

In the Supreme Court of the State of Nevada

IN THE MATTER OF THE CHRISTIAN)
FAMILY TRUST u.a.d. 10/11/16)

~~~~~ )  
SUSAN CHRISTIAN-PAYNE, )  
ROSEMARY KEACH AND )  
RAYMOND CHRISTIAN, JR. )  
Appellants, )

-vs- )  
ANTHONY L. BARNEY, LTD. and )  
JACQUELINE UTKIN, )  
Respondents. )

~~~~~ )  
ANTHONY L. BARNEY, LTD.,)
Cross-Appellant,)

-vs-)
SUSAN CHRISTIAN-PAYNE,)
ROSEMARY KEACH AND)
RAYMOND CHRISTIAN, JR.)
Cross-Respondents,)
and)
JACQUELINE UTKIN,)
Respondent.)
~~~~~ )

Electronically Filed  
Apr 10 2019 02:37 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No.: 75750

**APPELLANT/CROSS-RESPONDENTS'  
MOTION TO STRIKE COMBINED ANSWERING BRIEF/CROSS APPEAL  
OPENING BRIEF  
DISMISS CROSS APPEAL, ETC.,  
AND STAY OF BRIEFING PENDING RESOLUTION**

COMES NOW Appellants, Susan Christian (formerly Susan Christian-Payne), Rosemary Keach and Raymond Christian Jr., by and through their attorney, Cary Colt Payne, Esq., of the lawfirm of CARY COLT PAYNE, CHTD., hereby submits this Motion pursuant to NRAP 27.

## POINTS AND AUTHORITIES

### *I. Statement of Facts*

Appellants filed their Notice of Appeal April 26, 2018 as it related to an award of attorneys fees/costs to Nancy Christian's prior attorney, Anthony L. Barney, Ltd.

The Court modified the caption in this matter by order filed June 13, 2018, specifically noting Jacqueline Utkin (as Trustee of the CFT) as a Respondent. (**Exhibit "1"**)

Anthony L. Barney, Ltd. ("The Barney Firm") (non-party) filed its Notice of Appeal (cross-appeal) and Case Appeal Statement May 8, 2018. (**Exhibit "2"**)

The Court reinstated Briefing by order filed October 12, 2018. (**Exhibit "3"**)

Prior attorney for Respondent Jacqueline Utkin moved to withdraw as Utkin's counsel of record, which was granted by Order January 24, 2019. The order also requested responses from the other parties as to whether or not Utkin should remain a party.

The court in its Order filed February 14, 2019, ordered that Jacqueline Utkin remain a necessary party to the appeal, and ordered a briefing schedule. (**Exhibit "4"**)

On March 18, 2019, the Supreme Court received and filed what appears as the 2/14/19 Order with a handwritten notation from Utkin stating: "I'm opting out. Please remove." (**Exhibit "5"**)

The Barney Firm, represents itself, and filed their Combined Answering Brief on Appeal and Opening Brief on Cross-Appeal March 27, 2019.

## ***II. Argument***

Utkin was the interested and necessary party when the original Petition for Fees (APP-ROA-V8-577-pleading as Exhibit “A”) was filed in this matter. Utkin asserted same in her Notice of Substitution of Real Party in Interest (NRCP 17), filed in the court below on January 15, 2018 (APP-ROA-V18-1415-Exhibit “B”). She was the purported trustee who then, according to Respondent Barney firm, joined and filed a Notice of Non-Opposition and Limited Joinder on February 23, 2018 (APP-ROA-V8-660-Exhibit “C”) to the Respondent Barney firm Petition for Fees and Costs. This matter was cited to the District Court (4/4/18) and basis for such award.

Pursuant to this court’s order (2/14/19), Utkin remained a necessary party and ordered she should file an answering brief. Instead, she simply informed that she was “opting out”; therefore she did not comply with the court’s order. As Utkin was the then trustee, her failure to file any sort of response in this matter represents a confession of error. In fact, Utkin as a named party below, is the only party to this appeal who would have any standing to respond to the Appellants’ position.

NRAP 31(d)(2) states: *“If a respondent fails to file an answering brief, respondent will not be heard at oral argument except by permission of the court. The failure of respondent to file a brief may be treated by the court as a confession of error*

and appropriate disposition of the appeal thereafter made.” Also see Melvin L. Lukins & Sons v. Kast, 91 Nev. 116, 532 P.2d 602(1975); Summa Corp. v. Brooks Rent-a-Car, 95 Nev. 779, 602 P.2d 192 (1979); State v. Prins, 96 Nev. 565, 613 P.2d 408 (1980).

Respondent Barney Firm, again only representing itself, filed a cross-appeal (5/8/18) and filed their Combined Answering Brief on Appeal and Opening Brief on Cross-Appeal March 27, 2019.

The Barney Firm was not a named party in the court below, was never served with a Petition/Complaint naming itself as a party or served with process as a party. Their only role was as attorney of record for Nancy Christian (prior to her demise - one of the original Trustees).

This court has routinely held dismissing such an appeal or cross-appeals. See Albany v. Arcata Assoc, Inc., 106 Nev. 6888, 799 P.2d 566 (1990) (sole issue whether an order imposing sanctions upon a non-party is appealable, deciding such an order is not appealable); Albert D. Massi Ltd v. Bellmyre, 111 Nev. 1520, 908 P.2d 705 (1995) (an appeal from an order determining an attorney lien; the court specifically determined that an attorney representing a client in a case is not a party to the action and does not have standing to appeal).

Where no statutory authority to appeal is granted, no right to appeal exists. Kokkos v. Tsalikis, 91 Nev. 24, 530 P.2d 756 (1975). The court lacks jurisdiction

NRAP 3A(a) states that "[a]ny party aggrieved" may appeal from an appealable judgment or order in a civil action or proceeding. It also requires that a party to an appeal be a party below and aggrieved.

In this matter, The Barney Firm has no right of appeal/cross appeal because they are not a party to the underlying civil action –they were the attorneys for a (deceased) party only, yet styles themselves as a “judgment creditor”. See generally, Whitley v. State, 79 Nev. 406, 386 P.2d 93 (1963). Also see Aetna Life & Cas. Ins. Co. v. Rowan, 107 Nev. 362, 363, 812 P.2d 350,351 (1991)(holding a non-party may not appeal from an order denying its motion to intervene).

Moreover, as a non-party in the case below, The Barney Firm does not have standing to file an Answering Brief to Appellant’s appeal. They are a non-party, who seeks to represent themselves in this appeal, not in any representative capacity for any client.

The only party who has standing to participate in this appeal and/or argue against Appellant’s appeal and/or position is the then trustee, Jacqueline Utkin. She has intentionally refuses to participate, and upon whom The Barney Firm relies. (See Combined Brief pages 17-18)

In fact The Barney Firm’s combined brief is arguing potentially Utkin’s position, which Utkin intentionally refuses to do. The Barney Firm has no standing to argue another party’s positions.

Finally, that until this motion is decided, etc. that the remainder of any briefing should be stayed.

### **CONCLUSION**

It is submitted that the Supreme Court lacks jurisdiction to hear the cross-appeal of The Barney Firm, and same should be dismissed in its entirety. That as a non-party to the case below, The Barney Firm lacks standing to participate in the appeal as a party and their Combined Answering Brief on Appeal and Opening Brief on Cross-Appeal March 27, 2019 should be stricken.

Dated: April 10, 2019

*Filed by:*



CARY COLT PAYNE, ESQ.

Nevada Bar No.: 4357

CARY COLT PAYNE, CHTD.

700 S. Eighth Street

Las Vegas, NV 89101

(702) 383-9010

*carycoltpaynechtd@yahoo.com*

## CERTIFICATE OF SERVICE

I certify that pursuant to NRAP 31, on the 10<sup>th</sup> day of April, 2019, I have served to the following copy of the foregoing as follows:

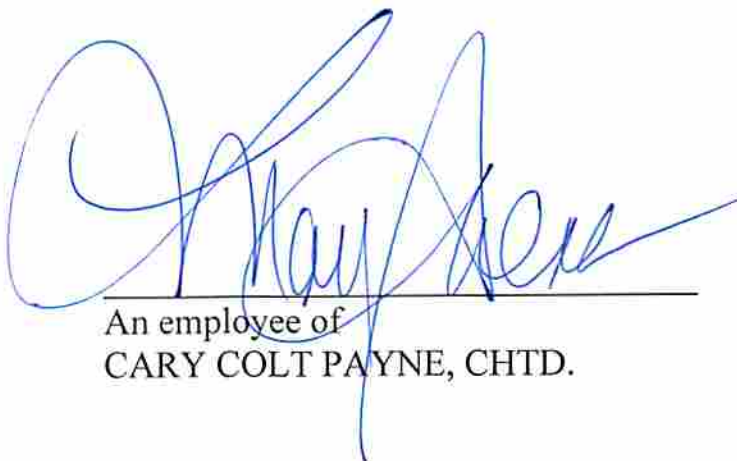
X via electronic filing by electronic filing through the Court's E-Flex System:

Anthony L. Barney, Esq.  
ANTHONY L. BARNEY LTD.  
3317 W. Charleston Blvd., Suite B  
Las Vegas, NV 89102  
*Email: anthony@anthonybarney.com*

Joseph Powell, Esq.  
RUSHFORTH, LEE & KIEFER, LLP  
1701 Village Center Circle, Suite 150  
Las Vegas, NV 89134  
*email: joey@rushforth.com*  
Attorney for Monte Reason

X via U.S. Mail to the parties last known address:

Jacqueline Utkin  
445 Seaside Avenue, Apt. 4005  
Honolulu, HI 96815



An employee of  
CARY COLT PAYNE, CHTD.



**CARY COLT PAYNE, CHTD.**

Attorney at Law

700 S. Eighth Street • Las Vegas, Nevada 89101  
(702) 383-9010 • Fax (702) 383-9049

*EXHIBIT PAGE INTENTIONALLY LEFT BLANK*

**EXHIBIT “1”**



IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE CHRISTIAN  
FAMILY TRUST U.A.D. 10/11/16

No. 75750

SUSAN CHRISTIAN-PAYNE;  
ROSEMARY KEACH; AND RAYMOND  
CHRISTIAN, JR.,  
Appellants,  
vs.  
ANTHONY L. BARNEY, LTD.; AND  
JACQUELINE UTKIN,  
Respondents.

FILED

JUN 13 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ANTHONY L. BARNEY, LTD.,  
Cross-Appellant,  
vs.  
SUSAN CHRISTIAN-PAYNE;  
ROSEMARY KEACH; AND RAYMOND  
CHRISTIAN, JR.,  
Cross-Respondents,  
and  
JACQUELINE UTKIN,  
Respondent.

ORDER MODIFYING CAPTION

Upon review of the documents before this court, including the parties' case appeal statements and appellants' docketing statement, it appears that Jacqueline Utkin, trustee, has not filed a notice of appeal and thus is properly named as a respondent, only, to both the appeal and the cross-appeal. Accordingly, the clerk of this court is directed to modify the caption of this docket to reflect the caption on this order. If any party is of the opinion that the caption, as modified, does not accurately reflect the

status of the parties to this matter, that party shall notify this court in writing within 11 days of the date of this order.

It is so ORDERED.

*Dryden*, C.J.

cc: Carolyn Worrell, Settlement Judge  
Cary Colt Payne  
Jerimy Kirschner & Associates, P.C.  
Anthony L. Barney, Ltd.



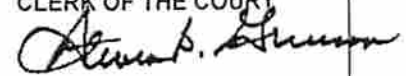
**CARY COLT PAYNE, CHTD.**

Attorney at Law

700 S. Eighth Street • Las Vegas, Nevada 89101  
(702) 383-9010 • Fax (702) 383-9049

*EXHIBIT PAGE INTENTIONALLY LEFT BLANK*

**EXHIBIT “2”**



Electronically Filed  
May 17 2018 11:09 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

1 ANTHONY L. BARNEY, ESQ.  
NV State Bar No. 8366  
2 TIFFANY S. BARNEY, ESQ.  
NV State Bar No. 9754  
3 ZACHARY D. HOLYOAK, ESQ.  
4 NV State Bar No. 14217  
5 **ANTHONY L. BARNEY, LTD.**  
3317 W. Charleston Boulevard, Suite B  
6 Las Vegas, NV 89102-1835  
Telephone: (702) 438-7878  
7 Facsimile: (702) 259-1116  
E-Mail: office@anthonybarney.com  
8 *Prior Attorneys for Nancy Christian,*  
9 *Creditors of the Christian Family Trust*

10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 In the Matter of the

Case Number: P-17-092512-T

13  
14 **THE CHRISTIAN FAMILY TRUST**

Dept.: S

15 Dated October 11, 2016

16 **NOTICE OF APPEAL**

17 **TO: SUSAN CHRISTIAN-PAYNE, ROSEMARY KEACH, and RAYMOND**  
18 **CHRISTIAN JR.,** by and through their attorney Cary C. Payne, Esq., of the Law Office  
19 of Cary Colt Payne, CHTD.

20  
21 **TO: MONTE REASON,** by and through his attorney, Joseph J. Powell, Esq., of Rushforth,  
22 Lee & Kiefer, LLP

23 **TO: JACQUELINE UTKIN,** by and through her attorney, Jerimy Kirschner, Esq. of  
24 Kirschner & Associates

25  
26 **PLEASE TAKE NOTICE,** each of you, of the following:

27 **NOTICE IS HEREBY GIVEN** that Anthony L. Barney, Ltd., Creditor of the Christian  
28 Family Trust dated October 11, 2016 hereby appeals to the Supreme Court of Nevada or

1 appellate court of competent jurisdiction from the Order entered in this action on April 12, 2018,  
2 which is an appealable order ordering or authorizing the payment of a debt, claim, devise,  
3 guardian's fees or attorney's fees, pursuant to NRS 159.325(5).  
4

5 DATED this 8<sup>th</sup> day of May, 2018.

6 RESPECTFULLY SUBMITTED,

7  
8 

9  
10 TIFFANY S. BARNEY, ESQ.  
11 ANTHONY L. BARNEY, LTD.  
12 3317 W. Charleston Blvd., Suite B  
13 Las Vegas, Nevada 89102-1835  
14 *Attorneys for Anthony L. Barney, Ltd.*  
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1 CERTIFICATE OF SERVICE

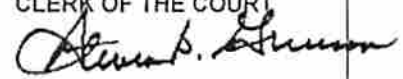
2 I hereby certify that I am an employee of Anthony L. Barney, Ltd., and not a party to  
3 this action. I further certify that on May 9, 2018, I served the foregoing **NOTICE OF**  
4 **APPEAL** through the Eighth Judicial District Court's electronic filing system, upon the  
5 following party(ies):  
6

7  
8 Cary Colt Payne, Esq.  
9 Law Office of Cary Colt Payne, CHTD.  
10 700 South 8<sup>th</sup> Street,  
11 Las Vegas, NV 89101  
12 *Attorney for Susan Christian-Payne,*  
*Rosemary Keach, and*  
*Raymond Christian, Jr.*

13 Joseph J. Powell, Esq.  
14 Rushforth, Lee & Kiefer LLP  
15 1707 Village Center Cir., #150  
16 Las Vegas, NV 89134  
17 *Attorney for Monte Reason, Successor*  
*Trustee*

18 Jerimy Kirschner, Esq.  
19 5550 Painted Mirage Rd., Suite 320  
20 Las Vegas, NV 89149  
21 *Attorney for Jacqueline Utkin, Successor*  
*Trustee*  
22  
23  
24  
25

26 \_\_\_\_\_s/ Zachary Holyoak/s\_\_\_\_\_  
27 Employee of Anthony L. Barney, Ltd.  
28



1 ANTHONY L. BARNEY, ESQ.  
NV State Bar No. 8366  
2 TIFFANY S. BARNEY, ESQ.  
NV State Bar No. 9754  
3 ZACHARY D. HOLYOAK, ESQ.  
NV State Bar No. 14217  
4 ANTHONY L. BARNEY, LTD.  
3317 W. Charleston Boulevard, Suite B  
5 Las Vegas, NV 89102-1835  
6 Telephone: (702) 438-7878  
7 Facsimile: (702) 259-1116  
8 E-Mail: office@anthonybarney.com  
9 *Prior Attorneys for Nancy Christian,  
Creditors of The Christian Family Trust*

10 **EIGHTH JUDICIAL DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 In the Matter of the

Case Number: P-17-092512-T

13  
14 THE CHRISTIAN FAMILY TRUST

Dept.: S

15 Dated October 11, 2016

16 **CASE APPEAL STATEMENT**

17 ANTHONY L. BARNEY, LTD, Creditor of the Christian Family Trust dated October  
18 11, 2016 ("Christian Family Trust"), by and through its attorneys of the law office of  
19 ANTHONY L. BARNEY, LTD., hereby submits its Case Appeal Statement for its appeal from  
20 the Order entered on April 12, 2018, which was served by the Eighth Judicial District Court  
21 electronic filing system in the above-mentioned matter, and states as follows:  
22

23 1. **Name of appellant filing this case appeal statement:** Anthony L. Barney, Ltd., Creditor  
24 of the Christian Family Trust  
25

26 2. **Identify the judge issuing the decision, judgment, or order appealed from:** Honorable  
27 Judge Vincent Ochoa of the Eighth Judicial District Court, Family Division, Department S in  
28 Clark County, Nevada, issued the Order dated April 12, 2018 from which this appeal is taken.

1 3. Identify each appellant and the name and address of counsel for each appellant:

2 A. Anthony L. Barney, Ltd., Judgment Creditor

3 Anthony L. Barney, Esq.  
4 ANTHONY L. BARNEY, LTD.  
5 3317 W. Charleston Blvd., Suite B  
6 Las Vegas, NV 89102

7 4. Identify each respondent and the name and address of appellate counsel, if known, for  
8 each respondent (if the name of a respondent's appellate counsel is unknown, indicate as  
9 much and provide the name and address of that respondent's trial counsel):

10 Appellate Counsel is unknown but Trial Counsel for Respondents are as follows:

11 A. Successor Trustee, Jacqueline Utkin, Respondent

12  
13 Jerimy Kirschner, Esq.  
14 JERIMY KIRSCHNER & ASSOCIATES, LTD. OFFICE  
15 5550 Painted Mirage Rd, #320  
16 Las Vegas, NV 89149  
17 *Attorney for Jacqueline Utkin*

18 B. Former Trustees, Susan Christian-Payne, Rosemary Keach and Raymond Christian,  
19 Jr., Respondents

20 Cary Colt Payne, Esq.  
21 LAW OFFICE OF CARY COLT PAYNE, CHTD.  
22 700 South 8th Street,  
23 Las Vegas, NV 89101  
24 *Attorney for Susan Christian-Payne,*  
25 *Rosemary Keach, and*  
26 *Raymond Christian, Jr.*

27 5. Indicate whether any attorney identified above in response to question 3 or 4 is not  
28 licensed to practice law in Nevada and, if so, whether the district court granted that  
attorney permission to appear under SCR 42 (attach a copy of any district court order  
granting such permission): All attorneys are licensed to practice law in Nevada.



1 6. Indicate whether appellant was represented by appointed or retained counsel in the  
2 district court: Appellant was represented by retained counsel in district court.

3 7. Indicate whether appellant is represented by appointed or retained counsel on appeal:  
4 Appellant is represented by retained counsel on appeal.

5 8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the  
6 date of entry of the district court order granting such leave: Appellant was not granted  
7 leave to proceed in forma pauperis.

8 9. Indicate the date the proceedings commenced in the district court (e.g., date  
9 complaint, indictment, information, or petition was filed): The Petition to Assume  
10 Jurisdiction of Trust was filed on July 31, 2017.

11 10. Provide a brief description of the nature of the action and result in the district court,  
12 including the type of judgment or order being appealed and the relief granted by the  
13 district court: This trust action arose when the Former Trustees (Susan Christian-Payne,  
14 Rosemary Keach and Raymond Christian, Jr., hereinafter "Former Trustees") were removed  
15 from their position as trustees and were replaced with another Successor Trustee by the Trustor,  
16 Nancy Christian ("Nancy"), pursuant to the terms of the Christian Family Trust. The Former  
17 Trustees filed a petition seeking to prevent their removal as trustees and, thereafter, sequestered  
18 trust funds away from Nancy up to and including the day that she died. Unfortunately, the  
19 Former Trustees continued to sequester the trust funds away from the newly appointed  
20 Successor Trustee, causing the Court to freeze all trust assets. Together with the Successor  
21 Trustee, Nancy filed claims against the Former Trustees, including, but not limited to, breach of  
22 fiduciary duty, conversion, fraudulent transfers, and undue influence, which have not yet been  
23 fully adjudicated.

1 Anthony L. Barney, Ltd., is a creditor of the trust due to the work performed on behalf of  
2 Nancy, the Trustor, to further the terms of the Trust. The Successor Trustee approved the  
3 requested fees and costs that were expended on behalf of Nancy. Pursuant to Section 11.1 of the  
4 Christian Family Trust, the Successor Trustee had discretion to do so and her exercise of  
5 discretion was binding upon all parties.  
6

7 Because the trust funds had been frozen, however, Anthony L. Barney, Ltd., was  
8 required to petition the court to unfreeze trust funds and release the approved amount of fees  
9 and costs. Instead of unfreezing the approved amount of fees and costs, the District Court only  
10 unfroze a portion of the fees; thus, causing Anthony L. Barney, Ltd., to remain a creditor and,  
11 also, requiring Anthony L. Barney, Ltd., to continue to seek the remaining fees and costs that  
12 had already been approved.  
13

14 The April 12<sup>th</sup> Order is an appealable order pursuant to NRS 159.325(5), ordering or  
15 authorizing the payment of a debt, claim, devise, guardian's fees or attorney's fees. Herein, all  
16 of the attorney's fees for the law office of Anthony L. Barney, Ltd. should have been unfrozen,  
17 because the Successor Trustee had approved them and pursuant to the terms of the Christian  
18 Family Trust, her decision was binding upon all parties in interest to the Christian Family Trust.  
19

20 **11. Indicate whether the case has previously been the subject of an appeal to or original**  
21 **writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket**  
22 **number of the prior proceeding:** This case has not previously been the subject of an appeal or  
23 original writ proceeding.  
24

25 **12. Indicate whether this appeal involves child custody or visitation:** This case does not  
26 involve child custody or visitation.  
27

28 ///

1 13. If this is a civil case, indicate whether this appeal involves the possibility of  
2 settlement: This appeal does involve the possibility of settlement.

3 DATED this 8<sup>th</sup> day of May, 2018.

4  
5 RESPECTFULLY SUBMITTED,

6 

7  
8 TIFFANY S. BARNEY, ESQ.  
9 ANTHONY L. BARNEY, LTD.  
10 3317 W. Charleston Blvd., Suite B  
11 Las Vegas, Nevada 89102-1835  
12 *Attorneys for Anthony L. Barney, Ltd.*  
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1 CERTIFICATE OF SERVICE

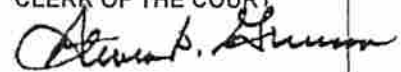
2 I hereby certify that I am an employee of Anthony L. Barney, Ltd., and not a party to  
3 this action. I further certify that on May 9, 2018 I served the foregoing CASE APPEAL  
4 STATEMENT through the Eighth Judicial District Court's electronic filing system, upon the  
5 following party(ies):  
6

7  
8 Cary Colt Payne, Esq.  
9 Law Office of Cary Colt Payne, CHTD.  
10 700 South 8<sup>th</sup> Street,  
11 Las Vegas, NV 89101  
12 *Attorney for Susan Christian-Payne,*  
*Rosemary Keach, and*  
*Raymond Christian, Jr.*

13 Joseph J. Powell, Esq.  
14 Rushforth, Lee & Kiefer LLP  
15 1707 Village Center Cir., #150  
16 Las Vegas, NV 89134  
17 *Attorney for Monte Reason, Successor*  
*Trustee*

18 Jerimy Kirschner, Esq.  
19 5550 Painted Mirage Rd., Suite 320  
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*Trustee*  
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25 \_\_\_\_\_s/ Zachary Holyoak/s\_\_\_\_\_  
26 Employee of Anthony L. Barney, Ltd.  
27  
28



1 ANTHONY L. BARNEY, ESQ.  
2 NV State Bar No. 8366  
3 TIFFANY S. BARNEY, ESQ.  
4 NV State Bar No. 9754  
5 ZACHARY D. HOLYOAK, ESQ.  
6 NV State Bar No. 14217  
7 ANTHONY L. BARNEY, LTD.  
8 3317 W. Charleston Boulevard, Suite B  
9 Las Vegas, NV 89102-1835  
10 Telephone: (702) 438-7878  
11 Facsimile: (702) 259-1116  
12 E-Mail: office@anthonybarney.com  
13 Prior Attorneys for Nancy Christian

14 **EIGHTH JUDICIAL DISTRICT COURT**

15 **FAMILY DIVISION**

16 **CLARK COUNTY, NEVADA**

17 In the Matter of the

Case Number: P-17-092512-T

Dept.: S

18 THE CHRISTIAN FAMILY TRUST

19 Dated October 11, 2016

20 **NOTICE OF ENTRY OF ORDER**

21 TO: SUSAN CHRISTIAN-PAYNE, ROSEMARY KEACH, and RAYMOND  
22 CHRISTIAN JR., by and through their attorney Cary C. Payne, Esq., of the Law Office  
23 of Cary Colt Payne, CHTD.

24 TO: MONTE REASON, by and through his attorney, Joseph J. Powell, Esq., of Rushforth,  
25 Lee & Kiefer, LLP

26 TO: JACQUELINE UTKIN, by and through her attorney, Jerimy Kirschner, Esq. of  
27 Kirschner & Associates

28 TO: CHRISTOPHER A. CHRISTIAN

TO: TOMMY L. CHRISTIAN

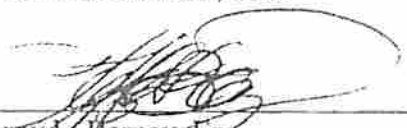
PLEASE TAKE NOTICE, each of you, of the following:

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An Order was entered and filed on April 12<sup>th</sup>, 2018 in the above entitled matter. A copy of said Order is attached hereto and incorporated herein as Exhibit 1.

Respectfully Submitted,  
ANTHONY L. BARNEY, LTD.



---

Anthony L. Barney, Esq.  
Nevada Bar No. 8366  
Tiffany S. Barney, Esq.  
Nevada Bar No. 9754  
3317 W. Charleston Blvd., Suite B  
Las Vegas, NV 89102-1835  
(702) 438-7878  
*Attorneys for Nancy Christian, Trustor*

1 CERTIFICATE OF SERVICE

2 I hereby certify that I am an employee of Anthony L. Barney, Ltd., and not a party to  
3 this action. I further certify that on April 12, 2018 I served the foregoing **NOTICE OF**  
4 **ENTRY OF ORDER** via regular mail and/or electronic service through the Eighth Judicial  
5 District Court's electronic filing system, upon the following party(ies):  
6

7  
8 Cary Colt Payne, Esq.  
9 Law Office of Cary Colt Payne, CHTD.  
10 700 South 8<sup>th</sup> Street,  
11 Las Vegas, NV 89101  
12 *Attorney for Susan Christian-Payne,*  
13 *Rosemary Keach, and*  
14 *Raymond Christian, Jr.*

15 Joseph J. Powell, Esq.  
16 Rushforth, Lee & Kiefer LLP  
17 1707 Village Center Cir., #150  
18 Las Vegas, NV 89134  
19 *Attorney for Monte Reason, Successor*  
20 *Trustee*

21 Jerimy Kirschner, Esq.  
22 5550 Painted Mirage Rd., Suite 320  
23 Las Vegas, NV 89149  
24 *Attorney for Jacqueline Utkin, Successor*  
25 *Trustee*

26 s/ Zachary Holyoak/s  
27 Employee of Anthony L. Barney, Ltd.  
28

EXHIBIT 1



*Steven D. Grierson*

1 ANTHONY L. BARNEY, ESQ.  
2 NV State Bar No. 8366  
3 TIFFANY S. BARNEY, ESQ.  
4 NV State Bar No. 9754  
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6 NV State Bar No. 14217  
7 ANTHONY L. BARNEY, LTD.  
8 3317 W. Charleston Boulevard, Suite B  
9 Las Vegas, NV 89102-1835  
10 Telephone: (702) 438-7878  
11 Facsimile: (702) 259-1116  
12 E-Mail: office@anthonybarney.com  
13 *Prior Attorneys for Nancy Christian,*  
14 *Creditors of The Christian Family Trust*

10 EIGHTH JUDICIAL DISTRICT COURT

11 CLARK COUNTY, NEVADA

12 In the Matter of the

Case Number: P-17-092512-T

13 THE CHRISTIAN FAMILY TRUST

Dept.: S

14 Dated October 11, 2016

15 ORDER

16 This matter came before the above-entitled court on April 4, 2018 at 2:00 p.m. on  
17 Anthony L. Barney, Ltd.'s, ("ALB. LTD.," or "Petitioner") Creditor of the Christian Family  
18 Trust dated October 11, 2018 ("Trust"), PETITION FOR FEES AND COSTS ("Petition"), and  
19 upon the Petitioner's Oral Motion to Strike Exhibit A of the SUPPLEMENTAL RESPONSE  
20 TO OPPOSITION TO PETITION FOR FEES (BARNEY FIRM); REQUEST FOR  
21 EVIDENTIARY HEARING, AND REOPENING DISCOVERY ("Supplement") filed March  
22 30, 2018 by Cary Colt Payne, Esq. on behalf of Susan Christian Payne ("Susan"), Rosemary  
23 Keach ("Rosemary"), and Raymond Christian Jr. ("Raymond"). The Petitioner was represented  
24 by its attorneys at the Law Office of Anthony L. Barney, Ltd. Jackie Utkin, Successor Trustee

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1 of the Trust was not present but was represented by her attorney, Jerimy Kirschner, Esq., Monte  
2 Reason, former Trustee and beneficiary of the Trust was not present but was represented by his  
3 attorney Joseph J. Powell, Esq., Raymond was not present, Susan and Rosemary were present  
4 and Raymond, Susan and Rosemary were represented by Cary C. Payne, Esq., After reviewing  
5 the pleadings on file in this matter, hearing the oral argument, and reviewing the evidence, the  
6 Court hereby makes the following findings of fact and conclusions of law.  
7

8 **I. FINDINGS OF FACT**  
9

10 The Court hereby finds the following:

- 11 1. The Trust contains broad discretion regarding decisions made by the Trustee with the  
12 specific language of the Trust stating:

13 **11.1 Protection.** Trustees shall not be liable for any loss or injury to the property at  
14 any time held by them hereunder, except only such as may result from their fraud,  
15 willful misconduct, or gross negligence. Every election, determination, or other  
16 exercise by Trustees of any discretion vested, either expressly or by implication, in  
17 them, pursuant to this Trust Agreement, whether made upon a question actually  
raised or implied in their acts and proceedings, shall be conclusive and binding upon  
all parties in interest.

- 18 2. The Trust's spendthrift provision does not apply to the trustor's interest in the Trust estate  
19 regarding the fees and costs payable to ALB, LTD.  
20  
21 3. ALB, LTD's request for payment of fees has been approved by the prior Trustee, Monte  
22 Reason, and the current Trustee, Jackie Utkin.  
23  
24 4. The Court has previously ordered that all Trust assets be frozen pending the current  
litigation in this matter.  
25  
26 5. Exhibit A to Susan, Rosemary, and Raymond's Supplement is immaterial and impertinent  
27 in this matter.  
28

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## II. CONCLUSIONS OF LAW

1. NRS 132.390(c)(8) states in pertinent part "[f]or the purposes of this title, a person is an interested person with respect to:... at trust, if the person:... Is a creditor of the settlor who has a claim which has been accepted by the trustee."

2. NRCP 12(f) provides:

Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

## III. ORDER

WHEREFORE, the Court hereby orders, adjudges and decrees the following:

1. That within seven (7) days of the entry of this order a certified check in the amount of \$50,000.00 shall be issued by Chase Bank from either or both blocked trust accounts (if funds are insufficient in either account), currently held in the names of Susan Christian-Payne, Rosemary Keach, and Raymond Christian Jr., at Chase Bank, account numbers 000000446556040 and 000003008644816 (a Chase Private Client Savings Account) and shall be delivered to Jackie Utkin as Trustee of the Christian Family Trust;

2. That within seven (7) days of the entry of this order a certified check in the amount of \$3,031.97 representing the costs filed with this Court which were incurred by ALB, LTD., shall be issued by Chase Bank from either or both blocked trust accounts (if funds are insufficient in either account), currently held in the names of Susan Christian-Payne, Rosemary Keach, and Raymond Christian Jr., at Chase Bank, account numbers at Chase Bank, account numbers 000000446556040 and 000003008644816 (a Chase Private Client Savings Account) and shall be delivered to Jackie Utkin as Trustee of the Christian Family Trust;

1 3. That within seven (7) days of receipt of the certified checks for \$50,000.00 and  
2 \$3,031.97, Jackie Utkin shall pay \$53,031.97 to ALB, LTD., for payment of attorney's fees and  
3 costs; and,  
4

5 4. That Exhibit A of the SUPPLEMENTAL RESPONSE TO OPPOSITION TO  
6 PETITION FOR FEES (BARNEY FIRM); REQUEST FOR EVIDENTIARY HEARING,  
7 AND REOPENING DISCOVERY is hereby stricken from the Nevada Eighth Judicial District  
8 Court's record as immaterial and impertinent.  
9

10 IT IS SO ORDERED, ADJUDGED AND DECREED.

11 DATED this 10th day of April 2018. *VO*

*Vincent Ochow*  
DISTRICT COURT JUDGE *Yue*

12  
13  
14 Respectfully Submitted,  
15 ANTHONY L. BARNEY, LTD.

16 *Anthony L. Barney*  
17 Anthony L. Barney, Esq.  
18 Nevada Bar No. 8366  
19 Tiffany S. Barney, Esq.  
20 Nevada Bar No. 9754  
21 Zachary D. Holyoak, Esq.  
22 Nevada Bar No. 14217  
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25 office@anthonybarney.com  
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27  
28



**CARY COLT PAYNE, CHTD.**

Attorney at Law

700 S. Eighth Street • Las Vegas, Nevada 89101  
(702) 383-9010 • Fax (702) 383-9049

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**EXHIBIT "3"**

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE CHRISTIAN  
FAMILY TRUST U.A.D. 10/11/16

No. 75750

SUSAN CHRISTIAN-PAYNE;  
ROSEMARY KEACH; AND RAYMOND  
CHRISTIAN, JR.,

Appellants,

vs.

ANTHONY L. BARNEY, LTD.; AND  
JACQUELINE UTKIN,

Respondents.

**FILED**

OCT 12 2018

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ANTHONY L. BARNEY, LTD.,

Cross-Appellant,

vs.

SUSAN CHRISTIAN-PAYNE;  
ROSEMARY KEACH; AND RAYMOND  
CHRISTIAN, JR.,

Cross-Respondents,

and

JACQUELINE UTKIN,

Respondent.

*ORDER REINSTATING BRIEFING*

Pursuant to NRAP 16, the settlement judge has filed a report with this court indicating that the parties were unable to agree to a settlement. Accordingly, we reinstate the deadlines for requesting transcripts and filing briefs. See NRAP 16.

Appellants and cross-appellant shall have 15 days from the date of this order to file and serve a transcript request form or certificate of no transcript request. See NRAP 9(a). Further, appellants shall have 90 days

from the date of this order to file and serve the opening brief and appendix.<sup>1</sup> Thereafter, appellants and cross-appellant shall comply with the briefing schedule set forth in NRAP 28.1(c) (briefing in cases with cross-appeals). Respondent Jacqueline Utkin shall have 30 days from the date when appellants' opening brief is served to file an answering brief on appeal, and 30 days from the date when cross-appellant's combined answering brief on appeal and opening brief on cross-appeal is served to file an answering brief on cross-appeal. If Utkin does not intend to file an answering brief on appeal and/or cross-appeal, she may so inform the court, in writing, within those same timeframes.

It is so ORDERED.

 C.J.

cc: Carolyn Worrell, Settlement Judge  
Cary Colt Payne  
Jerimy Kirschner & Associates, P.C.  
Anthony L. Barney, Ltd.

<sup>1</sup>In preparing and assembling the appendix, counsel shall strictly comply with the provisions of NRAP 30.



**CARY COLT PAYNE, CHTD.**

Attorney at Law

700 S. Eighth Street • Las Vegas, Nevada 89101  
(702) 383-9010 • Fax (702) 383-9049

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**EXHIBIT “4”**



IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE CHRISTIAN  
FAMILY TRUST U.A.D. 10/11/16

No. 75750

SUSAN CHRISTIAN-PAYNE;  
ROSEMARY KEACH; AND RAYMOND  
CHRISTIAN, JR.,

Appellants,

vs.

ANTHONY L. BARNEY, LTD.; AND  
JACQUELINE UTKIN,

Respondents.

**FILED**

FEB 14 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

ANTHONY L. BARNEY, LTD.,  
Cross-Appellant,

vs.

SUSAN CHRISTIAN-PAYNE;  
ROSEMARY KEACH; AND RAYMOND  
CHRISTIAN, JR.,

Cross-Respondents,

and

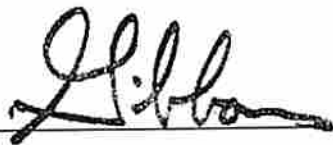
JACQUELINE UTKIN,  
Respondent.

**ORDER**

In response to this court's January 24, 2019, order, appellants and cross-appellant are in disagreement as to whether Jacqueline Utkin remains a necessary party to this appeal. Ms. Utkin shall remain a party to this appeal at this time. *See Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 448, 874 P.2d 729, 735 (1994). Ms. Utkin shall have 15 days from the date of this order to retain substitute counsel and cause counsel to file a notice of appearance in this court. If no notice of appearance is filed on behalf of Ms. Utkin within this time period, Ms. Utkin shall proceed pro se in this appeal.

The briefing schedule is reinstated as follows. Ms. Utkin shall have 45 days from the date of this order to file and serve an answering brief on appeal. Cross-appellant Anthony L. Barney, Ltd. shall have 45 days from the date of this order to file and serve a combined answering brief on appeal and opening brief on cross-appeal. Ms. Utkin shall have 30 days from service of the combined answering brief on appeal and opening brief on cross-appeal to file an answering brief on cross-appeal. Thereafter, briefing shall comply with NRAP 28.1(c). If Ms. Utkin does not intend to file an answering brief on appeal and/or cross-appeal, she may so inform the court, in writing, within those same timeframes.

It is so ORDERED.

 C.J.

cc: Cary Colt Payne  
Anthony L. Barney, Ltd.  
Jacqueline Utkin  
Hutchison & Steffen, LLC/Las Vegas



**CARY COLT PAYNE, CHTD.**

Attorney at Law  
700 S. Eighth Street • Las Vegas, Nevada 89101  
(702) 383-9010 • Fax (702) 383-9049

*EXHIBIT PAGE INTENTIONALLY LEFT BLANK*

**EXHIBIT “5”**

3-12-2019  
I'm opting out —  
Please remove me  
Sincerely  
Jacqueline Utkin

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE CHRISTIAN  
FAMILY TRUST U.A.D. 10/11/16

SUSAN CHRISTIAN-PAYNE;  
ROSEMARY KEACH; AND RAYMOND  
CHRISTIAN, JR.,

Appellants,

vs.

ANTHONY L. BARNEY, LTD.; AND  
JACQUELINE UTKIN,

Respondents.

ANTHONY L. BARNEY, LTD.,

Cross-Appellant,

vs.

SUSAN CHRISTIAN-PAYNE;  
ROSEMARY KEACH; AND RAYMOND  
CHRISTIAN, JR.,

Cross-Respondents,

and

JACQUELINE UTKIN,

Respondent.

No. 75750

**FILED**

FEB 14 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

**FILED**

MAR 18 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY J. Hedges  
DEPUTY CLERK

ORDER

In response to this court's January 24, 2019, order, appellants and cross-appellant are in disagreement as to whether Jacqueline Utkin remains a necessary party to this appeal. Ms. Utkin shall remain a party to this appeal at this time. See *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 448, 874 P.2d 729, 735 (1994). Ms. Utkin shall have 15 days from the date of this order to retain substitute counsel and cause counsel to file a notice of appearance in this court. If no notice of appearance is filed on behalf of Ms. Utkin within this time period, Ms. Utkin shall proceed pro se

RECEIVED  
MAR 18 2019  
MAR 18 2019 appeal.

SUPREME COURT  
OF  
NEVADA

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
DEPUTY CLERK

19-11925

19-11925

The briefing schedule is reinstated as follows. Ms. Utkin shall have 45 days from the date of this order to file and serve an answering brief on appeal. Cross-appellant Anthony L. Barney, Ltd. shall have 45 days from the date of this order to file and serve a combined answering brief on appeal and opening brief on cross-appeal. Ms. Utkin shall have 30 days from service of the combined answering brief on appeal and opening brief on cross-appeal to file an answering brief on cross-appeal. Thereafter, briefing shall comply with NRAP 28.1(c). If Ms. Utkin does not intend to file an answering brief on appeal and/or cross-appeal, she may so inform the court, in writing, within those same timeframes.

It is so ORDERED.

 C.J.

cc: Cary Colt Payne  
Anthony L. Barney, Ltd.  
Jacqueline Utkin  
Hutchison & Steffen, LLC/Las Vegas