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Elizabeth A. Brown
Clerk of Supreme Court

Petitioner,

VS.

Sup. Ct. Case No.

Dist. Ct. Case No. 15-10DC-0876

Respondents,

and

SHAUGHNAN L. HUGHES and JUSTIN
M. TOWNSEND, ESQ.

Real Parties in Interest

Volume One
A0001-A0195

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SUE SEYON
CLERK
BY *[Signature]* DEPUTY

1 Case No. 15-10DC-0876

2 Dept. No. I

3 The undersigned hereby affirms that
4 this document does not contain the
5 social security number of any person.

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10
11 JUSTIN M. TOWNSEND, Esq.

12 IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
13 IN AND FOR THE COUNTY OF CHURCHILL

14 SHAUGHNAN L. HUGHES, an
15 individual,

16 Plaintiff,

17 vs.

MOTION FOR SANCTIONS

18 ELIZABETH C. HOWARD, an
19 individual; and DOES I through
20 XX, inclusive.

21 Defendants.

22 COMES NOW, Plaintiff, SHAUGHNAN L. HUGHES ("HUGHES"), by and
23 through his attorneys, ALLISON MacKENZIE, LTD., and hereby moves this Court for an order of
24 sanctions against Defendant, ELIZABETH C. HOWARD and/or her attorney, CHARLES R.
25 KOZAK, ESQ. ("KOZAK"). This Motion is made and based upon the pleadings and documents on
26 file herein as well as the following Memorandum of Points & Authorities and the Affidavit of Justin
27 M. Townsend, Esq. ("Aff. of J. Townsend").

MEMORANDUM OF POINTS AND AUTHORITIES

I.

LEGAL AUTHORITY FOR SANCTIONS

28 This Court is empowered to impose sanctions on a party and/or her attorney by the
Nevada Rules of Civil Procedure ("NRCP") and the Tenth Judicial District Court Rules ("10JDCR")
as set forth herein. First, NRCP 11(b) provides that an attorney who presents a pleading, written

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1 motion, or other paper to the Court is certifying as follows with regard to said pleading, motion, or
2 paper:

3 “(1) it is not being presented for any improper purpose, such as to
4 harass or to cause unnecessary delay or needless increase in the
cost of litigation;

5 (2) the claims, defenses, and other legal contentions therein are
6 warranted by existing law or by a nonfrivolous argument for the
extension, modification, or reversal of existing law or the
7 establishment of new law;

8 (3) the allegations and other factual contentions have evidentiary
9 support or, if specifically so identified, are likely to have
evidentiary support after a reasonable opportunity for further
investigation or discovery; and

10 (4) the denials of factual contentions are warranted on the evidence
11 or, if specifically so identified, are reasonably based on a lack of
information or belief.”

12 NRCP 11(c) provides that this Court, after notice and a reasonable opportunity to
13 respond, may impose sanctions upon attorneys, law firms, or parties that have violated NRCP 11(b).
14 Proceedings for sanctions may be initiated by motion, which shall “describe the specific conduct
15 alleged to violate subdivision (b)” or on the Court’s own initiative, which shall direct “an attorney,
16 law firm, or party to show cause why it has not violated subdivision (b).” NRCP 11(c)(1)(A) and
17 (B). Sanctions may include an order directing the violating attorney, law firm, or party to pay the
18 moving party “some or all of the reasonable attorney’s fees and other expenses incurred as a direct
19 result of the violation.” NRCP 11(c)(2). Sanctions may also include “directives of a nonmonetary
20 nature [or] an order to pay a penalty into court.” *Id.*

21 In addition, sanctions are allowed pursuant to 10JDCR 8(6) and 10JDCR 25.
22 10JDCR 8(6) allows for sanctions specific to an attorney’s failure to participate in a pretrial
23 conference in good faith. 10JDCR 25 provides that the Court may impose sanctions “[i]f a party or
24 an attorney fails, refuses, or neglects to comply with these rules, the District Court Rules, the Nevada
25 Rules of Civil Procedure, the Supreme Court Rules, or any statutory requirements.” Sanctions
26 allowable under 10JDCR 25 include without limitation the following actions:

- 27 “1. Hold the disobedient party or attorney in contempt of court.
28 2. Continue any hearing until the disobedient party or attorney
has complied with the requirements imposed and require the
disobedient party to pay the other party’s expenses, including costs

and attorney's fees incurred in preparing for and attending such hearing.

3. Set the case for immediate trial.
4. Impose a fine.
5. Continue the trial subject to prescribed conditions.
6. Where such party or attorney has failed to make an adequate and fair disclosure of any matters in his pretrial memorandum or at the pretrial conference, refuse to allow the disobedient party or attorney to support or oppose designated claims or defenses, or prohibit him from introducing evidence of physical or mental condition or from introducing in evidence designated documents or things or items of testimony.
7. Enter the default of the disobedient party or attorney and, in the Court's sound discretion, dismiss the action or strike the defense of the disobedient party or attorney, with or without prejudice."

II.

ARGUMENT

A. Specific conduct by Defendant and KOZAK in violation of the rules governing this matter warrants the imposition of sanctions in order to deter further sanctionable actions and to move this matter forward to its end pursuant to NRS Chapter 39.

i. The Defendant and KOZAK failed to timely file a pleading in response to the Complaint.

On July 27, 2015, HUGHES, pursuant to the provisions of NRS Chapter 39, filed an action for partition of certain real property located at 11633 Fulkerson Road, Fallon, Nevada 89406 (the "Property"), title to which is held jointly by HUGHES and the Defendant. A summons was issued for Defendant on that same date and was thereafter delivered with a copy of the Complaint to the Churchill County Sheriff's Office for service thereof on Defendant. The Sheriff's Office made several attempts to serve the Defendant between August 5, 2015 and September 15, 2015. The Sheriff's Office was unable to serve Defendant but did leave cards at the Property, which is where she resided, requesting that the Defendant contact the Sheriff's Office. She never did. Aff. of J. Townsend at ¶ 2. On September 15, 2015, the Sheriff's Office provided to HUGHES' counsel a Return of Non-Service, a copy of which is hereby incorporated and attached hereto as **Exhibit "1"**.

On September 21, 2015, the undersigned counsel for HUGHES filed an Affidavit in Support of Service by Publication of Summons. On September 23, 2015, this Court issued an Order Granting Publication of Summons. On November 2, 2015, the undersigned counsel for HUGHES filed a Proof of Publication in which it was noted that the Summons was published in the Lahontan

1 Valley News commencing on September 30, 2015 and ending on October 21, 2015. Sometime in
2 early October, the undersigned counsel for HUGHES received a call from an attorney claiming to
3 represent the Defendant. The attorney, who said she was in Las Vegas, requested information about
4 the litigation. In response, the undersigned asked that she enter an appearance so that the matter
5 could move forward. That attorney never entered an appearance nor did she contact the undersigned
6 again. Aff. of J. Townsend at ¶ 3.

7 A few days later, still prior to the completion of service by publication, KOZAK
8 contacted the undersigned and noted that he had been retained to represent the Defendant. KOZAK
9 and the undersigned briefly discussed the matter and the undersigned requested that KOZAK enter
10 an appearance so this matter could proceed. Aff. of J. Townsend at ¶ 4. He did not enter an
11 appearance at that time. In fact, neither KOZAK nor the Defendant filed anything in this matter
12 prior to the deadline to file a pleading in response to the Complaint, which was due no later than
13 November 17, 2015. On November 17, 2015, the undersigned verified with this Court that nothing
14 had been filed. Upon learning that nothing had been filed, the undersigned prepared and sent a letter
15 to KOZAK with a Notice of Intent to Take Default if no responsive pleading was filed by Friday,
16 November 20, 2015. A copy of the November 17, 2015 letter and the Notice of Intent to Take
17 Default are hereby incorporated and attached hereto as **Exhibit "2"**.

18 Other than any inference this Court may make about Defendant's evasion of service,
19 this is the first instance in which Defendant and KOZAK clearly failed to adhere to applicable rules,
20 specifically NRCP 12, which requires the filing of a responsive pleading within 20 days after being
21 served with the summons and complaint. The Court may also wish to note that this was KOZAK's
22 and the Defendant's first opportunity to comply with the rules in this matter. It would not, however,
23 be their last time to disregard the rules.

24 Just after midnight on Saturday, November 21, 2015, KOZAK faxed to the
25 undersigned a copy of Defendant's Answer and Counterclaim. A copy of the first page of the fax
26 received from KOZAK, which shows the date and time the fax came through, is hereby incorporated
27 and attached hereto as **Exhibit "3"**. The Court will note that the face page of the Answer and
28 Counterclaim received by the undersigned was not file-stamped, so it is not clear when the pleading

1 was actually filed. It is not unreasonable to assume, based on the timing of the fax, that the pleading
2 could not have been filed with the Court until Monday, November 23, 2015, at the earliest, which is
3 three days after the deadline to avoid entry of default pursuant to NRCP 55. The Answer and
4 Counterclaim were not timely filed, which is a violation of NRCP 12 and 55. Entry of Defendant's
5 default may be warranted under NRCP 55 and as a sanction under 10JDCR 25(7).

6 **ii. Defendant's counterclaims were not well pleaded, contained unsubstantiated**
7 **allegations of a scandalous and impertinent nature, and Defendant failed to**
8 **timely file an Opposition to HUGHES' Motion to Dismiss on those grounds.**

9 On December 10, 2015, HUGHES timely filed a Motion to Dismiss; Motion to
10 Strike, noting that Defendant had failed to plead fraud with particularity as required by NRCP 9(b)
11 and had failed to plead any other claim for which relief can be granted as required by NRCP
12 12(b)(5). HUGHES also moved to strike all allegations of a scandalous, immaterial, or impertinent
13 nature pursuant to NRCP 12(f), in which he noted the numerous allegations contained in the
14 Counterclaim that were designed to denigrate HUGHES and his family and were immaterial to the
15 claims Defendant had alleged. HUGHES also posited in his Motion to Dismiss that the motive for
16 filing the Counterclaim was to delay these proceedings and to drive up HUGHES' litigation costs.
17 Drawing inferences from all that Defendant and KOZAK have done to utterly disregard the rules
18 time and time again as shown herein, which has in reality delayed these proceedings, HUGHES' early concerns regarding Defendant's motives have been proven to be accurate.

19 Service of HUGHES' Motion to Dismiss; Motion to Strike was accomplished by
20 placing a true and correct copy thereof in a sealed postage prepaid envelope in the United States mail
21 in Carson City, Nevada on December 10, 2015 addressed to Defendant's counsel pursuant to NRCP
22 (5)(b)(2)(B). A copy of the Certificate of Service is hereby incorporated and attached hereto as
23 **Exhibit "4"**. According to 10JDCR 15(9), an opposition to a motion is due "[w]ithin 10 days after
24 the service of the motion." The date of service and intermediate Saturdays, Sundays, and legal
25 holidays are not counted when computing the time for filing the opposition pursuant to 10JDCR
26 4(1). In addition, 3 calendar days are added to the prescribed period for service by mail. 10JDCR
27 4(3). By the foregoing calculations, Defendant's Opposition was due Sunday, December 27, 2015.
28

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1 According to 10JDCR 4(2), Defendant would not be required to file on a Sunday, but should have
2 filed no later than the following judicial day, which was Monday, December 28, 2015.

3 On Tuesday, December 29, 2015, counsel for HUGHES confirmed with the Court
4 that no Opposition had been filed and on that date HUGHES filed a Reply to the Failure to Oppose
5 Motion to Dismiss; Motion to Strike together with a Request for Submission. Aff. of J. Townsend at
6 ¶ 5. The aforementioned Reply was served on Defendant by placing a true and correct copy thereof
7 in the mail addressed to Defendant's counsel. A copy of the Certificate of Service is hereby
8 incorporated and attached hereto as **Exhibit "5"**. On January 7, 2016, this Court, having not
9 received any opposition to HUGHES' Motion to Dismiss; Motion to Strike, entered an Order
10 Granting Plaintiff's Motion to Dismiss; Motion to Strike in its entirety. On January 11, 2016,
11 HUGHES filed a Notice of Entry of the aforementioned Order and served the same on Defendant by
12 placing a true and correct copy thereof in the mail addressed to Defendant's counsel. A copy of the
13 Certificate of Service is hereby incorporated and attached hereto as **Exhibit "6"**.

14 Defendant's failure to timely file an Opposition to HUGHES' Motion to Dismiss;
15 Motion to Strike is a violation of 10JDCR 15. Further, violations of NRCP 9(b) and 12 are
16 discussed in detail in and HUGHES directs the Court's attention for an analysis of those violations to
17 HUGHES' December 10, 2015, Motion to Dismiss; Motion to Strike and in HUGHES' July 27,
18 2016, Opposition to Motion to Set Aside Dismissal of Counterclaim.

19 **iii. KOZAK was unprepared to participate in the mandated NRCP 16.1 early case**
20 **conference.**

21 On December 14, 2015, counsel for HUGHES contacted KOZAK and suggested that
22 the NRCP 16.1 early case conference be continued for a period of up to 90 days as allowed by
23 NRCP 16.1, pending the outcome of HUGHES' Motion to Dismiss. KOZAK agreed. HUGHES'
24 counsel followed this up with a confirming email dated December 14, 2015, to which KOZAK never
25 responded. Aff. of J. Townsend at ¶ 6. A copy of the aforementioned email is hereby incorporated
26 and attached hereto as **Exhibit "7"**.

27 On or about February 4, 2016, after this Court had granted HUGHES' Motion to
28 Dismiss, counsel for HUGHES called KOZAK to arrange the NRCP 16.1 early case conference.

1 During this call, counsel for the parties agreed on a date for a telephonic early case conference. Aff.
2 of J. Townsend at ¶ 7. On February 4, 2016, HUGHES also served Defendant with a Notice of Early
3 Case Conference and Request for Production of Documents. A copy of the February 4, 2016, Notice
4 of Early Case Conference and Request for Production of Documents is hereby incorporated and
5 attached hereto as **Exhibit "8"**.

6 The early case conference was held telephonically on February 16, 2016. When the
7 undersigned began speaking about the procedures for this matter as the same are set forth in NRS
8 Chapter 39, KOZAK stated to the undersigned that he had never even looked at NRS Chapter 39.
9 When the undersigned suggested to KOZAK that the case conference was going to be difficult if
10 KOZAK was not familiar with the statutes that govern this dispute and the procedures for resolving
11 the same, KOZAK offered nothing but a chuckle. Aff. of J. Townsend at ¶ 8. Needless to say, the
12 case management conference was not as productive as it should have been had KOZAK followed
13 NRCP 16.1(b)(1), which mandates that the attorneys for the parties attend the early case conference
14 to "confer and consider the nature and basis of their claims and defenses and the possibilities for a
15 prompt settlement or resolution of the case." KOZAK did not take the early case conference
16 seriously and had made no inquiry whatsoever of NRS Chapter 39 in preparation for the conference.
17 Therefore, a meaningful consideration of the nature and basis of HUGHES' partition claim during
18 the early case conference was not possible. Sanctions therefor are hereby requested.

19 **iv. KOZAK and the Defendant failed to timely provide the mandatory discovery**
20 **required by NRCP 16.1 or to timely file the required case conference report.**

21 NRCP 16.1(a)(1) mandates that the parties provide certain initial disclosures "at or
22 within 14 days of the [early case] conference." Failure to abide by this rule is sanctionable under the
23 specific sanctions provided for in NRCP 37(c)(1) in addition to those provided in NRCP 11 and
24 10JDCR 25. NRCP 37(c)(1) provides that the Court may prohibit the violating party from using at
25 trial any material not timely or properly disclosed pursuant to NRCP 16.1.

26 As noted above, HUGHES served on Defendant a Notice of Early Case Conference
27 and Request for Production of Documents. See Exhibit "8". The Request for Production of
28

1 Documents noted the deadline to provide the initial disclosures required by NRCP 16.1(a)(1), which
2 was 14 days after the February 16, 2016 early case conference, or March 1, 2016.

3 NRCP 16.1 also provides that "[w]ithin 30 days after each case conference, the
4 parties must file a joint case conference report or, if the parties are unable to agree upon the contents
5 of a joint report, **each party must serve and file a case conference report.**" (emphasis added).
6 Therefore, the case conference report was due on or before March 14, 2016.

7 On March 1, 2016, HUGHES timely served the Defendant with his NRCP 16.1 initial
8 disclosures. Counsel for HUGHES also provided to KOZAK on March 1, 2016 a draft Joint Case
9 Conference Report. On the evening of March 7, 2016, KOZAK's office sent via email to the
10 undersigned's office a revised draft Joint Case Conference Report and stated that "[t]he initial
11 disclosure will be sent tomorrow, 3/8/16." A copy of the March 7, 2016 email is hereby
12 incorporated (without attachments) and attached hereto as **Exhibit "9"**. The initial disclosures were
13 not sent as promised on March 8, 2016.

14 Indeed, at the May 17, 2016 pretrial conference the Court, on learning that Defendant
15 had not yet served HUGHES with her initial disclosures, ordered KOZAK to serve the undersigned
16 with the same no later than May 19, 2016 via Reno-Carson Messenger Service ("RCMS"). When
17 RCMS came to the undersigned's office on May 19, 2016 for the last time that day, no initial
18 disclosures were delivered. The undersigned sent an email to KOZAK asking for the status of the
19 disclosures and KOZAK responded that he "was under the impression they went out [on the 19th]".
20 A copy of an email string from May 19-20, 2016 is hereby incorporated and attached hereto as
21 **Exhibit "10"**. The initial disclosures were finally received by the undersigned on May 20, 2016,
22 nearly three months after they were due. Aff. of J. Townsend at ¶ 9.

23 As it concerns the case conference report, KOZAK's May 7, 2016, revisions included
24 two changes that the undersigned could not agree to, including an assertion that Defendant had
25 demanded a jury trial, which was simply untrue. On March 8, 2016, the undersigned sent an email
26 to KOZAK in which he outlined his concerns with only two of KOZAK's revisions and noted that
27 all other revisions were accepted. Whereas the case conference report was due to be filed on
28 Monday, March 14, 2016, the undersigned requested that KOZAK respond no later than Friday,

1 March 11, 2016. A copy of the undersigned's March 8, 2016 email is hereby incorporated and
2 attached hereto as **Exhibit "11"**. He never responded, so HUGHES sent Plaintiff's Case
3 Management Report on May 14, 2016 to be filed with the Court. A copy of Plaintiff's Case
4 Management Report was served on Defendant on the same day.

5 At the May 17, 2016 pretrial conference, which was requested by HUGHES as a
6 means of raising before the Court the many issues with KOZAK's failures to follow the rules, the
7 Court noted that it had not received a case management report from Defendant. The undersigned
8 also noted that he had not been served with a copy of a case management report from Defendant.
9 KOZAK insisted at the pretrial conference that he had filed Defendant's Case Conference Report, so
10 the Court requested that KOZAK have his office fax or email proof of the same. In response thereto,
11 KOZAK's office emailed a copy of Defendant's Case Conference Report, which was not file-
12 stamped, a copy of which was provided by the Court to the undersigned during the pretrial
13 conference. A copy of a May 17, 2016, email and attachment from KOZAK's office to the Court is
14 hereby incorporated and attached hereto as **Exhibit "12"**. At the May 17, 2016, pretrial conference
15 was the first time the Court or the undersigned had seen Defendant's Case Conference Report, more
16 than two months after it was due.

17 KOZAK and his client failed in every material respect to comply with the provisions
18 of NRCP 16.1. For this reason, sanctions are warranted against KOZAK and the Defendant.

19 **v. Defendant's Motion to Set Aside Dismissal is sanctionable under NRCP 11.**

20 When HUGHES' counsel called KOZAK on February 16, 2016 for the telephonic
21 case management conference, the telephone was answered by Nan Adams, a secretary at Kozak
22 Lusiani Law Firm, who asked if HUGHES or his counsel had not received an opposition to
23 HUGHES' Motion to Dismiss. Counsel for HUGHES confirmed in no uncertain terms that no
24 opposition had ever been received by his office and indicated his belief and understanding that the
25 Court had not received any opposition either. Counsel for HUGHES was then transferred to
26 KOZAK, who again asked if an opposition had ever been received. HUGHES' counsel reiterated
27 directly to KOZAK that no opposition had ever been received. This was the first time KOZAK or
28

1 anybody associated with Defendant had mentioned to HUGHES' counsel a claim that an opposition
2 had been filed. Aff. of J. Townsend at ¶ 10.

3 Exactly three months later, on May 16, 2016, Defendant filed a Motion to Set Aside
4 Dismissal of Counterclaim, which alleges that Defendant had filed an Opposition to HUGHES'
5 Motion to Dismiss on December 30, 2016, but that it was "never filed by this Court" due to "post
6 office mistake or being misplaced somewhere at the Court." Motion to Set Aside Dismissal, p. 5, ll.
7 23-24. Defendant also claimed in that Motion that "Mr. Hughes' counsel acknowledged to Ms.
8 Howard's counsel that he had received the Opposition; however, he noted that it was not a file-
9 stamped copy." Motion to Set Aside Dismissal, p. 5, ll. 25-28. The assertion about the undersigned
10 acknowledging receipt of an Opposition to the Motion to Dismiss is nothing short of a lie in
11 violation of NRCP 11(b). At no time did the undersigned acknowledge to KOZAK that he had
12 received a copy of an Opposition because no such Opposition was ever filed with the Court or
13 served on HUGHES. Aff. of J. Townsend at ¶ 11. The assertions about the Court and/or post office
14 losing the Opposition are dubious as well.

15 Further, the Motion to Set Aside Dismissal was styled as a Notice of Motion, which
16 was filed on May 16, 2016, one day before the May 17, 2016 pretrial conference. The Notice of
17 Motion purported to give notice to HUGHES that a hearing on the Motion to Set Aside Dismissal
18 would occur on May 17, 2016. The notice was insufficient and in violation of NRCP 6(d), which
19 requires a minimum of 5 days' notice prior to notice of a hearing on a motion.

20 The merits of Defendant's Motion to Set Aside Dismissal are set forth in detail in
21 HUGHES' July 27, 2016, Opposition to Motion to Set Aside Dismissal of Counterclaim, which is
22 currently pending before the Court. For convenience, HUGHES does not repeat those matters here.
23 However, it suffices to say here that the allegations contained in the Motion to Set Aside Dismissal
24 are not supported by any evidence as required by NRCP 11(b)(3).

25 Further, the Court, on May 19, 2016, issued a briefing schedule with regard to
26 Defendant's Motion to Set Aside Dismissal in which Defendant was ordered to supplement her
27 Motion with additional evidence no later than July 8, 2016. Instead of filing a supplement,
28 Defendant filed on or about June 20, 2016, a pleading styled as an Opposition to HUGHES' Motion

1 to Dismiss, which was not received by the undersigned counsel for HUGHES until June 28, 2016.
2 On the day the undersigned received the aforementioned Opposition, he called KOZAK to inquire as
3 to why Defendant was filing an Opposition to a Motion six months after it was due and more than
4 five months after the Motion had already been granted. KOZAK asserted that the June 20, 2016
5 Opposition was filed in response to the May 19, 2016 Order. Counsel for HUGHES noted the May
6 19, 2016 Order required a supplement to the May 17, 2016 Motion to Set Aside Dismissal and
7 KOZAK responded that the June 20, 2016 Opposition was the same thing as a supplement to the
8 Motion to Set Aside Dismissal. Aff. of J. Townsend at ¶ 12.

9 On June 29, 2016, counsel for HUGHES sent an email to KOZAK in which he
10 demanded that the June 20, 2016 Opposition be withdrawn and that a filing responsive to the Court's
11 May 19, 2016 Order be filed in its place by the deadline set therein. *Id.* at ¶ 13. A copy of the June
12 29, 2016 email to Kozak is hereby incorporated and attached hereto as Exhibit "13". On or about
13 July 7, 2016, Defendant withdrew the June 20, 2016 Opposition and filed a Supplement to Motion to
14 Set Aside Dismissal, which failed to address the Court's concerns with the original Motion.

15 The Court's May 19, 2016 Order provided that HUGHES had until July 27, 2016 to
16 file an Opposition to the Motion to Set Aside Dismissal and any supplements thereto. As noted
17 above, HUGHES filed an Opposition on July 27, 2016. The May 19, 2016 Order provided that the
18 Defendant then had until August 5, 2016 to file a Reply. No Reply was ever filed.

19 **vi. KOZAK did not participate in the May 17, 2016, pretrial conference in good**
20 **faith in violation of 10JDCR 8(6).**

21 As noted above, KOZAK filed a Motion to Set Aside Dismissal one day before the
22 previously scheduled pretrial conference. At the pretrial conference, KOZAK stood before the Court
23 and insisted that he had (a) filed an Opposition to Motion to Dismiss on December 30, 2016; (b)
24 served HUGHES with a copy of an Opposition to Motion to Dismiss on December 30, 2016; (c)
25 filed a case conference report with the Court; (d) served HUGHES with a copy of a case conference
26 report; (e) served HUGHES with the initial disclosures required by NRCP 16.1; and (f) that his
27 office had proof of filing and/or serving each of these documents, including without limitation,
28 having in his possession file-stamped copies of one or more of these documents. The Court briefly

1 recessed the pretrial conference and ordered that KOZAK have his office fax or email the proof he
2 claimed to have. He was unable to do so. Indeed, all that KOZAK's office provided to the Court
3 during the pretrial conference was the email string and documents attached here as Exhibit 12. To
4 date, KOZAK has failed to provide any evidence whatsoever of any of the actions listed above.
5 There is no file-stamped Opposition to Motion to Dismiss or case conference report. There is no
6 evidence that he had previously served any of the above-referenced documents on HUGHES or his
7 counsel. The fact of the matter is that KOZAK misrepresented actions he has taken in this matter.
8 His representations to the Court at the May 17, 2016 pretrial conference were made in bad faith in
9 violation of 10JDCR 8(6) and for improper purposes of delay, harassment, or perhaps concealment
10 of earlier rules violations that conceivably have affected his client's case, all of which are violations
11 of NRCP 11(b)(1). One can only guess what his motives for doing so are. Nevertheless, these
12 actions have caused delays to these proceedings and further actions of this type must be deterred by
13 the imposition of sanctions.

14 **vii. Defendant's Motion for Summary Judgment contains legal contentions that are**
15 **not supported by existing law as required by NRCP 11(b)(2) and was brought**
16 **only as a means of delay and harassment in violation of NRCP 11(b)(1).**

17 Defendant filed a Motion for Summary Judgment that was based in large part on case
18 law that does not apply to the factual situation at issue here. The merits of Defendant's Motion for
19 Summary Judgment are analyzed in HUGHES' July 20, 2016, Opposition to Motion for Summary
20 Judgment and, for convenience, will not be repeated here. Further, the Motion for Summary
21 Judgment is currently pending before the Court. Suffice it to say here that Defendant's Reply, which
22 was filed on July 29, 2016, fails to address the deficiencies in Defendant's arguments as raised by
23 HUGHES' Opposition. Further, Defendant failed to adequately address the case law raised in
24 HUGHES' Opposition.

25 **viii. Defendant has delayed submitting her Motion to Set Aside Dismissal and**
26 **her Motion for Summary Judgment for no other purpose than to further delay**
27 **these proceedings.**

28 In addition to KOZAK's failures to follow the May 19, 2016 Order concerning the
briefing schedule for Defendant's Motion to Set Aside Dismissal, KOZAK has not, as of the date of
this pleading, filed a Request for Submission of Defendant's Motion to Set Aside Dismissal.

1 Likewise, he has not filed a Request for Submission of Defendant's Motion for Summary Judgment.
2 While 10JDCR 15(15) allows for any party to file such a Request, it is customary for the moving
3 party to do so after or in connection with filing a reply. Nevertheless, HUGHES is filing Requests
4 for Submission of both of Defendant's outstanding Motions in connection with the instant Motion so
5 as to avoid further delays of these proceedings.

6 On August 24, 2016, the undersigned received several pieces of correspondence from
7 KOZAK's office concerning Requests for Submission. Aff. of J. Townsend at ¶14. The
8 correspondence is dated June 22, 2016 and the meaning of the correspondence is unclear. A copy of
9 two June 22, 2016 letters are hereby incorporated and attached hereto as Exhibit "14". The letters
10 seem to indicate that KOZAK's office has submitted at least one Request for Submission to the
11 Court, but it is not clear whether both Motions are meant to have been submitted or when the
12 Request(s) would have been filed. On August 24, 2016, the undersigned's office contacted the Court
13 to inquire as to the receipt of any Requests for Submission and the Court indicated that none had
14 been received from KOZAK's office at that time. Aff. of J. Townsend at ¶ 14. The Court may
15 receive Requests for Submission from KOZAK's office in the next few days after this filing, but the
16 inference to be drawn from the delay in filing the same may be that KOZAK and his client wish to
17 delay these proceedings, which is a sanctionable violation of NRCP 11.

18 **B. The violations of the NRCP and 10JDCR have caused HUGHES to incur substantial**
19 **amounts of attorneys' fees for which he seeks reimbursement as a sanction under**
20 **NRCP 11(c)(2) and 10JDCR.**

21 The Court is empowered by NRCP 11(c)(2) to order the violating party and/or her
22 attorney to "[direct] payment to the movant of some or all of the reasonable attorney's fees and other
23 expenses incurred as a direct result of the violation." HUGHES has incurred substantial amounts of
24 attorneys' fees in responding to meritless motions, in fighting over whether KOZAK filed
25 documents on time or at all, in requesting and attending a pretrial conference to discuss KOZAK's
26 rules violations, in fruitless correspondence with KOZAK about his failures, and in preparing this
27 Motion. The delays and wasted time caused by KOZAK's multiple violations are such that
28 HUGHES respectfully requests an award of attorneys' fees for all such fees incurred as a direct
result of said violations. To date, inclusive of the research for and preparation of this Motion,

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: lav@allisonmackenzie.com

1 HUGHES has incurred \$20,693.75 in direct response to KOZAK's violations. Aff. of J. Townsend
2 at ¶ 15. Copies of the undersigned's relevant billings are hereby incorporated and attached hereto as
3 Exhibit "15". HUGHES respectfully requests an order directing Defendant and/or KOZAK to pay
4 for these expenses and any additional fees that are incurred in replying to any opposition filed by
5 KOZAK herein.

6 **C. Conclusion.**

7 A review of the docket in this matter and the facts set forth herein reveals that
8 Defendant and her attorney have violated the rules more often than they have complied therewith.
9 For these reasons, HUGHES respectfully requests an order imposing sanctions as determined by the
10 Court. Without limiting the Court's options for sanctions under NRCP 11, NRCP 37, 10JDCR 8(6),
11 or 10JDCR 25, HUGHES respectfully requests an award of attorneys' fees incurred as a direct result
12 of the violations discussed herein and any others the Court deems to be sanctionable thereunder.

13 DATED this 25th day of August, 2016.

14 ALLISON MacKENZIE, LTD.
15 402 North Division Street
16 Carson City, NV 89703-4168

17 By: 

18 JUSTIN M. TOWNSEND, ESQ.
19 Nevada State Bar No. 12293

20 Attorneys for Plaintiff,
21 SHAUGHNAN L. HUGHES
22
23
24
25
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 on all parties to this action by:

- ☒ 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
- ☐ 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:

CHARLES R. KOZAK, ESQ.
KOZAK LAW FIRM
3100 Mill Street, Suite 115
Reno, NV 89502

DATED this 25th day of August, 2016.


NANCY FONTENOT

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

INDEX OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>	<u>Number of Pages (Not Including Cover Page)</u>
"1"	Return of Non-Service	1
"2"	November 17, 2015 letter and the Notice of Intent to Take Default	2
"3"	First page of the fax received from KOZAK	1
"4"	December 10, 2015 Certificate of Service	1
"5"	December 29, 2015 Certificate of Service	1
"6"	January 11, 2016 Certificate of Service	1
"7"	December 14, 2015 email	1
"8"	February 4, 2016 Notice of Early Case Conference and Request for Production of Documents	3
"9"	March 7, 2016 email	1
"10"	May 19-20, 2016 email string	2
"11"	March 8, 2016 email	1
"12"	May 17, 2016 email	11
"13"	June 29, 2016 email	1
"14"	Two June 22, 2016 letters	2
"15"	Relevant billings	13

4825-7285-6631, v. 3

EXHIBIT 1

EXHIBIT 1

SHERIFF'S RETURN OF NON-SERVICE

STATE OF NEVADA)
 (
COUNTY OF CHURCHILL)

Case # 1510DC0876

I hereby certify that our agency received the within the **Summons & Complaint** on the
5th day of August, 2015, and this agency was ~~unable to serve~~ the same after 4
attempt(s) upon Elizabeth Carole Howard at 11633 Fulkerson Rd., Fallon, NV
89406.

Reason for non-service is: **Unable to make contact. Return papers per call from
attorney's office.**

Dated: This 15th day of September, 2015.

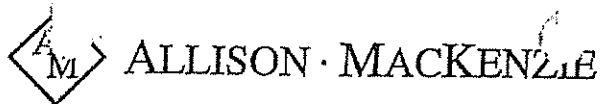
Ben Trotter, Sheriff
Churchill County, Nevada

by: S. Openshaw
S. Openshaw #754

EXHIBIT 2

EXHIBIT 2

MIKE PAVLAKIS
JOAN C. WRIGHT
KAREN A. PETERSON
JAMES R. CAVILIA
CHRIS MACKENZIE
DAWN ELLERBROCK
RYAN D. RUSSELL
JOEL W. LOCKE



November 17, 2015

JUSTIN TOWNSEND
THORAN TOWLER
S. JORDAN DUNLAP
KYLE A. WINTER
GEORGE V. ALLISON
ANDREW MACKENZIE
PATRICK V. FAGAN
CHARLES P. COCKERILL
OF COUNSEL

Via Facsimile & U.S. Mail
(775) 800-1767
MIKE SOUMBENIOTIS
(1932-1997)

Charles R. Kozak, Esq.
3100 Mill Street, Suite 115
Reno, NV 89502

Re: Notice of Intent to Take Default –
Hughes v. Howard, 10th Judicial District Court Case No. 15-10DC-0876

Dear Mr. Kozak:

You contacted me in regards to the above-referenced case over a month ago and indicated your intention to file an answer therein. It is not clear whether or not you have been retained by Ms. Howard in this matter, but we have confirmed with the Court that no appearances have been filed on behalf of Ms. Howard.

Nevertheless, be advised that today is the deadline to file a responsive pleading. We will not grant any requests for extensions of time as Ms. Howard has dragged this out by deliberately avoiding service and our earlier attempts to resolve this matter out of court. Therefore, please find enclosed a Notice of Intent to Take Default.

If you intend to participate in these proceedings, please file an appearance in the above-referenced case and file a responsive pleading no later than Friday, November 20, 2015. If no such action is taken, we will apply for entry of default.

Sincerely,

ALLISON MacKENZIE, LTD.

By: 
JUSTIN M. TOWNSEND, ESQ.

JMT/nf
Enclosure(s) as stated

cc: Elizabeth C. Howard (via U.S. Mail)
Client

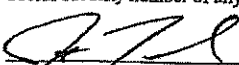
4850-4433-0027, v. 1

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

1 Case No.15-10DC-0876

2 Dept. No. I

3 The undersigned hereby affirms that
4 this document does not contain the
5 social security number of any person.

6 
JUSTIN M. TOWNSEND, Esq.

7 IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF CHURCHILL
9

10 SHAUGHNAN L. HUGHES, an
11 individual,

12 Plaintiff,

NOTICE OF INTENT
TO TAKE DEFAULT

13 vs.

14 ELIZABETH C. HOWARD, an
15 individual; and DOES I through
16 XX, inclusive.

Defendants.
17

18 TO: Defendant, Elizabeth C. Howard, and her attorney, Charles R. Kozak, Esq.

19 Please take notice that Plaintiff intends to take the Default of the Defendant above
20 named unless an Answer or other responsive pleading is filed herein on or before Friday, November
21 20, 2015, which is three (3) days from the date of this Notice.

22 DATED this 17th day of November, 2015.

23 ALLISON MacKENZIE, LTD.
24 402 North Division Street
25 Carson City, NV 89703-4168

26 By: 
JUSTIN M. TOWNSEND, ESQ.
Nevada State Bar No. 12293

27 Attorneys for Plaintiff,
28 SHAUGHNAN L. HUGHES

4824-7695-7227, v. 1

EXHIBIT 3

EXHIBIT 3

1 Case No. 15-10DC-0876

2 Dept. No. I

3 The undersigned hereby affirms that
4 this document does not contain the
5 social security number of any person.

6 
7 CHARLES R. KOZAK, ESQ.

8 IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
9 IN AND FOR THE COUNTY OF CHURCHILL

10 SHAUGHNAN L. HUGHES, an
11 individual,

12 Plaintiff,

ANSWER AND COUNTERCLAIM

13 vs.

14 ELIZABETH C. HOWARD, an
15 individual; and DOES I through
16 XX, inclusive,

17 Defendants

18 ELIZABETH C. HOWARD, an
19 individual,

20 Counterclaimant,

21 vs.

22 SHAUGHAN L. HUGHES, an
23 individual; and DOES I through
24 XX, inclusive,

25 Counterdefendants

ANSWER

26 ELIZABETH HOWARD, an individual (hereinafter "Defendant/Counterclaimant"), by
27 and through her attorney of record, Charles R. Kozak, Esq., answers SHAUGHAN L.
28

EXHIBIT 4

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

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 on 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
- 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:

CHARLES R. KOZAK, ESQ.
KOZAK LAW FIRM
3100 Mill Street, Suite 115
Reno, NV 89502

DATED this 10th day of December, 2015.



NANCY FONTENOT

EXHIBIT 5

EXHIBIT 5

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 on 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
- _____ 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:

CHARLES R. KOZAK, ESQ.
KOZAK LAW FIRM
3100 Mill Street, Suite 115
Reno, NV 89502

DATED this 29th day of December, 2015.


NANCY FONTENOT

4850-8275-3324, v. 1

EXHIBIT 6

EXHIBIT 6

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

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 on all parties to this action by:

- ☒ 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
- ☐ 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:

CHARLES R. KOZAK, ESQ.
KOZAK LAW FIRM
3100 Mill Street, Suite 115
Reno, NV 89502

DATED this 11th day of January, 2016.


NANCY FONTENOT

4814-6544-3372, v. 1

EXHIBIT 7

EXHIBIT 7

Nancy Fontenot

From: Justin Townsend <jtownsend@allisonmackenzie.com>
Sent: Monday, December 14, 2015 1:53 PM
To: chuck@kozaklawfirm.com
Cc: Nancy Fontenot
Subject: Hughes v. Howard

Chuck,

To confirm our telephone conversation of this afternoon, we have agreed to extend the deadline to hold the 16.1 early case conference for a period of up to 90 days. Please respond that you are in agreement with this extension.

Kind regards,

Justin Townsend, Esq.
Allison MacKenzie, Ltd.
402 N. Division Street
P.O. Box 646
Carson City, NV 89702
(775) 687-0202 telephone
(775) 882-7918 fax
email: jtownsend@allisonmackenzie.com

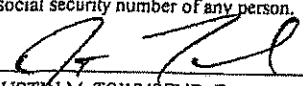
EXHIBIT 8

EXHIBIT 8

1 Case No.15-10DC-0876

2 Dept. No. I

3 The undersigned hereby affirms that
4 this document does not contain the
5 social security number of any person.

6 
7 JUSTIN M. TOWNSEND, Esq.

8 IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
9 IN AND FOR THE COUNTY OF CHURCHILL

10 SHAUGHNAN L. HUGHES, an
11 individual,

12 Plaintiff,

13 vs.

14 ELIZABETH C. HOWARD, an
15 individual; and DOES I through
16 XX, inclusive.

17 Defendants.
18

19 **NOTICE OF EARLY CASE CONFERENCE AND**
20 **REQUEST FOR PRODUCTION OF DOCUMENTS**

21 TO: The Defendant above-named, and her attorney of record:

22 PLEASE TAKE NOTICE that the telephonic early case conference in the above-
23 entitled action will be held at 11:00 a.m. on February 16, 2016. Plaintiff's attorneys will initiate
24 the telephone conference. The attorneys must have knowledge of the case, and possess authority to
25 act.

26 Pursuant to NRCP 16.1(a), Plaintiff hereby requests that Defendant provides prior to
27 the early case conference, but no later than March 1, 2016, the following:

28 A. **DOCUMENTS REQUESTED:**

1. Any and all documents which Defendant contemplates to be used in
this matter;

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@allisonmckenzie.com

- 2. All recorded statements, written or oral, by any witness concerning Defendant's admissions, denials and/or affirmative defenses;
- 3. Copies of any and all correspondence between the parties relating to the allegations in the Complaint and/or Answer in this action;
- 4. All records, notes, memoranda and documents of or relating to the allegations in the Complaint and/or Answer in this action; and
- 5. Any and all writings, books, records, accounts, diaries and other material of or relating to the claims and defenses raised in the pleadings in this case.

B. TANGIBLE THINGS:

Identify and describe all tangible things which constitute or contain matters within the scope of Rule 16.1(a) and which are in the possession, custody or control of another party.

C. WITNESS LIST:

A list of persons who Defendant believes has knowledge of any of the subject matter of the allegations, claims, denials or affirmative defenses raised in this litigation. Each person must be identified by name and location, along with a general description of the subject matter of his/her testimony.

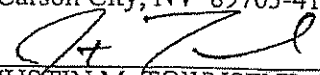
In addition, at or prior to the case conference, counsel for the parties must propose a plan and schedule of discovery; discuss settlement and alternative methods of dispute resolution, and any other matter which may aid in the resolution of the case.

AFFIRMATION

The undersigned does hereby affirm that the preceding document filed DOES NOT contain the social security number of any person.

DATED this 4th day of February, 2016.

ALLISON MacKENZIE, LTD.
402 North Division Street
Carson City, NV 89703-4168

By: 
JUSTIN M. TOWNSEND, ESQ.
Nevada State Bar No. 12293

Attorneys for Plaintiff,
SHAUGHNAN L. HUGHES

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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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 on all parties to this action by:

- ☒ 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)]
- ☒ Electronic Transmission
- ☐ Facsimile
- ☐ 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:

CHARLES R. KOZAK, ESQ.
KOZAK LAW FIRM
3100 Mill Street, Suite 115
Reno, NV 89502
chuck@kozaklawfirm.com

DATED this 4th day of February, 2016.


NANCY FONTENOT

4840-9696-4397, v. 1

EXHIBIT 9

EXHIBIT 9

Nancy Fontenot

From: Nan Adams <nan@kozaklawfirm.com>
Sent: Monday, March 07, 2016 9:24 PM
To: Nancy Fontenot
Subject: Case No. 15-10DC-0876 Hughes v. Howard
Attachments: Joint Case Conference Report Draft CRK rev. 3.7.16.doc

Hi Nancy,

Please find attached the Joint Case Conference Report draft with Mr. Kozak's additions. The initial disclosure will be sent tomorrow, 3/8/16 (as per the indication in the draft).

Nancy, thank you for your assistance.

Nan Adams
Legal Secretary
Kozak Law Firm
3100 Mill Street, Suite 115
Reno, NV 89502
(775) 322-1239

EXHIBIT 10

EXHIBIT 10

Justin Townsend

From: Chuck Kozak <chuck@kozaklusianilaw.com>
Sent: Friday, May 20, 2016 11:14 AM
To: Justin Townsend
Subject: Re: Hughes v. Howard - 16.1 Initial Production

Dear Mr. Townsend,

I was under the impression they went out yesterday. However they will be delivered today without fail.

Thanks,

Chuck Kozak

On Thu, May 19, 2016 at 4:07 PM, Justin Townsend <jtownsend@allisonmackenzie.com> wrote:

Mr. Kozak,

As you know, at the pretrial conference on Tuesday the Court ordered you to provide me with your initial production of documents and list of witnesses. You were ordered to provide these documents to me via Reno Carson Messenger Service ("RCMS") for delivery no later than today. RCMS comes by our office twice daily. They have just completed their second delivery of the day to our office and there has been no delivery of your initial production.

Please advise the status of this matter ASAP.

Regards,

Justin Townsend, Esq.

Allison MacKenzie, Ltd.

402 N. Division Street

P.O. Box 646

Carson City, NV 89702

(775) 687-0202 telephone

(775) 882-7918 fax

email: jtownsend@allisonmackenzie.com

PERSONAL AND CONFIDENTIAL: This message originates from the law firm of Allison MacKenzie, Ltd. This message and any file(s) or attachment(s) transmitted with it are confidential and may include information subject to the attorney-client privilege, information protected by the attorney work product doctrine, or information which is otherwise proprietary, a trade secret or protected against unauthorized use or disclosure. This message and any file(s) or attachment(s) transmitted with it are transmitted based on a reasonable expectation of privacy. Any disclosure, distribution, copying, or use of this information by anyone other than the intended recipient, regardless of address or routing, is strictly prohibited. If you receive this message in error, please advise the sender by immediate reply and delete the original message.

A&M-ver.-xz1.1

EXHIBIT 11

EXHIBIT 11

Justin Townsend

From: Justin Townsend
Sent: Tuesday, March 08, 2016 9:35 AM
To: chuck@kozaklawfirm.com
Cc: nan@kozaklawfirm.com; Nancy Fontenot
Subject: Joint Case Conference Report
Attachments: Joint Case Conference Report.pdf

Mr. Kozak,

I am in receipt of your proposed modifications to the Joint Case Conference Report. I am also informed that you intend to serve your initial disclosures today. Please be advised that your initial disclosures were due on March 1, 2016 under NRCp 16.1(a)(1). On February 4, 2016 we served you with a Notice of Early Case Conference and Request for Production of Documents, which informed you of the March 1, 2016 deadline and demanded your initial disclosures by said deadline. Moreover, we complied with the foregoing rule and served you with our initial disclosures on March 1, 2016.

In what has become a constant in this litigation, you and your client are late and your disregard for the rules will not be tolerated. Not once have you asked for an extension of time to file or serve any of the numerous documents that have been filed and/or served late. We will be filing a request for a pre-trial conference at which the Court will be made aware of these multiple failures. Sanctions will also be on the table.

One of the changes you have requested to the Joint Case Conference Report is to the section concerning jury demands. There are at least two reasons I will not consent to your requested change. First, you have not made a jury demand and a jury demand cannot be made via the joint case conference report. Second, this is an action for partition and nothing more. An action for partition is an action in equity for which a jury trial may not be appropriate. You are free to make a formal jury demand under the rules in which case the propriety of a jury trial in this matter can be discussed at the pre-trial conference I will request.

One other change I cannot agree to. You suggest that dispositive motions be filed no later than close of discovery. This deadline should come after the close of discovery so that all discovery may be used in support of any filed dispositive motion. If discovery is produced on the last day of the discovery period, which may give rise to a potential dispositive motion, some time to craft that motion should be allowed. I suggest that the deadline to file dispositive motions be set at 30 days after close of discovery (I had originally suggested 30 days prior to trial). I have made that change in the attached document. Please advise if this is acceptable.

The rest of your changes are acceptable to me. Therefore, please find attached a pdf version of the Joint Case Conference Report, which includes the changes noted in this email. Please sign and return the original signed document to me today so that we can get this on file. If I do not have a signed Joint Case Conference Report in hand from you by this Friday (3/11), we will proceed to file an individual case conference report.

Regards,

Justin Townsend, Esq.
Allison MacKenzie, Ltd.
402 N. Division Street
P.O. Box 646
Carson City, NV 89702
(775) 687-0202 telephone
(775) 882-7918 fax

EXHIBIT 12

EXHIBIT 12

Tiffany Josephs

From: Nan Adams <nan@kozaklusianilaw.com>
Sent: Tuesday, May 17, 2016 2:37 PM
To: Tiffany Josephs
Subject: Re: Case No. 15-10DC-0876 Hughes v. Howard
Attachments: Howard Defendant's Case Conference Report.pdf

On Tue, May 17, 2016 at 1:57 PM, Nan Adams <nan@kozaklusianilaw.com> wrote:

----- Forwarded message -----

From: Nan Adams <nan@kozaklusianilaw.com>
Date: Tue, May 17, 2016 at 1:53 PM
Subject: Re: Case No. 15-10DC-0876 Hughes v. Howard
To: Nan Adams <nan@kozaklawfirm.com>

On Tue, Feb 9, 2016 at 12:51 PM, Chuck Kozak <chuck@kozaklawfirm.com> wrote:
Nan,

We need to email this to Tiffany right away. Might as well fax too.

----- Forwarded message -----

From: Tiffany Josephs <tjosephs@churchillcourts.org>
Date: Tue, Feb 9, 2016 at 10:43 AM
Subject: Case No. 15-10DC-0876 Hughes v. Howard
To: "chuck@kozaklawfirm.com" <chuck@kozaklawfirm.com>
Cc: Sue Sevon <ssevon@churchillcourts.org>

Good morning Mr. Kozak,

Per our conversation last week, you indicated you would be faxing a file-stamped copy of your Opposition to the Motion to Dismiss. As of this time, we have not received a fax from your office. That same evening, Ms. Howard called us asking if we had found the document. I informed her that you were going to be sending us a copy.

We are reaching out to you because we are concerned you may have faxed it and we did not receive it. If it's more convenient, you can email the document to me.

We are staying on top of this because we are concerned we have misfiled a document and this is a high priority for this office to avoid. Your cooperation with this is appreciated.

Thank you,

Tiffany Josephs

Deputy Court Clerk

Tenth Judicial District Court

73 N. Maine Street, Suite B

Fallon, NV 89406

775-423-6088 ext. 260

775-423-8578 Fax

tjosephs@churchillcourts.org

www.churchillcounty.org

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--
Charles R. Kozak

chuck@kozaklawfirm.com

Charles R. Kozak Attorney at Law, LLC

3100 Mill Street #115

Reno, NV 89502

775-322-1239

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Nan Adams
Kozak Lusiani Law
3100 Mill Street, Suite 115
Reno, Nevada 89502
Telephone: (775) 322-1239
Facsimile: (775) 800-1767

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Reno, Nevada 89502
Telephone: (775) 322-1239
Facsimile: (775) 800-1767

1 Case No. 15-10DC-0876

2 Dept. No. I

3
4 IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
5
6 IN AND FOR THE COUNTY OF CHURCHILL

7 SHAUGHNAN L. HUGHES, an
8 individual,

9 Plaintiff,

10 vs.

11 ELIZABETH C. HOWARD, an
12 individual; and DOES I through
13 XX, inclusive,

14 Defendants

15 ELIZABETH C. HOWARD, an
16 individual,

17 Counterclaimant,

18 vs.

19 SHAUGHAN L. HUGHES, an
20 individual; and DOES I through
21 XX, inclusive,

22 Counterdefendants

23 DEFENDANT'S CASE CONFERENCE REPORT

24
25 DISCOVERY PLANNING/DISPUTE CONFERENCE REQUESTED: YES ___ NO X
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I.

PROCEEDINGS PRIOR TO CASE CONFERENCE REPORT

- A. DATE OF FILING OF COMPLAINT: July 27, 2015.
- B. DATE OF FILING OF ANSWER BY DEFENDANT: November 20, 2015.
- C. DATE THAT EARLY CASE CONFERENCE WAS HELD AND WHO ATTENDED: The early case conference was held telephonically on February 16, 2016. JUSTIN M. TOWNSEND, Esq. attended on behalf of Plaintiff and CHARLES R. KOZAK, Esq. attended on behalf of Defendant.

II.

A BRIEF DESCRIPTION OF THE NATURE OF THE ACTION
AND EACH CLAIM FOR RELIEF OR DEFENSE: [16.1(c)(1)]

- A. Description of the action: Plaintiff and Defendant own, in joint tenancy, an undivided one hundred percent (100%) interest in real property commonly referred to as 11633 Fulkerson Road, Fallon, Nevada 89406. Plaintiff seeks a partition or sale of the aforementioned property under NRS Chapter 39.
- B. Defendant should not be placed in the position of having to partition the Property and to sell the property as the Plaintiff no legal equitable investment in the property.
- C. Plaintiff exerted undue influence on Defendant to quit claim on the deed five (5) days after she closed the sale.
- D. Plaintiff used Conversion as he knew the monies had by Defendant were for herself and Defendant's mother.
- E. Plaintiff's threatening and wrongful behavior resulted in abusive mental anguish and anguish to the Defendant/Counterclaimant, and such was the Plaintiff's malicious intent.
- F. The only adequate remedy is have the Court Order the Plaintiff to execute the proper documents for Defendant to have sole ownership of the property.

III.

LIST OF ALL DOCUMENTS, DATA COMPILATIONS AND TANGIBLE THINGS
IN THE POSSESSION, CUSTODY OR CONTROL OF EACH PARTY WHICH
WERE IDENTIFIED OR PROVIDED AT THE EARLY CASE CONFERENCE
OR AS A RESULT THEREOF: [16.1(a)(1)(B) and 16.1(c)(4)]

A. Plaintiff: Provided to Defendant on March 1, 2016, see Exhibit "1" attached hereto.

B. Defendants: Provided to Plaintiff on March 8, 2016.

IV.

LIST OF PERSONS IDENTIFIED BY EACH PARTY AS LIKELY TO HAVE
INFORMATION DISCOVERABLE UNDER RULE 26(b), INCLUDING
IMPEACHMENT OR REBUTTAL WITNESSES: [16.1(a)(1)(A) and 16.1(c)(3)]

A. Plaintiff: Provided to Defendants on March 1, 2016, see Exhibit "1" attached hereto.

B. Defendants: Provided to Plaintiff on March 8, 2016.

V.

DISCOVERY PLAN: [16.1(b)(2) and 16.1(c)(2)]

A. What changes, if any, should be made in the timing, form or requirements for disclosures under 16.1(a):

1. Plaintiff's view: None.

2. Defendant's view: None.

When disclosures under 16.1(a)(1) were made or will be made:

1. Plaintiff's disclosures: March 1, 2016.

2. Defendant's disclosures: March 8, 2016.

B. Subjects on which discovery may be needed:

1. Plaintiff's view: Discoverable areas within the Rules of Civil Procedure on the Complaint allegations and Defendants' denials and defenses.

2. Defendants' view: Discoverable areas within the Rules of Civil Procedure on the Complaint allegations and Defendant's denials and defenses.

C. Should discovery be conducted in phases or limited to or focused upon particular issues?

1. Plaintiff's view: Discovery should be focused upon ascertaining the value of the property, each party's respective interest therein, and whether partition or sale under NRS Chapter 39 makes more sense under the existing circumstances.

2. Defendant's view: All Discovery which could lead to admissible evidence.

D. What changes, if any, should be made in limitations on discovery imposed under these rules and what, if any, other limitations should be imposed?

1. Plaintiff's view: None.

2. Defendant's view: None.

E. What, if any, other orders should be entered by Court under Rule 26(c) or Rule 16(b) and (c):

1. Plaintiff's view: None.

2. Defendant's view: None.

F. Estimated time for trial:

1. Plaintiff's view: 1 day.

2. Defendant's view: 4 days.

VI.

DISCOVERY AND MOTION DATES: [16.1(c)(5)-(8)]

A. Dates agreed by the parties:

1. Close of discovery: June 30, 2016

2. Final date to file motions to amend pleadings or add parties (without a further court order): 90 days before close of discovery.

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3. Final dates for expert disclosures:

i. initial disclosure: 45 days before close of discovery

ii. rebuttal disclosures: 30 days after initial disclosure

4. Final date to file dispositive motions: 30 days prior to trial

B. In the event the parties do not agree on dates, the following section must be completed:

1. Plaintiff's suggested close of discovery: N/A
enter calendar date

2. Defendant's suggested close of discovery: N/A
enter calendar date

1. Final date to file motions to amend pleadings or add parties (without a further court order):

Plaintiff's suggested:

N/A

enter calendar date
(Not later than 90 days
before close of
discovery)

Defendant's suggested:

N/A

enter calendar date
(Not later than 90 days
before close of
discovery)

I. Final dates for expert disclosures:

i. Plaintiff's suggested initial disclosure:

N/A

enter calendar date
(Not later than 90 days
before discovery cut-
off date)

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Defendant's suggested initial disclosure:

N/A

enter calendar date
(Not later than 90 days
before discovery cut-
off date)

ii. Plaintiff's suggested rebuttal disclosures:

N/A

enter calendar date
(Not later than 30 days
after initial disclosure
of experts)

Defendant's suggested rebuttal disclosures:

N/A

enter calendar date
(Not later than 30 days
after initial disclosure
of experts)

2. Final date to file dispositive motions:

Plaintiff's suggested:

N/A

enter calendar date
(Not later than 30 days
after discovery cut-off
date)

Defendant's suggested:

Close of Discovery

enter calendar date
(Not later than 30 days
after discovery cut-off
date)

Failure to agree on the calendar dates in this subdivision shall result in a
discovery planning conference.

VII.

JURY DEMAND: [16.1(c)(10)]

A jury demand has not been filed.

Defendant: Jury is demanded.

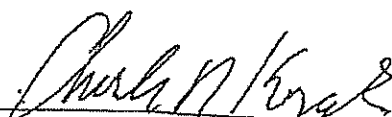
VIII.

INITIAL DISCLOSURES/OBJECTIONS: [16.1(a)(1)]

If a party objects during the Early Case Conference that initial disclosures are not appropriate in the circumstances of this case, those objections must be stated herein. The Court shall determine what disclosures, if any, are to be made and shall set the time for such disclosure.

This report is signed in accordance with Rule 26(g)(1) of the Nevada Rules of Civil Procedure. Each signature constitutes a certification that to the best of the signer's knowledge, information and belief, formed after a reasonable inquiry, the disclosures made by the signer are complete and correct as of this time.

DATED this 10th day of March 2016.


CHARLES R. KOZAK, ESQ. (SBN #11179)
chuck@kozaklusionilaw.com
R. CRAIG LUSIANI, ESQ. (SBN #552)
craig@kozaklusionilaw.com
KOZAK LUSIANI LAW
3100 Mill Street, Suite 115
Reno, Nevada 89502
Tel (775) 322-1239; Fax (775) 800-1767
ATTORNEYS FOR PLAINTIFF

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CERTIFICATE OF SERVICE

I certify that I am an employee working for Kozak Law Firm and am a citizen of the United States, over twenty-one years of age, and not a party to the within action. My business address is 3100 Mill Street, Suite 115, Reno, Nevada 89502.

On the 10th March 2016, I caused to be delivered via facsimile and U.S. Mail, postage fully prepaid, a true and correct copy of the foregoing document in Case No. 15-10DC-0876, Dept. I, to the following party(ies):

Justin M. Townsend, Esq.
Allison MacKenzie, Ltd.
Nevada State Bar No. 12293
402 N. Division Street
P. O. Box 646
Carson City, Nevada 89702
Phone (775) 687-0202
Facsimile (775) 882-7918
Attorney for Plaintiff

DATED this 10th day of March 2016.

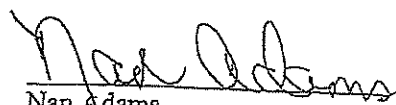

Nan Adams
Employee of Kozak Law Firm

EXHIBIT 13

EXHIBIT 13

Nancy Fontenot

From: Justin Townsend <jtownsend@allisonmackenzie.com>
Sent: Wednesday, June 29, 2016 4:25 PM
To: chuck@kozaklawfirm.com
Cc: nan@kozaklawfirm.com
Subject: Opposition to Motion to Dismiss

Mr. Kozak,

Yesterday, you told me on the phone that the Opposition to Motion to Dismiss you filed on or about June 20, 2016 was in response to the Court's May 19, 2016 Order After Pretrial Conference. Per the Court's May 19, 2016 Order After Pretrial Conference:

"ELIZABETH C. HOWARD shall have until July 8, 2016 to file a supplement to her Motion to Set Aside Dismissal of Counterclaim filed on May 17, 2016."

From the Pretrial Conference itself the Court noted the deficiencies in your Motion to Set Aside Dismissal include, but may not be limited to, failure to attach the Opposition you supposedly filed on December 30, 2016, failure to provide adequate proof of such a filing, and failure to provide proof of service of the Opposition on my office.

The Opposition you filed on or about June 20, 2016 does not meet the requirements of the Court's May 19, 2016 Order. Please withdraw the June 20, 2016 Opposition and refile by July 8, 2016 the supplement required by the Court. If you do not withdraw the June 20, 2016 Opposition (which is 6 months late) by July 8, 2016, we will file a Motion to Strike the pleading and ask the Court for attorneys' fees.

Regards,

Justin Townsend, Esq.
Allison MacKenzie, Ltd.
402 N. Division Street
P.O. Box 646
Carson City, NV 89702
(775) 687-0202 telephone
(775) 882-7918 fax
email: jtownsend@allisonmackenzie.com

EXHIBIT 14

EXHIBIT 14



KOZAK LUSIANI LAW, LLC

3400 Hill Street
Suite 115
Reno, NV 89502
P: 775 322 1239
F: 775 300 1977
KozakLusianiLaw.com

June 22, 2016

Dear Allison,

I apologize, I accidently sent out the Request for Submission of Elizabeth Howards Notice of Motion and Motion to Set Aside Dismissal of Counterclaim. I did send the correct copy to the Court. I apologize for any inconvenience.

Respectfully,

Dedra Sonne
Paralegal

Attorneys:

Charles R. Kozak

Chuck@KozakLusianiLaw.com

Admitted States:

Nevada

California

R. Craig Lusiani

Craig@KozakLusianiLaw.com

Admitted States:

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California

US Supreme Court

Susan M. Leeder

Susan@KozakLusianiLaw.com

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KOZAK LUSIANI LAW, LLC


100 Mill Street
Suite 115
Reno, NV 89502
P: 775-221-1230
F: 775-800-1567
KozakLusianiLaw.com

June 22, 2016

Dear Justin,

I apologize, I accidently sent out the Request for Submission of Elizabeth Howards Notice of Motion and Motion to Set Aside Dismissal of Counterclaim. I did send the correct copy to the Court. I apologize for any inconvenience.

Respectfully,


Dedra Sonne
Paralegal

Attorneys:

Charles R. Kozak
Chuck@KozakLusianiLaw.com
Admitted States:
Nevada
California

R. Craig Lusiani
Craig@KozakLusianiLaw.com
Admitted States:
Nevada
California
US Supreme Court

Susan M. Leeder
Susan@KozakLusianiLaw.com
Admitted States:
California

EXHIBIT 15

EXHIBIT 15

ALLISON MacKENZIE, LTD.

Invoice No.: 161591

September 10, 2015

PROFESSIONAL SERVICES RENDERED

Date	Atty	Description of Services Rendered	Hours
8/19/15	JMT	correspondence with client re status of service	.20

ALLISON MACKENZIE, LTD.

Invoice No.: 162377

October 1, 2015

PROFESSIONAL SERVICES RENDERED

Date	Atty	Description of Services Rendered	Hours
9/18/15	JMT	Attention to drafting, signing, and filing affidavit for publication of summons and proposed order re the same	.75
9/28/15	JMT	Attention to revising summons for publication	.50

ALLISON MACKENZIE, LTD.

Invoice No.: 162920

November 10, 2015

PROFESSIONAL SERVICES RENDERED

Date	Atty	Description of Services Rendered	Hours
10/27/15	JMT	Telephone calls with client; review Elizabeth's gofundme account; review service rules to determine timing of filing for default	1.30
10/28/15	JMT	Receipt and review voicemail and email from client re service issues; respond to the same	.75

A0063

ALLISON MacKENZIE, LTD.

Invoice No.: 163499

December 3, 2015

PROFESSIONAL SERVICES RENDERED

Date	Atty	Description of Services Rendered	Hours
11/03/15	JMT	Receipt and review correspondence from client re Elizabeth's most recent statements	.60
11/17/15	JMT	Prepare notice of intent to take default; prepare and send letter with notice to Charles Kozak, Esq. and Elizabeth Howard	2.50
11/19/15	JMT	Receipt and review faxed notice of appearance filed by Charles Kozak, Esq., on behalf of Elizabeth	.30
11/23/15	JMT	Receipt and review answer and counterclaim	.80
11/24/15	JMT	Correspondence with client re answer and counterclaim	.20

ALLISON MACKENZIE, LTD.

Invoice No.: 164071

January 14, 2016

PROFESSIONAL SERVICES RENDERED

Date	Atty	Description of Services Rendered	Hours	Rate	Amount
12/01/15	JMT	Meeting with client	2.00	275.00	550.00
12/04/15	JMT	Receipt and review documents from client	.50	275.00	137.50
12/08/15	JMT	Attention to drafting motion to dismiss and motion to strike; correspondence with client re the same	1.30	275.00	357.50
12/10/15	JMT	Finish drafting motion to dismiss	3.50	275.00	962.50
12/11/15	JMT	Finalize and file motion to dismiss and motion to strike	.80	275.00	220.00
12/14/15	JMT	Telephone call with Chuck Kozak re confirmation that he received motion to dismiss and to discuss extending deadline to hold 16.1 early case conference	.50	275.00	137.50
12/18/15	JMT	Correspondence with client re status of motion to dismiss	.20	275.00	55.00
12/29/15	JMT	Confirm with court that no opposition has been filed; prepare reply, proposed order, and request to submit; file the same with the court	1.20	275.00	330.00

ALLISON MacKENZIE, LTD.

Invoice No.: 164944

February 4, 2016

PROFESSIONAL SERVICES RENDERED

Date	Atty	Description of Services Rendered	Hours	Rate	Amount
1/08/16	JMT	Receipt and review order granting motion to dismiss	.50	275.00	137.50
1/28/16	JMT	Attention to preparing notice of early case conference	.50	275.00	137.50

A0066

ALLISON MACKENZIE, LTD.

Invoice No.: 165440

March 9, 2016

PROFESSIONAL SERVICES RENDERED

Date	Atty	Description of Services Rendered	Hours	Rate	Amount
2/04/16	JMT	Telephone call to Charles Kozak to coordinate early case conference	.50	275.00	137.50
2/16/16	JMT	Early case conference with opposing counsel via telephone	.60	275.00	165.00
2/18/16	JMT	Correspondence with client re outcome of early case conference with Charles Kozak; attention to drafting joint case conference report	1.20	275.00	330.00

A0067

ALLISON MACKENZIE, LTD.

April 5, 2016

Invoice No.: 165988

PROFESSIONAL SERVICES RENDERED

Date	Atty	Description of Services Rendered	Hours	Rate	Amount
3/08/16	JMT	Receipt and review email from Kozak's office with comments to joint case conference report; respond to the same; discuss the same with client	.80	275.00	220.00

A0068

ALLISON MACKENZIE, LTD.

Invoice No.: 166473

May 9, 2016

PROFESSIONAL SERVICES RENDERED

Date	Atty	Description of Services Rendered	Hours	Rate	Amount
4/01/16	JMT	Prepare and file request for pretrial conference; prepare and file reply to non-opposition and request to submit	1.60	275.00	440.00
4/04/16	JMT	Communications with court and with client re setting pretrial conference	.50	275.00	137.50
4/07/16	JMT	Correspondence from opposing counsel and court re setting pretrial conference	.20	275.00	55.00
4/13/16	JMT	Correspondence with client re court's setting of pretrial conference	.20	275.00	55.00
4/20/16	JMT	Meeting with client	1.00	275.00	275.00

A0069

ALLISON MACKENZIE, LTD.

June 6, 2016

Invoice No.: 166960

PROFESSIONAL SERVICES RENDERED

Date	Atty	Description of Services Rendered	Hours	Rate	Amount
5/17/16	JMT	Prepare for and attend meeting with client and pretrial conference in Fallon	5.30	275.00	1,457.50
5/18/16	JMT	Communications with client re status of counterclaim and to discuss concerns from pretrial conference	.75	275.00	206.25
5/20/16	JMT	Correspondence with opposing counsel re status of initial production; receipt and review initial production from Kozak; receipt and review order after pretrial conference	1.50	275.00	412.50

A0070

ALLISON MACKENZIE, LTD.

Invoice No.: 167433

July 12, 2016

PROFESSIONAL SERVICES RENDERED

Date	Atty	Description of Services Rendered	Hours	Rate	Amount
6/07/16	JMT	Receipt and review emails from client re harassment from Elizabeth	.40	275.00	110.00
6/28/16	JMT	Receipt and review motion for summary judgment; receipt and review purported opposition to our motion to dismiss; telephone calls to opposing counsel to discuss merits and timing of the same; prepare for settlement conference	2.50	275.00	687.50

A0071

Invoice No.: 167888

August 8, 2016

PROFESSIONAL SERVICES RENDERED

Date	Atty	Description of Services Rendered	Hours	Rate	Amount
7/01/16	JMT	Correspondence from client re motion for summary judgment	.40	275.00	110.00
7/05/16	JMT	Receipt and review information from client re motion for summary judgment	.60	275.00	165.00
7/06/16	JMT	Receipt and review documents dropped off by client	.50	275.00	137.50
7/07/16	JMT	Receipt and review notice of withdrawal of June 20 opposition to motion to dismiss and filing of supplement to motion to set aside dismissal	.80	275.00	220.00
7/08/16	JMT	Attention to drafting opposition to motion for summary judgment	1.30	275.00	357.50
7/11/16	JMT	Meet with client to go over documents and discuss motion for summary judgment; further attention to drafting opposition	1.60	275.00	440.00
7/12/16	JMT	Further attention to drafting opposition to motion to summary judgment; attention to drafting affidavits of counsel and client; send request for extension of time to file opposition	4.20	275.00	1,155.00
7/13/16	JMT	Correspondence from client re taxes and other issues re summary judgment	.30	275.00	82.50
7/15/16	JMT	Further attention to drafting opposition to motion for summary judgment	1.80	275.00	495.00
7/18/16	JMT	Finish drafting opposition to motion for summary judgment; draft affidavit of client in support of the same; meeting with client to go over his comments to draft opposition and to sign affidavit	3.40	275.00	935.00
7/19/16	JMT	Revise opposition to motion for summary judgment re client's comments; compile and attach all exhibits; prepare affidavit of counsel; finalize and file opposition and all affidavits	2.30	275.00	632.50
7/26/16	JMT	Attention to drafting opposition to motion to set aside dismissal	4.20	275.00	1,155.00
7/27/16	JMT	Receipt and review reply to opposition to motion for summary judgment; finalize and file opposition to motion to set aside dismissal; prepare and execute affidavit of counsel in support of opposition to set aside dismissal; telephone calls with client	3.40	275.00	935.00

Invoice No.: 168154

August 25, 2016

PROFESSIONAL SERVICES RENDERED

Date	Atty	Description of Services Rendered	Hours	Rate	Amount
8/15/16	JMT	Communications with client re potential motion for sanctions; begin researching the same	1.30	275.00	357.50
8/17/16	JMT	Attention to research re sanctions and applicability here	1.40	275.00	385.00
8/18/16	JMT	Further attention to research re sanctions; begin drafting motion for sanctions	2.70	275.00	742.50
8/19/16	JMT	Further attention to drafting motion for sanctions	2.80	275.00	770.00
8/24/16	JMT	Receipt and review correspondence from opposing counsel re requests for submission; finish drafting motion for sanctions	3.80	275.00	1,045.00
8/25/16	JMT	Finalize and file motion for sanctions; prepare, execute, and file affidavit in support thereof	2.50	275.00	687.50

SEP

FILED

2016 AUG 26 PM 4:38

SUE SEVON
COURT CLERK
BY [Signature] DEPUTY

1 Case No.15-10DC-0876

2 Dept. No. 1

3 The undersigned hereby affirms that
4 this document does not contain the
5 social security number of any person

6 [Signature]
7 JUSTIN M. TOWNSEND, Esq.

8 IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
9 IN AND FOR THE COUNTY OF CHURCHILL

10 SHAUGHNAN L. HUGHES, an
11 individual,

12 Plaintiff,

13 vs.

14 ELIZABETH C. HOWARD, an
15 individual; and DOES I through
16 XX, inclusive.

17 Defendants.

AFFIDAVIT OF
JUSTIN M. TOWNSEND, ESQ.

17 STATE OF NEVADA)
18 CARSON CITY) ss.

19 JUSTIN M. TOWNSEND, ESQ. ("TOWNSEND"), being first duly sworn, deposes

20 and says:

21 1. That he is an associate attorney at the law firm of Allison Mackenzie, Ltd. and
22 is the attorney of record for Plaintiff, SHAUGHNAN L. HUGHES ("HUGHES"), in the above
23 entitled action.

24 2. That he is informed and believes that the Churchill County Sheriff's Office
25 made several attempts to serve the above-named Defendant with a Summons and a copy of the
26 Complaint between August 5, 2015 and September 15, 2015 and that each such attempt was
27 unsuccessful. TOWNSEND's office contacted the Sheriff's Office, who indicated that it had left
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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

1 several cards requesting that Defendant contact the Sheriff's Office concerning this matter, but that
2 she never did.

3 3. That in early October 2015, he was contacted via telephone by an attorney
4 claiming to be from Las Vegas and that she had been retained to represent the Defendant in this
5 matter and that the purpose of the call was to request information about the case. That he requested
6 that she enter an appearance in this matter, but she never did and never contacted TOWNSEND
7 again.

8 4. That in mid-October 2015, he was contacted via telephone by Charles R.
9 Kozak, Esq. ("KOZAK"), who noted that he had been retained to represent the Defendant in this
10 matter and that he and TOWNSEND then briefly discussed the case. That during the
11 aforementioned phone call with KOZAK, TOWNSEND requested that KOZAK enter an appearance
12 herein so this matter could proceed.

13 5. That on Tuesday, December 29, 2015, TOWNSEND confirmed with the
14 Court that no Opposition had been filed and on that date HUGHES filed a Reply to the Failure to
15 Oppose Motion to Dismiss Counterclaim; Motion to Strike together with a Request for Submission.

16 6. That on December 14, 2015, TOWNSEND contacted KOZAK and suggested
17 that the NRCP 16.1 early case conference be continued for a period of up to 90 days as allowed by
18 NRCP 16.1, pending the outcome of HUGHES' Motion to Dismiss. KOZAK agreed. TOWNSEND
19 followed this up with a confirming email dated December 14, 2015, to which KOZAK never
20 responded.

21 7. That on or about February 4, 2016, TOWNSEND called KOZAK to arrange
22 the NRCP 16.1 early case conference. During this call, counsel for the parties agreed on a date for a
23 telephonic early case conference.

24 8. That the early case conference was held telephonically on February 16, 2016,
25 with TOWNSEND initiating the call. That KOZAK indicated to TOWNSEND during the call that
26 he had never even looked at NRS Chapter 39 and then chuckled when TOWNSEND suggested that
27 accomplishing the purposes of the case conference was going to be difficult if KOZAK was not
28 familiar with the statutes that govern the dispute.

1 9. That TOWNSEND did not receive Defendant's initial disclosures pursuant to
2 NRCP 16.1 until May 20, 2016, when the same were delivered to his office by Reno-Carson
3 Messenger Service.

4 10. When TOWNSEND called KOZAK on February 16, 2016 to conduct the
5 early case conference in this matter, the telephone was answered by Nan Adams, a secretary at
6 Kozak Lusiani Law Firm, who asked if HUGHES or TOWNSEND had not received an opposition to
7 HUGHES' Motion to Dismiss. TOWNSEND confirmed in no uncertain terms that no opposition
8 had ever been received by his office and indicated his belief and understanding that the Court had not
9 received any opposition either. TOWNSEND was then transferred to KOZAK, who again asked if
10 an opposition had ever been received. TOWNSEND reiterated directly to KOZAK that no
11 opposition had ever been received. This was the first time KOZAK or anybody associated with
12 Defendant had mentioned to TOWNSEND a claim that an opposition had been filed.

13 11. That TOWNSEND never at any time prior to the filing of Defendant's Motion
14 to Set Aside Dismissal of Counterclaim indicated to KOZAK that he had received an Opposition to
15 HUGHES' Motion to Dismiss.

16 12. On or about June 20, 2016, Defendant filed an Opposition to HUGHES'
17 Motion to Dismiss, which was received by TOWNSEND on or about June 28, 2016. On the day
18 TOWNSEND received the aforementioned Opposition, TOWNSEND called KOZAK to inquire as
19 to why Defendant was filing an Opposition to a Motion six months after it was due and more than
20 five months after the Motion had already been granted. KOZAK asserted that the June 20, 2016
21 Opposition was filed in response to the May 19, 2016 Order. TOWNSEND noted the May 19, 2016
22 Order required a supplement to the May 17, 2016 Motion to Set Aside Dismissal and KOZAK
23 responded that the June 20, 2016 Opposition was the same thing as a supplement to the Motion to
24 Set Aside Dismissal.

25 13. That on June 29, 2016, TOWNSEND sent an email to KOZAK in which he
26 demanded that the June 20, 2016 Opposition be withdrawn and that a filing responsive to the Court's
27 May 19, 2016 Order be filed in its place.
28

14. That on August 24, 2016, TOWNSEND received two letters dated June 22, 2016. That the meaning of the letters is not entirely clear but that they seem to indicate that one or more Requests for Submission were sent to the Court. TOWNSEND's office contacted the Court on August 24, 2016 and confirmed that no Requests for Submission had been received from KOZAK's office as of that date.

15. That his hourly rate for this matter is \$275 and that he has spent 75.25 hours as a direct result of the rules violations outlined in the Motion for Sanctions of even date herewith for a total cost billed to HUGHES of \$20,693.75.

16. That on penalty of perjury, the averments made herein are true to the best of TOWNSEND's knowledge, except as to those averments made on information and belief, and as to those matters, he believes them to be true.

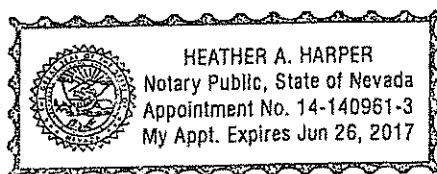
DATED this 25th day of August, 2016.


JUSTIN M. TOWNSEND, ESQ.

STATE OF NEVADA)
CARSON CITY) ss.

On August 25, 2016, personally appeared before me, a Notary Public, JUSTIN M. TOWNSEND, personally known (or proved) to me to be the person whose name is subscribed to the foregoing document, and who acknowledged to me that he executed the above document.


NOTARY PUBLIC



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 on all parties to this action by:

- ☒ 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
- ☐ 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:

CHARLES R. KOZAK, ESQ.
KOZAK LAW FIRM
3100 Mill Street, Suite 115
Reno, NV 89502

DATED this 25th day of August, 2016.


NANCY FONTENOT

4843-0079-1349, v. 1

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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FILED

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COURT CLERK

Julio Benningrove

Case No. 15-10DC-0876

Dept. No. I

The undersigned hereby affirms that
this document does not contain the
social security number of any person.

CHARLES R. KOZAK, Esq.

IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CHURCHILL

SHAUGHNAN L. HUGHES, an
individual,
vs.

Plaintiff,

**VERIFIED OPPOSITION TO
MOTION FOR SANCTIONS**

ELIZABETH C. HOWARD, an
individual; and DOES I through
XX, inclusive,

Defendants

ELIZABETH C. HOWARD, an
individual,

Counterclaimant,

vs.

SHAUGHAN L. HUGHES, an
individual; and DOES 1 through
XX, inclusive,

Counterdefendants. /

COMES NOW Defendant and Counterclaimant, ELIZABETH HOWARD (hereinafter
"Ms. Howard"), and without waiving her right to the safe harbor provision of Nevada Rules of
Civil Procedure 11 (c)(1)(A) (hereinafter "NRCP") presents her Opposition to Plaintiff and
Counterdefendant SHAUGHAN L. HUGHES' (hereinafter "Hughes") Motion for Sanctions
based on the following Memorandum of Points and Authorities, along with the record on file
herein.

A0079

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. FACTUAL AND PROCEDURAL BACKGROUND

3 Ms. Howard retained the undersigned counsel, and a Notice of Appearance was filed with
4 this Court on November 19, 2015. Having received a Notice of Intent to Take Default from
5 Hughes' counsel on November 17, 2015, an Answer and Counterclaim to the Complaint were
6 immediately prepared. Due to being recently retained, the Answer and Counterclaim were
7 completed and sent out to Hughes' counsel, and for filing to this Court on Saturday, November
8 21, 2015 at 12:09 a.m. Ms. Howard's Answer and Counterclaim were mailed the same day and
9 filed in the Court's record on November 24, 2015. Hughes counsel's filed a Motion to Dismiss
10 Counterclaim; Motion to Strike on December 11, 2015. The Counterclaim was dismissed
11 January 7, 2016. Ms. Howard's counsel participated in the NRCP 16.1 early case conference,
12 produced extensive Initial Disclosures and also participated in a Pretrial conference, in good
13 faith. Ms. Howard filed a Motion to Set Aside the Dismissal on May 17, 2016 based on error in
14 the filing and service. Thereafter, Ms. Howard also filed a Motion for Summary Judgment and
15 both were submitted for decision August 24, 2016 and both were denied on September 7, 2016.

16 On August 25, 2016, immediately after Ms. Howard's Motions were submitted, but before
17 the Court's ruling, Hughes' Counsel served Ms. Howard with a Motion for Sanctions. Hughes
18 counsel gave absolutely no prior notice of intent or basis to file a Motion for Sanctions to Ms.
19 Howard; and accordingly, Ms. Howard had no opportunity to cure any alleged defect prior to
20 counsel filing the within motion. Upon receiving the Motion for Sanctions, the undersigned's
21 office called Hughes counsel to inquire if the Motion for Sanctions had, in fact, been filed with
22 the Court, and confirmed that in violation of NRCP 11 (c)(1)(A), which allows twenty-one (21)
23 days for corrections of any alleged defect, Hughes' counsel filed his Motion for Sanctions with
24 this Court on August 26, 2016.

A0080

1 **II. LEGAL ARGUMENT**

2 **A. Failure to Comply with the Safe Harbor Provision of NRCP 11 Warrants**
3 **Denial of Plaintiff's Motion for Sanctions**

4 A motion for sanctions under NRCP 11 (c)(1)(A) "shall be served as provided in Rule 5, but
5 shall not be filed with or presented to the court unless, within 21 days after service of the
6 motion (or such other period as the court may prescribe), the challenged paper, claim, defense,
7 contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the
8 court may award to the party prevailing on the motion the reasonable expenses and attorney's
9 fees incurred in presenting or opposing the motion. Nev. R. Civ. P., rule 11, 28 U.S.C.A.
10

11 In Popowitz v. Eighth Judicial Dist. Court of State ex rel. County of Clark the Supreme
12 Court of Nevada found the district court erred in awarding sanctions because the Popowitizes
13 withdrew the alter ego claim within NRCP 11's 21-day safe harbor period. Popowitz v. Eighth
14 Judicial Dist. Court of State ex rel. County of Clark, 2014 WL 549482, at *2 (Nev., Feb. 10,
15 2014, No. 58305). Here, Hughes' counsel alleges defects in Ms. Howard's Motion to Set Aside
16 and Motion for Summary Judgment but waited until both motions had been submitted to the
17 court to raise the issues by filing his Motion for Sanctions on August 26, 2016. Even if on that
18 date, Hughes' counsel had provided a notice letter as required under NRCP 11's safe-harbor
19 provision, Ms. Howard's counsel would have had time to cure the alleged defects prior to the
20 Court's ruling on September 7, 2016. However, due to Hughes' counsel immediately filing the
21 Motion for Sanctions, Ms. Howard had no opportunity to consider and make corrections or
22 withdraw the motions, prior to the rulings on the motions.
23
24
25

26 Accordingly, the Motion for Sanctions should be denied and attorney fees awarded to Ms.
27 Howard for defense of the motion pursuant to the rule, as prevailing party. Nev. R. Civ. P., rule
28 11, 28 U.S.C.A. Additionally, Hughes counsel raises other issues, equally without notice, that
are not appropriate for sanctions for a number of reasons, as set out below.

1 **B. Filing Answer Nine (9) Minutes after Notice to Enter Default Deadline, does not**
2 **Constitute Grounds for Sanctions.**

3 Many months prior to Ms. Howard retaining counsel, Hughes attempted to serve Ms.
4 Howard. When unable to serve he motioned the Court and was granted the ability to serve by
5 publication. Proof of Publication was filed October 26, 2015 and an Answer was due
6 November 17, 2015. Because the undersigned had spoken with Ms. Howard and notified
7 Hughes' counsel that he may be retained in the matter, Hughes' counsel sent a Notice of Intent
8 to Take Default to the undersigned on November 17, 2016. Please see Exhibit 2 to Plaintiff's
9 Motion for Sanctions. The letter specified that a Responsive pleading was due on November
10 20, 2015. Upon receiving the Notice, the undersigned contacted Ms. Howard and filed his
11 Notice of Appearance on November 19, 2015. Due to being recently retained, and although the
12 undersigned was working to complete the Answer and Counterclaim by November 20, 2015, it
13 was completed and sent by facsimile to Hughes' counsel just nine (9) minutes after midnight on
14 November 21, 2015. Please see Exhibit 3 to Plaintiff's Motion for Sanctions. If Hughes'
15 counsel wanted to seek a remedy for the Answer and Counterclaim being served nine (9)
16 minutes late, he could have filed the Default. It was Hughes' council's decision as to whether to
17 enter a Default; however, he did not. To now take issue with a late filing is not only
18 inappropriate, it borders on harassment and is certainly nothing that should warrant sanctions.

19 **C. Sanctions Should Not Enter for Counterclaims Arising from Same Subject Matter**

20 Hughes claims a basis for sanctions also regarding the what he claims were improper
21 counterclaims made by Ms. Howard. However, Ms. Howard's counterclaims were properly
22 brought in this action pursuant to the Nevada Rules of Civil Procedure ("NRCPP"). NRCPP 13(a)
23 provides a counterclaim is compulsory, "if it arises out of the transaction or occurrence that is
24 the subject matter of the opposing party's claim and does not require for its adjudication the
25 presence of third parties of whom the court cannot acquire jurisdiction." A counterclaim
26 A0082

1 additionally may be brought under NRCP 13(b) because" "A pleading may state as a
2 counterclaim any claim against any opposing party not arising out of the transaction or
3 occurrence that is the subject matter of the opposing party's claim". Even if the claim is
4 different in kind it can be brought under NRCP 13(c) which provides "[a] counterclaim may or
5 may not diminish or defeat the recovery sought by the opposing party. It may claim relief
6 exceeding in amount or different in kind from that sought in the pleading of the opposing
7 party."
8

9 The basis of Hughes' initial complaint is for a partition action based on a quit claim deed
10 by which he claims Ms. Howard allegedly signed over substantial interest in her property at
11 11633 Fulkerson Road (hereinafter "Property") to him. Arising directly out of that transaction
12 are the facts and circumstances that form the basis of Ms. Howard's claims of undue influence
13 and emotional distress inflicted on her by Hughes that resulted her succumbing against her will
14 and without her understanding to signing the quit claim deed. Hughes requests a ruling to
15 determine his interest in the property and to partition that interest to him. To adequately
16 determine that interest, if any, the Court must consider all factual background relevant to that
17 interest. Ms. Howard's counterclaim is regarding the same subject matter, i.e. Hughes alleged
18 interest in the property, and is therefore compulsory because out of the facts surrounding the
19 alleged transfer of that interest arise Ms. Howards counterclaims and is not a basis for sanctions.
20 NRCP 13(a).
21
22
23

24 **D. A Timely Filed Motion to Set Aside is not a Basis for Sanctions**

25 Ms. Howard filed a Motion to Set Aside the Dismissal on May 17, 2016, within six (6)
26 months of when the Counterclaims were dismissed January 7, 2016. The filing falls within the
27 time frame set out in NRCP 60(b) which states:
28

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than 6 months after the proceeding was taken or the date that written notice of entry of
A0083

1 the judgment or order was served. A motion under this subdivision (b) does not affect the
2 finality of a judgment or suspend its operation. (Emphasis added.)

3 In the Order after the Pretrial Conference, Ms. Howard was Ordered to supply a
4 supplement to the Motion to Set Aside, which Counsel understood to mean the Opposition that
5 would have been filed, if the inadvertent error in the filing had not occurred. Hughes' counsel
6 objected to the format of this supplement by email to Ms. Howard's counsel. Ms. Howard's
7 counsel withdrew the Opposition supplement and refiled another supplement. After Hughes
8 filed his Opposition, Ms. Howard's counsel chose not to file a Reply. A Request for
9 Submission of the Motion to Set Aside was filed by both parties and was therefore,
10 appropriately before this Court. The Court entered an Order denying the Motion to Set Aside
11 on September 7, 2016. In the Order, the court acknowledged that the motion was filed within
12 the statutory time frame, but was not prompt, and therefore the Motion was denied. This was a
13 proper motion to bring before the court in the course of this litigation, was properly and timely
14 submitted to the court and is not a basis for sanctions.

17 **E. Hughes' Counsel Blatantly Misrepresents the 16.1 Case Conference, in which the**
18 **Undersigned was Fully Prepared and Participated in Good Faith**

19 The 16.1 early case conference was scheduled and held February 16, 2016. In the
20 conference Hughes' counsel stated his interpretation of NRS 39, incorrectly asserting that due to
21 the joint tenancy, the only options for resolution would be agreement or sale of the property and
22 equal division. Ms. Howard's counsel stated he had not seen anything in the statute that could
23 be interpreted in that way. The undersigned counsel was not unprepared, but simply in
24 disagreement with Hughes' counsel as to how the matter could be resolved. It is extremely
25 disingenuous for Hughes' counsel to misrepresent that the undersigned never looked at the
26 statute and it is absolutely inaccurate that the undersigned was unprepared. In fact, the
27
28

undersigned's position that patrician under NRS 39 requires an evaluation of the parties' contributions in interest is consistent with the statute;

In making the partition, the master or the court. . . shall order a partition according to the respective rights of the parties, as ascertained by the court, and may appoint a master to partition the property. NRS 39.120

Moreover, in this Court's Order entered on September 7, 2016, on page eight (8), the Court acknowledges that "the value of his (Hughes) contribution is a material fact for the court to consider in apportioning the parties' interests in a partition." A difference in opinion of how a Statute is interpreted according to the facts of the matter is not uncommon and absolutely not grounds for a sanction.

F. Ms. Howard's Motion for Summary Judgment was Supported by Hughes Lack of Evidence of Contribution to the Property and Not Grounds for Sanction

Summary judgment, pursuant to NRCP 5(c), is appropriate when there exists no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Butler ex rel. Biller v. Bayer, 123 Nev. 450, 457-58, 168 P.3d 1055, 1061 (2007) (en banc). Sack v. Tomlin, 110 Nev. 204, 871 P.2d 298 (1994), indicated a suit for partition of real property should be based on contribution, including improvements after purchase. Howard presented that documents produced by Hughes which failed to reasonably or reliably show that he made any actual contribution to the property. Based on this information, Ms. Howard appropriately brought the issue before that court that there were no material facts to support that Plaintiff had any interest in the Property. After Hughes Opposition to the Motion for Summary Judgment, this Court found that Hughes could demonstrate some minimal contribution to the property and that created a disputed issue of fact and denied the Summary Judgment. Nonetheless, bringing a Motion for Summary Judgment in this matter is part of the normal course of litigation and not grounds for sanctions. Likewise, the Motion was submitted to the

1 Court by both parties because the Requests for Submission passed in the mail, so again there is
2 no grounds for sanctions.

3 **G. Ms. Howard's Counsel Timely Prepared all Required Documents, and to his**
4 **Knowledge, each had been Filed and Served as he Represented in Good Faith**

5
6 Hughes' counsel is incorrect that the undersigned participated in the Pretrial Conference in
7 bad faith due to statements made before the Court. Each and every statement that the
8 undersigned made to this Court were based on his knowledge and belief at the time. In each
9 instance, the undersigned timely prepared each document and gave them to the legal assistant,
10 Nan Adams, with clear direction to immediately file and serve. The undersigned did draft and
11 sign the Opposition to the Motion to Strike on December 30, 2015. When a question later arose
12 regarding the service and filing, the legal assistant insisted adamantly that she had sent out the
13 document. The same is true regarding the Initial Disclosures, which were completed in March.
14 It was not until the undersigned was in court at the Pretrial Conference, on May 17, 2015 that
15 the undersigned was aware that the Initial Disclosures had not been received by Hughes'
16 counsel. Once aware, they were submitted. In each instance, the undersigned had been assured
17 by the legal assistant that each documents had been properly filed and service. At the time of
18 the Pretrial Conference, the undersigned made representations to the Court in good faith to the
19 best of his knowledge and belief at the time. Over the course of these events; however, it
20 became apparent that the legal assist, Nan Adams, was not completing the service and filings as
21 she represented. Appropriately, Nan Adams was discharged from employment August 1, 2016.

22
23 Regarding the Defendant's Case Conference Report, counsel had discussed on the phone
24 that they would separately prepare Reports, due to a disagreement regarding the jury. The
25 undersigned prepared and signed Defendant's Case Conference Report on March 10, 2016. See
26 Motion for Sanctions Exhibit 12. At the Pre-Trial Conference the court did acknowledge that
27
28

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1 the document was submitted to the Court. Again, the undersigned represented to his best
2 knowledge and belief at the time, when the document was sent to the Court. While the
3 undersigned acknowledges that he has full responsibility for those who are employed by him, it
4 took some time for the deficiencies of the employee to become fully apparent. When they did,
5 the undersigned to action to immediately remove the employee.
6

7 Most importantly, the undersigned in good faith participated and represented what had been
8 filed according to his knowledge and belief to this Court. At no time did the undersigned
9 intentionally misrepresent any fact and did strive to have candor before this Court at all times.
10 Accordingly, it is respectfully requested that Plaintiff's Motion for Sanctions regarding these
11 issues be denied.
12

13 **H. Attorney Fees should be Denied Based on a Lack of Basis for Sanctions.**

14 Plaintiff's motion additionally requests attorney's fees which should be denied based on
15 each heading above. First this Motion should never have been filed without compliance with
16 NRCPP 11 (c)(1)(A) safe harbor provision and therefore no attorney fees should be awarded.
17 Second, Ms. Howard's pleadings were appropriate and did not require additional work by
18 Plaintiff, including the Answer and appropriate Counterclaim, served nine (9) minutes late,
19 appropriate motion to set aside, and for summary judgment as part of normal litigation. Finally,
20 the undersigned was prepared and participated in good faith in all of the matters before this
21 Court and by doing so, did not cause Plaintiff any additional fees.
22
23

24 ...

25 ...

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1 **III. CONCLUSION**

2 Based on the foregoing, Ms. Howard respectfully requests this Court enter an Order
3 denying Hughes' Motion for Sanctions in its entirety.

4 **Affirmation:** Pursuant to NRS 239B.030, the undersigned does hereby affirm that this document does not
5 contain the social security of any person.

6
7 DATED this 9th day of September 2016.

8 Respectfully submitted,


9
10 

11 CHARLES R. KOZAK, ESQ.
12 KOZAK LUSIANI LAW, LLC
13 Nevada State Bar #11179
14 3100 Mill Street, Suite 115
15 Reno, Nevada 89502
16 Phone (775) 322-1239
17 Facsimile (775) 800-1767
18 chuck@kozaklusianilaw.com
19 Attorney for Elizabeth C. Howard

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On the 9 day of September 2016, I caused to be delivered via facsimile and U.S. Mail, postage fully prepaid, a true and correct copy of the foregoing document:

Justin M. Townsend, Esq.
Allison MacKenzie, Ltd.
Nevada State Bar No. 12293
402 N. Division Street
P. O. Box 646
Carson City, Nevada 89702
Phone (775) 687-0202
Facsimile (775) 882-7918
Attorney for Plaintiff


Dedra Sonne
Employee of Kozak Lusiani Law, LLC

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VERIFICATION

I, CHARLES R. KOZAK, ESQ., being first duly sworn under penalty of perjury, do hereby declare and say as follows:

1. I am a Counsel for Defendant and Counterclaimant, ELIZABETH HOWARD in the foregoing matter.
2. I have carefully read the Opposition to Motion for Sanctions to which my Verification is attached.
3. All statements made in the foregoing are true to the best of my knowledge and belief, except as to those matters therein stated upon information and belief, and that as to such matters, I believe them to be true.
4. I understand the penalties for perjury that could include prison and that perjury is felony.
5. I swear under penalty of perjury under the laws of the State of Nevada that the foregoing assertions of fact are true and correct.

DATED this ____ day of September 2016.

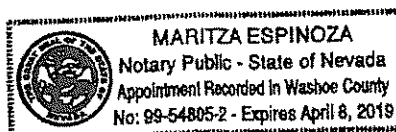

CHARLES R. KOZAK, ESQ.

ACKNOWLEDGMENT

STATE OF NEVADA)
) ss
COUNTY OF WASHOE)

On this 9th day of Sept, 2016 personally appeared before me, CHARLES R. KOZAK, proven to me to be the person whose name is subscribed to the above instrument, and who acknowledged to me that she executed the foregoing Opposition to Motion for Sanctions.


NOTARY PUBLIC



A0090

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

Case No. 15-10DC-0876

Dept. No. I

The undersigned hereby affirms that
this document does not contain the
social security number of any person

JUSTIN M. TOWNSEND, Esq

FILED

2016 SEP 21 AM 11:03

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IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CHURCHILL

SHAUGHNAN L. HUGHES, an
individual,

Plaintiff.

vs.

ELIZABETH C. HOWARD, an
individual; and DOES I through
XX, inclusive.

Defendants.

**REPLY TO VERIFIED OPPOSITION
TO MOTION FOR SANCTIONS**

COMES NOW, Plaintiff, SHAUGHNAN L. HUGHES ("HUGHES"), by and through
his attorneys, ALLISON MacKENZIE, LTD., and hereby replies to the Verified Opposition to Motion
for Sanctions filed by Defendant, ELIZABETH C. HOWARD. This Reply is made and based upon
the pleadings and documents on file herein as well as the following Memorandum of Points &
Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

A. The Motion for Sanctions does not violate the "safe harbor" provision of NRCP 11.

NRCP 11(c)(1)(A) provides that a motion for sanctions "shall not be filed with or
presented to the court unless, within 21 days after service of the motion...the challenged paper, claim,
defense, contention, allegation, or denial is not withdrawn or appropriately corrected." 10JDCR
15(15) provides that a motion is not presented to this Court until a Request for Submission is filed.
The instant Motion for Sanctions was served on Defendant on August 25, 2016. Twenty-one days

1 therefrom is September 15, 2016. Defendant's Verified Opposition was filed on or about September
2 9, which gives until September 19, 2016 for the filing of this Reply. A Request for Submission is
3 being filed herewith, which will present the instant Motion for Sanctions to the Court for the first time
4 after the expiration of the 21-day correction period set forth in NRCP 11(c)(1)(A). Further, there is
5 no legal authority cited by Defendant that would require similar correction periods for violations of
6 10JDCR 8(6) or 10JDCR25, both of which were raised in HUGHES' Motion for Sanctions but were
7 not addressed at all by the Verified Opposition.¹

8 Further, as will be shown herein, many of the violations outlined in the Motion for
9 Sanctions deal with Defendant's repeated violations of filing deadlines, which cannot be corrected in
10 retrospect. Moreover, even if HUGHES' interpretation of the 21-day correction period is faulty,
11 neither Defendant nor her counsel make adequate efforts to correct any of the violations outlined in
12 the Motion for Sanctions. Indeed, as will be shown herein, Defendant's attorney, Charles R. Kozak
13 ("KOZAK"), doubles down on or ignores many of the misrepresentations he has previously made with
14 this Court while also introducing new misrepresentations in the Verified Opposition.

15 **B. KOZAK has not corrected any of the violations outlined in the Motion for Sanctions**
16 **nor does he offer to do so.**

17 HUGHES' Motion for Sanctions alleged multiple violations of NRCP and 10JDCR.
18 KOZAK fails to address some of the allegations and uses misdirection when addressing others. He
19 has not corrected most, if any, of the violations as of the date of this filing, nor does he offer to do so.

20 **i. KOZAK devalues the fact that he untimely filed a pleading responsive to**
21 **the Complaint in this matter.**

22 The heading for Section B on p. 4 of the Verified Opposition implies that Defendant
23 filed her Answer only nine minutes late. The truth is that KOZAK faxed a copy of the Answer to the
24
25

26 ¹ KOZAK verified his client's Opposition to the Motion for Sanctions. NRS 15.010(1) provides that a pleading must be
27 verified by a party "unless the party is absent from the county where the attorneys reside, or from some cause unable to
28 verify it, or the facts are within the knowledge of the party's attorney." Where the pleading is verified by the attorney,
"the attorney...shall set forth in the affidavit the reasons why it is not made by the party." NRS 15.010(2). While most of
the allegations at issue in the Motion for Sanctions concern KOZAK's behavior, KOZAK's verification fails to state the
reasons why his client has not verified the pleading.

undersigned nine minutes after midnight on the deadline to avoid entry of default.² The evidence and KOZAK's own earlier admission shows that the Answer was not filed by this Court until November 24, 2015, which was four days after the default deadline and seven days after the Answer was due. See Exhibits 2 & 3 to Motion for Sanctions and statements in Verified Opposition at p. 2, ll. 7-11. Further, defaults are routinely set aside in such circumstances, so the undersigned did not want to waste time seeking default in lieu of prosecuting the case at bar. Nevertheless, the point raised in the Motion for Sanctions as it relates to the untimely filing of Defendant's Answer is that such action began a pattern of noncompliance by Defendant and her attorney, the cumulative and singular effects of which were to cause unnecessary delay and expense to HUGHES.

As it relates to the "safe harbor" provision of NRCP 11, KOZAK is unable to correct the violations of NRCP 12 and 55. Therefore, entry of Defendant's default may be warranted under NRCP 55 and as a sanction under 10JDCR 25(7).

ii. KOZAK fails to address the specific violations of NRCP 9 and NRCP 12 raised in the Motion for Sanctions as it relates to Defendant's Counterclaims.

In the Motion for Sanctions, HUGHES noted that he had timely filed a Motion to Dismiss Defendant's Counterclaims for failure to properly plead the same under the standards set forth in NRCP 9(b) and 12(b)(5). Specifically, HUGHES noted that Defendant's fraud claims were not supported with particular allegations of fact as required by NRCP 9(b) and that the remainder of her factual allegations failed to give rise to any claims for relief as required by NRCP 12(b)(5). Alternatively, HUGHES' Motion to Strike sought to strike all factual allegations contained in the Counterclaim that were scandalous, impertinent, or immaterial pursuant to NRCP 12(f).

In response to the allegations that the Counterclaims violated NRCP 9 and 12, KOZAK asserts only that Defendant's counterclaims were compulsory under NRCP 13. Never at any time has the question of whether Defendant's counterclaims were compulsory been before this Court. The only questions before the Court were whether Defendant had met the pleading standards required by NRCP

² The Court may also wish to know that KOZAK's office has served many of the pleadings in this matter on HUGHES by facsimile without following the same with service by mail or hand delivery. Not that the undersigned necessarily objects to such service, but service by facsimile is only proper "if the attorney or the party served has consented to service by electronic means." NRCP 5(b)(2)(D). The undersigned would not withhold such consent, but it is a technical violation of the aforementioned rule that KOZAK's office never asked for the undersigned's consent.

1 9 and 12. KOZAK fails in every respect to address these violations, which may be construed as an
2 admission of these violations under 10JDCR 15. Further, KOZAK makes no offer to withdraw the
3 allegations outlined in the Motion to Strike as being scandalous, impertinent, or immaterial or to
4 correct the pleading deficiencies of the allegations.

5 **iii. KOZAK misrepresents conversations between counsel at the NRCP 16.1**
6 **early case conference.**

7 KOZAK insists that he was prepared to discuss this matter during the NRCP 16.1 early
8 case conference on February 16, 2016 and implies that he did not state he had not reviewed NRS
9 Chapter 39 prior to said conference. His assertion is based only on what he says was a disagreement
10 about the meaning of NRS 39.120. KOZAK claims that the undersigned stated in the early case
11 conference that "due to joint tenancy, the only options for resolution would be agreement or sale of
12 the property and equal division." Verified Opposition, p. 6, ll. 20-23. This is false. No such assertion
13 was made by the undersigned and this Court can know that no such assertion was made because the
14 undersigned wholeheartedly disagrees with the substance of the statement attributed to him. The
15 undersigned understands and agrees that NRS Chapter 39 allows for partition or sale of the property
16 in accordance with the parties' respective rights. HUGHES does claim an equal right in the property
17 as a joint tenant, but never at any time has he asserted that physical partition of the property would not
18 be an option. Such a reading of NRS Chapter 39 would be absurd.

19 The bottom line is that KOZAK stated flatly during the early case conference that he
20 had not read NRS Chapter 39. This was frustrating to the undersigned and the undersigned made his
21 frustration known to KOZAK during the call. The undersigned's recollection of these matters is set
22 forth in his Affidavit in Support of the Motion for Sanctions and the Court is, obviously, free to weigh
23 the credibility of KOZAK's statements to the contrary.

24 **iv. KOZAK makes two misrepresentations concerning Defendant's case**
25 **conference report.**

26 In response to the allegation that KOZAK did not timely file or serve an individual
27 Case Conference Report, KOZAK makes two assertions that are demonstrably false. First, he asserts
28 that he had a telephone conversation with the undersigned in which the parties agreed that they would

1 file separate reports over a disagreement concerning whether this matter would be decided by a jury.
2 Verified Opposition, p. 8, ll. 25-27. Such a telephone conversation NEVER happened. As stated in
3 the Motion for Sanctions, the undersigned sent an email to KOZAK in which he noted in writing his
4 concerns that KOZAK was asserting that a jury demand had been made when no such demand had
5 been made. *See also* Exhibit 11 to the Motion for Sanctions, which is an email to KOZAK. KOZAK
6 never responded to that email, by telephone or otherwise. The assertion concerning this telephone
7 conversation is nothing short of a lie.

8 Next, KOZAK states that he prepared, filed, and served Defendant's Case Conference
9 Report on March 10, 2016 and that this Court acknowledged during the May 17, 2016 pretrial
10 conference that the same had been filed. Verified Opposition, p. 8, l. 25 to p. 9, l. 1. This statement
11 is curious, at best, when this Court's September 7, 2016 Order specifically states that the only case
12 conference report in the record is the one filed by HUGHES on March 15, 2016. September 7, 2016
13 Order, p. 5, fn. 5. Further, the undersigned has no recollection of the Court acknowledging receipt of
14 Defendant's Case Conference Report except to note that KOZAK's office had emailed an unstamped
15 copy thereof to the Court during the pretrial conference. Clearly, that document was never filed by
16 the Court as the only copy it received was via email more than two months after it was due. Further
17 no copy of Defendant's Case Conference Report has ever been served on HUGHES and KOZAK
18 makes no offer to serve the same now as a corrective measure for this particular rules violation.

19 **v. KOZAK blames his secretary for multiple violations but he fails to address**
20 **his own false statements to the Court.**

21 KOZAK blames his multiple violations regarding timely filing and service of
22 documents in this matter on his secretary, Nan Adams, who he claims has now been fired. Verified
23 Opposition, p. 8. However, KOZAK wholly fails to address his own misrepresentations to the Court
24 in apparent attempts to cover up his office's failures. For instance, KOZAK does not address HIS
25 statement in Defendant's Motion to Set Aside Dismissal, at p. 5, ll. 25-28, that "Mr. Hughes' counsel
26 acknowledged to Ms. Howard's counsel that he had received the Opposition; however, he noted that
27 it was not a file-stamped copy." This false statement was written in a pleading signed by KOZAK and
28 this Court has already concluded that KOZAK was less than truthful in making such a statement. *See*

1 September 7, 2016 Order, p. 4, l. 21 to p. 5, l. 2. Instead of addressing this false statement, KOZAK
2 attempts to distract the Court by arguing only that the Motion to Set Aside Dismissal was timely filed
3 and, therefore, not grounds for sanctions. The timeliness of the Motion to Set Aside Dismissal was
4 already addressed by this Court in its September 7, 2016 Order in which the Court found that said
5 Motion was not promptly filed. Further, the issue here is not the timeliness of the filing, but the
6 substance of the Motion to Set Aside Dismissal. KOZAK fails to address the false statements
7 contained therein, which can only be attributed to him, and, therefore, sanctions are appropriate.

8 KOZAK also fails to address the fact that he claimed at the pretrial conference that his
9 office had file-stamped copies of an Opposition to Motion to Dismiss and other documents but that
10 such copies have never been produced to support those claims. See September 7, 2016 Order, p. 5, ll.
11 1-2. Again, these statements are attributable only to him and he fails to make any corrective statements
12 in the Verified Opposition to Motion for Sanctions.

13 **vi. KOZAK fails to address several other violations raised in the Motion for**
14 **Sanctions.**

15 KOZAK does not address at all any of the following violations raised in the Motion for
16 Sanctions:

- 17 • Insufficient notice given concerning the Motion to Set Aside Dismissal in
18 violation of NRCP 6(d);
- 19 • Failure to participate in the pretrial conference in good faith in violation of
20 10JDCR 8(6);
- 21 • Failure to promptly file Requests for Submission of Defendant's Motions
22 demonstrates intent to delay these proceedings.

23 Failure to address these allegations may be construed as admissions thereof pursuant
24 to 10JDCR 15. HUGHES respectfully requests that the Court so construe KOZAK's failure to address
25 these violations.

26 **C. Conclusion**

27 The Motion for Sanctions does not violate the "safe harbor" provision of NRCP 11
28 because (a) the Motion will not be presented to the Court until after the lapse of the 21-day correction
period; (b) most of KOZAK's rules violations cannot be retroactively corrected; and (c) KOZAK has
not taken any corrective action as it concerns the violations raised in the Motion for Sanctions.

1 For the reasons set forth herein and in the Motion for Sanctions, KOZAK is in violation
2 of several rules governing this matter, each of which on its own and all of which combined, give rise
3 to sanctions, which should include, at a minimum, an award of attorneys' fees in favor of HUGHES.
4 HUGHES respectfully requests that this Court enter such an order.

5 DATED this 19th day of September, 2016.

6 ALLISON MacKENZIE, LTD.
7 402 North Division Street
8 Carson City, NV 89703-4168

9 By: 

10 JUSTIN M. TOWNSEND, ESQ.
11 Nevada State Bar No. 12293

12 Attorneys for Plaintiff,
13 SHAUGHNAN L. HUGHES
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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 on 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
- 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:

CHARLES R. KOZAK, ESQ.
KOZAK LUSIANI LAW, LLC
3100 Mill Street, Suite 115
Reno, NV 89502

DATED this 19th day of September, 2016.


NANCY FONTENOT

4820-2431-8521, v. 2

4
1 Case No. 15-10DC-0876

2 Dept. I

FILED

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CLERK OF COURT

BY *Joseph* DEPUTY

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6 IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF CHURCHILL
8
9

10 SHAUGHNAN L. HUGHES,

11 Plaintiff,

12 vs.

ORDER GRANTING IN PART AND
DENYING IN PART MOTION FOR
SANCTIONS

13 ELIZABETH C. HOWARD, an individual;
14 and DOES I through XX, inclusive,

15 Defendants. /

16 This Matter is before the Court on Plaintiff SHAUGHNAN HUGHES' (hereinafter "Mr.
17 Hughes") Motion for Sanctions, filed August 26, 2016, and Motion for Order to Show Cause,
18 filed November 4, 2016. Mr. Hughes is represented by Justin Townsend, Esq. ELIZABETH
19 HOWARD (hereinafter "Ms. Howard") opposed the Motion for Sanctions on September 14,
20 2016, and opposed the Motion for Order to Show Cause on November 22, 2016. Ms. Howard is
21 represented by Charles Kozak, Esq.

22 The factual background in this case is summarized in the Order After February 6, 2017
23 Hearing. In short, the Complaint in this matter seeks an accounting of the parties' respective
24 interests in a piece of real property, which they hold as joint tenants.

1 Mr. Hughes' Motion for Sanctions alleges that Ms. Howard and her attorney, Mr.
2 Kozak, are subject to sanction because they repeatedly violated the Nevada Rules of Civil
3 Procedure, District Court Rules and Tenth Judicial District Court Rules. Mr. Hughes notes
4 especially the following violations: (1) Ms. Howard failed to timely file a responsive pleading to
5 Mr. Hughes' Complaint;¹ (2) Ms. Howard failed to timely oppose Mr. Hughes' Motion to
6 Dismiss Ms. Howard's Counterclaim; (3) Mr. Kozak did not participate in the early case
7 conference in the manner contemplated in NRCP 16.1(b)(1);² (4) Mr. Kozak failed to timely
8 respond to discovery requests;³ (5) Mr. Kozak failed to timely file his Case Conference Report;⁴
9 (6) Mr. Kozak insisted he had actually filed his Case Conference Report at the pre-trial hearing
10 on May 17, 2016;⁵ (7) Mr. Kozak's conduct with respect to the Motion to Set Aside Dismissal
11 of Counterclaim was sanctionable under NRCP 11; (8) Mr. Kozak did not participate in the May
12 17, 2016 Pre-Trial conference in good faith; (9) Ms. Howard's Motion for Summary Judgment
13 was not supported by existing law and was brought only for purposes of delay; and (10) Ms.
14 Howard's delay in filing the Motion to Set Aside Dismissal of Counterclaim was filed belatedly
15 and for the purpose of delay. Due to the above allegations, Mr. Hughes argues that he incurred
16 unnecessary attorney's fees, and he requests an award of such attorney's fees.

18 ¹ Pursuant to an Order Granting Publication of Summons, the Complaint in this case was published in the Lahontan
19 Valley News with a last date of publication on October 21, 2015. Thus, the Answer was due on November 10,
20 2015. The Answer was not filed until November 24, 2015.

20 ² Specifically, Mr. Townsend alleges that Mr. Kozak stated he had not read the applicable law prior to the
21 conference.

21 ³ Initial disclosures were due by March 1, 2016. After Mr. Kozak failed to timely comply with this requirement, the
22 Court directed Mr. Kozak to send the initial disclosures to Mr. Townsend's office by no later than May 19, 2016,
23 they were delivered May 20, 2016.

22 ⁴ The parties participated in an early case conference on February 16, 2016. Pursuant to NRCP 16.1(c), the Early
23 Case Conference Reports were due by no later than March 17, 2016. Mr. Kozak did not file his Early Case
24 Conference Report until January 4, 2017.

23 ⁵ At the May 17, 2016 hearing, Mr. Kozak specifically stated that he could provide proof of a file-stamped copy of
24 his early case conference report even though the Court did not have an original in the file. Mr. Kozak's office
submitted a faxed version of a (non-file-stamped) case conference report, which was lodged in the file in
anticipation of him sending the original in accordance with 10JDCR 18. The Court did not receive the original until
January 4, 2017, and the Court notes that the faxed document from May 17, 2016 is not identical to the subsequently
submitted "original."

1 As a preliminary matter, Ms. Howard argues that Mr. Hughes' Motion for Sanctions
2 should be denied because he did not abide by the 21-day safe-harbor rule under NRCP
3 11(c)(1)(A). Specifically, NRCP 11(c)(1)(A) provides:

4 A motion for sanctions under this rule shall be made separately from other
5 motions or requests and shall describe the specific conduct alleged to
6 violate subdivision (b). It shall be served as provided in Rule 5, *but shall*
7 *not be filed with or presented to the court unless, within 21 days after*
8 *service of the motion (or such other period as the court may prescribe),*
9 *the challenged paper, claim, defense, contention, allegation, or denial is*
10 *not withdrawn or appropriately corrected.* If warranted, the court may
11 award to the party prevailing on the motion the reasonable expenses and
12 attorney's fees incurred in presenting or opposing the motion. Absent
13 exceptional circumstances, a law firm shall be held jointly responsible for
14 violations committed by its partners, associates, and employees.

15 (emphasis added). Here, Ms. Howard argues that she was not served with the Motion before it
16 was filed by Mr. Hughes. Mr. Hughes argues that he has complied with the requirements of
17 NRCP 11(c)(1)(A) because his Motion was not "presented to the court" until more than 21 days
18 after service.

19 The Court finds that Mr. Hughes substantially complied with the 21-day requirement
20 under NRCP 11 and that even if he did not, Ms. Howard was not prejudiced by any failure to
21 strictly comply with the technical requirements of NRCP 11(c)(1)(A). First, the Court notes
22 that much of the complained-of conduct in the Motion for Sanctions refers to Mr. Kozak's lack
23 of candor regarding his receipt and delivery of documents.⁶ Because of Mr. Kozak's conduct,
24 Mr. Hughes was left with limited options of ensuring that there was a clear record of him
25 sending the Motion for Sanctions to Mr. Kozak.

26 Second, although Mr. Kozak states that he had no prior notice of the Motion, the record
27 is clear that Mr. Kozak had prior notice of many of Mr. Hughes' claims of sanctionable conduct.

28 ⁶ As noted previously, Mr. Kozak claimed that he filed an Opposition to Mr. Hughes' Motion to Dismiss
29 Counterclaim in a timely fashion (for which there is no record), Mr. Kozak stated that he could produce a file-
30 stamped copy of the Opposition (which he has not), Mr. Kozak stated that Mr. Townsend told him he had received
31 the Opposition (Mr. Townsend disputes this), Mr. Kozak stated that he had submitted his case conference report (for
32 which there is no record). In the Order Denying Defendant's Motion For Summary Judgment And Denying
33 Defendant's Motion To Set Aside Dismissal Of Counterclaim, the Court specifically noted its concern regarding Mr.
34 Kozak's lack of candor regarding the opposition to the motion to dismiss counterclaims.

1 In fact, the issues related to Ms. Howard's counterclaims, discovery, and the early case
2 conference report were raised at the May 17, 2016 hearing. Nevertheless, Mr. Kozak failed to
3 cure the defects in the months between the hearing and the date on which the Motion was filed.⁷

4 Finally, even after Mr. Hughes filed the Motion for Sanctions, Mr. Kozak did not take
5 steps to cure his sanctionable conduct within 21 days. It is almost inexplicable that even after
6 the Motion for Sanctions was filed on August 26, 2016, Mr. Kozak did not remedy his failure to
7 file a case conference report. In light of Mr. Kozak's failure to correct the simple task of filing
8 his case conference report after the Motion was filed, it is evident that Mr. Kozak's conduct
9 would not have been any different even if Mr. Hughes would have waited to file the Motion 21
10 days after serving it. Thus, the Court will consider the merits of Mr. Hughes' Motion for
11 Sanctions.

12 Ms. Howard's Motion for Summary Judgment

13 Mr. Hughes argues that Ms. Howard should be sanctioned because her Motion for
14 Summary Judgment was without merit and was filed for the purpose of delay. The Court has
15 previously entered an Order ruling on the merits of the Motion on September 9, 2016. Although
16 Ms. Howard did not prevail on her Motion, her arguments were based upon applicable law and
17 the Court does not find that it was presented for an improper purpose. Thus, to the extent that
18 Mr. Hughes' Motion for Sanctions pertains to the Motion for Summary Judgment, it is Denied.

19 Ms. Howard's Counterclaims

20 Regarding Ms. Howard's Counterclaims, the Court finds as follows: to the
21 extent that Mr. Hughes' Motion for Sanctions pertains to Ms. Howard's original Answer and
22 Counterclaim, it is Denied; to the extent that Mr. Hughes' Motion for Sanctions pertains to Mr.
23 Kozak's conduct following the Dismissal of Counterclaims, it is Granted.

24 ⁷ Again, the Court specifically notes that Mr. Townsend raised the issue of Mr. Kozak's failure to file an early case
conference report in May. Mr. Kozak did not "cure" this defect until more than 6 months later, on January 4, 2017.

1 With respect to the original Counterclaims, Ms. Howard argued that she had various
2 claims for relief against Mr. Hughes. Pursuant to NRCP 13(b) "[a] pleading may state as a
3 counterclaim any claim against an opposing party not arising out of the transaction or
4 occurrence that is the subject matter of the opposing party's claim." Although the
5 Counterclaims were dismissed in an Order entered on January 7, 2016, Ms. Howard's initial
6 pleading does not rise to the level of sanctionable conduct.

7 Regarding Mr. Kozak's subsequent conduct, the Court previously noted its concern
8 regarding Mr. Kozak's lack of candor.⁸ Mr. Kozak informed the Court that he had timely filed
9 an Opposition to the Motion to Dismiss and that he could produce a file stamped copy thereof.
10 To date, Mr. Kozak has not produced such a copy. Mr. Kozak also informed the Court that Mr.
11 Townsend told Mr. Kozak that he had received a copy of the opposition. At the May 17, 2016
12 hearing, Mr. Townsend informed the Court that he had *not* received a copy of the opposition.
13 The Court finds Mr. Kozak's representation that Mr. Townsend told him he had previously
14 received a copy of the opposition to lack the candor due under the rules of professional
15 conduct.⁹ Additionally, the Court finds that Mr. Kozak's incredible delay in addressing the
16 dismissed counterclaims caused unnecessary delay and needlessly increased the cost of
17 litigation.¹⁰ Thus, to the extent that Mr. Hughes' Motion for Sanctions pertains to Mr.

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20 ⁸ See Order Denying Defendant's Motion For Summary Judgment And Denying Defendant's Motion To Set Aside Dismissal Of Counterclaim at p. 4, entered September 7, 2016.

21 ⁹ See NRCP 3.3.

22 ¹⁰ Specifically, the Opposition was due on December 29, 2015. Noting the absence of an opposition, the Court
23 entered an Order Dismissing Counterclaims on January 7, 2016. On May 17, 2016, Ms. Howard filed a Notice of
24 Motion to set aside dismissal of counterclaim on the morning of the pre-trial hearing. Due to Mr. Kozak's assertion
that he had attempted to timely file an Opposition, the Court directed Mr. Kozak to supplement his Motion with
information supporting his assertion. On June 20, 2016, Mr. Kozak filed "Elizabeth Howard's Opposition to Motion
to Dismiss; Motion to Strike." After speaking with Mr. Townsend, Mr. Kozak withdrew this document and filed a
Supplement to Elizabeth Howard's Motion to Set Aside Dismissal of Counterclaim filed May 17, 2016" on July 8,
2016. Mr. Townsend then filed an Opposition to the Motion to Set Aside on July 28, 2016. In sum, the issue of Ms.
Howard's Counterclaims came before the Court for a decision in January 2016. Because Mr. Kozak failed to
oppose the original Motion to Dismiss the Counterclaim in a timely fashion, and because of his subsequent lack of
candor, Mr. Hughes incurred substantial additional attorney's fees.

1 Kozak's delay in addressing the dismissed counterclaims, it is Granted. Mr. Kozak shall
2 personally pay attorney fees incurred as a result of the delayed opposition.

3 Early Case Conference & Pre-Trial Conference

4 Regarding Mr. Hughes' allegation that Mr. Kozak did not adequately participate in the
5 early case conference or pre-trial conference, the Court does not find that Mr. Kozak's conduct
6 rises to the level of sanctionable conduct (except as specifically noted above). Thus, to the
7 extent that Mr. Hughes' Motion pertains to these defects, it is Denied.

8 Case Conference Report

9 Mr. Hughes alleges that Ms. Howard failed to provide discovery in accordance with
10 NRCP 16.1(a)(1) or file his Early Case Conference Report. The attorneys participated in an
11 early case conference on February 16, 2016. Thus, Ms. Howard's Case Conference Report was
12 due on March 17, 2016. At the May 17, 2016 hearing, the Court noted the absence of the Case
13 Conference Report. At the time Mr. Hughes filed the Motion for Sanctions on August 26, 2016,
14 Ms. Howard's early case conference report was still outstanding. This fact is especially
15 troubling because Trial was set to begin in this matter on October 3, 2016. Although the trial
16 was ultimately continued, Defendant's failure to file a case conference report caused delays in
17 discovery and caused Mr. Hughes to incur additional attorney's fees by preparing and filing the
18 Motion for Sanctions to address this issue. Thus, to the extent Mr. Hughes' Motion for
19 Sanctions pertains to Mr. Kozak's failure to file an early case conference report, it is granted.
20 Mr. Kozak shall personally pay attorney's fees incurred by Mr. Hughes between March 17,
21 2016 and August 26, 2016 due to Mr. Kozak's failure to file the case conference report.

22 Motion for Order to Show Cause

23 In his Motion for Order to Show Cause, Mr. Hughes seeks an Order directing Ms.
24 Howard to appear and show cause as to why she should not be held in contempt of Court for her

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1 failure to comply with the Court's September 27, 2016 Order Continuing Trial. Specifically
2 Mr. Hughes alleges that Ms. Howard's attorney, Mr. Kozak was not cooperative in allowing an
3 appraiser to access their property because he provided inaccurate contact information for Ms.
4 Howard and failed to correct the inaccurate information in a timely fashion.

5 Pursuant to NRS 22.010(3), an act of contempt includes "disobedience or resistance to
6 any lawful writ, order, rule or process issued by the court or judge at chambers." "An order on
7 which a judgment of contempt is based must be clear and unambiguous, and must spell out the
8 details of compliance in clear, specific and unambiguous terms so that the person will readily
9 know exactly what duties or obligations are imposed on him." *Cunningham v. Eighth Judicial*
10 *Dist. Court*, 102 Nev. 551, 559-560 (1986).

11 Here, the Court's September 27, 2016 Order states "Ms. Howard shall cooperate with
12 Mr. Hughes to allow an appraiser to inspect the property by no later than October 27, 2016."
13 Although Mr. Kozak's conduct is not ideal, the Court does not find that the September 27 Order
14 was sufficiently specific to hold Mr. Kozak or Ms. Howard in contempt for their alleged
15 conduct. Thus, Mr. Hughes Motion for Order to Show Cause is Denied.

16 The Court reviews Mr. Kozak's conduct throughout the history of this case in the greater
17 context of the administration of our adversarial legal system. While the Court generally
18 anticipates legal positions that are disparate from one another, it expects litigants to adhere to
19 the guidelines that shape our legal system. Our legal system is governed by such authorities as
20 the Rules of Civil Procedure, Rules of Professional Conduct, and local court rules to ensure that
21 our adversarial proceedings remain civil. When one party (or counsel for one party) disregards
22 the guidelines, they place an unfair burden on the other party. Here, it is clear that Mr. Kozak
23 not only disregarded the rules, but also minimized the significance of his non-compliance on
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multiple occasions.¹¹ This attitude frustrates the legal process and has, in this case, caused Mr. Hughes to incur substantial fees for the work his attorney performed to compensate for Mr. Kozak's lack of diligence.

GOOD CAUSE APPEARING, IT IS HEREBY ORDERED

1. Mr. Hughes Motion for Order to Show Cause is DENIED.
2. To the extent that Mr. Hughes' Motion for Sanctions pertains to Ms. Howard's Motion for Summary Judgment or her originally pled counterclaims, it is DENIED.
3. To the extent that Mr. Hughes' Motion for Sanctions pertains to Mr. Kozak's belated filing of a Motion to Set Aside Dismissal of Counterclaim and his supplemental filings, Mr. Hughes' Motion is Granted.

a. Mr. Kozak shall personally pay Mr. Hughes for the attorney fees incurred in response to Mr. Kozak's delayed Motion and subsequent filings.

4. To the extent that Mr. Hughes' Motion for Sanctions pertains to Mr. Kozak's failure to timely file an Early Case Conference Report, it is Granted.

a. Mr. Kozak shall personally pay Mr. Hughes for the attorney fees incurred as a result of Mr. Kozak's failure to file the Report until January 4, 2017.

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¹¹ In addition to the previously noted conduct, the Court notes that, in his opposition to the motion for sanctions, Mr. Kozak argued that his Answer was only served 9 minutes late. He served the Answer upon Mr. Townsend at 9 minutes past midnight on the day it was due (it was not received or filed by the court until several days later).

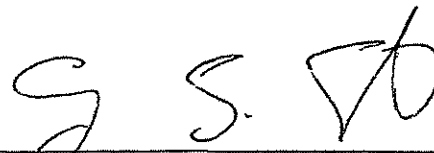
5. By no later than March 17, 2017, Mr. Townsend shall submit an affidavit establishing the cost of attorney fees pertinent to the awards set forth above.

a. Mr. Kozak may file a response to the requested amount by no later than April 3, 2017.

b. Thereafter, the Court will enter an Order establishing the amount of attorney fees owing.

IT IS SO ORDERED.

Dated this 15th day of March 2017.



THOMAS L. STOCKARD
DISTRICT JUDGE

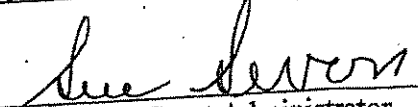
CERTIFICATE OF MAILING

The undersigned, an employee of the Tenth Judicial District Court, hereby certifies that I served the foregoing **ORDER GRANTING IN PART AND DENYING IN PART MOTION FOR SANCTIONS** on the parties by depositing a copy thereof in the U.S. Mail at Fallon, Nevada, postage prepaid, as follows:

Justin Townsend, Esq.
Allison MacKenzie, Ltd.
402 North Division Street
Carson City, NV 89703-4168

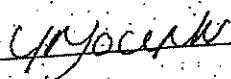
Charles R. Kozak, Esq.
Kozak Lusiani Law, LLC
3100 Mill Street, Suite 115
Reno, NV 89502

DATED this 1st day of March, 2017.


Sue Sevon, Court Administrator

Subscribed and sworn to this

1st day of March, 2017.

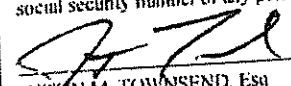

Notary Public/Clerk

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

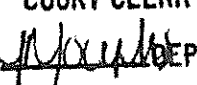
Case No. 15-10DC-0876

Dept. No. 1

The undersigned hereby affirms that
this document does not contain the
social security number of any person


JUSTIN M. TOWNSEND, Esq

FILED
2017 MAR 20 AM 9:53

SUE SEVON
COURT CLERK
BY  DEPUTY

IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CHURCHILL

SHAUGHNAN L. HUGHES, an
individual.

Plaintiff,

vs.

ELIZABETH C. HOWARD, an
individual; and DOES I through
XX, inclusive.

Defendants.

**AFFIDAVIT OF JUSTIN M.
TOWNSEND, ESQ. IN RESPONSE TO
MARCH 1, 2017 ORDER GRANTING
IN PART AND DENYING IN PART
MOTION FOR SANCTIONS**

STATE OF NEVADA)
CARSON CITY) ss.

JUSTIN M. TOWNSEND, ESQ. ("TOWNSEND"), being first duly sworn, deposes

and says:

1. That I am an associate attorney at the law firm of ALLISON MacKENZIE, LTD. and I am the attorney of record for Plaintiff, SHAUGHNAN L. HUGHES ("HUGHES"), in the above entitled action.

2. That I am an attorney duly licensed and admitted to practice before all courts in the State of Nevada, and I am a member in good standing with the State Bar of Nevada.

3. That I am responsible for the preparation and presentation of this case on behalf of HUGHES and have personal knowledge of all matters set forth herein.

4. That in this matter, my time is billed at \$275.00 per hour.

1 5. That I spent a total of 2.2 hours in association with preparing and filing a
2 Reply to Defendant's Non-Opposition to Motion to Dismiss and reviewing this Court's January 7,
3 2016 Order Granting Motion to Dismiss. The value of those fees is \$605.00.

4 6. That I spent a total of 3.3 hours preparing a draft Joint Case Conference
5 Report following the early case conference in this matter and discussing the same with Defendant's
6 counsel, Charles R. Kozak, Esq. ("Kozak"), who ultimately never signed the draft Joint Case
7 Conference Report, necessitating the filing of an individual Case Conference Report on HUGHES'
8 behalf. The value of those fees is \$907.50.

9 7. That I spent a total of 11.65 hours in association with requesting a pretrial
10 conference and then preparing for and attending a pretrial conference in this matter on May 17, 2016.
11 The value of those fees is \$3,203.75.

12 8. That I spent a total of 37.7 hours on written discovery following the May 17,
13 2016 Pretrial Conference. That time included, without limitation, (1) time spent traveling to and
14 from Kozak's office to copy photographs from Defendant's laptop computer that were not otherwise
15 properly or timely disclosed or produced;¹ (2) corresponding with Kozak and serving him with
16 written discovery requests concerning photographs and other evidence admittedly destroyed by the
17 Defendant; (3) responding/objection to deposition notices for persons not listed in any mandatory
18 disclosures and for depositions that were set just a few days out in violation of applicable timing
19 rules; and (4) responding to written discovery requests served by Kozak's office before the filing of
20 Defendant's Case Conference Report and after objecting to Defendant's right to perform discovery
21 for her failure to file her Case Conference Report. The value of those fees is \$10,367.50.

22 9. That I spent a total of 10.35 hours reviewing and responding to Defendant's
23 Motion to Set Aside Dismissal. That time included, without limitation, correspondence with Kozak
24 about non-compliant documents filed in contravention of this Court's earlier orders. The value of
25 those fees is \$2,846.25.

26
27
28

¹ This visit to Kozak's office occurred one week prior to the originally scheduled October 3, 2016 trial date and immediately prior to this Court's Order Continuing Trial.

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

10. That I spent a total of 18.3 hours researching sanctions and preparing a Motion for Sanctions and a Reply to Defendant's Opposition to Motion to Sanctions. The value of those fees is \$5,032.50.

11. That I spent a total of 6.95 hours defending HUGHES' deposition conducted at the courthouse in Fallon, Nevada, on December 7, 2016, after objecting on the record that the Defendant was not entitled to take HUGHES' deposition (or conduct any other discovery) because she had not yet filed her case conference report. The value of those fees is \$1,911.25.

12. That I spent a total of 9.2 hours reviewing the Defendant's Case Conference Report served on my office on January 5, 2017 and filing a Motion in Limine regarding the defenses raised therein for the first time and a subsequent Reply to Defendant's Opposition thereto. The value of those fees is \$2,530.00.

13. That I spent a total of 6.4 hours reviewing documents produced by Kozak for the first time in this matter on January 26, 2017 and January 30, 2017, less than two weeks before trial and well after the deadline to produce documents to be relied on at trial. The value of those fees is \$1,760.00.

14. That I spent 1.5 hours reviewing my billing records and preparing this affidavit. The value of those fees is \$412.50.

15. That based on the foregoing tally of 107.55 hours, HUGHES incurred attorneys' fees in the total amount of \$29,576.25 for conduct potentially subject to this Court's March 1, 2017 Order Granting in Part and Denying in Part Motion for Sanctions.

DATED this 15th day of March, 2017.


JUSTIN M. TOWNSEND, ESQ.

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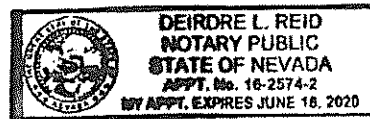
ALLISON MacKENZIE, LTD.
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E-Mail Address: law@allisonmackenzie.com

1 STATE OF NEVADA)
2 CARSON CITY) ss.

3
4 On March 15, 2017, personally appeared before me, a Notary Public, JUSTIN M.
5 TOWNSEND, personally known (or proved) to me to be the person whose name is subscribed to the
6 foregoing document, and who acknowledged to me that he executed the above document.

7
8 

9
10 NOTARY PUBLIC



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

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 on all parties to this action by:

- ☒ 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)]
- ☒ Electronic Transmission
- ☐ 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:

CHARLES R. KOZAK, ESQ.
KOZAK LUSIANI LAW, LLC
3100 Mill Street, Suite 115
Reno, NV 89502
chuck@kozaklusianilaw.com

DATED this 15th day of March, 2017.


NANCY FONTENOT

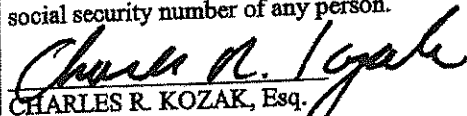
4842-5725-9845, v. 1

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BY Sue Sevon DEPUTY

1 Case No. 15-10DC-0876

2 Dept. No. I

3 The undersigned hereby affirms that
4 this document does not contain the
5 social security number of any person.

6 
CHARLES R. KOZAK, Esq.

7 IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF CHURCHILL

9 SHAUGHNAN L. HUGHES, an
10 individual,
11 vs.

12 Plaintiff,

13 AMENDED MOTION FOR
14 RECONSIDERATION
15 OF ORDER IN PART GRANTING
16 SANCTIONS

17 ELIZABETH C. HOWARD, an
18 individual; and DOES I through
19 XX, inclusive,

20 Defendants
21 _____

22 COMES NOW Defendant, ELIZABETH HOWARD (hereinafter "Ms. Howard"), and
23 presents her Motion for Reconsideration of Order in Part Granting Sanctions based on the
24 following Memorandum of Points and Authorities, along with the record on file herein.

25 MEMORANDUM OF POINTS AND AUTHORITIES

26 I. FACTUAL AND PROCEDURAL BACKGROUND

27 On March 1, 2017, this Court entered an Order Granting and Part and Denying in Part
28 Motion for Sanctions. The Court denied Mr. Hughes' Motion for Order to Show Cause and Mr.
Hughes' Motion for Sanctions as it pertained to Ms. Howard's Motion for Summary Judgment
and her originally pled counter claims. The Motion for Sanctions was only granted as it relates
to two areas:

A0114

- 1 1. Belated filing of a Motion to Set Aside Dismissal of Counterclaim and supplemental
- 2 filings; and
- 3 2. Failure to file an Early Case Conference Report.

4 Ms. Howard hereby respectfully requests that this Court Reconsider the March 1, 2017

5 Order in Part Granting Sanctions regarding the filing of the Early Case Conference Report

6 because Ms. Howard's counsel Case Conference Report and Initial Disclosure were provided to

7 the Court and opposing counsel by May 17, 2017, so that Mr. Hughes was not disadvantaged.

8

9 **LEGAL ARGUMENT**

10 **Service of the Case Conference Report and Initial Disclosures did not Cause**

11 **Delay in Discovery or Disadvantage Plaintiff.**

12 In Plaintiff's Motion for Sanctions filed on or about August 26, 2016, on page 7 and

13 following, addresses the facts regarding Ms. Howard's counsel's serving initial disclosures and

14 Case Conference Report to the court and opposing counsel. First, Plaintiff describes that there

15 were issues that could not be agreed upon to file a Joint Case Conference Report. As a result,

16 Plaintiff's counsel filed his Case Management Report on March 14, 2016. On May 17, 2016, in

17 the pre-trial conference, the Court noted that Mr. Kozak's Case Conference Report had not been

18 filed. When Mr. Kozak learned of this, he contacted his office and a copy was emailed to the

19 Clerk and was presented to both the Court and Mr. Hughes' Counsel, in Court that day. Please

20 see Hughes' Motion for Sanctions, page 9, lines 10-16. Therefore, Hughes' Counsel had Mr.

21 Kozak's Case Conference Report in May 2016. Discovery proceeded scheduled and therefore,

22 Mr. Hughes' Counsel was not disadvantaged by the late service. When preparing for trial, Mr.

23 Kozak's office realized that the Report had not been filed, and filed it on January 3, 2017, but

24 opposing counsel had it since May 17, 2016.

25

26 On May 17, 2016, the Court also ordered that Mr. Kozak provide his initial disclosures

27 by May 19, 2016, as Hughes counsel describes in his Motion for Sanctions. Reno

28 AC115 Carson

1 Messenger delivered them just one day late on May 20, 2016. Again, Hughes' Counsel was not
2 disadvantaged by the late service of one additional day. Hughes' Counsel had the Report and
3 initial disclosure in time to prepare and conduct discovery in this matter.

4 Far from hindering discovery in this case, Mr. Kozak and his staff have gone out of their
5 way to facilitate timely discovery. Mr. Townsend was given free access to Ms. Howard's
6 laptop in order to copy photos and other information he felt was crucial to his case. Requests for
7 answers to Interrogatories, Request for Production, and Request for Admission were timely
8 served to Mr. Townsend on or about December 2, 2016, two months prior to the trial date of
9 February 6, 2017. Mr. Kozak went further by sending his paralegal to Fallon in order to
10 expedite the appraisal of the Property at issue in this case.

11 The March 1, 2017 Order granting sanctions on this issue, states that the failure to file a
12 case "conference report caused delays in discovery"; however, Plaintiff had the initial
13 disclosures by May 20, 2016. Thereafter, discovery was served and timely answered.
14 Plaintiff's counsel chose to not conduct depositions. Additionally, as described above, Mr.
15 Kozak and his staff made extra effort to facilitate discovery and to assist in the completion of
16 the appraisal. As a result, there were no delays in discovery or any other conduct in this regard
17 that would warrant sanctions. Counsel for Ms. Howard respectfully requests that based on the
18 above facts, the court reconsider its March 1, 2017 decision and deny sanctions in regard to
19 filing of the Early Case Conference Report.

20 II. CONCLUSION

21 Based on the foregoing, Ms. Howard respectfully requests this Court Reconsider and
22 reverse its Order for Sanctions in these regards.

23 Affirmation: Pursuant to NRS 239B.030, the undersigned does hereby affirm that
24 this document does not contain the social security of any person.

1 DATED this 17th day of March 2017.

Respectfully submitted,



CHARLES R. KOZAK, ESQ.
KOZAK LUSIANI LAW, LLC
Nevada State Bar #11179
3100 Mill Street, Suite 115
Reno, Nevada 89502
Phone (775) 322-1239
Facsimile (775) 800-1767
chuck@kozaklusianilaw.com
Attorney for Elizabeth C. Howard

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On the 17th day of March 2017, I caused to be delivered via Reno Carson Messenger and Certified U.S. Mail, postage fully prepaid, a true and correct copy of the foregoing document:

AMENDED MOTION FOR RECONSIDERATION OF ORDER IN PART GRANTING SANCTIONS

in Case No. 15-10DC-0876, Dept. I, to the following party(ies):

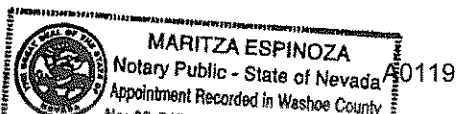
Justin M. Townsend, Esq.
Allison MacKenzie, Ltd.
Nevada State Bar No. 12293
402 N. Division Street
P. O. Box 646
Carson City, Nevada 89702
Phone (775) 687-0202
Facsimile (775) 882-7918
Attorney for Plaintiff

DATED this 17th day of March 2017.


Dedra Sonne
Employee of Kozak Lusiani Law, LLC

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FILED

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COURT CLERK

Julie Benninghoff

1 Case No. 15-10DC-0876

2 Dept. No. I

3 The undersigned hereby affirms that
4 this document does not contain the
5 social security number of any person.

6 
R. CRAIG LUSIANI, Esq.

7 IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF CHURCHILL

9 SHAUGHNAN L. HUGHES, an
10 individual,
11 vs.

12 Plaintiff,

13 **OPPOSITION TO AFFIDAVIT OF**
14 **JUSTIN M. TOWNSEND, ESQ. IN**
15 **RESPONSE TO MARCH 1, 2017**
16 **ORDER IN PART GRANTING**
17 **SANCTIONS AND MOTION FOR**
18 **ORDER REDUCING ATTORNEY**
19 **FEES**

20 ELIZABETH C. HOWARD, an
21 individual; and DOES I through
22 XX, inclusive,

23 Defendants
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20 COMES NOW Defendant, ELIZABETH HOWARD (hereinafter "Ms. Howard"), and
21 presents her Opposition to Affidavit of Justin Townsend, Esq. in Response to March 1, 2017
22 Order in Part Granting Sanctions and her Motion for Order Striking or Reducing Costs (Taxing
23 Costs) ("March 1, 2017 Order") based on the following Memorandum of Points and
24 Authorities, along with the record on file herein.
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MEMORANDUM OF POINTS AND AUTHORITIES

I. FACTUAL AND PROCEDURAL BACKGROUND

On March 1, 2017, this Court entered an Order granting Mr. Hughes' Motion for Sanctions as it pertained to belated filing of a Motion to Set Aside Dismissal of Counterclaim and supplemental filings; and a failure to file an Early Case Conference Report. The Order stated that Mr. Townsend could present an affidavit for costs as related to these two issues, which he did on or about March 15, 2017. Ms. Howard opposes Mr. Townsend's Affidavit in that it claims an excessive and unreasonable amount of 107.55 hours, some of which are unrelated to the issues stated. Accordingly, Ms. Howard additionally makes a motion for this Court to reduce Mr. Townsend's claim for attorney fees based on the following legal argument.

II. LEGAL ARGUMENT

Claimed Attorney Fees Should be Reduced Because the Fees Unfairly and Unreasonably Exceed the Bounds of this Court's Order.

An assessment of reasonable attorney fees is subject to the discretion of the court, which "is tempered only by reason and fairness." In determining the amount of fees to award, the court may use any method rationally designed to calculate a reasonable amount, but, the court must continue its analysis by considering the requested amount in light of the factors enumerated by *Brunzell v. Golden Gate National Bank*, namely, the advocate's professional qualities, the nature of the litigation, the work performed, and the result. Shuette v. Beazer Homes Holdings Corp., 121 Nev. 837, 864-65, 124 P.3d 530, 548-49 (2005), Brunzell v. Golden Gate Nat. Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

Ms. Howard opposes the amounts stated in the Justin M. Townsend's Affidavit on the basis that the work performed exceeds the boundaries of what this Court ordered as justifying sanctions. First, regarding sanctions as it pertained to, or related to, the belated filing of a Motion to Set Aside Dismissal of Counterclaim and supplemental filings, the court stated Mr.

A0121

1 Townsend could recover "attorney fees incurred *in response* to Mr. Kozak's delayed Motion
2 and subsequent filings". Please see March 1, 2017 Order page 8, lines 11-12. The Court also
3 stated he could recover fees incurred as a "*result of the delayed opposition*". Please see March
4 1, 2017 Order page 6, lines 1-2.
5

6 Regarding sanctions pertained to Mr. Kozak's failure to timely file an Early Case
7 Conference Report, the Court stated the recovery of fees was limited to those incurred *as a*
8 *result of the failure to file the Report*. Please see March 1, 2017 Order page 8, lines 15-16.
9 Additionally, the Court specifies a date range to those fees "incurred by Mr. Hughes *between*
10 *March 17, 2016 and August 26, 2016*". Please see March 1, 2017 Order page 6, lines 20-21.
11

12 This opposition refers to each item objected to by the same number, and each appears in
13 the same order, as the corresponding paragraph on the Affidavit of Justin M. Townsend and
14 states why the item is objectionable.
15

16 5. Mr. Townsend claims he spent 2.2 hours "in association with preparing and filing
17 a Reply to Defendant's Non-Opposition to Motion to Dismiss and reviewing this Court's
18 January 7, 2016 Order Granting Motion to Dismiss". The allowable fees specified by this
19 Court are those pertaining to, or in response to the belated Motion to Set Aside Dismissal of
20 Counterclaim and supplemental filings, which occurred in May 2016 and following. Fees claim
21 by Mr. Townsend in paragraph 5, occurred in January, and therefore, are not related to the
22 subsequent filings. Moreover, since Mr. Townsend apparently did not receive an Opposition,
23 preparing a Reply was not necessary. Regarding reviewing the Court's January Order, Mr.
24 Townsend would have spent time reviewing the Court's order whether or not Mr. Kozak filed
25 an Opposition. For these reasons, Ms. Howard requests the fees claimed in paragraph 5 be
26 stricken.
27
28

1 6. Mr. Townsend's fees claimed in paragraph 6 for drafting a Joint Case
2 Conference Report are unrelated to Mr. Kozak not filing his Early Case Conference Report
3 because the drafting occurred in the normal course of preparation for the Case Conference.
4 When the attorneys are in disagreement, as was the case here¹, it is acceptable for each to file
5 their own report, which Mr. Townsend did by essentially changing the Joint Report to his
6 individual Report to be filed. His actions would have occurred whether or not Mr. Kozak would
7 have been late with his own Report. Therefore, no additional fees were incurred and the
8 paragraph 6 fees should be stricken.
9

10
11 7. Due to the differences relating to the Joint Case Conference Report, a pretrial
12 conference was necessary in this matter, separate and apart from Mr. Kozak's filing of this Case
13 Conference Report. Mr. Townsend did not need to do any additional preparation for this
14 pretrial conference regardless of when Mr. Kozak filed his Report.
15

16 Even if any of Mr. Townsend's preparation did relate, the claim of 11.65 hours for this
17 preparation is unreasonable for the work required. In the *Brunzell* case, discussed above, the
18 second and third enumerated factors to consider in an award of attorney fees is:
19

- 20 (2) the character of the work, including its difficulty, intricacy, importance, as well as the
21 time and skill required, the responsibility imposed, and the prominence and character of
22 the parties when affecting the importance of the litigation;
23 (3) the work performed, including the skill, time, and attention given to the work; and

24 Barney v. Mt. Rose Heating & Air Conditioning, 124 Nev. 821, 829, 192 P.3d 730, 736
(2008).

25 Mr. Townsend's preparation for a pretrial conference did not involve difficulty, intricacy or
26 excessive work that would have required 11.65 hours, or almost a full day and a half of work. If
27
28

¹ Plaintiff's Motion for Sanctions describes that there were issues that could not be agreed upon to file a Joint Case Conference Report.

1 any, preparation related to the late filing would have been an hour or two, at most. Therefore,
2 the fees in paragraph 7 should be stricken or reduced to no more than 2 hours, or \$550.00.

3
4 8. After Mr. Townsend received a copy of Mr. Kozak's Case Conference Report at the
5 pretrial conference (please see Hughes' Motion for Sanctions, page 9, lines 10-16), discovery
6 proceeded as scheduled. Although Mr. Kozak's office realized that the Report had not been
7 filed, and filed an updated version on January 3, 2017, opposing counsel had substantially all
8 information since May 17, 2016, and initial disclosures by May 20, 2016, and was not
9 prejudiced. When Mr. Townsend brought the request for computer files, Mr. Kozak was fully
10 cooperative with providing the computer to be accessed by Mr. Townsend. The statements of
11 Mr. Townsend in his Affidavit regarding destroyed or undisclosed evidence is inaccurate and
12 unsubstantiated, as are the statements regarding deposition notices being untimely. Mr.
13 Townsend could have objected to the deposition, but instead agreed to the scheduled time.

14
15 While Mr. Kozak acknowledges that the Case Conference Report should have been
16 timely filed, it would be unfair to impose sanctions for the full cost of Plaintiff conducting
17 discovery, rather than as the Court order, for sanctions to be limited to those incurred *as a result*
18 *of the failure to file the Report, and as incurred between March 17, 2016 and August 26, 2016*.
19 (March 1, 2017 Order page 6, lines 20-21; page 8, lines 15-16.) Mr. Townsend's Affidavit
20 includes excessive discovery related hours of 37.7. The number of hours is claimed
21 unreasonable because they are not a result of Mr. Kozak's failure to file the Report. Mr.
22 Townsend would have incurred the majority of these hours in the normal course of this suit,
23 regardless of when Mr. Kozak's Report was filed. Additionally, the claimed hours go far
24 beyond the date range allowed to include issues and depositions that occurred after August
25 2016. Therefore, the hours claimed in paragraph 8 should be reduced to 10%-20% of that
26 claimed, or no more than 4-6 hours.
27
28

1 9. Mr. Townsend's response to the Motion to Set Aside Dismissal did not involve
2 difficulty, intricacy or excessive work that would have required 10.35 hours, because the basis
3 of the argument in that motion was mistake or inadvertent error. Id. The opposing argument did
4 not involve complex matters. The communication regarding the filing not conforming by
5 including a copy of the initial opposition took a brief call or email. At most, the response would
6 have taken an hour or two; any more is unreasonable. Therefore, the fees in paragraph 9 should
7 be reduced to no more than 2 hours, or \$550.00.
8

9
10 10. Again the claim for 18.3 hours of time to research and prepare a Motion for Sanctions
11 and Reply is excessive. It would be unreasonable to expect that preparation of this Motion took
12 Mr. Townsend more than a full work day, and therefore the hours should at least be cut in half
13 to 8-9 hours.
14

15 11. In this paragraph, Mr. Townsend again attempts to include discovery unrelated to the
16 late filed Case Conference Report. As noted earlier, it would be unfair to impose sanctions for
17 regularly conducted discovery, rather than as the Court ordered, for sanctions to be limited to
18 those incurred *as a result of the failure to file the Report, and as incurred between March 17,*
19 *2016 and August 26, 2016*". (March 1, 2017 Order page 6, lines 20-21; page 8, lines 15-16.)
20 The deposition on which these fees are based occurred on December 7, 2016 (as noted by Mr.
21 Townsend's Affidavit), far after the March to August time for incurred expenses. Therefore, the
22 hours claimed in paragraph 11 should be stricken.
23

24 12. The claim for 9.2 hours of time to review Defendant's Case Conference Report to file
25 Motions in Limine is excessive. The Report Mr. Townsend refers to was updated version of the
26 one he had since May 17, 2016. So, Mr. Townsend had reviewed essentially the same
27 information previously. Also, the Motions in Limine would have needed to be filed regardless
28 of when the Report was filed, and should not be included in the claimed fees. Moreover, this
A0125

1 outside of the date range stated by the Court. Even if allowed to be included, review of the
2 Report would have taken no more than one (1) hour of time and the fees should be reduced
3 accordingly or stricken completely.
4

5 13. Fees claimed in this paragraph are not related to either item allowed for sanctions by the
6 Court Order. Even if considered to pertain to the late filed Case Conference Report, the claim
7 in January 2017 is outside the March to August time for incurred expenses, and should be
8 stricken.
9

10 14. With automated billing programs, review of hours should not have taken 1.5 hours and
11 should be reduced to at least half.

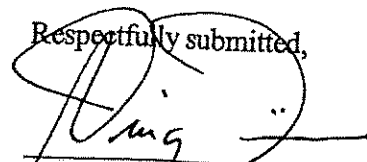
12 15. The amount of 107.55 hours for attorney fees in this matter is excessive, unreasonable
13 and unfair. Based on the foregoing, the amount should be reduced to no more than 20 hours.
14

15 Additionally, as pertaining to all claimed fees, Defendants request that this court require
16 specific billing records to justify any of the above costs that this Court may consider granting in
17 this matter.

18 **Affirmation: Pursuant to NRS 239B.030, the undersigned does hereby affirm that**
19 **this document does not contain the social security of any person:**

20 DATED this 3rd day of April 2017.
21

22 Respectfully submitted,
23

24 

25 R. CRAIG LUSIANI, ESQ.
26 KOZAK LUSIANI LAW, LLC

27 Nevada State Bar #552
28 3100 Mill Street, Suite 115
Reno, Nevada 89502

Phone (775) 322-1239
Facsimile (775) 800-1767

chuck@kozaklusianilaw.com

Attorney for Elizabeth C. Howard

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CERTIFICATE OF SERVICE

I certify that I am an employee working for Kozak Law Firm and am a citizen of the United States, over twenty-one years of age, and not a party to the within action. My business address is 3100 Mill Street, Suite 115, Reno, Nevada 89502.

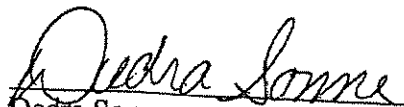
On the 3rd day of April 2017, I caused to be delivered via Reno Carson Messenger and Certified U.S. Mail, postage fully prepaid, a true and correct copy of the foregoing document:

**OPPOSITION TO AFFIDAVIT OF JUSTIN M. TOWNSEND, ESQ. IN
RESPONSE TO MARCH 1, 2017 ORDER IN PART GRANTING SANCTIONS
AND MOTION FOR ORDER REDUCING ATTORNEY FEES**

in Case No. 15-10DC-0876, Dept. I, to the following party(ies):

Justin M. Townsend, Esq.
Allison MacKenzie, Ltd.
Nevada State Bar No. 12293
402 N. Division Street
P. O. Box 646
Carson City, Nevada 89702
Phone (775) 687-0202
Facsimile (775) 882-7918
Attorney for Plaintiff

DATED this 3rd day of April 2017.


Dedra Sonne
Employee of Kozak Lusiani Law, LLC

1
2
3 **VERIFICATION**

4 I, R. CRAIG LUSIANI, ESQ., being first duly sworn under penalty of perjury, do
5 hereby declare and say as follows:

- 6 1. I am a Co-Counsel for Defendant and Counterclaimant, ELIZABETH HOWARD
7 in the foregoing matter.
8
9 2. I have carefully read the Amended Motion for Reconsideration of Order
10 Granting Sanctions in Part to which my Verification is attached.
11
12 3. All statements made in the foregoing are true to the best of my knowledge
13 and belief, except as to those matters therein stated upon information and belief, and that
14 as to such matters, I believe them to be true.
15
16 4. I understand the penalties for perjury that could include prison and that perjury is
17 felony.
18
19 5. I swear under penalty of perjury under the laws of the State of Nevada that the
20 foregoing assertions of fact are true and correct.

21 DATED this 17th day of March 2017.

22 
R. CRAIG LUSIANI, ESQ.

23 **ACKNOWLEDGMENT**

24 STATE OF NEVADA)
25) ss
26 COUNTY OF WASHOE)

27 On this 17th day of March, 2017 personally appeared before me, R. CRAIG LUSIANI,
28 proven to me to be the person whose name is subscribed to the above instrument, and who
acknowledged to me that she executed the foregoing Opposition to Motion for Sanctions.


NOTARY PUBLIC



MARITZA ESPINOZA
Notary Public - State of Nevada
Appointment Recorded in Washoe County

A0128

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

1 Case No. 15-10DC-0876

2 Dept. No. 1

3 The undersigned hereby affirms that
4 this document does not contain the
5 social security number of any person

6
7 JUSTIN M. TOWNSEND, Esq.

FILED

2017 APR 10 AM 11:05

SUE SEVON
COURT CLERK

BY Bennett Deputy

8 IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
9 IN AND FOR THE COUNTY OF CHURCHILL

10 SHAUGHNAN L. HUGHES, an
11 individual,

12 Plaintiff,

13 vs.

14 ELIZABETH C. HOWARD, an
15 individual; and DOES I through
16 XX, inclusive.

17 Defendants.

**REPLY TO OPPOSITION TO
AFFIDAVIT OF JUSTIN M.
TOWNSEND, ESQ. IN RESPONSE
TO MARCH 1, 2017 ORDER IN
PART GRANTING SANCTIONS**

18 COMES NOW, Plaintiff, SHAUGHNAN L. HUGHES ("HUGHES"), by and
19 through his attorneys, ALLISON MacKENZIE, LTD., and hereby replies to the Opposition to
20 Affidavit of Justin M. Townsend, Esq. in Response to March 1, 2017 Order in part Granting
21 Sanctions. This Reply is made and based upon the pleadings and documents on file herein as well as
22 the following Memorandum of Points & Authorities and is meant only to clarify certain allegations
23 made in the aforesaid Opposition.

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 In its March 1, 2017 Order, the Court ordered the undersigned counsel for HUGHES
26 to "submit an affidavit establishing the cost of attorney fees pertinent to the awards set forth" in the
27 Order. The undersigned submitted the required affidavit on March 15, 2017. The March 1, 2017
28 Order also allowed for Mr. Kozak to file a response by no later than April 3, 2017. Mr. Kozak's law
partner, R. Craig Lusiani, who has not heretofore made an appearance in this matter, filed a response

1 on behalf of Mr. Kozak on April 3, 2017. While there is no provision in the March 1, 2017 Order
2 for replying to Mr. Kozak's response, the undersigned deems it necessary to correct some of the
3 accusations and assertions contained in Mr. Kozak's April 3, 2017 Response.

4 This Reply is not meant as an exhaustive counterargument to each argument raised by
5 Mr. Kozak in his Response. The undersigned has already sworn to the amount of fees incurred by
6 HUGHES as a result of conduct potentially subject to the March 1, 2017 Order and trusts that the
7 Court will establish a just and fair amount of fees owed by Mr. Kozak. Nevertheless, certain
8 inaccuracies in Mr. Kozak's Response are worthy of clarification.

9 Mr. Kozak takes exception to time spent preparing for the May 17, 2016 pretrial
10 conference. Response, p. 4, l. 11 to p. 5, l. 5. The undersigned noted in his Affidavit that he spent a
11 total of 11.65 hours requesting a pretrial conference and then preparing for **and attending** a pretrial
12 conference. Mr. Kozak misunderstands the time claimed as time claimed only for preparation. The
13 time claimed actually included time spent on preparation **and on attendance** at the pretrial
14 conference, which was in Fallon, more than one hour from the undersigned's office.

15 Mr. Kozak also objects to the undersigned's assertion that the Defendant had
16 destroyed evidence and claims that statements to that effect in the undersigned's Affidavit are
17 "inaccurate and unsubstantiated." Response, p. 5, ll. 11-13. Incorporated herein and attached hereto
18 as **Exhibit "1"** is an email from Mr. Kozak to the undersigned in which Mr. Kozak plainly admits
19 that his client deleted photographs "out of animosity towards Mr. Hughes." In addition,
20 incorporated herein and attached hereto as **Exhibit "2"** are Defendant's responses to written
21 discovery requests in which Defendant admits that she deleted relevant photographs.

22 Mr. Kozak asserts that the undersigned's "statements regarding deposition notices
23 being untimely" are also inaccurate and unsubstantiated. Response, p. 5, ll. 12-13. In fact, not only
24 did Mr. Kozak serve HUGHES with untimely deposition notices, but he served HUGHES with
25 notices of deposition for persons who were never disclosed as potential witnesses. Incorporated
26 herein and attached hereto as **Exhibit "3"** are deposition notices served on HUGHES on September
27 8, 2016 for depositions of Teresa Boss and Walt Boss, which were scheduled to take place on
28 September 14, 2016. First, Walt Boss was never disclosed as a potential witness by either party. In

ALLISON MacKENZIE, LTD.
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1 addition, the depositions were scheduled with less than one week's notice, but NRCP 30(b)(1)
2 requires at least fifteen days' notice. Immediately upon receipt of the Notices of Deposition, the
3 undersigned sent an email to Mr. Kozak in which he objected to the Notices for the foregoing
4 reasons. A copy of the undersigned's September 8, 2016 email to Mr. Kozak is hereby incorporated
5 and attached hereto as **Exhibit "4"**. The Notices of Deposition were subsequently withdrawn.

6 HUGHES sought sanctions of Mr. Kozak in large part as a result of Mr. Kozak's lack
7 of candor throughout these proceedings and for his failures to follow the rules of civil procedure.
8 The above clarifications of Mr. Kozak's Response are illustrative of Mr. Kozak's failures in these
9 regards and are further evidence of the need to sanction and censure Mr. Kozak in order to curb this
10 behavior. Mr. Kozak has misrepresented basic facts to the Court on multiple occasions. In spite of
11 having an Order of Sanctions entered against him in this matter, he continues to do so. For these
12 reasons, HUGHES respectfully requests sanctions equal to the amounts contained in the
13 undersigned's Affidavit.

14 DATED this 7th day of April, 2017.

15 ALLISON MacKENZIE, LTD.
16 402 North Division Street
17 Carson City, NV 89703-4168

18 By: 
19 JUSTIN M. TOWNSEND, ESQ.
20 Nevada State Bar No. 12293

21 Attorneys for Plaintiff,
22 SHAUGHNAN L. HUGHES
23
24
25
26
27
28

ALLISON MacKENZIE, LTD.
402 North Division Street, P.O. Box 646, Carson City, NV 89702
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E-Mail Address: law@allisonmackenzie.com

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 on all parties to this action by:

- ☒ 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
- ☐ 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:

CHARLES R. KOZAK, ESQ.
KOZAK LAW FIRM
3100 Mill Street, Suite 115
Reno, NV 89502

DATED this 7th day of April, 2017.


NANCY FONTENOT

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

LIST OF EXHIBITS

Exhibit No.

Description

Number of Pages
Excluding Exhibit Tab

"1"

Email from Mr. Kozak

"2"

Defendant's responses to written
discovery requests

"3"

Deposition notices served on HUGHES
on September 8, 2016 for depositions of
Teresa Boss and Walt Boss

"4"

September 8, 2016 email to Mr. Kozak

4850-3020-3718, v. 1

EXHIBIT “1”

Justin Townsend

From: Chuck Kozak <chuck@kozaklusianilaw.com>
Sent: Monday, September 26, 2016 2:54 PM
To: Justin Townsend
Subject: Re: Continuance

I do have a laptop that Elizabeth provided to our office which has all of the photographs that she now has available. She has gotten rid of many photos due to her animosity towards Mr. Hughes. Why don't you come to our office and take a look at what's available and we can discuss what is missing and what if anything can be done about those that have been deleted. I will get more specific information on whether there are more computers etc.

Thanks,

Chuck

On Mon, Sep 26, 2016 at 10:39 AM, Justin Townsend <jtownsend@allisonmackenzie.com> wrote:

Chuck,

I've never distrusted another lawyer as much as I distrust you. You've lied to the Court about me multiple times without apology.

So, I'm being cautious in responding to your offer to produce Elizabeth's devices for inspection. In trying to ensure that the laptop and hard drive you'd give us access to are the laptop and hard drive that in fact had the photos on them, I asked my client to get me specific model information on those devices so that I could narrow our request down. In doing so, we've learned that your client rid herself of the laptop shortly after locking my client out of the property and thereafter acquired a new laptop. I believe your client was likely to offer access to the new laptop rather than informing us of what happened to the prior laptop or the contents thereof. So, I am concerned that two months for discovery may not be sufficient.

Can you tell me approximately how many photographs are on the laptop and hard drive that you had offered to provide to us? If your client can convince us that she's not deleted any photographs, we can probably agree to the earlier trial date suggested by the Court. For instance, why won't you produce what you have now as you are obligated under NRCP 16.1? Otherwise, I am not willing to take you or your client at your word.

Also, we're still waiting on an offer from you. What will your client take to buy her out of the property?

Regards,

Justin Townsend, Esq.

Allison MacKenzie, Ltd.

402 N. Division Street

P.O. Box 646

Carson City, NV 89702

(775) 687-0202 telephone

(775) 882-7918 fax

email: jtownsend@allisonmackenzie.com

From: Chuck Kozak [mailto:chuck@kozaklusianilaw.com]

Sent: Wednesday, September 21, 2016 1:52 PM

To: Justin Townsend <jtownsend@allisonmackenzie.com>

Subject: Re: Continuance

Under the controlled conditions stated

On Wed, Sep 21, 2016 at 1:35 PM, Justin Townsend <jtownsend@allisonmackenzie.com> wrote:

Chuck,

I'm running this by my client. I assume you mean that you would allow a review of the laptop and the external hard drive?

Thank you,

Justin Townsend, Esq.

Allison MacKenzie, Ltd.

402 N. Division Street

P.O. Box 646

Carson City, NV 89702

(775) 687-0202 telephone

(775) 882-7918 fax

email: jtownsend@allisonmackenzie.com

From: Chuck Kozak [mailto:chuck@kozaklusianilaw.com]
Sent: Wednesday, September 21, 2016 12:42 PM
To: Justin Townsend <jtownsend@allisonmackenzie.com>
Subject: Re: Continuance

Justin,

I would agree to a neutral third party reviewing the hard drive in the presence of the parties. Is this acceptable?

On Wed, Sep 21, 2016 at 11:32 AM, Justin Townsend <jtownsend@allisonmackenzie.com> wrote:

Chuck,

My concern is that your client is going to claim she doesn't have the photographs in her possession. Otherwise, they should already have been produced as part of your 16.1 obligations. We know they exist(ed). Our preference would be to have access directly to the laptop and external hard drive, so we can ascertain whether files have been moved or deleted. My client believes there may be as many as 1,000 photos, which he witnessed her take while he was working on the property and which show before and after progress of all of the work that was done.

If we can get the access requested above over the next week or so, we can probably ascertain whether or not we need additional time for discovery of these matters.

Otherwise, we can't agree to the time frames you've suggested.

As per the request that my client pay for the appraisal. I think he would agree to that up front, but here's what the applicable statute says:

NRS 39.480 – "The costs of partition; fees of the master and other disbursements and also, in the discretion of the court, reasonable counsel fees expended by the parties for the common benefit, must be paid by the parties respectively entitled to share in the lands divided, in proportion to their respective interests therein, and may be included and specified in the judgment."

So, in the end, the parties are going to share in the cost of the appraisal according to their respective interests in the property. You may want to have a discussion with your client that attorneys' fees may also have to be shared. You say your client is broke, so I question whether or how she is paying you. My client is willing to buy the property from your client, which could help alleviate her financial concerns. Just give us a number and we can go from there.

Thank you,

Justin Townsend, Esq.

Allison MacKenzie, Ltd.

402 N. Division Street

P.O. Box 646

Carson City, NV 89702

(775) 687-0202 telephone

(775) 882-7918 fax

email: jtownsend@allisonmackenzie.com

From: Chuck Kozak [mailto:chuck@kozaklusianilaw.com]
Sent: Wednesday, September 21, 2016 11:10 AM
To: Justin Townsend <jtownsend@allisonmackenzie.com>
Subject: Continuance

Justin,

We would stipulate to a new trial date around the second week of December, With a pre-trial conference 15 days prior to trial to handle the usual evidentiary matters to shorten the trial if possible. We will provide all photographs we have of work in progress that are in our possession. Counsel will cooperate in determining which exhibits will be acceptable at trial, and will complete a joint trial

exhibit list by the date of the pretrial conference if possible. If the Plaintiff wishes to pay for an appraisal, D will make the property available to a licensed appraiser on a mutually agreeable date to be determined by the parties. No further discovery other than that described in the stipulation will be permitted. If this is acceptable to you and the court, please draft for my approval.

I apologize for not being able to propose a reasonable settlement in this matter, but the volume of

documentation we are going through is taking longer than anticipated. Hope to have something to discuss soon.

Thanks,

Chuck

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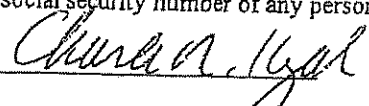
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EXHIBIT “2”

1 Case No. 15-10DC-0876

2 Dept. No. I

3 The undersigned hereby affirms that
4 this document does not contain the
5 social security number of any person.

6 
CHARLES R. KOZAK, Esq.

7 IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF CHURCHILL

9 SHAUGHNAN L. HUGHES, an
10 individual,
11 Plaintiff,

12 vs.

13 ELIZABETH C. HOWARD, an
14 individual; and DOES I through
15 XX, inclusive,
16 Defendants.

)
DEFENDANT ELIZABETH C. HOWARDS
RESPONSES TO PLAINTIFFS
INTERROGATORIES

SET: ONE

17
18
19
20 PROPOUNDING PARTY: Plaintiff: SHAUGHNAN L. HUGHES

21 RESPONDING PARTY: Defendant: ELIZABETH C. HOWARD

22 SET NUMBER: One

23 COMES NOW Defendant, by and through her counsel of record, Charles R. Kozak, Esq.,
24 and pursuant to Rule 33 of Nevada Rules of Civil Procedure, hereby responds to Plaintiff's First Set
25 of Interrogatories:
26

27 Initially, Plaintiff objects to each and every Interrogatory here as being propounded to and
28 requested from, "Plaintiff Shaughnan Hughes". As such all Requests are vague and unintelligible.

Without waiving such objection, Defendant Elizabeth C. Howard does respond as follows:

INTERROGATORY NO. 1:

Please describe all photographs of the property that you deleted from any digital medium, including without limitation any laptop, thumb drive, external hard drive, compact disc, DVD, or any other media.

RESPONSE TO INTERROGATORY NO. 1:

After Defendant, ELIZABETH C. HOWARD and Plaintiff, SHAUGHNAN L. HUGHES ceased to be intimately involved, Defendant deleted most of the photographs taken after the computer crash in an attempt to put the relationship behind her and move forward with her life. Defendant is not in a position to recall the details of specific photographs.

INTERROGATORY NO. 2:

For any response to a Request for Admission served herewith that is anything other than an unqualified admission, please state the number of the Request for Admission and identify all facts, including any documents, upon which you base your response.

RESPONSE TO INTERROGATORY NO. 2:

Request for Admission No. 1:

After Defendant, ELIZABETH C. HOWARD and Plaintiff, SHAUGHNAN L. HUGHES ceased to be intimately involved, Defendant deleted most of the photographs taken after the computer crash in an attempt to put the relationship behind her and move forward with her life.

Request for Admission No. 3:

After Defendant, ELIZABETH C. HOWARD and Plaintiff, SHAUGHNAN L. HUGHES ceased to be intimately involved, Defendant deleted most of the photographs taken after the computer crash in an attempt to put the relationship behind her and move forward with her life.

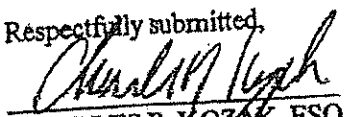
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Request for Admission No. 4:


Defendant, ELIZABETH C. HOWARD did not alter photos obtained by Plaintiff's counsel. Defendant had neither the knowledge or computer program to make such alterations.

DATED this 2nd day of December, 2016

Respectfully submitted,



CHARLES R. KOZAK, ESQ.
KOZAK LUSIAN LAW, LLC
Nevada State Bar #11179
3100 Mill Street, Suite 115
Reno, Nevada 89502
Phone (775) 322-1239
Facsimile (775) 800-1767
chuck@kozaklusianlaw.com
Attorney for Elizabeth C. Howard


ELIZABETH C. HOWARD
Defendant


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On the 2nd day of December 2016, I caused to be delivered via Reno Carson Messenger and certified U.S. Mail, postage fully prepaid, a true and correct copy of the foregoing document:

DEFENDANT ELIZABETH C. HOWARDS RESPONSES TO PLAINTIFFS INTERROGATORIES, in Case No. 15-10DC-0876, Dept. I, to the following party(ies):

Justin M. Townsend, Esq.
Allison MacKenzie, Ltd.
Nevada State Bar No. 12293
402 N. Division Street
P. O. Box 646
Carson City, Nevada 89702
Phone (775) 687-0202
Facsimile (775) 882-7918
Attorney for Plaintiff

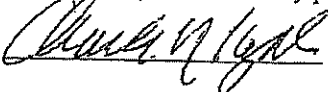
DATED this 2nd day of December 2016.


Dedra Sonne
Employee of Kozak Lusiani Law, LLC

Case No. 15-10DC-0876

Dept. No. I

The undersigned hereby affirms that
this document does not contain the
social security number of any person.



CHARLES R. KOZAK, Esq.

IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CHURCHILL

SHAUGHNAN L. HUGHES, an
individual,

Plaintiff,

vs.

ELIZABETH C. HOWARD, an
individual; and DOES I through
XX, inclusive,

Defendants.

DEFENDANT ELIZABETH C. HOWARD
RESPONSES TO REQUEST FOR
ADMISSIONS FROM PLAINTIFF

SET: ONE

PROPOUNDING PARTY: Plaintiff: SHAUGHNAN L. HUGHES

RESPONDING PARTY: Defendant: ELIZABETH C. HOWARD

SET NUMBER: One

COMES NOW Defendant, by and through her counsel of record, Charles R. Kozak, Esq.,
and pursuant to Rule 34 of Nevada Rules of Civil Procedure, hereby responds to Plaintiff's First Set
of Requests for Production:

Initially, Plaintiff objects to each and every Requests for Admission here as being pro-
pounded to and requested from, "Plaintiff Shaughnan L. Hughes". As such, all Requests are

1 vague and unintelligible.

2 Without waiving such objection, Defendant Elizabeth C. Hughes does respond as follows:

3 REQUEST NO. 1:

4 Admit that after Plaintiff, SHAUGHNAN L. HUGHES moved out of the property, you deleted
5 photographs of the property taken before he had moved out.

6 RESPONSE TO REQUEST NO. 1:

7 Deny in part. Photographs were deleted of the Plaintiff by Defendant at the end of their tumultu-
8 ous relationship.

9 REQUEST NO. 2:

10 Admit that some of the photographs you deleted depict Plaintiff, SHAUGHNAN L. HUGHES op-
11 erating machinery, installing materials, including landscaping material, and performing other labor
12 on the property.

13 RESPONSE TO REQUEST NO. 2:

14 Admit in part, some of the pictures that were lost, were due to a computer crash caused by misuse
15 of the computer by Plaintiff, SHAUGHNAN L. HUGHES'S minor children. Other photos may
16 have contained pictures of Plaintiff, SHAUGHNAN L. HUGHES operating machinery, installing
17 materials, including landscaping material, and performing other labor on the property but the in-
18 formation is not readily obtainable or is insufficient for Defendant, ELIZABETH C. HOWARD to
19 admit or deny.

20 REQUEST NO. 3:

21 Admit that the reason you deleted photos of Plaintiff, SHAUGHNAN L. HUGHES working on
22 the property was out of animosity towards him.

23 ///

24

1 RESPONSE TO REQUEST NO. 3:

2 Admit in part. Defendant did delete photographs of Plaintiff due to their relationship ending.
3 Plaintiff may have been working in some of this photographs; however, Defendant is not in a pos-
4 tion to recall.

5 REQUEST NO. 4:

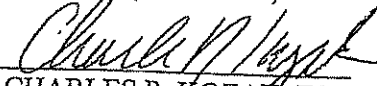
6
7 Admit that you had digitally altered some of the photos contained on the laptop you turned over to
8 your attorney and that was in his possession on September 28, 2016 when your attorney allowed
9 Plaintiff's counsel to copy all of said photographs onto thumb drives.

10 RESPONSE TO REQUEST NO. 4:

11 Deny. Defendant lacks the necessary program to alter pictures.

12 DATED this 1st day of Decemeber, 2016
13
14

Respectfully submitted,

15 
16 CHARLES R. KOZAK, ESQ.
17 KOZAK LUSIANI LAW, LLC
18 Nevada State Bar #11179
19 3100 Mill Street, Suite 115
20 Reno, Nevada 89502
21 Phone (775) 322-1239
22 Facsimile (775) 800-1767
23 chuck@kozaklusianilaw.com
24 Attorney for Elizabeth C. Howard
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CERTIFICATE OF SERVICE


I certify that I am an employee working for Kozak Lusiani Law, LLC and am a citizen of the United States, over twenty-one years of age, and not a party to the within action. My business address is 3100 Mill Street, Suite 115, Reno, Nevada 89502.

On the 2nd day of December 2016, I caused to be delivered via Reno Carson Messenger and certified U.S. Mail, postage fully prepaid, a true and correct copy of the foregoing document:

DEFENDANT ELIZABETH C. HOWARD RESPONSES TO REQUEST FOR ADMIS-
SIONS FROM PLAINTIFF, in Case No. 15-10DC-0876, Dept. I, to the following party(ies):

Justin M. Townsend, Esq.
Allison MacKenzie, Ltd.
Nevada State Bar No. 12293
402 N. Division Street
P. O. Box 646
Carson City, Nevada 89702
Phone (775) 687-0202
Facsimile (775) 882-7918
Attorney for Plaintiff

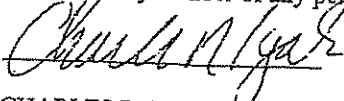
DATED this 2nd day of December 2016.


Dedra Sonne
Employee of Kozak Lusiani Law, LLC

1 Case No. 15-10DC-0876

2 Dept. No. I

3 The undersigned hereby affirms that
4 this document does not contain the
5 social security number of any person.

6 
CHARLES R. KOZAK, Esq.

7 IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF CHURCHILL

9 SHAUGHNAN L. HUGHES, an
10 individual,

11 Plaintiff,

12 vs.

13 ELIZABETH C. HOWARD, an
14 individual; and DOES I through
15 XX, inclusive,

16 Defendants.

DEFENDANT ELIZABETH C.
HOWARDS' RESPONSES TO REQUEST
FOR PRODUCTION OF DOCUMENTS

SET: ONE

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20 PROPOUNDING PARTY: Defendant: SHAUGHNAN L. HUGHES

21 RESPONDING PARTY: Plaintiff: ELIZABETH C. HOWARD

22 SET NUMBER: One

23
24 COMES NOW Defendant, by and through her counsel of record, Charles R. Kozak, Esq.,
25 and pursuant to Rule 34 of Nevada Rules of Civil Procedure, hereby responds to Plaintiff's First Set
26 of Requests for Production:
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I. RESPONSES

REQUEST NO. 1:

Please produce all documents, receipts, cancelled checks, check registers, records and all other documentation not heretofore provided to support the expenses and calculations listed on the Expense Report you produced, which is identified by bates stamps EH000012 to EH 000013.

RESPONSE TO REQUEST NO. 1:

Please see documents with Bates stamps EHDISC000001 to EHDISC 000179. (See Exhibit 1).

REQUEST NO. 2:

Please produce all photographs of the property in their original unaltered form, including all print photographs and any digital photographs located on any laptop, thumb drive, external hard drive, compact disc, DVD, or any other media, including without limitations all photographs showing the property or any of its improvements, any person(s) working on or observing the property, any machinery on the property, or any raw materials located on the property in connection with any improvements installed thereon.

RESPONSE TO REQUEST NO. 2:

Please see photographs Bates stamped EHDISC000180 to EHD000215. (See Exhibit 2).

REQUEST NO. 3:

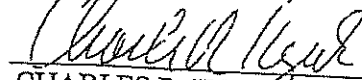
- a. Request for Admission No. 1: Defendant lost many photographs due to a computer crash. Other photos of Plaintiff were deleted at the conclusion of their relationship. It is possible that some of the photographs showed the property in the background; however, Defendant is not in a position to recall the specifics of any of the photographs.

- 1 b. Request for Admission No. 3: Defendant deleted photographs of the Plaintiff at the con-
2 clusion of their relationship in an effort to move on with her life.
3 c. Request for Admission No. 4: Defendant does not have the ability to alter photographs.
4

5 Affirmation: Pursuant to NRS 239B.030, the undersigned does hereby affirm that
6 this document does not contain the social security of any person.

7 DATED this 1st day of December, 2016
8

9 Respectfully submitted,

10 

11 CHARLES R. KOZAK, ESQ.

12 KOZAK LUSIANI LAW, LLC

13 Nevada State Bar #11179

14 3100 Mill Street, Suite 115

15 Reno, Nevada 89502

16 Phone (775) 322-1239

17 Facsimile (775) 800-1767

18 chuck@kozaklusianilaw.com

19 Attorney for Elizabeth C. Howard
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CERTIFICATE OF SERVICE

I certify that I am an employee working for Kozak Lusiani Law, LLC and am a citizen of the United States, over twenty-one years of age, and not a party to the within action. My business address is 3100 Mill Street, Suite 115, Reno, Nevada 89502.

On the 2nd day of December 2016, I caused to be delivered via Reno Carson Messenger and certified U.S. Mail, postage fully prepaid, a true and correct copy of the foregoing document to the following party:

Justin M. Townsend, Esq.
Allison MacKenzie, Ltd.
Nevada State Bar No. 12293
402 N. Division Street
P. O. Box 646
Carson City, Nevada 89702
Phone (775) 687-0202
Facsimile (775) 882-7918
Attorney for Plaintiff

DATED this 2nd day of December 2016.



Dedra Sonne
Employee of Kozak Lusiani Law, LLC

EXHIBIT LIST

	No.	Document	Pages
1			
2			
3	1	Bates stamped document EHDISC000001 to EHDISC000179	179
4	2	Bates stamped document EHDISC000180 to EHDISC000215	35
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EXHIBIT “3”

1 Case No. 15-10DC-0876

2 Dept. No. I

3 The undersigned hereby affirms that
4 this document does not contain the
5 social security number of any person.

6
7 R. CRAIG LUSIANI, Esq.

8 **IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
9 **IN AND FOR THE COUNTY OF CHURCHILL**

10 SHAUGHNAN L. HUGHES, an
11 individual,

12 vs.

13 Plaintiff,
14 ELIZABETH C. HOWARD, an
15 individual; and DOES I through
16 XX, inclusive,

17 Defendants

18 ELIZABETH C. HOWARD, an
19 individual,

20 Counterclaimant,

21 vs.

22 SHAUGHAN L. HUGHES, an
23 individual; and DOES I through
24 XX, inclusive,

25 Counterdefendants.

26 **NOTICE OF TAKING DEPOSITION OF TERESA BOSS**

27 TO ALL INTERESTED PARTIES:

28 PLEASE TAKE NOTICE that Defendant and Counterclaimant ELIZABETH C.

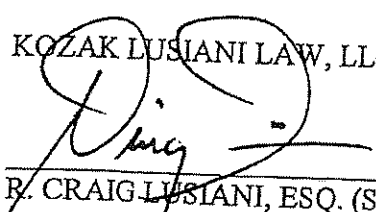
1 HOWARD by and through her counsel of record Charles R. Kozak, Esq., will take the
2 deposition of TERESA BOSS, for all purposes including trial testimony preservation,
3 commencing on Wednesday, September 14, 2016, at 10:00 a.m., at the law office of Kozak
4 Lusiani Law, LLC, 3100 Mill Street, Suite 115, Reno, Nevada, 89502, upon oral examination,
5 pursuant to Rule 26 and 30 of the Nevada Rules of Civil Procedure, before a Notary Public, or
6 before some other officer authorized by law to administer oaths.
7

8 You are invited to attend and cross-examine. The deposition will be recorded by sound
9 and/or stenographic means before an appropriate officer as set forth in NRCp 30(b).
10

11 Affirmation: The undersigned does hereby affirm, pursuant to NRS 239B.030, that this document
12 and any attachments thereto do not contain personal information as defined in NRS 603A.040 about any
13 person.

14 DATED this 8 day of September 2016.
15

16 KOZAK LUSIANI LAW, LLC

17
18 
19 R. CRAIG LUSIANI, ESQ. (SBN 552)
20 CHARLES R. KOZAK, ESQ. (SBN 11179)
21 KOZAK LUSIANI LAW, LLC
22 3100 Mill Street, Suite 115
23 Reno, Nevada 89502
24 Phone (775) 322-1239
25 Facsimile (775) 800-1767
26 craig@kozaklusianilaw.com
27 chuck@kozaklusianilaw.com
28 Attorneys for Elizabeth C. Howard


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CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I certify that I am an employee of the Kozak Lusiani Law, LLC,
and that on the 8 day of September 2016, I caused to be hand delivered by Reno Carson
Messenger Service a true and correct copy of **NOTICE OF TAKING DEPOSITION OF**
TERESA BOSS addressed to:

Justin M. Townsend, Esq.
Allison MacKenzie, Ltd.
Nevada State Bar No. 12293
402 N. Division Street
P. O. Box 646
Carson City, Nevada 89702
Phone (775) 687-0202
Facsimile (775) 882-7918
Attorney for Plaintiff

DATED this 8 day of September 2016.


Dedra Sonne
Employee of Kozak Lusiani Law, LLC

1 Case No. 15-10DC-0876

2 Dept. No. I

3 The undersigned hereby affirms that
4 this document does not contain the
5 social security number of any person.

6 _____
7 R. CRAIG LUSIANI, Esq.

8 **IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
9 **IN AND FOR THE COUNTY OF CHURCHILL**

10 SHAUGHNAN L. HUGHES, an
11 individual,

12 vs.

13 Plaintiff,
14 ELIZABETH C. HOWARD, an
15 individual; and DOES I through
16 XX, inclusive,

17 Defendants
18 _____ /

19 ELIZABETH C. HOWARD, an
20 individual,

21 Counterclaimant,

22 vs.

23 SHAUGHAN L. HUGHES, an
24 individual; and DOES 1 through
25 XX, inclusive,

26 Counterdefendants.
27 _____ /

28 **NOTICE OF TAKING DEPOSITION OF WALT BOSS**

TO ALL INTERESTED PARTIES:

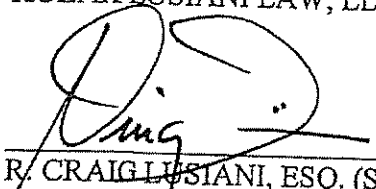
PLEASE TAKE NOTICE that Defendant and Counterclaimant ELIZABETH C.

1 HOWARD by and through her counsel of record Charles R. Kozak, Esq., will take the
2 deposition of WALT BOSS, for all purposes including trial testimony preservation,
3 commencing on Wednesday, September 14, 2016, at 2:00 p.m., at the law office of Kozak
4 Lusiani Law, LLC, 3100 Mill Street, Suite 115, Reno, Nevada, 89502, upon oral examination,
5 pursuant to Rule 26 and 30 of the Nevada Rules of Civil Procedure, before a Notary Public, or
6 before some other officer authorized by law to administer oaths.
7

8 You are invited to attend and cross-examine. The deposition will be recorded by sound
9 and/or stenographic means before an appropriate officer as set forth in NRCP 30(b).
10

11 DATED this 8 day of September 2016.
12
13

14 KOZAK LUSIANI LAW, LLC

15 
16 R. CRAIG LUSIANI, ESQ. (SBN 552)
17 CHARLES R. KOZAK, ESQ. (SBN 11179)
18 KOZAK LUSIANI LAW, LLC
19 3100 Mill Street, Suite 115
20 Reno, Nevada 89502
21 Phone (775) 322-1239
22 Facsimile (775) 800-1767
23 craig@kozaklusianilaw.com
24 chuck@kozaklusianilaw.com
25 Attorneys for Elizabeth C. Howard
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Kozak Lusiani Law, LLC,
and that on the 8 day of September 2016, I caused to be hand delivered by Reno Carson
Messenger Service a true and correct copy of **NOTICE OF DEPOSTION OF WALT BOSS**
addressed to:

Justin M. Townsend, Esq.
Allison MacKenzie, Ltd.
Nevada State Bar No. 12293
402 N. Division Street
P. O. Box 646
Carson City, Nevada 89702
Phone (775) 687-0202
Facsimile (775) 882-7918
Attorney for Plaintiff

DATED this 8 day of September 2016.

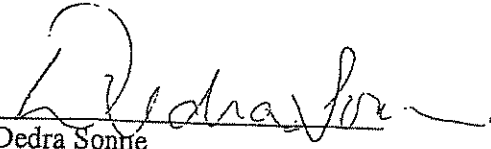

Dedra Sonne
Employee of Kozak Lusiani Law, LLC

EXHIBIT “4”

Justin Townsend

From: Justin Townsend
Sent: Thursday, September 08, 2016 5:13 PM
To: 'Chuck Kozak'; 'craig@kozaklusianilaw.com'
Cc: 'nan@kozaklusianilaw.com'; 'dedra@kozaklusianilaw.com'
Subject: Hughes v. Howard - Boss Deposition Notices

Chuck,

We were served via hand delivery two Notices of Deposition this afternoon for depositions of Teresa Boss and Walt Boss, which you apparently intend to take on September 14, 2016. Please take note that NRCP 30(b)(1) clearly requires that you give at least 15 days' notice to all parties. You've given me 6 days' notice and I am not available on the 14th. Further, you did not list Walt Boss as a potential witness on your 16.1 disclosure, so he cannot be called as a witness unless you supplement the 16.1 disclosure.

Ms. Boss is listed as a witness apparently in support of your client's counterclaims, which have been dismissed, so I'm not even sure why her deposition would be relevant to the partition.

I will not be in attendance on the 14th and will strenuously object to the admission of any testimony taken in contravention of the rules.

As a courtesy, I'd ask that you kindly contact me the next time you wish to schedule a deposition so that we can coordinate our calendars.

Regards,

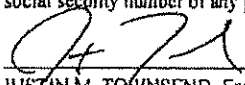
Justin Townsend, Esq.
Allison MacKenzie, Ltd.
402 N. Division Street
P.O. Box 646
Carson City, NV 89702
(775) 687-0202 telephone
(775) 882-7918 fax
email: jtownsend@allisonmackenzie.com

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

1 Case No. 15-10DC-0876

2 Dept. No. 1

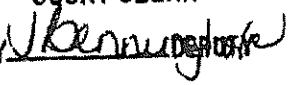
3 The undersigned hereby affirms that
4 this document does not contain the
5 social security number of any person

6 
7 JUSTIN M. TOWNSEND, Esq.

FILED

2017 APR 10 AM 11:05

SUE SEVON
COURT CLERK

BY 

8 IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
9 IN AND FOR THE COUNTY OF CHURCHILL

10 SHAUGHNAN L. HUGHES, an
11 individual,

12 Plaintiff.

13 vs.

14 ELIZABETH C. HOWARD, an
15 individual; and DOES I through
16 XX, inclusive.

17 Defendants.

**OPPOSITION TO
AMENDED MOTION FOR
RECONSIDERATION OF ORDER
IN PART GRANTING SANCTIONS**

18 COMES NOW, Plaintiff, SHAUGHNAN L. HUGHES ("HUGHES"), by and
19 through his attorneys, ALLISON MacKENZIE, LTD., and hereby opposes Defendant's Amended
20 Motion for Reconsideration of Order in Part Granting Sanctions. This Opposition is made and based
21 upon the pleadings and documents on file herein as well as the following Memorandum of Points &
22 Authorities.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

DEFENDANT HAS NOT MET LEGAL BURDEN FOR RECONSIDERATION

23 "No motion once heard and disposed of may be renewed in the same cause, nor may
24 the same matters therein be reheard, unless by leave of the Court granted upon motion, after
25 notice of such motion to the adverse parties." 10JDCR15(18); see also DCR 13(7). Leave for
26 rehearing of this matter has not been granted, nor has Defendant petitioned for leave to have this
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1 matter reheard. Defendant's Motion never asks for leave to have the matter reheard. For that reason
2 alone, Defendant's Amended Motion for Reconsideration should be denied. However, even if the
3 Court determines to rehear HUGHES' Motion for Sanctions, Defendant has not met her burden to
4 show that the Court's March 1, 2017 Order is worthy of rehearing.

5 Rehearing is appropriate only where the Court's decision is clearly erroneous.
6 *Masonry and Tile v. Jolley, Urga & Wirth*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). In order to
7 prevail on the Court to rehear a matter already heard and disposed, Defendant must demonstrate that
8 sufficient cause exists for the Court to "amend, correct, resettle, modify or vacate, as the case may
9 be, an order previously made and entered on the motion in the progress of the cause or proceeding."
10 *Trail v. Faretto*, 91 Nev. 401, 403, 536 P.2d 1026, 1027 (1975); *see also Barry v. Lindner*, 119 Nev.
11 661, 670, 81 P.3d 537, 543 (2003).

12 II.

13 **MARCH 1, 2017 ORDER IS NOT CLEARLY ERRONEOUS AND** 14 **DEFENDANT'S ATTORNEY IS SUBJECT TO SANCTION**

15 Even if the Court entertains Defendant's Amended Motion, she has not demonstrated
16 therein that the Court's March 1, 2017 Order was clearly erroneous. Defendant's Amended Motion
17 is based entirely on the premise that HUGHES "was not disadvantaged" because Defendant's "Case
18 Conference Report and Initial Disclosures were provided to the Court and opposing counsel by May
19 17, 2017." Regardless of the inaccuracies of the foregoing contention, Defendant's counsel fails to
20 address in any way the fact that Defendant's Case Conference Report was due on March 17, 2017 or
21 that her Initial Disclosures were due on March 1, 2017. Moreover, Defendant's assertions about
22 when she served the aforementioned documents is blatantly false. Further, her assertions that
23 HUGHES was not disadvantaged by her many late filings is clearly wrong.

24 The Court's March 1, 2017 Order correctly notes that the parties held an early case
25 conference on February 16, 2016. Therefore, initial disclosures were due no later than March 1,
26 2016. NRCp 16.1(a)(1), and case conference reports were due no later than March 17, 2016. NRCp
27 16.1(c). Defendant failed to comply with either of these deadlines. Defendant's initial disclosures
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1 were served on HUGHES on May 20, 2016¹ and only after the Court ordered Defendant's counsel to
2 do so at the May 17, 2016 pretrial conference. Further, Defendant's Case Conference Report was
3 not served on HUGHES until January 4, 2017, nearly ten months late.²

4 With specific regard to filing of Defendant's Case Conference Report, Defendant's
5 counsel fails again to acknowledge the multiple reminders he received from the Court and the
6 undersigned. First, the Court correctly mentioned in the March 1, 2017 Order that the Court "noted
7 the absence of the Case Conference Report" during the May 17, 2016 pretrial conference. March 1,
8 2017 Order, p. 6, ll. 12-13. In response, Defendant's counsel had his office email a copy of an
9 unfiled Case Conference Report to the Court Clerk. He did not, however, actually file a Case
10 Conference Report at that time, nor did he serve a copy thereof on HUGHES. Two months later, on
11 August 26, 2016, HUGHES filed the Motion for Sanctions in which he reiterated that he had still not
12 been served with a copy of Defendant's Case Conference Report. Then, in the Court's September 7,
13 2016 Order Denying Defendant's Motion for Summary Judgment and Denying Defendant's Motion
14 to Set Aside Dismissal of Counterclaim, the Court noted again that Defendant's Case Conference
15 Report was still not on file. See September 7, 2016 Order, p. 5, fn. 5.

16 Still, Defendant's counsel took no action to file the report. Then, at a December 7,
17 2016 deposition of HUGHES, which had been noticed by Defendant's counsel, before questioning
18 of the deponent began the undersigned vocally objected to the deposition for the specific reason that
19 Defendant was not entitled to conduct any discovery because she had not yet filed or served her Case
20 Conference Report. A copy of the cover page and relevant portions of the deposition transcript are
21 hereby incorporated and attached hereto as **Exhibit "1"**. Still, Defendant did not file a case
22 conference report. On December 2, 2016, Defendant served written discovery requests on
23 HUGHES. In response, the undersigned sent Defendant's counsel a letter in which he reiterated that
24

25 ¹ Not by May 17, 2016 as asserted on page 2 at lines 6 to 9 of the Amended Motion.

26 ² Defendant argues that HUGHES "had Mr. Kozak's Case Conference Report in May 2016." This is not true as what
27 was emailed to the Court on May 17, 2016 was nothing more than an unfiled draft. Further, in Defendant's original
28 Motion for Reconsideration, Defendant also argued that HUGHES had filed Plaintiff's Case Conference Report only
three days prior on May 14, 2016. Upon receiving an emailed copy of Defendant's original Motion for Reconsideration,
the undersigned immediately emailed counsel for Defendant and noted that this was patently false and that Plaintiff's
Case Conference Report had in fact been filed on March 14, 2016. Defendant then emailed a copy of the instant
Amended Motion.

1 Defendant was not entitled to conduct any discovery because she had not filed her Case Conference
2 Report. A copy of the undersigned's December 21, 2016 letter to Defendant's counsel is hereby
3 incorporated and attached hereto as **Exhibit "2"**. Finally, on January 4, 2017, just one month before
4 trial, Defendant filed her Case Conference Report. Notably, the report filed on January 4, 2017
5 differed from the unfiled report emailed to the Court on May 17, 2016. The Court recognized this
6 fact in its March 1, 2017 Order. See March 1, 2017 Order, p. 2, fn. 5.

7 Rather than acknowledge his clear and repeated failures to file and/or serve these
8 documents on time, Defendant falsely contends that HUGHES was aware of these documents as of
9 May 17, 2016 and, thus, not prejudiced or disadvantaged. Defendant's position in this regard
10 ignores the broader purpose of the rules of civil procedure and the specific purpose of NRCp 16.1.
11 This Court correctly noted in its March 1, 2017 Order that the rules are in place "to ensure that our
12 adversarial proceedings remain civil" and that when "one party (or counsel for one party) disregards
13 the guidelines, they place an unfair burden on the other party." March 1, 2017 Order, p. 7, ll. 20-22.
14 Defendant contends now that her counsel's actions (or inactions) did not prejudice or disadvantage
15 HUGHES in any way. Amended Motion, pp. 2-3.

16 However, it is incontrovertible fact that HUGHES was unable to properly conduct
17 discovery until receipt of Defendant's initial disclosures. HUGHES was unaware of the discovery
18 that would even need to be conducted until Defendant served him with her initial disclosures. Her
19 disclosures were due on March 1, 2016, but were not served until May 20, 2016.³ Further, courts
20 typically use the parties' case conference reports to set various deadlines, including discovery cutoffs
21 and trial dates. Without the benefit of Defendant's Case Conference Report, the Court was unable to
22 set these deadlines.

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27 ³ In her Amended Motion, Defendant asserts that the initial disclosures were served only a day late because the Court
28 had ordered her during the May 17, 2016 pretrial conference to serve them by May 19, 2016. Amended Order, p. 3, ll. 1-
2. This is an absurd argument. The true deadline for serving initial disclosures in this matter was unequivocally March
1, 2016.

1 It was for these specific reasons that HUGHES requested a pretrial conference in May
2 2016.⁴ Moreover, HUGHES was not put on notice of certain defenses Defendant intended to invoke
3 until the actual filing and service of her Case Conference Report on January 4, 2017, nearly ten
4 months late. As the Court knows, the extremely late filing on the eve of trial of Defendant's Case
5 Conference Report led directly to HUGHES filing a Motion in Limine, which was based on
6 HUGHES' inability at that late stage to properly conduct discovery on the defenses raised for the
7 first time in her Case Conference Report.

8 Further, had Defendant's counsel followed the prescribed procedures in timely filing
9 and serving Defendant's initial disclosures and Case Conference Report, discovery could have
10 proceeded as of mid-March 2016 instead of May 2016 and this Court likely would have set a much
11 earlier trial date. This was a simple action for partition that was not resolved for over eighteen
12 months when it could have been resolved much quicker without the delays directly attributable to the
13 actions and/or inactions of Defendant's counsel. For these reasons, HUGHES urges the Court to
14 deny Defendant's Motion for Reconsideration.

15 III.

16 CONCLUSION

17 Defendant has no leave to seek rehearing of this Court's March 1, 2017 Order.
18 Further, Defendant makes no showing that this Court's March 1, 2017 Order was clearly erroneous.
19 To the contrary, the Court's decision to sanction Defendant's counsel was warranted by said
20 counsel's multiple failures to follow the rules as set forth herein and in HUGHES' original Motion
21 for Sanctions. For these reasons, HUGHES respectfully urges the Court to deny Defendant's
22 Amended Motion for Reconsideration. In addition, HUGHES respectfully requests that the Court
23 award HUGHES attorneys' fees for time spent by the undersigned in responding to the instant
24 Amended Motion for Reconsideration.

25 ///

26 ///


27
28 ⁴ At the time HUGHES requested the pretrial conference, Defendant had not filed or served a single document since the late-filing of her Answer and Counterclaim. In addition to the discovery matters discussed herein, Defendant had also failed to respond to HUGHES' Motion to Dismiss her Counterclaims.

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

DATED this 7th day of April, 2017.

ALLISON MacKENZIE, LTD.
402 North Division Street
Carson City, NV 89703-4168

By:


JUSTIN M. TOWNSEND, ESQ.
Nevada State Bar No. 12293

Attorneys for Plaintiff,
SHAUGHNAN L. HUGHES

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

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 on 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
 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:

CHARLES R. KOZAK, ESQ.
KOZAK LAW FIRM
3100 Mill Street, Suite 115
Reno, NV 89502

DATED this 7th day of April, 2017.


NANCY FONTENOT

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

LIST OF EXHIBITS

<u>Exhibit No.</u>	<u>Description</u>	<u>Number of Pages Excluding Exhibit Tab</u>
"1"	Cover page and relevant portions of the deposition transcript	4
"2"	December 21, 2016 letter to Defendant's counsel	2
4811-0597-2294, v. 1		

EXHIBIT “1”

EXHIBIT “1”

In the Matter Of:
Hughes vs. Howard

SHAUGHNAN L. HUGHES

December 07, 2016

Job Number: 354637

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TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CHURCHILL
--oOo--

SHAUGHNAN L. HUGHES, an :
individual, :
Plaintiff, :
vs. : 15-10DC-0876
ELIZABETH C. HOWARD, an :
individual; and DOES I-XX, :
inclusive, :
Defendants. :

=====

DEPOSITION OF
SHAUGHNAN L. HUGHES
WEDNESDAY, DECEMBER 7, 2016
FALLON, NEVADA

Job No.: 354637

Reported by: CAROL HUMMEL, RPR, CCR #340
Transcription --- Computer ---

1 BE IT REMEMBERED that on WEDNESDAY, the 7th
2 day of DECEMBER 2016, at the hour of 1:00 P.M., of said
3 day, at the TENTH JUDICIAL DISTRICT COURT, 73 North Maine
4 Street, Fallon, Nevada, before me, CAROL HUMMEL, a notary
5 public, personally appeared SHAUGHNAN L. HUGHES, who was
6 by me first duly sworn, and was examined as a witness in
7 said cause.

8 -oOo-

9

10 SHAUGHNAN L. HUGHES

11 having been first duly sworn, testified as follows:

12 E X A M I N A T I O N

13 BY MR. KOZAK:

14 Q State your name, please.

15 A Shaughnan Hughes.

16 MR. TOWNSEND: Can I ask a question first?

17 Oh, I didn't see that, your machine.

18 Can I make one note before we get started?

19 MR. KOZAK: Sure. Any statement. Go ahead.

20 MR. TOWNSEND: Under Rule 26 we're not going
21 to object to this deposition proceeding. But under Rule
22 26 I do need to note for the record that defense is not
23 allowed to take the deposition of any party until after 10
24 days after the filing of their case conference report
25 which has not been filed.

1 So I just want to make that note for the
2 record. I don't want to waive any objection that I had to
3 these proceedings going forward.

4 BY MR. KOZAK:

5 Q Mr. Hughes, have you ever had your deposition
6 taken before?

7 A Not that I know of.

8 Q I'm going to be asking you a series of
9 questions today. You're under oath. Even though things
10 look rather informal here, it will be like you are in
11 court answering the questions to the best of your ability.

12 It would be helpful if you let me finish my
13 question before you begin your answer so we don't step on
14 each other's answers and responses.

15 A Okay.

16 Q You're not under any medication today or you
17 don't have any reason why you can't proceed today?

18 A No, sir.

19 Q Do you have any questions of me before we
20 begin?

21 A No, sir.

22 Q I represent Elizabeth Howard, as you know, and
23 you've brought a lawsuit for what you claim is a share of
24 real property that you both resided in for a period of
25 time. That's my understanding of your lawsuit. Is that

EXHIBIT “2”

EXHIBIT “2”

MIKE PAVLAKIS
KAREN A. PETERSON
JAMES R. CAVILIA
CHRIS MACKENZIE
DAWN ELLERBROCK
RYAN D. RUSSELL
JOEL W. LOCKE

JUSTIN TOWNSEND
S. JORDAN WALSH
KYLE A. WINTER
WILL WAGNER



ALLISON · MACKENZIE

December 21, 2016

GEORGE V. ALLISON
ANDREW MACKENZIE
PATRICK V. FAGAN
CHARLES P. COCKERILL
JOAN C. WRIGHT
OF COUNSEL
MIKE SOUMBENIOTIS
(1932-1997)

Charles R. Kozak, Esq.
KOZAK LUSIANI LAW, LLC
3100 Mill Street, Suite 115
Reno, NV 89502

Re: **Hughes v. Howard; Case No. 15-10DC-0876;**
No Right to Participate in Discovery

Dear Mr. Kozak:

I am in receipt of Defendant's First Set of Request for Production of Documents; First Set of Interrogatories; and Defendant's First Request for Admissions from Plaintiff, each of which was mailed to my office on or about December 2, 2016. As I noted to you on the record at the beginning of your deposition of my client on December 7, 2016, your client is not entitled to conduct discovery in this matter. I have adequately preserved the right to maintain my client's objection to your ongoing discovery efforts unless and until you comply with applicable discovery rules.

NRCP 16.1(c) provides plainly that "[w]ithin 30 days after each case conference, the parties must file a joint case conference report or, if the parties are unable to agree upon the contents of a joint report, each party must serve and file a case conference report." NRCP 26(a) provides that "not sooner than 10 days after a party has filed a separate case conference report...any party who has complied with Rule 16.1(a)(1) may obtain discovery..." As you know, we held an early case conference via telephone on February 16, 2016. On March 1, 2016, I sent you a draft Joint Case Conference Report. On March 7, 2016 your office returned a revised draft Joint Case Conference Report containing several revisions, two of which were objected to by me. I noted my objections to you in an email on March 8, 2016 and you never responded. On March 14, 2016, having not heard back from you, I timely filed a separate case conference report on behalf of my client. Having also timely served you with all required disclosures under NRCP 16.1(a), my client is permitted to engage in discovery in this matter.

Charles R. Kozak, Esq.
KOZAK LUSIANI LAW, LLC
December 21, 2016
Page 2 of 2

Not only did you not comply with NRCP 16.1(a)(1), which requires timely filing of various required disclosures, to date you have yet to file a case conference report on behalf of your client as confirmed to me by the Court. This has been brought to your attention on numerous occasions both by the Court at the pretrial conference and in at least one order and by myself in pleadings and on the record prior to your deposition of my client just two weeks ago. Yet, you continue to persist in defying the rules.

From the outset of this case, you and your client have ignored the rules at virtually every turn. I will not allow your persistent disregard for the rules to continually drive up costs for my client. Therefore, be advised that we will not respond to any discovery requests in this matter unless and until you comply with each and every rule prerequisite to your client's right to engage in discovery.

If you would like to meet and confer concerning this matter, please contact me at your earliest convenience.

Sincerely,

ALLISON MacKENZIE, LTD.

By: 
JUSTIN M. TOWNSEND, ESQ.

cc: Client

4817-3750-7391, v 1

FILED

2017 APR 18 PM 4:05

SUE SEVON
COURT CLERK

BY Sue Sevon
DEPUTY

1 Case No. 15-10DC-0876

2 Dept. No. I

3 The undersigned hereby affirms that
4 this document does not contain the
5 social security number of any person.

6 CHARLES R. KOZAK, Esq.

7 **IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF CHURCHILL**

9 **SHAUGHNAN L. HUGHES, an**
10 **individual,**
11 **vs.**

12 **Plaintiff,**

REPLY TO OPPOSITION TO
AMENDED MOTION FOR
RECONSIDERATION OF ORDER
IN PART GRANTING SANCTIONS

13 **ELIZABETH C. HOWARD, an**
14 **individual; and DOES I through**
15 **XX, inclusive,**

16 **Defendants**
17 _____ /

18 COMES NOW Defendant, ELIZABETH HOWARD (hereinafter "Ms. Howard"), and
19 presents her Reply to Opposition to Amended Motion for Reconsideration of Order in Part
20 Granting Sanctions based on the following Memorandum of Points and Authorities, along with
21 the record on file herein.
22

23 **MEMORANDUM OF POINTS AND AUTHORITIES**

24 **I. PROCEDURAL ISSUES**

25 Plaintiff's Opposition to Ms. Howard's Amended Motion for Reconsideration takes
26 issue with the motion being filed without a motion for leave to amend, based on 10th Judicial
27 District Court Rule 15(18) which states:
28

1 18. No motion once heard and disposed of may be renewed in the same cause, nor may
2 the same matters therein be reheard, unless by leave of the Court granted upon motion,
3 after notice of such motion to the adverse parties.

4 a. A party seeking reconsideration of a ruling of the Court, other than any order that
5 may be addressed by motion pursuant to NRCPP 50(b), 52(b), 59, or 60, must file a
6 motion for such relief within 10 days after service of written notice of the order or
7 judgment unless the time is shortened or enlarged by the order.

8 b. A motion for rehearing or reconsideration must be served, noticed, and filed as is
9 any other motion.

10 c. A motion for reconsideration does not toll the 30-day period for filing a notice of
11 appeal from a final order or judgment.

12 [Added; effective May 18, 2012.]

13 Ms. Howard timely filed her Amended Motion for Reconsideration within the required
14 ten (10) days. It was served, noticed, and filed as is any other motion. Petitioner is correct that
15 the Motion for Reconsideration did not include a separate motion for leave, but if Ms. Howard
16 had filed a motion for leave first, it would have been impossible for her to file the Motion for
17 Reconsideration *within* the required ten (10) day deadline. Once the Court has the Motion for
18 Reconsideration, the Court can procedurally give leave *granted upon the motion* according to
19 the rule.

20 Even if the Court considers failure to file a separate Motion for Leave to be a procedural
21 error, if it states grounds with particularity, it should be considered. When addressing
22 procedural errors, our courts have held that so long as a post-judgment motion for
23 reconsideration is in writing, timely filed, states its grounds with particularity, and "request[s] a
24 substantive alteration of the judgment, not merely the correction of a clerical error, or relief of a
25 type wholly collateral to the judgment," it should be considered. AA Primo Builders, LLC v.
26 Washington, 126 Nev. 578, 585, 245 P.3d 1190, 1195 (2010)

27 Accordingly, Ms. Howard hereby respectfully requests that this Court consider her
28 Amended Motion for Reconsideration of the March 1, 2017 Order in Part Granting Sanctions on
its merits.

1 **LEGAL ARGUMENT**

2 **Service of the Case Conference Report should not Result in Sanctions**
3 **because it does not Meet the Purpose of the Rule, to Prevent Delay.**

4 NRCP 16.1(e)(2) was adopted to promote the prosecution of litigation within adequate
5 timelines, and it permits sanctions to ensure compliance with specific deadlines. The factors to
6 be considered by the district court should be those that relate to the purpose of the rule. Arnold
7 v. Kip, 123 Nev. 410, 415–16, 168 P.3d 1050, 1053–54 (2007), as amended (Nov. 21, 2007)
8 (*discussing dismissal as a sanction*). A non-exhaustive list of such factors includes the length of
9 the delay, whether the defendant induced or caused the delay, whether the delay has otherwise
10 impeded the timely prosecution of the case, general considerations of case management such as
11 compliance with any case scheduling order or the existence or postponement of any trial date, or
12 whether the plaintiff has provided good cause for the delay. Dornbach v. Tenth Jud. Dist. Ct.,
13 130 Nev. Adv. Op. 33, 324 P.3d 369, 373 (2014)

14 Additionally, the defendant is not required to demonstrate prejudice resulting from the
15 delay. The district court's consideration of a motion for sanctions should address factors that
16 promote the purpose of the rule, than factors that focus on the consequences to the plaintiff
17 resulting from failure to comply with the rule. Arnold v. Kip, at 415.

18 Here, despite failure to timely file the Case Conference Report, discovery proceeded on
19 schedule. Mr. Hughes' Counsel had initial disclosures by May 20, 2016. Requests for answers
20 to Interrogatories, Request for Production, and Request for Admission were timely served to
21 Mr. Townsend on or about December 2, 2016. Hughes' Counsel had the initial disclosures and
22 discovery in time to prepare for trial in this matter, which was not delayed. Although Ms.
23 Howard is not required to demonstrate prejudice, there was none to Plaintiff.

24 Ms. Howard would also respectfully ask that the court consider efforts that Mr. Kozak
25 and his staff went out of their way to facilitate timely discovery. Mr. Kozak's paralegal traveled
26 and his staff went out of their way to facilitate timely discovery. Mr. Kozak's paralegal traveled

1 to the property to meet the appraiser. Also, Mr. Townsend was given free access to Ms.
2 Howard's laptop in order to copy photos and other information he felt was crucial to his case.
3

4 As a result, there were no delays in discovery or of the trial in this regard that would warrant
5 sanctions. Counsel for Ms. Howard respectfully requests that based on the above facts, the
6 court reconsider its March 1, 2017 decision and deny sanctions in regard to filing of the Early
7 Case Conference Report.
8

9 Affirmation: Pursuant to NRS 239B.030, the undersigned does hereby affirm that
10 this document does not contain the social security of any person.

11 DATED this 18th day of April 2017.

12 Respectfully submitted,
13

14 

15 CHARLES R. KOZAK, ESQ.
16 KOZAK LUSIANI LAW, LLC
17 Nevada State Bar #11179
18 3100 Mill Street, Suite 115
19 Reno, Nevada 89502
20 Phone (775) 322-1239
21 Facsimile (775) 800-1767
22 chuck@kozaklusianilaw.com
23 Attorney for Elizabeth C. Howard
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CERTIFICATE OF SERVICE

I certify that I am an employee working for Kozak Law Firm and am a citizen of the United States, over twenty-one years of age, and not a party to the within action. My business address is 3100 Mill Street, Suite 115, Reno, Nevada 89502.

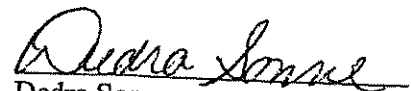
On the 18th day of April 2017, I caused to be delivered via Reno Carson Messenger and Certified U.S. Mail, postage fully prepaid, a true and correct copy of the foregoing document:

**AMENDED MOTION FOR RECONSIDERATION OF ORDER IN PART GRANTING
SANCTIONS**

in Case No. 15-10DC-0876, Dept. I, to the following party(ies):

Justin M. Townsend, Esq.
Allison MacKenzie, Ltd.
Nevada State Bar No. 12293
402 N. Division Street
P. O. Box 646
Carson City, Nevada 89702
Phone (775) 687-0202
Facsimile (775) 882-7918
Attorney for Plaintiff

DATED this 18th day of April 2017.


Dedra Sonne
Employee of Kozak Lusiani Law, LLC

FILED

2017 APR 20 AM 11:04

SUE SEVON
COURT CLERK

Bonnie Hodges
DEPUTY

1 Case No. 15-10DC-0876

2 Dept. I

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6 **IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
7 **IN AND FOR THE COUNTY OF CHURCHILL**
8
9

10 SHAUGHNAN L. HUGHES,
11 an individual,

12 Plaintiff,

13 vs.

14 ELIZABETH C. HOWARD, an individual, et
al.,

15 Defendants. /

ORDER DENYING MOTION
FOR RECONSIDERATION

16 This matter is before the Court on ELIZABETH HOWARD's (hereinafter "Ms. Howard")
17 Amended Motion for Reconsideration of Order in Part Granting Sanctions, filed March 20, 2017.
18 SHAUGHNAN HUGHES (hereinafter "Mr. Hughes") opposed the Motion on April 10, 2017.

19 As a preliminary matter, the Court notes that, on March 27, 2017, Ms. Howard filed a
20 Notice of Appeal regarding the "Order After February 6, 2017 Hearing." In general, a timely
21 notice of appeal "divests the district court of jurisdiction to act." *Mack-Manley v. Manley*, 122
22 Nev. 849, 855 (2006). However, "the district court retains jurisdiction to enter orders on matters
23 that are collateral to and independent from the appealed order, i.e., matters that in no way affect
24 the appeal's merits." *Id.* Here, the Order Granting in Part and Denying in Part Motion for

1 Sanctions, entered March 1, 2017 (hereinafter "Order for Sanctions"), is separate and distinct
2 from the order appealed from. The Order for Sanctions in no way affects the appeal's merits.
3 Therefore, this Court retains jurisdiction to consider Ms. Howard's motion for reconsideration.

4 Reconsideration of motions is governed by various rules and doctrines. Distilled to their
5 essence, those rules and doctrines permit a court to exercise its discretion and reconsider motions,
6 subject to limitations of time and substance. There is no right to have a matter reconsidered.
7 However, a court has the inherent authority to reconsider its prior orders. *Trail v. Faretto*, 91 Nev.
8 401 (1975) ("a court may, for sufficient cause shown, amend, correct, resettle, modify or vacate,
9 as the case may be, an order previously made and entered on the motion in the progress of the
10 cause or proceeding").

11 The Nevada Supreme Court has held that a motion for rehearing should be granted "[o]nly
12 in rare instances in which new issues of fact or law are raised supporting a ruling contrary to the
13 ruling already reached." *Moore v. Las Vegas*, 92 Nev. 402, 405 (1976). Furthermore, "[a] district
14 court may reconsider a previously decided issue if substantially different evidence is subsequently
15 introduced or the decision is clearly erroneous." *Masonry & Tile Contrs. v. Jolley, Urga & Wirth*
16 *Ass'n*, 113 Nev. 737, 741 (1997). In other words, this avenue of relief is remedial in nature and
17 enables the court to correct an error in a previous ruling.

18 The Court has reviewed Ms. Howard's motion, the Order for Sanctions, and the applicable
19 law. The Court does not find sufficient cause to amend, modify or otherwise alter the March 1,
20 2017 Order for Sanctions.

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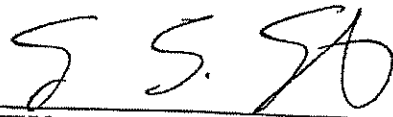
24 ///

1 **GOOD CAUSE APPEARING, IT IS HEREBY ORDERED**

- 2 1. Ms. Howard's Amended Motion for Reconsideration of Order in Part Granting Sanctions
3 is DENIED.

4 IT IS SO ORDERED.

5 Dated this 20th day of April 2017.

6 

7 THOMAS L. STOCKARD
8 DISTRICT JUDGE
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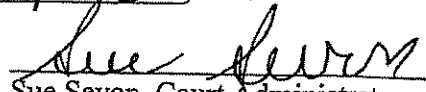
CERTIFICATE OF MAILING

The undersigned, an employee of the Tenth Judicial District Court, hereby certifies that I served the foregoing **ORDER DENYING MOTION FOR RECONSIDERATION** on the parties by depositing a copy thereof in the U.S. Mail at Fallon, Nevada, postage prepaid, as follows:

Justin M. Townsend, Esq.
Allison MacKenzie, Ltd.
402 North Division Street
Carson City, NV 89703-4168


Charles R. Kozak, Esq.
Kozak Lusiani Law, LLC
3100 Mill Street, Suite 115
Reno, NV 89502

DATED this 20 day of April, 2017.


Sue Sevon, Court Administrator

Subscribed and sworn to this

20 day of April, 2017.


Notary Public/Clerk

received
4/25/17

Case No. 15-10DC-0876

Dept. I

FILED

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SUE SEVON
COURT CLERK

BY: *[Signature]* DEPUTY

IN THE TENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CHURCHILL

SHAUGHNAN L. HUGHES,
an individual,

Plaintiff,

vs.

ORDER REGARDING AMOUNT OF
SANCTIONS

ELIZABETH C. HOWARD, an individual, et
al.,

Defendants.

This Matter came before the Court on Plaintiff SHAUGHNAN HUGHES' (hereinafter "Mr. Hughes") Motion for Sanctions, filed August 26, 2016. Mr. Hughes is represented by Justin Townsend, Esq. ELIZABETH HOWARD (hereinafter "Ms. Howard") opposed the Motion for Sanctions on September 14, 2016. Ms. Howard is represented by Charles Kozak, Esq. On March 1, 2017, this Court entered an Order Granting in Part and Denying in Part Motion for Sanctions (hereinafter "Order for Sanctions").

The Order directed counsel for Mr. Hughes, Justin Townsend, Esq., to file an affidavit establishing the cost of attorney's fees pertinent to the awards set forth in the Order for Sanctions. The Court has reviewed the affidavit along with Ms. Howard's Opposition and makes the following findings and conclusions.

1 As a preliminary matter, the Court notes that, on March 27, 2017, Ms. Howard filed a
2 Notice of Appeal regarding the "Order After February 6, 2017 Hearing." In general, a timely
3 notice of appeal "divests the district court of jurisdiction to act." *Mack-Manley v. Manley*, 122
4 Nev. 849, 855 (2006). However, "the district court retains jurisdiction to enter orders on matters
5 that are collateral to and independent from the appealed order, i.e., matters that in no way affect
6 the appeal's merits." *Id.* Here, the pending issue applies to the Order Granting in Part and Denying
7 in Part Motion for Sanctions, entered March 1, 2017 (hereinafter "Order for Sanctions"). This
8 Order is separate and distinct from the order appealed from. The Order for Sanctions in no way
9 affects the appeal's merits. Therefore, this Court retains jurisdiction to address the issue of
10 reasonable attorney's fees.

11 "In determining the amount of fees to award, the [district] court is not limited to one
12 specific approach; its analysis may begin with any method rationally designed to calculate a
13 reasonable amount, so long as the requested amount is reviewed in light of the 'Brunzell factors.'
14 *Logan v. Abe*, 131 Nev., Adv. Rep. 31, 350 P.3d 1139, 1143 (2015) (quoting *Haley v. Eighth Jud.*
15 *Dist. Ct.*, 128 Nev., Adv. Op. 16, 237 P.3d 855, 860 (2012); citing *Brunzell v. Golden Gate*
16 *National Bank*, 85 Nev. 345, 349 (1969)). In factors set forth in *Brunzell* include: "(1) the qualities
17 of the advocate," "(2) the character of the work to be done," "(3) the work actually performed by
18 the lawyer," and "(4) the result." *Brunzell*, 85 Nev. at 349.

19 The Court has considered the factors and finds that Mr. Townsend's ability, training and
20 education facilitated his ability to achieve a favorable result for his client. As this Court has
21 previously noted, Mr. Townsend carried the unanticipated burden of having to compensate for
22 Mr. Kozak's lack of preparation and diligence on several occasions. Throughout the life of the
23 case, Mr. Townsend was diligent in preserving his client's interests.
24

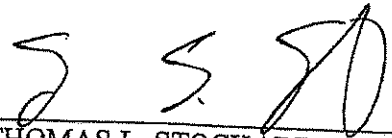
1 The Court finds that Mr. Townsend's affidavit represents reasonable attorney's fees for
2 the work attested to. However, the Court notes that a few of the itemized categories are outside
3 the scope of the Order for Sanctions.¹ Upon review of the affidavit and the opposition, the court
4 finds that the reasonable value of attorney's fees pertinent to the awards set forth in the Order for
5 Sanctions is \$16,500.

6 **GOOD CAUSE APPEARING, IT IS HEREBY ORDERED**

- 7 1. Mr. Townsend is awarded attorney's fees in the sum of \$16,500, which shall be paid by
8 Mr. Kozak.

9 IT IS SO ORDERED.

10 Dated this _____ day of April 2017.

11 
12 THOMAS L. STOCKARD
13 DISTRICT JUDGE
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24 ¹ The Court specifically notes, for example, the fees attested to in paragraph 5 of the Affidavit, which pertain to work performed prior to Mr. Kozak's misconduct.

CERTIFICATE OF MAILING

The undersigned, an employee of the Tenth Judicial District Court, hereby certifies that I served the foregoing **ORDER REGARDING AMOUNT OF SANCTIONS** on the parties by depositing a copy thereof in the U.S. Mail at Fallon, Nevada, postage prepaid, as follows:

Justin M. Townsend, Esq.
Allison MacKenzie, Ltd.
402 North Division Street
Carson City, NV 89703-4168

Charles R. Kozak, Esq.
Kozak Lusiani Law, LLC
3100 Mill Street, Suite 115
Reno, NV 89502

DATED this 24 day of April, 2017.

Sue Sevon
Sue Sevon, Court Administrator

Subscribed and sworn to this

24 day of April, 2017.

Shelly Norton
Notary Public/Clerk