

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

\* \* \*

SCOTT CANARELLI, Beneficiary of The  
Scott Lyle Graves Canarelli Irrevocable Trust,  
dated February 24, 1998,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT  
COURT, in and for the County of Clark, State  
of Nevada, and THE HONORABLE JUDGE  
BELL, District Judge,

Respondents,

And

LAWRENCE and HEIDI CANARELLI, and  
FRANK MARTIN, Special Administrator of  
the Estate of Edward C. Lubbers, Former  
Trustees,

Real Party in Interest.

Electronically Filed  
Jan 08 2021 04:00 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No.

District Court Case No.  
P-13-078912-T

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**MOTION FOR LEAVE TO  
FILE SEPARATE  
APPENDIX OF  
REDACTED DOCUMENTS  
UNDER SEAL**

Petitioner's Appendix to the writ petition in the above captioned matter redacts documents that were sealed by the district court pursuant to the Stipulation and Order to Seal Documents Previously filed with the Court dated September 28, 2018 attached hereto as **Exhibit 1**. Consistent with this Court's prior order in previous writ proceedings stemming from the same underlying matter,<sup>1</sup> Petitioner moves to file the redacted documents contained in Petitioner's Appendix in an unredacted form in a separate appendix volume to be filed under seal by the clerk of court. The separate sealed appendix volume would include the following documents:<sup>2</sup>

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<sup>1</sup> See, Order Granting In Part Motion for Leave to File Portions of the Appendix Under Seal dated June 6, 2019, a true and correct copy being attached hereto as **Exhibit 2**.

<sup>2</sup> The "FUS" Bates Number correlates to the "APP" Bates numbered version of the documents filed in redacted form concurrently with the Writ.

<u>TAB</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>PAGES</u>
1 (Vol. 8)	Motion for Determination of Privilege Designation of RESP013284-RESP013288 and RESP78899-RESP78900 - <b>Redacted per 09/26/18 Order</b>	07/13/2018	FUS000014-FUS000078
2 (Vol. 8)	Reply to Opposition to Motion for Determination of Privilege Designation of RESP013284-013288 and RESP078899-0789900 and Opposition to Countermotion for Remediation of Improperly Disclosed Attorney-Client Privileged and Work Product Protected Materials - <b>Redacted per 09/26/18 Order</b>	08/24/2018	FUS000193-FUS000252

Dated this 8th day of January, 2021.

Dated this 8th day of January, 2021.

By: /s/ Dana A. Dwiggins

Dana A. Dwiggins (#7049)  
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*Attorneys for Petitioner*

By: /s/ Daniel F. Polsenberg

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*Attorneys for Petitioner*

## **CERTIFICATE OF SERVICE**

Pursuant to NRAP 5(b), I hereby certify that I am an employee of the law firm of Solomon Dwiggins & Freer, Ltd., and that on January 8th, 2021, I filed a true and correct copy of the foregoing **MOTION FOR LEAVE TO FILE SEPARATE APPENDIX OF REDACTED DOCUMENTS UNDER SEAL**, with the Clerk of the Court through the Court's e-flex electronic filing system and notice will be sent electronically by the Court to the following:

Donald J. Campbell  
J. Colby Williams  
Philip R. Erwin  
Campbell & Williams  
700 South Seventh Street  
Las Vegas, NV 89101  
Telephone: (702) 382-5222  
dj@cwlawlv.com  
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*Attorneys for Lawrence and Heidi Canarelli, and Frank Martin, Special Administrator of the Estate of Edward C. Lubbers, Real Party in Interest*

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*Attorney for Frank Martin, Special Administrator of the Estate of Edward C. Lubbers, Real Party in Interest*

I further certify that a copy of the above-mentioned document will be served via U.S. Mail, postage prepaid, addressed to the above and as follows:

The Honorable Linda M. Bell  
Eighth Judicial District Court  
Department VII  
Regional Justice Center  
200 Lewis Ave.  
Las Vegas, NV 89155

*Respondent*

DATED: January 8th, 2021.

/s/ Terrie Maxfield  
An Employee of Solomon Dwiggin  
& Freer

# EXHIBIT 1

# EXHIBIT 1



1 **SAO**  
2 Dana A. Dwiggins (#7049)  
3 Jeffrey P. Luszeck (#9619)  
4 Tess E. Johnson (#13511)  
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13 *Attorneys for Scott Canarelli*

14 **DISTRICT COURT**  
15 **CLARK COUNTY, NEVADA**

16 In the Matter of the

Case No.: P-13-078912-T  
Dept. No.: XXVI/Probate

17 **THE SCOTT LYLE GRAVES**  
18 **CANARELLI IRREVOCABLE TRUST,**  
19 dated February 24, 1998.

20 **STIPULATION AND ORDER TO SEAL DOCUMENTS PREVIOUSLY FILED WITH**  
21 **THE COURT**

22 Petitioner Scott Lyle Graves Canarelli ("Petitioner"), by and through his counsel, the law  
23 firm of Solomon Dwiggins & Freer, Ltd. and Respondents Frank Martin, Special Administrator of  
24 the Estate of Edward C. Lubbers, as former Family Trustee and/or the Independent Trustee of the  
25 Scott Lyle Graves Canarelli Irrevocable Trust dated February 24, 1998 (the "Trust"), and Lawrence  
26 Canarelli and Heidi Canarelli, Former Family Trustees of the Trust (collectively, "Respondents"),  
27 by and through their counsel, the law firms of Campbell & Williams and Dickinson Wright PLLC  
28 and hereby stipulate as follows:

1. Pursuant to Rules SRCR 3(4)(a) and (h) of the Nevada Rules for Sealing and  
Redacting Court Records, Nevada permits the court to seal or redact when it "is permitted or  
required by federal or state law," or when it is justified or required by another "compelling  
circumstance."

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TRUST AND ESTATE ATTORNEYS



2. On August 29, 2018, the Parties appeared before the Discovery Commissioner for a hearing on several matters including a motion to determine whether certain documents disclosed by Respondents (the "Disputed Documents") are protected by the attorney/client privilege or the work product doctrine and, therefore, may be clawed back by Respondents as they contend the Disputed Documents were inadvertently produced.

3. Prior to the filing of such motion, Petitioner referenced the Disputed Documents in certain filings before this Court, both directly in briefing and as exhibits.

4. During the August 20 hearing, the Discovery Commissioner ruled, in part, that some of the content contained within the Disputed Documents was not protected but nonetheless should be deemed confidential at this time.

5. As a matter of good faith and in order to comply with the Discovery Commissioner's confidential designation of the Disputed Documents, the Parties hereby request an order from this Court directing the Clerk to seal the following documents previously filed with this Court: (1) the Supplement to Petition to Surcharge Trustee and Former Trustees for Breach of Fiduciary Duties, Conspiracy and Aiding and Abetting; Petition for Breach of Fiduciary Duty for Failure to Properly Account; and Petition for an Award of Attorneys' Fees, Accountant Fees and Costs, filed May 18, 2018 ("Supplement to the Surcharge Petition"); (2) the Motion for Determination of Privilege Designation for RESP013284-RESP013288 and RESP78899-RESP78900, filed July 13, 2018 ("Motion for Determination"); (3) the Opposition to Motion to Dismiss Petitioner's Supplement to Petition to Surcharge Trustee and Former Trustees for Breach of Fiduciary Duties, Conspiracy and Aiding and Abetting; Petition for Breach of Fiduciary Duty for Failure to Properly Account; and Petition for an Award of Attorneys' Fees, Accountant Fees & Costs, filed July 31, 2018 ("Opposition to Motion to Dismiss"); and (4) the Reply to Opposition to Motion for Determination of Privilege Designation for RESP013284-RESP013288 and RESP78899-RESP78900; and Opposition to Countermotion for Remediation of Improperly Disclosed Attorney-client Privileged and Work Product Protected Materials, filed August 24, 2018 ("Reply to Motion for Determination") (collectively the "Filed Documents").

6. The Parties further agree that, after the Filed Documents are sealed, such



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*Sdf*

1 documents should be refiled with the redactions agreed to by the Parties.

2 DATED this 21 day of September, 2018.

DATED this 20<sup>th</sup> day of September,  
2018.

3 By: Tess Johnson  
4 Dana A. Dwiggins, Esq., Bar No. 7049  
5 Jeffrey P. Luszeck, Esq., Bar No. 9619  
6 Tess E. Johnson, Esq., Bar No. 13511  
7 SOLOMON DWIGGINS & FREER, LTD.  
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By: J. Colby Williams  
J. Colby Williams, Esq., Bar No. 5549  
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9 *Counsel for Petitioner Scott Canarelli*

and

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*Counsel for Respondents Lawrence and  
Heidi Canarelli, and Frank Martin,  
Special Administrator of the Estate of  
Edward C. Lubbers*

### ORDER

19 **GOOD CAUSE BEING FOUND, IT IS HEREBY ORDERED** that the Supplement to  
20 the Surcharge Petition filed on May 18, 2018 shall be SEALED.

21 **IT IS FURTHER HEREBY ORDERED** that Petitioner shall file a redacted copy of the  
22 Supplement to the Surcharge Petition, with redactions as agreed to by Respondents.

23 **IT IS FURTHER HEREBY ORDERED** that the Motion for Determination filed on July  
24 13, 2018 shall be SEALED.

25 **IT IS FURTHER HEREBY ORDERED** that Petitioner shall file a redacted copy of the  
26 Motion for Determination, with redactions as agreed to by Respondents.

27 **IT IS FURTHER HEREBY ORDERED** that the Opposition to Motion to Dismiss shall  
28 be SEALED.

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EAST AND WEST ATTORNEYS

*[Signature]*

1           **IT IS FURTHER HEREBY ORDERED** that Petitioner shall file a redacted copy of the  
2 Opposition to Motion to Dismiss, with redactions as agreed to by Respondents.

3           **IT IS FURTHER HEREBY ORDERED** that the Reply to Motion for Determination shall  
4 be SEALED.

5           **IT IS FURTHER HEREBY ORDERED** that Petitioner shall file a redacted copy of the  
6 Reply to Motion for Determination, with redactions as agreed to by Respondents.

7           Dated this 26 day of September, 2018.

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*[Signature]*  
DISTRICT COURT JUDGE

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12

Respectfully Submitted By:

13

SOLOMON DWIGGINS & FREER, LTD.

14

15

By: *[Signature]*

16

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*Counsel for Petitioner Scott Canarelli*

24

25

26

27

28

# EXHIBIT 2

# EXHIBIT 2

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAWRENCE D. CANARELLI; HEIDI  
CANARELLI; AND FRANK MARTIN,  
SPECIAL ADMINISTRATOR FOR THE  
ESTATE OF EDWARD C. LUBBERS,  
FORMER TRUSTEES,  
Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
GLORIA STURMAN, DISTRICT  
JUDGE,

Respondents,

and

SCOTT CANARELLI, BENEFICIARY  
OF THE SCOTT LYLE GRAVES  
CANARELLI IRREVOCABLE TRUST  
DATED FEBRUARY 24, 1998,  
Real Party in Interest.

No. 78883

**FILED**

**JUN 06 2019**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER GRANTING IN PART MOTION FOR LEAVE TO FILE  
PORTIONS OF THE APPENDIX UNDER SEAL*

Petitioners' June 3, 2019, motion for leave to file portions of their appendix under seal is granted as follows. SRCR 3(4)(b). In their motion, petitioners assert that the district court reviewed the contested notes in camera and point to a September 26, 2018, district court order allowing four documents to be filed in redacted form, with the unredacted versions filed under seal. Because those documents are contained in volumes 1, 2, and 4 of their appendix to this court, they ask that this court allow those volumes to be filed under seal. However, it appears that the

volumes also contain documents not covered by the district court's September 26 order.

Therefore, petitioners may file volumes 1, 2, and 4 of the appendix with the redacted versions of the four documents. They shall submit the unredacted versions and any documents reviewed by the district court in camera in a separate volume, and the clerk of this court shall file that volume under seal.

It is so ORDERED.

 C.J.

cc: Campbell & Williams  
Marquis Aurbach Coffing  
Solomon Dwiggins & Freer, Ltd.