

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

EDGEWORTH FAMILY TRUST; AND  
AMERICAN GRATING, LLC

Petitioners,

vs.

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

Respondents.

Supreme Court Case No. 86676  
Electronically Filed  
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Elizabeth A. Brown  
(District Court Clerk for the Court)

**RESPONSE TO MOTION TO STAY BRIEFING OR ALTERNATIVELY,  
FOR A 60-DAY EXTENSION TO DEADLINE TO FILE THEIR OPENING  
BRIEF**

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Appellants requested identical relief from this Court on identical issues via a petition for extraordinary relief and by a direct appeal. Appellants now seek to permanently stay the briefing schedule in the direct appeal in favor of their petition. However, Appellants do not address the overarching problem, which is that Appellants have needlessly duplicated proceedings before this Court. Simon does not strictly oppose a stay but does request that this Court examine the needless duplication of filings by Appellants and consider a sanction, to include for Simon to seek attorney fees and costs.

Appellants alternatively seek a 60-day continuance due to unexpected burdens on counsel's time. Simon *does not* object to a 60-day continuance on the stated family obligation basis, although the needless duplication of proceedings issue would remain.

A stay of the direct appeal until this Court decides the Petition has a pragmatic allure. However, in the larger context, pragmatism and the law cut against any level of deference to a litigant that needlessly multiplies requests for relief to this Court on identical grounds. The authority warning against needless duplication of proceedings and providing a basis for sanctions includes NRS 7.085 & 18.010(2)(b), NRCP 11, NRAP 28.2(a)(2) and 38.

In the motion, Appellants acknowledge that they seek identical relief on identical issues via both the Petition and the Appeal. In the Petition, Appellants argued that extraordinary relief was needed to avoid “the burden of an expensive third direct appeal”. (Petition at p. 18.) Appellants also used the words “speedy” and “adequate”. (Petition at p. 17.) In the motion, Appellants also raise an undefined novel issue. (Motion at 2.) Assuming Appellants’ novel issue refers to the assertion made in reply in support of the Petition that the Edgeworths do not have an adequate remedy at law, the claim is squarely refuted by the fact of their direct appeal.

This Court should consider sanctions because litigation burdens and expenses do not create irreparable or serious harm to the extent that an appellant can be excused for filing duplicate requests for relief on identical grounds. *See, Hansen v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 658, 6 P.3d 982, 986-87 (2000)(litigation burdens do not demonstrate irreparable harm sufficient to grant a stay). The position does not argue against Simon’s request for associated fees and costs, because *Hansen* did not address the issue of additional *needless* litigation burdens or of wasting limited judicial resources. *See, e.g.*, NRS 7.085(2)(the statute provides a mandate to sanction those who “overburden limited judicial resources”).

The current motion seeks to remedy a problem of Appellants own making. Simon agrees that it is not practical to double track identical issues and requests for relief, and in that same vein Simon also asserts that the decision made by the Edgeworths to pursue double relief needlessly increased cost of litigation and the burden on this Court's limited resources. Accordingly, Simon respectfully requests this Court consider a sanction to include leave to Simon to apply for fees and cost related to the needless duplication of litigation, as well as a pragmatic remedy to the needless burden created by Appellants.

Dated this 27<sup>th</sup> day of September 2023.

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## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 27<sup>th</sup> day of September 2023, I served a copy of the foregoing RESPONSE TO MOTION TO STAY OR ALTERNATIVELY, FOR A 60-DAY EXTENSION TO DEADLINE TO FILE THEIR OPENING BRIEF electronically to all registered parties.

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