

## IN THE SUPREME COURT OF THE STATE OF NEVADA

### INDICATE FULL CAPTION:

IN THE MATTER OF THE GUARDIANSHIP  
OF THE PERSON AND ESTATE OF:  
CARMEN GOMEZ WITTLER, AN ADULT

No. 76948

Electronically Filed  
Nov 19 2018 09:53 a.m.

Elizabeth A. Brown  
Clerk of Supreme Court  
DOCKETING STATEMENT  
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 First Department 1  
County Carson Judge The Honorable James E. Wilson  
District Ct. Case No. 18GRD000381B

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

Attorney Jennifer Richards, Esq. Telephone 775-321-2066  
Firm Washoe Legal Services  
Address 299 South Arlington Avenue  
Reno, NV 89501

Client(s) Carmen Gomez-Wittler

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 Joel Locke, Esq. Telephone 775-687-0202  
Firm Allison MacKenzie  
Address 402 N. Division Street  
Carson City, NV 89703

Client(s) Eric Wittler

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

Firm \_\_\_\_\_

Address \_\_\_\_\_

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

(List additional counsel on separate sheet if necessary)

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

- |  |  |
|--|--|
| <input checked="" type="checkbox"/> Judgment after bench trial | <input 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 type="checkbox"/> Other (specify): _____                                      |
| <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 checked="" type="checkbox"/> Other disposition (specify): <u>Guardianship</u> |

**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:

N/A

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

This is an adult guardianship action in which petitioner, Eric Wittler, petitioned the Court for temporary and permanent guardianship of the person and estate of Ms. Carmen Gomez-Wittler.

The protected person moved to dismiss the petition for temporary guardianship based on a lack of jurisdiction under NRS 159.1998 and also argued that there were not sufficient facts to support a temporary guardianship under NRS 159.0523 and NRS 159.0252.

The court denied the motion, granted a temporary guardianship over the person and estate under NRS 159.1998(2)(b).

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

The issues on appeal are whether the district court committed reversible error by; (1) granting and extending a temporary guardianship without making any factual findings pursuant to NRS 159.0523 and NRS 159.0525, (2) not holding a hearing within 10 days of entering a temporary guardianship order, (3) no factual findings regarding notice requirements, including personal service of the proposed protected person, (4) granting a temporary guardianship without a valid physician's certificate and assessment per NRS 159.0523 and NRS 159.0525 and (5) finding a jurisdictional basis exists under NRS 159.1998 (2)(b).

**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:

In re Guardianship of Vandermark, Supreme Court Case #75600 addresses the issue of jurisdiction under NRS 159.1998.

**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: The appeal would require an interpretation of the uniform guardianship and protective proceedings jurisdiction act which would be an issue of first impression in Nevada.

The issues of public policy are related to temporary guardianships and the standards of due process required for their imposition.

**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 case is presumptively assigned to the Court of Appeals pursuant to NRAP 17(b)(5), as it is a case "involving family law matters other than termination of parental rights."

**14. Trial.** If this action proceeded to trial, how many days did the trial last? \_\_\_\_\_

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** 8/22/2018

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

**17. Date written notice of entry of judgment or order was served** 8/24/2018

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** 9/7/2018

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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)(1); NRS 159.375 (1)

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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 checked="" 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 checked="" type="checkbox"/> NRAP 3A(b)(3)              | <input type="checkbox"/> NRS 703.376  |
| <input type="checkbox"/> Other (specify) <u>NRS 159.375(1)</u> |                                       |
- 

(b) Explain how each authority provides a basis for appeal from the judgment or order:  
NRAP 3A(b)(1)

An order regarding a temporary guardianship is a final order regarding the designated time constraints imposed for guardianship. Plenary guardianship is a separate and distinct action.

NRS 159.375 (1)

Specific statutory authority exists to appeal the "granting or revoking" of letters of guardianship. Here, an Order Granting Temporary Guardianship and which authorizes the issuance of letters of guardianship is the basis of the appeal.



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

(a) Parties:

Carmen Gomez-Wittler represented by Washoe Legal Services

Eric Wittler represented by Allison MacKenzie

(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:

**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.**

N/A

**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:

(b) Specify the parties remaining below:

(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 is appealable based up specific statutory authority under NRAP 3(a)(b)(1) and NRS 159.375 (1).

**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.

Carmen Gomez-Wittler

Name of appellant

11/16/18

Date

Jennifer M. Richards, Esq.

Name of counsel of record

Jennifer Richards

Signature of counsel of record

Washoe County, Nevada

State and county where signed

## CERTIFICATE OF SERVICE

I certify that on the 16<sup>th</sup> day of November, 2018, 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.)

Joel Locke, Esq.

P.O. Box 646

Carson City, NV 89702

Dated this 16<sup>th</sup> day of November, 2018

Joel Locke

Signature

ALLISON MacKENZIE, LTD.  
402 North Division Street, P.O. Box 646, Carson City, NV 89702  
Telephone: (775) 687-0202 Fax: (775) 882-7918  
E-Mail Address: law@allisonmackenzie.com

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2 Nevada State Bar No. 10128  
3 ALLISON MacKENZIE, LTD.  
4 402 N. Division Street  
5 P.O. Box 646  
6 Carson City, NV 89702  
7 Telephone: (775) 687-0202  
8 Facsimile: (775) 882-7918

9 Attorneys for Petitioner,  
10 ERIC R. WITTLER

REC'D & FILED

2018 MAY -9 PH 1:05

SUSAN HERRIWETHER  
CLERK

11 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
12 IN AND FOR CARSON CITY

13 IN THE MATTER OF THE  
14 GUARDIANSHIP OF THE PERSON  
15 AND ESTATE OF:

Case No. 18GRD 00038 1B  
Dept. No. II

16 CARMEN GOMEZ WITTLER,  
17 an Adult.

18 **ORDER APPOINTING TEMPORARY GUARDIAN,**  
19 **ISSUING LETTERS OF TEMPORARY GUARDIANSHIP, AND**  
20 **SETTING HEARING ON EXTENSION OF TEMPORARY GUARDIANSHIP**

21 Petitioner, ERIC R. WITTLER, by and through his attorneys, ALLISON MacKENZIE,  
22 LTD., having petitioned this Court for the Appointment of Temporary and Permanent Guardian of the  
23 Person and Estate of CARMEN GOMEZ WITTLER, an Adult Proposed Protected Person, and the  
24 Court having reviewed the evidence, read the papers, and considered the matter, with good cause  
25 appearing, IT IS HEREBY FOUND AND ORDERED:

26 1. That the adult Protected Person is at immediate risk of substantial harm, and  
27 incapable of managing her financial affairs and making those decisions necessary for her treatment and  
28 well-being;

2. That the adult Protected Person has an Estate consisting of an amount in excess  
of Two Hundred Thousand and No/00 Dollars (\$200,000.00);

3. That the Proposed Protected Person receives income as specified in the Petition;

1                   4.       That Petitioner, ERIC R. WITTLER be and hereby is appointed as Temporary  
2 Guardian of the Person and Estate of CARMEN GOMEZ WITTLER, and that Letters of Temporary  
3 Guardianship be issued to him, and that no bond shall be required.

4. That Petitioner, ERIC R. WITTLER be and hereby is appointed as Temporary Guardian of the Person and Estate of CARMEN GOMEZ WITTLER, and that Letters of Temporary Guardianship be issued to him, and that no bond shall be required.

5. That a hearing of this matter shall be held on the 22 day of May, 2018, at 8:30 a.m., in the Department of the above-entitled Court, at which time a determination shall be made concerning the extension of the Temporary Guardianship.

6. That the Proposed Protected Person is executed from attending before the Court at the time set forth above to show cause, if any she may have, as to why this Temporary Guardianship should not be extended by the Court.

7. That the Temporary Guardian, ERIC R. WITTLER, is authorized to execute all documentation on behalf of the Protected Person, CARMEN GOMEZ WITTLER, necessary to obtain federal and/or state assistance to keep her in her present placement, to make changes to any federal tax withholdings, to execute any other documentation to take charge of her Person and Estate, in the Protected Person's best interest, and to have all authority granted by law under NRS Chapter 159 as Guardian of her Person and Estate;

8. That this Order for Temporary Guardianship shall lapse on the date set for the hearing to continue the Temporary Guardianship unless otherwise extended by the Court on said date.

IT IS SO ORDERED.

DATED this 7 day of May, 2018.

James M. Miley  
DISTRICT JUDGE

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5 Attorneys for Petitioner,  
6 ERIC R. WITTLER

REC'D & FILED

2018 MAY 30 AM 9:19

SUSAN MERRIWETHER  
CLERK

SY GREENBURG  
NOTARY

7  
8 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
9 IN AND FOR CARSON CITY

10  
11 IN THE MATTER OF THE  
GUARDIANSHIP OF THE PERSON  
12 AND ESTATE OF:

Case No. 18 GRD 00038 1B

Dept. No. II

13 CARMEN GOMEZ WITTLER,  
14 an Adult.

15  
16 **ORDER EXTENDING TEMPORARY GUARDIANSHIP AND SETTING HEARING**

17 Petitioner, ERIC R. WITTLER, by and through his attorneys, ALLISON MacKENZIE,  
18 LTD., having petitioned this Court for the Appointment of Temporary and Permanent Guardian of the  
19 Person and Estate of CARMEN GOMEZ WITTLER, an Adult Proposed Protected Person, and this  
20 Court having issued an Order Appointing Temporary Guardian, Issuing Letters of Temporary  
21 Guardianship, and Washoe Legal Services having filed a Motion to Dismiss, good cause appearing  
22 therefor: **IT IS HEREBY ORDERED** as follows:

23 1. That the Temporary Guardianship of CARMEN GOMEZ WITTLER is hereby  
24 extended until further Order of this Court pending a hearing on WASHOE LEGAL SERVICES'  
25 Motion to Dismiss and the extension of the Temporary Guardianship.

26 2. That it is in the best interest of the Adult Protected Person that the appointment  
27 of Petitioner as temporary guardian of the Person and Estate previously entered herein, and the Letters  
28

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1 of Temporary Guardianship filed thereafter, be continued in full force and effect pending a hearing on  
2 the further extension of the temporary guardianship and on the pending Motion to Dismiss.

3 3. That within seven (7) days of this Order, counsel shall contact the judicial  
4 assistant and set a hearing on the further extension of the Temporary Guardianship and the pending  
5 Motion to Dismiss, and the parties shall select a date convenient to the Court, the parties, and the  
6 witnesses.

7 IT IS SO ORDERED.

8 DATED this 29 day of May, 2018.

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12 DISTRICT JUDGE  
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4831-9023-1654, v. 1

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5 Attorneys for Petitioner,  
6 ERIC R. WITTLER

7  
8 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
9 IN AND FOR CARSON CITY

10  
11 IN THE MATTER OF THE  
GUARDIANSHIP OF THE PERSON  
12 AND ESTATE OF:

Case No. 18 GRD 00038 1B

Dept. No. II

13 CARMEN GOMEZ WITTLER,

14 an Adult.  
15 \_\_\_\_\_

16 **NOTICE OF ENTRY OF ORDER**

17 NOTICE IS HEREBY GIVEN that on the 30<sup>th</sup> of May, 2018, the Court duly entered an  
18 Order Extending Temporary Guardianship and Setting Hearing, in the above-entitled matter. A  
19 copy of said Order is attached hereto.

20 DATED this 30 day of May, 2018.

21 ALLISON MacKENZIE, LTD.

22  
23 By: 

24 JOEL W. LOCKE, ESQ.  
Nevada State Bar No. 10128  
25 Attorneys for Petitioner,  
ERIC R. WITTLER  
26  
27  
28



**CERTIFICATE OF SERVICE**

Pursuant to NRCP Rule 5(b), I hereby certify that I am an employee of ALLISON MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served to all parties to this action by:

  X   Placing a true copy thereof in a sealed postage prepaid envelope in the United States  
Mail in Carson City, Nevada [NRCP 5(b)(2)(B)]  
       Hand-delivery - via Reno/Carson Messenger Service [NRCP 5(b)(2)(A)]  
       Facsimile  
       E-Mail  
       Federal Express, UPS, or other overnight delivery  
       E-filing pursuant to Section IV of District of Nevada Electronic Filing Procedures  
[NRCP 5(b)(2)(D)]

fully addressed as follows:

Washoe Legal Services  
Danielle L. Christenson, Esq.  
Jennifer Richards, Esq.  
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Carson City, NV 89703

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Margrate Krug  
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Gabriella Lee  
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Fuquay-Varina, NC 27526

Florentino Gomez  
73-1206 Lilia Drive  
Kailua Kona, HI 96740 USA

DATED this 31 day of May, 2018.



DEIRDRE REID