

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

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ELEANOR AHERN,

Appellant,

vs.

BROWNSTEIN HYATT FARBER  
SCHRECK, LLP,

Respondent.

Electronically Filed  
Supreme Court No.: 728975 2018 10:23 a.m.  
Elizabeth A. Brown  
District Court Case No.: Clerk of Supreme Court  
P-09-066425-T

Appeal from the Eighth Judicial  
District Court, The Honorable Gloria  
Sturman Presiding

**RESPONDENT'S MOTION FOR LEAVE TO SUPPLEMENT  
THE RECORD ON APPEAL**

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Respondent Brownstein Hyatt Farber Schreck, LLP ("BHFS"),<sup>1</sup> by and through its attorney of record, Brownstein Hyatt Farber Schreck, LLP, hereby moves for leave to supplement the record on appeal ("Motion"). This Motion is brought pursuant to NRAP 27, the following Memorandum of Points and Authorities, all pleadings and papers already on file with the Court in this appeal, and such further arguments or evidence as the Court deems appropriate.

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

BHFS requests that the Court allow it to supplement the record with: (1) the District Court's August 8, 2017, Order Regarding Motion for Assessment of Damages against Eleanor Ahern ("Damages Order") (SA0112 - SA0127); and BHFS' redacted billing statements for work performed to retain Ms. Ahern's right to payments under the Trust ("Invoices") (SA0001 - SA0111).

As the Court is aware, "meaningful, effective appellate review depends upon the availability of an accurate record covering lower court proceedings relevant to the issues on appeal." *Daniel v. State*, 119 Nev. 498, 508, 78 P.3d 890, 897 (2003) (quoting *Lopez v. State*, 105 Nev. 68, 84-85, 769 P.2d 1276, 1287 (1989)).

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<sup>1</sup> Unless otherwise noted, capitalized terms shall carry the same meaning ascribed to them in Respondent's Answering Brief.

In this case, the Damages Order reflects the District's Court's decision to award damages against Ms. Ahern for her failure to comply with her duties as trustee, such that the payments to her under the Trust (except for previously authorized payments for living expenses and legal fees) are suspended until the compensatory damages awarded against her are satisfied. (SA0112 - SA0127). The Damages Order was not part of the Appellate Record because the record was transmitted on July 12, 2017, before the Damages Order was entered. The Damages Order provides the Court context for the District Court's decision on BHFS' charging lien, and BHFS respectfully requests that the Court consider it on appeal.

BHFS also asks the Court to consider the Invoices, in connection with its alternate argument to uphold the District Court's decision on the charging lien for the portion of fees that directly led to Ms. Ahern's retention of rights to payments under the Trust. (SA0001 - SA0111; *see also* Respondent's Supplemental Response, Section IV, filed concurrently herewith.) As this Court has found, supplementing the record with evidence that was not considered by a district court is proper when such supplementation will aid the Court in making its ruling, and the evidence was offered to the district court. *See Whittlesea Blue Cab Co. v. McIntosh*, 86 Nev. 609, 611, 472 P.2d 356, 357 (1970). Here, BHFS offered to submit the Invoices to the District Court *in camera* in connection with

its motion to adjudicate its charging lien, but the District Court did not request them. (AR 8574.) The Invoices will nonetheless aid the Court in making its ruling on BHFS' alternate argument requesting that the charging lien be upheld on at least a portion of BHFS' awarded fees. (See Respondent's Supplemental Response, Section IV.)

In sum, BHFS respectfully requests that the Court allow BHFS to supplement the record with the Damages Order and Invoices.

Dated this 14th day of June, 2018.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

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**CERTIFICATE OF SERVICE**

I hereby certify that I electronically filed the foregoing **RESPONDENT'S MOTION FOR LEAVE TO SUPPLEMENT THE RECORD ON APPEAL** with the Clerk of the Court of the Supreme Court of Nevada by using the Court's Electronic Filing System on June 14, 2018.

I also hereby certify that on June 14, 2018, I served a copy of this document by mailing a true and correct copy, postage prepaid, via U.S. Mail, addressed to the following:

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*Appellant*

/s/ Paula Kay  
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