

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ESTATE
OF DEMETRIOS A. DALACAS,
DECEASED,

RYAN MCCLARAN,

Appellant,

v.

ESTATE OF DEMETRIOS A.
DALACAS; AND JASEN E.
CASSADY,

Respondents.

Electronically Filed
Nov 19 2021 11:43 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

SUPREME COURT CASE NO. 83702

Dist. Court Case No. P103708

**APPELLANT McCLARAN'S MOTION FOR DETERMINATION OF
STANDING TO APPEAL**

Appellant McClaran hereby submits this early Motion to determine a threshold issue as to whether he has proper standing to appeal in this matter from the District Court's Order appointing a Special Administrator. McClaran does not wish to litigate this appeal and have the standing issue later asserted so he proactively raises the legal issue now for the Court to determine.

I. BACKGROUND

This appeal arises from a dispute in the Eighth Judicial District as to who would be appointed the administrator of the Estate of Demetrios A. Dalacas, a

deceased attorney. A lengthy recitation of facts is not necessary for the Court to have in order to adjudicate the legal issue raised in this motion. However, to briefly explain, the Appellant, McClaran—a creditor of the Estate—claimed a statutory right under NRS § 139.040 to select the administrator, who he claimed needed to defend litigation and take other actions against the Estate’s insurance company, which had sued the Estate to void all insurance policies issued to the Estate. Despite an obvious adversarial relationship and no standing under NRS § 139.040 to make a counter-nomination, the District Court entertained a nomination by the Estate’s insurance company and appointed Jasen Cassady, Esq. as Special Administrator of the Estate, who had been nominated, hired and paid by the insurance company that is suing the Estate. Essentially, the Estate’s insurer took over the Estate so it would not oppose its efforts to void the Estate’s insurance coverage.

The District Court entered a formal Order appointing Mr. Cassady as Special Administrator on September 21, 2021 and Letters of Special Administration were entered on September 27, 2021 (See Exhibit 1). McClaran continues to fight this appointment as there is a clear bias and conflict in allowing the insurance company to appoint and financially control the administrator charged with defending the Estate from the insurance company’s separate lawsuit to void its coverage. McClaran filed a Notice of Appeal on October 21, 2021. However, he now asks the appellate court to make an early determination of his standing to appeal, as Nevada

law may not allow for an appeal and instead limit McClaran to writ relief under these circumstances.

II. LAW AND ARGUMENT

“NRAP 3A(b) designates the judgments and orders from which an appeal may be taken, and where no statutory authority to appeal is granted, no right exists.” *Taylor Constr. Co. v. Hilton Hotels Corp.*, 100 Nev. 207, 209, 678 P.2d 1152, 1153 (1984). In researching whether McClaran could appeal the District Court’s order appointing the Special Administrator, his counsel found two apparently conflicting statutes as to whether the District Court’s order is appealable.

First, NRS Chapter 140 refers to Special Administrators and states the following:

NRS § 140.020 Notice and order of appointment; order not appealable.

1. The appointment of a special administrator may be made at chambers or in open court, and without notice or upon such notice to such interested persons as the court deems reasonable, and must be made by entry upon the minutes of the court or by written order signed and filed, which must specify the powers to be exercised by the special administrator.

2. Upon the filing of the order, and after the person appointed has given bond if fixed by the court, the clerk shall issue special letters of administration, with a copy of the order attached.

3. In making the appointment of a special administrator, the court:

(a) Must appoint a person who satisfies the qualifications set forth in NRS 139.010; and

(b) May give preference to the person or persons entitled to

letters testamentary or letters of administration, ***but no appeal may be taken from the appointment.*** [Emphasis added]

At the same time, also under Title 12 [Wills and Estates of Deceased Persons] NRS §155.190 states the following:

NRS 155.190 Appealable orders.

1. Except as otherwise provided in subsection 2, in addition to any order from which an appeal is expressly permitted by this title, an appeal may be taken to the appellate court of competent jurisdiction pursuant to the rules fixed by the Supreme Court pursuant to Section 4 of Article 6 of the Nevada Constitution within 30 days after the notice of entry of an order:

(a) Granting or revoking letters testamentary ***or letters of administration.*** [emphasis added]

Thus, there appears to be two specific statutes, one barring an appeal and another allowing for it, regarding orders appointing a Special Administrator. In an older case, *Nev. Paving v. Callahan*, 83 Nev. 208, 427 P.2d 383 (1967), it appears that this Court found there was no conflict in the statutes because NRS §155.190 was held to refer to letters of *general* administration but not letters of *special* administration. Yet, that distinction is not apparent from the plain reading of the statute at all. Furthermore, although the documents here are entitled “Letters of Special Administration,” the court’s orders in this case were designed to be more like letters of general administration (they grant sweeping powers, are not stated to be temporary and were granted with notice). In *Nev. Paving*, the temporary, emergent nature of the letters seemed to be the main factor in the court’s decision, yet those factors do not exist in this case. Moreover, it appears that NRS §155.190

has been amended several times since the *Nev. Paving* case was decided in 1967, making it difficult to discern whether the case remains good law.

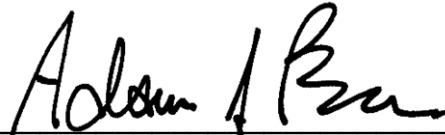
Therefore, in an abundance of caution, McClaran filed a Notice of Appeal within 30 days of the District Court's issuance of the order appointing the Special Administrator and the letters. However, it remains unclear to him and his counsel whether an appeal is allowed. If an appeal is not allowed, McClaran would be compelled to file a writ petition to challenge the ruling, citing dismissal of this appeal as the reason there is no adequate remedy at law.

III. LAW AND ARGUMENT

Faced with two seemingly contradictory statutes about whether an appeal may be taken from an order and letters of Special Administration, McClaran seeks to have the appellate court determine his standing now so his matter can be re-filed as a writ petition if standing to appeal is lacking.

Dated this 19th day of November, 2021.

BREEDEN & ASSOCIATES, PLLC

A handwritten signature in black ink, appearing to read "Adam J. Breiden", is written over a horizontal line.

ADAM J. BREIDEN, ESQ.

Nevada Bar No. 008768

376 E. Warm Springs Rd., Suite 120

Las Vegas, NV 89119

Ph. (702) 819-7770

Attorney for Appellant McClaran

CERTIFICATE OF SERVICE

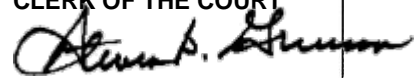
I HEREBY CERTIFY that on the 19th day of November 2021, I served a copy of the foregoing legal document entitled **APPELLANT McCLARAN'S MOTION FOR DETERMINATION OF STANDING TO APPEAL** via the method indicated below:

X	<p>Pursuant to NRAP 25(c), by placing a copy in the US mail, postage pre-paid to the following counsel of record or parties in proper person:</p> <table><tbody><tr><td>Kevin T. Strong, Esq. PRINCE LAW GROUP 10801 W. Charleston Blvd, Ste. 560 Las Vegas, Nevada 89135 <i>For Creditor Sirianni</i></td><td>Janeen V. Isaacson, Esq. LIPSON NEILSON P.C. 9900 Covington Cross Drive, Ste. 120 Las Vegas, Nevada 89144 <i>For Herself and the Insurance Company</i></td></tr><tr><td>Thomas R. Grover, Esq. BLACKROCK LEGAL, LLC 10155 W. Twain Avenue, Suite 100 Las Vegas, Nevada 89147 <i>For Special Administrator Jasen Cassady</i></td><td>Kevin R. Hansen, Esq. LAW OFFICE OF KEVIN R. HANSEN 5440 W. Sahara Avenue, Suite 206 Las Vegas, Nevada 89146 <i>For Creditor John and Denise Tousoulis</i></td></tr><tr><td>Elene Mylordos 14947 Fjord Street San Leandro, California 94578 <i>Interested Party</i></td><td>Agnes R. MacIntyre WELLS FARGO BANK, N.A. PO Box 3696 MAC P6053-021 Portland, Oregon 97208 <i>Creditor & Interested Party</i></td></tr></tbody></table>	Kevin T. Strong, Esq. PRINCE LAW GROUP 10801 W. Charleston Blvd, Ste. 560 Las Vegas, Nevada 89135 <i>For Creditor Sirianni</i>	Janeen V. Isaacson, Esq. LIPSON NEILSON P.C. 9900 Covington Cross Drive, Ste. 120 Las Vegas, Nevada 89144 <i>For Herself and the Insurance Company</i>	Thomas R. Grover, Esq. BLACKROCK LEGAL, LLC 10155 W. Twain Avenue, Suite 100 Las Vegas, Nevada 89147 <i>For Special Administrator Jasen Cassady</i>	Kevin R. Hansen, Esq. LAW OFFICE OF KEVIN R. HANSEN 5440 W. Sahara Avenue, Suite 206 Las Vegas, Nevada 89146 <i>For Creditor John and Denise Tousoulis</i>	Elene Mylordos 14947 Fjord Street San Leandro, California 94578 <i>Interested Party</i>	Agnes R. MacIntyre WELLS FARGO BANK, N.A. PO Box 3696 MAC P6053-021 Portland, Oregon 97208 <i>Creditor & Interested Party</i>
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An Attorney or Employee of the firm:

/s/ Sarah Daniels
BREEDEN & ASSOCIATES PLLC

EXHIBIT “1”



1 **NEOJ**

2 MICHAEL A. OLSEN, ESQ.

3 Nevada Bar No. 6076

4 THOMAS R. GROVER, ESQ.

5 Nevada Bar No. 12387

6 **BLACKROCK LEGAL, LLC**

7 10155 W. Twain Ave., Suite 100

8 Las Vegas, Nevada 89147

9 Telephone: (702) 855-5658

10 Facsimile: (702) 869-8243

11 mike@blackrocklawyers.com

12 tom@blackrocklawyers.com

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

15 In the Matter of the Estate of

16 DEMETRIOS DALACAS,

17 Deceased.

Case No.: P-20-103708-E

Dept. No.: 5

18 **NOTICE OF ENTRY OF ORDER**

19 PLEASE TAKE NOTICE that an **ORDER AFFIRMING REPORT AND**

20 **RECOMMENDATION, APPOINTING JASEN CASSADY AS SPECIAL**

21 **ADMINISTRATOR** was entered on the Court's record on the 21st day of September 2021, A
22 copy of said Order is attached hereto as **Exhibit "1"**.

23 DATED this 22nd day of September 2021.

24 /s/ Thomas R. Grover, Esq.

25 MICHAEL A. OLSEN, ESQ.

26 Nevada Bar No. 6076

27 THOMAS R. GROVER, ESQ.



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“EXHIBIT 1”

LIPSON NEILSON, P.C.
9900 Covington Cross Drive, Suite 120, Las Vegas, Nevada 89144
Telephone: (702) 382-1500 Facsimile: (702) 382-1512

LIPSON NEILSON P.C.
JOSEPH P. GARIN, ESQ.
Nevada Bar No. 6653
JANEEN V. ISAACSON, ESQ.
Nevada Bar No. 6429
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 - Telephone
(702) 382-1512 – Facsimile
jgarin@lipsonneilson.com
jisaacson@lipsonneilson.com
Attorneys for Defendants

DISTRICT COURT
CLARK COUNTY, NEVADA

In the Matter of the Estate of
DEMETRIOS DALACAS,

Deceased,

CASE NO. P-20-103708-E
DEPT NO.
PROBATE

In the Matter of the Estate of
DEMETRIOS DALACAS,

Deceased.

CASE NO. P-20-103708-E
DEPT NO.
PROBATE

**ORDER AFFIRMING REPORT AND
RECOMMENDATION, APPOINTING
JASEN CASSADY AS SPECIAL
ADMINISTRATOR**

Creditor Ryan McClaran's (hereafter "Creditor" or "McClaran") *Objection to Probate Commissioner's Report and Recommendation and Motion for Evidentiary Hearing* Doc ID #35 (hereafter "Objection") came before the Court on July 22, 2021, and following the review of the papers and pleadings on file, and considering oral argument by counsel at the time of hearing, the Court issued a Minute Order, now reduced to a formal order, which hereby finds and orders as follows:

THE COURT FINDS AND CONCLUDES that although the parties disagree as to the applicable standard of review of the objection the Probate Commissioner's *Report and Recommendation* Doc ID #30 (hereafter "RAR"), dated May 25, 2021, the case law under Venetian Casino, suggests that the correct standard is de novo review for questions of law and abuse of

1 discretion for question of fact. Thus, the report and recommendations must be reviewed for clear
2 error or arbitrary or capricious abuse of discretion. Qualification of an administrator is a question of
3 fact. Here, the court is unable to discern a clear error or arbitrary or capricious abuse of discretion.
4 Thus, there is no factual basis to sustain the Objection. ^{Venetian Casino Resort, LLC v. Eighth Jud.} District. Ct., 41 P.3d 327, 332 (2002).

5 **THE COURT FURTHER FINDS AND CONCLUDES** that parties agree to the relevant
6 statute: NRS139.010 and 130.040. There is no dispute that under NRS 139.040(1)(h) and (j),
7 McClaran, a purported creditor, enjoys a priority in appointment over Lipson Neilson. However, the
8 Probate Commissioner, in the RAR, made a ruling clearly finding of conflict of interest by attorney
9 Sharp, who as nominated by McClaran, under NRS 139.010. Thus, under NRS 139.010(3), Sharp is
10 not qualified to serve as the administrator and the priority for right to appointment need not even be
11 discussed.

12 **THE COURT FURTHER FINDS AND CONCLUDES** that Dickerson v. Eighth Judicial
13 Dist. Court, 82 Nev. 234, 238, 414 P.2d 946, 949 (1966) is inapplicable here. It is noted that
14 Dickerson was issued in 1966 and NRS 130.010 was amended multiple times since then. Most
15 notably, in 2001, this statute was amended to specifically include conflict of interest as basis to find
16 that a person is qualified to serve as an administrator. Thus, Dickerson was overruled by Statute.
17 Furthermore, applying Dickerson to this case would negate the power of the court to appoint a
18 special administrator under NRS 140.020.

19 **THE COURT FURTHER FINDS AND CONCLUDES** that there is insufficient argument
20 that attorney Cassady is not qualified to act as the special administrator or that he has a conflict of
21 interest. Thus, under NRS 139.050, his nomination to serve as the administrator should be granted.

22 Therefore, based upon the foregoing, and good cause appearing,

23 ///

24 ///

25 ///

1 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the Objection to Probate
2 Commissioners Report and Recommendations shall be **OVERRULED**.

3 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Probate
4 Commissioner's *Report and Recommendation* Doc ID #30 dated May 25, 2021 is **AFFIRMED**
5 **AND ADOPTED**.

6 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that JASEN
7 CASSADY, is appointed as Special Administrator of the Estate of DEMETRIOUS DALACAS to
8 act on behalf of the Estate in pending litigation where the Decedent or the Estate is named as a
9 party, and that Letters of Special Administration be issued to him upon him taking the oath
10 required by law.

11 **IT IS FURTHER ORDERED** that the Court waives the requirement of posting bond
12 by the Special Administrator provided that any proceeds from the liquidation of any estate
13 assets are deposited in the BLACKROCK LEGAL CLIENT TRUST ACCOUNT.
14

15 **IT IS FURTHER ORDERED** that Petitioner be granted all of the powers of a Special
16 Administrator contained in NRS Chapter 140.

17
18 **IT IS SO ORDERED.**

19 DATED this ____ day of September, 2021.

Dated this 21st day of September, 2021

20 
21 _____
22 DISTRICT COURT JUDGE

23 BA9 373 3E59 9D2A
24 Veronica M. Barisich
25 District Court Judge
26
27
28

Respectfully submitted by:

LIPSON NEILSON, LLP

/s/ Janeen V. Isaacson

JANEEN ISAACSON, ESQ.

Nevada Bar No. 6419
9900 Covington Cross, Suite 120
Las Vegas, Nevada 89144
Phone: (702) 382-1500

Attorneys for Defendants

Approved as to form and content:

BREEDEN & ASSOCIATES, PLLC

ADAM J. BREEDEN, ESQ.

Nevada Bar No. 008768
376 E. Warm Springs Rd., Suite 120
Las Vegas, Nevada 89119
Phone: (702) 819-7770
Attorneys for Plaintiff

Approved as to form and content:

BLACKROCK LEGAL

/s/ Thomas R. Grover

Michael A. Olson, Esq.

Nevada Bar No. 6076
Thomas R. Grover, Esq.
Nevada Bar No 12387
10155 W. Twain Ave., Suite 100
Las Vegas, Nevada 89147
Phone: (702) 855-5658
Attorneys for Jasen Cassady

Renee Rittenhouse

From: Thomas Grover <tom@blackrocklawyers.com>
Sent: Tuesday, September 7, 2021 5:50 PM
To: Renee Rittenhouse; DC5inbox@clarkcountycourts.us
Cc: Janeen Isaacson; 'Adam Breeden'; Kristy Johnson
Subject: RE: P-20-103708-C (In the Matter of the Estate of Demetrios Dalacas)

Follow Up Flag: Follow up
Due By: Tuesday, September 14, 2021 9:00 AM
Flag Status: Flagged

Categories: Email String

I approve of this order as to form and content. I represent Jasen Cassady who will be confirmed as Special Administrator.

Tom



Thomas R. Grover
10155 West Twain Suite 100
Las Vegas, NV 89147
T: 702.855.5658
F: 702.869.8243
C: 702.900.3003

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From: Renee Rittenhouse <RRittenhouse@lipsonneilson.com>
Sent: Tuesday, September 7, 2021 2:40 PM
To: DC5inbox@clarkcountycourts.us
Cc: Janeen Isaacson <JIsaacson@lipsonneilson.com>; Thomas Grover <tom@blackrocklawyers.com>; 'Adam Breeden' <adam@breedenandassociates.com>; Kristy Johnson <kristy@breedenandassociates.com>
Subject: P-20-103708-C (In the Matter of the Estate of Demetrios Dalacas)

Dear Dept. 5:

Please see attached Order Affirming Report & Recommendation Appointing Jasen Cassedy as Special Administrator for review by the Judge. It is our understanding that Mr. Breeden will be submitting a competing order.

Please do not hesitate to contact our office with any questions or concerns.

Thank you,

LAW OFFICES

Lipson | Neilson

Attorneys and Counselors at Law

Renee M. Rittenhouse

***Legal Assistant to Janeen V. Isaacson, Esq.
and Peter E. Dunkley, Esq.***

Lipson Neilson

9900 Covington Cross Drive, Suite 120

Las Vegas, NV 89144

(702) 382-1500

(702) 382-1512 (fax)

E-Mail: rrittenhouse@lipsonneilson.com

Website: www.lipsonneilson.com

OFFICES IN NEVADA, MICHIGAN, ARIZONA & COLORADO

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 In the Matter of:

CASE NO: P-20-103708-E

7 Demetrios Dalacas, Deceased

DEPT. NO. Department 5

8
9 **AUTOMATED CERTIFICATE OF SERVICE**

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

13 Service Date: 9/21/2021

14 Adam Breeden adam@breedenandassociates.com

15 Thomas Grover tom@blackrocklawyers.com

16 Susana Nutt snutt@lipsonneilson.com

17 Michael Olsen mike@blackrocklawyers.com

18 Renee Rittenhouse rrittenhouse@lipsonneilson.com

19 Kevin Hansen, Esq. kevin@kevinrhansen.com

20 Amy Wilson, Esq. amy@kevinrhansen.com

21 Amanda Harmon amandah@kevinrhansen.com

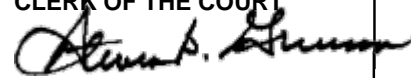
22 Kristy Johnson kristy@breedenandassociates.com

23 Christine Manning christine@blackrocklawyers.com

24 Julian Campbell julian@blackrocklawyers.com

25 Janeen Isaacson JIsaacson@lipsonneilson.com
26
27
28

1	Eservice Filing	eservice@thedplg.com
2		
3	Vicki Pyne	vicki@blackrocklawyers.com
4	Rocio Leal	rocio@kevinrhansen.com
5	Thomas Grover	tom@blackrocklawyers.com
6	Cameron Starr	cameron@blackrocklawyers.com
7	Nicole Littlejohn	nlittlejohn@thedplg.com
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1 **LAEI**
2 MICHAEL A. OLSEN, ESQ.
3 Nevada Bar No. 6076
4 THOMAS R. GROVER, ESQ.
5 Nevada Bar No. 12387
6 **BLACKROCK LEGAL**
7 10155 W. Twain Ave., Suite 100
8 Las Vegas, NV 89147
9 Telephone (702) 855-5658
10 Facsimile (702) 869-8243
11 mike@blackrocklawyers.com
12 tom@blackrocklawyers.com
13 *Attorneys for Jasen Cassidy*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 In the Matter of the Estate of

17 DEMETRIOS A. DALACAS,

18 Deceased.

19 Case No. P-20-103708-E
20 Dept. No. 5

21 **LETTERS OF SPECIAL
22 ADMINISTRATION**

23 On the 21st of September 2021, the Court entered an Order appointing Jasen Cassidy as
24 Special Administrator of the estate of the above-named Decedent. The Order includes:

25 A directive for no bond.

26 A directive that in the event the estate assets are liquidated those assets be placed
27 in the Client Trust Account Blackrock Legal until further ordered by the Court.

28 The Special Administrator having duly qualified may act and has the authority
and duties of a Special Administrator as provided under NRS 140.040.

In testimony of which, I have this date signed these Letters and affixed the Seal of
the Court.

STEVEN D. GRIERSON, CLERK OF THE COURT

By: 

Deputy Clerk

Michelle McCarthy

9/28/2021

Date

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OATH

I, Jasen Cassady, whose mailing address is 10799 W Twain Ave, Las Vegas, NV 89135,
solemnly affirm that I will faithfully perform according to law duties of Special Co-
Administrator and that any matters stated in any petition or paper filed with the Court are true of
my own knowledge or, if any matters are stated on information or belief, I believe them to be
true.



Jasen Cassady, Special Administrator

SIGNED AND SWORN to before me
this 27th day of September, 2021, by



NOTARY PUBLIC

