

In the Supreme Court of Nevada

IN THE MATTER OF THE COLMAN
FAMILY REVOCABLE LIVING
TRUST, DATED JUNE 23, 2011, A
NON-TESTAMENTARY TRUST.

PAUL VALER COLMAN; AND THE
COLMAN FAMILY REVOCABLE
LIVING TRUST, DATED JUNE 23,
2011 A NON-TESTAMENTARY
TRUST

Appellants,

vs.

TONYA COLLIER,

Respondent.

No. 76950

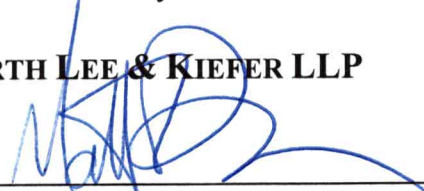
**MOTION TO REISSUE
ORDER AS A PUBLISHED
OPINION PURSUANT TO
NRAP 36(F)**

Electronically Filed
Jan 30 2020 03:19 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

The Rushforth Lee & Kiefer LLP (the "Firm"), counsel for respondent, Tonya Collier, hereby files its motion to reissue the unpublished ORDER OF AFFIRMANCE (the "Order") issued by this Honorable Court on January 23, 2020, as a published opinion in the *Nevada Reports*. This motion is made pursuant to NRAP 36(f) and is supported by the memorandum of points and authorities below.

Respectfully submitted this 30th day of January 2020.

RUSHFORTH LEE & KIEFER LLP

By: 
MATTHEW W. PARK (State Bar No. 12062)
DANIEL P. KIEFER (State Bar No. 12419)

MEMORANDUM OF POINTS AND AUTHORITIES

I. Criteria for Publication.

Pursuant to NRAP 36(f)(3), publication is proper if the Order satisfies one or more of NRAP 36(c)(1)'s three criteria. Specifically, publication is proper if the Order:

- (A) Presents an issue of first impression;
- (B) Alters, modifies, or significantly clarifies a rule of law previously announced by the court; or
- (C) Involves an issue of public importance that has application beyond the parties.

NRAP 36(c)(1).

NRAP 36(c) further explains that an “unpublished disposition, while publicly available, does not establish mandatory precedent except in a subsequent stage of a case in which the unpublished disposition was entered, in a related case, or in any case for purposes of issue or claim preclusion or to establish law of the case.” NRAP 36(c)(2).

For the reasons explained below, the Firm believes that this Order is appropriate for publication because the reasoning set forth in the unpublished Order has precedential value as an issue of first impression. It interprets a statute, NRS

111.781, that has never been analyzed by a published opinion¹ of this Court. Furthermore, it clarifies an issue of public importance in the fields of trust and estate and family law.

Given the scarcity of precedent concerning the automatic revocation of an ex-spouse's beneficial interest in a revocable trust, a published opinion will guide both the public and members of the legal profession. We respectfully request that this Order be published as an opinion in the *Nevada Reports*.

II. The Case Is Appropriate for Publication.

The Order is appropriate for publication because it “significantly clarifies a rule of law previously announced by the court.” Furthermore, the Order focuses on the revocability of dispositions in divorce cases which “involves an issue of public importance that has application beyond the parties.”

A. It Significantly Clarifies A Rule of Law – NRS 111.781.

Publication is proper if the opinion “significantly clarifies a rule of law.” NRAP 36(c)(1)(B). NRS 111.781 outlines the principle that any revocable dispositions of property to a former spouse are revoked upon divorce. The statute, however, does not expressly outline whether this revocation is automatic, or whether

¹ NRS 111.781 was only briefly discussed in the unpublished disposition *Stanford v. Browne*, 402 P.3d 1253 (Nev. 2017) (Table).

intent of the parties changes the revocation. And so, it is essential to consider the Court's clarifying language regarding an NRS 111.781 revocation in the Order.

As background, Nevada is widely considered a "trust friendly" jurisdiction where an ever-growing number of trusts are established. Accordingly, Nevada's case law on trusts and trustees should be robust. But there is presently an inadequate number of published opinions interpreting Nevada trust law. Often, Nevada courts are forced to look to other jurisdictions for guidance in evaluating the actions of trustees take in relation to trusts governed by Nevada law.

By publishing this Order, the Court will make a meaningful addition to the reservoir of Nevada common law concerning trust assets (and beneficiary designations in trusts which may be revoked under certain circumstances), including the application of NRA 111.781.

Here, the Order unequivocally states that NRS 111.781 is an automatic revocation of an ex-spouse's beneficial interest in a revocable trust. This clarification serves as a clear guidepost for future district court decisions, while providing critical notice to legal practitioners in both the family law and trust and estate practice areas.

Furthermore, the Order explains that any revocation only applies to the disposition to a former spouse and does not invalidate the entire trust. Accordingly, all of the remaining trust provisions in the subject trust remain in effect. This

removes any grey area as to the severability or survivability of the remaining trust provisions.

Publishing the Order will provide precedential Nevada common law on this important matter, reducing the need to look to persuasive authority from some other jurisdiction. Relevant Nevada case law is essential to clarify existing Nevada statutes like NRS 111.781.

B. An Issue of Public Importance.

Publication is proper if the opinion “Involves an issue of public importance that has application beyond the parties.” NRAP 36(c). Nevada’s public interest is uniquely served by enhancing its brand as a “trust friendly” jurisdiction. In doing so, the importance of clarity, certainty, and confidence in trust law cannot be overstated. Here, the Order provides clarity on an issue that affects both estate planners and family law attorneys – divorce as the mechanism for revoking an ex-spouse’s beneficial interest in a revocable trust.

Trusts are often designed to implement the wishes and desires of a decedent after death. Without certainty, clarity, and confidence in the application of a statute like NRS 111.781, this preparation is speculative at best—often only aided by a piecemeal tapestry of decisions from other jurisdictions. Nevadans deserve to plan their affairs with as much certainty as possible. Publishing this Order provides additional assurances and certainty regarding dispositions to former spouses.

In short, publishing this Order provides for more competent, clear, and certain Nevada trust and estate law. Clear law leads to less ambiguity and better trust administration. And, better trust administration reduces the need for expensive litigation. Publishing the Order would assist all trust-related actors in Nevada to better accomplish their objectives under the auspices of controlling case law.

III. Conclusion

Pursuant to NRAP 36(f)(3), the Order offers clarity to an established rule of law (NRS 111.781) that has not previously been addressed in a published opinion, and it concerns a rule of law that is of great public importance. Therefore, publication of the Order is warranted. Based upon the foregoing, the Firm respectfully requests that this Honorable Court reissue the Order filed on January 23, 2020, as an opinion to be published in the *Nevada Reports*.

Respectfully submitted this 30th day of January 2020.

RUSHFORTH LEE & KIEFER LLP

By: 

MATTHEW W. PARK (State Bar No. 12062)

DANIEL P. KIEFER (State Bar No. 12419)