

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

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Elizabeth A. Brown  
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JOHN TOWNLEY,

Petitioner,

S. Ct. Case No.

vs.

Dist. Ct. Case No. DV21-01640

SECOND JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA, IN AND  
FOR THE COUNTY OF WASHOE, THE  
HONORABLE CYNTHIA LU,  
ACTING DISTRICT JUDGE,  
FAMILY COURT DIVISION, DEPT. 5,

Respondents,

and

ROCHELLE MEZZANO,

Real Party in Interest.

\_\_\_\_\_ /

**ORIGINAL PETITION FOR WRIT OF MANDAMUS**

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## NRAP 26.1 DISCLOSURE

I hereby certify that the following are the persons and entities described in NRAP 26.1(a) and must be disclosed. These representations are made in order that Judges of this Court may evaluate possible disqualifications or recusal.

1. Alexander C. Morey, Esq.
2. Silverman Kattelman Springgate, Chtd.

There are no applicable disclosures regarding corporations S or stock ownership. There are no corporations or other entities with any ownership interest in Silverman Kattelman Springgate, Chtd.

The following attorneys or entities have appeared on behalf of  
Petitioner:

1. Alexander C. Morey, Esq.
2. Silverman Kattelman Springgate, Chtd.

Dated this 6<sup>th</sup> day of April 2022.

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## TABLE OF CONTENTS

NRAP 26. 1 DISCLOSURE.....	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES.....	v
NRAP 17(a) STATEMENT.....	1
RELIEF SOUGHT.....	1
ISSUES PRESENTED.....	1
A. Whether the district court improperly determined the real party in interest was not personally served under NRCP 4.2(a)(1) by the process server leaving the documents outside her door after announcing his intent and announcing the real party in interest was served when the reason the real party in interest did not receive the service documents physically in her hands was her refusal to open a screen door and take the documents despite the process server, while standing a few feet from the real party in interest and speaking through a mesh screen door, (a) advising her she was being served, (b) holding the process documents in his hand in her view, and (c) asking if she would take the documents or if he should leave them at the door.....	1
B. Whether the district court improperly determined the real party in interest was “under no obligation to come outside to take the documents” from the process server despite the announcement by the process server he was legally serving the real party in interest while holding the process documents within a few feet of the real party in interest who had interposed a screen door between herself and the process server.....	2
FACTS.....	2
POINTS AND LEGAL AUTHORITIES.....	5

A. Writ Relief is the Appropriate Means to Challenge an Order Quashing Service.....	6
B. Ms. Mezzano was Served by the Process Server Delivering the Summons and Complaint to Her Personally Notwithstanding Her Refusal to Take the Documents into Her Hands.....	6
C. The Case Law Relied on by the Trial Court Does not Support the Trial Court’s Decision to Quash Service of Process.....	17
D. Rewarding Ms. Mezzano for Refusing to Take Possession of the Documents is Contrary to the Administration of Justice and the Purposes of Service.....	20
CONCLUSION.....	22
VERIFICATION.....	24
CERTIFICATE OF COMPLIANCE.....	25
CERTIFICATE OF SERVICE.....	26

## TABLE OF AUTHORITIES

### Cases

<i>Ali v. Mid-Atlantic Settlement Services, Inc.</i> , 233 F.R.D. 32 (D.D.C. 2006)	
.....	20, 21
<i>Bertha G. v. Paul T.</i> , 509 N.Y.S.2d 995 (N.Y. Fam. Ct. 1986).....	8
<i>Borden v. Borden</i> , 23 N.W. 573 (Wis. 1885).....	7
<i>Bossuk v. Steinberg</i> , 447 N.E.2d 56 (N.Y. 1983).....	18
<i>CRB v. Department of Family Servs.</i> , 974 P.2d 931 (Wyo. 1999) .....	7, 8
<i>Doe v. Karadzic</i> , 1996 U.S. Dist. LEXIS 5291, 1996 WL 194298 (S.D.N.Y. 1996).....	14, 15
<i>Drews v. Fannie Mae</i> , 850 N.W.2d 738 (Minn. Ct. App. 2014).....	7, 9, 10
<i>Fagin v. Fagin</i> , 91 Nev. 794, 544 P.2d 415 (1975).....	21
<i>Firouzabadi v. First Judicial Dist. Court</i> , 110 Nev. 1348, 885 P.2d 616 (1994) .....	6
<i>Francis S. Denny, Inc. v. I.S. Laboratories, Inc.</i> , 737 F. Supp. 247 (S.D.N.Y. 1990). .....	18
<i>Freeman v. Second Judicial Dist. Court</i> , 116 Nev. 550, 1 P.3d 963 (2000)..	6
<i>Haney v. Olin Corp.</i> , 245 So. 2d 671 (Fla. Dist. Ct. App. 1971) .....	7, 11, 12
<i>Heller v. Levinson</i> , 152 N.Y.S. 35 (N.Y. App. Div. 1915).....	7, 10, 11
<i>Hoffman v. Logan</i> , 2021 Wash. App. LEXIS 1808, 2021 WL 3144951 (Wash. Ct. App. 2021) (unpublished).....	7, 13, 14
<i>In re: Application of Ball</i> , 38 P.2d 411 (Cal. Ct. App. 1934).....	7, 8, 9
<i>Liberman v. Commercial Nat’l Bank</i> , 256 So. 2d 63 (Fla. Dist. Ct. App. 1971) .....	12
<i>Norris v. Causey</i> , 869 F.3d 360 (5th Cir. 2017).....	18, 19

<i>Peoples Trust Co. v. Kozuck</i> , 236 A.2d 630 (N.J. Super. 1967).....	7, 12, 13
<i>Slaieh v. Zeineh</i> , 539 F. Supp. 2d 864 (S.D. Miss. 2008).....	7, 15, 16
<i>State v. Counts</i> , 452 A.2d 1141 (R.I. 1982) .....	7
<i>United Pacific Ins. Co. v. Discount Co.</i> , 550 P.2d 699 (Wash. Ct. App. 1976) .....	7, 16, 17
<i>Weiss v. Glemp</i> , 792 F. Supp. 215 (S.D.N.Y. 1992).....	17, 18

## **Rules**

NRCP 4.2(a)(1) .....	6
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## **PETITION FOR WRIT OF MANDAMUS**

Comes now Petitioner, John Townley, through counsel, Silverman Kattelman Springgate, Chtd., and petitions this Court for a writ of mandamus.

### **I. NRAP 17(a) STATEMENT**

This matter should be retained by the Supreme Court pursuant to NRAP 17(a)(11) & (12) because this case concerns matters of first impression and statewide importance: (1) whether personal service occurs when a process server deposits the service documents in a conspicuous place after having advised a defendant who refuses to accept the papers that the process server is serving the defendant and leaving the documents, and (2) the duties on a defendant to accept service of process when it is presented to her and she is told she is being served.

### **II. RELIEF SOUGHT**

Petitioner seeks a writ of mandamus compelling the district court to find the real party in interest, Rochelle Mezzano, was properly served with process and to deny Ms. Mezzano's Specially Appearing Defendant's Motion to Quash Service of Summons and Complaint.

### **III. ISSUES PRESENTED**

Whether the district court improperly determined the real party in interest was not personally served under NRCP 4.2(a)(1) by the process server leaving the documents outside her door after announcing his intent and announcing the real

party in interest was served when the reason the real party in interest did not receive the service documents physically in her hands was her refusal to open a screen door and take the documents despite the process server, while standing a few feet from the real party in interest and speaking through a mesh screen door, (a) advising her she was being served, (b) holding the process documents in his hand in her view, and (c) asking if she would take the documents or if he should leave them at the door.

Whether the district court improperly determined the real party in interest was “under no obligation to come outside to take the documents” from the process server despite the announcement by the process server he was legally serving the real party in interest while holding the process documents within a few feet of the real party in interest who had interposed a screen door between herself and the process server.

#### **IV. FACTS**

In 2019, John Townley filed a divorce action in the Second Judicial District Court of the State of Nevada, Washoe County. (Petitioner’s Appendix, hereinafter “PA” (PA001-PA005.) He attempted to serve Rochelle Mezzano with that action. (PA007.) Despite receiving actual notice of the action and communicating that she would need funds for a legal defense, (PA010), Ms. Mezzano did not participate in the divorce case, and Mr. Townley received a default judgment. (PA012.) This



Court, in case #81379, eventually determined the attempted service was not sufficient under NRCP 4.2, reversed the trial court's denial of Ms. Mezzano's NRCP 60(b) motion to set aside the default decree, and remanded the matter for further proceedings. (PA013-PA017.) This Court noted the process server did not see or directly interact with Ms. Mezzano and did not declare service was being attempted when he left documents at her home after Ms. Mezzano declined to come to the door. (PA016.)

Fearing he would not be able to obtain personal jurisdiction over Ms. Mezzano in the remanded action because more than 120 days had passed without service of process, Mr. Townley filed a new action in the Second Judicial District Court of the State of Nevada, Washoe County, case DV21-01640. (PA018-PA027.)

On November 19, 2021, Dustin Grate of Grate Detections, LLC, who Mr. Townley had hired to serve Ms. Mezzano, arrived at 735 Aesop Court, Reno, Nevada 89512, having identified the property as a potential residence of Ms. Mezzano. (PA029, PA039-PA040.) At 12:56 p.m., a second employee of Grate Detections approached the front door of the home while Mr. Grate video recorded the proceedings from his vehicle. (PA029, PA061) An unknown male answered the door and called to Ms. Mezzano. (PA029; PA062.) When Ms. Mezzano appeared in the window of the home, Mr. Grate exited the vehicle—continuing to video

record—and approached the home. (PA030.) He announces to Ms. Mezzano “Hi Rochelle, you are positively identified. You are being served.” (PA030, PA059.)<sup>1</sup> Ms. Mezzano makes no response, and Mr. Grate continues along the front porch toward the front door of the home. (PA030.) The front entry of the home is blocked by a transparent screen door. (PA035, PA063-PA065.) The interior door is open, and Ms. Mezzano and Mr. Grate can see one another through the screen. (PA035, PA063-PA065.) Ms. Mezzano is standing behind the screen door approximately three feet from Mr. Grate. (PA030, PA064.) Mr. Grate announces “Okay. So these papers are for you.” (PA059.) Ms. Mezzano does not respond. (Id.) Mr. Grate, separated from Ms. Mezzano by the screen door, is holding the service documents in his hand. (PA030.) Mr. Grate, referring to the service documents, says “You can either take them or we can drop them at your door.” (PA059.) Ms. Mezzano does not respond. (Id.) Mr. Grate continued speaking to Ms. Mezzano through the screen door: “So you’re positively identified. Would you like to take these papers or would you like me to leave them there?” (PA059.) Ms. Mezzano continues to stare at Mr. Grate and then walks away while closing the door. (PA030, PA063-PA066.) While the door is closing, Mr. Grate places the documents just outside the door on the entry mat and loudly says “Okay, Rochelle, I’m leaving them right

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<sup>1</sup> For the Court’s ease of review, Mr. Townley obtained a transcript of the video recording, see PA058-060.

here on your doorstep. It's filmed. You are personally served." (PA059, PA065-PA067.) Mr. Grate and his assistant return to their vehicle and wait. (PA030.) Approximately 25 minutes later, the gentleman who first answered the door appears and retrieves the documents. (PA030.)

On December 28, 2021, Ms. Mezzano, through counsel, filed her Specially Appearing Defendant's Motion to Quash Service of Summons and Complaint. (PA041-PA043.) Mr. Townley opposed the motion, (PA044-PA049), and Ms. Mezzano filed a reply in support, (PA050-PA053). Ms. Mezzano did not provide any affidavits, declarations, or other evidence to contradict the process server's statements or the video of the events. (Id.) The trial court issued an Order Quashing Service of Process on March 2, 2022. (PA054-PA057.) In that order, the trial court found the process server "did not state they attempted to hand Ms. Mezzano the documents directly," (PA056), that Ms. Mezzano "was under no obligation to come outside to take the documents" and that her failure to exit her home to accept the documents was not "evasion of service." (PA056.)

## **V. POINTS AND LEGAL AUTHORITIES**

The Court should take this opportunity to clarify that service occurs when a process server deposits the documents in a conspicuous place after having advised a defendant who refused to take possession of the documents that the process server was doing so.

This Court may also wish to take this opportunity to clarify the state of Nevada law and the duties on a defendant to accept service of process when it is presented to her and is not taken into her hands, she interposes a door or other barrier between herself and the process server, or she otherwise refuses to physically accept the documents despite the process server advising the defendant she is being served.

These are issues of substantial statewide importance because service of process is essential to establish the jurisdiction of the courts to make valid orders affecting the parties' rights and duties.

**A. Writ Relief is the Appropriate Means to Challenge an Order Quashing Service.**

A writ of mandamus is the appropriate means to challenge an order quashing service of process. *Freeman v. Second Judicial Dist. Court*, 116 Nev. 550, 552, 1 P.3d 963, 965 (2000) (stating that "a petition for a writ of mandamus is the proper means by which to challenge an order quashing service of process"); *Firouzabadi v. First Judicial Dist. Court*, 110 Nev. 1348, 1351-52, 885 P.2d 616, 618 (1994) ("As no appeal lies from an order quashing service of process, a petition for a writ of mandamus is the proper means by which to challenge such an order.")

**B. Ms. Mezzano was Served by the Process Server Delivering the Summons and Complaint to Her Personally Notwithstanding Her Refusal to Take the Documents into Her Hands.**

Service of process may be accomplished on an individual by “delivering a copy of the summons and complaint to the individual personally.” NRCp 4.2(a)(1). This Court has not previously issued an opinion explaining what constitutes “personal delivery” when a defendant declines to accept process where, as here, the defendant—who has been involved in litigation with the plaintiff for approximately two years—and the process server are within speaking distance of each other, the process server announces they are attempting service, and the process server has the documents to be served in his hand visible to the defendant.

Mr. Townley submits the rule announced in *Peoples Trust Co. v. Kozuck*, 236 A.2d 630 (N.J. Super. 1967), is the appropriate standard:

it is generally held that when a summons is offered to someone, he cannot avoid service by refusing physically to accept the summons if he is informed that service of process is being attempted.

*Id.* at 631.<sup>2</sup>

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<sup>2</sup> See also *Slaieh v. Zeineh*, 539 F. Supp. 2d 864, 871 (S.D. Miss. 2008), *In re: Application of Ball*, 38 P.2d 411, 412 (Cal. Ct. App. 1934), *Haney v. Olin Corp.*, 245 So. 2d 671, 674 (Fla. Dist. Ct. App. 1971), *Drews v. Fannie Mae*, 850 N.W.2d 738, 742 (Minn. Ct. App. 2014), *Heller v. Levinson*, 152 N.Y.S. 35, 36-37 (N.Y. App. Div. 1915), *State v. Counts*, 452 A.2d 1141, 1143 (R.I. 1982), *Hoffman v. Logan*, 2021 Wash. App. LEXIS 1808 at \*15-16, 2021 WL 3144951 (Wash. Ct. App. 2021) (unpublished), *United Pacific Ins. Co. v. Discount Co.*, 550 P.2d 699, 701 (Wash. Ct. App. 1976), *Borden v. Borden*, 23 N.W. 573, 574 (Wis. 1885), *CRB v. Department of Family Servs.*, 974 P.2d 931, 935-36 (Wyo. 1999).

In this case, the process server informed Ms. Mezzano she was being legally served while holding the documents approximately three feet away from Ms. Mezzano who had interposed a transparent screen door between herself and process server.<sup>3</sup> Ms. Mezzano cannot avoid service by refusing to accept the proffered documents.

On comparable facts, Nevada's sister courts have found proper service.

- *CRB v. Department of Family Servs.*, 974 P.2d 931 (Wyo. 1999):
  - **Facts.** The process server attempted to serve the defendant at his apartment. The defendant refused to open the door. The process server telephoned the defendant while observing him through a window. The process server advised the defendant he was being served and the documents would be in his mailbox. The trial court found proper service.
  - **Held.** Affirmed. "The record is clear that CRB knew service was being attempted and he deliberately attempted to avoid that service. Under these circumstances, the process server took appropriate action by informing CRB

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<sup>3</sup> As explained in *Bertha G. v. Paul T.*, 509 N.Y.S.2d 995 (N.Y. Fam. Ct. 1986), "while there is no general rule which requires that a process server announce that he is making service when he does so, it is required that, if the respondent evades or rejects the service, the process server cannot leave in silence but must announce his action." *Id.* at 997. In this case, the process server repeatedly used the words "served" and "legally served" and "service" when approaching and addressing Ms. Mezzano and presented uncovered documents.

at that time that he was being served and then leaving the summons and complaint in a location where CRB was likely to find them.” *Id.* at 935.

- *In re: Application of Ball*, 2 Cal. App. 2d 578 (Cal. Ct. App. 1934):
  - **Facts.** The process server, who had served the defendant with prior similar actions, approached the defendant where he had been previously served and, within about 12 feet of the defendant while holding the process in his hand, said “I have here another one of those things for you.” The defendant replied “You have nothing for me.” When the defendant began walking away while looking at the process server, the process server “handed or tossed” the process toward the defendant. The documents fell a few feet from the defendant who continued to walk away without the documents. The Railroad Commission found the defendant was personally served.
  - **Held.** Affirmed on an original writ petition. “We take it that when men are within easy speaking distance of each other and facts occur that would convince a reasonable man that personal service of a legal document is being attempted, service cannot be avoided by denying service and moving away without consenting to take the document in hand.” *Id.* at 412.
- *Drews v. Fannie Mae*, 850 N.W.2d 738 (Minn. Ct. App. 2014):
  - **Facts.** The process server in a foreclosure action requiring strict statutory compliance under Minnesota law, after a “stakeout” at the defendant’s

property, and observing a man meeting the description of the defendant for approximately 90 minutes, spoke to the man through a permeable mesh screen window, advised him he was there to serve foreclosure documents. The process server asked the man to come to the door to accept the documents. The man froze, did not respond, and walked away from the window. The process server “vocalized that since Mr. Drews would not accept the service documents,” he would tape them to the door of the home, which he did. The process server returned some time later and observed the documents still on the door. The trial court found proper service.

- **Held.** Affirmed. “We conclude that taping the papers to Drews’s front door after speaking to him through a window is analogous to placing the papers under a windshield wiper of an occupied vehicle.” *Id.* at 743. “Personal delivery is satisfied ‘if the process server and the defendant are within speaking distance of each other, and such action is taken as to convince a reasonable person that personal service is being attempted,’ because ‘service cannot be avoided by physically refusing to accept the summons.” *Id.* at 742.
- *Heller v. Levinson*, 152 N.Y.S. 35 (N.Y. App. Div. 1915):
  - **Facts.** Service made by a person familiar with the defendant. The person approached the defendant, stated “I got a little paper for you,” received a



response “I don’t want it,” and placed the paper in the defendant’s pocket.

Trial court determined service was not effective.

- **Held.** Reversed. The preponderance of the evidence established that service occurred: ““any service must be deemed sufficient which renders it reasonably probable that the party proceeded against will be apprised of what is going on against him, and have an opportunity to defend.” *Id.* at 36.
- *Haney v. Olin Corp.*, 245 So. 2d 671 (Fla. Dist. Ct. App. 1971):
  - **Facts.** Deputy Sheriff observed a residence door open at approximately midnight and saw two women emerge. He approached them and identified himself as a deputy sheriff. One of the women, later identified as the wife of the defendant, ran back into the house yelling “No! No!”. The sheriff followed her, but the door was closed to him. He announced he had a summons and complaint. He read the summons and announced he was leaving a copy on the doorstep. Trial court found good service.
  - **Held.** Affirmed over the defendant’s claim service required some communication between the defendant and the process server. “We fail to see the significance of such when appellant was physically present on the premises, was reasonably apprised of the officer’s presence and purpose, and could have had the suit papers placed directly in his hand by the simple

expedient of opening the door in response to the officer's request." *Id.* at 674.

- Further stated that "[a]n officer's reasonable attempt to effect personal service of process upon a person in his own home, when the person reasonably should know the officer's identity and purpose, cannot be frustrated by the simple expedient of the person closing the front door in the officer's face and willfully refusing to accept service of process, very much as a child playing a game of tag might gain instantaneous immunity by calling 'King's X'." *Id.* at 673.
- *Liberman v. Commercial Nat'l Bank*, 256 So. 2d 63 (Fla. Dist. Ct. App. 1971):
  - **Facts.** Defendant ran into his house and closed the door upon seeing the process server approach. The process server left a copy of the documents in the defendant's mailbox, drove around the block, parked to observe the defendant's residence, and watched the defendant exit the home and retrieve the papers. The trial court denied a motion to quash.
  - **Held.** Affirmed. "While this approaches the outer limits, we conclude . . . that personal service on [the defendant] was perfected." *Id.* at 64.
- *Peoples Trust Co. v. Kozuck*, 236 A.2d 630 (N.J. Super. 1967):
  - **Facts.** The process server testified he rang the doorbell for the defendants' home, heard a woman open a window upstairs and ask "Who's there", he

asked in response “Are you Mrs. Kozuck?”, received an affirmative response, and then advised the woman he had a summons and complaint for Peoples Trust versus the defendants. The process server further testified the woman then denied she was one of the defendants and started to close the window when he advised her he would leave the papers in the mailbox, which he did. The defendant testified a male voice called up that “he had papers from the Peoples Trust,” that she said her husband, the other defendant, was not home, and that she was not the defendant. She testified the man said he would leave the papers outside, and that she found the papers on the stoop. She admitted she knew the plaintiff was seeking to collect money from her and her husband and did not want to receive papers. The trial court held service was proper.

- **Held.** Affirmed. “Such service is valid and could not be avoided by Mrs. Kozuck’s refusal to open the door and accept the papers, or by her denying her true identity.” *Id.* at 632. “[I]t is generally held that when a summons is offered to someone, he cannot avoid service by refusing physically to accept the summons if he is informed that service of process is being attempted. [Collected Citations.]” *Id.* at 631. “The rule means that a person within the jurisdiction has an obligation to accept service of process when service is attempted reasonably.” *Id.*

- *Hoffman v. Logan*, 2021 Wash. App. LEXIS 1808, 2021 WL 3144951 (Wash. Ct. App. Jul. 26, 2021) (unpublished) (citation permitted under Wash. GR 14.1 (Lexis 2021)):
  - **Facts.** The process server handed the defendant's wife the summons and complaint at the defendant's apartment in New Jersey. The woman returned the documents and closed the door. No one would thereafter answer the door. The process server placed the documents under the door and yelled he was leaving the papers and "You are being served." The defendant claimed he was not personally served. The trial court held service was effective.
  - **Held.** Affirmed. The process server attempted to yield possession and control of the documents to the defendant's wife, but she refused them. "A process server accomplishes service if there is a clear attempt to yield possession and control of the documents to the person being served." *Id.* at \*15-16.
- *Doe v. Karadzic*, 1996 U.S. Dist. LEXIS 5291, 1996 WL 194298 (S.D.N.Y. 1996):
  - **Facts.** A process server entered a Manhattan hotel lobby on February 11, 1993, with a copy of the summons and complaint. "As he approached the defendant and removed the papers to be served from his coat . . . the Special Agent in Charge of the protective detail for defendant . . . who was standing

within feet of the defendant, intercepted [the process server] and batted [his] hand away.” The Special Agent then “held defendant and physically moved as quickly as possible to the waiting elevator.” The Special Agent, who was next to the defendant throughout, heard the process server should “words to the effect of ‘You’ve been served. You’ve been served.’”

- **Held.** Service effective. The process server approached the defendant, offered papers, had them knocked from his hand, left them near the defendant, and “clearly apprised defendant that he was attempting to serve legal papers, by calling after him words to the effect of ‘you’ve been served’”. *Id.* at \*5-6.
- *Slaieh v. Zeineh*, 539 F. Supp. 2d 864 (S.D. Miss. 2008):
  - **Facts.** The process server approached the defendant at his home, identified himself, and informed the defendant he was there to serve legal documents. The defendant responded “I do not want them.” The process server attempted to hand the documents to the defendant who turned and walked away. The process server said “You are served,” and again attempted to hand the documents to the defendant who did not take them. The process server dropped the papers to the ground. The defendant asserted the papers were not “delivered” to him.

- **Held.** Service was effective. “Contrary to defendant’s urging, the question here is not what would suffice as ‘delivery’ in general, but rather what constitutes ‘delivery’ of a copy of the summons and complaint to the defendant personally in a situation where the defendant is aware that service is being attempted and seeks to avoid service by refusing to accept service.” *Id.* at 868. “The court is convinced that confronted with this situation, the Mississippi courts, as any other court, would find that this defendant was effectively served with process despite his refusal to take the papers into his hands.” *Id.* at 870.
- *United Pacific Ins. Co. v. Discount Co.*, 550 P.2d 699 (Wash. Ct. App. 1976):
  - **Facts.** The process server approached the defendant’s house and engaged in a conversation with an adult woman at the front door. The process server testified he said “Mrs. Norelius?” received the response “Yes,” and then asked if the defendant was home. The woman advised him the defendant was not home at which point the process server asked the woman whether she was “Phyllis,” the defendant’s wife. The process server further testified the woman gave a long pause and asked what he wanted at which point he advised her he had “some legal papers for her” and the woman slammed the door knocking the papers from his hand. He then “hollered out that she had

been legally served” and left. The woman never touched the papers. The trial court found proper service.

- **Held.** Affirmed. The facts “demonstrate a clear attempt by the process server to yield possession and control of the documents to Mrs. Norelius while he was positioned in a manner to accomplish that act. Normal ‘delivery’ thereof would have been effected upon Mrs. Norelius except for her obvious attempt to evade service by slamming the door after the papers had been held out to her.” *Id.* at 561-62.

Here, Ms. Mezzano, as were the defendants in the foregoing cases, was properly served when she declined to take the documents and the process server left them on her doorstep after announcing his intention and advising Ms. Mezzano she was legally served.

**C. The Case Law Relied on by the Trial Court Does not Support the Trial Court’s Decision to Quash Service of Process.**

The cases relied upon by the trial court are inapposite to the present case. *Weiss v. Glemp*, 792 F. Supp. 215 (S.D.N.Y. 1992), concerned attempted service on a Catholic Cardinal during a procession from the Rectory of the Cathedral of the Immaculate Conception to the Cathedral itself by the defendant and a retinue of other Catholic prelates. The events surrounding service were disputed, and the court rejected all testimony by the process server concerning the events. Thus, the evidence before the court was that a person approached the defendant during the

process, made no oral announcement concerning service and did not tuck papers under the defendant's arm as claimed, but the papers fell to the ground. The court concluded the defendant could have reasonably believed the "papers proffered by Mrs. Frisch could just as well have been a petition, a leaflet, a protest, or another non-legal document." *Id.* at 215. In reaching its decision, the *Weiss* court distinguished New York case law concerning defendants who resist service of process:

There is some flexibility in the requirements of § 308 when a defendant resists service. See *Bossuk*, 460 N.Y.S.2d at 510 (holding "where the person to be served interposes a door between himself and the process server, the latter may leave the summons outside the door, provided the person to be served is made aware that he is doing so"); *Francis S. Denney, Inc. v. I.S. Laboratories, Inc.*, 737 F. Supp. 247, 248 n.1 (S.D.N.Y. 1990) (leaving an order to show cause outside a door held to be proper delivery under § 308(1) when the recipient slammed the door and knowingly refused to open it to accept service).

*Weiss*, 792 F. Supp. at 224-25.

This case is factually comparable to *Bossuk*<sup>4</sup> and *I.S. Laboratories*<sup>5</sup> and substantially different from the events in *Weiss*, upon which the trial court relied in quashing service.

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<sup>4</sup> *Bossuk v. Steinberg*, 447 N.E.2d 56 (N.Y. 1983).

<sup>5</sup> *Francis S. Denney, Inc. v. I.S. Laboratories, Inc.*, 737 F. Supp. 247 (S.D.N.Y. 1990).



In *Norris v. Causey*, 869 F.3d 360 (5th Cir. 2017), the appellate court remanded for further fact finding because it was unclear whether a refusal to accept service and the posting of the service documents on the defendant's door occurred on the same day. In *Norris*, the process server's affidavit stated that the defendant's wife "'yelled through the door that she would not accept service . . . ." The affidavit then says that "[s]ervice was subsequently made on February 2, 2015 by posting the [documents] on the front door." *Id.* at 370. The appellate court, considering the import of the affidavit, noted first that "whether the yelling and posting occurred on the same day matters a great deal. Leaving a summons and complaint at a residence door, **unaccompanied by a refusal to accept service**, is not effective service." *Id.* (emphasis added). The court then noted that "[o]n the other hand, **a defendant's refusal to accept service is not rewarded** when the process server announces the nature of the documents and leaves them in close proximity to the defiant defendant." *Id.* (emphasis added). The appellate court concluded that "if [the defendant's] wife was present and refusing service the day of the posting, leaving the summons on the door may have qualified as" service. *Id.* So, the appellate court remanded the matter for the trial court to first determine whether the refusal and posting occurred on the same day and then invited the trial court to engage in additional factfinding if it concluded "the documents were not posted on the door the same day [the defendant's] wife was home and refused

service.” *Id.* at 370-71. Contrary to the trial court’s decision in this case, the analysis in *Norris* supports a finding of good service on Ms. Mezzano. There is no dispute the process server appearing at Ms. Mezzano’s house, stating he was legally serving Ms. Mezzano while holding the service documents in Ms. Mezzano’s view from a few feet away, Ms. Mezzano’s refusal to accept the documents, and the process server leaving of the documents at her door while announcing he was serving Ms. Mezzano, occurred on the same day—indeed in the same few minutes.

**D. Rewarding Ms. Mezzano for Refusing to Take Possession of the Documents is Contrary to the Administration of Justice and the Purposes of Service.**

The rules for service are intended to provide a defendant notice comporting with due process that an action has been brought against her. In *Ali v. Mid-Atlantic Settlement Services, Inc.*, 233 F.R.D. 32 (D.D.C. 2006), the Court stated the purpose of the service rules:

Whether service is effective turns on the facts and circumstances of each case. Where service complies precisely with the requirements of Rule 4(e), it will be effective for personal jurisdiction, even if the individual did not receive actual notice. *Smith v. Kincaid*, 249 F.2d 243, 244 (6th Cir. 1957); *Capitol Life Ins. Co. v. Rosen*, 69 F.R.D. 83, 88 n. 3 (E.D. Pa. 1975). On the other hand, where the defendant has received actual notice of the action, "the provisions of Rule 4(e) should be liberally construed to effectuate service and uphold the jurisdiction of the court." *Karlsson v. Rabinowitz*, 318 F.2d 666 (4th Cir. 1963); *Rovinski v. Rowe*, 131 F.2d 687, 689 (6th Cir. 1942) (same). "The rules governing service of process are

not designed to create an obstacle course for plaintiffs to navigate, or a cat-and-mouse game for defendants who are otherwise subject to the court's jurisdiction." *TRW, Inc. v. Derbyshire*, 157 F.R.D. 59, 60 (D.Col. 1994). Rather, "the rules governing service of process are utilized for the purpose of providing a likelihood of bringing actual notice to the intended recipient," *Minnesota Mining & Mfr'g Co. v. Kirkevold*, 87 F.R.D. 317, 324 (D. Minn. 1980), and actual notice satisfies the due process notice requirement and provides the court with personal jurisdiction. *Frank Keevan & Son, Inc. v. Callier Steel Pipe & Tube, Inc.*, 107 F.R.D. 665, 671 (S.D. Fla. 1985). Where the defendant receives actual notice and the plaintiff makes a good faith effort to serve the defendant pursuant to the federal rule, service of process has been effective. *Id.* Good faith efforts at service are effective particularly where the defendant has engaged in evasion, deception, or trickery to avoid being served. *Id.*

"The service of process is not a game of hide and seek. Where service is repeatedly effected in accordance with the applicable rules of civil procedure and in a manner reasonably calculated to notify the defendant of the institution of an action against him, the defendant cannot claim that the court has no authority to act when he has willfully evaded the service of process." *Electronics Boutique Holdings Corp. v. Zuccarini*, No. Civ. A. 00-4055, 2001 U.S. Dist. LEXIS 765, 2001 WL 83388, at \*9 (E.D. Pa. Jan. 25, 2001).

*Ali*, 233 F.R.D. at 35-36. *Cf. Fagin v. Fagin*, 91 Nev. 794, 797, 544 P.2d 415, 417 (1975) (stating, as dicta, the Court condemned "the deceitful means by which [the wife] avoided personal service of process").

The purpose of service was accomplished in this case. Ms. Mezzano was within a few feet of the process server while the process server held the uncovered documents in his hand and advised Ms. Mezzano she was being legally served. The

trial court's determination Ms. Mezzano had no obligation to come outside and take the documents coupled with its determination leaving the documents outside the door was insufficient is contrary to the purpose of the service rules. It serves no purpose for the courts to allow a defendant to evade and willfully ignore service of process when it is attempted.

## **VI. CONCLUSION**

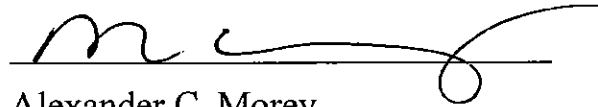
The undisputed facts in this matter establish a process server arrived at Ms. Mezzano's home, identified her, announced to her that she was "legally served" and "served", held the process documents in his hand while standing approximately three feet from Ms. Mezzano who interposed a transparent screen door between herself and the process server, and deposited the documents outside the door after Ms. Mezzano declined to take the documents into her hands but, instead, closed the door in the process server's face. The undisputed facts further establish the process server immediately deposited the documents after advising Ms. Mezzano what he was doing and that she was served, and the undisputed facts establish Ms. Mezzano received the documents. This must be good service. A defendant in Ms. Mezzano's position must not be permitted to avoid service when the only reason the documents were not placed in her hands was her refusal to accept them. A writ of mandamus should issue directing the trial court to find Ms.

Mezzano was served under NRCp 4.2(a)(1) and to deny Ms. Mezzano's Specially  
Appearing Defendant's Motion to Quash Service of Summons and Complaint.

Dated this 6<sup>th</sup> day of April 2022.

Respectfully submitted,

SILVERMAN KATTELMAN SPRINGGATE, CHTD.

A handwritten signature in black ink, appearing to read 'm c', with a long horizontal stroke extending to the right and a small loop at the end.

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Attorneys for Petitioner  
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## VERIFICATION

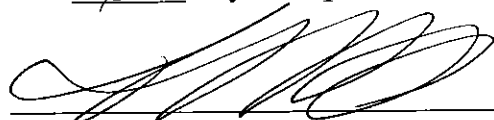
STATE OF NEVADA     )  
                                     : ss  
COUNTY OF WASHOE)

COMES NOW, Alexander Morey, being first duly sworn under penalty of perjury and deposes and says:

1.     I am Petitioner, John Townley's counsel herein.
2.     I make this Verification of my own personal knowledge, information and belief.
3.     I have read the foregoing Petition for Writ of Mandamus or Prohibition and know the contents thereof, and the same is true of my own knowledge, except those matters therein stated upon information and belief, and as to those matters I believe them to be true.
4.     I do hereby swear under penalty of perjury that the assertions set forth in this Verification are true.



Subscribed and sworn to before me  
By Alexander Morey  
this 6 day of April, 2022.



Notary Public in and for  
said county and state



## ATTORNEY'S CERTIFICATE

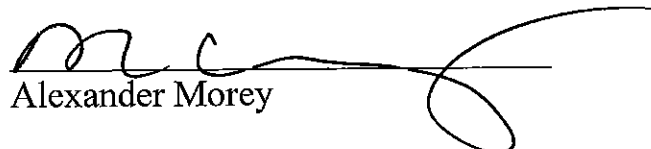
1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14 point.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 21(d) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 5358 words.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 6<sup>th</sup> day of April 2022.

SILVERMAN KATTELMAN SPRINGGATE,  
CHTD.

  
Alexander Morey

## CERTIFICATE OF SERVICE

Pursuant to NRCp 5 (b), I hereby certify that I am an employee of Silverman Kattelman Springgate, Chtd, and on the date set forth below, I caused to be served a true copy of the foregoing Petition for Writ of Mandamus on the party(ies) identified below by:

  X   Placing an original or true copy thereof in a sealed envelope,  
postage prepaid for collection and mailing in the United States  
Mail at Reno, Nevada

       Personal Delivery:

       Facsimile to the following number:

       Certified Mail, Return receipt requested

       Electronically, using Second Judicial District Court's ECF system

       Electronic mail:

Addressed to:

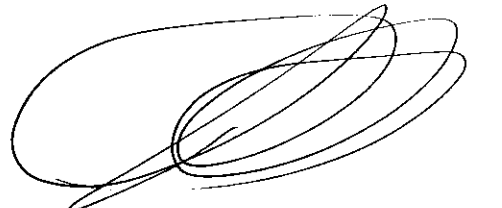
Second Judicial District Court  
State of Nevada, Family Division  
Department 5  
The Honorable Judge Cynthia Lu  
75 Court Street (mailing)  
One South Sierra St.  
Reno, NV 89501

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Clerk of the Court  
Second Judicial District Court  
75 Court Street  
Reno, NV 89501

Dated this   6   day of   April  , 2022.

  
\_\_\_\_\_  
Toni Matts