

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

ZITTING BROTHERS CONSTRUCTION,
INC.,

Appellant,

v.

FENNEMORE CRAIG, P.C.,

Respondent.

No. 79301

DOCKETING STATEMENT
CIVIL APPEALS

Electronically Filed
Aug 21 2019 05:03 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 13
County Clark Judge Mark R. Denton
District Ct. Case No. A571228

2. Attorney filing this docketing statement:

Attorney Jorge A. Ramirez; I-Che Lai Telephone 702-727-1400
Firm Wilson, Elser, Moskowitz, Edelman & Dicker LLP
Address 300 South Fourth Street, 11th Floor
Las Vegas, NV 89101

Client(s) Zitting Brothers Construction, Inc.

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney J. Randall Jefferies; Christopher H. Byrd Telephone 702-692-8000
Firm Fennemore Craig, P.C.
Address 300 South Fourth Street, 14th Floor
Las Vegas, NV 89101

Client(s) Fennemore Craig, P.C.

Attorney _____ Telephone _____
Firm _____
Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

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

- | | |
|--|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input checked="" type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input checked="" type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

- A. Helix Electric v. APCO Construction (docket no. 77320)
- B. Helix Electric v. APCO Construction (docket no. 76276)
- C. APCO Construction v. Zitting Brothers Construction (docket no. 75197)
- D. APCO Construction v. District Court (Scott Financial Corp.) (docket no. 61131)
- E. Club Vista Financial Services v. District Court (Scott Financial Corp.) (docket no. 57784)
- F. Club Vista Financial Services v. District Court (Scott Financial Corp.) (docket no. 57641)

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Other than the district court cases (case nos. A574391, A574792, A577623, A583289, A587168, A580889, A584730, A589195, A595552, A597089, A592826, A589677, A596924, A584960, A608717, A608718, and A590319) consolidated into the district court case with the case no. A571228, Appellant is not aware of any other pending or prior proceedings in other courts.

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

This is a breach of contract and mechanic's lien case that arose from a general contractor's refusal to pay its sub-contractor for work completed on the Manhattan West Condominiums ("Project") in Las Vegas, Nevada. Zitting Brothers Construction, Inc. ("Zitting"), as the subcontractor, sued APCO Construction, Inc. ("APCO"), the general contractor, to recover the amount owed for work completed on the Project. The district court granted summary judgment in Zitting's favor and certified the judgment as final under NRCP 54(b). APCO appealed the judgment, which is currently pending in this court as docket no. 75197.

During this case, Richard Dreitzer, a partner at Zitting's law firm, defended Zitting's NRCP 30(b)(6) deposition and provided strategies on resolving the case for Zitting. During the appeal in docket no. 75197, Mr. Dreitzer joined APCO's law firm (Fennemore Craig, P.C.). Fennemore Craig, P.C. filed a motion for determination of attorney conflict before the district court, and the district court found no conflict and granted the motion. This led to this appeal.

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

- A. Whether the district court had jurisdiction to address conflict of interest implicating a law firm representing a party in an appeal pending before the Nevada Supreme Court.
- B. Whether the motion is ripe for the district court's consideration when Fennemore Craig, P.C. is waiting on the district court to clear attorney conflict before hiring Richard Dreitzer.
- C. Whether the district erred in concluding that it had sufficient evidence to conclude that Richard Dreitzer did not have a substantial role in representing Zitting Brothers Construction, Inc. without accepting Zitting Brothers Construction, Inc.'s offer of in camera proof of Mr. Dreitzer's role in the matter.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

Appellant is not aware of any proceedings presently pending before this court raising the same or similar issues.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☒ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: This Court has not previously address the issue of attorney conflict that arises when an attorney associated with a law firm representing a party in a pending case leaves the firm to join a law firm representing the adverse party in the same pending case. The resolution of this issue is important to the public because the public should have confidence that there are laws in place to protect the confidentiality of the information the attorney learns during the attorney's time at the former firm.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is presumptively retained by the Nevada Supreme Court under NRAP 17(a)(12).

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

Was it a bench or jury trial? N/A

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice? Appellant does not intend to file a motion to disqualify or have a justice recuse himself or herself.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from Jun 26, 2019

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

N/A

17. Date written notice of entry of judgment or order was served Jun 26, 2019

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☐ NRCP 52(b) Date of filing _____

☐ NRCP 59 Date of filing _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion _____

(c) Date written notice of entry of order resolving tolling motion was served _____

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed Jul 25, 2019

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:
N/A

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)(1).

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input checked="" type="checkbox"/> Other (specify) <u>NRAP 3A(8)</u> | |

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

Nev. R. App. P. 3A(8) allows an appeal of "[a] special order entered after final judgment, excluding an order granting a motion to set aside a default judgment under NRCP 60(b)(1) when the motion was filed and served within 60 days after entry of the default judgment." Here, the district had certified Appellant's summary judgment as final under NRAP 54(b) on July 31, 2018. The order being appealed in this appeal is an order entered after the July 31, 2018 final judgment and affects Appellant's rights under the July 31, 2018 final judgment.

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

(a) Parties:

See Exhibit "A" to this docketing statement.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

On July 30, 2018, the district court entered final judgment in favor of Appellant and against APCO Construction, which is currently on appeal in docket no. 75197. This appeal is limited to an issue between Appellant and APCO's appellate counsel of record that arose after the entry of final judgment.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

See Exhibit "A" to this docketing statement.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

N/A

(b) Specify the parties remaining below:
N/A

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☒ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☒ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

order is independently appealable under NRAP 3A(b)(8): A special order entered after final judgment, excluding an order granting a motion to set aside a default judgment under NRCP 60(b)(1) when the motion was filed and served within 60 days after entry of the default judgment.

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

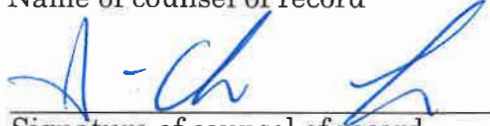
I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Zitting Brothers Construction, Inc.
Name of appellant

Aug 21, 2019
Date

Clark County, Nevada
State and county where signed

Jorge A. Ramirez and I-Che Lai
Name of counsel of record


Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 21st day of August, 2019, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

John Randall Jefferies
Christopher H. Byrd
FENNEMORE CRAIG, P.C.
300 South 4th Street, 14th Floor
Las Vegas, NV 89101

Dated this 21st day of August, 2019


Signature

EXHIBIT A

EXHIBIT A

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

(a) Parties:

1. Zitting Brothers Construction, Inc.
2. APCO Construction, Inc.
3. Asphalt Products Corp.
4. Cactus Rose Construction
5. Camco Pacific Construction Co.
6. Club Vista Financial Services, LLC
7. Gemstone Development West, Inc.
8. Insulpro Projects, Inc.
9. Tharaldson Motels II, Inc.
10. Gary D. Tharaldson
11. Accuracy Glass & Mirror Co., Inc.
12. Ahern Rentals, Inc.
13. Arch Aluminum and Glass Co.
14. Atlas Construction Supply, Inc.
15. Bank of Oklahoma, N.A.
16. Bruin Painting Corp.
17. Buchele, Inc.

18. Cabintec, Inc.
19. Cellcrete Fireproofing of Nevada, Inc.
20. Concrete Visions, Inc.
21. Creative Home Theatre, LLC
22. Dave Peterson Framing, Inc.
23. E & E Fire Protection, LLC
24. Executive Plastering, Inc.
25. EZA P.C.
26. Flast Glass, Inc.
27. Ferguson Fire and Fabrication, Inc.
28. Gerdau Reinforcing Steel
29. Granite Construction Co.
30. Harsco Corp.
31. HD Supply Waterworks LP
32. Heinaman Contract Glazing
33. Helix Electric of Nevada, LLC
34. Hydropressure Cleaning, Inc.
35. Inquipco
36. Interstate Plumbing & Air Conditioning
37. John Deere Landscape, Inc.

38. Las Vegas Pipeline, LLC
39. Masonry Group Nevada, Inc.
40. Nevada Construction Services
41. Nevada Prefab Engineers, Inc.
42. Noord Sheet Metal Co.
43. Northstar Concrete, Inc.
44. Pape Materials Handling
45. Patent Construction Systems
46. Professional Doors and Millworks, LLC
47. Ready Mix, Inc.
48. Renaissance Pools & Spas, Inc.
49. Republic Crane Service, LLC
50. Scott Financial Corp.
51. Bradley J. Scott
52. Selectbuild Nevada, Inc.
53. Steel Structures, Inc.
54. Supply Network, Inc.
55. The Pressure Grout Co.
56. Tri City Drywall, Inc.
57. WRG Design, Inc.

58. Commonwealth Land Title Insurance Co.
59. First American Title Insurance Co.
60. Oz Architecture of Nevada, Inc.
61. Pape Rents
62. Power Plus!
63. Viking Supplynet
64. Dave Peterson Framing, Inc.
65. National Wood Products, Inc.
66. Fidelity & Deposit Company of Maryland
67. Jeff Heit Plumbing Co., LLC
68. Kelly Marshall
69. Old Republic Surety
70. Cactus Rose Construcion, Inc.
71. S R Bray Corp.
72. Sunstate Companies, Inc.
73. SWPPP Compliance Solutions, LLC
74. Graybar Electric Co.
75. PCI Group, LLC
76. RLMW Investments, LLC
77. United Subcontractors, Inc., d/b/a Skyline Insulation

78. Wiss, Janney, Elstner Associates, Inc.

23. Give a brief description (3-5 words) of each party's claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

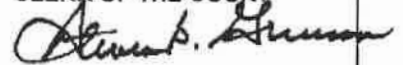
The consolidated cases involve 78 parties. The claims for all parties in the consolidated cases can generally be described as claims related to payment for either labor or materials provided to the Project. During the September 5, 2017 calendar call, the district court entertained some of the parties' oral motion to dismiss parties who did not serve pre-trial disclosures and later dismiss those parties, leaving the following parties in the litigation:

- APCO Construction, Inc. (May 31, 2018 judgment)
- Camco Pacific Construction, Inc. (April 26 and May 16 and 30, 2018 judgments)
- Steel Structures, Inc. (May 25, 2018 stipulated dismissal)
- Gerdau Reinforcing Steel (May 25, 2018 stipulated dismissal)
- E&E Fire Protection, LLC (May 16, 2018 judgment)
- SWPPP Compliance Solutions, LLC (May 30, 2018 judgment)
- Helix Electric of Nevada, Inc. (April 25, 26, and May 31, 2018 judgments)
- Fast Glass, Inc. (May 30, 2018 judgment)

- Buchele, Inc. (January 16, 2018 dismissal order)
- Zitting Brother Construction, Inc. (December 29, 2017 summary judgment)
- Nevada Prefab Engineers, Inc. (May 25, 2018 stipulated dismissal)
- Heinaman Construct Glazing, Inc. (May 30, 2018 judgment)
- Cactus Rose Construction, Inc. (May 30, 2018 judgment)
- National Wood Products, Inc. (February 14, 2019 stipulated dismissal)
- United Subcontractors, Inc., d/b/a Skyline Insulation (July 2, 2018 dismissal)
- Interstate Plumbing and Air Condition, LLC (February 5, 2018 stipulated dismissal)

EXHIBIT B

EXHIBIT B



1 **NEOJ**
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9 *Attorneys for Cross-Appellant/Respondent*
10 *APCO Construction, Inc.*

11 **DISTRICT COURT**
12 **CLARK COUNTY, NEVADA**

13 APCO CONSTRUCTION, a Nevada
14 corporation,

15 Plaintiff,

16 v.

17 GEMSTONE DEVELOPMENT WEST, INC.,
18 a Nevada corporation,

19 Defendant.

20 AND ALL RELATED MATTERS.

Case No. : 08A571228
Supreme Ct. Case No.: 77320

Dept. No.: XIII

NOTICE OF ENTRY OF ORDER

Consolidated with:
A574391; A574792; A577623; A583289;
A587168; A580889; A584730; A589195;
A595552; A597089; A592826; A589677;
A596924; A584960; A608717; A608718; and
A590319

21 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that on the 26th day of
22 June, 2019, a Findings of Fact, Conclusions of Law, and Order Granting Fennemore Craig,
23 P.C.'s Motion for Determination of Potential Conflict was entered in the above case. A copy is
24 attached hereto.

25 Dated this 26th day of June, 2019.

26 **FENNEMORE CRAIG, P.C.**

27 */s/Christopher H. Byrd, Esq.*

28 John Randall Jefferies, Esq. (No. 3512)
Christopher H. Byrd, Esq. (No. 1633)
300 South Fourth St. 14th Floor
Las Vegas, NV 89101
Attorneys for Cross Appellant/Respondent

CERTIFICATE OF SERVICE

Pursuant to EDCR 8.05(a) and 8.05(f) and Rule 9 of N.E.F.C.R., I hereby certify that I am an employee of the law firm of FENNEMORE CRAIG, P.C., and that on the 26th day of June, 2019, I caused to be served a true and correct copy of the document described herein to the following addressed entities by the method stated below:

Document Served: **NOTICE OF ENTRY OF ORDER**

VIA E-SERVICE:

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Depository Depository@litigationservices.com

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An Employee of FENNEMORE CRAIG, P.C.

Steven D. Grierson

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9 *Attorneys for Cross-Appellant/Respondent*
10 *APCO Construction, Inc.*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 **APCO CONSTRUCTION,** a Nevada
14 corporation,

15 Plaintiff,

16 v.

17 **GEMSTONE DEVELOPMENT WEST, INC.,**
18 a Nevada corporation,

19 Defendant.

Case No. : 08A571228
Supreme Ct. Case No.: 77320

Dept. No.: XIII

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER GRANTING
FENNEMORE CRAIG, P.C.'S MOTION
FOR DETERMINATION OF POTENTIAL
CONFLICT

Hearing Date: June 6, 2019
Hearing Time: 9:00 a.m.

20 AND ALL RELATED MATTERS.

Consolidated with:
A574391; A574792; A577623; A583289;
A587168; A580889; A584730; A589195;
A595552; A597089; A592826; A589677;
A596924; A584960; A608717; A608718; and
A590319

21 On June 6, 2019, this Court heard Fennemore Craig, P.C.'s ("Fennemore Craig") Motion
22 for Determination of Potential Attorney Conflict on an Order Shortening Time ("Motion").
23 Christopher H. Byrd of Fennemore Craig appeared at the hearing on behalf of Fennemore Craig
24 and Jorge A. Ramirez and I-Che Lai of Wilson Elser Moskowitz Edelman & Dicker, LLC
25 ("Wilson Elser") appeared for Zitting Brother's Construction, Inc. ("Zitting"). Having considered
26 the Motion, Zitting's opposition, Helix Electric of Nevada, LLC's opposition and joinder to
27 Zitting's opposition, Fennemore Craig's reply, the pleadings and papers filed in this case, and oral
28 arguments of counsel, this Court makes the following findings of fact and conclusions of law:

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DISTRICT COURT DEPT# 13

1 **FINDINGS OF FACT**

2 **A. Manhattan West Mechanic's Lien Litigation**

3 1. The litigation underlying the potential attorney conflict at issue in the Motion is
4 known as the Manhattan West Mechanic's Lien Litigation ("Manhattan West Litigation"). The
5 Manhattan West Litigation, which was initiated in 2008, has lasted for more than 10 years and has
6 involved seventeen consolidated cases and nearly ninety parties. The current service list consists
7 of more than 100 attorneys.

8 2. The Manhattan West Litigation has been the subject of multiple appeals and writ
9 proceedings and has resulted in two published opinions.

10 3. The Manhattan West Litigation is a complex case.

11 4. This Court has presided over the Manhattan Lien Litigation since 2008.

12 5. Wilson Elser has represented Zitting in the Manhattan West Litigation since 2009.

13 6. Fennemore Craig represents APCO Construction ("APCO") in the Manhattan
14 West Litigation.

15 7. The claims between Zitting and APCO and the claims of the remaining parties in
16 the Manhattan West Litigation have been reduced to judgment and are now on appeal to the
17 Nevada Supreme Court. The issues raised in this Motion are collateral to any issues presently on
18 appeal.

19 **B. Richard Dreitzer's Involvement in the Manhattan West Litigation**

20 8. Richard Dreitzer was formerly a partner at Wilson Elser. Mr. Dreitzer left Wilson
21 Elser in April 2019.

22 9. At all relevant times herein, Wilson Elser attorneys Jorge Ramirez and I-Che Lai
23 had primary responsibility (as the Partner and Associate, respectively) for representing Zitting in
24 the Manhattan West Litigation.

25 10. Mr. Dreitzer's involvement in the Manhattan West Litigation on behalf of Zitting
26 was limited to the following:

- 27 a. Preparation for and defense of the deposition of Sam Zitting, the NRCP
28 30(b)(6) witness for Zitting. Mr. Dreitzer's preparation for defending this

1 deposition consisted of reviewing discovery responses, several
2 conversations with Mr. Zitting, and a discussion of the case with Mr.
3 Ramirez;

4 b. Discussion of a potential settlement offer with Mr. Zitting that was
5 subsequently conveyed to and rejected by counsel for APCO;

6 c. Appearance at a mandatory pretrial conference;

7 d. Participation in an approximately fifteen-minute conversation between Mr.
8 Ramirez and Mr. Lai on the general topic of strategies under consideration
9 by Wilson Elser regarding negotiating a settlement with APCO; and

10 e. Being present at Wilson Elser partner lunches where the Manhattan West
11 Litigation was discussed.

12 11. Mr. Dreitzer's billed work on the Manhattan West Litigation was limited to less
13 than 12 total hours.

14 12. At no time did Mr Dreitzer direct how any of the work on the Zitting matter would
15 be performed. Nor did he direct any of the strategy in the case, or which strategies would be
16 implemented on Zitting's behalf.

17 13. At no time did Mr. Dreitzer have primary responsibility for the representation of
18 Zitting in the Manhattan West Litigation.

19 14. Wilson Elser offered an in camera discussion of the exact input Mr. Dreitzer had in
20 the Manhattan West Litigation, but the Court declined the request. The Court finds that the
21 Declarations submitted to the Court were sufficient for the Court to determine Mr. Dreitzer's role
22 in the representation of Zitting in the Manhattan West Litigation.

23 15. Mr. Dreitzer did not have a substantial role in the representation of Zitting in the
24 Manhattan West Litigation, for purposes of the Nevada Rules of Professional Conduct (NRPC).

25 C. Richard Dreitzer's Offer to Join Fennemore Craig

26 16. Fennemore Craig has extended an offer for Mr. Dreitzer to join its firm. Mr.
27 Dreitzer intends to join Fennemore Craig once the issue of the potential conflict in the Manhattan
28 West Litigation is resolved.

1 17. Mr. Dreitzer requested a waiver of the conflict from Zitting after Fennemore Craig
2 extended its offer to Mr. Dreitzer.

3 18. After receiving this request, Wilson Elser partner, Jorge Ramirez, represented he
4 advised Zitting to seek advice from "independent counsel", who recommended that Zitting refuse
5 to waive the conflict. This "independent counsel" was Reuben Cawley, a former partner at Wilson
6 Elser and cousin to Mr. Zitting.

7 19. Upon Mr. Cawley's advice, Zitting refused to waive the conflict.

8 20. Fennemore Craig filed the Motion to determine whether NRPC 1.10(e) would
9 apply if Mr. Dreitzer joins the firm, which would allow Fennemore Craig to continue its
10 representation of APCO in the Manhattan West Litigation when Mr. Dreitzer joins the firm.

11 21. In support of the Motion, Fennemore Craig provided the Declaration of Timothy
12 Berg, Esq., General Counsel for Fennemore Craig, outlining the screen that would be put in place
13 if Mr. Dreitzer joins Fennemore Craig. Mr. Berg attested that Mr. Dreitzer would be screened as
14 follows if he joins the firm:

15 a. The firm's Information Systems department would deprive Mr. Dreitzer of
16 any electronic access to the to Manhattan West Litigation file;

17 b. A screening memo would be circulated to the entire law firm explaining
18 the conflict and that Mr. Dreitzer is being ~~screened~~^{screened} from the Manhattan West
19 Litigation matter, that the matter should not be discussed with Mr. Dreitzer,
20 and that Mr. Dreitzer should not be given the client files or other
21 documents relating to the Manhattan West Litigation;

22 c. Mr. Dreitzer would be provided with a copy of screening memo, the
23 screening memo would be explained to him, and Mr. Dreitzer would be
24 required to sign a copy of the screening memo acknowledging that he has
25 been screened from the Manhattan West Litigation matter;

26 d. Fennemore Craig would also provide a copy of the screening memo to
27 Zitting and Wilson Elser.

19. Zitting contends that Mr. Dreitzer's presence at the Fennemore Craig firm would be prejudicial to their interests in this litigation, and has articulated certain general concerns to support this contention. In the Court's view, these concerns are unpersuasive. Zitting has articulated no specific facts to suggest that the screening procedure described by Fennemore Craig would be insufficient to protect Zitting's interests or would otherwise fail to satisfy the requirements of NRPC 1.10(e)(2).

20. The screening procedure described by Fennemore Craig is, therefore, sufficient to protect the interests of Zitting and satisfies the requirements of NRPC 1.10(e)(2).

CONCLUSIONS OF LAW

D. Jurisdiction and Justiciability

21. This Court has jurisdiction to hear and decide the Motion, which is collateral to and independent from any of the orders currently on appeal and does not in any way affect the merits of any of the pending appeals. *Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529-30 (2006).

22. The issue of Fennemore Craig's potential disqualification from its representation of APCO in the Manhattan West Litigation is properly brought before this Court. *Brown v. Eighth Judicial Dist. Court*, 116 Nev. 1200, 1205, 14 P.3d 1266, 1269 (2000) ("District courts are responsible for controlling the conduct of attorneys practicing before them").

23. The relief requested in the Motion is ripe for review by this Court. *Herbst Gaming, Inc. v. Heller*, 122 Nev. 877 (2006) (holding that in considering whether an issue is ripe the district court must weigh the following factors: “(1) the hardship to the parties of withholding judicial review, and (2) the suitability of the issues for review”). As to the first factor, the hardship to Fennemore Craig and Mr. Dreitzer will be considerable if this Court withholds its review of the potential attorney conflict issue raised in the Motion. Fennemore Craig will be forced to decide whether to associate Mr. Dreitzer and run the risk of being disqualified from representing its client, APCO, in this matter, or else not associate Mr. Dreitzer when this Court may in fact determine that NRPC 1.10(e) could apply, wrongfully depriving either Mr. Dreitzer of the employment of his choice or APCO of the attorney of its choice. As to the second factor, the

1 issue raised in the Motion is suitable for review because Mr. Dreitzer has left Wilson Elser, and
2 the facts relevant to and necessary for this Court's consideration of the issue are fixed and fully
3 available to the parties and the Court. *Eberle Design, Inc. v. Reno A & E*, 354 F. Supp. 2d 1093,
4 1094 (D. Ariz. 2005) (deciding a factually similar potential disqualification issue prior to an
5 attorney joining a new law firm "[b]ecause the Court will be called upon to decide any
6 disqualification motion that is filed as a result of this development and because Bryan Cave has
7 sought the Court's guidance before Mr. Watts joins the firm this week").

8 24. Mr. Dreitzer testified that he intends to accept Fennemore Craig's offer if this
9 Court determines that NRPC 1.10(e) applies in this case. The issue raised in the Motion is
10 therefore not speculative.

11 **NRPC 1.10(e)**

12 25. NRPC 1.10(e) permits the screening of disqualified attorneys to prevent an
13 associated law firms imputed disqualification where:

- 14 (1) The personally disqualified lawyer did not have a substantial
15 role in or primary responsibility for the matter that causes the
16 disqualification under Rule 1.9;
17 (2) The personally disqualified lawyer is timely screened from any
18 participation in the matter and is apportioned no part of the fee
therefrom; and
(3) Written notice is promptly given to any affected former client
to enable it to ascertain compliance with the provisions of this
Rule.

19 *See New Horizon Kids Quest III, Inc. v. Eighth Judicial Dist. Court*, 392 P.3d 166, 169 (2017)
20 ("Pursuant to RPC 1.10(a), an attorney's disqualification under RPC 1.9 is imputed to all other
21 attorneys in that disqualified attorney's law firm. However, a disqualified attorney's law firm may
22 nevertheless represent a client in certain circumstances if screening and notice procedures are
23 followed" citing to NRPC 1.10(e)).

24 26. Mr. Ramirez and Mr. Lai had primary responsibility for Zitting's representation in
25 the Manhattan West Litigation. Mr. Dreitzer did not have primary responsibility under NRPC
26 1.10(e)(1).

1 27. Given the size, length and complexity of the Manhattan West Litigation, Mr.
2 Dreitzer's limited involvement in the matter does not rise to the level of a "substantial role" in the
3 matter under NRPC 1.10(e)(1).

4 28. NRPC 1.0(l) defines "[s]ubstantial" as "denot[ing] a material matter of clear and
5 weighty importance." Thus, under NRPC 1.10(e), in order to preclude Fennemore Craig from
6 continuing its representation of APCO if Mr. Dreitzer were to join the Fennemore firm, Mr.
7 Dreitzer's role in the Manhattan West Litigation would have to be deemed as having clear and
8 weighty importance.

9 29. Yet, the facts of Mr. Dreitzer's involvement in the Manhattan West Litigation
10 strongly suggest otherwise.

11 30. Zitting contends that the number of hours that Mr. Dreitzer worked on the
12 Manhattan West Litigation is immaterial and that the Court's analysis needs to be "qualitative"
13 rather than "quantitative". In the Court's view, Mr. Dreitzer's role in the Manhattan West
14 Litigation was not substantial for purposes of NRPC 1.10(e)(1), from both a qualitative and
15 quantitative standpoint.

16 31. It is undisputed that Mr. Dreitzer did not direct any of the work on the Manhattan
17 West Litigation; he was not responsible for directing the strategy of the case; and he neither
18 managed the case nor the client, Zitting.

19 32. Mr. Dreitzer's limited 12-hours of billable work on a matter that has been in
20 litigation for over 10 years and has included nearly 90 parties does not rise to the level of
21 "substantial" or "clear and weighty importance". *Eberle Design, Inc. v. Reno A & E*, 354 F. Supp.
22 2d 1093, 1097 (D. Ariz. 2005).

23 33. Given the number of law firms and attorneys that have worked on the Manhattan
24 West Litigation, a finding that Mr. Dreitzer's limited involvement in the matter would improperly
25 invade on a client's right to its choice of counsel and Mr. Dreitzer's right to choose his
26 employment. *Ryan's Express v. Amador Stage Lines*, 128 Nev. 289, 295, 279 P.3d 166, 170
27 (2012).

28 ///


1 **ORDER**

2 **THEREFORE, IT IS HEREBY ORDERED** that Fennemore Craig's Motion is
3 **GRANTED.**

4 **IT IS FURTHER ORDERED** that so long as the screening procedures outlined in Mr.
5 Berg's declaration in support of the Motion are implemented, and written notice is promptly given
6 to Zitting to enable it to ascertain compliance with the requirements of NRPC 1.10(e), as required
7 by NRPC 1.10(e)(2) and (3), Fennemore Craig will not be disqualified under NRPC 1.10 from
8 continuing its representation of APCO in the Manhattan West Litigation when Mr. Dreitzer joins
9 Fennemore Craig.

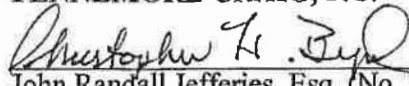
10 **IT IS SO ORDERED**

11 Dated this 21st day of June, 2019.


DISTRICT COURT JUDGE

12
13 Respectfully submitted by:

14 **FENNEMORE CRAIG, P.C.**

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