

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE
WILLIAM J. RAGGIO FAMILY TRUST.

DALE CHECKET RAGGIO, individually and
as Trustee of The Marital Deduction Portion
and Credit Share of the William J. Raggio
Family Trust,
Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF WASHOE;
AND THE HONORABLE DAVID A. HARDY,
Respondents,

and

LESLIE RAGGIO RIGHETTI and TRACY
RAGGIO CHEW, Co Trustees of the William
J. Raggio and Dorothy B. Raggio Trust under
agreement dated January 27, 1998 as
decanted and Vested Remaindermen of the
Marital Deduction portion of The William J.
Raggio Family Trust,
Real Parties in Interest.

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Co-Trustees of the William J. Raggio and Dorothy B. Raggio Trust under
agreement dated January 27, 1998 as decanted and Vested Remaindermen of
the Marital Deduction portion of The William J. Raggio Family Trust

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Elizabeth A. Brown
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**Respondents' Appendix
to Answer to Petition
for Writ of Prohibition
or, Alternatively,
Mandamus**

Concerning the District
Court, Department 15
(Hon. David A. Hardy),
Second Judicial District

APPENDIX

DATE	DOCUMENT	VOL.	PAGE NO.
05/22/2015	Objection to Petition for Approval of Accounting, Counter Petition for Removal and Surcharge of Trustee	N/A	RA0001-RA0022
01/02/2011	Everett "Chet" Checket Obituary	N/A	RA0023-RA0024
08/30/2012	Kathleen A. Checket Obituary	N/A	RA0025

CERTIFICATE OF SERVICE

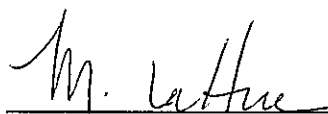
I, Michele E. LaHue, certify that on October 17, 2018, I electronically filed the forgoing **Respondents' Appendix to Answer to Petition for Writ of Prohibition or, Alternatively, Mandamus** with the Clerk of the Nevada Supreme Court via the Court's e-Flex system. Service will be made by e-Flex on the registered participants. Non-e-Flex participants will be served by U.S. mail, as noted.

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**IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

IN THE MATTER OF THE
WILLIAM J. RAGGIO FAMILY
TRUST

CASE NO.: PR13-00624
DEPT. NO.: PR

**OBJECTION TO PETITION FOR APPROVAL OF ACCOUNTING, COUNTER
PETITION FOR REMOVAL AND SURCHARGE OF TRUSTEE**

Leslie Raggio Righetti ("Leslie"), as a Co-Trustee under the William J. and Dorothy B. Raggio Family Trust Agreement dated January 27, 1998, as recently "decanted" pursuant to NRS 163.556, and as a vested remainder beneficiary of the William J. Raggio Marital Deduction Trust created from The William J. Raggio Family Trust ("The Marital Deduction Trust"), by and through her counsel, the law firm of Maupin, Cox & LeGoy, hereby:

1. Objects to the charge and discharge statement and accountants' compilation report (the "Accounting") for the Marital Deduction Trust attached as Exhibit 1 to the Petition for Approval of Accounting filed by Dale Checket-Raggio ("Dale"), as Trustee;

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2. seeks removal of Dale as Trustee of the Marital Deduction Trust pursuant to NRS 163.115;
3. seeks to have the Court surcharge Dale as Trustee for having breached her fiduciary obligations and duties owed to Leslie and other beneficiaries of the Marital Deduction Trust;
4. seeks to enjoin Dale, as Trustee from committing any further breaches of trust;
5. seeks to compel Dale, as Trustee to redress her breaches of trust by repatriation of excess distributions she made to herself as sole lifetime beneficiary of the Marital Deduction Trust;
6. requests the Court to appoint a temporary trustee to take possession of the assets of the Marital Deduction Trust and administer the trust properly; and
7. to trace trust property that has been wrongfully distributed and recover such property or its proceeds.

This objection and counter-petition ("Objection") is based on the following Memorandum of Points and Authorities, the attached Exhibit, all papers and pleadings on file herein, and additional evidence to be obtained as part of discovery prior to an evidentiary hearing or trial on the merits.

MEMORANDUM OF POINTS AND AUTHORITIES

I. OVERVIEW OBJECTION.

Leslie files this Objection challenging the "support" distributions from the principal of the Marital Deduction Trust made by Dale, as Trustee, to herself as sole lifetime beneficiary of the Marital Deduction Trust, for among other reasons, unreasonableness,

1 dishonesty, or improper motivation. Leslie acknowledges that Dale, as lifetime beneficiary,
2 is entitled to mandatory distributions of net income from the Marital Deduction Trust and
3 discretionary distributions of principal as "necessary" for Dale's "proper support." Based
4 on the information set forth in Dale's Accounting, during the period of the accounting which
5 covered approximately one year from July 22, 2013 to July 31, 2014 (the "Accounting
6 Period"), Dale exercised her discretion, as Trustee of the Marital Deduction Trust to benefit
7 herself through distribution of approximately \$200,000 of principal above and beyond the
8 approximate \$48,000 of income she received from the Marital Deduction Trust, to the
9 detriment of the remainder beneficiaries.

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11 As set forth in the Accounting, the Marital Deduction Trust earned dividend and
12 interest income in the amount of \$64,018. As further set forth in the Accounting, during
13 the Accounting Period, legal, accounting and investment fees charged to the Marital
14 Deduction Trust totaled \$32,730, of which approximately one-half (1/2) or \$16,000, should
15 be subtracted from the gross income to arrive at the net income to which Dale is entitled
16 to receive from the Marital Deduction Trust. Leslie acknowledges that Dale was entitled
17 to distribution of the Marital Deduction Trust's net income of approximately \$48,000 for the
18 Accounting Period. However, she challenges the propriety of the additional distributions
19 of principal made to Dale totaling \$200,000 as reported in the Accounting. Dale, as
20 Trustee, made these excess principal distributions to herself, as beneficiary, under the
21 guise of being "necessary" for her "proper support." The total distributions of \$248,000
22 equate to 9.7% of the beginning principal balance of the Marital Deduction Trust. The
23 combination of these distributions and the administrative expenses resulted in a shrinkage
24 of the asset value from \$2,555,471 to \$2,345,377, during the Accounting Period.

25 The terms applicable to the Trustee's authority over the Marital Deduction Trust are
26 set forth in section 5.1 of The William J. Raggio Family Trust under the agreement dated

1 April 13, 2007, which provides as follows:

2 "In addition, the Trustee shall pay to or apply for the benefit of DALE
3 CHECKET-RAGGIO as much of the principal of the Trust as the Trustee, in
4 the Trustee's discretion shall deem **necessary** for the **proper support**, care,
5 and maintenance of the [sic] DALE CHECKET-RAGGIO." (*Emphasis
6 added.*)

7 The above terms set forth a requirement that the Trustee deem the principal
8 distributions **necessary** for the **proper** support of herself before making such distributions.
9 Dale has breached the fiduciary duties she owes to Leslie and all other vested remainder
10 beneficiaries of the Marital Deduction Trust by improperly exercising her discretionary
11 authority to distribute principal to herself in violation of the trust terms and applicable
12 fiduciary law and further refusing requests for supporting information. On information and
13 belief, Leslie alleges that the distributions Dale made in her capacity as Trustee to herself
14 in her capacity as a beneficiary, were (1) far in excess of the "standard of living Dale is
15 accustomed to from her marriage to William Raggio" referenced in Dale's Petition for
16 Approval of Accounting, p. 2, In 17-18, and therefore are outside the amount "necessary"
17 for her "proper" support, and (2) are an attempt to unreasonably and improperly drain the
18 resources of the Marital Deduction Trust to effectuate a disinheritance of the natural
19 children of William J. Raggio ("Bill") in direct contradiction to the intent of the Grantor, Bill.
20 The ultimate result of Dale's actions, if allowed to continue unchecked, will result in the
21 disinheritance of the natural children of Bill.

22 NRS 163.115 provides various remedies for a breach of trust by a trustee.
23 Specifically, this statute provides as follows:

24 **Breach of trust by trustee: Maintenance of proceeding; permissible
25 purposes for maintenance of proceeding; nonexclusivity of
26 remedies; method of commencing proceeding.**

1. If a trustee commits or threatens to commit a breach of trust, a beneficiary or co-trustee of the trust may maintain a proceeding for any of the following purposes that is appropriate:

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- (a) To compel the trustee to perform his or her duties.
- (b) To enjoin the trustee from committing the breach of trust.
- (c) To compel the trustee to redress the breach of trust by payment of money or otherwise.
- (d) To appoint a receiver or temporary trustee to take possession of the trust property and administer the trust.
- (e) To remove the trustee.
- (f) To set aside acts of the trustee.
- (g) To reduce or deny compensation of the trustee.
- (h) To impose an equitable lien or a constructive trust on trust property.
- (i) To trace trust property that has been wrongfully disposed of and recover the property or its proceeds.

Given Dale's blatant disregard for the duties she owes to the remainder beneficiaries as evidenced by her recent Accounting, Leslie brings this Objection in order to prevent further damage to the intent of the Grantor and the interests of the remainder beneficiaries.

II. BACKGROUND INFORMATION RELATED TO THE GRANTOR'S FAMILY AND TRUSTS HEREIN.

Bill was married to his first wife, Dorothy B. Raggio ("Dorothy") for forty-nine and one-half (49½) years. They had three children, daughter Leslie, daughter Tracy L. Chew ("Tracy") and son Mark Raggio ("Mark"). Mark predeceased Bill and Dorothy without leaving issue. During Dorothy's and Bill's joint lifetimes they created The Bill and Dorothy Raggio Trust. When Dorothy died in 1998, the Bill and Dorothy Raggio Trust provided for the creation of two sub-trusts – a revocable Survivor's Trust ("Bill's Survivor's Trust") and an irrevocable Credit Shelter Trust ("Dorothy's Credit Shelter Trust").

1 The Bill and Dorothy Raggio Trust provided that upon Dorothy's death, Bill was to
2 serve as the Trustee of both Bill's Survivor's Trust and Dorothy's Credit Shelter Trust.
3 Thereafter, the terms of The Bill and Dorothy Raggio Trust provided that Leslie was to
4 serve as the successor Trustee of both Trusts when Bill was unable to so serve. The
5 dispositive provisions of both Trusts provided for Bill's benefit for life, and upon Bill's death,
6 Leslie and Tracy were each to receive distribution, free of trust, of one-half (1/2) of the
7 assets. Dorothy's Credit Shelter Trust was irrevocable, and the above provisions remained
8 unchanged during Bill's lifetime as to that trust which is not the subject of this Objection.
9

10 Bill's Survivor's Trust was revocable, and Bill amended the same from time to time.
11 Bill married his second wife, Dale, then age 65 in April, 2004. Bill was then age 78. The
12 last amendment to Bill's Survivor's Trust provided that upon Bill's death, Bill's Survivor's
13 Trust would be distributed with cash gifts of \$50,000 to each of his six grandchildren, and
14 with the residue of Bill's Survivor's Trust was to be divided into separate shares with one-
15 third (1/3) to each of his wife, Dale, his daughter, Leslie, and his daughter, Tracy.

16 Prior to his death, Bill established a new trust known as The William J. Raggio
17 Family Trust into which were decanted the assets of Bill's Survivor's Trust. Dale was NOT
18 a co-settlor or co-grantor of The William J. Raggio Family Trust as it was funded solely
19 from Bill's separate property (from Bill's Survivor's Trust). Bill named himself as Trustee
20 of The William J. Raggio Family Trust and named his new wife, Dale as the successor
21 Trustee, followed by Leslie and Tracy, in that order.
22

23 Bill and Dale were married for just seven and one-half (7½) years when Bill died on
24 February 24, 2012, during a trip to Australia. On Bill's death, the terms of The William J.
25 Raggio Family Trust provided for specific gifts of \$50,000 to each of Bill's six grandchildren.
26 In addition, The William J. Raggio Family Trust, and related Estate of William J. Raggio,

1 resulted in the distribution, free of trust, to Dale of tangible personal property, substantial
2 cash, significant life insurance proceeds, retirement plan accounts, and the residence of
3 Bill, located at 1855 Webster Way.

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5 The residue of The William J. Raggio Family Trust was thereafter divided into the
6 Marital Deduction Trust and a Credit Shelter Trust ("Bill's Credit Shelter Trust"). It is these
7 trusts that are now at issue herein. The Marital Deduction Trust provides for a "QTIP trust,"
8 so there are mandatory distributions of net income payable to Dale for her life. In addition
9 to the net income distributions under the Marital Deduction Trust, Dale is also to receive
10 "as much of the principal of the trust ["QTIP trust"] as the Trustee, in the Trustee's
11 discretion, shall deem **necessary** for the **proper support**, care, and maintenance of the
12 [sic] DALE CHECKET-RAGGIO." Upon the death of Dale (Dale is age 75 and her
13 actuarial life expectancy per IRS tables is 11.12 years), the remaining balance of the
14 Marital Deduction Trust is to be added to Dorothy's Credit Shelter Trust (of which one-half
15 (1/2) will be distributed to each of Leslie and Tracy). Accordingly, Leslie and Tracy are to
16 ultimately receive inheritance from their father from the Marital Deduction Trust upon Dale's
17 death.

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19 With respect to Bill's Credit Shelter Trust, during Dale's lifetime, Dale is entitled to
20 "as much of the net income and principal of [Bill's] Credit Shelter Trust " as the Trustee,
21 in the Trustee's discretion, shall deem **necessary** for the **proper support**, care, and
22 maintenance of DALE CHECKET-RAGGIO." On Dale's death, Bill's Credit Shelter Trust
23 is to be divided into equal shares among Dale's then living grandchildren and their issue
24 (who live in Australia and, on information and belief, had little to no relationship with Bill).
25 Thus, none of Bill's Credit Shelter Trust is to be distributed to Leslie and Tracy, neither of
26 whom has a cordial or blood relationship with Dale. While Leslie and Tracy are to receive
the entire remainder of the Marital Deduction Trust on Dale's death, that bequest will

1 ultimately be meaningless if Dale has since drained the Marital Deduction Trust.

2 On information and belief, Leslie believes that very little, if any, of the net income
3 or principal of Bill's Credit Shelter Trust has been distributed to Dale during the Accounting
4 Period even though the support distribution standard for Bill's Credit Shelter Trust is
5 identical to the Marital Deduction Trust. In other words, on information and belief, Leslie
6 asserts that Dale is electing for her own benefit to draw down principal from the Marital
7 Deduction Trust instead of using other assets, despite access. Since no part of Bill's
8 Credit Shelter Trust will be distributed to Leslie and Tracy, Dale is directly favoring and
9 benefitting the remainder beneficiaries of Bill's Credit Shelter Trust (who are Dale's blood
10 relatives) to the detriment of the remainder beneficiaries of the Marital Deduction Trust
11 (who are Bill's blood relatives). Consequently, if Dale uses solely the Marital Deduction
12 Trust for her "proper support, maintenance, and care", there will be no remainder of the
13 Marital Deduction Trust left for Leslie and Tracy. The entire Marital Deduction Trust will be
14 depleted under the current rate of expenditure during Dale's lifetime. Dale as "trustee" and
15 as lifetime beneficiary of the Marital Deduction Trust will totally and effectively disinherit
16 Bill's daughters, just as if Bill had left the entire Marital Deduction Trust outright to Dale
17 which he did not do.

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19 The Form 706 United States Federal Estate Tax Return filed for Bill's estate reports
20 that Bill's Credit Shelter Trust was funded with \$3,940,964. In truth, Bill's Credit Shelter
21 Trust was funded with much more than this amount because of the appreciation in the
22 value of The William J. Raggio Family Trust assets between Bill's death, and the date on
23 which the Marital Deduction Trust and Bill's Credit Shelter Trust were actually funded. The
24 timing in the funding of the two trusts, which was completed by Dale as Trustee, had the
25 unfortunate result of further prejudicing the remainder beneficiaries of the Marital
26 Deduction Trust, which was funded with the lesser \$2,555,471 amount based on the

1 funding formula set forth in The William J. Raggio Family Trust Agreement since the
2 Marital Deduction Trust did not share in the appreciation during the funding period. The
3 timing of such funding did however directly benefit Bill's Credit Shelter Trust, all of which
4 passes on Dale's death to Dale's blood relatives.

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6 Based on the design of Bill's estate plan, not only was Dale a lifetime beneficiary of
7 both the Marital Deduction Trust and Bill's Credit Shelter Trust, but Dale also received
8 valuable assets and property free of trust which were reported on Bill's 706 to exceed
9 \$1,800,000 consisting of cash, personal property, insurance and retirement benefits. See
10 Exhibit 1.¹ Therefore, it is apparent that Dale inherited \$1,800,000 of assets, outright and
11 free of trust, which she has access to utilize, in addition to the mandatory income
12 distributions from the Marital Deduction Trust. She also has the right to receive income
13 from Bill's Credit Shelter Trust, and further ability to receive additional distributions of
14 principal that the Trustee determine "necessary" for her "proper support" from both the
15 Marital Deduction Trust and Bill's Credit Shelter Trust.

16 As reflected in the Accounting, the Marital Deduction Trust earned approximately
17 \$48,000 in net income, which was distributed to Dale, along with an additional \$200,000
18 of principal that Dale deemed "necessary" for her "proper support." At this rate (and
19 assuming a 2% dividend stream similar to the S&P 500), the Marital Deduction Trust will
20 be completely depleted by Dale in approximately ten (10) years and prior to the anticipated
21 life expectancy of Dale (11.12 years). Meanwhile, Bill's Credit Shelter Trust which has
22 almost double the value of the assets from the Marital Deduction Trust, is believed to have
23 been relatively untouched by Dale despite that trust's ability to generate income for Dale's
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25
26 ¹ Exhibit 1 attached hereto and incorporated herein, shows a schematic diagram of how Bill's estate was distributed to Dale and the minimum amounts that were to be funded into the Marital Deduction Trust and Bill's Credit Shelter Trust.

1 proper support, care and maintenance. On information and belief, Dale is relying primarily,
2 if not solely, on the Marital Deduction Trust for her "support," without regard to the other
3 resources available to her including the \$1,800,000 she received outright on Bill's death
4 and at least another \$4,000,000 in Bill's Credit Shelter Trust. The effect of Dale's actions
5 will disinherit Leslie and the other remainder beneficiaries, and will increase the inheritance
6 of Dale's own family. Such a result, carried out by Dale under the guise of her authority
7 as Trustee, is entirely contrary to the duties of a fiduciary to act in good faith, and to be
8 impartial and loyal to all beneficiaries whom she serves.
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10 III. LEGAL ARGUMENT IN SUPPORT OF OBJECTIONS.

11 It is undisputed that a trustee owes fiduciary duties to the remainder beneficiaries
12 of a trust. Included among the many duties a trustee owes to beneficiaries are the duties
13 of good faith, impartiality and loyalty. The duty of impartiality means the trustee must show
14 impartiality in balancing the interest of lifetime beneficiaries (the interests of Dale) with
15 those of remainder beneficiaries (the interest of Leslie and Tracy). The duty of loyalty
16 prohibits a trustee from placing her own best interests ahead of the interests of the trust's
17 beneficiaries. Dale, as Trustee, has breached her fiduciary duties by making excessive
18 support distributions from the Marital Deduction Trust to herself, as beneficiary. On
19 information and belief, and which further discovery is expected to evidence, these
20 excessive distributions to Dale are well in excess of the standard of living which she
21 enjoyed during her seven and one-half (7 1/2) year marriage to Bill. Aside from that, on
22 information and belief, Dale has not made distributions to herself from the assets of Bill's
23 Credit Shelter Trust even though there is more than \$4,000,000 in that Trust which may
24 be used to provide for her support. Moreover, on Bill's February 24, 2012 death, Dale
25 received bequests free of trust from Bill totaling \$1,800,000, which included cash, a
26 personal residence, life insurance proceeds, and substantial retirement plan benefits of

1 which Dale has the ability to access for her support. Dale is ignoring her other resources
2 while claiming that the distributions to herself from the Marital Deduction Trust are
3 "necessary" for her "proper support." In other words, she has manufactured her own
4 necessity and is electing to satisfy that self-determined necessity from principal
5 distributions from the Marital Deduction Trust.

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7 Dale's counsel cites NRS 163.4175 to contend that Dale, as Trustee, was not
8 required to consider her other sources of income or resources before making support
9 distributions to herself, as the income beneficiary. NRS 163.4175 provides that: "[e]xcept
10 **as otherwise provided in the trust instrument**, the trustee is not required to consider a
11 beneficiary's assets or resources in determining whether to make a distribution of trust
12 assets." NRS 163.4175 (Emphasis added). In point of fact, The William J. Raggio Family
13 Trust Agreement actually does specifically address this issue and therefore Dale may not
14 ignore her other resources. With respect to both Bill's Credit Shelter Trust and the Marital
15 Deduction Trust, the trustee is only permitted to distribute principal assets to Dale if the
16 distribution is "necessary" for Dale's "proper support." Specifically, Dale, as beneficiary, is
17 entitled to distributions of principal of both trusts "as the Trustee, in the Trustee's
18 discretion, shall deem **necessary** for the proper **support**, care, and maintenance of DALE
19 CHECKET-RAGGIO."

20 Inclusion of the word "necessary" essentially means what is needed, not whatever
21 the trustee who also is the beneficiary decides she wants it to mean. "Wants" are not the
22 same as "needs". Merriam-Webster's dictionary defines necessary as "absolutely needed."
23 It is impossible for Dale, as Trustee, to determine what is "absolutely needed" by Dale, as
24 beneficiary, without considering the other assets or resources available to her and her
25 obligations in her role as Trustee to all beneficiaries. Indeed, in most situations, the trustee
26 is circumspect in determining what is "necessary" to satisfy a beneficiary's support interest.

1 Most trustees carefully consider and weigh the rights of the remainder beneficiaries, to
2 whom they owe fiduciary duties, prior to determining whether a principal distribution is
3 "necessary" for a lifetime beneficiary. Here, Dale is on both sides of the decision,
4 completely ignoring her fiduciary duties as Trustee to the remainder beneficiaries with the
5 apparent belief that she can distribute any amount she desires to herself as beneficiary
6 regardless of whether it is "necessary."
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8 NRS 163.4175 does *not* abrogate the fiduciary duties a trustee owes to remainder
9 beneficiaries. To the contrary, the trustee still "has a duty to act in a reasonable manner
10 in attempting to ascertain the beneficiary's **needs** and, under the usual rule of construction,
11 other resources that may be appropriately and reasonably available for purposes relevant
12 to the discretionary power." *Restatement (Third) of Trust* § 50, Cmt. (e)(1) (Emphasis
13 added). Moreover, "a Trustee may have discretion, and perhaps a duty, to take account
14 of the principal of the beneficiary's personal estate, depending on the terms and purposes
15 of the discretionary power and other purposes of the discretionary power and other
16 purposes of the trust." *Restatement (Third) of Trust* § 50, Cmt. (e)(2). "The settlors
17 relationships and objectives with respect to both the beneficiary in question and the trust's
18 other current and remainder beneficiaries are of particular relevance." *Id.*

19 A fundamental duty of a trustee is impartiality. A trustee cannot be considered to
20 have acted impartially when it is abundantly clear that she is preferring herself at the
21 expense of the remainder beneficiaries to whom she as trustee clearly owes fiduciary
22 duties. A trustee "is always subject to accountability to remaindermen where discretion is
23 improperly, arbitrarily or capriciously exercised." *Mesler v. Holly*, 318 So.2d 530, 533 (Fla.
24 Ct. App. 1975). "Clearly, a trustee who is also a beneficiary and who is given a power, or
25 discretion, to invade the trust principal has a fiduciary obligation to the remaindermen to
26 keep her demands within reasonable limits." *Id.* The *Mesler* court also noted that correcting

1 a trustee's abuse of discretion is particularly appropriate if the trustee is distributing
2 principal to herself as a lifetime beneficiary. *Id.*

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4 In particular, a trustee has a fiduciary duty to act impartially as to two or more trusts
5 in allocating, investing, managing, and distributing the trust property. *See e.g., Epworth*
6 *Orphanage v. Long*, 36 S.E.2d 37, 44 (S.C. 1945). "The law does not recognize the right
7 of a trustee to escape or minimize [her] obligation by putting [herself] in a position where
8 [her] obligation to one trust conflicts with [her] obligation to another trust or with [her]
9 personal interests." *Id.* A trustee of two trusts who enters into a transaction involving
10 dealing between the two trusts has the burden, where the transaction is challenged as
11 unfair and results in a loss to one of the trusts, of showing that the transaction was in good
12 faith and in the exercise of sound discretion and prudence. *See, e.g., First Nat. Bank v.*
13 *Basham*, 238 Ala. 500, 509, 191 So. 873, 880 (1939).

14
15 There is also a general obligation for fiduciaries to disclose all relevant facts to
16 beneficiaries, particularly when the fiduciary is engaged in self-dealing to the potential
17 detriment of those beneficiaries. *See e.g., Lind v. Webber*, 36 Nev. 623, 134 P. 461, 465
18 (1913). "[W]hen a fiduciary, in furtherance of its individual interests, deals with the
19 beneficiary of the duty in a matter relating to the fiduciary relationship, the fiduciary is
20 strictly obligated to make 'full disclosure' of all material facts." *Blue Chip Emerald LLC v.*
21 *Allied Partners Inc.*, 299 A.D.2d 278, 279, 750 N.Y.S.2d 291 (2002). Moreover, "if a trustee
22 does not make a full disclosure of material facts to a beneficiary, that conduct is a breach
23 of the trustee's duty of loyalty . . . The law concludes this breach is intentional." *Zastrow*
24 *v. Journal Communications, Inc.*, 718 N.W.2d 51, 61 (Wis. 2006); *see also Huie v.*
25 *DeShazo*, 922 S.W.2d 920, 923 (Tex. 1996). Even if a fiduciary's actions are legal, he is
26 in breach when his legal actions are for his own benefit and not for the beneficiary. *Flippo*
v. CSC Associates III, L.L.C., 262 Va. 48, 57, 547 S.E.2d 216, 222 (Va. 2001).

1 A trustee owes a duty of loyalty to beneficiaries and a trustee may not place his own
2 best interests ahead of the interests of the trust's beneficiaries, even if the trustee's actions
3 are vaguely authorized by the trust instrument. "Even a power expressly conferred by the
4 trust instrument, or by statute, is subject to the fundamental duties of prudence, loyalty,
5 and impartiality." *Restatement (Third) of Trusts* § 70, Cmt. (a). Even if the act in question
6 was one the trustee had the power to perform, the trustee must exercise that power in a
7 manner consistent with the applicable standards of fiduciary conduct. *Id.* at Cmt. (a)(1). "A
8 trustee, in deciding whether and how to exercise the powers of the trusteeship, even those
9 expressly authorized by trust provision or statute, has a duty to the beneficiaries to act in
10 good faith, with prudence, and in accordance with the trustee's other fiduciary duties." *Id.*
11 at Cmt. (d). A fiduciary breaches his duty of loyalty when he fails to promote and protect
12 the interests of the beneficiary over anyone else. *See e.g., Lind v. Webber*, 36 Nev. 623,
13 134 P. 461, 467 (1913); *see also, Shoen v. SAC Holding Corp.*, 122 Nev. 621, 632, 137
14 P.3d 1171, 1178 (2006). A trustee, who is also a beneficiary, breaches her fiduciary duties
15 to other beneficiaries where she makes unreasonably large distributions to herself at the
16 expense of the trust's other beneficiaries. *See e.g., Restatement (Third) of Trusts* § 50.

19 Dale's legal counsel has cited the Restatement (Third) of Trusts as authority in
20 support of Dale's excessive distributions. Actually, the Restatement (Third) of Trusts
21 condemns Dale's exercise of discretion as reported in the Accounting and further provides
22 guidance which contradicts the propriety of Dale's actions. In particular, the Restatement
23 states as follows:

24 **"[W]here a beneficiary is entitled to payments from another trust**
25 **created by the same settlor (e.g., nonmarital and marital deduction**
26 **trusts for a surviving spouse), or as a part of coordinated estate**

1 **planning with another (such as the settlor's spouse), required**
2 **distributions from the other trust—and the purposes of both trusts—are**
3 **to be taken into account by the trustee in deciding whether, in what**
4 **amounts, and from which trust(s) discretionary payments are to be**
5 **made.”** *Restatement (Third) of Trusts* § 50, Cmt. (e) (Emphasis added).

6 Those are precisely our facts in this case. The Marital Deduction Trust is the
7 “marital deduction trust” in the comment while Bill’s Credit Shelter Trust is the “nonmarital
8 trust.” Both of the trusts, as well as Dale’s outright testamentary gifts from Bill of over
9 \$1,800,000, are all part of a coordinated estate plan with the same settlor, i.e., Bill. Dale
10 has an identical distribution standard for both the Marital Deduction Trust and Bill’s Credit
11 Shelter Trust. Bill’s Credit Shelter Trust is almost twice the size and value of the Marital
12 Deduction Trust and the testamentary gifts Dale received from Bill are nearly the same size
13 as the Marital Deduction Trust. Yet, on information and belief, Dale’s distributions from the
14 Marital Deduction Trust dwarf any distributions Dale has made to herself from Bill’s Credit
15 Shelter Trust, if any. The Petitioner respectfully submits that this Court must hold Dale
16 to the standards set forth in the Restatement (Third) of Trusts. If this Court does not put
17 a stop to Dale’s excessive support distributions immediately, Dale, as Trustee and life
18 beneficiary, will continue unbridled and the end result will be to rob Leslie and Tracy from
19 what their father Bill intended for them to receive, specifically a remainder interest in a trust
20 at Dale’s death.
21

22 NRS 30.060 provides that any person interested in the administration of a trust may
23 have a declaration of rights to direct the trustee to do or abstain from doing any particular
24 act in their fiduciary capacity or to determine any questions arising in the administration of
25 the trust. Leslie is an interested person under NRS 30.060 as a remainder beneficiary of
26

1 the Marital Deduction Trust authorized to bring this Objection and to seek the relief
2 requested herein.

3
4 In addition to the above acts of breach, Dale's stonewalling and refusal to disclose
5 to Leslie material facts relevant to support the actions reported in the Accounting violates
6 Dale's fiduciary duty of loyalty to Leslie, particularly since Dale is engaged in self-dealing
7 by making distributions to herself to the potential detriment of Leslie under the guise of
8 "necessary" support needs. In summary, to date, despite reasonable attempts and
9 requests, Dale has refused to provide information to Leslie related to the disbursements
10 she has received from other sources, her methodology of determining the amount of her
11 "need," and how she determined that the need required a principal disbursement of
12 \$200,000 from the Marital Deduction Trust in light of the totality of assets available to Dale,
13 as demonstrated by the values shown on Bill's IRS Form 706 and Exhibit 1.

14
15 IV. RELIEF REQUESTED

16 Based upon the foregoing, Leslie requests that the Court take immediate action to
17 prevent Dale's ongoing breaches to prevent disinheritance of Bill's children, and to allow
18 the parties broad discovery to determine the amount of Dale's proper support needs, her
19 "accustomed standard of living" when Bill was alive, the other resources available to Dale
20 including Bill's Credit Shelter Trust and what amounts, if any, have been distributed from
21 that trust to Dale for her "proper support." If the facts bear out what Leslie has alleged
22 herein on information and belief, then Leslie requests this Court to enter the following
23 Orders:

- 24
25 A. Deny Dale's Petition for Approval of Accounting.
26 B. Remove Dale as Trustee of the Marital Deduction Trust pursuant to NRS
163.115.

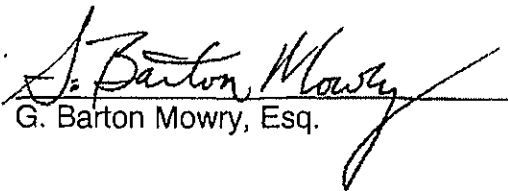
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- C. Surcharge Dale, Trustee, for breaching her fiduciary obligations and duties owed to Leslie and Tracy.
- D. Enjoin Dale, as Trustee, from committing any further breaches of trust.
- E. Compel Dale, as Trustee, to repatriate excess distributions she made to herself from the principal of the Marital Deduction Trust.
- F. Appoint a temporary Trustee to take possession of the assets of the Marital Deduction Trust and administer the trust properly.
- G. Trace trust property that has been wrongfully distributed and recover such property or its proceeds.
- H. Dale be required to pay out of her personal funds the attorneys' fees, costs and expenses that Leslie and Tracy have incurred in protecting their rights as remainder beneficiaries of the Marital Deduction Trust.
- I. Such other and further relief as the Court deems just and proper in these circumstances.

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the personal information of any person.

Dated this 12 day of May, 2015.


G. Barton Mowry, Esq.

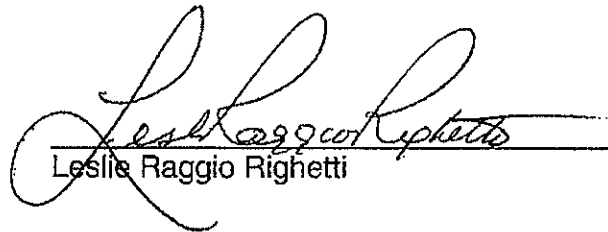
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VERIFICATION

Leslie Raggio Righetti hereby declares the following:

1. She is the objector and Petitioner herein;
2. She has read the foregoing Objection to Petition for Approval of Accounting, Counter Petition for Removal and Surcharge of Trustee ("Objection") and knows the contents thereof; and
3. She declares under penalties of perjury that the statements made in the Objection are true of her own knowledge, except for those matters stated on information and belief, and as to those matters she believes them to be true.

Dated this 22 day of May, 2015.


Leslie Raggio Righetti

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of MAUPIN, COX & LeGOY and on this 22 day of May, 2015, I served the foregoing, Objection to Petition for Approval of Accounting, Counter Petition for Removal and Surcharge of Trustee on all parties to this action by:

- Placing the original or true copy thereof in a sealed envelope for collection and mailing in the United States Mail, at Reno, Nevada, postage paid, following ordinary business practices.
- Facsimile (FAX)
- Eflex Filing System
- Messenger Service

Addressed as follows:

Tim Riley, Esq.
Soraya Aguirre, Esq.
Holland & Hart
5441 Kietzke Lane
Reno, NV 89511

John Echeverria, Esq.
Echeverria Law Office
9432 Double R. Blvd.
Reno, NV 89511

Michael A. Rosenauer, Esq.
Rosenauer & Wallace
510 West Plumb Lane
Suite A
Reno, NV 89509

Dated this 22 day of May, 2015


An Employee of Maupin, Cox & LeGoy

LIST OF EXHIBITS

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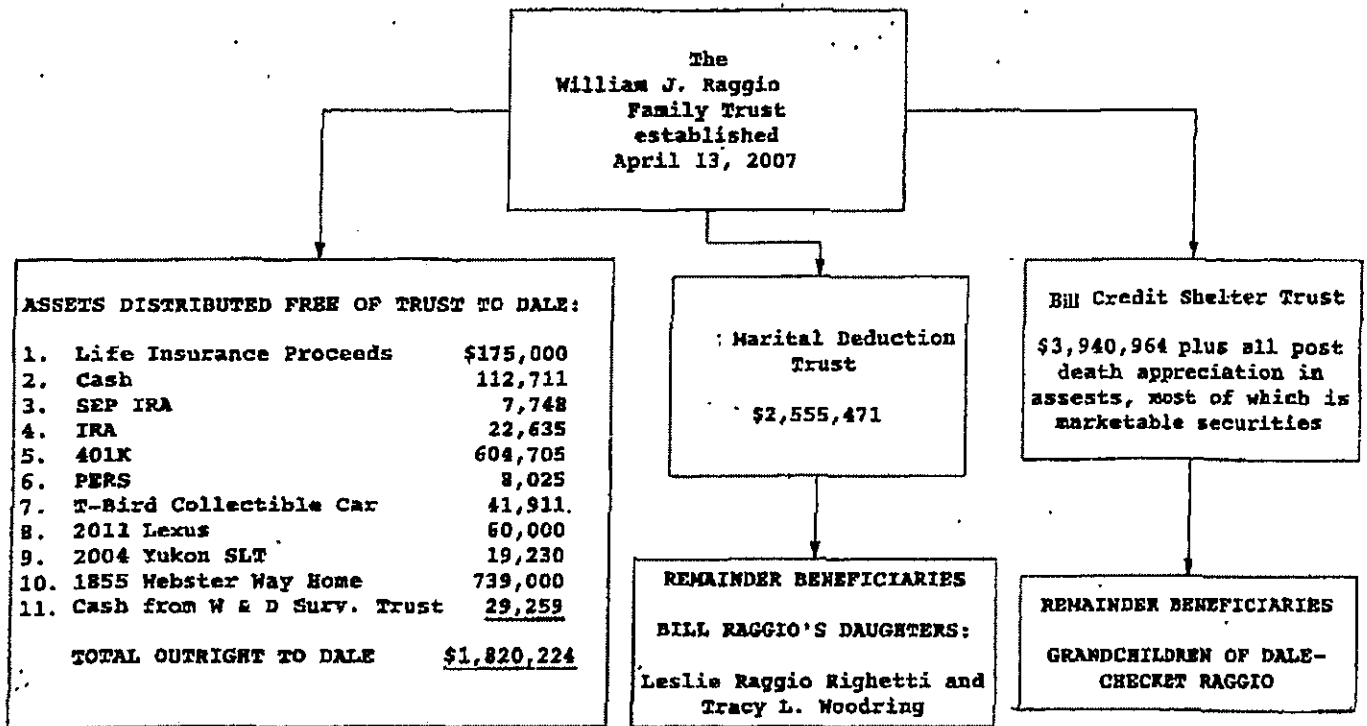
1. Schematic of Bill Raggio's assets distributed to Dale Checket-Raggio and allocated to trusts

1 page

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Everett "Chet" Checket

Obituary Condolences



Everett "Chet" Checket, peacefully departed this Earth on November 24, 2010, having given it significantly more than he ever asked or took from it. From his service in the Pacific Theater of Operations during World War II (where he rose quickly through the ranks to Lieutenant Colonel), to his international business career with Mobil Oil Corporation, where his rise was equally as swift, Chet had an uncanny ability to bridge divides and unite those both under and above him to reach whatever common goal he had been charged to achieve. Whether it was directing the prosecution of war criminals under General Douglas MacArthur (including that of General Yamashita Tomoyuki, The Tiger of Malaya), negotiating complex international shipping agreements on behalf of Mobil Oil, or testifying before the United States Congress on international trade issues, Chet's attention to detail and professionalism consistently permitted him to persevere and prosper.

During his 35-year career with Mobil, he held many positions, including as a director and vice president of Mobil Oil Corporation, executive vice president of its International Division, president of its Worldwide Marketing and Refining Division, and president of its Marine Transportation and Marine Sales Division. His international experience included work in Europe, The Middle East, South Africa, the Philippines, Singapore, and Japan, which bestowed upon him the Order of the Sacred Treasure. After his retirement, he continued to consult in the international business arena and in 2001 published "Principles of Negotiation - A Primer for Intercultural Strategies".

A graduate of Drexel University, Chet is a member of The Drexel 100, the university's hall of fame of alumni chosen for their lifetime achievements. He also was a lifetime honorary member of the Japan Society, as well as a member of the American Bureau of Shipping.

Chet is survived by his beautiful wife, Kathleen, to whom he was married and devoted himself for over sixty years, her daughter, Dale Raggio (Nevada State Senator William J. Raggio), her grandson, David Everett Joffick, of Sidney, Australia and her great-grandsons, Thomas Joffick and Harrison Joffick, of Sydney, Australia.

Over 20 years ago, Chet and Kathy founded the Checket Cup, which quickly became and remains a popular stop



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on the USTA's Les Grande Dames Women's Tennis Tour. The 2011 event will be held at The Tennis Club in Fort Lauderdale during the first week of February where, at 5:00 p.m. on February 3, 2011, there will be a Celebration of Life honoring Chet for his contributions to women's tennis and to the world around him.

Donations may be made to the [Alzheimer's Association](#), 3333 Forest Hill Blvd., Suite 101, West Palm Beach, Florida 33406 or the [American Cancer Society](#) of Broward County, Florida, 3363 West Commercial Blvd., Suite 100, Fort Lauderdale, Florida 33309.

Published in Reno Gazette-Journal from Jan. 2 to Jan. 3, 2011

REMEMBER

Share memories or express condolences below.

THE GUEST BOOK IS EXPIRED

"One of the last aristocrats. He will be missed."

-Peter Tavoulareas

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Please restore the Guest Book to share in the life story for EVERETT "CHET" CHECKET

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Kathleen A. Checket

Obituary Condolences

Checket, Kathleen A., born January 22, 1917 in Manila, N.S.W, Australia to Cecil and Ethel Kramer, passed away on August 27, 2012. Kathleen went to the Philippines in 1945 with the American Red Cross, where she met and married Everett "Chet" Checket, the love of her life in 1947, who predeceased her November 24, 2010. An active tennis player, Kathleen sponsored the "Checket Cup", a senior women's sanctioned U.S.T.A. tennis tournament held at the Fort Lauderdale Club for over 25 years. Survivors include her only daughter, Dale Raggio, Reno, NV; grandson David E. Joffick; great-grandsons Thomas and Harrison, all of Sydney, Australia; brother Bruce Kramer, Yamba, N.S.W. Australia. Donations may be made to the Palm Beach Hospice and the American Cancer Society of Palm Beach.



Published In Sun-Sentinel on Aug. 30, 2012

REMEMBER

Share memories or express condolences below.

THE GUEST BOOK IS EXPIRED

"Kathleen and Chet were two of my favorite people. They are so very much missed."

-David Felder
2 ENTRIES

Please restore the Guest Book to share in the life story for KATHLEEN A. CHECKET

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