

1
2 SUPREME COURT OF THE STATE OF NEVADA

3 IN THE MATTER OF THE ESTATE
4 OF ELLA E. HORST REVOCABLE
5 TRUST, U/A/D
6 5/21/1991

APPELLATE
COURT NO. 77964

Electronically Filed
Mar 12 2020 08:48 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

District Court Case No. P-18-095314-T

7 BRIAN HOLIDAY,
8 Appellant,

9 vs.

10
11 PATRICIA L. HORST, TRUSTEE OF
12 THE ELLA E. HORST REVOCABLE
13 TRUST, U/A/D 5/21/1991; AND ELLA
14 E. HORST REVOCABLE TRUST,
15 U/A/D 5/21/1991,
16 Respondents.

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18 **MOTION FOR EXTENSION OF TIME TO FILE ANSWERING BRIEF**

19 COMES NOW Respondent PATRICIA L. HORST, TRUSTEE OF THE
20 ELLA E. HORST REVOCABLE TRUST, (hereinafter "Respondent") by and
21 through counsel Kirk D. Kaplan, Esq., of Crest Key, LLC, and S. Don Bennion,
22 Esq., of the Law Office of S. Don Bennion, hereby files this Motion for Extension
23 of Time to file Respondent's Answering Brief
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1 above entitled action.

2 **STATEMENT OF PERTINENT PROCEDURAL HISTORY and FACTS**

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4 The primary issue on appeal is whether NRS 164.021(4) bars a challenge to
5 the Trust instrument where a challenge was not made with the 120-day notice
6 period?
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8 On October 17, 2018, the District Court issued its decision assuming *in rem*
9 jurisdiction over the Trust and confirming Patricia L. Horst as Trustee of the Trust.
10 JA, Vol. II, 00283-00286. The District Court ruled that NRS 164.021(4) barred
11 Appellant's challenge of the Second and Third Amendments to the Trust, which
12 were confirmed along with the Original Trust and First Amendment thereto. JA, Vol.
13 II, 00322-00327. The District Court's Order Granting Petition to Confirm Trust was
14 entered December 26, 2018. *Id.*
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18 On January 27, 2020, Appellant filed his Opening Brief. On February 27,
19 2020, Respondent requested and received a 15-day extension from the Clerk of the
20 Nevada Supreme Court via telephone to file the Answering Brief by March 12, 2020.
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22 On March 5, 2020, undersigned counsel, Kirk D. Kaplan's lower back "went
23 out," requiring medical treatment. See Exhibit 1, Declaration of Kirk D. Kaplan.
24 On March 10, 2020, undersigned counsel Kirk D. Kaplan received medical treatment
25 for his lumbar spine. *Id.* While Mr. Kaplan's medical condition is improving,
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undersigned counsel remains unable to work a full work-day and continues to be monitored closely by his doctor. *Id.* In 2019, Mr. Kaplan underwent surgery to repair his lumbar spine. *Id.* Accordingly, Respondents hereby request a 15-day extension to file the Answering Brief up to and including March 27, 2020.

LEGAL ARGUMENT

All Motions for Extension of Time must: 1) be filed on or before the due date that the Motion seeks to extend; 2) set forth the reasons for the requested extension that establish good cause; 3) be served on all parties; and 4) set for the exact length of additional time requested. NRAP 26(b)(1)(A). In addition, a Motion to extend the time to file a brief or appendix must meet additional requirements set out in NRAP 31(b)(3)(A) which requires that the Motion state 1) the date the brief (or appendix) is due; 2) the number of previously granted extensions (including telephonic extensions); 3) whether previous requests for extensions of time have been denied or limited; 4) the reasons or grounds why the extension is necessary; and 5) the length of the extension requested and the specific date on which the brief or appendix would become due.

In this case, the current due date for Respondent's Answering Brief and Appendix is March 12, 2020. This motion is being filed prior to the expiration of that date and will be served on all parties. Respondent is seeking a fifteen-day

1 extension to March 27, 2020, to file the Answering Brief. This is Respondent's first
2 Motion for Extension of Time to file Answering Brief.
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4 **CONCLUSION**

5 This motion is made in good faith and not for the purpose of undue delay of
6 this matter. In fact, undersigned counsel for Respondent is recovering from a lower
7 back condition which warrants the 15-day request for extension as set forth herein.
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9 DATED this 12th day of March 2020.
10

11 Crest Key, Prof., L.L.C.

Law Office of S. Don Bennion

12 /s/Kirk D. Kaplan, Esq.

/s/ S. Don Bennion

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18 *Attorney for Respondent*

Attorney for Respondent Patricia L. Horst

Trustee, Patricia L. Horst

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EXHIBIT 1

Declaration of Kirk D. Kaplan, Esq.

I, Kirk D. Kaplan, Esq., pursuant to NRS 53, under penalty of perjury, hereby state, declare, and testify to the truth of the matters set forth in this Declaration:

1- I am counsel for Patricia L. Horst, Trustee, in the above-entitled action;

2- In 2019, I underwent lumbar surgery and I have recovered mostly from this condition.

3- However, on March 5, 2020, I suffered a set back in my lumbar spine condition and sought medical treatment.

4- On March 10, 2020, I received medical treatment for my lumbar spine condition, which is improving.

5- I continue to experience pain, intermittently, in my lumbar spine and, therefore, Respondents make this request for a 15-day extension of time to file the Answering Brief as set forth hereinabove.

ss/ Kirk D. Kaplan