

# IN THE SUPREME COURT OF THE STATE OF NEVADA

## INDICATE FULL CAPTION:

DARRELL T. COKER, AN INDIVIDUAL,  
Appellant,  
vs.  
MARCO SASSONE,  
Respondent.

No. 73863

Electronically Filed  
Oct 23 2017 09:06 a.m.  
Elizabeth N. Brown  
Clerk of Supreme Court

DOCKETING  
CIVIL APPEALS

## GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

## WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department XXXII  
County Clark Judge Hon. Rob Bare  
District Ct. Case No. A-16-742853-C

**2. Attorney filing this docketing statement:**

Attorney Alex J. Shepard Telephone 702-420-2001  
Firm Randazza Legal Group, PLLC  
Address 4035 S. El Capitan Way  
Las Vegas, NV 89147  
  
Client(s) Darrell T. Coker

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

**3. Attorney(s) representing respondents(s):**

Attorney Dominic P. Gentile Telephone 702-880-0000  
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Client(s) Marco Sassone

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Client(s) Marco Sassone

(List additional counsel on separate sheet if necessary)

**3. Attorney(s) representing respondents(s):**

Attorney Lauren E. Paglini Telephone 702-880-0000

Firm Dominic Cristalli Miller Armeni Savarese

Address 410 S. Rampart Blvd.  
Suite 420  
Las Vegas, NV 89145

Client(s) Marco Sassone

Attorney \_\_\_\_\_ Telephone \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

Client(s) \_\_\_\_\_

(List additional counsel on separate sheet if necessary)

**4. Nature of disposition below (check all that apply):**

- |   |   |
|---|---|
| <input type="checkbox"/> Judgment after bench trial         | <input checked="" type="checkbox"/> Dismissal:  |
| <input type="checkbox"/> Judgment after jury verdict        | <input type="checkbox"/> Lack of jurisdiction   |
| <input type="checkbox"/> Summary judgment                   | <input type="checkbox"/> Failure to state a claim                                     |
| <input type="checkbox"/> Default judgment                   | <input type="checkbox"/> Failure to prosecute   |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief  | <input checked="" type="checkbox"/> Other (specify): <u>NRS 41.660 Special Motion</u> |
| <input type="checkbox"/> Grant/Denial of injunction         | <input type="checkbox"/> Divorce Decree:  |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification               |
| <input type="checkbox"/> Review of agency determination     | <input type="checkbox"/> Other disposition (specify): _____                           |

**5. Does this appeal raise issues concerning any of the following?**

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

**6. Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None.

**7. Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None.

**8. Nature of the action.** Briefly describe the nature of the action and the result below:

Plaintiff alleges (1) deceptive trade practices and (2) violations of Nevada's RICO statutes resulting from Defendant's sale of allegedly fraudulent reproductions of Plaintiff's artistic works. Defendant filed a Special Motion to Dismiss pursuant to NRS 41.660. The Court denied the motion, finding that Defendant did not meet his burden of establishing that the claims were based on good-faith communications made in direct connection with an issue of public concern. Specifically, the Court found that Defendant had not met his burden of showing that his conduct amounted to a good faith communication that was either truthful or made without knowledge of its falsehood.

**9. Issues on appeal.** State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

- (1) Whether distribution of artistic works that, by available record evidence, are in the public domain is conduct protected under Nevada's Anti-SLAPP statute, NRS 41.635, et seq.
- (2) Whether a party establishes his burden of proof under the first prong of the Anti-SLAPP statute by providing a sworn declaration regarding the truthfulness of his communication, or lack of awareness of falsity of his communication, that is not rebutted by any admissible evidence.

**10. Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None.

**11. Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

**12. Other issues.** Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: This Court has not addressed the question of whether distribution of artistic works generally, or works in the public domain specifically, constitutes conduct protected under Nevada's Anti-SLAPP statute.

**13. Assignment to the Court of Appeals or retention in the Supreme Court.** Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is presumptively retained by the Supreme Court under NRAP 17(a)(14). The matter raises as a principal issue a question of statewide public importance, namely, whether the distribution of artistic works in the public domain constitutes a communication in direct connection with an issue of public concern under Nevada's Anti-SLAPP statute.

Furthermore, the explicit language of the Anti-SLAPP statute provides that an appeal lies to the Supreme Court. NRS 41.670(4) provides that "[i]f the court denies the special motion to dismiss filed pursuant to NRS 41.660, an interlocutory appeal lies to the Supreme Court."

**14. Trial.** If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? N/A

**15. Judicial Disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

## TIMELINESS OF NOTICE OF APPEAL

**16. Date of entry of written judgment or order appealed from** August 23, 2017

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

The order appealed from is a denial of an Special Motion to Dismiss under NRS 41.660. NRS 41.670(4) provides that "[i]f the court denies the special motion to dismiss filed pursuant to NRS 41.660, an interlocutory appeal lies to the Supreme Court."

**17. Date written notice of entry of judgment or order was served** August 23, 2017

Was service by:

☐ Delivery

☒ Mail/electronic/fax

**18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)**

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b)      Date of filing \_\_\_\_\_

☐ NRCP 52(b)      Date of filing \_\_\_\_\_

☐ NRCP 59      Date of filing \_\_\_\_\_

**NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. \_\_\_\_, 245 P.3d 1190 (2010).**

(b) Date of entry of written order resolving tolling motion \_\_\_\_\_

(c) Date written notice of entry of order resolving tolling motion was served \_\_\_\_\_

Was service by:

☐ Delivery

☐ Mail



**19. Date notice of appeal filed** August 23, 2017

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If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

**20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other**

NRAP 4(a)

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### **SUBSTANTIVE APPEALABILITY**

**21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

(a)

- |  |                                       |
|--|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1)                                   | <input type="checkbox"/> NRS 38.205   |
| <input type="checkbox"/> NRAP 3A(b)(2)                                   | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3)                                   | <input type="checkbox"/> NRS 703.376  |
| <input checked="" type="checkbox"/> Other (specify) <u>NRS 41.670(4)</u> |                                       |
- 

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The order appealed from is a denial of an Special Motion to Dismiss under NRS 41.660. NRS 41.670(4) provides that "[i]f the court denies the special motion to dismiss filed pursuant to NRS 41.660, an interlocutory appeal lies to the Supreme Court."

**22. List all parties involved in the action or consolidated actions in the district court:**

(a) Parties:

Plaintiff: Marco Sassone.

Defendants: Darrell T. Coker; Darrell R. Coker, Jr; Richard Morello; Darryl McCullough; And the Jello's Jigglin, LLC d/b/a Postal Annex.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

Defendant Darrell R. Coker, Jr. is deceased.

Defendant Darrell T. Coker is not represented by the same counsel as the other Defendants, and only appeals the Anti-SLAPP order as to himself.

Following Mr. Coker filing the Notice of Appeal, Plaintiff filed his Second Amended Complaint, naming only Darrell T. Coker as a defendant.

**23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.**

Plaintiff: RICO and deceptive trade practices. There has been no formal disposition of the claims.

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?**

☐ Yes

☒ No

**25. If you answered "No" to question 24, complete the following:**

(a) Specify the claims remaining pending below:

All claims remain pending.

(b) Specify the parties remaining below:

As of Plaintiff filing his Second Amended Complaint in the district court, Darrell T. Coker is the only remaining Defendant.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

**26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):**

The order appealed from is a denial of an Special Motion to Dismiss under NRS 41.660. NRS 41.670(4) provides that "[i]f the court denies the special motion to dismiss filed pursuant to NRS 41.660, an interlocutory appeal lies to the Supreme Court."

**27. Attach file-stamped copies of the following documents:**

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

## VERIFICATION

**I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.**

Darrell T. Coker  
Name of appellant

Alex J. Shepard  
Name of counsel of record

October 20, 2017  
Date

/s/ Alex J. Shepard  
Signature of counsel of record

Clark County, Nevada  
State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 20th day of October, 2017, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Dominic Gentile, Esq.  
Dominic Cristalli Miller Armeni Savarese  
410 S. Rampart Blvd.  
Suite 420  
Las Vegas, NV 89145

Dated this 20th day of October, 2017

/s/ Alex J. Shepard  
Signature