

Exhibit 2

1 **Marquis Aurbach Coffing**
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CLERK OF THE COURT

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 In the Matter of

Case No.: P-09-066425-T
Dept. No.: 26

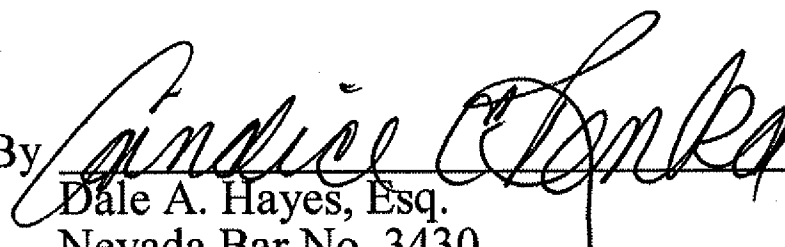
11 THE W.N. CONNELL AND MARJORIE T.
12 CONNELL LIVING TRUST DATED May 18,
1972, An Inter Vivos Irrevocable Trust.

13 **NOTICE OF ENTRY OF JUDGMENT**

14 Please take notice that a Judgment in favor of Marquis Aurbach Coffing and against
15 Eleanor Ahern for attorney fees and costs was entered in the above-captioned matter on the 28th
16 day of February, 2017, a copy of which is attached hereto.

17 Dated this 1st day of March, 2017.

18 MARQUIS AURBACH COFFING

19 By 
20 Dale A. Hayes, Esq.
21 Nevada Bar No. 3430
22 Liane K. Wakayama, Esq.
23 Nevada Bar No. 11313
24 Candice E. Renka, Esq.
25 Nevada Bar No. 11447
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27 Las Vegas, Nevada 89145
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **NOTICE OF ENTRY OF JUDGMENT** was submitted electronically for filing and/or service with the Eighth Judicial District Court on the 1st day of March, 2017. Electronic service of the foregoing document shall be made in accordance with the E-Service List as follows:¹

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I further certify that I served a copy of this document by mailing a true and correct copy

¹ Pursuant to EDCR 8.05(a), each party who submits an E-Filed document through the E-Filing System consents to electronic service in accordance with NRCP 5(b)(2)(D).

MARQUIS AURBACH COFFING


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(702) 382-0711 FAX: (702) 382-5816

thereof, postage prepaid, addressed to:

Eleanor Ahern
400 Paradise Pkwy, Unit 111
Mesquite, Nevada 89027
Pro Se



An employee of Marquis Aurbach Coffing



CLERK OF THE COURT

1 Marquis Aurbach Coffing
Dale A. Hayes, Esq.
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8
9 DISTRICT COURT
10 CLARK COUNTY, NEVADA

11 In the Matter of

Case No.: P-09-066425-T
Dept. No.: 26

12 THE W.N. CONNELL AND MARJORIE T.
CONNELL LIVING TRUST DATED May 18,
13 1972, An Inter Vivos Irrevocable Trust.

14 JUDGMENT

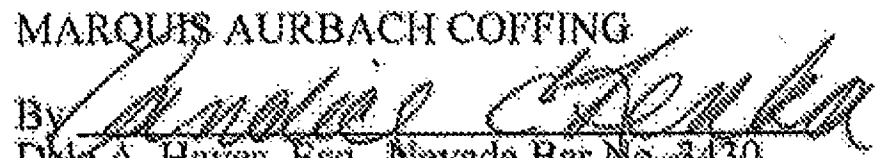
15 Judgment is hereby entered in favor of Marquis Aurbach Coffing and against Eleanor
16 Ahern for attorney fees in the amount of \$151,228.69 and costs in the amount of \$9,726.43 for a
17 total judgment of \$160,955.12, which amount shall accrue interest at the legal rate until such
18 time it is paid in full.

19 Dated this 22 day of February, 2017.

20
21 
22 DISTRICT COURT JUDGE

23 Submitted by:

24 MARQUIS AURBACH COFFING

25 By 
26 Dale A. Hayes, Esq., Nevada Bar No. 3430
Liane K. Wakayama, Esq., Nevada Bar No. 11313
27 Candice E. Renka, Esq., Nevada Bar No. 11447
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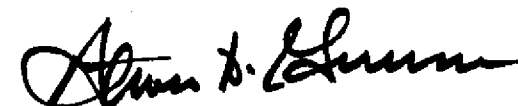
MARQUIS AURBACH COFFING

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Exhibit 1

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CLERK OF THE COURT

8
9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 In the Matter of
12 **THE W.N. CONNELL AND MARJORIE T.**
13 **CONNELL LIVING TRUST DATED May 18,**
1972, An Inter Vivos Irrevocable Trust.

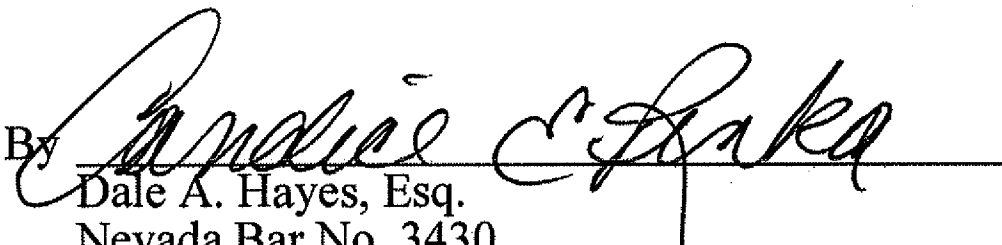
Case No.: P-09-066425-T
Dept. No.: 26

14 **NOTICE OF ENTRY OF ORDER**

15 Please take notice that a Decision and Order re Marquis Aurbach Coffing's Motion to
16 Adjudicate Attorney's Lien was entered in the above-captioned matter on the 9th day of
17 February, 2017, a copy of which is attached hereto.

18 Dated this 16th day of February, 2017.

19
20 **MARQUIS AURBACH COFFING**

21
22 By 
Dale A. Hayes, Esq.
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CERTIFICATE OF SERVICE

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I further certify that I served a copy of this document by mailing a true and correct copy

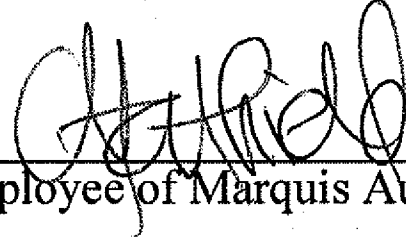
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thereof, postage prepaid, addressed to:

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Pro Se



An employee of Marquis Aurbach Coffing



CLERK OF THE COURT

1 **ORDR**

2
3 **DISTRICT COURT**
4 **CLARK COUNTY, NEVADA**

5
6 IN THE MATTER OF THE W.N.
7 CONNELL and MARJORIE T.
8 CONNELL LIVING TRUST, dated May
9 18, 1972

Case No.: P-09-066425-T
Department XXVI

10 **DECISION AND ORDER**

11 **Re: Marquis Aurbach Coffing's Motion to Adjudicate Attorney's Lien**

12 The above referenced matter came on for hearing on Marquis Aurbach Coffing's
13 (MAC) Motion to Adjudicate Attorney's Lien on September 7, 2016, and November 23,
14 2016. As the initial filing provided only redacted billings the counsel for the Successor
15 Trustee, and Beneficiaries objected, the matter was continued to allow time for counsel
16 for the Successor Trustee to review and comment on un-redacted billings. The primary
17 objection raised by counsel for the Successor Trustee, as well as the Beneficiaries, was
18 to the attorney's lien attaching to the MTC trust (100% of the total income) as opposed
19 to prior trustee Eleanor Ahern's beneficial interest (35%), on the grounds that the
20 attorneys representation benefitted only Eleanor in her individual capacity and not the
21 MTC trust. The parties returned on January 18, 2017, at which time the Court took the
22 matter under advisement to review *in camera* submissions from the parties (including the
23 beneficiaries who have not reviewed the un-redacted billing statements). The Court,
24 having reviewed the un-redacted billing statements together with the letter in support of
25 the lien from MAC, the letter outlining the Successor Trustee's position on the proper
26 party to pay the fees, and the letter from counsel for the beneficiaries, and the pleadings
27 and papers on file herein the Court hereby enters the following decision:

28 The litigation herein has gone on for some time, and Eleanor has been represented
by several different law firms. The litigation arises out of the WN and Marjorie Connell
Trust which held Mr. Connell's separate property consisting primarily of Texas oil and

1 gas lease royalties. The trust provided that upon WN's death, Eleanor would receive
2 35% of the proceeds for her lifetime, with Marjorie Connell receiving 65% for her
3 lifetime. Prior to her death in 2009, Marjorie exercised her power of appointment to
4 leave her share to her granddaughters, Jacqueline Montoya and Kathryn Bouvier,
5 Eleanor was the Successor Trustee. In 2013 Eleanor unilaterally stopped distributions
6 to her daughters, who filed a petition to compel distribution of the 65% to them. The
7 Court found that Marjorie had authority to leave the 65% to her granddaughters, thus
8 Eleanor had wrongfully withheld the funds from her daughters, which Eleanor appealed.
9 Pending resolution of the appeal the Court ordered Eleanor hold the 65% in trust. A
10 settlement was negotiated in the interim, but Eleanor terminated her counsel and hired
11 MAC to successfully oppose enforcement of the settlement. Subsequently MAC
12 withdrew and the law firm of Brownstein Hyatt began representing Eleanor. The Court
13 found that Eleanor had wrongfully failed to hold the 65% in trust, and removed her as
14 trustee. Fred Waid was appointed Successor Trustee for all of the beneficiaries, and
15 attempted to identify how much was missing from the trust, and whether any funds could
16 be recovered. The NV Supreme Court recently affirmed the finding that Eleanor had
17 wrongfully withheld the 65% from her daughters. See, In the matter of the W.N.
18 Connell and Marjorie T. Connell Living Trust, (unpublished Case No. 66231 & 68046
19 decided 1/26/2017).

20 MAC has properly perfected its attorney's lien pursuant to NRS 18.015. One of
21 the objections raised by the Successor Trustee was that the lien cannot attach to proceeds
22 because none were "recovered" by Eleanor. The court has authority to enter a judgment
23 for attorney's fees where the client has submitted herself to the court's jurisdiction. See,
24 Argentina Consolidated Mining Co. v Jolley Urga, et al, 125 Nev. 527, 216 P.3d 779
25 (2009). Here, Eleanor has submitted herself to jurisdiction of Court as a party, the
26 Court also has jurisdiction over MAC, having appeared as counsel in the action. A
27 charging lien does not attach where a party did not file an affirmative claim, rather it
28 attaches "to the tangible fruits of the attorneys services." *Id.* In Argentina the
plaintiff's claim against the defendant was dismissed, the defendant had not filed any
claims against the plaintiff so there was nothing for the charging lien to attach to.

Here, Eleanor did file counter petitions, seeking to confirm her claim to the
disputed 65%, as well as enforcement of the no contest clause against Jacqueline and
Kathryn. The attorney's fees must arise on account of the suit. *Id.* Withdrawal by

1 counsel before settlement does not prevent enforcement of its charging lien. See,
2 McDonald Carrion et al v Bourassa Law Group, LLC. Unpublished, WL 57739793
3 (2015). The requirement that an attorney lien is enforced against an "affirmative
4 recovery" is a generalized requirement so that the lien may attach to something of value.
5 Id. Here, the fees charged by MAC arise from their defense of Eleanor's claim to the
6 disputed 65%, as well defending her right to continued receipt of her 35% share.

7 A charging lien may have priority over other liens if notice is perfected before a
8 settlement or judgment. See Golightly and Vannah v TJ Allen, LLC, 372 P.3d 103
9 (2016). Attorneys may perfect their attorney's lien after a settlement is reached but
10 before funds are received. Id. Here, MAC successfully defeated enforcement of a
11 settlement agreement disputed by Eleanor, and litigation has continued as to the amounts
12 to be charged against Eleanor for breach of fiduciary duty, and enforcement of the no-
13 contest clause against her beneficial interest. Thus the lien may attach to the sums she is
14 affirmatively defending and/or claiming.

15 The Successor Trustee objects to the lien attaching to Eleanor's beneficial interest
16 as this would violate the Spendthrift provisions of the Trust. As discussed herein, the
17 unique nature of an attorney's charging lien allows a judgment to be entered against the
18 "affirmative recovery" sought by a party to litigation. No distinction is made in the
19 cases interpreting NRS 18.015 which would suggest that a party who is affirmatively
20 defending their right to continue to receive funds from a Trust would have a defense to
21 paying her attorneys by virtue of the fact that the Trust contains a spendthrift clause. To
22 read such a defense into NRS 18.015 would place attorneys who take on Trust litigation
23 at a disadvantage, an outcome which there is no indication the Legislature intended.

24 The Court has considered the MAC lien claim in light of the factors identified in
25 Brunzell v. Golden Gate National Bank, 85 Nev. 345, 455 P. 2d 31 (1969) factors and
26 finds that the rates charged are reasonable in the community given the (1) qualities of the
27 advocate(s) who have expertise, experience, and specialization in the field of Trusts and
28 Estates litigation; (2) the character of the work which was complex and difficult,
important to the outcome of the case, requiring significant time and skill and the need for
counsel to familiarize themselves with the history of the case within a relatively
shortened timeframe; (3) the work performed required skill time and attention; and (4)
the successful outcome objecting to enforcement of a settlement agreement, until such
time as the relationship broke down over Eleanor's misrepresentations regarding the

1 funds ordered to be held in trust. Counsel for the Successor Trustee does not challenge
2 the rate or amount billed, nor do the beneficiaries.

3 MAC billed for three separate matters, Eleanor's lawsuit against her former
4 attorney David Mann to recover the retainer paid to him; the will contest; and the instant
5 Trust litigation. The retainer agreement was signed by Eleanor in her individual capacity
6 and trustee. Eleanor opposing enforcement of the settlement agreement did not benefit
7 any of the parties, especially not the Trust. Mr. Mann has taken the position that he only
8 represented Eleanor, so seeking recovery of the fee did not benefit the Trust, nor did the
9 Will Contest.

10 Based on a review of the un-redacted billings, it appears that all of the work
11 undertaken by MAC was exclusively related to Eleanor's interests and not for the benefit
12 of the Trust and could only be assessed against Eleanor's beneficial interest.

13 MAC also seeks costs in its charging lien. The documentation attached does not
14 approach the specificity required pursuant to Cadle Co. v. Woods & Erickson, LLP, 131
15 Nev. Adv. Op. 15, 345 P.3d 1049 (2015) for an award of costs by the Court. Filing fees,
16 transcript and recording fees can be confirmed upon a review of the Court's records, so
17 any costs charged for those items will be allowed as part of the judgment. Any other
18 costs, including but not limited to charges "scanning" and "copying" will not be allowed
19 as part of the judgment.

20 Wherefore, the Court hereby GRANTS the Motion for Attorney's Lien, fees are
21 awarded in their entirety, and costs are awarded in accordance with Cadle. The lien shall
22 be a judgment only against Eleanor's beneficial interest in the Trust.

23 Dated this 9th day of February, 2017.

24 
25 GLORIA STURMAN
26 DISTRICT JUDGE
27 DEPARTMENT 26
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CERTIFICATE OF SERVICE

I hereby certify that on or about the date filed, a copy of the foregoing

DECISION AND ORDER Re: Marquis Aurbach Coffing's Motion to Adjudicate

Attorney's Lien was E-Served, mailed or a copy was placed in the attorney's folder in
the Clerk's Office as follows:

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And
400 Paradise Pkwy, Unit 111
Mesquite, NV 89027
And
8635 W. Sahara Ave., #50
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And
355 W. Mesquite Blvd., D30 #176
Mesquite, NV 89027



Linda Denman
Judicial Executive Assistant
Department 26

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF: THE W.N.
CONNELL AND MARJORIE T.
CONNELL LIVING TRUST, DATED
MAY 18, 1972,

JACQUELINE M. MONTOYA; AND
KATHRYN A. BOUVIER

Appellants,

vs.

ELEANOR C. AHERN A/K/A
ELEANOR CONNELL HARTMAN
AHERN,

Respondent.

Case No.: 71577 Electronically Filed
Aug 01 2017 01:54 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Eighth Judicial District
Court, The Honorable Gloria Sturman
Presiding, Case No. P-09-066425-T

**MOTION TO APPEAR AS AMICUS CURIAE AND FILE AMICUS
CURIAE BRIEF IN SUPPORT OF RESPONDENT'S ANSWERING BRIEF**

Marquis Aurbach Coffing

Dale A. Hayes, Esq.

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Attorneys for Prospective Amicus Curiae,

Marquis Aurbach Coffing

**MOTION TO APPEAR AS AMICUS CURIAE AND FILE AMICUS
CURIAE BRIEF IN SUPPORT OF RESPONDENT'S ANSWERING BRIEF**

The law firm of Marquis Aurbach Coffing (“MAC”) hereby seeks permission to appear in this matter for purposes of filing an Amicus Curiae Brief in support of the Respondent, Eleanor Ahern’s (“Ahern”) Answering Brief, which is currently due August 4, 2017.

Under Nevada Rule of Appellate Procedure (“NRAP”) 29, an interested party that is not a government entity may file an amicus curiae brief if granted leave to do so. Generally, leave may be granted where the amicus has an interest that may be affected by the case before the Court or where the amicus brief may provide information and insight beyond that provided by the lawyers for the parties. See NRAP 29(c) (providing that a prospective amicus must state their interest in a case and the reasons why the amicus curiae brief is desirable); see also, e.g., Ryan v. Comodity Futures Trading Com’n, 125 F.3d 1062, 1063 (7th Cir. 1997) (“An amicus brief should normally be allowed when a party is not represented competently or is not represented at all, when the amicus has an interest in some other case that may be affected by the decision in the present case, . . . or when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.”); Miller-Wohl Co. v. Comm’r of Labor & Indus., 694 F.2d 203, 204 (9th Cir. 1982)

(explaining that the “classic role” of an amicus brief is “assisting in a case of general public interest, supplementing the efforts of counsel, and drawing the court’s attention to law that escaped consideration”).

Here, MAC is interested in the legal issues Appellants advanced regarding the enforcement of no-contest clauses pursuant to NRS 163.00195. MAC’s interest is aligned with Ahern’s but separate because a reversal of the district court’s decision denying enforcement of the no-contest clause would result in the unwinding of previous orders. Specifically, the district court entered an order on February 9, 2017 granting MAC’s Motion to Adjudicate Attorney’s Lien, granting MAC a lien against Ahern’s beneficial interest in the Trust. See Decision and Order re Marquis Aurbach Coffing’s Motion to Adjudicate Attorney’s Lien and Notice of Entry of Order (“Attorney’s Lien Order”), attached as **EXHIBIT 1**. Thereafter, the district court entered a judgment in favor of MAC in the amount of \$160,955.12 (attorney fees in the amount of \$151,228.69 and costs in the amount of \$9,726.43). See Judgment entered February 28, 2016 (“Judgment”) and notice of entry of order, attached as **EXHIBIT 2**. Notably, these orders have not been appealed and are not before this Court.

Should this Court reverse, thus enforcing the no-contest clause, Ahern will no longer have a beneficial interest under the Trust. Consequently, the Attorney’s

Lien Order and Judgment against Ahern's beneficial interest in the Trust would be rendered nullities. MAC anticipates that its brief will also provide the Court with analysis of the controlling law and the public policy concerns arising out of this unique situation where enforcing the no-contest clause would nullify prior orders that are not on appeal before this Court. The brief will also address any important issues either not raised by Ahern or issues raised by Ahern that may warrant additional analysis. Therefore, MAC's interest is aligned with Ahern's interest, but MAC has a unique perspective not shared with any of the parties to this action.

To that end, MAC requests permission to make an appearance for purposes of filing a motion for leave and proposed amicus curiae brief pursuant to NRAP 29. MAC recognizes that NRAP 29 requires a motion with the proposed amicus curiae brief attached. However, under NRAP 29, MAC only has 7 days from the filing of Ahern's Answering Brief to file such a motion with a proposed brief. Given that MAC is already in a situation where it is having to collect a substantial amount of attorney fees and costs that have been due for some time, MAC is hoping to avoid drafting an amicus curiae brief if the Court is not inclined to allow its filing.

///

///

Accordingly, MAC respectfully requests the Court's advance permission to appear and brief these unique issues.

Dated this 1st day of August, 2017.

MARQUIS AURBACH COFFING

By /s/ Candice E. Renka, Esq.

Dale A. Hayes, Esq.

Nevada Bar No. 3430

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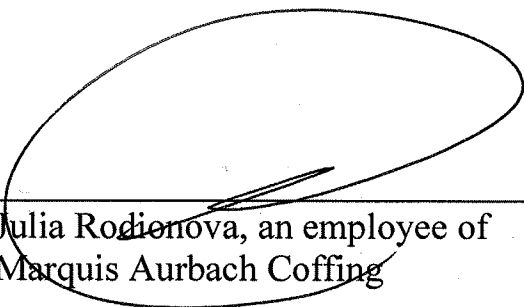
Curiae, Marquis Aurbach Coffing

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **MOTION TO APPEAR AS AMICUS CURIAE AND FILE AMICUS CURIAE BRIEF IN SUPPORT OF RESPONDENT'S ANSWERING BRIEF** was filed electronically with the Nevada Supreme Court on the 1st day of August, 2017. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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*Attorneys for Respondent Eleanor
Connell Hartman Ahern*



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