

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

2       UNITE HERE HEALTH; and NEVADA  
3       HEALTH SOLUTIONS, LLC,

4                                   Appellants,

5                   vs.

6       STATE OF NEVADA, EX. REL.  
7       COMMISSIONER OF INSURANCE  
8       BARBARA RICHARDSON, IN HER  
9       OFFICIAL CAPACITY AS  
10      STATUTORY RECEIVER FOR  
11      DELINQUENT DOMESTIC INSURER;  
12      and GREENBERG TRAUIG, LLP,

13                                   Respondents.

Electronically Filed  
Mar 12 2021 03:46 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

No. 82467  
(District Court Case A-15-725244-C)

Related to Case No. 82552

14                                   **OPPOSITION TO MOTION TO CONSOLIDATE**  
15                                   **AND COUNTERMOTION TO DISMISS APPEAL**

16           Greenberg Traurig, LLP (“Greenberg Traurig”), counsel to Barbara  
17       Richardson as the Statutory Receiver (the “Receiver”) for the Nevada Health Co-Op  
18       (“NHC”) and representing itself in response to this motion, and Jenner & Block LLP,<sup>1</sup>  
19       counsel to Greenberg Traurig, submit this (1) opposition to the Motion to Consolidate  
20       with the writ petition proceedings in Case No. 82552 (the “Writ”), filed by  
21       Appellants/Petitioners United Here Health and Nevada Health Solutions, LLC  
22       (collectively, Appellants or UHH), and (2) Greenberg Traurig’s Countermotion to  
23       Dismiss Appeal.  
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28       <sup>1</sup> The Orders granting *pro hac vice* admission to Michael McNamara, Esq, and David Jimenez-Ekman Esq., of Jenner and Block, are attached hereto as Exhibit A.

## **MEMORANDUM OF POINTS AND AUTHORITIES**

The Court should deny the motion to consolidate the appeal and Writ and dismiss both because Appellants lack standing to seek disqualification of counsel who undisputedly never represented them. In this appeal, Appellants seek reversal of the district court's interlocutory denial of their Motion to Disqualify Greenberg Traurig as counsel for the Receiver. The Writ proceeding seeks review of the same decision. But it is undisputed that Greenberg Traurig never represented Appellants in any matter. Consequently, under longstanding black letter law, Appellants have no standing to seek disqualification of Greenberg Traurig based on a purported conflict. Because standing is a jurisdictional prerequisite, the Court should dismiss this appeal, and, although not at issue in this motion, the Writ as well. Alternatively, the Court should dismiss this appeal because the district court's decision is reviewable, if at all, only by writ, not by appeal.

## **FACTS RELEVANT TO JURISDICTION**

The following discrete facts appear in the Writ record and will permit the Court to evaluate the propriety of jurisdiction. The Receiver was appointed by the district court under NRS Chapter 696B to administer the delinquent domestic insurer NHC. I APP 56-68.<sup>2</sup> In turn, on January 18, 2017, Greenberg Traurig was appointed to represent the Receiver to pursue certain receivership claims. **I APP 127.** On

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<sup>2</sup> The reference is to the of UHH's Appendix to Petition for Extraordinary Writ Relief in Case No. 82552.

1 August 25, 2017, Greenberg Traurig commenced claims on behalf of the Receiver  
2 against Appellants, Case No. A-17-760558-B. **III APP 240.** Greenberg Traurig has  
3 been pursuing those claims for the Receiver for nearly four years, during which  
4 Appellants have engaged in numerous strategic tactics designed to delay their  
5 ultimate liability and which have resulted in significant unnecessary expense to the  
6 receivership.<sup>3</sup>  
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9 On October 8, 2020, more than three years into the litigation, Appellants moved  
10 to disqualify Greenberg Traurig on the basis of a putative ethical conflict. **X APP**  
11 **1146.** Appellants argued that Greenberg Traurig's current and/or former  
12 representation of two other entities having *no* affiliation with Appellants—Valley  
13 Health System and Xerox—presented a conflict that required disqualification.  
14 **X APP 1148-1154.** Greenberg Traurig and the Receiver responded that  
15 (i) Appellants, who are not former clients of Greenberg Traurig, have no standing to  
16 raise the issue; (ii) Greenberg Traurig's limited-scope representation of the Receiver  
17 excluded any issues relating to Valley Health Care and Xerox, and therefore is not  
18 conflicted; (iii) Appellants waived the issue by strategically waiting more than 3  
19 years to raise it; and (iv) even if there were a conflict, the potential prejudice to the  
20 Receiver precluded disqualification. **XIV APP 1585-1604.** On December 31,  
21 2020, the district court denied Appellants' motion; the court concluded that there was  
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27 <sup>3</sup> An account of the numerous delaying tactics employed by these defendants may be found  
28 at XIV APP 1592-1593.

no conflict and did not reach the issues of standing, waiver or prejudice.

**XIX APP 2125-2136.** Appellant’s appeal and Writ seek reversal of that order.

**I. THE COURT SHOULD DISMISS THIS APPEAL BECAUSE APPELLANTS WERE NEVER CLIENTS OF GREENBERG TRAURIG AND THEREFORE HAVE NO STANDING TO SEEK DISQUALIFICATION.**

This Court should deny the Motion to consolidate, and dismiss this appeal, as Appellants have no standing. “[S]tanding to bring the underlying claims affects the district court’s jurisdiction over this matter, and accordingly this court’s jurisdiction . . .” *Cotter v. Kane*, 473 P.3d 451, 456 (Nev. 2020). Therefore, Appellants’ standing in this Court turns on (among other things) their standing to bring their motion to disqualify in the district court in the first instance. But “[t]he general rule is that only a former or current client has standing to bring a motion to disqualify counsel on the basis of a conflict of interest.” *Liapis v. Second Judicial Dist. Court*, 128 Nev. 414, 420, 282 P.3d 733, 737 (2012), *quoting* Model Rules of Professional Conduct, Rule 1.7). It is undisputed that neither of the Appellants is now, or has ever been, a client of Greenberg Traurig. That dooms their appeal.

This Court has soundly rejected numerous attempts to disqualify attorneys by non-client movants. Just last year, this Court reiterated that standing to seek disqualification of counsel requires a current or former attorney-client relationship. *State v. First Judicial Dist. Court*, 466 P.3d 529, 532 (Nev. 2020)(“[T]he senator plaintiffs lack standing to seek LCB Legal’s disqualification because they do not have

1 an attorney-client relationship with LCB Legal . . .”). Indeed, the *first* element that a  
2 party seeking disqualification must establish is “that it had an attorney-client  
3 relationship with the lawyer” it seeks to disqualify. *Nev. Yellow Cab Corp. v. Eighth*  
4 *Judicial Dist. Court*, 123 Nev. 44, 50, 152 P.3d 737, 741 (2007) (stating elements that  
5 must be shown for disqualification).  
6

7 Appellants are nonclients seeking to derail litigation brought by Greenberg  
8 Traurig’s clients, the Receiver and her Special Deputy Receiver (“SDR”), who  
9 carefully limited the scope of Greenberg Traurig’s representation to avoid any  
10 potential conflicts.<sup>4</sup> This Court should not countenance Appellants’ continued  
11 attempts to misuse a motion to disqualify as an “instrument[] of harassment or delay.”  
12 *Brown v. Eighth Judicial Dist. Court*, 116 Nev. 1200, 1205, 14 P.3d 1266, 1270 (2000)  
13 (discussing the impropriety of using disqualifications as a litigation tactic). The Motion  
14 to consolidate should be denied as futile, and the appeal (as well as the Writ) dismissed  
15 for lack of jurisdiction.  
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19 **II. ALTERNATIVELY, THE COURT SHOULD DISMISS THIS**  
20 **APPEAL BECAUSE THERE IS NO RIGHT OF DIRECT**  
21 **APPEAL FROM A RULING ON A DISQUALIFICATION**  
22 **MOTION.**

23 Even if (contrary to fact) Appellants had standing to pursue disqualification, the  
24 district court’s order is currently reviewable—if at all—only by a petition for a writ of  
25 mandamus. It is well-settled that a petition for mandamus is the appropriate and only  
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27 <sup>4</sup> See XIV APP 1588:10-1589:28, and exhibits cited therein, XIV 1611-1631, for a  
28 description of the actions of the Receiver and counsel with respect to the retention of  
Greenberg Traurig.

1 means to obtain immediate review of a decision granting a motion to disqualify. *See*  
2 *Nev. Yellow Cab Corp. v. Eighth Judicial Dist. Court*, 123 Nev. 44, 49, 152 P.3d 737,  
3 740 (2007) (“This court has consistently held that mandamus is the appropriate vehicle  
4 for challenging orders that disqualify counsel.”).<sup>5</sup> Accordingly, there is no jurisdiction  
5 over this improper interlocutory appeal, and it should be dismissed, not consolidated.  
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7 Appellants urge jurisdiction over a direct appeal because this order was entered  
8 in a receivership proceeding rather than general civil litigation. Appellants cite NRS  
9 696B.190, which states:  
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11 An appeal to the appellate court of competent jurisdiction pursuant to the  
12 rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the  
13 Nevada Constitution may be taken . . . from every order in delinquency  
14 proceedings having the character of a final order as to the particular  
15 portion of the proceedings embraced therein.

16 *Motion*, p. 3. However, the fact that this plainly interlocutory order was entered in a  
17 receivership proceeding does not change the basic policies animating Nevada’s  
18 jurisdictional calculus, and the district court’s ruling does not satisfy the “final order”  
19 requirement. *Lee v. GNLV Corp.*, 116 Nev. 424, 426 (Nev. 2000).  
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21 This Court has not previously interpreted NRS 696B.101. However, the Court  
22 has often found persuasive guidance from other jurisdictions<sup>6</sup> interpreting similar  
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25 <sup>5</sup> While it is established that a decision *granting* a motion to disqualify can be reviewed on a  
26 petition for a writ of mandamus, it is less clear that a decision *denying* such a motion is  
27 immediately reviewable. Greenberg Traurig will raise this issue if necessary to resolve the  
28 Writ.

<sup>6</sup> *See, e.g., Cohen v. Mirage Resorts*, 119 Nev. 1, 10 n.10 (Nev. 2003) (relying on  
interpretations of model language adopted in other jurisdictions); and *Craig v. Circus-*  
*Circus Enterprises*, 106 Nev. 1, 3, 786 P.2d 22, 23 (1990) (noting “rule of statutory

1 statutes based on the model insurer liquidation statute. The courts of several states  
2 with identically worded provisions in their insurers' liquidation statutes have rejected  
3 Appellants' proposed interpretation of the phrase "having the character of a final order  
4 as to the particular portion of the proceedings embraced therein." Applying the  
5 interpretations given by those other courts, the decision here is not a "final order."  
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8 For example, in *Pac. Marine Ins. Co. v. Harvest States Coop.* 877 P.2d 264, 268  
9 (Alaska 1994), the Alaska Supreme Court held that only an order terminating the  
10 receivership action or certified under Alaska's Civil Rule 54(b) is appealable, because  
11 "[w]ithout either a final judgment or a Civil Rule 54(b) direction . . . intermediate  
12 orders of the superior court do not have the character of a final order." Similarly, in  
13 *Protective Life Ins. Co. v. Navarro*, 238 A.3d 193 (Del. 2020), the Delaware Supreme  
14 Court held that an order dismissing a claim for a set-off process filed by a creditor did  
15 not have the characteristics of a final order, because the creditor's claims were not  
16 resolved by the order. Similarly, in *Moody v. State*, 351 So. 2d 547, 548 (Ala. 1977),  
17 an order finding a party in civil contempt with respect to certain delinquency matters  
18 was not final, as it did not resolve all the claims between the parties. These  
19 interpretations are consistent with Nevada's requirements that a final judgment  
20 "dispose[] of all the issues presented in the case, and leave[] nothing for the future  
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28 interpretation that when a statute is derived from a sister state, it is presumedly adopted with  
the construction given it by the highest court of the sister state").

1 consideration of the court, except for post-judgment issues such as attorney’s fees and  
2 costs.”

3 Yet here, the challenged order does not dispose of *any* claims between NHC and  
4 Appellants. While NHC’s claims against Appellants will be resolved in EDCR A-17-  
5 760558-B, Appellants’ claims against NHC will be resolved in the claims process  
6 authorized through by the Receivership Court. Therefore, the Order does not “have  
7 the characteristics of a final order,” and the requirement of NRS 696B.190(5) is not  
8 met.  
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11 Appellants contend that the Order resolved the issue raised in its “Motion to  
12 Disqualify Greenberg Traurig and to Disgorge Fees,” and therefore, it operates as a  
13 final judgment as to the issues in that “particular portion of the proceedings.” That  
14 slices the onion far too thinly. Accepting Appellant’s creative theory, *every* motion  
15 fully decided in any delinquency proceeding would be final as to a “particular portion  
16 of the proceedings” and yield an immediately appealable order. That is an absurd  
17 interpretation of the phrase “particular portion of the proceedings.” *See State, Private*  
18 *Investigator's Licensing Bd. v. Tatalovich*, 129 Nev. 588, 590, 309 P.3d 43, 44 (2013)  
19 (courts should avoid interpretations that would lead to absurd results).  
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23 Significantly, NHC discovered only one reported decision interpreting this  
24 statutory language and allowing an immediate direct appeal; the order in question was  
25 that appointing a receiver. *Fewell v. Pickens*, 344 Ark. 368, 374, 39 S.W.3d 447, 451  
26 (2001). Unlike Appellant’s motion, this significant first step in delinquency  
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1 proceedings, wherein the need for the placement of the insurer into a receivership is  
2 determined, qualifies as a “portion” of the delinquency proceedings from which an  
3 interlocutory appeal would be justified.  
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5 Here, however, Appellants’ attempt to disqualify counsel does not have nearly  
6 the significance of an order that establishes the receivership itself. Instead, it is one  
7 episode in the portion of the proceedings related to the Court’s oversight and approval  
8 of the Receiver’s actions and expenditures during the course of the receivership. The  
9 Receiver has sought approval of numerous actions, including retention of litigation  
10 counsel, conflicts counsel, and experts; sale of a receivership receivable; approval of a  
11 claim settlement; and approval of payment of fees and costs incurred. It cannot be the  
12 case that each one of these incremental steps is a “final order” that warrants the  
13 resources of an immediate appellate review. This “portion” of the delinquency  
14 proceedings has not been resolved by the order Appellants’ challenge, and remains  
15 ongoing. Therefore, the requirements of NRS 190(5) have not been met, and there is  
16 no jurisdiction for this appeal.  
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## CONCLUSION

The Court should deny the motion to consolidate and dismiss the appeal. Appellants lack standing to bring this appeal because they were never clients of Greenberg Traurig and therefore cannot seek its disqualification. Alternatively, there is no right to immediate appeal of a ruling on a motion to disqualify counsel, which can be properly challenged, if at all, only by a petition for a writ of mandamus.

RESPECTFULLY SUBMITTED this 12<sup>th</sup> day of March 2021

GREENBERG TRAURIG, LLP

*/s/ Tami D. Cowden*

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**CERTIFICATE OF SERVICE**

Pursuant to NRAP 25, on this 12<sup>th</sup> day of March, 2021, I certify that I am an employee of GREENBERG TRAURIG, LLP, that in accordance therewith, I caused the foregoing ***Opposition to Motion to Consolidate and Countermotion to Dismiss Appeal*** to be filed and served to all parties of record via the Supreme Court's e-filing system.

DATED this 12<sup>th</sup> day of March 2021.

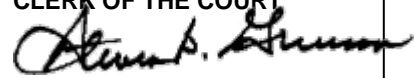
/s/ Andrea Lee Rosehill

An employee of GREENBERG  
TRAURIG

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# EXHIBIT A

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1 **NEOJ**

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3 Nevada Bar No. 001625

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5 Nevada Bar No. 008230

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**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

STATE OF NEVADA, EX REL.  
COMMISSIONER OF INSURANCE,  
BARBARA D. RICHARDSON, IN HER  
OFFICIAL CAPACITY AS RECEIVER  
FOR NEVADA HEALTH CO-OP,

Plaintiff,

v.

NEVADA HEALTH CO-OP,

Defendant.

CASE NO. A-15-725244-C  
DEPARTMENT I

**NOTICE OF ENTRY**

[ORDER GRANTING MOTION TO ASSOCIATE COUNSEL]

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**NOTICE OF ENTRY**

[ORDER GRANTING MOTION TO ASSOCIATE COUNSEL]

**YOU AND EACH OF YOU**, will please take notice that the **ORDER GRANTING MOTION TO ASSOCIATE COUNSEL** was entered on the 22nd day of December 2020. A copy of said Order is attached hereto as **Exhibit A**.

DATED this 22<sup>ND</sup> day of December 2020.

GREENBERG TRAURIG, LLP

*/s/ Donald L. Prunty*

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Nevada Bar No. 001625

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*Counsel for Plaintiff*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on the **22<sup>nd</sup> day of December 2020**, and pursuant to NEFCR 9, NRCF 5(b), and EDCR 7.26, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING MOTION TO ASSOCIATE COUNSEL** was filed with the Clerk of the Court using the Odyssey eFileNV Electronic Service system and served on all parties with an email-address on record, pursuant to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R.

The date and time of the electronic proof of service is in place of the date and place of deposit in the United States mail.

/s/ Evelyn Escobar-Gaddi  
An employee of GREENBERG TRAURIG, LLP

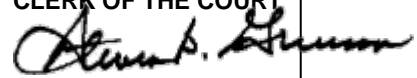
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## EXHIBIT A

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Order Granting Motion to Associate Counsel





1 **OGM**

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14 *Commissioner of Insurance, as the Permanent Receiver for*  
15 *Nevada Health Co-Op*

16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 STATE OF NEVADA, EX. REL.

19 COMMISSIONER OF INSURANCE,

20 BARBARA D. RICHARDSON, IN HER

21 OFFICIAL CAPACITY AS STATUTORY

22 RECEIVER FOR DELINQUENT DOMESTIC

23 INSURER,

24 Plaintiff,

25 v.

26 NEVADA HEALTH CO-OP,

27 Defendant.

Case No. A-15-725244-C

Department I

**[PROPOSED] ORDER GRANTING  
MOTION TO ASSOCIATE  
COUNSEL**

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1 It is hereby ORDERED, ADJUDGED AND DECREED that Greenberg Traurig,  
2 LLP's Motion to Associate with Michael McNamara and David Jimenez-Ekman to practice  
3 in the state of Nevada pursuant to Nevada Supreme Court Rule 42 is hereby **GRANTED**.

4 **IT IS SO ORDERED.**

5 DATED this 22nd day of <sup>December</sup>~~November~~ 2020

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7 **JUDGE OF THE DISTRICT COURT**  
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