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11 *and Nevada Health Solutions, LLC*

12 IN THE SUPREME COURT OF THE STATE OF NEVADA

13 UNITE HERE HEALTH; AND NEVADA
14 HEALTH SOLUTIONS, LLC,

15 Appellants,

16 vs.

17 STATE OF NEVADA, EX REL.
18 COMMISSIONER OF INSURANCE,
19 BARBARA D. RICHARDSON, IN HER
OFFICIAL CAPACITY AS STATUTORY
RECEIVER FOR DELINQUENT
DOMESTIC INSURER; and
GREENBERG TRAUIG, LLP,

20 Respondents.

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Supreme Court No. 82467
District Court No.
A-15-725244-C

**REPLY IN SUPPORT OF
APPELLANTS' MOTION
TO CONSOLIDATE; AND
RESPONSE TO
RESPONDENTS'
COUNTER-MOTION TO
DISMISS APPEAL**

MEMORANDUM OF POINTS AND AUTHORITIES

Standing to seek disqualification of counsel is not limited to current or former clients, particularly in delinquency proceedings and analogous bankruptcy proceedings. Moreover, the plain and unambiguous language of NRS 696B.190(5) authorizes this appeal, as the Order Denying the Motion to Disqualify (“Order”) fully and finally resolved all issues raised in the motion. Thus, Appellants respectfully request that this Court: (1) grant the Motion to Consolidate and determine the appropriate means for reviewing the challenged Order; and (2) deny the Counter-Motion to Dismiss this appeal.

A. Appellants Have Standing to Bring This Appeal.

In reciting the general rule regarding standing to seek disqualification of counsel as set forth in *Liapis v. Second Judicial District Court ex rel. County of Washoe*, 128 Nev. 414, 282 P.3d 733 (2012), (Response & Counter-Mot. at 4:13-17), Respondents disingenuously omit that this Court also detailed in *Liapis* the circumstances in which ***non-clients*** may file a motion to disqualify counsel. Specifically, “if the breach of ethics ‘so infects the litigation in which disqualification is sought that it impacts the [nonclient] moving party’s interest in a just and lawful determination of her claims, she may have the . . . standing

1 needed to bring a motion to disqualify based on a third-party conflict of interest
2 or other ethical violation.” *Liapis*, 128 Nev. at 420, 282 P.3d at 737.

3 Greenberg’s conflicts of interest with Valley and Xerox prevent the just
4 and lawful determination of: (1) Appellant Unite Here Health’s claim as a
5 creditor of the receivership estate; and (2) the Receiver’s claims against both
6 Appellants in the Milliman Lawsuit, in which it is alleged that the Appellants
7 caused NHC’s insolvency. (*See* Pet. (No. 82552), at 7:18-8:7, 13:11-15:16,
8 16:13-18:9, 28:3-34:2.)¹ As a creditor, Appellant Unite Here Health has
9 standing because Greenberg’s conflicts: (i) potentially favor one large creditor
10 (Valley) over the interests of the others; and (ii) limit the recovery of assets for
11 the receivership estate by preventing the Receiver from pursuing claims against
12 a potential target defendant (Xerox). *See e.g., Matter of Bohack Corp.*, 607
13 F.2d 258, 262 (2d Cir. 1979) (finding creditors have standing to seek
14 disqualification of bankruptcy debtor’s counsel because “their pecuniary
15 interests w[ould] suffer through depletion of estate assets in the form of fees
16 paid for the continued retention” of such counsel); *In re Enron Corp.*, No. 02

17 ¹ In the interest of judicial economy, like Respondents, Appellants
18 reference the detailed facts and legal arguments on these issues as set forth in
the Petition for Extraordinary Writ Relief in Case No. 82552.

1 Civ. 5638, 2003 U.S. Dist. Lexis 1442, **3-6 (S.D.N.Y. Feb. 3, 2003) (same).
2 Similarly, both Appellants have standing because they have been sued by the
3 Receiver in the Milliman Lawsuit for allegedly causing NHC's insolvency,
4 while similar claims have not been alleged against Greenberg's client (Xerox)
5 despite mounting evidence of Xerox's liability. *See, e.g., CFTC v. Eustace*,
6 Nos. 05-2973, 06-1944, 2007 U.S. Dist. LEXIS 33137, at **5-9, 13, 34-39
7 (E.D. Pa. May 3, 2007) (granting defendant's motion to disqualify where
8 Receiver and Receiver's counsel failed to pursue similar claims against their
9 own client); *In re S. Kitchens. Inc.*, 216 B.R. 819, 821, 829 (Bankr. D. Minn.
10 1998) (granting defendants' motion to disqualify plaintiff's counsel in
11 adversary proceeding "[b]ecause of the possibility that [counsel's] former client
12 w[a]s liable for the damage [plaintiff] attribute[ed] to the [d]efendants").

13 **B. This Appeal Is Authorized by NRS 696B.190(5).**

14 The plain language of NRS 696B.190(5) is unambiguous. An appeal
15 may be filed from an order granting or refusing rehabilitation, liquidation,
16 conservation, or receivership, and "*from every order in delinquency*
17 *proceedings having the character of a final order as to the particular portion*
18 *of the proceedings embraced therein.*" Thus, if an order resolving a motion

1 leaves no issues for future determination, the order will have the “character of a
2 final order” and be capable of appeal. *Valley Bank of Nev. v. Ginsburg*, 110
3 Nev. 440, 445, 874 P.2d 729, 733 (1994). The Motion to Disqualify raised very
4 discrete issues (whether Greenberg should be disqualified for breach of its
5 fiduciary duties relating to its conflicts of interest as to Valley and Xerox, and
6 for concealing such conflicts from the receivership court at the time of its
7 appointment and thereafter), and the Order fully resolved these issues.

8 While this Court has not had occasion to interpret or apply NRS
9 696B.190(5), the Supreme Court of Arkansas interpreted a virtually identical
10 statute in *Fewell v. Pickens*, 39 S.W.3d 447 (Ark. 2001), and held that an order
11 appointing a receiver and permanently enjoining the delinquent insurer’s parent
12 company and shareholder from transacting any business with the insurer had the
13 character of a final order. *Id.* at 449, 451. Here, Respondents contend that the
14 Order is not appealable because it “does not have nearly the significance” of an
15 order appointing a receiver. (Response & Counter-Mot. at 9:5-6.) However,
16 the “significance” of the order is not the issue — the finality of the order is the
17 pertinent question. Moreover, Respondents contend that the Order is just “one
18 episode in the portion of the proceedings related to the Court’s oversight and

1 approval of the Receiver’s actions and expenditures during the course of the
2 receivership” and each one of these “incremental steps” cannot constitute a
3 “final order” warranting an appeal. (*Id.* at 9:6-18.) However, this is exactly
4 what the plain language of NRS 696B.190(5) contemplates. As stated in
5 *Fewell*, the statutory language “contemplates *more than one final order* in
6 delinquency proceedings,” and an order is appealable even if “other [future]
7 orders might be entered . . . which touch and concern this order.” *Fewell*, 39
8 S.W.3d at 451; *see also In re Enron Corp.*, No. 02 Civ. 5638, 2003 U.S. Dist.
9 Lexis 1442, **6-9 (S.D.N.Y. Feb. 3, 2003) (holding that orders resolving
10 motions to disqualify counsel are final and appealable in bankruptcy
11 proceedings which allow appeals from orders which “finally dispose of discrete
12 disputes within the larger case”) Therefore, the Order is final and appealable.

13 DATED this 19th day of March, 2021.

14 BAILEY❖KENNEDY

15 By: /s/ Dennis L. Kennedy

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CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY❖KENNEDY and that on the 19th day of March, 2021, service of the foregoing **REPLY IN SUPPORT OF APPELLANTS' MOTION TO CONSOLIDATE; AND RESPONSE TO RESPONDENTS' COUNTER-MOTION TO DISMISS APPEAL** was made by electronic service through Nevada Supreme Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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