19-796919-B

PETITION FOR REHEARING PURSUANT TO NRAP 40

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I. Procedural History.

Petitioner, E&T Ventures, LLC (“Petitioner”), filed its petition on March 7, 2022. See Dkt. No. 22-07119 (“Petition”). The Petition is supported by Volume I and Volume II of Petitioner’s Appendix. See Dkt. Nos. 22-07120 and 22-07121.¹ Real Party-in-Interest, Euphoria Wellness, LLC (“Euphoria”), filed its response to the Petition on June 10, 2022, as ordered by the Nevada Supreme Court on April 29, 2022. See Dkt. 22-18592 (“Euphoria’s Response”). Euphoria’s Response was supported by Volume I and Volume II of its Appendix. See Dkts. 22-18595 and 22-18597. Petitioner filed its reply in support of the Petition on July 8, 2022. See Dkt. No. 22-21562. The Nevada Supreme Court filed its order denying the relief requested by the Petition on December 29, 2022. See Dkt No. 22-40823. Petitioner now files this Petition for Rehearing pursuant to NRAP 40.

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¹ The Table of Contents included as part of Volume II of Petitioner’s Appendix (Dkt. No. 07121) contains errant references to “ppe i,” which appeared after the Appendix was filed. The Table of Contents included as part of Volume I of Petitioner’s Appendix (Dkt. No. 22-07120) can be used for both Volumes I and II of Petitioner’s Appendix.

II. Applicable Law.

NRAP 40(c)(2) sets forth the circumstances under which the Nevada Supreme Court may consider rehearing a matter. Those circumstances are as follows:

(A) When the court has overlooked or misapprehended a material fact in the record or a material question of law in the case, or

(B) When the court has overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case.

NRAP 40(c)(2)(A)-(B); see also Gordon v. District Court, 114 Nev. 744 (Nev. 1998) (citing In re Herrmann, 100 Nev. 149, 151, 679 P.2d 246, 247 (1984)).

Notwithstanding the Nevada Supreme Court's conclusion to the contrary in its order denying the Petition, the Petition actually presented **three (3) issues** for appellate review:

1. Whether the Chief Judge of the Eighth Judicial District Court has the power and authority to decide the issue of disqualification in the absence of disagreement between the parties over the judge to consider the matter?
2. Whether a district court judge has the power and authority to conduct an evidentiary hearing while a new affidavit under NRS 1.235(1) alleging bias or prejudice was filed?

3. Whether a district court judge has the power and authority to refuse to transfer a case despite failing to provide a written response to a new affidavit under NRS 1.235(1) alleging bias or prejudice?

See Petition, Dkt. No. No. 22-07119 (Page 5) (emphasis added).

Unfortunately, the order denying the Petition left the third question unanswered. See Order, Dkt. No. 22-40823, pages 2-3 (footnotes 2 and 3). Judge Kishner of Department 31 was served with a copy of the motion for Chief Judge Bell to withdraw her decision as premature or in the alternative to reconsider the same based on a new affidavit pursuant to NRS 1.235(1) alleging bias or prejudice (as confirmed by the statements contained within Judge Kishner’s actual response to the original application for disqualification). See Certificate of Service, **Exhibit 6**, Volume II, Appendix, Dkt. No. 22-07121 (APP 289-325). Judge Kishner had the right to respond to the motion as supported by the new affidavit in accordance with NRS 1.235(6). **She failed to do so.** This is not in dispute. Therefore, NRS 1.235(5) **required** Judge Kishner to “immediately transfer the case to another department of the court[.]”

In light of the foregoing, Judge Kishner has in fact refused to perform as required by Nevada law, and Petitioner satisfied its burden under Smith v. Eighth Judicial Dist. Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991) (observing that a

writ of mandamus is warranted “to compel the performance of an act [that] the law requires”). Accordingly, Petitioner respectfully requests that the Nevada Supreme Court grant the Petition by vacating the orders of Judge Kishner after personal service of the motion on February 14, 2022 (**Exhibit 6**, Volume II, Appendix, Dkt. No. 22-07121 (APP 289-325)) and ordering the Clerk of the District Court to administratively reassign the district case to another business court department.

DATED this 4th day of January, 2023

LAW OFFICE OF MITCHELL STIPP

/s/ Mitchell Stipp

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**CERTIFICATE OF COMPLIANCE
PURSUANT TO NRAP 40 AND 40A**

1. I hereby certify that this petition for rehearing/reconsideration or answer complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

☒ It has been prepared in a proportionally spaced typeface using [Microsoft Word for Mac, Version 16.68] in [14 point, Times New Roman]; or

☐ It has been prepared in a monospaced typeface using [state name and version of word processing program] with [state number of characters per inch and name of type style].

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 40 or 40A because it is either:

☐ Proportionately spaced, has a typeface of 14 points or more, and contains _____ words; or

☐ Monospaced, has 10.5 or fewer characters per inch, and contains ____ words or ____ lines of text; or

☒ Does not exceed 10 pages.

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VERIFICATION

I hereby certify that I have read the Petition for Rehearing Pursuant to NRAP 40, 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 Petition for Rehearing Pursuant to NRAP 40 complies with all applicable Nevada Rules of Appellate Procedure, including NRAP 40. I understand that I may be subject to sanctions in the event that the Petition for Rehearing Pursuant to NRAP 40 is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

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/s/ Mitchell Stipp

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of January 2023, I filed the foregoing **PETITION FOR REHEARING PURSUANT TO NRAP 40**, using the court's electronic filing system. Notice of the same was made upon acceptance by the Nevada Supreme Court and separately using the District Court's electronic filing system to the following e-service participants:

Judge Joanna Kishner:

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By:

/s/ Mitchell Stipp

An employee of Law Office of Mitchell Stipp