IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Sep 11 2023 07:44 PM
Elizabeth A. Brown
Clerk of Supreme Court

EDGEWORTH FAMILY TRUST; AND AMERICAN GRATING, LLC, Petitioners VS. CLARK COUNTY DISTRICT COURT, THE HONORABLE TIERRA XX JONES, DISTRICT JUDGE, DEPT. 10, Respondents, DANIEL S. SIMON; THE LAW OFFICE OF DANIEL S. SIMON, Real Parties in Interest. _____	)	Case Number: 86467 Dist. Ct. Case No. A-16-738444-C Consolidated with A-18-767242-C **EDGEWORTHS' REPLY IN SUPPORT OF PETITION FOR A WRIT OF MANDAMUS TO COMPEL THE DISTRICT COURT TO ENTER A QUANTUM MERUIT ORDER AS TWICE PREVIOUSLY ORDERED BY THIS COURT BUT DISREGARDED BY THE DISTRICT COURT**

MORRIS LAW GROUP
Steve Morris, Bar No. 1543
Rosa Solis-Rainey, Bar No. 7921
801 South Rancho Drive
Las Vegas, NV 89106
Phone: 702/474-9400
Fax: 702/474-9422
sm@morrislawgroup.com
rsr@morrislawgroup.com

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I. INTRODUCTION

The district court has not complied with this court's previous two mandates to explain, consistent with *Brunzell*, [1] the award of $200,000 in quantum meruit to Simon in a lien adjudication hearing in 2018 for 71.10 hours of administrative work he did for the Edgeworths following his discharge as their attorney on November 29, 2017.

Simon's answer does not show that the district court has made "specific and express findings as to what work Simon completed after he was constructively discharged and limit[ed] its quantum meruit fee to those findings," as this Court ordered the district court to do. *Edgeworth Family Trust v. Simon*, Case Nos. 83258/83260, at 4, 516 P.3d 676 (Nev. 2022) (Table) (referred to as "EFT II").[2]

Two things that Simon does not dispute and his Answer fails to address go to the heart of the Court's mandates: (1) Simon's latest post-mandate briefing acknowledges the exact 71.10 hours of work he presented to the district court in 2018 to justify his compensation, which the Edgeworths submit is all the district court could have reasonably

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[1] *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 455 P.2d 31 (1969).

[2] Simon's Answer also misstates facts concerning a subsequent SLAPP lawsuit he brought against the Edgeworths, which is entirely irrelevant to this Petition, and for these reasons that litigation and Simon's misstatement of facts are not addressed.

considered in evaluating the quantum meruit value of his post-discharge services; and (2) the amount of quantum meruit fees awarded must be reasonable under *Brunzell*, a requirement he acknowledges in his Answer (at 5) but fails to discuss.

Disregarding the hyperbolic arguments in his answer, Simon cannot overcome the fact the district court has issued ***five orders*** "awarding" the same $200,000 quantum meruit amount for Simon's 71.10 hours of post-discharge work without specifying its basis or explaining how that sum is reasonable. The district court's references to the complexity of this case is related to Simon's ***pre-discharge*** work for which he has been paid. The best Simon can say about his post-discharge work is that he increased the Lange settlement from a net $25,000 to $100,000 with a $22,000 setoff by November 30, 2017 (day one of the post-discharge period). That work is included in the 71.10 hours Simon outlined in his "superbill," which resulted in a net gain of $53K to the Edgeworths. (The Lange settlement is discussed in this Petition, at 14-15). Simon also brags that he negotiated the removal of a confidentiality clause in the Viking settlement agreement that allegedly was of benefit to the Edgeworths, without also pointing out that the Edgeworths had ***agreed*** to the confidentiality clause. Nor does Simon acknowledge that he falsely testified to the district court

that he worked to remove the clause at Brian Edgeworth's request. P00559-60 (falsely testifying "Mr. Edgeworth didn't want it"); P00672 (Mr. Edgeworth telling Simon confidentiality clause "is fine"); P00637 (Simon admitting he removed it unilaterally "Just so we're clear . . . ").

Even if the district court disregarded Simon's false testimony and credited him with these "accomplishments," both of which were complete on day one of the post-termination period, there is nothing more he or the district court have pointed to beyond the other ministerial work outlined in the post-discharge portion of his "superbill" that he presented to the district court in 2018 and on which the court specifically relied to determine the remaining due under his implied contract, in effect through November 29, 2017.

The Edgeworths' Petition was not drafted to disparage anyone: it merely sets out examples of Simon's misconduct that he fails to acknowledge, but which are relevant when considering the "Quality of the Advocate" prong under *Brunzell*. Despite two prior appeals [3] and two nearly identical mandates, the district court has not complied with the directions it was twice given by this Court.

[3] The Edgeworths filed a third-appeal (Case No. 86676) as a precaution since this writ petition had not yet been acted upon.

II. ARGUMENT

A. WRIT RELIEF IS APPROPRIATE UNDER THE UNIQUE CIRCUMSTANCES OF THIS CASE

Disregarding the fact that two prior appeals and mandates have not provided the Edgeworths with a speedy or adequate remedy, Simon cheekily contends an adequate remedy at law exists: a ***third*** appeal.[4] Ans. at 10; *but, se*e, *Ashokan v. State Dept. of Ins.*, 109 Nev. 662, 667, 856 P.2d 244, 247 (1993) (Court has constitutional prerogative "to entertain the writ" [Nev. Const. art. 6] "where circumstances reveal urgency or strong necessity"); *In re Sanford Fork & Tool Co.*, 160 U. S. 247, 256 (1895) (writ of mandamus is appropriate when lower court does not follow prior mandate). But two appeals and two disregarded mandates should be enough for the Court to exercise its original jurisdiction to grant this writ petition and effectuate justice.

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[4] *See* n.3. Simon's mistaken contention that the Petition did "not assert that 'an important issue of law needs clarification' " ignores the principal question presented here -- does Nevada law support intervention by way of mandamus when justice so requires because the Court's two prior mandates have been disregarded by the district court? *See Barrow v. Falck,* 11 F.3d 729, 730 (7th Cir. 1994) ("[F]louting of our instructions [on attorneys fees] leads us to vacate the district court's judgment and set the fees ourselves from a range of fees that the appellate court had specified in previously remanding the case."); *In re Sanford Fork & Tool Co.*, 160 U. S. at 256, *infra.*

Simon should not be permitted to continue to falsely recharacterize the issues presented by the Edgeworths to create a strawman he can then kick around to divert attention from the substantive content of this Petition. The Petition raises two important questions of first impression and statewide importance that warrant judicial intervention: (1) how many disregarded mandates are necessary before mandamus relief can be obtained? and (2) did the district court again err by failing to set out a basis for its $200,000 quantum meruit award and its reasonableness under *Brunzell,* when the record Simon himself created is that he provided, at most, 71.10 hours of post-discharge administrative services?

Simon is flat wrong when he argues that "the keystone of the Edgeworth petition is that this [C]ourt limited Simon's fee to 71 hours of post discharge work." Ans. at 13. The entirety of Simon's arguments rest on this foundational mischaracterization and error. The keystone of this Petition is that the ***district court again failed to effectuate the mandate by not articulating a basis for its $200,000 quantum meruit award, and then explaining how that amount is reasonable*** for 71.10 hours he worked post-discharge.[5]

[5] Simon's contention that the Edgeworths "did not rebut the contents of his declaration" (Ans. at 27) which sought to enlarge the judicial record of services he submitted in 2018 is another meritless distraction. His

B. THE DISTRICT COURT DID NOT FOLLOW THE MANDATE

Simon's Answer mistakenly contends that the district court "followed the instruction of this Court" when the record shows otherwise. Simon props up this misleading contention by quibbling with the issues presented by the Edgeworths (Ans. at 12 – 13) and leaning on his false characterization of the 'keystone" of the Petition. The fact is, the district court has issued ***five orders*** that neither provide a basis for the $200,000 quantum meruit amount Judge Jones awarded nor explain the reasonableness of that award notwithstanding two prior mandates of this Court expressly directing her to do so. The 2022 mandate was especially clear: the district court was ordered to "make specific and express findings as to what work Simon completed after he was constructively discharged

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declaration was addressed in the district court. The Edgeworths pointed out that not only is it wholly inappropriate to try to beef up his superbill ***over five years*** after Simon represented to the court that it had been painstakenly prepared, but that the substance of the services were already accounted for in his "superbill." If Simon chose to leave off "services" for that period, especially when those services were not to benefit the Edgeworths, he should be held to that tactical decision. The improper add-ons Simon claimed based on newly produced portions of the Edgeworths' file he has wrongfully withheld for years following creation of his "superbill" in 2018 in fact did not benefit the Edgeworths and some were for dates before his superbill was submitted. P00431-440. The "new" production of old email to support his add-on billing is also contrary to his testimony to Judge Jones that all emails supporting the services he provided and included in his "superbill" had already been turned over to the Edgeworths in 2018. P00485:16 -19.

and limit its quantum meruit fee to those findings," *EFT II,* Nos. 83258/83260, at 4, 516 P.3d 676. Judge Jones has not done so.

1. *Simon Should be Held to the Work He Chose to Present to the District Court In 2018*

The Edgeworths in no way contend this Court "limited" Simon's fee award to the 71.10 hours he submitted in his "superbill" to document his post-discharge work. The Edgeworths have repeatedly argued the 71.10 hours Simon submitted to the district court in 2018 are relevant because that is the ***entirety*** of the work Simon ***chose*** to present to the district court ***in 2018*** to value his work. While Simon now contends the "superbill" cuts off on January 8, 2018 because it was submitted as an attachment to his January 24, 2018 motion to adjudicate his lien (Ans. at 14 - 15), he completely ignores the fact that he had ample opportunity in 2018 to supplement his "superbill" at any time during the lien adjudication proceedings or ***before*** the appeals of the lien adjudication began in 2018. *See* Restatement (Third) of the Law Governing Lawyers § 39 cmt. b (2000) ("Where there has been no prior contract as to fee, the lawyer presumably did not adequately explain the cost of pursuing the claim and is thus the proper party to bear the risk of indeterminacy.) Not only did Simon fail to "supplement" in 2018, the ***first time*** he raised this issue was during the

second appeal in 2021. Case No. 83258/83260 at 27-29.[6] Prior to that he maintained he was due the $1.977+ million balance of a contingency-like fee he demanded (Pet. at 6 n.3) because of the $6 million award he negotiated with Viking. *See* Case No. 83258/83260 Ans. Br. at 18. As set forth in the Petition at 12-13, 24-25 and notes 12 and 13, permitting Simon to belatedly enlarge the record of services he provided ***after*** two appeals would be not only unfair, it would be contrary to the concept of finality of district court proceedings that concluded in 2018, and it would improperly shift the risk of his billing omissions or errors to the client. *Id.*

In evaluating Simon's "superbill" during the 5-day lien adjudication in 2018, the district court properly rejected his efforts to amend and enlarge the hours previously billed for services prior to 9/19/17 because his after-the-fact revisions were ***not*** reliable. P00019:19. But Simon ***does not*** dispute that the district court accepted his superbill in full for the purpose of paying him for the more recent period (9/19/17 – 11/29/17). *See* Pet. at 6 – 7 and n.5; P00020:15-23. His effort to enlarge the work he claimed to have performed, supported by documents he

[6] The Edgeworths objected to Simon's attempt to introduce new arguments for the first time on appeal that were never presented to the district court. Case No. 83258/83260, Reply at 7. Simon then raised the new arguments to the district court after the second Nevada Supreme Court mandate in 2022.

intentionally withheld from the Edgeworths, even **after** this Court's mandamus order in another proceeding ordered him to produce his entire file to the Edgeworths is inappropriate. Pet. at 12 – 13 (discussing Simon's latest post-mandate efforts to enlarge his timesheets ***five*** years after-the-fact).

2. *The District Court's Fifth Order Does Not Support the Quantum Meruit Award*

a. *The Sparse and Irrelevant Factual Findings Added to the Order Listing Filings Since the District Court's Initial Failure to Follow the Mandate*

As support for his suggestion that the district court's Fifth Amended Order supports the disputed $200,000 quantum meruit award, Simon points to 41 paragraphs that the court added. Of these 41 paragraphs, 40 (¶¶ 34 – 74) merely list the date and title of filings, such as the date this Court issued its orders and remittitur. Simon also suggests that the district court's list and acknowledgement that it did not have jurisdiction to issue the second and fourth orders somehow makes the Edgeworths' contention that the district court has issued ***five*** flawed orders less true. Simon's arguments on this issue are merely a distraction from the real issue: the five orders have not materially varied; none adequately describe the basis for the quantum meruit award or its reasonabless under

Brunzell. The last of these "added" 41 paragraphs Simon touts, ¶ 75, is merely a conclusory statement that "the [district c}ourt finds that there was ample foundation for the quantum meruit award of $200,000.00." This is hardly an express finding of work done.

Perhaps recognizing that the 41 new paragraphs he touts are irrelevant, Simon then claims, Ans. at 18, that the district court added "factual findings" regarding work done in the body of the court's Fifth Order. The body of that order, however, only discusses work he included in the 71.10 hours that he specified in his superbill, which the Edgeworths have repeatedly stated is the work that should be considered. Pet. at 9-10. That ministerial work includes opening a bank account for settlement checks he refused to release to the Edgeworths and finalizing the Lange settlement, both of which he already included among the 71.10 he claimed in his superbill (21.55 hours to finalize the Lange settlement; and 7.25 hours to open the bank accounts). Pet. at 10; P00215. This ministerial work is not worth over $2,800+ per hour that the district court awarded Simon, as the Edgeworths pointed out in the two appeals that precede this Petition. Pet. at 9 n.7.

b. The District Court's Brunzell Analysis Is Not Based on Simon's Post-Discharge Work

Simon contends this petition did not address the "substantial re-write" of the *Brunzell* analysis, which is true in a sense because the district court's "rewrite" did not address his post-discharge work. The rewrite merely shuffled words pertaining to pre-discharge work without changing the substance of the order. It even carried over the same error from 2018 about costs the Edgeworths promptly paid which the court continues to include in each of its cut-and-paste orders.[7] *Compare* P00831 (including $71,894.93 in judgment) *with* P00824:23 (acknowledging no costs remain outstanding).[8]

In the "Character of the Work" section, the district court omitted details about how the character of the pre-discharge work was complicated, but the words the court substituted do not, as Simon says,

[7] The $71,894.93 amount of the costs listed in the judgment section has also been incorrect in each of the five orders. *See* note 9 at 13-14 of Petition. Costs were immediately paid when Simon finally disclosed them as being $68,844.93 (*see* P00824:22), although this amount was later found to be overstated.

[8] This error has been addressed in briefing to the district court more than once and yet has gone uncorrected. *See e.g.*, Case No. 84159, Vol I Appx, P000157;' Case No. 83258-83260, Vol IV Appx., AA0804-05.

show that the post-discharge work was complicated. Ans. at 19. It was routine at most, as a reading of his billing descriptions attests.

In the 2021 third iteration of its order, the district court described the quality of the pre-discharge work for which Simon has been compensated as follows:

> The character of the work done in this case is complex. There were multiple parties, multiple claims, and many interrelated issues. Affirmative claims by the Edgeworths covered the gamut from product liability to negligence. The many issues involved manufacturing, engineering, fraud, and a full understanding of how to work up and present the liability and damages. Mr. Kemp testified that the quality and quantity of the work was exceptional for a products liability case against a world-wide manufacturer that is experienced in litigating case. Mr. Kemp further testified that the Law Office of Danny Simon retained multiple experts to secure the necessary opinions to prove the case. The continued aggressive representation, of Mr. Simon, in prosecuting the case that was a substantial factor in achieving the exceptional results.

P00103.

The new paragraph in the 2023 fifth iteration of the Order states:

> The character of the work done in this case is complex. This case was a very complex products liability case, from the beginning. After the constructive discharge of Simon, the complications in the case continued. The continued aggressive representation of Mr. Simon, in prosecuting the case was a substantial factor in achieving the exceptional results. Even after the constructive termination, Simon continued to work on the case. At one point, Simon said that he was not going to abandon the case, and he didn't abandon the case. The lack of

> communication with the Edgeworths made continuation of the case difficult, but Simon continued to work on the case and ended up reaching a resolution beneficial to the Edgeworths.

P00827.

Thus, although the district court said in its Fifth Order that "complications in the case continued," the work described by Simon himself in his superbill contradicts that conclusory statement. In describing the work Simon actually performed, the district court again remained focused on pre-discharge work that Mr. Edgeworth assisted with that led to the large settlement with Viking. That settlement was fully ***negotiated pre-discharge*** and, as acknowledged in the Petition, the Edgeworths approved the settlement agreement on November 30 (the day after Simon's termination)[9] and signed it on December 1, 2017. Pet. at 5.

Likewise, the district court merely restated the "Work Actually Performed" pre-termination paragraph but added nothing of substance pertaining to post-termination work. It said:

> Mr. Simon was aggressive in litigating this case. Since Mr. Edgeworth is not a lawyer, it is impossible that it was his work alone that led to the settlement of the Viking and Lange claims, for a substantial sum, in the instant case. The Lange claims were settled for four times the original offer, because Simon continued to work on the case. He continued to make efforts to

[9] This was also the first day Simon shared the settlement agreement with the Edgeworths.

> communicate with the Edgeworths and even followed their requests to communicate with Vannah's office. He also agreed to their request of opening a trust account, though in an unusual fashion. All of the work by the Law Office of Daniel Simon led to the ultimate result in this case, and a substantial result for the Edgeworths.

P00827; *see also* P00103-04 (for old description). The four-times over "increase" in the Lange settlement that the court gives Simon credit for refers to an additional $75,000 that resulted in a net increase of $53K to the Edgeworths due to the set-off that was part of the negotiation. Additionally, Simon's own testimony was that ***all settlement negotiations were "hammered out" pre-discharge***, P00176; P00835 (confirming Simon was actively discussing settlement agreement on 11/27/17); P00836 (confirming terms were agreed upon by November 28, 2017), though his November 30 email contends that the Lange settlement increase and Simon's unilateral removal of the confidentiality clause were accomplished on November 30.[10] P00637. More importantly, however, Simon testified he fully-reviewed his file for this period and outlined his post-discharge work in the superbill. This work in total came to 71.10 hours.

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[10] The district court order and Simon's argument that he is owed for services for November 29, 2017 are mistaken. P00825:11 – 13; Ans. at 17). As was presented in the Petition, the district court compensated Simon under the implied contract, accepting the outrageous number of hours listed on Simon's superbill for the unbilled period between September 19, 2017 ***through*** and including November 29, 2017. P00020:15-23; Pet. at 7 n.5.

Any doubt about the district court's reliance on the pre-discharge work in its Fifth Order is eliminated when reviewing the "Result Obtained" section of the Order, which remained *identical* to the *four* prior orders. The district court said:

> The result was impressive. This began as a $500,000 insurance claim and ended up settling for over $6,000,000. Mr. Simon was also able to recover an additional $100,000 from Lange Plumbing LLC. Mr. Vannah indicated to Simon that the Edgeworths were ready so sign and settle the Lange Claim for $25,000 but Simon kept working on the case and making changes to the settlement agreement. This ultimately led to a larger settlement for the Edgeworths. Recognition is due to Mr. Simon for placing the Edgeworths in a great position to recover a greater amount from Lange. Mr. Kemp testified that this was the most important factor and that the result was incredible. Mr. Kemp also testified that he has never heard of a $6 million settlement with a $500,000 damage case. Further, in the Consent to Settle, on the Lange claims, the Edgeworth's [sic] acknowledge that they were made more than whole with the settlement with the Viking entities.

P00827-28; P00104 (*for identical analysis* in third order).[11]

[11] On page 14 of the Petition it says that the district court's "analysis of the "Quality of the Advocate Prong is identical, and the "Work Actually Performed" and "Results Obtained" prong were only slightly but not substantively reworked." This sentence should have read that *both* the "Quality of the Advocate Prong" and the "Results Obtained" Prong *were identical*, as can be seen by comparing the orders.

c. *Simon's Effort to Evade Responsibility for his Misrepresentations Misses the Point*

Simon dances between the raindrops to excuse his misrepresentations in the district court and briefing to this Court. The point of presenting his misrepresentations was to establish that in evaluating the quality of the advocate, the district court should have considered the manner in which Simon was misleading his clients. With respect to the removal of the confidentiality clause, Simon's Answer does not acknowledge or address the fact he was told in no uncertain terms by the Edgeworths that they were agreeable to the provision. P00672; P00637 (admitting he unilaterally made change: "Just so we are clear, your office did not ask for these substantial additional beneficial terms to protect the clients"). Nor does Simon acknowledge that he flat out lied when the testified to the district court that he negotiated confidentiality out at the request of Mr. Edgeworth. P00559:5 - 7 (falsely testifying that Brian Edgeworth requested the removal of the confidentiality provision); P00559:15 (falsely testifying Mr. Edgeworth "didn't want it").[12] Rather than address those troubling facts, Simon asks this Court to applaud him for

[12] Simon's false testimony is directly relevant to the "Quality of the Advocate" prong of the *Brunzell* analysis. The public's trust in a fair judiciary is substantially diminished when a lawyer's misrepresentations to the judiciary are not addressed.

unilaterally removing the confidentiality clause to increase his fee. While removing a confidentiality clause may have value in the circumstances of the cases Simon cited, this is not one of them since the client had considered and expressly accepted the confidentiality provision.

Simon responds to the issue of him ***destroying the fully-executed copy*** *(i.e.*, fully signed) of the Viking settlement sent to him by Viking's counsel by changing the narrative to discuss ***drafts*** and shamelessly asking why Viking would have tendered money if the fully-executed releases were destroyed by Simon. Ans. at 30 n.5. The fact is, however, that Simon ***did*** destroy the copy of the fully-executed agreements he received. *Compare* Ans. at 30 (pointing to *draft* used as evidence) *with* Pet. at 25; P00768 (admitting he destroyed the fully executed agreements). *See also* P00593 (in briefing before this Court, Simon mocked the claim that he would have received a copy of the fully-executed settlement agreement because he was no longer counsel of record); *but see* P00637 (directing that all settlement agreements be routed through him); P00638-39 (confirming Simon's direction to be the intermediary was followed).

Simon again takes issue with referencing the Viking settlement as having been reached on November 15, 2017, Ans. at 28, despite the fact that in questioning Mr. Edgeworth before Judge Jones, Simon's own

counsel acknowledged the settlement was reached on between November 10 and 15, 2017:

> Q. [Mr. Christiansen] Your case settled November, between November 10th and 15th, the sort of essential terms of the settlement were agreed for $6 million against Viking, correct?
>
> A. [Mr. Edgeworth] Correct.

P00841 at lines 22-24. This issue was also fully addressed in the second appeal. Case No. 83258/83260, Reply Br. at 8-9. In that second appeal, Simon argued, for the first time, that services after the date he chose to present (and after the parties were in litigation) *could* have been considered by the district court to justify the his $200K quantum meruit award.[13] *Id.* Among his arguments for introducing new facts, Simon claimed in the second appeal that the district court had substantially amended her lien adjudication order, when in truth, few changes were made. Compare P00854 *with* P00008. In the October 11, 2017 order FOF #13 says: "[o]n the evening of November 15, 2017 [pre-discharge], the Edgeworths settled their claims against the Viking Corporation." P00854.

[13] ***After*** the second mandate, Simon tried to correct this deficiency by presenting evidence he had previously withheld from the Edgeworths to bolster his argument to the district court about services he chose not to specify in the 2018 lien adjudication proceedings. *See* Ans. at 27 (acknowledging Simon's effort to add to his 2018 superbill came only in 2023 ***"after the second mandate."***

At Simon's behest, FOF #13 was amended to recognize that the settlement agreement which Simon first shared with the Edgeworths on November 30, 2017 was not signed until December 1, 2017, which the Edgeworths acknowledge on page 5 of their Petition.[14]

Simon also tries to divert attention from a key misrepresentation he made by now quarreling that he had not yet *seen* the copy of the settlement agreement sent to him by Viking's counsel on November 27, 2017, at 4:48 p.m., prior to emailing Mrs. Edgeworth at 4:58 p.m., to say the agreement ***was likely not started*** yet because of "the holidays" (P00666). The draft he received at 4:48 p.m. did not materialize from thin air. In truth, he was having discussions with counsel for Viking at least by that morning, if not before. His own email exchange with Viking's counsel before noon on November 27, six hours before he falsely told the Edgeworths he had not yet heard anything about the settlement his demand described as being very precarious confirms his self-serving

[14] FOF #13 in the November 19, 2017 Order was modified to say: "On the evening of November 15, 2017, the Edgeworth's [sic] received the first settlement offer for their claims against the Viking Corporation ("Viking"). However, the claims were not settled until or on about December 1, 2017." P00008. Other than this minor amendment to Finding #13 and amending the amount of the lien to correct an error in including costs the Edgeworths had already paid, the amended November 19, 2018 Order did not materially change any findings as Simon misleadingly suggests.

machinations. P00835; P00663-64. His morning email confirms he ***knew*** the agreement was being negotiated ***before*** his November 27, 2017 afternoon emails to Mrs. Edgeworth (P00666-67) and before sending his demand to the Edgeworths trying to frighten them into submitting to his demand for a contingent-like fee by restating his veiled threats to implode the settlement (P00663). *See* P00835 (confirming Simon and Viking's counsel were discussing the settlement agreement at least by the morning of November 27, 2017); *see also* P00836 (email to Simon confirming settlement was finalized before November 28, 2017).[15]

And recall Simon previously ***denied*** the existence of any settlement drafts in testimony before the district court, attributing the absence of any drafts to his false contention that all negotiations had been conducted in person P00568:18 – 24; P00606. The portion of the file he produced in December 2022 demonstrates that in fact did exchange drafts electronically. P00438 n.5 and P00609-35.

[15] Misleading the Edgeworths about the status of the settlement negotiations was not an innocent oversight; the misrepresentations appear calculated to exert pressure on the Edgeworths and support Simon's November 27, 2017 demand claiming that much remained to be done, and his threats that the settlement could implode if *he chose* not to accept the confidentiality provisions. P00663-64.

Simon's answer attributes fault to footnote 4 on page 6 of the Edgeworths' Petition where they point out the district court *did not* order him to refuse to release money to the Edgeworths. He offers nothing to rebut that fact, nor could he because a court order as he describes does not exist. Footnote 4 points out that Simon affirmatively told two different courts that he refused to distribute the Edgeworth funds due to the district court's non-existent order. In his effort to "rebut" these statements, Simon says that "Unmentioned is the failure of the Edgeworths' motion to force disbursal" of the funds (Ans. at 30), which is a non-sequitur. The Edgeworths did seek to disburse the funds but that motion could not be considered because of the pending appeal. The minute order refusing to consider the Edgeworths' motion because an appeal had divested the district of jurisdiction is completely different than the affirmative representations Simon made claiming: "Judge Jones ordered the funds to remain in the account . . ." (P00282) and that "Simon *is following the District Court order* to keep disputed funds safe pending appeal" (P00285). Neither is a true statement.

Simon's effort to capitalize on the hourly rate of other lawyers to justify a larger fee for himself should also be rejected. Ans. at 22. Vannah was not retained "to do the same work as Simon" as Simon contends

without any citation to the record. *Id*. Vannah was retained to protect the Edgeworths' from Simon's threats and promptly finalize the Viking settlements. P00838:17 - 19. The fee he was paid to protect the Edgeworths' against Simon's arm-twisting tactics is not only irrelevant to the question of what a reasonable fee is for Simon's ministerial work, but Simon neglects to mention that Vannah's $925/hour fee included a reasonable cap, and factored in the complexity of becoming adversarial to a fellow lawyer whom Vannah had considered a friend. P00844-45.

C. IF A THIRD REMAND IS ORDERED, REASSIGNMENT TO ANOTHER JUDGE WOULD BE PROPER

The Edgeworths maintain that the record and the law fully support this Court directing a judgment for the reasonable value (as Simon himself valued his time) of the 71.10 hours Simon chose to describe and present to the district court in 2018. *Ashokan*, 109 Nev. at 667, 856 P.2d at 247 (Court has constitutional prerogative "to entertain the writ" [Nev. Const. art. 6] "where circumstances reveal urgency or strong necessity"); *Barrow*, 11 F.3d at 730 (concluding it was appropriate for an appellate court to direct the amount of a judgment when the lower court has not followed the instructions issued in remand, which has twice been the case here); *In re Sanford Fork & Tool Co.*, 160 U. S. at 256 (writ of mandamus is

appropriate when lower court does not follow prior mandate). Simon acknowledges that he offered his "superbill" to the district court on January 24, 2018 with his motion to adjudicate the value of his lien (Ans. at 14-15). He not only had a duty, but an ample opportunity during the 8 months between his January 2018 motion to adjudicate his false lien and the adjudication of the lien in October 2018 to present to the district court anything else he wanted her to consider in valuing his services. He chose to do nothing other than present his superbill and claim a contingent-like fee based on a colleague's opinion of what his services (mostly pre-termination) were worth.

Permitting Simon to enlarge the record ***over five years*** later, especially when some of the work claimed in his 2023 briefing took place ***before*** the date he submitted his superbill to the district court in 2018 would be unjust. Recall that Simon claimed the superbill was meticulously prepared after a full review of his entire file in 2018. P00431; P00477:16-17; *see also* P00416-18 (relying on work done ***before*** January 24, 2018 to enlarge his superbill); *but see*, Rest. Third of the Law Governing Lawyers § 39 cmt. b (attorney is the appropriate person to bear the risk of indeterminacy since he failed to memorialize the terms of his engagement). It is not a coincidence that Simon's additions to his account of time spent were raised

only after he produced documents he did not want the Edgeworths to see because they show he was not truthful with them when he suggested that the Viking settlement discussions had not even begun on November 27, 2017, when Angela Edgeworth begged for a status and asked that they be copied on anything regarding the settlement. *See* Pet. at 24-25 (discussing some of Simon's add-ons).

After two appeals, district court Judge Jones has demonstrated she is unwilling or unable to look beyond the dollars recovered from the Viking settlement and focus on the Court's two clear and unambiguous mandates. The Court in *Wickliffe v. Sunrise*, 104 Nev. 777, 783, 766 P.2d 1322, 1327 (1988) determined reassignment was proper after the district court, like Judge Jones has in this case, twice failed to follow the mandate. In arguing reassignment is not appropriate, Simon merely claims that elements of a Ninth Circuit Court of Appeals case were not addressed. Ans. at 31. In *State of Cal. v. Montrose Chem. Corp. of California*, 104 F.3d 1507, 1521 (9th Cir. 1997), the Ninth Circuit considered the appropriateness of reassignment under a federal statute. Not only is the case not binding on this Court, but it is inapposite.[16]

[16] Although *Wickliffe* confirms that reassignment for failure to follow prior mandates is appropriate, the Court can elect to look to other courts for guidance as to when reassignment is proper. The factors set out in the

When the substance of the district court's Fifth Amended Order is objectively reviewed, the post-discharge services the district court considered are the finalizing of the ***pre-discharge*** settlements, including the $53,000 net increase in the Lange Settlement, removal of the confidentiality clause, some clean up hearings to resolve the claims between Viking and Lange, and setting up one bank account. ***These same services are included in the 71.10 hours Simon listed on his superbill*** – the only 2018 record of his services he elected to offer when his time and fees were an issue to be decided by the district court. Yet the district court awarded Simon $200,000 in quantum meruit fees (more than $2,800 per hour) for 71.10 hours of administrative wrap-up work. That is unreasonable under *Brunzell*. If the

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Montrose Chemical case are common-sense ones: "(1) whether the original judge would reasonably be expected upon remand to have substantial difficulty in putting out of his or her mind previously-expressed views or findings determined to be erroneous or based on evidence that must be rejected, (2) whether reassignment is advisable to preserve the appearance of justice, and (3) whether reassignment would entail waste and duplication out of proportion to any gain in preserving the appearance of fairness." 104 F.3d at 1521 As to the first factor, Judge Jones has shown an inability to change her prior orders by twice ignoring the Court's mandate. The appearance of justice factor also favors reassignment in this case given that we are on the third appellate proceeding to address the same issues on which this Court gave clear instructions in the first appeal. The Petition addresses the third factor, which is that given the established record, a new judge could easily consider Simon's post-discharge services as set out in his superbill and value them in a manner that is reasonable under *Brunzell.*

Court does not direct entry of a judgment, reassignment to a new judge to reasonably value the services under *Brunzell.*

III. CONCLUSION

Petitioners respectfully ask the Court to grant this Petition and issue a writ of mandamus directing the district court to vacate its Fifth Amended Order and enter an order awarding Simon not more than $33,811.25 in fees for his and his associate's minimal post-discharge work, which is the most Simon's contemporaneous 2018 records will reasonably support.

Alternatively, we reluctantly request, should the Court vacate the Fifth Amended Order and remand this case for a third time, it should order that it be assigned to another district court judge for consideration of an appropriate quantum meruit value based on the record Simon submitted in 2018.

MORRIS LAW GROUP

By:/s/ STEVE MORRIS
Steve Morris, Bar No. 1543
Rosa Solis-Rainey, Bar No. 7921
801 South Rancho Dr., Ste B4
Las Vegas, Nevada 89106

Attorneys for Petitioners

CERTIFICATE OF COMPLIANCE

1. I hereby certify that I have read this **EDGEWORTHS' REPLY IN SUPPORT OF PETITION FOR A WRIT OF MANDAMUS TO COMPEL THE DISTRICT COURT TO ENTER A QUANTUM MERUIT ORDER AS TWICE PREVIOUSLY ORDERED BY THIS COURT BUT DISREGARDED BY THE DISTRICT COURT**, 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 6,125 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.

MORRIS LAW GROUP

By: /s/ STEVE MORRIS
Steve Morris, Bar No. 1543
Rosa Solis-Rainey, Bar No. 7921
801 South Rancho Dr., Ste B4
Las Vegas, Nevada 89106

Attorneys for Petitioners

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 **EDGEWORTHS' REPLY IN SUPPORT OF PETITION FOR A WRIT OF MANDAMUS TO COMPEL THE DISTRICT COURT TO ENTER A QUANTUM MERUIT ORDER AS TWICE PREVIOUSLY ORDERED BY THIS COURT BUT DISREGARDED BY THE DISTRICT COURT**; 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 **EDGEWORTHS' REPLY IN SUPPORT OF THEIR PETITION FOR A WRIT OF MANDAMUS TO COMPEL THE DISTRICT COURT TO ENTER A QUANTUM MERUIT ORDER AS TWICE PREVIOUSLY ORDERED BY THIS COURT BUT DISREGARDED BY THE DISTRICT COURT** to be served via the Court's e-flex system and by U.S. Mail:

Judge Tierra Jones (Will be Hand-Delivered 09/12/23)
Eighth Judicial District Court of
Clark County, Nevada
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

Respondent

James R. Christensen
JAMES R. CHRISTENSEN PC
601 S. 6th Street
Las Vegas NV 89101

Attorneys for Daniel Simon, Real Parties in Interest

DATED this 11th day of September, 2023.

By: /s/ CATHY SIMICICH