

1 parties going to appeal it? Probably. I think people are  
2 looking for things to go because I think this case will never  
3 end. I think I will retire, and the case will be going on.  
4 Hopefully, I'll be wrong on that, but that's my gut feeling.  
5 So I ain't stupid in that context, on that.

6           Where there is a lot of discretion to the Court, the  
7 issue is fundamental fairness, getting all the evidence that  
8 we need out there. I do believe the Court has a lot of  
9 discretion whether to admit an expert testimony. I think, in  
10 this case, the real question is: Will these expert  
11 testimonies really help the trier of fact?

12           I'm not sure if Mr. Rushforth would. If you're  
13 going to give me a lecture on the law, I'm not sure I need the  
14 lecture on the law, or the explanation of the law. I think  
15 the law speaks for itself. Spendthrift trusts are pretty  
16 straightforward, and I've read the statutes on that in  
17 preparation. I'm not so sure what he could add to the trier  
18 of fact. I know he's helped write it, so I do understand  
19 that, but I'm not sure what he could add from a law side that  
20 Mr. Solomon or the other attorneys can't add. If I needed  
21 some more information on the actual law, the post-trial briefs  
22 could be -- could achieve that, as well, so I'm not so sure  
23 exactly.

24           I did not read -- so it's clear for the record, I

1 did not read any of the reports, I did not read any documents  
2 that were attached to the pretrial. I think that's  
3 inappropriate. They're not in evidence, there's no foundation  
4 for it, so I didn't read anything. I just read the briefs.

5           The problem with that is Mr. Dickerson attached his  
6 report, as an attachment to his. So they're trying to keep it  
7 out, yet, they attach it to theirs, to address it on that. So  
8 I didn't read his actual reports, I just read the briefs, so  
9 the I could deal with it without looking at the reports,  
10 because I don't want to be tainted one way or the other, since  
11 all the documents were -- should not have been attached to the  
12 pretrial memo, because now they're in the record, and now they  
13 got to be stricken from the record because they're not  
14 evidentiary. The reliability and the integrity of any of  
15 those documents have not been established, so they're not of  
16 evidentiary value. So, be that as it may, that's where we're  
17 at.

18           If I go forward, if I keep the expert witnesses out,  
19 they're going to cry foul, they didn't have a chance to do  
20 their case-in-chief. If I let them in, you guys yell foul  
21 because you didn't get a chance to cross-examine and prepare.  
22 So I'm kind of in that situation. But the fact is that I'm  
23 not really sure what Mr. Rushforth would add, but I'll hear  
24 argument on that, what he would add to the Court, to help the

1 trier of fact determine a key issue on that.

2 I do understand trusts, and we have researched the  
3 law, as far as trusts. It has some impact. But we also have  
4 family/divorce law, and equity principles, as well, so be that  
5 as it may.

6 As far as the time frames, when I looked at the time  
7 frames, I didn't give you the discovery scheduling order, I  
8 let you guys work it out by yourself. I did look at the  
9 rules, as argued by Mr. Solomon, that those rules would not  
10 apply, the 16.2, because we're in the middle of a trial that  
11 we had started, seems like decades ago, but I guess it's only  
12 years ago; that we had started this trial a while back, so it  
13 wouldn't have been because 16.2 applies to new matters on  
14 that.

15 And with that in mind, I did read 16.2 in detail,  
16 and here's my relevant time frame that I can have the  
17 attorneys address. I saw the stip and order to allow ELN  
18 Trust to join as a necessary party was signed and filed by the  
19 parties on August 9th, 2011. We were here on October 11th,  
20 2011. I said I would start looking into scheduling a  
21 scheduling order.

22 We came back on December 13th, 2011. Mr. Dickerson  
23 acknowledged that the ELN Trust had orally designated to him  
24 experts Garrity and Rushforth. We did not give trial dates at

1 that time, because we wanted parties to look at their trial  
2 calendars to see when we'd get this done, and no trial date  
3 was given. So, according to Mr. Solomon, you guys clearly  
4 knew experts, and there had been about 210 days before the  
5 trial date of July 16th.

6           On January 31st, counsels agreed that, upon the  
7 Court's decision as to the trust's motion to dismiss the  
8 third-party complaint, then we'd set up our scheduling orders  
9 and get our trial dates all set. We came back on February  
10 23rd, 2012, when I gave my decision as to the motion to  
11 dismiss, and as to what I was going to entertain and what I  
12 wouldn't entertain, and I gave you a trial date of July 16th,  
13 2012. I wanted it in May, but some counsels had some  
14 conflicts, needed more time. Essentially, this gave everybody  
15 140 days notice of the discovery, of what would be needed for  
16 the July 16th date.

17           And if I went by the statutory language under 16.2,  
18 if I apply that -- which I don't think I would in this case,  
19 just out of the time -- but it would say that, if we went by  
20 the rules, well, they would have to -- the trust would have  
21 had to file and serve its financial disclosures by October  
22 9th, based on the stipulation and order joining them.

23           They would have had to have disclosed the identity  
24 of the rebuttal -- of their expert witnesses by January 7th.

1 I think you knew who their witnesses were before then, as of  
2 December. Then it would have been up to Mrs. Nelson to submit  
3 their rebuttal witnesses by March 7th, 60 days thereafter.  
4 And it would have been up to the trust to serve and disclose  
5 their expert reports by May 16th, which would have been 60  
6 days before trial. And then Ms. Nelson would have had 60 days  
7 thereafter to disclose their rebuttal expert, which, of  
8 course, would have been the day of trial.

9           So those time frames, if I looked at the time frames  
10 by 16.2, they don't exactly fall into our time frame because  
11 of the fact that they came in late with the necessary party,  
12 so I did not really give those the hard and fast rule, because  
13 we didn't give you a scheduling order. But if we went by the  
14 rule on that, that's about the time frames that would have  
15 come.

16           But I did not think that would be fair to the bottom  
17 line because, while the defense knew about the expert  
18 witnesses, until they get those reports, know exactly what  
19 they were going to base their testimony on, as far as the --  
20 their opinions, the reasons for their opinions, the data that  
21 they relied on in forming their opinions, and exhibits they'd  
22 be using -- the qualifications, I wasn't too worried about  
23 because they could have figured that out, they knew these  
24 people before, any publications that they have.

1           But the real key is the defense is not in a position  
2 -- or I should say Ms. Nelson is not in a position to  
3 adequately cross-examine expert witnesses at this late date.  
4 And Mr. Solomon says, well, as a fallback would be to give  
5 them some more time. Well, I ain't going to give them more  
6 time because I ain't going to be here until I die. I'm going  
7 to get this case done. And I think Mr. Eric and Ms. Lynita  
8 need to get this case done, so I'm not inclined to say, okay,  
9 let's continue it again just for those experts, in order to  
10 get this matter going forward, so I'm just not inclined with  
11 that.

12           Again, as to the attorney Mr. Rushforth, I'm not  
13 sure what he could add to me, to the trier of fact, to help me  
14 in this case. Mr. Garrity clearly could add information.  
15 Apparently, Mr. Garrity has been involved in this case, in the  
16 trust, and could help trace the money or help trace the  
17 property, so I do think he has some issues, maybe not as an  
18 expert, but simply as a witness on that. He did testify  
19 before. Matter of fact, when he did testify initially, it was  
20 this Court's hope to get this matter resolved, if I made some  
21 initial findings on the trust, that maybe we'll get this case  
22 done.

23           We had Mr. Jeffrey Burr testify, and the  
24 understanding was that Ms. Nelson would not object to Mr.

1 Garrity being an expert witness if Mr. Jimmerson, counsel at  
2 that time, would not object to Jeffrey Burr being an expert.  
3 I did not have Jeffrey Burr as an expert witness. I don't  
4 believe we -- I don't remember if we qualified him as an  
5 expert witness. I'd have to check that out, to be honest, and  
6 I'll take argument from you guys. I don't think we did.

7 I saw it as more of what the intent of the parties  
8 were when they set up the trust, to get an idea of what it was  
9 about. He did talk about the separate properties. So it  
10 really wasn't a trace into the property, it -- what it was to  
11 see what the parties were when they set up the trust.

12 And Mr. Garrity testified, if I remember, as to some  
13 tax issues. I think there was a huge tax exception or --  
14 wouldn't be the right word -- that you had, that you would  
15 lose, if I made the decision here, and they're worried about  
16 that it could not be transferred, so he talked about the tax  
17 considerations; and also, as far as why the value as to Mr.  
18 Nelson's business was difficult to ascertain because of the  
19 nature of the business. I did not see Mr. Garrity testifying  
20 at that time as an expert, either. I thought he was a  
21 witness, just as Attorney Burr was, so I did not consider  
22 either of them to be experts.

23 At this time, so the parties can know -- and I'll  
24 hear argument and set up a record -- I would not be inclined

1 to let Mr. Rushforth in, his testimony or his report. Mr.  
2 Garrity, I would allow him to testify, not as an expert, but  
3 as a witness, since he can trace money, he knows where it came  
4 into, he's been involved with how money went to the trust. I  
5 think that is very interesting, and made it necessary to the  
6 Court to determine the nature of the property, separate or  
7 marital property, if it was community property, it he put it  
8 in the trust. Of course, he cannot put marital property in  
9 the trust; he can put his half, but not her half. So I think  
10 the tracing would be important. I'm not sure what Mr. Garrity  
11 would add as an expert anyways, beyond this, because I haven't  
12 read any of their reports. But that's where I'm at right now.

13 I'm not sure if Ms. Nelson had any expert witnesses  
14 that we want to talk about. But that's where I'm at now. I  
15 want to give everybody a chance to kind of address those  
16 issues because I know exactly where we're at, and I want to  
17 give everybody a fair shake in this case. But I'm not  
18 inclined to continue it further because we'll never get done.

19 So that's kind of my initial ruling and findings,  
20 but I'm glad to hear argument on those issue on that, to get a  
21 nice record, so we can move this forward, and see if you can  
22 persuade me otherwise what I need to do, but we can get this  
23 case going forward.

24 So, Mr. Dickerson, since this was your motion, I'll



1 let you go first to address any concerns by the Court, and  
2 then we'll hear from --

3 MR. DICKERSON: Thank you, Your Honor. Mr.  
4 Karacsonyi will handle the oral argument.

5 THE COURT: Okay.

6 MR. KARACSONYI: Needless to say, we agree a lot  
7 with what Your Honor said; we don't have much to add.

8 The only thing we would add is with regards to the  
9 testimony of Mr. Garrity. The -- Rule 53 is the rule -- of  
10 the Nevada Rules of Civil Procedure, is the rule that applies  
11 to special masters. There has been acknowledgments on both  
12 sides that Mr. Birch is going to testify here as a special  
13 master, and has been appointed by the Court as a special  
14 master. Your Honor, in your most recent -- in one of your  
15 most recent rulings, even found him to be a special master,  
16 confirmed that you had appointed him as a special master.

17 The information they seek to elicit from Garrity, a  
18 lot of it is duplicative of what has been presented by Mr.  
19 Birch. And under Rule 53, there is a procedure for them to  
20 take, if they want, to object to the information provided to  
21 Your Honor by Mr. Birch. It says, Rule 53(e)(1):

22 "The master shall prepare a report upon the matter  
23 submitted to the master by the order of reference;  
24 and, if required to make findings of facts and

1 conclusions of law, the master shall set them forth  
2 in the report. The master shall file the report  
3 with the Clerk of the Court and in an action to be  
4 tried without a jury, unless otherwise directed by  
5 the order of reference, shall file with it a  
6 transcript of the proceedings and of the evidence  
7 and the original exhibits."

8 Now I note that there's been at least half a dozen,  
9 maybe a dozen -- I don't know the exact number, but somewhere  
10 in that neighborhood -- reports filed by Mr. Birch throughout  
11 the course of these proceedings, regarding the source  
12 application of funds for various entities and trusts.

13 Now, unless otherwise directed, the master shall  
14 serve a copy of the report on each party, which was done.  
15 Okay? In non-jury actions, in an action to be tried without a  
16 jury, the Court shall accept the master's findings of facts,  
17 unless clearly erroneous.

18 "Within 10 days after being served, with notice of  
19 the filing of the report, any party may serve  
20 written objections thereto upon the other parties.  
21 Application to the Court for action upon the report  
22 and upon objections thereto shall, by motion and  
23 upon notice, as proscribed in Rule 6(b). The Court,  
24 after a hearing, may adopt the report or may modify

1           it or may reject it, in whole or in part, or may  
2           receive further evidence."

3           If you didn't like what Mr. Birch said the first  
4 time when he filed it, your remedy was to file a motion with  
5 the Court saying that you believed the report to clearly  
6 erroneous, and ask the Court, by motion, as this rule  
7 provides, to receive further evidence; i.e., Mr. Garrity.

8           That's not what's happened here. We agree with  
9 everything else Your Honor said. To the extent you're going  
10 to let Mr. Garrity testify, or the Court is inclined to let  
11 Mr. Garrity testify, his testimony cannot be considered to  
12 contradict that of Mr. Birch. Mr. Birch's reports have  
13 already been filed herein. The time for objection has passed,  
14 and no objections have been filed.

15           THE COURT: Thank you.

16           MR. SOLOMON: Thank you, Your Honor.

17           I, obviously, don't disagree with a lot of what Your  
18 Honor put on the record. I would like to go over just a  
19 couple of points, so you understand our perspective of it.

20           You asked us because 16.2 clearly doesn't apply, to  
21 sit down and try and work out a schedule. I had a brief  
22 conversation with Mr. Dickerson. He proposed a week before  
23 trial. I said, I have no objection to that. We never even  
24 put that in anything formal. We never agreed to any other

1 deadlines, simply stated.

2 I continue -- I got documents from them last week,  
3 Your Honor, productions from them. Neither of us were  
4 following any type of scheduling order or restrictions. I got  
5 production of documents, I got a list -- I got a new name of a  
6 witness last week. Before that, I got more documents.  
7 Subpoenas went out by them, calling for production of  
8 documents, the same time these reports were being filed. Both  
9 sides knew that there was no time deadlines, so to suggest  
10 that there was is just not accurate.

11 The fundamental fairness that Your Honor raises is  
12 an important issue. The fundamental fairness here is, in my  
13 opinion, that we're going to be severely prejudiced if we're  
14 not allowed to produce all of the evidence on the -- and have  
15 this matter decided on the merits.

16 And what seems to me is important on their side is  
17 Your Honor has already observed they knew about our experts no  
18 later than December; it was actually earlier that we -- I  
19 advised Mr. Dickerson. But he acknowledged on the record in  
20 December that he knew who they were. He knows what the issues  
21 are. He framed the issues in his counterclaim. Those are the  
22 issues, Your Honor.

23 We intend, primarily, to use these experts, to show  
24 that these trusts are valid, and that they were respected

1 within the norms of the practice of the State of Nevada. And  
2 the witnesses that we're going to call, Mr. Rushforth and Mr.  
3 Garrity, are competent and, I submit, would be helpful. You  
4 got the right standard. You have a lot of discretion here to  
5 allow these in, if you find them helpful.

6           We're privileged to be here with a very bright  
7 judge, and we understand that. But we don't believe you  
8 practice in this area. And we all, as lawyers, have areas of  
9 law that we aren't experts in. Both of these witnesses are  
10 experts in these very types of trusts and estate planning that  
11 was employed in this case. They know what the law is, they  
12 know what the community standards are, they have investigated  
13 what the facts are. And we believe they can help prove our  
14 case and assist this Court in rendering a proper factual  
15 determination under the law, as to what the -- what these  
16 parties did and how it affects their interest in this divorce.

17           Mr. Dickerson's pleadings alleged that these were  
18 alter egos of the parties, and these witnesses are prepared,  
19 again, to prove, elicit testimony through them, that they fit  
20 within the terms of Nevada law; they were, in fact, factually  
21 complied with in terms of complying with that law; and that  
22 Your Honor will have evidence at that point to determine  
23 whether you believe they have proved and can prove their case,  
24 that these trusts should be disregarded.

1           Mr. Birch, the order appointing him, says, is  
2 ordered -- he's appointed by this Court to:

3           "-- perform a forensic accounting, intended to  
4 provide the Court with an accurate evaluation of the  
5 parties' estate."

6           That's what he did. Mr. Garrity is not doing that.  
7 And in fact, Mr. Garrity, they simply accepted Mr. Birch's  
8 report and listing of what the assets were and what he thought  
9 the values are. What Mr. Garrity does is trace the assets, to  
10 show the Court the flow of the same, starting from when he was  
11 able to develop the record.

12           Our case, by way of preview, will start with the  
13 separate property agreement. It will carry forward from that  
14 point to demonstrate that the parties intentionally kept their  
15 assets separate, and that that remained so through the point  
16 of time when they established, in 2001, the self-settled  
17 spendthrift trust; and that, even after that point, there was  
18 a concerted effort by the parties to keep their assets  
19 separate, and in fact, it was done.

20           The testimony will also show that the parties did  
21 what was required by the law each step of the way, in order to  
22 preserve the separateness of their property; and that, despite  
23 the claim of the opposite side of this courtroom, in fact,  
24 those assets were preserved as separate property, and no

1 community property is contained with Eric's self-settled  
2 spendthrift trust, and it has been operated under the law and  
3 community standards, in terms of how a trust is supposed to  
4 operate; and, therefore, it cannot be the alter ego.

5           NRS 50.275 sets a very low threshold for  
6 admissibility of expert testimony, as Your Honor knows.  
7 Simply, will it assist the trier of fact in understanding or  
8 determining a fact issue?

9           In a bench trial, which this is, these type of  
10 motions in limine are almost never granted, Your Honor. And  
11 the reason is you can simply sustain an objection to a  
12 question as it's asked, point by point, if you believe it's  
13 not going to be helpful to you or is beyond the competency or  
14 otherwise inadmissible, and you can simply disregard anything  
15 you don't believe, or you don't think you need help on, you'd  
16 rather look at it yourself. This is not a jury trial, where  
17 you need to a motion in limine.

18           Their motion in limine grounds were that somehow we  
19 were late. And I think we clearly were not late. They had  
20 the opportunity to depose both of these witnesses, since at  
21 least December, when Mr. Dickerson acknowledged them. They  
22 had the ability to send interrogatories out, asking what these  
23 guys are going to do. They discovered the same records that  
24 my experts looked at and are basing their opinion on. They

1 knew what the issues were, they framed the issues in their own  
2 pleading. Yet, now they're claiming surprise and unfairness,  
3 we're not ready, we didn't know what they were going to say?  
4 Gee, that would have been real hard to guess that my experts  
5 were going to say what I just represented.

6           Experts are allowed in Nevada to testify on mixed  
7 questions of fact and law, and even on the ultimate issue, and  
8 that's expressly set forth at NRS 50.295. It is extremely  
9 common, Your Honor, for lawyers who are experts in trusts and  
10 estate matters to testify as experts within that field before  
11 a court of law, in order to, not only explain what the law is  
12 in their technical area, but to help the Court apply it.

13           There is a Nevada Supreme Court case on this, which  
14 I happened to be in. It was The Matter of the Estate of John  
15 W. Bowles, it's at 120 Nev. 990, in 2004. In that case, the  
16 American Cancer Society was taking the position that the  
17 executors/trustees' commissions were unreasonable, even though  
18 they had been set under their traditional five percent rule  
19 that pertained at that time.

20           Mr. Gardner Joli, who was a long-term trust and  
21 estate lawyer, was allowed to testify, not only on his review  
22 of what the lawyers had done, to try and justify their fee,  
23 but also on the application of what he saw under the rules and  
24 Nevada law. In fact, I'm quoting from the Court's decision;



1 I'll just give one sentence of it: "He" -- he, meaning Joli.  
2 "He finally concluded that Kyle & Kyle's fee  
3 agreement in this matter was unreasonable under the  
4 applicable statutory provisions and Nevada Supreme  
5 Court Rules, NRS 150.060, and Supreme Court Rule  
6 155."

7 We cited other cases, Your Honor, where courts have  
8 done and allowed the same thing, one of which is going to be a  
9 hugely important case for Your Honor to read. And this case  
10 is called In Re Marriage of Lund, it's at 94 Cal. Rptr. 3d 84,  
11 it's a Cal. App. 2009 case. For the purposes of this hearing,  
12 their estate planning lawyers were allowed to provide an  
13 opinion on whether certain estate planning documents had the  
14 effect of transmuting key immunity property into separate  
15 property, under the law.

16 Now that case cites another case, and both of those  
17 we're going to provide to the Court because they're hugely  
18 relevant on the issue that you're going to have to decide in  
19 this case, and that is whether the separate property  
20 agreement, the 1993 separate property agreement, can be used -  
21 - as the other side says, it's only binding with respect to  
22 creditors and asset protection, but it's not binding on this  
23 Court with respect to division of property because that case  
24 and another case that's cited there say you can't have it both

1 ways, and it's not permissible, and you can't even allow parole  
2 evidence on that issue. It is what it is under that separate  
3 property agreement, or in that case, a community property  
4 agreement.

5           We cited several other cases, Rio Grande Valley Gas  
6 Company v. City of Edinburg, at 59 S.W.3d 199 (Tex. App.  
7 2009). There, estate planning attorneys were called --  
8 allowed to give opinion on the effect of corporate structures  
9 and how they worked on the issue of whether they were being  
10 used as the alter egos of each other and other entities.

11           There is no question in this case, whether or not he  
12 started off that way, Mr. Burr, in his testimony, got into a  
13 lot of Nevada law and how it applied. And I know that he left  
14 this Court with an impression that I don't think is accurate.  
15 And I took his examination on two days of depositions, and  
16 think I can bring him back on the stand to explain what he  
17 tried to tell the Court, what he meant and didn't mean.  
18 Because, frankly, when he veered into issues of law and was  
19 asked these things, he was not clear. And I submit he wasn't  
20 asked the proper questions; and, when he is asked the proper  
21 questions, comes out with the proper answers.

22           Mr. Rushforth is certainly able to do that and to  
23 clarify what Mr. Burr had to say and how it works with respect  
24 to the practice of estate planning, and the tools that one

1 uses in estate planning for asset protection, and what the  
2 consequences of using those various state structures are. And  
3 that's the purpose of him.

4           He can, I think, assist this Court in understanding  
5 how these estate planning tools work and what they're intended  
6 to do, and what they're intended not to do, and how they apply  
7 in this case, based on the facts. This Court can regard or  
8 disregard this testimony as it's elicited, and you can sustain  
9 objections if you think any of the questions I'm asking him  
10 are invading your province, which you're capable and want to  
11 do yourself, and that's fine.

12           Expert reports are not admissible. We have no  
13 intent to admit these reports, that was never our intent. The  
14 intent was to get them out as fast as we could. It was very  
15 difficult to do under the factual circumstances of this case.  
16 And Mr. Garrity can sit and explain what he had to do to be  
17 able to put this together. It took many, many, many months to  
18 do this. And part of the problem, of course, was we couldn't  
19 get him paid, couldn't get him the retainer that he wanted.

20           Again, Your Honor, you've got the touchstone, and  
21 that's fundamental fairness. The fundamental fairness in this  
22 case tips the scales to allowing us a fair and full  
23 opportunity to present our case on the merits. There is  
24 nothing that's been done to the other side that they didn't do

1 to themselves by their own inaction. And it would be simply  
2 unfair to our side of this case if we are not permitted to  
3 call these witnesses to present our case.

4           You wanted a tracing. You mentioned at least 10  
5 times since I've been involved in this case that you wanted  
6 the tracing. They knew you wanted the tracing. They finally,  
7 at the end of the day -- and I don't know why they waited so  
8 long -- asked this Court to appoint Mr. Birch to do that. And  
9 Your Honor recently ruled that it was too late because that  
10 was going to delay the trial to get him started on that. But  
11 if you recall our response, we said, we've been having Garrity  
12 work on this for months, and we assumed they've been doing  
13 this. Why are they now trying to get somebody else to do it?  
14 That's part of their burden.

15           Our position is, once we establish the separate  
16 property agreements, burden shifts to them to show that this  
17 isn't separate property anymore. They've got the obligation  
18 to do that. And to a large extent, our witnesses are going to  
19 dispel anything they try and present in that regard. Again,  
20 fundamental fairness that we be allowed to do that.

21           I don't want to continue this trial, I'm ready to  
22 go, Your Honor. My client is ready to go, our witnesses are  
23 ready to go. The last thing we want to do is continue this  
24 trial. But this issue is so important that I threw in that

1 counter-motion to say, if you're inclined at all to buy their  
2 argument that somehow they've been opportuned [sic] upon, we  
3 haven't seen any of their expert reports. We haven't seen a  
4 witness list, we haven't seen an exhibit list, Your Honor, we  
5 haven't seen a pretrial memorandum from them; we haven't seen  
6 any of that stuff from them. It's okay to trial-ambush us,  
7 but boy, the standard works the opposite way when they think  
8 they can get some "gotcha" out of it.

9           They sat by and watched, knowing that we were  
10 working on this, for months, because we said it every  
11 pleading. They knew the Court just awarded us money to pay to  
12 these experts. And they didn't do anything about that, they  
13 let us spend that money. They let the experts work on this,  
14 incur all those charges, get it done as quick as we can. And  
15 after it's done, they first raise the objection.

16           And they don't even tell Your Honor that,  
17 immediately, I called Mr. Dickerson and said, I know this is  
18 later than I wanted it, I've been pushing, pushing, pushing,  
19 but I will stipulate to let you take depositions right now, if  
20 you want to. He said, I'll think about it, wrote me the next  
21 day and said, nope, we're going to say it's too late.

22           They made their own bed, Your Honor. It's not fair  
23 to us. Fundamental fairness is that we be able to call these  
24 witnesses and allow the Court to rule on the questions as

1 they're asked. You're the one who ultimately has to decide  
2 whether or not they're going to help you. Thank you.

3 THE COURT: All right. Rebuttal, please?

4 MR. KARACSONYI: I don't know what the --

5 MS. FORSBERG: Your Honor, I had a couple of things  
6 before we go on. Sorry.

7 THE COURT: All right.

8 MR. KARACSONYI: Oh, sorry.

9 MR. DICKERSON: Just a couple of quick things.

10 As you know, Your Honor, I am the last attorney  
11 involved in this, the most new one on this panel in this case.  
12 So, of course, with that being said, I probably had the last  
13 review with new eyes of all that trial period that you went  
14 through. I probably reviewed all the video transcript most  
15 recently than anybody here because I am the last one in. So a  
16 couple of issues that just struck me.

17 On August 31st, if you recall, Mr. Jimmerson filed a  
18 motion in limine for their expert Jolla Awanay. But what  
19 happened? You let him in, but you said he can't -- he can  
20 come in as an expert -- which he has no other role here; he  
21 has no role. He didn't work on anybody's books, so he could  
22 even testify that way. But you allowed him, said that he  
23 could.

24 He hasn't testified yet because they haven't gotten

1 to their case-in-chief, if you recall, because it morphed to a  
2 settlement conference. It pretty much morphed to a big  
3 settlement conference, as you know, from my review of it all.  
4 So you allowed that, but you said his report couldn't come in.  
5 That was on the day of trial, August 31st, if you recall. So  
6 it seems like this unfairness is happening on that side. They  
7 wanted theirs, and you allowed it, but now they don't want the  
8 trust to have theirs? It just doesn't seem fair, Your Honor,  
9 in any way.

10           The other issue, though, is, after reviewing it all,  
11 I think Mr. Solomon covered it, but to reiterate it, if Mr.  
12 Burr only testified to how these parties entered their --  
13 entered a trust, I would agree with that total assessment that  
14 you made of it, except for he didn't. His testimony went way  
15 afield of saying what you could do with trusts, how trusts  
16 work legally, and how the law applies. So it seems that it  
17 would even be a rebuttal witness against what he had already  
18 testified.

19           So that would be my only two points, Your Honor:  
20 That you allowed them to have theirs on the day of trial on  
21 the motion in limine by him, but you just excluded the report.  
22 I think it should be treated fairly, it should be treated the  
23 same.

24           THE COURT: Very good. Rebuttal, Counsel?

1 MR. KARACSONYI: Thank you, Your Honor.

2 I don't know -- I don't know whether they've swayed  
3 you or not, Your Honor. But either way, we'd need to -- there  
4 are some things that need to be addressed.

5 First of all, the timeliness issue, under no set of  
6 circumstances could they have honestly believed that it was  
7 all right to give your expert report 17 days before trial and  
8 seven days before trial. Mr. Solomon, Mr. Luszeck, Ms.  
9 Forsberg are accomplished enough attorneys to know that, even  
10 under non-family law cases, in other civil matters, non-  
11 domestic civil matters, everybody has at least 30 days for  
12 rebuttal. In family court, it's 60 days. There is no way  
13 they could think this was all right.

14 Now what they acknowledge in their motion is, you  
15 know what, we could have done this, had we gotten your  
16 permission. The rule provides:

17 "The Court, upon good cause shown or by stipulation  
18 of the parties, may extend the deadline for exchange  
19 of the experts' reports or relieve a party of the  
20 duty to prepare a report in an appropriate case."

21 They point that out to Your Honor as a reason to  
22 grant -- to allow these witnesses to testify right now. You  
23 knew the rule was there, you're charged with knowledge of it.  
24 You could have filed the motion. Now is not the time to argue



1 that these -- that we should be relieved of our duties.

2 Seventeen days and seven days is simply not enough.

3 Now they argue, well, we offered you the opportunity  
4 to depose them. About what? What are we going to talk to  
5 them about, the weather? I mean, we have their names, their  
6 names and their addresses. We have nothing to say what their  
7 information is going to be.

8 Now they want to charge us with the duty of serving  
9 discovery to find out what it's going to be. Let me ask --  
10 let me tell you how those discovery responses are responded  
11 to. Objection, work product, you'll get a written report;  
12 objection, work product, call him in for a deposition, start  
13 asking him what he's going to testify; work product, we  
14 haven't -- we're not done with it. Okay? There was no way we  
15 could have deposed these people.

16 Are they going to argue that we were expected to  
17 depose them in the 17 days and seven days before trial? Those  
18 are full days, Your Honor, not judicial days; there was a  
19 holiday there, too, July 4th. When we're preparing thousands  
20 of pages of documents? It's just simply not possible.

21 This argument they make that they couldn't pay their  
22 costs. They never needed permission before to pay costs and  
23 fees, including all of Mr. Jimmerson's fees -- or actually,  
24 not all of them, but a good portion of them. We have checks

1 to back that out. The trust expressly provides that the  
2 investment trustee, Mr. Nelson, is entitled to employ and  
3 compensate attorneys.

4           You know, Mr. Nelson never really thought he needed  
5 much permission from this Court for anything. If you recall,  
6 he did lots of transactions, never once with permission. But  
7 in an abundance of caution, he just felt this one time, this  
8 one time, he needed permission to pay experts, to pay his  
9 attorneys' fees? This argument is almost laughable.

10           Even if that was a concern, whose fault is it that  
11 you waited nearly seven months to file the motion requesting  
12 the fees and costs. You had this expert, by your own  
13 admission, both experts hired in 2011. Here comes March 7th,  
14 2012, you're just filing your motion. You were made a party  
15 August 19th, 2011. You voluntarily appeared in this action.  
16 You had all your -- you had everything in order. You're not  
17 trying to ambush us? It's been 10 months.

18           As the Court expressly found in one of its recent  
19 orders, the motion to pay attorneys' fees and costs was  
20 denied. You didn't give them permission to do anything, they  
21 didn't need the permission. You also found that they had  
22 plenty of fees and costs to pay for that.

23           In fact, Judge, let's tie this together. You had  
24 the money, you found 400,000 to buy the Wyoming property that

1 we came in here screaming and yelling about, in -- on January  
2 2012; yet, your experts, who you retained in 2011, you  
3 couldn't find any money for it, it just wasn't there, needed  
4 the Court's permission. Didn't need the Court's permission to  
5 go buy a four-hundred-thousand-dollar piece of property and do  
6 a seven-hundred-thousand-dollar note, but needed permission to  
7 pay your experts?

8           Now what about the experts? Rushforth. Testimony  
9 by experts. They cite you the rule, but it's like they gloss  
10 over it. He said, if the testimony -- it's real plain, Your  
11 Honor. NRC 50, real low standard. If it will help you  
12 ascertain the facts. Okay? NRS, testimony by experts.

13           "If scientific, technical, or other specialized  
14 knowledge will assist the trier of fact to  
15 understand the evidence, or determine a fact in  
16 issue, a witness qualified as an expert by special  
17 knowledge, skill, experience, training, or education  
18 may testify to matters within the scope of such  
19 knowledge."

20           They said, well, in their report, you know, we just  
21 make this blanket statement that Mr. Rushforth is going to  
22 testify about the law. I didn't know Mr. Rushforth was  
23 qualified in any other area but the law. I've looked over his  
24 CV. In fact, I'll tell you what it says, just in the opening

1 line. It says here:

2 "Layne T. Rushforth is an attorney, who focuses his  
3 practice in matters involving estate planning,  
4 business planning, trust administration, and  
5 probate."

6 I don't see that he's a forensic accountant. What  
7 can he -- what facts can he help you to understand? The only  
8 thing he can testify about is the law. Needless to say, he's  
9 not listed -- he doesn't list in his practice areas his  
10 specialty is family law. We are sitting, or appearing today  
11 in a domestic relations court. This is a divorce action.  
12 Yet, Mr. Rushforth doesn't even list domestic relations as an  
13 area of specialty. What special knowledge then does he have?

14 Now we did attach the report. And the reason we  
15 attached the report is because, if we didn't attach the  
16 report, we felt that the other side would say we didn't  
17 present you with adequate information to consider the issue.  
18 We apologize for that. We were -- we had contemplated not  
19 attaching the report. But we ultimately attached the report  
20 because we felt that we had to present to you exactly what it  
21 was that we were trying to exclude, and you had to have all  
22 the facts before you.

23 THE COURT: For the record, I didn't read it, the  
24 reports, at all.

1 MR. KARACSONYI: In the document, we purposely only  
2 listed one portion of the report: The opinion requested.  
3 There was five portions, this is all you need to know.

4 "I am sending this letter to express my opinions as  
5 an expert witness with respect to the following  
6 questions: Do the separate property agreement and  
7 separate property trust signed by Eric and Lynita  
8 Nelson in 1993 affect their property interests, both  
9 as to the claims of their creditors and as to their  
10 rights between themselves in a divorce proceeding?"

11 I find it so ironic that they have pounded this drum  
12 this whole time about the case law, Judge. The case law says  
13 that a witness cannot give an opinion as to the character of  
14 property; that a witness' opinion about the character of  
15 property should not be considered by the Court. But hey, wait  
16 a sec, maybe our party can't, but let's just circumvent the  
17 rule. Here's our expert, who's going to tell you the law and  
18 the character of property. You can't have it both ways.

19 I find it ironic, too, Your Honor -- and I'm going  
20 to state this objection generally, for today and for the rest  
21 of this proceeding -- that the Eric L. Nelson Nevada Trust is  
22 here arguing about the separate property agreement. The Eric  
23 L. Nelson Nevada Trust has no interest in the separate  
24 property agreement. It was not a party to the separate

1 property agreement, and it is not a third-party beneficiary.

2           It is well settled, under basic contract law 101,  
3 and the rules and the laws of every state in this country,  
4 that, in order to sue on a contract, you have to be either in  
5 privity or an intended third-party beneficiary. The law of  
6 this state is clear on that point.

7           "It is axiomatic that a party does not have standing  
8 to sue on a contract unless he or she is a party to  
9 the contract or an intended third-party  
10 beneficiary."

11           Hartford Fire Insurance v. Trustee of Construction  
12 Industrial, 125 Nev. 16, quote:

13           "To obtain third-party beneficiary status, there  
14 must clearly appear a promise or an intent to  
15 benefit the third party; and, ultimately, it must be  
16 shown that the third party's reliance thereon is  
17 foreseeable."

18           Lift Seat v. Tracy Inventory Company.

19           The ELN Trust didn't even exist until 2001. It  
20 would have been impossible for them to be an intended third-  
21 party beneficiary. In fact, under the terms of the agreement,  
22 Paragraph 7, no irrevocable trust could be a third-party  
23 beneficiary because the agreement is only -- the only trusts  
24 that don't violate the terms of the agreement are revocable

1 trusts.

2           So, for them to want to call Mr. Rushforth on  
3 matters that don't affect them and they don't have standing on  
4 is not allowed, it's not permissible. They can't address  
5 anything pre-2001. They just don't have an interest in the  
6 subject matter at those points in time. There's two people  
7 that do have an interest in the subject matter at that point  
8 in time and that were present; that's Eric and Lynita Nelson.  
9 Mr. Nelson has already stated his position with respect to  
10 that separate property agreement.

11           They say that we -- that Mr. Burr was presented as  
12 an expert, that you allowed him to testify about issues of the  
13 law. But guess what? You're the only one that's presented a  
14 case. You called Mr. Burr.

15           It's funny. Ms. Forsberg said that she was probably  
16 the last person to look over the testimony. I'm pretty sure  
17 I'm the last person that looked over the prior court  
18 proceedings. The prior court proceedings show clearly that it  
19 was Mr. Jimmerson, Mr. Nelson's attorney, who enlisted --  
20 elicited testimony from Mr. Burr about the intent of the  
21 agreement, about the -- what the Judge -- what the Court could  
22 do under Nevada law. You elicited the testimony. You can't  
23 now take it back. You want to rebut your own elicited  
24 testimony?

1 Now the other things in Mr. Rushforth's report, his  
2 next area is:

3 "Does the trust agreement for the Eric L. Nelson  
4 Nevada Trust, May 30th, 2001, create a valid self-  
5 settled spendthrift trust, sometimes referred to as  
6 an 'asset protection trust,' under Nevada law?"  
7 That's a question of law. The Court decides that.  
8 "If Eric's separate property trust is valid, what is  
9 the status of separate property that was transferred  
10 to it?"

11 Again, an area of law.

12 "Is it possible for property in Eric's separate  
13 property trust to become classified as community  
14 property?"

15 The law determines that.

16 "What is the status of community property, if any,  
17 that was transferred to the trust?"

18 Again, these are all legal questions. There is  
19 nothing in here about doing any kind of factual inquiry.

20 We have cited propositions that directly support our  
21 position. I'm sure the Court has gone over them. There's a  
22 plethora of evidence. McCormick on Evidence says all courts  
23 exclude such extreme conclusory expressions.

24 In Downer v. Brown Mat, the Court -- the Court went



1 on to -- or In Re Initial Public Offering Securities, 174  
2 F.Supp. 2nd 61 that we cited, the Southern District of New  
3 York cited every single federal appeals court as adopting this  
4 rule. What happens is that:

5 "The calling of lawyers as expert witnesses to give  
6 opinions as to the application of the law to  
7 particular facts usurps the duty of the trial court  
8 to instruct the jury on the law as applicable to the  
9 facts, and results in no more than a modern-day  
10 trial by oath."

11 That's exactly what it is. They're going to get up  
12 there and say, we interpret the law this way. Are we to hire  
13 three rebuttal experts on the law and say, wait, we outweigh  
14 you three to one, we have three lawyers who are willing to  
15 support our reading of the law? No, that's not how it works.  
16 It's just not allowed.

17 Now what they cite to you, it's interesting, and  
18 they tell you they're important cases. I read the cases. Let  
19 me tell you about what happened in Lund. In Lund, the case  
20 they tell you is really germane to this argument, Lund, they  
21 never actually reach the issue of whether or not the experts  
22 could testify about the law. The reason they never reach the  
23 issue is because -- just because in the lower court, both  
24 sides just went out and hired an expert on the law. Nobody

1 objected, nobody said anything.

2 For them to cite that as a piece of -- as a common  
3 law case that supports their position is frivolous. That's  
4 like me going out and finding some facts, a factual recitation  
5 from the Nevada Supreme Court, and saying, look, Judge, they  
6 did that in the trial court there, that supports my position.  
7 You have to have holdings.

8 Now they obviously -- if you look at their -- if you  
9 look at their brief, they obviously searched wide and far.  
10 They've got a Texas case, I think a Massachusetts or --  
11 Massachusetts or Maine case that the citation is incorrect  
12 because it couldn't be found. Maybe, perhaps, it's -- you  
13 know, I don't know, our system -- our research system. I'm  
14 not saying it was intentional or anything like that.

15 They have the Texas case. It's interesting. The  
16 Texas case they cite to you, Judge, clearly states -- hold it,  
17 Judge. One second.

18 (Pause in proceedings.)

19 MR. KARACSONYI: I apologize. The Court's  
20 indulgence -- oh, here it is. It's interesting. It does  
21 state one rule of law in that case about this issue, it really  
22 does. It says:

23 "An expert may not give an opinion regarding a  
24 question of law because such issues are not for the

1 fact-finder to determine."

2 Cite one case that says, I can put an expert up  
3 there, and the expert can help advise the Court about the law.  
4 They haven't cited that case because it doesn't exist. It  
5 does exist in some international contexts, we've seen that;  
6 those cases are out there. But in this context, it doesn't  
7 exist, and that's why they haven't cited it.

8 Gardner Joli gave testimony in bolds [sic] about  
9 what the -- about what's the reasonable fee, which is a --  
10 based on the work that was performed, okay, about the facts of  
11 the case, and what his opinion was of a reasonable fee. We  
12 know, under -- under attorneys' fees cases, the Court has to  
13 consider whether the fee was reasonable, and attorneys  
14 typically call other attorneys to say whether that's a  
15 reasonable fee in the community. But they don't call them to  
16 apply the law.

17 What has happened in this case is somewhat tragic.  
18 I did go over that testimony. I went over that testimony, and  
19 that testimony proves to you conclusively that everything  
20 these parties had was community property. But that wasn't  
21 good enough because the Court wasn't going to take Eric  
22 Nelson's settlement offers and make them its ruling.

23 So, instead, what he did is this complete about-  
24 face. And now what they're trying to do here, and what's

1 going to happen here is they're going to try to negate six  
2 days of testimony. They're not able to do that; judicial  
3 estoppel will apply to prevent them from doing that, and we'll  
4 get into it.

5 But the Court had this issue exactly right, when we  
6 walked in here today. The analysis was spot-on. And like you  
7 said, there's no reason for these witnesses to be able to  
8 testify. The only thing that these witnesses could offer is  
9 neither of these witnesses have any personal knowledge of the  
10 facts or any -- can offer anything to the Court factually. So  
11 we would -- we would request that the Court enter its order,  
12 in accordance with what was stated today, except for the part  
13 about letting Garrity contradict the testimony of Mr. Birch.

14 MR. SOLOMON: Your Honor, can I be heard just on a  
15 couple of matters? He raised a lot of the matters there --

16 THE COURT: I'll give you a little bit of rebuttal,  
17 but then I'll give you a chance to respond. I don't want this  
18 to go on forever, but since there are so many issues, I will  
19 give you that, so there's a clear record, because it's --

20 MR. SOLOMON: I appreciate it, Your Honor. And I'm  
21 not going to repeat, or try not to repeat what I said, but  
22 just with respect to some of the statements he made.

23 First of all, Your Honor, your order -- he  
24 represented that your order did not deal with the issue of

1 payment to our experts in this case, but it clearly did. In  
2 fact, you further ordered that the ELN Trust is directed to  
3 pay the sum of \$40,000 towards the expert witness fees.

4 THE COURT: For the record, that's a June 5th, 2012  
5 order --

6 MR. SOLOMON: Yes.

7 THE COURT: -- by the Court, just for the record.

8 MR. SOLOMON: Yes, it is, Your Honor. So you know,  
9 that comment that we were outside the order, I don't know  
10 where that came from.

11 There is no reasons they couldn't have asked  
12 interrogatories and taken the depositions of these people.  
13 Once you designate witnesses, experts as experts and not and  
14 consultants, their entire file is open to you, and they were  
15 designated as such. So to say that they couldn't have used  
16 that device is simply incorrect.

17 He also said that the law in Nevada prohibits  
18 opinion on whether property is community or otherwise. What  
19 those cases say is lay opinion, and this is expert opinion.  
20 So those also don't apply.

21 Then to say that we don't have the right to talk  
22 about what happened in the separate property agreement as it  
23 affects our case? We're not suing on that contract, Your  
24 Honor. I agree with that. We don't have standing to sue on

1 it as the trust.

2           But we certainly have an interest in showing the  
3 Court that the property that was funded into our trust in  
4 2001, where it originated, and the character of the property;  
5 that it wasn't community property that was put into that trust  
6 without her knowledge and consent. That's what we're going to  
7 prove, that's what we're going to have testimony on, and  
8 that's going to establish that the community -- I'm sorry --  
9 that the separate property coming into our trust is, in fact,  
10 that. So it's an extremely relevant issue to us. And we have  
11 the standing and the ability to show that, and intend to do  
12 so.

13           I have read -- I may not have been the last to read,  
14 but I don't care. I read Mr. Dickerson -- I'm sorry -- Mr.  
15 Burr's testimony, and I told the Court right at the beginning  
16 of this case that I need to clean that up. And both trial  
17 attorneys -- and they're fine attorneys, I respect Mr.  
18 Jimmerson and Mr. Dickerson very, very much. They both  
19 weighed in to the issues of law with respect to how these  
20 things work and what the law is. And that's because you  
21 can't do it in a vacuum, you can't. In order to understand  
22 what the parties did, you have to understand why they did it  
23 and what the parameters of the law is. And that's  
24 permissible. It's done all the time.

1           It's the -- counsel is correct. I can't bring a  
2 witness up here to say, Your Honor, I want you to know, NRS  
3 dah, dah, dah says dah, dah, dah, if that's the purpose of his  
4 testimony. Everybody agrees that can't be done. But what he  
5 can say is Kyle & Kyle did this work, and they were awarded  
6 fees under this community standard of five percent, but in my  
7 opinion, NRS 155 or 157.035, and Supreme Court Rule 155 should  
8 have been the applicable law; and, under that law, he's not  
9 entitled to that fee because, and analyze it, and help the  
10 Court with the facts. That's done all the time, and that's  
11 what we propose to do here.

12           And again, it's a question-by-question issue. If  
13 Your Honor doesn't want to hear the answer to the question, or  
14 you think we've invaded something, you'll rule at that point,  
15 and we'll move on. But to wholesale keep it out on that type  
16 of ground is simply not the law, and deprives us of the  
17 ability to present our case, and we believe will deprive the  
18 Court of the ability to help understand how to deal with some  
19 of the factual issues that you're going to have to make  
20 decisions on. And so, for that reason, Your Honor, we again  
21 request to be allowed to recall these witnesses.

22           THE COURT: Well --

23           MR. KARACSONYI: Just real briefly, to --

24           THE COURT: It's your motion, so I'll give you the

1 last word. It's your motion, so you'll get the last word.

2 MR. KARACSONYI: To protect my integrity, I said  
3 that the Court found that it specifically denied their motion  
4 for attorneys' fees and costs, effectively denied it. Okay?  
5 I'm looking at the order from this Court, entered July 11th,  
6 2012. It was prepared by the Court, actually. Page 3.

7 THE COURT: I think I prepared a lot of orders the  
8 last couple of weeks.

9 MR. KARACSONYI: Yeah.

10 "The Court further finds that, as to the ELN Trust's  
11 requests to provide language in the order stating  
12 that the Court granted, in part, its motion for  
13 attorneys' fees and costs, this language does not  
14 need to be included, and has been rendered moot by  
15 the Court's subsequent order, issued on June 5th,  
16 2012, which directed that the ELN Trust could not  
17 utilize the enjoined funds to pay its attorneys'  
18 fees and costs and expert fees and costs, thereby  
19 effectively denying the ELN Trust's motion."

20 Again, Judge, they cite to you a few cases where the  
21 holding -- the issue of whether a Judge -- whether a party can  
22 -- whether an attorney can be called to testify about the law,  
23 they don't even reach that issue. I challenge them again,  
24 show you a case.



1           We've cited treatises, we've cited cases from around  
2 the country saying that every court holds this way. He hasn't  
3 cited a single case that says you can call an expert about the  
4 law. Now he wants you to believe that he can call an expert  
5 to apply the facts to the law.

6           You have that opportunity, you have that opportunity  
7 in your pretrial memorandum, if it doesn't get stricken for  
8 inappropriately putting in a report that shouldn't belong  
9 there. You have that opportunity in opening arguments and  
10 closing. You have that opportunity by -- via a trial brief.  
11 But the Court's job is to apply the facts to the law that are  
12 -- that have been found.

13           It's interesting, when we were here, in their  
14 motion, they say -- they talk about how we made this frivolous  
15 argument under Chapter 78, that Chapter 78 should apply to  
16 alter ego determinations for self-settled spendthrift trusts.  
17 We obviously don't agree that it was frivolous.

18           In fact, the trust statutes that they're going to --  
19 or the alter ego statutes that they're going to rely on were  
20 actually passed nine years after -- or eight years after these  
21 trusts were created. Prior to that, the only standard you  
22 would have had is Chapter 78, and we still think it's  
23 applicable.

24           But they talk about the frivolous argument. Did we

1 have an -- did we have an opportunity to call an expert?  
2 Surely, you can decide that as a matter of law. In fact, they  
3 said you did decide it as a matter of law. I don't recall us  
4 having the opportunity or an y rule of law that would allow us  
5 the opportunity to call in an expert witness to tell you  
6 whether Chapter 78 applies.

7           It was fine when you made that finding without any  
8 expert assistance. Now what they want to do, says there right  
9 there in Mr. Rushforth's report, he wants to come in here and  
10 tell you the standard to apply to alter egos and self-settled  
11 spendthrift trusts. They know that's not the law, it's not  
12 permissible, and the Court shouldn't allow it here.

13           THE COURT: Thank you. As far as -- and I won't  
14 hear any more arguments. As far as, the Court appreciates  
15 both counsels, and I want to give you some direction on that.

16           Again, I'm still at the point I'm not sure what Mr.  
17 Rushforth would add to this Court. I do know I do not  
18 practice trust law, but I do my research, I'm prepared. I  
19 don't see those issues as being a matter of his testimony  
20 would help me as a trier of fact, to make determinations.

21           The nature of that property will be key, of course,  
22 if it's separate and community. I know they've had the  
23 separate property agreements, I know all of that from the  
24 testimony. So I still don't see how Mr. Rushforth would add

1 to the Court as a trier of fact in determining a fact that  
2 would be important to the Court in its decision.

3 I've got very competent counsel. Mr. Solomon is  
4 very well versed on the issue of -- I imagine that's why he  
5 was hired by the trust on that -- very well versed on the law.  
6 And I leave it for the attorneys to argue what the law is.  
7 And if I need more points and authorities, I'll have the  
8 points and authorities, so I'm really not sure what Mr.  
9 Rushforth would add to this Court at this time.

10 Therefore, I'm still inclined to strike Mr.  
11 Rushforth as an expert witness, as I do not believe that he  
12 will add anything to this Court that would be beneficial to the  
13 Court, helping to determine key questions of fact, so the  
14 Court can come up with a fair and just decision under the law.  
15 So I'm still inclined to keep Mr. Rushforth out.

16 I am concerned about the untimely disclosure, 17  
17 days prior to trial. This is my fault because we do it in  
18 family court, and we get criticized all the time, and I  
19 stepped right into it; that we run family court like it's not  
20 a real court because we're loosey and goosey. I know better  
21 than that. I've been doing juvenile for a while, so I kind of  
22 lost my focus on you got to keep the foot to the fire,  
23 otherwise, we're in all these loosey-goosey everything comes  
24 in, and family court becomes a joke, to be quite honest,

1 because there's no rules and no one applies the rules.

2 I've had attorneys in family court argue hearsay and  
3 tell me, well, Judge, it's family court, hearsay doesn't  
4 apply. I mean, that's exactly how ridiculous it's gotten.  
5 And I stepped right into on this case by not saying, here's  
6 the rules, here's the time frames, and if you screw it up, you  
7 don't -- that's because I respected all counsel; I still do.

8 I respect all counsel, they felt they could resolve  
9 this. They've been very amicable. While they have zealously  
10 argued issues on behalf of their client, they've always been  
11 very professional towards each other and very honorable, all  
12 of the attorneys, so I did not feel the need to do that. And  
13 again, that was my fault, and that is not saying that the  
14 attorneys did anything in bad faith. There's the matter, I  
15 should have set it down so I wouldn't be here and spend the  
16 first hour, two hours of trial on the motions. But I stepped  
17 into it, and it's my fault.

18 I am going to allow Mr. Garrity to testify. The  
19 reason for that, Mr. Garrity has got key questions of fact and  
20 he can trace the property, because that's what I need to see,  
21 where the property came from, how it got into it. The  
22 representations are, is that he was involved with the assets  
23 with the trust.

24 I do not think he's invading the province of Mr.

1 Birch. Mr. Birch was an accountant because Ms. Nelson was  
2 worried that they were hiding things, and he was loosey  
3 goosey, and there was a million transactions going back and  
4 forth, and promissory notes to family members. So they felt  
5 that there was some, maybe just not above, forthright issues  
6 by Mr. Nelson, to make sure they could track the estate.

7           And that's what Mr. Birch was, not to track money  
8 going in from the beginning, was it separate, was it -- where  
9 it came from. It was what the accounts look like, what the  
10 assets look like, and what it looks like now, and what's  
11 happened to address the issues. So I believe his goal was  
12 completely different that Mr. Garrity, who would have  
13 knowledge on the assets of the trust, where the property came  
14 from, so this Court can determine character of property, was  
15 it separate going in, was it community going in.

16           Of course, Mr. Nelson could only put property into  
17 the Eric Nelson Trust that he had rights to do it. And if was  
18 community property, he could not put Ms. Nelson's -- I don't  
19 know -- half into that. So that's -- so I think Mr. Garrity -  
20 - I think Mr. Garrity has already testified, so I think  
21 there's no unfairness to Mr. Dickerson and his client since  
22 Mr. Garrity did testify, so they kind of know exactly where he  
23 was coming from.

24           I do think Mr. Rushforth, though, again, would not

1 add anything. I think he's really getting into the province  
2 of more of the law. I'm not sure what he could give me, as  
3 far as what facts would help me apply the law, I just don't  
4 see it at this point.

5           However, due to the lateness of that report, the  
6 fact that not -- that I do not believe that Mr. Rushforth, at  
7 this time, would add anything to this Court that could help  
8 the Court as a trier of fact make a determination in this  
9 case, I am going to exclude Mr. Rushforth at this time as an  
10 expert witness.

11           And I'm going to allow Mr. Garrity to testify, as I  
12 guess I think he's got information that's very necessary to  
13 this Court, as far as the character of the property, as far as  
14 tracing, so the Court can make those determinations, what was  
15 separate, what was community.

16           I do understand the estate is a separate entity. I  
17 do know the estate did not have an opportunity to cross-  
18 examine Mr. Burr, or Attorney Burr, I should say. So I do  
19 understand Mr. Solomon's concerns, as from the trust, Mr.  
20 Nelson's trust, Mr. Nelson's interest is separate than the  
21 trust's interests. While we can say they're very strongly  
22 correlated, the issue on that, the trust does have a separate  
23 interest; and, therefore, they need the change to examine Mr.  
24 -- Attorney Burr, to see if, quote, "the right questions were

1 asked."

2           This Court, for the record, entertained those six  
3 days of trial, thought I could get it resolved if I got that  
4 on the table, thought we had it resolved a couple of times  
5 because of that testimony. And then we had the trust come in  
6 late. That was no fault on that, they had a right to be in  
7 from day one. I should have made them -- brought them in for  
8 day on that, but it was not raised at that point.

9           Mr. Nelson knew what was going on. The trust knew  
10 exactly what was going on. The fact was, though, they still  
11 had the right to be served and get in. That's why Mr.  
12 Dickerson stipulated to them coming in, so now I have to give  
13 them the right to their discovery and explore that.

14           But at this time, I do not believe that Mr.  
15 Rushforth can add anything to this Court, to help this Court  
16 determine a fact that would help this Court render a decision,  
17 the ultimate decision as to the character and nature of the  
18 property at stake, and the distribution of that property,  
19 accordingly.

20           Number two, I think the attorneys here can address  
21 the issues as to the law. I think they're very competent law  
22 [sic]. It's a trust, and while I don't practice it all the  
23 time, I would do my homework, you can rest assured on that.  
24 I've already done a lot of research, will continue to do the

1 research as these issues come up. I would have done a lot of  
2 research already because of the issues as they come up, will  
3 continue to do that. And I think the attorneys, if there any  
4 issues, I can have them do a post-trial brief or memo as to  
5 specific issues, or if they want that, give them a chance to  
6 do that as well, to solidify the record on that, to give  
7 everybody a chance, in fairness, and to address any legal  
8 issues they thought that they may, so I think I can consider  
9 that, as well, if I think it's fair and just, to give  
10 everybody a chance to make sure that this Court is well versed  
11 on the law or other issues it needs to know. And the fact  
12 that it was untimely with the report, and as to Mr. Rushforth,  
13 I will, for those reasons, grant the motion in limine as to  
14 Mr. Rushforth only.

15 I am going to allow Mr. Garrity to testify because I  
16 think his testimony would definitely be beneficial to this  
17 Court on key issues, as to the character of the property, was  
18 it separate going in, whether the property went into the  
19 estate or into the trust, where it came from. I think that's  
20 very germane, and therefore allow Mr. Garrity. I do not  
21 believe the lateness of his report impacts Ms. Nelson, since  
22 he's already testified. I forgot what the dates were before,  
23 so he knew exactly what was going on. I knew his position on  
24 that. And for those reasons, I will grant the motion in



1 limine in part, deny it as to Mr. Garrity.

2 I'm going to deny attorneys' fees at this time  
3 because I think these issues were out there, and I think it's  
4 my fault for not setting the scheduling order, and therefore,  
5 I will deny the request for attorneys' fees at this time, and  
6 we'll have an order issued. Mr. Joe, we'll have you submit  
7 the order -- Karacsonyi. I can never say your last name, so  
8 I'll jut call it "Mr. Joe." How do you pronounce your last  
9 name?

10 MR. DICKERSON: Karacsonyi.

11 MR. KARACSONYI: Karacsonyi.

12 THE COURT: Karacsonyi, let me write it down because  
13 I keep forgetting. Mr. Karacsonyi --

14 MR. KARACSONYI: Joe is fine, Your Honor.

15 THE COURT: -- will prepare the order, subject to --

16 MR. KARACSONYI: Are we striking the --

17 THE COURT: I am going to strike all the documents  
18 that are attached to the pretrial memo. I would not strike  
19 the pretrial memo, but I will strike the documents that were  
20 attached thereto. I also will strike your attachment to your  
21 motion --

22 MR. KARACSONYI: Thank you.

23 THE COURT: -- that had his written report because I  
24 didn't read it, and I told my law clerk not to read it. They

1 did not read any documents, they only read the motions because  
2 I wanted to avoid any tainting by the Court, either way, so we  
3 have it. So I will strike the documents attached to the  
4 pretrial memo, and I will strike the report from Mr. Rushforth  
5 that was attached to Ms. Nelson's --

6 MR. SOLOMON: Your Honor, there's documents other  
7 than the reports attached.

8 THE COURT: Is there --

9 MR. SOLOMON: So you're just striking the reports,  
10 correct?

11 THE COURT: Well, I wasn't sure what other documents  
12 were attached because I don't look at documents attached,  
13 because I don't want to read them, because now they're already  
14 in the record. They may or may not be appropriate for the  
15 evidentiary, I don't know what else was there.

16 MR. DICKERSON: They have evidentiary value.

17 THE COURT: What's that?

18 MR. DICKERSON: I mean, they have no evidentiary  
19 value.

20 THE COURT: Exactly.

21 MR. DICKERSON: They may be part of the record --

22 THE COURT: Yeah, yeah.

23 MR. DICKERSON: -- but they have no evidentiary  
24 value.

1 MR. KARACSONYI: I mean, our position --

2 MS. PROVOST: It's Burr's -- excerpts from Burr's  
3 deposition, excerpts from Koch's deposition --

4 MR. DICKERSON: This is --

5 MS. PROVOST: -- and an email from --

6 MR. KARACSONYI: That's what's attached.

7 MR. DICKERSON: Yeah. This is --

8 THE COURT: Do you have a problem with that other  
9 stuff being there? I'm not sure because it's just got no  
10 evidentiary basis to this Court.

11 MR. DICKERSON: No, I -- it's just the report, and  
12 the report should be stricken.

13 THE COURT: The report? All right. Give me --

14 MR. DICKERSON: Just --

15 MR. SOLOMON: That's my point, Your Honor.

16 THE COURT: Okay. Just as to the reports then.

17 Okay?

18 MR. DICKERSON: If I may then, Your Honor?

19 THE COURT: Sure.

20 MR. DICKERSON: This is Mr. Garrity's report. Okay?  
21 So this is what we were provided with.

22 THE COURT: Oh, gee.

23 MR. DICKERSON: I would ask this accommodation.

24 THE COURT: I say that, for the record, it looks

1 like it's about three inches.

2 MR. DICKERSON: It's easily three inches.

3 THE COURT: At least three inches thick on that.  
4 That's the report from Mr. Garrity that you got only 10 days  
5 before trial?

6 MR. DICKERSON: Right.

7 MS. PROVOST: Yes.

8 THE COURT: Okay.

9 MR. DICKERSON: Now here's what I would ask Your  
10 Honor, because we do need some accommodations. First, in  
11 light of the fact that Mr. Birch is the court-appointed master  
12 in this case, I did not take any liberties to make any  
13 communication with Mr. Birch about this. I would ask  
14 permission to be able to provide Mr. Birch with Mr. Garrity's  
15 report, so that when Mr. Birch testifies, he can comment on  
16 the report and what Mr. Garrity has done, and the  
17 appropriateness of what he's done, and whether it makes sense  
18 to me. So I think we can get an opinion out of him, and not a  
19 biased opinion, from the Court's expert.

20 MR. DICKERSON: I would also tell Your Honor that I  
21 have provided the report to two individuals that I intend to  
22 call for the purposes of responding and commenting about the  
23 report and the propriety of the report. And that would be  
24 Melissa Attanasio and Joe Lealani. Mr. Lealani has been tied

1 up on other matters. Ms. Attanasio has -- is in the process,  
2 I believe even today, of going through and trying to work on  
3 putting together her analysis of it and where she believes the  
4 flaws are, and the same thing with Mr. Lealani. So we are not  
5 going to -- obviously, Mr. Lealani and Ms. Attanasio would not  
6 be able to testify until probably early next week. And I'm  
7 going to ask them to get on it as soon as they can, to see if  
8 they can devote as much time.

9           With respect to Mr. Garrity himself, if I could get  
10 just a little bit more time to be able to prepare for at least  
11 some cross-examination, with the right to be able to reserve  
12 that cross and call him next week, to further the cross. But  
13 with that being the case, I think you're planning on going  
14 until Thursday. If we could plan Mr. Garrity say around  
15 Thursday or -- Thursday would be the best.

16           (Participants confer.)

17           THE COURT: Does that work for you guys? I don't  
18 want --

19           MR. SOLOMON: I don't know. I have to call him. He  
20 was planning -- he was actually planning and due today because  
21 he's got a very tight schedule. I'll accommodate, obviously,  
22 counsel with respect to the timing issue, and I need to talk  
23 to him.

24           THE COURT: Yeah, talk to Mr. Garrity and see,

1 because I hate to have to have to call him back. Maybe that  
2 might be a leverage to him, if he can just stay a couple --  
3 fly in a little bit later, because I hate to have him -- I  
4 don't think they need to call him back as a rebuttal, some of  
5 the way to get him, if they felt they didn't have a fair  
6 chance to cross-examine. So I'd like to see if he -- if it  
7 works Thursday, that probably would be good for everybody.  
8 But if he can't, let me know, and we'll figure something else.  
9 We'll try -- we'll give everybody --

10 MR. SOLOMON: I'll do that. I strongly object that  
11 the request that Mr. Birch be involved in this. His role, and  
12 the role of a -- as Your Honor acknowledged in the order, the  
13 role of a special master is fairly limited, and he is not  
14 going to be -- shouldn't be called by the Court to comment on  
15 the quality of the -- of another expert's testimony. They've  
16 got Melissa, they've got Joe. They've been around forever,  
17 they know what the issues are. They've reviewed this thing.

18 It's right within what they've been -- to say that  
19 they're not prepared, frankly, Your Honor, is somewhat  
20 disingenuous because that is their very position. What Mr.  
21 Garrity reports on is the very contrary of what their position  
22 is and what they've had the burden to prove all along. So  
23 they're prepared. They know what the facts are.

24 I mean, timing is one thing, but to have another

1 expert comment on this is just totally inappropriate, in the  
2 form of a special master. And I don't think Mr. Birch could  
3 do it anyway. And all -- I mean, he's a very confident man,  
4 but that's -- you know, that's not what he did. That's not  
5 his role. That's the Court's role, to determine whether or  
6 not the evidence being presented proves a party's case, and it  
7 shouldn't be done by a special master.

8 THE COURT: Do you want a one-minute rebuttal, Mr.  
9 Dickerson?

10 MR. DICKERSON: Yes, Your Honor. Interestingly, I  
11 do respectfully disagree with -- that Mr. Garrity's report is  
12 contrary to our position. I actually think there's much in  
13 Mr. Garrity report that just kills them, and basically  
14 supports exactly what the settlor of the trust told Your Honor  
15 with respect to what the intent of the parties was when they  
16 entered into their separate property agreements and when they  
17 entered into the trust. They're forgetting, the settlor has  
18 already testified, and judicial estoppel prevents them from  
19 contradicting the settlor's intent that he expressed to this  
20 Court.

21 Now with that, I believe Mr. Birch will tell you  
22 that he requested from Mr. Nelson all the information that Mr.  
23 Nelson has with respect to the tracing of his properties, and  
24 with respect to the debt, and particular with respect to the

1 issue of debt. And yet, Mr. Nelson never provided him with  
2 the documentation that he was requesting. And Mr. Birch is  
3 taking the position, if you cannot provide me with the  
4 documentation, it doesn't exist. And I think he would confirm  
5 that, and he's here in the courtroom right now.

6 So I -- and I think what you're going to find in Mr.  
7 Garrity's report is exactly that. If Eric didn't provide him  
8 with the documentation, all Mr. Garrity did is says, okay,  
9 Eric, I take you at your word. And that's what you're going  
10 to hear and see when Mr. Garrity testifies. And that's why I  
11 think it would be important for the Court's expert to be able  
12 to review this, and then be able to comment to you as to what  
13 he requested from Mr. Nelson, and why he rejected what Mr.  
14 Nelson was attempting to provide to him.

15 MR. SOLOMON: And in fact, it's going to be the  
16 opposite. Mr. Garrity is going to testify that he used the  
17 documents that went to Mr. Birch for the purposes of that  
18 analysis. So it's --

19 THE COURT: Well, at this time, I'm not going to  
20 have Mr. Birch get involved in that. If we need to later on,  
21 if I need sometimes, I'll look at that. My issue is Mr. Birch  
22 came in for a very limited purpose. I didn't want him to be  
23 an expert witness on one side or another. If Mr. Garrity did  
24 rely on what he was told, not documents that I can take into



1 consideration, what weight I give his testimony. But if his  
2 testimony was based on what people told him and wasn't at the  
3 level of what this Court would expect someone to rely on, then  
4 I'll disregard it, all of it, part of it. And so I think that  
5 will go based on the cross-examination.

6 I think Ms. Attanasio and Mr. Lealani can testify as  
7 to any flaws that they thought in his analysis. But I want to  
8 keep our master out of it, as I thought he really was more  
9 just to sit through and see if he can get a handle on what was  
10 the estate was, what was there, because they felt things were  
11 flying in and out. And that's what I wanted Mr. Birch to do,  
12 and not get caught up and be an expert for one side or other,  
13 really just to see an accounting, what he thought the estate  
14 was, and different types of property on that, as far as what  
15 was there, what real estate, things like that. And that  
16 really was his role.

17 I'll leave it to Mrs. -- your people to review that,  
18 see what they thought would be the flaws in the report and  
19 analysis, and see if you come out that way, instead of Mr.  
20 Birch being that. And if -- later on, if it looks like  
21 there's some stuff where I need to call Mr. Birch, as far as  
22 you thought the documents were not provided, I can look at  
23 that time.

24 But I'd like to keep him out of it at this time. I

1 don't see the need for it, and I think it can probably be done  
2 without Mr. Birch being involved in that aspect of it, as he  
3 had a very limited purpose as a master. I think Mr. Garrity's  
4 purpose is much different and apart than what Mr. Birch was  
5 retained by this -- by the parties to -- as far as from the  
6 Court's standpoint. So I'll deny that request to submit it to  
7 Mr. Birch at this time.

8           We will try to accommodate, see if we can get Mr.  
9 Garrity late Thursday or early next week, depending on his  
10 schedule. And we'll also see with your people on that, see  
11 what it looks like. If I need to give it another day here or  
12 there next week, I'll make it happen because we need to get it  
13 done.

14           I want to give everybody a fair chance, as much  
15 opportunity to be prepared and get everything out on that,  
16 because we need to get this done for these -- I mean, these  
17 people have been going on this forever, and there's a value to  
18 getting it resolved, no matter what happens afterwards, so ...

19           MR. DICKERSON: Judge, if I may inquire on this. As  
20 you recall, we are in the middle of plaintiff's case-in-chief.

21           THE COURT: Yes.

22           MR. DICKERSON: How are we proceeding? Is the  
23 plaintiff continuing with their case-in-chief, or is the trust  
24 now taking over and interrupting that?

1 MS. FORSBERG: Your Honor, I believe you already --

2 MR. SOLOMON: I'm glad you raised it.

3 MS. FORSBERG: -- ruled on that. I mean, before,  
4 whenever we started this, you said you would address this  
5 issue because it would clear things out. So I believe that we  
6 are supposed to be on the issues of the trust, that is what I  
7 thought we were supposed to -- you had said you would deal  
8 with that first.

9 THE COURT: I was going to deal with --

10 MS. FORSBERG: We had asked for a separate day. You  
11 said you'd deal with that first, and then the other.

12 MR. DICKERSON: I don't have any objection --

13 THE COURT: Okay.

14 MR. DICKERSON: -- to doing it that way. I just  
15 want -- so if can then get an idea of -- I received a call  
16 from --

17 THE COURT: Well, the --

18 MR. DICKERSON: -- Mr. Solomon last week, with  
19 respect to his desire to call Jeff Burr again as a witness.  
20 And I believe Mr. Burr was leaving town, so I indicated I had  
21 no objection to him calling him today. So I'm assuming --

22 MR. SOLOMON: Unfortunately, he left.

23 THE COURT: He already left?

24 MR. DICKERSON: Oh, he's already out of town?

1 MR. SOLOMON: Yeah. So he said --

2 THE COURT: When is he going to be back?

3 MR. SOLOMON: -- he would like to testify on  
4 Wednesday, if possible.

5 THE COURT: This Wednesday? Okay. We'll  
6 accommodate that. We want --

7 MR. SOLOMON: He's in the middle of his vacation.  
8 He's actually flying back for that.

9 THE COURT: Oh, just for that?

10 MR. DICKERSON: Oh, I thought he was town. Okay.

11 MS. PROVOST: In fact, we asked that they tell us if  
12 Mr. Burr was not going forward today.

13 (Participants confer.)

14 THE COURT: Would Wednesday work for Mr. Burr?  
15 Because we'll accommodate Mr. Burr if --

16 MR. SOLOMON: Yes, he said it would.

17 THE COURT: Okay.

18 MR. SOLOMON: We heard from his staff.

19 MR. DICKERSON: All right. Then what would be the  
20 order of the witnesses?

21 (Participants confer.)

22 THE COURT: It's about eleven o'clock, as far as  
23 housekeeping. Did you guys want to do opening statements, and  
24 then break for lunch. I can give you some time right now, and

1 we can talk about housekeeping, as far as how we deal with  
2 witnesses, so we get a time frame. Because we've got Monday,  
3 Tuesday, Wednesday, Thursday. And then next week, I think we  
4 got Monday and Tuesday.

5           If I need to kick another day or two -- what I do  
6 now is I've got my juvenile calendar being covered by a *pro*  
7 *tem*, which means I'll have twice as much work to do, because  
8 they'll continue anything of issue back to me anyway, so I'll  
9 have to catch up on that. But I can kick another day or two,  
10 if we need to.

11           I want to get it done for everyone, I want to give  
12 everybody as much chance as they can to accommodate the  
13 witnesses. So if we need another day or two next week,  
14 Wednesday or Thursday, I'll make it happen, if we need to, but  
15 ...

16           MR. SOLOMON: Yeah, I will agree to cooperate on  
17 both sides, who we're going to try and call. My problem, Mr.  
18 Dickerson, is I expected to call Dan today. I'm not going to  
19 do that now, so I need to call some other to get them in here,  
20 and I'll do that during the lunch hour.

21           MR. DICKERSON: Do you know who you'd be calling?

22           MR. SOLOMON: I'll -- yeah. I'm probably going to  
23 try and get all the office people in today, so I'm probably  
24 going to get Rochelle and Nola.

1 (Participants confer.)

2 MR. DICKERSON: All right. Great.

3 THE COURT: And then --

4 MS. FORSBERG: Your Honor, if I could clarify one  
5 other housekeeping matter on that, because what you had stated  
6 before was that you were going to do the trust things, and  
7 hopefully come up with a ruling on that, so we'd know what to  
8 move forward on. So is that your plan? I just wondered --

9 THE COURT: Well --

10 MS. FORSBERG: -- what the Court's plan is. Are you  
11 going to try to resolve that issue, so that it limits it?  
12 Because it's either wide open, and we have so much to cover  
13 for the Court on the second half, or if you make a ruling,  
14 then it just limits it. I'm just wondering what the Court's -  
15 -

16 THE COURT: Yeah. Well, I guess it depends on what  
17 the evidence is submitted. Because the reality of it is Mr.  
18 Garrity coming later in the week on that, this issue has kind  
19 of taken over the focus of the trial at this point on that.  
20 I'd like to see if I got enough evidence. If I think I can  
21 make a ruling at the close of it, I will. If not, we'll sit  
22 there and see what we have to do. And if you need more  
23 witnesses, we'll give you more time.

24 I would like -- I was hoping I could get -- that was



language of subsection NRS 166.170(3):

~~(3) A creditor may not bring an action with respect to transfer of property to a spendthrift trust unless a creditor can prove by clear and convincing evidence that the transfer of property was a fraudulent transfer pursuant to chapter 112 of NRS or that the transfer violates a legal obligation owed to the creditor under a contract or a valid court order that is legally enforceable by that creditor. In the absence of such clear and convincing proof, the property transferred is not subject to the claims of the creditor. [Emphasis added.]~~

(b) *Challenges to the Validity of an SSST.* If a creditor cannot successfully challenge a transfer to an SSST directly, a common tactic is for the creditor to challenge the validity of the trust itself, usually on the grounds that the trust is a “sham” or that the trust is the alter ego of the settlor of the trust without any separate existence.

(c) *The “Sham Trust” Argument.* The concept of a “sham trust” is usually invoked by the Internal Revenue Service in tax-related federal court cases, but the term has appeared in some state court cases as well.

(i) *Lack of Economic Substance.* In tax cases, a trust is considered a “sham” if there is no “economic substance” to the creation of a trust. That concept does not apply to an SSST, especially when the tax code recognizes that the trust is a grantor trust that has no separate existence for tax-law purposes.

(ii) *Lack of Legal Formalities.* In state-law cases, the general rule is that a trust is a sham and is not to be recognized if the principal parties have disregarded the legal formalities of the trust.<sup>11</sup> Cases not involving an SSST focus on the settlor’s retention of benefits and the settlor’s control over the trust, including the influence of the settlor over the trustee.

{A} Influence should not be a factor when determining whether or not an SSST is a sham. Consistent with the public policy reflected in Nevada’s legislation relating to spendthrift trusts, two commentators have stated (referring to an SSST as an “APT” or asset-protection trust):<sup>12</sup>

*[T]here are numerous other reasons that debunk the notion that friendly relations between a trustor and trustee are, by themselves, proof of a sham:*

*a. It is the very nature of a trust relationship that trustors*

<sup>11</sup>See “Sham Trust Theory—Limited Tax Holdings”, *Planning and Defending Domestic Asset-protection Trusts*, SS039 ALI-ABA 1741, 1792 and 2 *Asset Protection: Domestic & International Law & Tactics* § 14A:125 for discussions of this topic.

<sup>12</sup>2 *Asset Protection: Domestic & International Law & Tactics* § 14A:125, footnotes omitted.



*will pick trustees they trust, and it should not be surprising that trustees will take care of a trustor-beneficiary.*

*b. Trustees are supposed to carry out a trustor's intent.*

*c. Given that trustees are fiduciaries who are supposed to be solicitous of their beneficiaries' best interests, they often make distributions requested by beneficiaries—trustors or nontrustors.*

*d. The need for a trustee to honor its legal duties to a trustor-beneficiary is most acute precisely when creditors press claims.*

*e. A trustee's failure to honor its duties during the pendency of a creditor's claim could expose the trustee to claims for breach of duty, and a beneficiary asserting such claims could seek money damages, a declaratory judgment for specific performance of those duties, or other remedies.*

*f. An APT that functions exactly as required by the terms of the agreement is not a sham.*

*g. As discussed above, American precedent shows that proper trust administration involving an independent trustee and observing legal formalities will survive a sham challenge.*

*h. A rule or argument that a sham trust exists simply because a trustee engages in a pattern of trust distributions or other friendly measures to or for a trustor-beneficiary could actually have an undue chilling effect on a trustee's independence.*

{B} I know of no facts that would indicate that the formalities of the trust have been disregarded.

D.4 Merger and Alter Ego. A creditor may wish to challenge the recognition of a trust by arguing that the trust and the settlor are merged or that the trust is merely the alter ego for the settlor.

(a) *Merger.* The doctrine of merger for trusts was repudiated in NRS 163.007, which allows the trust to continue as an entity that is separate from its creator, trustee, and beneficiary, even if they are one and the same.

(b) *Alter Ego, Generally.* There is no Nevada statute that specifies what makes a trust the alter ego of its settlor, but NRS 163.418 and NRS 163.4177 provide some guidelines.





(i) The statutory language of NRS 163.418 is as follows:

~~**NRS 163.418 Clear and convincing evidence required to find settlor to be alter ego of trustee of irrevocable trust; certain factors insufficient for finding that settlor controls or is alter ego of trustee of irrevocable trust.**~~ Absent clear and convincing evidence, a settlor of an irrevocable trust shall not be deemed to be the alter ego of a trustee of an irrevocable trust. If a party asserts that a settlor of an irrevocable trust is the alter ego of a trustee of the trust, the following factors, alone or in combination, are not sufficient evidence for a court to find that the settlor controls or is the alter ego of a trustee:

1. The settlor has signed checks, made disbursements or executed other documents related to the trust as the trustee and the settlor is not a trustee, if the settlor has done so in isolated incidents.
2. The settlor has made requests for distributions on behalf of a beneficiary.
3. The settlor has made requests for the trustee to hold, purchase or sell any trust property.
4. The settlor has engaged in any one of the activities, alone or in combination, listed in NRS 163.4177.

(ii) The statutory language of NRS 163.4177 is as follows:

**NRS 163.4177 Factors which must not be considered exercising improper dominion or control over trust.** If a party asserts that a beneficiary or settlor is exercising improper dominion or control over a trust, the following factors, alone or in combination, must not be considered exercising improper dominion or control over a trust:

1. A beneficiary is serving as a trustee.
2. The settlor or beneficiary holds unrestricted power to remove or replace a trustee.
3. The settlor or beneficiary is a trust administrator, general partner of a partnership, manager of a limited-liability company, officer of a corporation or any other manager of any other type of entity and all or part of the trust property consists of an interest in the entity.
4. The trustee is a person related by blood, adoption or marriage to the settlor or beneficiary.
5. The trustee is the settlor or beneficiary's agent, accountant, attorney, financial adviser or friend.
6. The trustee is a business associate of the settlor or beneficiary.

(c) From the documents I have reviewed relating to this case, I found no clear



and convincing evidence that shows that Eric is the alter ego of Eric's SSST.

~~(i) While other jurisdictions may restrict the role that the settlor of an SSST may play, Nevada law merely requires that all distributions to the settlor are received "only subject to the discretion of another person." [See NRS 166.040(2)(g).<sup>13</sup>] That is the only limitation. NRS 166.040(3) states:~~

(3) Except for the power of the settlor to make distributions to himself or herself without the consent of another person, the provisions of this section shall not be construed to prohibit the settlor of a spendthrift trust from holding other powers under the trust, whether or not the settlor is a cotrustee, including, without limitation, the power to remove and replace a trustee, direct trust investments and execute other management powers.

(ii) Lynita has alleged that persons serving as the Distribution Trustee have violated a duty by consenting to distributions requested by Eric.<sup>14</sup> This is a specious argument.

{A} Under NRS 163.419, a trustee given absolute discretion<sup>15</sup> "has no duty to act reasonably in the exercise of that discretion."

{B} Under NRS 166.040(2)(g)<sup>16</sup>, the person authorizing a distribution to the settlor of an SSST need not be a trustee at all. Because the spendthrift trusts in this case give the Distribution Trustee absolute discretion, that trustee cannot violate a duty to a beneficiary because neither applicable Nevada law nor the trust instrument imposes any specific duty on the Distribution Trustee except to act within the constraints of the trust agreement.

{C} Although Lynita has alleged that the trust agreement has been violated,<sup>17</sup> her main complaint is that the Distribution Trustee "performed exactly as ERIC instructed".<sup>18</sup> Even if that allegation were true, that does not make Eric's SSST an "alter ego" of Eric because the Distribution Trustee is authorized to do exactly that. The Distribution Trustee has the authority to accept or decline any request. The Distribution Trustee's alleged conduct does not constitute actions that

<sup>13</sup>As amended by Section 206 of Chapter 270, Statutes of Nevada 2011, at page 102.

<sup>14</sup>See, for example, paragraph 46 on page 19 and paragraph 49 on page 20 of LSN's Counter-Claim.

<sup>15</sup>Subsection 3.1 of the Eric's SSST on page 2.

<sup>16</sup>As amended by Section 205, Chapter 270, Statutes of Nevada 2011, at page 102. Before the amendment, this was covered by NRS 164.040(2)(b).

<sup>17</sup>See, for example, paragraph 45 on page 19 of LSN's Counter-Claim.

<sup>18</sup>Paragraph 46 on page 19 of LSN's Counter-Claim.



are inconsistent with the provisions of the trust and of applicable law.

(d) *Application of NRS 78.747.* NRS 78.747 does not apply to trusts, either by specific application or by analogy.

(i) *Specific Application.* The alter-ego doctrine, as codified in NRS 78.747, clearly applies to corporations and does not apply to trusts. There is no statutory or judicial authority that supports applying that statute to trusts. The public policy reflected in NRS Chapter 166 allows a settlor to create a trust that he can manage, benefit from, and control except as to distributions. Applying the alter-ego rules reflected in the language of NRS 78.747 would frustrate that public policy. It would also contradict the statutes mentioned above, (NRS 163.418 and NRS 163.4177), which specifically relate to trusts.

(ii) *Application by Analogy.* Similarly, there is no authority for applying the principles of NRS 78.747 to trusts by analogy, especially when NRS 163.418 and NRS 163.4177 exist. Under NRS 78.747(2), a person who is a stockholder, director or officer is the alter ego of a corporation if (1) the corporation “is influenced and governed” by that person; (2) the “unity of interest and ownership” is such that the person and the corporation “are inseparable from each other”; AND (3) recognizing the entity as separate “would sanction fraud or promote a manifest injustice.” Thus there are three elements of this statute that must be met before it applies. I will discuss the three elements individually, but it is important to understand that all three must exist in order to apply the alter-ego doctrine under NRS 78.747.

{A} *Influence and Govern.* NRS 78.747(2)(a) requires that the alleged alter ego of the corporation must influence and govern the corporation. When the settlor is a trustee of an SSST (as permitted by law), this element is always applicable; however, NRS 163.417 and 163.4177 specifically provide that this type of involvement by the settlor is insufficient to find that a settlor controls or is the alter ego of the trustees of the trust and “*must not be considered exercising improper dominion or control over the trust*”.

{B} *Unity of Interest and Ownership.* NRS 78.747 requires that as between the alter ego and the corporation there be “such unity of interest and ownership that the corporation and the stockholder, director or officer are inseparable from each other”. The Nevada Supreme Court has indicated that as to the “unity of interest and ownership”, the factors to be considered are “commingling of funds, undercapitalization, unauthorized diversion of funds, treatment of corporate assets as the individual's own, and failure to observe corporate formalities.”<sup>19</sup> I will address those factors individually, as follows:

(I) *Commingling.* I am unaware of any allegation of commingling of

<sup>19</sup> *Lorenz v. Beltio, Ltd.*, 114 Nev. 795, 808, 963 P.2d 488, 497 (1998)



funds. From what I am aware, the trustees of Eric's SSST have consistently maintained the assets of the trust separate and apart from the assets of Eric, and the trust is authorized to conduct transactions with Eric and others under the terms of the trust instrument and under Nevada law.

(II) Undercapitalization. Undercapitalization is not relevant to any trust.

(III) Unauthorized Diversion of Funds. I am unaware of any alleged facts that would constitute an "unauthorized diversion of funds" in violation of the terms of the trust. To constitute an "unauthorized diversion of funds", a distribution would have to violate the terms of the trust.

(IV) Treating Assets as One's Own. Corporate law does not permit an officer, director, or shareholder to treat corporate assets as their own. In contrast, Nevada spendthrift trust law allows the settlor of an SSST to retain certain indicia of ownership and ownership benefits. Thus, when applied to trusts, the alter-ego doctrine prohibits "treatment of trust assets as the individual's own in a manner not permitted under the terms of the trust or under applicable law." I am unaware of any facts that would show that Eric treated the assets of Eric's SSST in any way that was inconsistent with the terms of the trust or applicable law. To avoid negating NRS Chapter 166 and the public policy reflected therein, Eric's SSST should not be disregarded or treated as a nullity because the settlor retains a degree of control that is allowed by law. NRS Chapter 166 specifically permits the settlor of a spendthrift trust to be a beneficiary without limits as to the benefits received and to have any power except "for the power of the settlor to make distributions to himself or herself without the consent of another person".<sup>20</sup>

(V) Conclusion as to Unity of Interest and Ownership. Without proof that establishes that the settlor has maintained ownership benefits in violation of applicable law or of the trust's terms, the alter-ego doctrine cannot be applied in this case.

(C) *Fraud and Manifest Injustice.* Lynita has alleged fraud and injustice with respect to the transfers to the trust and with respect to distributions from the trust.

(I) Transfers. As to asset transfers, the challenges to those transfers appear to be barred by either (1) the statute of limitations found in NRS 166.170 or (2) by the failure to provide clear and convincing evidence that there is a fraudulent transfer or that the transfer constitutes a violation of an enforceable legal obligation, which means that any fraud or manifest injustice was triggered by the claimant's own action (or inaction). The application of NRS 166.170 to bar the claims of Lynita is no more unjust than the application of any statute of limitation under NRS

<sup>20</sup> NRS 166.040(3).



Chapter 11 or than the application of any exemption under NRS Chapter 21, and even fraud-based claims are barred thereby.

(ii) ~~Distributions. As to the distributions made from the trust, there cannot be fraud or manifest injustice when the trust is administered in compliance with the law and with the trust instrument. Unless there is proof that a distribution was made in violation of the terms of the trust or applicable law, there cannot be fraud or manifest injustice.~~

D.5 *There is No Alter Ego.* After adapting the principles of NRS 78.747 to an SSST and after applying the principals of NRS 163.418 and NRS 163.4177, it is my opinion that there is no alter ego involved in the SSSTs because there is no impermissible influence or control, no impermissible unity of ownership, and no fraud or manifest injustice<sup>21</sup>. A trust is not intended to be a business entity like a corporation, and it is inappropriate to use corporate law to ask a court to disregard an irrevocable trust that has been created and administered in compliance with applicable trust law.

#### E. STATUTES OF LIMITATION

E.1 In my opinion, transfers to Eric's SSST are subject to the limitations of NRS 166.170, which is discussed below.

(a) The limitations of NRS Chapter 11 may also apply, but if the challenge to a transfer to a spendthrift trust is barred under NRS 166.170, it is barred regardless of any provision in NRS Chapter 11.

(i) ~~NRS 11.190(3)(d)~~ specifically states that NRS 166.170 supersedes the longer period that would otherwise be allowed for allegations of fraud under that provision.

(ii) NRS 166.170(8) reads, "*Notwithstanding any other provision of law, no action of any kind, including, without limitation, an action to enforce a judgment entered by a court or other body having adjudicative authority, may be brought at law or in equity against the trustee of a spendthrift trust if, as of the date the action is brought, an action by a creditor with respect to a transfer to the spendthrift trust would be barred pursuant to this section.*"

(b) In this situation, if a deed of real property to Eric was made in 1993 pursuant to the Separate Property Agreement, any challenge to that deed is beyond the statute of limitations. Actions for the recovery of real property or for the profits therefrom must be made within five years. [NRS 11.070 and 11.080] Those statutes require the person asserting the claim to be "seized or possessed of the premises" within five years, and that

<sup>21</sup>If Lynita alleges "fraud and injustice" with respect to transfers to the SSSTs, those claims are time-barred under NRS 166.170.



would not be true as to Lynita with respect to any deeds of real property to Eric's SSST in 2001.

(c) As to personal property:

(i) NRS 11.190 states that actions based upon a written contract must be brought within six years. If Lynita wanted to assert that Eric made transfers in violation of a contract, any violation asserted within six years prior to the filing of the divorce complaint would be within the statute of limitations. Any breach would have had to occur after May 6, 2003 in order to come within this limitation.

(ii) Even if NRS 166.170 were inapplicable, Lynita's argument to negate transfers to the SSST seem to be based on a side agreement that the Separate Property Agreement was subject to an understanding that it was only binding as against third-party creditors. As stated in subsection B.2, above, evidence of such a side agreement is inadmissible. Even if evidence of a side agreement were admissible, a contract not in writing is subject to the four-year statute of limitations under NRS 11.190. Any breach of the agreement would have had to occur after May 6, 2005 to come within this limitation. Again, it is my opinion that NRS 166.170 applies and not NRS Chapter 11.

(iii) As to any alleged breach of the statutes relating to community property, the breach would have had to occur after May 6, 2006 in order to come within the limitation given in NRS 11.190(3)(a).

E.2 NRS 166.170 provides the statute of limitations relating to transfers to spendthrift trusts. The term "creditor" in that statute refers to "a person who has a claim", as defined in NRS 112.150(4). The first three subsections of NRS 166.170 read as follows:

1. A person may not bring an action with respect to a transfer of property to a spendthrift trust:

(a) If the person is a creditor when the transfer is made, unless the action is commenced within:

(1) Two years after the transfer is made; or

(2) Six months after the person discovers or reasonably should have discovered the transfer,

whichever is later.

(b) If the person becomes a creditor after the transfer is made, unless the action is commenced within 2 years after the transfer is made.

2. A person shall be deemed to have discovered a transfer at the time a public record is made of the transfer, including, without limitation, the conveyance of real property that is



recorded in the office of the county recorder of the county in which the property is located or the filing of a financing statement pursuant to chapter 104 of NRS.

~~3. A creditor may not bring an action with respect to transfer of property to a spendthrift trust unless a creditor can prove by clear and convincing evidence that the transfer of property was a fraudulent transfer pursuant to chapter 112 of NRS or that the transfer violates a legal obligation owed to the creditor under a contract or a valid court order that is legally enforceable by that creditor. In the absence of such clear and convincing proof, the property transferred is not subject to the claims of the creditor. Proof by one creditor that a transfer of property was fraudulent or wrongful does not constitute proof as to any other creditor and proof of a fraudulent or wrongful transfer of property as to one creditor shall not invalidate any other transfer of property.~~

E.3 Because Lynita and Eric established their SSSTs concurrently and using the same attorney, and they were aware that the transfers to the SSSTs were from property in their respective 1993 separate property trusts, it is clear that they were aware of the transfers to the SSST. In addition, a notice relating to transfers to the trust was published in *Nevada Legal News* three times commencing on August 23, 2001 [Burro0237]. Thus, even if it is assumed that Lynita had a claim against Eric at the time of any transfer of assets to the SSST, no challenge to that transfer could be asserted more than two years after the date of that transfer.

E.4 Lynita may try to argue that a transfer to Eric's SSST violated "a contract or a valid court order that is legally enforceable by that creditor" within the meaning of NRS 166.170(3). That argument would still fail for at least two reasons:

(a) First, even if that were true, the claim still has to be brought within the two-year time frame given in NRS 166.170(1).

(b) Second, to fit within the statute, the transfer itself must violate an enforceable contract or court order, and I have not seen any contract or court order that specifically prohibited any transfer.

E.5 The two-year statute of limitations under NRS 166.170 begins as of the date the asset is transferred to the trust. Under NRS 163.002, an asset is considered an asset of the trust as soon as it is declared to be an asset by the owner who is the trustee or as soon as it is transferred to another person as trustee.

## F. DOCUMENTS CITED

The documents cited herein are referred to herein using the underlined caption show below, and any number that appears in brackets refers to the Bates numbering on the first page of that document:

F.1 Eric's SSST: The trust established under the trust agreement titled "The Eric L. Nelson Nevada Trust" dated 5/30/2001 [Burro0256].



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F.2 LSN's Counter-Claim: Lynita Sue Nelson's (1) Answer to Claims of The Eric L. Nelson Nevada Trust; and (2) Claims for Relief against Eric L. Nelson et al. filed 09/30/2011.

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F.3 Separate Property Agreement: The "Separate Property Agreement" dated April 28, 1993, signed by Eric and Lynita [Burro0151].

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F.4 Separate Property Trusts: This refers to the Eric L. Nelson Separate Property Trust dated July 13, 1993 [Burro0388] and the Nelson Trust dated July 13, 1993 [Burro0172].

#### G. INVOLVED PERSONS

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The underlined captions below are shorthand references for the major parties involved in this case.

G.1 Eric: Eric L. Nelson, Plaintiff and Counter-defendant.

G.2 Lynita: Lynita Sue Nelson, Defendant and Counter-claimant.

#### H. CREDENTIALS

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H.1 My *Curriculum Vitae* is enclosed.

H.2 A list of recent cases in which I have been engaged as an expert witness is also enclosed.

#### I. CONCLUSION

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Based on the facts as I presently understand them, it is my opinion that:

I.1 The Separate Property Agreement and Separate Property Trusts signed by Eric and Lynita Nelson in 1993 are binding, both as to the claims of third-party creditors and as to their rights in a divorce proceeding.

(a) The terms of the Separate Property Agreement should be construed from the agreement itself as written, and extrinsic evidence that contradicts the unambiguous meaning of the written agreement is inadmissible.

(b) Even if extrinsic evidence were admissible, the testimony of the drafting attorney confirms that the parties intent is consistent with the terms of the written agreement.

(c) Mr. Burr's testimony also indicates that Lynita's position that there was a binding side agreement or understanding that community property principles would continue to apply despite clear contractual language otherwise would have frustrated the intent of the agreement. The Court cannot properly condone Lynita's acceptance of the separate property agreement as against creditors while arguing that Eric's SSST holds





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community property because "a person shall not be allowed at once to benefit by and repudiate an instrument, but, if he chooses to take the benefit which it confers, he shall likewise take the obligations or bear the onus which it imposes."<sup>22</sup>

I.2 The trust agreement titled THE ERIC L. NELSON NEVADA TRUST dated May 30, 2001 ("Eric's SSST") creates a valid self-settled spendthrift trust ("SSST")

I.3 Because Eric's SSST is a valid SSST:

(a) Property in Eric's SSST is no longer his separate property. His interest is a discretionary interest in a trust, as defined in NRS 163.4185(1)(c).

(b) Is it not possible for property in Eric's SSST to become classified as community property because the property is not his. Nevada law does not give him enforceable rights that would allow him to withdraw property unilaterally, and thus ownership of the property cannot be imputed to him. There is no legal authority that allows a spouse to assert a community property interest in property not owned by the other spouse.

(c) If a transfer of community property to Eric's SSST was made by Eric without Lynita's consent, Lynita could challenge that transfer if she raises that challenge within the limitation period given in NRS 166.170.

I.4 NRS 78.747 does not apply to trusts and should not be applied by analogy. The statutes that should be applied are NRS 163.418 and NRS 163.4177. After NRS 163.418 and NRS 163.4177 are applied to this case, Lynita's allegations fail to make a case showing clear and convincing evidence that Eric was the alter ego of, or inappropriately controlled, Eric's SSST. Neither Eric's SSST nor any trustee thereof is the alter ego of anyone because there is no evidence that anyone controlled the trust in any way that violated its terms or applicable law.

I.5 Transfers to Eric's SSST are subject to the limitations of NRS 166.170. The limitations of NRS Chapter 11 may also apply, but if the challenge to a transfer to a spendthrift trust is barred under NRS 166.170, it is barred regardless of any provision in NRS Chapter 11. I have not seen the transfer documents pertinent to transfers to Eric's SSST, but unless the transfers were made less than two years prior to the divorce complaint, they are not subject to challenge.

Sincerely,

LAYNE T. RUSHFORTH  
layne@rushforth.net

<sup>22</sup>See footnote 6, above.

## CURRICULUM VITAE

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### SUMMARY

Layne T. Rushforth is an attorney who focuses his practice in matters involving estate planning, business planning, trust administration, and probate. Mr. Rushforth is licensed in Utah (since 1978) and in Nevada (since 1981). He has been active in the estate planning community as a lecturer, an author, and an officer of an association of estate planners.

Mr. Rushforth's practice as an attorney from 1978 through the present has focused on the drafting of wills, trusts, contracts, and other legal documents related to estate and business planning. He regularly appears in the Probate Court of the Eighth Judicial District Court in Clark County, Nevada with respect to estate and trust administration matters. His trust and probate practice includes representation before the Probate Court related to will contests and other disputes related to estates and trusts. He has been recognized as an expert witness in estate planning and estate administration matters in both state and federal court proceedings.

### CURRENT STATUS

2002-Present: Principal attorney and sole owner of THE RUSHFORTH FIRM, LTD., 9505 Hillwood Drive, Suite 100, Las Vegas, Nevada 89134-0514; Telephone (702) 255-4552; Fax (702) 255-4677.

### PRIOR LEGAL CAREER

1996 - 2002: Member of THE BUSCH FIRM, practicing in the firm's Nevada office at 9505 Hillwood Drive, Suite 100, Las Vegas, Nevada 89134. THE BUSCH FIRM closed its Nevada office in 2002. Its primary office is located at 2532 Dupont Drive, Irvine California 92612-1254, Telephone (949) 474-7368.

1990 - 1995: Senior associate with the law firm presently known as BECKLEY SINGLETON, 530 Las Vegas Boulevard South, Las Vegas, Nevada 89101; Telephone (702) 385-3373.

1989 - 1990: Member of the law firm of SEGAL, McMAHAN & RUSHFORTH, CHARTERED, formerly known as OSHINS & SEGAL, CHARTERED, 720 South Fourth Street, Las Vegas,

NV 89101; Telephone (702) 382-5212, one of three professional corporations associated together under the name of "OSHINS, GIBBONS, BERKLEY, SEGAL, BERMAN & WOLFSON, An Association of Professional Corporations". This firm no longer exists.

~~1988 - 1989: Member and associate of the law firm of RUDIAK, OSHINS, SEGAL & LARSEN, CHARTERED, 720 South Fourth Street, Las Vegas, NV 89101; Telephone (702) 382-5212. (This firm ceased the active practice of law at the end of 1989 after George Rudiak retired and Brent Larsen went into solo practice.)~~

1981 - 1988: Member of JOHNSON & RUSHFORTH, P.C. (now JOHNSON LAW OFFICES), 530 South Fourth Street, Las Vegas, Nevada 89101; Telephone (702) 384-2830.

1979 - 1981: Associate with the law firm of JACKMAN & ASSOCIATES (now Law Office of FREDERICKA JACKMAN), 867 North 900 West Street, Orem, UT 84057-7701, Telephone (801) 225-1632.

1978 - 1979: Partner with the law firm of CROOK & RUSHFORTH (now defunct), Orem, UT.

## EDUCATION

April, 1978: Graduated *cum laude* from the J. Reuben Clark Law School at Brigham Young University with a Juris Doctor (J.D.) degree.

April, 1975: Graduated *cum laude* from Brigham Young University with a Bachelor of Arts (B.A.) degree in Political Science and Spanish.

## RECOGNITION BY PEERS AND COURTS

Recognized as an expert witness in the area of trusts and estate planning in federal and Nevada state courts. Also has collaborated with co-counsel in complex cases, including litigation and disputes relating to trusts and estates. He has also served as a mediator in a trust dispute case. Counsel with whom Mr. Rushforth has associated or for whom he has acted as an expert witness or mediator include the following:

John H. Cotton & Christopher G. Rigler, John H. Cotton & Associates, Las Vegas, Nevada  
Mark Solomon, Dana Dwiggin, and Alan Freer, Solomon Dwiggin Freer & Morse, Ltd., Las Vegas, Nevada

Bernard L. Karr, McDonald Hopkins LLC, Cleveland, Ohio

Robert E. Thomson, Esq., Jekel, Howard & Thomson, Scottsdale, Arizona

Steven E. Trytten, Anglin Flewelling Rasmussen Campbell & Trytten, LLP, Pasadena, California

Rob Graham, Rob Graham & Associates, Las Vegas, Nevada

Steve Morris, Morris Pickering & Peterson, Las Vegas, Nevada

John Porter and Stephanie Loomis-Price, Baker & Botts, Houston, Texas

Dominic Campisi, Evans, Latham & Campisi, San Francisco, California  
 G. Dallas Horton, G. Dallas Horton & Associates, Las Vegas, Nevada  
 Greg Morris, Morris Ltd. Gregory J. Morris, Ltd., Las Vegas, Nevada  
 David Johnson, Johnson & Johnson, Las Vegas, Nevada  
 Alan Harter, Las Vegas, Nevada

Fellow with the American College of Trust and Estate Counsel (ACTEC), which is "an association of lawyers skilled and experienced in: the preparation of wills and trusts; estate planning; probate procedure and administration of trusts and estates of decedents, minors and incompetents." "Fellows are selected on the basis of professional reputation and ability in the fields of trusts and estates and on the basis of having made substantial contributions to these fields through lecturing, writing, teaching and bar activities."<sup>1</sup> Appointed by ACTEC as Nevada State Chair, serving in that office from March 2005 to March 2010.

Listed in the Martindale-Hubbell legal directory with an "AV" rating. Quoting from the Martindale-Hubbell web pages, an "AV Rating shows that a lawyer has reached the height of professional excellence. He or she has usually practiced law for many years, and is recognized for the highest levels of skill and integrity."<sup>2</sup>

Member of the Probate and Trust Section of the State Bar of Nevada, and member of that Section's Legislation Committee, which drafts and submits proposed legislation to the Nevada Legislature to improve Nevada law related to estate and trust administration.

Co-chair of the Legislative Committee of the Probate and Trust Section of the State Bar of Nevada (2012), previously having served as a member of that Committee for several years.

Member of the Southern Nevada Estate Planning Council, which is an association of estate-planning professionals, including certified public accountants, certified life underwriters, trust officers, and attorneys. Served as its president for two years (1986-1988).

Former Board Member of the Nevada Planned Giving Roundtable, an association of estate planners and charitable organizations with the goal of encouraging planned charitable giving. Past president (1997). [This organization ceased to exist in 2003.]

Listed as one of Nevada's top attorneys in the area of "Trusts and Estates" in *The Best Lawyers in America* compiled by Steven Naifeh and Gregory White Smith on the basis of interviews and surveys involving local attorneys. All editions from 1987 through the present.

Former member (1982-1993) and former chairman (1992-1993) of the Clark County Bar Continuing Legal Education Committee.

<sup>1</sup> See <http://www.actec.org/public/MemberInfo.asp>.

<sup>2</sup> See <http://www.martindale.com/xp/Martindale/LawyerLocator/SearchLawyerLocator/ratinginfo.xml>.

## SEMINARS AND PUBLICATIONS

- May 2012: Lecturer for continuing education presentation videotaped in Las Vegas, Nevada titled "Nevada Trust & Estate Law Update; Cases, Revised Statutes & Drafting Tips" sponsored by Life Oak CLE, Inc. (nevadacle.com) and author of a supporting manual with the same title.
- September 2011: Lecturer for continuing education presentation in Las Vegas, Nevada titled "Estates and Trusts Under the Microscope: SB 221 Examined". Co-lecturer: Mark Solomon.
- June 2010: Lecturer for continuing education presentation videotaped in Las Vegas, Nevada titled "Tips, Tricks, Traps & Pitfalls in Drafting Nevada Trusts" sponsored by Life Oak CLE, Inc. (nevadacle.com) and author of a supporting manual with the same title.
- September 2009: Lecturer for continuing education presentation in Las Vegas, Nevada titled "Estate and Probate Legislation Update 2009: Trust, Estate and Guardianship Practices". Co-lecturer: Mark Solomon.
- October 2008: Lecturer and author for continuing education presentation in Las Vegas, Nevada titled "Fundamentals of Trust Administration" sponsored by National Business Institute. Co-lecturers: Philip C. Van Alstyne and Kirk D. Kaplan.
- June 2008: Lecturer and author for continuing education presentation in Las Vegas, Nevada titled "The 7 Greatest Estate Planning Techniques" sponsored by Lorman Education Services. Co-lecturers: Kim Boyer, Catherine M. Colombo, Briar K. Stall, and S. Craig Stone II.
- September 2006: Lecturer for continuing legal education presentations in Las Vegas and Reno, Nevada titled "Drafting Wills and Powers of Attorney in Nevada" and "Drafting Trusts in Nevada" sponsored by Live Oak CLE. Co-lecturer: Scott A. Swain.
- November 2005: Lecturer for continuing education presentation in Las Vegas, Nevada titled "Greatest Estate Planning Techniques". Co-lecturers: S. Craig Stone II and Kim Boyer.
- April 2005: Lecturer for continuing legal education presentation in Las Vegas and Reno, Nevada titled "Estate Planning" sponsored by the State Bar of Nevada. Co-lecturer: Scott A. Swain.
- October 2004: Lecturer for "Representing the Elderly in Nevada", a continuing education presentation sponsored by Professional Education Systems, Inc. Co-lecturers and co-authors of the seminar materials: Kim Boyer, Jasen E. Cassady, and Elyse M. Tyrell.
- November 2003: Lecturer for "Fall Planning Update", a continuing education presentation sponsored by the Nevada Community Foundation. Co-lecturers: Jay Larsen, Dara Goldsmith, and Steven Oshins.
- October 2003: Lecturer for "Nevada Probate Update" continuing education presentation sponsored by Live Oak CLE.

- April 2002: Lecturer for continuing education presentation broadcast nationally via satellite and via Internet webcast from Dallas, Texas titled "Estate Planning Techniques In Response to the 2001 Tax Act" sponsored by Business Professionals Network, Inc. Co-lecturers: Martin (Marty) Satinsky - Isdaner & Company, LLC; Stephanie (Stevie) Casteel - Bank of America Private Bank in Atlanta; and Patrick Pacheco - Davis, Ridout, Jones and Gerstner.
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- December 2001: Lecturer for continuing education presentation in Las Vegas, Nevada titled "Ethical Considerations in Estate Planning" sponsored by Live Oak CLE.
- June 2000: Lecturer for continuing education presentation in Las Vegas and Reno, Nevada titled "Nevada Post-Mortem Planning" sponsored by Professional Education Systems, Inc. Co-lecturer: Scott A. Swain.
- December 1998: Lecturer for continuing education presentation in Las Vegas and Reno, Nevada titled "The Estate Administration Course" sponsored by Professional Education Systems, Inc. Co-lecturer: Scott A. Swain.
- February 1998: Lecturer for continuing education presentation in Las Vegas and Reno, Nevada titled "Estate Planning Update for Up-and-Comers" sponsored by the State Bar of Nevada. Co-lecturer: Todd Torvinen.
- December 1997: Lecturer for continuing education presentation in Las Vegas and Reno, Nevada titled "The Estate Planning Course" sponsored by Professional Education Systems, Inc. Co-lecturer: Scott A. Swain.
- June 1997: Lecturer for continuing education presentation titled "Trust and Estates for Dummies" at the Annual Convention for the State Bar of Nevada, Disneyland Hotel, Anaheim, California. Co-lecturer: Greg Morris.
- August 1996: Co-Author of article titled "An Analysis of the Final GST Regulations: Certain Planning Issues Still Remain" (Tax Management Memorandum, BNA, August 15, 1996). Co-authors: Allen Walburn and R. Zebulon Law.
- June 1995: Lecturer for portion of ethics seminar titled "Ethics in Estate Planning and Estate Administration", Clark County Bar Association.
- January 1995: Lecturer for seminar titled "Bridge the Gap", State Bar of Nevada, which was taught in Reno and Las Vegas, Nevada.
- December 1993: Lecturer for seminar titled "Estate Administration in Nevada", National Business Institute, Inc. The materials for the seminar were co-authored by Mr. Rushforth, Barbara K. Finley, Stephen C. Moss, and Bradley J. Richardson.
- November 1993: Lecturer for seminar titled "The Trust Course", which was sponsored by Professional Education Systems, Inc. Co-lecturer: Gregory J. Morris.

May 1993: Lecturer for seminar titled "Wills & Estates", which was sponsored by the State Bar of Nevada and held in Reno and Las Vegas. He authored sections of the seminar manual titled "Wills and Testamentary Trusts" and "Tips for The Real World", and he co-authored the section titled "Revocable Trusts".

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~~September 1992: Lecturer for seminar titled "The Limited Liability Company", sponsored by William D. Bagley and Philip P. Whynott.~~

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May 1991: Lecturer for seminar titled "Effective Will Drafting", which was sponsored by the State Bar of Nevada and held in Reno and Las Vegas.

March 1991: Lecturer for seminar titled "Medicaid Law, Guardianship Law, and Estate Planning", which was sponsored by Professional Education Systems, Inc. Co-lecturer: Patricia L. Brown. The lecturers co-authored a manual for the seminar.

October 1990: Lecturer for seminar titled "Advising the Family Business", which was sponsored by the State Bar of Nevada.

January 1990: Lecturer for seminar titled "Nevada Practical Probate", which was sponsored by Professional Education Systems, Inc. Co-lecturer: Patricia L. Brown. The lecturers co-authored a manual for the seminar.

September 1989: Lecturer for seminar titled "Nevada Drafting Estate Planning Documents", which was sponsored by Professional Education Systems, Inc. Co-lecturers: Patricia L. Brown and Richard A. Oshins. The lecturers co-authored a manual for the seminar.

December 1987: Lecturer for seminar titled "Basic Probate in Nevada", which was sponsored by Professional Education Systems, Inc. Co-lecturer: Jerome L. Blut. The lecturers co-authored a manual with Robert E. Armstrong, Terrill R. Dory, and John Sande, III.

November 1987: Lecturer for an "Estate Planning Conference" sponsored by the Nevada Society of Certified Public Accountants and the State Bar of Nevada.

January 1987: Lecturer for seminar titled "Nevada Practical Probate", which was sponsored by Professional Education Systems, Inc. Co-lecturer: John G. Gubler. The lecturers co-authored a manual for the seminar.

May 1987: Lecturer for seminar titled "Nevada Estate Planning Trust Drafting", which was sponsored by Professional Education Systems, Inc. Co-lecturer: Patricia L. Brown. The lecturers co-authored a manual for the seminar.

1986: Lecturer for seminar titled "Nevada Practical Probate", which was sponsored by Professional Education Systems, Inc. Co-lecturers were Robert E. Armstrong, George K. Folsom, and John G. Gubler. The lecturers co-authored a manual for the seminar.

1984: Lecturer for seminar titled "Nevada Estate Planning and Probate: The Basics and Beyond", which was sponsored by National Business Institute, Inc. Co-lecturer: Patricia L. Brown. The lecturers co-authored a manual for the seminar.

~~1983: Principal author of the *Nevada Estate Planning and Probate Handbook* written for the general public, nonattorney estate-planning advisors, and attorneys not specializing in estate planning. The co-author was Charles W. Johnson, and it was published by Johnson & Rushforth, P.C. under the name of the "Nevada Estate Planning Institute".~~

1982: Lecturer for seminar titled "Nevada Practical Estate Planning", which was sponsored by Professional Education Systems, Inc. His co-lecturer was his partner, Charles W. Johnson. The seminar was attended by attorneys, accountants, trust officers, and paralegals. The lecturers co-authored a manual for the seminar with the same title.



RECENT EXPERT WITNESS EXPERIENCE  
OF ATTORNEY LAYNE T. RUSHFORTH

I have been involved as an expert witness in these cases during the past five years:

1. 2011: *Burson v. Burson*, Case No. D414217 in the Family Court of the Eighth Judicial District Court in Clark County, Nevada. I have not been informed of the outcome in this case.

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  - a. The Plaintiff was Roy Burson, and the Defendant was Paula K. Briley, also known as Paula K. Burson. This is a divorce case.
  - b. I was retained as an expert witness by EVANS & RIVERA-ROGERS, LTD., counsel for the Defendant. Christina Evans of that firm was subsequently replaced by attorney Michael Warhola. I was engaged to testify as to the validity of a trust schedule declaring certain property to be community property and its effectiveness in transmuting separate property into community property. I was also asked to opine with respect to certain provisions of a limited partnership agreement.
  - c. I prepared a written report, and I gave testimony at trial.
2. 2010: *Frei v. Goodsell*, Case No. A-10-619242 in the Eighth Judicial District Court, Clark County, Nevada. This case resulted in a jury verdict for the Defendant.
  - a. The Plaintiff is Emil Frei III, and the Defendants are attorney Daniel V. Goodsell and his firm Goodsell & Olsen.
  - b. I was retained as an expert witness by the Defendants' counsel, John H. Cotton & Associates. I was engaged to give an opinion as to whether an attorney-client relationship existed between the Plaintiff and the Defendants and whether or not the Defendants had breached a duty of care to a client or potential client. A unique element to this case involves the fact that the Defendants prepared documents for an existing client for signature by the Plaintiff, and the Plaintiff had given the Defendants' client a power of attorney to act for Plaintiff.
  - c. I have submitted a report and a response to a report of the Plaintiffs' expert, and my deposition has been taken. Trial was held in February 2011, and I was qualified and testified as an expert witness.
3. 2010: *Leseberg v. Woods et al.*, Case No. A-551940 in the Eighth Judicial District Court, Clark County, Nevada. This case went to trial and was settled during jury deliberations.
  - a. The Plaintiffs are Reta Leseberg and Mark Leseberg, and the Defendants are attorney R. Glen Woods and his law firm, Woods Erickson Whitaker Miles & Maurice, LLC.
  - b. I was retained by Solomon, Dwiggins & Freer, counsel for the Plaintiffs. I was asked to give an opinion as to whether or not the Defendants breached the standard of care with respect to their representation of the Plaintiffs concurrently with their representation of the estate of Earl Leseberg and of R. Glen Woods in his capacity as



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trustee of various trusts. I have submitted a report and a response to another expert's report, and my deposition was taken. Over a two-day period, I testified at the trial in December of 2010.

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4. 2009-2010: *Buck v. Hoffman*, Case No. CV09-00324 in the Second Judicial District Court, Washoe County, Nevada.
  - a. The Plaintiffs were Christian Buck and Anne Buck-Fenn. The defendants were John Hoffman (individually and as trustee), Leonard C. Buck (individually and as trustee), and the law firm of Hoffman, Test, Guinan & Collier.
  - b. I was retained by counsel for the Plaintiffs, Solomon, Dwiggins & Freer. I was asked to give an opinion as to whether or not the individual Defendants has breached their fiduciary duties in their capacity as the trustees of two different trusts. I have submitted a report and a response to another expert's report, and my deposition was taken. I testified at the trial on June 2, 2010.
  
5. 2009: *Chingros v. Chingros*, Case No. A-5558107 in the Eighth Judicial District Court, Clark County, Nevada. This case settled without a trial.
  - a. The Plaintiffs were Christopher W. Chingros and Arthur S. Chingros. The Defendants were Carolyn A. Chingros, the William N. Chingros Separate Property Trust dated December 14, 1994, and the Chingros Family Limited Partnership dated December 14, 1994.
  - b. I was retained by counsel for the Defendants, Hutchison & Steffen. I submitted a report. A trial was scheduled for the Fall of 2010, but it was settled without my having to testify. I was asked to opine with respect to a trustee's authority to make distributions in kind and the beneficiaries' right to demand a cash distribution under the terms of a trust.
  
6. 2008: *HSK Living Trust v. Kratke*, Case No. A-532821 in the Eighth Judicial District Court, Clark County, Nevada.
  - a. The Plaintiff was the HSK Living Trust. The Defendants were Stephen Kratke, the Kratke Family Trust, and the Steven and Cheryl Kratke 2001 Revocable Trust.
  - b. I was retained by counsel for the Defendants, Solomon, Dwiggins & Freer, Ltd. I prepared a report and a response to the rebuttal of another expert, and a brief deposition was taken. The case settled before trial. My opinion related to the division of a married couple's trust upon the death of the first spouse to die, and it included issues involving Nevada law applied to the facts of the case. The legal issues involved in my opinion related to: (a) community property held in a trust; (b) the



**The Rushforth Firm, Ltd.**  
A Nevada Professional Limited- Liability Company

*Recent Expert Witness Experience  
of Attorney Layne T. Rushforth  
Page 3 of 3*

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revocability of a trust where no right of revocation was reserved; (c) the powers of a trustee; (d) the exercise of a power of appointment by a will containing no specific reference to a power of appointment; and (e) the rules governing the construction of a trust.

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Prepared June 27, 2012 as an exhibit to an opinion letter written for the case of *Nelson v. Nelson*, Case No. D-09-411537-D in the Family Court of the Eighth Judicial District Court in Clark County, Nevada.

# Exhibit “B”

## Nelson - Layne Rushforth Report - EDCR 2.47 Conference

Josef Karacsonyi

**Sent:** Monday, July 09, 2012 1:16 PM

**To:** Jeffrey P. Luszeck [jluszeck@sdfnvlaw.com]; Mark Solomon [msolomon@sdfnvlaw.com]; rhonda@ifdlaw.com

**Cc:** Bob Dickerson; Katherine Provost; Shari Aidukas; File Room

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Dear Mr. Luszeck:

This e-mail shall serve to confirm my conversation with you this afternoon pursuant to EDCR 2.47, wherein I requested that the ELN Trust stipulate to exclude from trial Layne T. Rushforth's testimony and report, and to strike Mr. Rushforth's report from the ELN Trust's Pre-Trial Memorandum. As I stated during our telephone conference, Mr. Rushforth was not timely disclosed as an expert, nor was his report timely produced. Furthermore, it is well established that an expert cannot testify regarding the interpretation of law, or application of facts to law.

You indicated during our telephone conference that you would discuss our request with Mr. Solomon, and that if I do not hear otherwise from you by the end of the day, I am to assume that the ELN Trust will not agree to exclude Mr. Rushforth's testimony and report from trial, and to strike Mr. Rushforth's report from the ELN Trust's Pre-Trial Memorandum.

If you will not agree to exclude Mr. Rushforth's testimony and report from trial, and to strike Mr. Rushforth's report from the ELN Trust's Pre-Trial Memorandum, you will leave us no option but to file a motion tomorrow requesting such relief from the Court. I sincerely hope that it will be not necessary to file such a motion, as I see no valid reason for the ELN Trust to believe that Mr. Rushforth's testimony and report will be admissible at trial. If we are required to file such motion we will be requesting an award of fees and costs.

We appreciate your time and attention to this matter. If you have any questions or concerns, please do not hesitate to contact us.

Best Regards,

Josef Karacsonyi, Esq.

The Dickerson Law Group  
Telephone (702) 388-8600  
Facsimile (702) 388-0210  
1745 Village Center Circle  
Las Vegas, Nevada 89134

NOTICE: The above information is for the sole use of the intended recipient and contains information belonging to The Dickerson Law Group, which is confidential and may be legally privileged. If you are not the intended recipient, or believe that you have received this communication in error, you are hereby notified that any printing, copying, distribution, use or taking of any action in reliance on the contents of this e-mail information is strictly prohibited. If you have received this e-mail in error, please immediately (1) notify the sender by reply e-mail; (2) call our office at (702) 388-8600 to inform the sender of the error; and (3) destroy all copies of the original message, including ones on your computer system and all drives.

In accordance with Internal Revenue Service Circular 230, we advise you that if this e-mail contains any tax advice, such tax advice was not intended or written to be used and it cannot be used, by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer.

# Exhibit “C”

DECLARATION OF JOSEF M. KARACSONYI, ESQ.

I, JOSEF M. KARACSONYI, declare under penalty of perjury under the law of the State of Nevada that the following statement is true and correct:

1. I am over the age of 18 years. I am an attorney licensed to practice in the State of Nevada and counsel for Defendant, Lynita Sue Nelson, in this action. I have personal knowledge of the facts contained herein, and I am competent to testify thereto.

2. I am making this affidavit in support of DEFENDANT'S MOTION IN LIMINE TO EXCLUDE FROM TRIAL THE TESTIMONY AND REPORT OF LAYNE T. RUSHFORTH, ESQ., AND ANY PURPORTED EXPERT TESTIMONY REGARDING THE INTERPRETATION OF LAW, AND APPLICATION OF FACTS TO LAW; TO STRIKE THE ERIC L. NELSON NEVADA TRUST'S PRE-TRIAL MEMORANDUM; AND FOR ATTORNEYS' FEES AND COSTS ("the Motion").

3. On Friday, July 9, 2012, I had a telephone conference with Jeffrey P. Luszeck, Esq., of Solomon, Dwiggin, Freer & Morse, Ltd., counsel for the ELN Trust, to discuss the issues presented in the Motion. Despite such conference, counsel was unable to resolve the matter satisfactorily.

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

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

  
JOSEF M. KARACSONYI

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**FILED**

JUL 11 2 04 PM '12

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

*Ann L. Quinn*  
CLERK OF THE COURT

ERIC L. NELSON, )

Plaintiff/Counterdefendant, )

vs. )

LYNITA SUE NELSON, LANA MARTIN, as )  
Distribution Trustee of the ERIC L. NELSON )  
NEVADA TRUST dated May 30, 2001, )

Defendant/Counterclaimants. )

CASE NO.: D-09-411537-D  
DEPT. NO.: 0

LANA MARTIN, Distribution Trustee of the )  
ERIC L. NELSON NEVADA TRUST dated )  
May 30, 2001, )

Crossclaimant, )

vs. )

LYNITA SUE NELSON, )

Crossdefendant. )

**NOTICE OF ENTRY OF ORDER**

**FRANK R SULLIVAN**  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O  
LAS VEGAS NV 89101




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TO:  
Rhonda Forsberg, Esq.  
Robert Dickerson, Esq.  
Mark Solomon, Esq.  
Jeffrey Luszeck, Esq.  
Larry Bertsch

PLEASE TAKE NOTICE that FINDINGS OF FACT AND ORDER was duly entered  
in the above-referenced case on the 11th day of July, 2012.

DATED this 11 day of July, 2012.

  
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Lori Parr  
Judicial Executive Assistant  
Dept. O

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ORDR

DISTRICT COURT  
CLARK COUNTY, NEVADA

FILED

JUL 11 2 04 PM '12

*Ann L. Quinn*  
CLERK OF THE COURT

ERIC L. NELSON, )

Plaintiff/Counterdefendant, )

vs. )

LYNITA SUE NELSON, LANA MARTIN, as )  
Distribution Trustee of the ERIC L. NELSON )  
NEVADA TRUST dated May 30, 2001, )

Defendant/Counterclaimants. )

CASE NO.: D-09-411537-D  
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LANA MARTIN, Distribution Trustee of the )  
ERIC L. NELSON NEVADA TRUST dated )  
May 30, 2001, )

Crossclaimant, )

vs. )

LYNITA SUE NELSON, )

Crossdefendant. )

**FINDINGS OF FACT AND ORDER**

This Matter having come before this Honorable Court on Lana Martin, Distribution Trustee of the Eric L. Nelson Nevada Trust and Lynita Nelson's Requests for the Court to consider drafts of two proposed Orders from the hearings this Court held on February 23, 2012

ANK R SULLIVAN  
DISTRICT JUDGE

ILY DIVISION, DEPT. O  
S VEGAS NV 89101

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2 and April 10, 2012 respectively, with the Court having reviewed the language of the proposed  
3 Orders and being duly advised in the premises, good cause being shown:

4 THE COURT HEREBY FINDS that with respect to the February 23, 2012 Order, the  
5 impasse between the Eric L. Nelson Nevada Trust (hereinafter, "ELN Trust") and Lynita  
6 Nelson concerns whether the Order from this hearing should contain language foreclosing this  
7 Court from considering NRS Chapter 78 in its analysis of Lynita Nelson's first and second  
8 claims for relief for veil-piercing and reverse veil-piercing respectively, contained in their First  
9 Amended Claims for Relief against Eric Nelson and the ELN Trust.  
10

11 THE COURT FURTHER FINDS that at the hearing on February 23, 2012, this Court  
12 essentially stated that one does not analyze alter ego or piercing the veil claims of a Spendthrift  
13 Trust under the same criteria as a Corporation since they are created for entirely different  
14 purposes and are governed by different statutory schemes (NRS 166 for Spendthrift Trusts and  
15 NRS 78 for Corporations).  
16

17 THE COURT FURTHER FINDS that NRS 78.015 provides that the provisions  
18 contained in Chapter 78 expressly apply to Corporations and NRS 78.747 describes when a  
19 shareholder, director or officer acts as the "alter-ego" of the Corporation.

20 THE COURT FURTHER FINDS that NRS Chapter 163 contains provisions that apply  
21 to "Trusts" generally, including a statute entitled, "Clear and convincing evidence required to  
22 find settlor to be alter ego of trustee of irrevocable trust; certain factors insufficient for finding  
23 that settlor controls or is alter ego of trustee of irrevocable trust." NRS 163.418.  
24

25 THE COURT FURTHER FINDS that even though the Trust at issue in this case is a  
26 Spendthrift Trust governed by Chapter 166 of the Nevada Revised Statutes, it is a "type" of  
27  
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1 trust nonetheless, and, as such, NRS 78.747 is not the applicable provision for Ms. Nelson's  
2 veil-piercing and reverse veil-piercing claims.  
3

4 THE COURT FURTHER FINDS that excluding NRS 78.747 as the applicable alter-ego  
5 provision and applying NRS 163.418 comports with the Legislature's intent evidenced by the  
6 fact that it drafted a specific "alter-ego" statute applicable to "Trusts" generally under NRS 163  
7 and did not place a provision in Chapter 166 stating that the statutory provisions of NRS 163  
8 are excluded from being applied to Spendthrift Trusts.  
9

10 THE COURT FURTHER FINDS that as to the April 10, 2012 Order, the ELN Trust  
11 and Lynita Nelson cannot agree on the proposed language in the Order with respect to the  
12 following issues: (1) whether the Order should contain language that the ELN Trust's request  
13 for attorneys' fees and costs were granted; and (2) the scope of the Court's injunction issued on  
14 April 10, 2012.  
15

16 THE COURT FURTHER FINDS that while the ELN Trust wants to place language in  
17 the April 10, 2012 Order that the Court found that its requested amount of attorneys' fees and  
18 costs are reasonable and shall be paid, there is no need for this language as it has been rendered  
19 moot by the Court's Order issued on June 5, 2012, which addressed the reasonableness and  
20 payment of the requested attorney fees.  
21

22 THE COURT FURTHER FINDS that as to the ELN Trust's request to provide  
23 language in the Order stating that the Court granted, in part, its Motion for attorneys' fees and  
24 costs, this language does not need to be included and has been rendered moot by the Court's  
25 subsequent Order issued on June 5, 2012, which directed that the ELN Trust could not utilize  
26 the enjoined funds to pay its attorneys' fees and costs and experts' fees and costs, thereby,  
27 effectively denying the ELN Trust's Motion.  
28

1  
2 THE COURT FURTHER FINDS that as to the scope of the Court's injunction issued  
3 on April 10, 2012, the proposed language presented by Lynita Nelson exceeds the scope of the  
4 Court's injunction because Ms. Nelson's proposed injunction states that the ELN Trust "shall  
5 not incur additional liabilities," which is not consistent with the Court's ruling that as of 3:00  
6 p.m. on April 10, 2012, the ELN Trust is enjoined from acquiring any new assets, and selling or  
7 encumbering any existing assets, thereby maintaining the status quo of the ELN Trust, pending  
8 the conclusion of the divorce trial.  
9

10 THEREFORE, IT IS HEREBY ORDERED that this Court directs that the following  
11 language be contained in the Order as to Ms. Nelson's veil-piercing and reverse veil-piercing  
12 claims from the February 23, 2012 hearing:

13 "IT IS HEREBY ORDERED that the provisions contained in NRS 78 are not the  
14 appropriate standards to be applied to Lynita Nelson's veil-piercing and reverse  
15 veil-piercing claims against the ELN Trust."

16 IT IS FURTHER ORDERED that this Court shall adopt the language contained in  
17 Lynita Nelson's proposed April 10, 2012 Order stating the following:

18 "IT IS HEREBY ORDERED that the ELN Trust's Motion for Payment of Attorneys  
19 Fees and Costs is taken under advisement with the Court to issue a separate Findings of  
20 Fact and written Order on this request."

21 IT IS FURTHER ORDERED that this Court shall adopt the language contained in the  
22 ELN Trust's proposed April 10, 2012 Order stating the following:

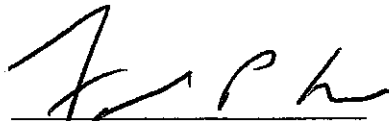
23 "IT IS FURTHER ORDERED that Defendant's request for additional injunctive relief  
24 is GRANTED, and to preserve the status quo of the ELN Trust as of 3:00 p.m. on April  
25 10, 2012, the ELN Trust is enjoined from, and shall not acquire any new or additional  
26 assets, encumber existing assets, or sell existing assets without specific Order of the  
27 Court.  
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IT IS FURTHER ORDERED that counsel for the ELN Trust shall prepare the Order from the February 23, 2012 hearing consistent with these Findings and Order, and is directed to provide a copy to opposing counsel for review prior to submittal to this Court for signature.

IT IS FURTHER ORDERED that counsel for Lynita Nelson shall prepare the Order from the April 10, 2012 hearing consistent with these Findings and Order, and is directed to provide a copy to opposing counsel for review prior to submittal to this Court for signature.

Dated this 6<sup>th</sup> day of July, 2012.

  
Honorable Frank P. Sullivan  
District Court Judge – Dept. O

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FILED

JUL 11 2 04 PM '12

DISTRICT COURT  
CLARK COUNTY, NEVADA

*Ann L. Schuman*  
CLERK OF THE COURT

ERIC L. NELSON, )

Plaintiff/Counterdefendant, )

vs. )

LYNITA SUE NELSON, LANA MARTIN, as )  
Distribution Trustee of the ERIC L. NELSON )  
NEVADA TRUST dated May 30, 2001, )

Defendant/Counterclaimants. )

LANA MARTIN, Distribution Trustee of the )  
ERIC L. NELSON NEVADA TRUST dated )  
May 30, 2001, )

Crossclaimant, )

vs. )

LYNITA SUE NELSON, )

Crossdefendant. )

CASE NO.: D-09-411537-D  
DEPT. NO.: O

NOTICE OF ENTRY OF ORDER

FRANK R. SULLIVAN  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O  
LAS VEGAS NV 89101


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TO:

Rhonda Forsberg, Esq.  
Robert Dickerson, Esq.  
Mark Solomon, Esq.  
Jeffrey Luszeck, Esq.  
Larry Bertsch

PLEASE TAKE NOTICE that FINDINGS OF FACT AND ORDER was duly entered  
in the above-referenced case on the 11th day of July, 2012.

DATED this 11 day of July, 2012.

  
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Lori Parr  
Judicial Executive Assistant  
Dept. O



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**FILED**

**DISTRICT COURT**

JUL 11 2 04 PM '12

**CLARK COUNTY, NEVADA**

*Sharon L. Johnson*  
CLERK OF THE COURT

ERIC L. NELSON, )  
)  
Plaintiff/Counterdefendant, )

CASE NO.: D-09-411537-D  
DEPT. NO.: 0

vs. )

LYNITA SUE NELSON, LANA MARTIN, as )  
Distribution Trustee of the ERIC L. NELSON )  
NEVADA TRUST dated May 30, 2001, )  
)  
Defendant/Counterclaimants. )

LANA MARTIN, Distribution Trustee of the )  
ERIC L. NELSON NEVADA TRUST dated )  
May 30, 2001, )  
)  
Crossclaimant, )

vs. )

LYNITA SUE NELSON, )  
)  
Crossdefendant. )

**FINDINGS OF FACT AND ORDER**

This matter having come before this Honorable Court on Defendant Lynita Nelson's Motion for Court Order Directing Larry Bertsch to Examine Transactions Relating to Acquisition and Sale of Wyoming Property, Acquisition and Sale of Phoenix Properties, and Tracing of all Current Assets; Counterdefendant, Cross-defendant, Third-Party Defendant,

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Lana Martin, Distribution Trustee of the Eric L. Nelson Nevada Trust's Opposition to Motion for Court Order Directing Larry Bertsch to Examine Transactions Relating to Acquisition and Sale of Wyoming Property, Acquisition and Sale of Phoenix Properties, and Tracing of all Current Assets; and Countermotion to Compel Lynita Nelson's Expert Witness to Return Documents to the ELN Trust; Plaintiff, Eric Nelson's Opposition to Defendant's Motion for Court Order Directing Larry Bertsch to Examine Transactions Relating to Acquisition and Sale of Wyoming Property, Acquisition and Sale of Phoenix Properties, and Tracing of all Current Assets; Defendant Lynita Nelson's Reply to Opposition to Motion for Court Order Directing Larry Bertsch to Examine Transactions Relating to Acquisition and Sale of Wyoming Property, Acquisition and Sale of Phoenix Properties, and Tracing of all Current Assets filed by Eric Nelson, Reply to Opposition to Motion for Court Order Directing Larry Bertsch to Examine Transactions Relating to Acquisition and Sale of Wyoming Property, Acquisition and Sale of Phoenix Properties, and Tracing of all Current Assets filed by the Eric L. Nelson Nevada Trust and Opposition to the Eric L. Nelson Nevada Trust's Countermotion to Compel Return of Documents; Counterdefendant, Cross-defendant, Third-Party Defendant, Lana Martin, Distribution Trustee of the Eric L. Nelson Nevada Trust's Response to New Issues Raised in Lynita Nelson's Reply to Opposition to Motion for Court Order Directing Larry Bertsch to Examine Transactions Relating to Acquisition and Sale of Wyoming Property, Acquisition and Sale of Phoenix Properties, and Tracing of all Current Assets; and Reply to Opposition to Countermotion to Compel Lynita Nelson's Expert Witness to Return Documents to the ELN Trust; and Plaintiff Eric Nelson's Notice of Joinder to Response to New Issues Raised in Lynita Nelson's Reply to Opposition to Motion for Court Order Directing Larry Bertsch to Examine Transactions Relating to Acquisition and Sale of Wyoming Property, Acquisition and Sale of

1  
2 Phoenix Properties, and Tracing of all Current Assets; and Reply to Opposition to  
3 Counter-motion to Compel Lynita Nelson's Expert Witness to Return Documents to the ELN  
4 Trust, with the Court having reviewed the pleadings and papers filed herein and being duly  
5 advised in the premises, good cause being shown:

6 THE COURT HEREBY FINDS that on May 4, 2012, Lynita Nelson filed a Motion  
7 with this Court asking that the Court order the forensic accountant that it appointed, Larry  
8 Bertsch, to perform the following tasks: examine all transactions relating to the acquisition and  
9 sale of the Wyoming Property (hereinafter, "Wyoming Downs Property"); examine all  
10 transactions relating to the acquisition and sale of the "Sycamore Plaza" Phoenix Property and  
11 the "Tierra Del Sol" Phoenix Property (hereinafter, "Phoenix Properties"); and trace the source  
12 of all current assets held by either the Eric L. Nelson Nevada Trust (hereinafter, "ELN Trust")  
13 or the LSN Nevada Trust (hereinafter, "LSN Trust").

14  
15 THE COURT FURTHER FINDS that Ms. Nelson's request of the Court stems from  
16 information that she has discovered regarding the purchase of the Wyoming Downs Property  
17 and Mr. and Ms. Nelson's accumulation of assets that they both held in joint tenancy, despite  
18 the existence of a Separate Property Agreement that they both entered in 1993.

19  
20 THE COURT FURTHER FINDS that in its Order issued on June 9, 2011, the Court  
21 made the following Order:

22 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that LARRY BERTSCH,  
23 CPA and NICHOLAS MILLER, CFE, are appointed by this Court to perform a forensic  
24 accounting intended to provide the Court with an accurate evaluation of the parties'  
25 estate. Counsel for the parties are to meet separately with the Court appointed experts  
and confirm the areas they desire the experts to review during their evaluation.

26 THE COURT FURTHER FINDS that Ms. Nelson represents that her requests for Mr.  
27 Bertsch's investigations and subsequent reports are necessary because they will "ensure the

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1  
2 Court has the most accurate information regarding the assets at issue in this divorce at the time  
3 of trial.”

4 THE COURT FURTHER FINDS that the ELN Trust argues in its Opposition that Ms.  
5 Nelson is essentially requesting that the Court allow Mr. Bertsch to conduct her discovery for  
6 the evidentiary hearing, that such request exceeds the scope of Mr. Bertsch’s appointment and  
7 that Ms. Nelson’s specific request that Mr. Bertsch trace the source of all of the assets held by  
8 the ELN Trust and the LSN Trust to determine the disposition of the property as either  
9 community property or separate property is an improper delegation to a special master of the  
10 Court’s duty.  
11

12 THE COURT FURTHER FINDS that Mr. Nelson filed his own Opposition in which he  
13 made several of the same arguments as the ELN Trust, but also went into his own theory as to  
14 why the Wyoming Downs Property is separate property and requested attorney’s fees.  
15

16 THE COURT FURTHER FINDS that as to Mr. Nelson’s argument regarding the  
17 classification of the Wyoming Downs property, this Court is not going to entertain Mr.  
18 Nelson’s theory as he and the ELN Trust will have their opportunity at the evidentiary hearing  
19 to establish the classification of the Wyoming Downs property.  
20

21 THE COURT FURTHER FINDS that as to Mr. Nelson’s request for attorney’s fees,  
22 this Court does not find Ms. Nelson’s Motion was filed disingenuously or to delay the trial,  
23 and, as such, this Court is not inclined to grant Mr. Nelson’s request for reasonable attorney’s  
24 fees.  
25

26 THE COURT FURTHER FINDS that the issue before this Court is simply whether or  
27 not Ms. Nelson’s request for Mr. Bertsch to perform the aforementioned tasks exceeds the  
28 scope of this Court’s appointment.

1  
2 THE COURT FURTHER FINDS that NRCP 53 (c) provides that “The order of  
3 reference to the master may specify or limit the master’s powers and may direct the master to  
4 report only upon particular issues or to do or perform particular acts or to receive and report  
5 evidence only...”

6 THE COURT FURTHER FINDS that the Nevada Supreme Court has determined that  
7  
8 “Masters are appointed to aid judges in the performance of specific judicial duties...not to  
9 place the trial judge into a position of a reviewing court.” *Russell v. Thompson*, 96 Nev. 830,  
10 835, 619 P.2d 537, 539 (Nev. 1980).

11 THE COURT FURTHER FINDS that a Court’s referral to a special master is only  
12 warranted when it is absolutely necessary, not when the Court simply desires to appoint a  
13 special master as this might lead to the Court’s delegation of too much authority or power to  
14 the special master. *Venetian Casino Resort, LLC v. Eighth Jud. Dist. Ct. of St. ex rel. Co. of*  
15 *Clark*, 118 Nev. 124, 128, 41 P.3d 327, 329 (Nev. 2002) citing *Russell v. Thompson*, 96 Nev.  
16 830, 834, 619 P.2d 537, 540 (Nev. 1980).

17  
18 THE COURT FURTHER FINDS that in *Thompson*, the Nevada Supreme Court held  
19 that a writ of mandamus would properly issue because the Judge, in contravention of NRCP 53,  
20 improperly abdicated his judicial duties when he appointed the special master to make  
21 determinations as to whether the property at issue was separate or community property, to  
22 recommend an appropriate division of the property at issue and/or any alimony, and to provide  
23 the Court with a report chronicling his Findings of Fact and Conclusions of Law, forthwith.  
24 *Thompson*, at 832, 538.

1  
2 THE COURT FURTHER FINDS that in *Thompson*, the Nevada Supreme Court agreed  
3 with the Colorado Supreme Court's holding that in accordance with Rule 53 of the Colorado  
4 Rules of Civil Procedure, which contains a very similar provision that exists in NRCP 53,  
5 "...where the issues in a divorce case are not beyond the competence of a court to consider  
6 without a master, a reference [to a master] constitutes an unjustified delegation of the court's  
7 decision-making powers." *Thompson*, at 834, 539 citing *Gelfond v. Dist. Ct.*, 180 Colo. 95, 504  
8 P.2d 673 (Colo. 1972).  
9

10 THE COURT FURTHER FINDS that while the ELN Trust argues that Ms. Nelson's  
11 request that Mr. Bertsch examine all transactions relating to the acquisition and sale of the  
12 Wyoming Downs Property, the Phoenix Properties and trace the source of all current assets  
13 held by the ELN Trust and the LSN Trust, respectively, teeters on the brink of this Court  
14 abdicating its judicial decision-making authority, this Court does not interpret Ms. Nelson's  
15 Motion to include such a request as she is only asking the Court to authorize Mr. Bertsch to  
16 trace the source of the properties contained in the respective trusts, not to empower Mr. Bertsch  
17 with the authority to make determinations as to the classification of the property.  
18

19 THE COURT FURTHER FINDS that although Ms. Nelson is not requesting that the  
20 Court abdicate its judicial decision-making power in contravention of NRCP 53 and *Thompson*,  
21 this Court is not inclined to grant Ms. Nelson's request as it exceeds the scope of this Court's  
22 Order issued on June 9, 2011 that Mr. Bertsch perform a forensic accounting of all of the assets  
23 at issue in this divorce and their respective streams of income and expenses, not to trace the  
24 source of the income used to acquire said properties.  
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THE COURT FURTHER FINDS that Ms. Nelson's request for Mr. Bertsch to analyze the transactions involved with the Wyoming Downs Property and Phoenix Properties and trace the source of all of the assets held by the ELN Trust and LSN Trust, not only exceeds the scope of Mr. Bertsch's original appointment, but would further delay the start of the July 16, 2012 Evidentiary Hearing.


THE COURT FURTHER FINDS that with respect to the ELN Trust's Counter-motion to compel Ms. Nelson's Expert Witness to return original Wells Fargo Bank Statements to the ELN Trust, Ms. Nelson should simply make copies of the documents at issue, subject to reimbursement for copying costs, and provide the originals back to the ELN Trust.

THEREFORE, IT IS HEREBY ORDERED that Ms. Nelson's Motion is DENIED in its entirety.

IT IS FURTHER ORDERED that the ELN Trust's Counter-motion to compel the return of the original Wells Fargo Bank Statements is hereby GRANTED, subject to reimbursement for copying costs.

IT IS FURTHER ORDERED that Mr. Nelson's request for attorney's fees is hereby DENIED.

Dated this 11<sup>th</sup> day of July, 2012.

  
Honorable Frank P. Sullivan  
District Court Judge - Dept. O

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JUL 23 2014

*Alvin J. Sullivan*  
CLERK OF COURT

EIGHTH JUDICIAL DISTRICT COURT  
FAMILY DIVISION  
CLARK COUNTY, NEVADA

ERIC L. NELSON, )  
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Plaintiff, )  
 )  
vs. )  
 )  
LYNITA NELSON, )  
 )  
Defendant. )

CASE NO. D-09-411537-D  
DEPT. L  
**(SEALED)**

BEFORE FRANK P. SULLIVAN  
DISTRICT COURT JUDGE

TRANSCRIPT RE: TRIAL - VOL I

Monday, July 16, 2012



1 APPEARANCES:

2 Plaintiff: ERIC L. NELSON  
3 For the Plaintiff: RHONDA K. FORSBERG, ESQ.  
4 Rhonda K. Forsberg, Chtd.  
5 64 N. Pecos Road, Suite 800  
6 Henderson, Nevada 89074  
7 (702) 990-6468

8 Defendant: LYNITA NELSON  
9 For the Defendant: ROBERT PAUL DICKERSON, ESQ.  
10 JOSEF M. KARACSONYI, ESQ.  
11 KATHERINE L. PROVOST, ESQ.  
12 The Dickerson Law Group  
13 1745 Village Center  
14 Las Vegas, Nevada 89134  
15 (702) 388-89134

16 Intervenor: LANA MARTIN, TRUSTEE, ET AL  
17 For the Intervenors: MARK ALAN SOLOMON, ESQ.  
18 JEFFREY P. LUSZECK, ESQ.  
19 Solomon, Dwiggin & Freer, Ltd  
20 9060 W. Cheyenne Avenue  
21 Las Vegas, Nevada 89129  
22 (702) 853-5483

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I N D E X

W I T N E S S E S

Direct      Cross      Redirect      Recross

FOR THE PLAINTIFF:

None

FOR THE DEFENDANT:

None

FOR THE INTERVENORS:

Lana Martin	122		
Nola Harber	195	222	248

E X H I B I T S

Admitted

FOR THE PLAINTIFF:

None

FOR THE DEFENDANT:

None

FOR THE INTERVENORS:

Intervenor Exhibit 30	155
Intervenor Exhibit 35	156
Intervenor Exhibit 36	157
Intervenor Exhibit 37	158
Intervenor Exhibit 38	159
Intervenor Exhibit 39	160

(Exhibits Continued)

E X H I B I T S  
(Continued)

Admitted

FOR THE INTERVENORS: (Continued)

1		
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5	Intervenor Exhibit 41	160
6	Intervenor Exhibit 42	161
7	Intervenor Exhibit 43	162
8	Intervenor Exhibit 45	164
9	Intervenor Exhibit 46	164
10	Intervenor Exhibit 47	167
11	Intervenor Exhibit 48	167
12	Intervenor Exhibit 49	168
13	Intervenor Exhibit 50	169
14	Intervenor Exhibit 52	170
15	Intervenor Exhibit 53	170
16	Intervenor Exhibit 54	171
17	Intervenor Exhibit 55	172
18	Intervenor Exhibit 56	172
19	Intervenor Exhibit 58	173
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21	Intervenor Exhibit 60	174
22	Intervenor Exhibit 61	174
23	Intervenor Exhibit 62	175
24	Intervenor Exhibit 64	176
	Intervenor Exhibit 65	176
	Intervenor Exhibit 66	176
	Intervenor Exhibit 67	176
	Intervenor Exhibit 68	176
	Intervenor Exhibit 70	177
	Intervenor Exhibit 71	177
	Intervenor Exhibit 72	211
	Intervenor Exhibit 73	217
	Intervenor Exhibit 77	212
	Intervenor Exhibit 99	179
	Intervenor Exhibit 100	180
	Intervenor Exhibit 101	180
	Intervenor Exhibit 103	180
	Intervenor Exhibit 105	180
	Intervenor Exhibit 106	180
	Intervenor Exhibit 107	180
	Intervenor Exhibit 108	181

(Exhibits Continued)

E X H I B I T S  
(Continued)

Admitted

FOR THE INTERVENORS: (Continued)

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4	Intervenor Exhibit 109	181
5	Intervenor Exhibit 110	181
	Intervenor Exhibit 111	181
6	Intervenor Exhibit 112	181
	Intervenor Exhibit 113	181
7	Intervenor Exhibit 115	182
	Intervenor Exhibit 116	182
8	Intervenor Exhibit 117	182
	Intervenor Exhibit 118	182
9	Intervenor Exhibit 119	183
	Intervenor Exhibit 120	183
10	Intervenor Exhibit 121	183
	Intervenor Exhibit 123	183
11	Intervenor Exhibit 124	183
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13	Intervenor Exhibit 128	184
	Intervenor Exhibit 129	184
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	Intervenor Exhibit 131	184
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16	Intervenor Exhibit 136	186
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17	Intervenor Exhibit 138	186
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18	Intervenor Exhibit 140	186
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20	Intervenor Exhibit 144	187
	Intervenor Exhibit 145	187
21	Intervenor Exhibit 146	187
	Intervenor Exhibit 147	188
22	Intervenor Exhibit 148	188
	Intervenor Exhibit 149	209

(Exhibits Continued)

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E X H I B I T S  
(Continued)

Admitted

FOR THE INTERVENORS: (Continued)

Intervenor Exhibit 150	219
Intervenor Exhibit 151	220
Intervenor Exhibit 152	220
Intervenor Exhibit 153	221
Intervenor Exhibit 155	220
Intervenor Exhibit 156	221
Intervenor Exhibit 158	220
Intervenor Exhibit 159	221
Intervenor Exhibit 162	210
Intervenor Exhibit 163	188
Intervenor Exhibit 164	188
Intervenor Exhibit 165	190

1 LAS VEGAS, NEVADA

MONDAY, JULY 16, 2012

2 PROCEEDINGS

3 (Proceedings commence at 9:35 a.m.)

4

5 THE COURT: This is the time set in the matter of  
6 Eric Nelson and Lynita Nelson, Case Number D-411537. We'll  
7 get everybody's appearances for the record, and we'll get this  
8 show on the road. Start with Mr. Solomon.

9 MR. SOLOMON: Thank you. Mark Solomon on behalf of  
10 Lana Martin, distribution trustee of the ELN Self-Settled  
11 Spendthrift Trust.

12 THE COURT: Thank you.

13 MR. LUSZECK: Jeff Luszeck on behalf of Lana Martin  
14 as distribution trustee of the ELN Self-Settled Spendthrift  
15 Trust.

16 MS. FORSBERG: Rhonda Forsberg on behalf of Eric  
17 Nelson.

18 THE COURT: Good to see you, Mr. Nelson.

19 MR. DICKERSON: Thank you, Your Honor. Bob --

20 MS. FORSBERG: Ms. Martin is right there --

21 THE COURT: Oh, sorry. I see. Okay.

22 MR. DICKERSON: Good morning. Bob Dickerson. My  
23 bar number is 0945. I'm here on behalf of Lynita Nelson,  
24 along with Josef Karacsonyi, whose bar number is 10634, and

1 Katherine Provost, whose bar number is 8414. And Ms. Nelson  
2 is here with us.

3 THE COURT: It's good to see you, as well; Ms.  
4 Lynita Nelson, as well.

5 We're ready to get this matter going. There was a  
6 motion in limine filed to exclude the testimony and reports of  
7 Daniel Garrity, as well as the attorney in the matter, that's  
8 the expert Mr. Rushforth. I have read the motion, the  
9 oppositions.

10 At this time, I'll give some preliminary, and then  
11 I'll hear arguments as to that issue. You know, I'm not happy  
12 that we're there -- that we're hearing this on a motion in  
13 limine. I told the parties to -- I should have set a  
14 scheduling order. I've been doing this long enough to know  
15 not to leave it to the attorneys, because that's exactly where  
16 we end up, where we're at. I'm not happy about it because you  
17 should have been able to resolve it. Apparently, we can't  
18 resolve anything, from language in orders, I have to resolve  
19 every issue between that, and I ain't happy about it.

20 As far as the issue, it comes down to fundamental  
21 fairness. And the position of Mr. Dickerson is that,  
22 basically, a trial by ambush, that they get the expert reports  
23 by Mr. Rushforth 17 days before trial, and Mr. Garrity 10 days  
24 before trial; and, therefore, they're not able to prepare in

1 detail for cross-examination or rebuttal. I do understand  
2 that.

3           And the other side by Mr. Solomon, and the argument  
4 was that they kind of knew who these witnesses were going all  
5 the way back to December, so there really was no surprise on  
6 the fact, and they had some problems getting the experts done  
7 on time, because of money, and getting approval by the Court,  
8 to -- in order to pay the experts, so they could do that; and  
9 that the Court -- if the Court wanted the rules to apply, the  
10 Court would have said the rules apply.

11           But I left it to the attorneys because, two or three  
12 times, we talked about it, and two or three times, the  
13 attorney said, no, Judge, we don't need a scheduling order, we  
14 can work it out. And I think I even said, I don't want to be  
15 on the eve of trial, and have people fighting that they were  
16 ambushed or were not given proper notice and things like that.  
17 And that's exactly where we're at, so shame on me, to allow  
18 that to happen, so ... but it is where it's at.

19           I'll be honest what my preliminary are, and I'll  
20 have you guys argue on it. I ain't stupid. I do know that,  
21 as far as an expert, the competency of an expert to allow them  
22 in is in the sound discretion of the Court as to competency.  
23 The issue is fundamental fairness. If I keep that experts  
24 out, is that a reversible error? Could be. And are the





community property because “a person shall not be allowed at once to benefit by and repudiate an instrument, but, if he chooses to take the benefit which it confers, he shall likewise take the obligations or bear the onus which it imposes.”<sup>22</sup>

I.2 The trust agreement titled THE ERIC L. NELSON NEVADA TRUST dated May 30, 2001 (“Eric’s SSST”) creates a valid self-settled spendthrift trust (“SSST”)

I.3 Because Eric’s SSST is a valid SSST:

(a) Property in Eric’s SSST is no longer his separate property. His interest is a discretionary interest in a trust, as defined in NRS 163.4185(1)(c).

(b) Is it not possible for property in Eric’s SSST to become classified as community property because the property is not his. Nevada law does not give him enforceable rights that would allow him to withdraw property unilaterally, and thus ownership of the property cannot be imputed to him. There is no legal authority that allows a spouse to assert a community property interest in property not owned by the other spouse.

(c) If a transfer of community property to Eric’s SSST was made by Eric without Lynita’s consent, Lynita could challenge that transfer if she raises that challenge within the limitation period given in NRS 166.170.

I.4 NRS 78.747 does not apply to trusts and should not be applied by analogy. The statutes that should be applied are NRS 163.418 and NRS 163.4177. After NRS 163.418 and NRS 163.4177 are applied to this case, Lynita’s allegations fail to make a case showing clear and convincing evidence that Eric was the alter ego of, or inappropriately controlled, Eric’s SSST. Neither Eric’s SSST nor any trustee thereof is the alter ego of anyone because there is no evidence that anyone controlled the trust in any way that violated its terms or applicable law.

I.5 Transfers to Eric’s SSST are subject to the limitations of NRS 166.170. The limitations of NRS Chapter 11 may also apply, but if the challenge to a transfer to a spendthrift trust is barred under NRS 166.170, it is barred regardless of any provision in NRS Chapter 11. I have not seen the transfer documents pertinent to transfers to Eric’s SSST, but unless the transfers were made less than two years prior to the divorce complaint, they are not subject to challenge.

Sincerely,

LAYNE T. RUSHFORTH  
layne@rushforth.net

<sup>22</sup>See footnote 6, above.

## CURRICULUM VITAE

**LAYNE T. RUSHFORTH**  
**THE RUSHFORTH FIRM, LTD.**  
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Las Vegas, Nevada 89134-0514  
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Fax: (702) 255-4677  
Internet E-mail: [layne@rushforth.net](mailto:layne@rushforth.net)  
Web pages: <http://rushforthfirm.com> and <http://rushforth.net/>

### SUMMARY

Layne T. Rushforth is an attorney who focuses his practice in matters involving estate planning, business planning, trust administration, and probate. Mr. Rushforth is licensed in Utah (since 1978) and in Nevada (since 1981). He has been active in the estate planning community as a lecturer, an author, and an officer of an association of estate planners.

Mr. Rushforth's practice as an attorney from 1978 through the present has focused on the drafting of wills, trusts, contracts, and other legal documents related to estate and business planning. He regularly appears in the Probate Court of the Eighth Judicial District Court in Clark County, Nevada with respect to estate and trust administration matters. His trust and probate practice includes representation before the Probate Court related to will contests and other disputes related to estates and trusts. He has been recognized as an expert witness in estate planning and estate administration matters in both state and federal court proceedings.

### CURRENT STATUS

2002-Present: Principal attorney and sole owner of THE RUSHFORTH FIRM, LTD., 9505 Hillwood Drive, Suite 100, Las Vegas, Nevada 89134-0514; Telephone (702) 255-4552; Fax (702) 255-4677.

### PRIOR LEGAL CAREER

1996 - 2002: Member of THE BUSCH FIRM, practicing in the firm's Nevada office at 9505 Hillwood Drive, Suite 100, Las Vegas, Nevada 89134. THE BUSCH FIRM closed its Nevada office in 2002. Its primary office is located at 2532 Dupont Drive, Irvine California 92612-1254, Telephone (949) 474-7368.

1990 - 1995: Senior associate with the law firm presently known as BECKLEY SINGLETON, 530 Las Vegas Boulevard South, Las Vegas, Nevada 89101; Telephone (702) 385-3373.

1989 - 1990: Member of the law firm of SEGAL, McMAHAN & RUSHFORTH, CHARTERED, formerly known as OSHINS & SEGAL, CHARTERED, 720 South Fourth Street, Las Vegas,

NV 89101; Telephone (702) 382-5212, one of three professional corporations associated together under the name of "OSHINS, GIBBONS, BERKLEY, SEGAL, BERMAN & WOLFSON, An Association of Professional Corporations". This firm no longer exists.

1988 - 1989: Member and associate of the law firm of RUDIAK, OSHINS, SEGAL & LARSEN, CHARTERED, 720 South Fourth Street, Las Vegas, NV 89101; Telephone (702) 382-5212. (This firm ceased the active practice of law at the end of 1989 after George Rudiak retired and Brent Larsen went into solo practice.)

1981 - 1988: Member of JOHNSON & RUSHFORTH, P.C. (now JOHNSON LAW OFFICES), 530 South Fourth Street, Las Vegas, Nevada 89101; Telephone (702) 384-2830.

1979 - 1981: Associate with the law firm of JACKMAN & ASSOCIATES (now Law Office of FREDERICKA JACKMAN), 867 North 900 West Street, Orem, UT 84057-7701, Telephone (801) 225-1632.

1978 - 1979: Partner with the law firm of CROOK & RUSHFORTH (now defunct), Orem, UT.

## EDUCATION

April, 1978: Graduated *cum laude* from the J. Reuben Clark Law School at Brigham Young University with a Juris Doctor (J.D.) degree.

April, 1975: Graduated *cum laude* from Brigham Young University with a Bachelor of Arts (B.A.) degree in Political Science and Spanish.

## RECOGNITION BY PEERS AND COURTS

Recognized as an expert witness in the area of trusts and estate planning in federal and Nevada state courts. Also has collaborated with co-counsel in complex cases, including litigation and disputes relating to trusts and estates. He has also served as a mediator in a trust dispute case. Counsel with whom Mr. Rushforth has associated or for whom he has acted as an expert witness or mediator include the following:

John H. Cotton & Christopher G. Rigler, John H. Cotton & Associates, Las Vegas, Nevada  
Mark Solomon, Dana Dwiggins, and Alan Freer, Solomon Dwiggins Freer & Morse, Ltd., Las Vegas, Nevada

Bernard L. Karr, McDonald Hopkins LLC, Cleveland, Ohio

Robert E. Thomson, Esq., Jekel, Howard & Thomson, Scottsdale, Arizona

Steven E. Trytten, Anglin Flewelling Rasmussen Campbell & Trytten, LLP, Pasadena, California

Rob Graham, Rob Graham & Associates, Las Vegas, Nevada

Steve Morris, Morris Pickering & Peterson, Las Vegas, Nevada

John Porter and Stephanie Loomis-Price, Baker & Botts, Houston, Texas

Dominic Campisi, Evans, Latham & Campisi, San Francisco, California  
G. Dallas Horton, G. Dallas Horton & Associates, Las Vegas, Nevada  
Greg Morris, Morris Ltd. Gregory J. Morris, Ltd., Las Vegas, Nevada  
David Johnson, Johnson & Johnson, Las Vegas, Nevada  
Alan Harter, Las Vegas, Nevada

Fellow with the American College of Trust and Estate Counsel (ACTEC), which is “an association of lawyers skilled and experienced in: the preparation of wills and trusts; estate planning; probate procedure and administration of trusts and estates of decedents, minors and incompetents.” “Fellows are selected on the basis of professional reputation and ability in the fields of trusts and estates and on the basis of having made substantial contributions to these fields through lecturing, writing, teaching and bar activities.”<sup>1</sup> Appointed by ACTEC as Nevada State Chair, serving in that office from March 2005 to March 2010.

Listed in the Martindale-Hubbell legal directory with an “AV” rating. Quoting from the Martindale-Hubbell web pages, an “AV Rating shows that a lawyer has reached the height of professional excellence. He or she has usually practiced law for many years, and is recognized for the highest levels of skill and integrity.”<sup>2</sup>

Member of the Probate and Trust Section of the State Bar of Nevada, and member of that Section’s Legislation Committee, which drafts and submits proposed legislation to the Nevada Legislature to improve Nevada law related to estate and trust administration.

Co-chair of the Legislative Committee of the Probate and Trust Section of the State Bar of Nevada (2012), previously having served as a member of that Committee for several years.

Member of the Southern Nevada Estate Planning Council, which is an association of estate-planning professionals, including certified public accountants, certified life underwriters, trust officers, and attorneys. Served as its president for two years (1986-1988).

Former Board Member of the Nevada Planned Giving Roundtable, an association of estate planners and charitable organizations with the goal of encouraging planned charitable giving. Past president (1997). [This organization ceased to exist in 2003.]

Listed as one of Nevada’s top attorneys in the area of “Trusts and Estates” in *The Best Lawyers in America* compiled by Steven Naifeh and Gregory White Smith on the basis of interviews and surveys involving local attorneys. All editions from 1987 through the present.

Former member (1982-1993) and former chairman (1992-1993) of the Clark County Bar Continuing Legal Education Committee.

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<sup>1</sup>See <http://www.actec.org/public/MemberInfo.asp>.

<sup>2</sup>See [http://www.martindale.com/xp/Martindale/Lawyer\\_Locator/Search\\_Lawyer\\_Locator/rating\\_info.xml](http://www.martindale.com/xp/Martindale/Lawyer_Locator/Search_Lawyer_Locator/rating_info.xml).

## SEMINARS AND PUBLICATIONS

- May 2012: Lecturer for continuing education presentation videotaped in Las Vegas, Nevada titled "Nevada Trust & Estate Law Update; Cases, Revised Statutes & Drafting Tips" sponsored by Life Oak CLE, Inc. (nevadacle.com) and author of a supporting manual with the same title.
- September 2011: Lecturer for continuing education presentation in Las Vegas, Nevada titled "Estates and Trusts Under the Microscope: SB 221 Examined". Co-lecturer: Mark Solomon.
- June 2010: Lecturer for continuing education presentation videotaped in Las Vegas, Nevada titled "Tips, Tricks, Traps & Pitfalls in Drafting Nevada Trusts" sponsored by Life Oak CLE, Inc. (nevadacle.com) and author of a supporting manual with the same title.
- September 2009: Lecturer for continuing education presentation in Las Vegas, Nevada titled "Estate and Probate Legislation Update 2009: Trust, Estate and Guardianship Practices". Co-lecturer: Mark Solomon.
- October 2008: Lecturer and author for continuing education presentation in Las Vegas, Nevada titled "Fundamentals of Trust Administration" sponsored by National Business Institute. Co-lecturers: Philip C. Van Alstyne and Kirk D. Kaplan.
- June 2008: Lecturer and author for continuing education presentation in Las Vegas, Nevada titled "The 7 Greatest Estate Planning Techniques" sponsored by Lorman Education Services. Co-lecturers: Kim Boyer, Catherine M. Colombo, Briar K. Stall, and S. Craig Stone II.
- September 2006: Lecturer for continuing legal education presentations in Las Vegas and Reno, Nevada titled "Drafting Wills and Powers of Attorney in Nevada" and "Drafting Trusts in Nevada" sponsored by Live Oak CLE. Co-lecturer: Scott A. Swain.
- November 2005: Lecturer for continuing education presentation in Las Vegas, Nevada titled "Greatest Estate Planning Techniques". Co-lecturers: S. Craig Stone II and Kim Boyer.
- April 2005: Lecturer for continuing legal education presentation in Las Vegas and Reno, Nevada titled "Estate Planning" sponsored by the State Bar of Nevada. Co-lecturer: Scott A. Swain.
- October 2004: Lecturer for "Representing the Elderly in Nevada", a continuing education presentation sponsored by Professional Education Systems, Inc. Co-lecturers and co-authors of the seminar materials: Kim Boyer, Jasen E. Cassady, and Elyse M. Tyrell.
- November 2003: Lecturer for "Fall Planning Update", a continuing education presentation sponsored by the Nevada Community Foundation. Co-lecturers: Jay Larsen, Dara Goldsmith, and Steven Oshins.
- October 2003: Lecturer for "Nevada Probate Update" continuing education presentation sponsored by Live Oak CLE.

- April 2002: Lecturer for continuing education presentation broadcast nationally via satellite and via Internet webcast from Dallas, Texas titled "Estate Planning Techniques In Response to the 2001 Tax Act" sponsored by Business Professionals Network, Inc. Co-lecturers: Martin (Marty) Satinsky - Isdamer & Company, LLC; Stephanie (Stevie) Casteel - Bank of America Private Bank in Atlanta; and Patrick Pacheco - Davis, Ridout, Jones and Gerstner.
- December 2001: Lecturer for continuing education presentation in Las Vegas, Nevada titled "Ethical Considerations in Estate Planning" sponsored by Live Oak CLE.
- June 2000: Lecturer for continuing education presentation in Las Vegas and Reno, Nevada titled "Nevada Post-Mortem Planning" sponsored by Professional Education Systems, Inc. Co-lecturer: Scott A. Swain.
- December 1998: Lecturer for continuing education presentation in Las Vegas and Reno, Nevada titled "The Estate Administration Course" sponsored by Professional Education Systems, Inc. Co-lecturer: Scott A. Swain.
- February 1998: Lecturer for continuing education presentation in Las Vegas and Reno, Nevada titled "Estate Planning Update for Up-and-Comers" sponsored by the State Bar of Nevada. Co-lecturer: Todd Torvinen.
- December 1997: Lecturer for continuing education presentation in Las Vegas and Reno, Nevada titled "The Estate Planning Course" sponsored by Professional Education Systems, Inc. Co-lecturer: Scott A. Swain.
- June 1997: Lecturer for continuing education presentation titled "Trust and Estates for Dummies" at the Annual Convention for the State Bar of Nevada, Disneyland Hotel, Anaheim, California. Co-lecturer: Greg Morris.
- August 1996: Co-Author of article titled "An Analysis of the Final GST Regulations: Certain Planning Issues Still Remain" (Tax Management Memorandum, BNA, August 15, 1996). Co-authors: Allen Walburn and R. Zebulon Law.
- June 1995: Lecturer for portion of ethics seminar titled "Ethics in Estate Planning and Estate Administration", Clark County Bar Association.
- January 1995: Lecturer for seminar titled "Bridge the Gap", State Bar of Nevada, which was taught in Reno and Las Vegas, Nevada.
- December 1993: Lecturer for seminar titled "Estate Administration in Nevada", National Business Institute, Inc. The materials for the seminar were co-authored by Mr. Rushforth, Barbara K. Finley, Stephen C. Moss, and Bradley J. Richardson.
- November 1993: Lecturer for seminar titled "The Trust Course", which was sponsored by Professional Education Systems, Inc. Co-lecturer: Gregory J. Morris.

May 1993: Lecturer for seminar titled "Wills & Estates", which was sponsored by the State Bar of Nevada and held in Reno and Las Vegas. He authored sections of the seminar manual titled "Wills and Testamentary Trusts" and "Tips for The Real World", and he co-authored the section titled "Revocable Trusts".

September 1992: Lecturer for seminar titled "The Limited Liability Company", sponsored by William D. Bagley and Philip P. Whynott.

May 1991: Lecturer for seminar titled "Effective Will Drafting", which was sponsored by the State Bar of Nevada and held in Reno and Las Vegas.

March 1991: Lecturer for seminar titled "Medicaid Law, Guardianship Law, and Estate Planning", which was sponsored by Professional Education Systems, Inc. Co-lecturer: Patricia L. Brown. The lecturers co-authored a manual for the seminar.

October 1990: Lecturer for seminar titled "Advising the Family Business", which was sponsored by the State Bar of Nevada.

January 1990: Lecturer for seminar titled "Nevada Practical Probate", which was sponsored by Professional Education Systems, Inc. Co-lecturer: Patricia L. Brown. The lecturers co-authored a manual for the seminar.

September 1989: Lecturer for seminar titled "Nevada Drafting Estate Planning Documents", which was sponsored by Professional Education Systems, Inc. Co-lecturers: Patricia L. Brown and Richard A. Oshins. The lecturers co-authored a manual for the seminar.

December 1987: Lecturer for seminar titled "Basic Probate in Nevada", which was sponsored by Professional Education Systems, Inc. Co-lecturer: Jerome L. Blut. The lecturers co-authored a manual with Robert E. Armstrong, Terrill R. Dory, and John Sande, III.

November 1987: Lecturer for an "Estate Planning Conference" sponsored by the Nevada Society of Certified Public Accountants and the State Bar of Nevada.

January 1987: Lecturer for seminar titled "Nevada Practical Probate", which was sponsored by Professional Education Systems, Inc. Co-lecturer: John G. Gubler. The lecturers co-authored a manual for the seminar.

May 1987: Lecturer for seminar titled "Nevada Estate Planning Trust Drafting", which was sponsored by Professional Education Systems, Inc. Co-lecturer: Patricia L. Brown. The lecturers co-authored a manual for the seminar.

1986: Lecturer for seminar titled "Nevada Practical Probate", which was sponsored by Professional Education Systems, Inc. Co-lecturers were Robert E. Armstrong, George K. Folsom, and John G. Gubler. The lecturers co-authored a manual for the seminar.

- 1984: Lecturer for seminar titled "Nevada Estate Planning and Probate: The Basics and Beyond", which was sponsored by National Business Institute, Inc. Co-lecturer: Patricia L. Brown. The lecturers co-authored a manual for the seminar.
- 1983: Principal author of the *Nevada Estate Planning and Probate Handbook* written for the general public, nonattorney estate-planning advisors, and attorneys not specializing in estate planning. The co-author was Charles W. Johnson, and it was published by Johnson & Rushforth, P.C. under the name of the "Nevada Estate Planning Institute".
- 1982: Lecturer for seminar titled "Nevada Practical Estate Planning", which was sponsored by Professional Education Systems, Inc. His co-lecturer was his partner, Charles W. Johnson. The seminar was attended by attorneys, accountants, trust officers, and paralegals. The lecturers co-authored a manual for the seminar with the same title.



**RECENT EXPERT WITNESS EXPERIENCE  
OF ATTORNEY LAYNE T. RUSHFORTH**

I have been involved as an expert witness in these cases during the past five years:

1. 2011: *Burson v. Burson*, Case No. D414217 in the Family Court of the Eighth Judicial District Court in Clark County, Nevada. I have not been informed of the outcome in this case.
  - a. The Plaintiff was Roy Burson, and the Defendant was Paula K. Briley, also known as Paula K. Burson. This is a divorce case.
  - b. I was retained as an expert witness by EVANS & RIVERA-ROGERS, LTD., counsel for the Defendant. Christina Evans of that firm was subsequently replaced by attorney Michael Warhola. I was engaged to testify as to the validity of a trust schedule declaring certain property to be community property and its effectiveness in transmuting separate property into community property. I was also asked to opine with respect to certain provisions of a limited partnership agreement.
  - c. I prepared a written report, and I gave testimony at trial.
2. 2010: *Frei v. Goodsell*, Case No. A-10-619242 in the Eighth Judicial District Court, Clark County, Nevada. This case resulted in a jury verdict for the Defendant.
  - a. The Plaintiff is Emil Frei III, and the Defendants are attorney Daniel V. Goodsell and his firm Goodsell & Olsen.
  - b. I was retained as an expert witness by the Defendants' counsel, John H. Cotton & Associates. I was engaged to give an opinion as to whether an attorney-client relationship existed between the Plaintiff and the Defendants and whether or not the Defendants had breached a duty of care to a client or potential client. A unique element to this case involves the fact that the Defendants prepared documents for an existing client for signature by the Plaintiff, and the Plaintiff had given the Defendants' client a power of attorney to act for Plaintiff.
  - c. I have submitted a report and a response to a report of the Plaintiffs' expert, and my deposition has been taken. Trial was held in February 2011, and I was qualified and testified as an expert witness..
3. 2010: *Leseberg v. Woods et al.*, Case No. A-551940 in the Eighth Judicial District Court, Clark County, Nevada. This case went to trial and was settled during jury deliberations.
  - a. The Plaintiffs are Reta Leseberg and Mark Leseberg, and the Defendants are attorney R. Glen Woods and his law firm, Woods Erickson Whitaker Miles & Maurice, LLC.
  - b. I was retained by Solomon, Dwiggin & Freer, counsel for the Plaintiffs. I was asked to give an opinion as to whether or not the Defendants breached the standard of care with respect to their representation of the Plaintiffs concurrently with their representation of the estate of Earl Leseberg and of R. Glen Woods in his capacity as



trustee of various trusts. I have submitted a report and a response to another expert's report, and my deposition was taken. Over a two-day period, I testified at the trial in December of 2010.

4. 2009-2010: *Buck v. Hoffman*, Case No. CV09-00324 in the Second Judicial District Court, Washoe County, Nevada.
  - a. The Plaintiffs were Christian Buck and Anne Buck-Fenn. The defendants were John Hoffman (individually and as trustee), Leonard C. Buck (individually and as trustee), and the law firm of Hoffman, Test, Guinan & Collier.
  - b. I was retained by counsel for the Plaintiffs, Solomon, Dwiggin & Freer. I was asked to give an opinion as to whether or not the individual Defendants has breached their fiduciary duties in their capacity as the trustees of two different trusts. I have submitted a report and a response to another expert's report, and my deposition was taken. I testified at the trial on June 2, 2010.
5. 2009: *Chingros v. Chingros*, Case No. A-5558107 in the Eighth Judicial District Court, Clark County, Nevada. This case settled without a trial.
  - a. The Plaintiffs were Christopher W. Chingros and Arthur S. Chingros. The Defendants were Carolyn A. Chingros, the William N. Chingros Separate Property Trust dated December 14, 1994, and the Chingros Family Limited Partnership dated December 14, 1994.
  - b. I was retained by counsel for the Defendants, Hutchison & Steffen. I submitted a report. A trial was scheduled for the Fall of 2010, but it was settled without my having to testify. I was asked to opine with respect to a trustee's authority to make distributions in kind and the beneficiaries' right to demand a cash distribution under the terms of a trust.
6. 2008: *HSK Living Trust v. Kratke*, Case No. A-532821 in the Eighth Judicial District Court, Clark County, Nevada.
  - a. The Plaintiff was the HSK Living Trust. The Defendants were Stephen Kratke, the Kratke Family Trust, and the Steven and Cheryl Kratke 2001 Revocable Trust.
  - b. I was retained by counsel for the Defendants, Solomon, Dwiggin & Freer, Ltd. I prepared a report and a response to the rebuttal of another expert, and a brief deposition was taken. The case settled before trial. My opinion related to the division of a married couple's trust upon the death of the first spouse to die, and it included issues involving Nevada law applied to the facts of the case. The legal issues involved in my opinion related to: (a) community property held in a trust; (b) the



**The Rushforth Firm, Ltd.**

A Nevada Professional Limited-Liability Company

*Recent Expert Witness Experience  
of Attorney Layne T. Rushforth  
Page 3 of 3*

revocability of a trust where no right of revocation was reserved; (c) the powers of a trustee; (d) the exercise of a power of appointment by a will containing no specific reference to a power of appointment; and (e) the rules governing the construction of a trust.

Prepared June 27, 2012 as an exhibit to an opinion letter written for the case of *Nelson v. Nelson*, Case No. D-09-411537-D in the Family Court of the Eighth Judicial District Court in Clark County, Nevada.

RECEIVED  
7/11/12

1 MLIM  
2 THE DICKERSON LAW GROUP  
3 ROBERT P. DICKERSON, ESQ.  
4 Nevada Bar No. 000945  
5 KATHERINE L. PROVOST, ESQ.  
6 Nevada Bar No. 008414  
7 JOSEF M. KARACSONYI, ESQ.  
8 Nevada Bar No. 010634  
9 1745 Village Center Circle  
10 Las Vegas, Nevada 89134  
11 Telephone: (702) 388-8600  
12 Facsimile: (702) 388-0210  
13 Email: info@dickersonlawgroup.com

8 Attorneys for Defendant

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DISTRICT COURT  
FAMILY DIVISION  
CLARK COUNTY, NEVADA

ERIC L. NELSON, )  
Plaintiff/Counterdefendant, )  
v. )  
LYNITA SUE NELSON, )  
Defendant/Counterclaimant. )  
\_\_\_\_\_)  
ERIC L. NELSON NEVADA TRUST )  
dated May 30, 2001, and LSN NEVADA )  
TRUST dated May 30, 2001, )  
Necessary Parties (joined in this )  
action pursuant to Stipulation and )  
Order entered on August 9, 2011 )  
\_\_\_\_\_)  
LANA MARTIN, as Distribution Trustee of )  
the ERIC L. NELSON NEVADA TRUST )  
dated May 30, 2001, )  
Necessary Party (joined in this action )  
pursuant to Stipulation and Order )

CASE NO. D-09-411537-D  
DEPT NO. "O"

DATE OF HEARING:  
TIME OF HEARING:

1 entered on August 9, 2011)/ Purported )  
2 Counterclaimant and Crossclaimant, )

3 v. )

4 LYNITA SUE NELSON and ERIC )  
5 NELSON, )

6 Purported Cross-Defendant and )  
7 Counterdefendant, )

8 LYNITA SUE NELSON, )

9 Counterclaimant, Cross-Claimant, )  
and/or Third Party Plaintiff, )

10 v. )

11 ERIC L. NELSON, individually and as the )  
Investment Trustee of the ERIC L. NELSON )  
12 NEVADA TRUST dated May 30, 2001; the )  
ERIC L. NELSON NEVADA TRUST dated )  
13 May 30, 2001; LANA MARTIN, individually, )  
and as the current and/or former Distribution )  
14 Trustee of the ERIC L. NELSON NEVADA )  
TRUST dated May 30, 2001, and as the )  
15 former Distribution Trustee of the LSN )  
NEVADA TRUST dated May 30, 2001); )  
16 NOLA HARBER, individually, and as the )  
current and/or former Distribution Trustee )  
17 of the ERIC L. NELSON NEVADA TRUST )  
dated May 30, 2001, and as the current )  
18 and/or former Distribution Trustee of the )  
LSN NEVADA TRUST dated May 30, 2001; )  
19 ROCHELLE McGOWAN, individually; )  
JOAN B. RAMOS, individually; and DOES I )  
20 through X, )

21 Counterdefendant, and/or )  
22 Cross-Defendants, and/or )  
Third Party Defendants. )

23  
24 NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH  
25 THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF  
26 YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION.  
27 FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN  
TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED  
RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE  
SCHEDULED HEARING DATE.

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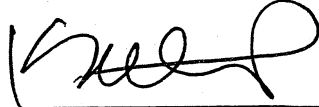
**DEFENDANT'S MOTION IN LIMINE TO EXCLUDE TESTIMONY AND  
REPORT OF DANIEL T. GERETY, CPA**

COMES NOW Defendant/Counterclaimant, LYNITA SUE NELSON ("Lynita"), by and through hers attorneys, ROBERT P. DICKERSON, ESQ., KATHERINE L. PROVOST, ESQ., and JOSEF M. KARACSONYI, ESQ., of THE DICKERSON LAW GROUP, and submits the following Memorandum of Points and Authorities in support of her Motion in Limine.

This Motion is made and based upon the following Memorandum of Points and Authorities, the attached Declaration, all papers and pleadings on file herein, as well as oral argument of counsel as may be permitted at the hearing on this matter.

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

THE DICKERSON LAW GROUP

By   
ROBERT P. DICKERSON, ESQ.  
Nevada Bar No. 000945  
KATHERINE L. PROVOST, ESQ.  
Nevada Bar No. 008414  
JOSEF M. KARACSONYI, ESQ.  
Nevada Bar No. 010634  
1745 Village Center Circle  
Las Vegas, Nevada 89134  
Attorneys for Defendant

1 NOTICE OF MOTION

2 TO: ERIC L. NELSON, Plaintiff;

3 TO: RHONDA K. FORSBERG, ESQ., of FORSBERG & DOUGLAS, Attorneys for  
4 Plaintiff;

5 TO: MARK A. SOLOMON, ESQ., and JEFFREY P. LUSZECK, ESQ., of  
6 SOLOMON, DWIGGINS & FREER, LTD., Attorneys for the Eric L. Nelson  
7 Nevada Trust;

8 PLEASE TAKE NOTICE that the undersigned will bring the foregoing  
9 DEFENDANT'S MOTION IN LIMINE TO EXCLUDE TESTIMONY AND REPORT  
10 OF DANIEL T. GERETY, CPA, on for hearing before the above-entitled Court on  
11 \_\_\_\_\_, 2012 at \_\_\_\_\_ a.m./p.m.

12 THE DICKERSON LAW GROUP

13  
14 By 

15 ROBERT P. DICKERSON, ESQ.  
16 Nevada Bar No. 000945  
17 KATHERINE L. PROVOST, ESQ.  
18 Nevada Bar No. 008414  
19 JOSEF M. KARACSONYI, ESQ.  
20 Nevada Bar No. 010634  
21 1745 Village Center Circle  
22 Las Vegas, Nevada 89134  
23 Attorneys for Defendant  
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26  
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 A. Procedural History

3 Plaintiff, Eric L. Nelson (“Eric”), and Defendant, Lynita Sue Nelson (“Lynita”),  
4 were married on September 17, 1983. They have been married for nearly 29 years.  
5 During this lengthy marriage the parties have been blessed with five children. Three  
6 of the parties’ children are now adults. Custody of the remaining two (2) minor  
7 children has been resolved by the parties’ Stipulated Parenting Agreement that was  
8 entered as an Order of this Court on February 8, 2010.

9 On May 6, 2009, Eric filed his Complaint for Divorce initiating this action.  
10 Prolonged litigation followed including eight (8) days of trial conducted between  
11 August 2010 and November 2010. This action is set for a continuation of trial  
12 proceedings beginning July 16, 2012.

13 On Thursday, July 6, 2012, a mere ten (10) days before the continuation of  
14 Trial, Third-Party Defendant, Lana Martin (“Ms. Martin”), in her capacity as  
15 Distribution Trustee of the Eric L. Nelson Nevada Trust (the “ELN Trust”), produced  
16 the ELN Trust’s Fifth Supplemental Disclosure, formally listing Daniel T. Gerety, CPA  
17 (“Mr. Gerety”) as a purported expert witness for the ELN Trust for the first time, and  
18 producing for the first time a written report prepared by Mr. Gerety.<sup>1</sup>

19 Mr. Gerety’s report is improper in that it purports to interpret for the Court the  
20 “trust accounting of the Eric L. Nelson Nevada Trust,” and the “contingent non-  
21 contingent debt of the trust,” the very same matters addressed by the court’s Special

22 \_\_\_\_\_  
23 <sup>1</sup> Mr. Gerety was previously disclosed as an expert witness for Eric Nelson, in Mr.  
24 Nelson’s First Supplemental NRCP 16.1 Disclosure of Witnesses and Documents on July 7,  
25 2010. This Disclosure indicated Mr. Gerety “may be called to testify with regard to the  
26 absence of value of the Plaintiff’s business. He is anticipated to give his opinion regarding the  
27 absence of value of the business and his reasons therefore. Tax considerations and costs to the  
28 parties as they affect certain assets of the parties will also be a subject of likely testimony.” Mr.  
Gerety testified at trial in this matter, as to those designated issues only, on October 20, 2010.



1 Master, Larry Bertsch, CPA in his reports to the Court. Pursuant to NRCP 53(e)(2),  
2 “in an action to be tried without a jury the court shall accept the master’s findings of  
3 fact unless clearly erroneous.” Eric and the ELN Trust had the ability to challenge Mr.  
4 Bertsch’s reports through the process identified in NRCP 53. Specifically, “[w]ithin  
5 10 days after being served with notice of the filing of the report any party may serve  
6 written objections thereto upon the other parties. Application to the Court for action  
7 upon . . . objections thereto shall be by motion and upon notice as prescribed in Rule  
8 6(d).” The ELN Trust failed to do so. Now, on the eve of trial, the ELN Trust seeks  
9 admittance of Mr. Gerety’s expert opinions as to the same matters analyzed by Mr.  
10 Bertsch.

11 **II. Legal Analysis**

12 **A. Motions in limine.**

13 Eighth Judicial District Court Rules, Rule 2.47 (2012), provides:

14 Unless otherwise provided for in an order of the court, all motions in  
15 limine to exclude or admit evidence must be in writing and filed not less  
than 45 days prior to the date set for trial and must be heard not less  
than 14 days prior to trial.

16 (a) The court may refuse to sign orders shortening time and to  
17 consider any oral motion in limine and any motion in limine  
which is not timely filed or noticed.

18 (b) Motions in limine may not be filed unless an unsworn  
19 declaration under penalty of perjury or affidavit of moving counsel  
20 is attached to the motion setting forth that after a conference or a  
21 good-faith effort to confer, counsel have been unable to resolve the  
22 matter satisfactorily. A "conference" requires a personal or  
23 telephone conference between or among counsel. Moving counsel  
must set forth in the declaration/affidavit what attempts to resolve  
the matter were made, what was resolved, what was not resolved  
and the reasons therefore. If a personal or telephone conference  
was not possible, the declaration/affidavit shall set forth the  
reasons.

24 As set forth in the “Introduction and Factual Statement,” above, the ELN Trust  
25 did not formally disclose Mr. Gerety as a proposed expert witness, or Mr. Gerety’s  
26 report, until July 5, 2012, eleven (11) days prior to Trial. Accordingly, it was  
27

1 impossible for Lynita to file this motion in limine within the time period prescribed by  
2 EDCR 2.47, and this Motion should be considered by the Court.

3 Furthermore, on July 9, 2012, Lynita's counsel, Katherine L. Provost, Esq.,  
4 conducted a telephone conference with the ELN Trust's counsel, Jeffrey P. Luszeck,  
5 Esq., in a good-faith effort to address the issues presented herein as required by EDCR  
6 2.47(b). During this call, Mr. Luszeck confirmed that the ELN Trust would not  
7 stipulate to the exclusion of Mr. Gerety as an expert witness or to the exclusion of his  
8 expert report, necessitating this Motion.

9 B. The ELN Trust failed to timely disclose Daniel Gerety as an expert, and  
10 to timely produce Mr. Gerety's report, and Mr. Gerety must not be permitted to testify  
11 at the continuation of Trial in this matter.

12 Nevada Rules of Civil Procedure, Rule 16.2(a)(3) (2012) ("Disclosure of Expert  
13 Testimony"), provides:

14 (A) In addition to the disclosures required by paragraphs (1) and (2),  
15 a party shall disclose to other parties the identity of any person who may  
16 be used at trial to present evidence under NRS 50.275, 50.285, and  
17 50.305. These disclosures must be made within 90 days after the  
18 financial disclosures are required to be filed and served under Rule  
19 16.2(a)(1) or, if the evidence is intended solely to contradict or rebut  
20 evidence on the same subject matter identified by another party under  
21 paragraph (3)(B), within 60 days after the disclosure made by the other  
22 party. The parties shall supplement these disclosures when required under  
23 Rule 26(e)(1).

24 (B) Except as otherwise stipulated or directed by the court, a party  
25 who retains or specially employs a witness to provide expert testimony in  
26 the case, or whose duties as an employee of the party regularly involve  
27 giving expert testimony, shall deliver to the opposing party a written  
28 report prepared and signed by the witness, within 60 days before trial.  
The court, upon good cause shown or by stipulation of the parties, may  
extend the deadline for exchange of the experts' reports or relieve a party  
of the duty to prepare a written report in an appropriate case. The report  
shall contain a complete statement of all opinions to be expressed and the  
basis and reasons therefor; the data or other information considered by  
the witness in forming the opinions; any exhibits to be used as a summary  
of or support for the opinions; the qualifications of the witness, including  
a list of all publications authored by the witness within the preceding 10  
years; the compensation to be paid for the study and testimony; and a  
listing of any other cases in which the witness has testified as an expert  
at trial or by deposition within the preceding 4 years.

1 NRS 50.275 provides:

2 **Testimony by experts.** If scientific, technical or other specialized  
3 knowledge will assist the trier of fact to understand the evidence or  
4 to determine a fact in issue, a witness qualified as an expert by  
special knowledge, skill, experience, training or education may  
testify to matters within the scope of such knowledge.

5 On August 9, 2011, the parties, through counsel, stipulated to join the ELN  
6 Trust and LSN Nevada Trust, dated May 1, 2001 (the "LSN Trust"), as necessary  
7 parties to this action. On August 19, 2011, Attorney Mark Solomon, on behalf of Ms.  
8 Martin and the ELN Trust, filed an initial Notice of Appearance, followed by an  
9 Answer to Eric's Complaint for Divorce, as well as Counterclaims and Cross-claims  
10 against Eric and Lynita, respectively. Despite joining this action on August 19, 2011,  
11 the ELN Trust waited over ten (10) months to formally disclose Mr. Gerety as a  
12 proposed expert witness in this matter on behalf of the Trust, and to produce a report  
13 from Mr. Gerety. These disclosures were made a mere eleven (11) days before Trial is  
14 scheduled to resume. As Mr. Gerety's October 20, 2010 trial appearance was  
15 challenged due to his failure to provide an expert report to Lynita's counsel prior to his  
16 trial appearance, Mr Gerety was well aware of the need to provide an expert report well-  
prior to the July 5, 2012 disclosure at issue in this Motion.

17 NRCP 16.2(a)(3), and its counterpart for civil actions not involving domestic  
18 relations, NRCP 16.1(a)(2), limit the time periods for parties to disclose expert  
19 witnesses and reports. Specifically, NRCP 16.2(a)(3) requires parties to disclose expert  
20 witnesses 135 days (4.5 months) after service of the summons and complaint (financial  
21 disclosure forms are due forty-five (45) days after service of the summons and  
22 complaint pursuant to NRCP 16.2(a)(1), and expert disclosures are required ninety  
23 (90) days thereafter), and to produce a report from any proposed expert at least sixty  
24 (60) days prior to trial. NRCP 16.1(a)(2) requires parties to disclose experts and  
25 reports at least ninety (90) days before the discovery cut-off (absent extraordinary  
26 circumstances). The purpose of these rules is to prevent trial by ambush, and to allow  
27

1 any other party to an action receiving an expert disclosure and report from another  
2 party sufficient time to analyze and conduct discovery concerning same, and to retain  
3 an expert to contradict or rebut such experts/reports. In fact, NRCP 16.2(a)(1)(A)  
4 allows parties receiving an expert disclosure from another party sixty (60) days to  
5 designate a rebuttal expert, and to produce his or her report, and NRCP 16.1(a)(2)  
6 allows parties receiving an expert disclosure from another party thirty (30) days from  
7 the date of such disclosure to disclose a rebuttal expert, and to produce his or her  
8 report.

9 There is absolutely no justification for the ELN Trust to have waited until eleven  
10 (11) days prior to the continuation of trial to formally disclose Mr. Gerety as a  
11 proposed expert and produce his report. The timing of such disclosure does not afford  
12 Lynita sufficient or reasonable time to analyze and conduct discovery regarding Mr.  
13 Gerety's report, or to disclose a rebuttal expert and report. NRCP 16.2(a)(1) and  
14 16.1(a)(2) were enacted to prevent exactly this situation. Accordingly, Mr. Gerety  
15 must be excluded from further testifying or offering any opinions in this matter at trial.

16 B. All of Mr. Rushforth's purported "expert opinions" involve interpretation  
17 of law, and application of alleged facts to law, and are wholly inadmissible at trial.

18 Assuming that the ELN Trust had timely disclosed Mr. Gerety as an expert  
19 witness, and timely produced Mr. Gerety's report, which clearly the ELN Trust did not,  
20 the opinions the ELN Trust seeks to elicit from Mr. Gerety are wholly inadmissible.  
21 Nevada Revised Statutes, Section 50.275 (2012), provides:

22 **Testimony by experts.** If scientific, technical or other specialized  
23 knowledge will assist the trier of fact to understand the evidence or to  
24 determine a fact in issue, a witness qualified as an expert by special  
25 knowledge, skill, experience, training or education may testify to matters  
26 within the scope of such knowledge.

27 (Emphasis added). Mr. Gerety's testimony is not being offered to help this Court to  
28 understand the evidence in this matter, or to assist the Court to determine a fact in  
issue. Rather, Mr. Gerety's expert report, submitted eleven (11) days prior to trial,

1 endeavors to create fact. Within his expert report Mr. Gerety reports that he has made  
2 adjustments to the ELN Trust's books . . . to correct the books. As his expert opinion  
3 is not based upon the true books and records of the ELN Trust (which were provided  
4 to and reviewed by Mr. Bertsch), but rather, Mr. Gerety's creative accounting, Mr.  
5 Gerety cannot in any manner assist the trier of fact to understand the evidence or to  
6 determine a fact in issue.

7 NRS 125.070 provides, "The judge of the court shall determine all questions of  
8 law and fact arising in any divorce proceeding under the provisions of [Chapter 125]."  
9 It shall be this Court's job to determine if Mr. Bertsch's reports are clearly erroneous,  
10 based upon the evidence previously elicited at trial and the testimony and evidence to  
11 be presented at the continuation of trial. If such a finding cannot be made, then the  
12 Court shall accept the master's findings of fact.

13 For the foregoing reasons, the Court should exclude Mr. Gerety from further  
14 testifying at the upcoming continuation of trial in this matter, as an expert, or in any  
15 other manner, and should enter an Order prohibiting the ELN Trust and Eric from  
16 seeking to introduce adjusted books and records through Mr. Gerety or any other  
17 witness at trial.

18 D. Lynita should be awarded her fees and costs for this Motion.

19 NRS 18.010 permits litigants to recover their attorneys' fees where the Court  
20 finds that a claim or defense of an opposing party was maintained without reasonable  
21 ground or to harass the prevailing party. As set forth in subparagraph B of this Legal  
22 Analysis, the ELN Trust was severely untimely in disclosing Mr. Gerety's report to  
23 Lynita and her counsel. Furthermore, as was set forth in subparagraph C of this Legal  
24 Analysis, the opinions the ELN Trust seek to elicit from Mr. Gerety at trial are not  
25 based upon the true books and records of the ELN Trust (which were provided to and  
26 reviewed by Mr. Bertsch), but rather, Mr. Gerety's creative accounting. Lynita's  
27

1 counsel contacted the ELN Trust's counsel prior to filing the instant motion to  
2 determine if the issue of Mr. Gerety's testimony and report could be resolved without  
3 the need for litigation. The ELN Trust indicated it would not stipulate to the exclusion  
4 of Mr. Gerety as an expert witness or to the exclusion of his expert report, necessitating  
5 this Motion.

6 Pursuant to *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31,  
7 33 (1969), in awarding reasonable fees and costs to Lynita this Court will need to make  
8 specific findings regarding the quality of Lynita's advocates, the character of the work  
9 done in this Motion, the work actually performed, and the result. It is impossible at  
10 this time to provide the Court with a total amount of time spent towards this Motion,  
11 as a Reply to the ELN Trust's opposition (if any) to Lynita's Motion, and a Court  
12 appearance, will undoubtedly be required. In the event, however, that the Court rules  
13 in Lynita's favor after the hearing in this matter, it is requested that Lynita be allowed  
14 to submit the total amount of time spent, and fees incurred in connection with this  
15 Motion, and offer suggested findings regarding the award of fees and costs.

### 15 III. CONCLUSION

16 Based upon the foregoing analysis and authorities, Lynita respectfully requests  
17 that the Court enter an Order granting this Motion in its entirety, and Order the ELN  
18 Trust to pay all fees and costs associated with this Motion.

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

20 THE DICKERSON LAW GROUP

21 By 

22 ROBERT P. DICKERSON, ESQ.  
23 Nevada Bar No. 000945  
24 KATHERINE L. PROVOST, ESQ.  
25 Nevada Bar No. 008414  
26 JOSEF M. KARACSONYI, ESQ.  
27 Nevada Bar No. 010634  
28 1745 Village Center Circle  
Las Vegas, Nevada 89134  
Attorneys for Defendant

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DECLARATION OF KATHERINE L. PROVOST, ESQ.

I, KATHERINE L. PROVOST, declare under penalty of perjury under the law of the State of Nevada that the following statement is true and correct:

1. I am over the age of 18 years. I am an attorney licensed to practice in the State of Nevada and counsel for Defendant, Lynita Sue Nelson, in this action. I have personal knowledge of the facts contained herein, and I am competent to testify thereto.

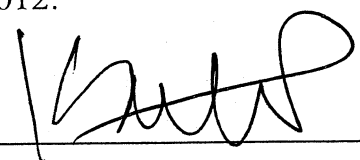
2. I am making this affidavit in support of DEFENDANT'S MOTION IN LIMINE TO EXCLUDE TESTIMONY AND REPORT OF DANIEL T. GERETY, CPA (the "Motion").

3. I have read the Motion and swear, to the best of my knowledge, that the facts as set forth therein are true and accurate, save and except any fact stated upon information and belief, and as to such facts I believe them to be true. I hereby reaffirm said facts as if set forth fully herein to the extent that they are not recited herein. If called upon by this Court, I will testify as to my personal knowledge of the truth and accuracy of the statements contained therein.

4. On July 9, 2012, I conducted a telephone conference with the ELN Trust's counsel, Jeffrey P. Luszeck, Esq., in a good-faith effort to address the issues presented herein as required by EDCR 2.47(b). During this call, Mr. Luszeck confirmed that the ELN Trust would not stipulate to the exclusion of Mr. Gerety as an expert witness or to the exclusion of his expert report, necessitating this Motion.

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

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

  
\_\_\_\_\_  
KATHERINE L. PROVOST

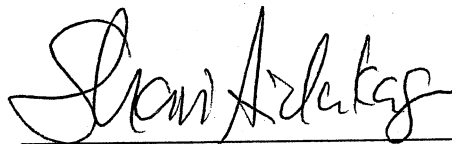
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CERTIFICATE OF MAILING

I HEREBY CERTIFY that I am serving via U.S. Mail, a true and correct copy of the foregoing DEFENDANT'S MOTION IN LIMINE TO EXCLUDE TESTIMONY AND REPORT OF DANIEL T. GERETY, CPA, to the following at their last known addresses on this 10<sup>th</sup> day of July, 2012.

RHONDA K. FORSBERG, ESQ.  
FORSBERG & DOUGLAS  
1070 W. Horizon Ridge Pkwy., Ste. 100  
Henderson, Nevada 89012  
Attorneys for Plaintiff

MARK A. SOLOMON, ESQ.  
JEFFREY P. LUSZECK, ESQ.  
SOLOMON, DWIGGINS, FREER & MORSE, LTD.  
9060 W. Cheyenne Avenue  
Las Vegas, Nevada 89129



\_\_\_\_\_  
An employee of The Dickerson Law Group



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DISTRICT COURT  
CLARK COUNTY, NEVADA

ERIC L. NELSON

Plaintiff(s),

-vs-

LYNITA SUE NELSON

Defendant(s).

CASE NO. D411537

DEPT. NO. O

FAMILY COURT  
MOTION/OPPPOSITION FEE  
INFORMATION SHEET  
(NRS 19.0312)

Party Filing Motion/Opposition:  Plaintiff/Petitioner  Defendant/Respondent

MOTION FOR OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO EXCLUDE TESTIMONY AND REPORT OF DANIEL T. GERETY, CPA

**Motions and Oppositions to Motions filed after entry of a final order pursuant to NRS 125, 125B or 125C are subject to the Re-open filing fee of \$25.00, unless specifically excluded. (NRS 19.0312)**

**NOTICE:**

*If it is determined that a motion or opposition is filed without payment of the appropriate fee, the matter may be taken off the Court's calendar or may remain undecided until payment is made.*

**Mark correct answer with an "X."**

- 1. No final Decree or Custody Order has been entered.  YES  NO
- 2. This document is filed solely to adjust the amount of support for a child. No other request is made.  
 YES  NO
- 3. This motion is made for reconsideration or a new trial and is filed within 10 days of the Judge's Order  
If YES, provide file date of Order: \_\_\_\_\_  
 YES  NO

If you answered YES to any of the questions above, you are not subject to the \$25 fee.

Motion/Opposition  IS  IS NOT subject to \$25 filing fee

Dated this 10<sup>th</sup> of July, 2002

Shari Aidukas  
Printed Name of Preparer

Shari Aidukas  
Signature of Preparer

RECEIVED  
7/11/12

1 MLIM  
THE DICKERSON LAW GROUP  
2 ROBERT P. DICKERSON, ESQ.  
Nevada Bar No. 000945  
3 KATHERINE L. PROVOST, ESQ.  
Nevada Bar No. 008414  
4 JOSEF M. KARACSONYI, ESQ.  
Nevada Bar No. 010634  
5 1745 Village Center Circle  
Las Vegas, Nevada 89134  
6 Telephone: (702) 388-8600  
Facsimile: (702) 388-0210  
7 Email: info@dickersonlawgroup.com

8 Attorneys for Defendant

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DISTRICT COURT  
FAMILY DIVISION  
CLARK COUNTY, NEVADA

ERIC L. NELSON,  
Plaintiff/Counterdefendant,  
v.  
LYNITA SUE NELSON,  
Defendant/Counterclaimant.  

---

ERIC L. NELSON NEVADA TRUST  
dated May 30, 2001, and LSN NEVADA  
TRUST dated May 30, 2001,  
Necessary Parties (joined in this  
action pursuant to Stipulation and  
Order entered on August 9, 2011  

---

LANA MARTIN, as Distribution Trustee of  
the ERIC L. NELSON NEVADA TRUST  
dated May 30, 2001,  
Necessary Party (joined in this action  
pursuant to Stipulation and Order

CASE NO. D-09-411537-D  
DEPT NO. "O"

Date of Hearing:  
Time of Hearing:

1 entered on August 9, 2011)/ Purported )  
2 Counterclaimant and Crossclaimant, )

3 v. )

4 LYNITA SUE NELSON and ERIC )  
5 NELSON, )  
6 Purported Cross-Defendant and )  
7 Counterdefendant, )

8 LYNITA SUE NELSON, )  
9 Counterclaimant, Cross-Claimant, )  
10 and/or Third Party Plaintiff, )

11 v. )

12 ERIC L. NELSON, individually and as the )  
13 Investment Trustee of the ERIC L. NELSON )  
14 NEVADA TRUST dated May 30, 2001; the )  
15 ERIC L. NELSON NEVADA TRUST dated )  
16 May 30, 2001; LANA MARTIN, individually, )  
17 and as the current and/or former Distribution )  
18 Trustee of the ERIC L. NELSON NEVADA )  
19 TRUST dated May 30, 2001, and as the )  
20 former Distribution Trustee of the LSN )  
21 NEVADA TRUST dated May 30, 2001); )  
22 NOLA HARBER, individually, and as the )  
23 current and/or former Distribution Trustee )  
24 of the ERIC L. NELSON NEVADA TRUST )  
25 dated May 30, 2001, and as the current )  
26 and/or former Distribution Trustee of the )  
27 LSN NEVADA TRUST dated May 30, 2001; )  
28 ROCHELLE McGOWAN, individually; )  
JOAN B. RAMOS, individually; and DOES I )  
through X, )

Counterdefendant, and/or )  
Cross-Defendants, and/or )  
Third Party Defendants. )

23 NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH  
24 THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF  
25 YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION.  
26 FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN  
27 TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED  
28 RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE  
SCHEDULED HEARING DATE.

1 DEFENDANT'S MOTION IN LIMINE TO EXCLUDE FROM TRIAL THE  
2 TESTIMONY AND REPORT OF LAYNE T. RUSHFORTH, ESQ., AND ANY  
3 PURPORTED EXPERT TESTIMONY REGARDING THE INTERPRETATION  
4 OF LAW, AND APPLICATION OF FACTS TO LAW; TO STRIKE THE ERIC  
5 L. NELSON NEVADA TRUST'S PRE-TRIAL MEMORANDUM; AND FOR  
6 ATTORNEYS' FEES AND COSTS

7 COMES NOW Defendant, LYNITA SUE NELSON ("Lynita"), by and through  
8 her attorneys, ROBERT P. DICKERSON, ESQ., JOSEF M. KARACSONYI, ESQ., and  
9 KATHERINE L. PROVOST, ESQ., of THE DICKERSON LAW GROUP, and submits  
10 the following Memorandum of Points and Authorities in support of her Motion in  
11 Limine to Exclude from Trial the Testimony and Report of Layne T. Rushforth, Esq.,  
12 and Any Purported Expert Testimony Regarding the Interpretation of Law, and  
13 Application of Facts to Law; to Strike the Eric L. Nelson Nevada Trust's Pre-Trial  
14 Memorandum; and for Attorneys' Fees and Costs ("Motion").

15 This Motion is made and based upon the following Memorandum of Points and  
16 Authorities, the attached Declaration, all papers and pleadings on file herein, as well  
17 as oral argument of counsel as may be permitted at the hearing on this matter.

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

19 THE DICKERSON LAW GROUP

20 By Robert P. Dickerson  
21 ROBERT P. DICKERSON, ESQ.  
22 Nevada Bar No. 000945  
23 KATHERINE L. PROVOST, ESQ.  
24 Nevada Bar No. 008414  
25 JOSEF M. KARACSONYI, ESQ.  
26 Nevada Bar No. 010634  
27 1745 Village Center Circle  
28 Las Vegas, Nevada 89134  
Attorneys for Defendant

1 NOTICE OF MOTION

2 TO: ERIC L. NELSON, Plaintiff;

3 TO: RHONDA K. FORSBERG, ESQ., of FORSBERG & DOUGLAS, Attorneys for  
Plaintiff; and

4 TO: MARK A. SOLOMON, ESQ., and JEFFREY P. LUSZZECK, ESQ., of  
5 SOLOMON, DWIGGINS & FREER, LTD., Attorneys for the Eric L. Nelson  
Nevada Trust.

6 PLEASE TAKE NOTICE that the undersigned will bring the foregoing  
7 DEFENDANT'S MOTION IN LIMINE TO EXCLUDE FROM TRIAL THE  
8 TESTIMONY AND REPORT OF LAYNE T. RUSHFORTH, ESQ., AND ANY  
9 PURPORTED EXPERT TESTIMONY REGARDING THE INTERPRETATION OF  
10 LAW, AND APPLICATION OF FACTS TO LAW; TO STRIKE THE ERIC L.  
11 NELSON NEVADA TRUST'S PRE-TRIAL MEMORANDUM; AND FOR  
12 ATTORNEYS' FEES AND COSTS on for hearing before the above-entitled Court on

13 \_\_\_\_\_, 2012 at \_\_\_\_\_ a.m./p.m.

14 THE DICKERSON LAW GROUP

15  
16 By Josef Karacsonyi  
17 ROBERT P. DICKERSON, ESQ.  
Nevada Bar No. 000945  
18 KATHERINE L. PROVOST, ESQ.  
Nevada Bar No. 008414  
19 JOSEF M. KARACSONYI, ESQ.  
Nevada Bar No. 010634  
20 1745 Village Center Circle  
Las Vegas, Nevada 89134  
Attorneys for Defendant

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. Introduction and Factual Statement

3 Trial in this matter is currently scheduled to continue on July 16, 2012. On  
4 Thursday, June 28, 2012, a mere seventeen (17) days before the continuation of trial,  
5 Third-Party Defendant, Lana Martin (“Ms. Martin”), as Distribution Trustee of the  
6 Eric L. Nelson Nevada Trust (the “ELN Trust”), produced the ELN Trust’s Fourth  
7 Supplement to Initial Disclosures, listing Layne T. Rushforth, Esq. (“Mr. Rushforth”)  
8 as a purported expert witness for the ELN Trust, and producing for the first time a  
9 written report prepared by Mr. Rushforth. Mr. Rushforth’s report, a copy of which is  
10 attached hereto as Exhibit A, is nothing more than a legal memorandum, wherein Mr.  
11 Rushforth purports to summarize and interpret Nevada law for the Court, and apply  
12 purported facts in this matter to his alleged interpretation of the law. As is set forth  
13 below, Mr. Rushforth must be excluded from testifying at the upcoming continuation  
14 of trial in this matter, based on the untimeliness of his disclosure as a purported expert  
15 by the ELN Trust, and the disclosure of his purported “expert report,” and the well-  
16 settled rule that an expert witness cannot testify about the interpretation of law, or the  
17 application of facts to law. Furthermore, the Pre-Trial Memorandum filed by the ELN  
18 Trust on Friday, July 6, 2012, should be stricken, based on the ELN Trust’s decision  
19 to attach and incorporate into such Pre-Trial Memorandum the inadmissible report of  
20 Mr. Rushforth.

21 II. Legal Analysis

22 A. Motions in limine.

23 Eighth Judicial District Court Rules, Rule 2.47 (2012), provides:

24 Unless otherwise provided for in an order of the court, all motions in  
25 limine to exclude or admit evidence must be in writing and filed not less  
26 than 45 days prior to the date set for trial and must be heard not less  
27 than 14 days prior to trial.

28 ...

1 (a) The court may refuse to sign orders shortening time and to  
2 consider any oral motion in limine and any motion in limine which is not  
timely filed or noticed.

3 (b) Motions in limine may not be filed unless an unsworn declaration  
4 under penalty of perjury or affidavit of moving counsel is attached to the  
5 motion setting forth that after a conference or a good-faith effort to  
6 confer, counsel have been unable to resolve the matter satisfactorily. A  
7 "conference" requires a personal or telephone conference between or  
8 among counsel. Moving counsel must set forth in the declaration/affidavit  
what attempts to resolve the matter were made, what was resolved, what  
was not resolved and the reasons therefore. If a personal or telephone  
conference was not possible, the declaration/affidavit shall set forth the  
reasons.

9 As set forth in the "Introduction and Factual Statement," above, the ELN Trust did not  
10 formally (in a written disclosure) disclose Mr. Rushforth as an expert witness, or  
11 produce Mr. Rushforth's report, until June 28, 2012, seventeen (17) days prior to trial.  
12 Accordingly, it was impossible for Lynita to file this motion in limine within the time  
13 period prescribed by EDCR 2.47, and this Motion should be considered by the Court.

14 Furthermore, on July 9, 2012, Lynita's counsel, Josef M. Karacsonyi, Esq.,  
15 conducted a telephone conference with the ELN Trust's counsel, Jeffrey P. Luszeck,  
16 Esq., in a good-faith effort to confer and resolve the issues presented herein as required  
17 by EDCR 2.47(b). See Exhibit B, confirming e-mail sent by Mr. Karacsonyi to Mr.  
18 Luszeck on July 9, 2012; and Exhibit C, Declaration of Josef M. Karacsonyi, Esq.  
19 Unfortunately, the ELN Trust would not stipulate to exclude Mr. Rushforth, and his  
20 report from trial, nor to strike Mr. Rushforth's report from the ELN Trust's Pre-Trial  
21 Memorandum, necessitating this Motion.

22 B. The ELN Trust failed to timely disclose Layne Rushforth, Esq. as an  
23 expert, and to timely produce Mr. Rushforth's report, and Mr. Rushforth must not be  
permitted to testify at the continuation of trial in this matter.

24 Nevada Rules of Civil Procedure, Rule 16.2(a)(3) (2012)("Disclosure of Expert  
25 Testimony"), provides:

26 (A) In addition to the disclosures required by paragraphs (1) and (2),  
27 a party shall disclose to other parties the identity of any person who may  
be used at trial to present evidence under NRS 50.275, 50.285, and

1 50.305. These disclosures must be made within 90 days after the  
2 financial disclosures are required to be filed and served under Rule  
3 16.2(a)(1) or, if the evidence is intended solely to contradict or rebut  
4 evidence on the same subject matter identified by another party under  
5 paragraph (3)(B), within 60 days after the disclosure made by the other  
6 party. The parties shall supplement these disclosures when required  
7 under Rule 26(e)(1).

8 (B) Except as otherwise stipulated or directed by the court, a party  
9 who retains or specially employs a witness to provide expert testimony in  
10 the case, or whose duties as an employee of the party regularly involve  
11 giving expert testimony, shall deliver to the opposing party a written  
12 report prepared and signed by the witness, within 60 days before trial.  
13 The court, upon good cause shown or by stipulation of the parties, may  
14 extend the deadline for exchange of the experts' reports or relieve a party  
15 of the duty to prepare a written report in an appropriate case. The report  
16 shall contain a complete statement of all opinions to be expressed and the  
17 basis and reasons therefor; the data or other information considered by  
18 the witness in forming the opinions; any exhibits to be used as a summary  
19 of or support for the opinions; the qualifications of the witness, including  
20 a list of all publications authored by the witness within the preceding 10  
21 years; the compensation to be paid for the study and testimony; and a  
22 listing of any other cases in which the witness has testified as an expert  
23 at trial or by deposition within the preceding 4 years.

24 On August 9, 2011, the parties, through counsel, stipulated to join the ELN Trust and  
25 LSN Nevada Trust, dated May 1, 2001 (the "LSN Trust"), as necessary parties to this  
26 action. On August 19, 2011, Mark Solomon, Esq., on behalf of Ms. Martin and the  
27 ELN Trust, filed an initial Notice of Appearance, followed by an Answer to Plaintiff,  
28 Eric L. Nelson's ("Eric") Complaint for Divorce, and Counterclaims and Cross-claims  
against Eric and Lynita, respectively. Despite joining this action on August 19, 2011,  
the ELN Trust waited over ten (10) months to formally disclose Mr. Rushforth as an  
expert witness in this matter, and to produce a report from Mr. Rushforth. As  
previously stated, these disclosures were made a mere seventeen (17) days before trial  
is scheduled to resume.

NRCP 16.2(a)(3), and its counterpart for civil actions not involving domestic  
relations, NRCP 16.1(a)(2), limit the time periods for parties to disclose expert  
witnesses and reports. Specifically, NRCP 16.2(a)(3) requires parties to disclose expert  
witnesses 135 days (4.5 months) after service of the summons and complaint (financial



1 disclosure forms are due forty-five (45) days after service of the summons and  
2 complaint pursuant to NRCPP 16.2(a)(1), and expert disclosures are required ninety  
3 (90) days thereafter), and to produce a report from any proposed expert at least sixty  
4 (60) days prior to trial. NRCPP 16.1(a)(2) requires parties to disclose experts and  
5 reports at least ninety (90) days before the discovery cut-off (absent extraordinary  
6 circumstances). The purpose of these rules is to prevent trial by ambush, and to allow  
7 any other party to an action receiving an expert disclosure and report from another  
8 party sufficient time to analyze and conduct discovery concerning same, and to retain  
9 an expert to contradict or rebut such experts/reports. In fact, NRCPP 16.2(a)(1)(A)  
10 allows parties receiving an expert disclosure from another party sixty (60) days to  
11 designate a rebuttal expert, and to produce his or her report, and NRCPP 16.1(a)(2)  
12 allows parties receiving an expert disclosure from another party thirty (30) days from  
13 the date of such disclosure to disclose a rebuttal expert, and to produce his or her  
14 report.

15 There is absolutely no justification for the ELN Trust to have waited until  
16 seventeen (17) days prior to the continuation of trial to disclose Mr. Rushforth as a  
17 proposed expert and produce his report. The timing of such disclosure does not afford  
18 Lynita sufficient or reasonable time to analyze and conduct discovery regarding Mr.  
19 Rushforth's report, or to disclose a rebuttal expert and report. NRCPP 16.2(a)(1) and  
20 16.1(a)(2) were enacted to prevent exactly this situation. Accordingly, Mr. Rushforth  
21 must be excluded from testifying or offering any opinions in this matter at trial.

22 B. All of Mr. Rushforth's purported "expert opinions" involve interpretation  
23 of law, and application of alleged facts to law, and are wholly inadmissible at trial.

24 Assuming that the ELN Trust had timely disclosed Mr. Rushforth as an expert  
25 witness, and timely produced Mr. Rushforth's report, which clearly the ELN Trust did  
26 not, the opinions the ELN Trust seeks to elicit from Mr. Rushforth are wholly  
27

1 inadmissible. Nevada Revised Statutes, Section 50.275 (2012), provides:

2 **Testimony by experts.** If scientific, technical or other specialized  
3 knowledge will assist the trier of fact to understand the evidence or to  
4 determine a fact in issue, a witness qualified as an expert by special  
5 knowledge, skill, experience, training or education may testify to matters  
6 within the scope of such knowledge.

7 (Emphasis added). Mr. Rushforth's testimony is not being offered to help this Court  
8 to understand the evidence in this matter, or to assist the Court to determine a fact in  
9 issue. Instead, Mr. Rushforth is being offered to advise the Court about Nevada law,  
10 and the application of Nevada law to the facts in this matter. This is clear from Mr.  
11 Rushforth's report, which is nothing more than a legal memorandum purporting to  
12 describe and interpret the law in Nevada, and apply the facts of this case to Mr.  
13 Rushforth's alleged interpretation of Nevada law:

14 A. Opinion Requested:

15 I am sending this letter to express my opinions, as an expert  
16 witness, with respect to the following questions:

17 A.1 Do the Separate Property Agreement and Separate Property  
18 Trusts signed by Eric and Lynita Nelson in 1993 affect their property  
19 interests, both as to the claims of their creditors and as to their rights  
20 between themselves in a divorce proceeding? . . .

21 A.2 Does the trust agreement for the ERIC L. NELSON  
22 NEVADA TRUST dated May 30, 2011 ("Eric's SSST") create a valid  
23 self-settled spendthrift trust ("SSST") sometimes referred to as an asset  
24 protection trust ("APT") under Nevada law? . . .

25 A.3 If Eric's SSST is a valid SSST:

26 (a) What is the status of separate property that was  
27 transferred to Eric's SSST? . . .

28 (b) It is possible for property in Eric's SSST to become  
classified as community property if it was his separate property at  
the time of its contribution? . . .

(c) What is the status of community property, if any,  
that was transferred to the trust? . . .

29 . . .

1           A.4    What would be required to establish that Eric's SSST is the  
2 alter ego of Eric Nelson sufficient to disregard the trust as a separate  
3 entity? . . .

4           A.5    What statute or statute of limitation apply to negate  
5 transfers to the trust?

6 NRS 125.070 provides, "The judge of the court shall determine all questions of law and  
7 fact arising in any divorce proceeding under the provisions of [Chapter 125]."

8 Although the Nevada Supreme Court has not yet addressed the issue, it is well settled  
9 that adjudicating issues of law is within the exclusive province of the court. "The rule  
10 prohibiting experts from providing their legal opinions or conclusions is so well  
11 established that it is often deemed a basic premise or assumption of evidence law- a  
12 kind of axiomatic principle. [Citation omitted]. In fact, every [federal] circuit has  
13 explicitly held that experts may not invade the court's province by testifying on issues  
14 of law." *In re Initial Public Offering Securities Lit.*, 174 F.Supp.2d 61, 64 (S.D.N.Y. 2001).

15 "[T]he calling of lawyers as 'expert witnesses' to give opinions as to the application of  
16 the law to particular facts usurps the duty of the trial court to instruct the jury on the  
17 law as applicable to the facts, and results in no more than a modern day 'trial by oath'  
18 in which the side procuring the greater number of lawyers able to opine in their favor  
19 wins." *Downer v. Bramet*, 199 Cal.Rptr. 830, 833, 152 Cal.App.3d 837, 842 (Cal. App.  
20 4<sup>th</sup> Dist. 1984).

21           As McCormick on Evidence teaches: Undoubtedly some highly  
22 opinionated statements by the witness amount to nothing more than an  
23 expression of his general belief as to how the case should be decided or  
24 the amount of damages which would be just. **All courts** exclude such  
25 extreme, conclusory expressions. There is no necessity for this kind of  
26 evidence; its receipt would suggest that the judge and jury may shift  
27 responsibility for the decision to the witness. In any event, the opinion  
28 is worthless to the trier of fact. 1 McCormick on Evidence § 12, at 60 (6<sup>th</sup>  
ed. 1999).

25 *Webb v. Omni Block*, 216 Ariz. 349, 354, 166 P.3d 140, 144-45 (Ariz. App. Div. 1  
26 2007) (emphasis added); *see also, Steffensen v. Smith's Management Corp.*, 862 P.2d 1342,  
27 1347 (Utah 1993) ("Opinion testimony is not helpful to the fact finder when it is

1 couched as a legal conclusion. These extreme expressions of the general belief of the  
2 expert witness tend to blur the separate and distinct responsibilities of the judge, jury,  
3 and witness.”). For the foregoing reasons, the Court should exclude Mr. Rushforth  
4 from testifying at the upcoming continuation of trial in this matter, and should enter  
5 an Order prohibiting the ELN Trust and Eric from seeking to elicit legal conclusions  
6 from any witness at trial.

7 C. The ELN Trust’s Pre-Trial Memorandum should be stricken for the  
8 improper inclusion of Mr. Rushforth’s report in such memorandum.

9 As set forth above, the opinions and report of Mr. Rushforth are inadmissible  
10 at the continuation of trial in this matter. Despite the inadmissibility of Mr.  
11 Rushforth’s “opinions,” the ELN Trust has improperly attached a copy of Mr.  
12 Rushforth’s report to its Pre-Trial Memorandum, in an attempt to prejudice Lynita,  
13 and have Mr. Rushforth’s opinions considered by the Court without actually having  
14 Mr. Rushforth admitted to testify at trial. The Court should not condone this strategy,  
15 and should strike the ELN Trust’s Pre-Trial Memorandum.

16 D. Lynita should be awarded her fees and costs for this Motion.

17 NRS 18.010 permits litigants to recover their attorneys’ fees where the Court  
18 finds that a claim or defense of an opposing party was maintained without reasonable  
19 ground or to harass the prevailing party. As set forth in subparagraph B of this Legal  
20 Analysis, the ELN Trust was severely untimely in disclosing Mr. Rushforth’s report to  
21 Lynita and her counsel. Furthermore, as was set forth in subparagraph C of this Legal  
22 Analysis, the opinions the ELN Trust seek to elicit from Mr. Rushforth at trial invade  
23 the exclusive province of the Court, and are wholly inadmissible. Lynita’s counsel  
24 contacted the ELN Trust’s counsel prior to filing the instant motion to explain Lynita’s  
25 position with respect to Mr. Rushforth’s testimony and report, and to give the ELN  
26 Trust an opportunity to withdraw Mr. Rushforth as a proposed witness in this matter.

1 See Exhibit C. Without reasonable grounds, the ELN Trust refused to agree to same,  
2 necessitating this Motion.

3 Pursuant to *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31,  
4 33 (1969), in awarding reasonable fees and costs to Lynita this Court will need to make  
5 specific findings regarding the quality of Lynita's advocates, the character of the work  
6 done in this Motion, the work actually performed, and the result. It is impossible at  
7 this time to provide the Court with a total amount of time spent towards this Motion,  
8 as a Reply to the ELN Trust's opposition (if any) to Lynita's Motion, and a Court  
9 appearance, will undoubtedly be required. In the event, however, that the Court rules  
10 in Lynita's favor after the hearing in this matter, it is requested that Lynita be allowed  
11 to submit the total amount of time spent, and fees incurred in connection with this  
12 Motion, and offer suggested findings regarding the award of fees and costs.

13 **III. CONCLUSION**

14 Based upon the foregoing analysis and authorities, Lynita respectfully requests  
15 that the Court enter an Order granting this Motion in its entirety, and Order the ELN  
16 Trust to pay all fees and costs associated with this Motion.

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

18 THE DICKERSON LAW GROUP

19  
20 By Robert P. Dickerson  
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Attorneys for Defendant

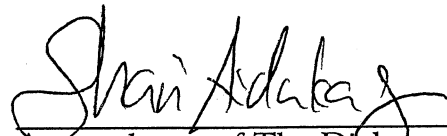
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CERTIFICATE OF MAILING

I HEREBY CERTIFY that I am serving via U.S. Mail, a true and correct copy of the foregoing DEFENDANT'S MOTION IN LIMINE TO EXCLUDE FROM TRIAL THE TESTIMONY AND REPORT OF LAYNE T. RUSHFORTH, ESQ., AND ANY PURPORTED EXPERT TESTIMONY REGARDING THE INTERPRETATION OF LAW, AND APPLICATION OF FACTS TO LAW; TO STRIKE THE ERIC L. NELSON NEVADA TRUST'S PRE-TRIAL MEMORANDUM; AND FOR ATTORNEYS' FEES AND COSTS, to the following at their last known addresses on this 10<sup>th</sup> day of July, 2012.

RHONDA K. FORSBERG, ESQ.  
FORSBERG & DOUGLAS  
1070 W. Horizon Ridge Pkwy., Ste. 100  
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Attorneys for Plaintiff

MARK A. SOLOMON, ESQ.  
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9060 W. Cheyenne Avenue  
Las Vegas, Nevada 89129



An employee of The Dickerson Law Group

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DISTRICT COURT  
CLARK COUNTY, NEVADA

ERIC L. NELSON

Plaintiff(s),

-vs-

LYNITA SUE NELSON

Defendant(s).

CASE NO. D411537

DEPT. NO. 0

**FAMILY COURT  
MOTION/OPPOSITION FEE  
INFORMATION SHEET  
(NRS 19.0312)**

Party Filing Motion/Opposition:  Plaintiff/Petitioner  Defendant/Respondent

MOTION FOR OPPOSITION TO DEFENDANT'S MOTION IN LIMINE TO EXCLUDE FROM TRIAL THE TESTIMONY AND REPORT OF LAYNE T. RUSHFORTH, ESQ., AND ANY PURPORTED EXPERT TESTIMONY REGARDING THE INTERPRETATION OF LAW, AND APPLICATION OF FACTS TO LAW; TO STRIKE THE ERIC L. NELSON NEVADA TRUST'S PRE-TRIAL MEMORANDUM; AND FOR ATTORNEYS' FEES AND COSTS

**Motions and Oppositions to Motions filed after entry of a final order pursuant to NRS 125, 125B or 125C are subject to the Re-open filing fee of \$25.00, unless specifically excluded. (NRS 19.0312)**

**NOTICE:**

*If it is determined that a motion or opposition is filed without payment of the appropriate fee, the matter may be taken off the Court's calendar or may remain undecided until payment is made.*

**Mark correct answer with an "X."**

1. No final Decree or Custody Order has been entered.  YES  NO
2. This document is filed solely to adjust the amount of support for a child. No other request is made.  YES  NO
3. This motion is made for reconsideration or a new trial and is filed within 10 days of the Judge's Order. If YES, provide file date of Order: \_\_\_\_\_.  YES  NO

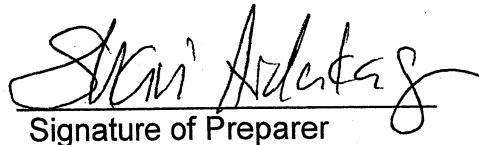
If you answered YES to any of the questions above, you are not subject to the \$25 fee.

Motion/Opposition  IS  IS NOT subject to \$25 filing fee

Dated this 10<sup>th</sup> of July, ~~200~~ 2012

Shari Adunka

Printed Name of Preparer



Signature of Preparer

Motion-Opposition Fee.doc/1/30/05

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# Exhibit “A”



# The Rushforth Firm, Ltd.

A Professional Limited-Liability Company

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June 27, 2012

Mark A. Solomon, Esq.  
Solomon Dwiggin & Freer, Ltd.  
9060 West Cheyenne Avenue  
Las Vegas, Nevada 89129

Re: Nelson v. Nelson  
(Our File: 6691)

Dear Mark:

## A. OPINION REQUESTED

I am sending this letter to express my opinions, as an expert witness, with respect to the following questions:

A.1 Do the Separate Property Agreement and Separate Property Trusts signed by Eric and Lynita Nelson in 1993 affect their property interests, both as to the claims of their creditors and as to their rights between themselves in a divorce proceeding? *My response to this question is in section B of this letter.*

A.2 Does the trust agreement for the ERIC L. NELSON NEVADA TRUST dated May 30, 2001 ("Eric's SSST") create a valid self-settled spendthrift trust ("SSST") sometimes referred to as an asset protection trust ("APT") under Nevada law? *My response to this question is in subsection C.1 of this letter.*

A.3 If Eric's SSST is a valid SSST:

(a) What is the status of separate property that was transferred to Eric's SSST? *My response to this question is in subsection C.2 of this letter.*

(b) Is it possible for property in Eric's SSST to become classified as community property if it was his separate property at the time of its contribution? *My response to this question is in subsection C.3 of this letter.*



(c) What is the status of community property, if any, that was transferred to the trust? *My response to this question is in subsection C.4 of this letter.*

A.4 What would be required to establish that Eric's SSST is the alter ego of Eric Nelson sufficient to disregard the trust as a separate entity? *My response to this question is in section D of this letter.*

A.5 What statute or statutes of limitation apply to negate transfers to the trust? *My response to this question is in subsection E of this letter.*

#### **B. VALIDITY OF 1993 PROPERTY ARRANGEMENTS**

B.1 In my opinion, NRS 123.080 and NRS 123.220(1) allow spouses to alter the default rules of spousal property interests, and their mutual consent is sufficient consideration. Thus, community property can be transmuted in to separate property, and vice versa. Transmutation must be established by clear and convincing evidence<sup>1</sup>, but the agreement between Eric and Lynita is both clear and convincing, and it satisfies the requirement of NRS 123.220(1).

Paragraph 2 of the Separate Property Agreement dated April 28, 1993 reads as follows:

"The Parties agree that this AGREEMENT shall be controlling in determining the ownership of each party's property regardless the manner in which the property was previously held or titled, acquired through capital or personal efforts, or whether the property is real, personal or any variation thereof."<sup>2</sup>

B.2 The foregoing provision does not state that the agreement is only controlling in some situations or that it does not apply in others.

(a) To state that the agreement would be binding against third-party creditors but not binding in a divorce would be a modification that would vary the terms of the written agreement. The Nevada Supreme Court has ruled on more than one occasion that "[i]f the terms of an agreement are clear, definite and unambiguous, parol evidence may not be introduced to vary those terms."<sup>2</sup> Thus, it is inappropriate for the court to consider any extrinsic evidence of any contrary terms, understandings, or agreements unless the terms of an agreement are ambiguous. The 1993 agreement is not ambiguous, and even if it were, Nevada law allows only clarifying evidence, not evidence that contradicts the express terms of the agreement.<sup>3</sup> Contracts, like wills, should be construed by reading the actual words

<sup>1</sup>*Sprenger v. Sprenger*, 110 Nev. 855, 878 P.2d 284 (1994).

<sup>2</sup>*Crow-Spieker No. 23 v. Robinson*, 629 P.2d 1198, 1199 (Nev. 1981).

<sup>3</sup>*Ringle v. Bruton*, 86 P.3d 1032, 1037 (Nev. 2004).



used, not by trying to infer intent from something else.<sup>4</sup>

(b) Although extrinsic evidence is not admissible to contradict the terms of the Separate Property Agreement, the testimony of the drafting attorney, Jeffrey L. Burr, supports the validity of that agreement, as written, and does not support the proposition that the transmutation of community property really only operated as to third parties, such as creditors, leaving the parties as if no marital property agreement had been written in the event of a divorce between them. Mr. Burr testified that a side agreement would make the plan ineffective. He also testified that he explained the legal consequences of the agreement to both parties, pointing out that equalization would have to occur by gift, making it clear that it would not occur automatically, dispelling any inference that community property rights would stay intact.

(c) The following excerpts come from the transcript of the videotaped deposition of Mr. Burr taken February 22, 2012 (omitting objections):

(i) From page 22 (Questioning by Mark Solomon):

Q: *You can't, for example, have a situation where the parties agree that for purposes of creditors they're going to treat this as separate-property pools, but for any other purpose it's a wink and a nod and it's not really separate property, it's something different; is that correct?*

A: *Yeah. There has to be -- basically the division of assets in the plan has to be done without any outside agreements in order to be effective.*

Q: *It has to be a real agreement?*

A: *Yes.*

Q: *You can't have hidden side agreements?*

A: *Right.*

Q: *You can't have a wink and a nod that we're not going to treat this consistently for all purposes; correct?*

A: *Yes.*

(ii) From pages 32-33 (Questioning by Mark Solomon):

Q: *When you had meetings with Lynita and Eric, did you explain to both of them the legal consequences of an agreement like this?*

<sup>4</sup>See *Zirovic v. Kordic*, 101 Nev. 740, 709 P.2d 1022 (1985), quoting language from *Jones v. First Nat. Bank*, 72 Nev. 121, 296 P.2d 295 (1956).



A: Yes.

~~Q: Do you believe you had an ethical obligation, representing both Lynita and Eric in connection with the development of this type of estate plan, to go over with them the benefits and the risks and the detriments involved in entering such agreement?~~

A: Yes.

Q: Did you fulfill that ethical obligation to the best of your ability?

A: Yes.

(iii) From page 35 (Questioning by Mark Solomon):

Q: Did you have any discussion at that time, 1993, prior to the execution of this agreement, with Eric and/or Lynita about what they could do in the future should one trust become more or less valuable than the other party's trust?

A: Yes.

Q: And did you -- what did you tell them in that regard?

A: I just told them that as of that date, by agreement, they would have an equal division; and since it was not their intent to -- it was not divorce or dissolution planning, it was their intent at that time to keep their assets, you know, pretty much equally owned, that it would be important to periodically rebalance the trusts so that the assets would maintain equal value in each trust.

Q: And how would that be accomplished in the future?

A: By gift.

Q: Okay. You did tell them that?

A: Yes.

(iv) From page 84 (Questioning by Mark Solomon):

Q: You have no understanding one way or the other whether there was any agreement between Lynita and Eric to ignore the Separate-Property Agreement in the event of a divorce; is that correct as a factual matter?

A: Right.



(v) From page 113 (Questioning by Dickerson):

*Q: Was there any discussion as to the purpose of the separate-property settlement agreement and the two trusts that you prepared for the Nelsons?*

*A: Yes.*

*Q: What was the purpose?*

*A: Again, the purpose was to take community property that would be exposed 100 percent to liabilities that Eric might incur in the venture he was undertaking and to separate that community property into separate property so that at least Lynita's one-half could remain protected in the event a liability occurred and that Eric were to, well, incur liability and they would try to reach Lynita's assets. The creditors could not reach the assets.*

(vi) From pages 125-126 (Questioning by Dickerson):

*Q: Was there any discussion that you recall having with them of the legal consequences of this agreement should they get a divorce?*

*A: We talked about that 'cause that was a big topic, and again my -- this is my own personal opinion. You know, this particular planning was done for asset-protection purposes as to third parties; and I always warn my clients or at least tell them that, you know, when it comes to dissolution of a marriage, I believe there's a lot more opportunity to have the Court award property in an equitable manner based on the intended parties. But again, I'm not a family-law attorney, but we have that discussion. So that's why I said, "As a safety valve, to be sure that you can maintain your equal ownership, it's best to periodically equalize the property through gifting."*

(d) The following excerpts come from the transcript of the videotaped deposition of Mr. Burr taken April 11, 2012 (omitting objections):

(i) From page 195 (Questioning by Mark Solomon):

*Q: "... it had to be a true agreement where the property was separated -- the community was separated -- into separate property for all purposes. Does that comport with your recollection?*

*A: Yes.*

*Q: Okay. You also indicated that there couldn't be a side agreement, a secret side agreement, where it was separate property for some purposes but not for others. Do you recall so testifying?*



A: Yes.

(ii) From pages 196-197 (Questioning by Mark Solomon):

*Q: In fact if the parties had such an agreement, express or implied, that this agreement would not apply in the event of a divorce, isn't it your legal opinion, as you've already expressed in earlier portions of your deposition, that that would give a creditor a very good claim that the agreement was not a true division of the community property and therefore would not help you, in essence, in the estate planning you were trying to achieve?*

*A: I mean I think the document speaks for itself. They basically agreed to divide their property at that point in time in two equal parts and treat that property as separate property, so that's what this agreement accomplished. As far as the legal impact of some type of implied or side agreement, I really couldn't give an opinion on that. All I can say is that's what was occurring here, that they were dividing their property into separate property as allowed by law, as permitted by law.*

B.3 One cannot accept the benefits of an agreement for some purposes and then repudiate it for others.<sup>5</sup> From the materials I have reviewed, the parties' intent was to separate assets so that only Eric's separate property would be exposed to the perceived additional risk that came from the investments he was making. Lynita cannot accept that benefit while arguing that she really retained an interest in Eric's separate property. The Nevada Supreme Court has ruled that it "is well settled that a person shall not be allowed at once to benefit by and repudiate an instrument, but, if he chooses to take the benefit which it confers, he shall likewise take the obligations or bear the onus which it imposes."<sup>6</sup>

B.4 Once the Separate Property Agreement identified the parties' separate property, each party was expressly permitted to transfer his or her separate property to his or her own revocable trust. Such a transfer could not transmute the property to community property in the absence of an express declaration otherwise.

B.5 Thus, in my opinion, if the Separate Property Trusts created in 1993 were funded with the separate property identified in the Separate Property Agreement, or with property traceable thereto, then the assets of those trusts would constitute the separate property of each settlor unless that settlor expressly declared otherwise.

<sup>5</sup>Schmidt v. Horton, 287 P. 274, 280 (Nev. 1930).

<sup>6</sup>Fed. Mining & Engr. Co. v. Pollak, 85 P.2d 1008, 1012 (Nev. 1939), citing Alexander v. Winters, 24 Nev. 143, 146, 50 P. 798, 799 (1897).



**C. VALIDITY OF ERIC L. NELSON NEVADA TRUST AS A NEVADA SPENDTHRIFT TRUST**

C.1 NRS Chapter 166 governs the validity of spendthrift trusts, including a trust that provides for the benefit of the trust's settlor, which we refer to as a "self-settled spendthrift trust" or an "SSST". In order for a valid SSST to be established, the trust must be properly established under NRS 163.002 et seq., and it must also meet these additional requirements of NRS Chapter 166:

(a) There is a nexus to Nevada, which can be met if any one of the following is true:

(i) All or part of the land, rents, issues or profits affected are in Nevada;

(ii) All or part of the personal property, interest of money, dividends upon stock and other produce thereof, affected, are in Nevada;

(iii) The declared domicile of the creator of a spendthrift trust affecting personal property is in Nevada; or

(iv) At least one qualified trustee has powers that include maintaining records and preparing income tax returns for the trust, and all or part of the administration of the trust is performed in Nevada.

(b) One trustee must be a Nevada resident or a bank or trust company having an office to conduct business in Nevada. [NRS 166.015(2)]

(c) The trust must be irrevocable, distributions to the settlor are discretionary or fit within specific statutory exceptions, and the trust is not intended to hinder, delay or defraud known creditors. [NRS 166.040(1)(b)]

(d) I have reviewed the Eric L. Nelson Nevada Trust dated May 30, 2001, and its terms comply with the requirements to establish an irrevocable self-settled spendthrift trust.

C.2 When property is transferred to an irrevocable spendthrift trust, the rights of the transferor, as such, are terminated, and the rights of all persons are determined only as provided in the trust agreement. Since Eric cannot unilaterally remove any property and his distributions are subject to the discretionary approval of the "distribution trustee", it is a misnomer to characterize the property as his separate property. His property rights are limited to that of a beneficiary with a "discretionary interest", as defined in NRS 163.4185(1)(c), and Nevada law limits his enforceable rights. See also NRS 166.130, which provides that a "beneficiary of a spendthrift trust has no legal estate in the capital, principal or corpus of the trust estate" unless the trust mandates a distribution after a term of years, which does not apply in this case.

(a) More specifically, NRS 163.419(1) states, "A court may review a trustee's





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exercise of discretion concerning a discretionary interest only if the trustee acts dishonestly, with improper motive or fails to act.”

~~(b) NRS 21.090(1)(cc)(2) exempts from the claims of creditors any discretionary interest, even if the trust is not a spendthrift trust.~~

(c) Thus, unless an asset can be removed from the trust under the limited provisions of NRS 166.170, it comes out of the trust only in the trustee’s discretion.

C.3 If the value of a married person’s separate property is increased by the uncompensated (or under-compensated) personal services of that person, the property becomes community property as to the increased value attributable to the services not compensated for.<sup>7</sup> Insofar as I can determine, that rule applies only to a spouse’s own property. If a person works for a corporation, and his uncompensated personal services increase the value of the corporation’s assets, the person’s spouse cannot claim any community property interest in the corporation’s assets because the person does not own them. (A different rule may apply if the corporation is found to be the person’s alter ego, and that issue is discussed in section D of this letter.) In this case, the owner of the assets is a trust, and unless the trust is found to be Eric’s alter ego, I found no legal authority for imposing any community property interest upon the assets of the trust.

C.4 If community property were transferred to Eric’s SSST without Lynita’s consent, then that would be a violation of NRS 123.230(2). If that were true, Lynita could have filed a complaint seeking either (a) to have the improper transfer set aside<sup>8</sup> or (b) to have a constructive trust imposed (assuming she could produce clear and convincing evidence supporting the imposition of a constructive trust<sup>9</sup>), but the complaint for such relief would have had to be filed within the applicable statute of limitations (discussed in section E of this letter). In this case, I am unaware of any specific allegation of a transfer of community property to Eric’s SSST, and I express no opinion as to any specific transfer of property.

#### D. APPLICATION OF THE ALTER-EGO DOCTRINE TO SPENDTHRIFT TRUSTS

You have requested that I express my opinion with respect to the application of NRS 78.747 or any other alter-ego doctrine to a self-settled spendthrift trust (“SSST”) established and

<sup>7</sup> See *Johnson v. Johnson*, 89 Nev. 244, 510 P.2d 625 (1973), *Schulman v. Schulman*, 92 Nev. 707, 558 P.2d 525 (1976), and *Cord v. Neuhoff*, 94 Nev. 21, 573 P.2d 1170 (1978). These cases reflect the Nevada Supreme Court’s adoption of *Pereira v. Pereira*, 156 Cal. 1, 103 P. 488 (1909) and *Van Camp v. Van Camp*, 53 Cal.App. 17, 199 P. 885 (1921) and indicate the Court’s preference to apply the *Pereira* ruling unless the *Van Camp* method is shown to be more equitable.

<sup>8</sup> There does not seem to be a single remedy for negating the effects of an inappropriate transfer of community property. For real property, inappropriate transfers have been resolved in a quiet title action. See *Neumann v. McMillan*, 629 P.2d 1214, 1215 (Nev. 1981). Negating an invalid disposition of community property has also been raised in a contract dispute case. See *Peccole v. Eighth Jud. Dist. Ct. In and For County of Clark*, 899 P.2d 568, 570 (Nev. 1995).

<sup>9</sup> For a general discussion of the use of a constructive trust as a remedy for a fraud upon the community, see Bradley L. Adams, “The Doctrine of Fraud on the Community”, 49 *Baylor L. Rev.* 445, 468 (1997).



administered in compliance with NRS Chapter 166. For the reasons given in this letter, it is my opinion that neither the law nor the facts of this case (as I presently understand them) justify a ruling that Eric is the alter ego of the Eric's SSST or of its Distributions Trustee.

D.1 Public Policy Overview. In order to evaluate the application of any alter-ego doctrine to a self-settled spendthrift trust, it is important to understand the public policy regarding such a trust.

(a) *Original Policy against Self-Settled Spendthrift Trusts.* Until the mid-1990s, the laws of all states uniformly prohibited the establishment of a spendthrift trust that was completely exempt from the claims of a beneficiary's creditors to the extent the settlor<sup>10</sup> was a beneficiary. In other words, an SSST could not be created because of a public policy that generally prohibited arrangements that allowed a settlor to benefit from a trust he created with his own assets that was shielded from the claims of the settlor's creditors.

(b) *Shift in Domestic Public Policy to Compete with Foreign Trusts.* Trusts subject to the laws of foreign jurisdictions have allowed SSSTs for many years. In the mid-1990s, because of the lucrative trust business, state legislatures started to consider allowing domestic asset-protection trusts in order to entice trust business into their states. Beginning with Alaska and Delaware in 1997, various states have adopted statutes that allow the creation of SSSTs whose assets are exempt from the claims of the settlor's creditors. Thus, the public policy shifted, allowing the settlor to benefit from a trust that would not be liable for the payment of creditors except as to a creditor who can timely meet its burden to prove that such trust or a transfer thereto violates the law.

(c) *Exceptions to Protection for Some States.* The public policy of several states, including South Dakota, Tennessee, Utah, Wyoming, New Hampshire, and Rhode Island, as reflected in their respective spendthrift trust statutes, excluded protection for certain claims, including claims for child support and/or alimony.

D.2 Nevada's Current Public Policy. Nevada's public policy is reflected in the various amendments to NRS Chapter 166 in 1999, 2001, 2007, 2009, and 2011, as well as changes to NRS Chapters 163, 164, and 165 in the same years. In part, the ongoing legislative changes reflect a desire to create laws that attract and retain trust business in Nevada. It also reflects a desire to reduce disputes, including those based on improper dominion and control or based on an alter-ego theory.

D.3 Challenges to the Trust or to Trust Transfers. To access the assets of the trust, a challenger must either invalidate the trust or invalidate transfers to the trust.

(a) *Challenges to SSST Transfers:* Nevada's law provides for complete creditor protection for assets transferred to SSSTs with only two exceptions: (1) fraudulent transfers and (2) transfers that violate an enforceable legal obligation. This is reflected in the

<sup>10</sup>The term "settlor" and "trustor" are used interchangeably in this letter.

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1 evidence is not admissible to contradict the plain language of the trust” and “[a] trustor’s intention  
2 must be determined in view of the circumstances existing at the time of the creation of the trust.”<sup>8</sup>

3 As the court observed in *Edwards*:

4 It is not the business of the court to say, in examining the terms of a  
5 will, what the testator intended, but what is the meaning to be given  
6 to the language which he used. Where the terms of a will are free  
7 from ambiguity, the language used must be interpreted according to  
8 its ordinary meaning and legal import and the intention of the testator  
9 ascertained thereby.<sup>9</sup>

10 Courts limit their inquiry to the four corners of the trust document because “the language of  
11 the trust deed itself is the best and controlling evidence of such intent.”<sup>10</sup> Accordingly, courts  
12 regularly exclude evidence from parties and/or the settlor concerning the intention of trust terms. The  
13 terms of the trust agreement are conclusive of the testator’s intent.<sup>11</sup>

14 Here, the terms of the Separate Property Agreement, ELN Separate Property Trust and LSN  
15 Separate Property Trust, ELN SSST and LSN SSST are clear, definite and unambiguous. Irrespective  
16 of Lynita’s purported intent in the execution and implementation of the Separate Property Agreement,  
17 ELN Separate Property Trust and LSN Separate Property Trust, ELN SSST and LSN SSST, the  
18 express terms of the trusts and Separate Property Agreement govern and any extrinsic evidence  
19 regarding Lynita’s intent is simply not relevant. As the trusts are not ambiguous, and there are no  
20 allegations that any ambiguity exists, Lynita’s intent is inadmissible. Therefore, this Court should  
21 exclude any testimony regarding Eric and/or Lynita’s intent from being heard at trial.

22 **C. LYNITA’S CLAIMS ARE BARRED BY THE STATUTE OF LIMITATIONS.**

23 of only one construction: the plain provisions of the trust instrument ... determine its construction.”)  
(Citations omitted).

24 <sup>8</sup> *In re Estate of Zilles*, 200 P.3d 1024, 1028 (Ariz. Ct. App. 2008).

25 <sup>9</sup> *Id.*, quoting *Estate of Avila*, 85 Cal. App. 2d 38, 39 (1948).

26 <sup>10</sup> *In re Estate of Devine*, 910 A.2d 699, 703 (Pa. Super. 2006).

27 <sup>11</sup> *See, e.g., Taylor*, 978 A.2d at 542-43 (“The issue of intent as it relates to the  
28 interpretation of a trust instrument ... is to be determined by examination of the language of the trust  
instrument itself and not by extrinsic evidence of actual intent.”).

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1 Chapter 166 of the Nevada Revised Statutes codifies the Spendthrift Trust Act of Nevada.  
2 For purposes of Chapter 166, a spendthrift is defined as “a trust in which by the terms thereof a valid  
3 restraint on the voluntary and involuntary transfer of the interest of the beneficiary is imposed.”<sup>12</sup>  
4 “The beneficiary or beneficiaries of such trust shall be named or clearly referred to in the writing. No  
5 spouse, former spouse, child or dependent shall be a beneficiary unless named or clearly referred to  
6 as a beneficiary in the writing.”<sup>13</sup> “A beneficiary of a spendthrift trust has no legal estate in the  
7 capital, principal or corpus of the trust estate . . .”<sup>14</sup>

8 NRS 166.170 limits the time frame in which a creditor,<sup>15</sup> which is defined as “a person who  
9 has a claim, may bring an action against a trust advisor,<sup>16</sup> trustee and/or spendthrift trust. Specifically,  
10 NRS 166.170 provides:

- 11 1. A person may not bring an action with respect to a transfer of  
12 property to a spendthrift trust:
  - 13 (a) If the person is a creditor when the transfer is made,  
14 unless the action is commenced within:
    - 15 (1) Two years after the transfer is made; or
    - 16 (2) Six months after the person discovers<sup>17</sup> or  
reasonably should have discovered the  
transfer, whichever is later.
  - 17 (b) If the person becomes a creditor after the transfer is  
18 made, unless the action is commenced within 2 years  
19 after the transfer is made. (Emphasis added).

18 <sup>12</sup> NRS 166.020.

19 <sup>13</sup> NRS 166.080.

20 <sup>14</sup> NRS 166.130.

21 <sup>15</sup> See NRS 112.150(4) defines a creditor as “a person who has a claim.”

22 <sup>16</sup> See NRS 166.170(6)(a) defines trust advisor as: “any person, including, without  
23 limitation, an accountant, attorney or investment adviser, who gives advice concerning or was  
24 involved in the creation of, transfer of property to, or administration of the spendthrift trust or who  
25 participated in the preparation of accountings, tax returns or other reports related to the trust.”  
(Emphasis added).

26 <sup>17</sup> NRS 166.170(2) (“A person shall be deemed to have discovered a transfer at the time  
27 a public record is made of the transfer, including, without limitation, the conveyance of real property  
28 that is recorded in the office of the county recorder of the county in which the property is located or  
the filing of a financing statement pursuant to chapter 104 of NRS.”).

1  
2 NRS 166.170(3)<sup>18</sup> and (6),<sup>19</sup> require that a creditor prove by “clear and convincing evidence” that the  
3 transfer of property was a fraudulent transfer and/or violated the laws of the State of Nevada.

4 In her Opposition to the Motion to Dismiss, Lynita contended, for the first time, that her delay  
5 was justified because none of her “causes of action could have accrued until June, 2011.”<sup>20</sup> Said  
6 statement is patently false as Lynita’s Counsel demanded, prior to the initiation of this divorce and  
7 when Eric was unrepresented by counsel, that Eric acknowledging that all of the property owned by  
8 the ELN SSST and LSN SSST was community property. Indeed, Lynita’s Counsel even threatened  
9 to initiate a lawsuit to invalidate said trusts and the Separate Property Agreement in March, 2009,  
10 which upon information and belief, Lynita attempted to do in or around July 2009. For reasons  
11 unbeknownst to the ELN Trust, Lynita unjustifiably delayed bringing her claims against the ELN  
12 SSST until the fall of 2011, beyond the 2 year statute of limitations period.

13 Indeed, as set forth in the Amended Third-Party Complaint, both the ELN SSST and LSN  
14 SSST were concurrently created and funded in May 2001, as Lynita clearly knew.<sup>21</sup> Additionally, a  
15 notice relating to transfers made to the ELN SSST and LSN SSST was published in Nevada Legal  
16 News three times commencing on August 21, 2001. Consequently, the statute of limitations began  
17

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18 <sup>18</sup> NRS 166.170(3) reads as follows: “[a] creditor may not bring an action with respect  
19 to transfer of property to a spendthrift trust unless a creditor can prove by clear and convincing  
20 evidence that the transfer of property was a fraudulent transfer pursuant to chapter 112 of NRS or  
21 that the transfer violates a legal obligation owed to the creditor under a contract or a valid court order  
22 that is legally enforceable by that creditor. In the absence of such clear and convincing proof, the  
23 property transferred is not subject to the claims of the creditor. Proof by one creditor that a transfer  
of property was fraudulent or wrongful does not constitute proof as to any other creditor and proof  
of a fraudulent or wrongful transfer of property as to one creditor shall not invalidate any other  
transfer of property.”

24 <sup>19</sup> NRS 166.170(6) reads as follows: “[a] person other than a beneficiary or settlor may  
25 not bring a claim against a trustee of a spendthrift trust unless the person can show by clear and  
26 convincing evidence that the trustee acted in violation of the laws of this State, knowingly and in bad  
faith, and the trustee’s actions directly caused the damages suffered by the person. As used in this  
subsection, “trustee” includes a cotrustee, if any, and a predecessor trustee.”

27 <sup>20</sup> See Opp. at p. 19, ll. 5-9.

28 <sup>21</sup> See Amended Third-Party Complaint at ¶¶ 28-29.

1 to run in or around May 2001, over ten (10) years ago. Pursuant to NRS 166.170, any claim that  
2 Lynita may have had against the ELN SSST should have been brought no later than May 2003, within  
3 two (2) years of its creation and funding; however, she failed to do so. Said failure precludes Lynita's  
4 claims against the ELN SSST.

5 **D. LYNITA CANNOT PREVAIL ON HER ALTER EGO CLAIM.<sup>22</sup>**

6 There is no Nevada statute that specifies what makes a trust the alter ego of its settlor, but  
7 NRS 163.418 and NRS 163.4177 provide some guidelines. NRS 163.418 provides that an alter ego  
8 claim must be proven by clear and convincing evidence, and the following factors, alone or in  
9 combination, are insufficient for a finding of alter ego:

- 10 1. The settlor has signed checks, made disbursements or  
11 executed other documents related to the trust as the trustee  
and the settlor is not a trustee, if the settlor has done so in  
isolated incidents.
- 12 2. The settlor has made requests for distributions on behalf of a  
beneficiary.
- 13 3. The settlor has made requests for the trustee to hold, purchase  
or sell any trust property.
- 14 4. The settlor has engaged in any one of the activities, alone or  
15 in combination, listed in NRS 163.4177.

16 Further, NRS 163.4177 provides that “[i]f a party asserts that a beneficiary or settlor is

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17 <sup>22</sup> Despite this Court's express holding that Lynita's alter ego claim should be brought  
18 under NRS 163 and not NRS 78, because a corporate alter ego claim requires a “different criteria,”  
19 Lynita is under the mistaken belief that her alter ego claim under NRS 78 has not been dismissed.  
20 In regards to Lynita's alter ego claim, this Court stated: “[t]he alter ego claim, while I think the  
21 defense, or I should say the defense, I think that Ms. Nelson will have a difficult time with the alter  
22 ego cause its different with spendthrift trusts. I do not believe that you look at the alter ego or the  
23 piercing of the corporate veil like you would do under NRS 78 corporations. I think there's a whole  
24 different criteria you look at. The reason for that is the spendthrift trust is set up a whole different  
25 way and a person can be a trustee and normally when you have the alter ego in corporations you have  
26 different criteria because the entity itself is separate. Here a spendthrift you can be a trustee; you just  
27 cannot be the distribution trustee that you determine money comes to you because that's the whole  
28 purpose of a spendthrift trust. While I think its difficult to prove I think they can have a shot at  
proving it. I think when you look at it I don't think you look at NRS 78 as far as determining alter  
ego claims, I think you look under NRS 163 which talks about alter egos, irrevocable trusts and  
163.4177 talks about factors which must not be considered to be exercising improper dominion or  
control over trusts and it lists those criteria 1 through 6 about the beneficiary serving as a trustee and  
those type of things. So I think that's the appropriate that you look at to determine alter ego not the  
corporate alter ego. [02-23-12 Hearing, VTS 15:16:32 - 15:17:50].

1 exercising improper dominion or control over a trust, the following factors, alone or in combination,  
2 must not be considered exercising improper dominion or control over a trust:"

- 3 1. A beneficiary is serving as a trustee.
- 4 2. The settlor or beneficiary holds unrestricted power to remove or replace a trustee.
- 5 3. The settlor or beneficiary is a trust administrator, general partner of a partnership, manager of a limited-liability company, officer of a corporation or any other manager of any other type of entity and all or part of the trust property consists of an interest in the entity.
- 6 4. The trustee is a person related by blood, adoption or marriage to the settlor or beneficiary.
- 7 5. The trustee is the settlor or beneficiary's agent, accountant, attorney, financial adviser or friend.
- 8 6. The trustee is a business associate of the settlor or beneficiary.

10 Lynita's Amended Third-Party Complaint fails to specify any admissible evidence to support  
11 her alter ego claim. Indeed, the majority, if not all, of Lynita's self-serving allegations elicited to date  
12 are inadmissible at trial:

- 13 1. "Eric has asserted his management and control over the ELN Trust;"<sup>23</sup>
- 14 2. "Eric has influenced, directed, and controlled all aspects of both [ELN Trust] and the LSN Trust;"<sup>24</sup>
- 15 3. Lana, "Eric's employee, close friend . . . served as the Distribution Trustee for [ELN Trust] and the LSN Trust,"<sup>25</sup>
- 16 4. Nola, "Eric's sister . . . served as the Distribution Trustee for [ELN Trust] and the LSN Trust for approximately four years;"<sup>26</sup>
- 17 5. "Eric directed the release of thousand of dollars of trust income to Eric and other third parties, including Eric's family members (Cal Nelson, Paul Nelson, Chad Ramos, Ryan Nelson and others) . . . to fund Eric's and Eric's family members' personal expenditures;"<sup>27</sup>
- 18 6. Eric dictated the asset transfers and loans he desired to be

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23 <sup>23</sup> Cf. Amended Third-Party Complaint at ¶ 6 with NRS 163.4177(3).

24 <sup>24</sup> Cf. Amended Third-Party Complaint at ¶ 6 with NRS 163.418(2).

25 <sup>25</sup> Cf. Amended Third-Party Complaint at ¶ 10 with NRS 163.4177(5) & (6).

26 <sup>26</sup> Cf. Amended Third-Party Complaint at ¶ 10 with NRS 163.4177(4).

27 <sup>27</sup> Cf. Amended Third-Party Complaint at ¶ 11 with NRS 163.418(2) & (3) and NRS  
28 163.4177(3).

- 1 performed;<sup>28</sup>  
2 7. “Eric’s actions demonstrate that [ELN Trust] was influenced,  
3 directed, controlled and governed by Eric;”<sup>29</sup>  
4 8. Lana, Rochelle and Joan, “as employees of any one of Eric’s  
5 entities, they each handled Eric’s books and records and day  
6 to day operations (under Eric’s direction and control), acted  
7 as the registered agent for any one of Eric’s entities (under  
8 Eric’s direction and control), and/or acted as the notary public  
9 for Eric’s entities, including notarizing documents related to  
10 the [ELN Trust] and [LSN Trust];<sup>30</sup>  
11 9. “[t]here has been such unity of interest and ownership  
12 between Eric and [ELN Trust] that one is inseparable from  
13 the other;”<sup>31</sup>  
14 10. “Eric’s actions demonstrate his control over [ELN Trust] and  
15 the assets held in the Trust, including the distribution of assets  
16 of [ELN Trust] for his own personal benefit;”<sup>32</sup> and  
17 11. “Eric’s direct or indirect control and direction of [ELN Trust]  
18 investments and disbursements invalidate any spendthrift  
19 aspect of the Trust.”<sup>33</sup>

20 Since Lynita cannot cite and/or introduce any admissible evidence to meet her burden to  
21 support an alter ego claim by clear and convincing evidence under NRS 163.418, her First and Second  
22 Claims for Relief for alter ego are improper.

23 1. SETTLEMENT STATEMENTS ARE INADMISSIBLE AS A MATTER OF LAW.

24 Since this Court has made it clear that she will have a “difficult time” with the alter ego claim  
25 because “its different with spendthrift trusts,”<sup>34</sup> Lynita now contends that she has “demonstrate[d] a  
26

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27 <sup>28</sup> Cf. Amended Third-Party Complaint at ¶ 12 with NRS 163.418(3) and NRS  
28 163.4177(3).

<sup>29</sup> Cf. Amended Third-Party Complaint at ¶¶ 73 and 78 with NRS 163.418(2) & (3) and  
NRS 163.4177(1)-(6).

<sup>30</sup> Cf. Amended Third-Party Complaint at ¶ 13 with NRS 163.418(3) and NRS  
163.4177(5).

<sup>31</sup> Cf. Amended Third-Party Complaint at ¶¶ 74 & 79 with NRS 163.418(2) & (3) and  
NRS 163.4177(1)-(6).

<sup>32</sup> Cf. Amended Third-Party Complaint at ¶ 74 with NRS 163.418(2) & (3) and  
163.4177(1)-(6).

<sup>33</sup> Cf. Amended Third-Party Complaint at ¶ 84 with NRS 163.418(2) & (3) and NRS  
163.4177(1)-(6).

<sup>34</sup> See 02-23-12 Hearing, VTS 15:16:32 -15:17:50.



1 high likelihood of success on her alter ego claims”<sup>35</sup> based upon inadmissible statements purportedly  
2 made by Eric. Eric’s statements are not controlling because under Nevada law, personal opinion of  
3 either spouse as to separate or community character of property is of no moment whatsoever in  
4 determining legal status of that property.<sup>36</sup> On the effect of the opinion of a spouse as evidence of the  
5 separate or community character of property, the court in *Re Pepper’s Estate*, 158 Cal. 619, 625-26,  
6 112 P. 62 (Cal. 1910)<sup>37</sup> stated:

7           Whether the property was community or separate, was a question of  
8           law, depending on the manner and time of its acquisition. The opinion  
9           of Pepper [the husband] on this legal question was entitled to no  
10           weight.

11           Lynita’s logic is similarly flawed because settlement proposals are inadmissible to prove the  
12           validity/invalidity of Lynita’s claims.<sup>38</sup> This basic rule of law was recognized by Lynita’s Counsel  
13           at trial wherein Mr. Dickerson repeatedly objected to questions on the basis of settlement  
14           discussions.<sup>39</sup> In light of the foregoing, this Court should summarily disregard the self-serving  
15           excerpts previously referenced by Lynita, and any attempt by Lynita to continue to rely upon the same  
16           at trial.

17           **E.       LYNITA’S CLAIM FOR CONSTRUCTIVE TRUST IS IMPROPER.**

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18           <sup>35</sup>       See Opposition to Motion to Dismiss. at p. 14, ll. 24-27.

19           <sup>36</sup>       See *Hardy v. United States*, 918 F. Supp. 312, 317 (D. Nev. 1996) (“The personal  
20           opinion of either spouse as to the character of the property is of no moment whatsoever.”); *See also*,  
21           *Peters v. Peters*, 92 Nev. 687, 692, 557 P.2d 713, 716 (1976) (“The opinion of either spouse as to  
22           whether property is separate or community is of no weight whatever.”); *In re Wilson’s Estate*, 56  
23           Nev. 353, 53 P.2d 339, 344 (1936) (court disregarded affidavit, even through it raises some doubt  
24           regarding correctness of findings of the district court, because “it has been decided by this court, as  
25           well as by appellate courts of other states, that the opinion of either spouse as to whether property  
26           is separate or community is of no weight.”).

27           <sup>37</sup>       Overruled on other grounds by *In re Neilson’s Estate*, 371 P.2d 745 (Cal. 1962).

28           <sup>38</sup>       See generally, NRS 48.105.

<sup>39</sup>       See August 30, 2010, Trial Transcript at p. 71, ll. 23-24 (“MR. DICKERSON:  
          Objection to anything dealing with settlement discussions.”); p. 100, ll. 9-10 (“MR. DICKERSON:  
          Objection, Your Honor, to any hearsay, anything – any discussions on settlement.”).

1 A constructive trust<sup>40</sup> is an equitable remedy, as opposed to a claim.<sup>41</sup> Thus, if a party's legal  
2 claims fail so does the underlying equitable remedies.<sup>42</sup> As an equitable remedy sounding in tort, a  
3 party is precluded from seeking a constructive trust if the party has an adequate remedy at law for  
4 damages.<sup>43</sup> Lynita has an adequate remedy at law for damages under her other claims for relief. For  
5 this reason alone, Lynita's constructive trust claim is improper. Further, Lynita has failed to plead  
6 and/or otherwise cannot meet the requisite elements for a constructive trust. For this reason alone,  
7 Lynita's Fourteenth Claim for Relief is improper.

8 **F. LYNITA SHOULD BE COMPELLED TO PAY MR. BERTSCH'S FEES AND COSTS.**

9 On March 2, 2011, despite the fact that she had already retained a forensic accountant, Joe  
10

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11 <sup>40</sup> "[A] constructive trust exists where: '(1) a confidential relationship exists between  
12 the parties; (2) the retention of legal title by the holder thereof against another would be inequitable;  
13 and (3) the existence of such a trust is essential to the effectuation of justice.'" *Bemis v. Estate of*  
14 *Bemis*, 114 Nev. 1021, 1027, 967 P.2d 437, 442 (1998) (quoting *Locken v. Locken*, 98 Nev. 369,  
372, 650 P.2d 803, 804-05 (1982)).

15 <sup>41</sup> See *DeLee v. Roggen*, 111 Nev. 1453, 1457, 907 P.2d 168, 170 (1995) (quoting  
16 *Locken v. Locken*, 98 Nev. 369, 372, 650 P.2d 803, 804-05 (1982)) (Reiterating that "[a]  
17 constructive trust is a remedial device by which the holder of legal title to property is held to be a  
18 trustee of that property for the benefit of another who in good conscience is entitled to it"); see also  
19 *Bemis v. Estate of Bemis*, 114 Nev. 1021, 1027, 967 P.2d 437, 441 (1998) ("The constructive trust  
is no longer limited to [fraud and] misconduct cases; it redresses unjust enrichment, not  
wrongdoing.") (quoting Dan B. Dobbs, *Law of Remedies* § 4.3(2) (2d ed.1993)).

20 <sup>42</sup> *Gilbert v. City of Cambridge*, 932 F.2d 51, 57 (1st Cir. 1991) ("It is settled, therefore,  
21 that where legal and equitable claims coexist, equitable remedies will be withheld if an applicable  
22 statute of limitations bars the concurrent legal remedy."); *United States v. Lon Lee*, 2006 WL  
23 2927245 (D. Or. 2006) aff'd sub nom. *United States v. Lee*, 06-30611, 2007 WL 3001685 (9th Cir.  
2007) ("Here, Petitioner has failed to allege facts sufficient to support a finding of a constructive  
trust because she has failed to allege an underlying substantive right to the properties that would  
justify the imposition of an exceptional remedy.").

24 <sup>43</sup> *Matter of Bevill, Bresler & Schulman Asset Mgmt. Corp.*, 896 F.2d 54, 58 (3<sup>rd</sup> Cir.  
25 1990) ("The proper remedy for breach of contract, however, is an award of damages at law, not the  
equitable remedy of constructive trust."); *Pearson's Pharmacy, Inc. v. Express Scripts, Inc.*, 505 F.  
26 Supp. 2d 1272, 1278 (M.D. Ala. 2007) ("The presence of an adequate remedy at law precludes the  
enforcement of a constructive trust. . . The court finds that plaintiffs have an adequate remedy at law  
27 for damages under a theory of breach of contract."); *Gimbel v. Feldman*, 1996 WL 342006 (E.D.N.Y.  
28 1996) ("Constructive trusts are equitable remedies sounding in tort to recovery money or property  
acquired through fraud or undue influence").

1 Leauanae, and had paid him nearly \$70,000.00,<sup>44</sup> Lynita requested that this Court “appoint a forensic  
2 accountant to review the financial records at issue in this litigation.”<sup>45</sup> The ELN SSST would have  
3 opposed Lynita’s self-serving request had it been a Party in this litigation at that time.

4 On April 4, 2011, this Court appointed Larry Bertsch, CPA and Nicholas Miller, CFE to  
5 perform a “forensic accounting intended to provide the Court with an accurate evaluation of the  
6 parties’ estate.”<sup>46</sup> Since the April 4, 2011, hearing Mr. Bertsch has completed the task for which he  
7 was appointed by providing this Court with detailed reports of any and all assets belonging to the  
8 Parties.

9 On April 26, 2012, Mr. Bertsch filed an Application of Forensic Accounts for Allowance of  
10 Fees and Reimbursement of Expenses for the Period from April 4, 2011 through March 31, 2012,<sup>47</sup>  
11 seeking the payment of \$58,938.00 in fees and \$2.00 in costs (in addition to the \$60,000.00 that he  
12 has already been paid by Eric and/or the ELN SSST). To date, neither Lynita nor the LSN SSST have  
13 paid any of Mr. Bertsch’s fees and costs even though said Parties benefit the most from his retention.<sup>48</sup>  
14 Lynita and/or the LSN SSST should pay any additional fees and costs owed to Mr. Bertsch for  
15 reasons, including, but not limited to, the following.

16 First, the ELN SSST was not a party to this action when Mr. Bertsch was appointed as Special  
17 Master. Consequently, the ELN SSST never agreed to pay the fees and costs associated with Mr.  
18 Bertsch. Second, the ELN SSST is not in a position to pay its own attorneys’ fees, expert fees,  
19 administration expenses *let alone* Mr. Bertsch’s fees and costs. Third, upon information and belief,

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21 <sup>44</sup> See Notice of Filing Amendment to Source and Application of Funds for Lynita  
22 Nelson, on file herein.

23 <sup>45</sup> See Order, previously filed May 25, 2011, on file herein.

24 <sup>46</sup> See Order, previously filed June 9, 2011, on file herein.

25 <sup>47</sup> See Application of Forensic Accounts for Allowance of Fees and Reimbursement of  
26 Expenses for the Period from April 4, 2011 through March 31, 2012, previously filed on April 26,  
2012, on file herein.

27 <sup>48</sup> Indeed, said reports, schedules, transactions *etc.* performed by Mr. Bertsch does not  
28 benefit the ELN SSST because the ELN SSST is already in possession of documents that Mr. Bersch  
is analyzing/reviewing.

1 the liquid assets of Lynita and/or the LSN SSST vastly exceed those of the ELN SSST. Fourth,  
 2 Lynita and/or the LSN SSST are the only Parties that reap the benefit of Mr. Bertsch's engagement,  
 3 especially in light of the fact that they have not had to contribute to his fees and costs. Indeed, the  
 4 majority of reports, schedules, transactions *etc.* analyzed and/or prepared by Mr. Bertsch pertain to  
 5 the ELN SSST and/or entities owned by the same. Said reports, schedules, transactions *etc.* do not  
 6 benefit the ELN SSST because the ELN SSST is already in possession of documents that Mr. Bersch  
 7 is analyzing/reviewing. To the extent that Lynita and/or the LSN SSST contend that they have  
 8 insufficient documents/information regarding the ELN SSST, it is her responsibility to request said  
 9 documents/information through the numerous avenues of discovery, analyze said information, and  
 10 retain an expert of her choosing. It is inappropriate for Lynita and/or the LSN SSST on one hand to  
 11 expect a third-party to prepare their case-in-chief, and on the other hand demand that the ELN SSST,  
 12 who was not even a party to this litigation when Mr. Bertsch was appointed, pay the bill.

13 **V. ATTORNEYS' FEES AND COSTS**

14	Amount of Fees Incurred to Date (through June 30, 2012):	\$236,863.50
15	Amount of Costs Incurred to Date (through June 30, 2012):	\$8,098.96
16	Amount of Fees Paid to Date (through June 30, 2012):	\$154,595.38
17	Amount Remaining Due and Owing:	<b>\$65,714.23</b>

18 The ELN SSST has incurred additional attorneys' fees and costs from July 1, 2012, to the  
 19 present date, and will continue to do so in preparing for the July 16, 2012, trial. The ELN SSST is  
 20 entitled to their attorneys' fees and costs under the terms of the ELN SSST,<sup>49</sup> this Court's Findings  
 21 of Fact and Order dated January 31, 2012 and overwhelming case law.<sup>50</sup>

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23 <sup>49</sup> See generally, ELN SSST, Article XII, Section 12.1, 12.2 and 12.6.

24 <sup>50</sup> See, e.g., See NRS 163.375 ("A fiduciary may compromise, adjust, arbitrate, sue on  
 25 or defend, abandon or otherwise deal with and settle claims in favor of or against the estate or trust  
 26 a the fiduciary deems advisable. . ."); NRS 163.380 ("A fiduciary may employ and compensate, out  
 27 of income or principal or both and in such proportion as the fiduciary deems advisable, persons  
 28 deemed by the fiduciary needful to advise or assist in the proper settlement of the estate or  
 administration of the trust, including, but not limited to, agents, accountants, brokers, attorneys at  
 law, attorneys-in-fact . . ."); RESTATEMENT (THIRD) OF TRUSTS § 581 ("Equity imposes upon the  
 trustee the duty of defending the integrity of the trust, if he has reasonable ground for believing that

1 VI. LIST OF WITNESSES

2 A. ELN SSST'S LIST OF WITNESSES

- 3 1. LANA MARTIN
- 4 c/o Solomon Dwiggin Freer & Morse, Ltd.
- 5 9060 West Cheyenne Avenue
- 6 Las Vegas, Nevada 89129
- 7 Telephone: (702) 853-5483

8 Ms. Martin is expected to testify concerning the facts and circumstances surrounding the  
9 Counterclaims and Cross-Claims, damages claimed and any other information which is pertinent to  
10 this lawsuit.

- 11 2. LYNITA SUE NELSON
- 12 c/o Robert P. Dickerson, Esq.
- 13 Dickerson Law Group
- 14 1745 Village Center Circle
- 15 Las Vegas, NV 89134
- 16 Telephone: (702) 388-8600

17 Ms. Nelson is expected to testify concerning the facts and circumstances surrounding the  
18 Counterclaims and Cross-Claims, damages claimed and any other information which is pertinent to  
19

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20 the attack is unjustified or if he is reasonably in doubt on that subject.”); RESTATEMENT (SECOND)  
21 OF TRUSTS § 178 (“The trustee is under a duty to the beneficiary to defend actions which may result in  
22 a loss to the trust estate . . .”); *Sundquist v. Sundquist*, 639 P.2d 181, 188 (Utah 1981) (stating that “[a]  
23 trustee has the fiduciary duty and the concomitant power to defend the trust from the depletion of its  
24 assets by decrees of termination or invalidity”); *Estate of Harvey*, 330 P.2d 478, 164 Cal.App.2d 330  
25 (Ca. 1958) (a testamentary trustee has a power and duty to resist a claim by the widow of the testator  
26 that the trust property was community property); *Bank of Am. Nat. Trust & Sav. Ass’n v. Long Beach  
27 Fed. Sav. & Loan Ass’n*, 141 Cal. App. 2d 618, 624, 297 P.2d 443, 447 (Ca. 1956) (“The law  
28 governing the administration of trusts is that a trustee not only has the right, but it is his duty,  
whenever necessary to the proper administration, preservation and execution of the trust or to its  
defense”); *Avery v. Bender*, 126 A.2d 99, 113 (Vt. 1956) (holding that a trustee has “an active duty  
to participate” in litigation and to employ counsel for that purpose in an action to declare a trust  
amendment null and void as it “put in issue the validity of part of the trust as it was being  
administered by [the trustee]”); *In re Kessler's Estate*, 196 P.2d 559, 561 (Cal. 1948) (stating “it is [the  
trustee’s] duty to defend the estate from all unjust and illegal attacks made upon it which affect the  
interests of heirs, devisees, legatees or creditors”); *Rossi v. Davis*, 133 S.W.2d 363, 376 (Mo. 1939)  
(recognizing that a trustee is entitled to all expenses reasonably necessary for the prevention of a failure  
of the trust, including fees and expenses incurred in litigation concerning the trust’s validity); *Republic  
Nat. Bank & Trust Co. v. Bruce*, 130 Tex. 136, 141, 105 S.W.2d 882, 885 (Comm’n App. 1937)  
 (“The absolute and positive duty is imposed upon him [the trustee] to defend the life of the trust  
whenever it is assailed, if the means of defense are known to him, or can with diligence be  
discovered.”).

SOLOMON DWIGGINS & FREER, LTD.  
CHEYENNE WEST PROFESSIONAL CENTRE  
9060 WEST CHEYENNE AVENUE  
LAS VEGAS, NEVADA 89129  
(702) 853-5483 (TELEPHONE)  
(702) 853-5485 (FACSIMILE)  
E-MAIL: sdf@sdfvllaw.com

1 this lawsuit.

2 3. ERIC L. NELSON  
3 c/o Rhonda K. Forsberg, Esq.  
4 Forsberg & Douglas  
5 1070 W. Horizon Ridge Parkway, #100  
6 Henderson, NV 89012  
7 Telephone: (702) 800-3588

8 Mr. Nelson is expected to testify concerning the facts and circumstances surrounding the  
9 Counterclaims and Cross-Claims, interests claimed and any other information which is pertinent to  
10 this lawsuit.

11 4. SHELLEY NEWELL  
12 7800 Blue Eagle Way  
13 Las Vegas, NV 89128

14 Ms. Newell is expected to testify concerning the facts and circumstances surrounding the  
15 Counterclaims and Cross-Claims, interests claimed and any other information which is pertinent to  
16 this lawsuit.

17 5. ROCHELLE MCGOWAN  
18 c/o Solomon Dwiggin Freer & Morse, Ltd.  
19 9060 West Cheyenne Avenue  
20 Las Vegas, Nevada 89129  
21 Telephone: (702) 853-5483

22 Ms. McGowan is expected to testify concerning the facts and circumstances surrounding the  
23 Counterclaims and Cross-Claims, interests claimed and any other information which is pertinent to  
24 this lawsuit.

25 6. JOAN RAMOS  
26 c/o Solomon Dwiggin & Freer, Ltd.  
27 9060 West Cheyenne Avenue  
28 Las Vegas, Nevada 89129  
Telephone: (702) 853-5483

Ms. Ramos is expected to testify concerning the facts and circumstances surrounding the  
Counterclaims and Cross-Claims, interests claimed and any other information which is pertinent to  
this lawsuit.

7. NOLA HARBER  
c/o Solomon Dwiggin & Freer, Ltd.  
9060 West Cheyenne Avenue  
Las Vegas, Nevada 89129  
Telephone: (702) 853-5483

1 Ms. Harber is expected to testify concerning the facts and circumstances surrounding the  
2 Counterclaims and Cross-Claims, interests claimed and any other information which is pertinent to  
3 this lawsuit.

4 8. JEFFREY BARR, ESQ.  
5 Jeffrey Burr, Ltd.  
6 2600 Paseo Verde Parkway, # 200  
7 Henderson, NV 89074

8 Mr. Burr is expected to testify concerning the facts and circumstances surrounding the  
9 Counterclaims and Cross-Claims, interests claimed and any other information which is pertinent to  
10 this lawsuit.

11 9. RICHARD KOCH, ESQ.  
12 Koch & Brim, LLP  
13 4520 S. Pecos Road #4  
14 Las Vegas, NV 89121

15 Mr. Koch is expected to testify concerning the facts and circumstances surrounding the  
16 Counterclaims and Cross-Claims, interests claimed and any other information which is pertinent to  
17 this lawsuit.

18 **B. ELN SSST'S LIST OF EXPERT WITNESSES**

19 1. LAYNE T. RUSHFORTH, ESQ.  
20 The Rushforth Firm, Ltd.  
21 P.O. Box 371655  
22 Las Vegas, Nevada 89137-1655  
23 Telephone: (702) 255-4552

24 Mr. Rushforth is a designated expert and is expected to provide testimony regarding any and  
25 all matters contained in his report dated June 27, 2012, which is attached hereto as **Exhibit 5**.

26 2. DANIEL T. GERETY, CPA  
27 Gerety & Associates, CPA's  
28 6817 S. Eastern Avenue, Suite 101  
Las Vegas, Nevada 89119-4684  
Telephone: (702) 933-2213

Mr. Gerety is a designated expert and is expected to provide testimony regarding any and all  
matters contained in his report dated July 5, 2012, which is attached hereto as **Exhibit 6**.

1 The ELN SSST reserves the right to call any witnesses on Eric and Lynita's List of Witnesses,  
2 any and all witnesses called to testify by Eric or Lynita, and any and all necessary rebuttal witnesses  
3 for purposes of rebuttal testimony.

4 **VII. LIST OF EXHIBITS**

- 5 A. Pre-Hearing Exhibits disclosed in Plaintiff's Pre-Trial Memorandum on or around  
6 August 30, 2010.
- 7 B. Exhibits disclosed in Defendant's Pre-Trial Memorandum on or around August 27,  
8 2010.
- 9 C. Separate Property Agreement dated April 28, 1993 (but executed on July 13, 1993).
- 10 D. Correspondence from Jeffrey L. Burr, Esq. to Richard Koch, Esq. dated July 13, 1993.
- 11 E. THE ERIC L. NELSON SEPARATE PROPERTY TRUST dated July 13, 1993.
- 12 F. THE NELSON TRUST dated July 13, 1993.
- 13 G. ERIC L. NELSON NEVADA TRUST u/a/d 5/30/2001
- 14 H. THE LSN NEVADA TRUST dated May 30, 2001
- 15 I. Minutes of Annual Meetings for the ERIC L. NELSON NEVADA TRUST u/a/d  
16 5/30/2001.
- 17 J. Minutes of Annual Meetings for the THE LSN NEVADA TRUST dated May 30,  
18 2001.
- 19 K. Any and all documents disclosed by Lynita S. Nelson in her Responses to Requests  
20 for Production of Documents and Fifth and Sixth Supplement to Initial Disclosures.

21 The ELN SSST reserves the right to utilize any document on Eric and Lynita's List of  
22 Exhibits, and any and all necessary documents for purposes of rebuttal testimony.

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1 **VIII. LENGTH OF TRIAL**

2 This Court has already scheduled trial on this matter for July 16-19 and 23-24, 2012. The  
3 ELN SSST believes it would it is in the best interests of all Parties to hear the claims pertaining to  
4 the ELN SSST and LSN SSST first (*i.e.* declaratory relief, alter ego, constructive trust, *etc.*).

5 DATED this 6<sup>th</sup> day of July, 2012.

6 SOLOMON DWIGGINS & FREER, LTD.

7  
8 By:   
9 MARK A. SOLOMON, ESQ.  
10 Nevada State Bar No. 0418  
11 JEFFREY P. LUSZECK  
12 Nevada State Bar No. 9619  
13 Cheyenne West Professional Centre'  
14 9060 West Cheyenne Avenue  
15 Las Vegas, Nevada 89129

13 **CERTIFICATE OF MAILING**

14 I HEREBY CERTIFY that pursuant to EDCR 7.26(a), service of the foregoing **THE**  
15 **ERIC L. NELSON NEVADA TRUST'S PRETRIAL MEMORANDUM** was made on this 6<sup>th</sup>  
16 day of July, 2012, by sending a true and correct copy of the same by United States Postal Service,  
17 first class postage fully prepaid, to the following at his last known address as listed below:  
18

19 Robert P. Dickerson, Esq.  
20 Dickerson Law Group  
21 1745 Village Center Circle  
22 Las Vegas, NV 89134

23   
24 An employee of SOLOMON DWIGGINS & FREER, LTD.

# **EXHIBIT 1**

# **EXHIBIT 1**

Jeffrey L. Burr Vol. I February 22, 2012  
\*\*\* Videotaped Deposition \*\*\*

1 DISTRICT COURT  
2 CLARK COUNTY, NEVADA  
3  
4  
5 ERIC L. NELSON, )  
6 Plaintiff/Counterdefendant, )  
7 vs. ) Case No. D-411537  
8 LYNITA SUE NELSON; LANA MARTIN, as )  
9 Distribution Trustee of the ERIC L. )  
10 NELSON NEVADA TRUST dated May 30, )  
11 2001, )  
12 Defendants/Counterclaimants. )  
13 \_\_\_\_\_ )  
14 LANA MARTIN, Distribution Trustee )  
15 of the ERIC L. NELSON NEVADA TRUST )  
16 dated May 30, 2001, )  
17 Cross-claimant, )  
18 vs. )  
19 LYNITA SUE NELSON, )  
20 Cross-defendant. )  
21 \_\_\_\_\_ )

18 VIDEOTAPED DEPOSITION OF JEFFREY L. BURR  
19 Volume I

20 Taken on Wednesday, February 22, 2012  
21 At 10:05 a.m.

22 Held at Solomon Dwiggin Freer & Morse  
23 9060 West Cheyenne Avenue  
24 Las Vegas, Nevada

25 Reported by: Ellen A. Goldstein, CCR 829

1 of his assets?

2 MR. SOLOMON: Object; leading.

3 THE WITNESS: Again we -- that was an important part of our  
4 discussion and she -- I mean I told both of them that the  
5 assets that remained would be available, you know, for the  
6 community for both them and their family at the discretion of  
7 course of the trustee of that trust and the trustor. In this  
8 case it was a revocable trust, so trustor/trustee.

9 BY MR. DICKERSON:

10 Q And did you explain to Lynita that she would be a  
11 beneficiary under Eric's trust?

12 A Yes.

13 Q Did Eric have any discussion or do you recall any  
14 conversation by Eric where he communicated to Lynita in any way  
15 his intent to equalize the property on a periodic basis?

16 A All I recall -- all I recall is that they were  
17 committed to this plan but to make sure that they were treating  
18 each other fairly and equally down the road in relation to  
19 their property and their property rights.

20 Q Was there any discussion as to the purpose of the  
21 separate-property settlement agreement and the two trusts that  
22 you prepared for the Nelsons?

23 A Yes.

24 Q What was the purpose?

25 A Again, the purpose was to take community property that

1 would be exposed 100 percent to liabilities that Eric might  
2 incur in the venture he was undertaking and to separate that  
3 community property into separate property so that at least  
4 Lynita's one-half could remain protected in the event a  
5 liability occurred and that Eric were to, well, incur liability  
6 and they would try to reach Lynita's assets. The creditors  
7 could not reach the assets.

8 Q Do you recall how many times you met with Lynita  
9 Nelson to explain what you said here today with respect to this  
10 transaction involving what occurred in 1993?

11 A I'm going to say, to the best of my recollection,  
12 three times.

13 Q Prior to those meetings in 1993, you did have an  
14 ongoing attorney-client relationship with Lynita Nelson; is  
15 that right?

16 A Yes.

17 Q And do you believe that she had the trust and  
18 confidence in the advice that you were giving her?

19 A Yes.

20 Q Now, isn't it true, Mr. Burr, that you recommended to  
21 her the name of Richard Koch?

22 A Yes.

23 Q And you suggested only one attorney, Richard Koch?

24 A I don't recall, but I know I suggested Richard.

25 Q And that -- and actually you contacted Richard Koch,

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REPORTER'S CERTIFICATE

I, Ellen A. Goldstein, a duly certified court reporter in and for the County of Clark, State of Nevada, do hereby certify:

That I reported the taking of the deposition of the witness, JEFFREY L. BURR, at the time and place aforesaid;

That prior to being examined, the witness was by me duly sworn to testify to the truth, the whole truth and nothing but the truth;

That the witness requested to read and sign the transcript herewith;

That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true and accurate transcription of my said shorthand notes taken down at said time.

I further certify that I am not a relative or employee of an attorney or counsel of any of the parties, nor a relative or employee of any attorney or counsel involved in said action, nor a person financially interested in the action.

IN WITNESS THEREOF, I have hereunto set my hand in the County of Clark, State of Nevada, this 29th day of February 2012.

\_\_\_\_\_  
Ellen A. Goldstein, CCR No. 829

# **EXHIBIT 2**

# **EXHIBIT 2**

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DISTRICT COURT  
CLARK COUNTY NEVADA

ERIC L. NELSON,	)	
	)	
Plaintiff/Counterdefendant,	)	
	)	
vs.	)	CASE NO. D-411537
	)	DEPT. NO. O
LYNITA SUE NELSON, LANA MARTIN,	)	
as Distribution Trustee of ERIC )	)	
L. NELSON NEVADA TRUST dated May)	)	
30, 2001,	)	
	)	
Defendants/Counterclaimants.	)	
<hr/>		
LANA MARTIN, Distribution	)	
Trustee of the ERIC L. NELSON )	)	
NEVADA TRUST dated May 30, 2001,	)	
	)	
Crossclaimant,	)	
	)	
vs.	)	
	)	
LYNITA SUE NELSON,	)	
	)	
Crossdefendant.	)	
<hr/>		

DEPOSITION OF RICHARD KOCH, ESQ.

Taken on Tuesday, May 1, 2012

At 10:06 a.m.

At Solomon Dwiggins & Freer, Ltd.

9060 West Cheyenne Avenue

Las Vegas, Nevada

Reported by: CINDY K. JOHNSON, RPR, CCR NO. 706



1 understanding that this agreement did not  
2 truly effectuate the parties' intent?")

3 THE WITNESS: I would say, yes, it would --  
4 that this would be an incomplete representation of the  
5 agreement, if that had been represented to me.

6 BY MR. SOLOMON:

7 Q. Okay.

8 A. In other words, this might have been the  
9 agreement, but it may not have been complete.

10 Q. In accordance with your custom and habit, what  
11 would you have advised Lynita in order to explain the  
12 legal effect of this agreement and have her acknowledge  
13 to you that she had an understanding of its legal  
14 consequences?

15 MS. PROVOST: Object as to the form of the  
16 question. He has no recollection of what he advised  
17 Lynita. If you're asking about his custom and habit  
18 with any general person, then I don't have an objection  
19 to that.

20 THE WITNESS: My custom would have been to  
21 explain how community and separate property work and  
22 it'd kind of be about the principles about bringing  
23 property into the marriage, about the community property  
24 rights that have accrued during the marriage, about how  
25 community property and separate property can be

1 converted.

2 And I would have, I guess, wanted her to be  
3 satisfied that she was an intelligent woman who has some  
4 understanding of that, that this was done freely by her.

5 I have no recollection of going through the  
6 property list, which I see here, or the values -- I  
7 don't see any values here -- but I would have wanted to  
8 make sure she had some comprehension of what the  
9 agreement meant.

10 BY MR. SOLOMON:

11 Q. Okay. Would that also have included -- that  
12 explanation have included how the separate property  
13 would be divided normally upon divorce, if that were to  
14 occur?

15 A. I don't -- I have no idea if I discussed that  
16 with her specifically or not. I don't know. But I --  
17 that's certainly a good topic for discussion. I don't  
18 know if I discussed that with her specifically.

19 Q. Okay. Would that have been your -- I'm not  
20 asking -- I know you have no recollection of it --

21 A. I understood that.

22 Q. -- so I'm not asking --

23 A. And I'm saying, generally, I don't know if I  
24 would have discussed that. I guess I would have. My  
25 perceived understanding of what they're doing and why

1 CERTIFICATE OF COURT REPORTER

2 STATE OF NEVADA )  
3 COUNTY OF CLARK ) ss:

4 I, Cindy Johnson, a duly licensed reporter  
5 for Clark County, State of Nevada, do hereby certify:  
6 That I reported the deposition of Richard Koch, Esq.,  
7 commencing on Tuesday, May 1, 2012, at 10:06 a.m.

8 That prior to being deposed, the witness was  
9 duly sworn by me to testify to the truth. That I  
10 thereafter transcribed my said shorthand notes into  
11 typewriting and that the typewritten transcript is a  
12 complete, true and accurate transcription of my said  
13 shorthand notes. Transcript review pursuant to NRC  
14 30(e) was requested.

15 I further certify that I am not a relative  
16 or employee of counsel or any of the parties, nor a  
17 relative or employee of the parties involved in said  
18 action, nor a person financially interested in the  
19 action.

20 IN WITNESS WHEREOF, I have set my hand in my  
21 office in the County of Clark, State of Nevada, this  
22 7th day of May 2012.

23

24 Cindy K. Johnson, RPR, CCR No. 706

25

# **EXHIBIT 3**

# **EXHIBIT 3**

**Eric Nelson**

---

**From:** "Denise Gentile" <denise@dickersonlawgroup.com>  
**To:** "Eric Nelson" <eric@enlvcorp.com>  
**Cc:** "L. Nelson" <tiggywinkle@cox.net>; "Bob Dickerson" <bob@dickersonlawgroup.com>  
**Sent:** Monday, March 02, 2009 4:26 PM  
**Subject:** re: Nelson divorce

Eric,

I have spoken with Lynita regarding your divorce case and have the following response to your various demands and concerns:

First, be aware that we ARE working on the case (contrary to your comments) and we are doing everything that we can to avoid having to go to court and battle this case in an adversarial setting. Florence Rodriguez spent an inordinate amount of time trying to create a list of assets and questions relating to your estate. Unfortunately, Florence was on vacation for the last two weeks, and I was unable to access her or discuss the case with her because she was out of the country. I needed her help in understanding what information she had obtained and what she believed we were still missing. Today is her first day back, and I have not yet had the opportunity to meet with her to review everything that you have delivered as compared to what she believes we need or were missing from the document productions.

In the meantime, to keep the peace and to ensure that this matter proceeds smoothly, we ask that you continue to support Lynita in the manner she has been supported by you during the pendency of this action. Lynita requests that you pay her directly the sum of \$16,000 per month. In addition, you promised that you would pay for Lynita's carpet and have told me that you would do so. Now, you have placed conditions on the case and inform that you will only do this if you were able to meet with us. However, a meeting with us does not provide the necessary information at this point. We have met and discussed this case *ad nauseum*, but I am not permitted to take you at your word. My job is to ensure that you provide the necessary documentation to support your position. In that regard, more documentation is needed to ensure that we have what is necessary to complete this case.

Additionally, you have incessantly asked that Lynita sign the deeds on the Mississippi property. However, we need to clarify some issues in this matter. There have been documents presented to you asking you to acknowledge all of the property is community property. Mr. Burr asked that you sign them, and you refused. You since have admitted that the separate property agreements (as much as you would like to rely upon them in your arguments for this divorce), were prepared to ensure that Lynita was protected from creditors. Yet, after the execution of said agreements, you have operated in such a way that you handle and manage the affairs of both separate property trusts and conduct yourself as if the property is yours in both. If you are willing to sign the documents presented to you by Mr. Burr, and willing to acknowledge the community nature of all of the assets, then we may be able to make some quicker progress. Otherwise, if this matter becomes contested, Lynita will be forced to file a claim against you to set aside those agreements.

In this regard, and as an additional informal document request, there are certain items of information that I know we are missing, which I am going to request from you by way of this e-mail:

- 1) Please provide any and all management contracts you may have with the Silver Slipper Casino
- 2) Please provide all financial statements and ledgers for the various entities owned by you, including Eric Nelson Auctioneering (at least for the past 6 years) (you provided pieces and parts of financial statements for ENA and Eric Nelson Trust, but they were deficient and failed to provide a full picture of what has happened in those entities).
- 3) Please provide all tax returns from the various entities owned by you
- 4) Please provide an accounting of the funds which were in the Mellon and other investment accounts, for the past 5 years – so as to account for the additional several million dollars which were invested therein, but which was depleted during the period just prior to your separation from Lynita. It is my understanding that there was in excess of \$13,000,000 in those accounts, but was depleted by you down to \$8,000,000 just prior to the separation (we can start with an accounting of what was in those accounts over the last 2 years, and work from there)
- 5) Please provide me with copies of your personal bank account statements for the past 5 years (but I will accept as a start the bank statements for the last year and then we can work from there)

3/10/2009

- 6) Please provide me with an accounting of each and every auction that you have performed in the last six years and an accounting of the proceeds therefrom (we can start with the auctions you performed in 2007 and 2008, and work from there)
- 7) Please provide all documentation indicating from where you derive your income. Are you paid a management fee from Silver Slipper, are you drawing money from one of your various entities? Please advise us about from where you pull your income.

In addition to the foregoing, Lynita and I are working on a different settlement proposal which may result in a resolution of this case. I will forward that to you as soon as possible, and once I have it confirmed with Lynita regarding the specific terms. In the meantime, please work on getting me the documents as listed hereinabove.

Finally, you mentioned to Jenn in one of your voice mails that you may be getting a lawyer or you have sought counsel with a lawyer. If you have retained a lawyer to help you in this case, I am forbidden from communicating directly with you. Please advise if you still represent yourself, or whether you have counsel with whom I need to speak.

Thank you,

Denise Gentile

Denise L. Gentile, Esq.  
THE DICKERSON LAW GROUP  
1745 Village Center Circle  
Las Vegas, Nevada 89134  
Telephone (702) 388-8600  
Facsimile (702) 388-0210

3/10/2009

# **EXHIBIT 4**

# **EXHIBIT 4**

Dickerson Law Group  
1745 Village Center Circle  
Las Vegas, NV 89134  
Telephone: 702-388-8600  
Fax: 702-388-0210

LYNTA S. NELSON  
7065 Palmyra Ave.  
Las Vegas, NV 89117

August 19, 2009  
Invoice No. 3007

Client Number: 08-120 LYNTA S. NELSON  
Matter Number: 08-120 NELSON, LYNTA S. vs. ERIC L. NELSON  
For Services Rendered Through 7/31/2009.

Date	Timekeeper	Description	Hours	Amount
07/06/2009	FRU	Review emails from client.	0.40	\$70.00
07/07/2009	FRU	Draft and revise transmittal letter regarding [REDACTED]	0.50	\$87.50
07/08/2009	DLG	Numerous emails between Ed Kalinen and Lynta Nelson regarding scheduling meeting and e-mail from Lynta regarding issues in the case.	0.40	\$180.00
07/13/2009	FRU	Review and analyze evidence developed in order to prepare for tomorrow's conference with Eric and his counsel.	1.70	\$297.50
07/14/2009	DLG	Office conference with Lynta Nelson, Eric Nelson, and Ed Kalinen. [Eric Nelson left the meeting early and Lynta and Ed remained; then Lynta returned after Ed departed - discussed financial disclosure and motion for temporary support].	2.50	\$1,125.00
07/14/2009	FRU	Office conference with Lynta Nelson, Eric Nelson, Edward Kalinen, and Denise Gentile, Esq., requested by Eric. Mr. Nelson walked out almost upon commencement when documents requested of him. Continued meeting with his counsel. Reached agreement regarding necessity of forensic accountant and joint business appraiser, Stephen Nicholas. Forensic accountant not determined. Ed indicated he was staffing over financial disclosure and it was in the process of being prepared.	2.50	\$457.50

Continued On Next Page

Client Number: 08-120  
Matter Number: 08-120

08/19/2009  
Page: 2

07/24/2009	FRU	Telephone conference with Lynta Nelson.	0.20	\$35.00
07/27/2009	FRU	Draft and revise correspondence to Dolores R. Milkic, City Deputy County Attorney, Civil Division, Mohave County regarding requested payment.	0.30	\$52.50
07/28/2009	FRU	Telephone conference with client, conference with Denise Gentile, revised, finalized, and faxed letter to Mohave County District Attorney; work on preparation of financial declaration.	4.90	\$857.50
07/29/2009	FRU	Draft motion and order to seal case; start preparing first draft of motion for temporary orders.	1.20	\$910.00
07/30/2009	FRU	Reviewed LSN & ELN Trusts and work on first draft of motion [REDACTED]	3.40	\$945.00

Timekeeper Summary

Timekeeper DLG worked 2.90 hours at \$450.00 per hour, totaling \$1,305.00.  
Timekeeper FRU worked 21.10 hours at \$175.00 per hour, totaling \$3,692.50.

Billable Hours / Fees: 24.80 \$4,997.50

Date	Description	Amount	Check No.
07/08/2009	Postage	\$0.44	
07/29/2009	Postage	1.76	
07/31/2009	Phonecalls July 2009	26.20	
Total Costs		\$28.40	

Payment Detail

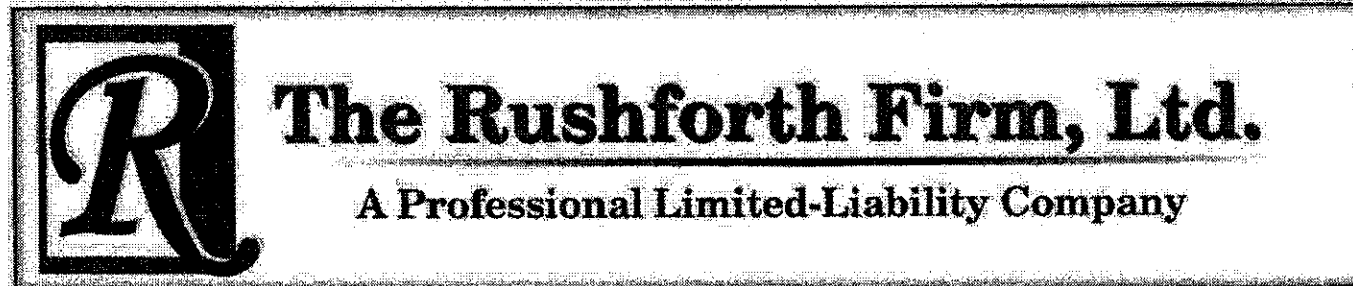
Date	Description	Amount
08/18/2009	Credit Card Payment from Visa payment to authorization received from L. Nelson for payment of Invoice No. 2977	(\$9,912.50)
08/18/2009	Credit Card Payment from Visa payment to authorization received from L. Nelson for payment of Invoice No. 2977	(\$739.27)
08/18/2009	Credit Card Payment from Visa payment to authorization received from L. Nelson for payment of Invoice No. 2977	(\$504.82)
Total Payments Received:		(\$10,656.59)

Continued On Next Page



# **EXHIBIT 5**

# **EXHIBIT 5**



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<http://rushforthfirm.com>

June 27, 2012

Mark A. Solomon, Esq.  
Solomon Dwiggin & Freer, Ltd.  
9060 West Cheyenne Avenue  
Las Vegas, Nevada 89129

Re: Nelson v. Nelson  
(Our File: 6691)

Dear Mark:

**A. OPINION REQUESTED**

I am sending this letter to express my opinions, as an expert witness, with respect to the following questions:

A.1 Do the Separate Property Agreement and Separate Property Trusts signed by Eric and Lynita Nelson in 1993 affect their property interests, both as to the claims of their creditors and as to their rights between themselves in a divorce proceeding? *My response to this question is in section B of this letter.*

A.2 Does the trust agreement for the ERIC L. NELSON NEVADA TRUST dated May 30, 2001 ("Eric's SSST") create a valid self-settled spendthrift trust ("SSST") sometimes referred to as an asset protection trust ("APT") under Nevada law? *My response to this question is in subsection C.1 of this letter.*

A.3 If Eric's SSST is a valid SSST:

(a) What is the status of separate property that was transferred to Eric's SSST? *My response to this question is in subsection C.2 of this letter.*

(b) Is it possible for property in Eric's SSST to become classified as community property if it was his separate property at the time of its contribution? *My response to this question is in subsection C.3 of this letter.*



(c) What is the status of community property, if any, that was transferred to the trust? *My response to this question is in subsection C.4 of this letter.*

A.4 What would be required to establish that Eric's SSST is the alter ego of Eric Nelson sufficient to disregard the trust as a separate entity? *My response to this question is in section D of this letter.*

A.5 What statute or statutes of limitation apply to negate transfers to the trust? *My response to this question is in subsection E of this letter.*

## **B. VALIDITY OF 1993 PROPERTY ARRANGEMENTS**

B.1 In my opinion, NRS 123.080 and NRS 123.220(1) allow spouses to alter the default rules of spousal property interests, and their mutual consent is sufficient consideration. Thus, community property can be transmuted in to separate property, and vice versa. Transmutation must be established by clear and convincing evidence<sup>1</sup>, but the agreement between Eric and Lynita is both clear and convincing, and it satisfies the requirement of NRS 123.220(1).

Paragraph 2 of the Separate Property Agreement dated April 28, 1993 reads as follows:

"The Parties agree that this AGREEMENT shall be controlling in determining the ownership of each party's property regardless the manner in which the property was previously held or titled, acquired through capital or personal efforts, or whether the property is real, personal or any variation thereof."

B.2 The foregoing provision does not state that the agreement is only controlling in some situations or that it does not apply in others.

(a) To state that the agreement would be binding against third-party creditors but not binding in a divorce would be a modification that would vary the terms of the written agreement. The Nevada Supreme Court has ruled on more than one occasion that "[i]f the terms of an agreement are clear, definite and unambiguous, parol evidence may not be introduced to vary those terms."<sup>2</sup> Thus, it is inappropriate for the court to consider any extrinsic evidence of any contrary terms, understandings, or agreements unless the terms of an agreement are ambiguous. The 1993 agreement is not ambiguous, and even if it were, Nevada law allows only clarifying evidence, not evidence that contradicts the express terms of the agreement.<sup>3</sup> Contracts, like wills, should be construed by reading the actual words

<sup>1</sup>*Sprenger v. Sprenger*, 110 Nev. 855, 878 P.2d 284 (1994).

<sup>2</sup>*Crow-Spieker No. 23 v. Robinson*, 629 P.2d 1198, 1199 (Nev. 1981).

<sup>3</sup>*Ringle v. Bruton*, 86 P.3d 1032, 1037 (Nev. 2004).



used, not by trying to infer intent from something else.<sup>4</sup>

(b) Although extrinsic evidence is not admissible to contradict the terms of the Separate Property Agreement, the testimony of the drafting attorney, Jeffrey L. Burr, supports the validity of that agreement, as written, and does not support the proposition that the transmutation of community property really only operated as to third parties, such as creditors, leaving the parties as if no marital property agreement had been written in the event of a divorce between them. Mr. Burr testified that a side agreement would make the plan ineffective. He also testified that he explained the legal consequences of the agreement to both parties, pointing out that equalization would have to occur by gift, making it clear that it would not occur automatically, dispelling any inference that community property rights would stay intact.

(c) The following excerpts come from the transcript of the videotaped deposition of Mr. Burr taken February 22, 2012 (omitting objections):

(i) From page 22 (Questioning by Mark Solomon):

*Q: You can't, for example, have a situation where the parties agree that for purposes of creditors they're going to treat this as separate-property pools, but for any other purpose it's a wink and a nod and it's not really separate property, it's something different; is that correct?*

*A: Yeah. There has to be -- basically the division of assets in the plan has to be done without any outside agreements in order to be effective.*

*Q: It has to be a real agreement?*

*A: Yes.*

*Q: You can't have hidden side agreements?*

*A: Right.*

*Q: You can't have a wink and a nod that we're not going to treat this consistently for all purposes; correct?*

*A: Yes.*

(ii) From pages 32-33 (Questioning by Mark Solomon):

*Q: When you had meetings with Lynita and Eric, did you explain to both of them the legal consequences of an agreement like this?*

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<sup>4</sup>See *Zirovcic v. Kordic*, 101 Nev. 740, 709 P.2d 1022 (1985), quoting language from *Jones v. First Nat. Bank*, 72 Nev. 121, 296 P.2d 295 (1956).



A: Yes.

Q: Do you believe you had an ethical obligation, representing both Lynita and Eric in connection with the development of this type of estate plan, to go over with them the benefits and the risks and the detriments involved in entering such agreement?

A: Yes.

Q: Did you fulfill that ethical obligation to the best of your ability?

A: Yes.

(iii) From page 35 (Questioning by Mark Solomon):

Q: Did you have any discussion at that time, 1993, prior to the execution of this agreement, with Eric and/or Lynita about what they could do in the future should one trust become more or less valuable than the other party's trust?

A: Yes.

Q: And did you -- what did you tell them in that regard?

A: I just told them that as of that date, by agreement, they would have an equal division; and since it was not their intent to -- it was not divorce or dissolution planning, it was their intent at that time to keep their assets, you know, pretty much equally owned, that it would be important to periodically rebalance the trusts so that the assets would maintain equal value in each trust.

Q: And how would that be accomplished in the future?

A: By gift.

Q: Okay. You did tell them that?

A: Yes.

(iv) From page 84 (Questioning by Mark Solomon):

Q: You have no understanding one way or the other whether there was any agreement between Lynita and Eric to ignore the Separate-Property Agreement in the event of a divorce; is that correct as a factual matter?

A: Right.



(v) From page 113 (Questioning by Dickerson):

*Q: Was there any discussion as to the purpose of the separate-property settlement agreement and the two trusts that you prepared for the Nelsons?*

*A: Yes.*

*Q: What was the purpose?*

*A: Again, the purpose was to take community property that would be exposed 100 percent to liabilities that Eric might incur in the venture he was undertaking and to separate that community property into separate property so that at least Lynita's one-half could remain protected in the event a liability occurred and that Eric were to, well, incur liability and they would try to reach Lynita's assets. The creditors could not reach the assets.*

(vi) From pages 125-126 (Questioning by Dickerson):

*Q: Was there any discussion that you recall having with them of the legal consequences of this agreement should they get a divorce?*

*A: We talked about that 'cause that was a big topic, and again my -- this is my own personal opinion. You know, this particular planning was done for asset-protection purposes as to third parties; and I always warn my clients or at least tell them that, you know, when it comes to dissolution of a marriage, I believe there's a lot more opportunity to have the Court award property in an equitable manner based on the intended parties. But again, I'm not a family-law attorney, but we have that discussion. So that's why I said, "As a safety valve, to be sure that you can maintain your equal ownership, it's best to periodically equalize the property through gifting."*

(d) The following excerpts come from the transcript of the videotaped deposition of Mr. Burr taken April 11, 2012 (omitting objections):

(i) From page 195 (Questioning by Mark Solomon):

*Q: "... it had to be a true agreement where the property was separated -- the community was separated -- into separate property for all purposes. Does that comport with your recollection?*

*A: Yes.*

*Q: Okay. You also indicated that there couldn't be a side agreement, a secret side agreement, where it was separate property for some purposes but not for others. Do you recall so testifying?*



A: Yes.

(ii) From pages 196-197 (Questioning by Mark Solomon):

*Q: In fact if the parties had such an agreement, express or implied, that this agreement would not apply in the event of a divorce, isn't it your legal opinion, as you've already expressed in earlier portions of your deposition, that that would give a creditor a very good claim that the agreement was not a true division of the community property and therefore would not help you, in essence, in the estate planning you were trying to achieve?*

*A: I mean I think the document speaks for itself. They basically agreed to divide their property at that point in time in two equal parts and treat that property as separate property, so that's what this agreement accomplished. As far as the legal impact of some type of implied or side agreement, I really couldn't give an opinion on that. All I can say is that's what was occurring here, that they were dividing their property into separate property as allowed by law, as permitted by law.*

B.3 One cannot accept the benefits of an agreement for some purposes and then repudiate it for others.<sup>5</sup> From the materials I have reviewed, the parties' intent was to separate assets so that only Eric's separate property would be exposed to the perceived additional risk that came from the investments he was making. Lynita cannot accept that benefit while arguing that she really retained an interest in Eric's separate property. The Nevada Supreme Court has ruled that it "is well settled that a person shall not be allowed at once to benefit by and repudiate an instrument, but, if he chooses to take the benefit which it confers, he shall likewise take the obligations or bear the onus which it imposes."<sup>6</sup>

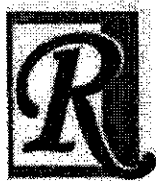
B.4 Once the Separate Property Agreement identified the parties' separate property, each party was expressly permitted to transfer his or her separate property to his or her own revocable trust. Such a transfer could not transmute the property to community property in the absence of an express declaration otherwise.

B.5 Thus, in my opinion, if the Separate Property Trusts created in 1993 were funded with the separate property identified in the Separate Property Agreement, or with property traceable thereto, then the assets of those trusts would constitute the separate property of each settlor unless that settlor expressly declared otherwise.

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<sup>5</sup>*Schmidt v. Horton*, 287 P. 274, 280 (Nev. 1930).

<sup>6</sup>*Fed. Mining & Engr. Co. v. Pollak*, 85 P.2d 1008, 1012 (Nev. 1939), citing *Alexander v. Winters*, 24 Nev. 143, 146, 50 P. 798, 799 (1897).



**C. VALIDITY OF ERIC L. NELSON NEVADA TRUST AS A NEVADA SPENDTHRIFT TRUST**

C.1 NRS Chapter 166 governs the validity of spendthrift trusts, including a trust that provides for the benefit of the trust's settlor, which we refer to as a "self-settled spendthrift trust" or an "SSST". In order for a valid SSST to be established, the trust must be properly established under NRS 163.002 et seq., and it must also meet these additional requirements of NRS Chapter 166:

(a) There is a nexus to Nevada, which can be met if any one of the following is true:

(i) All or part of the land, rents, issues or profits affected are in Nevada;

(ii) All or part of the personal property, interest of money, dividends upon stock and other produce thereof, affected, are in Nevada;

(iii) The declared domicile of the creator of a spendthrift trust affecting personal property is in Nevada; or

(iv) At least one qualified trustee has powers that include maintaining records and preparing income tax returns for the trust, and all or part of the administration of the trust is performed in Nevada.

(b) One trustee must be a Nevada resident or a bank or trust company having an office to conduct business in Nevada. [NRS 166.015(2)]

(c) The trust must be irrevocable, distributions to the settlor are discretionary or fit within specific statutory exceptions, and the trust is not intended to hinder, delay or defraud known creditors. [NRS 166.040(1)(b)]

(d) I have reviewed the Eric L. Nelson Nevada Trust dated May 30, 2001, and its terms comply with the requirements to establish an irrevocable self-settled spendthrift trust.

C.2 When property is transferred to an irrevocable spendthrift trust, the rights of the transferor, as such, are terminated, and the rights of all persons are determined only as provided in the trust agreement. Since Eric cannot unilaterally remove any property and his distributions are subject to the discretionary approval of the "distribution trustee", it is a misnomer to characterize the property as his separate property. His property rights are limited to that of a beneficiary with a "discretionary interest", as defined in NRS 163.4185(1)(c), and Nevada law limits his enforceable rights. See also NRS 166.130, which provides that a "beneficiary of a spendthrift trust has no legal estate in the capital, principal or corpus of the trust estate" unless the trust mandates a distribution after a term of years, which does not apply in this case.

(a) More specifically, NRS 163.419(1) states, "A court may review a trustee's





exercise of discretion concerning a discretionary interest only if the trustee acts dishonestly, with improper motive or fails to act.”

(b) NRS 21.090(1)(cc)(2) exempts from the claims of creditors any discretionary interest, even if the trust is not a spendthrift trust.

(c) Thus, unless an asset can be removed from the trust under the limited provisions of NRS 166.170, it comes out of the trust only in the trustee’s discretion.

C.3 If the value of a married person’s separate property is increased by the uncompensated (or under-compensated) personal services of that person, the property becomes community property as to the increased value attributable to the services not compensated for.<sup>7</sup> Insofar as I can determine, that rule applies only to a spouse’s own property. If a person works for a corporation, and his uncompensated personal services increase the value of the corporation’s assets, the person’s spouse cannot claim any community property interest in the corporation’s assets because the person does not own them. (A different rule may apply if the corporation is found to be the person’s alter ego, and that issue is discussed in section D of this letter.) In this case, the owner of the assets is a trust, and unless the trust is found to be Eric’s alter ego, I found no legal authority for imposing any community property interest upon the assets of the trust.

C.4 If community property were transferred to Eric’s SSST without Lynita’s consent, then that would be a violation of NRS 123.230(2). If that were true, Lynita could have filed a complaint seeking either (a) to have the improper transfer set aside<sup>8</sup> or (b) to have a constructive trust imposed (assuming she could produce clear and convincing evidence supporting the imposition of a constructive trust<sup>9</sup>), but the complaint for such relief would have had to be filed within the applicable statute of limitations (discussed in section E of this letter). In this case, I am unaware of any specific allegation of a transfer of community property to Eric’s SSST, and I express no opinion as to any specific transfer of property.

#### **D. APPLICATION OF THE ALTER-EGO DOCTRINE TO SPENDTHRIFT TRUSTS**

You have requested that I express my opinion with respect to the application of NRS 78.747 or any other alter-ego doctrine to a self-settled spendthrift trust (“SSST”) established and

<sup>7</sup>See *Johnson v. Johnson*, 89 Nev. 244, 510 P.2d 625 (1973), *Schulman v. Schulman*, 92 Nev. 707, 558 P.2d 525 (1976), and *Cord v. Neuhoff*, 94 Nev. 21, 573 P.2d 1170 (1978). These cases reflect the Nevada Supreme Court’s adoption of *Pereira v. Pereira*, 156 Cal. 1, 103 P. 488 (1909) and *Van Camp v. Van Camp*, 53 Cal.App. 17, 199 P. 885 (1921) and indicate the Court’s preference to apply the *Pereira* ruling unless the *Van Camp* method is shown to be more equitable.

<sup>8</sup>There does not seem to be a single remedy for negating the effects of an inappropriate transfer of community property. For real property, inappropriate transfers have been resolved in a quiet title action. See *Neumann v. McMillan*, 629 P.2d 1214, 1215 (Nev. 1981). Negating an invalid disposition of community property has also been raised in a contract dispute case. See *Peccole v. Eighth Jud. Dist. Ct. In and For County of Clark*, 899 P.2d 568, 570 (Nev. 1995).

<sup>9</sup>For a general discussion of the use of a constructive trust as a remedy for a fraud upon the community, see Bradley L. Adams, “The Doctrine of Fraud on the Community”, 49 *Baylor L. Rev.* 445, 468 (1997).



administered in compliance with NRS Chapter 166. For the reasons given in this letter, it is my opinion that neither the law nor the facts of this case (as I presently understand them) justify a ruling that Eric is the alter ego of the Eric's SSST or of its Distributions Trustee.

D.1 Public Policy Overview. In order to evaluate the application of any alter-ego doctrine to a self-settled spendthrift trust, it is important to understand the public policy regarding such a trust.

(a) *Original Policy against Self-Settled Spendthrift Trusts.* Until the mid-1990s, the laws of all states uniformly prohibited the establishment of a spendthrift trust that was completely exempt from the claims of a beneficiary's creditors to the extent the settlor<sup>10</sup> was a beneficiary. In other words, an SSST could not be created because of a public policy that generally prohibited arrangements that allowed a settlor to benefit from a trust he created with his own assets that was shielded from the claims of the settlor's creditors.

(b) *Shift in Domestic Public Policy to Compete with Foreign Trusts.* Trusts subject to the laws of foreign jurisdictions have allowed SSSTs for many years. In the mid-1990s, because of the lucrative trust business, state legislatures started to consider allowing domestic asset-protection trusts in order to entice trust business into their states. Beginning with Alaska and Delaware in 1997, various states have adopted statutes that allow the creation of SSSTs whose assets are exempt from the claims of the settlor's creditors. Thus, the public policy shifted, allowing the settlor to benefit from a trust that would not be liable for the payment of creditors except as to a creditor who can timely meet its burden to prove that such trust or a transfer thereto violates the law.

(c) *Exceptions to Protection for Some States.* The public policy of several states, including South Dakota, Tennessee, Utah, Wyoming, New Hampshire, and Rhode Island, as reflected in their respective spendthrift trust statutes, excluded protection for certain claims, including claims for child support and/or alimony.

D.2 Nevada's Current Public Policy. Nevada's public policy is reflected in the various amendments to NRS Chapter 166 in 1999, 2001, 2007, 2009, and 2011, as well as changes to NRS Chapters 163, 164, and 165 in the same years. In part, the ongoing legislative changes reflect a desire to create laws that attract and retain trust business in Nevada. It also reflects a desire to reduce disputes, including those based on improper dominion and control or based on an alter-ego theory.

D.3 Challenges to the Trust or to Trust Transfers. To access the assets of the trust, a challenger must either invalidate the trust or invalidate transfers to the trust.

(a) *Challenges to SSST Transfers.* Nevada's law provides for complete creditor protection for assets transferred to SSSTs with only two exceptions: (1) fraudulent transfers and (2) transfers that violate an enforceable legal obligation. This is reflected in the

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<sup>10</sup>The term "settlor" and "trustor" are used interchangeably in this letter.



language of subsection NRS 166.170(3):

(3) *A creditor may not bring an action with respect to transfer of property to a spendthrift trust unless a creditor can prove by clear and convincing evidence that the transfer of property was a fraudulent transfer pursuant to chapter 112 of NRS or that the transfer violates a legal obligation owed to the creditor under a contract or a valid court order that is legally enforceable by that creditor. In the absence of such clear and convincing proof, the property transferred is not subject to the claims of the creditor. [Emphasis added.]*

(b) *Challenges to the Validity of an SSST.* If a creditor cannot successfully challenge a transfer to an SSST directly, a common tactic is for the creditor to challenge the validity of the trust itself, usually on the grounds that the trust is a “sham” or that the trust is the alter ego of the settlor of the trust without any separate existence.

(c) *The “Sham Trust” Argument.* The concept of a “sham trust” is usually invoked by the Internal Revenue Service in tax-related federal court cases, but the term has appeared in some state court cases as well.

(i) *Lack of Economic Substance.* In tax cases, a trust is considered a “sham” if there is no “economic substance” to the creation of a trust. That concept does not apply to an SSST, especially when the tax code recognizes that the trust is a grantor trust that has no separate existence for tax-law purposes.

(ii) *Lack of Legal Formalities.* In state-law cases, the general rule is that a trust is a sham and is not to be recognized if the principal parties have disregarded the legal formalities of the trust.<sup>11</sup> Cases not involving an SSST focus on the settlor’s retention of benefits and the settlor’s control over the trust, including the influence of the settlor over the trustee.

{A} *Influence should not be a factor when determining whether or not an SSST is a sham. Consistent with the public policy reflected in Nevada’s legislation relating to spendthrift trusts, two commentators have stated (referring to an SSST as an “APT” or asset-protection trust):<sup>12</sup>*

*[T]here are numerous other reasons that debunk the notion that friendly relations between a trustor and trustee are, by themselves, proof of a sham:*

*a. It is the very nature of a trust relationship that trustors*

<sup>11</sup>See “Sham Trust Theory—Limited Tax Holdings”, *Planning and Defending Domestic Asset-protection Trusts*, SSO39 ALI-ABA 1741, 1792 and 2 *Asset Protection: Domestic & International Law & Tactics* § 14A:125 for discussions of this topic.

<sup>12</sup>2 *Asset Protection: Domestic & International Law & Tactics* § 14A:125, footnotes omitted.



*will pick trustees they trust, and it should not be surprising that trustees will take care of a trustor-beneficiary.*

*b. Trustees are supposed to carry out a trustor's intent.*

*c. Given that trustees are fiduciaries who are supposed to be solicitous of their beneficiaries' best interests, they often make distributions requested by beneficiaries—trustors or nontrustors.*

*d. The need for a trustee to honor its legal duties to a trustor-beneficiary is most acute precisely when creditors press claims.*

*e. A trustee's failure to honor its duties during the pendency of a creditor's claim could expose the trustee to claims for breach of duty, and a beneficiary asserting such claims could seek money damages, a declaratory judgment for specific performance of those duties, or other remedies.*

*f. An APT that functions exactly as required by the terms of the agreement is not a sham.*

*g. As discussed above, American precedent shows that proper trust administration involving an independent trustee and observing legal formalities will survive a sham challenge.*

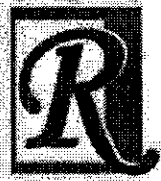
*h. A rule or argument that a sham trust exists simply because a trustee engages in a pattern of trust distributions or other friendly measures to or for a trustor-beneficiary could actually have an undue chilling effect on a trustee's independence.*

{B} I know of no facts that would indicate that the formalities of the trust have been disregarded.

D.4 Merger and Alter Ego. A creditor may wish to challenge the recognition of a trust by arguing that the trust and the settlor are merged or that the trust is merely the alter ego for the settlor.

(a) *Merger.* The doctrine of merger for trusts was repudiated in NRS 163.007, which allows the trust to continue as an entity that is separate from its creator, trustee, and beneficiary, even if they are one and the same.

(b) *Alter Ego, Generally.* There is no Nevada statute that specifies what makes a trust the alter ego of its settlor, but NRS 163.418 and NRS 163.4177 provide some guidelines.



(i) The statutory language of NRS 163.418 is as follows:

**NRS 163.418 Clear and convincing evidence required to find settlor to be alter ego of trustee of irrevocable trust; certain factors insufficient for finding that settlor controls or is alter ego of trustee of irrevocable trust.** Absent clear and convincing evidence, a settlor of an irrevocable trust shall not be deemed to be the alter ego of a trustee of an irrevocable trust. If a party asserts that a settlor of an irrevocable trust is the alter ego of a trustee of the trust, the following factors, alone or in combination, are not sufficient evidence for a court to find that the settlor controls or is the alter ego of a trustee:

1. The settlor has signed checks, made disbursements or executed other documents related to the trust as the trustee and the settlor is not a trustee, if the settlor has done so in isolated incidents.
2. The settlor has made requests for distributions on behalf of a beneficiary.
3. The settlor has made requests for the trustee to hold, purchase or sell any trust property.
4. The settlor has engaged in any one of the activities, alone or in combination, listed in NRS 163.4177.

(ii) The statutory language of NRS 163.4177 is as follows:

**NRS 163.4177 Factors which must not be considered exercising improper dominion or control over trust.** If a party asserts that a beneficiary or settlor is exercising improper dominion or control over a trust, the following factors, alone or in combination, must not be considered exercising improper dominion or control over a trust:

1. A beneficiary is serving as a trustee.
2. The settlor or beneficiary holds unrestricted power to remove or replace a trustee.
3. The settlor or beneficiary is a trust administrator, general partner of a partnership, manager of a limited-liability company, officer of a corporation or any other manager of any other type of entity and all or part of the trust property consists of an interest in the entity.
4. The trustee is a person related by blood, adoption or marriage to the settlor or beneficiary.
5. The trustee is the settlor or beneficiary's agent, accountant, attorney, financial adviser or friend.
6. The trustee is a business associate of the settlor or beneficiary.

(c) From the documents I have reviewed relating to this case, I found no clear



and convincing evidence that shows that Eric is the alter ego of Eric's SSST.

(i) While other jurisdictions may restrict the role that the settlor of an SSST may play, Nevada law merely requires that all distributions to the settlor are received "only subject to the discretion of another person." [See NRS 166.040(2)(g).<sup>13</sup>] That is the only limitation. NRS 166.040(3) states:

(3) Except for the power of the settlor to make distributions to himself or herself without the consent of another person, the provisions of this section shall not be construed to prohibit the settlor of a spendthrift trust from holding other powers under the trust, whether or not the settlor is a cotrustee, including, without limitation, the power to remove and replace a trustee, direct trust investments and execute other management powers.

(ii) Lynita has alleged that persons serving as the Distribution Trustee have violated a duty by consenting to distributions requested by Eric.<sup>14</sup> This is a specious argument.

{A} Under NRS 163.419, a trustee given absolute discretion<sup>15</sup> "has no duty to act reasonably in the exercise of that discretion."

{B} Under NRS 166.040(2)(g)<sup>16</sup>, the person authorizing a distribution to the settlor of an SSST need not be a trustee at all. Because the spendthrift trusts in this case give the Distribution Trustee absolute discretion, that trustee cannot violate a duty to a beneficiary because neither applicable Nevada law nor the trust instrument imposes any specific duty on the Distribution Trustee except to act within the constraints of the trust agreement.

{C} Although Lynita has alleged that the trust agreement has been violated,<sup>17</sup> her main complaint is that the Distribution Trustee "performed exactly as ERIC instructed".<sup>18</sup> Even if that allegation were true, that does not make Eric's SSST an "alter ego" of Eric because the Distribution Trustee is authorized to do exactly that. The Distribution Trustee has the authority to accept or decline any request. The Distribution Trustee's alleged conduct does not constitute actions that

<sup>13</sup>As amended by Section 206 of Chapter 270, Statutes of Nevada 2011, at page 102.

<sup>14</sup>See, for example, paragraph 46 on page 19 and paragraph 49 on page 20 of LSN's Counter-Claim.

<sup>15</sup>Subsection 3.1 of the Eric's SSST on page 2.

<sup>16</sup>As amended by Section 205, Chapter 270, Statutes of Nevada 2011, at page 102. Before the amendment, this was covered by NRS 164.040(2)(b).

<sup>17</sup>See, for example, paragraph 45 on page 19 of LSN's Counter-Claim.

<sup>18</sup>Paragraph 46 on page 19 of LSN's Counter-Claim.



are inconsistent with the provisions of the trust and of applicable law.

(d) *Application of NRS 78.747.* NRS 78.747 does not apply to trusts, either by specific application or by analogy.

(i) *Specific Application.* The alter-ego doctrine, as codified in NRS 78.747, clearly applies to corporations and does not apply to trusts. There is no statutory or judicial authority that supports applying that statute to trusts. The public policy reflected in NRS Chapter 166 allows a settlor to create a trust that he can manage, benefit from, and control except as to distributions. Applying the alter-ego rules reflected in the language of NRS 78.747 would frustrate that public policy. It would also contradict the statutes mentioned above, (NRS 163.418 and NRS 163.4177), which specifically relate to trusts.

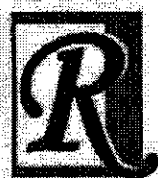
(ii) *Application by Analogy.* Similarly, there is no authority for applying the principles of NRS 78.747 to trusts by analogy, especially when NRS 163.418 and NRS 163.4177 exist. Under NRS 78.747(2), a person who is a stockholder, director or officer is the alter ego of a corporation if (1) the corporation “is influenced and governed” by that person; (2) the “unity of interest and ownership” is such that the person and the corporation “are inseparable from each other”; AND (3) recognizing the entity as separate “would sanction fraud or promote a manifest injustice.” Thus there are three elements of this statute that must be met before it applies. I will discuss the three elements individually, but it is important to understand that all three must exist in order to apply the alter-ego doctrine under NRS 78.747.

{A} *Influence and Govern.* NRS 78.747(2)(a) requires that the alleged alter ego of the corporation must influence and govern the corporation. When the settlor is a trustee of an SSST (as permitted by law), this element is always applicable; however, NRS 163.417 and 163.4177 specifically provide that this type of involvement by the settlor is insufficient to find that a settlor controls or is the alter ego of the trustees of the trust and “*must not be considered exercising improper dominion or control over the trust*”.

{B} *Unity of Interest and Ownership.* NRS 78.747 requires that as between the alter ego and the corporation there be “such unity of interest and ownership that the corporation and the stockholder, director or officer are inseparable from each other”. The Nevada Supreme Court has indicated that as to the “unity of interest and ownership”, the factors to be considered are “commingling of funds, undercapitalization, unauthorized diversion of funds, treatment of corporate assets as the individual’s own, and failure to observe corporate formalities.”<sup>19</sup> I will address those factors individually, as follows:

(I) *Commingling.* I am unaware of any allegation of commingling of

<sup>19</sup>*Lorenz v. Beltio, Ltd.*, 114 Nev. 795, 808, 963 P.2d 488, 497 (1998)



funds. From what I am aware, the trustees of Eric's SSST have consistently maintained the assets of the trust separate and apart from the assets of Eric, and the trust is authorized to conduct transactions with Eric and others under the terms of the trust instrument and under Nevada law.

(II) Undercapitalization. Undercapitalization is not relevant to any trust.

(III) Unauthorized Diversion of Funds. I am unaware of any alleged facts that would constitute an "unauthorized diversion of funds" in violation of the terms of the trust. To constitute an "unauthorized diversion of funds", a distribution would have to violate the terms of the trust.

(IV) Treating Assets as One's Own. Corporate law does not permit an officer, director, or shareholder to treat corporate assets as their own. In contrast, Nevada spendthrift trust law allows the settlor of an SSST to retain certain indicia of ownership and ownership benefits. Thus, when applied to trusts, the alter-ego doctrine prohibits "treatment of trust assets as the individual's own *in a manner not permitted under the terms of the trust or under applicable law.*" I am unaware of any facts that would show that Eric treated the assets of Eric's SSST in any way that was inconsistent with the terms of the trust or applicable law. To avoid negating NRS Chapter 166 and the public policy reflected therein, Eric's SSST should not be disregarded or treated as a nullity because the settlor retains a degree of control that is allowed by law. NRS Chapter 166 specifically permits the settlor of a spendthrift trust to be a beneficiary without limits as to the benefits received and to have any power except "for the power of the settlor to make distributions to himself or herself without the consent of another person".<sup>20</sup>

(V) Conclusion as to Unity of Interest and Ownership. Without proof that establishes that the settlor has maintained ownership benefits in violation of applicable law or of the trust's terms, the alter-ego doctrine cannot be applied in this case.

{C} *Fraud and Manifest Injustice.* Lynita has alleged fraud and injustice with respect to the transfers to the trust and with respect to distributions from the trust.

(I) Transfers. As to asset transfers, the challenges to those transfers appear to be barred by either (1) the statute of limitations found in NRS 166.170 or (2) by the failure to provide clear and convincing evidence that there is a fraudulent transfer or that the transfer constitutes a violation of an enforceable legal obligation, which means that any fraud or manifest injustice was triggered by the claimant's own action (or inaction). The application of NRS 166.170 to bar the claims of Lynita is no more unjust than the application of any statute of limitation under NRS

<sup>20</sup>NRS 166.040(3).





Chapter 11 or than the application of any exemption under NRS Chapter 21, and even fraud-based claims are barred thereby.

(II) Distributions. As to the distributions made from the trust, there cannot be fraud or manifest injustice when the trust is administered in compliance with the law and with the trust instrument. Unless there is proof that a distribution was made in violation of the terms of the trust or applicable law, there cannot be fraud or manifest injustice.

D.5 *There is No Alter Ego.* After adapting the principles of NRS 78.747 to an SSST and after applying the principals of NRS 163.418 and NRS 163.4177, it is my opinion that there is no alter ego involved in the SSSTs because there is no impermissible influence or control, no impermissible unity of ownership, and no fraud or manifest injustice<sup>21</sup>. A trust is not intended to be a business entity like a corporation, and it is inappropriate to use corporate law to ask a court to disregard an irrevocable trust that has been created and administered in compliance with applicable trust law.

#### **E. STATUTES OF LIMITATION**

E.1 In my opinion, transfers to Eric's SSST are subject to the limitations of NRS 166.170, which is discussed below.

(a) The limitations of NRS Chapter 11 may also apply, but if the challenge to a transfer to a spendthrift trust is barred under NRS 166.170, it is barred regardless of any provision in NRS Chapter 11.

(i) NRS 11.190(3)(d) specifically states that NRS 166.170 supersedes the longer period that would otherwise be allowed for allegations of fraud under that provision.

(ii) NRS 166.170(8) reads, "*Notwithstanding any other provision of law, no action of any kind, including, without limitation, an action to enforce a judgment entered by a court or other body having adjudicative authority, may be brought at law or in equity against the trustee of a spendthrift trust if, as of the date the action is brought, an action by a creditor with respect to a transfer to the spendthrift trust would be barred pursuant to this section.*"

(b) In this situation, if a deed of real property to Eric was made in 1993 pursuant to the Separate Property Agreement, any challenge to that deed is beyond the statute of limitations. Actions for the recovery of real property or for the profits therefrom must be made within five years. [NRS 11.070 and 11.080] Those statutes require the person asserting the claim to be "seized or possessed of the premises" within five years, and that

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<sup>21</sup>If Lynita alleges "fraud and injustice" with respect to transfers to the SSSTs, those claims are time-barred under NRS 166.170.



would not be true as to Lynita with respect to any deeds of real property to Eric's SSST in 2001.

(c) As to personal property:

(i) NRS 11.190 states that actions based upon a written contract must be brought within six years. If Lynita wanted to assert that Eric made transfers in violation of a contract, any violation asserted within six years prior to the filing of the divorce complaint would be within the statute of limitations. Any breach would have had to occur after May 6, 2003 in order to come within this limitation.

(ii) Even if NRS 166.170 were inapplicable, Lynita's argument to negate transfers to the SSST seem to be based on a side agreement that the Separate Property Agreement was subject to an understanding that it was only binding as against third-party creditors. As stated in subsection B.2, above, evidence of such a side agreement is inadmissible. Even if evidence of a side agreement were admissible, a contract not in writing is subject to the four-year statute of limitations under NRS 11.190. Any breach of the agreement would have had to occur after May 6, 2005 to come within this limitation. Again, it is my opinion that NRS 166.170 applies and not NRS Chapter 11.

(iii) As to any alleged breach of the statutes relating to community property, the breach would have had to occur after May 6, 2006 in order to come within the limitation given in NRS 11.190(3)(a).

E.2 NRS 166.170 provides the statute of limitations relating to transfers to spendthrift trusts. The term "creditor" in that statute refers to "a person who has a claim", as defined in NRS 112.150(4). The first three subsections of NRS 166.170 read as follows:

1. A person may not bring an action with respect to a transfer of property to a spendthrift trust:

(a) If the person is a creditor when the transfer is made, unless the action is commenced within:

(1) Two years after the transfer is made; or

(2) Six months after the person discovers or reasonably should have discovered the transfer,

whichever is later.

(b) If the person becomes a creditor after the transfer is made, unless the action is commenced within 2 years after the transfer is made.

2. A person shall be deemed to have discovered a transfer at the time a public record is made of the transfer, including, without limitation, the conveyance of real property that is



recorded in the office of the county recorder of the county in which the property is located or the filing of a financing statement pursuant to chapter 104 of NRS.

3. A creditor may not bring an action with respect to transfer of property to a spendthrift trust unless a creditor can prove by clear and convincing evidence that the transfer of property was a fraudulent transfer pursuant to chapter 112 of NRS or that the transfer violates a legal obligation owed to the creditor under a contract or a valid court order that is legally enforceable by that creditor. In the absence of such clear and convincing proof, the property transferred is not subject to the claims of the creditor. Proof by one creditor that a transfer of property was fraudulent or wrongful does not constitute proof as to any other creditor and proof of a fraudulent or wrongful transfer of property as to one creditor shall not invalidate any other transfer of property.

E.3 Because Lynita and Eric established their SSSTs concurrently and using the same attorney, and they were aware that the transfers to the SSSTs were from property in their respective 1993 separate property trusts, it is clear that they were aware of the transfers to the SSST. In addition, a notice relating to transfers to the trust was published in *Nevada Legal News* three times commencing on August 23, 2001 [Burro0237]. Thus, even if it is assumed that Lynita had a claim against Eric at the time of any transfer of assets to the SSST, no challenge to that transfer could be asserted more than two years after the date of that transfer.

E.4 Lynita may try to argue that a transfer to Eric's SSST violated "a contract or a valid court order that is legally enforceable by that creditor" within the meaning of NRS 166.170(3). That argument would still fail for at least two reasons:

(a) First, even if that were true, the claim still has to be brought within the two-year time frame given in NRS 166.170(1).

(b) Second, to fit within the statute, the transfer itself must violate an enforceable contract or court order, and I have not seen any contract or court order that specifically prohibited any transfer.

E.5 The two-year statute of limitations under NRS 166.170 begins as of the date the asset is transferred to the trust. Under NRS 163.002, an asset is considered an asset of the trust as soon as it is declared to be an asset by the owner who is the trustee or as soon as it is transferred to another person as trustee.

## **F. DOCUMENTS CITED**

The documents cited herein are referred to herein using the underlined caption show below, and any number that appears in brackets refers to the Bates numbering on the first page of that document:

F.1 Eric's SSST: The trust established under the trust agreement titled "The Eric L. Nelson Nevada Trust" dated 5/30/2001 [Burro0256].



F.2 LSN's Counter-Claim: Lynita Sue Nelson's (1) Answer to Claims of The Eric L. Nelson Nevada Trust; and (2) Claims for Relief against Eric L. Nelson et al. filed 09/30/2011.

F.3 Separate Property Agreement: The "Separate Property Agreement" dated April 28, 1993, signed by Eric and Lynita [Burro0151].

F.4 Separate Property Trusts: This refers to the Eric L. Nelson Separate Property Trust dated July 13, 1993 [Burro0388] and the Nelson Trust dated July 13, 1993 [Burro0172].

### **G. INVOLVED PERSONS**

The underlined captions below are shorthand references for the major parties involved in this case.

G.1 Eric: Eric L. Nelson, Plaintiff and Counter-defendant.

G.2 Lynita: Lynita Sue Nelson, Defendant and Counter-claimant.

### **H. CREDENTIALS**

H.1 My Curriculum Vitae is enclosed.

H.2 A list of recent cases in which I have been engaged as an expert witness is also enclosed.

### **I. CONCLUSION**

Based on the facts as I presently understand them, it is my opinion that:

I.1 The Separate Property Agreement and Separate Property Trusts signed by Eric and Lynita Nelson in 1993 are binding, both as to the claims of third-party creditors and as to their rights in a divorce proceeding.

(a) The terms of the Separate Property Agreement should be construed from the agreement itself as written, and extrinsic evidence that contradicts the unambiguous meaning of the written agreement is inadmissible.

(b) Even if extrinsic evidence were admissible, the testimony of the drafting attorney confirms that the parties intent is consistent with the terms of the written agreement.

(c) Mr. Burr's testimony also indicates that Lynita's position that there was a binding side agreement or understanding that community property principles would continue to apply despite clear contractual language otherwise would have frustrated the intent of the agreement. The Court cannot properly condone Lynita's acceptance of the separate property agreement as against creditors while arguing that Eric's SSST holds

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

MATT KLABACKA, Distribution Trustee  
of the Eric L. Nelson Nevada Trust dated  
May30, 2001,

Appellant/Cross Respondent.

vs.

LYNITA SUE NELSON, Individually and in  
her capacity as Investment Trustee of the  
LSN NEVADA TRUST dated May 30,  
2001; and ERIC L. NELSON, Individually  
and in his capacity as Investment Trustee of  
the ELN NEVADA TRUST dated May 30,  
2001;

Respondents/Cross-Appellants.

MATT KLABACKA, as Distribution  
Trustee of the Eric L. Nelson Nevada Trust  
dated May30, 2001,

Appellants,

vs.

ERIC L. NELSON; LYNITA SUE  
NELSON, INDIVIDUALLY; AND LSN  
NEVADA TRUST DATED MAY 30, 2001,

Respondents.

**Supreme Court Case No. 66772**

**District Court Case No. D-09-  
411537**

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Clerk of Supreme Court

**Consolidated With:**

**Supreme Court Case No. 68292**

**RECORD ON APPEAL  
VOLUME 12**

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**Supreme Court Case 66772 Consolidated with 68292 In the Matter of: Klabacka v. Nelson et al.**

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1	05/06/2009	Complaint for Divorce in Eighth Judicial District Court Case No. D-09-411537-D	1 - 8
19	07/25/2012	Court Minutes	4515 - 4516
20	07/22/2013	Court Minutes	4873 - 4875
21	08/01/2013	Court Minutes	5040 - 5042
11	04/10/2012	Court Minutes - Motion for Payment of Attorneys' Fees and Costs	2643 - 2644
12	07/10/2012	Defendant's Motion in Limine to Exclude from Trial the Testimony and Report of Layne T. Rushforth, Esq. and Any Purported Experts Testimony Regarding the Interpretation of Law, and Application of Facts to Law; to Strike the Eric L. Nelson Nevada Trusts' Pre-Trial Memorandum and for Attorneys' Fees and Costs	2864 - 2913
12	07/10/2012	Defendant's Motion in Limine to Exclude Testimony and Report of Daniel T. Gerety, CPA	2850 - 2863
20	06/17/2013	Defendant's Motion to Amend or Alter Judgement for Declaratory and Related Relief	4755 - 4798
23, 24	11/13/2014	Defendant's Motion to Enforce the June 3, 2013 Decree of Divorce, Address Issues Relating to Property Awarded to Defendant in the Divorce, and for Related Relief	5579 - 5805
24	12/22/2014	ELN Trust's Opposition to Defendant's Motion to Enforce the June 3, 2013 Decree of Divorce, Address Issues Relating to Property Awarded to Defendant in the Divorce, and for Related Relief	5806 - 5940
26	01/26/2009	E-mail from Mrs. Nelson to Barbara Morelli (Admitted as Intervenor Trial Exhibit 12)	6350
26	04/28/1993	Executed Separate Property Agreement (Admitted as Intervenor Trial Exhibit 4)	6273 - 6282
26	02/27/2009	Exercise of Power of Appointment for the LSN Nevada Trust (Admitted as Intervenor Trial Exhibit 81)	6462 - 6468
26	03/24/1994	Fax from Jeffrey L. Burr & Associates to Shelley Newell (Admitted as Intervenor Trial Exhibit 10)	6345 - 6346
26	03/19/1994	Fax from Shelley Newell to Jeffrey L. Burr & Associates (Admitted as Intervenor Trial Exhibit 9)	6343 - 6344
26	07/08/1993	Fax to Melina Barr from Roslyn Hinton (Admitted as	6253 - 6261

		Intervenor Trial Exhibit 2)	
25	06/08/2015	Findings of Fact and Order	6226 – 6248
30	03/22/2007	Grant, Bargain, Sale Deed (Admitted as Nelson Exhibit 57A)	7394 – 7396
26	01/09/2001	Handwritten Note from Jeff Burr File (Admitted as Intervenor Trial Exhibit 20)	6389 - 6391
26	01/15/2001	Handwritten Note from Jeff Burr File (Admitted as Intervenor Trial Exhibit 21)	6392
26	07/15/1993	Handwritten Note to Melina (Admitted as Intervenor Trial Exhibit 1)	6252
8	08/19/2011	Initial Appearance Fee Disclosure (NRS Chapter 19)	1775- 1776
1	05/18/2009	Joint Preliminary Injunction	9-10
30	09/08/2011	Judgement and Order Granting Plaintiffs' Motion for Summary Judgment in United States District Court, Central District of California, Case No. 2:11-cv-02583-JEM (Admitted as GGGGG at Tab 23)	7409 - 7410
26	02/17/2009	Last Will and Testament of Mrs. Nelson (Admitted as Intervenor Trial Exhibit 19)	6384 - 6388
26	00/00/0000	Letter of Instruction signed by Mrs. Nelson (Admitted as Intervenor Trial Exhibit 18)	6383
26	06/19/1998	Letter to Mr. and Mrs. Nelson from Jeffrey L. Burr & Associates (Admitted as Intervenor Trial Exhibit 11)	6347 - 6349
6	01/30/2001	Letter to Mr. and Mrs. Nelson from Jeffrey L. Burr & Associates (Admitted as Intervenor Trial Exhibit 22)	6393
26	02/15/2001	Letter to Mr. and Mrs. Nelson from Jeffrey L. Burr & Associates (Admitted as Intervenor Trial Exhibit 23)	6394
26	05/30/2001	Letter to Mr. and Mrs. Nelson from Jeffrey L. Burr & Associates (Admitted as Intervenor Trial Exhibit 28)	6442 – 6444
26	05/30/2001	Letter to Mrs. Nelson from Jeffrey L. Burr & Associates (Admitted as Intervenor Trial Exhibit 26)	6434 - 6437
26	05/30/2001	Letter to Mrs. Nelson from Jeffrey L. Burr & Associates (Admitted as Intervenor Trial Exhibit 27)	6438 - 6441
26	05/03/2002	Letter to Mrs. Nelson from Jeffrey L. Burr & Associates (Admitted as Intervenor Trial Exhibit 40)	6447
26	03/26/2003	Letter to Mrs. Nelson from Jeffrey L. Burr & Associates (Admitted as Intervenor Trial Exhibit 44)	6448
26	05/03/2004	Letter to Mrs. Nelson from Jeffrey L. Burr & Associates (Admitted as Intervenor Trial Exhibit 51)	6449
26	05/04/2005	Letter to Mrs. Nelson from Jeffrey L. Burr & Associates (Admitted as Intervenor Trial Exhibit 57)	6450
26	02/09/2009	Letter to Mrs. Nelson from Jeffrey L. Burr & Associates (Admitted as Intervenor Trial Exhibit 79)	6453 - 6457
26	02/09/2009	Letter to Mrs. Nelson from Jeffrey L. Burr & Associates (Admitted as Intervenor Trial Exhibit 80)	6458 – 6461
26	00/00/0000	Letter to Nevada Legal News from Jeffrey L. Burr & Associates (Admitted as Intervenor Trial Exhibit 29)	6445 – 6446

26,	07/13/1993	Letter to Richard Koch with Separate Property Agreement (Admitted as Intervenor Trial Exhibit 3)	6262 - 6272
11	05/15/2012	Limited Objection to Application of Forensic Accountants for Allowance of Fees and Reimbursement of Expenses for the period from April 4, 2011 through March 31, 2012	2710 – 2712
8	09/30/2011	Lynita Sue Nelson’s: (1) Answer to Claims of The Eric L. Nelson Nevada Trust; and (2) Claims for Relief Against Eric L. Nelson Nevada Trust dated May 30, 2001, Lana Martin, Nola Harber, Rochelle McGowan, Joan B. Ramos, and Does 1 through X (Whether Designed as a Counterclaim, Cross-Claim and/or Third Party Complaint)	1818 - 1853
9	12/20/2011	Lynita Sue Nelson’s: (1) First Amended Answer to Claims of the Eric L. Nelson Nevada Trust and (2) First Amended Claims for Relief Against Eric L. Nelson Nevada Trust dated May 30, 2001, Lana Martin, Nola Harber, Rochelle McGowan, Joan B. Ramos, and Does 1 through X (Whether Designed as a Counterclaim, Cross-Claim and/or Third Party Complaint)	2140 - 2182
30	05/07/2013	Memorandum from Robert P. Dickerson in Support of AB378 (Exhibit 8)	7480 - 7487
27	00/00/0000	Miscellaneous Documents produced by Defendants (Admitted as Intervenor Trial Exhibit 167)	6513 – 6549
29, 30	03/01/2002	Mississippi Deeds (Admitted as Nelson Exhibit 8A)	7069 - 7393
10	03/06/2012	Motion for Payment of Attorneys’ Fees and Costs	2461 – 2494
19	06/05/2013	Motion for Payment of Funds Belonging to Defendant Pursuant to Court’s Decree to Ensure Receipt of the Same, and for Immediate Payment of Court Appointed Expert	4743 – 4752
8	11/07/2011	Motion to Dismiss	1885 - 1908
9	01/17/2012	Motion to Dismiss Amended Third-Party Complaint and Motion to Strike	2190 - 2224
8	11/29/2011	Motion to Dissolve Injunction	1916 - 1999
7	06/24/2011	Motion to Join Necessary Party; or in the Alternative; to Dismiss Claims Against The Eric L. Nelson Nevada Trust dated May 30, 2011	1606 - 1661
23	10/20/2014	Notice of Appeal	5576 – 5578
25, 26	06/23/2015	Notice of Appeal	6249 – 6251
21	09/10/2013	Notice of Entry of Injunctions from September 4, 2013 Hearing	5230 – 5241
10	01/31/2012	Notice of Entry of Order	2264 – 2272
11	05/29/2012	Notice of Entry of Order	2739 – 2745
12	06/05/2012	Notice of Entry of Order	2759 – 2770

12	07/11/2012	Notice of Entry of Order	2914 – 2920
12	07/11/2012	Notice of Entry of Order	2921 – 2929
19	08/07/2012	Notice of Entry of Order	4517 – 4520
	06/03/2012	Notice of Entry of Order	4691 – 4742
8	11/14/2011	Notice of Entry of Order and Order – August 24, 2011 Hearing	1909 - 1915
21	09/03/2013	Notice of Entry of Order Denying Countermotion to Stay Payments and Transfer Property Pending Appeal and/or Resolution to the Nevada Supreme Court for an Extraordinary Writ	5148 – 5153
23	09/22/2014	Notice of Entry of Order Determining Disposition of Dynasty Development Management, Inc. AKA Wyoming Downs	5553 – 5561
19	10/10/2012	Notice of Entry of Order from July 16, 2012 Hearing	4683 – 4690
19	08/31/2012	Notice of Entry of Order from April 10, 2012 Hearing and Injunction	4531 – 4539
19, 20	08/31/2012	Notice of Entry of Order from February 23, 2012 Hearing Partially Granting ELN Trust’s Motion to Dismiss Third-Party Complaint Without Prejudice.	4540 – 4550
23	09/22//2014	Notice of Entry of Order from July 22, 2013 Hearing on Lynita Nelson’s Motion to Amend or Alter Judgment for Declaration and Related Relief	5562 – 5575
21, 22	09/30/2013	Notice of Entry of Order from September 4, 2013 Hearing Regarding Payment of Lindell Professional Plaza Income	5247 – 5254
19	08/29/2012	Notice of Entry Of Order Granting Motion for Relief from Automatic Stay and Denying Motion to Dismiss Without Prejudice	4521 – 4527
12	06/05/2011	Notice of Entry of Order regarding Findings of Fact and Order dated June 5, 2012	2771 – 2782
7	08/09/2011	Notice of Entry of Stipulation and Order	1742 - 1746
8	09/14/2011	Notice of Filing a Summary Appraisal Report of a Two-Story Office Building (3611 Lindell Road, Las Vegas, NV )	1789 - 1801
10	02/27/2012	Notice of Filing Amendment to Source and Application of Duns for Lynita Nelson	2249 – 2460
10	01/27/2012	Notice of Filing Amendment to Source and Application of Funds for Emerald Bay Mississippi, LLC Filed December 8, 2011	2257 – 2263
10	02/27/2012	Notice of Filing Amendment to Source and Application of Funds for Eric L. Nelson Nevada Trust	2425 – 2248
7	07/05/2011	Notice of Filing Asset Schedule and Notes to Asset Schedule	1662 - 1683
9	12/23/2011	Notice of Filing Corrected Asset Schedule by Ownership	2186 - 2189
7	07/15/2011	Notice of Filing Income and Expense Reports for Banone-AZ LLC	1713 -1724

8	08/15/2011	Notice of Filing Income and Expense Reports for Emerald Bay Resorts, LLC	1762 – 1769
7	07/19/2011	Notice of Filing Income and Expense Reports for Eric L. Nelson Nevada Trust	1725 - 1741
7, 8	08/15/2011	Notice of Filing Income and Expense Reports for Eric Nelson Auctioneering	1747 - 1761
9, 10	01/26/2012	Notice of Filing Income and Expense Reports for Eric Nelson Auctioneering	2225 -2256
8	09/28/2011	Notice of Filing Income and Expense Reports for Lynita Nelson	1806 - 1817
7	07/11/2011	Notice of Filing Income and Expense Reports for: (1) Banone, LLC and (2) Dynasty Development Group	1684 - 1712
10	02/16/2012	Notice of Filing Source and Application of Funds for Banone-AZ, LLC	2362 – 2389
11	04/11/2012	Notice of Filing Source and Application of Funds for Dynasty Development Group, LLC	2645 – 2677
9	12/08/2011	Notice of Filing Source and Application of Funds for Eric L. Nelson Nevada Trust	2060 - 2095
11	04/23/2012	Notice of Filing Source and Application of Funds Pursuant to April 10, 2012 Hearing	2678 – 2709
8	10/03/2011	Notice of Filing Summary Appraisal Report of +202.50 Acres of Agricultural/Residential Land (Uinta County, Wyoming)	1854 - 1859
8	10/06/2011	Notice of Submission of First Billing for Fees and Expenses of Forensic Accountants	1860 -1884
11	04/09/2012	Opposition to Countermotion for Receiver, Additional Injunction and Fees and Costs	2630 – 2642
21	08/23/2013	Opposition to Imposition of Charging Order and Appointment of Receiver	5043 – 5066
10, 11	03/26/2012	Opposition to Motion for Payment of Attorneys' Fees and Costs, and Countermotion for Receiver, Additional Injunction, and Fees and Costs	2495 – 2594
20	06/18/2013	Opposition to Motion for Payment of Funds Belonging to Defendant Pursuant to Court's Decree to Ensure Receipt of the Same, and for Immediate Payment of Court Appointed Expert; and Countermotion to Stay Payments and Transfer Property Pending Appeal and/or Resolution to the Nevada Supreme Court for an Extraordinary Writ	4799 – 4812
16	07/20/2012	Opposition to Motion in Limine to Exclude to Exclude from Trial the Testimony and Report of Daniel T. Gerety, CPA, Layne T. Rushforth, Esq. and Any Purported Experts Testimony Regarding the Interpretation of Law, and Application of Facts to Law; to Strike the Eric L. Nelson Nevada Trusts' Pre-Trial Memorandum; and Counter-Motion to Continue Trial and for Attorneys' Fees and Costs	3803 – 3838

8, 9	12/01/2011	Opposition to Motion to Dismiss and Countermotion for an Award of Attorneys' Fees and Costs	2000 - 2040
9	12/07/2011	Opposition to Motion to Dissolve Injunction and Countermotion for an Award of Attorneys' Fees and Costs	2041 - 2059
30	07/11/2012	Order entered in Case D-09-411537-D	7471 - 7479
20	06/19/2013	Order for Payment of Funds Pursuant to June 3, 2013 Decree of Divorce	4847 - 4850
30	08/09/2011	Order in Case No. D-09-411537-D	7400 - 7402
6	11/17/2010	Partial Transcript, Non-Jury Trial, November 17, 2010	1256 - 1435
6	11/22/2010	Partial Transcript, Non-Jury Trial, November 22, 2010	1436 - 1499
6, 7	11/22/2010	Partial Transcript, Non-Jury Trial, November 22, 2010	1500 - 1605
21	09/27/2013	Plaintiff Eric Nelson's Response to Lynita's Response to Court Ordered Accountings Provided by Eric Nelson	5242 - 5246
19	08/31/2012	Post-Trial Brief of Eric L. Nelson Nevada Trust Dated May 30, 2001	4551 - 4610
30	01/28/2005	Promissory Note in favor of Lana Martin	7488
30	01/28/2005	Promissory Note in favor of Robert A. Martin	7489
29	09/25/1999	Real Estate Records for 5220 E. Russell Road, Las Vegas, Nevada (UUUU)	7017 - 7049
	06/06/2013	Receipt of Copy regarding Motion for Payment of Funds Belonging to Defendant Pursuant to Court's Decree to Ensure Receipt of the Same, and for Immediate Payment of Court Appointed Expert	4753 - 4754
8	09/19/2011	Reply to Counterclaim and Answer to Cross - Claim	1802 - 1805
24, 25	01/14/2015	Reply to ELN Trust's Opposition to Defendant's Motion to Enforce the June 3, 2013 Decree of Divorce, Address Issues Relating to Property Awarded to Defendant in the Divorce, and for Related Relief and Eric Nelson's Opposition to Defendants Motion to Enforce June 3, 2013 Decree of Divorce, Address Issues Relating to Property Awarded to Defendant in the Divorce, and for Related Relief and Opposition to Eric Nelson's Countermotion	5941 - 6076
11	05/22/2012	Reply to Limited Objection to Application of Forensic Accountants for Allowance of Fees and Reimbursement of Expenses for the period from April 4, 2011 through March 31, 2012 filed by the Eric L. Nelson Nevada Trust and Reply to Limited Objection to Application of Forensic Accountants for Allowance of Fees and Reimbursement of Expenses for the period from April 4, 2011 through March 31, 2012 filed by Eric Nelson	2713 - 2738
22	10/14/2013	Reply to Opposition to Countermotion/Petition for Appointment of Authorized Trustee and for Fees and Costs	5255 - 5265

20	07/11/2013	Reply to Opposition to Defendant's Motion to Amend or Alter Judgement, for Declaratory and Related Relief and Joinder to Opposition	4851 – 4869
21	08/30/2013	Reply to Opposition to Imposition of Charging Order and Appointment of Receiver and Requests for Injunction and Fees and Costs	5067 – 5087
11	04/04/2012	Reply to Opposition to Motion for Payment of Attorneys' Fees and Costs	2595 – 2623
9	12/09/2011	Reply to Opposition to Motion to Dismiss and Countermotion for An Aware of Attorneys' Fees and Costs	2096 - 2123
9	12/09/2011	Reply to Opposition to Motion to Dissolve Injunction and Opposition to Countermotion for an Aware of Attorneys Fees and Costs	2124 -2139
22	10/15/2013	Reply to Plaintiff Eric Nelson's Response to Court Order Accountings	5266 - 5287
27, 28, 29	07/05/2012	Report of Gerety & Associates (Admitted as Intervenor Trial Exhibit 168)	6550 – 7014
21	08/30/2013	Response to Court Order Accountings Provided by Eric Nelson	5088 – 5147
19	09/28/2012	Response to Defendant Lynita S. Nelson's Post-Trial Memorandum on Trust Issues	4628 – 4657
29	01/21/2002	Soris Original Mortgage – (Wyoming Property) – (Admitted as Nelson Exhibit 41C)	7050 – 7068
8	08/24/2011	Summons directed to Eric Nelson	1779 -1782
8	08/24/2011	Summons directed to Lynita Sue Nelson	1783 -1786
11	04/05/2012	Supplement to Opposition to Motion for Payment of Attorneys' Fees and Costs, and Countermotion for Receiver, Additional Injunction, and Fees and Costs	2624 – 2629
	10/08/2012	Supplement to Verified Memorandum of Attorneys' Fees and Costs	4658 – 4682
26, 27	05/30/2001	The Eric L. Nelson Nevada Trust (Admitted as Intervenor Trial Exhibit 86)	6475 – 6508
12	07/06/2012	The Eric L. Nelson Nevada Trust's Pretrial Memorandum	2783 – 2849
26	07/13/1993	The Eric L. Nelson Separate Property Trust (Admitted as Intervenor Trial Exhibit 7)	6313 – 6341
26	05/30/2001	The LSN Nevada Trust (Admitted as Intervenor Trial Exhibit 25)	6395 - 6433
26	07/13/1993	The Nelson Trust (Admitted as Intervenor Trial Exhibit 5)	6283 - 6311
20, 21	08/01/2013	Transcript Re: All Pending Motions	4991 – 5039
21	09/05/2013	Transcript Re: All Pending Motions	5154 – 5229
22	10/21/2013	Transcript Re: All Pending Motions	5288 – 5347
25	01/26/2015	Transcript RE: All Pending Motions	6077 – 6225
22, 23	06/04/2014	Transcript RE: Decisions	5495 – 5552

20	06/19/2013	Transcript Re: Motion	4813 – 4846
20	07/22/2013	Transcript Re: Motion	4876 – 4990
10	02/23/2012	Transcript regarding Decision	2390 – 2424
10	01/31/2012	Transcript relating to Motion	2273 – 2361
4	10/19/2010	Transcript, Non-Jury Trial, October 19, 2010	849 – 990
4, 5, 6	10/20/2010	Transcript, Non-Jury Trial, October 20, 2010	991 – 1255
1, 2	08/30/2010	Transcript, Non-Jury Trial, Volume 1 from August 30, 2010	40 – 258
2	08/31/2010	Transcript, Non-Jury Trial, Volume 2 from August 31, 2010	259 - 441
2, 3	08/31/2010	Transcript, Non-Jury Trial, Volume 3 from August 31, 2010	442 – 659
3,4	09/01/2010	Transcript, Non-Jury Trial, Volume 4 from September 1, 2010	660 –848
13, 14	07/17/2012	Trial Transcript Re: Non-Jury Trial	3181 – 3406
14, 15	07/18/2012	Trial Transcript Re: Non-Jury Trial	3407 – 3584
22	05/30/2014	Trial Transcript RE: Non-Jury Trial	5348 – 5494
15	07/19/2012	Trial Transcript Re: Non-Jury Trial – Vol. I	3585 – 3714
16	07/23/2012	Trial Transcript Re: Non-Jury Trial – Vol. I	3839 – 3943
17	07/24/2012	Trial Transcript Re: Non-Jury Trial – Vol. I	4050 – 4187
18	07/25/2012	Trial Transcript Re: Non-Jury Trial – Vol. I	4279 – 4447
15, 16	07/19/2012	Trial Transcript Re: Non-Jury Trial – Vol. II	3715 – 3802
16, 17	07/23/2012	Trial Transcript Re: Non-Jury Trial – Vol. II	3494 -4049
17, 18	07/24/2013	Trial Transcript Re: Non-Jury Trial – Vol. II	4188 – 4278
18, 19	07/25/2012	Trial Transcript Re: Non-Jury Trial – Vol. II	4448 -4514
12, 13	07/16/2012	Trial Transcript Volume I	2930 – 3120
13	07/16/2012	Trial Transcript Volume II	3121 – 3180
26	02/17/2009	Trust Agreement of the Total Amendment and Restatement of the Nelson Trust (Admitted as Intervenor Trial Exhibit 14)	6351 – 6381
30	03/31/2011	Trust Ownership-Distribution Report of Larry Bertsch (Admitted as Exhibit GGGGG at Tab 9)	7397 – 7399
19	09/28/2012	Verified Memorandum of Attorneys’ Fees and Costs	4611 – 4627



1 In answering Paragraph No. 12 of the Cross-Claim, the Trustee admits that Eric L. Nelson  
2 serves as the Investment Trustee of the ELN Trust and has acted in accordance with the terms of  
3 the same. The Trustee denies the remaining allegations contained therein.

4 In answering Paragraph No. 13 of the Cross-Claim, the Trustee admits that Joan B. Ramos  
5 and/or Rochelle McGowan are employees of the ELN Trust and/or an entity owned by the ELN  
6 Trust. The Trustee denies the remaining allegations contained therein.

7 In answering Paragraph No. 16 of the Cross-Claim, the Trustee admits that she e-mailed the  
8 law office of Jeffrey Burr in or around June 2003 and that said e-mail speaks for itself. The Trustee  
9 denies the remaining allegations contained therein.

10 **PARTIES**

11 In answering Paragraph No. 18 of the Cross-Claim, the Trustee admits that the Complaint  
12 for Divorce and Answer and Counterclaim allege that Eric L. Nelson and Lynita S. Nelson are  
13 husband and wife. The Trustee further admits that Eric L. Nelson is the Investment Trustee of the  
14 ELN Trust. The Trustee denies the remaining allegations contained therein.

15 In answering Paragraph No. 19 of the Cross-Claim, the Trustee admits that she is a resident  
16 of Clark County, Nevada and is the Distribution Trustee of the ELN Trust. The Trustee further  
17 admits that she is a former Distribution Trustee of the LSN Trust. The Trustee denies the remaining  
18 allegations contained therein.

19 In answering Paragraph No. 20 of the Cross-Claim, the Trustee admits that Nola Harber is:  
20 (1) serving a voluntary mission for The Church of Jesus Christ of Latter-Day Saints in Laie, Hawaii;  
21 (2) the sister of Eric L. Nelson; (3) a former Distribution Trustee of the ELN Trust; and (4) a former  
22 Distribution Trustee of the LSN Trust. The Trustee denies the remaining allegations contained  
23 therein.

24 In answering Paragraph No. 21 of the Cross-Claim, the Trustee admits that Rochelle  
25 McGowan is an employee of the ELN Trust or an entity owned by the ELN Trust. The Trustee  
26 denies the remaining allegations contained therein.

1 In answering Paragraph No. 22 of the Cross-Claim, the Trustee admits that Joan B. Ramos  
2 is an employee of the ELN Trust or an entity owned by the ELN Trust. The Trustee denies the  
3 remaining allegations contained therein.

4 The allegations contained within Paragraph No. 23 of the Cross-Claim state conclusions to  
5 which no response is required. To the extent a response is required, the Trustee is without sufficient  
6 knowledge or information to form a belief as to the truth of the allegations contained in said  
7 Paragraph, and on that basis denies each and every allegation contained therein.

#### 8 JURISDICTION AND VENUE

9 In answering Paragraph No.'s 24, 25, 26 and 27 of the Cross-Claim, the Trustee denies all  
10 of the allegations therein.

#### 11 ADDITIONAL FACTS

12 In regards to Paragraph No. 28 of the Cross-Claim, the Trustee admits that the ELN Trust  
13 was created on or around May 30, 2001, and that she was named as the Distribution Trustee and  
14 Eric L. Nelson was named as the Investment Trustee. The Trustee denies the remaining allegations  
15 contained therein.

16 In regards to Paragraph No. 29 of the Cross-Claim, the Trustee admits that the LSN Trust  
17 was created on or around May 30, 2001, and that she was named as the Distribution Trustee and  
18 Lynita S. Nelson was named as the Investment Trustee. The Trustee denies the remaining  
19 allegations contained therein.

20 In regards to Paragraph No. 30 of the Cross-Claim, the Trustee admits that the ELN Trust  
21 and LSN Trust are Nevada self-settled spendthrift trusts. The Trustee denies the remaining  
22 allegations contained therein.

23 In regards to Paragraph No. 31 of the Cross-Claim, the Trustee admits that the ELN Trust  
24 and LSN Trust were drafted by the law offices of Jeffrey Burr. The Trustee is without sufficient  
25 knowledge or information to form a belief as to the truth of the remaining allegations contained in  
26 said Paragraph, and on that basis denies each and every allegation contained therein.

1 In answering Paragraph No.'s 32, 33 and 34 of the Cross-Claim, the Trustee is without  
2 sufficient knowledge or information to form a belief as to the truth of the allegations contained in  
3 said Paragraphs, and on that basis denies each and every allegation contained therein.

4 In regards to Paragraphs No.'s 35 and 36, 38, 39, 40, 41, 42 and 43 of the Cross-Claim, the  
5 Trustee admits that the terms of the ELN Trust and LSN Trust speak for themselves. The ELN Trust  
6 denies the remaining allegations contained therein.

7 In answering Paragraph No. 37 of the Cross-Claim, the Trustee is without sufficient  
8 knowledge or information to form a belief as to the truth of the allegations contained in said  
9 Paragraph, and on that basis denies each and every allegation contained therein.

10 In regards to Paragraph No. 44 of the Cross-Claim, the Trustee admits that the legal fees  
11 incurred by the ELN Trust in this Divorce Proceeding are being paid from the ELN Trust pursuant  
12 to its terms. The ELN Trust denies the remaining allegations contained therein.

13 In answering Paragraph No.'s 45, 46, 49, 50, 53 and 56 of the Cross-Claim, the Trustee  
14 denies all of the allegations therein.

15 In regards to Paragraph No.'s 47 and 48 of the Cross-Claim, the Trustee admits that on or  
16 around February 22, 2007, she was replaced by Nola Harber, who is the sister of Eric L. Nelson,  
17 as Distribution Trustee of the ELN Trust. The Trustee is without sufficient knowledge or  
18 information to form a belief as to the truth of the allegations contained in said Paragraphs, and on  
19 that basis denies each and every allegation contained therein.

20 In regards to Paragraph No.'s 51, 52, 54 and 55 of the Cross-Claim, the Trustee admits that  
21 on or around February 22, 2007, she was replaced by Nola Harber, who is the sister of Eric L.  
22 Nelson, as Distribution Trustee of the LSN Trust. The Trustee is without sufficient knowledge or  
23 information to form a belief as to the truth of the allegations contained in said Paragraphs, and on  
24 that basis denies each and every allegation contained therein.

25 In regards to Paragraphs No.'s 57, 58 (A) - (I), 59 and 60 of the Cross-Claim, the Trustee  
26 admits that the report entitled "Source and Application of Funds for Eric L. Nelson Nevada Trust"  
27 speaks for itself. The ELN Trust denies the remaining allegations contained therein.

1 In answering Paragraph No. 61 of the Cross-Claim, the Trustee denies all of the allegations  
2 therein.

3 In answering Paragraph No. 62 of the Cross-Claim, the Trustee admits that Eric L. Nelson  
4 filed his Complaint for Divorce on or around May 6, 2009. The Trustee denies the remaining  
5 allegations contained therein.

6 In answering Paragraph No.'s 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76 and 77,  
7 the Trustee is without sufficient knowledge or information to form a belief as to the truth of the  
8 allegations contained in said Paragraphs, and on that basis denies each and every allegation  
9 contained therein.

10 **FIRST CLAIM FOR RELIEF**  
11 **(VEIL-PIERCING AGAINST THE ELN TRUST)<sup>1</sup>**

12 The allegations contained within Paragraph No. 78 of the Cross-Claim state conclusions to  
13 which no response is required. To the extent a response is required, the Trustee is without sufficient  
14 knowledge or information to form a belief as to the truth of the allegations contained in said  
15 Paragraph, and on that basis denies each and every allegation contained therein.

16 In answering Paragraph No.'s 79, 80 and 81 of the Cross-Claim, the Trustee denies all of  
17 the allegations therein.

18 In answering Paragraph No.'s 82<sup>2</sup> and 83 of the Cross-Claim, the Trustee is without  
19 sufficient knowledge or information to form a belief as to the truth of the allegations contained in  
20 said Paragraphs, and on that basis denies each and every allegation contained therein.

21 **SECOND CLAIM FOR RELIEF**  
22 **(REVERSE VEIL-PIERCING AGAINST THE ELN TRUST)**

23 The allegations contained within Paragraph No. 84 of the Cross-Claim state conclusions to  
24 which no response is required. To the extent a response is required, the Trustee is without sufficient

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25 <sup>1</sup> Lynita S. Nelson's Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth,  
26 Eleventh, Twelfth, Thirteenth and Fifteenth Claims for Relief have been dismissed, and as such, no  
27 response is necessary for said claim.

28 <sup>2</sup> Lynita S. Nelson's claim for Veil-Piercing under NRS 78.487 has been dismissed,  
and as such, no response is necessary for said claim.

1 knowledge or information to form a belief as to the truth of the allegations contained in said  
2 Paragraph, and on that basis denies each and every allegation contained therein.

3 In answering Paragraph No.'s 85, 86 and 87 of the Cross-Claim, the Trustee denies all of  
4 the allegations therein.

5 In answering Paragraph No.'s 88<sup>3</sup> and 89 of the Cross-Claim, the Trustee is without  
6 sufficient knowledge or information to form a belief as to the truth of the allegations contained in  
7 said Paragraphs, and on that basis denies each and every allegation contained therein.

8 **FOURTEENTH CLAIM FOR RELIEF**  
9 **(CONSTRUCTIVE TRUST AGAINST THE ELN TRUST)**

10 The allegations contained within Paragraph No. 162 of the Cross-Claim state conclusions  
11 to which no response is required. To the extent a response is required, the Trustee is without  
12 sufficient knowledge or information to form a belief as to the truth of the allegations contained in  
13 said Paragraph, and on that basis denies each and every allegation contained therein.

14 In answering Paragraph No.'s 163, 164, 165 and 166 of the Cross-Claim, the Trustee denies  
15 all of the allegations therein.

16 In answering Paragraph No. 167 of the Cross-Claim, the Trustee is without sufficient  
17 knowledge or information to form a belief as to the truth of the allegations contained in said  
18 Paragraphs, and on that basis denies each and every allegation contained therein.

19 **FIFTEENTH CLAIM FOR RELIEF**  
20 **(INJUNCTIVE RELIEF AGAINST THE ELN TRUST)**

21 The allegations contained within Paragraph No. 168 of the Cross-Claim state conclusions  
22 to which no response is required. To the extent a response is required, the Trustee is without  
23 sufficient knowledge or information to form a belief as to the truth of the allegations contained in  
24 said Paragraph, and on that basis denies each and every allegation contained therein.

25 In answering Paragraph No.'s 169 and 170 of the Cross-Claim, the Trustee denies all of the  
26 allegations therein.

---

27 <sup>3</sup> Lynita S. Nelson's claim for Veil-Piercing under NRS 78.487 has been dismissed,  
28 and as such, no response is necessary for said claim.

1 In answering Paragraph No. 171 of the Cross-Claim, the Trustee is without sufficient  
2 knowledge or information to form a belief as to the truth of the allegations contained in said  
3 Paragraphs, and on that basis denies each and every allegation contained therein.

4 **AFFIRMATIVE DEFENSES**

5 In addition to the defenses set forth above, the Trustee interposes the following affirmative  
6 defenses:

7 1. This Court lacks jurisdiction to hear matters arising under Title 12 and 13 of the  
8 Nevada Revised Statutes as NRS 164.015(1) specifically provides that the probate “court has  
9 exclusive jurisdiction of proceedings initiated by the petition of an interested person concerning the  
10 internal affairs of a nontestamentary trust. . .”

11 2. Lynita S. Nelson’s claims are barred due to her failure to comply with NRS 164.015.

12 3 This Court lacks jurisdiction to enter the injunction against the ELN Trust because  
13 an injunction pertains to “the internal affairs of a nontestamentary trust. . .,” and is therefore subject  
14 to the Probate Court’s exclusive jurisdiction under Title 12 and Title 13 of the Nevada Revised  
15 Statutes.

16 4 Lynita S. Nelson failed to comply with NRS 30.060, which mandates that “[a]ny  
17 action for declaratory relief under this section may only be made in a proceeding commenced  
18 pursuant to the provisions of title 12 or 13 of NRS, as appropriate.”

19 5 Lynita S. Nelson’s allegations pertaining to the ELN Trust cannot and should not be  
20 considered in alter ego claims under NRS 163.418.

21 6. Lynita S. Nelson’s Cross-Claims are time-barred by NRS 166.170 and/or other  
22 applicable statute of limitations.

23 7. Lynita S. Nelson’s Cross-Claims fail to state facts sufficient to constitute a cause of  
24 action against the ELN Trust.

25 8. To the extent that any or all occurrences, happenings, injuries, and/or damages  
26 alleged in Lynita S. Nelson’s Cross-Claim were proximately caused and/contributed to by the  
27 wrongful acts and/or omissions of Lynita S. Nelson, Lynita S. Nelson is precluded from obtaining  
28 judgment against the ELN Trust.

SOLOMON DAVIGINS & FREER, LTD.  
CHEYENNE WEST PROFESSIONAL CENTRE  
9060 WEST CHEYENNE AVENUE  
LAS VEGAS, NEVADA 89129  
(702) 853-5483 (TELEPHONE)  
(702) 853-5485 (FACSIMILE)  
E-MAIL: sdf@sdffvllaw.com

1 9. Lynita S. Nelson is barred from any recovery against the ELN Trust based upon the  
2 doctrines of waiver, estoppel, laches and unclean hands.

3 10. Lynita S. Nelson's Cross-Claims are frivolous, unnecessary and unwarranted, and  
4 the Trustee has been required to retain the services of an attorney to defend this action and is  
5 entitled to recover attorney's fees and costs incurred.

6 11. The Trustee may have other affirmative defenses that are not currently known but  
7 which may become known through the course of discovery, and the Trustee reserves the right to  
8 allege such affirmative defenses as they become known.

9 DATED this 1<sup>st</sup> day of June, 2012.

10 SOLOMON DWIGGINS & FREER, LTD.

11  
12 By: 

13 MARK A. SOLOMON, ESQ.

14 Nevada State Bar No. 0418

15 JEFFREY P. LUSZECK

16 Nevada State Bar No. 9619

17 Cheyenne West Professional Centre'

18 9060 West Cheyenne Avenue

19 Las Vegas, Nevada 89129


20 *Attorneys for Lana Martin, Distribution Trustee*  
21 *of the ERIC L. NELSON NEVADA TRUST*  
22  
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1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that pursuant to EDCR 7.26(a), service of the foregoing **ANSWER**  
3 **TO LYNITA SUE NELSON'S FIRST AMENDED CLAIMS FOR RELIEF AGAINST THE**  
4 **ERIC L. NELSON NEVADA TRUST dated May 30, 2001** was made on this 1<sup>st</sup> day of June,  
5 2012, by sending a true and correct copy of the same by United States Postal Service, first class  
6 postage fully prepaid, to the following at his last known address as listed below:

7  
8 Rhonda K. Forsberg, Esq.  
9 Nevada State Bar No. 009557  
10 Forsberg & Douglas  
11 *Via E-mail Only* [rhonda@ifdlaw.com](mailto:rhonda@ifdlaw.com)  
12 Attorney for Counterdefendant, Eric L.  
13 Nelson

Robert P. Dickerson, Esq.  
Dickerson Law Group  
1745 Village Center Circle  
Las Vegas, NV 89134

14  
15   
16 An employee of SOLOMON DWIGGINS & FREER, LTD.



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JUN 5 2 03 PM '12

DISTRICT COURT  
CLARK COUNTY, NEVADA

*Ann H. Quinn*  
CLERK OF THE COURT

ERIC L. NELSON, )  
)  
Plaintiff/Counterdefendant, )

CASE NO.: D-09-411537-D  
DEPT. NO.: 0

vs. )  
)  
LYNITA SUE NELSON, LANA MARTIN, as )  
Distribution Trustee of the ERIC L. NELSON )  
NEVADA TRUST dated May 30, 2001, )  
)  
Defendant/Counterclaimants. )

\_\_\_\_\_)  
)  
LANA MARTIN, Distribution Trustee of the )  
ERIC L. NELSON NEVADA TRUST dated )  
May 30, 2001, )  
)  
Crossclaimant, )

vs. )  
)  
LYNITA SUE NELSON, )  
)  
Crossdefendant. )

NOTICE OF ENTRY OF ORDER

FRANK R. SULLIVAN  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O  
LAS VEGAS NV 89101

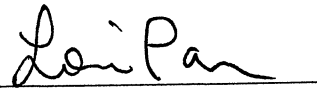
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TO:

Rhonda Forsberg, Esq.  
Robert Dickerson, Esq.  
Mark Solomon, Esq.  
Jeffrey Luszeck, Esq.  
Larry Bertsch

PLEASE TAKE NOTICE that FINDINGS OF FACT AND ORDER was duly entered  
in the above-referenced case on the 5th day of June, 2012.

DATED this 5 day of June, 2012.



Lori Parr  
Judicial Executive Assistant  
Dept. O

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ORDR

DISTRICT COURT  
CLARK COUNTY, NEVADA

FILED  
JUN 5 2 03 PM '12  
*Ann S. Quinn*  
CLERK OF THE COURT

ERIC L. NELSON, )

Plaintiff/Counterdefendant, )

vs. )

LYNITA SUE NELSON, LANA MARTIN, as )  
Distribution Trustee of the ERIC L. NELSON )  
NEVADA TRUST dated May 30, 2001, )

Defendant/Counterclaimants. )

LANA MARTIN, Distribution Trustee of the )  
ERIC L. NELSON NEVADA TRUST dated )  
May 30, 2001, )

Crossclaimant, )

vs. )

LYNITA SUE NELSON, )

Crossdefendant. )

CASE NO.: D-09-411537-D  
DEPT. NO.: O

**FINDINGS OF FACT AND ORDER**

This Matter having come before this Honorable Court on April 10, 2012, on  
Counterdefendant, Crossdefendant, Third Party Defendant Lana Martin, Distribution Trustee of  
the Eric L. Nelson Nevada Trust's Motion for Payment of Attorneys' Fees and Costs,  
Defendant Lynita Nelson's Opposition to Motion for Payment of Attorneys' Fees and Costs

ANK R SULLIVAN  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O  
CLERK OF COURTS, LAS VEGAS NV 89101

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and Counter-motion for Receiver, Additional Injunction and Fees and Costs, Lana Martin's Reply to Opposition to Motion for Attorneys' Fees and Costs, and Lana Martin's Opposition to Counter-motion for Receiver, Additional Injunction and Fees and Costs, with Plaintiff, Eric Nelson, appearing and being represented by Rhonda Forsberg, Esq., Defendant, Lynita Nelson, appearing and being represented by Robert Dickerson, Esq., Katherine Provost, Esq., and Josef Karacsonyi, Esq., and Counter-defendant, Cross-defendant, Third Party Defendant Lana Martin, Distribution Trustee of the Eric L. Nelson Nevada Trust, being represented by Mark Solomon, Esq., and Jeffrey Luszeck, Esq., with the Court having reviewed Counter-defendant, Cross-defendant, Third Party Defendant's Motion, Defendant's Opposition and Counter-motion and Counter-defendant, Cross-defendant, Third Party Defendant's Reply and Opposition to Counter-motion, having heard oral argument and being duly advised in the premises, good cause being shown:

THE COURT HEREBY FINDS that in its Findings of Fact and Order filed on January 31, 2012, this Court made the following Order:

IT IS FURTHER ORDERED that any monies received by Eric L. Nelson, or any entity owned or controlled by Mr. Nelson, related to his ownership interest in the Silver Slipper Casino/Dynasty Development Group, LLC, shall remain in his attorney's interest bearing account and that the ELN Trust is otherwise enjoined from using any such monies received from the sale of Dynasty Development Group LLC's interest in the Silver Slipper Casino Venture LLC without an Order from this Court.

...  
...

1  
2 THE COURT FURTHER FINDS that monies in the amount of One Million Five  
3 Hundred Sixty-Eight Thousand Dollars (\$1,568,000.00) that Dynasty Development Group,  
4 LLC, obtained as a result of a transaction involving the Silver Slipper Casino are subject to the  
5 Court's Injunction issued on January 31, 2012.

6 THE COURT FURTHER FINDS that in its Findings of Fact and Order that was filed  
7 on January 31, 2012, this Court made the following Order:

8 IT IS FURTHER ORDERED that Lana Martin, Trustee of ELN Trust, is free to seek  
9 leave of this Court to obtain any funds or assets necessary to defend against any lawsuits,  
10 including this divorce action, that will have a direct effect on the value of any properties that  
11 are contained in the ELN Trust and, as such, are susceptible to a community interest claim.

12 THE COURT FURTHER FINDS that the Eric L. Nelson Nevada Trust (hereinafter,  
13 "ELN Trust") argues in its Motion that it currently owes the Law Firm of Solomon, Dwiggin  
14 and Freer, Ltd., (hereinafter, "Solomon Law Firm") Sixty-Eight Thousand Six Hundred Eighty-  
15 Two Dollars and Eighty-Nine Cents (\$68,682.89) for fees and costs, and is requesting an  
16 additional Sixty Thousand Dollars (\$60,000.00) to be held as a retainer to offset attorneys' fees  
17 and costs incurred in preparation for the July, 2012 Evidentiary Hearing.

18 THE COURT FURTHER FINDS that the Solomon Law Firm is requesting expert  
19 witnesses' fees in the amount of Thirty-Four Thousand Nine Hundred One Dollars and Five  
20 Cents (\$34,901.05) due and owing to Gerety and Associates, CPA; Twenty-Five Thousand  
21 Dollars (\$25,000.00) to be held as a retainer for Gerety & Associates to offset fees associated  
22 with the preparation of an expert witness report for the July, 2012 Evidentiary Hearing; and  
23 Twenty Thousand Dollars (\$20,000.00) for The Rushforth Firm to offset fees associated with  
24 the preparation of an expert witness report for the July, 2012 Evidentiary Hearing.  
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1  
2 THE COURT FURTHER FINDS that the ELN Trust desires to utilize a portion of the  
3 One Million Five Hundred Sixty-Eight Thousand Dollars (\$1,568,000.00) that is subject to the  
4 Court's injunction issued on January 31, 2012, to pay for the aforementioned attorneys and  
5 expert witnesses' fees and costs.

6 THE COURT FURTHER FINDS that at the hearing on April 10, 2012, the Court  
7 informed the parties that it would issue an Order as to the payment of the requested attorneys  
8 and expert witnesses' fees and costs from the One Million Five Hundred Sixty-Eight Thousand  
9 Dollars (\$1,568,000.00) that this Court has enjoined the ELN Trust from using pending further  
10 Order of this Court.

11  
12 THE COURT FURTHER FINDS that in her Opposition, Ms. Nelson argues that Ms.  
13 Martin, as the Distribution Trustee, lacks standing to maintain her request for attorneys' fees  
14 and expert witnesses' fees on behalf of the ELN Trust because the express terms of the Trust do  
15 not provide her with the authority to make such request.<sup>1</sup>

16  
17 THE COURT FURTHER FINDS that NRS 163.380 provides that a person acting in his  
18 role as a fiduciary may utilize any income created by the Trust to pay professionals necessary  
19 to assist in the administration of the Trust, including accountants and attorneys.

20 THE COURT FURTHER FINDS that Lana Martin, as the Distribution Trustee, has  
21 taken the following actions since Mr. and Mrs. Nelson stipulated to joining the ELN Trust as a  
22 necessary party on August 9, 2011: filed an Answer to the Complaint for Divorce and  
23 Counterclaim and Cross-claim on August 13, 2011; filed a Motion to Dismiss on November 7,  
24

25  
26 \_\_\_\_\_  
27 <sup>1</sup> Specifically, Article XII, Section 12.1 (z) of the Eric L. Nelson Nevada Trust provides that the Investment  
28 Trustee shall have the power "to employ and compensate, out of the principal or income or both, as the Trustee  
shall determine, such agents, persons, corporation or associations, including accountants, brokers, attorneys, tax  
specialists, certified financial planners, realtors, and other assistants and advisors deemed needful by the Trustees  
even if they are associated with a Trustee, for the proper settlement, investment and overall financial planning and  
administration of the Trust..."

1  
2 2011; filed a Motion to Dissolve Injunction on November 29, 2011; and filed a Motion to  
3 Dismiss Amended Third Party Complaint and Motion to Strike on January 17, 2012.

4 THE COURT FURTHER FINDS that at the hearing on April 10, 2012, Lana Martin  
5 produced a copy of a Delegation of Authority signed by Mr. Nelson , as Investment Trustee,  
6 delegating his authority as to the powers to employ and compensate attorneys, accountants,  
7 etc., to Lana Martin as Distribution Trustee.

8  
9 THE COURT FURTHER FINDS that irrespective of the Delegation of Authority or the  
10 express terms contained in the ELN Trust, this Court has recognized the fact that Lana Martin,  
11 as Distribution Trustee, has acted on behalf of the ELN Trust since it joined this action, and, as  
12 such, does not lack standing to ask the Court for attorneys and other professionals' fees and  
13 costs.

14 THE COURT FURTHER FINDS that alternatively, even though Lana Martin is the  
15 Distribution Trustee and is not expressly authorized to employ and compensate professionals  
16 under the terms of the ELN Trust, Mr. Nelson, as Investment Trustee, should not maintain the  
17 responsibility "to employ and compensate, out of the principal or income or both...such agents,  
18 etc..." in this action due to an apparent inherent conflict such arrangement would create as the  
19 ELN Trust is alleging that it is a separate entity representing its own interests, apart from and  
20 contrary to Mr. and Mrs. Nelson's interests in this divorce action.

21  
22 THE COURT FURTHER FINDS that at the hearing held on April 10, 2012, the Court  
23 requested that Mr. Larry Bertsch, the Court-appointed forensic accountant, prepare a report  
24 chronicling the costs the ELN Trust incurs with respect to its day-to-day operations as well as  
25 its respective sources of yearly and monthly income.  
26  
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28

1  
2 THE COURT FURTHER FINDS that, according to the Notice of Filing Source and  
3 Application of Funds Pursuant to April 10, 2012 Hearing filed by the forensic accountant Mr.  
4 Bertsch, the ELN Trust's bank accounts reflect a total balance of Four Hundred Seventy-One  
5 Thousand Eight Hundred Ninety-Eight Dollars and Fifty-Six Cents (\$471,898.56) as of April  
6 20, 2012.

7  
8 THE COURT FURTHER FINDS that while the ELN Trust incurs many expenses  
9 which this Court would classify as "operating expenses," as reflected in the aforementioned  
10 Notice filed by Larry Bertsch, the ELN Trust has also incurred expenses entitled "Eric Nelson  
11 Draws and Expenses" and "Bella Kathryn Improvements and Expenses (Eric's Residence),"  
12 which are of particular interest to this Court.

13 THE COURT FURTHER FINDS that, as to the "Eric Nelson Draws and Expenses,"  
14 while Mr. Nelson is entitled to distributions under the ELN Trust, it is interesting to note that  
15 since the inception of these divorce proceedings in 2009, the ELN Trust has made direct  
16 payments to Mr. Nelson in the total amount of Four Hundred Twenty-Nine Thousand Nine  
17 Hundred Four Dollars and Twenty Cents (\$429,904.20) through March of 2012; and has paid  
18 Mr. Nelson's expenses in the total amount of Two Hundred Sixty-Seven Thousand Five  
19 Hundred Seventy-Two Dollars and Nine Cents (\$267,572.09) through March of 2012.

20  
21 THE COURT FURTHER FINDS that, as to the "Bella Kathryn Improvements and  
22 Expenses (Eric's Residence)," since the inception of these divorce proceedings in 2009, the  
23 ELN Trust has made payments towards the improvement of the Bella Kathryn residence in the  
24 total amount of One Million Seven Hundred Sixty-Five Thousand Sixty-Three Dollars and  
25 Seventy-Two Cents (\$1,765,063.72) through March of 2012; and payments towards the  
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expenses of the Bella Kathryn residence in the total amount of Seventy-Four Thousand Four Hundred Thirty-One Dollars and Seven Cents (\$74,431.07) through March of 2012.

THE COURT FURTHER FINDS that considering the fact that the ELN Trust had bank accounts totaling a balance of Four Hundred Seventy-One Thousand Eight Hundred Ninety-Eight Dollars and Fifty-Six Cents (\$471,898.56) as of April 20, 2012; that the ELN Trust has made direct payments to Mr. Nelson in the total amount of Four Hundred Twenty-Nine Thousand Nine Hundred Four Dollars and Twenty Cents (\$429,904.20) through March of 2012; that the ELN Trust has paid Mr. Nelson's expenses in the total amount of Two Hundred Sixty-Seven Thousand Five Hundred Seventy-Two Dollars and Nine Cents (\$267,572.09) through March of 2012; that the ELN Trust has made payments towards the improvement of the Bella Kathryn residence in the total amount of One Million Seven Hundred Sixty-Five Thousand Sixty-Three Dollars and Seventy-Two Cents (\$1,765,063.72) through March of 2012; and that the ELN Trust has made payments towards the expenses of the Bella Kathryn residence in the total amount of Seventy-Four Thousand Four Hundred Thirty-One Dollars and Seven Cents (\$74,431.07) through March of 2012, the ELN Trust has sufficient financial resources to pay for the attorneys' fees, expert witnesses' fees and other costs associated with the litigation of this matter without the need to access the funds currently enjoined by this Court.

THE COURT FURTHER FINDS that this Court decided to enjoin access to the One Million Five Hundred Sixty-Eight Thousand Dollars (\$1,568,000.00) to ensure that the ELN Trust would not engage in any business ventures that might dissipate the value of these funds pending determination as to the community property claims of Mrs. Nelson.

1  
2 THE COURT FURTHER FINDS that due to Mrs. Nelson's pending community interest  
3 claims as to the ELN Trust's assets, including the enjoined monies totaling One Million Five  
4 Hundred Sixty-Eight Thousand Dollars (\$1,568,000.00), it is most appropriate at this stage of  
5 the proceedings for this Court to continue to utilize statutes and case law in the context of  
6 divorce law as they would be most instructive in helping this Court render a fair and just  
7 decision.

8  
9 THE COURT FURTHER FINDS that the statutory scheme contained in Chapters 123  
10 and 125 of the Nevada Revised Statutes promotes a policy of ensuring that the value of any  
11 property or pecuniary interests that the parties have asserted maintain their "status quo"  
12 pending the outcome of the divorce action.<sup>2</sup>

13 THE COURT FURTHER FINDS that, upon review of the Billing Statement provided  
14 by the Solomon Law Firm, the request for attorneys' fees in the amount of Sixty Eight  
15 Thousand Six Hundred Eighty-Two Dollars and Eighty-Nine Cents (\$68,682.89) is fair and  
16 reasonable based upon the quality of the legal services rendered; the character, difficulty, and  
17 intricacy of the required legal services rendered; and the skill, time and attention given to the  
18 legal work provided by counsel.

19  
20 THE COURT FURTHER FINDS that the request for Retainer Fees in the amount of  
21 Sixty Thousand Dollars (\$60,000.00) to offset attorneys' fees and costs incurred in preparation  
22 for the Evidentiary Hearing to be held in July of 2012 is a fair and reasonable amount based  
23 upon the extended, protracted and litigious history of this divorce proceeding.

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<sup>2</sup> Specifically, NRS 123.225 provides that the husband and wife's interest in community property are "present, existing and equal interests." NRS 125.050 provides that after a complaint is filed, if it appears probable to the Court that either party is considering acting in such a way that would "defeat or render any less effectual" any order a Court may make concerning a party's property or pecuniary interests, the Court shall, through a restraining order, prevent the party from taking such detrimental action.

1  
2 THE COURT FURTHER FINDS that while a request has been made for the expert  
3 witnesses' fees to date in the amount of Thirty-Four Thousand Nine Hundred One Dollars and  
4 Five Cents (\$34,901.05), and an additional Forty-Five Thousand Dollars (\$45,000.00) to offset  
5 fees associated with the preparation of the expert witnesses' reports for the upcoming  
6 Evidentiary Hearing, this Court has only been provided with an invoice in the amount of  
7 \$34,901.05 without detail as to the services provided by the expert witnesses, and, as such, this  
8 Court lacks sufficient documentation to determine the fairness and reasonableness of the  
9 requested expert witnesses' fees at this time.  
10

11 THE COURT FURTHER FINDS that while the Court lacks sufficient details as to the  
12 expert witnesses' services provided to date and to be provided in preparation for the impending  
13 Evidentiary Hearing, this Court will authorize an initial payment of Forty Thousand Dollars  
14 (\$40,000.00) towards the expert witnesses' fees, which would appear prudent at this time based  
15 the pending legal issues in regards to the ELN Trust and community property claims associated  
16 therewith, subject to reconsideration and/or reimbursement upon submission of an itemized  
17 billing statement at the conclusion of the Evidentiary Hearing.  
18

19 THEREFORE, IT IS HEREBY ORDERED that the ELN Trust is precluded from  
20 utilizing the monies, subject to this Court's January 31, 2012 injunction, in the amount of One  
21 Million Five Hundred Sixty-Eight Thousand Dollars (\$1,568,000.00) to pay its retained  
22 attorneys' fees and costs and retained experts' fees and costs.  
23

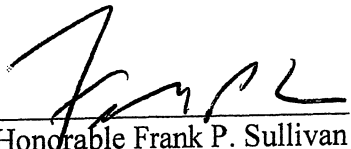
24 IT IS FURTHER ORDERED that the ELN Trust is directed to pay the sum of Sixty  
25 Eight Thousand Six Hundred Eighty-Two Dollars and Eighty-Nine Cents (\$68,682.89) for  
26 legal services and a retainer fee in the amount of Sixty Thousand Dollars (\$60,000) to  
27 Solomon, Dwiggins, and Freer, Ltd.  
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IT IS FURTHER ORDERED that the ELN Trust is directed to pay the sum of Forty  
Thousand Dollars (\$40,000) towards the expert witnesses' fees made payable to Solomon,  
Dwiggins, and Freer, Ltd.

IT IS FURTHER ORDERED that this Court reserves the right to offset any attorneys'  
fees and/or expert witnesses' fees awarded to date based upon this Court's ultimate  
determination as to the respective parties' property rights and division thereof, as deemed fair  
and just.

Dated this 5<sup>th</sup> day of June, 2012.

  
\_\_\_\_\_  
Honorable Frank P. Sullivan  
District Court Judge – Dept. O

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FILED

JUN 5 2 03 PM '12

DISTRICT COURT

CLARK COUNTY, NEVADA *Ann S. Sullivan*  
CLERK OF THE COURT

ERIC L. NELSON, )

Plaintiff/Counterdefendant, )

vs. )

LYNITA SUE NELSON, LANA MARTIN, as )  
Distribution Trustee of the ERIC L. NELSON )  
NEVADA TRUST dated May 30, 2001, )

Defendant/Counterclaimants. )

CASE NO.: D-09-411537-D  
DEPT. NO.: O

LANA MARTIN, Distribution Trustee of the )  
ERIC L. NELSON NEVADA TRUST dated )  
May 30, 2001, )

Crossclaimant, )

vs. )

LYNITA SUE NELSON, )

Crossdefendant. )

NOTICE OF ENTRY OF ORDER

**R SULLIVAN**  
DISTRICT JUDGE

FAMILY DIVISION, DEPT. O  
LAS VEGAS NV 89101

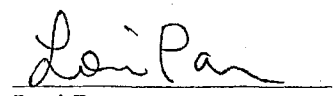
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TO:

Rhonda Forsberg, Esq.  
Robert Dickerson, Esq.  
Mark Solomon, Esq.  
Jeffrey Luszeck, Esq.  
Larry Bertsch

PLEASE TAKE NOTICE that FINDINGS OF FACT AND ORDER was duly entered  
in the above-referenced case on the 5th day of June, 2012.

DATED this 5 day of June, 2012.



Lori Parr  
Judicial Executive Assistant  
Dept. O

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ORDR

DISTRICT COURT  
CLARK COUNTY, NEVADA

**FILED**  
JUN 5 2 03 PM '12  
*Ann L. Shuman*  
CLERK OF THE COURT

ERIC L. NELSON, )  
)  
Plaintiff/Counterdefendant, )  
)  
vs. )  
)  
LYNITA SUE NELSON, LANA MARTIN, as )  
Distribution Trustee of the ERIC L. NELSON )  
NEVADA TRUST dated May 30, 2001, )  
)  
Defendant/Counterclaimants. )

CASE NO.: D-09-411537-D  
DEPT. NO.: 0

LANA MARTIN, Distribution Trustee of the )  
ERIC L. NELSON NEVADA TRUST dated )  
May 30, 2001, )  
)  
Crossclaimant, )  
)  
vs. )  
)  
LYNITA SUE NELSON, )  
)  
Crossdefendant. )

FINDINGS OF FACT AND ORDER

This Matter having come before this Honorable Court on April 10, 2012, on  
Counterdefendant, Crossdefendant, Third Party Defendant Lana Martin, Distribution Trustee of  
the Eric L. Nelson Nevada Trust's Motion for Payment of Attorneys' Fees and Costs,  
Defendant Lynita Nelson's Opposition to Motion for Payment of Attorneys' Fees and Costs

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and Counter-motion for Receiver, Additional Injunction and Fees and Costs, Lana Martin's Reply to Opposition to Motion for Attorneys' Fees and Costs, and Lana Martin's Opposition to Counter-motion for Receiver, Additional Injunction and Fees and Costs, with Plaintiff, Eric Nelson, appearing and being represented by Rhonda Forsberg, Esq., Defendant, Lynita Nelson, appearing and being represented by Robert Dickerson, Esq., Katherine Provost, Esq., and Josef Karacsonyi, Esq., and Counter-defendant, Cross-defendant, Third Party Defendant Lana Martin, Distribution Trustee of the Eric L. Nelson Nevada Trust, being represented by Mark Solomon, Esq., and Jeffrey Luszeck, Esq., with the Court having reviewed Counter-defendant, Cross-defendant, Third Party Defendant's Motion, Defendant's Opposition and Counter-motion and Counter-defendant, Cross-defendant, Third Party Defendant's Reply and Opposition to Counter-motion, having heard oral argument and being duly advised in the premises, good cause being shown:

THE COURT HEREBY FINDS that in its Findings of Fact and Order filed on January 31, 2012, this Court made the following Order:

IT IS FURTHER ORDERED that any monies received by Eric L. Nelson, or any entity owned or controlled by Mr. Nelson, related to his ownership interest in the Silver Slipper Casino/Dynasty Development Group, LLC, shall remain in his attorney's interest bearing account and that the ELN Trust is otherwise enjoined from using any such monies received from the sale of Dynasty Development Group LLC's interest in the Silver Slipper Casino Venture LLC without an Order from this Court.

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THE COURT FURTHER FINDS that monies in the amount of One Million Five Hundred Sixty-Eight Thousand Dollars (\$1,568,000.00) that Dynasty Development Group, LLC, obtained as a result of a transaction involving the Silver Slipper Casino are subject to the Court's Injunction issued on January 31, 2012.

THE COURT FURTHER FINDS that in its Findings of Fact and Order that was filed on January 31, 2012, this Court made the following Order:

IT IS FURTHER ORDERED that Lana Martin, Trustee of ELN Trust, is free to seek leave of this Court to obtain any funds or assets necessary to defend against any lawsuits, including this divorce action, that will have a direct effect on the value of any properties that are contained in the ELN Trust and, as such, are susceptible to a community interest claim.

THE COURT FURTHER FINDS that the Eric L. Nelson Nevada Trust (hereinafter, "ELN Trust") argues in its Motion that it currently owes the Law Firm of Solomon, Dwiggin and Freer, Ltd., (hereinafter, "Solomon Law Firm") Sixty-Eight Thousand Six Hundred Eighty-Two Dollars and Eighty-Nine Cents (\$68,682.89) for fees and costs, and is requesting an additional Sixty Thousand Dollars (\$60,000.00) to be held as a retainer to offset attorneys' fees and costs incurred in preparation for the July, 2012 Evidentiary Hearing.

THE COURT FURTHER FINDS that the Solomon Law Firm is requesting expert witnesses' fees in the amount of Thirty-Four Thousand Nine Hundred One Dollars and Five Cents (\$34,901.05) due and owing to Gerety and Associates, CPA; Twenty-Five Thousand Dollars (\$25,000.00) to be held as a retainer for Gerety & Associates to offset fees associated with the preparation of an expert witness report for the July, 2012 Evidentiary Hearing; and Twenty Thousand Dollars (\$20,000.00) for The Rushforth Firm to offset fees associated with the preparation of an expert witness report for the July, 2012 Evidentiary Hearing.

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THE COURT FURTHER FINDS that the ELN Trust desires to utilize a portion of the One Million Five Hundred Sixty-Eight Thousand Dollars (\$1,568,000.00) that is subject to the Court's injunction issued on January 31, 2012, to pay for the aforementioned attorneys and expert witnesses' fees and costs.

THE COURT FURTHER FINDS that at the hearing on April 10, 2012, the Court informed the parties that it would issue an Order as to the payment of the requested attorneys and expert witnesses' fees and costs from the One Million Five Hundred Sixty-Eight Thousand Dollars (\$1,568,000.00) that this Court has enjoined the ELN Trust from using pending further Order of this Court.

THE COURT FURTHER FINDS that in her Opposition, Ms. Nelson argues that Ms. Martin, as the Distribution Trustee, lacks standing to maintain her request for attorneys' fees and expert witnesses' fees on behalf of the ELN Trust because the express terms of the Trust do not provide her with the authority to make such request.<sup>1</sup>

THE COURT FURTHER FINDS that NRS 163.380 provides that a person acting in his role as a fiduciary may utilize any income created by the Trust to pay professionals necessary to assist in the administration of the Trust, including accountants and attorneys.

THE COURT FURTHER FINDS that Lana Martin, as the Distribution Trustee, has taken the following actions since Mr. and Mrs. Nelson stipulated to joining the ELN Trust as a necessary party on August 9, 2011: filed an Answer to the Complaint for Divorce and Counterclaim and Cross-claim on August 13, 2011; filed a Motion to Dismiss on November 7,

---

<sup>1</sup> Specifically, Article XII, Section 12.1 (z) of the Eric L. Nelson Nevada Trust provides that the Investment Trustee shall have the power "to employ and compensate, out of the principal or income or both, as the Trustee shall determine, such agents, persons, corporation or associations, including accountants, brokers, attorneys, tax specialists, certified financial planners, realtors, and other assistants and advisors deemed needful by the Trustees even if they are associated with a Trustee, for the proper settlement, investment and overall financial planning and administration of the Trust..."

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2011; filed a Motion to Dissolve Injunction on November 29, 2011; and filed a Motion to Dismiss Amended Third Party Complaint and Motion to Strike on January 17, 2012.

THE COURT FURTHER FINDS that at the hearing on April 10, 2012, Lana Martin produced a copy of a Delegation of Authority signed by Mr. Nelson , as Investment Trustee, delegating his authority as to the powers to employ and compensate attorneys, accountants, etc., to Lana Martin as Distribution Trustee.

THE COURT FURTHER FINDS that irrespective of the Delegation of Authority or the express terms contained in the ELN Trust, this Court has recognized the fact that Lana Martin, as Distribution Trustee, has acted on behalf of the ELN Trust since it joined this action, and, as such, does not lack standing to ask the Court for attorneys and other professionals' fees and costs.

THE COURT FURTHER FINDS that alternatively, even though Lana Martin is the Distribution Trustee and is not expressly authorized to employ and compensate professionals under the terms of the ELN Trust, Mr. Nelson, as Investment Trustee, should not maintain the responsibility "to employ and compensate, out of the principal or income or both...such agents, etc..." in this action due to an apparent inherent conflict such arrangement would create as the ELN Trust is alleging that it is a separate entity representing its own interests, apart from and contrary to Mr. and Mrs. Nelson's interests in this divorce action.

THE COURT FURTHER FINDS that at the hearing held on April 10, 2012, the Court requested that Mr. Larry Bertsch, the Court-appointed forensic accountant, prepare a report chronicling the costs the ELN Trust incurs with respect to its day-to-day operations as well as its respective sources of yearly and monthly income.

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THE COURT FURTHER FINDS that, according to the Notice of Filing Source and Application of Funds Pursuant to April 10, 2012 Hearing filed by the forensic accountant Mr. Bertsch, the ELN Trust's bank accounts reflect a total balance of Four Hundred Seventy-One Thousand Eight Hundred Ninety-Eight Dollars and Fifty-Six Cents (\$471,898.56) as of April 20, 2012.

THE COURT FURTHER FINDS that while the ELN Trust incurs many expenses which this Court would classify as "operating expenses," as reflected in the aforementioned Notice filed by Larry Bertsch, the ELN Trust has also incurred expenses entitled "Eric Nelson Draws and Expenses" and "Bella Kathryn Improvements and Expenses (Eric's Residence)," which are of particular interest to this Court.

THE COURT FURTHER FINDS that, as to the "Eric Nelson Draws and Expenses," while Mr. Nelson is entitled to distributions under the ELN Trust, it is interesting to note that since the inception of these divorce proceedings in 2009, the ELN Trust has made direct payments to Mr. Nelson in the total amount of Four Hundred Twenty-Nine Thousand Nine Hundred Four Dollars and Twenty Cents (\$429,904.20) through March of 2012; and has paid Mr. Nelson's expenses in the total amount of Two Hundred Sixty-Seven Thousand Five Hundred Seventy-Two Dollars and Nine Cents (\$267,572.09) through March of 2012.

THE COURT FURTHER FINDS that, as to the "Bella Kathryn Improvements and Expenses (Eric's Residence)," since the inception of these divorce proceedings in 2009, the ELN Trust has made payments towards the improvement of the Bella Kathryn residence in the total amount of One Million Seven Hundred Sixty-Five Thousand Sixty-Three Dollars and Seventy-Two Cents (\$1,765,063.72) through March of 2012; and payments towards the

**SULLIVAN**  
JUDGE

CLERK OF COURT DIVISION, DEPT. OF  
SOUTH LAS VEGAS NV 89101

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expenses of the Bella Kathryn residence in the total amount of Seventy-Four Thousand Four Hundred Thirty-One Dollars and Seven Cents (\$74,431.07) through March of 2012.

THE COURT FURTHER FINDS that considering the fact that the ELN Trust had bank accounts totaling a balance of Four Hundred Seventy-One Thousand Eight Hundred Ninety-Eight Dollars and Fifty-Six Cents (\$471,898.56) as of April 20, 2012; that the ELN Trust has made direct payments to Mr. Nelson in the total amount of Four Hundred Twenty-Nine Thousand Nine Hundred Four Dollars and Twenty Cents (\$429,904.20) through March of 2012; that the ELN Trust has paid Mr. Nelson's expenses in the total amount of Two Hundred Sixty-Seven Thousand Five Hundred Seventy-Two Dollars and Nine Cents (\$267,572.09) through March of 2012; that the ELN Trust has made payments towards the improvement of the Bella Kathryn residence in the total amount of One Million Seven Hundred Sixty-Five Thousand Sixty-Three Dollars and Seventy-Two Cents (\$1,765,063.72) through March of 2012; and that the ELN Trust has made payments towards the expenses of the Bella Kathryn residence in the total amount of Seventy-Four Thousand Four Hundred Thirty-One Dollars and Seven Cents (\$74,431.07) through March of 2012, the ELN Trust has sufficient financial resources to pay for the attorneys' fees, expert witnesses' fees and other costs associated with the litigation of this matter without the need to access the funds currently enjoined by this Court.

THE COURT FURTHER FINDS that this Court decided to enjoin access to the One Million Five Hundred Sixty-Eight Thousand Dollars (\$1,568,000.00) to ensure that the ELN Trust would not engage in any business ventures that might dissipate the value of these funds pending determination as to the community property claims of Mrs. Nelson.

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THE COURT FURTHER FINDS that due to Mrs. Nelson's pending community interest claims as to the ELN Trust's assets, including the enjoined monies totaling One Million Five Hundred Sixty-Eight Thousand Dollars (\$1,568,000.00), it is most appropriate at this stage of the proceedings for this Court to continue to utilize statutes and case law in the context of divorce law as they would be most instructive in helping this Court render a fair and just decision.

THE COURT FURTHER FINDS that the statutory scheme contained in Chapters 123 and 125 of the Nevada Revised Statutes promotes a policy of ensuring that the value of any property or pecuniary interests that the parties have asserted maintain their "status quo" pending the outcome of the divorce action.<sup>2</sup>

THE COURT FURTHER FINDS that, upon review of the Billing Statement provided by the Solomon Law Firm, the request for attorneys' fees in the amount of Sixty Eight Thousand Six Hundred Eighty-Two Dollars and Eighty-Nine Cents (\$68,682.89) is fair and reasonable based upon the quality of the legal services rendered; the character, difficulty, and intricacy of the required legal services rendered; and the skill, time and attention given to the legal work provided by counsel.

THE COURT FURTHER FINDS that the request for Retainer Fees in the amount of Sixty Thousand Dollars (\$60,000.00) to offset attorneys' fees and costs incurred in preparation for the Evidentiary Hearing to be held in July of 2012 is a fair and reasonable amount based upon the extended, protracted and litigious history of this divorce proceeding.

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<sup>2</sup> Specifically, NRS 123.225 provides that the husband and wife's interest in community property are "present, existing and equal interests." NRS 125.050 provides that after a complaint is filed, if it appears probable to the Court that either party is considering acting in such a way that would "defeat or render any less effectual" any order a Court may make concerning a party's property or pecuniary interests, the Court shall, through a restraining order, prevent the party from taking such detrimental action.

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THE COURT FURTHER FINDS that while a request has been made for the expert witnesses' fees to date in the amount of Thirty-Four Thousand Nine Hundred One Dollars and Five Cents (\$34,901.05), and an additional Forty-Five Thousand Dollars (\$45,000.00) to offset fees associated with the preparation of the expert witnesses' reports for the upcoming Evidentiary Hearing, this Court has only been provided with an invoice in the amount of \$34,901.05 without detail as to the services provided by the expert witnesses, and, as such, this Court lacks sufficient documentation to determine the fairness and reasonableness of the requested expert witnesses' fees at this time.

THE COURT FURTHER FINDS that while the Court lacks sufficient details as to the expert witnesses' services provided to date and to be provided in preparation for the impending Evidentiary Hearing, this Court will authorize an initial payment of Forty Thousand Dollars (\$40,000.00) towards the expert witnesses' fees, which would appear prudent at this time based the pending legal issues in regards to the ELN Trust and community property claims associated therewith, subject to reconsideration and/or reimbursement upon submission of an itemized billing statement at the conclusion of the Evidentiary Hearing.

THEREFORE, IT IS HEREBY ORDERED that the ELN Trust is precluded from utilizing the monies, subject to this Court's January 31, 2012 injunction, in the amount of One Million Five Hundred Sixty-Eight Thousand Dollars (\$1,568,000.00) to pay its retained attorneys' fees and costs and retained experts' fees and costs.

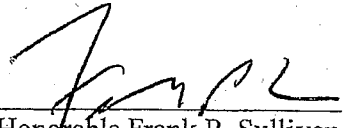
IT IS FURTHER ORDERED that the ELN Trust is directed to pay the sum of Sixty Eight Thousand Six Hundred Eighty-Two Dollars and Eighty-Nine Cents (\$68,682.89) for legal services and a retainer fee in the amount of Sixty Thousand Dollars (\$60,000) to Solomon, Dwiggin, and Freer, Ltd.

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IT IS FURTHER ORDERED that the ELN Trust is directed to pay the sum of Forty  
Thousand Dollars (\$40,000) towards the expert witnesses' fees made payable to Solomon,  
Dwiggins, and Freer, Ltd.

IT IS FURTHER ORDERED that this Court reserves the right to offset any attorneys'  
fees and/or expert witnesses' fees awarded to date based upon this Court's ultimate  
determination as to the respective parties' property rights and division thereof, as deemed fair  
and just.

Dated this 5<sup>th</sup> day of June, 2012.

  
Honorable Frank P. Sullivan  
District Court Judge – Dept. O

FRANK P. SULLIVAN  
DISTRICT COURT JUDGE  
DIVISION, DEPT. O  
LAS VEGAS NV 89101



CLERK OF THE COURT

1 **PMEM**  
MARK A. SOLOMON, ESQ.  
2 Nevada State Bar No. 0418  
E-mail: [msolomon@sdfnvlaw.com](mailto:msolomon@sdfnvlaw.com)  
3 JEFFREY P. LUSZECK  
Nevada State Bar No. 9619  
4 E-mail: [jluszeck@sdfnvlaw.com](mailto:jluszeck@sdfnvlaw.com)  
**SOLOMON DWIGGINS & FREER, LTD.**  
5 Cheyenne West Professional Centre'  
9060 W. Cheyenne Avenue  
6 Las Vegas, Nevada 89129  
Telephone No.: (702) 853-5483  
7 Facsimile No.: (702) 853-5485  
*Attorneys for LANA MARTIN, Distribution*  
8 *Trustee of the ERIC L. NELSON*  
*NEVADA TRUST dated May 30, 2001*

10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 ERIC L. NELSON, ) Case No. D-411537  
13 ) Dept. No. O  
Plaintiff/Counterdefendant, )  
14 vs. ) **DATE OF TRIAL:** July 16, 2012  
15 ) **TIME OF TRIAL:** 9:00 a.m.  
LYNITA SUE NELSON, LANA MARTIN, as )  
16 Distribution Trustee of the ERIC L. NELSON )  
NEVADA TRUST dated May 30, 2001 )  
17 Defendants/Counterclaimants. )

19 LANA MARTIN, Distribution Trustee of the )  
20 ERIC L. NELSON NEVADA TRUST dated )  
May 30, 2001, )  
21 Crossclaimant, )  
22 vs. )  
23 LYNITA SUE NELSON, )  
24 Crossdefendant. )

25 **THE ERIC L. NELSON NEVADA TRUST'S PRETRIAL MEMORANDUM**

26 Lana Martin, Distribution Trustee ("Trustee") of the ERIC L. NELSON NEVADA TRUST  
27 dated May 30, 2001 ("ELN SSST"), by and through her Counsel of Record, Solomon Dwiggins &  
28

SOLOMON DWIGGINS & FREER, LTD.  
CHEYENNE WEST PROFESSIONAL CENTRE  
9060 WEST CHEYENNE AVENUE  
LAS VEGAS, NEVADA 89129  
(702) 853-5483 (TELEPHONE)  
(702) 853-5485 (FACSIMILE)  
E-MAIL: [sdf@sdfnvlaw.com](mailto:sdf@sdfnvlaw.com)

1 Freer, Ltd., hereby file this Pretrial Memorandum pursuant to EDCR 5.87.

2 **I. STATEMENT OF ESSENTIAL FACTS**

3 **A. BRIEF STATEMENT OF FACTS**

4 **1. SEPARATE PROPERTY AGREEMENT AND SEPARATE PROPERTY TRUSTS**

5 On or around July 13, 1993, Eric and Lynita entered into the Separate Property Agreement,  
6 wherein they divided their community property into separate property, and established THE ERIC  
7 L. NELSON SEPARATE PROPERTY TRUST dated July 13, 1993 (“ELN Separate Property Trust”),  
8 and THE NELSON TRUST dated July 13, 1993 (“LSN Separate Property Trust”) due to Lynita’s  
9 moral aversion to gaming and other types of risky investments. Jeffrey L. Burr, Esq., the scrivener  
10 of the Separate Property Agreement, ELN Separate Property Trust and LSN Separate Property Trust,  
11 confirmed Lynita’s aversion to gaming and testified that another purpose of the aforementioned  
12 Separate Property Agreement and trusts were to:

13 take community property that would be exposed 100 percent to  
14 liabilities that Eric might incur in the venture he was undertaking and  
15 to separate that community property into separate property so that at  
16 least Lynita’s one-half could remain protected in the event a liability  
17 occurred and that Eric were to, well, incur liability and they would try  
18 to reach Lynita’s assets. The creditors could not reach the assets.<sup>1</sup>

19 Prior to entering into the Separate Property Agreement, Lynita met with competent Counsel,  
20 Richard Koch, Esq., who explained to her the effect of the Separate Property Agreement. Indeed, Mr.  
21 Koch, who acknowledged that he had no independent recollection of the 1993 events, nevertheless  
22 testified that it was his custom and practice to:

23 explain how community and separate property work and it’d kind of  
24 be about the principles about bringing property into the marriage,  
25 about the community property rights that have accrued during the  
26 marriage, about how community property and separate property can  
27 be converted.  
28 And I would have, I guess, wanted her to be satisfied that she was an  
intelligent woman who has some understanding of that, that this was  
done freely by her.<sup>2</sup>

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1 See Deposition Transcript of Jeffrey L. Burr at p. 117, l. 25 - p. 118, l. 1-7, attached  
hereto as **Exhibit 1**.

2 See Deposition Transcript of Richard Koch, Esq. at p. 22, l. 20 - p. 23, l. 4, attached  
hereto as **Exhibit 2**.

1 In discovery, Lynita has failed to introduce any evidence that the Separate Property  
2 Agreement, ELN Separate Property Trust or LSN Separate Property Trust are invalid or that she  
3 lacked a sound understanding of the legal implications of said documents prior to executing the same.  
4

5 **2. SELF-SETTLED SPENDTHRIFT TRUSTS**

6 On May 30, 2001, in order to enhance the estate plan Eric and Lynita had in place, Mr. Burr  
7 recommended that Eric establish the ELN SSST and that Lynita establish the LSN SSST. The ELN  
8 SSST was funded by assets that were wholly owned by the ELN Separate Property Trust. Likewise,  
9 the LSN SSST was funded by assets that were wholly owned by the LSN Separate Property Trust.  
10 Eric has always served as Investment Trustee of the ELN SSST,<sup>3</sup> and Lynita has always served as  
11 Investment Trustee of the LSN SSST.

12 In discovery, Lynita has failed to introduce any evidence that the ELN SSST or LSN SSST  
13 are invalid or that she lacked a sound understanding of the legal implications of said trusts. The  
14 evidence at trial will show that Lynita has been intricately involved with the management and  
15 operation of the LSN SSST.

16 **3. DIVORCE PROCEEDING**

17 Prior to Eric initiating the initial divorce proceeding on or around May 6, 2009, Lynita and  
18 her Counsel recognized that neither Eric nor Lynita owned many, if any, assets, as Eric had previously  
19 transferred all of his separate property to the ELN Separate Property Trust and ultimately the ELN  
20 SSST, and Lynita had previously transferred all of her separate property to the LSN Separate Property  
21 Trust and ultimately the LSN SSST. Because Lynita and her Counsel were aware of the ramifications  
22 of the Separate Property Agreement, the separate property trusts and self-settled spendthrift trusts (*i.e.*  
23 all community property had been transmuted to separate property in 1993), Lynita's Counsel  
24 demanded that Eric execute certain documents as early as March 2, 2009, when Eric was  
25 unrepresented by counsel, acknowledging that all of the property owned by the ELN SSST and LSN  
26 SSST was community property. Indeed, in an e-mail dated March 2, 2009, Denise Gentile, Esq. of  
27 the Dickerson Law Group sent e-mail correspondence to Eric wherein she stated:

28 <sup>3</sup> See ELN SSST, at Article XI.

1 There have been documents presented to you asking you to  
2 acknowledge all of the property is community property. Mr. Burr  
3 asked that you sign them, and you refused. . . . If you are willing to  
4 sign the documents presented to you by Mr. Burr, and willing to  
5 acknowledge the community nature of all of the assets, then we may  
6 be able to make some quicker progress. Otherwise, if this matter  
7 becomes contested, Lynita will be forced to file a claim against you  
8 to set aside those agreements.<sup>4</sup>

9 It should be noted Lynita has failed/refused to produce said e-mail or the documents that the  
10 Dickerson Law Group prepared for Eric to execute, when he was unrepresented by counsel, despite  
11 her duty to do so under NRCP 16.2 and in response to Requests for Production of Documents to  
12 Lynita. In any case, Eric did not execute the proffered acknowledgment.

13 Additionally, on or around July 30, 2009, the Dickerson Law Group spent 5.40 hours  
14 reviewing the ELN SSST and LSN SSST and working on some type of motion, which upon  
15 information and belief was drafted to set aside the ELN SSST and LSN SSST.<sup>5</sup> Said motion was  
16 never filed.

17 Notwithstanding the fact that Lynita and her Counsel recognized the existence, and legal  
18 implications, of the Separate Property Agreement, ELN Separate Property Trust, LSN Separate  
19 Property Trust, ELN SSST and LSN SSST prior to the initiation of this divorce, they ignored the same  
20 until Eric filed his Motion to Join Necessary Party on or around June 24, 2011.

21 **B. NAMES AND AGES OF THE PARTIES**

22 Plaintiff/Counterdefendant, Eric L. Nelson (“Eric”) - 52;

23 Defendant/Crossdefendant, Lynita S. Nelson (“Lynita”) - 50; and

24 Defendant/Counterclaimant, Lana Martin, Distribution Trustee of the ELN SSST.

25 **C. DATE OF MARRIAGE**

26 September 17, 1983.

27 **D. RESOLVED ISSUES**

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28 <sup>4</sup> See E-mail from Denise Gentile, Esq. to Eric dated March 2, 2009, attached hereto  
as **Exhibit 3**.

<sup>5</sup> See Dickerson Law Group billing record dated August 19, 2009, attached hereto as  
**Exhibit 4**.

1 No issues pertaining to the ELN SSST have been resolved.

2 **II. CHILD CUSTODY**

3 Issues pertaining to child custody are inapplicable to the ELN SSST.

4 **III. SPOUSAL SUPPORT**

5 To the extent that spousal support is being requested, it would be inappropriate and in  
6 contravention of ELN SSST and general trust law to compel spousal support to be paid from the ELN  
7 SSST.

8 **IV. BRIEF STATEMENT OF CONTESTED LEGAL AND FACTUAL ISSUES**

9 **A. DYNASTY'S BANKRUPTCY PROCEEDING DOES NOT PRECLUDE THIS COURT'S  
10 ABILITY TO CONFIRM THAT THE ELN SSST IS A VALID SELF-SETTLED  
11 SPENDTHRIFT TRUST AND THAT LYNITA POSSESSES NO OWNERSHIP INTEREST  
12 THEREIN.**

12 Dynasty, an asset owned by the ELN SSST, was forced to file bankruptcy in order to preserve  
13 its current appeal and to address the contingent liens that are presently threatening the 125 acres in  
14 Mississippi. Lynita's prior contention that Dynasty's decision to file for Chapter 11 bankruptcy  
15 impedes this Court's ability to resolve this action at the July 2012 is erroneous for several reasons,  
16 including that it presumes that she possesses a community interest in the ELN SSST, specifically  
17 Dynasty, which is simply not true. The evidence at trial will show that the ELN SSST is a valid self-  
18 settled spendthrift trust of which Lynita possesses no interest. In any case, the bankruptcy will not  
19 impede this Court's ability to confirm who possesses an ownership interest in Dynasty: the ELN  
20 SSST. Consequently, the fact that Dynasty filed for bankruptcy is inconsequential to the July 2012  
21 trial, and said trial should proceed as scheduled.

22 **B. LYNITA SHOULD BE PRECLUDED FROM INTRODUCING OR OFFERING ANY  
23 EVIDENCE AND/OR STATEMENTS REGARDING HER INTENT IN EXECUTING THE  
24 SEPARATE PROPERTY AGREEMENT, ELN SEPARATE PROPERTY TRUST, LSN  
25 SEPARATE PROPERTY TRUST, ELN SSST AND/OR LSN SSST.**

26 As a matter of law, courts strictly determine a settlor's intent from the language contained in  
27 the trust document and not the settlor's undeclared or subsequent intentions.<sup>6</sup> Like contract law,  
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<sup>6</sup> See, e.g., *Taylor v. Taylor*, 978 A.2d 538, 542-43 (Conn. Ct. App. 2009) ("The issue of intent as it relates to the interpretation of a trust instrument ... is to be determined by examination of the language of the trust instrument itself and not by extrinsic evidence of actual intent . . . . The

1 courts only consider extrinsic evidence if the trust document is ambiguous.<sup>7</sup> Moreover, “extrinsic

2  
3 construction of a trust instrument presents a question of law. . . .”); *Soeffe v. Jones*, 270 S.W.3d 617,  
4 628 (Tex. Ct. App. 2008) (“Construction of an unambiguous trust is a matter of law for the court.  
5 In construing a trust, we are to ascertain the intent of the grantor from the language in the four  
6 corners of the instrument.”); *Kimberlin v. Dull*, 218 S.W.3d 613, 616 (Mo. Ct. App. 2007)  
7 (“[A]bsent ambiguity, the intent of the settlor is determined from the four corners of the trust  
8 instrument. It is not this court's function to rewrite a trust in order to effectuate a more equitable  
9 distribution or to impart an intent to the testatrix that is not expressed in the trust”); *Keisling v.*  
10 *Landrum*, 218 S.W.3d 737, 741 (Tex. Ct. App. 2007) (“The construction of a will or trust instrument  
11 is a question of law for the trial court. Courts construe trusts to determine the intent of the maker.  
12 The intent of the maker must be ascertained from the language used within the four corners of the  
13 instrument.”) (Citations omitted); *Blue Ridge Bank and Trust Co. v. McFall*, 207 S.W.3d 149,  
14 156-57, 161 (Mo. Ct. App. 2006) (“As a starting point in any analysis of a testamentary document,  
15 we note that the paramount rule of will or trust construction is to discern the intent of the settlor.  
16 Such intention must be ascertained from the instrument as a whole, and must be adhered to unless  
17 it conflicts with some positive rule of law. . . . [I]n interpreting the trust, the court must look to the  
18 language of the instrument and not to the results to be achieved. . . . Courts are to ascertain what the  
19 testator meant from the words actually used.”) (Citations omitted); *Sherard v. Sherard*, 142 P.3d 673,  
20 677 (Wyo. 2006) (“The intent is determined from the trust document itself. [T]he interpretation of  
21 the language of a trust instrument constitutes a question of law”); *Estate of Edwards*, 203 Cal.  
22 App.3d 1366, 1371 (1988) (Citing *Estate of Stokley*, 108 Cal. App. 3d 461, 467 (1980) (“The  
23 testator's intent is determined from the language of the will itself. The intention which an  
24 interpretation of a will seeks to ascertain is the testator's intention as expressed in the words of the  
25 will, not some undeclared intention which may have been in his mind.”)).

17 <sup>7</sup> See, e.g., *Jones*, 270 S.W.3d at 628 (“If the words in the trust are unambiguous, we  
18 do not go beyond them to find the grantor’s intent. Our focus is not what the grantor may have  
19 intended to write, but what words are actually used in the trust instrument. If the words are  
20 unambiguous, extrinsic evidence is not admissible to show that the grantor had some other intent  
21 than that expressed in the clear words of the trust.”); *Carmody v. Betts*, 104 Ark. App. 84, 88, 289  
22 S.W.3d 174, 178 (Ark. Ct. App. 2008) (“Extrinsic evidence may be received on the issue of the  
23 testator's intent only if the terms of the will are ambiguous. Absent a finding of ambiguity by the  
24 court, testimony about the settlor's intent should not be considered. When the terms of a trust are  
25 unambiguous, it is the court’s duty to construe the written agreement according to the plain meaning  
26 of the language employed.”); *Sherard*, 142 P.3d at 677 (“The intent is determined from the trust  
27 document itself. [T]he interpretation of the language of a trust instrument constitutes a question of  
28 law. . . . Where the language used in the trust is unambiguous, the plain provisions of the trust  
determine its construction and interpretation does not require consideration of evidence.”);  
*Goodwine v. Goodwine*, 819 N.E.2d 824, 829 (Ind. Ct. App. 2004) (“To determine the settlor’s  
intent, courts look first to the language used in the trust document. If the terms of the trust instrument  
are not ambiguous, a court may examine only the document itself to determine the settlor’s intent.”)  
(Citations omitted); *In re Reid*, 46 P.3d 188, 190 (Okla. Ct. App. 2002) (“As a general rule, the  
interpretation of the language of a trust instrument constitutes a question of law. . . . The courts  
strive to ascertain and effect the intent of the settlor, but parole evidence may not be considered  
where there is no ambiguity and the language of a declaration of trust is clear and plainly susceptible