

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2 CHRISTOPHER D. DAVIS,

) CASE NO. 68542

3 )  
4 Appellant,

) Electronically Filed  
) Eighth Judicial District Court 04:20 p.m.  
) Case No. P-15-00170

5 Vs.

) Elizabeth A. Brown  
) Clerk of Supreme Court

6 CAROLINE DAVIS,

) the Beatrice B. Davis  
) Family Heritage Trust, dated  
) July 28, 2000)

7 )  
8 Respondent.

)

)

)

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10  
11 RESPONDENT'S ANSWER TO  
12 PETITION FOR REHEARING

13  
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1 **NRAP 26.1 DISCLOSURE**

2 The undersigned counsel of record certifies that the following are persons and  
3 entities described in NRAP 26.1(a) and must be disclosed. These representations are  
4 made in order that the Judges of this Court may evaluate possible disqualifications or  
5 recusal.  
6

7 1) Beatrice B. Davis Family Heritage Trust:

- 8
- 9 a) Former Trustees: Alaska Trust Company, Alaska USA Trust Company;
  - 10 b) Directed Trustee: Dunham Trust Company;
  - 11 c) Trust Protector and Distribution Trust Advisor: Stephen K. Lehnardt;
  - 12 d) Investment Trust Advisor: Christopher D. Davis;
  - 13 e) Beneficiaries: (i) Christopher D. Davis, (ii) Caroline D. Davis;  
(iii) Winfield Davis and (iv) Ace Davis (c/o Winfield Davis).

14 2) FHT Holdings, LLC:

- 15
- 16 a) Sole Member: Beatrice B. Davis Family Heritage Trust;
  - 17 b) Registered Agent: Registered Agent Solutions, Inc;
  - 18 c) Sole Manager: Christopher D. Davis.

19 Dated this 14<sup>th</sup> day of March, 2016.

20 Respectfully Submitted:

21 SOLOMON DWIGGINS & FREER, LTD.


22   
23 \_\_\_\_\_  
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1           **I. Introduction.**

2           As this Court is aware, Appellant, Christopher D. Davis (“Christopher”):  
3  
4 (1) was integrally involved with and expressly consented to the transfer of the  
5 situs of the Beatrice B. Davis Family Heritage Trust, dated July 28, 2000, as  
6 amended February 24, 2014 (the “Trust”), from Alaska to Nevada;<sup>1</sup> (2) expressly  
7 consented to serve as Investment Trust Advisor (“ITA”) to the Trust, and has  
8 been serving in such capacity since February, 2014;<sup>2</sup> and (3) expressly consented  
9 to serve as sole manager of FHT Holdings, LLC (“FHT, LLC”), a Nevada limited  
10 liability company wholly owned by the Trust (and which holds the Trust’s  
11 assets), and has been serving in such capacity since March, 2014.<sup>3</sup> As fully  
12 briefed in Respondent’s Answering Brief, not only did Christopher expressly  
13 submit to the jurisdiction of the State of Nevada upon accepting to serve as ITA  
14 pursuant to NRS 163.5555, but Christopher, in his capacity as ITA and/or sole  
15 manager of FHT, LLC, has also purposefully taken actions for a Nevada trust and  
16 its subsidiary LLC, which satisfies the necessary minimum contacts so as to  
17 provide Nevada courts the authority to assume *in personam* jurisdiction over  
18 him.<sup>4</sup>  
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<sup>1</sup> See, APELL000135-142

26 <sup>2</sup> *Id.*

27 <sup>3</sup> See, APPELL000354:5-7; APPELL000778-779; APPELL000773-774; and  
28 APPELL000776.

<sup>4</sup> See, Respondent’s Answering Brief, at Art II(A)-(B), generally.

1           Indeed, it was Christopher’s actions that initially led the Eighth Judicial  
2 District Court (the “DC”) to assume *in personam* jurisdiction over him as ITA,  
3 which he appealed on July 30, 2017 (the “Appeal”). Christopher thereafter filed  
4 an Emergency Writ Under NRAP 27(e) Petition For Writ Of Prohibition And/Or  
5 Mandamus with this Court on October 8, 2105 (the “Writ”) further challenging  
6 the assumption of *in personam* jurisdiction. Having lost his Appeal and Writ,  
7 and still unhappy with the Court’s assumption of *in personam* jurisdiction over  
8 him, Christopher has now filed his Petition For Rehearing, alleging, in relevant  
9 part, that this Court “has overlooked, misapplied or failed to consider a statute,  
10 procedural rule, regulation or decision directly controlling a dispositive issue in  
11 the case.”<sup>5</sup>

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16           Specifically, Christopher alleges that this Court, as well as the DC, failed  
17 to “conduct any analysis to demonstrate that sufficient minimum contact exists to  
18 permit Nevada courts to exercise personal jurisdiction over [him].”<sup>6</sup> Christopher  
19 also contends that this Court somehow erred, and, therefore, permitted a violation  
20 of Christopher’s due process rights, when it held that Christopher was properly  
21 served.<sup>7</sup>

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27 <sup>5</sup> See, Petition For Rehearing, at p. 1:-9 (citing to NRAP 40(C)(2)(A)-(B)).

28 <sup>6</sup> See, Petition For Rehearing, at p. 1:16-17 through p. 2:1-2.

<sup>7</sup> *Id.*, at p. 2:3-11.

1 Both this Court and the DC were presented with substantiated evidence  
2 sufficient to establish minimum contacts such that Nevada courts are authorized  
3 to assume *in personam* jurisdiction over Christopher, as ITA and as sole manager  
4 of FHT, LLC. Moreover, this Court correctly found that the method of service  
5 perfected upon Christopher was consistent with Nevada law and was proper and  
6 effective in all respects. As such Christopher's Petition For Rehearing should be  
7 denied in its entirety.  
8

9  
10 **II. Statement of Relevant Facts.**

11  
12 **(A) NRS 163.5555 And Minimum Contacts.**

13 Christopher expressly agreed to serve as ITA of the Trust (a Nevada trust)  
14 on February 24, 2014.<sup>8</sup> Pursuant to NRS 163.5555, upon his acceptance to serve  
15 as ITA, Christopher "submit[ted] to the jurisdiction of this State..."<sup>9</sup> After a  
16 hearing on Caroline D. Davis' ("Ms. Davis") Original Petition,<sup>10</sup> the DC entered  
17 its Initial Order, which, in relevant part: (1) **found that Christopher had been**  
18 **directing the Trust since the execution of the First Amendment;** (2) assumed  
19 jurisdiction over the Trust under the theory of constructive trust; (3) assumed *in*  
20 *personam* jurisdiction over Christopher, as ITA; and (4) required Christopher to  
21 disclose any and all information he had in possession, custody or control as ITA  
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27 <sup>8</sup> See, APPELL000135-144.

28 <sup>9</sup> See, NRS 163.5555.

<sup>10</sup> See, APELL000002-11



1 and as sole manager of FHT, LLC.<sup>11</sup> Christopher then initiated this appeal  
2 proceeding on July 30, 2015.<sup>12</sup>  
3

4 During the pendency of the matter, Caroline D. Davis (“Ms. Davis”)  
5 presented the DC with sufficient evidence that Christopher, as ITA and/or sole  
6 manager of FHT, LLC, directed actions towards the Trust and its assets (i.e. a  
7 Nevada trust and its wholly owned LLC), which warranted assumption of *in*  
8 *personam* jurisdiction over Christopher, specifically:  
9

10 (1) In March and April, 2014, Christopher, as ITA, authorized and  
11 directed the creation of the LLC and the transfer of the Trust’s primary  
12 asset (i.e. the \$35,000,000.00 Policy)<sup>13</sup> to FHT, LLC, of which Christopher  
13 is the sole manager;<sup>14</sup>  
14

15 (2) Christopher further directed actions towards the Trust and its assets  
16 in April, 2014, when he sought to take additional loans from the Policy in  
17 the amount of \$489,500, as follows: (i) \$59,000 to Christopher, as the  
18 trustee of the Beatrice B. Davis Revocable Trust, dated April 4, 1990, as  
19 amended (the “Revocable Trust”); (ii) \$231,000 to Christopher, as the  
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26 <sup>11</sup> See, APPELL000441-445.

27 <sup>12</sup> See, APPELL000680-683 and APPELL000685-700.

28 <sup>13</sup> See, APPELL000146-174

<sup>14</sup> See, APPELL000714:23-25 through 715:1-3

1 manager of the Davis Family Office, a Missouri limited liability company  
2 (the “DFO”); and (iii) \$199,000 to Christopher, individually;<sup>15</sup>

3  
4 (3) Christopher, as ITA of a Nevada trust, failed to provide the  
5 information and documentation related to his administration and  
6 management of the Trust’s investments, which required Ms. Davis to seek  
7 relief before the DC in order to enforce her rights and interests under the  
8 Trust;<sup>16</sup> and

9  
10 (4) Christopher has continually served as ITA of a Nevada trust and sole  
11 manager of a Nevada LLC for more than two (2) years, during which time  
12 Christopher purposefully availed himself of the laws and protection of the  
13 State of Nevada.<sup>17</sup>

14  
15  
16 On December 9, 2015, this Court granted Ms. Davis’ Motion For Remand  
17 in response to the DC’s certification of intent to amend the Initial Order for the  
18 purpose of “ensur[ing] that this court has before it the [DC’s] most updated  
19 explanation for its decisions...”<sup>18</sup> Pursuant to this Court’s order, the DC

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25 <sup>15</sup> See, Respondent’s Answering Brief, at p. 22:14-18; see also, APPELL000773-  
26 776.

27 <sup>16</sup> *Id.*, at p. 25:17 through p. 26:1-2;

28 <sup>17</sup> *Id.*, at p. 27:13-19 through p. 28:1-2.

<sup>18</sup> See, RAPP 39-43.

1 executed an Amended Order, which was filed in the DC on December 31, 2015,  
2 and later filed with this Court on January 5, 2016.<sup>19</sup>

3  
4 Based upon the evidence Ms. Davis presented to the DC, the Amended  
5 Order, in relevant part, provides as follows:

6 “4. \*\*\*

7  
8 (d) Based upon a good faith reliance of the validity of the First  
9 Amendment, [Christopher] accepted his appointment as [ITA]  
10 pursuant to NRS 163.5543;

11 \*\*\*

12  
13 (g) [Christopher] **has been acting** as [ITA] since his acceptance of  
14 such position;

15  
16 (h) [Christopher] **has been acting** as sole Manager of [the LLC]  
17 since his appointment of such position;

18 \*\*\*

19  
20 5. The [DC] noted that it was appropriate to assume jurisdiction  
21 over the Trust **and its fiduciaries**, Dunham and [Christopher],  
22 as all parties consented to the execution of the First  
23 Amendment and to the transfer of the Trust’s situs from Alaska  
24 to Nevada, **and all parties before the Court acted** upon a  
25  
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28 <sup>19</sup> See, RAPP 44-52

1 good faith reliance with respect to the validity of the First  
2 Amendment.”<sup>20</sup>  
3

4 As such, the DC and this Court were presented with evidence supporting  
5 the existence of sufficient minimum contacts between Christopher and Nevada,  
6 and the Amended Order itself provides the necessary analysis of the same  
7 supporting the assumption of *in personam* jurisdiction over Christopher.<sup>21</sup>  
8

9 Notwithstanding the fact that: (1) Christopher expressly consented to serve  
10 as ITA, and, therefore, submitted to the jurisdiction of Nevada under NRS  
11 163.5555; and (2) Ms. Davis presented evidence of sufficient minimum contacts,  
12 which authorized the DC and this Court to assume *in personam* jurisdiction over  
13 Christopher, he conveniently avoids addressing such minimum contacts analysis  
14 within his Petition For Rehearing. Indeed, rather than acknowledging the  
15 sufficiency of the minimum contacts, Christopher attempts to deflect the same by  
16 arguing that the “actions” Ms. Davis identified to establish minimum contacts  
17 somehow “relies on choice of law determinations,” and that Ms. Davis  
18 improperly “argues sufficient minimum contacts arise because the [Trust’s] situs  
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25 <sup>20</sup> *Id.* (Emphasis added).

26 <sup>21</sup> *See also*, Respondent’s Answering Brief, at p. 37:20-25 through 42:1-8, and  
27 accompanying footnotes citing to the record (illustrating that the findings and  
28 orders within the Amended Order are based upon the record presented to the  
DC).

1 was designated as Nevada and [FHT, LLC], is a Nevada limited liability  
2 company for which Christopher is sole manager.”<sup>22</sup>  
3

4 Christopher’s contention is absurd, especially given the fact that each of  
5 Christopher’s actions identified by Ms. Davis were presented to the DC and this  
6 Court for the purpose of determining minimum contacts with Nevada, and not for  
7 the purpose of choice of law determinations. Moreover, the fact that the Trust  
8 and FHT, LLC are Nevada entities further illustrates that the actions taken by  
9 Christopher are directed at the State of Nevada, which ultimately favors a finding  
10 of minimum contacts with Nevada and, therefore, *in personam* jurisdiction over  
11 Christopher.  
12

13  
14 Christopher expressly consented to serve as ITA and submitted to *in*  
15 *personam* jurisdiction in Nevada under NRS 163.5555, and this Court and the DC  
16 were presented with adequate evidence to establish sufficient minimum contacts.  
17 As such, assumption of *in personam* jurisdiction over Christopher is proper under  
18 the facts and circumstances of this case.  
19  
20

21 **(B) Service Of Process.**

22 As fully set forth in the Respondent’s Answering Brief, and as argued  
23 before this Court on November 8, 2016, Ms. Davis provided Christopher  
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28 <sup>22</sup> See, Petition For Rehearing, at p. 15:2-8.

1 adequate, sufficient, and timely notice of the Original Petition, and the method by  
2 which he was served has not been deprived him of his due process rights.<sup>23</sup>

3  
4 Ms. Davis filed her Original Petition pursuant to NRS 153.031(1)(q),  
5 requesting the DC require Christopher to comply with the terms of the Trust or  
6 other applicable law (i.e. comply with his fiduciary duty of full disclosure).<sup>24</sup> Ms.  
7 Davis then properly mailed the Notice Of Hearing and a copy of the Petition to  
8 Christopher as required by NRS 153.031(2) and NRS 155.010,<sup>25</sup> and Christopher  
9 admittedly received the same.<sup>26</sup> As fully set forth below, Caroline properly  
10 complied with the requisite Nevada Revised Statutes and she was not required to  
11 perform any acts above and beyond what such statutes require in order to perfect  
12 service of process. As such, the method by which Christopher was served was  
13 not only sufficient to provide notice of the pendency of the action and the  
14 opportunity to appear and defend, but it was also sufficient to perfect *in*  
15 *personam* jurisdiction over Christopher as he already submitted to the jurisdiction  
16 of Nevada under NRS 163.5555.

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25 <sup>23</sup> See, Respondent's Answering Brief, at Art. II(C), generally.  
26 <sup>24</sup> See, APPELL000001-11; see also, Respondent's Answering Brief, at p. 30:16-  
27 20.  
28 <sup>25</sup> See, RAPP 24-27; see also, Respondent's Answering Brief, at p. 30:20-24  
through p. 31:1-13.  
<sup>26</sup> See, Respondent's Answering Brief, at p. 31:13-14; see also, Writ, at p. 4:7.

1           **III. Legal Argument.**

2           **A. This Court Did Not Err When It Held That An ITA**  
3           **Impliedly Consents To In Personam Jurisdiction Pursuant**  
4           **To NRS 163.5555 Upon “Accepting” To Serve In Such**  
5           **Capacity.**

6           Within his Petition For Reconsideration, Christopher attempts to convince  
7 this Court that it erred when it held that “[b]ased on a plain reading of NRS  
8 163.5555, [this Court] conclude[s] that by accepting a position as an ITA for a  
9 trust with a situs in Nevada, the ITA impliedly consents to personal jurisdiction  
10 in Nevada.”<sup>27</sup> Christopher also argues that, based upon the Court’s interpretation  
11 of NRS 163.5555, “that statute is rendered unconstitutional.”<sup>28</sup>  
12

13  
14           Christopher, however, is mistaken. Simply because a statute creates *in*  
15 *personam* jurisdiction over an individual who falls within the parameters thereof,  
16 does not, in and of itself, render the statute unconstitutional. Rather, a legislature  
17 may enact such statute granting *in personam* jurisdiction over certain persons, but  
18 it is the court’s responsibility to ensure that due process is complied with when  
19 the court decides to exercise such jurisdiction. *See, Falcoal, Inc. v. Turkey*  
20 *Komur Isletmeleri Kurumu*, 660 F.Supp. 1536, 1541 (S.D.T.X. 1987)  
21  
22 (recognizing that courts have construed such statutes “to provide merely a  
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27 <sup>27</sup> *See, In re Beatrice B. Davis Family Heritage Trust*, 133 Nev. Adv. Op. 4, \*7  
(2017) (the “Decision”).

28 <sup>28</sup> *See, Petition For Rehearing*, at p. 6:1-3.

1 statutory jurisdiction and have engaged in the further step of making a due  
2 process scrutiny of the court's power to exercise in personam jurisdiction.")

3  
4 The question posed to this Court by Christopher was "whether NRS  
5 163.5555 provides the [DC] with personal jurisdiction over persons accepting an  
6 appointment as an [ITA] for a trust with a situs in Nevada."<sup>29</sup> Based upon the  
7 plain language of the statute, and because Christopher expressly accepted his  
8 appointment as ITA of a Nevada trust, the Court properly held that he consented  
9 to the jurisdiction of the State of Nevada pursuant to NRS 163.5555. Moreover,  
10 Christopher has served in his capacity as ITA since February 24, 2014, and has  
11 directed actions towards the State of Nevada. Therefore, the facts and  
12 circumstances of this case have validated this Court's holding.

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14  
15  
16 Indeed, Christopher's express acceptance to serve as a fiduciary of a  
17 Nevada trust, which is governed by Nevada law, is sufficient to satisfy the  
18 minimum contacts requirement of due process. As this Court has recognized, "it  
19 is the quality of [the] contacts,...any not he quantity, that confers personal  
20 jurisdiction over a [party]."<sup>30</sup> As such, the qualitative act of Christopher's  
21 acceptance to serve as ITA satisfies the minimum contact because his service as  
22 ITA is an ongoing relationship with Nevada and a Nevada trust, and his

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26 <sup>29</sup> See, Decision, at p. 3. (Emphasis added).

27 <sup>30</sup> Trump v. Eighth Judicial Dist. Court of State of Nev. In and For County of  
28 Clark, 109 Nev. 687, 700, 857 P.2d 740, 749 (Nev. 1993) (internal quotations and  
citations omitted).



1 acceptance requires purposeful availment of the laws of the State of Nevada.<sup>31</sup>  
2 Assuming arguendo that acceptance to serve as ITA of a Nevada trust is not  
3 sufficient to satisfy minimum contacts, Christopher has nonetheless satisfied the  
4 minimum contacts test as set forth herein.  
5

6 Contrary to Christopher's assertion, this Court did not conclude that the  
7 analysis of whether or not to exercise such *in personam* jurisdiction ceases upon  
8 a person's acceptance to serve as an ITA. Rather, this Court held that, upon  
9 acceptance to serve as an ITA, *in personam* jurisdiction exists under NRS  
10 163.5555. Even though a court may have jurisdiction over a person, Court has  
11 stated, "[i]t is one thing to possess jurisdiction. It is another to exercise it."<sup>32</sup> As  
12 such, although Christopher submitted to *in personam* jurisdiction upon accepting  
13 to serve as ITA, exercising *in personam* jurisdiction is within the discretion of the  
14 Court. Obviously, the DC and this Court can only exercise *in personam*  
15 jurisdiction if sufficient minimum contacts exists between Christopher and  
16 Nevada such that he can "reasonably anticipate being haled into Court [here]."<sup>33</sup>  
17 In this case, minimum contacts between Christopher and Nevada have clearly  
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24 <sup>31</sup> *Id.*

25 <sup>32</sup> State ex rel. Crummer v. Fourth Judicial Dist. Court of Nev., in and for Elko  
26 County, 69 Nev. 276, 280, 249 P.2d 226, 228 (Nev. 1952).

27 <sup>33</sup> Trump v. Eighth Judicial Dist. Court of State of Nev. In and For County of  
28 Clark, 109 Nev. 687, 700, 857 P.2d 740, 748 (Nev. 1993) (citing World-Wide  
Volkswagen Corp. v. Woodson, 444 U.S. 286, 297, 100 S.Ct. 559, 567, 62  
L.Ed.2d 692 (1980)).

1 been established to warrant the exercise of *in personam* jurisdiction over  
2 Christopher.

3  
4 As much as Christopher would like convince this Court that any person  
5 simply named as an investment trust advisor or distribution trust advisor would  
6 automatically become subject to *in personam* jurisdiction, such is not the ruling  
7 set forth by this Court. To the contrary, this Court specifically held that when a  
8 person “accepts” to serve as ITA, he or she is subject to *in personam* jurisdiction  
9 of Nevada courts.<sup>34</sup> As this Court recognized long ago, “[a] person designated as  
10 a trustee by another must accept the trusteeship before he is chargeable with  
11 those responsibilities.”<sup>35</sup> In other words, before a person can be subject to  
12 fiduciary obligations, and be subject to the laws governing such the same, such  
13 person must take an affirmative step to accept service as trustee or ITA.<sup>36</sup> Upon  
14 taking such affirmative step, that person is then subject to the laws governing  
15 their roles as a fiduciary.<sup>37</sup> As such, it was Christopher express consent to serve  
16 as ITA under NRS 163.5543 that resulted in his submission to *in personam*  
17 jurisdiction under NRS 163.5555.  
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25 <sup>34</sup> See, Decision, at p. 7.

26 <sup>35</sup> In re Newman’s Estate, 86 Nev. 151, 155, 465 P.2d 616, 618 (Nev. 1970)  
27 (citations omitted).

28 <sup>36</sup> In re Newman’s Estate, 86 Nev., at 155-156, 465 P.2d, at 618-619.

<sup>37</sup> *Id.*

1           Moreover, in reviewing a state court's ability assume *in personam*  
2 jurisdiction over nonresidents and the sufficiency of implied consent, the United  
3 States Supreme Court recognized that "[a] variety of legal arrangements have  
4 been taken to represent express or implied consent to the personal jurisdiction of  
5 the court."<sup>38</sup> For example, the United States Supreme Court further recognized  
6 that nonresidents can submit to *in personam* jurisdiction of a particular state  
7 pursuant to a contract<sup>39</sup> or pursuant to "state procedures which find constructive  
8 consent to the personal jurisdiction of the state court..."<sup>40</sup> Indeed, NRS 163.5555  
9 is simply a legal arrangement to ensure that those serving as fiduciaries of  
10 Nevada trusts are not shielded from liability for actions directed at or towards this  
11 State (i.e. Nevada trusts and assets and beneficiaries thereof); rather, NRS  
12 163.5555 provides a mechanism to allow Nevada courts to assume *in personam*  
13 jurisdiction over such individuals to enable such courts to enforce the terms of a  
14 trust and applicable law.  
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20           Nothing in NRS 163.5555, as interpreted by this Court, suggests that due  
21 process requirements and minimum contacts has been overlooked or disregarded.  
22 Indeed, notwithstanding the sufficiency of express or implied consent to enable a  
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24  
25 <sup>38</sup> Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456  
26 U.S. 694, 703, 102 S.Ct. 2099, 2105, 72 L.Ed.2d 492 (1982)

27 <sup>39</sup> Insurance Corp. of Ireland, Ltd., 456 U.S. 694, 704, 102 S.Ct. 2099, 2105, 72  
28 L.Ed.2d 492 (citations omitted)

<sup>40</sup> *Id.*

1 court to assume *in personam* jurisdiction, there still must be a finding of  
2 minimum contacts in order to satisfy due process requirements.<sup>41</sup>

3  
4 Again, minimum contacts have been satisfied in this matter, and NRS  
5 163.5555 constitutes a permissible avenue by which this Court (and the DC) can  
6 ensure that those serving as fiduciaries of Nevada trusts (i.e. Christopher) can be  
7  
8 subject to accountability for such administration here in Nevada.

9 As Christopher accepted to serve as ITA of a Nevada trust, he submitted to  
10 the jurisdiction of the State of Nevada under NRS 163.5555. The decision  
11 exercise *in personam* jurisdiction over Christopher is within the discretion of the  
12 DC. Based upon the record before this Court, it is clear that minimum contacts  
13 have been analyzed and assumption of *in personam* jurisdiction over Christopher  
14 by the DC was proper. As such, Christopher's Petition For Rehearing should be  
15  
16 denied.  
17

18 **B. Service Of Process Was Adequate And Christopher's Due**  
19 **Process Rights Were Not Violated.**

20 Christopher "was properly served."<sup>42</sup> Notwithstanding the thorough  
21 analysis that this Court and the DC have been provided regarding the sufficiency  
22 of such service, Christopher still contends that before this Court or the DC can  
23 ever assume *in personam* jurisdiction over him, personal service must be  
24  
25

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26  
27 <sup>41</sup> See, e.g., Trump v. Eighth Judicial Dist. Court of Nev. In and For County of  
Clark, 109 Nev. 687, 857 P.2d 740 (Nev. 1993)

28 <sup>42</sup> See, Decision, at p. 6, footnote 3.

1 perfected.<sup>43</sup> Christopher cites to this Court's recent decision in In re Estate of  
2 Black, 132 Nev.Adv.Op. 7, 367 P.3d 416 (Nev. 2016) to support his contention.  
3  
4 In In re Estate of Black, the issue before the Court was, *inter alia*, whether a  
5 person's failure to comply with NRS 137.090, requiring the issuance of a citation  
6 to the executor or administrator of an estate within three (3) months after the will  
7 has been admitted to probate, results in dismissal of the will contest.<sup>44</sup> This Court  
8 held that, based upon the facts and circumstances, as well as the plain meaning of  
9 NRS 137.090, "failure to timely issue citations deprives the court of personal  
10 jurisdiction over those to whom the citations are to be issued."<sup>45</sup>  
11  
12

13 This matter at hand is wholly distinguishable from In re Estate of Black,  
14 and the requirement to serve a citation in a will contest. First of all, this is not a  
15 will contest, and nothing in our statutes or case law requires personal service of a  
16 citation in this matter for the relief Ms. Davis is seeking. This is a trust dispute  
17 and Ms. Davis sought relief under NRS 153.031(1)(q).<sup>46</sup> According to NRS  
18 153.031(2), a notice of a petition filed under NRS 153.031(1) shall, unless  
19 otherwise provided in Chapter 153, be served in accordance with NRS 155.010.<sup>47</sup>  
20  
21  
22

23  
24 <sup>43</sup> See, Petition For Rehearing, at p. 18:17 through p. 19:1-3.

25 <sup>44</sup> In re Estate of Black, 132 Nev.Adv.Op., at \_\_\_, 367 P.3d, at 417.

26 <sup>45</sup> *Id.*

27 <sup>46</sup> See, NRS 153.031(1)(q) (A trustee or beneficiary may petition the court  
regarding any aspect of the affairs of the trust, including: [c]ompelling  
compliance with the terms of the trust or other applicable law...")

28 <sup>47</sup> See, NRS 153031(2).

1 NRS 155.010(1), in relevant part, provides that, “except as otherwise  
2 provided in this section or a specific statute relating to the kind of notice required  
3 or otherwise ordered by the court” notice is to be mailed “at least 10 days before  
4 the time set for the hearing by certified, registered or ordinary first-class  
5 mail...”<sup>48</sup> Ms. Davis mailed the Original Petition and notice of the hearing  
6 pursuant to NRS 153.031(2) and NRS. 155.010.<sup>49</sup>  
7  
8

9 Not only do NRS 153.031(2) and NRS 155.010 **not** require Ms. Davis to  
10 perform any acts above and beyond what she has done to perfect service, but  
11 Christopher admittedly received such service.<sup>50</sup> As such, the method of service  
12 employed by Ms. Davis pursuant to NRS 153.031(2) and NRS 155.010 was  
13 undoubtedly “reasonably calculated...to apprise [Christopher] of the pendency of  
14 the action and afford[ed] [him] an opportunity to present [his] objections.”<sup>51</sup>  
15  
16

17 Moreover, the fact that Christopher submitted to the jurisdiction of the  
18 State of Nevada under NRS 163.5555 by virtue of his express consent to serve as  
19 ITA, Christopher availed himself of the laws of Nevada, including the notice law  
20  
21

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22  
23 <sup>48</sup> See, NRS 155.010(1).

24 <sup>49</sup> See, RAPP 24-27.

25 <sup>50</sup> See, Writ, at p. 4:7.

26 <sup>51</sup> Clint Hurt & Associates, Inc. v. Silver State Oil and Gas Co., Inc., 111 Nev.  
27 1086, 1088, 901 P.2d 703, 705 (Nev. 1995) (citing Mullane v. Central Hanover  
28 Tr. Co., 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950)); *see also*,  
Swartz v. Adams, 93 Nev. 240, 243, 563 P.2d 74, 76 (Nev. 1977(recognizing that  
mailing notice of the sale of real property is an “effective way of ensuring actual  
notice.”)).

1 requirements set forth in NRS 155.010.<sup>52</sup> As such, Christopher's contention that  
2 personal service is required before this Court can assume *in personam*  
3 jurisdiction is without merit. Therefore, this Petition For Rehearing should be  
4 denied in its entirety.  
5

6 **IV. Conclusion.**  
7

8 Since even before the inception of this matter, it has been Ms. Davis' goal  
9 to obtain information and documentation regarding the Trust and Christopher  
10 administration of the assets thereof. Notwithstanding, throughout the entirety of  
11 this matter, including these appellate proceedings, Christopher has consistently  
12 sought to stall and avoid his obligations. Christopher's Petition For Rehearing is  
13 nothing more than thinly veiled attempt to convince this Court that it erred in  
14 order to permit Christopher to continue breach his fiduciary obligations to Ms.  
15 Davis.  
16  
17

18 Christopher clearly and expressly consented to serve as ITA of the Trust.  
19 As such, and based upon the clear and unambiguous language of NRS 163.5555,  
20 Christopher submitted to the jurisdiction of the State of Nevada. Additionally,  
21 Christopher's actions as ITA have satisfied the minimum contact analysis  
22 necessary to ensure due process is complied with. As such, this Court did not err  
23  
24  
25  
26

---

27 <sup>52</sup> See, Answering Brief, at p. 32:17-24 through p. 33:1-5, and footnotes 122 -  
28 123.

1 and properly assumed jurisdiction over Christopher pursuant to the facts and  
2 circumstances of this matter.

3  
4 Moreover, Christopher's arguments regarding service are meritless as Ms.  
5 Davis perfected service pursuant to the Nevada Revised Statutes, and Christopher  
6 admittedly received the same.

7  
8 Based on the foregoing, Ms. Davis respectfully requests that this Court  
9 deny Christopher's Petition For Rehearing in its entirety.

10 Dated this 14th day of March, 2017.

11  
12 Respectfully submitted by:

13 SOLOMON DWIGGINS & FREER, LTD.

14 

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1 **CERTIFICATE OF COMPLIANCE**

2 1. I hereby certify that this Answer to Petition for Hearing complies  
3 with the formatting requirements of NRCP 32(a)(4), the typeface requirements of  
4 NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:  
5

6 It has been prepared in a monospaced typeface using Microsoft Word in  
7  
8 font-size 14 of Times New Roman.

9 2. I further certify that this Answer complies with the page- or type-  
10 volume limitations of NRAP 40, excluding the parts of the brief exempted by  
11 NRAP 32(a)(7)(c), as it is proportionally spaced, has a typeface of 14 points or  
12 more and contains less than 4,667 words.  
13

14 3. Further, I certify that I have read this Answer and to the best of my  
15 knowledge, and belief, it is not frivolous or interposed for any improper purpose.  
16 I further certify that this Answer complies with all applicable Nevada Rules of  
17 Appellate Procedure, in particular NRAP 40, which requires every assertion in  
18 the petition regarding matters in the record to be supported by a reference to the  
19 page and volume number, if any, of the transcript or appendix where the matter  
20 relied on is to be found. I understand that I may be subject to sanctions in the  
21 event that the accompanying Answer is not in conformity with the requirements  
22  
23  
24

25 ///


26 ///

27 ///

1 of the Nevada Rules of Appellant Procedure.

2 Respectfully Submitted:

3  
4 SOLOMON DWIGGINS & FREER, LTD.

5  
6   
7 \_\_\_\_\_  
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9 Joshua M. Hood, Esq., Bar No. 12777  
10 *Attorneys for Respondent*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of SOLOMON DWIGGINS &  
3 FREER, LTD., and on the 14<sup>th</sup> day of March, 2017, I mailed a true and correct  
4 copy of the Respondent's Answer to the Petition for rehearing via first class mail  
5 upon which postage was prepaid addressed as follows:

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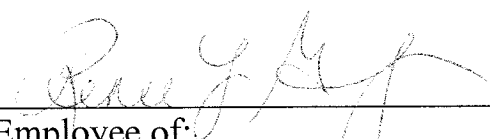
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