

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC

Appellants/Cross-Respondents,

vs.

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

Respondents/Cross-Appellants.

Supreme Court Case No. 84367  
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(District Court A-18-767242-C  
Consolidated with  
A-16-738444-C)

**RESPONDENTS/CROSS-APPELLANTS' MOTION FOR REHEARING**

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The Law Office of Daniel S. Simon and Daniel S. Simon (hereinafter “Simon”) hereby moves for a rehearing of their Petition for Writ of Prohibition or Mandamus filed March 11, 2022.

## **I. Introduction**

Simon sought relief via petition for a writ regarding the manner of adjudication of an attorney’s lien by the district court. This Court ruled the Simon petition was moot considering the order on appeal of remand to the district court for further deliberation related to the attorney lien adjudication.

Simon respectfully submits that granting a rehearing to address the merits of the Simon petition is appropriate because the relief sought by Simon addresses the manner of adjudication employed by the district court. Thus, the subject matter of the petition is not abstract, but addresses a live controversy because the decision will impact the work of the district court on remand.

## **II. Argument**

The adjudication performed by the district court was reviewed on appeal and the case was remanded for further proceedings in, *Edgeworth Family Tr., v. Simon*, 516 P.3d 676 (table) 2022 WL 4298625 (Nev. 2022) (unpublished). In consideration of the remand, the Simon petition was found to be moot. *Law Office of Daniel Simon v. The Eighth Jud. Dist. Ct.*,

2022 WL 17037739 (Nev. 2022)(unpublished). Simon respectfully submits that the subject matter of the Simon petition was overlooked when the determination of mootness was made. The petition addresses the manner of adjudication by the district court; thus, the petition addressed a live controversy because a decision would impact the lien adjudication by the district court. Further, even if moot, an exception can be found because an issue raised by the petition will repeat and can again evade review.

NRAP 40 allows a party to request rehearing if the court has overlooked or misapprehended a material question of law. NRCP 40(a)(2). In this case, Simon respectfully submits that the legal question of mootness was misapprehended when the subject matter of the Simon petition was overlooked.

In general, an attorney seeking appellate review of an adjudication of an attorney lien is typically not a party and thus does not have a right of direct appeal. *Albert D. Massi LTD., v. Bellmyre*, 111 Nev. 1520, 908 P.2d 705 (1995). Therefore, an attorney seeking review of an adjudication must do so by a petition for extraordinary writ. *Ibid*; and, *A.W. Albany v. Arcata Associates, Inc.*, 106 Nev. 688, 799 P.2d 566 at n. 1 (1990).

Simon is an attorney seeking review of an attorney lien adjudication; so, review of the adjudication decision of the district court via a petition for a writ is appropriate. *Albert D. Massi LTD.* 111 Nev. 1520, 908 P.2d 705. Simon has filed two petitions seeking review of the manner of adjudication, both fully briefed, and neither has been decided on the merits. *Law Office of Daniel Simon v. The Eighth Jud. Dist. Ct.*, 478 P.2d 362 (table) 2020 WL 7828799 (2020)(unpublished)(regarding the first petition, “Pet. I”); and *Law Office of Daniel Simon*, 2022 WL 17037739 (regarding the second petition, “Pet. II”).

An issue is not moot if it presents a live controversy. See, e.g., *Stephens Media, LLC v. Eighth Jud. Dist. Ct.*, 125 Nev. 849, 858 (2009) 221 P.2d 1240 1246-47 (2009)(a case is moot which does not present a live controversy which cannot impact the outcome of the case).

The Simon petitions addressed a live controversy because Simon sought relief concerning the method employed by the district court to adjudicate the Simon attorney lien - which will occur on remand. Simon argued that the proper method of adjudication is for the district court to use the fair value standard described by the Restatement (Third) The Law Governing Lawyers §39 (2000) to determine the fee due under quantum meruit. (See, e.g., Pet II at p. 20-27.) The Simon argument regarding use of

the fair value standard was not addressed in the appeal decision and thus remains a live issue because the district court may not follow the fair value standard on remand. *Edgeworth Family Tr.*, 2022 WL 4298625 (the appeal decision did not address the fair value standard argument as the standard was raised as an issue in the petition and not in the appeal).

As another example of why the Simon petitions are not moot, Simon sought relief because the district court findings were internally inconsistent in that the court found the superbill to be unreliable through September 19, but reliable beginning the next day, September 20<sup>th</sup> through November 29, 2017, without an explanation for the change in the finding regarding reliability.<sup>1</sup> (See, e.g., Pet. II at 26-27.) Therefore, the findings were arbitrary and capricious because the findings were internally inconsistent without a rational explanation of the inconsistency. See, e.g., *SIIS v. Christensen*, 106 Nev. 85, 787 P.2d 408 (1990); *Integrity Ins. Co., v. Martin*, 105 Nev. 16, 769 P.2d 69 (1989). This problem was not addressed and remains on remand.

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<sup>1</sup> This Court commented on the issue of billing reliability when the Court declined the Edgeworth request to make its own award of fees. *Edgeworth Family Tr.*, 516 P.3d 676 (table) 2022 WL 4298625 at \*2.

Even if moot, an issue can be addressed if the issue is likely to be repeated. *See, Personhood Nevada v. Bristol*, 126 Nev. 599, 245 P.3d 572 (2010). The district court has issued two prior adjudication orders which were appealed by the Edgeworths and for which Simon filed two petitions. Based on the record of this case, it is likely that the issue will remain through a third appeal and petition if the manner of adjudication by the district court is not addressed as requested by Simon. This argument does not just go to the possible uniqueness of facts relating to this case, because a ruling on the use of the fair value standard to adjudicate an attorney lien has widespread application.

Even if moot, an issue may also be addressed if the dispute will evade further review. *See, Personhood Nevada*, 126 Nev. 599, 245 P.3d 572. The arguments raised by Simon and the relief sought have evaded review to date through two rounds of appeal and petitions. As such, this case illustrates how the application of the fair value standard can be a recurrent issue which evades review, which provides an additional independent reason to address the merits of the Simon petition.

### III. Conclusion

The Simon petition addresses a live issue which is the method of adjudication to be employed by the district court on remand. Accordingly, the legal question of mootness was misapprehended, and Simon respectfully requests that the Court grant rehearing to reach the merits of the petition. In addition, the manner of attorney lien adjudication is a recurring issue which may be evaded in the future. Therefore, even if the petition is moot, an exception applies and rehearing is requested.

Dated this 8<sup>th</sup> day of December 2022.

/s/ James R. Christensen  
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## VERIFICATION

I, James R. Christensen, am an attorney for Simon herein. I hereby certify that I have read the foregoing Motion for Rehearing, have personal knowledge concerning the matters raised therein, and to the best of my knowledge, information, and belief, the factual matters set forth are as documented in the records of the case and that the arguments herein are not frivolous nor interposed for any improper purpose or delay.

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

/s/ James R. Christensen

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## **CERTIFICATE OF COMPLIANCE**

I hereby certify that this Motion for Rehearing 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 this brief has been prepared in a proportionally spaced typeface using Microsoft word for office 365 MSO in 14 point Arial font. I further certify that this brief complies with the page or type volume limitation of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C) it does not exceed 4,667 words and contains approximately 1,100 words.

I hereby certify that I have read this Motion for Rehearing, 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 Motion for Rehearing complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found.

I understand that I may be subject to sanctions in the event that it is not in conformity with the Nevada Rules of Appellate Procedures.

DATED this 8<sup>th</sup> day of December, 2022.

/s/ James R. Christensen

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### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 8<sup>th</sup> day of December 2022, I served a copy of the foregoing MOTION FOR REHEARING (corrected) electronically to all registered parties.

/s/ Dawn Christensen  
an employee of JAMES R. CHRISTENSEN