

1 exercised due diligence, and showed excusable neglect and therefore, the petition to enlarge the time  
2 for the issuance of citations was granted.

## 3 **II. Introduction and Summary of the Argument**

4 The objection to report and recommendation by Probate Commissioner Wesley Yamashita should  
5 be denied because the personal representative did not timely file objections and wrongly based its  
6 objections on the plain language rule of statutory interpretation. The Probate Commissioner agrees  
7 that the Court has the discretion under NRCP 6(b) and EECR 2.25 to extend the time for the issuance  
8 of citations. The Court should use this discretion to extend the time because the Contestant timely  
9 objected to the validity of the will and complied with relevant statutes in that regard. Moreover, the  
10 untimely issuance of the citation will not bar Contestant's claim because the extension of time is  
11 governed by NRCP 6(b), EDCR 2.25, and the doctrine of equitable tolling, and because Contestant's  
12 delay was the result of excusable neglect.  
13

### 14 **a. The Personal Representative failed to serve written objections within 10 days as** 15 **required by NRCP 53(e)(2).**

16 The Personal Representative failed to meet the statutory of limitations of NRCP 53(e)(2). The  
17 Rule states that "within 10 days after being served with notice of the filing of the report any party may  
18 serve written objections thereto upon the other parties." The Probate Commissioner Wesley  
19 Yamashita entered the Report and Recommendation on April 11, 2013. The Personal Representative  
20 filed its objection on April 29, 2013, more than 10 days after being served with notice. It is  
21 disingenuous for the Petitioner to claim that the Contestant should be barred from pursuing legitimate  
22 claims due to the inadvertent late filing of a citation while simultaneously failing to comply with a  
23 similar rule which controls the filing of objections in the instant matter. Therefore the late objection to  
24 the Probate Commissioner's Report and Recommendation should be rejected in whole and the report  
25 and recommendation should be affirmed.  
26  
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28

1           b. **The Plain Language Rule for the issuance of citations is inapplicable in this case**  
2           **because it is a procedural rule that is meant to give the court discretion to extend**  
3           **the time.**

4           The Petitioner cites a case with which counsel for contestant worked directly on as counsel for  
5           Blaine Equipment, however, the petitioner wrongly applies the plain language rule to the interpretation  
6           of the NRS 137.090 and misconstrues the ruling in that case. The Courts ruling in *Blaine Equipment* is  
7           inapplicable because it was only upholding the plain language rule to the word "shall". *Blaine Equip.*  
8           *Co. v. State of Nevada*, 112 Nev. 860, 867 (2006). In *Blaine Equipment*, the Court reaffirmed the  
9           mandatory meaning of the word 'shall' and held that the contracts shall be void, therefore, the district  
10          court did not have discretion in affirming the contract. Here, the ordinary meaning of NRS 137.090 is  
11          further explained by NRCP 6(b) which allows this court discretion in extending the time for the  
12          issuance in citations. The Nevada Supreme Court has held in the context of NRCP 6(a) that "[t]he  
13          better rule, however, and that reflected in . . . numerous other cases, is that the rules of procedure may  
14          apply with regard to statutes of limitations." *Romaine v. State Farm Mut. Auto. Ins. Co.*, 87 Nev. 257,  
15          259, 485 P.2d 102, 103 (1971) (emphasis added).

16          As the Commissioner correctly found, the rules of procedure apply in this case as evidenced by  
17          California case law. Nevada courts often look to California case law where the statutes at issue are  
18          similar to those in Nevada. *See e.g., John v. Douglas County School Dist.*, 125 Nev. 746, 756, 219 P.3d  
19          1276, 1283 (2009) ("we consider California caselaw because California's . . . statute is similar in  
20          purpose and language to Nevada's . . . statute."). In ruling to follow the Commissioner's decision, this  
21          Court would be following precedent from a neighboring state in regards to a statute where the purpose  
22          and language is substantially similar. Secondly, this Court would be following the Legislature's intent  
23          in drafting NRCP 6(b) in allowing the Courts to have the discretion to extend time limits. The  
24          legislature is trying to prevent injustice by giving the Court discretion so cases may be heard on their  
25          actual merits on not due to some harsh interpretation of the law or an attorneys inadvertent oversight in  
26          27  
28

1 failing to file a citation timely. Even in applying the plain language rule, the plain language in NRCP  
2 6(b), allows an extension in the issuance of citations.

3 **c. The Doctrine of Equitable Tolling Applies in this Case Because There Is No**  
4 **Danger of Prejudice to the Petitioner and Because the Interests of Justice So**  
5 **Require.**

6 Under the doctrine of equitable tolling, the deadline to issue citations should be extended  
7 because Contestant was prevented from complying with the deadline through no fault of his own or  
8 lack of diligence, and because a failure to extend the deadline would cause severe injustice. In  
9 addition, there is no prejudice to Petitioner.

10 “The equitable tolling doctrine extends statutory deadlines in extraordinary circumstances for  
11 parties who were prevented from complying with them through no fault or lack of diligence of their  
12 own.” *Neves v. Holder*, 613 F.3d 30, 36 (1st Cir. 2010). The doctrine of equitable tolling has been  
13 applied in Nevada. *See, e.g. Seino v. Employers Ins. Co. of Nevada*, 121 Nev. 146, 111 P.3d 1107  
14 (2005). Moreover, “equitable tolling focuses on whether there was excusable delay . . . .” *City of North*  
15 *Las Vegas v. State Local Government Employee-Management Relations Bd.*, 261 P.3d 1071, 1077  
16 (Nev. 2011) (quotation marks and citations omitted).

17 Contestant’s failure to file was the result of excusable neglect as Contestant relied on his  
18 attorney and acted diligently based on counsel’s mistaken advice. It was through no fault of his own as  
19 he intended to comply with all rules in relying on his attorney. Additionally, the Petitioner will not  
20 suffer any prejudice to his case in this matter and any prejudice the Petitioner may suffer in a small  
21 delay to the winding up of the estate is minimal to the damage that will be suffered if an incorrect and  
22 fraudulent Will is probated.

23 **d. Contestants Delay in Obtaining the Issuance of Citations Was the Result of**  
24 **Excusable Neglect Because Contestant’s Attorney Was Mistaken Regarding the**  
25 **Law and Because Contestant Acted with Diligence When the Error Was**  
26 **Discovered.**

27 Contestant’s delay was the result of excusable neglect because the former counsel for  
28 Contestant was mistaken regarding the law and because Contestant acted diligently upon discovery of

1 the mistake. Under NRCP 6(b), extensions may be granted “where the failure to act was the result of  
2 excusable neglect.” This is consistent with EDCR 2.25 which allows “a request for extension made  
3 after the expiration of the specified period” if “failure to act was result of excusable neglect.”

4 The Nevada Supreme Court has found, specifically in the context of NRCP 6(b)(2) that the  
5 factors required to establish excusable neglect are as follows:

6 [A] party seeking relief . . . under NRCP 6(b)(2) is required to demonstrate that  
7 (1) it acted in good faith, (2) it exercised due diligence, (3) there is a reasonable  
8 basis for not complying within the specified time, and (4) the nonmoving party  
will not suffer prejudice.

9 *Moseley v. Eighth Judicial Dist. Court ex rel. County of Clark*, 124 Nev. 654, 557-68, 188 P.3d 1136,  
10 1146 (2008).

11 First, Contestant acted in good faith and sought the advice of an attorney in preparing and filing  
12 the will contest. The objection to the will was filed within the required time limits, and in accordance  
13 with NRS 137. However, Contestant’s former counsel misread the statute and mistakenly thought that  
14 the issuance of the citation would be conducted as in a contest before probate. Counsel mistakenly  
15 thought he had complied with the provisions of NRS 137 for the issuance of a citation. There was  
16 nothing about Contestant’s conduct that was not in good faith. In addition, Contestant had a good faith  
17 basis for objecting to the will based on the suspicious circumstances by which it was procured.

18 With regard to the second and third factor, Contestant exercised due diligence and there was a  
19 reasonable basis for Contestant’s failure to comply with the specified time. The failure to comply was  
20 reasonable because Contestant relied on his attorney, and his attorney put forth a good faith effort to  
21 read and adhere to the statutory provision and relied on his past experience. Despite his efforts at  
22 complying with the rules, he overlooked an applicable provision. Moreover, although several days  
23 passed from the passage of the deadline to the issuance of the citation, Contestant was diligent because  
24 he understood from his attorney that he had complied with the provisions of NRS 137 and proceeded  
25 accordingly. Therefore, the delay in issuance of citations was due to the excusable neglect of the  
26 client’s former attorney which falls under the NRCP 6(b) extension for time.  
27  
28

1                   e. **Opposition to Counter-Petition to Dismiss Will Contest, or, in the Alternative, for**  
2                   **a More Definite Statement.**

3                   The objection to the will is not barred by the statute of limitations because Contestant timely  
4                   filed the will contest. Moreover, the Objection to the Admission of the will is sufficient on its face, and  
5                   properly alleges fraud, undue influence, and lack of testamentary capacity. These claims meet the  
6                   notice pleading requirements of NRCP 8(a) which simply requires a "short and plain statement of the  
7                   claim showing that the pleader is entitled to relief." In addition, the objection makes allegations of  
8                   conduct by Executor that are sufficient to show fraudulent circumstances. For these reasons, the  
9                   Commissioners denial of the Personal Representative's Counter-Petition to Dismiss Will Contest  
10                  should be affirmed. If the Court deems it necessary, Contestants new counsel can amend any  
11                  necessary pleadings so as to comply with pleading requirements.

12               **III. Conclusion and Request for Relief**

13               WHEREFORE, Contestant William Fink, requests the Court as follows:

- 14               1. The Court approves the Probate Commissioner's Report and Recommendation.  
15               2. The Court grants the Contestant's Petition to Enlarge Time Pursuant to NRCP 6(b).  
16               3. The Court denies the Personal Representative's Objection to Report and Recommendation.  
17               4. The Court grants the Contestant's request for extension of time to issue citations.  
18

19               DATED this 3<sup>rd</sup> day of July 2013.

20                               Respectfully submitted,  
21                               **CALLISTER & FRIZELL**  
22                               8275 S. Eastern Ave., Ste. 200  
23                               Las Vegas, Nevada 89123  
24                               Telephone: (702) 657-6000  
25                               Facsimile: (702) 657-0065

26               By: 

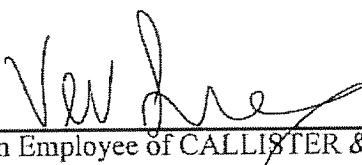
27                               **JONATHAN C. CALLISTER, ESQ.**  
28                               Nevada Bar No. 8011  
                                Attorneys for William Fink

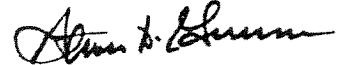
CERTIFICATE OF MAILING

I certify that I am an employee of CALLISTER & FRIZELL, and that on this 3 day of July 2013, I caused **OPPOSITION TO THE OBJECTION TO REPORT AND RECOMMENDATION** to be served by depositing a true and correct copy of the same with the United States Postal Service, with postage prepaid and addressed to the following:

Jonathan W. Barlow  
Jordan M. Flake  
BARLOW FLAKE LLP  
701 N. Green Valley Pkwy., Ste. 200  
Henderson, Nevada 89074  
*Attorneys for the Estate*

Rose Markowitz  
2201 Hercules Dr.  
Los Angeles, CA 90046

  
An Employee of CALLISTER & FRIZELL



CLERK OF THE COURT

**ORDR**

**JONATHAN W. BARLOW**

Nevada Bar No. 9964

**JORDAN M. FLAKE**

Nevada Bar No. 10583

**BARLOW FLAKE LLP**

50 S. Stephanie St., Ste. 101

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Attorneys for the Estate

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

In the Matter of the Estate of

LEROY G. BLACK,

Deceased.

Case No. P-12-074745-E

Dept. No. 26

**ORDER GRANTING OBJECTION TO REPORT AND RECOMMENDATION**

Date of Hearing: July 9, 2013

Time of Hearing: 9:00 a.m.

The *Objection to Report and Recommendation* filed by Phillip Markowitz as Executor of the Estate of Leroy G. Black came on for hearing on July 9, 2013. Jonathan W. Barlow, of Barlow Flake LLP, appeared for Phillip Markowitz as Executor of the Estate of Leroy G. Black, and Jonathan C. Callister, of Callister & Frizell, appeared for William Fink. The Court having reviewed all pleadings and papers on file, having considered the arguments of counsel, and other good cause showing, enters the following findings and order granting the Objection:

**FINDINGS OF FACT:**

1. Leroy G. Black ("Decedent") died on April 4, 2012.
2. On July 18, 2012, Phillip Markowitz ("Markowitz") filed a Petition for Probate of Will, Petition for Appointment of Personal Representative and for Issuance of Letters

1 Testamentary (the "Petition to Probate Will"). In the Petition to Probate Will, Markowitz  
2 petitioned the Court to enter a will dated March 7, 2012, to probate as Decedent's last will and  
3 testament.

4 3. On July 27, 2012, Markowitz provided Notice of Hearing on the Petition to  
5 Probate Will to William Fink ("Fink").  
6

7 4. This Court held its hearing on the Petition to Probate Will on August 31, 2012.  
8 Fink neither filed a written objection to the Petition to Probate Will, nor did Fink appear at the  
9 hearing to object to the Petition to Probate Will.

10 5. This Court entered its Order admitting the March 7, 2012, will to probate on  
11 August 31, 2012. Notice of Entry of the Order was served on Fink on August 31, 2012.  
12

13 6. On November 27, 2012, Fink filed an Objection to the Admission of the Last  
14 Will and Testament of Leroy G. Black, for the Revocation of Letters Testamentary and for  
15 Appointment of Special Administrator Pending the Conclusion of Will Contest (the "Objection  
16 to Admission of Will").  
17

18 7. On January 3, 2013, Fink caused a Citation to Plea to Contest to be issued by the  
19 Clerk of Court.

20 8. On January 23, 2013, Fink filed a Petition to Enlarge Time Pursuant to NRC  
21 6(b).  
22

23 CONCLUSIONS OF LAW:

24 1. An interested person who wishes to revoke an order admitting a will to probate  
25 must file a petition "containing the allegations of the contestant against the validity of the will  
26 or against the sufficiency of the proof, and requesting that the probate be revoked." NRS  
27  
28

1 137.080. The petition to revoke the probate must be filed "at any time within 3 months after the  
2 order is entered admitting the will to probate." NRS 137.080.

3 2. In addition to the requirements of NRS 137.080, an interested person who wishes  
4 to revoke an order admitting a will to probate must comply with the requirements of NRS  
5 137.090, which states, "Upon filing the petition, and within the time allowed for filing the  
6 petition, a citation must be issued, directed to the personal representative and to all the devisees  
7 mentioned in the will, and the heirs, so far as known to the petitioner, including minors and  
8 incapacitated persons, or the personal representative of any such person who is dead, directing  
9 them to plead to the contest within 30 days after service of the citation."  
10

11 3. The plain language rule of statutory interpretation requires that NRS 137.080-  
12 .090 must be given their plain and unambiguous meaning. The phrase, "a citation must be  
13 issued," in NRS 137.090 is given its plain meaning as a mandatory, not permissive, requirement  
14 that must be performed within three months after entry of the order admitting a will to probate.  
15

16 4. Because Fink failed to cause a citation to be issued within three months of  
17 August 31, 2012, Fink is time-barred by the statute of limitations to pursue a will contest of the  
18 March 7, 2012, will. Pursuant to NRS 137.120, the probate of Decedent's March 7, 2012, will is  
19 conclusive.  
20

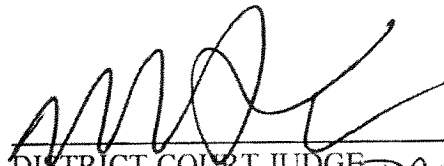
21 5. The statute of limitations in this case is not tolled based on extrinsic fraud. Fink  
22 did not provide any evidence of extrinsic fraud or any proof of any action by Markowitz that  
23 would have prevented Fink from knowing his rights in this matter or acting to protect his rights.  
24

25 6. Rule 6 of the Nevada Rules of Civil Procedure is not applicable to enlarge the  
26 time to issue the citation required by NRS 137.090.  
27  
28


1 IT IS THEREFORE ORDERED that the *Objection to Report and Recommendation* filed  
2 by Phillip Markowitz as Executor of the Estate of Leroy G. Black is granted. The Court does  
3 not adopt or approve of the Report and Recommendation entered by Probate Commissioner  
4 Wesley Yamashita on April 11, 2013.

5 IT IS FURTHER ORDERED that William Fink's Objection to Admission of Will is  
6 denied. Fink's purported will contest of the admission of Decedent's March 7, 2012, will to  
7 probate is time-barred by his failure to comply with the requirements of NRS 137.090 and is,  
8 therefore, dismissed. The probate of Decedent's March 7, 2012, will is conclusive.


9  
10 DATED this 31<sup>st</sup> day of July, 2013.

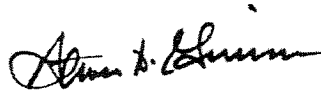
11  
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13   
14 DISTRICT COURT JUDGE *pon*

15 Prepared and submitted by:  
16 **BARLOW FLAKE LLP**

17   
18 **JONATHAN W. BARLOW**  
19 Nevada Bar No. 9964  
20 Attorneys for the Estate

21 Reviewed as to form and content:  
22 **CALLISTER & FRIZELL**

23   
24 **JONATHAN C. CALLISTER**  
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27  
28

  
CLERK OF THE COURT

1 NEO  
2 JORDAN M. FLAKE  
3 Nevada Bar No. 9964  
4 JONATHAN W. BARLOW  
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7 50 S. Stephanie St., Ste. 101  
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10 (702) 924-0709 (Fax)  
11 jonathan@barlowflakelaw.com  
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DISTRICT COURT  
CLARK COUNTY, NEVADA

In the Matter of the Estate of

Case No. P-12-074745-E  
Dept. No. 26

LEROY G. BLACK,


Deceased.

NOTICE OF ENTRY OF ORDER GRANTING OBJECTION TO REPORT AND  
RECOMMENDATION

YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE that the *Order Granting*  
*Objection to Report and Recommendation* was entered in the above entitled matter on August  
1, 2013, a copy of which is attached hereto.

DATED this 2<sup>nd</sup> day of August, 2013.

BARLOW FLAKE LLP

  
JONATHAN W. BARLOW  
Nevada Bar No. 9964  
Attorneys for the Estate

BARLOW FLAKE LLP  
50 S. Stephanie St., Ste. 101  
Henderson, NV 89012  
(702) 476-5900

CERTIFICATE OF MAILING

I hereby certify that on August 2, 2013, a true and correct copy of the original *Notice of Entry of Order Granting Objection to Report and Recommendation* was sent via U.S. Mail, first class postage prepaid, to the following at their last known address:

Rose E. Markowitz  
318 North California St.  
Burbank CA 91505

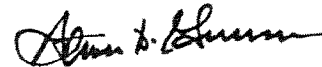
Phillip Markowitz  
2201 Hercules Drive  
Los Angeles CA 90046

Jonathan C. Callister  
Callister & Frizell  
8275 S. Eastern Ave., Ste. 200  
Las Vegas NV 89123



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CLERK OF THE COURT

**ORDR**

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Nevada Bar No. 9964

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Nevada Bar No. 10583

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22 did not provide any evidence of extrinsic fraud or any proof of any action by Markowitz that  
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4 Wesley Yamashita on April 11, 2013.

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10 DATED this 31<sup>st</sup> day of July, 2013.

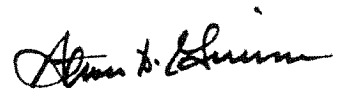
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13   
14 DISTRICT COURT JUDGE *pon*

15 Prepared and submitted by:  
16 **BARLOW FLAKE LLP**

17   
18 **JONATHAN W. BARLOW**  
19 Nevada Bar No. 9964  
20 Attorneys for the Estate

21 Reviewed as to form and content:  
22 **CALLISTER & FRIZELL**

23   
24 **JONATHAN C. CALLISTER**  
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26 Attorney for William Fink  
27  
28

  
CLERK OF THE COURT

1 RTRAN

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4 DISTRICT COURT  
5 CLARK COUNTY, NEVADA

6  
7 IN THE MATTER OF THE ESTATE OF: )

8 LEROY BLACK )

CASE NO. P-074745

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DEPT. XXVI

BEFORE THE HONORABLE GLORIA STURMAN, DISTRICT COURT JUDGE

TUESDAY, JULY 9, 2013

**RECORDER'S TRANSCRIPT OF PROCEEDING:**

**OBJECTION: BY EXECUTOR PHILLIP MARKOWITZ TO REPORT AND  
RECOMMENDATION OF APRIL 11, 2013**

APPEARANCES:

For the Petitioner:

JONATHAN BARLOW, ESQ.  
Clear Counsel Law Group

For the Objector:

JONATHAN CALLISTER, ESQ.  
Callister & Frizell

RECORDED BY: KERRY ESPARZA, COURT RECORDER

1 TUESDAY, JULY 9, 2013 AT 9:23 A.M.

2  
3 THE COURT: The Leroy Black Estate. It's P-12-074745.

4 MR. BARLOW: Good morning, Your Honor, Jonathan Barlow, 9964 for  
5 Phil Markowitz, the Executor of the Estate.

6 THE COURT: Okay.

7 MR. CALLISTER: Jonathan Callister, Bar Number 8011, on behalf of  
8 William Fink.

9 THE COURT: Okay. All right.

10 MR. BARLOW: Your Honor, we're here on our Objection to Report and  
11 Recommendations. We have two basic matters that we're concerned about  
12 today. One is interpretation of NRS 137.090 and whether that should be given  
13 a plain language reading. And then, number two, secondarily, which I don't  
14 think it'd been given proper consideration below but it's been raised -- was the  
15 concern about whether the actual will contest was styled as an objection at the  
16 time back in November. Whether that actually comports with 137.080 which  
17 requires allegations of the -- against the admission of the will, so that's the first  
18 issue.

19 This is simply -- we're just saying, the Nevada Supreme Court has  
20 held over and over, and over again that if a statute lends itself to a plain literal  
21 reading of the statute, that we have to enforce the literal reading of the statute.  
22 And I don't see any other way that 137.090 could be interpreted other than to  
23 say: This has to be done. That the issuance of the citations must be done  
24 within that same three month period after the admission of the will to probate.  
25 And unfortunately, that simply was not done in this case. In fact, it was done

1 more than a month after the fact, after we raised this point.

2           So if we're going – so essentially our argument is: Follow the  
3 Nevada Supreme Court well held rule of statutory interpretation, which is to  
4 enforce the plain meaning of the statute. The opposing position would be  
5 follow a California Supreme Court case that was held almost a hundred years  
6 ago that allows some leeway in this case. And I think when you're faced with  
7 those two things, we have to follow what the Nevada Supreme Court says.

8           I understand there may be some reticence given the harsh –  
9 wonderful harsh results that may occasion against the – the will contestant,  
10 but unfortunately, that's up to the Legislature to remedy that problem. If the  
11 Legislature wants to change 137.090 then that's where it should be taken up at  
12 that point.

13           THE COURT: Okay, well, I think that we're cited to *Fullerton* where, if  
14 there's some reason to toll the statute of limitations then extrinsic fraud will toll  
15 the statute of limitations. And is it your position here that –

16           MR. BARLOW: To – yeah, to the question of extrinsic fraud that – as I  
17 understand extrinsic fraud, that is that -- that my client would have had to have  
18 done something to prevent his client from being able to comply with the statute  
19 of limitations, which that clearly was not the case. Notice of hearing was  
20 provided on the petition to probate the will. Notice of entry of order was given  
21 to his client to – the contestant once the order was entered, admitting the will  
22 to probate.

23           We've done nothing to hide this proceeding from him. He knew  
24 about this all along. He failed to come forward. From the time that we first  
25 gave notice of hearing on the Petition to Probate the Will it was almost four

1 months. Yeah, I understand that this timeframe is three months from admission  
2 of the will, but he had a whole month before that where he knew this was  
3 going forward and he's failed to do anything in that timeframe up until the 11<sup>th</sup>  
4 hour when he – when he hired an attorney to help him with this, who then put  
5 on Objection to the Admission of the Will which has the most boilerplate  
6 language I could ever see as a purported contest of the will.

7 And I just don't think that complies with the – that gets to my  
8 second point, which I don't believe that complies at all with what the statute  
9 requires for a will contest to simply say we're contesting the will. I just don't  
10 think that complies with what the statutes require in that instance.

11 THE COURT: Okay. Thank you.

12 MR. CALLISTER: If I may, Your Honor. One, I understand that that -- the  
13 Nevada Supreme Court has said if the – if the Legislature has spoken that  
14 should be the rule you go by. There's also a counterbalance to that and that is  
15 that the courts have repeatedly said that issues should be decided on their  
16 merits, not by the harsh implication of some rule.

17 Mr. Barlow, in his briefing, quoted *Blaine Equipment v. State of*  
18 *Nevada Purchasing Division* which I personally worked on. And that is not like  
19 the situation, it is distinguishable. What is distinguishable there is, that was  
20 decided on the merits and he had a statute which said: If it's been decided and  
21 the Purchasing Division violated the purchasing act, then those contracts shall  
22 be void.

23 We have a different situation here. We have a two part statute that  
24 says: One, you can file a will contest.

25 THE COURT: Uh-huh.

1 MR. CALLISTER: That's the initiation of the -- of the jurisdiction of the  
2 Court that there's going to be a will contest. Second part of that is the  
3 issuance of the citations which is similar to a summons. That is what is -- goes  
4 out and is served to individuals to inform them that there is a will contest  
5 pending. My client did everything he could -- could do to comply with that  
6 statute. He hired an attorney.

7 The will contest was filed on time. The issuance of the citation  
8 admittedly was not, but that was not through any fault of my clients. It's  
9 because his attorney, previous to myself, made an error. And we believe that  
10 that is excusable neglect. It was no fault of his own that his attorney made a  
11 mistake.

12 THE COURT: Well --

13 MR. CALLISTER: And that, really, this matter should be decided on its  
14 merits.

15 THE COURT: -- well as Counsel has argued that where it's a statute of  
16 limitations and it -- the purpose, as I would view it, behind the statute is, the  
17 speedy administration of the states. You want to hold this -- this 90-day period  
18 for service very, very tightly because it -- it runs counter to the intention behind  
19 the probate statutes to get these things resolved quickly for the benefit of  
20 creditors and for the ultimate heirs.

21 So that's the purpose behind it is to make sure this thing runs  
22 smoothly and quickly. It's a real short, real narrow time window. If there's an  
23 error, isn't there a different remedy for that error if it's not the -- the objector's  
24 error, it was counsel's error. There's a different -- there's a different remedy for  
25 that, not tolling the statute of limitations. The case that talks about tolling the

1 statute of limitations: *Fullerton*, talks about it in the terms of extrinsic fraud.

2           That there was an attempt to hide from the person who is seeking  
3 to raise the objection. That there were grounds or issues upon which they  
4 could seek to have his will set aside and that's the -- where we run into a  
5 problem here is that where notice is given, can we really say there's -- there's  
6 fraud? I mean, I understand the argument that your client believes this was a  
7 fraudulent will, but there is fraud in the -- to the extent that the signatures don't  
8 match, it's questionable circumstances under which it was -- it was done. I  
9 understand all that.

10           But where we have what appears to be a statute of limitations, if  
11 you don't do this within this much time, then it's void because we want to  
12 push these things through the system on a real short timeframe for the benefit  
13 of the creditors and the heirs. How do I -- how do I get around a statute that  
14 says its got to be done?

15           MR. BARLOW: Well, Your Honor, I believe with -- even when there are  
16 statutes that speak to something, this Court still can't have some discretion.  
17 When you look at the -- the rules, in particular EDCR 2.25, it says that the rules  
18 of civil procedure apply --

19           THE COURT: Uh-huh.

20           MR. BARLOW: -- to Title 12 cases which are will contest issues. And  
21 that those same rules apply which provide the Court with discretion, to decide  
22 that a matter can be tolled or an extension can be given due to excusable  
23 neglect of a party.

24           THE COURT: Well, if we looked at it the way we look at the statutes on  
25 serving a summons and complaint where you have 120 days and then, if you

1 have requested time – have made a timely request to extend that time, kind of  
2 the *Scrimner* factors. And if you haven't made a timely request we look at the  
3 *Saavedra-Sandoval* factors, and isn't this really a case in which there was no  
4 timely request to extend time? I mean, I – you have to – under Rule 4(i), have  
5 requested that from the Court and I don't – I don't see that there was an  
6 attempt made.

7           There's just a failure to issue those citations at all, not that they  
8 were having difficulty getting them served or any of those kinds of things.  
9 Where there's some discretion to [cough] extend the time.

10           MR. BARLOW: I would agree. I believe, Your Honor, that that's – that  
11 just creates a harsh result. That his attorney made an error, filed an affidavit or  
12 he admits that he made an error in interpreting [sic] the statute. And here we  
13 have an issue where their – a handwriting expert said there may have been or  
14 believes that there was fraud, and we're going to decide an issue based on a 90  
15 day window in which you're to file a will contest and issue a citation within the  
16 same 90 days.

17           We're going to decide that that forever bars what possibly was a  
18 fraudulent will which has been filed. And, I believe the discretion of the Court  
19 to decide matters on their merits rather than on the implication of a harsh rule  
20 like this, I really think it does an injustice in this matter.

21           THE COURT: Okay, thanks.

22           MR. CALLISTER: Here again the – I can acknowledge the harshness of  
23 the result. I can understand that that -- this – it may occasion a harsh result.  
24 But again, the Nevada Supreme Court's addressed that again saying: If the  
25 literal meaning of a statute causes that, that's up to the Legislature to resolve

1 that problem. That's not up to the judiciary to solve that problem. To the  
2 question of the underlying facts, those aren't technically before the Court. We  
3 could have given sympathetic facts to our side as well, but those would come  
4 up if the will contest pursued. So, I don't know if those are real relevant to  
5 what we're doing today.

6           There are statute of limitations for all kinds of cases, for personal  
7 injury cases, for fraud itself – very little on fraud. You have to bring your claim  
8 within a certain period of time. You have to do it following the statutes of  
9 limitations or the best of claims in the whole world could get barred from being  
10 pursued. The most compelling cases can be barred from being pursued. So  
11 there's – this is no different than those other that are subject to the statute of  
12 limitations.

13           To the issue of the rule of civil procedure applying to Title 12, the  
14 Rules of Civil Procedure apply to all of the statutes in NRS, is it 48 an 41 that  
15 have the regular statutes of limitations for – for civil claims? It also applies to  
16 those but they don't necessarily toll those statutes of limitations from running.

17           THE COURT: Okay. Now, are you looking to have the – the report and  
18 recommendations overturned or are you simply seeking to have more guidance  
19 from the commissioner as to why he found, in this particular case, that there's  
20 some grounds – I mean, I'm not sure what he found here as to the excusable  
21 neglect factors that there were, because the contestant acted in good faith,  
22 exercised due diligence, had a reasonable basis for not complying in a specified  
23 time and there's no prejudice to the non-moving party.

24           MR. BARLOW: Yeah.

25           THE COURT: And further, acted in good faith seeking counsel. The

1 objection itself was filed, just wasn't served.

2 MR. BARLOW: You know, not to make the arguments but my  
3 understanding of the underlying ruling in which we are asking to be overturned  
4 by Your Honor, as an error of law, is that the commissioner found that the –  
5 what I believe is a statute of limitations in 137.090 where they took issuance  
6 of citations. He found that that – that must -- actually it wasn't mandatory but  
7 it was permissive, and which I don't understand how you can misread that  
8 literal reading.

9 And so, because it's permissive, he then allowed NRCP 6(b) to be  
10 used to extend the time for the accomplishment of that requirement, and then  
11 you get into the excusable neglect and things like that. Those would only come  
12 in if we then – if we've decided that NRCP 6(b) should – should apply. Which  
13 I'm saying that that shouldn't apply at all, because we have a firm statute of  
14 limitations, so we don't get into the excusable neglect and – and those types of  
15 issues.

16 THE COURT: Okay.

17 MR. BARLOW: So we're asking yes, that it be overturned. That Your  
18 Honor just simply says: 137.090 is a statute of limitations, that it was not  
19 complied with, and that therefore bars the pursuit of the will contest under  
20 137.120, I believe is the statute.

21 THE COURT: Okay. Well, Counsel I have to tell you, I have in the past  
22 ruled in that – in that fashion. I do believe it is statute of limitations. There's a  
23 very limited exception to statutes of limitations for tolling based on extrinsic  
24 fraud, but the fraud would have to be in letting the person know they have the  
25 claim and not the fraud of the underlying will.

1 And so, that's where I have a problem because I – you know, I do  
2 think there's a case right on point. The *Fullerton* case tells us that *Fullerton* and  
3 Mrs. *Rogers*, 101 Nev. 306, it's a 1985 case. That extrinsic fraud may toll the  
4 time limits under NRS 137.080. But the problem I have is, I don't see that  
5 there were findings of extrinsic fraud here. I think that's the only thing that  
6 would toll the statute of limitations and we don't have it.

7 What we have, maybe, and I understand your argument and that  
8 this would result in an inequity because there's a potential that there was fraud  
9 here in the underlying will itself, I understand that. But I just, you know, I had  
10 previously ruled that we have to have the fraud with respect to letting the  
11 person know the stat that their claim has arisen and you hide that. I think  
12 that's the way the *Fullerton* case reads is that: The fraud is as to letting the  
13 person know there's a claim at all.

14 And it sounds like they gave timely notice and he filed his objection,  
15 he just didn't get his citations issued in time. And I had previously ruled that –  
16 so I got to be consistent in my previous ruling, that absent the kind of extrinsic  
17 fraud that we see in *Fullerton v. Rogers*, it's a statute of limitations. It's got to  
18 be strictly complied with. Must, is a mandatory term, not a permissive term.  
19 And unlike the Rules of Civil Procedure on service of process where you can,  
20 you know, you have the cases that tell us what the factors are that you can  
21 apply and get your time extended for service of a summons and complaint.

22 This – where we don't have that request made in a timely fashion  
23 it's just not done at all. The citations weren't even issued as far as I can tell. If  
24 it were a problem with -- they hid from us, they lied about where they were so  
25 we couldn't get service, something like that. I could see where you'd be going

1 with it, but just failure to issue the citations. I, you know, I previously ruled  
2 that that's just – I don't – I don't find that that can toll the statute, at all,  
3 absent some – like I said, like they were hiding and we couldn't get service on  
4 them or something. And I – I just – that's how I previously ruled.

5 I feel I have to be consistent with my ruling, so I'm going to grant  
6 the objection because I – I do it as a statute of limitations. And absent the kind  
7 of factors we have in *Fullerton v. Rogers*, there's some sort of other bad faith in  
8 the service of the citation itself. Because I understand there's always going to  
9 be an allegation – underlying allegation that there was some sort of fraud in  
10 getting the will, that's why there is a will contest.

11 I just, you know, I know that we have a preference for getting  
12 cases to set on their merits, but I feel I must remain consistent with my  
13 previous rulings, so I'm going to grant it. Okay. And Counsel, if you'll prepare  
14 that order and show it to your opposing counsel, because I mean, if you wish to  
15 take it up, you know, I've got another one that might be going up too. Because  
16 this is, like I said, this is how I've ruled in the past and I'm going to remain  
17 consistent.

18 MR. BARLOW: Okay, thank you, Your Honor.

19 MR. CALLISTER: Thank you, Your Honor.

20 THE COURT: Thank you.

21 [Proceeding concluded at 9:39 a.m.]

22 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
23 audio/visual recording in the above entitled case to the best of my ability.

24 

25 Kerry Esparza, Court Recorder/Transcriber  
District Court, Department XXVI

FILED

JUN 24 2014

*Am. & Blum*  
CLERK OF COURT

ORIGINAL

1 TRANS

2  
3  
4  
5 EIGHTH JUDICIAL DISTRICT COURT  
6 FAMILY DIVISION  
7 CLARK COUNTY, NEVADA  
8

9 IN THE MATTER OF: )

10 LEROY BLACK, )

CASE NO. P-12-074745-E

11 Deceased. )

DEPT. PROBATE

12  
13 BEFORE THE HONORABLE WESLEY YAMASHITA  
DISTRICT COURT JUDGE

14 TRANSCRIPT RE: ALL PENDING MOTIONS

15 FRIDAY, FEBRUARY 8, 2013

16 APPEARANCES:

17 The Executor:  
18 For the Executor:

NOT PRESENT  
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21 For the Objector:

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1 LAS VEGAS, NEVADA

FRIDAY, FEBRUARY 8, 2013

2

P R O C E E D I N G S

3

(THE PROCEEDINGS BEGAN AT 10:28:39)

4

5

MR. BARLOW: Good morning, Your Honor. Jonathan

6

Barlow for the Executor of the estate Phillip Markowitz.

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MR. CALLISTER: Jonathan Callister for the

8

Contestant William Fink, bar number 8011. With me is William

9

Fink, Adam Birk, an associate of Jonathan Callister's, bar

10

number 12557.

11

THE COURT: All right. I've got response that was

12

filed, late, late, Wednesday night. I got in my office

13

yesterday morning, I believe.

14

MR. CALLISTER: I apologize about that, Your Honor.

15

We were just --

16

THE COURT: But you leave --

17

MR. CALLISTER: -- retained.

18

THE COURT: My -- part of the problem is when I

19

first came in I thought well, this wasn't even -- I thought

20

this was a totally different thing, because he's gone through

21

now -- you're the third attorney and none of which --

22

MR. CALLISTER: Third attorney.

23

THE COURT: -- have this sub -- you don't have a

24

substitute attorney on.

1 MR. CALLISTER: Oh.

2 THE COURT: And so I didn't see that. I didn't know  
3 where you fit in the picture, so --

4 MR. CALLISTER: I apologize, Your Honor. We did  
5 file a substitution of attorney and a notice of appearance.

6 THE COURT: Okay. When it goes into Odyssey, then  
7 I'm not going to see that.

8 MR. CALLISTER: Okay. I apologize, Your Honor.

9 THE COURT: Until at least three days. So this is  
10 the petition with regard to the issuance of a citation on a  
11 post admittance will contest.

12 MR. CALLISTER: Correct, Your Honor.

13 THE COURT: The statute is in conjunction with  
14 137.080 and 090 which talks about the citation is to be upon  
15 final petition and within the time allowed for final petition  
16 citation must be issued. Okay. And so the question is does  
17 that require -- is that kind of a cliff type thing? I mean,  
18 if you're over the cliff, are you over the cliff or is there  
19 is a step down and you can get back up type of thing? Okay.

20 Certainly from this side they're saying they -- you  
21 didn't meet the requirement, you're done. Okay. Your side  
22 you're saying well, it is potentially not a kill shot so to  
23 speak, but it is reparable.

24 MR. CALLISTER: Correct, Your Honor. We believe

1 that regardless of whether you look at it as being the  
2 issuance of a citation as being a statute of limitations or  
3 simply a rule that can be modified by the Rules of Civil  
4 Procedure 6(b), we believe under both that we would have the  
5 ability to -- that the Court would have the authority to allow  
6 an extension for us to go ahead and issue the citations beyond  
7 the 90 days.

8 Both of those whether you look at it as being a  
9 statute of limitations meaning a strict 90 day rule or a rule  
10 that can be modified by the discretion of the Court. We  
11 believe that Rule 6(b) can apply in both situations and that  
12 there's case law that allows Rule 6(b) to be applied both in  
13 the situation of a statute of limitations and in the situation  
14 where it's just the violation of a rule.

15 THE COURT: My question is I mean, you submitted in  
16 this other evidence about, you know, can -- blah, blah, blah,  
17 blah. Is the viability or of the actual contest actual part  
18 of this discussion?

19 MR. CALLISTER: Is the viability of the contest --

20 THE COURT: Right. I mean --

21 MR. CALLISTER: -- part of the discussion?

22 THE COURT: -- of what he has, you know, the merits,  
23 quote unquote, the availability of the merits of his  
24 objection, is that part of the discussion when it comes to

1 whether or not the extension of time is available or not?

2 MR. CALLISTER: Yeah. I believe merits of the case  
3 can be looked at with regard to the Court exercising its  
4 discretion on whether to extend. We believe we have a very  
5 meritorious claim and that we have -- we have attached to our  
6 pleading a handwriting expert that has said that it's not his  
7 signature. We believe there's a previous will and trust that  
8 makes my client the beneficiary.

9 THE COURT: But is that really -- and I'm trying to  
10 figure out if that's really part of the discussion as to  
11 whether the extension of time is applicable or not.

12 MR. BARLOW: Your Honor, may I -- on that opine,  
13 there's a lot of statute of limitations in the statutes. And  
14 when the statute runs regardless of the viability of the claim  
15 and there's a lot of made now cases that don't get brought  
16 within the right amount of time, there's breach of contract  
17 things that don't get brought in the right amount of time.  
18 And you just can't bring those claims after the statute has  
19 run.

20 So I think that the mere question here is not  
21 whether there's a viable defense or whether issues with the  
22 will contest. We'll get to those if you do let this go  
23 forward. And I think those are completely irrelevant to what  
24 we're trying to say right now which is simply can they now

1 issue this citation after the running of the 90 days and then  
2 we'll get to that.

3 THE COURT: And --

4 MR. BARLOW: In fact, the -- I'm sorry.

5 THE COURT: Whether -- and whether this is  
6 technically under the quote, statute of limitations, whether  
7 it is a statute of limitation or not.

8 MR. BARLOW: Right. And to -- and my last point is  
9 that the supreme court in Mosley (ph), the Mosley case that I  
10 cited, they set out the elements under 6(b) of whether to  
11 consider that. That doesn't have any language about the  
12 viability of the defense or the claim which is under 60(b).  
13 There is language about that and those elements, but mostly  
14 cases -- so that out. So they're not applicable in this  
15 situation.

16 I think we're merely trying to determine --

17 THE COURT: Hold on.

18 MR. CALLISTER: I apologize, Your Honor. This is  
19 William Fink's mother who --

20 MS. FINK: And this is Mrs. -- Mr. Markowitz and his  
21 mother is my twin sister. Their name wasn't anything on the  
22 --

23 THE COURT: Ma'am --

24 MS. FINK: -- Your Honor --

1 THE COURT: Ma'am, you have no standing here. You  
2 have no standing here.

3 MS. FINK: Your Honor --

4 MR. CALLISTER: I apologize, Your Honor.

5 MR. BARLOW: If I might -- how I see this discussion  
6 framed is 137.120 states what the statute of limitations is --  
7 or it says what has to happen within the statute of  
8 limitations. We all agree it's 90 days or three months.  
9 137.120 says you have to contest the validity of a will, but  
10 it doesn't tell us in 137.120 what it means to contest the  
11 validity of a will.

12 The Nevada Supreme Court has stated in -- when it's  
13 a little bit ambiguous what that means, you have to construe  
14 multiple legislative provisions as a whole so that they all  
15 are given effect. And when you look at that, we have to  
16 construe all of those legislative provisions in 137.080  
17 through the end of the after probate statutes as a whole.

18 So we go back up to the top and say what does it  
19 mean to contest the validity of a will. 080 says we have to  
20 file the actual petition and 090 says we have to issue the  
21 citation. Those are the two things that are necessary to  
22 quote/unquote contest the validity of the will. And the  
23 language in 080 and 090 are pretty clear and there's plain  
24 stay what has to happen in those situations.

1           So if you don't accomplish those two steps, then you  
2 just -- you have not quote/unquote contest the validity of a  
3 will. And the supreme court and other statu -- or another  
4 rule of interpretation is that it's not the Court's job, it's  
5 not the supreme court's job, it's not our job to correct any  
6 injustices that may be done by, you know, a harsh result so to  
7 speak, you know, in a plain reading of the statute.

8           THE COURT: But -- and I -- let -- the whole  
9 question comes down to me, is this a mandatory dismissal issue  
10 or is this a discretionary dismissal issue?

11           MR. BARLOW: It does say must. It's -- citation  
12 must be issued within the three month period.

13           MR. CALLISTER: We believe Your Honor that we've  
14 given both -- given case law that makes it clear that it's  
15 absolutely discretionary on their part.

16           MR. BARLOW: And the case law that was cited was  
17 California case law from almost a hundred years ago. And we  
18 have a -- and I have no idea what statutes the California  
19 courts were interpreting a hundred years ago, but we here we  
20 have a specific statute --

21           THE COURT: Well, let me tell you, counsel.

22           MR. BARLOW: -- that defines it.

23           THE COURT: I took an opportunity to review a little  
24 bit, okay, because this is like the third or fourth time this

1 has come up. And I've had to do a little research now. I  
2 found that the courts of Wyoming, New Mexico and Arizona have  
3 all allowed it to proceed based upon the citation issues, but  
4 their statutes do not say anything that specifically the nine  
5 -- within the time allowed for filing of petition. Okay.

6           So in each of their discussion was this appears to  
7 be -- we don't want the issuance of a citation to bog down or  
8 to pull something to a halt like this, but in the interest of  
9 hitting things on the merit, it is not a mandatory but rather  
10 a discretionary issue with the judge.

11           Then I looked at -- and they each quoted this  
12 California case. And it was interesting. It's a 1922 case.  
13 I can't remember what it was called. Anyway, the case got  
14 into and I had to go back and pull it back and clear back then  
15 and you realize that Nevada, number one, has a very much a  
16 dearth of case law. Okay.

17           And two, much of our statutory is based on  
18 California. The wording of that statute at that time clear  
19 back in 1922 which actually went into effect 1907 says  
20 specifically the way this reads. Upon the final petition  
21 within the time allowed for the filing of the petition.

22           MR. BARLOW: And it says must be?

23           THE COURT: Must.

24           MR. BARLOW: So it tracks our language.

1 THE COURT: Exactly.

2 MR. BARLOW: So that curious. I haven't had a time  
3 to review that. I mean, it's interesting.

4 THE COURT: We went back and had tracked it exactly.  
5 Okay. The Court at that point said they felt likewise that it  
6 was not a mandatory dismissal but it was permissive. Okay.  
7 And as facts and circumstances. In that one, they caught the  
8 error and issued one within it was like six days after the  
9 time. This one it appears that the citation was issued  
10 possibly five weeks after the running of the time.

11 I -- given that case law and the fact that it was  
12 directly on that point and the way it looks, you have to then  
13 look to see if what would be the ultimate detriment to the  
14 estate and/or the opposing party, what things could come about  
15 the probability and the -- I shouldn't say probably, the basic  
16 legal premise that you want to hear things on the merits.  
17 Okay.

18 I think given all that and looked by my research and  
19 going through it at this point, I believe that there is  
20 sufficient reason to allow this citation to have been issued  
21 at this point, that this can be and will be declared a will  
22 contest and that we would go forward from that point.

23 MR. BARLOW: May I think we just put the cart out  
24 there a little bit before a little bit of discussion so that

1 if we're determining that the 90 day window can be reopened on  
2 the issue of citations, we then need to review the Mosley  
3 statute -- or the Mosley case factors to determine whether  
4 there is excusable neglect to allow you to now --

5 THE COURT: Sure.

6 MR. BARLOW: -- open it again.

7 THE COURT: And I went through that and I believe  
8 yes, I think there's some issues there. It came down to a  
9 paralegal on that said and also on this side. I think given  
10 the preference to hear things on the merits, I believe that  
11 there is sufficient issue of excusable neglect and/or mistake  
12 that we should let this go forward. And I suppose you want  
13 this in the form of report and recommendation.

14 MR. BARLOW: Well, yeah. I mean, it's an  
15 interesting legal issue in --

16 THE COURT: Sure.

17 MR. BARLOW: -- all ground and I --

18 THE COURT: And so maybe we'll --

19 MR. BARLOW: -- begrudge the ruling at all. And so  
20 --

21 THE COURT: Maybe we'll get some law out of this.  
22 So Mr. Callister, if you'll put together a report and  
23 recommendation.

24 MR. CALLISTER: As -- certainly, Your Honor. As

1 part of that -- part of our -- the original objection had to  
2 do with the removal of Mr. Markowitz during the pending of the  
3 will contest and the appointment of a special administrator.

4 MR. BARLOW: And Your Honor, if I can tell you what  
5 -- this is what's going on with the estate. There's  
6 essentially as far as we know right now there's only three  
7 things in the estate. There's a house that's way upside down  
8 and then there's two parcels of vacant property on Fremont  
9 Street essentially that are subject to be foreclosed on by the  
10 Treasurer's Office in the beginning of May.

11 So we would like to just go forward in order to  
12 preserve the estate to either try to sell those properties  
13 before the closing of that time or we'll probably bring a  
14 petition to stay the foreclosure if we can't get that done in  
15 that amount of time. I mean, there's not much harm that's  
16 going to be done here by climbing it forward here.

17 THE COURT: If it's all real property and you have  
18 no specific access to over anything else --

19 MR. BARLOW: There's no cash as far as we know.

20 THE COURT: -- then I don't think there's a reason  
21 why to, you know, put everybody on notice. You may proceed in  
22 that manner. I don't think the reason why we need to suspend  
23 control to it, everything has to be brought back to this Court  
24 anyway. He can't control anything. If you do and can't and

1 do eventually do bring in a sale and can't get a sale, I'll  
2 require that those funds be deposited into a locked account or  
3 a trust account, but we can control it in that manner.

4 MR. BARLOW: I'll be glad to do that. So just to  
5 make it clear, I understand that we're somewhat restricted in  
6 acting when there's a petition to remove and -- but the sale  
7 of those two properties would be the exclusion --

8 THE COURT: Yeah, I think given the --

9 MR. BARLOW: -- to save the estate.

10 THE COURT: -- urgency of the situation, you need to  
11 proceed to what you can to preserve the estate.

12 MR. BARLOW: Okay.

13 THE COURT: Okay.

14 MR. BARLOW: Yeah. Yeah. Okay. That would fine.  
15 Report and recommendations would be good here.

16 THE COURT: Yeah, you'll need a report and  
17 recommendation, get some findings and conclusions of law and  
18 have him do everything else. You may allow him to review  
19 them. If you feel you have a great objection to it, you may  
20 submit an opposite opposing one or whatever else but I never  
21 require you to actually sign off on one.

22 MR. BARLOW: Can I just be clear going into the  
23 report and recommendation? The rule on which you are allowing  
24 the time is this -- NRCP 6(b) to enlarge the idea?

1 THE COURT: Yeah, it is to --

2 MR. BARLOW: Okay.

3 THE COURT: -- enlarge to allow that. I find that  
4 there is sufficient reason that number one, this is not a  
5 mandatory but rather permissive requirement on the Court to  
6 look at. And the evaluation of the circumstance and the facts  
7 and the preference of course of hearing things on the merit  
8 like I find that there was sufficient demonstration of  
9 excusable neglect and/or mistake which allow me to do that.

10 MR. BARLOW: Okay.

11 THE COURT: Okay.

12 MR. BARLOW: This should be interesting.

13 THE COURT: Yeah.

14 MR. CALLISTER: Thank you, Your Honor.

15 MR. FINK: Thank you, Your Honor.

16 (PROCEEDINGS CONCLUDED AT 10:44:11)

17 \* \* \* \* \*

18 ATTEST: I do hereby certify that I have truly and  
19 correctly transcribed the digital proceedings in the  
20 above-entitled case to the best of my ability.

21

22

23

24

*Adrian Medrano*

Adrian N. Medrano

FILED

JUN 24 2014

*John A. Johnson*  
CLERK OF COURT

ORIGINAL

CTNC

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

In the Matter of ) CASE NO. P-12-074745-E  
LEROY BLACK, ) DEPT. PROBATE  
Deceased. )

**CERTIFICATION OF TRANSCRIPTS/NOTIFICATION OF COMPLETION**

The office of Transcript Video Services received a request for original transcript and one copy, for the purpose of appeal, from Callister & Frizell PLLC on May 21, 2014. A deposit was paid May 27, 2014, for the following proceeding in the above-captioned case:

FEBRUARY 8, 2013

I do hereby certify that a true and accurate copy of the transcript requested in the above-captioned case was filed with the Eighth Judicial District Court on June 24, 2014, and ordering party was notified June 24, 2014.

DATED this 24<sup>th</sup> day of June, 2014.

SHELLY A. AJOUB, SUPERVISOR  
TRANSCRIPT VIDEO SERVICES

*Sajoub*

FILED

JUN 24 2014

*John L. Smith*  
CLERK OF COURT

ORIGINAL

1 COST

2 EIGHTH JUDICIAL DISTRICT COURT

3 FAMILY DIVISION

4 CLARK COUNTY, NEVADA

5  
6 In the Matter of ) CASE NO. P-12-074745-E  
7 LEROY BLACK, ) DEPT. PROBATE  
8 Deceased. )  
9 \_\_\_\_\_ )

10 FINAL BILLING OF TRANSCRIPTS

11 The office of Transcript Video Services filed transcripts  
12 for Callister & Frizell PLLC for the following proceeding in  
the above-captioned case:

13 FEBRUARY 8, 2013

14 Original transcript and one copy were requested. The  
15 transcripts total 14 pages, final cost being \$49.70. Postage  
and handling from outsource company is \$7.50. A deposit in  
16 the amount of \$40.00 was paid May 27, 2014. The balance of  
\$17.20, **payable to Verbatim Reporting & Transcription**, is  
due upon receipt of transcript.

17 DATED this 24<sup>th</sup> day of June, 2014.

18 SHELLY A. AJOUB, SUPERVISOR  
19 TRANSCRIPT VIDEO SERVICES

*Shelly A. Ajoub*

20 Amount of \$ \_\_\_\_\_ Check# \_\_\_\_\_ paid this \_\_\_\_\_ day  
21 of \_\_\_\_\_, 2014.

22  
23 ITEMS LEFT BEYOND NINETY DAYS ARE SUBJECT TO DISPOSAL WITHOUT REFUND.  
COUNTY RETENTION POLICY APPROVED BY INTERNAL AUDIT.

1 “The equitable tolling doctrine extends statutory deadlines in extraordinary circumstances for  
2 parties who were prevented from complying with them through no fault or lack of diligence of their  
3 own.” *Neves v. Holder*, 613 F.3d 30, 36 (1st Cir. 2010). The doctrine of equitable tolling has been  
4 applied in Nevada. *See, e.g. Seino v. Employers Ins. Co. of Nevada*, 121 Nev. 146, 111 P.3d 1107  
5 (2005). Moreover, “equitable tolling focuses on whether there was excusable delay . . . .” *City of North*  
6 *Las Vegas v. State Local Government Employee-Management Relations Bd.*, 261 P.3d 1071, 1077  
7 (Nev. 2011) (quotation marks and citations omitted).

8 Contestant’s failure to file was the result of excusable neglect as Contestant relied on his  
9 attorney and acted diligently based on counsel’s mistaken advice. This is discussed in detail below  
10 (Part II.d.)

11  
12 **d. Contestants Delay in Obtaining the Issuance of Citations Was the Result of**  
13 **Excusable Neglect Because Contestant’s Attorney Was Mistaken Regarding the**  
14 **Law and Because Contestant Acted with Diligence When the Error Was**  
15 **Discovered.**

16 Contestant’s delay was the result of excusable neglect because the former counsel for  
17 Contestant was mistaken regarding the law and because Contestant acted diligently upon discovery of  
18 the mistake. Under NRCP 6(b), extensions may be granted “where the failure to act was the result of  
19 excusable neglect.” This is consistent with EDCR 2.25 which provides as follows:

20 A request for extension made after the expiration of the specified period shall not  
21 be granted unless the moving party, attorney or other person demonstrates that the  
22 failure to act was the result of excusable neglect.

23 In addition to factors discussed in Contestant’s Petition to Enlarge Time, the Nevada Supreme  
24 Court has found, specifically in the context of NRCP 6(b)(2) that the factors required to establish  
25 excusable neglect are as follows:

26 [A] party seeking relief . . . under NRCP 6(b)(2) is required to demonstrate that  
27 (1) it acted in good faith, (2) it exercised due diligence, (3) there is a reasonable  
28 basis for not complying within the specified time, and (4) the nonmoving party  
will not suffer prejudice.

*Moseley v. Eighth Judicial Dist. Court ex rel. County of Clark*, 124 Nev. 654, 557-68, 188 P.3d 1136,  
1146 (2008).

1 First, Contestant acted in good faith and sought the advice of an attorney in preparing and filing  
2 the will contest. The objection to the will was filed within the required time limits, and in accordance  
3 with NRS 137. However, Contestant's former counsel misread the statute and mistakenly thought that  
4 the issuance of the citation would be conducted as in a contest before probate. Counsel mistakenly  
5 thought he had complied with the provisions of NRS 137 for the issuance of a citation. There was  
6 nothing about Contestant's conduct that was not in good faith. In addition, Contestant had a good faith  
7 basis for objecting to the will based on the suspicious circumstances by which it was procured.

8 With regard to the second and third factor, Contestant exercised due diligence and there was a  
9 reasonable basis for Contestant's failure to comply with the specified time. The failure to comply was  
10 reasonable because Contestant relied on his attorney, and his attorney put forth a good faith effort to  
11 read and adhere to the statutory provision and relied on his past experience. Despite his efforts at  
12 complying with the rules, he overlooked an applicable provision. Moreover, although several days  
13 passed from the passage of the deadline to the issuance of the citation, Contestant was diligent because  
14 he understood from his attorney that he had complied with the provisions of NRS 137 and proceeded  
15 accordingly. Shortly after the timely filing of the objection, Contestant filed and served notices of  
16 hearing and proceeded based on the mistaken understanding of his attorney. (See Affidavit of Tassy  
17 Wolfe, attached hereto as *Exhibit 2*.) In a case nearly identical to this case, involving a will contest and  
18 the failure to timely issue a citation due to mistake by the attorney, the court granted relief and found  
19 that "the appellant ought not to be deprived of her right to contest the will because of . . . delay, if any,  
20 brought about by the neglect of her attorney. . . ." In re Withenbury's Estate, 188 Cal. 109, 113, 204 P.  
21 385, 386 (1922).

22 With regard to the fourth factor above, Executor will suffer no prejudice. Executor and other  
23 interested parties were quickly on notice of the will contest through Contestant's service of notices of  
24 hearing on interested parties. It was, in fact, counsel for Executor who notified Contestant of the  
25 mistake. Thereupon, Contestant acted promptly to correct the error and sought and extension from the  
26  
27  
28

1 Court. "Prejudice" is defined as "[d]amage or detriment to one's legal rights or claims." *Black's Law*  
2 *Dictionary* 1198 (7th ed. 1999). There is no damage or detriment to Executor's claims. Executor has  
3 shown no evidence of a change in circumstances during the relatively short time span from November  
4 30, 2012 to the issuance of the citation that would cause detriment to his claims. It would be prejudicial  
5 to preclude Contestant's suit in light of the facts of the case outlined above. Contestant has shown that  
6 the Decedent's alleged signature is a forgery, and that the circumstances are highly suspicious. It  
7 would be a manifest injustice to penalize Contestant for the oversight of his attorney and deny his will  
8 contest. For these reasons, Contestant has shown excusable neglect and his request for an extension of  
9 time for the issuance of a citation should be granted.

11 **e. Opposition to Counter-Petition to Dismiss Will Contest, or, in the Alternative, for  
a More Definite Statement.**

12 As discussed in the previous section a, the objection to the will is not barred by the statute of  
13 limitations because Contestant timely filed the will contest. Moreover, the Objection to the Admission  
14 of the will is sufficient on its face, and properly alleges fraud, undue influence, and lack of  
15 testamentary capacity. These claims meet the notice pleading requirements of NRCP 8(a) which  
16 simply requires a "short and plain statement of the claim showing that the pleader is entitled to relief."  
17 In addition, the objection makes allegations of conduct by Executor that are sufficient to show  
18 fraudulent circumstances. Finally, the evidence submitted with this Reply substantiates Contestant's  
19 claims of fraudulent conduct. For these reasons, Executor's Counter-Petition to Dismiss Will Contest  
20 should be denied.

22 **III. CONCLUSION AND REQUEST FOR RELIEF**

23 WHEREFORE, Petitioner William Fink, requests the Court as follows:

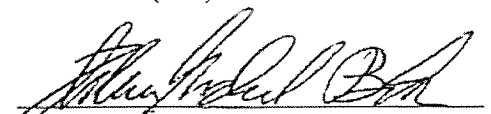
- 24 1. to grant Contestant's Petition to Enlarge Time Pursuant to NRCP 6(b) and Opposition to  
25 Counter-Petition;  
26 2. to overrule and deny Executor's Objection and Counter-Petition;  
27 3. to grant Contestant's request for the extension of time to issue citations; and  
28

1 4. to grant Contestant all such other and further relief to which he may be entitled at law or in  
2 equity.

3 DATED this 6th day of February 2013.

4  
5 Respectfully submitted,  
6 **CALLISTER & FRIZELL**  
7 8275 S. Eastern Ave., Ste. 200  
8 Las Vegas, Nevada 89123  
9 Telephone: (702) 657-6000  
10 Facsimile: (702) 657-0065

11 By:

12   
13 **JONATHAN C. CALLISTER, ESQ.**  
14 Nevada Bar No. 8011  
15 **ADAM M. BIRK, ESQ.**  
16 Nevada Bar No. 12557  
17 Attorneys for William Fink  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CERTIFICATE OF MAILING

I certify that I am an employee of CALLISTER & FRIZELL, and that on this 6th day of February 2013, I caused **REPLY IN SUPPORT OF PETITION TO ENLARGE TIME PURSUANT TO NRCP 6(b) AND OPPOSITION TO COUNTER-PETITION** to be served by depositing a true and correct copy of the same (including all exhibits) with the United States Postal Service, with postage prepaid and addressed to the following:

Jonathan W. Barlow  
Jordan M. Flake  
BARLOW FLAKE LLP  
701 N. Green Valley Pkwy., Ste. 200  
Henderson, Nevada 89074  
*Attorneys for the Estate*

Rose Markowitz  
2201 Hercules Dr.  
Los Angeles, CA 90046

  
An Employee of CALLISTER & FRIZELL

# **EXHIBIT 1**

# **EXHIBIT 1**

# ANTONIA'S CERTIFIED HANDWRITING ANALYSIS SERVICE

Antonia Klekoda-Baker C.F.D.E.

LAS VEGAS, NV 89117-23

Phone (702) 256-4479

Fax(702) 256-4489

www.expert-handwriting-now.com

To: William Fink  
1835 East Michelle Street  
West Covina, CA 91791

Date: January 22, 2013

Re: HANDWRITING ANALYSIS INVESTIGATION

Subject: Questioned Signature on Will

---

---

## EXPLICATION:

On January 21, 2013 William Fink hand-delivered to this Examiner a Document bearing the Questioned Signature of Leroy G. Black -- along with assorted documents bearing the Purportedly-Known Signature of Leroy G. Black for the purpose of determining authenticity of the Questioned Signature.

\*\*\*\*\*

The items discussed in this report are described as follows:

## QUESTIONED WRITING/DOCUMENTS:

Q-1 -- Copy of Page 4 of the *Last Will of Leroy G. Black* dated March 7, 2012 bearing the Questioned Signature of Leroy G. Black.

## KNOWN WRITING/DOCUMENTS:

K-1 -- Partnership page dated August 21, 1992 bearing two Purportedly-Known signatures of Leroy G. Black.

K-2 -- Notarized page from Grantor/Trustee matter dated October 27, 2009 bearing the Purportedly-Known Signature of Leroy G. Black.

Page 2 -- Leroy G. Black Case

K-3 -- Actual Notarized Senior Nevada Benefit Group form dated June 22, 2010 bearing the Purportedly-Known Signature of Leroy G. Black.

K-4 -- Trustor form dated July 9, 2010 bearing the Purportedly-Known Signature of Leroy G. Black.

K-5 -- Facsimile Cover sheet dated July 29, 2010 bearing the Purportedly-Known Signature of Leroy G. Black.

K-6 -- Copy of Bank of America check #5451 dated April 22, 2011 bearing the Purportedly-Known Signature of Leroy G. Black.

K-7 -- Page 2 from Real Estate Contract Agreement dated June 14, 2011 bearing the Purportedly-Known Signature of Leroy G. Black.

K-8 -- Actual letter from EQUIFAX dated October 28, 2011 bearing the Purportedly-Known Signature of Leroy G. Black.

K-9 -- Copy of Dental Invoice dated February 14, 2012 bearing two Purportedly-Known Signatures of Leroy G. Black.

K-10 -- Letter regarding tax forms from Conway, Stuart & Woodbury dated March 25, 2012 bearing the Purportedly-Known Signature of Leroy G. Black.

COMMENTS:

In order to establish that a signature, or any writing whatsoever, was written by a particular person, an examination with known genuine signatures and/or writing must show agreement in *all* handwriting characteristics without unexplainable differences.

This investigation covers the obvious characteristics such as *letter formations, spacing, slant, and line quality* as well as the less conspicuous characteristics -- including, *pressure pattern, proportions, connections, and initial and terminal stroke formations*.

OPINION:

In my opinion, Leroy G. Black did not perform his own Signature on the document identified as the Last Will of Leroy G. Black.

The Questioned and Purportedly-Known Signatures were isolated from the documents on which they appeared and placed on a composite sheet for visual comparison.

It can be noted that the regular penmanship habits of Leroy G. Black which repeatedly appear in his Purportedly-Known Signatures – namely, Specimens K-1 through K-10, inclusively, are absent in the Questioned Signature. There are unexplainable differences in the Questioned Signature on Specimen Q-1 which cannot be found in any of his Purportedly-Known Signatures.

There is illegibility, restricted letter formations, a closed letter and a non-matching "r" and "B" form in the Questioned Signature.

What with so many diversified penmanship presentations, there is no reason to believe that the Questioned Signature on Specimen Q-1 is authentic.

CONCLUSION:

This opinion is qualified by the use of copies wherein described and limited to the items described at the beginning of this report. This opinion is the result of a professional service for which an agreed-upon fee has been rendered. Any further involvement in this matter, with or without subpoena from either side, subjects said officer of the court, and/or client, to additional professional charges according to National Forensic Guidelines .

The person requesting this report carries all responsibilities for any expenses this Handwriting Expert may incur in servicing this case -- for the present, and future, should such become a reality.

Respectfully submitted,

*Antonia M. Klekoda-Baker C.F.D.E.*

Antonia M. Klekoda-Baker

Certified Forensic Document Examiner

Licensed

QUES TION ED SIGNATURE

5.3. Simultaneous Death. If any beneficiary under this will and I die simultaneously, or if it cannot be established by clear and convincing evidence whether that beneficiary or I died first, I shall be deemed to have survived that beneficiary, and this will shall be construed accordingly.

5.4. Period of Survivorship. For the purposes of this will, a beneficiary shall not be deemed to have survived me if that beneficiary dies within two months after my death.

5.5. No-Contest Clause. If any person, directly or indirectly, contests the validity of this will in whole or in part, or opposes, objects to, or seeks to invalidate any of its provisions, or seeks to succeed to any part of my estate otherwise than in the manner specified in this will, any gift or other interest given to that person under this will shall be revoked and shall be disposed of as if he or she had predeceased me without issue.

5.6. Definition of Incapacity. As used in this will, "incapacity" or "incapacitated" means a person operating under a legal disability such as a duly established conservatorship, or a person who is unable to do either of the following:

(a) Provide properly for that person's own needs for physical health, food, clothing, or shelter; or

(b) Manage substantially that person's own financial resources, or resist fraud or undue influence.

5.7. Captions. The captions appearing in this will are for convenience of reference only, and shall be disregarded in determining the meaning and effect of the provisions of this will.

5.8. Severability Clause. If any provision of this will is invalid, that provision shall be disregarded, and the remainder of this will shall be construed as if the invalid provision had not been included.

5.9. Nevada Law to Apply. All questions concerning the validity and interpretation of this will, including any trusts created by this will, shall be governed by the laws of the State of Nevada in effect at the time this will is executed.

Executed on March 7, 2012, at Las Vegas, Nevada.

  
LERROY G. BLACK

9-1

March 7, 2012

Last Will of Leroy G. Black


KNOWN SIGNATURES

III.

THIS FIRST AMENDMENT is accepted, made, and executed by the General Partners and Limited Partners in the State of Nevada on the day and year first above written.

GENERAL PARTNER:


I.D.A. HOLDINGS, LLC

  
By: LEROY G. BLACK, Manager

LIMITED PARTNERS:

K-1

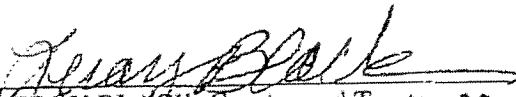
LEROY G. BLACK 1992 TRUST, August 21, 1992

By:   
LEROY G. BLACK, Trustee

the business and to that end to delegate all or any part of the power to supervise, manage or operate the business to such person or persons as the fiduciary may select, including any individual who may be a Beneficiary or Trustee hereunder.

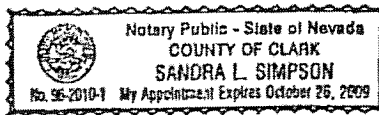
- (3) The power to engage, compensate and discharge, or as stockholder owning the stock of the Corporation, to vote for the engagement, compensation and discharge of such manager, employees, agents, attorneys, accountants, consultants or other representatives, including anyone who may be a Beneficiary or Trustee hereunder.
- (4) The power to become or continue to be an officer, director or employee of a Corporation and to be paid reasonable compensation from such Corporation as such officer, director and employee, in addition to any compensation otherwise allowed by law.
- (5) The power to invest or employ in such business such other assets of the Trust estate.

IN WITNESS WHEREOF, the Grantor and Trustee has hereunto set his hand  
October 27, 2009.

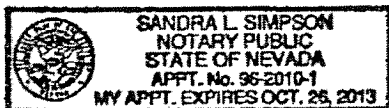
  
LEROY BLACK, Grantor and Trustee

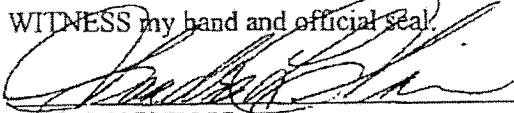
K-2

STATE OF NEVADA       )  
                                      )SS.  
COUNTY OF CLARK       )

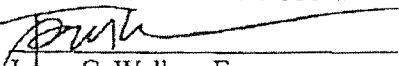


On October 27, 2009, before me, the undersigned, a Notary Public in and for said County of Clark, State of Nevada, personally appeared LEROY BLACK, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.




WITNESS my hand and official seal.  
  
NOTARY PUBLIC

APPROVED AS TO FORM:

  
Jason C. Walker, Esq.  
ATTORNEY FOR GRANTOR

IN WITNESS WHEREOF the Parties have executed this Agreement as of the Effective Date.


SENIOR NEVADA BENEFIT GROUP, LIMITED PARTNERSHIP, a Nevada Limited Partnership

  
Leroy George Black, General Manager

K-3

STATE OF Nevada  
COUNTY OF Clark

This instrument was acknowledged before me on 25<sup>th</sup> day of June, 2010, by Leroy George Black as General Manager of SENIOR NEVADA BENEFIT GROUP, LIMITED PARTNERSHIP, a Nevada Limited Partnership

  
Signature of Notary



NOTARY SEAL

Print, Type or Stamp Name of Notary

Personally Known \_\_\_\_\_ OR Produced Identification X

Type of Identification Produced NDL 2101581761 X 01-25-2014

- (b) "Independent Trustee". As used in this instrument, the term "Independent Trustee" shall only be a qualified corporation or those persons who would be an Independent Trustee as defined in Internal Revenue Code Section 672(c) of a trust for which the beneficiary of the trust share for the appointment of the Independent Trustee were the grantor of such trust.
- (c) "Trust Consultant". As used in this instrument, the term "Trust Consultant" shall be the appointed individual or institution who has the right and power by giving Ten (10) days written notice to the Trustee or Successor Trustee, as the case may be, to remove any Trustee or Successor Trustee and to appoint an individual, qualified bank or trust company to serve as Successor Trustee or as Successor Co-Trustees of the Trusts created hereunder.

EXECUTED in Clark County, Nevada, on July 9, 2010.

TRUSTOR:

  
LEROY G. BLACK

K-4

TRUSTEE:

\_\_\_\_\_  
GLENN ROBERTSON



Senior Nevada Benefit Group. L.P.

FACSIMILE COVER SHEET

OUR FAX NUMBER IS: (702) 366-9200

PLEASE DELIVER THE FOLLOWING PAGES TO:

NAME: JEFF BECK 1-866-879-0331  
MARK GATSCH 1-866-745-7107  
COMPANY: GIB BARBERIS 1-866-422-3992

FAX NUMBER:

FROM: LEROY BLACK

MESSAGE:

HELLO JEFF, GIB & MARK:

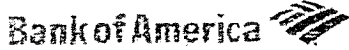
PLEASE CORRECT THE DOLLAR-AMOUNT IN RECITAL #1 AND FILL-IN THE  
BLANKS ON THIS UNDATED AGREEMENT DRAFTED BY ATTORNEY HARDY.  
I WAS TOLD THAT I WOULD HAVE TO SIGN THIS FIRST (ON JUNE 22ND)  
IN ORDER TO BE GIVEN THE PLANTARA AGREEMENT THAT I THEN SIGNED  
(ON JUNE 23RD).

THIS DEMAND IS WHAT CAUSED THE "UNDISCLOSED" DOUBLE-ENGAGEMENT  
MISUNDERSTANDING (14% THRU HARDY VS. 6%-8% THRU PLANTARA).  
IN PARAGRAPH 2.3, THE LATTER "ARRANGEMENT" FEES ARE REPRESENTED  
AS CUSTOMARY AND SHOULD PREVAIL. THANK YOU FOR CORRECTING THINGS  
PROMPTLY IN A FIDUCIARY MANNER.

*Leroy Black* K-S

THIS TELECOPY CONSISTS OF "24" PAGE(S) INCLUDING COVER SHEET. IF  
YOU DO NOT RECEIVE ALL PAGES OR EXPERIENCE ANY PROBLEMS IN THIS  
TRANSMITTAL, PLEASE CALL OUR VOICE PHONE: (702) 366-1600.

DATE AND TIME OF TRANSMISSION: THURSDAY, JULY 29, 2010



Business Economy Chk - 8266 : Check Image

Check Image:

SENIOR NEVADA BENEFIT GROUP, L.P.  
LEROY BLACK, GENERAL PARTNER  
1800 BECKE CIRCLE, LAS VEGAS, NV 89104-3322  
VOICE: (702) 366-1000 / FAX: (702) 366-8200  
E-MAIL: SNEGROUP@YAHOO.COM

4-22-11 Date

5451

Pay to the Order of AXA EQUITABLE \$248,496

*Two Hundred Forty Eight Thousand Four Hundred Ninety Six and 00/100*

Bank of America

ACH # 171400774

for Policy 1616202864

124 224007240 005010428 266 5451

Accepted

K-6

Seq: 1  
Dep: 005790  
RT: 111000075  
Date: 04/29/11

For Deposits only to  
Cust: AXA Equitable Life Insurance Co  
AG: AXA Equitable Life Insurance Co

4. Law does not fix the amount or rates of real estate commissions. It is set by each BROKER individually and may be negotiable between the OWNER and BROKER.
5. The parties understand and agree that BROKER'S undertaking pursuant to this contract is limited to the procurement of a BUYER, ready, willing and able to PURCHASE the property on the terms and conditions specified, and that the commission established herein shall be due and payable according to the terms described above.
6. In the event suit is brought by either party to enforce this contract, the prevailing party is entitled to court costs and reasonable attorney's fees.

In consideration of the above contract and authorization, BROKER and/or his representatives agree to use diligence in their efforts to bring about the SALE of subject property.

McMenemy Investment Services  
900 Karen Suite C-219  
Las Vegas, NV 89109  
(702) 307.4925  
Fax: (702) 920.8811

125  
BROKER- Ron McMenemy

THE UNDERSIGNED ACKNOWLEDGE THAT THEY HAVE READ THIS ENTIRE CONTRACT AND AGREE TO THE TERMS AND CONDITIONS HEREIN. THE UNDERSIGNED WARRANT THAT HAVE FULL LEGAL AUTHORIZATION TO EXECUTE THIS CONTRACT.

Receipt of a copy of this contract is hereby acknowledged.

[Signature]  
GENERAL PARTNER **K-7**

06-14-11  
DATE

3:30 PM  
TIME

1600 BECKA CIR LV NV 89109  
ADDRESS 366-1600

[Signature]  
[Signature]

\* FAXED & MAILED TO EQUIFAX ON 10-23-2011  
<1-888-826-0573> <6-PAGES>

P.O. Box 105069  
Atlanta, GA 30348

October 20, 2011

**EQUIFAX**



To Start An Investigation, Please Visit Us At:  
[www.investigate.equifax.com](http://www.investigate.equifax.com)

|||||001056250-6433|||||

001056250-6433  
Leroy George Black  
1500 Becke Cir Apt 54  
Las Vegas, NV 89104-3322

Dear Leroy George Black:

Enclosed is a copy of your Equifax credit file. Please review it for any unauthorized accounts or inquiries. If unauthorized information is reporting on your Equifax credit file, you may start an investigation immediately on-line at [www.investigate.equifax.com](http://www.investigate.equifax.com). Using the Internet to initiate an on-line investigation request will expedite the resolution of your concerns. You may also start an investigation by completing and returning the enclosed Research Request Form or by calling the toll free telephone number on the credit file. Please advise us of any documents that may help us in the reinvestigation, such as an identity theft report or letters from credit grantors.

You should contact the credit grantors that are reporting information you believe is fraudulent. Ask them to explain their fraud investigation process, what steps should be taken and how long the process normally takes. Additionally request that they send you a letter or documentation stating the results of the investigation. Upon receipt, forward a copy of that letter to us.

If your ID information, such as driver's license or social security card, was lost or stolen, contact the appropriate issuing agency.

**Results Of Your Investigation** (For your security, the last 4 digits of your credit account number(s) have been replaced by \*)

>>> We have researched the credit account. Account # - 515788479\* The results are: This creditor has verified to Equifax that the balance is being reported correctly. Additional information has been provided from the original source regarding this item. If you have additional questions about this item please contact: **US Bank Home MTG, PO Box 20005, Owensboro, KY 42304-0005 Phone: (800) 365-7772**

**The FBI Has Named Identity Theft As The Fastest Growing Crime In America.**

Protect yourself with Equifax Credit Watch<sup>TM</sup>, a service that monitors your credit file every business day and notifies you within 24 hours of any activity. To order, go to: [www.creditwatch.equifax.com](http://www.creditwatch.equifax.com)

INVESTIGATION REMAINS INACCURATE!

Leroy George Black K-8

10-23-2011

# PROPOSED TREATMENT PLAN

## MOORE FAMILY DENTISTRY

Feb 14, 2012

2560 S. MARYLAND PKWY, SUITE #5  
LAS VEGAS, NV 89109-1872  
(702)791-1010 ( )

LEROY BLACK  
160 BECKE CIRCLE  
LAS VEGAS, NV 89104

ID:9415

Phase	Date Plan	Appt	Provider	Service	Tth	Surf	Fee	Ins.	Pat.
1	02/14/12		222	D7210	SURGICAL REMOVAL OF ERU	8	\$70.00	\$0.00	\$70.00
1	02/14/12		222	D7210	SURGICAL REMOVAL OF ERU	9	\$70.00	\$0.00	\$70.00
Subtotal For This Phase:							\$140.00	\$0.00	\$140.00
2	02/14/12		222	D5820	INTERIM PARTIAL DENTURE (	UA	\$150.00	\$0.00	\$150.00
Subtotal For This Phase:							\$150.00	\$0.00	\$150.00
Subtotal:							\$290.00	\$0.00	\$290.00

Disclaimer: THIS IS AN ESTIMATE OF WHAT YOU CAN EXPECT YOUR DENTAL INSURANCE TO COVER. THE PATIENT IS RESPONSIBLE FOR ANY DIFFERENCE BETWEEN ACTUAL CHARGES AND WHAT THE CARRIER PAYS.

Total Proposed: \$290.00  
Total Completed: \$0.00  
Total Accepted: \$0.00  
Proposed Insurance: \$0.00

The above treatment recommendations have been explained to me. I have been informed of my dental condition

All my questions have been answered and I have been informed of my dental condition, treatment options, benefits, rates and possible consequences of treatment or no treatment

Patient or Guarantor's Signature

*Leroy Black*

Date

*February 14, 2012*  
*PER MARY*

K-9

Current Dental Terminology (CDT) © American Dental Association (ADA). All rights reserved.

FINK000115

Your returns may be selected for review by the taxing authorities. Any proposed adjustments by the examining agent are subject to certain rights of appeal. In the event of such governmental tax examination, we will be available, upon request, to represent you under a separate engagement letter for that representation.

You understand that your income tax returns will be electronically filed through a secured third party filing service. (The state returns will be filed electronically if applicable.) You may opt out of electronic filing if you so choose.

Our fee for preparation of your tax returns will be based on the time required at our standard billing rates plus out-of-pocket expense. All invoices are due and payable upon presentation.

If the foregoing fairly sets forth your understanding, please sign the enclosed copy of this letter in the space indicated and return it to our office. However, if there are other tax returns you expect us to prepare, such as gift and/or property, please inform us by noting so just below your signature at the end of the returned copy of this letter.

We want to express our appreciation for this opportunity to work with you.

Very truly yours,

Conway, Stuart & Woodbury

Accepted By: *Theresa P. Smith* **K-10**


Date: 03-25-2012

Comments or additional requests:

---

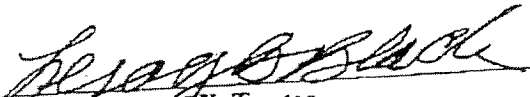


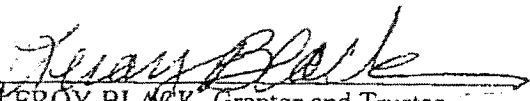
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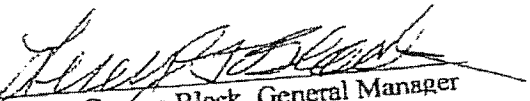
  
LERROY G. BLACK Q-1  
March 7, 2012

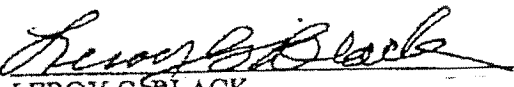
## KNOWN SIGNATURES

  
By: LEROY G. BLACK, Manager K-1

  
LEROY G. BLACK, Trustee August 21, 1992


  
LEROY BLACK, Grantor and Trustee K-2  
October 27, 2009


  
Leroy George Black, General Manager K-3  
June 22, 2010

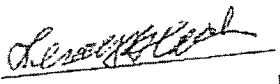
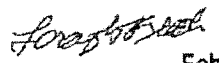
  
LEROY G. BLACK K-4  
July 9, 2010


  
K-5  
July 29, 2010

  
K-6  
April 22, 2011

  
GENERAL PARTNER K-7  
June 1, 2011

  
K-8  
October 23, 2011

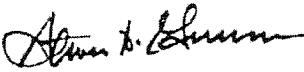
  
K-9  
  
February 14, 2012

  
K-10  
March 25, 2012

The image is a severely degraded scan of a document page. It is almost entirely black with significant vertical banding and horizontal streaking, suggesting severe damage or corruption. A small, faint, and illegible mark is visible near the top center.

# **EXHIBIT 2**

# **EXHIBIT 2**

  
CLERK OF THE COURT

RICHARD A. KOCH, ESQUIRE  
Nevada Bar No. 1596  
KOCH & BRIM  
4520 South Pecos #4  
Las Vegas, NV 89121  
702 451 3900 Telephone  
702 451-1448 Facsimile  
[tassyw@gmail.com](mailto:tassyw@gmail.com)  
Attorney for William Fink

DISTRICT COURT  
CLARK COUNTY, NEVADA

In the Matter of the Estate of )  
 )  
 LEROY G. BLACK )  
 ) Case No. P-12-074745-E  
 Deceased. )

AFFIDAVIT OF TASSY WOLFE IN SUPPORT OF PETITION TO ENLARGE TIME  
PURSUANT TO NRCP 6(b)

Hearing Date: February 8, 2013  
Hearing Time: 9:30 a.m.

STATE OF NEVADA )  
 )  
COUNTY OF CLARK )

TASSY WOLFE, being first duly sworn, deposes and says:

1. That I am an independent probale paralegal employed by Douglas J. Gardner, Esquire during his representation of WILLIAM FINK, the contestant in the above case. I am familiar with the circumstances involved in this matter and can testify from personal knowledge of the facts contained herein.

2. On November 27, 2012, Mr. Gardner and I met with William Fink who was contemplating a contest of the March 7, 2012 will that was allegedly signed by the decedent.

1 3. After a lengthy consultation, Mr. Gardner advised the client that the will was admitted  
2 to probate on August 31, 2012 and, therefore, the three-month contest period would expire on  
3 November 30, 2012. Mr. Fink stated that he would like to think about the situation before  
4 committing to the expense of the contest.

5 4. On November 27, 2012 Mr. Fink contacted Mr. Gardner and instructed him to  
6 proceed to file the necessary documents to contest the will.  
7

8 5. Mr. Gardner came into my office and told me of the situation and instructed me to file  
9 the objection to the admission of the will that he had prepared. I did so and, immediately  
10 thereafter, efiled a Notice of Hearing which was mailed to all interested parties on December 5,  
11 2012.  
12

13 6. Mr. Gardner and I reviewed NRS 137.080 and subsequent statutes concerning after-  
14 probate will contests. We had never been involved in an after-probate will contest but had  
15 worked together on several before-probate will contests. We were familiar with the  
16 requirements concerning the issuance of the Citation. In our experience, the Citation was  
17 discussed at the hearing on the contest. At that time, the Probate Commissioner instructed the  
18 contesting party to issue the Citation and serve the same upon the heirs and interested parties  
19 to the will contest.  
20


21 7. After reading NRS 137.100 where, we believed, it stated that all proceedings in an  
22 after-probate contest were to be handled in the same manner as in a before-probate contest,  
23 we anticipated issuing the Citation in the same manner involved in other actions in which we  
24 had been involved.  
25

26 8. Shortly thereafter and unrelated to issuance of the Citation but due to Mr. Gardner's  
27 press of other business, Mr. Fink obtained new counsel, Richard A. Koch, Esquire to represent  
28

1 him. Mr. Koch also employed me to continue with the will contest. Mr. Koch received a  
2 telephone call from Jonathan Barlow, Esquire, who had been retained to represent Phil and  
3 Rose Markowitz, the proponents of the March 7 will. Mr. Barlow informed Mr. Koch of the  
4 failure to issue the Citation timely. Mr. Koch was leaving the country for vacation the next day.  
5 He immediately contacted me and instructed me to issue the Citation as soon as possible.  
6 Inasmuch as it was late in the day, I went to the Clark County Clerk's Office and had the  
7 Citation issued the next day.

9 9. There was no intent to delay the proceedings in our failure to issue the Citation  
10 before the end of the three-month contest period. It was merely our inadvertent procedural  
11 inexperience in after-probate will contests that resulted in the delay. The situation was  
12 resolved immediately upon notification that the Citation had not been issued timely.  
13

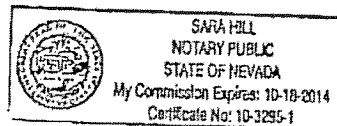
14 DATED this 23<sup>rd</sup> day of January, 2013.

15  
16   
17 TASSY WOLFE

18 SUBSCRIBED and SWORN to before me

19 This 23<sup>rd</sup> day of January, 2013.

20   
21 NOTARY PUBLIC



  
CLERK OF THE COURT

1 RAR  
2 JONATHAN C. CALLISTER, ESQ.  
3 Nevada Bar No. 8011  
4 CALLISTER & FRIZELL  
5 8275 S. Eastern Ave., Suite 200  
6 Las Vegas, Nevada 89123  
7 Telephone: (702) 657-6000  
8 Facsimile: (702) 657-0065  
9 Attorneys for the Contestant

6  
7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9  
10  
11 In the Matter of the Estate of  
12 LEROY G. BLACK,  
13 Deceased.

Case No.: P-12-074745-E

Date of Hearing: Feb. 8, 2013  
Time of Hearing: 9:30 a.m.

14  
15 REPORT AND RECOMMENDATION

16 This matter came before Commissioner Wesley Yamashita on February 8, 2013, at which time  
17 Jonathan W. Barlow, Esq., appearing on behalf of Phillip Markowitz (the "Personal Representative")  
18 and Jonathan C. Callister, counsel for William Fink (the "Contestant") presented argument. Having  
19 reviewed the parties' briefs, heard argument by counsel, being fully advised in the premises, and good  
20 cause appearing, the Probate Commissioner now makes the following Findings of Fact, Conclusions of  
21 Law and Recommendations:  
22

23 **GENERAL FACTS**

24 Leroy G. Black died on or about April 4, 2012. On July 18, 2012, Personal Representative filed  
25 a petition for the probate of a will and for the appointment of a personal representative (the "Petition").  
26 The hearing on Personal Representative's Petition was held on August 31, 2012. An order admitting a  
27 will to probate was entered on August 31, 2012.  
28

1 On November 27, 2012, Contestant, through Douglas Gardner, his attorney at the time, filed an  
2 objection to the admission of the will, thereby initiating a will contest. However, Contestant's attorney  
3 was mistaken in his reading of the after-probate will contest statute which caused him to fail to timely  
4 issue citations. Upon discovery of the mistake, citations were issued immediately. Contestant now  
5 seeks to enlarge the time for the issuance of the citation, and has filed a Petition to Enlarge Time  
6 Pursuant to NRCP 6(b) (filed on Jan. 23, 2013). The Personal Representative filed an Objection to the  
7 Petition to Enlarge Time Pursuant to NRCP 6(b) and Counter-Petition to Dismiss Will Contest or, in  
8 the Alternative, to Require a More Definite Statement Pursuant to NRCP 12(e) (the "Objection") on  
9 February 4, 2013. Contestant has presented the opinion of a handwriting expert that the will offered by  
10 the Personal Representative is a forgery.  
11

#### 12 FINDINGS OF FACTS AND CONCLUSIONS OF LAW

13 THE COMMISSIONER FINDS THAT the will contest is not barred by the failure to issue  
14 citations within the three month requirement listed in NRS 137.080. The issue is whether the statutory  
15 time period of three months for the issuance of citations is mandatory or permissive.

16 The period of limitation described in NRS 137.120 is only applicable to the filing of the will  
17 contest, and not to the issuance of the citation. NRS 137.120 provides as follows:

18 If no person contests the validity of a will or of the probate thereof, within the  
19 time specified in NRS 137.080, the probate of the will is conclusive.

20 (Emphasis added.) The issuance of citations is handled in a separate statute, i.e., NRS 137.090. The  
21 period of limitation is only in reference to the filing of the will contest which is described in NRS  
22 137.080 as follows:

23 After a will has been admitted to probate, any interested person . . . at any time  
24 within 3 months after the order is entered admitting the will to probate, contest the  
25 admission or the validity of the will. The contestant must file with the court in  
26 which the will was proved a petition containing the allegations of the contestant  
against the validity of the will or against the sufficiency of the proof, and  
requesting that the probate be revoked.

27 (Emphasis added.) While the issuance of citations is not subject to the period of limitation of NRS  
28 137.120, NRS 137.090 requires the issuance of citations within three months of the admission of the

1 will to probate. However, the extension of the time for the issuance of citations under NRS 137.090  
2 may be extended based on the Court's discretion under NRCP 6(b) and EDCR 2.25.

3 There is no Nevada case law on point for this issue. Nevada courts have often looked to  
4 California case law where the statutes at issue are similar to those in Nevada. *See e.g., John v. Douglas*  
5 *County School Dist.*, 125 Nev. 746, 756, 219 P.3d 1276, 1283 (2009) ("we consider California caselaw  
6 because California's . . . statute is similar in purpose and language to Nevada's . . . statute.") With  
7 regard to will contests and the issuance of citations, California courts have provided as follows:

8 The jurisdiction of the court to entertain a proceeding for the revocation of the  
9 will does not depend upon the issuance and service of a citation within a year  
10 after the probate of the will. Jurisdiction of the court attaches on the filing of the  
11 petition inaugurating the contest. The office of the citation is only that of a  
12 summons—to give the court jurisdiction of the parties who would be affected by  
13 its revocation. It is not essential to the jurisdiction of the court that the citation be  
issued and served within a year. The only penalty for failure to have it issued  
within that time is that the court may dismiss the contest. And even where there  
has been a failure to have it issued within the year the court may nevertheless  
relieve a contestant for his failure to do so and thereupon order a citation issued  
and served.

14 *In re Logan's Estate*, 171 Cal. 357, 362-63, 153 P. 388, 390 (1915) (emphases added). *See also In re*  
15 *Simmons' Estate*, 168 Cal. 390, 395, 143 P. 697 (1914) ("we think it must be held that the court has  
16 power . . . to relieve a contestant, whose petition for revocation, duly filed, has not been dismissed,  
17 from the failure to have citation issued and served within the year."); *In re Withenbury's Estate*, 188  
18 Cal. 109, 110-11, 204 P. 385, 385 (1922) ("The issuance of the citation is not jurisdictional, and the  
19 trial court had the power to relieve the petitioner from the failure to issue such citation within a year . .  
20 . .") The statute at issue in these cases is substantially similar to, and in certain respects identical to  
21 NRS 137.080 in both purpose and language. The Court finds that the California cases are persuasive on  
22 the issue of whether the three month requirement of the issuance of citations is mandatory or  
23 permissive. Accordingly, the Court finds that the three month period for issuance of the citations is not  
24 mandatory and may be extended in the Court's discretion and pursuant to NRCP 6 and EDCR 2.25.

25 THE COMMISSIONER FURTHER FINDS that Contestant timely objected to the validity of the  
26 will and complied with relevant statutes in that regard. Moreover, the untimely issuance of the citation  
27  
28

will not bar Contestant's claim because the extension of time is governed by NRCP 6(b), EDCR 2.25.

NRCP 6(b) and EDCR 2.25 govern the practice and procedure of contested procedures under Title 12 of NRS. *See* NRCP 83; EDCR 2.01. With regard to the extension or enlargement of time, EDCR 2.25 and NRCP 6 both require a showing of excusable neglect.

THE COMMISSIONER FURTHER FINDS it appropriate to adopt the factors for excusable neglect applied by the Court in *Moseley v. Eighth Judicial Dist. Court ex rel. County of Clark*, 124 Nev. 654, 557-68, 188 P.3d 1136, 1146 (2008), and finds excusable neglect under NRCP 6(b) and EDCR 2.25 because Contestant acted in good faith, exercised due diligence, had a reasonable basis for not complying with the specified time, and that the non-moving party will not suffer prejudice.

THE COMMISSIONER FURTHER FINDS that Contestant acted in good faith and sought the advice of an attorney in preparing and filing the will contest. The objection to the will was filed within the required time limits, and in accordance with NRS 137. However, Contestant's former counsel misread the statute and mistakenly thought that the issuance of the citation would be conducted as in a contest before probate. Counsel mistakenly thought he had complied with the provisions of NRS 137 for the issuance of a citation. In addition, Contestant had a good faith basis for objecting to the will based on the suspicious circumstances surrounding the will.

THE COMMISSIONER FURTHER FINDS with regard to the second and third factors, that Contestant exercised due diligence and there was a reasonable basis for Contestant's failure to comply with the specified time limit. The failure to comply was reasonable because Contestant relied on his attorney, and his attorney put forth a good faith effort to read and adhere to the statutory provision and relied on his past experience. Despite his efforts to comply with the rules, he overlooked an applicable provision. Moreover, although several days passed from the passage of the deadline to the issuance of the citation, Contestant was diligent because he understood from his attorney that he had complied with the provisions of NRS 137 and proceeded accordingly. Shortly after the timely filing of the objection, Contestant filed and served notices of hearing and proceeded based on the mistaken

1 understanding of his attorney. The Contestant should not to be deprived of his right to contest the will  
2 because of the delay brought about by the neglect of his attorney. *See In re Withenbury's Estate*, 188  
3 Cal. 109, 113, 204 P. 385, 386 (1922).

4 THE COMMISSIONER FURTHER FINDS with regard to the fourth factor above, that  
5 Personal Representative will suffer no prejudice. Personal Representative and other interested parties  
6 were quickly on notice of the will contest through Contestant's service of notices of hearing on  
7 interested parties. Thereupon, Contestant acted promptly to correct the error and sought an extension  
8 from the Court and issued citations. There is no damage or detriment to Personal Representative's  
9 claims. Personal Representative has shown no evidence of a change in circumstances during the  
10 relatively short time span from November 30, 2012 to the issuance of the citation that would harm his  
11 claims.  
12

13 THE COMMISSIONER FURTHER FINDS that the grant of the enlargement of time to issue  
14 citations is appropriate in light of the judiciary's strong policy of hearing cases on their merits. *Hansen*  
15 *v. Universal Health Servs.*, 112 Nev. 1245, 1247-48, 924 P.2d 1345, 1346 (1996) (noting the court's  
16 preference that cases be decided on the merits).

17 THE COMMISSIONER FURTHER FINDS with regard to Contestant's motion to remove the  
18 Personal Representative as representative of the estate, that the motion is denied. While the Personal  
19 Representative still has authority to manage the property of the Estate, any transactions engaged in are  
20 subject to this Court's oversight and approval, therefore minimizing any concern of that the Personal  
21 Representative will be involved in inappropriate conduct.  
22

23 THE COMMISSIONER FURTHER FINDS with regard to Personal Representative's Counter-  
24 Petition to Dismiss Will Contest or, in the Alternative, to Require a More Definite Statement Pursuant  
25 to NRCP 12(e), that the Counter-Petition is denied.  
26  
27  
28

RECOMMENDATIONS FOR ORDER

IT IS RECOMMENDED that the Court enter an Order as follows:

THE COURT FINDS AND ORDERS that the Report and Recommendation of the Probate Commissioner for the reasons stated therein be approved.

THE COURT FINDS AND ORDERS that Contestant's Petition to Enlarge Time Pursuant to NRCP 6(b) be granted.

THE COURT FURTHER FINDS AND ORDERS that Personal Representative's Objection and Counter-Petition be overruled and denied.

THE COURT FURTHER FINDS AND ORDERS that Contestant's request for the extension of time to issue citations be granted.

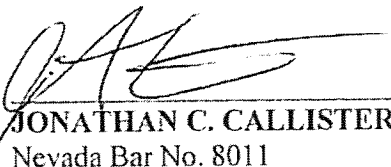
THE COURT FURTHER FINDS AND ORDERS that Contestant's motion to remove and replace Personal Representative as personal representative of the Estate be denied.

DATED this 9 day of ~~March~~ <sup>April</sup>, 2013.

  
Wesley Yamashita  
PROBATE COMMISSIONER

Respectfully submitted,  
**CALLISTER & FRIZELL**  
8275 S. Eastern Ave., Ste. 200  
Las Vegas, Nevada 89123  
Telephone: (702) 657-6000  
Facsimile: (702) 657-0065

By:

  
**JONATHAN C. CALLISTER, ESQ.**  
Nevada Bar No. 8011  
Attorney for William Fink

**NOTICE**

Pursuant to NRCP 53(e)(2), an objection must be filed and served within ten (10) days after being served with a copy of the Report and Recommendations. This Report and Recommendation is deemed received three days after mailing to a party of their counsel, or three (3) days after the Clerk of the Court deposits a copy of the Report in the file of a party's attorney in the Clerk's office.

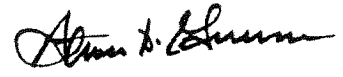
**CERTIFICATE OF MAILING**

I certify that I am an employee of CALLISTER & FRIZELL, and that on this 11<sup>th</sup> day of April ~~March~~, 2013, I caused **COMMISSIONER'S REPORT AND RECOMMENDATIONS** to be served by depositing a true and correct copy of the same (including all exhibits) with the United States Postal Service, with postage prepaid and addressed to the following:

Jonathan W. Barlow  
Jordan M. Flake  
BARLOW FLAKE LLP  
701 N. Green Valley Pkwy., Ste. 200  
Henderson, Nevada 89074  
*Attorneys for the Estate*

Rose Markowitz  
2201 Hercules Dr.  
Los Angeles, CA 90046

  
An Employee of CALLISTER & FRIZELL



CLERK OF THE COURT

1 NOTC  
2 JONATHAN C. CALLISTER, ESQ.  
3 Nevada Bar No. 8011  
4 **CALLISTER & FRIZELL**  
5 8275 S. Eastern Ave., Suite 200  
6 Las Vegas, Nevada 89123  
7 Telephone: (702) 657-6000  
8 Facsimile: (702) 657-0065  
9 *Attorneys for the Contestant*

DISTRICT COURT  
CLARK COUNTY, NEVADA

Case No.: P-12-074745-E


10 In the Matter of the Estate of  
11 LEROY G. BLACK,  
12 Deceased.

NOTICE OF ENTRY OF REPORT AND RECOMMENDATION

13  
14  
15 PLEASE TAKE NOTICE that on the 11<sup>th</sup> day of April, 2013, a Report and Recommendation  
16 was entered by the Court in the above-captioned matter. A true and correct copy of which is  
17 attached hereto.

18 DATED this 19 day of April 2013.

20 CALLISTER & FRIZELL

21  
22 By:   
23 JONATHAN C. CALLISTER ESQ.  
24 *Attorneys for Contestant*  
25  
26  
27  
28

1  
2 CERTIFICATE OF MAILING

3 I certify that I am an employee of CALLISTER & FRIZELL, and that on this 19 day of  
4 April, 2013 the NOTICE OF ENTRY OF REPORT AND RECOMMENDATION was served  
5 by depositing a true and correct copy of the same in the United States mail, postage prepaid and by  
6 electronic transmission to the following:  
7

8 Jonathan W. Barlow  
9 Jordan M. Flake  
10 BARLOW FLAKE LLP  
11 701 N. Green Valley Pkwy., Ste. 200  
12 Henderson, Nevada 89074  
13 *Attorneys for the Estate*

Rose Markowitz  
2201 Hercules Dr.  
Los Angeles, CA 90046

14   
15 \_\_\_\_\_  
16 An Employee of CALLISTER & FRIZELL  
17  
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1 RAR

2 JONATHAN C. CALLISTER, ESQ.

3 Nevada Bar No. 8011

4 CALLISTER & FRIZELL

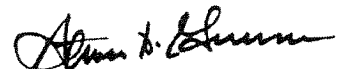
5 8275 S. Eastern Ave., Suite 200

6 Las Vegas, Nevada 89123

7 Telephone: (702) 657-6000

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9 Attorneys for the Contestant



CLERK OF THE COURT

6 DISTRICT COURT

7 CLARK COUNTY, NEVADA

8 Case No.: P-12-074745-E

9 In the Matter of the Estate of

10 Date of Hearing: Feb. 8, 2013

11 LEROY G. BLACK,

12 Time of Hearing: 9:30 a.m.

13 Deceased.

14 REPORT AND RECOMMENDATION

15 This matter came before Commissioner Wesley Yamashita on February 8, 2013, at which time  
16 Jonathan W. Barlow, Esq., appearing on behalf of Phillip Markowitz (the "Personal Representative")  
17 and Jonathan C. Callister, counsel for William Fink (the "Contestant") presented argument. Having  
18 reviewed the parties' briefs, heard argument by counsel, being fully advised in the premises, and good  
19 cause appearing, the Probate Commissioner now makes the following Findings of Fact, Conclusions of  
20 Law and Recommendations:  
21  
22

23 GENERAL FACTS

24 Leroy G. Black died on or about April 4, 2012. On July 18, 2012, Personal Representative filed  
25 a petition for the probate of a will and for the appointment of a personal representative (the "Petition").  
26 The hearing on Personal Representative's Petition was held on August 31, 2012. An order admitting a  
27 will to probate was entered on August 31, 2012.  
28

1 On November 27, 2012, Contestant, through Douglas Gardner, his attorney at the time, filed an  
2 objection to the admission of the will, thereby initiating a will contest. However, Contestant's attorney  
3 was mistaken in his reading of the after-probate will contest statute which caused him to fail to timely  
4 issue citations. Upon discovery of the mistake, citations were issued immediately. Contestant now  
5 seeks to enlarge the time for the issuance of the citation, and has filed a Petition to Enlarge Time  
6 Pursuant to NRCP 6(b) (filed on Jan. 23, 2013). The Personal Representative filed an Objection to the  
7 Petition to Enlarge Time Pursuant to NRCP 6(b) and Counter-Petition to Dismiss Will Contest or, in  
8 the Alternative, to Require a More Definite Statement Pursuant to NRCP 12(e) (the "Objection") on  
9 February 4, 2013. Contestant has presented the opinion of a handwriting expert that the will offered by  
10 the Personal Representative is a forgery.  
11

#### 12 FINDINGS OF FACTS AND CONCLUSIONS OF LAW

13 THE COMMISSIONER FINDS THAT the will contest is not barred by the failure to issue  
14 citations within the three month requirement listed in NRS 137.080. The issue is whether the statutory  
15 time period of three months for the issuance of citations is mandatory or permissive.

16 The period of limitation described in NRS 137.120 is only applicable to the filing of the will  
17 contest, and not to the issuance of the citation. NRS 137.120 provides as follows:

18 If no person contests the validity of a will or of the probate thereof, within the  
19 time specified in NRS 137.080, the probate of the will is conclusive.

20 (Emphasis added.) The issuance of citations is handled in a separate statute, i.e., NRS 137.090. The  
21 period of limitation is only in reference to the filing of the will contest which is described in NRS  
22 137.080 as follows:

23 After a will has been admitted to probate, any interested person . . . at any time  
24 within 3 months after the order is entered admitting the will to probate, contest the  
25 admission or the validity of the will. The contestant must file with the court in  
26 which the will was proved a petition containing the allegations of the contestant  
against the validity of the will or against the sufficiency of the proof, and  
requesting that the probate be revoked.

27 (Emphasis added.) While the issuance of citations is not subject to the period of limitation of NRS  
28 137.120, NRS 137.090 requires the issuance of citations within three months of the admission of the

1 will to probate. However, the extension of the time for the issuance of citations under NRS 137.090  
2 may be extended based on the Court's discretion under NRCP 6(b) and EDCR 2.25.

3 There is no Nevada case law on point for this issue. Nevada courts have often looked to  
4 California case law where the statutes at issue are similar to those in Nevada. *See e.g., John v. Douglas*  
5 *County School Dist.*, 125 Nev. 746, 756, 219 P.3d 1276, 1283 (2009) ("we consider California caselaw  
6 because California's . . . statute is similar in purpose and language to Nevada's . . . statute.") With  
7 regard to will contests and the issuance of citations, California courts have provided as follows:

8 The jurisdiction of the court to entertain a proceeding for the revocation of the  
9 will does not depend upon the issuance and service of a citation within a year  
10 after the probate of the will. Jurisdiction of the court attaches on the filing of the  
11 petition inaugurating the contest. The office of the citation is only that of a  
12 summons—to give the court jurisdiction of the parties who would be affected by  
13 its revocation. It is not essential to the jurisdiction of the court that the citation be  
14 issued and served within a year. The only penalty for failure to have it issued  
15 within that time is that the court may dismiss the contest. And even where there  
16 has been a failure to have it issued within the year the court may nevertheless  
17 relieve a contestant for his failure to do so and thereupon order a citation issued  
18 and served.

19 *In re Logan's Estate*, 171 Cal. 357, 362-63, 153 P. 388, 390 (1915) (emphases added). *See also In re*  
20 *Simmons' Estate*, 168 Cal. 390, 395, 143 P. 697 (1914) ("we think it must be held that the court has  
21 power . . . to relieve a contestant, whose petition for revocation, duly filed, has not been dismissed,  
22 from the failure to have citation issued and served within the year."); *In re Withenbury's Estate*, 188  
23 Cal. 109, 110-11, 204 P. 385, 385 (1922) ("The issuance of the citation is not jurisdictional, and the  
24 trial court had the power to relieve the petitioner from the failure to issue such citation within a year . .  
25 . .") The statute at issue in these cases is substantially similar to, and in certain respects identical to  
26 NRS 137.080 in both purpose and language. The Court finds that the California cases are persuasive on  
27 the issue of whether the three month requirement of the issuance of citations is mandatory or  
28 permissive. Accordingly, the Court finds that the three month period for issuance of the citations is not  
mandatory and may be extended in the Court's discretion and pursuant to NRCP 6 and EDCR 2.25.

THE COMMISSIONER FURTHER FINDS that Contestant timely objected to the validity of the  
will and complied with relevant statutes in that regard. Moreover, the untimely issuance of the citation

1 will not bar Contestant's claim because the extension of time is governed by NRCP 6(b), EDCR 2.25.

2 NRCP 6(b) and EDCR 2.25 govern the practice and procedure of contested procedures under  
3 Title 12 of NRS. *See* NRCP 83; EDCR 2.01. With regard to the extension or enlargement of time,  
4 EDCR 2.25 and NRCP 6 both require a showing of excusable neglect.

5 THE COMMISSIONER FURTHER FINDS it appropriate to adopt the factors for excusable  
6 neglect applied by the Court in *Moseley v. Eighth Judicial Dist. Court ex rel. County of Clark*, 124  
7 Nev. 654, 557-68, 188 P.3d 1136, 1146 (2008), and finds excusable neglect under NRCP 6(b) and  
8 EDCR 2.25 because Contestant acted in good faith, exercised due diligence, had a reasonable basis for  
9 not complying with the specified time, and that the non-moving party will not suffer prejudice.

10 THE COMMISSIONER FURTHER FINDS that Contestant acted in good faith and sought the  
11 advice of an attorney in preparing and filing the will contest. The objection to the will was filed within  
12 the required time limits, and in accordance with NRS 137. However, Contestant's former counsel  
13 misread the statute and mistakenly thought that the issuance of the citation would be conducted as in a  
14 contest before probate. Counsel mistakenly thought he had complied with the provisions of NRS 137  
15 for the issuance of a citation. In addition, Contestant had a good faith basis for objecting to the will  
16 based on the suspicious circumstances surrounding the will.

17 THE COMMISSIONER FURTHER FINDS with regard to the second and third factors, that  
18 Contestant exercised due diligence and there was a reasonable basis for Contestant's failure to comply  
19 with the specified time limit. The failure to comply was reasonable because Contestant relied on his  
20 attorney, and his attorney put forth a good faith effort to read and adhere to the statutory provision and  
21 relied on his past experience. Despite his efforts to comply with the rules, he overlooked an applicable  
22 provision. Moreover, although several days passed from the passage of the deadline to the issuance of  
23 the citation, Contestant was diligent because he understood from his attorney that he had complied  
24 with the provisions of NRS 137 and proceeded accordingly. Shortly after the timely filing of the  
25 objection, Contestant filed and served notices of hearing and proceeded based on the mistaken  
26  
27  
28

1 understanding of his attorney. The Contestant should not to be deprived of his right to contest the will  
2 because of the delay brought about by the neglect of his attorney. *See In re Withenbury's Estate*, 188  
3 Cal. 109, 113, 204 P. 385, 386 (1922).

4 THE COMMISSIONER FURTHER FINDS with regard to the fourth factor above, that  
5 Personal Representative will suffer no prejudice. Personal Representative and other interested parties  
6 were quickly on notice of the will contest through Contestant's service of notices of hearing on  
7 interested parties. Thereupon, Contestant acted promptly to correct the error and sought an extension  
8 from the Court and issued citations. There is no damage or detriment to Personal Representative's  
9 claims. Personal Representative has shown no evidence of a change in circumstances during the  
10 relatively short time span from November 30, 2012 to the issuance of the citation that would harm his  
11 claims.  
12

13 THE COMMISSIONER FURTHER FINDS that the grant of the enlargement of time to issue  
14 citations is appropriate in light of the judiciary's strong policy of hearing cases on their merits. *Hansen*  
15 *v. Universal Health Servs.*, 112 Nev. 1245, 1247-48, 924 P.2d 1345, 1346 (1996) (noting the court's  
16 preference that cases be decided on the merits).

17 THE COMMISSIONER FURTHER FINDS with regard to Contestant's motion to remove the  
18 Personal Representative as representative of the estate, that the motion is denied. While the Personal  
19 Representative still has authority to manage the property of the Estate, any transactions engaged in are  
20 subject to this Court's oversight and approval, therefore minimizing any concern of that the Personal  
21 Representative will be involved in inappropriate conduct.  
22

23 THE COMMISSIONER FURTHER FINDS with regard to Personal Representative's Counter-  
24 Petition to Dismiss Will Contest or, in the Alternative, to Require a More Definite Statement Pursuant  
25 to NRCP 12(e), that the Counter-Petition is denied.  
26  
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28

RECOMMENDATIONS FOR ORDER

IT IS RECOMMENDED that the Court enter an Order as follows:

THE COURT FINDS AND ORDERS that the Report and Recommendation of the Probate Commissioner for the reasons stated therein be approved.

THE COURT FINDS AND ORDERS that Contestant's Pctition to Enlarge Time Pursuant to NRCP 6(b) be granted.

THE COURT FURTHER FINDS AND ORDERS that Personal Representative's Objection and Counter-Petition be overruled and denied.

THE COURT FURTHER FINDS AND ORDERS that Contestant's request for the extension of time to issue citations be granted.


THE COURT FURTHER FINDS AND ORDERS that Contestant's motion to remove and replace Personal Representative as personal representative of the Estate be denied.

DATED this 9 day of ~~March~~<sup>April</sup>, 2013.

  
Wesley Yamashita  
PROBATE COMMISSIONER

Respectfully submitted,  
**CALLISTER & FRIZELL**  
8275 S. Eastern Ave., Ste. 200  
Las Vegas, Nevada 89123  
Telephone: (702) 657-6000  
Facsimile: (702) 657-0065

By:

  
**JONATHAN C. CALLISTER, ESQ.**  
Nevada Bar No. 8011  
Attorney for William Fink

NOTICE

Pursuant to NRCP 53(e)(2), an objection must be filed and served within ten (10) days after being served with a copy of the Report and Recommendations. This Report and Recommendation is deemed received three days after mailing to a party of their counsel, or three (3) days after the Clerk of the Court deposits a copy of the Report in the file of a party's attorney in the Clerk's office.

CERTIFICATE OF MAILING

I certify that I am an employee of CALLISTER & FRIZELL, and that on this 11<sup>th</sup> day of ~~March~~ <sup>April</sup>, 2013, I caused **COMMISSIONER'S REPORT AND RECOMMENDATIONS** to be served by depositing a true and correct copy of the same (including all exhibits) with the United States Postal Service, with postage prepaid and addressed to the following:

Jonathan W. Barlow  
Jordan M. Flake  
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701 N. Green Valley Pkwy., Ste. 200  
Henderson, Nevada 89074  
*Attorneys for the Estate*

Rose Markowitz  
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An Employee of CALLISTER & FRIZELL

1 **OBJ**

2 **JONATHAN W. BARLOW**

3 Nevada Bar No. 9964

4 **JORDAN M. FLAKE**

5 Nevada Bar No. 10583

6 **BARLOW FLAKE LLP**

7 701 N. Green Valley Pkwy., Ste. 110

8 Henderson, Nevada 89074

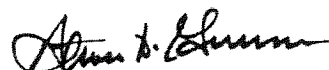
9 (702) 476-5900

10 (702) 924-0709 (Fax)

11 jonathan@barlowflakelaw.com

12 Attorneys for the Estate

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CLERK OF THE COURT

13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

15 In the Matter of the Estate of

16 LEROY G. BLACK,

17 Deceased.

Case No. P-12-074745-E

Dept. No. 26

18 **OBJECTION TO REPORT AND RECOMMENDATION**

19 Phillip Markowitz, Executor of the Estate of Leroy G. Black ("Markowitz"), by and  
20 through his attorneys of record of the law firm Barlow Flake LLP, hereby objects to the Report  
21 and Recommendation entered by Probate Commissioner Wesley Yamashita on April 11, 2013,  
22 as follows:

23 1. Markowitz incorporates into this Objection all arguments previously made in his  
24 *Opposition to Objection to the Admission of the Last Will and Testament of Leroy G. Black, for*  
25 *the Revocation of Letters Testamentary and for Appointment of Special Administrator Pending*  
26 *the Conclusion of Will Contest* filed on January 3, 2013, and in his *Objection to Petition to*  
27 *Enlarge Time Pursuant to NRCP 6(b) and Counter-Petition to Dismiss Will Contest or, in the*  
28 *Alternative, to Require a More Definite Statement Pursuant to NRCP 12(e)* filed on February 4,  
2013. Markowitz reasserts each argument as if fully set forth in this Objection.

1           2.       In addition to the arguments set forth earlier, Markowitz also objects to the  
2 Report and Recommendation on the ground that it is contrary to rules of statutory interpretation  
3 adopted by the Nevada Supreme Court.

4           3.       In the Report and Recommendation, despite the fact that NRS 137.090 clearly  
5 states that the action of issuing a citation “must” be accomplished within the three month period  
6 set forth in NRS 137.080, Commissioner Yamashita recommends that the mandatory language  
7 in NRS 137.090 should be read as permissive language. Commissioner Yamashita’s  
8 Recommendation disregards the plain language rule of statutory interpretation adopted by the  
9 Nevada Supreme Court. “[I]f the language of the statute is plain and unambiguous and its  
10 meaning clear and unmistakable there is not room for construction and the courts are not  
11 permitted to search for its meaning beyond the statute itself.” *Madera v. SIIS*, 114 Nev. 253,  
12 257 (1998); see also *Rosequist v. Int’l Ass’n of Firefighters*, 118 Nev. 444, 448 (2002) (“If the  
13 plain meaning of a statute is clear on its face, then this court will not go beyond the language of  
14 the statute to determine its meaning.”).

15           4.       In repeatedly upholding the plain language rule, the Nevada Supreme Court has  
16 stated that the District Court does not have equitable power to disregard mandatory language in  
17 a statute. *Blaine Equip. Co. v. State of Nevada*, 138 P.3d 820, 122 Nev. 860 (2006). In fact, in  
18 *Blaine Equipment*, the Court noted that it could find only two occasions where the Nevada  
19 Supreme Court approved the District Court in using equitable power to grant relief contrary to  
20 that mandated by plain statutory language. *Id.* at 824. Both situations were extraordinary and  
21 neither of which remotely apply to the present case. *Id.* at 824-25.

22           5.       Nevertheless, despite the plain language of NRS 137.090, Commissioner  
23 Yamashita fashioned an equitable remedy through the use of NRCP 6(b) to allow the  
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1 enlargement of time to issue the citation. The Recommendation cites to the inherently equitable  
2 remedy of "hearing cases on their merits" as a way to avoid the harsh effects of a plain language  
3 reading of NRS 137.090.

4         6. In fashioning an equitable remedy around the plain language of NRS 137.090,  
5 Commissioner Yamashita relied on California case law that is nearly 100 years old.<sup>1</sup> In essence,  
6 this Court has one of two choices. First, this Court may follow well-settled case law adopted by  
7 the Nevada Supreme Court in applying the plain language rule to NRS 137.090 and enforce the  
8 plain, unambiguous language of NRS 137.090. Second, this Court may disregard well-founded  
9 and long-held rules of statutory interpretation adopted by the Nevada Supreme Court in favor of  
10 100 year old case law from a neighboring state.

11         7. In determining whether to follow Nevada case law or California case law, it is  
12 important to note that the Nevada Supreme Court has stated, "It is the prerogative of the  
13 Legislature, not this court, to correct any injustice occasioned by a literal reading of the statute."  
14 *Breen v. Caesars Palace*, 102 Nev. 79, 86-87 (1986). If Fink believes that a plain language  
15 enforcement of NRS 137.090 is not just, his remedy is through the legislative process. This  
16 Court should not exceed its prerogative by engaging in judicial legislation.  
17  
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20         8. Even if this Court finds that the mandatory language of NRS 137.090 is capable  
21 of more than one reasonable interpretation and that the plain language rule, therefore, should not  
22 apply, the Court must then construe the multiple legislative provisions related to an after-  
23 probate will contest as a whole "to give meaning to each of their parts, such that, when read in  
24

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26  
27 <sup>1</sup> Commissioner Yamashita also noted in his comments at the hearing that many other sister  
28 states in the western United States have enforced statutes requiring the dismissal of a will  
contest for failure to issue a citation in a timely manner, though he chose not to follow these  
sister states.

1 context, none of the statutory language is rendered mere surplusage.” *Stockmeier v.*  
2 *Psychological Review Panel*, 135 P.3d 807, 810, 122 Nev. 534 (2006).

3 9. There is nothing in NRS 137.080-.140 that would permit a reading of NRS  
4 137.090 any way other than to give effect to the mandatory language of NRS 137.090. Any  
5 other reading of the after-probate statutory will contest scheme would render the mandatory  
6 language of NRS 137.090 as “mere surplusage.” The reading of NRS 137.090 recommended by  
7 Commissioner Yamashita reads out of the statute any time limit whatsoever on the issuance of  
8 the citation.

10 10. Markowitz also reiterates the arguments made in his counter-petition to dismiss  
11 the will contest not only for the failure to issue citations timely, but also because Fink’s  
12 *Objection to the Admission of the Last Will and Testament of Leroy G. Black* in and of itself  
13 fails to meet the statutory requirements for a will contest. Fink and the Probate Commissioner  
14 have taken for granted the woefully inadequate pleading of the purported will contest, which  
15 point Markowitz has raised in his Opposition filed on January 3, 2013, and in his Objection  
16 filed on February 4, 2013. In addition, Fink never properly verified his Objection as required by  
17

19 11. Commissioner Yamashita never specifically addressed the argument of the  
20 inadequacy of Fink’s pleading. Markowitz now requests again that the Court specifically review  
21 Fink’s initial *Objection to the Admission of the Last Will and Testament of Leroy G. Black* and  
22 determine whether the Objection comports with the pleading requirements of Nevada law as  
23 detailed by Markowitz in his Opposition filed on January 3, 2013, and in his Objection filed on  
24 February 4, 2013.  
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1 12. Markowitz requests that the Court enter its Order denying the Report and  
2 Recommendation for the following reasons set forth in this Objection and in Markowitz's  
3 previous filings:

4 A. Fink failed to issue a citation within three months of the Order admitting the will  
5 to probate;

6 B. NRCP 6(b) is not applicable to statutes of limitation set forth in the Nevada  
7 Revised Statutes;

8 C. Fink has failed to show excusable neglect and absence of prejudice, if NRCP  
9 6(b) is determined to apply;

10 D. There is no basis to toll or extend the statute of limitations of NRS 137.080-.090;

11 E. Fink's *Objection to the Admission of the Last Will and Testament of Leroy G.*  
12 *Black* fails to meet the statutory requirements for a will contest; and,

13 F. Fink's *Objection* fails to plead fraud with particularity.

14 THEREFORE, Markowitz requests that the Court deny the Report and  
15 Recommendations and enter its Order dismissing the will contest.

16 DATED this 29<sup>th</sup> day of April, 2013.

17  
18  
19  
20 BARLOW FLAKE LLP

21 

22  
23 JONATHAN W. BARLOW

24 Nevada Bar No: 9964  
25 Attorneys for the Estate  
26  
27  
28

## CERTIFICATE OF MAILING

I hereby certify that on April 29, 2013, a true and correct copy of the original *Objection to Report and Recommendation* was sent via U.S. Mail, first class postage prepaid, to the following at their last known address:

Jonathan C. Callister  
Callister & Frizell  
8275 S. Eastern Ave., Ste. 200  
Las Vegas, NV 89123

Rose Markowitz  
2201 Hercules Dr.  
Los Angeles, CA 90046

  
An Employee of Barlow Flake LLP

NOH

JONATHAN W. BARLOW

Nevada Bar No. 9964

JORDAN M. FLAKE

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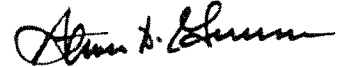
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jonathan@barlowflakelaw.com

Attorneys for the Estate

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CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

In the Matter of the Estate of

LEROY G. BLACK,

Deceased.

Case No. P-12-074745-E

Dept. No. 26

NOTICE OF HEARING ON OBJECTION TO REPORT AND RECOMMENDATION

Date of Hearing: 06/11/2013

Time of Hearing: 9:00 A.M.

NOTICE IS HEREBY GIVEN that Phillip Markowitz filed with this Court an *Objection to Report and Recommendation* for the Estate of the above-named Decedent and that the hearing on the Objection has been set for June 11, 2013 in at 9:00 a.m. District Court, Department 26, at the Regional Justice Center, 200 Lewis Ave., Las Vegas, Nevada, 89101. Further details concerning the Objection can be obtained by reviewing the Court file at the Office of the Court Clerk, Family Court, 601 N. Pecos, Las Vegas, Nevada, 89101, or by contacting the Petitioner or the attorney for the Petitioner whose name, address, and telephone number is given above.

...

...

1 All persons interested in this Estate are notified to appear and show cause why the  
2 Objection should not be granted.

3 DATED this 8th day of May, 2013.

4 **BARLOW FLAKE LLP**

5 

6  
7 **JONATHAN W. BARLOW**  
8 Nevada Bar No. 9964  
9 Attorneys for the Estate  
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OPPS  
JONATHAN C. CALLISTER, ESQ.  
Nevada Bar No. 8011  
CALLISTER & FRIZELL  
8275 S. Eastern Ave., Suite 200  
Las Vegas, Nevada 89123  
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Attorneys for the Contestant

  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

In the Matter of the Estate of  
  
LEROY G. BLACK,  
  
Deceased.

Case No.: P-12-074745-E  
Dept. No.: 26

**OPPOSITION TO THE OBJECTION TO REPORT AND RECOMMENDATION**

William Fink (the "Contestant"), by and through his attorney, Jonathan C. Callister of the law firm of Callister & Frizell, now file this opposition to the objection to report and recommendation against Phillip Markowitz (the "Personal Representative"), by and through his attorney, Jonathan W. Barlow, Esq. This Opposition is based upon the following grounds: (1) the Personal Representative's failure to serve written objections within 10 days as required by NRCP 53(e)(2); (2) the plain language rule of statutory interpretation is inapplicable in this case because the Court has the discretion to extend the time for the issuance of citations under NRCP 6(b) and EECR 2.25; (3) the Personal Representative will suffer no prejudice and the judiciary's strong policy of hearing cases on its merits; and (4) the contestant timely objected the will, acted in good faith, exercised due diligence and there was excusable neglect. In this connection, Petitioner would respectfully show the Court as follows:

## MEMORANDUM OF POINTS AND AUTHORITIES

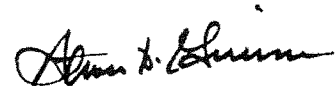
### **I. Factual and Procedural Background**

Contestant has been the sole beneficiary of a trust, of which Decedent, Leroy G. Black, was the trustor, since August 1992. A pour-over will, gifting the Estate to the trust, was executed by Decedent at the time of the execution of the trust. Contestant was also the beneficiary of Decedent's prior wills. The true will, however, was never admitted to probate. A new will was allegedly executed by Decedent on March 7, 2012, a mere three weeks prior to his suicide, and at a time when Decedent was in a state of depression and taking various medications affecting his cognitive ability.

The will suspiciously appeared after Decedent's death, gifting Decedent's Estate to Rose and Phillip Markowitz, individuals with whom Decedent had long had no relationship, and with whom Decedent only had limited interaction immediately prior to his death. The new will was prepared by the Executor, Phil Markowitz, and was witnessed by two individuals, David Everston and Maria Onofre, who came from California to witness the will and are complete strangers to Decedent or Contestant. The Contestant retained an expert to evaluate Decedent's alleged signature on the will who concluded that the signature on the will was a forgery.

On August 31, 2012, the new will was admitted to probate. In his state of mourning over a close family member's tragic death, Contestant did not contest the new will prior to its admission to probate. On November 27, 2012, Contestant, through Douglas Gardner, his attorney at that time, filed an objection to the admission of the will, thereby initiating a will contest. However, Contestant's attorney was mistaken in his reading of the after-probate will contest statute which caused him to not timely issue citations. Upon discovery of the mistake, citations were issued immediately and Contestant sought new counsel in this matter.

The matter came before Commissioner Wesley Yamashita on February 8, 2013. The Commissioner found the issuance of citations time period in NRS 137.080 was permissive. The Commissioner also found the Contestant timely objected to the validity of the will, acted in good faith,

  
CLERK OF THE COURT

DOUGLAS J. GARDNER, ESQUIRE  
Nevada Bar No. 4609  
RANDS, SOUTH & GARDNER  
1055 Whitney Ranch Drive #220  
Henderson, NV 89014  
702 940 2222  
[tassyw@gmail.com](mailto:tassyw@gmail.com)

DISTRICT COURT  
CLARK COUNTY, NEVADA

In the Matter of the Estate of )  
 )  
 LEROY G. BLACK )  
 ) Case No. P-12-074745-E  
 Deceased. )  
 )

**SUPPLEMENT TO THE OBJECTION TO THE ADMISSION OF THE LAST WILL AND  
TESTAMENT OF LEROY G. BLACK, FOR THE REVOCATION OF LETTERS  
TESTAMENTARY AND FOR APPOINTMENT OF SPECIAL ADMINISTRATOR PENDING  
THE CONCLUSION OF WILL CONTEST**

Hearing Date: December 21, 2012  
Hearing Time: 9:30 a.m.

WILLIAM FINK, aka BILL FINK [hereinafter Contestant], by and through his attorney,  
DOUGLAS J. GARDNER, ESQUIRE of the law firm of RANDS, SOUTH & GARDNER, hereby  
supplements his objection to the admission of the will dated March 7, 2012 to set forth his  
standing in this matter to object thereto.

Contestant is the beneficiary of decedent's inter vivos trust and former will dated August  
21, 1992 and totally restated on October 27, 2009. Pursuant to the provisions of NRS 137.080

...

...

1 and NRS 137.010<sup>1</sup>, Contestant is an interested person in these proceedings because he is the  
2 beneficiary under the former will of the decedent.

3 DATED this 27<sup>th</sup> day of November, 2012.

4 RANDS, SOUTH & GARDNER

5  
6 /s/Douglas J. Gardner

7 DOUGLAS J. GARDNER, ESQUIRE

8 Nevada Bar No. 4609

9 1055 Whitney Ranch Drive #220

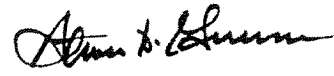
10 Henderson, NV 89014

11 702 940 2222

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<sup>1</sup> NRS 137.100 provides that a contest after probate is conducted the same as a contest before probate; accordingly, Contestant's status as the beneficiary of a former will creates his interest for purposes of this contest..



CLERK OF THE COURT

DOUGLAS J. GARDNER, ESQUIRE  
Nevada Bar No. 4609  
RANDS, SOUTH & GARDNER  
1055 Whitney Ranch Drive #220  
Henderson, NV 89014  
702 940 2222  
[tassyw@gmail.com](mailto:tassyw@gmail.com)

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate of )  
 )  
 **LEROY G. BLACK** )  
 ) Case No. P-12-074745-E  
 Deceased. )  
 )

**AMENDED NOTICE OF HEARING ON OBJECTION TO THE ADMISSION OF THE LAST  
WILL AND TESTAMENT OF LEROY G. BLACK, FOR THE REVOCATION OF LETTERS  
TESTAMENTARY AND FOR APPOINTMENT OF SPECIAL ADMINISTRATOR PENDING  
THE CONCLUSION OF WILL CONTEST**

Hearing Date: December 28, 2012  
Hearing Time: 9:30 a.m.

PLEASE TAKE NOTICE that WILLIAM FINK has filed with the Court an Objection to the Admission of the Last Will and Testament of LeRoy G. Black, for the Revocation of Letters Testamentary and for Appointment of Special Administrator Pending Conclusion of Will Contest; that a hearing on said petition has been set for ***Friday, the 28<sup>th</sup> day of December, 2012 at the hour of 9:30 a.m. in Courtroom #9 of the Family Courts Building, 601 North Pecos Road, Las Vegas, NV 89101.***

NOTICE IS FURTHER GIVEN that all persons interested in the estate are notified to then and there appear and show cause, if any they have, why said petition should not be granted.

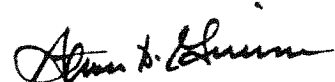
For further particulars, reference is made to the petition on file herein.

1  
2 **YOU NEED NOT APPEAR UNLESS YOU WISH TO FILE AN OBJECTION.**

3 DATED this 10<sup>th</sup> day of December, 2012.

4 RANDS, SOUTH & GARDNER

5  
6 /s/Douglas J. Gardner  
7 DOUGLAS J. GARDNER, ESQUIRE  
8 1055 Whitney Ranch Drive #220  
9 Henderson, NV 89014  
10 702 940 2222  
11 tassyw@gmail.com  
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CLERK OF THE COURT

DOUGLAS J. GARDNER, ESQUIRE  
Nevada Bar No. 4609  
RANDS, SOUTH & GARDNER  
1055 Whitney Ranch Drive #220  
Henderson, NV 89014  
702 940 2222  
[tassyw@gmail.com](mailto:tassyw@gmail.com)  
Attorney for William Fink

DISTRICT COURT  
CLARK COUNTY, NEVADA

In the Matter of the Estate of )  
 )  
 LEROY G. BLACK )  
 ) Case No. P-12-074745-E  
 Deceased. )  
 )

CERTIFICATE OF MAILING

Hearing Date: December 28, 2012  
Hearing Time: 9:30 a.m.

The undersigned hereby certifies that on the 11<sup>th</sup> day of December, 2012, she deposited in the United States Mail, postage prepaid, a copy of the Amended Notice of Hearing on Objection to the Admission of the Last Will and Testament of LeRoy G. Black, for the Revocation of Letters Testamentary and for Appointment of Special Administrator Pending the Conclusion of Will Contest addressed as set forth on Exhibit "A" attached hereto.

DATED this 11<sup>th</sup> day of December, 2012.

/s/T. Wolfe  
TASSY WOLFE

Exhibit "A"

Christopher J. Phillips, Esquire  
10777 West Twain #300  
Las Vegas, NV 89135  
Attorney for Ruth &  
Phillip Markowitz

Zelda Kameyer  
456 Elm Street  
Woodland, CA 95695

William Fink  
1835 East Michelle  
West Covina, CA 92048

  
CLERK OF THE COURT

1 **OPP**

2 **JONATHAN W. BARLOW**

3 Nevada Bar No. 9964

4 **JORDAN M. FLAKE**

5 Nevada Bar No. 10583

6 **BARLOW FLAKE LLP**

7 701 N. Green Valley Pkwy., Ste. 200

8 Henderson, Nevada 89074

9 (702) 476-5900

10 (702) 924-0709 (Fax)

11 jonathan@barlowflakelaw.com

12 Attorneys for the Estate

13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

15 In the Matter of the Estate of

16 LEROY G. BLACK,

17 Deceased.

Case No. P-12-074745-E

Dept. No. 26

18 **OPPOSITION TO OBJECTION TO THE ADMISSION OF THE LAST WILL AND**  
19 **TESTAMENT OF LEROY G. BLACK, FOR THE REVOCATION OF LETTERS**  
20 **TESTAMENTARY AND FOR APPOINTMENT OF SPECIAL ADMINISTRATOR**  
21 **PENDING THE CONCLUSION OF WILL CONTEST**

22 Phillip Markowitz, Executor of the Estate of Leroy G. Black, by and through his  
23 attorneys of record of the law firm Barlow Flake LLP, hereby opposes William Fink's  
24 Objection to the Admission of the Last Will and Testament of Leroy G. Black, for the  
25 Revocation of Letters Testamentary and for Appointment of Special Administrator Pending the  
26 Conclusion of Will Contest, as follows:

27 1. Leroy G. Black ("Decedent") died on April 4, 2012, in Clark County, State of  
28 Nevada. Phillip Markowitz ("Markowitz") petitioned this Court to admit Decedent's March 7,  
2012, will to probate and for appointment as Executor of the Estate of Leroy G. Black.  
Markowitz provided notice of hearing on the petition to all interested parties, including to  
William Fink ("Fink"). The Certificate of Mailing to Fink is on file in this matter.

1           2.       On August 31, 2012, this Court entered its Order appointing Markowitz as  
2       Executor of the Estate and admitting the March 7, 2012, will to probate. Letters Testamentary  
3       were issued on September 13, 2012, and Markowitz has been acting in his capacity as Executor  
4       since that time.

5           3.       Markowitz's petition to probate the March 7, 2012, will is supported by the  
6       Affidavit of Attesting Witness provided by David Everston and by Maria Onofre, the two  
7       witnesses to the execution of the March 7, 2012, will. The Affidavits are both on file in this  
8       matter.  
9

10          4.       Markowitz served notice of entry of the order admitting the March 7, 2012, will  
11       to probate on all interested parties in this matter, including upon Fink. The Notice of Entry of  
12       Order was mailed to all interested parties on August 31, 2012, and is on file in this matter.  
13

14          5.       On November 27, 2012, Fink filed an Objection to the Admission of the Last  
15       Will and Testament of Leroy G. Black, for the Revocation of Letters Testamentary and for  
16       Appointment of Special Administrator Pending the Conclusion of Will Contest (the  
17       "Objection").  
18

19          6.       Upon information and belief, Fink has not caused any Citation to be issued as  
20       required by NRS 137.090.

21          7.       Markowitz requests that the Court dismiss Fink's Objection and the purported  
22       will contest because of Fink's failure to comply with the strict statutory requirements of NRS  
23       137.080 and 137.090.  
24

25          8.       An interested person who wishes to revoke an order admitting a will to probate,  
26       must file a petition "containing the allegations of the contestant against the validity of the will  
27       or against the sufficiency of the proof, and requesting that the probate be revoked." NRS  
28

1 137.080. The petition to revoke the probate must be filed “at any time within 3 months after the  
2 order is entered admitting the will to probate.” NRS 137.080.

3 9. Fink’s Objection appears to seek to revoke the probate of the March 7, 2012, will  
4 admitted to probate by this Court’s Order dated August 31, 2012. Fink filed his petition on  
5 November 27, 2012, which is within three months after the entry of the August 31, 2012, Order.

6 10. Though Fink did file the Objection within the three month period for the filing of  
7 a will contest, Markowitz believes that the Objection fails to conform to the statutory  
8 requirement that the petition contain allegations against the validity of the will. Fink’s  
9 conclusory statement that the March 7, 2012, will was “obtained through fraud and undue  
10 influence” and that “decedent lacked the requisite testamentary capacity” are so vague and  
11 boilerplate as to not allow any interested party to respond to these “allegations” in any  
12 substantive manner. Therefore, there is a serious concern whether Fink’s Objection complies  
13 with the statutory requirements for the filing of a petition to revoke the probate of a will within  
14 three months of the entry of the order admitting the will to probate.  
15

16 11. More importantly, however, upon information and belief Fink has failed to  
17 comply with NRS 137.090 regarding the issuance of a citation to plead to the contest of the will.  
18 NRS 137.090 states, “Upon filing the petition, and within the time allowed for filing the  
19 petition, a citation must be issued, directed to the personal representative and to all the devisees  
20 mentioned in the will, and the heirs, so far as known to the petitioner, including minors and  
21 incapacitated persons, or the personal representative of any such person who is dead, directing  
22 them to plead to the contest within 30 days after service of the citation” (emphasis added).  
23 Notably, the requirement to issue a citation as set forth in NRS 137.090 does not include  
24 permissive language, but is mandatory stating that the citation “must be issued ....”  
25  
26  
27  
28

1           12.     NRS 137.090 clearly provides and mandates that not only must the petition to  
2     revoke the will be filed within three months of the order admitting the will to probate, **but the**  
3     **contestant must also cause a citation to be issued within the same three month statute of**  
4     **limitations.** In order to have properly complied with the statute of limitations set forth in NRS  
5     137.080-.140, therefore, Fink must have (1) filed a petition seeking to revoke the probate of the  
6     will and (2) caused a citation to be issued by no later than November 30, 2012. Upon  
7     information and belief, Fink failed to cause the issuance of a citation to plead to the will contest  
8     before November 30, 2012.

10           13.     Upon information and belief, Fink has failed to comply with the strict time  
11     requirements to properly contest the March 7, 2012, will admitted to probate by this Court's  
12     August 31, 2012, Order. "If no person contests the validity of a will or of the probate thereof,  
13     within the time specified in NRS 137.080, the probate of the will is conclusive." NRS 137.120  
14     (emphasis added).

16           14.     Because the Order admitting the March 7, 2012, will to probate is conclusive,  
17     Fink is now statutorily and absolutely time-barred from bringing his petition (or "Objection") to  
18     revoke will before this Court. The probate of the will set forth in this Court's August 31, 2012,  
19     Order is conclusive. Markowitz, therefore, requests that the Court deny Fink's Objection and  
20     dismiss any purported will contest that may have resulted from the filing of the Objection.

22           15.     Markowitz also opposes Fink's request to have Barbara Stewart named as  
23     Special Administrator of the Estate. Because the purported will contest must be dismissed, there  
24     is no other basis on which to appoint a special administrator.

26           16.     Finally, Fink has requested that Markowitz be removed as Executor of the Estate  
27     due to alleged claims made by Markowitz against assets allegedly owned by the Leroy G. Black  
28

1 1992 Living Trust. At this point, counsel for Markowitz has not had an opportunity to review  
2 these issues in detail, including any contractual documents governing the assets in question or  
3 other estate plan documents related to transfers of assets to the Trust. Upon information and  
4 belief, it is possible that the Estate may have a colorable claim to Decedent's personal property  
5 located in the 1600 Becke Circle property and to rental payments from CenturyLink. Until the  
6 documents can be reviewed and Markowitz properly advised by his counsel, it is hardly a  
7 breach of Markowitz's fiduciary duties to the Estate to attempt to collect assets that may  
8 possibly belong to the Estate.  
9

10 17. In any event, Fink has no standing to seek to remove Markowitz as Executor.  
11 Fink has filed a Supplement to his Objection in which Fink alleges to have standing in this  
12 Estate because of Fink's interest under an alleged will of Decedent's apparently dated October  
13 27, 2009. As set forth above, because the order admitting Decedent's March 7, 2012, will to  
14 probate is conclusive, any and all prior dated wills executed by Decedent, including the alleged  
15 October 27, 2009, will, were revoked by the execution of the March 7, 2012, will. Because Fink  
16 is statutorily barred from pursuing a will contest and because Fink otherwise has no interest in  
17 this Estate, Fink has no standing to seek to remove Markowitz as Executor of the Estate.  
18 Markowitz, therefore, requests that the Court deny Fink's request to remove Markowitz as  
19 Executor of the Estate.  
20  
21

22 WHEREFORE, Markowitz requests that the Court enter the following orders:  
23


24 A. That Fink's Objection be dismissed insofar as it purports to constitute a valid  
25 will contest;

26 B. That Fink's request to remove Markowitz as Executor of the Estate be denied;  
27 and,  
28

1 C. That Fink's request for the appointment of a special administrator be denied.

2 DATED this 3rd day of January, 2013.

3 **BARLOW FLAKE LLP**

4 

5  
6 **JONATHAN W. BARLOW**

7 Nevada Bar No: 9964

8 Attorneys for the Estate

DOUGLAS J. GARDNER, ESQUIRE  
Nevada Bar No. 4609  
RANDS, SOUTH & GARDNER  
1055 Whitney Ranch Drive #220  
Henderson, NV 89014  
702 940 2222  
[tassyw@gmail.com](mailto:tassyw@gmail.com)  
Attorney for William Fink

  
CLERK OF THE COURT

DISTRICT COURT  
CLARK COUNTY, NEVADA

In the Matter of the Estate of )

LEROY G. BLACK )

Deceased. )

Case No. P-12-074745-E

CITATION TO PLEA TO CONTEST

TO: Phil Markowitz and all heirs of the decedent and interested persons including  
minors and incapacitated persons:

YOU ARE HEREBY CITED to plead to this will contest within thirty (30) days after  
service of this Citation to determine the validity of the purported Last Will and Testament of  
LEROY G. BLACK, Deceased.

THIS CITATION is based upon the verified Objection to the Admission of the Last Will  
and Testament of Leroy G. Black, for Revocation of Letters Testamentary and for Appointment  
of Special Administrator Pending the Conclusion of Will Contest heretofore filed in this action.

DATED this \_\_\_\_ day of December, 2012.

CLERK OF COURT STEVEN D. GRIERSON

By:

Deputy Clerk

JAN 03 2013

RANDS, SOUTH & GARDNER

  
DOUGLAS J. GARDNER, ESQUIRE  
Nevada Bar No. 4609  
1055 Whitney Ranch Drive #220  
Henderson, NV 89014

  
CLERK OF THE COURT

RICHARD A. KOCH, ESQUIRE  
Nevada Bar No. 1596  
**KOCH & BRIM**  
4520 South Pecos #4  
Las Vegas, NV 89121  
702 451 3900 Telephone  
702 451-1448 Facsimile  
[tassyw@gmail.com](mailto:tassyw@gmail.com)  
Attorney for William Fink

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

In the Matter of the Estate of )  
 )  
 **LEROY G. BLACK** )  
 ) Case No. P-12-074745-E  
 Deceased. )  
 )

**NOTICE OF HEARING ON PETITION TO ENLARGE TIME PURSUANT TO NRCP 6(b)**

Hearing Date: February 8, 2013  
Hearing Time: 9:30 a.m.

PLEASE TAKE NOTICE that WILLIAM FINK has filed with the Court a Petition to Enlarge Time Pursuant to NRCP 6(b); that a hearing on said petition has been set for ***Friday, the 8<sup>th</sup> day of February, 2013 at the hour of 9:30 a.m. in Courtroom #9 of the Family Courts Building, 601 North Pecos Road, Las Vegas, NV 89101.***

NOTICE IS FURTHER GIVEN that all persons interested in the estate are notified to then and there appear and show cause, if any they have, why said petition should not be granted.

For further particulars, reference is made to the petition on file herein.

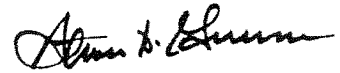
...

1                   **YOU NEED NOT APPEAR UNLESS YOU WISH TO FILE AN OBJECTION.**

2                   DATED this 22<sup>nd</sup> day of January, 2013.

3                                   KOCH & BRIM

4  
5                                   /s/Richard A. Koch  
6                                   RICHARD A. KOCH, ESQUIRE  
7                                   Nevada Bar No. 1596  
8                                   4520 South Pecos #4  
9                                   Las Vegas, NV 89121  
10                                  702 451 3900 Telephone  
11                                  702 451-1448 Facsimile  
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CLERK OF THE COURT

RICHARD A. KOCH, ESQUIRE  
Nevada Bar No. 1596  
**KOCH & BRIM**  
4520 South Pecos #4  
Las Vegas, NV 89121  
702 451 3900 Telephone  
702 451-1448 Facsimile  
[tassyw@gmail.com](mailto:tassyw@gmail.com)  
Attorney for William Fink

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

In the Matter of the Estate of )  
 )  
 **LEROY G. BLACK** )  
 ) Case No. P-12-074745-E  
 Deceased. )

**PETITION TO ENLARGE TIME PURSUANT TO NRCP 6(b)**

Hearing Date: February 8, 2013  
Hearing Time: 9:30 a.m.

WILLIAM FINK, aka BILL FINK, by and through his attorney, RICHARD A. KOCH,  
ESQUIRE of the law firm of KOCH & BRIM hereby moves this Honorable Court for an Order  
enlarging the time for the issuance of a Citation required by NRS 137.090. In support thereof,  
it is respectfully submitted as follows:

**I. Factual Background**

On or about August 21, 1992 Leroy G. Black, decedent herein, created the Leroy G.  
Black 1992 Living Trust. Said trust was totally amended and restated on October 27, 2009.  
Petitioner was the named beneficiary of Mr. Black's trust. A pour-over will was executed at  
the same time the trust was executed. Petitioner had been the beneficiary of decedent's prior  
wills.

1 On March 7, 2012, under suspect conditions<sup>1</sup>, Mr. Black executed a new will which did  
2 not pour into decedent's trust. Instead, the new will named Phil and Rose Markowitz as the  
3 beneficiaries of Mr. Black's estate.

4 Subsequent to the decedent's death, Phil Markowitz submitted the will for probate. No  
5 contest was filed prior to the admission of the will and the March 7, 2012 will was admitted to  
6 probate. Phil Markowitz was appointed as the Personal Representative of decedent's estate.  
7 The order admitting the will was entered by the court on August 31, 2012. The period of  
8 contesting the will ended on November 30, 2012.  
9

10 On November 25, 2012 Petitioner met with Douglas J. Gardner, Esquire concerning an  
11 action to contest the March 7, 2012 will. Mr. Gardner outlined the procedures inherent in a will  
12 contest and discussed with Petitioner the Nevada requirements of successfully invalidating a  
13 will. Petitioner decided he would think about the situation and advise Mr. Gardner if he wanted  
14 to contest the will. Mr. Gardner advised Petitioner that the time was very short before a  
15 contest must be filed and informed him of the date after which a contest would not be  
16 accepted. On November 27, 2012 Petitioner advised Mr. Gardner to go forward and object to  
17 the will.  
18  
19

20 Understanding the urgency of the situation, Mr. Gardner immediately instructed his  
21 paralegal to file the necessary petition [objection] to contest the admission of the will. Said  
22 objection was filed with the court on November 27, 2012. Under Mr. Gardner's supervision  
23 and while perusing NRS 137.100, the attorney and paralegal misread that the proceedings in a  
24 will contest after probate are conducted in the same manner as in a will contest before  
25 probate. Based on NRS 137.100, both the paralegal and counsel anticipated that the issuance  
26  
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<sup>1</sup> The exact nature of the suspect conditions will be discussed hereafter.

1 of the citation and other proceedings in this action would be conducted as in a contest before  
2 probate. Neither counsel nor the paralegal had been involved in an after-probate will contest  
3 but had done many before-probate contests. Based upon their inexperience, they did not  
4 notice NRS 137.090 which requires the Citation to be issued at the same time as the contest is  
5 filed. Based upon their prior experience, they proceeded as in a contest before probate and  
6 did not issue the Citation before the end of the three-month contest period.  
7

8 Subsequent to the filing of the will contest and unrelated to the issue involving the  
9 issuance of the Citation, Petitioner obtained new counsel to represent him. Richard A. Koch,  
10 Esquire notified Jonathan Barlow, Esquire<sup>2</sup> of his representation of Petitioner. Shortly  
11 thereafter Mr. Koch received notification from Mr. Barlow that the Citation had not been issued  
12 timely. The Citation was immediately issued and filed in an effort to demonstrate promptness  
13 in resolving the delay. This petition follows in an effort to enlarge the time required to issue the  
14 Citation to and including January 7, 2013.  
15

16 II. Applicable Law  
17

18 NRS 137.090 provides:

19 "Issuance of Citation. Upon filing the petition and within the time allowed for filing  
20 the petition, a citation must be issued directed to the personal representative  
21 and to all devisees mentioned in the will, and the heirs, so far as known to  
22 the petition including minors and incapacitated persons, or the personal  
representative of any person who is dead, directing them to plead to the  
contest within 30 days after service of the citation."

23 NRCP 6(b) provides as follows:

24 "Enlargement. When by these rules or by a notice given thereunder or by  
25 order of court an act is required or allowed to be done at or within a  
26 specified time, the parties, by written stipulation of counsel filed in the  
27 action, may enlarge the period or the court for cause shown may, at any  
time, in its discretion: (1) with or without motion or notice order the

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<sup>2</sup> Mr. Barlow substituted as counsel for the estate in place of Christopher Phillips, Esquire.

1 period enlarged if request therefore is made before the expiration of  
2 the period originally prescribed or as extended by a previous order  
3 or (2) upon motion made after the expiration of the specified period  
4 permit the act to be done where the failure to act was the result of  
5 excusable neglect . . ."

### 6 **III. Argument**

7 NRCP 6(b) allows time to be enlarged in which to perform any certain function. The rule  
8 allows three ways to enlarge the time, i.e.:

- 9 1. By stipulation of the parties
- 10 2. By ex parte order submitted to the court before the time required has expired
- 11 3. By motion before the court after the time has expired if the failure to perform the  
12 action was due to excusable neglect.

13 The case of Hotel Last Frontier Corporation v. Frontier Properties, Inc., 79 Nev. 150,  
14 380 P.2d 293 (1963) sets forth the guidelines necessary to determine excusable neglect. They  
15 are as follows:

- 16 a) A showing of mistake, inadvertence, surprise or excusable neglect, singly or in  
17 combination;
- 18 b) Prompt application to remove the [situation];
- 19 c) The absence of an intent to delay the proceedings;
- 20 d) Lack of knowledge of the party or his counsel as to procedural requirements
- 21 e) Good faith
- 22 f) That a meritorious claim exists

23 By applying each of these guidelines in turn Petitioner will show that the failure to timely  
24 file the Citation was the result of excusable neglect.  
25  
26  
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1 a) The failure to file the Citation on time was a mistake on the part of counsel and his  
2 paralegal as they were relying on the requirements of a will contest filed before probate;

3 b) The Citation was immediately issued and filed as soon as the mistake was realized.  
4 Counsel Richard A. Koch, Esquire was leaving the country the day after he received  
5 notification of the mistake. He immediately instructed his paralegal to hand carry the Citation  
6 to the District Court Clerk's Office and have the same issued. Tassy Wolfe then hand carried  
7 the Citation to the Clerk and the same was issued one calendar day later.  
8

9 c) There was no intent to delay the proceedings because as soon as the petition  
10 initiating the will contest was filed, the same was scheduled for hearing and notice mailed to all  
11 interested persons. At the request of the personal representative's prior counsel, the initial  
12 hearing was rescheduled.  
13

14 d) In this instance, there was lack of procedural knowledge on the part of Petitioner's  
15 counsel in the requirements of a will contest after probate. Counsel was well versed in the  
16 requirements of a will contest before probate and anticipated that the issuance of the Citation  
17 would take place after the initial hearing on the objection to the will.  
18

19 e) Petitioner has demonstrated good faith by immediately issuing the Citation upon  
20 notification that the same had not been issued timely.

21 f) Petitioner has a meritorious claim in this action. Petitioner asserts that the subject  
22 will was obtained by fraud. The decedent did not have a relationship with Phil and Rose  
23 Markowitz for many years. He told Petitioner, on many occasions, that he did not trust them  
24 and that they had preyed on the elderly in order to obtain their assets. Petitioner had a close  
25 relationship with the decedent for the majority of his life and was the beneficiary of his estate in  
26 all previous wills. Phil and Rose Markowitz re-established a relationship with the decedent  
27  
28

1 immediately before his death. Mr. Markowitz prepared the subject will within a month of  
2 decedent's death. The decedent was in a depressed state of mind due to the loss in value of  
3 his many real properties. He was on various medications which affected his cognitive ability.  
4 He committed suicide three weeks after executing the will. Furthermore, based upon  
5 exemplars in the possession of Petitioner, it is distinctly possible that the subject will was  
6 forged.  
7

8 Petitioner is prepared to pursue all issues involved in the making and execution of the  
9 subject will.

10 Lastly, in Hotel Last Frontier Corp, supra, we find the following language:

11 "Finally, we mention the basic underlying policy to have each case decided upon  
12 its merits. In the normal course of events, justice is best served by such a  
13 policy. Because of this policy, the general observation may be made that an  
14 appellate court is more likely to affirm a lower-court ruling setting aside a default  
15 than it is to affirm a refusal to do so. In the former case, a trial on the merits is  
16 assured whereas in the latter it is denied forever. "

17 This court has wide discretion in permitting the enlargement of time allowed by NRCP  
18 6(b). See Blakeney v. Fremont Hotel, Inc., 77 Nev. 191, 360 P.2d 1039; Anderson v. Havas,  
19 77 Nev. 223, 361 P.2d 536.

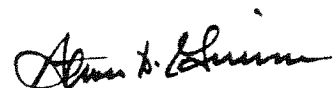
20 In the case of Fullerton v. Rogers, 101 Nev. 306, 701 P.2d 1020 (1985), it states that  
21 extrinsic fraud is used to toll statutory time limits in filing an after-probate will contest. While  
22 extrinsic fraud is not present in causing the mistake in the issuance of the citation, Petitioner  
23 asserts that extrinsic fraud is present in the making of the March 7 will.

24 Finally, while the purpose of any citation issued in a will contest action is to give notice  
25 to the interested parties of the objection to the making of the subject will, in this case notice of  
26 the hearing on the objection to the will was mailed to all interested parties on December 5,  
27 2012 – just five days after the expiration of the contest period.  
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## VERIFICATION

/s/William Fink  
WILLIAM FINK

  
CLERK OF THE COURT

RICHARD A. KOCH, ESQUIRE  
Nevada Bar No. 1596  
KOCH & BRIM  
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702 451 3900 Telephone  
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Attorney for William Fink

DISTRICT COURT  
CLARK COUNTY, NEVADA

In the Matter of the Estate of )  
 )  
 LEROY G. BLACK )  
 ) Case No. P-12-074745-E.  
 Deceased. )

AFFIDAVIT OF TASSY WOLFE IN SUPPORT OF PETITION TO ENLARGE TIME  
PURSUANT TO NRCP 6(b)

Hearing Date: February 8, 2013  
Hearing Time: 9:30 a.m.

STATE OF NEVADA )  
 )  
COUNTY OF CLARK )

TASSY WOLFE, being first duly sworn, deposes and says:

1. That I am an independent probate paralegal employed by Douglas J. Gardner, Esquire during his representation of WILLIAM FINK, the contestant in the above case. I am familiar with the circumstances involved in this matter and can testify from personal knowledge of the facts contained herein.

2. On November 27, 2012, Mr. Gardner and I met with William Fink who was contemplating a contest of the March 7, 2012 will that was allegedly signed by the decedent.

1 3. After a lengthy consultation, Mr. Gardner advised the client that the will was admitted  
2 to probate on August 31, 2012 and, therefore, the three-month contest period would expire on  
3 November 30, 2012. Mr. Fink stated that he would like to think about the situation before  
4 committing to the expense of the contest.

5 4. On November 27, 2012 Mr. Fink contacted Mr. Gardner and instructed him to  
6 proceed to file the necessary documents to contest the will.  
7

8 5. Mr. Gardner came into my office and told me of the situation and instructed me to file  
9 the objection to the admission of the will that he had prepared. I did so and, immediately  
10 thereafter, efiled a Notice of Hearing which was mailed to all interested parties on December 5,  
11 2012.  
12

13 6. Mr. Gardner and I reviewed NRS 137.080 and subsequent statutes concerning after-  
14 probate will contests. We had never been involved in an after-probate will contest but had  
15 worked together on several before-probate will contests. We were familiar with the  
16 requirements concerning the issuance of the Citation. In our experience, the Citation was  
17 discussed at the hearing on the contest. At that time, the Probate Commissioner instructed the  
18 contesting party to issue the Citation and serve the same upon the heirs and interested parties  
19 to the will contest.  
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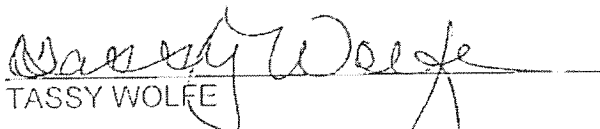
21 7. After reading NRS 137.100 where, we believed, it stated that all proceedings in an  
22 after-probate contest were to be handled in the same manner as in a before-probate contest,  
23 we anticipated issuing the Citation in the same manner involved in other actions in which we  
24 had been involved.  
25

26 8. Shortly thereafter and unrelated to issuance of the Citation but due to Mr. Gardner's  
27 press of other business, Mr. Fink obtained new counsel, Richard A. Koch, Esquire to represent  
28

him. Mr. Koch also employed me to continue with the will contest. Mr. Koch received a telephone call from Jonathan Barlow, Esquire, who had been retained to represent Phil and Rose Markowitz, the proponents of the March 7 will. Mr. Barlow informed Mr. Koch of the failure to issue the Citation timely. Mr. Koch was leaving the country for vacation the next day. He immediately contacted me and instructed me to issue the Citation as soon as possible. Inasmuch as it was late in the day, I went to the Clark County Clerk's Office and had the Citation issued the next day.

9. There was no intent to delay the proceedings in our failure to issue the Citation before the end of the three-month contest period. It was merely our inadvertent procedural inexperience in after-probate will contests that resulted in the delay. The situation was resolved immediately upon notification that the Citation had not been issued timely.

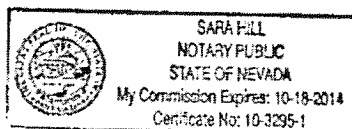
DATED this 23<sup>rd</sup> day of January, 2013.

  
TASSY WOLFE

SUBSCRIBED and SWORN to before me

This 23<sup>rd</sup> day of January, 2013.

  
NOTARY PUBLIC



  
CLERK OF THE COURT

1 **OBJ**  
2 **JONATHAN W. BARLOW**  
3 Nevada Bar No. 9964  
4 **JORDAN M. FLAKE**  
5 Nevada Bar No. 10583  
6 **BARLOW FLAKE LLP**  
7 701 N. Green Valley Pkwy., Ste. 200  
8 Henderson, Nevada 89074  
9 (702) 476-5900  
10 (702) 924-0709 (Fax)  
11 jonathan@barlowflakelaw.com  
12 Attorneys for the Estate

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

10 In the Matter of the Estate of  
11 LEROY G. BLACK,  
12  
13 Deceased.

Case No. P-12-074745-E  
Dept. No. 26

**OBJECTION TO PETITION TO ENLARGE TIME PURSUANT TO NRCP 6(b) AND  
COUNTER-PETITION TO DISMISS WILL CONTEST OR, IN THE ALTERNATIVE,  
TO REQUIRE A MORE DEFINITE STATEMENT PURSUANT TO NRCP 12(e)**

Hearing Date: February 8, 2013  
Hearing Time: 9:30 a.m.

18 Phillip Markowitz, Executor of the Estate of Leroy G. Black, by and through his  
19 attorneys of record of the law firm Barlow Flake LLP, hereby objects to William Fink's Petition  
20 to Enlarge Time Pursuant to NRCP 6(b), as follows:  
21

**FACTUAL BACKGROUND**

23 Phillip Markowitz ("Markowitz") filed his Petition for Probate of Will, Petition for  
24 Appointment of Personal Representative and for Issuance of Letters Testamentary in this matter  
25 on July 18, 2012. On July 27, 2012, Markowitz provided Notice of Hearing on this Petition to  
26 William Fink ("Fink"). The Petition, Notice of Hearing, and Certificate of Mailing to Fink are  
27 on file in this matter. This Court held its hearing on Markowitz's Petition on August 31, 2012.  
28

1 Fink neither filed a written objection to Markowitz's Petition, nor did Fink appear at the hearing  
2 to object to Markowitz's Petition.

3 The Order admitting Decedent's March 7, 2012, Will to probate was, therefore, entered  
4 on August 31, 2012, and Notice of Entry of the Order was served on Fink also on August 31,  
5 2012. The Order and Notice of Entry of Order are on file in this matter. Despite having received  
6 notice of Markowitz's Petition on July 27, 2012, despite having more than a month to review  
7 Markowitz's Petition and the March 7, 2012, Will that it sought to have admitted to probate,  
8 and despite receiving notice that an order was entered admitting the March 7, 2012, Will to  
9 probate, Fink unreasonably waited nearly four months from the time that he first received notice  
10 of the March 7, 2012, Will, until November 27, 2012 (see Affidavit of Tassy Wolfe, ¶2), to  
11 object to the admission of the March 27, 2012, Will.  
12

13 On November 27, 2012, Fink filed his Objection to the Admission of the Last Will and  
14 Testament of Leroy G. Black, for the Revocation of Letters Testamentary and for Appointment  
15 of Special Administrator Pending the Conclusion of Will Contest (the "Objection"). Fink filed a  
16 Notice of Hearing on December 4, 2012, and an Amended Notice of Hearing on December 11,  
17 2012. However, Fink did not mail the Notice of Hearing to Markowitz, but mailed only an  
18 Amended Notice of Hearing on December 12, 2012. The Certificate of Mailing is on file in this  
19 matter. It appears that Fink did not serve his Objection on Markowitz along with the Notice of  
20 Hearing. Fink scheduled the hearing on his Objection for December 28, 2012.  
21

22 However, Fink, by his own admission (see Petition to Enlarge Time, p. 3), did not cause  
23 the issuance of a Citation to plead to a will contest prior to the November 30, 2012, expiration  
24 of the time to file a will contest after admission of the March 7, 2012, Will to probate. In fact,  
25 Fink admits that he did not cause the issuance of a Citation until after counsel for Markowitz  
26  
27  
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1 notified him of his failure to do so by way of Markowitz's Opposition to the Objection filed on  
2 January 3, 2013. Later the same day of January 3, 2013, Fink caused a Citation to be issued by  
3 the Clerk of Court, which was then filed on January 7, 2013. The Citation is on file in this  
4 matter. Despite having issued the Citation, upon information and belief, Fink has yet to  
5 accomplish or even attempt to serve the Citation on any of the interested parties to this matter.  
6 Fink then filed his Petition to Enlarge Time on January 23, 2013, 54 days after the expiration of  
7 the statute of limitations for the issuance of the Citation.  
8

9 **OBJECTION TO PETITION TO ENLARGE TIME**

10 Despite the fact that Fink failed to comply with the statute of limitations for bringing a  
11 will contest after the admission of a will to probate, Fink now asks the Court to excuse his delay  
12 by enlarging the time to have the Citation issued. This Court, however, should deny Fink's  
13 Petition to Enlarge Time because NRCP 6 does not apply to statutes of limitation under the  
14 Nevada Revised Statutes. Even if this Court finds that NRCP 6 can apply to enlarge a statute of  
15 limitations, Fink has failed to show proper excusable neglect under NRCP 6 to justify enlarging  
16 the time. Markowitz, therefore, requests that the Court deny Fink's Petition to Enlarge Time.  
17  
18

19 I. NRCP 6(b) Does Not Apply to NRS 137.090.

20 Fink admits that NRS 137.090 mandatorily requires that a Citation must be issued "at  
21 the same time as the contest is filed." See Petition to Enlarge Time, p. 3. Though a will  
22 contestant need not necessarily cause a Citation to be issued at the exact time of the filing of the  
23 petition contesting the admission of a will to probate, it is true that the contestant "must" cause  
24 the Citation to be issued before the expiration of the time allowed for filing the petition to  
25 contest the will, which time is set forth in NRS 137.080.  
26  
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Specifically, NRS 137.090 states, “Upon filing the petition, and within the time allowed for filing the petition, a citation must be issued, directed to the personal representative and to all the devisees mentioned in the will, and the heirs, so far as known to the petitioner, including minors and incapacitated persons, or the personal representative of any such person who is dead, directing them to plead to the contest within 30 days after service of the citation” (emphasis added). Therefore, in order to have properly complied with the statute of limitations set forth in NRS 137.080-.140, Fink must have (1) filed a petition seeking to revoke the probate of the will and (2) caused a Citation to be issued *by no later than November 30, 2012*. By his own admission and as shown on the record, Fink failed to cause the issuance of a Citation to plead to the will contest before November 30, 2012. In fact, the Citation was not issued until January 3, 2013, 34 days after the expiration of the time to have issued the Citation. See Citation on file in this matter, filed on January 7, 2013.

As a defense to the mandatory language of NRS 137.090, Fink requests that this Court apply NRCP 6(b) to enlarge the statute of limitations set forth in NRS 137.080-.090. However, NRCP 6(b) does not apply and cannot be applied to enlarge the statute of limitations set forth in NRS 137.080-.090. The plain language of NRCP 6(b) makes clear that the ability to enlarge time under Rule 6 applies only to an act required by the Nevada Rules of Civil Procedure, not to acts required by the Nevada Revised Statutes. Specifically, NRCP 6(b) states, “When by these rules or by a notice given thereunder ... an act is required or allowed to be done at or within a specified time ...” (emphasis added). The reference to “these rules” and “thereunder” is a clear, specific reference to the Nevada Rules of Civil Procedure. Any other attempted interpretation of those references to something other than the Nevada Rules of Civil Procedure would strain the plain language of the Rule.

1 In accordance with the plain language of Rule 6, the Nevada Supreme Court has had  
2 frequent occasion to consider the application of Rule 6 to acts and requirements set forth in the  
3 Nevada Rules of Civil Procedure. However, Counsel for Markowitz has been unable to find any  
4 instance where NRCP 6(b) has been applied to enlarge any statute of limitations set forth in the  
5 Nevada Revised Statutes. Because the requirement to issue a Citation within three months of the  
6 entry of the order admitting a will to probate is mandatory, and because there appears to be no  
7 statute or case law allowing the Court to enlarge the time to comply with this statute of  
8 limitations, this Court must deny Fink's Petition to Enlarge Time.

10 II. Fink has Failed to Show Excusable Neglect.

11 In the event that the Court determines that NRCP 6(b) can be applied to enlarge the time  
12 to comply with the statute of limitations set forth in NRS 137.080-.090, Fink has failed to show  
13 the excusable neglect required to allow the Court to apply NRCP 6(b) to this case. The Nevada  
14 Supreme Court defined "excusable neglect" in the context of NRCP 6 for the first time in  
15 Moseley v. District Court, 188 P.3d 1136 (Nev. 2008).<sup>1</sup> In Moseley, the Court held that a party  
16 seeking relief under NRCP 6(b) "is required to demonstrate that (1) it acted in good faith, (2) it  
17 exercised due diligence, (3) there is a reasonable basis for not complying within the specified  
18 time, and (4) the nonmoving party will not suffer prejudice." Id. at 1146 (footnote omitted). The  
19 Court noted that the "key factor" in applying this standard is "whether the plaintiff asserted a  
20 reasonable basis for not complying." Id. at 1144.

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23  
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26 <sup>1</sup> In his Petition to Enlarge Time, Fink reviews the standard for excusable neglect under NRCP  
27 60(b) as discussed in Hotel Last Frontier Corp. v. Frontier Properties, Inc., 79 Nev. 150, 380  
28 P.2d 293 (1963). Though these standards are similar in some respects, the Court specifically  
adopted the standard for excusable neglect in regard to NRCP 6 as set forth in Moseley. See  
Moseley, 188 P.3d at 1144.

1 In support of his argument that he has shown excusable neglect, Fink essentially relies  
2 on only one argument relevant to the Moseley analysis: that his counsel was unaware of the  
3 requirements of NRS 137.090.<sup>2</sup> Markowitz notes that former counsel for Fink regularly appears  
4 in Probate Court and has extensive experience in probate matters. Similarly, the independent  
5 paralegal employed by Fink's former counsel on this matter also has extensive experience with  
6 probate matters and procedures. Fink notes that his former counsel has participated in many  
7 before-probate will contests, see Petition to Enlarge Time, p. 3, and that his former counsel is  
8 "well versed" in before-probate will contests. See id., p. 5.

10 Importantly, Fink notes in his Petition to Enlarge Time that his former counsel was  
11 aware of the three month requirement set forth in NRS 137.080 and that he was aware of NRS  
12 137.100 regarding how an after-probate will contest is to proceed. See Petition to Enlarge Time,  
13 p. 2. Notably, Fink's former counsel actually "reviewed NRS 137.080 and subsequent statutes  
14 concerning after-probate will contests." See Affidavit of Tassy Wolfe on file in this matter, p. 2,  
15 ¶6 (emphasis added). Nevertheless, Fink asserts in his Petition to Enlarge Time that his former  
16 counsel was unaware of the Citation requirement of NRS 137.090. This assertion, however, is  
17 not accurate. In his Objection, Fink states, "Contestant is in the process of issuing a Citation to  
18 all heirs of the decedent pursuant to the provisions of NRS 137.090." Fink Objection, p. 3, ¶6  
19 (emphasis added). Thus, by Fink's own admission his former counsel reviewed NRS 137.090  
20 and knew of its requirement to issue a Citation, and yet failed to comply with this requirement.

24 Fink also asserts that his former counsel relied on his experience in before-probate will  
25 contests, in which he asserts that "the Citation was discussed at the hearing on the contest" and  
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27 <sup>2</sup> Fink sets forth other arguments in his Petition to Enlarge Time that are irrelevant to the  
28 Moseley analysis, including whether a meritorious claim exists. These arguments that do not  
address the Moseley factors, therefore, should not be considered by this Court.

1 that the Probate Commissioner then “instructed the contesting party to issue the Citation and  
2 serve the same upon the heirs and interested parties to the will contest.” See Wolfe Affidavit, p.  
3 2, ¶6. Regardless of prevailing practice before this Court, NRS 137.010 (governing before-  
4 probate will contests) has no requirement that a before-probate will contest first proceed to a  
5 hearing before a Citation is issued. In fact, NRS 137.010 directs that the Citation be issued upon  
6 filing the will contest with no discussion of any hearing requirement.  
7

8 Despite having reviewed and having knowledge of the statutes related to after-probate  
9 will contests, and despite extensive experience in probate matters, Fink asserts that it is  
10 reasonable for his former counsel and his former counsel’s paralegal to have failed to comply  
11 with NRS 137.090. Markowitz, respectfully, asserts that this situation is the exact definition of  
12 unreasonableness. Fink’s former counsel is not an inexperienced or young attorney unfamiliar  
13 with the probate rules and statutes. To the contrary, and with all due respect, former counsel for  
14 Fink has practiced law in Nevada for over twenty years and has appeared before this Court on  
15 numerous probate matters. To assert on one hand that counsel is very experienced in probate  
16 matters and that counsel actually reviewed the after-probate will contest statutes, including NRS  
17 137.090, but on the other hand to ask the Court’s indulgence because counsel failed to comply  
18 with the requirements in NRS 137.090 of which he was aware, is simply unreasonable.  
19  
20

21 Fink points out that, though Fink did not cause a Citation to be issued, he did file and  
22 serve notice of hearing on his purported will contest. Beside the fact that notice of hearing is  
23 quite different than Citation in the context of a will contest and that the after-probate will  
24 contest statutes say nothing about providing notice of hearing, Fink’s Notice of Hearing was  
25 served twelve days past the expiration of the three month statute of limitations. Fink also urges  
26 the Court to take notice of the fact that Fink promptly caused the Citation to be issued upon  
27  
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1 receiving Markowitz's Opposition on January 3, 2013. Despite the issuance and filing of the  
2 Citation, Fink did not petition this Court to enlarge the time to perform this act until January 23,  
3 2013, a full fifty-four days after the expiration of the three month statute of limitations.

4 As the Nevada Supreme Court has noted, the key factor in determining whether to  
5 enlarge time under NRCP 6 is "whether the plaintiff asserted a reasonable basis for not  
6 complying." Moseley, 188 P.3d at 1144. Fink has simply failed to assert any reasonable basis  
7 for failing to comply with the Citation requirements of NRS 137.090.  
8

9 III. Fink has Failed to Show that Markowitz and the Estate will not Suffer Prejudice.

10 It is Fink's responsibility as the moving party to show that Markowitz and all other  
11 interested parties in the Estate of Leroy Black will not suffer prejudice if this Court does apply  
12 NRCP 6(b) and enlarges the time for the issuance of the Citation. Fink, however, would have a  
13 difficult time showing the absence of prejudice. As this Court is well aware, Title 12 of the  
14 Nevada Revised Statutes "must be liberally construed so that a speedy settlement of estates is  
15 accomplished at the least expense to the parties." NRS 132.010.<sup>3</sup> The entirety of the probate  
16 code is drafted to provide expedited procedures and timeframes so that estates are settled  
17 quickly and efficiently. This is precisely why the statute of limitations in NRS 137.080-.090 is a  
18 relatively short three month period.  
19  
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21 Contrary to this legislative intent, a will contest essentially pauses the entire  
22 administration of the estate. In particular, NRS 141.095 prohibits a personal representative from  
23 acting, except under very limited circumstances, upon receiving notice of a proceeding to  
24 suspend or remove the personal representative. The personal representative, therefore, should  
25 not close bank accounts, sell estate assets, deal with taxes or creditors, take any other action that  
26  
27

28 <sup>3</sup> See also NRCP 1 (The Nevada Rules of Civil Procedure "shall be construed and administered to secure the just, speedy, and inexpensive determination of every action.")

1 a personal representative normally would take, and, of course, could not petition the Court to  
2 distribute any assets to any beneficiaries of the estate. Though not every will contest necessarily  
3 includes a corresponding request to remove the personal representative, Fink has commenced a  
4 proceeding to remove Markowitz in this specific matter in connection with his purported will  
5 contest. Therefore, due to NRS 141.095, Markowitz cannot accomplish a "speedy settlement" of  
6 this estate, and the settlement of this estate certainly will not be at the "least expense to the  
7 parties." See NRS 132.010.

9 Fink's failure to comply with the statute of limitations has already caused a two month  
10 delay in the administration of the Estate from the expiration of the three month statute of  
11 limitations to the time that this Court will consider this matter on February 8, 2013. Enlarging  
12 the time to issue the Citation will cause an even more extended delay as the will contest  
13 proceeds through discovery, evidentiary hearing, and appeal. The prejudice to Markowitz and to  
14 the other beneficiary of the March 7, 2012, Will could not be more pronounced than the delay  
15 that will be caused by allowing Fink's will contest to proceed.

17 IV. There is No Extrinsic Fraud to Justify Tolling the Statute of Limitations.

18 Last, Fink asserts that extrinsic fraud can be asserted as a sufficient basis to toll the  
19 statute of limitations in will contest matters, citing to Fullerton v. Rogers. 110 Nev. 306, 701  
20 P.2d 1020 (1985). Extrinsic fraud "means some intentional act or conduct by which the  
21 prevailing party has prevented the unsuccessful party from having a fair submission of the  
22 controversy." Black's Law Dictionary, p. 789 (4<sup>th</sup> Edition, 1968). In other words, extrinsic fraud  
23 prevents a party from knowing their rights or from having a fair opportunity of presenting their  
24 rights at a trial. Though Fink alleges that fraud exists in the making of the March 7, 2012, Will,  
25 there is no argument, nor any non-frivolous basis, to assert that Markowitz took any action  
26  
27  
28

1 designed to prevent Fink from knowing of his right to contest the March 7, 2012, Will, or from  
2 granting Fink the opportunity to be heard. In fact, Fink received all statutory notices required in  
3 this matter and still failed to take any action to protect his own rights. Therefore, extrinsic fraud  
4 cannot be used to toll the statute of limitations in this case.

5 V. Conclusion.

6 Rule 6 of the Nevada Rules of Civil Procedure applies only to acts to be taken under the  
7 Rules of Civil Procedure, not to statutes of limitations set forth in the Nevada Revised Statutes.  
8 In any event, Fink has failed to show excusable neglect and absence of prejudice as required  
9 under NRCP 6. Because there is no other basis on which this Court can toll or extend the statute  
10 of limitations of NRS 137.080-.090, this Court must deny Fink's Petition to Enlarge Time.

11 **COUNTER-PETITION TO DISMISS WILL CONTEST, OR, IN THE ALTERNATIVE,**  
12 **FOR A MORE DEFINITE STATEMENT**

13 As detailed above and in Markowitz's Opposition to Objection to the Admission of the  
14 Last Will and Testament, Fink has failed to properly bring his will contest prior to the  
15 expiration of the three month statute of limitations. Fink, therefore, has failed to state a claim  
16 upon which relief can be granted. Markowitz, therefore, petitions this Court to dismiss Fink's  
17 purported will contest pursuant to NRCP 12(b)(5). See Bemis v. Estate of Bemis, 114 Nev.  
18 1021, 967 P.2d 437, 439 (1998) ("A court can dismiss a complaint for failure to state a claim  
19 upon which relief can be granted if the action is barred by the statute of limitations.").

20 In addition, regardless of the concerns with the issuance of the Citation, it is extremely  
21 doubtful that Fink's "Objection to the Admission of the Last Will and Testament" filed on  
22 November 27, 2012, complies with the statutory requirement that the petition to contest a will  
23 contain allegations against the validity of the will. See NRS 137.080. The entirety of Fink's  
24 "allegations against the validity of the will" consists of the following statement:  
25  
26  
27  
28

Contestant [Fink] alleges that the subject will was obtained through fraud and undue influence as will be proved at the time of the trial on this matter. Furthermore, Contestant believes that the decedent lacked the requisite testamentary capacity at the time it is alleged that said will was executed.

Fink Objection, p. 1-2, ¶ 2. It is very doubtful that this simple, boilerplate statement meets even the liberal notice requirements of NRCP 8(a) that require “(1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the pleader seeks,” let alone the more specific requirement of NRS 137.080 that the petition include “allegations against the validity of the will.”

Though NRCP 8(a) is liberally applied, the Nevada Supreme Court has directed that a complaint (here, the petition invoking a will contest) “must set forth sufficient facts to establish all necessary elements of a claim for relief, so that the adverse party has adequate notice of the nature of the claim and relief sought.” Hay v. Hay, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984) (emphasis added) (citations omitted). In the present case, Fink has wholly failed to set forth any facts, let alone “sufficient facts” establishing the elements necessary to contest the March 7, 2012, Will. Because Fink has not set forth any facts whatsoever, Markowitz has not been provided “adequate notice of the nature of the claim,” NRCP 8(a), or the “allegations against the validity of the will,” NRS 137.080. It is impossible for Markowitz to respond to Fink’s claims without knowing what those claims may be.<sup>4</sup>

In addition to failing to meet the liberal notice pleading requirements of NRCP 8(a), Fink’s Objection clearly does not comply with the stricter requirements of pleading fraud under NRCP 9(b). Rule 9(b) requires, “In all averments of fraud or mistake, the circumstances

---

<sup>4</sup> It is also very questionable whether Fink has properly verified his purported petition to contest the March 7, 2012, Will. Fink’s verification is not signed, but instead “/s/Bill Fink” is typed into the Verification. See EDCR 8.07(c).

1 constituting fraud or mistake shall be stated with particularity.” “The circumstances that must be  
2 detailed include averments to the time, the place, the identity of the parties involved, and the  
3 nature of the fraud or mistake.” Brown v. Kellar, 97 Nev. 582, 583-84, 636 P.2d 874, 874  
4 (1981). Though Fink’s boilerplate statement alleges that the “subject will was obtained through  
5 fraud and undue influence” (Fink Objection, p. 1-2), there are no averments whatsoever that  
6 meet the standard described by the Nevada Supreme Court in Brown v. Kellar.

7  
8 Because Fink has failed to comply with the statute of limitations, and because the  
9 purported petition contesting the March 7, 2012, Will fails to meet the requirements of NRCP  
10 8(a), NRCP 9(b), and NRS 137.080, Markowitz petitions the Court to dismiss the purported will  
11 contest set forth in Fink’s Objection for Fink’s failure to state a claim upon which relief may be  
12 granted.

13  
14 In the event that this Court does not find that the statute of limitations bars Fink from  
15 bringing his will contest, or in the event that the Court does not dismiss Fink’s will contest for  
16 failure to state a claim upon which relief may be granted, Markowitz petitions this Court to  
17 require Fink to provide a more definite statement of his claims pursuant to NRCP 12(e). As  
18 noted above, the statements in Fink’s Objection provide no factual assertions whatsoever, but  
19 instead include only standard, boilerplate allegations. It would be impossible for Markowitz to  
20 respond to Fink’s Objection without notice of what facts he claims cause the March 7, 2012,  
21 Will to be invalid. In the event that Fink alleges that Markowitz or other parties engaged in any  
22 fraudulent conduct in the procurement or execution of the March 7, 2012, Will, Fink must be  
23 required to comply with the requirements of NRCP 9(b), which require that circumstances of  
24 fraud be plead with particularity.  
25  
26  
27  
28

WHEREFORE, Markowitz requests that the Court enter the following orders:

A. That Fink's Petition to Enlarge Time be denied;

B. That Fink's purported will contest be dismissed for failure to comply with the statute of limitations;

C. That Fink's purported will contest be dismissed for failure to state a claim upon which relief can be granted;

D. That, in the alternative, Fink be required to provide a more definite statement.

DATED this 4th day of February, 2013.

**BARLOW FLAKE LLP**



**JONATHAN W. BARLOW**

Nevada Bar No: 9964


Attorneys for the Estate

**CERTIFICATE OF MAILING**

I hereby certify that on February 4, 2013, a true and correct copy of the original *Objection to Petition to Enlarge Time Pursuant to NRCP 6(b) and Counter-Petition to Dismiss Will Contest or, in the Alternative, to Require a More Definite Statement Pursuant to NRCP 12(e)* was sent via U.S. Mail, first class postage prepaid, to the following at their last known address:

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Koch & Brim  
4520 South Pecos, #4  
Las Vegas, NV 89121

Rose Markowitz  
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An Employee of Barlow Flake LLP

1 **RPLY**

2 **JONATHAN C. CALLISTER, ESQ.**

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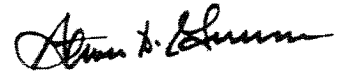
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11 Attorneys for the Contestant

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CLERK OF THE COURT

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 Case No.: P-12-074745-E

11 In the Matter of the Estate of

12 **LEROY G. BLACK,**

13 Deceased.

Date of Hearing: Feb. 8, 2013  
Time of Hearing: 9:30 a.m.

14 **REPLY IN SUPPORT OF PETITION TO ENLARGE TIME PURSUANT TO NRCP 6(b) AND**  
15 **OPPOSITION TO COUNTER-PETITION**

16 William Fink (the "Contestant"), by and through his attorneys, Jonathan C. Callister and Adam  
17 M. Birk of the law firm of Callister & Frizell, now file this Reply in Support of Petition to Enlarge  
18 Time Pursuant to NRCP 6(b) and Opposition to Counter-Petition. This Reply is based upon the  
19 Memorandum of Points and Authorities below, the pleadings and papers on file with the Court, and the  
20 arguments of counsel, if any, made at the hearing on this Petition. In this connection, Petitioner would  
21 respectfully show the Court as follows:

22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23 **I. FACTUAL AND PROCEDURAL BACKGROUND**

24 Contestant has been the sole beneficiary of a trust, of which Decedent, Leroy G. Black, was the  
25 trustor, since August 1992. A pour-over will, gifting the Estate to the trust, was executed by Decedent

FINK000089

1 at the time of the execution of the trust. Contestant was also the beneficiary of Decedent's prior wills.  
2 The true will, however, was never admitted to probate. A new will was allegedly executed by  
3 Decedent on March 7, 2012, a mere three weeks prior to his suicide, and at a time when Decedent was  
4 in a state of depression and taking various medications affecting his cognitive ability.

5 The will suspiciously appeared after Decedent's death, gifting Decedent's Estate to Rose and  
6 Phillip Markowitz, individuals with whom Decedent had long had no relationship, and with whom  
7 Decedent only had limited interaction immediately prior to his death. The new will was prepared by  
8 the Executor, Phil Markowitz, and was witnessed by two individuals, David Everston and Maria  
9 Onofre, who came from California to witness the will and are complete strangers to Decedent or  
10 Contestant.  
11

12 Interestingly, a cursory Google search for David Everston, Los Angeles County, reveals as the  
13 first search result a web site dedicated to listing the long criminal history of a David Everston, whose  
14 business address is only a short drive from the address of the witness David Everston.

15 Moreover, Contestant retained an expert to evaluate Decedent's alleged signature on the will.  
16 After careful evaluation and comparison with samples of Decedent's signature, the expert concluded  
17 that the signature on the will was not the signature of Leroy G. Black. (See Handwriting Analysis  
18 Investigation, attached hereto as *Exhibit 1*.) Moreover, the expert opined as follows:  
19

20 It can be noted that the regular penmanship habits of Leroy G. Black which  
21 repeatedly appear in his Purportedly-Known Signatures – namely, Specimens K-1  
22 through K-10, inclusively, are absent in the Questioned Signature. There are  
23 unexplainable differences in the Questioned Signature on Specimen Q-1 which  
cannot be found in any of his Purportedly –Known Signatures. . . . [W]ith so  
many diversified penmanship presentations, there is no reason to believe that the  
Questioned Signature on Specimen Q-1 is authentic.

24 (Exhibit 1 p. 3 [emphasis in original].) In addition to the forged signature, there are other  
25 inconsistencies between Decedent's alleged new will and the trust, as well as prior wills that further  
26 evidence fraud.

27 On August 31, 2012, the new will was admitted to probate. In his state of mourning over a  
28 close family member's tragic death, Contestant did not contest the new will prior to its admission to

1 probate. On November 27, 2012, Contestant, through Douglas Gardner, his attorney at that time, filed  
2 an objection to the admission of the will, thereby initiating a will contest. However, Contestant's  
3 attorney was mistaken in his reading of the after-probate will contest statute which caused him to not  
4 timely issue citations. Upon discovery of the mistake, citations were issued immediately. Contestant  
5 now seeks to enlarge the time for the issuance of the citation, and has filed a Petition to Enlarge Time  
6 Pursuant to NRCP 6(b) (filed on Jan. 23, 2013). The Executor filed an Objection to Petition to Enlarge  
7 Time Pursuant to NRCP6(b) and Counter-Petition to Dismiss Will Contest or, in the Alternative, to  
8 Require a More Definite Statement Pursuant to NRCP 12(e) (the "Objection") on February 4, 2013.  
9 Current counsel was recently retained on this matter and received Executor's Objection on February 5,  
10 2013, and replies as follows:

## 11 II. INTRODUCTION AND SUMMARY OF THE ARGUMENT

12 Contestant timely objected to the validity of the will and complied with relevant statutes in that  
13 regard. Moreover, the untimely issuance of the citation of the citation will not bar Contestant's claim  
14 because the extension of time is governed by NRCP 6(b), EDCR 2.25, and the doctrine of equitable  
15 tolling, and because Contestant's delay was the result of excusable neglect.  
16

17 Finally, Executor's counter-petition is without merit because Contestant's action is not barred by  
18 the statute of limitations and because Contestant has produced additional evidence in support of his  
19 claim of fraudulent will.  
20

### 21 a. Contestant Timely Contested the Validity of the Will Within the Period of 22 Limitation Specified by NRS 137.020 and the Will contest Is Therefore Not Barred 23 Because of the Failure to Timely Issue Citations.

24 The period of limitation argued by Petitioner to be a statute of limitation is only applicable to  
25 the filing of the will contest, and not the issuance of the citation.

26 NRS 137.120 provides as follows:

27 If no person contests the validity of a will or of the probate thereof, within the  
28 time specified in NRS 137.080, the probate of the will is conclusive.

1 (Emphasis added.) NRS 137.120 includes no reference to the issuance of citations which is handled in  
2 a separate statute, i.e., NRS 137.090. The period of limitation is in no way a reference to the issuance  
3 of citations, but only to the filing of the will contest which is described in NRS 137.080 as follows:

4 After a will has been admitted to probate, any interested person . . . at any time  
5 within 3 months after the order is entered admitting the will to probate, contest the  
6 admission or the validity of the will. The contestant must file with the court in  
7 which the will was proved a petition containing the allegations of the contestant  
8 against the validity of the will or against the sufficiency of the proof, and  
9 requesting that the probate be revoked.

10 (Emphasis added.) The issuance of the citations is mentioned no where in NRS 137.080. Clearly, the  
11 filing of the will contest is an event separate from the issuance of the citations which is described in  
12 another section. Based on the statutory language of NRS 137, Contestant's will contest is not barred by  
13 the period of limitation described in NRS 137.120 because Contestant complied with the requirements  
14 of that section by filing a will contest within the time limits specified by NRS 137.080.

15 In addition, requiring the issuance of citations to comply with a statute of limitation does not  
16 comport with general procedures for compliance with other statutes of limitation. In civil actions, a  
17 statute of limitation requires the filing of a complaint prior to the running of the statute. Compliance  
18 with statutes of limitation in general happens through the commencement of an action. See NRS  
19 11.190. NRCP 3 provides that "[a] civil action is commenced by filing a complaint with the court."  
20 The commencement of a civil action does not require the issuance of summons. While the issuance of  
21 a summons may happen at or near the time of the filing of a complaint, the filing of a *complaint* and  
22 not a summons is what prevents the action from being barred by a statute of limitations. Failing to  
23 issue summonses will not cause the action to be barred by any statute of limitation. Similarly, the  
24 failure to issue citations should not cause Contestant's will contest to be barred by the period of  
25 limitation in NRS 137.120.

26 With regard to will contests and the issuance of citations, California courts have provided as  
27 follows:

28 The jurisdiction of the court to entertain a proceeding for the revocation of the  
will does not depend upon the issuance and service of a citation within a year

1 after the probate of the will. Jurisdiction of the court attaches on the filing of the  
2 petition inaugurating the contest. The office of the citation is only that of a  
3 summons—to give the court jurisdiction of the parties who would be affected by  
4 its revocation. It is not essential to the jurisdiction of the court that the citation be  
5 issued and served within a year. The only penalty for failure to have it issued  
6 within that time is that the court may dismiss the contest. And even where there  
7 has been a failure to have it issued within the year the court may nevertheless  
8 relieve a contestant for his failure to do so and thereupon order a citation issued  
9 and served.

10 *In re Logan's Estate*, 171 Cal. 357, 362-63, 153 P. 388, 390 (1915) (emphases added). The jurisdiction  
11 of the Court attaches upon the filing of the will contest. While other sections within NRS 137 provide  
12 procedures for a will contest, the lack of adherence to those procedures, including the issuance of  
13 summonses, do not preclude the Court's jurisdiction over the will contest.

14 Even if this Court were to view the 90-day limit as a statute of limitation, the Nevada Supreme  
15 Court has held in the context of NRCP 6(a) that "[t]he better rule, however, and that reflected in . . .  
16 numerous other cases, is that the rules of procedure may apply with regard to statutes of limitations."  
17 *Romaine v. State Farm Mut. Auto. Ins. Co.*, 87 Nev. 257, 259, 485 P.2d 102, 103 (1971) (emphasis  
18 added).

19 **b. The Statutory Scheme Supports of the Proposition that NRCP 6(b) Applies to the**  
20 **Enlargement of Time for the Issuance of Citations.**

21 Petitioner's claim that NRCP 6(b) has no application to NRS 137.090 is ridiculous, and  
22 Petitioner is unable to present any substantial authority in support of that proposition. On the contrary,  
23 the statutory scheme supports Contestant's position that the Court may enlarge the time for the  
24 issuance of citations.

25 NRCP 6(b) provides for the enlargement of time with or without motion and based on the  
26 Court's discretion. NRCP 83 gives authority for the promulgation of rules consistent with the Nevada  
27 Rules of Civil Procedure. ("Each district court . . . may from time to time make and amend rules  
28 governing its practice not inconsistent with these rules.") Accordingly, the Rules of Practice of the  
Eighth Judicial District Court of the State of Nevada (EDCR), the local rules issued under NRCP 83,  
provide as follows: "The rules in Part II govern the practice and procedure of all civil actions, all  
contested proceedings under Titles 12 and 13 of NRS." (Emphasis added) Title 12 of the Nevada

1 Revised Statutes governs wills and estates of deceased persons, including will contests (NRS 137) at  
2 issue in this case. Thus EDCR Section II applies in this case. EDCR 2.25 provides the following:

3 **Extending time.**

4 (a) Every motion or stipulation to extend time shall inform the court of any  
5 previous extensions granted and state the reasons for the extension requested. A  
6 request for extension made after the expiration of the specified period shall not be  
7 granted unless the moving party, attorney or other person demonstrates that the  
8 failure to act was the result of excusable neglect.

9 Thus, motions for the enlargement or extension of time apply in the exact circumstances of this case.

10 Furthermore, what is clear from the statutory scheme for will contests is that the Nevada  
11 Legislature intended to allow the Court to extend time limits. NRS 137.100 provides with regard to  
12 after-probate will contests that the procedures for the after-probate will contest will be governed by the  
13 same rules as a contest before probate. NRS 137.100 ("The citation must be served and proceedings  
14 had thereunder as in the case of a contest before probate." [Emphasis added].) Accordingly, NRS  
15 137.010, which describe the proceedings in a contest before probate, provides that "[t]he times  
16 specified in this section may be extended by the court." NRS 137.010(2) (emphasis added). The timing  
17 for the issuance of the citations is not a statute of limitation, but a procedural rule, and is governed by  
18 EDCR Section II, which allows for the extension of time. Moreover, the fact the NRS 137.120 only  
19 references the filing of the will contest, and not the issuance of citations is convincing evidence that the  
20 deadline for the issuance of citations is not meant to be governed by a statute of limitations, but is  
21 subject to the Court's discretion and "may be extended by the court." NRS 137.010(2). For these  
22 reasons, the will contest should not be precluded by NRS 137.120.

23 **c. The Doctrine of Equitable Tolling Applies in this Case Because There Is No  
24 Danger of Prejudice to the Petitioner and Because the Interests of Justice So  
25 Require.**

26 Under the doctrine of equitable tolling, the deadline to issue citations should be extended  
27 because Contestant was prevented from complying with the deadline through no fault of his own or  
28 lack of diligence, and because a failure to extend the deadline would cause severe injustice. In  
addition, there is no prejudice to Petitioner.

## IN THE SUPREME COURT OF THE STATE OF NEVADA

In the Matter of the Estate of ) Case No: 63960  
LEROY G. BLACK, Deceased. )  
)  
)

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Dec 16 2014 09:21 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

## APPEAL

from the Eighth Judicial District, Clark County  
The Honorable GLORIA J. STURMAN, District Judge  
District Court Case No. P-12-074745-E

## JOINT APPENDIX

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Markowitz*

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CLERK OF THE COURT

PETN  
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(702) 869-8801  
Attorney for the Petitioner,  
PHILLIP MARKOWITZ

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

In the Matter of the Estate of ) CASE NO. P - 12 - 074745 - E  
LEROY G. BLACK, Deceased. ) DEPT. NO. 26 (Probate)

**PETITION FOR SPECIAL LETTERS OF ADMINISTRATION**

Date of Hearing: n/a  
Time of Hearing: n/a

COMES NOW, the Petitioner, PHILLIP MARKOWITZ, ("Phil") whose Petition respectfully represents the following to this Honorable Court:

1. Petitioner is the named Executor of the decedent's Last Will of Leroy G. Black, dated March 7, 2012 and cousin of the above-named decedent and is a resident of the State of California, his mailing address being 2201 Hercules Drive, Los Angeles, California 90046.
2. LEROY G. BLACK died on or about the 4<sup>th</sup> day of April, 2012, in the State of Nevada. The decedent was, at the time of his death, a resident of the State of Nevada. A copy of the decedent's Death Certificate will be submitted as Exhibit "1" when received.
3. The decedent left a document which your Petitioner alleges to be the Last Will and Testament of said decedent, a copy of which is attached hereto as Exhibit "2", and the original of which was lodged with this Court on June 5, 2012. The Petitioner will petition this Court to admit the will to probate as soon as possible, but there are pressing matters that necessitate this petition to appoint the Petitioner (and 75% beneficiary) as Special Administrator.

4. The decedent is survived by the following heirs/beneficiaries:

<u>Name and Address</u>	<u>Relationship to Deceased</u>
Rose E. Markowitz 318 North California St Burbank, Ca 91505	Aunt
Phillip Markowitz 2201 Hercules Drive Los Angeles, Ca 90046	Petitioner/Executor/Cousin

5. Petitioner reports to the Court that his appointment as Special Administrator of the decedent's estate is necessary due to the fact that the decedent owned several parcels of real property including a parking lot which generates revenue and a large and unique parcel of residential real property at 500 Rancho Circle which has sophisticated maintenance needs. The decedent recently spent a large amount of money refacing and preparing the property for sale. The property is currently listed for sale for \$2,990,000. A copy of the listing is attached hereto as Exhibit "3".

6. Petitioner requests that the Court grant him all powers and authorities conferred upon special administrators including, but not limited to, the authority to:

- a. To take possession and control of any and all assets of the decedent.
- b. To take possession of and manage and maintain the decedent's real property.

7. Petitioner requests that all liquid assets belonging to the estate which come to his knowledge or possession be deposited into the trust account of BLACK & LOBELLO where said funds shall remain until further order of this Court.

8. Petitioner confirms that he has never been convicted of a felony.

9. Petitioner is competent and capable of acting as Special Administrator of the decedent's estate and hereby consents to serve in that capacity. The name of the person for whom Special Letters of Administration in this matter are requested is PHILLIP MARKOWITZ.

1 your Petitioner herein.

2 WHEREFORE, Petitioner prays as follows:

3 1. That Petitioner be appointed to act as Special Administrator of the estate of  
4 LEROY G. BLACK, and that Special Letters of Administration issue to Petitioner upon him  
5 taking the oath of office as required by law, without bond. That all liquid assets belonging to the  
6 estate be deposited into the trust account of Black & LoBello.

7  
8 2. That all of the powers, authorities and duties of special administrators be  
9 conferred upon Petitioner including, but not limited to, the authority to:

- 10 a. Take possession of, manage and control all funds on deposit in any and all  
11 banking, brokerage or other institutions located within this Court's  
12 jurisdiction.  
13 b. Take possession of and manage and maintain the decedent's real property.  
14 c. To open, inventory and take possession of the contents of any and all safe  
15 deposit boxes in the decedent's name, whether titled solely in the name of  
16 the decedent or jointly with others.  
17 d. To take possession of and manage all of the remaining assets belonging to  
18 the decedent.

19  
20 3. For such other and further relief as to the court may deem just and proper in the  
21 premises.  
22

23  
24   
25 PHILLIP MARKOWITZ

26 VERIFICATION

27 PHILLIP MARKOWITZ, under penalty of perjury, deposes and says: That he is the  
28

BLACK & LOBELLO  
10777 West Twain Avenue, Suite 300  
Las Vegas, Nevada 89135  
(702) 869-8801 FAX: (702) 869-2669

1 Petitioner in the above entitled matter; that he has read the foregoing petition and knows the  
2 contents thereof; that the same is true of his own knowledge except as to those matters therein  
3 contained upon information and belief, and as to those matters, he believes them to be true.  
4  
5  
6

  
PHILLIP MARKOWITZ

7  
8 BLACK & LOBELLO

9   
10

11 CHRISTOPHER J. PHILLIPS, ESQ.  
12 10777 West Twain Avenue, Suite 300  
13 Las Vegas, Nevada 89135  
14 Attorney for the Petitioner  
15 PHILLIP MARKOWITZ  
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EXHIBIT 1

EXHIBIT 1

## EXHIBIT 2

## EXHIBIT 2

**LAST WILL OF LEROY G. BLACK****FILED**

I, LEROY G. BLACK, a resident of Clark County, Nevada, declare that this is my will. I hereby revoke any and all of my previous wills and codicils.

JUN 5 3 53 PM '12  
*[Signature]*  
CLERK OF COURT

**ARTICLE ONE  
INTRODUCTORY PROVISIONS**

- 1.1. Marital Status. I am not currently married.  
1.2. Identification of Living Children. I have no living children.  
1.3. Deceased Children. I have no deceased children.

**ARTICLE TWO  
GIFT OF ENTIRE ESTATE**

2.1. Gift of Entire Estate. I give all of my property, both real and personal, as follows: Twenty-five percent (25%) of the total value of my estate at the time of my death to my aunt, ROSE E. MARKOWITZ. The remainder of my estate, Seventy-five percent (75%), shall be given to my cousin, PHILLIP I. MARKOWITZ.

2.2. Beneficiaries Excluded. I, LEROY G. BLACK, specifically direct that no portion of the trust estate ever be used for the benefit of or pass to ZELDA KAMEYER, and/or any of her children, possible heirs or beneficiaries. Other possible heirs or beneficiaries not specifically provided for in this document shall be considered as excluded beneficiaries from my estate and shall not receive any benefit from my estate. The provisions contained in this agreement contain my final decisions in this regard.

**ARTICLE THREE  
RESIDUARY PROVISIONS**

3.1. Disposition of Residue. I give the residue of my estate to the executor of this will, PHILLIP I. MARKOWITZ, as trustee, who shall hold, administer, and distribute the property

under a testamentary trust, the terms of which shall be identical to the terms of this will that are in effect on the date of execution of this will.

## ARTICLE FOUR

### EXECUTOR

4.1. Nomination of Executor. I nominate PHILLIP I. MARKOWITZ as executor of this will.

4.2. Successor Executor. If PHILLIP I. MARKOWITZ is unable (by reason of death, incapacity, or any other reason) or unwilling to serve as executor, or if at any time the office of executor becomes vacant, by reason of death, incapacity, or any other reason, and no successor executor or co-executors have been designated under any other provision of this will, I nominate the following, as executor:

FIRST: ROSE E. MARKOWITZ

If all those named above are unwilling or unable to serve as successor executor, a new executor or co-executors shall be appointed by the court.

4.3. Waiver of Bond. No bond or undertaking shall be required of any executor nominated in this will.

4.4. General Powers of Executor. The executor shall have full authority to administer my estate under the Nevada Revised Statute Section 164. The executor shall have all powers now or hereafter conferred on executors by law, except as otherwise specifically provided in this will, including any powers enumerated in this will.

4.5. Power to Invest. The executor shall have the power to invest estate funds in any kind of real or personal property, as the executor deems advisable.

4.6. Division or Distribution in Cash or in Kind. In order to satisfy a pecuniary gift or to distribute or divide estate assets into shares or partial shares, the executor may distribute or divide those assets in kind, or divide undivided interests in those assets, or sell all or any part of those assets and distribute or divide the property in cash, in kind, or partly in cash and partly in kind. Property distributed to satisfy a pecuniary gift under this will shall be valued at its fair market value at the time of distribution.

**4.7. Power to Sell, Lease, and Grant Options to Purchase Property.** The executor shall have the power to sell, at either public or private sale and with or without notice, lease, and grant options to purchase any real or personal property belonging to my estate, on such terms and conditions as the executor determines to be in the best interest of my estate.

**4.8. Payments to Legally Incapacitated Persons.** If at any time any beneficiary under this will is a minor or it appears to the executor that any beneficiary is incapacitated, incompetent, or for any other reason not able to receive payments or make intelligent or responsible use of the payments, then the executor, in lieu of making direct payments to the beneficiary, may make payments to the beneficiary's conservator or guardian; to the beneficiary's custodian under the Uniform Gifts to Minors Act or Uniform Transfers to Minors Act of any state; to one or more suitable persons, as the executor deems proper, such as a relative or a person residing with the beneficiary, to be used for the benefit of the beneficiary; to any other person, firm, or agency for services rendered or to be rendered for the beneficiary's assistance or benefit; or to accounts in the beneficiary's name with financial institutions. The receipt of payments by any of the foregoing shall constitute a sufficient acquittance of the executor for all purposes.

## ARTICLE FIVE CONCLUDING PROVISIONS

**5.1. Definition of Death Taxes.** The term "death taxes," as used in this will, shall mean all inheritance, estate, succession, and other similar taxes that are payable by any person on account of that person's interest in my estate or by reason of my death, including penalties and interest, but excluding the following:

- (a) Any additional tax that may be assessed under Internal Revenue Code Section 2032A.
- (b) Any federal or state tax imposed on a "generation-skipping transfer," as that term is defined in the federal tax laws, unless the applicable tax statutes provide that the generation-skipping transfer tax on that transfer is payable directly out of the assets of my gross estate.

**5.2. Payment of Death Taxes.** The executor shall pay death taxes, whether or not attributable to property inventoried in my probate estate, by prorating and apportioning them among the persons interested in my estate as provided in the Nevada Revised Statutes.

5.3. **Simultaneous Death.** If any beneficiary under this will and I die simultaneously, or if it cannot be established by clear and convincing evidence whether that beneficiary or I died first, I shall be deemed to have survived that beneficiary, and this will shall be construed accordingly.

5.4. **Period of Survivorship.** For the purposes of this will, a beneficiary shall not be deemed to have survived me if that beneficiary dies within two months after my death.

5.5. **No-Contest Clause.** If any person, directly or indirectly, contests the validity of this will in whole or in part, or opposes, objects to, or seeks to invalidate any of its provisions, or seeks to succeed to any part of my estate otherwise than in the manner specified in this will, any gift or other interest given to that person under this will shall be revoked and shall be disposed of as if he or she had predeceased me without issue.

5.6. **Definition of Incapacity.** As used in this will, "incapacity" or "incapacitated" means a person operating under a legal disability such as a duly established conservatorship, or a person who is unable to do either of the following:

- (a) Provide properly for that person's own needs for physical health, food, clothing, or shelter; or
- (b) Manage substantially that person's own financial resources, or resist fraud or undue influence.

5.7. **Captions.** The captions appearing in this will are for convenience of reference only, and shall be disregarded in determining the meaning and effect of the provisions of this will.

5.8. **Severability Clause.** If any provision of this will is invalid, that provision shall be disregarded, and the remainder of this will shall be construed as if the invalid provision had not been included.

5.9. **Nevada Law to Apply.** All questions concerning the validity and interpretation of this will, including any trusts created by this will, shall be governed by the laws of the State of Nevada in effect at the time this will is executed.

Executed on March 7, 2012, at Las Vegas, Nevada.

  
LERoy G. BLACK


March 7, 2012

*Last Will of Leroy G. Black*

On the date written above, we, the undersigned, each being present at the same time, witnessed the signing of this instrument by LEROY G. BLACK. At that time, LEROY G. BLACK appeared to us to be of sound mind and memory and, to the best of our knowledge, was not acting under fraud, duress, menace, or undue influence. Understanding this instrument, which consists of five (5) pages, including the pages on which the signature of LEROY G. BLACK and our signatures appear, to be the will of LEROY G. BLACK, we subscribe our names as witnesses thereto.

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

Executed on March 7, 2012, at Las Vegas, Nevada.

Signature: 

Printed Name: DAVID Everston

Address: 11684 Ventura bl Suite 507

Studio, CA 91604  
City State

Signature: 

Printed Name: MARIA J. ONOFRE

Address: 20300 Ventura Blvd

Woodland Hills, CA  
City State

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06/29/2012 10:20:05 AM

OASA  
CHRISTOPHER J. PHILLIPS, ESQ.  
Nevada Bar No: 8224

  
CLERK OF THE COURT

**BLACK & LOBELLO**  
10777 West Twain Avenue, Suite 300  
Las Vegas, Nevada 89135  
(702) 869-8801  
Attorney for the Petitioner,  
PHILLIP MARKOWITZ

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

In the Matter of the Estate of )  
LEROY G. BLACK, Deceased. )

CASE NO. P-12-074745-E  
DEPT. NO. 26 (Probate)

**ORDER APPOINTING SPECIAL ADMINISTRATOR**

Date of Hearing: n/a  
Time of Hearing: n/a

Upon review of the verified Petition for Special Letters of Administration filed by PHILLIP MARKOWITZ, the named executor in the decedent's Last Will and Testament, and a resident of the State of California; the Court having reviewed said Petition and having found that all allegations contained therein are true and correct, and good cause appearing therefor,

NOW, THEREFORE, IT IS HEREBY ORDERED that PHILLIP MARKOWITZ be, and he is hereby appointed to serve as Special Administrator of the estate of LEROY G. BLACK, and Special Letters of Administration shall issue to the said PHILLIP MARKOWITZ upon his taking the oath of office as required by law, without bond; and it is

FURTHER ORDERED that all liquid assets belonging to the decedent's estate shall be deposited into the trust account Black & LoBello, where said funds shall remain until further order of this Court; and it is

FURTHER ORDERED that the Special Administrator shall have all of the powers, authorities and duties of general administrators be conferred upon Petitioner including, but not

1 limited to, the following:

2 a. Take possession of, manage and control all the decedent's funds on deposit in any  
3 and all banking, brokerage or other institutions located within this Court's jurisdiction, whether  
4 titled solely in the name of the decedent or jointly with another individual.

5 b. To open, inventory and take possession of the contents of any and all safe deposit  
6 boxes in the decedent's name, whether titled solely in the name of the decedent or jointly with  
7 another individual.

8 c. Take possession and control of any and all assets of the decedent, including, but  
9 not necessarily limited to, the decedent's real estate, automobiles, bank accounts, brokerage  
10 accounts, safe deposit boxes, whether titled in the name of the decedent or jointly with another  
11 individual.

12 d. Request, receive and take possession of any and all of the decedent's medical  
13 records.

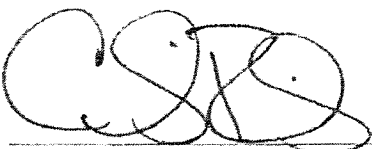
14 DATED and DONE this 27<sup>th</sup> of June, 2012.

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DISTRICT COURT JUDGE

BLACK & LOBELLO



CHRISTOPHER J. PHILLIPS, ESQ.  
10777 West Twain Avenue, Suite 300  
Las Vegas, NV 89135  
Attorney for PHILLIP MARKOWITZ

1 **EXHS**  
2 CHRISTOPHER J. PHILLIPS, ESQ.  
3 Nevada Bar No: 8224  
4 **BLACK & LOBELLO**  
5 10777 West Twain Avenue, Suite 300  
6 Las Vegas, Nevada 89135  
7 (702) 869-8801  
8 Attorney for the Petitioner,  
9 PHILLIP MARKOWITZ

  
CLERK OF THE COURT

6 **DISTRICT COURT**  
7 **CLARK COUNTY, NEVADA**

8 In the Matter of the Estate of ) CASE NO. P-12-074745-E  
9 LEROY G. BLACK, Deceased. ) DEPT. NO. 26 (Probate)  
10 )

10 **FILING OF EXHIBITS**

11 Attached hereto for filing is Exhibit "1" and Exhibit "3" for the Petition for Special  
12 Letters of Administration which filed on June 26, 2012.

13 Dated this 29<sup>th</sup> day of June, 2012.

14 **BLACK & LOBELLO**

15 

16  
17 CHRISTOPHER J. PHILLIPS, ESQ.  
18 10777 West Twain Avenue, Suite 300  
19 Las Vegas, NV 89135  
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**BLACK & LOBELLO**  
10777 West Twain Avenue, Suite 300  
Las Vegas, Nevada 89135  
(702) 869-8801 FAX (702) 869-2669

## EXHIBIT 1

## EXHIBIT 1

# CERTIFICATE OF DEATH

2012008348

STATE FILE NUMBER

TYPE OR  
PRINT IN  
PERMANENT  
BLACK INK

DECEDENT

IF DEATH  
OCCURRED IN  
INSTITUTION  
SEE HANDBOOK  
REGARDING  
COMPLETION OF  
RESIDENCE  
ITEMS

PARENTS

DISPOSITION

TRADE CALL

CERTIFIER

REGISTRAR

CAUSE OF  
DEATH

CONDITIONS IF  
ANY WHICH  
GAVE RISE TO  
IMMEDIATE  
CAUSE  
→  
STATING THE  
UNDERLYING  
CAUSE LAST

1a. DECEASED NAME (FIRST, MIDDLE, LAST SUFFIX) <b>Leroy G BLACK</b>			2. DATE OF DEATH (Mo/Day/Year) <b>April 04, 2012</b>		3a. COUNTY OF DEATH <b>Clark</b>	
3b. CITY, TOWN, OR LOCATION OF DEATH <b>Las Vegas</b>		3c. HOSPITAL OR OTHER INSTITUTION (Name (if not either, give street and number)) <b>1600 Becke Circle</b>		3e. If Hosp. or Inst. indicate DOA OP/Emer. Rm Inpatient (Specify) <b>Home</b>		
4. SEX <b>Male</b>		5. RACE <b>White</b>		6. Hispanic Origin? Specify <b>No - Non-Hispanic</b>		
7a. AGE - Last birthday (Years) <b>69</b>		7b. UNDER 1 YEAR MOS: _____ DAYS: _____		7c. UNDER 1 DAY HOURS: _____ MINS: _____		
8. DATE OF BIRTH (Mo/Day/Yr) <b>January 25, 1943</b>		9a. STATE OF BIRTH (If not U.S.A., name country) <b>California</b>		9b. CITIZEN OF WHAT COUNTRY <b>United States</b>		
10. EDUCATION <b>16</b>		11. MARRIED, NEVER MARRIED, WIDOWED, DIVORCED (Specify) <b>Never Married</b>		12. SURVIVING SPOUSE (If wife, give maiden name)		
13. SOCIAL SECURITY NUMBER		14a. USUAL OCCUPATION (Give Kind of Work Done During Most of Working Life, Even If Retired) <b>Broker</b>		14b. KIND OF BUSINESS OR INDUSTRY <b>Real Estate</b>		
15a. RESIDENCE - STATE <b>Nevada</b>		15b. COUNTY <b>Clark</b>		15c. CITY, TOWN OR LOCATION <b>Las Vegas</b>		
15d. STREET AND NUMBER <b>1600 Becke Circle</b>		15e. INSIDE CITY LIMITS (Specify Yes or No) <b>Yes</b>		16. FATHER/PARENT - NAME (First Middle Last Suffix) <b>Jack Jacob BLACK</b>		
17. MOTHER/PARENT - NAME (First Middle Last Suffix) <b>Ida BRODSKY</b>		18a. INFORMANT - NAME (Type or Print) <b>Zelda KAMEYER</b>		18b. MAILING ADDRESS (Street or R.F.D. No; City or Town, State, Zip) <b>456 Elm Street Woodland, California 95695</b>		
19a. BURIAL, CREMATION, REMOVAL, OTHER (Specify) <b>Burial</b>		19b. CEMETERY OR CREMATORY - NAME <b>King David Memorial Cemetery</b>		19c. LOCATION City or Town State <b>Las Vegas Nevada 89120</b>		
20a. FUNERAL DIRECTOR - SIGNATURE (Or Person Acting as Such) <b>BART BURTON</b> SIGNATURE AUTHENTICATED		20b. FUNERAL DIRECTOR LICENSE <b>50</b>		20c. NAME AND ADDRESS OF FACILITY <b>King David Memorial Chapel</b> <b>2697 E Eldorado Ln Las Vegas NV 89120</b>		
TRADE CALL - NAME AND ADDRESS <b>Bunker's Mortuary 925 N. Las Vegas Blvd. Las Vegas NV 89101</b>						
21a. To the best of my knowledge, death occurred at the time, date and place and due to the cause(s) stated. (Signature & Title) <b>LISA GAVIN M.D., MPH</b> SIGNATURE AUTHENTICATED		21b. DATE SIGNED (Mo/Day/Yr) <b>May 30, 2012</b>		21c. HOUR OF DEATH <b>15:25</b>		
21d. NAME OF ATTENDING PHYSICIAN IF OTHER THAN CERTIFIER (Type or Print)		22a. PRONOUNCED DEAD (Mo/Day/Yr) <b>April 04, 2012</b>		22b. PRONOUNCED DEAD AT (Hour) <b>15:25</b>		
23a. NAME AND ADDRESS OF CERTIFIER (PHYSICIAN, ATTENDING PHYSICIAN, MEDICAL EXAMINER, OR CORONER) (Type or Print) <b>Lisa Gavin M.D., MPH 1704 Pinto Lane Las Vegas, NV 89106</b>				23b. LICENSE NUMBER <b>13249</b>		
24a. REGISTRAR (Signature) <b>SUSAN ZANNIS</b> SIGNATURE AUTHENTICATED		24b. DATE RECEIVED BY REGISTRAR (Mo/Day/Yr) <b>May 31, 2012</b>		24c. DEATH DUE TO COMMUNICABLE DISEASE <b>YES <input type="checkbox"/> NO <input checked="" type="checkbox"/></b>		
25. IMMEDIATE CAUSE (ENTER ONLY ONE CAUSE PER LINE FOR (a), (b), AND (c))						
PART I						
(a) <b>Contact gunshot wound of head</b>						
DUE TO, OR AS A CONSEQUENCE OF						
(b) <b>DUE TO, OR AS A CONSEQUENCE OF</b>						
DUE TO, OR AS A CONSEQUENCE OF						
(c) <b>DUE TO, OR AS A CONSEQUENCE OF</b>						
DUE TO, OR AS A CONSEQUENCE OF						
(d)						
PART II OTHER SIGNIFICANT CONDITIONS-Conditions contributing to death but not resulting in the underlying cause given in Part I						
26a. ACC., SUICIDE, HOMICIDE, OR PENDING INVEST. (Specify) <b>Suicide</b>		26b. DATE OF INJURY (Mo/Day/Yr)		26c. HOUR OF INJURY		
26d. DESCRIBE HOW INJURY OCCURRED <b>Self-inflicted gunshot wound</b>		27. WAS CASE REFERRED TO CORONER (Specify Yes or No) <b>Yes</b>				
28a. INJURY AT WORK (Specify Yes or No) <b>No</b>		28b. PLACE OF INJURY - At home, farm, street, factory, office building, etc. (Specify) <b>Home</b>		28c. LOCATION - STREET OR R.F.D. No CITY OR TOWN STATE <b>1600 Becke Circle Las Vegas Nevada</b>		

STATE REGISTRAR

"CERTIFIED TO BE A TRUE AND CORRECT COPY OF THE DOCUMENT ON FILE WITH THE REGISTRAR OF VITAL STATISTICS, STATE OF NEVADA" This copy was issued by the Southern Nevada Health District from State certified documents as authorized by the State Board of Health pursuant to NRS 440.175.

NOT VALID WITHOUT THE RAISED SEAL OF THE SOUTHERN NEVADA HEALTH DISTRICT

Lawrence K. Sands, D.O., M.P.H.  
Registrar of Vital Statistics

By:   
Date Issued: **JUN 28 2012** 00016

## EXHIBIT 3

## EXHIBIT 3

## A Property for Your Consideration . . .

Presented by: Christopher Phillips  
Real Estate One LLC  
cphillips@blacklobellolaw.com  
Phone: 702-435-1111  
Fax: 702-433-3436  
Agent: 702-218-1418

**Clark County**

**500 RANCHO CR**

**\$ 2,990,000**

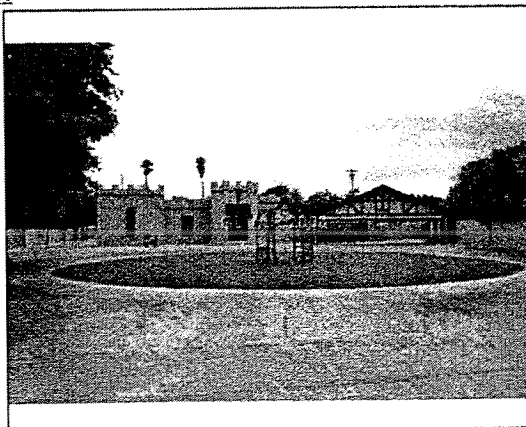
**Virtual Tour:** <http://rtvpix.com/rst/RE-3615-TC6QBO-01>

Ref #: 854761 Status: ER

**Subdivision:**  
RANCHO CIRCLE

**Short Sale:** N  
**Foreclosure Commenced:** N  
**Repo/REO:** N

**Bedrooms:** 5  
**Full Baths:** 1  
**3/4 Baths:** 4  
**Half Baths:** 0  
**#Den/Oth:** 1  
**#Loft:** 0



[Click here for map view](#)

**SqFt:** 6,121  
**Year Built:** 1945 / Resale  
**PropSubTyp:** Single Family Residential  
**Lot Sqft:** 48,276  
**PropDes:** Custom, Detached Guest House  
**Garages:** 0  
**Carports:** 4 / Detached Carport

OWC--Custom, one-of-a-kind, Restored Cinderella Castle in Guard Gated Rancho Circle actually available! Historic Alta Drive Private Gate. Totally refurbished Castle Compound. Custom made doors leading to Grand Foyer, Formal Living, Dining, Library & 40foot Grand Hall. Huge Pool & Outdoor Entertainment & Guest House!

### Construction:

Other Siding, Wood Siding, Frame & Stucco, Block & Stucco

### Interior Features:

Alarm System-Owned, Window Coverings Throughout, Skylight(s), Sun Room

### Exterior Features:

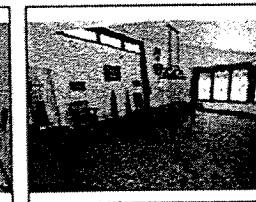
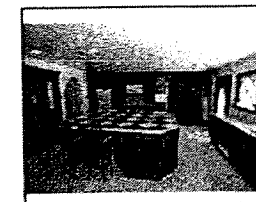
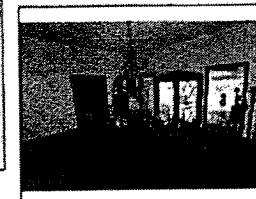
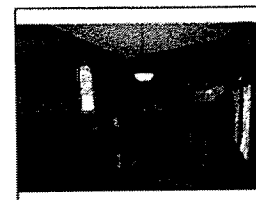
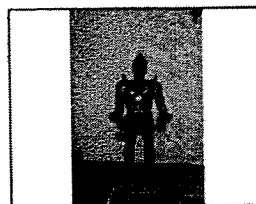
Built-In Barbecue, Circular Driveway, Covered Patio, Enclosed Patio/Sun Room, Private Yard, Patio

### Private Pool/Description:

Y / Inground-Private

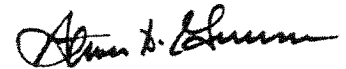
### Lot Description:

1 to 5 Acres



**Directions:** FROM ALTA & RANCHO; 1/2 BLOCK NORTH TO RANCHO CIRCLE, LEFT AT LIGHT TO GUARD GATE; LEFT AT END OF DOUBLE DRIVE TO PROPERTY ON LEFT--IT'S A CASTLE--YOU CAN'T MISS IT!

1 **NEOJ**  
2 CHRISTOPHER J. PHILLIPS, ESQ.  
3 Nevada Bar No: 8224  
4 **BLACK & LOBELLO**  
5 10777 West Twain Avenue, Suite 300  
6 Las Vegas, Nevada 89135  
7 (702) 869-8801  
8 Attorney for the Petitioner,  
9 PHILLIP MARKOWITZ



CLERK OF THE COURT

7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 In the Matter of the Estate of ) CASE NO. P-12-074745-E  
10 LEROY G. BLACK, Deceased. ) DEPT. NO. 26 (Probate)  
11 )

11 **NOTICE OF ENTRY OF ORDER**

12 TO: ALL PERSONS INTERESTED IN THE ABOVE-REFERENCED ESTATE

13 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE than an Order Appointing  
14 Special Administrator. a copy of which is attached hereto and incorporated herein by reference,  
15 was entered by the Court on the 29<sup>th</sup> day of June, 2012.

16 DATED this 10<sup>th</sup> day of July, 2012.

17 **BLACK & LOBELLO**



18  
19  
20 CHRISTOPHER J. PHILLIPS, ESQ.  
21 10777 West Twain Avenue, Suite 300  
22 Las Vegas, Nevada 89135

23 I, the undersigned, an employee of the law firm of Black & Lobello, do hereby declare  
24 that on the 10<sup>th</sup> day of July, 2012, I placed in an envelope, postage pre-paid, first class mail  
25 thereon, a copy of the foregoing Notice of Entry of Order, to which a copy of the Order  
26 Appointing Special Administrator was attached, addressed to the persons referenced herein and  
27 deposited the same in the Post Office at Las Vegas, Nevada.  
28

1 There is a regular communication by mail between the Post Office at Las Vegas, Nevada  
2 and the addresses to which the above-referenced documentation was mailed.

3 Rose E. Markowitz  
4 2201 Hercules Drive  
Los Angeles, Ca 90046

Medicaid Estate Recovery  
1000 E. William Street, Suite 102  
Carson City, NV 89701

5 Phillip Markowitz  
6 2201 Hercules Drive  
Los Angeles, Ca 90046

Zelda Kameyer  
456 Elm  
Woodland, CA 95695

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11 Employee of Black & Lobello  
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OASA  
CHRISTOPHER J. PHILLIPS, ESQ.  
Nevada Bar No: 8224  
BLACK & LOBELLO  
10777 West Twain Avenue, Suite 300  
Las Vegas, Nevada 89135  
(702) 869-8801  
Attorney for the Petitioner.  
PHILLIP MARKOWITZ

  
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate of ) CASE NO. P-12-07114  
LEROY G. BLACK, Deceased. ) DEPT. NO. 26 (Probate)

ORDER APPOINTING SPECIAL ADMINISTRATOR

Date of Hearing: n/a  
Time of Hearing: n/a

Upon review of the verified Petition for Special Letters of Administration filed by PHILLIP MARKOWITZ, the named executor in the decedent's Last Will and Testament, and a resident of the State of California, the Court having reviewed said Petition and having found that all allegations contained therein are true and correct, and good cause appearing therefor,

NOW, THEREFORE, IT IS HEREBY ORDERED that PHILLIP MARKOWITZ be, and he is hereby appointed to serve as Special Administrator of the estate of LEROY G. BLACK, and Special Letters of Administration shall issue to the said PHILLIP MARKOWITZ upon his taking the oath of office as required by law, without bond; and it is

FURTHER ORDERED that all liquid assets belonging to the decedent's estate shall be deposited into the trust account Black & LoBello, where said funds shall remain until further order of this Court; and it is

FURTHER ORDERED that the Special Administrator shall have all of the powers, authorities and duties of general administrators be conferred upon Petitioner including, but not

1 limited to, the following:


2 a. Take possession of, manage and control all the decedent's funds on deposit in any  
3 and all banking, brokerage or other institutions located within this Court's jurisdiction, whether  
4 titled solely in the name of the decedent or jointly with another individual.

5 b. To open, inventory and take possession of the contents of any and all safe deposit  
6 boxes in the decedent's name, whether titled solely in the name of the decedent or jointly with  
7 another individual.

8 c. Take possession and control of any and all assets of the decedent, including, but  
9 not necessarily limited to, the decedent's real estate, automobiles, bank accounts, brokerage  
10 accounts, safe deposit boxes, whether titled in the name of the decedent or jointly with another  
11 individual.


12 d. Request, receive and take possession of any and all of the decedent's medical  
13 records.

14 DATED and DONE this 27<sup>th</sup> of June, 2012.

15  
16  
17  
18  
19 

20 DISTRICT COURT JUDGE  
21 

22 BLACK & LOBELLO

23 

24 CHRISTOPHER J. PHILLIPS, ESQ.  
25 10777 West Twain Avenue, Suite 300  
26 Las Vegas, NV 89135  
27 Attorney for PHILIP MARKOWITZ  
28

LSA

**ORIGINAL**

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

*Steven D. Grierson*  
CLERK OF THE COURT

In the Matter of the Estate of: )  
 )  
LERROY G. BLACK, )  
 )  
 )  
Deceased. )  
\_\_\_\_\_ )

CASE NO: P-12-074745-E  
LETTERS OF SPECIAL ADMINISTRATION

On the 29<sup>th</sup> day of June, 2012, the court entered an Order appointing PHILLIP MARKOWITZ as Special Administrator of the Decedent's Estate. The Order includes:

- ☒ A directive for no bond: All liquid assets of the estate shall be placed into the trust account of Black & LoBello
- ☐ A directive for the establishment of blocked accounts;
- ☐ A directive for the posting of bond in the sum of \$ \_\_\_\_\_; or
- ☐ A directive for both the establishment of blocked account for sums in excess of \$ \_\_\_\_\_ and the posting of bond in the sum of \$ \_\_\_\_\_.

The Administrator, having duly qualified, may act and has the authority and duties of Administrator.

In testimony of which, I have this date signed these Letters and affixed the seal of the Court.

CLERK OF THE COURT  
STEVEN D. GRIERSON

By: \_\_\_\_\_

Deputy Clerk

**OATH**

I, Phillip Markowitz, whose mailing address is 2201 Hercules Drive, Los Angeles, California 90046, solemnly affirm that I will faithfully perform according to law the duties of Administrator and that all matters stated in any petition or paper filed with the court by me are true of my own knowledge or, if any matters are stated in information and belief, I believe them to be true.

*Phillip Markowitz*  
ADMINISTRATOR  
PHILLIP MARKOWITZ

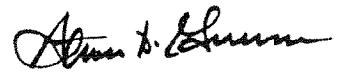
SUBSCRIBED AND AFFIRMED before me this  
3<sup>rd</sup> day of July, 2012.

By: \_\_\_\_\_  
DEPUTY CLERK

(OR) *Alex Janashvili*  
NOTARY PUBLIC



County of LOS ANGELES State of California



CLERK OF THE COURT

1 NOH  
2 CHRISTOPHER J. PHILLIPS, ESQ.  
3 Nevada Bar No: 8224  
4 **BLACK & LOBELLO**  
5 10777 West Twain Avenue, Suite 300  
6 Las Vegas, Nevada 89135  
7 (702) 869-8801  
8 Attorney for the Petitioner,  
9 PHILLIP MARKOWITZ

6 DISTRICT COURT

7 CLARK COUNTY, NEVADA

8 In the Matter of the Estate of ) CASE NO. P-12-074745-E  
9 LEROY G. BLACK, Deceased. ) DEPT. NO. 26 (Probate)

10 **NOTICE OF HEARING OF PETITION FOR PROBATE OF WILL, PETITION FOR**  
11 **APPOINTMENT OF PERSONAL REPRESENTATIVE AND FOR ISSUANCE OF**  
12 **LETTERS TESTAMENTARY**

13 Date of Hearing: 08/31/12  
14 Time of Hearing: 9:30 a.m.

15 NOTICE IS HEREBY GIVEN to all persons interested in the foregoing estate that  
16 Friday, the 31<sup>st</sup> day of August, 2012, at the hour of 9:30 o'clock a.m. of said day, in the  
17 Courtroom of the above-entitled Court, in Department H, Family Courts and Services Center,  
18 Courtroom 9, 601 N. Pecos, Las Vegas, Nevada 89101, is hereby set as the time and place by the  
19 Court for the hearing on the **Petition for Probate of Will, Petition for Appointment of**  
20 **Personal Representative and for Issuance of Letters Testamentary**, filed by PHILLIP  
21 MARKOWITZ, at which time all persons interested therein are notified then and there to appear  
22 and show cause, if any they have, why said petition should not be granted.

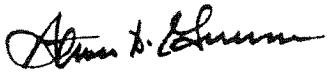
23 DATED this 18<sup>th</sup> day of July, 2012.

24 BLACK & LOBELLO

25 /s/ Christopher J. Phillips

26 CHRISTOPHER J. PHILLIPS, Esq.  
27 Nevada Bar No. 8224  
28 10777 West Twain Ave., #300  
Las Vegas, NV 89135

BLACK & LOBELLO  
10777 West Twain Avenue, Suite 300  
Las Vegas, Nevada 89135  
(702) 869-8801 FAX: (702) 869-2669

  
CLERK OF THE COURT

1 **PAAD**  
2 **CHRISTOPHER J. PHILLIPS, ESQ.**  
3 Nevada Bar No: 8224  
4 **BLACK & LOBELLO**  
5 10777 West Twain Avenue, Suite 300  
6 Las Vegas, Nevada 89135  
7 (702) 869-8801  
8 Attorney for the Petitioner,  
9 **PHILLIP MARKOWITZ**

6 **DISTRICT COURT**  
7 **CLARK COUNTY, NEVADA**

8 In the Matter of the Estate of )  
9 LEROY G. BLACK, Deceased. )  
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CASE NO. P-12-074745-E  
DEPT. NO. 26 (Probate)

**PETITION FOR PROBATE OF WILL, PETITION FOR APPOINTMENT OF**  
**PERSONAL REPRESENTATIVE AND FOR ISSUANCE OF LETTERS**  
**TESTAMENTARY**

Date of Hearing:  
Time of Hearing: 9:30 a.m.

COMES NOW, the Petitioner, PHILLIP MARKOWITZ, whose Petition respectfully  
represents the following to this Honorable Court:

1. PHILLIP MARKOWITZ is the nominated Executor in the Last Will of Leroy G.  
Black and the Court appointed Special Administrator of the decedent's estate, with Letters of  
Special Administration having been filed on July 9, 2012. PHILLIP MARKOWITZ is a resident  
of the State of California, his mailing address being 2201 Hercules Drive, Los Angeles,  
California 90046.

2. LEROY G. BLACK died in the State of Nevada on April 4, 2012. The decedent  
was, at the time of his death, a resident of the State of Nevada.

3. The decedent left a document which your Petitioner alleges to be the Last Will of  
Leroy G. Black, a copy of which is attached hereto as Exhibit "1", and the original of which was  
filed with the Court on June 5, 2012.

4. At the time the decedent's Last Will and Testament was executed, to wit: on  
March 7, 2012, the Testator was of sound mind and memory and was in every respect competent

**BLACK & LOBELLO**  
10777 West Twain Avenue, Suite 300  
Las Vegas, Nevada 89135  
(702) 869-8801 FAX: (702) 869-2669

1 to dispose of all of his estate.

2 5. Said will was executed in the presence of certain witnesses and they witnessed the  
3 execution of said Last Will and Testament in the presence of the Testator and in the presence of  
4 each other and at the request of the Testator and, at the time of the execution of the said will, the  
5 Testator was of full age and of sound mind and memory, and that they signed their subscribing  
6 affidavit at the request of the Testator.

7 6. The decedent is survived by the following heirs:

<u>Name and Address</u>	<u>Relationship to Deceased</u>
Rose E. Markowitz 318 North California St Burbank, Ca 91505	Aunt
Phillip Markowitz 2201 Hercules Drive Los Angeles, Ca 90046	Petitioner/Executor/Cousin

13  
14 7. Petitioner is competent and capable of acting as Personal Representative of the  
15 decedent's estate and hereby consents to act in this capacity. The name of the person for whom  
16 Letters Testamentary of this estate are requested is PHILLIP MARKOWITZ, your Petitioner  
17 herein, whose address is shown above.

18 8. Petitioner alleges that the value of the decedent's property is unknown. However,  
19 despite the fact that the value of these assets are unknown, Petitioner is informed and believes  
20 and in reliance thereon alleges that the total value of this estate will exceed the sum of  
21 \$200,000.00.

22 9. Petitioner confirms that he has never been convicted of a felony.

23 10. Petitioner would request that the requirement of posting a bond in this matter be  
24 waived pursuant to Last Will of Leroy G. Black.

25 WHEREFORE, Petitioner prays as follows:

26 1. A time be fixed for a hearing of this Petition and that all interested parties be  
27 notified as to the date, time and place thereof.

28 2. That the document heretofore presented to this Court be admitted to probate as the

1 Last Will of Leroy G. Black of the said decedent.

2 3. Petitioner be appointed to act as Personal Representative of this estate, and that  
3 Letters Testamentary issue to him upon his taking the oath of office as required by law, without  
4 bond.

5 4. For such other and further relief as the Court may deem just and proper in the  
6 premises.

7 Respectfully submitted this 18<sup>th</sup> day of July, 2012.

8 **BLACK & LOBELLO**

9 /s/ Christopher J. Phillips

10 \_\_\_\_\_  
11 CHRISTOPHER J. PHILLIPS, ESQ.  
12 10777 West Twain Avenue, Suite 300  
Las Vegas, NV 89135  
Attorney for the Petitioner

## EXHIBIT 1

## EXHIBIT 1

W-12-003875

# LAST WILL OF LEROY G. BLACK

JUN 5 3 53 PM '12

I, LEROY G. BLACK, a resident of Clark County, Nevada, declare that this is my will. I hereby revoke any and all of my previous wills and codicils.

*James L. Schuman*  
CLERK OF COURT

## ARTICLE ONE INTRODUCTORY PROVISIONS

- 1.1. Marital Status. I am not currently married.
- 1.2. Identification of Living Children. I have no living children.
- 1.3. Deceased Children. I have no deceased children.

## ARTICLE TWO GIFT OF ENTIRE ESTATE

2.1. Gift of Entire Estate. I give all of my property, both real and personal, as follows: Twenty-five percent (25%) of the total value of my estate at the time of my death to my aunt, ROSE E. MARKOWITZ. The remainder of my estate, Seventy-five percent (75%), shall be given to my cousin, PHILLIP I. MARKOWITZ.

2.2. Beneficiaries Excluded. I, LEROY G. BLACK, specifically direct that no portion of the trust estate ever be used for the benefit of or pass to ZELDA KAMEYER, and/or any of her children, possible heirs or beneficiaries. Other possible heirs or beneficiaries not specifically provided for in this document shall be considered as excluded beneficiaries from my estate and shall not receive any benefit from my estate. The provisions contained in this agreement contain my final decisions in this regard.

## ARTICLE THREE RESIDUARY PROVISIONS

3.1. Disposition of Residue. I give the residue of my estate to the executor of this will, PHILLIP I. MARKOWITZ, as trustee, who shall hold, administer, and distribute the property

March 7, 2012

*Last Will of Leroy G. Black*

under a testamentary trust, the terms of which shall be identical to the terms of this will that are in effect on the date of execution of this will.

## ARTICLE FOUR

### EXECUTOR

**4.1. Nomination of Executor.** I nominate PHILLIP I. MARKOWITZ as executor of this will.

**4.2. Successor Executor.** If PHILLIP I. MARKOWITZ is unable (by reason of death, incapacity, or any other reason) or unwilling to serve as executor, or if at any time the office of executor becomes vacant, by reason of death, incapacity, or any other reason, and no successor executor or co-executors have been designated under any other provision of this will, I nominate the following, as executor:

FIRST:            ROSE E. MARKOWITZ

If all those named above are unwilling or unable to serve as successor executor, a new executor or co-executors shall be appointed by the court.

**4.3. Waiver of Bond.** No bond or undertaking shall be required of any executor nominated in this will.

**4.4. General Powers of Executor.** The executor shall have full authority to administer my estate under the Nevada Revised Statute Section 164. The executor shall have all powers now or hereafter conferred on executors by law, except as otherwise specifically provided in this will, including any powers enumerated in this will.

**4.5. Power to Invest.** The executor shall have the power to invest estate funds in any kind of real or personal property, as the executor deems advisable.

**4.6. Division or Distribution in Cash or in Kind.** In order to satisfy a pecuniary gift or to distribute or divide estate assets into shares or partial shares, the executor may distribute or divide those assets in kind, or divide undivided interests in those assets, or sell all or any part of those assets and distribute or divide the property in cash, in kind, or partly in cash and partly in kind. Property distributed to satisfy a pecuniary gift under this will shall be valued at its fair market value at the time of distribution.

**4.7. Power to Sell, Lease, and Grant Options to Purchase Property.** The executor shall have the power to sell, at either public or private sale and with or without notice, lease, and grant options to purchase any real or personal property belonging to my estate, on such terms and conditions as the executor determines to be in the best interest of my estate.

**4.8. Payments to Legally Incapacitated Persons.** If at any time any beneficiary under this will is a minor or it appears to the executor that any beneficiary is incapacitated, incompetent, or for any other reason not able to receive payments or make intelligent or responsible use of the payments, then the executor, in lieu of making direct payments to the beneficiary, may make payments to the beneficiary's conservator or guardian; to the beneficiary's custodian under the Uniform Gifts to Minors Act or Uniform Transfers to Minors Act of any state; to one or more suitable persons, as the executor deems proper, such as a relative or a person residing with the beneficiary, to be used for the benefit of the beneficiary; to any other person, firm, or agency for services rendered or to be rendered for the beneficiary's assistance or benefit; or to accounts in the beneficiary's name with financial institutions. The receipt of payments by any of the foregoing shall constitute a sufficient acquittance of the executor for all purposes.

## **ARTICLE FIVE CONCLUDING PROVISIONS**

**5.1. Definition of Death Taxes.** The term "death taxes," as used in this will, shall mean all inheritance, estate, succession, and other similar taxes that are payable by any person on account of that person's interest in my estate or by reason of my death, including penalties and interest, but excluding the following:

(a) Any additional tax that may be assessed under Internal Revenue Code Section 2032A.

(b) Any federal or state tax imposed on a "generation-skipping transfer," as that term is defined in the federal tax laws, unless the applicable tax statutes provide that the generation-skipping transfer tax on that transfer is payable directly out of the assets of my gross estate.

**5.2. Payment of Death Taxes.** The executor shall pay death taxes, whether or not attributable to property inventoried in my probate estate, by prorating and apportioning them among the persons interested in my estate as provided in the Nevada Revised Statutes.

**5.3. Simultaneous Death.** If any beneficiary under this will and I die simultaneously, or if it cannot be established by clear and convincing evidence whether that beneficiary or I died first, I shall be deemed to have survived that beneficiary, and this will shall be construed accordingly.

**5.4. Period of Survivorship.** For the purposes of this will, a beneficiary shall not be deemed to have survived me if that beneficiary dies within two months after my death.

**5.5. No-Contest Clause.** If any person, directly or indirectly, contests the validity of this will in whole or in part, or opposes, objects to, or seeks to invalidate any of its provisions, or seeks to succeed to any part of my estate otherwise than in the manner specified in this will, any gift or other interest given to that person under this will shall be revoked and shall be disposed of as if he or she had predeceased me without issue.

**5.6. Definition of Incapacity.** As used in this will, "incapacity" or "incapacitated" means a person operating under a legal disability such as a duly established conservatorship, or a person who is unable to do either of the following:

- (a) Provide properly for that person's own needs for physical health, food, clothing, or shelter; or
- (b) Manage substantially that person's own financial resources, or resist fraud or undue influence.

**5.7. Captions.** The captions appearing in this will are for convenience of reference only, and shall be disregarded in determining the meaning and effect of the provisions of this will.

**5.8. Severability Clause.** If any provision of this will is invalid, that provision shall be disregarded, and the remainder of this will shall be construed as if the invalid provision had not been included.

**5.9. Nevada Law to Apply.** All questions concerning the validity and interpretation of this will, including any trusts created by this will, shall be governed by the laws of the State of Nevada in effect at the time this will is executed.

Executed on March 7, 2012, at Las Vegas, Nevada.

  
LEROY G. BLACK

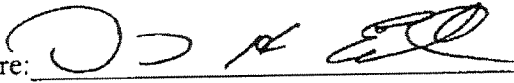
March 7, 2012

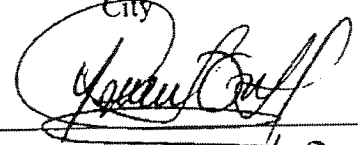
*Last Will of Leroy G. Black*

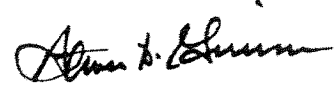
On the date written above, we, the undersigned, each being present at the same time, witnessed the signing of this instrument by LEROY G. BLACK. At that time, LEROY G. BLACK appeared to us to be of sound mind and memory and, to the best of our knowledge, was not acting under fraud, duress, menace, or undue influence. Understanding this instrument, which consists of five (5) pages, including the pages on which the signature of LEROY G. BLACK and our signatures appear, to be the will of LEROY G. BLACK, we subscribe our names as witnesses thereto.

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

Executed on March 7, 2012, at Las Vegas, Nevada.

Signature:   
Printed Name: DAVID Everston  
Address: 11684 Ventura bl Suite 507  
Studio, CA 91604  
City State

Signature:   
Printed Name: MARIA J. ONOFRE  
Address: 20560 Ventura Blvd  
Woodland Hills, CA  
City State



CLERK OF THE COURT

CERT  
CHRISTOPHER J. PHILLIPS, ESQ.  
Nevada Bar No: 8224  
**BLACK & LOBELLO**  
10777 West Twain Avenue, Suite 300  
Las Vegas, Nevada 89135  
(702) 869-8801  
Attorney for the Petitioner,  
PHILLIP MARKOWITZ

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate of	)	CASE NO. P-12-074745-E
LEROY G. BLACK, Deceased.	)	DEPT. NO. 26 (Probate)

CERTIFICATE OF MAILING

Date of Hearing: 08/31/12  
Time of Hearing: 9:30 a.m.

The undersigned herby certifies that on the 27<sup>th</sup> day of July, 2012, a true and correct copy of the foregoing Petition for Probate of Will, Petition for Appointment of Personal Representative and for Issuance of Letters Testamentary, along with a copy of the Notice of Hearing, was duly served by sealing in an envelope and depositing in the U.S. Mail at Las Vegas, Nevada, first-class postage fully prepaid thereon, addressed to the following individual(s):

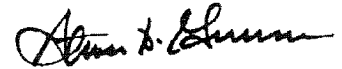
William Fink  
1835 E Michelle St  
West Covina. CA 91791

  
Employee of BLACK & LOBELLO

**BLACK & LOBELLO**  
10777 West Twain Avenue, Suite 300  
Las Vegas, Nevada 89135  
(702) 869-8801 FAX: (702) 869-2669

AFFP  
P 74745 NOH

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08/08/2012 10:15:38 AM



CLERK OF THE COURT

## Affidavit of Publication

STATE OF NEVADA }  
COUNTY OF CLARK } SS

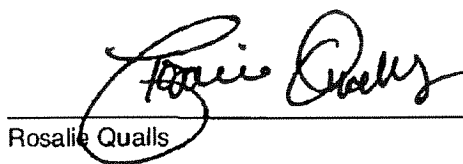
I, Rosalie Qualls state:

That I am Assistant Operations Manager of the Nevada Legal News, a daily newspaper of general circulation, printed and published in Las Vegas, Clark County, Nevada; that the publication, a copy of which is attached hereto, was published in the said newspaper on the following dates:

Jul 25, 2012  
Aug 01, 2012  
Aug 08, 2012

That said newspaper was regularly issued and circulated on those dates. I declare under penalty of perjury that the foregoing is true and correct.

DATED: Aug 08, 2012

  
\_\_\_\_\_  
Rosalie Qualls

DISTRICT COURT

CLARK COUNTY, NEVADA

CASE NO. P 74745 DEPT. NO. 26 (Probate)

In the Matter of the Estate of LEROY G. BLACK, Deceased.

NOTICE OF HEARING OF PETITION FOR PROBATE OF WILL, PETITION FOR APPOINTMENT OF PERSONAL REPRESENTATIVE AND FOR ISSUANCE LETTERS OF TESTAMENTARY

Date of Hearing: 08/31/12

Time of Hearing: 9:30 a.m.

NOTICE IS HEREBY GIVEN to all persons interested in the foregoing estate that Friday, the 31st day of August, 2012, at the hour of 9:30 o'clock a.m. of said day, in the Courtroom of the above-entitled Court, in Department H, Family Courts and Services Center, Courtroom 9, 601 N. Pecos, Las Vegas, Nevada 89101, is hereby set as the time and place by the Court for the hearing on the Petition for Probate of Will, Petition for Appointment of Personal Representative and for Issuance of Letters Testamentary, filed by PHILLIP MARKOWITZ, at which time all persons interested therein are notified then and there to appear and show cause, if any they have, why said petition should not be granted. DATED this 18th day of July, 2012. BLACK & LOBELLO, s/ CHRISTOPHER J. PHILLIPS, ESQ., Nevada Bar No: 8224, 10777 West Twain Avenue, Suite 300, Las Vegas, Nevada 89135, (702) 869-8801, Attorney for the Petitioner, PHILLIP MARKOWITZ  
Published in Nevada Legal News  
July 25, August 1, 8, 2012

01104764 00330318 (702)869-2669

BLACK & LOBELLO  
10777 W. TWAIN AVE., STE. 300  
LAS VEGAS, NV 89135

FINK000035

*Alvin L. Quinn*

CLERK OF THE COURT

1 **AFFT**  
2 CHRISTOPHER J. PHILLIPS, ESQ.  
3 Nevada Bar No: 8224  
4 **BLACK & LOBELLO**  
5 10777 West Twain Avenue, Suite 300  
6 Las Vegas, Nevada 89135  
7 (702) 869-8801  
8 Attorney for the Petitioner,  
9 PHILLIP MARKOWITZ

6 **DISTRICT COURT**  
7 **CLARK COUNTY, NEVADA**

8 In the Matter of the Estate of  
9 LEROY G. BLACK, Deceased.

CASE NO. P-12-074745-E  
DEPT. NO. 26 (Probate)

10 **AFFIDAVIT OF ATTESTING WITNESS**

11 STATE OF CALIFORNIA )  
12 ) ss:  
13 COUNTY OF Los Angeles )

14 DAVID EVERSTON, being first duly sworn according to law, deposes and says:

15 1. Affiant witnessed the execution of the Last Will of Leroy G. Black on March 7,  
16 2012.

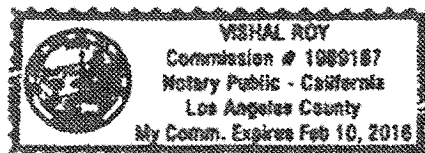
17 2. Affiant witnessed said Last Will and Testament in the presence of the Testator, in  
18 the presence of one other witness, and at the request of the Testator.

19 3. At the time of the execution of said will, the said Testator appeared to your Affiant  
20 to be of full age and of sound and disposing mind, memory and understanding.

21 *David Everston*  
22 DAVID EVERSTON

23 SUBSCRIBED and SWORN to before me  
24 this 9<sup>th</sup> day of August, 2012.

25 *[Signature]*  
26 NOTARY PUBLIC in and for said  
27 County and State  
28



BLACK & LOBELLO  
10777 West Twain Avenue, Suite 300  
Las Vegas, Nevada 89135  
(702) 869-8801 FAX: (702) 869-2669

*Alma L. Lujan*  
CLERK OF THE COURT

AFFT  
CHRISTOPHER J. PHILLIPS, ESQ.  
Nevada Bar No: 8224  
**BLACK & LOBELLO**  
10777 West Twain Avenue, Suite 300  
Las Vegas, Nevada 89135  
(702) 869-8801  
Attorney for the Petitioner,  
PHILLIP MARKOWITZ

DISTRICT COURT  
CLARK COUNTY, NEVADA

In the Matter of the Estate of } CASE NO. P-12-074745-E  
LEROY G. BLACK, Deceased. } DEPT. NO. 26 (Probate)

AFFIDAVIT OF ATTESTING WITNESS

STATE OF CALIFORNIA )  
: ss:  
COUNTY OF LOS ANGELES

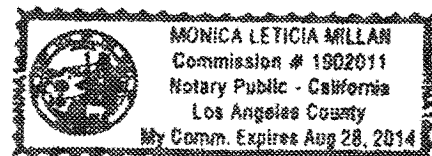
MARIA ONOFRE, being first duly sworn according to law, deposes and says:

1. Affiant witnessed the execution of the Last Will of Leroy G. Black on March 7, 2012.
2. Affiant witnessed said Last Will and Testament in the presence of the Testator, in the presence of one other witness, and at the request of the Testator.
3. At the time of the execution of said will, the said Testator appeared to your Affiant to be of full age and of sound and disposing mind, memory and understanding.

*Maria Onofre*  
\_\_\_\_\_  
MARIA ONOFRE

SUBSCRIBED and SWORN to before me  
this 26<sup>TH</sup> day of JULY, 2012.

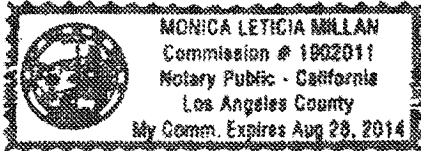
*[Signature]*  
\_\_\_\_\_  
NOTARY PUBLIC in and for said  
County and State



State of California  
County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 26th  
day of July, 2012, by MARIA ONOFRE

proved to me on the basis of satisfactory evidence to be the  
person(s) who appeared before me.



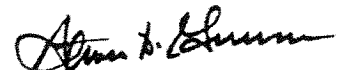
(Seal)

Signature

A handwritten signature in dark ink, appearing to read "Maria Onofre", written over a horizontal line.

39  
ORIGINAL

1 **ORDR**  
2 CHRISTOPHER J. PHILLIPS, ESQ.  
3 Nevada Bar No: 8224  
4 **BLACK & LOBELLO**  
5 10777 West Twain Avenue, Suite 300  
6 Las Vegas, Nevada 89135  
7 (702) 869-8801  
8 Attorney for the Petitioner,  
9 PHILLIP MARKOWITZ

  
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

10 In the Matter of the Estate of ) CASE NO. P-12-074745-E  
11 LEROY G. BLACK, Deceased. ) DEPT. NO. 26 (Probate)

12 **ORDER ADMITTING LAST WILL AND TESTAMENT TO PROBATE, ORDER**  
13 **APPOINTING PERSONAL REPRESENTATIVE AND ORDER ALLOWING LETTERS**  
14 **TESTAMENTARY TO ISSUE**

15 Date of Hearing: 08/31/12  
16 Time of Hearing: 9:30 a.m.

17 This matter having come on for hearing before the above entitled Court on the 31<sup>st</sup> day of  
18 August, 2012, upon the Petition for Probate of Will, Petition for Appointment of Personal  
19 Representative and for Issuance of Letters Testamentary, filed by PHILLIP MARKOWITZ; the  
20 Court having reviewed the pleadings on file herein and having found that LEROY G. BLACK  
21 died a resident of Nevada and leaving a valid Last Will and Testament; the decedent died leaving  
22 assets located within Clark County, Nevada which are subject to the jurisdiction of this Court;  
23 and the Court having further found that proper notice of hearing has been given in this matter,  
24 and good cause appearing therefor,

25 NOW, THEREFORE, IT IS HEREBY ORDERED AND DETERMINED that LEROY  
26 G. BLACK died leaving an instrument which the Court hereby finds to be his Last Will and  
27 Testament. Therefore, this instrument, dated March 7, 2012, is hereby admitted to probate as  
28 the Last Will and Testament of LEROY G. BLACK; and it is

FURTHER ORDERED that Letters Testamentary in the matter of the estate of LEROY

1 G. BLACK shall be issued to the Petitioner, PHILLIP MARKOWITZ, upon his taking the oath  
2 of office as required by law, without bond; and it is

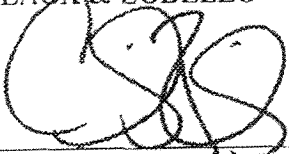
3 FURTHER ORDERED that the Personal Representative shall have all rights and  
4 obligations reposed in administrators pursuant to law including, but not limited to, closing and  
5 taking possession of any and all bank, brokerage or other accounts and/or safe deposit boxes  
6 bearing the decedent's name in any banking or brokerage institution located within this Court's  
7 jurisdiction without bond pursuant to the decedent's Last Will and Testament; and it is

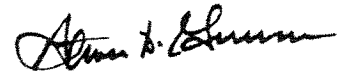
8 FURTHER ORDERED that the payment of the statutory fee for the Personal  
9 Representative pursuant to N.R.S. 150.020 shall be paid upon the close of the instant estate  
10 administration.  
11

12 DATED and DONE this 31<sup>st</sup> day of August, 2012.

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DISTRICT COURT JUDGE *SN*

BLACK & LOBELLO

  
CHRISTOPHER J. PHILLIPS, ESQ.  
10777 West Twain Avenue, Suite 300  
Las Vegas, NV 89135  
Attorney for Phillip Markowitz

  
CLERK OF THE COURT

1 **NEOJ**  
2 CHRISTOPHER J. PHILLIPS, ESQ.  
3 Nevada Bar No: 8224  
4 **BLACK & LOBELLO**  
5 10777 West Twain Avenue, Suite 300  
6 Las Vegas, Nevada 89135  
7 (702) 869-8801  
8 Attorney for the Petitioner,  
9 PHILLIP MARKOWITZ

7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

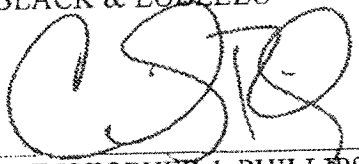
9 In the Matter of the Estate of ) CASE NO. P-12-074745-E  
10 LEROY G. BLACK, Deceased. ) DEPT. NO. 26 (Probate)  
11 \_\_\_\_\_ )

11 **NOTICE OF ENTRY OF ORDER**

12 TO: ALL PERSONS INTERESTED IN THE ABOVE-REFERENCED ESTATE  
13 YOU AND EACH OF YOU WILL PLEASE TAKE NOTICE than an Order Admitting  
14 Last Will and Testament to Probate, Order Appointing Personal Representative and Order  
15 Allowing Letters Testamentary to Issue, a copy of which is attached hereto and incorporated  
16 herein by reference, was entered by the Court on the 31st day of August, 2012.

17 DATED this 31st day of August, 2012.

18 **BLACK & LOBELLO**

19   
20 **CHRISTOPHER J. PHILLIPS, ESQ.**  
21 10777 West Twain Avenue, Suite 300  
22 Las Vegas, Nevada 89135

23 I, the undersigned, an employee of the law firm of Black & Lobello, do hereby declare  
24 that on the 31st day of August, 2012, I placed in an envelope, postage pre-paid,  
25 first class mail thereon, a copy of the foregoing Notice of Entry of Order, to which a copy of the  
26 Order Admitting Last Will and Testament to Probate, Order Appointing Personal Representative  
27 and Order Allowing Letters Testamentary to Issue was attached, addressed to the persons  
28

1 referenced herein and deposited the same in the Post Office at Las Vegas, Nevada.

2 There is a regular communication by mail between the Post Office at Las Vegas, Nevada  
3 and the addresses to which the above-referenced documentation was mailed.


4 Rose E. Markowitz  
5 2201 Hercules Drive  
6 Los Angeles, Ca 90046

Medicaid Estate Recovery  
1000 E. William Street, Suite 102  
Carson City, NV 89701

6 Phillip Markowitz  
7 2201 Hercules Drive  
8 Los Angeles, Ca 90046

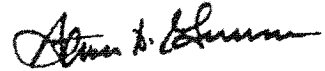
Zelda Kameyer  
456 Elm  
Woodland, CA 95695

8 William Fink  
9 1835 E Michelle St  
10 West Covina. CA 91791

11   
12 \_\_\_\_\_  
13 Employee of Black & Lobello  
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**ORIGINAL**

**ORDER**  
CHRISTOPHER J. PHILLIPS, ESQ.  
Nevada Bar No: 8224  
**BLACK & LOBELLO**  
10777 West Twain Avenue, Suite 300  
Las Vegas, Nevada 89135  
(702) 869-8801  
Attorney for the Petitioner,  
PHILLIP MARKOWITZ



CLERK OF THE COURT

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

In the Matter of the Estate of )  
LEROY G. BLACK, Deceased. )

CASE NO. P-12-074745-E  
DEPT. NO. 26 (Probate)

**ORDER ADMITTING LAST WILL AND TESTAMENT TO PROBATE, ORDER**  
**APPOINTING PERSONAL REPRESENTATIVE AND ORDER ALLOWING LETTERS**  
**TESTAMENTARY TO ISSUE**

Date of Hearing: 08/31/12  
Time of Hearing: 9:30 a.m.

This matter having come on for hearing before the above entitled Court on the 31<sup>st</sup> day of August, 2012, upon the Petition for Probate of Will, Petition for Appointment of Personal Representative and for Issuance of Letters Testamentary, filed by PHILLIP MARKOWITZ; the Court having reviewed the pleadings on file herein and having found that LEROY G. BLACK died a resident of Nevada and leaving a valid Last Will and Testament; the decedent died leaving assets located within Clark County, Nevada which are subject to the jurisdiction of this Court; and the Court having further found that proper notice of hearing has been given in this matter, and good cause appearing therefor,

NOW, THEREFORE, IT IS HEREBY ORDERED AND DETERMINED that LEROY G. BLACK died leaving an instrument which the Court hereby finds to be his Last Will and Testament. Therefore, this instrument, dated March 7, 2012, is hereby admitted to probate as the Last Will and Testament of LEROY G. BLACK; and it is

FURTHER ORDERED that Letters Testamentary in the matter of the estate of LEROY

**BLACK & LOBELLO**  
10777 West Twain Avenue, Suite 300  
Las Vegas, Nevada 89135  
(702) 869-8801 FAX: (702) 869-2669

BLACK & LOBELLO  
10777 West Twain Avenue, Suite 300  
Las Vegas, Nevada 89135  
(702) 869-8801 FAX: (702) 869-2669

1 G. BLACK shall be issued to the Petitioner, PHILLIP MARKOWITZ, upon his taking the oath  
2 of office as required by law, without bond; and it is

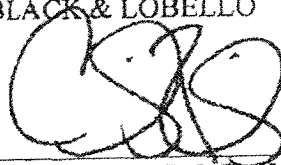
3 FURTHER ORDERED that the Personal Representative shall have all rights and  
4 obligations reposed in administrators pursuant to law including, but not limited to, closing and  
5 taking possession of any and all bank, brokerage or other accounts and/or safe deposit boxes  
6 bearing the decedent's name in any banking or brokerage institution located within this Court's  
7 jurisdiction without bond pursuant to the decedent's Last Will and Testament; and it is  
8

9 FURTHER ORDERED that the payment of the statutory fee for the Personal  
10 Representative pursuant to N.R.S. 150.020 shall be paid upon the close of the instant estate  
11 administration.

12 DATED and DONE this 31<sup>st</sup> day of August, 2012.

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DISTRICT COURT JUDGE *SA*

BLACK & LOBELLO

  
CHRISTOPHER J. PHILLIPS, ESQ.  
10777 West Twain Avenue, Suite 300  
Las Vegas, NV 89135  
Attorney for Phillip Markowitz

ORIGINAL

Electronically Filed  
09/13/2012 01:49:17 PM

LETP

DISTRICT COURT  
CLARK COUNTY, NEVADA

*Steven D. Grierson*

CLERK OF THE COURT

In the Matter of the Estate of: )

LERDY G. BLACK, )

Deceased. )

CASE NO: P-12-074745-E

LETTERS TESTAMENTARY

On the 31<sup>st</sup> day of August, 2011, the court entered an Order admitting the Decedent's Will to probate and appointing Phillip Markowitz as Executor of the Decedent's Estate. The Order includes:

- X A directive for no bond: All liquid assets of the estate shall be deposited into the trust account of Black & LoBello
- ☐ A directive for the establishment of blocked accounts;
- ☐ A directive for the posting of bond in the sum of \$ \_\_\_\_\_; or
- ☐ A directive for both the establishment of blocked account for sums in excess of \$ \_\_\_\_\_ and the posting of bond in the sum of \$ \_\_\_\_\_.

The Executor, having duly qualified, may act and has the authority and duties of Executor.

In testimony of which, I have this date signed these Letter and affixed the seal of the Court.

STEVEN D. GRIERSON  
CLERK OF THE COURT



SEP 12 2012

By: *[Signature]*

Deputy Clerk

DANIEL MITCHELL

OATH

I, PHILLIP MARKOWITZ, whose mailing address is 2201 Hercules Drive, Los Angeles, California 90046, solemnly affirm that I will faithfully perform according to law the duties of Executor and that all matters stated in any petition or paper filed with the court by me are true of my own knowledge or, if any matters are stated in information and belief, I believe them to be true.

*[Signature]*  
ADMINISTRATOR

SUBSCRIBED AND AFFIRMED before me this  
6<sup>th</sup> day of SEPTEMBER, 2012.

By: \_\_\_\_\_

DEPUTY CLERK

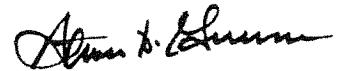
(OR) *Alex Janashvili*

NOTARY PUBLIC

LOS ANGELES

County of \_\_\_\_\_ State of California





CLERK OF THE COURT

DOUGLAS J. GARDNER, ESQUIRE  
Nevada Bar No. 4609  
RANDS, SOUTH & GARDNER  
1055 Whitney Ranch Drive #220  
Henderson, NV 89014  
702 940 2222  
[tassyw@gmail.com](mailto:tassyw@gmail.com)

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate of )

LEROY G. BLACK )

Deceased. )

Case No. P-12-074745-E

**OBJECTION TO THE ADMISSION OF THE LAST WILL AND TESTAMENT OF LEROY G. BLACK, FOR THE REVOCATION OF LETTERS TESTAMENTARY AND FOR APPOINTMENT OF SPECIAL ADMINISTRATOR PENDING THE CONCLUSION OF WILL CONTEST**

Hearing Date: December 21, 2012  
Hearing Time: 9:30 a.m.

WILLIAM FINK, aka BILL FINK [hereinafter Contestant], by and through his attorney, DOUGLAS J. GARDNER, ESQUIRE of the law firm of RANDS, SOUTH & GARDNER, hereby objects to the admission of the will dated March 7, 2012. In support thereof, Contestant shows the court as follows:

1. Contestant brings this action pursuant to the provisions of NRS 137.080. The will purported to be the Last Will and Testament of Leroy G. Black was admitted to probate on August 31, 2012. Pursuant to NRS 137.080, Contestant has until November 30, 2012 in which to contest the validity of the will.

2. Contestant alleges that the subject will was obtained through fraud and undue influence as will be proved at the time of the trial of this matter. Furthermore, Contestant

1 believes that the decedent lacked the requisite testamentary capacity at the time it is alleged  
2 that said will was executed.

3 3. Contestant requests that Phillip I. Markowitz, the personal representative of  
4 decedent's estate, be removed as Personal Representative and his letters vacated. He has  
5 acted in bad faith and without integrity in his administration of the estate. Contestant has been  
6 advised and upon such information and belief alleges that the said Phillip I. Markowitz has filed  
7 a false and fraudulent insurance claim for personal property removed from decedent's  
8 residence at 1600 Becke Circle, Las Vegas, NV. Said property is owned by the LeRoy G.  
9 Black 1992 Living Trust of which Contestant is the beneficiary and trustee. Said property is not  
10 subject to this probate. Mr. Markowitz has no authority whatsoever to file any claim on behalf  
11 of the trust.  
12

13 4. In addition, the trust owns several pieces of vacant land which CenturyLink rents for  
14 signage. Contestant has been informed by CenturyLink that they were contacted by Mr.  
15 Markowitz and instructed to transfer the lease payments to him. They have not done so;  
16 however, Contestant is concerned that Mr. Markowitz, as long as he has authority over the  
17 probate estate, will utilize that authority to interfere with the trust and/or administer the estate  
18 assets to his own use and benefit.  
19

20 5. Contestant believes it is in the best interests of the estate that Barbara Stewart be  
21 named Special Administrator pending the conclusion of the will contest.  
22

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24

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27 . . .  
28

6. Contestant is in the process of issuing a Citation to all heirs of the decedent pursuant to the provisions of NRS 137.090.

DATED this 27<sup>th</sup> day of November, 2012.

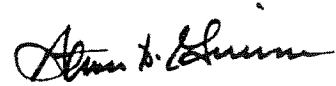
RANDS, SOUTH &amp; GARDNER

/s/Douglas J. Gardner  
DOUGLAS J. GARDNER, ESQUIRE  
Nevada Bar No. 4609  
1055 Whitney Ranch Drive #220  
Henderson, NV 89014  
702 940 2222

## VERIFICATION

Under penalties of perjury, the undersigned state as follows: That I am the Contestant in the foregoing action; that I have read the above and foregoing; and that the same is true of my own knowledge, except for matters stated therein on information and belief, and as for those matters, I believe it to be true.

/s/Bill Fink  
BILL FINK



CLERK OF THE COURT

DOUGLAS J. GARDNER, ESQUIRE  
Nevada Bar No. 4609  
RANDS, SOUTH & GARDNER  
1055 Whitney Ranch Drive #220  
Henderson, NV 89014  
702 940 2222  
[tassyw@gmail.com](mailto:tassyw@gmail.com)

DISTRICT COURT

CLARK COUNTY, NEVADA

In the Matter of the Estate of )  
 )  
 **LEROY G. BLACK** )  
 ) Case No. P-12-074745-E  
 Deceased. )  
 )

**NOTICE OF HEARING ON OBJECTION TO THE ADMISSION OF THE LAST WILL AND  
TESTAMENT OF LEROY G. BLACK, FOR THE REVOCATION OF LETTERS  
TESTAMENTARY AND FOR APPOINTMENT OF SPECIAL ADMINISTRATOR PENDING  
THE CONCLUSION OF WILL CONTEST**

Hearing Date: December 21, 2012  
Hearing Time: 9:30 a.m.

PLEASE TAKE NOTICE that WILLIAM FINK has filed with the Court an Objection to the Admission of the Last Will and Testament of LeRoy G. Black, for the Revocation of Letters Testamentary and for Appointment of Special Administrator Pending Conclusion of Will Contest; that a hearing on said petition has been set for ***Friday, the 21<sup>st</sup> day of November, 2012 at the hour of 9:30 a.m. in Courtroom #9 of the Family Courts Building, 601 North Pecos Road, Las Vegas, NV 89101.***

NOTICE IS FURTHER GIVEN that all persons interested in the estate are notified to then and there appear and show cause, if any they have, why said petition should not be granted.

For further particulars, reference is made to the petition on file herein.

...

1                   **YOU NEED NOT APPEAR UNLESS YOU WISH TO FILE AN OBJECTION.**  
2

3                   DATED this 4<sup>th</sup> day of November, 2012.

4                                   RANDS, SOUTH & GARDNER

5                                   /s/Douglas J. Gardner  
6                                   DOUGLAS J. GARDNER, ESQUIRE  
7                                   1055 Whitney Ranch Drive #220  
8                                   Henderson, NV 89014  
9                                   702 940 2222  
10                                  tassyw@gmail.com  
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