

**R. DUANE FRIZELL, ESQ.**

Nevada Bar No. 9807

**CALLISTER & FRIZELL**

8275 S. Eastern Ave., Ste. 200

Las Vegas, Nevada 89123

Telephone (702) 657-6000

Facsimile (702) 657-0065

[dfrizell@callisterfrizell.com](mailto:dfrizell@callisterfrizell.com)

*Attorneys for William Fink*

Electronically Filed  
Jul 24 2014 02:43 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

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

IN THE MATTER OF: ESTATE OF	)	SUPREME COURT NO. 63960
<u>LEROY G. BLACK, DECEASED,</u>	)	
	)	
WILLIAM FINK A/K/A BILL FINK,	)	District Court Case No. P074745
Appellant,	)	
	)	
vs.	)	
	)	
PHILLIP MARKOWITZ AS EXECUTOR	)	
OF THE ESTATE OF LEROY G. BLACK,	)	
<u>Respondent.</u>	)	

\*\*\*

IN THE MATTER OF: ESTATE OF	)	SUPREME COURT NO. 65983
<u>LEROY G. BLACK, DECEASED,</u>	)	
	)	
PHILLIP MARKOWITZ AS EXECUTOR	)	District Court Case No. P074745
OF THE ESTATE OF LEROY G. BLACK,	)	
Appellant,	)	
	)	
vs.	)	
	)	
WILLIAM FINK,	)	
<u>Real Party in Interest.</u>	)	

**JOINT MOTION TO CONSOLIDATE APPEALS AND  
EXTEND BRIEFING SCHEDULE**

Pursuant to NRAP 3(b)(2) and NRAP 26(b)(1)(A), William Fink a/k/a Bill Fink (“Fink”) and Phillip Markowitz (“Markowitz”), as Executor of the Estate of Leroy G. Black, Parties in the two cases identified in the caption above (collectively, the “Parties”), now file this Joint Motion to Consolidate Appeals and Extend Briefing Schedule. This Motion is based upon the Memorandum of Points and Authorities below, the pleadings and papers on file with the Court Clerk, and the arguments of counsel made at a hearing, if any. In this connection, Appellants would show the Court as follows:

### **MEMORANDUM OF POINTS AND AUTHORITIES**

#### **I. BACKGROUND**

This motion pertains to two appellate cases: *William Fink a/k/a Bill Fink v. Phillip Markowitz, as Executor of the Estate of Leroy G. Black*, Supreme Court No. 63960 (“Case I”) and *Phillip Markowitz, as Executor of the Estate of Leroy G. Black v. William Fink*, Supreme Court No. 65983 (“Case II”). Both cases involve challenges to the will and the trust, respectively, of Leroy G. Black (“Black”).

More specifically, Case I concerns Fink’s challenge to the validity of a purported will of Black, which was admitted to probate with Markowitz as the executor of the estate. Markowitz petitioned to have the challenge dismissed on the grounds of timeliness. The Probate Commissioner entered a report and recommendation to deny the petition. Markowitz objected to the report and recommendation, and the District Court sustained the objection. Ultimately, the will challenge was dismissed. The appeal in Case I then followed. (For more details concerning the underlying factual background

and procedural posture in Case I, see Docketing Statement Civil Appeals, Supreme Court No. 63960 (filed Sept. 26, 2013)).

Case II involves a challenge to Black's existing agreement for revocable living trust on the grounds that the will at issue in Case I revoked the agreement and the trust. In the same proceeding as Case I in the District Court (Case No. P074745), Markowitz petitioned the District Court to void the trust and trust agreement. The Probate Commissioner entered a report and recommendation to deny the petition. Markowitz objected to the report and recommendation, and the District Court denied the objection. Ultimately, the trust challenge was dismissed. The appeal in Case II then followed. (For more details concerning the underlying factual background and procedural posture in Case II, see Docketing Statement Civil Appeals, Supreme Court No. 65983 (dated July 10, 2014)).

Currently, the deadline for the appendix and opening brief in Case I is August 4, 2014. (Order Reinstating Briefing, Supreme Court No. 63960 (filed May 6, 2014)). The deadline in Case II is November 12, 2014. (Exemption from Settlement Program — Notice to File Documents, Supreme Court No. 65983 (dated July 15, 2014)).

The Parties now file this Joint Motion to Consolidate Appeals and Extend Briefing Schedule. This Motion is being filed, more or less contemporaneously, in Case I and in Case II. The reasons for this Motion are set forth below.

## **II. LAW AND ARGUMENT**

“When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the Supreme Court upon its own motion or upon motion of a

party.” NRAP 3(b)(2). “For good cause, the court may extend the time prescribed by these Rules or by its order to perform any act, or may permit an act to be done after that time expires.” NRAP 26(b)(1)(A).

Although not controlling, the Nevada Rules of Civil Procedure provide some guidance on a motion to consolidate appeals. Those rules provide, in pertinent part: “When actions involving a common question of law or fact are pending before the court, . . . it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.” NRCP 42(a).

Here, it is clear that there are common questions of law and fact, and that consolidating Case I and Case II would tend to avoid unnecessary costs and delay. The reasons why are set forth below:

1. Case I and Case II involve identical parties, Fink and Markowitz.
2. Case I and Case II are appeals from the identical case in the Eighth Judicial District Court, Case No. P074745.
3. Case I and Case II involve common factual and legal issues, all of which are inexorably intertwined with the will and trust agreement at issue.
4. Common factual issues include the following: the circumstances surrounding the execution of the will and trust agreement; whether Black actually executed the will and trust agreement; whether Black was competent if he so signed; and so forth.
5. Common legal issues include the following: the validity of the will; the validity of the trust agreement; the effect of the will on the trust, and vice-

versa; the effect of the legal challenges on the will and the trust; whether the will challenge was timely; whether the trust challenge has a good basis in law; and so on.

6. In effect, the District Court will have to wait for the Supreme Court remittiturs in both Case I and Case II before proceeding with either, both, or neither of the challenges.
7. Transcripts have been requested in both Case I and Case II.
8. The appendix and opening brief are not yet due in either Case I or Case II.
9. Procedurally, both Case I and Case II are roughly at the same point in the appellate process.
10. Consolidating Case I and Case II would allow the same appellate panel to review all the issues in their entirety.
11. Consolidating Case I and Case II would minimize the risks of inconsistent rulings from different panels at different times.
12. Consolidating Case I and Case II would allow the Parties to cross-reference the various briefs and prepare a single, joint appendix, thus minimizing the content of and the time required for preparing and reviewing each individual brief and appendix.
13. Neither of the Parties would be prejudiced by consolidating Case I and Case II.

For all of these reasons, the Parties are requesting the Court to consolidate Case I and Case II. Furthermore, the Parties are requesting the Court to extend the briefing

schedule in Case I (for the filing of an appendix, opening brief, and so forth) so that it is identical with the schedule in Case II. Under that schedule, the opening brief and appendix are due November 12, 2014.

### III. REQUEST FOR RELIEF

WHEREFORE, William Fink a/k/a Bill Fink and Phillip Markowitz, as Executor of the Estate of Leroy G. Black, request the Court as follows:

- A. to grant their Joint Motion to Consolidate Appeals and Extend Briefing Schedule;
- B. to consolidate Case I and Case II, as identified above; and
- C. to extend the briefing schedule in Case I (for the filing of an appendix, opening brief, and so forth) so that it is identical with the schedule in Case II, under which the opening brief and appendix are due on November 12, 2014.

IT IS SO MOVED.

Dated: 7-24-14

Dated: 7/24/14

**CALLISTER & FRIZELL**  
8275 South Eastern Ave., Suite 200  
Las Vegas, Nevada 89123

**CLEAR COUNSEL LAW GROUP**  
50 S. Stephanie St., Ste. 101  
Henderson, Nevada 89012

By: 

**R. DUANE FRIZELL, ESQ.**  
Nevada Bar No. 9807  
*Attorneys for William Fink*

By: 

**JONATHAN W. BARLOW, ESQ.**  
Nevada Bar No. 9964  
**AMY K. CRIGHTON, ESQ.**  
Nevada Bar No. 12421  
*Attorneys for the Estate*

## CERTIFICATE OF SERVICE

I certify that on the 24<sup>th</sup> day of July 2014, I served a copy of the foregoing *Joint Motion to Consolidate Appeals and Extend Briefing Schedule*, together with any and all exhibits and attachments, as follows:

By the Court's electronic filing system upon those individuals marked with an asterisk (\*) below:

and

By depositing such copy, together with any and all exhibits, with the United States Postal Service with sufficient first-class postage prepaid and addressed to the following:

Jonathan W. Barlow, Esq.  
Amy K. Crighton, Esq.  
CLEAR COUNSEL LAW GROUP  
50 S. Stephanie St., Ste. 101  
Henderson, Nevada 89012  
*Attorneys for the Estate*

Rose Markowitz  
2201 Hercules Dr.  
Los Angeles, CA 90046

Michael A. Olsen, Esq.  
Thomas R. Grover, Esq.  
GOODSELL & OLSEN, LLP  
10155 W. Twain Ave., Suite 100  
Las Vegas, NV 89147

M. Nelson Segel, Esq.  
M. NELSON SEGEL, CHTD.  
624 S. Ninth Street  
Las Vegas, NV 89101  
*Appellate Settlement Judge*

  
An employee of CALLISTER & FRIZELL