

1 BRENOCH WIRTHLIN, ESQ. (NV SBN 10282)

2 **HUTCHISON & STEFFEN**

3 10080 W. Alta Dr., Suite 200

4 Las Vegas, Nevada 89145

5 Telephone: (702) 385-2500

6 Facsimile: (702) 385-2086

7 Email: [bwirthlin@hutchlegal.com](mailto:bwirthlin@hutchlegal.com)

8 *Attorneys for Edward Detwiler*

Electronically Filed  
Oct 04 2021 08:04 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

9 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

10 \* \* \*

11 EDWARD N. DETWILER,

12 Appellant,

13 v.

14 BAKER BOYER NATIONAL

15 BANK, a Washington corporation,

16 Respondent.

Supreme Court Case No.: 81594

District Court Case No.: A-17-760779-F

17 **RESPONSE TO ORDER TO SHOW CAUSE**

18 **HUTCHISON & STEFFEN**

19 Brenoch Wirthlin, Esq.

20 (Nevada Bar No. 10282)

21 Scot Shirley, Esq.

22 (Nevada Bar No. 15326)

23 10080 W. Alta Dr., Suite 200

24 Las Vegas, Nevada 89145

25 Phone: (702) 385-2500

26 [bwirthlin@hutchlegal.com](mailto:bwirthlin@hutchlegal.com)

27 *Attorneys for Edward N. Detwiler*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**RESPONSE TO ORDER TO SHOW CAUSE**

Edward N. Detwiler (“Mr. Detwiler” or “Appellant”) hereby responds to this Court’s Order to Show Cause entered August 20, 2021 (“OSC”).

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

The trial court, Honorable Richard Scotti (“Trial Court”), issued an Order on January 9, 2019 (“January 2019 Order”) regarding the twenty vehicles at issue (the “Vehicles”), which the Respondent sought to obtain in order to partially satisfy its Judgment against judgment debtor Mr. Foust (“Judgment Debtor” or “Foust”). The Vehicles were found to be in the possession and control of Foust. During later proceedings, Mr. Detwiler was subpoenaed and sanctioned by the Trial Court under EDCR 7.60, despite never being named as a party. *See* EDCR 7.60 (“The court may . . . impose upon an attorney or a party all [authorized and reasonable] sanctions.”) (emphasis added). Specifically, on March 23, 2020, the Trial Court entered an Order and Judgment against Mr. Detwiler in the amount of \$318,855.52 (the “Contempt Order”).

After a writ petition which was granted by this Court, this Court vacated the judgment upon which the Contempt Order was based, and directed the clerk of this Court to “issue a writ of mandamus instructing the district court to vacate its judgment and to recalculate the attorney fee award consistent with this opinion.” *Detwiler v. Eighth Jud. Dist. Ct. in & for Cty. of Clark*, 137 Nev. Adv. Op. 18, 486 P.3d 710, 722

1 (2021) (“Order Granting Writ”). This Court ordered in *Detwiler v. Eighth Jud.* that  
2 the attorney fees should be calculated from the date of the alleged contempt – January  
3 9, 2019<sup>1</sup> – *until Detwiler was no longer able to comply with the Turnover Order*  
4 (entered on January 9, 2019). As this Court specifically ordered:

6 The court ultimately found that Detwiler had the ability to comply with  
7 the court's order, **at least until he resigned as manager of HH**, and  
8 failed to do so. **But the court agreed with Detwiler that his**  
9 **resignation now made it impossible for him to comply**. As Detwiler  
10 could no longer comply, the district court vacated its order for his arrest.  
11 Instead, it ordered him to pay the Bank's attorney fees incurred since  
12 HH filed its NRS Chapter 31 third-party claim to the Motorcoach in  
13 March 2018.

14 *Detwiler v. Eighth Jud. Dist. Ct. in & for Cty. of Clark*, 137 Nev. Adv. Op. 18, 486  
15 P.3d 710, 715 (2021) (emphasis added).

16 As this Court recognized, Mr. Detwiler informed the trial court in January,  
17 2020, that he had, in fact, resigned as manager of Harry Hildebrand, LLC (“HH”).<sup>2</sup>  
18

---

19  
20 <sup>1</sup> As this Court recognized, “[t]he district court found Detwiler and HH in contempt  
21 for violating a specific court order—the January turnover order. *See* NRS  
22 22.010(3).<sup>9</sup> We hold that the fees incurred \*722 prior to January 9, 2019, were  
23 improperly awarded.” *Detwiler v. Eighth Jud. Dist. Ct. in & for Cty. of Clark*, 137  
24 Nev. Adv. Op. 18, 486 P.3d 710, 721–22 (2021)

25 <sup>2</sup> Three days after signing the written order, the court sua sponte stayed the  
26 enforcement of Detwiler's arrest warrant and eventually set a new hearing for late  
27 January 2020. Days before that hearing, Detwiler informed the court that he had  
28 resigned as a manager of HH in September, after the contempt hearing but before  
the court announced it was holding him in contempt. *Detwiler v. Eighth Jud. Dist.*  
*Ct. in & for Cty. of Clark*, 137 Nev. Adv. Op. 18, 486 P.3d 710, 715 (2021)

1 The total fees within that limited time frame were roughly \$100,000. Yet,  
2 unfortunately, the respondent Baker Boyer National Bank (“Bank”) has improperly  
3 and deceptively sought attorney fees **through the date of recalculation, for a total**  
4 **of \$250,546.89**. *See* Exhibit 1 hereto. The Bank has disingenuously, in violation of  
5 this Court’s directive in granting the prior petition, turned what should have been an  
6 award of no more than \$100,000 – and not even that as the Bank is clearly “double-  
7 dipping” by seeking the same fees against Detwiler that it has already been awarded  
8 against Foust, in violation of the Order Granting Writ – and nearly tripled it by  
9 dishonestly seeking fees incurred literally years after Detwiler resigned from HH,  
10 the point at which even the trial court found Detwiler could no longer comply with  
11 the Turnover Order, and which therefore could not be the source of attorney fees for  
12 contempt he could no longer commit. The attached Order is the subject of yet  
13 another forthcoming writ petition by Detwiler which the Bank’s dishonest behavior  
14 has necessitated.<sup>3</sup>

15  
16  
17  
18  
19  
20 Thus, Detwiler filed the instant appeal out of an abundance of caution, but  
21 will be filing a forthcoming writ petition to, yet again, address the Bank’s  
22 disingenuous overreaching behavior, which this time was in direct violation of this  
23 Court’s Order Granting Writ.

24  
25 ///

26  
27  
28 <sup>3</sup> Detwiler has appealed the amended charging order, and will dismiss that appeal if  
this appeal is dismissed as well.

## II. LEGAL ARGUMENT

### A. The Charging Order is Appealable under Nevada Law

A charging order is appealable as a “special order entered after final judgment.” NRAP 3A(b)(8). To be appealable, such an order “must be an order affecting the rights of some party to the action, growing out of the judgment previously entered . . . [and] must be an order affecting rights incorporated in the judgment.” *Gumm v. Mainor*, 118 Nev. 912, 59 P.3d 1220, (2002) (relying on NRAP 3A(b)(2)); *see also* *Peck v. Crouser*, 129 Nev. 120, 125 n. 3 295 P.3d 586, 588 n. 3 (2013) (noting that, since *Gumm* was decided, NRAP 3A(b)(8) was enacted and “[n]o substantive alteration was made to NRAP 3A in the 2009 amendment”).

This Court has previously considered appeals from charging orders. Most notably, in *Tupper v. Kroc*, this Court found that, because the debtor failed to “either limit the charging order or prevent the sale of [the debtor’s] interest” and because the debtor “did not appeal from [the charging] order [within 30 days],” the debtor was “estopped to question the propriety of the charging order.” 88 Nev. 146, 151–52, 494 P.2d 1275, 1278 (1972); *see also* *Weddell v. H2O, Inc.*, 128 Nev. 94, 97, 271 P.3d 743, 745 (2012) (reversing the “district court’s judgment relating to the scope of the charging order against [the debtor’s] membership interests”); *Topol v. First Indep. Bank of Nev.*, 130 Nev. 1255, at \*2 (Nev. May 30, 2014) (unpublished disposition) (considering whether the “district court improperly entered a charging order against [the debtor’s] interest in an LLC”); *Becker v. Becker*, 131 Nev. 857, 858, 362 P.3d

1 641, 642 (2015) (responding to a certified question and considering whether a debtor’s  
2 “economic interest can still be subject to the charging order remedy” when the debtor  
3 “exempt[s] his stock in [certain listed] corporations”).  
4

5 Here, the subject Charging Order is appealable as a special order. First, the  
6 order affects the rights of a party to the action. While not a named party, the Trial  
7 Court has clothed Mr. Detwiler with the status of a party by issuing the Charging  
8 Order. *See, supra*, subsection A. Alternatively, Mr. Detwiler’s due process rights  
9 were violated by not naming him as a party, which grants him party status for purposes  
10 of this appeal. *Id.* Further, this Court has previously considered appeals brought  
11 regarding charging-order issues. *Id.* The Bank and Trial Court should not be  
12 permitted to avoid appeal of the Charging Order merely by refusing to name Mr.  
13 Detwiler as a party.  
14  
15  
16

17 Alternatively, the Charging Order is a final judgment pursuant to NRAP  
18 3A(b)(1). The Charging Order “disposes of all the issues presented in the case, and  
19 leaves nothing for the future consideration of the court, except for post-judgment  
20 issues such as attorney’s fees and costs.” *See Lee v. GNLV Corp.*, 116 Nev. 424, 426  
21 996 P.2d 416, 417 (2000).  
22  
23

24 Here, the Charging Order is the Bank’s exclusive remedy against Mr.  
25 Detwiler’s interest in limited-liability companies. *See* NRS 86.401(2)(a) (stating that  
26 a charging order “[p]rovides the exclusive remedy by which a judgment creditor . . .  
27 may satisfy a judgment out of the member’s interest of the judgment debtor . . . and  
28

1 no other remedy may be ordered by a court”). By definition, then, once a charging  
2 order is issued, there are no issues left to resolve, as the court can issue no remedy  
3 against a member’s interest in an LLC other than through the charging order. Further,  
4 because there should have been an independent action for the collection of this  
5 judgment against Mr. Detwiler, *see Callie v. Bowling*, 123 Nev. 181, 186 n. 10, 160  
6 P.3d 878, 881 n. 10 (2007), the Charging Order represents the final judgment against  
7 Mr. Detwiler’s interests, similar to the procedure in a garnishment proceeding. *See*  
8 *Rawson v. Ninth Judicial Dist. Court*, 133 Nev. 309, 396 P.3d 842 (2017) (finding  
9 that “garnishment proceedings are independent from the underlying action and that  
10 the resulting judgment in favor or against the garnishee defendant constitutes a final  
11 judgment in the garnishment proceeding”).  
12  
13  
14  
15

16 **B. Mr. Detwiler Should be Determined to Have Standing to Appeal**

17 The purpose of a charging order is to charge an underlying judgment against  
18 the defendant/judgment debtor’s interest in a limited-liability company. *See* NRS  
19 86.401(1) (“On application . . . by any judgment creditor of a member, the court may  
20 charge the member’s interest with payment of the unsatisfied amount of the judgment  
21 with interest.”) (emphasis added). This Court has found that judgments cannot be  
22 collected against nonparties absent an independent action: “[W]henever a judgment  
23 creditor seeks to collect on a judgment from a nonparty, the judgment creditor must  
24 file an independent action.” *Callie v. Bowling*, 123 Nev. 181, 186 n. 10, 160 P.3d  
25 878, 881 n. 10 (2007); *see also DeMaranville v. Emp’rs Ins. Co. of Nev.*, 135 Nev.  
26  
27  
28

1 259, 268 448 P.3d 526, 534 (2019) (rejecting a nonparty’s proposition that it was  
2 deprived of due process because the nonparty had standing as a respondent); NRC  
3 71 (“When an order . . . may be enforced against a nonparty, the procedure for  
4 enforcing the order is the same as for a party.”). If an independent action is not filed  
5 against the nonparty for collection purposes, the nonparty’s due process rights are  
6 violated. *Callie*, 123 Nev. at 182, 160 P.3d at 879.  
7  
8

9       If this Court finds that Mr. Detwiler is not a party, he still has standing because  
10 his due process rights were violated. Just as in *Callie, supra*, where this Court  
11 considered the appeal of a nonparty against whom a domesticated judgment was  
12 rendered, the facts here demonstrate that the Bank and Trial Court are employing the  
13 mechanisms of judgment collection against Mr. Detwiler without affording him party  
14 status.  
15  
16

### 17 **III. CONCLUSION**

18       Out of an abundance of caution, Mr. Detwiler filed the instant appeal regarding  
19 the Charging Order. If this Court is inclined to dismiss this appeal, Mr. Detwiler  
20 would respectfully request that this Court: (1) give him 60 days to prepare and file a  
21 Writ Petition and also file a new Motion to Stay; and (2) issue a stay until a  
22  
23

24 ///

25 ///

26 ///

27 ///

28



1 determination is made on said Motion to Stay.

2 DATED this 4<sup>th</sup> day of October, 2021.

3 **HUTCHISON & STEFFEN**

4 By /s/ Brenoch Wirthlin, Esq.

5 BRENOCH WIRTHLIN, ESQ.

6 (NV SBN 10282)

7 SCOT SHIRLEY, ESQ.

8 (NV SBN 15326)

9 Las Vegas, Nevada 89145

10 *Attorneys for Edward Detwiler*

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

***Via Electronic Service through E-Flex System:***

Dated: October 4, 2021.

Page 10 of 10

INTENTIONALLY LEFT BLANK  
EXHIBIT PAGE ONLY

## EXHIBIT 1

HUTCHISON & STEFFEN  
A PROFESSIONAL LLC

BRENOCH WIRTHLIN, ESQ.  
NV SBN 10282  
**HUTCHISON & STEFFEN**  
10080 W. Alta Dr., Suite 200  
Las Vegas, Nevada 89145  
Telephone: (702) 385-2500  
Facsimile: (702) 385-2086  
Email: [bwirthlin@hutchlegal.com](mailto:bwirthlin@hutchlegal.com)

*Attorneys for Non-party Edward Detwiler*

**EIGHTH JUDICIAL DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

\* \* \*

BAKER BOYER NATIONAL BANK,

Plaintiff,

v.

JAMES PATTERSON FOUST, JR.,  
individually,

Defendants.

CASE NO.: A-17-760779-F  
DEPT NO.: 4

**Order Granting Plaintiff's Request for a  
New Judgment Amount and Amended  
Charging Order Amount**

*and*

**Granting in Part and Denying In Part  
Edward N. Detwiler's Countermotion**

**Hearing Date: August 5, 2021**

After resolving a writ petition in favor of Edward N. Detwiler ("Detwiler") and against judgment creditor Baker Boyer National Bank (the "Bank"), the Nevada Supreme Court remanded this matter for the purposes of recalculating the amount of a contempt judgment. *See generally Detwiler v. Dist. Ct.*, 137 Nev. Adv. Op. 18, p. 11, 486 P.3d 710 (2021). Specifically, the Nevada Supreme Court vacated the \$100,000 compensatory award portion of the original contempt judgment against Detwiler and remanded the matter to this Court to issue an updated judgment with a recalculation of the attorney fees and court costs award.

To this end, the Bank filed its Motion to Calculate New Judgment Amount on June 25, 2021 (the "Motion"). Detwiler filed his Opposition to Motion to Calculate New Judgment

1 Amount and Countermotion to Stay Execution of Award Pending Outcome of Baker Boyer  
2 National Bank's Collection Efforts Against Defendant Foust's Estate on July 16, 2021, and a  
3 supplement thereto on July 23, 2021. The matter came on for a hearing on August 5, 2021,  
4 before the Honorable Nadia Krall, Department 4, Eighth Judicial District Court, with John E.  
5 Bragonje of the Lewis Roca Rothgerber Christie LLP law firm appearing on behalf of the Bank  
6 and Scot L. Shirley of the Hutchinson & Steffen PLLC law firm appearing on behalf of Detwiler.  
7 The Court, having reviewed the moving papers and pleadings on file herein, hearing oral  
8 argument, being fully advised in the premises, and for good cause appearing, the Court calculates  
9 the new judgment amount as \$250,546.89, consisting of \$237,714.25 in attorney fees and  
10 \$12,832.64 in costs, and authorizes a new judgment to issue in this amount and grants in part, and  
11 denies in part, Detwiler's countermotion the for the following reasons:

#### 12 **FINDINGS**

13 1. The Nevada Supreme Court directed this Court to "recalculate the attorney fee  
14 award consistent with this opinion." *Detwiler*, Nev. Adv. Op. 18, p. 23. Specifically,

15 Here, the district court ordered Detwiler to pay all of the Bank's  
16 attorney fees from "the time that HH [i.e., the Fraudulent  
17 Transferee] intervened as a party in this action pursuant to NRS  
18 Chapter 31," which was on March 2, 2018. The Bank calculated  
19 its fees based on this date. However, the district court found  
20 Detwiler and HH in contempt for violating a specific court order—  
21 the January turnover order. *See* NRS 22.010(3). We hold that the  
22 fees incurred prior to January 9, 2019, were improperly awarded.

23 *Detwiler*, Nev. Adv. Op. 18, p. 21. In other words, the relevant period for calculating attorney  
24 fees begins on January 9, 2019. The Court did not provide a specific cut-off time for the fees and  
25 has allowed fees beyond the April 2020 contempt order, despite the Nevada Supreme Court  
26 mandating recalculation, not addition of any fees.

#### 27 **The Court's New Judgment Amount Takes Into Account the *Brunzell* Factors, But Does**

#### 28 **Not Take into Account the Heightened Standard Under NRS 22.100(3)**

1 This Court normally has great discretion regarding its decision to award fees and  
2 regarding the amount of fees granted, but this discretion is limited when awarding contempt

1 sanctions. “The fees must not only be ‘reasonable,’ . . . but must also be incurred as a result of  
2 the contempt.” *Detwiler v. Dist. Ct.*, 137 Nev. Adv. Op. 18, 19 (2021) (quoting NRS 22.100(3)).

3 2. Thus, there are two questions that the Court must answer: (1) whether the fees  
4 were reasonable under the *Brunzell* factors, and (2) whether they were incurred as a result of the  
5 contempt under NRS 22.100(3).

6 3. This Court cannot follow the traditional method of calculation when awarding  
7 contempt sanctions – the party seeking fees bears a heightened burden to show that the causation  
8 element is met under NRS 22.100(3). The Court reviewed the billing statements demonstrating  
9 the Bank’s attorneys’ fees and costs, but declined to allow Detwiler to examine the same.

10 4. On June 25, 2021, the Bank’s counsel submitted an affidavit of fees and costs,  
11 along with supporting documentation, as part of its Motion, but did not submit any billing  
12 statements or any breakdown of attorneys’ fees. (*See* 6/25/21 Affidavit of John E. Bragonje in  
13 Support of Lewis Roca Updated Attorney Fees and Costs Figures (the “Affidavit”) included in  
14 the body of the Motion, on file herein.)

15 5. The Affidavit did not describe how the work performed was incurred because of,  
16 or as a result of, Detwiler’s contempt. Rather, the Court accepted the Bank’s general oral  
17 assertion at the hearing on this matter that the Court should just find that all fees were incurred as  
18 a result of the contempt without any further briefing on the matter.

19 6. Exhibit 3 to the affidavit was submitted for *in camera* review, despite the option  
20 of providing redacted records to Detwiler, which the Bank could have done. Again, the Court  
21 determined that Detwiler was not entitled to see any evidence of whether the fees and costs were  
22 incurred because of Detwiler’s contempt.

23 7. The Court orders a new judgment amount of \$250,546.89, which exceeds the  
24 original fee and cost award of \$218,855.52. The Court did not explicitly state the reasons why  
25 the fees incurred after the original contempt order were awarded, but merely used the January 9,  
26 2019 date as a starting date.

27 8. Since this Court entered its Turn-Over Order on January 9, 2019, Lewis Roca  
28 proved that it has advanced costs for the total amount of \$12,832.64, which are itemized with

1 back-up for these costs and included as Exhibit 2 to the Motion. The Court finds that these costs  
2 were reasonable and necessary.

3 **The Fees Relate Exclusively to the Enforcement of the Turn-Over Order**

4 9. The Court reviewed Exhibit 3 in chambers and did not provide Detwiler's counsel  
5 with the opportunity to review these records. Because Detwiler cannot review these records, he  
6 cannot adequately determine whether these fees were incurred as a result of the contempt.

7 **Evidence that the Bank has not**

8 10. Parties may not collect on a judgment twice. Pursuant to Detwiler's  
9 countermotion, the Court directs the Bank's counsel to submit evidence of what fees and costs it  
10 has already collected from Foust's estate.

11 **A New Charging Order Should Issue**

12 11. This Court grants the request that a new charging order issue to reflect the updated  
13 judgment amount of \$250,546.89.

14 ///

**ORDER**

12. IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Bank's motion to calculate a new judgment amount is GRANTED and Detwiler's opposition thereto is denied.

13. IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that Detwiler's counter-motion is GRANTED IN PART and DENIED IN PART. Detwiler's counter-motion is granted in that the Bank is required to submit evidence of any fees and costs it has received from Foust's estate.

14. IT IS HEREBY FURTHER ORDERED, ADJUDGED, AND DECREED that the Bank shall prepare a separate judgment and charging order against Detwiler for the Court's signature.

**IT IS SO ORDERED.**

Dated this 30th day of August, 2021



**C48 A99 D8AB 1140  
Nadia Krall  
District Court Judge**

Respectfully submitted by:

HUTCHISON & STEFFEN

Approved as to Form and Content:

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/Brenoch Wirthlin  
Brenoch R. Worthlin (SBN 10282)  
10080 W. Alta Drive, Suite 200  
Las Vegas, NV 89145  
Tel.: 702.385.2500  
bwirthlin@hutchlegal.com

*Attorneys for Edward N. Detwiler*

By: Declined to Sign  
John E. Bragonje (SBN 9159)  
3993 Howard Hughes Pkwy., Suite 600  
Las Vegas, NV 89169  
Tel.: 702.949.8200  
jbragonje@lewisroca.com

*Attorneys for Plaintiff and Judgment  
Creditor Baker Boyer National Bank*



1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Baker Boyer National Bank,  
Plaintiff(s)

CASE NO: A-17-760779-F

7  
8 vs. James Foust, Jr., Defendant(s)

DEPT. NO. Department 4

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Order was served via the court's electronic eFile system to all  
recipients registered for e-Service on the above entitled case as listed below:

13 Service Date: 8/30/2021

14 Michael Mazur Esq. complaint@mazurbrooks.com

15 Danielle Kelley dkelley@hutchlegal.com

16 John Bragonje JBragonje@lewisroca.com

17 Luz Horvath LHorvath@lewisroca.com

18 Brenoch Wirthlin bwirthlin@hutchlegal.com

19 Jon Linder jlinder@hutchlegal.com

20  
21  
22  
23  
24  
25  
26  
27  
28