

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

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4       CHRISTOPHER D. DAVIS,

5                                   Appellant,

6       v.

7       CAROLINE DAVIS,

8                                   Respondent.  
9

Electronically Filed  
Case No.: 68542   Oct 08 2015 08:52 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court  
Eighth Judicial District Court  
Case No.: P-15-083867-T (In re  
the Beatrice B. Davis Family  
Heritage Trust, dated July 28,  
2000)

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11                                   **EMERGENCY MOTION UNDER NRAP 27(e)**  
12                                   **FOR 1) STAY PENDING APPEAL AND 2) AFFIRMATIVE RELIEF**

13                                   **ACTION NECESSARY ON OR BEFORE**  
14                                   **OCTOBER 23, 2015**

15           Pursuant to NRAP 8 and NRAP 27(e), Petitioner Christopher D. Davis  
16 hereby moves this Honorable Court for an emergency stay of the proceedings  
17 being conducted in the Eighth Judicial District Court, Department 26, in Clark  
18 County, Nevada when jurisdiction is admittedly not proper, is in dispute, and,  
19 despite such objections, the District Court continues to make findings and move  
20 forward with discovery while the fundamental question of jurisdiction is at issue.  
21 He also seeks affirmative relief or a dismissal of the matter because of proper  
22 service. This motion is being requested on an emergency basis because there are  
23 motions to impose sanctions upon parties and to compel production of documents  
24 scheduled on October 23 and 28, 2015, which must be stayed.  
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1       **PLEASE NOTE** that this motion has been filed to the extent that  
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3 Christopher D. Davis as Investment Trust Advisor is under the purview and  
4  
5 appealable order provision of NRS § 155.190 which applies to Trustees. To the  
6  
7 extent that Christopher D. Davis does not fall under the purview of the appealable  
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9 order pursuant to NRS § 155.190 as an Investment Trust Advisor, a Writ has also  
10  
11 been filed. The Writ has been attached hereto and incorporated herein as Exhibit  
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13 1. If the Writ disposes of all or some of the issues on appeal, then Christopher  
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15 will, where appropriate, dismiss or amend the appeal.

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17               DATED this 7<sup>th</sup> day of October 2015.

18       Respectfully Submitted,  
19       ROLAND LAW FIRM

20         
21       Harriet H. Roland, Esq.  
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27         
28       Attorney for Christopher D. Davis

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1       **I. NRAP 27(E) CERTIFICATE**

2           Petitioners respectfully certify that their motion for stay is an emergency  
3  
4 motion requiring relief in less than fourteen days to avoid irreparable harm.  
5 Indeed, immediate relief is needed, because the Eighth Judicial District Court,  
6  
7 Department 26 (“District Court”), continues to hear matters that directly relate to  
8 the matters on appeal – whether this court has proper jurisdiction over Beatrice B.  
9 Davis Family Heritage Trust, dated July 28, 2000 (“FHT”) under the remedy of  
10 constructive trust, whether this court has *in personam* jurisdiction over any party  
11 or entity based upon the remedy of constructive trust or otherwise, and the alleged  
12 appointment of a trustee based upon such findings. Furthermore, the District  
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14 Court is considering sanctions against Christopher D. Davis (“Christopher”) for  
15 his alleged non-compliance with discovery, when jurisdiction remains at issue. It  
16  
17 is also requiring Christopher’s counsel to disclose confidential documents some of  
18 which are subject to attorney-client privilege and were provided to counsel in  
19 preparation for litigation. The motion for sanctions and motions to compel are  
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21 scheduled to be heard on October 28, 2015 and initial discovery disclosures are  
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23 due October 23, 2015.  
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1       A. NRAP 27(e)(3)(a) Telephone Numbers and Office Addresses of The  
2       Attorneys for the Parties.

3 4 5 6 7 8 9	Harriet H. Roland, Esq. Nevada Bar No. 5471 ROLAND LAW FIRM, INC. 2470 E. St. Rose Pkwy, Ste. 105 Henderson, NV 89074 Telephone: (702) 452-1500 Facsimile: (702) 920-8903 <a href="mailto:hroland@rolandlawfirm.com">hroland@rolandlawfirm.com</a> <i>Attorney for Christopher D. Davis</i>	Anthony L. Barney, Esq. Nevada Bar No. 8366 ANTHONY L. BARNEY, LTD. 3317 W. Charleston Blvd., Suite B Las Vegas, NV 89102 Telephone: (702) 438-7878 Facsimile: (702) 259-1116 <a href="mailto:office@anthonybarney.com">office@anthonybarney.com</a> <i>Attorney for Christopher D. Davis</i>
10 11 12 13 14 15	Mark Solomon, Esq. Joshua Hood, Esq. SOLOMON DWIGGINS & FREER, LTD. 9060 W. Cheyenne Ave. Las Vegas, NV 89129 <i>Attorneys for Caroline Davis</i>	DUNHAM TRUST COMPANY SHANNA CORESSAL, CTFA c/o Charlene Renwick, Esq. Lee, Hernandez, Landrum & Garofalo 7575 Vegas Drive, #150 Las Vegas, Nevada 89128

16       B. Facts Showing the Existence and Nature of the Claimed Emergency (NRAP  
17       27(e)(3)(b)

18               The facts showing the existence and nature of the emergency pursuant to  
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20       NRAP 27(e)(3)(b) are being incorporated and included with the facts pertaining to  
21       the NRAP 8 Requirements below to avoid duplication herein. They are  
22       incorporated herein as if set forth fully herein, but are discussed fully below.

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24       C. Notification of Parties pursuant to NRAP 27(e)(3)(c)

25               Christopher requested an agreement from Caroline to stay the District Court  
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27       proceedings in District Court pending the appeal. This request was made by  
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1 electronic mail.<sup>1</sup> Christopher notified Caroline that if the request was rejected or  
2 not answered, he would be filing an emergency request for a stay and providing  
3 the motion by facsimile without exhibits and by mail with exhibits.<sup>2</sup> Caroline  
4 refused to agree to the stay.<sup>3</sup> Service of this motion was made as stated in the  
5 electronic mail and by hand delivery to the parties noted below.  
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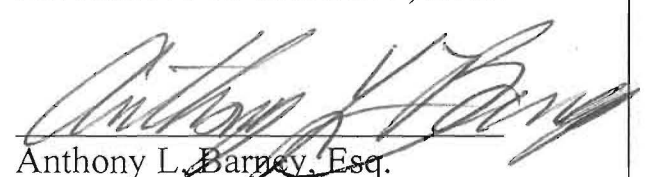
8 DATED this 7<sup>th</sup> day of October 2015.

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10 Respectfully Submitted,  
11 ROLAND LAW FIRM

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20 *Attorney for Christopher D. Davis*

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26 <sup>1</sup> See Email dated October 5, 2015 attached hereto and incorporated herein as  
27 Exhibit 2.

28 <sup>2</sup> See Exhibit 2.

<sup>3</sup> See Email dated October 5, 2015, attached hereto and incorporated herein as  
Exhibit 3.

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1 Order”), but Christopher’s motions have been denied or the District Court has  
2 declined to make orders because of the appeal.<sup>4</sup> Caroline issued subpoenas to  
3 Christopher **and** his counsel which demanded disclosure of documents in  
4 Christopher’s personal capacity or in various non-related roles to the FHT.<sup>5</sup>  
5 Christopher and his counsel filed separate motions for protective orders and  
6 Christopher requested the subpoena be quashed or modified, because it required  
7 disclosure of personal and confidential information and other information from  
8 him personally or in other purported capacities over which the District Court did  
9 not have proper jurisdiction.<sup>6</sup> Christopher’s Motion was denied.<sup>7</sup> The Motion for  
10 Protective Order filed by the Roland Law Firm was denied in part.<sup>8</sup> Christopher’s  
11 oral motion to stay the proceedings was denied.<sup>9</sup>

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17 The District Court has indicated that it is allowing discovery under the  
18 Nevada Supreme Court’s holdings in *Viega GmbH v. Eighth Judicial District*  
19 *Court*, 328 P.3d 1152 (Nev. 2014) (hereinafter “Viega”) and *Fulbright & Jaworski*

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22 <sup>3</sup> See Exhibit 4, Page 69:15-25; Page 70:1-14.

23 <sup>4</sup> See Notice of Entry of Order, filed with Order, which has been entered July 1,  
24 2015, attached hereto and incorporated herein as Exhibit 8.

25 <sup>5</sup> See Subpoenas Duces Tecum dated June 25, 2015 attached collectively hereto  
and incorporated herein as Exhibit 9.

26 <sup>6</sup> See Motion for Protective Order attached hereto and incorporated herein as  
27 Exhibit 5.

28 <sup>7</sup> See Exhibit 8.

<sup>8</sup> See September 16, 2015 Court Minutes attached hereto and incorporated herein  
as Exhibit 10.

1 v. Eighth Judicial District Court, 342 P.3d 997 (Nev. 2015) (hereinafter  
2 “Fulbright”) and that the “purpose and intent of taking jurisdiction initially was to  
3 figure out jurisdiction.”<sup>10</sup> This is an error of law.

4  
5 Viega and Fulbright do not allow a court to take jurisdiction to determine  
6 jurisdiction – these cases were writ proceedings to determine whether the court  
7 had jurisdiction and do not allow a court to take jurisdiction and then allow  
8 discovery to determine if the initial assumption of jurisdiction was proper.  
9  
10 However, based upon Viega and Fulbright, the District Court is allowing  
11 discovery to move forward without making findings under NRS § 14.065,  
12 constitutional principles, or case law to assert proper jurisdiction over the  
13 parties/entities in this matter.  
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17 Furthermore, the District Court has indicated that there is a “limited  
18 exception to attorney-client privilege when an attorney represents a fiduciary and  
19 that “this limited exception allows a beneficiary to breach attorney/client  
20 privilege.”<sup>11</sup> However, Caroline has not alleged any breach and there were no  
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26 <sup>9</sup> See Exhibit 4, September 2, 2015 Transcript, Page 70, lines 7-8

27 <sup>10</sup> See Page 58:17-19 of September 2, 2015 Transcript attached hereto and  
incorporated herein as Exhibit 4.

28 <sup>11</sup> See September 16, 2015 Court Minutes attached hereto and incorporated herein  
as Exhibit 10.

1 findings of breach made.<sup>12</sup> The District Court has wrongfully required the  
2 production of documents from the time of the trust settlor's incompetence,<sup>13</sup> which  
3 was at least seven years before Christopher was allegedly appointed as a trust  
4 advisor. The District Court, however, failed to differentiate between the time  
5 periods when Christopher was strictly a beneficiary and when he was allegedly a  
6 trust investment advisor. Therefore, the District Court has imposed an undue  
7 burden on Christopher's counsel putting her at odds between her ethical duties,  
8 including the duty of confidentiality, and a court order.

12 The Court has imposed a deadline of October 23, 2015 for Christopher and  
13 his legal counsel to disclose documents in his various capacities unrelated to the  
14 FHT many of which are confidential and subject to attorney-client privilege or  
15 other privilege. Most importantly, on October 28, 2015, Christopher is also being  
16 subjected to motions for sanctions, motions for contempt or other related  
17 pleadings based upon his alleged lack of participation in discovery although  
18 jurisdiction is in dispute. Therefore, this motion is not only warranted but  
19 necessary.  
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28 <sup>12</sup> See Exhibit 10, Court Minutes dated September 16, 2015; see also Original  
Petition, attached hereto and incorporated herein as Exhibit 11.

1 B. Facts Showing the Existence and Nature of the Claimed Emergency (NRAP  
2 27(e)(3)(b) and NRAP 8

3 Caroline's initial petition filed in the District Court did not allege any  
4 claims (hereinafter "Original Petition") but requested the court take jurisdiction  
5 over an alleged Nevada Trust, its alleged trustee, its trust protector, its alleged  
6 investment trust advisor, and all other parties seemingly related to the FHT to  
7 obtain documents from various parties related to the FHT.<sup>14</sup> Notably, the only acts  
8 alleged against Christopher were his actions in an individual capacity, as the  
9 beneficiary of another trust, or as the sole manager of a Missouri limited liability  
10 company.<sup>15</sup> The District Court was made aware that there is a lawsuit in Missouri  
11 and noted that these alleged acts were in Missouri where Christopher had contact  
12 with those states.<sup>16</sup> All other references to Christopher in the Original Petition  
13 were to alert the Court of his alleged capacities in purported relation to the FHT.<sup>17</sup>  
14 Not only did the Original Petition not allege claims against any party, it did not  
15 allege that certain acts were done by any party in Nevada.  
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26 <sup>13</sup> *Id.*

27 <sup>14</sup> See Original Petition attached hereto and incorporated herein as Exhibit 11.

28 <sup>15</sup> Exhibit 11, Original Petition, Page 7-8; Paragraphs 23, 24.

<sup>16</sup> See Exhibit 4, Page 17:6-20.

<sup>17</sup> Exhibit 11, Page 3, 8; Paragraphs 12, 26.

1 The Original Petition was mailed to various parties.<sup>18</sup> Personal service was  
2 not effectuated on any party.<sup>19</sup> Also, Christopher is not a Nevada resident.<sup>20</sup>  
3

4 After Christopher received the Original Petition by mail, Christopher filed a  
5 motion to dismiss based upon the lack of jurisdiction over FHT because 1) the  
6 Alaskan Trustees of the FHT were in possession of the documents being requested  
7 and were indispensable parties because no trustees have a duty to account to  
8 another trustee pursuant to the FHT and; 2) the change in situs had not been  
9 properly effectuated under the terms of the FHT because a beneficiary had not  
10 consented and the resigned trustee had not received the advice of counsel.  
11 Additionally, Christopher requested dismissal because personal service was  
12 lacking (e.g. there was insufficiency of service of process) on parties that were  
13 requested to provide documents unrelated to the FHT.<sup>21</sup> Caroline opposed the  
14 motion to dismiss.<sup>22</sup>  
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19 At the hearing on the motion to dismiss, despite the fact that FHT's trust  
20 protector and drafter of the FHT conceded that the trust amendment which  
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24 <sup>18</sup> See Second Amended Notice of Hearing, filed March 5, 2015, Pages 3-4,  
25 attached hereto and incorporated herein as Exhibit 12.

26 <sup>19</sup> The Appellate Court can take judicial notice under NRS 47.130 that a summons  
27 and/or citation has never been issued or served in this matter.

28 <sup>20</sup> See Declaration of Christopher Davis attached hereto and incorporated herein as  
Exhibit 13.

<sup>21</sup> See Motion to Dismiss and Reply attached hereto and incorporated herein as 14  
and 15, respectively.

1 outlined the alleged change of situs was done improperly,<sup>23</sup> the District Court took  
2 jurisdiction pursuant to a theory of constructive trust, which was suggested for the  
3 first time during the hearing by Caroline's counsel.<sup>24</sup> Unfortunately, the District  
4 Court simply assumed that certain acts had taken place in Nevada by Christopher  
5 but did not make any findings of any acts that had actually been performed in this  
6 jurisdiction.<sup>25</sup> None were alleged in the Original Petition.<sup>26</sup> The District Court did  
7 not make findings of personal service pursuant to NRS § 14.065 or established  
8 constitutional principles regarding jurisdiction in any of Christopher's alleged  
9 roles.<sup>27</sup> Additionally, the District Court also included hand-written interlineations  
10 into the June 24, 2015 Order, derived from ex-parte communications with  
11 Caroline's counsel, which asserted jurisdiction over parties admittedly outside this  
12 Court's jurisdiction.<sup>28</sup>

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14 Because a constructive trust is a remedy (and not a factual basis upon which  
15 to base jurisdiction), such a theory would require the proper assumption of  
16 jurisdiction over Christopher before placing property under his alleged custody  
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24 <sup>22</sup> See Opposition attached hereto and incorporated herein as Exhibit 16.

25 <sup>23</sup> See April 22, 2015 Hearing at Page 31:17-20 attached hereto and incorporated  
herein as Exhibit 17.

26 <sup>24</sup> See Exhibit 17, Page 30:6; and Exhibit 7.

27 <sup>25</sup> Exhibit 17, Page 49:23-25, Page 50:1.

28 <sup>26</sup> See Exhibit 11 generally.

<sup>27</sup> The Appellate Court can take judicial notice pursuant to NRS 47.130 that a  
summons and/or citation has never been issued or served in this matter.

1 into a constructive trust by a court of competent jurisdiction.<sup>29</sup> This is lacking  
2 herein. The District Court conceded that it was “wrong” to accept Caroline’s  
3 counsel’s theory of constructive trust as “the FHT is not a constructive trust”<sup>30</sup> and  
4 acknowledged that FHT Holdings, LLC, was not a party.<sup>31</sup>  
5

6  
7 Despite its admissions, the District Court continues discovery under a  
8 misinterpretation of Viega and Fulbright without proper findings or foundational  
9 basis of jurisdiction.<sup>32</sup> It is subjecting Christopher’s counsel to possible breaches  
10 of its duties to Christopher by compelling her to produce documents under a court  
11 order. Without emergency relief on or before the date for initial disclosures and  
12 the motions to compel and for sanctions on October 23 and 28, 2015, respectively,  
13 Christopher will be irreparably harmed and subject to inappropriate sanctions.  
14 Christopher respectfully requests that this Court issue a stay of the District Court  
15 proceedings until the appeal is determined.  
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24 <sup>28</sup> See Exhibit 4, Page 79:9-14, 21-23, Page 81:12-25.

25 <sup>29</sup> See *DeLee v. Roggen*, 111 Nev. 1453, 1457, (Nev. 1995) quoting *Locken v.*  
*Locken*, 98 Nev. 369, 650 P.2d 803 (1982)

26 <sup>30</sup> See Page 59:23-25 and Page 60:11 of September 2, 2015 Transcript, attached  
27 hereto and incorporated herein as Exhibit 4.

28 <sup>31</sup> Exhibit 8, Page 79:9-14, 21-23, Page 81:12-25

<sup>32</sup> See Page 57:2-8 of September 2, 2015 Transcript, attached hereto and  
incorporated herein as Exhibit 4.

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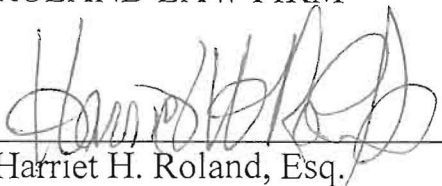
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1 failure to serve pursuant to NRCP 4(i); and provide further proper relief that may  
2 be warranted in this matter.

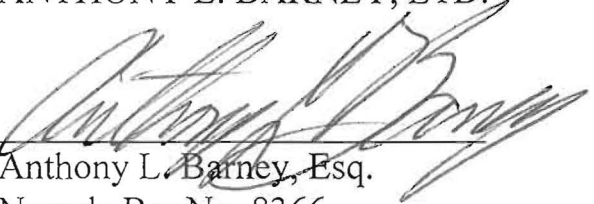
3  
4 DATED this 7<sup>th</sup> day of October, 2015.

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7 Respectfully Submitted,  
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28 day service period expires, the court shall take that failure into consideration in  
determining good cause for an extension of time.

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