

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE
GUARDIANSHIP OF THE PERSON
AND ESTATE OF KATHLEEN JUNE
JONES, PROTECTED PERSON,

KATHLEEN JUNE JONES

Appellant,

vs.

ROBYN FRIEDMAN;
DONNA SIMMONS; AND
ELIZABETH BRICKFIELD,
GUARDIAN AD LITEM FOR
KATHLEEN JUNE JONES,

Respondents.

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Supreme Court Case No. 84655

District Court Case No.

G-19-052263-A

**RESPONDENTS, ROBYN FRIEDMAN AND
DONNA SIMMONS' ANSWERING BRIEF**

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the Justices of this Court may evaluate possible disqualification or recusal.

1. Robyn Friedman and Donna Simmons are individuals.
2. Robyn Friedman and Donna Simmons are or have been represented in the District Court and this Court by Michaelson Law, Claggett & Sykes Law Firm, and Sylvester & Polednak, Ltd.

DATED this 16th day of November 2022.

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By /s/ John P. Michaelson

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I. JURISDICTIONAL STATEMENT

The law firm of Legal Aid Center of Southern Nevada (“LACSN”) pursues this appeal purportedly on behalf of Kathleen June Jones (“Ms. Jones”). The term “purportedly” is appropriate in this instance given that the District Court concluded, based on medical evidence, that the Protected Person, Kathleen June Jones, lacks the capacity to direct her legal affairs, does not know what an appeal is generally or what appeals are being filed on her behalf. *See* District Court’s Findings of Fact, Conclusions of Law, and Order Denying Motion to Stay Order for Removal of Guardian and Order Appointing Successor General Guardian of the Person and Estate and for Issuance of Letters of General Guardianship filed June 29, 2022, RA 0102-06. Despite this legal conclusion from the District Court based on medical evidence, LACSN still moved forward with this appeal by filing Appellant’s Opening Brief on September 15, 2022.

In this appeal, LACSN appeals from the Findings of Facts, Conclusions of Law, and Order Granting Guardian Ad Litem Fees that was filed on March 18, 2022. The Notice of Entry of Order for the appealed order was filed on March 31, 2022. Appellant filed its notice of Appeal on April 28, 2022. The District Court concluded the Protected Person lacked capacity to direct LACSN on this appeal on June 29, 2022. LACSN filed Appellant’s Opening Brief on September 15, 2022.

In its opening brief, LACSN asserts that this Court has appellate jurisdiction

over this order based upon NRS 159.375(5) but fails to set forth any NRAP provision as basis for its standing for this appeal. NRAP 3A(b)(8) provides the jurisdictional basis for an appeal of an attorney fees order. However, according to this rule, the jurisdictional basis is only for an appeal of a fees order entered after “final judgment.” *See Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000). The District Court docket shows that this litigation is still ongoing. LACSN has the burden to establish proper jurisdiction in this Court. *See Taylor Constr. Co. v. Hilton Hotels Corp.*, 100 Nev. 207, 209, 678 P.2d 1152, 1153 (1984); *In re Estate of Miller*, 111 Nev. 1, 5, 888 P.2d 433, 435 (1995).

In a previous LACSN appeal of an award of attorney’s fees in this matter, *Jones v. Friedman (In re Jones)*, 507 P.3d 598 (Nev. App. 2022), the Nevada Court of Appeals denied the appeal and upheld the district court’s award of attorney’s fees, without reaching the issue of whether an attorney fees award in a guardianship matter before a final judgment is an appealable order.

II. ROUTING STATEMENT

LACSN challenges the \$5,713.50 award of attorney’s fees and costs to the guardian ad litem in the case below. The issue of awarding attorney’s fees in guardianship proceedings under NRS 159.344 is not a matter of first impression that fits within NRAP 17(11) or (12). A decision was issued in this same case on the same topic, as previously referenced, *Jones v. Friedman (In re Jones)*, 507 P.3d 598

(Nev. App. 2022). LACSN fails to cite this authority so that it can, in an indirect way, appeal for guidance regarding the appointment of a guardian ad litem under NRS 159.0455 and Statewide Rules for Guardianship Rule 8. However, LACSN failed to appeal the appointment of the guardian ad litem in this matter and this appeal should be limited to the issue of whether the district court abused its discretion in awarding the guardian ad litem attorney's fees and costs.

Despite its arguments that the issue of whether a guardian ad litem in a guardianship proceeding can collect attorney's fees at an attorney rate is an issue of statewide importance and that there is minimal guidance in NRS 159.0455 and Statewide Rules for Guardianship 8, LACSN has not satisfied the exceptions to NRAP 17(a)(11) and (12) in order for the Supreme Court to retain this appeal.

Under NRAP 17(b)(10), this case may be more properly assigned to the Court of Appeals as a case involving family law matters other than termination of parental rights or NRS Chapter 432B proceedings. This assignment would be similar to the manner that Family Division Matters and Guardianships are categorized together under Part V of the Rules of Practice for the Eighth Judicial District Court of the State of Nevada.

Also, this current appeal from LACSN should be assigned to the Court of Appeals because the Court of Appeals has previously familiarized itself with the lengthy record of this complex case and already rendered a published opinion in

Case No. 81799-COA earlier this year, *Jones v. Friedman (In re Jones)*, 507 P.3d 598 (Nev. App. 2022). Also, there is yet another appeal pending in this matter as well, Case No. 83967. Accordingly, for judicial economy, this appeal should be assigned to the Court of Appeals.

III. ISSUES ON APPEAL

- A.** Whether the Protected Person, Kathleen June Jones, lacks capacity to direct LACSN on this appeal.
- B.** Whether LACSN Failed to Raise the Nevada Guardianship Rule 8(I) Issue in the District Court Regarding the District Court's Alleged Failure to Specify the GAL's Rate in its Order Appointing Guardian Ad Litem.
- C.** Whether the District Court Had Authority to Award Fees and Costs to the GAL, Despite Not Specifying the GAL's Rate Directly in Its Order Appointing GAL
- D.** Whether the District Court Properly Interpreted NRS 159.0455 and Nevada Guardianship Rule 8 When it Appointed the Guardian Ad Litem
- E.** Whether the District Court Correctly Awarded the Guardian Ad Litem Attorney's Fees and Costs at the Attorney Rate,
 - a. Whether the District Court was correct to award the Guardian Ad Litem fees at her attorney rate; NRS 159.344 did not require the District Court to award a "fiduciary rate" to the guardian ad litem
 - b. Whether NRS 159.344 includes a "Market Rate" Requirement

IV. STATEMENT OF THE CASE AND SUMMARY OF ARGUMENT

LACSN is using the protected person as a mule to carry the burden of LACSN's own agenda which is to make new law favorable to it and to punish those who question

its judgment. RA 104. The LACSN law firm *has filed four appeals in this one guardianship matter*. The instant appeal, costing tens of thousands of dollars in legal fees, is to challenge an award of just \$5,713.50 for services rendered by an outstanding, respected attorney – who serves on Nevada’s Statewide Permanent Guardianship Commission - who consented to act as GAL in this very difficult case. *Jones v. Friedman (In re Jones)*, 507 P.3d 598, 600 (Nev. App. 2022).

This Court should consider, as authorized by NRAP 38, on its own motion, imposing monetary sanctions on the LACSN law firm as this Court deems appropriate for LACSN bringing this appeal when LACSN’s client, the Protected Person, Kathleen June Jones, lacks the capacity to direct her legal affairs, does not know what an appeal is generally or what appeals are being filed on her behalf. *See Findings of Fact, Conclusions of Law, and Order Denying Motion to Stay Order for Removal of Guardian and Order Appointing Successor General Guardian of the Person and Estate and for Issuance of Letters of General Guardianship filed June 29, 2022 (hereinafter “Order Denying Motion to Stay”)*, RA 0102-06.

In this appeal, LACSN challenges the District Court’s award of the relatively small figure of \$5,713.50 in attorney’s fees and costs to the guardian ad litem from whom the District Court sought an independent perspective in this very litigious matter. *See Appellant’s Opening Brief; Findings of Fact and Conclusions of Law and Order Granting Guardian Ad Litem Fees filed March 18, 2022 (hereinafter “Order*

Granting Fees”) AA 0365, AA 0368-69. It is important to note that the District Court ultimately relied upon the information and insights the guardian ad litem provided to remove the previous guardian, Kimberly Jones, for cause, including observations relating to both financial irregularities and isolation of the protected person. Order Granting Fees, AA 0370; *See also* Findings of Fact and Conclusions of Law and Order Regarding Visitation, First Annual Accounting, Guardian’s Fees, Caretaking Fees, Attorney’s Fees and Costs, and Removal of the Guardian that was filed December 6, 2021 (hereinafter “Order Regarding Visitation and Removal of Guardian”) RA 0001. Clearly, the District Court found Ms. Brickfield’s services to be extremely important, and worth at least \$5,713.50. It is also important to note that the Order Regarding Visitation and Removal of Guardian was entered just three (3) days prior to the hearing on the guardian ad litem’s request for fees, meaning the District Court’s memory was very fresh as to the importance of the guardian ad litem’s efforts in helping the District Court provide an accurate, well-grounded decision. RA 0001; AA 0364.

Despite the District Court’s detailed findings concerning Kimberly’s ongoing failure to account for the protected person’s money, and isolation of the protected person, in a separate appeal, LACSN is seeking to have her reinstated as guardian. Case No. 83967. Kimberly was removed for numerous reasons including but not limited to repeatedly failing to properly account for assets and expenditures of the guardianship estate, despite being warned, cajoled, and admonished by all parties and

the District Court on many occasions, and for refusing to reasonably accommodate – and in many instances outright interfering with - visitation and communication between her mother, the protected person, and most of the family. Order Regarding Visitation and Removal of Guardian, RA 0001-45.

June has suffered from dementia for many years, including years prior to these proceedings. *See Jones v. Friedman (In re Jones)*, 507 P.3d 598, 599 (Nev. App. 2022); Order Denying Motion to Stay, RA 0089, 98 (referencing the guardian ad litem’s report). While June had Dementia, and prior to the guardianship, Kimberly was designated as agent in her mother’s power of attorney document. *See Id.* at 599-600. Despite this authority and all parties to the proceedings leading up to the guardianship being aware of Kimberly’s authority, Kimberly was not willing or able to protect her mother from many harms, including losing her home for far less than market value, having medical appointments inappropriately cancelled, having Kimberly herself denied access to her mother, and having June, the mother and grandmother of the family, isolated from many other members of the family. *See Jones v. Friedman (In re Jones)*, 507 P.3d 598, 599-600 (Nev. App. 2022).

Respondents Robyn Friedman and Donna Simmons discovered that the family of their mother’s then-husband had transferred ownership of June’s house into their name, taken money out of her bank accounts, and even held onto her dogs. *Jones v. Friedman (In re Jones)*, 507 P.3d 598, 600 (Nev. App. 2022).

Their sister, Kimberly Jones, who held the Power of Attorney for their mother, was unable to protect Ms. Jones from these actions. *Id.* at 600.

Fearing for their mother's safety, and unable to get clarity on their mother's finances or plan of care, Robyn Friedman and Donna Simmons filed a temporary guardianship in September 2019 and served as temporary guardians until Kimberly Jones finally decided to step up and serve as guardian for Ms. Jones. *Id.* at 600.

Robyn and Donna petitioned for, and the District Court awarded, attorney's fees to Robyn and Donna from the guardianship estate pursuant to NRS 159.344 and LACSN appealed the award. *Id.* The Court of Appeals upheld the fees award. *Id.* In its published opinion the Court of Appeals noted the complexities of this case. *Id.* at 603. Unfortunately, issues that were very complex continued to be a problem and illustrate why the District Court felt it was prudent and even necessary to appoint an experienced attorney in this particular case as guardian ad litem to provide additional independent legal analysis and insight to the Court. Order Granting Fees, AA 0368-69.

After Kimberly Jones began serving as guardian, new issues arose and old concerns persisted, including Robyn Friedman and Donna Simmons and other family members experiencing extreme difficulties communicating and visiting their mother, the Protected Person, Kathleen June Jones, during early 2020. Order Granting Fees AA 0365; Order Regarding Visitation and Removal of Guardian, RA

0001-45; Order Denying Motion to Stay, RA 0090-93. Robyn Friedman and Donna Simmons raised these issues at the September 17, 2020 hearing where LACSN and the District Court asked that Robyn and Donna just file a petition for visitation and communication, and they did so on December 30, 2020. Verified Petition for Communication, Visits, and Vacation Time with Protected Person filed December 30, 2020, AA 002-4.

At that point, the District Court appointed a very experienced and respected attorney who serves on Nevada's Statewide Permanent Guardianship Commission as the guardian ad litem in this matter to assist the court with the issues of communication, visitation, and isolation. Order Appointing Guardian Ad Litem, AA 0146-52. The District Court also set this matter for an evidentiary hearing. Order Regarding Visitation and Removal of Guardian, RA 0001. Ultimately, the District Court removed Kimberly Jones as June's guardian due to isolation of the protected person as well as persistent financial irregularities and failure to account. See Order Regarding Visitation and Removal of Guardian, and appointed Robyn Friedman as Successor Guardian of the Person and Estate, RA 0043-45.

Despite nearly completely one-sided evidence in support of the District Court's action, and the fact that literally all of the medical evidence concludes June cannot direct legal counsel, LACSN (not Kimberly) appealed the order removing Kimberly. Case No. 83967.

The District Court also denied LACSN's motion to stay its order removing Kimberly pending the LACSN appeal, and that is when the District Court made very detailed findings of fact and conclusions of law that June has a significant inability to comprehend and understand the events surrounding her, and concluded what every shred of evidence supported except the self-serving claims of LACSN attorneys that June lacked the capacity to direct LACSN in legal proceedings, to understand appeals generally, or what appeals were being filed on her behalf. Order Denying Motion to Stay, RA 0102-04. LACSN did not appeal the Order Denying Motion to Stay.

A. LACSN failed to appeal the order appointing the guardian ad litem

LACSN failed to file any pleading to clarify, reconsider, apply for a writ, or appeal the Order Appointing Guardian Ad Litem, failed to limit the Guardian Ad Litem's Report, and failed to present any real evidence of an alternate rate of pay for the guardian ad litem. Objection to Petition for Approval of Guardian Ad Litem's Fees and Costs filed November 18, 2021 (hereinafter "Objection to Petition for Fees"), AA 333-43. LACSN challenges the rate of pay for the guardian ad litem based upon job postings at zippia.com, glassdoor.com and ziprecruiter.com three recruiting websites. Objection to Petition for Fees, AA 333-35, footnote 5. The District Court made substantial findings of fact and conclusions of law in its award of fees to the guardian ad litem, which were supported by substantial evidence. Order Granting Fees, AA 364-377; Petition for Approval of Guardian Ad Litem's Fees and Costs filed October

27, 2021 (hereinafter “Petition for Fees”), AA 319. LACSN did not appeal the appointment of the guardian ad litem, did not request the GAL clarify her notice of intent to seek fees, nor request the District Court to clarify its order appointing the guardian ad litem as to the issue of rate of pay. Nor did LACSN present any actual evidence regarding a contrary rate of pay to the guardian ad litem in its Objection to Petition for Fees. AA 0333-43.

B. LACSN failed to show an abuse of discretion by the District Court in its award to the guardian ad litem.

LACSN has offered only general arguments to challenge the award of fees to the guardian ad litem and has failed to show any prejudice to the protected person. Appellant’s Opening Brief. “[P]rejudice must be established in order to reverse a district court judgment; it is not presumed...” *Cook v. Sunrise Hosp. & Med. Cir, LLC*, 124 Nev. 997, 1066, 194 P.3d, 1214, 1219 (2008).

This Court will not disturb a district court’s findings of fact unless they are clearly erroneous and not supported by substantial evidence. *See Sheehan & Sheehan v. Nelson Malley and Co.*, 121 Nev. 481, 486, 117 P.3d 219, 223 (2005).

C. LACSN has presented arguments that it failed to raise in the district court, including its what it now calls a “fiduciary rate.”

On pages 25-30 of Appellants’ Opening Brief, LACSN present arguments it failed to raise to the District Court, including arguments regarding what it now calls a “fiduciary rate.” According to the standard of review for attorney fees orders, this

Court must only look at any evidence that supports the District Court's award. *See Logan*, 131 Nev. at 266, 350 P.3d at 1143. Implicit within this standard is the broader rule that this Court does not weigh competing evidence. *See Yamaha Motor Co. v. Arnoult*, 114 Nev. 233, 238, 955 P.2d 661, 664 (1998). Again, LACSN presented no real evidence in the district court regarding any contrary rate of pay, or the appropriate rate of pay for an attorney, or an attorney that serves as a guardian ad litem. Objection to Petition for Fees, AA 333-35, footnote 5. There is no evidence before this Court to support LACSN's appeal regarding the rate of pay.

D. The District Court properly awarded \$5,713.50 in attorney's fees and costs to the guardian ad litem despite LACSN's challenges.

The District Court's fourteen-page Order Granting Fees sets forth in detail the basis for this award and why the District Court used its discretion to appoint an attorney as guardian ad litem. AA 0346-59. The District Court wanted the guardian ad litem to utilize her "extensive experience, legal abilities, and knowledge." Order Granting Fees, AA 0368-69. In a very litigious case with over 400 pleadings filed, the District Court desired someone with highly specialized skill and experience to assist the District Court in reaching its decision to help protect the Protected Person and her estate. Order Granting Fees, AA 0365-76.

E. The record, as a whole, demonstrates that the District Court's award of attorney's fees to the guardian ad litem complied with NRS 159.

Order Granting Fees, AA 0367-76. The District Court's Order Granting Fees

awarding the guardian ad litem attorney fees set forth in detail the District Court’s reasoning and why the award complied with NRS 159.0455, NRS 159.344, and Guardianship Rule 8(J). *See* AA 0367-76. The Order Granting Fees complied with all applicable procedural requirements and safeguards. AA 0367-76.

V. STANDARD OF REVIEW

This Court reviews an award of attorney fees for an abuse of Discretion. *Jones v. Friedman (In re Jones)*, 507 P.3d 598, 601 (Nev. App. 2022) (citing NRS 159.183(1) (noting that payment of attorney fees in guardianship cases is subject to discretion and approval of the court); *Miller v. Wilfong*, 121 Nev. 619, 622, 119 P.3d 727, 729 (2005)). *See also* Nev. Const. art. 6, § 4; *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 123 Nev. 468, 474-75, 168 P.3d 731, 736-37 (2007); *Frantz v. Johnson*, 116 Nev. 455, 471, 999 P.2d 351, 361 (Nev. 2000. At least up to 2015, because an award of attorney fees is fact intensive, this Court would affirm an award of attorney fees if it is based upon substantial evidence. *See Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015). However, the guardianship statute NRS 159.344(5)(g) went into effect in 2017 and for guardianship purposes states “[i]n determining whether attorney’s fees are just, reasonable and necessary, the court may consider all the following factors: . . . (g) The usual and customary fees charged in the relevant professional communities for each task performed,” There is no substantial evidence requirement in the statute.

V. LEGAL ARGUMENT

A. The Protected Person, Kathleen June Jones, Lacks Capacity to Direct LACSN on this Appeal.

The District Court properly concluded in its Order Denying Motion to Stay, based on medical evidence, that the Protected Person, Kathleen June Jones, lacks the capacity to direct her legal affairs, does not know what an appeal is generally or what appeals specifically are being filed on her behalf. RA 0102-06. Despite this legal conclusion from the District Court that was entered June 19, 2022 and based on medical evidence, LACSN still moved forward with this appeal by filing Appellant's Opening Brief on September 15, 2022.

As a result, this Court should consider, as authorized by NRAP 38, on its own motion, imposing monetary sanctions on LACSN as this Court deems appropriate for LACSN bringing this appeal when LACSN's client, the Protected Person, Kathleen June Jones, lacks the capacity to direct her legal affairs, does not know what an appeal is generally or what appeals specifically are being filed on her behalf.

B. LACSN Failed to Raise the Nevada Guardianship Rule 8(I) Issue in the District Court Regarding the District Court's Alleged Failure to Specify the GAL's Rate in its Order Appointing Guardian Ad Litem.

LACSN is raising for the first time on appeal its argument that the District Court failed to specify in its Order Appointing Guardian Ad Litem the hourly rate Elizabeth Brickfield, Esq. could charge as guardian ad litem pursuant to Nevada Guardianship

Rule 8(I).

Under Nevada law, parties cannot raise new issues for the first time on appeal.

See Old Aztec Mine v. Brown, 97 Nev. 49, 52-53, 623 P.2d 981, 983-84 (Nev. 1981).

In *Old Aztec Mine* at 983-84, the Nevada Supreme Court explained:

It was incumbent upon the appellant to direct the trial court's attention to its asserted omission to mention the counterclaim expressly in its judgment. For example, the appellant could have moved the district

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court for amended judgment which would have included an explicit ruling on its counterclaim. NRCP 52(b) Because the appellant neglected to raise the issue that a decision [97 Nev. 53] on its counterclaim needed to be made, and because this issue does not concern the jurisdiction of the trial court we will not consider that issue on appeal. Britz, cited above.

Old Aztec Mine, Inc. v. Brown, 97 Nev. 49, 623 P.2d 981 (Nev. 1981)

LACSN did not argue at the February 11, 2021 hearing that the District Court needed to specify the guardian ad litem's hourly rate in the District Court's Order Appointing Guardian Ad Litem. *See* AA 0416. The LACSN law firm did ask if Elizabeth Brickfield, Esq. would be serving pro bono, and the Court responded that it was requesting the same, but was also allowing Elizabeth Brickfield, Esq. to file a request for fees from the guardianship estate pursuant to statute if she chose to do that. AA 0416. The Court also pointed out that it had several cases, older cases, where Elizabeth Brickfield, Esq. was serving as guardian ad litem. AA 0416.

LACSN did not raise the Rule 8(I) issue in response to the Court's answer

during the hearing either, it only asked if Elizabeth Brickfield, Esq. would be serving pro bono, without any further argument after the Court answered as described above.

Thus, under *Old Aztec Mine*, LACSN cannot rely on its question about Elizabeth Brickfield serving pro bono during the February 11, 2021 hearing as grounds to raise the Rule 8(I) issue for the first time in this appeal.

After the Court entered its Order Appointing Guardian Ad Litem on February 16, 2021, LACSN did not appeal the Order. LACSN did not file a Motion for Clarification. LACSN did not file a Motion for Reconsideration or seek to correct the alleged deficiency in the Order in any other way. Like the Appellant in *Old Aztec Mine*, LACSN failed to bring this alleged deficiency to the Court's attention and cannot now raise it for the first time on appeal. Nev. 49, 53-54; 623 P.2d 981, 983-84.

Similarly, on February 26, 2021, LACSN did not include any argument that the District Court's Order Appointing Guardian Ad Litem failed to specify the guardian ad litem's hourly rate pursuant to Nevada Guardianship Rule 8(I) in LACSN's filing titled "Kathleen June Jones' Notice of Objection to Guardian Ad Litem's Written Notice of Intention to Seek Attorney's Fees and Costs from Guardianship Estate Pursuant to NRS 159.344(3)" (hereinafter "Objection to Notice of Intent to Seek Fees"). See AA 0160-66. It is true that LACSN objected to the fee rates Elizabeth Brickfield, Esq. included in her Notice of Intent to Seek Fees and proposed a much lower rate, but LACSN did not raise the Rule 8(I) issue that it is now raising for the

first time on appeal. *See* AA 0160-66.

Finally, on November 18, 2021, LACSN did not include any argument that the District Court's Order Appointing Guardian Ad Litem failed to specify the guardian ad litem's hourly rate pursuant to Nevada Guardianship Rule 8(I) in its Objection to Petition for Approval of Guardian Ad Litem's' [*sic*] Fees and Costs. (hereinafter "Objection to Petition for Fees"). *See* AA 0333-40. LACSN objected to the fees Elizabeth Brickfield, Esq. was requesting and argued for a lower rate, but LACSN did not raise the Rule 8(I) issue it is now raising for the first time on appeal. *See* AA 0333-40.

Again, under *Old Aztec Mine*, LACSN failed to bring the alleged Nevada Guardian Rule 8(I) deficiency to the Court's attention despite having ample opportunity to do so, and LACSN cannot now raise it for the first time on appeal. Nev. 49, 53-54; 623 P.2d 981, 983-84.

C. The District Court Had Authority to Award Fees and Costs to the GAL, Despite Not Specifying the GAL's Rate Directly in Its Order Appointing GAL.

If LACSN's arguments under Nevada Guardianship Rule 8(I) are not dismissed for LACSN's failure to raise the issue in the District Court, then the following analysis shows that the District Court had authority to award fees and costs to the GAL, despite not specifying the GAL's rate directly in its Order Appointing GAL.

LACSN's arguments are overstated that (i) the District Court had no authority

to award fees and costs because it failed to specify the GAL's rate in its Order Appointing GAL, and (ii) that the District Court erred as a matter of law when it awarded fees and costs from the Protected Person's estate without first including the guardian ad litem's rate in the appointing order.

NRS 159.344 and Nevada Guardianship Rule 8(J) authorized the District Court to award fees and costs to Elizabeth Brickfield, Esq. as guardian ad litem when Elizabeth Brickfield, Esq. fully complied with the requirements of NRS 159.344. LACSN's arguments regarding Nevada Guardianship Rule 8 do not change this fact.

Further analysis of LACSN's arguments for this issue regarding Nevada Guardianship Rule 8 are as follows:

Nevada Guardianship Rule 8 establishes as follows, in relevant part:

Rule 8. Guardian ad litem for protected person or proposed protected person.

A. This rule applies to any guardian ad litem appointed pursuant to NRS 159.0455 and NRS 159A.0455.

* * *

H. A guardian ad litem may be a trained volunteer from a court-approved advocate program, an attorney, or any other person that the court finds has appropriate training and experience.

I. If the guardian ad litem is a trained volunteer from a court-approved volunteer advocate program or an attorney providing services as a guardian ad litem pro bono, the appointing order shall state that fact and state that the guardian ad litem is not seeking compensation. If the guardian ad litem is not a volunteer and will seek compensation in the case, the appointing order shall state the hourly rate to be charged by the

guardian ad litem and may limit the hours that may be charged by the guardian ad litem, absent further order of the court.

J. A guardian ad litem that seeks compensation for the services provided is only entitled to compensation upon compliance with NRS 159.344 et. al., and the request for payment, whether or not payment is to be from the guardianship estate or from any third party, shall be subject to the requirements of and analysis set forth in NRS 159.344.

The District Court followed Rule 8 of the Statewide Rules for Guardianship in its Order Appointing Guardian Ad Litem filed February 16, 2021. AA 0146-52. One example is that the District Court followed Rule 8(A), by stating the Guardian Ad Litem was appointed pursuant to NRS 159.0455 and Nevada Guardianship Rule 8. AA 0146. Rule 8 and its subparts B, C, D, E, F, G, H, J, K, L, M, N, O and P are similarly cited verbatim in relevant parts and/or simply followed. AA 0146-52. Despite LACSN's arguments to the contrary, this is also true of Rule 8 and its subparts H, I and J.

Regarding Rule 8(H):

First, The District Court followed Nevada Guardianship Rule 8(H) on the first page of its Order Appointing Guardian Ad Litem when it included:

IT IS HEREBY ORDERED that the following person, an attorney with appropriate training and experience, shall be appointed the guardian ad litem:

Elizabeth Brickfield, Esq.
Dawson & Lordahl PLLC
8925 West Post Road Suite 210
Las Vegas, Nevada 89148

This language complies with Nevada Guardianship Rule 8(H) and makes the Order Appointing Guardian Ad Litem clear that the District Court was appointing Elizabeth Brickfield, Esq., an attorney, as Guardian Ad Litem precisely because she was “an attorney with appropriate training and experience.”

Second, there is no court-approved advocate program from which the District Court could have selected a trained volunteer under Rule 8(H).

Third, nobody, especially not LACSN, nominated “any other person that the court finds has appropriate training and experience” for the court to consider appointing under Rule 8(H). *See* AA 0416, AA 0160-66.

Regarding Rule 8(I):

First, it is important to note what the District Court did not include in its Order Appointing Guardian Ad Litem. The District Court did not include the Nevada Guardianship Rule 8(I) mandated statement that the guardian ad litem is either a trained volunteer from a court-approved volunteer advocate program or an attorney providing services as a guardian ad litem pro bono that is not seeking compensation. The Court did not include this mandated statement because Elizabeth Brickfield, Esq. was neither of these. She was not a volunteer. She was not serving pro bono.

Furthermore, LACSN is correct that the District Court did not state the specific hourly rate to be charged by the guardian ad litem in its Order Appointing Guardian Ad Litem. However, the District Court’s Order, coupled with Elizabeth Brickfield’s

Notice of Intention to Seek Attorney's Fees and Costs from Guardianship Estate Pursuant to NRS 159.344(3) did follow this mandate in Rule 8(I), as follows:

First, the District Court made it clear that it was appointing Elizabeth Brickfield, "an attorney with appropriate training and experience."

Second, the District Court included in the Order Appointing Guardian Ad Litem, page 3-4, with emphasis added:

IT IS FURTHER ORDERED that a guardian ad litem that seek compensation for the services provided is only entitled to compensation upon compliance with NRS 159.344 et. al., and the request for payment, whether payment is to be from the guardianship estate or from a third party, shall be subject to the requirements and analysis set forth in NRS 159.344. **The guardian ad litem may request fees from the guardianship estate or a third party.**

AA 0148-49.

This is more than just a verbatim citation of Rule 8(J). The District Court added the bolded portion pursuant to Rule 8(I) to make it clear that Elizabeth Brickfield, Esq. was authorized to seek her attorney's fees from the guardianship estate or a third party pursuant to NRS 159.344, and thereby placed everybody on notice of the same, including LACSN.

Thereafter, on February 22, 2021, Elizabeth Brickfield, Esq. filed her Notice of Intention to Seek Attorney's Fees and Costs from Guardianship Estate Pursuant to NRS 159.344(3) ("Notice of Intent to Seek Fees"). Elizabeth Brickfield, Esq. listed specifically: her hourly rate, Melissa R. Douglas' hourly rate, Barbara Morelli's

hourly rate, and Karen Friedrich’s hourly rate—the specific hourly rates for which Elizabeth Brickfield intended to seek reimbursement. Again, everybody was placed on notice, including LACSN, who filed on February 26, 2021, its Objection to Notice of Intent to Seek Fees, but again, as discussed above, failed to raise the Guardianship Rule 8(i) argument in it that the Court allegedly failed to specify the Guardian Ad Litem’s rate in its Order Appointing Guardian Ad Litem.

Thus, NRS 159.344 authorized the District Court to award fees and costs to Elizabeth Brickfield, Esq. as guardian ad litem when Elizabeth Brickfield, Esq. fully complied with the requirements of NRS 159.344. LACSN’s arguments regarding Nevada Guardianship Rule 8 do not change this fact or strip the District Court of this authority.

D. The District Court Properly Interpreted NRS 159.0455 and Nevada Guardianship Rule 8 When it Appointed the Guardian Ad Litem.

The District Court’s Findings of Fact, Conclusions of Law, and Order Granting Guardian Ad Litem Fees entered March 18, 2022 (hereinafter “Order Granting Fees”) shows that the District Court properly interpreted and applied NRS 159.0455 and Nevada Guardianship Rule 8 when it appointed Elizabeth Brickfield, Esq. as guardian ad litem, as shown above, and when it awarded Elizabeth Brickfield, Esq. her fees and costs, as analyzed below:

NRS 159.0455 establishes as follows:

NRS 159.0455 Appointment and duties of guardians ad litem.

1. On or after the date of the filing of a petition to appoint a guardian:

(a) The court may, in any proceeding, appoint a person to represent the protected person or proposed protected person as a guardian ad litem if the court believes that the protected person or proposed protected person will benefit from the appointment and the services of the guardian ad litem will be beneficial in determining the best interests of the protected person or proposed protected person; and

(b) The guardian ad litem must represent the protected person or proposed protected person as a guardian ad litem until relieved of that duty by court order.

2. Upon the appointment of the guardian ad litem, the court shall set forth in the order of appointment the duties of the guardian ad litem.

3. If a court-approved volunteer advocate program for guardians ad litem has been established in a judicial district, a court may appoint a person who is not an attorney to represent a protected person or proposed protected person as a guardian ad litem. If such a program has been established, all volunteers participating in the program must complete appropriate training, as determined by relevant national or state sources or as approved by the Supreme Court or the district court in the judicial district, before being appointed to represent a protected person or proposed protected person.

4. A guardian ad litem appointed pursuant to this section is an officer of the court and is not a party to the case. A guardian ad litem appointed pursuant to this section shall not offer legal advice to the protected person or proposed protected person but shall:

(a) Advocate for the best interests of the protected person or proposed protected person in a manner that will enable the court to determine the action that will be the least restrictive and in the best interests of the protected person or proposed protected person; and

(b) Provide any information required by the court.

<https://www.leg.state.nv.us/Division/Legal/LawLibrary/NRS/NRS-159.html#NRS159Sec0455> (last visited November 8, 2022).

Nevada Guardianship Rule 8 establishes as follows, in relevant part:

Rule 8. Guardian ad litem for protected person or proposed protected person.

A. This rule applies to any guardian ad litem appointed pursuant to NRS 159.0455 and NRS 159A.0455.

* * *

H. A guardian ad litem may be a trained volunteer from a court-approved advocate program, an attorney, or any other person that the court finds has appropriate training and experience.

I. If the guardian ad litem is a trained volunteer from a court-approved volunteer advocate program or an attorney providing services as a guardian ad litem pro bono, the appointing order shall state that fact and state that the guardian ad litem is not seeking compensation. If the guardian ad litem is not a volunteer and will seek compensation in the case, the appointing order shall state the hourly rate to be charged by the guardian ad litem and may limit the hours that may be charged by the guardian ad litem, absent further order of the court.

J. A guardian ad litem that seeks compensation for the services provided is only entitled to compensation upon compliance with NRS 159.344 et. al., and the request for payment, whether or not payment is to be from the guardianship estate or from any third party, shall be subject to the requirements of and analysis set forth in NRS 159.344.

The Order Granting Fees correctly states as follows, in part:

The District Court has further discretion to appoint a non-attorney to serve as Guardian Ad Litem, *only if* a court-approved volunteer advocate program, which provides court approved training, for Guardians Ad Litem has been established in the judicial district. *See* NRS 159.0455(3).

There is no volunteer, non-attorney, Guardian Ad Litem, adult guardianship advocate program in the Eighth Judicial District Court. Accordingly, this Court may not utilize its discretion to appoint a non-attorney to serve as a Guardian Ad Litem for a Protected Person in a guardianship proceeding in this judicial district.

Protected Person's [LACSN's] statement that Nevada law allows "... any person in the community to serve as a GAL without the need to have legal experience" is inaccurate and intentionally ignores NRS

159.0455(3) and the language of Nevada Guardianship Rule 8. *See* Objection at page 2.

Under NRS 159.0455(3), the District Court is absolutely correct. Under Nevada Guardianship Rule 8(H) that adds a bit to NRS 159.0455(3), the District Court is also correct, contrary to LACSN's arguments, as follows:

First, no court-approved advocate program to train volunteers is established in the Eighth Judicial District, therefore, this option was not available to the District Court to appoint as guardian ad litem under Nevada Guardianship Rule 8(H). *See* AA 0367.

Second, the District Court did not abuse its discretion in any way in an analysis under Rule 8(H), as LACSN argues because no "other person that the court finds has appropriate training and experience" was available to the District Court to appoint as guardian ad litem under Rule 8(H). LACSN itself did not mention or argue for appointment of an actual person meeting these criteria to the District Court. *See* AA 0160-66; AA 0416; AA 0333-40. Thus, even though the District Court did not analyze this option in the Findings of Fact section of the Order Granting Fees—and this Appellate Court somehow concludes that the District Court should have analyzed this option that was never presented or argued before it—the outcome would have been the same, as no actual person was available for such an appointment, thus resulting in a harmless error under NRCP 61 and *Boyd v. Pernicano*, 79 Nev. 356, 359, 385 P.2d 342, 343 (1963); *Cook v. Sunrise Hosp. &*

Med. Ctr., LLC, 124 Nev. 997, 1006, 194 P.3d 1214, 1219 (2008) (confirming that the appealing party must establish “by providing record evidence . . . that, but for the error, a different result might have been reached”). Herein, LACSN has not established that but for the District Court not including a specific finding pursuant to Nevada Guardianship Rule 8(H), another “person that the court finds has appropriate training and experience,” would have been appointed as guardian ad litem. Therefore, LACSN’s arguments fail under NRCP 61; *Boyd v. Pernicano*; and *Cook v. Sunrise Hosp. et. al.*

Third, an attorney, Elizabeth Brickfield, Esq., was available to the District Court to appoint as guardian ad litem under Rule 8(H). The Order Granting Fees and the Order Appointing Guardian Ad Litem are replete with the District Court’s direct, correct, on point statement and Findings as to why a respected and experienced attorney, Elizabeth Brickfield, Esq., was needed in this very complex and contested case. AA 0368-70; AA 0146-52.

LACSN fails to provide any cogent argument or persuasive authority in support of its contentions on pages 24-25 of its Opening Brief (with emphasis added), “[a]dditionally, the district court erred when it concluded that ‘under Nevada law non-attorney Guardian Ad Litem’s do not get paid,’ **and by implication, that an attorney GAL must be paid at their attorney rate.**” The bolded, incorrect “implication” *i.e.* assumption, that LACSN reads into the Court Order Granting Fees

is not cogent argument or persuasive authority. Yet, it leads to LACSN's conclusions that (1) "a GAL who is non-volunteer and non-attorney can seek compensation in an adult guardianship case," and (2) that the district court erred "when it concluded that only an attorney GAL can receive compensation under Nevada law." *See* Opening Brief, pages 24-25. Thus, these conclusions are not based on cogent argument or persuasive authority, but rather, a poor "implication" *i.e.* assumption. Therefore, this Court should not address these arguments under *Ransom v. State*, 381 P.3d 654 (Table) (Nev. 2012) (citing *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (Nev. 1987) ("It is appellant's responsibility to present relevant authority and cogent argument; issues not so presented need not be addressed by this court."))." *Ransom v. State*, 381 P.3d 654 (Table) (Nev. 2012)).

E. The District Court Correctly Awarded the Guardian Ad Litem Attorney's Fees and Costs at the Attorney Rate, Rather than a "Fiduciary Rate".

The District Court was correct to under NRS 159.344 to award Elizabeth Brickfield, Esq. her fees at her attorney rate of \$400.00 per hour.

LACSN's arguments are incorrect in its Opening Brief on pages 25-34. Correct statements of the sub-issues are as follows: (1) NRS 159.344 did not require the District Court to award a "fiduciary rate" to the guardian ad litem; and (2) the District Court did not err when it awarded the guardian ad litem her fees at her attorney rate of \$400.00 per hour.

NRS 159.344 provides as follows, in relevant part, with emphasis added:

NRS 159.344 Payment of attorney's fees and costs incurred as result of representation by attorney in guardianship proceeding: Liability; petition for payment from guardianship estate; procedure upon filing petition.

* * *

2. Notwithstanding the provisions of subsection 1 and except as otherwise provided in subsection 5 of NRS 159.183, a person who is personally liable for attorney's fees and costs may petition the court for an order authorizing such attorney's fees and costs to be paid from the estate of the protected person in accordance with this section. Any such attorney's fees and costs must not be paid from the guardianship estate unless and until the court authorizes the payment pursuant to this section.

* * *

5. In determining whether attorney's fees are just, reasonable and necessary, the court may consider all the following factors:

(a) The written notice approved by the court pursuant to subsection 3.

(b) Whether the services conferred any actual benefit upon the protected person or attempted to advance the best interests of the protected person.

(c) The qualities of the attorney, including, without limitation, his or her ability, training, education, experience, professional standing and skill.

(d) The character of the work performed, including, without limitation, the difficulty, intricacy and importance of the work, the time and skill required to complete the work, the responsibility imposed and the nature of the proceedings.

(e) The work actually performed by the attorney, including, without limitation, the skill, time and attention given to the work.

(f) The result of the work, including, without limitation, whether the attorney was successful and any benefits that were derived.

(g) The usual and customary fees charged in the relevant professional communities for each task performed, regardless of who actually performed the task. The court may only award:

(1) Compensation at an attorney rate for time spent performing services that require an attorney;

(2) Compensation at a paralegal rate for time spent performing paralegal services;

(3) Compensation at a fiduciary rate for time spent performing fiduciary services; and

(4) No compensation for time spent performing secretarial or clerical services.

(h) The appropriate apportionment among multiple clients of any billed time that benefited multiple clients of the attorney.

(i) The extent to which the services were provided in a reasonable, efficient and cost-effective manner, including, without limitation, whether there was appropriate and prudent delegation of services to others.

(j) The ability of the estate of the protected person to pay, including, without limitation:

(1) The value of the estate;

(2) The nature, extent and liquidity of the assets of the estate;

(3) The disposable net income of the estate;

(4) The anticipated future needs of the protected person; and

(5) Any other foreseeable expenses.

(k) The efforts made by the person and attorney to reduce and minimize any issues.

(l) Any actions by the person or attorney that unnecessarily expanded issues or delayed or hindered the efficient administration of the estate.

(m) Whether any actions taken by the person or attorney were taken for the purpose of advancing or protecting the interests of the person as opposed to the interests of the protected person.

(n) Any other factor that is relevant in determining whether attorney's fees are just, reasonable and necessary, including, without limitation, any other factor that is relevant in determining whether the person was acting in good faith and was actually pursuing the best interests of the protected person.

* * *

10. If an attorney is appointed by the court in a guardianship proceeding, he or she may petition the court for compensation for

his or her services from the guardianship estate in accordance with the procedure set forth in this section.

(Added to NRS by 2017, 3898)

<https://www.leg.state.nv.us/Division/Legal/LawLibrary/NRS/NRS-159.html#NRS159Sec344> (last visited November 9, 2022)

NRS 159.0455 establishes as follows, in relevant part:

NRS 159.0455 Appointment and duties of guardians ad litem.

* * *

4. A guardian ad litem appointed pursuant to this section is an officer of the court and is not a party to the case. A guardian ad litem appointed pursuant to this section shall not offer legal advice to the protected person or proposed protected person but shall:

(a) Advocate for the best interests of the protected person or proposed protected person in a manner that will enable the court to determine the action that will be the least restrictive and in the best interests of the protected person or proposed protected person; and

(b) Provide any information required by the court.

<https://www.leg.state.nv.us/Division/Legal/LawLibrary/NRS/NRS-159.html#NRS159Sec0455> (last visited November 8, 2022).

Nevada Guardianship Rule 8 establishes as follows, in relevant part:

Rule 8. Guardian ad litem for protected person or proposed protected person.

A. This rule applies to any guardian ad litem appointed pursuant to NRS 159.0455 and NRS 159A.0455.

* * *

J. A guardian ad litem that seeks compensation for the services provided is only entitled to compensation upon compliance with NRS 159.344 et. al., and the request for payment, whether or not payment is to be from the guardianship estate or from any third party, shall be subject to the requirements of and analysis set forth in NRS 159.344.

Nevada Rule of Professional Conduct 4.2 establishes as follows:

Rule 4.2. Communication With Person Represented by Counsel.

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

[Added; effective May 1, 2006.]

<https://www.leg.state.nv.us/Division/Legal/LawLibrary/CourtRules/RPC.html> (last visited November 9, 2022)

Nevada Rule of Professional Conduct 4.3 establishes as follows:

Rule 4.3. Dealing With Unrepresented Person. In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

[Added; effective May 1, 2006.]

<https://www.leg.state.nv.us/Division/Legal/LawLibrary/CourtRules/RPC.html> (last visited November 9, 2022)

Analysis under the authorities cited above shows as follows:

- a. The District Court was correct to award the Guardian Ad Litem fees at her attorney rate; NRS 159.344 did not require the District Court to award a fiduciary rate to the guardian ad litem.**

Elizabeth Brickfield, Esq., as guardian ad litem, complied with Nevada Guardianship Rule 8(J) on February 22, 2021, when filed her Notice of Intent to Seek Fees. AA 0156-59. Said Notice of Intent to Seek Fees fulfilled the requirements

of NRS 159.344, as required by Rule 8(J). AA 0156-59.

Contrary to LACSN's arguments on page 26 of its Opening Brief, neither NRS 159.0455 nor Nevada Guardianship Rule 8 make it clear that a guardian ad litem's role is in a fiduciary capacity. This is simply incorrect, as explained immediately below:

First, while NRS 159.0455(4) does state "[a] guardian ad litem appointed pursuant to this section is an officer of the court . . . , " being an "officer of the court" does not automatically equate to being a fiduciary that can only be compensated at a fiduciary rate under NRS 159.344(5)(g)(3) as LACSN contends.

The clearest example of this is that attorneys are officers of the court. *State Bar of Nevada v. Clairborne*, 104 Nev. 115, 119; 756 P.2d 464, 531-32 (Nev. 1988) (citing *In re Echeles*, 430 F.2d 347 (7th Cir. 1970) (purpose of bar proceedings is not to punish but to determine the fitness of an **officer of the court** to continue in that capacity and to protect the courts and the public from the official ministrations of persons unfit to service) (emphasis added)) (additional citations omitted). Yet, even though attorneys are officers of the court, it is proper to compensate attorneys, *i.e.* officers of the court, at an attorney rate under NRS 159.344(5)(g)(1). The same is true of guardian ad litem attorneys that performed attorney tasks as an officer of the court, like Elizabeth Brickfield, Esq.

Second, while NRS 159.0455(4) does state "[a] guardian ad litem appointed

pursuant to this section shall not offer legal advice to the protected person or proposed protected person . . . ,” not offering legal advice to the protected person does not automatically equate to being a fiduciary that can only be compensated at a fiduciary rate under NRS 159.344(5)(g)(3) as LACSN contends.

The clearest examples of this are in a guardianship context are:

(1) that the attorney for the guardian in a guardianship case is prohibited from even communicating with the protected person (unless the protected person’s attorney agrees to it), much less providing legal advice to the protected person. *See* Nevada Rules of Professional Conduct 4.2 and 4.3.

(2) that the attorney for the guardian in a guardianship case is prohibited from providing legal advice to other interested parties in the case, such as family members, that are unrepresented by counsel. *See* Nevada Rule of Professional Conduct 4.3.

Yet, even though other attorneys are prohibited from providing legal advice to the protected person, it is proper to compensate them—*i.e.* officers of the court that are prohibited from providing legal advice to the protected person and other parties—at an attorney rate under NRS 159.344(5)(g)(1). The same is true of guardians ad litem that are attorneys that perform attorney tasks, like Elizabeth Brickfield, Esq.

Third, LACSN’s arguments are also incorrect on pages 26-30 of its Opening

Brief that guardian ad litem is serving in a fiduciary capacity and can only be compensated at a “fiduciary rate” because Nevada Guardianship Rule 8(N) states (i) their role is separate and distinct from the role of an attorney for a protected person, and (ii) a guardian ad litem for a protected person shall not serve as an attorney for the protected person or guardian. Rule 8(N) really appears to be in place to prevent conflicts of interest under Nevada Rules of Professional Conduct 1.7 and 1.8. These limitations that a guardian ad litem may not represent the protected person’s best interest while also representing another party in the case do not properly lead to LACSN’s conclusion that a guardian ad litem’s services are not legal services, they are only provided in a “fiduciary capacity”, and can only be compensated at a fiduciary rate under NRS 159.344.

The District Court itself provided clear, well-founded, analysis of this issue in its Order Granting Fees, AA 0368-72, wherein it included Findings of Fact and Conclusions of law that state, in relevant part:

Protected Person's representation that Nevada law prohibits a GAL from providing legal services is also inaccurate. Protected Person states, " ... NRS 159.0455(4) provides that a GAL "shall not" provide legal services." *See* Objection at page 2.

NRS 159.0455(4) does not prohibit a Guardian Ad Litem from providing legal services. The statute prohibits a Guardian Ad Litem from providing a specific type of legal service to a specific person. A Guardian Ad Litem is prohibited from offering legal advice to the Protected Person. *See* NRS 159.0455(4).

Protected Person argues that an attorney Guardian Ad Litem should be paid at the rate of non-attorney Guardian Ad Litem. However, under Nevada law non-attorney Guardian Ad Litem's do not get paid.

Pursuant to NRS 159.0455(4) only a *volunteer* non-attorney Guardian Ad Litem may be appointed, under specific circumstances that do not exist in this judicial district.

Given the complexity of this matter and the issues presented, an attorney Guardian Ad Litem was necessary. The potential impact of the communication and visitation requests and the Adverse Parties' significant inconsistencies regarding the Protected Person's abilities and desires, a Guardian Ad Litem with considerable legal and professional experience was necessary in this matter.

Guardian Ad Litem Brickfield was appointed by this Court *because of* her extensive experience, legal abilities, and knowledge. This Court expected Ms. Brickfield to bring the breadth of her legal experience and knowledge to her role to benefit the Protected Person. The Court believed the appointment of Ms. Brickfield as Guardian Ad Litem would benefit the Protected Person and would be beneficial in determining best interests.

Protected Person's contention that the tasks assigned to Guardian Ad Litem Brickfield were simple and required no legal training is incorrect.

The isolation of a Protected Person, through the restriction of communication and visitation of family members, can have significant consequences in guardianship matters.² The Protected Person's Bill of Rights grants the Protected Person the right to receive telephone calls, personal mail, and visitors, unless the Guardian and Court determine it will cause harm to the Protected Person. *See* NRS 159.328. The method and manner in which restrictions can or should be put in place requires legal experience and skill. Therefore, discussions regarding communication and visitation must be conducted balancing the intricate statutory legal framework that governs potential restrictions.

[Footnote 2. A guardian can be removed for restricting communication, visitation, or interaction with a protected person. *See* NRS 159.332. Generally, communication and visitation can only be restricted through Court Order. In specific circumstances, the guardian may restrict communication and visitation, but is required to file notice within ten days. The procedure required to request a Court Order to restrict communication is governed by NRS 159.331 through NRS 159.338 and provides an independent statutory basis for attorney's fees and sanctions.]

The pleadings filed in regards to visitation and communication requested the removal of the Guardian, Kimberly Jones. Ultimately, this Court did remove Kimberly Jones and appointed a Successor Guardian based upon Ms. Jones' restriction of visitation and communication and her failure to comply with her statutory duties regarding the Guardianship Estate. The Court relied, in part, on Guardian Ad Litem Brickfield's Report and Recommendations in the Order removing the Guardian. The financial forensic investigation of the Guardianship Estate, which includes Kimberly Jones' personal finances, is ongoing.

Pursuant to NRS 159.0455, NRS 159.344, and Guardianship Rule 8(J) a Guardian Ad Litem is entitled to reasonable compensation from the Guardianship Estate.

If an attorney is appointed by the Court, she may petition for fees from the Guardianship Estate in accordance with the procedures outlined in NRS 159.344. *See* NRS 159.344(10).

NRS 159.344 requires the attorney who intends to seek fees to file written notice of intent to request fees when she first makes an appearance.

A Court appointed attorney may file a petition requesting payment of fees and costs must include the following:

- (a) A detailed statement as to the nature and extent of the services performed by the attorney;

- (b) An itemization of each task performed by the attorney, with reference to the time spent on each task in an increment to the nearest one-tenth of an hour and with no minimum billing unit in excess of one-tenth of an hour;

- (c) An indication of whether any time billed, including, without limitation, any time spent traveling or waiting, benefited any clients of the attorney other than the protected person and, if so, how many other clients benefited from such time; and

- (d) Any other information considered relevant to a determination of whether attorney's fees are just, reasonable and necessary.

In determining whether attorney's fees are just, reasonable, and necessary, the District Court may consider all of the approximately twenty-three (23) enumerated, and sometimes compound, subsections of NRS 159.344(5).

As to NRS 159.344(5)(a), written notice of intent to filed and approved.

As to subsection b, the services performed conferred an actual benefit upon the protected person or attempted to advance the best interests of the protected person. Guardian Ad Litem Brickfield attempted to advance the best interests of the Protected Person by attempting to discuss and find common ground between the Protected Person's family members that would promote communication and visitation between the Protected Person and her family without the financial and emotional cost of an evidentiary hearing. Although Guardian Ad Litem Brickfield was unable to secure a settlement agreement that would have allowed the Parties to forego an evidentiary hearing, Ms. Brickfield's work did ultimately result in the removal of the Guardian and allowed the Protected Person to enjoy communication and visitation with her family.

After Evidentiary Hearing and Court Order, based in part upon GAL's Recommendations, the Protected Person was able to have communication and visitation with her family members, as guaranteed by the Protected Person's Bill of Rights and argued by Guardian Ad Litem Brickfield.

Order Granting Fees, AA 0368-72.

The foregoing shows that the District Court was correct in awarding attorney's fees of \$5,710.00 and costs of \$3.50 for a total of \$5,713.50 to Elizabeth Brickfield, Esq. at her attorney fee rate under Nevada law. LACSN's argument is incorrect that the District Court erred in making this award and should have applied a fiduciary rate.

The foregoing also shows that this Court should not apply the Nevada case cited on page 26 of Appellant's Opening Brief to limit guardians ad litem in guardianship proceedings in Nevada to only be compensated at a fiduciary rate. Likewise, this Court should not adopt or apply any of the authority LACSN cites from other states to argue to limit guardians ad litem in guardianship proceedings in

Nevada to only be compensated at a fiduciary rate. The foregoing analysis, including that from the District Court that specializes in guardianship proceedings in its Order Granting Fees, and the fact that trained guardian ad litem are not available in the Eighth Judicial District, all show that such a limitation would damage guardianship proceedings and unnecessarily limit the District Court's discretion in who it can appoint when the Nevada Guardianship Rules and NRS Chapter 159 necessarily allow the Court to appoint attorneys to serve as guardians ad litem and be compensated at an attorney rate under NRS 159.344. Indeed, many outstanding attorneys would not be able to serve as GAL's in complex cases were they required to do so pro bono.

b. NRS 159.344 Does Not Include a “Market Rate” Requirement.

LACSN's request is improper that this Court read a market rate analysis based on substantial evidence into NRS 159.344(5) when awarding compensation under NRS 159.344.

Nevada law has long held that when the language of a statute is clear on its face (*i.e.*, unambiguous), Nevada courts will not look beyond the statute's plain language in interpreting it. *Bank of America, N.A. v. SFR Investments Pool 1, LLC*, 134 Nev. Adv. Op. 72, 8 (2018); *see also Williams v. United Parcel Servs.*, 129 Nev. 386, 391, 302 P.3d 1144, 1147 (2013) (“In the absence of an ambiguity, we do not resort to other sources, such as legislative history, in ascertaining that statute's

meaning.”). Only if a statute’s language is subject to two or more reasonable interpretations (*i.e.*, ambiguous) may the Court consult outside sources, such as, legislative history, reason, and policy. *Pawlik v. Shyang-Fenn Deng*, 134 Nev. Adv. Op. 11, 412 P.3d 68, 71 (2018); *MGM Mirage v. Nevada Insurance Guaranty Ass’n*, 125 Nev. 223, 228–29, 209 P.3d 766, 769 (2009) (if the language of the statute is plain and unambiguous, the court should not construe that statute otherwise).

NRS 159.344(5)(g) is unambiguous and therefore this Court cannot look beyond the plain language of the statute to revise the statute as LACSN requests.

Even though the statute is unambiguous, LACSN asks this Court to revise it, as follows (LACSN’s proposed subtractions to the statute are ~~crossed-out~~ and proposed additions are in **bold**):

NRS 159.344 Payment of attorney’s fees and costs incurred as result of representation by attorney in guardianship proceeding: Liability; petition for payment from guardianship estate; procedure upon filing petition.

* * *

5. In determining whether attorney’s fees are just, reasonable and necessary, the court may consider all the following factors, **except factors (5)(g) and (10) that the court shall apply**:

* * *

(g) The ~~usual and customary fees~~ **market rate** charged in the relevant professional communities for each task performed, regardless of who actually performed the task, **based on substantial evidence and included in the court’s order awarding compensation**. The court may only award:

- (1) Compensation at an attorney rate for time spent performing services that require an attorney;
- (2) Compensation at a paralegal rate for time spent performing paralegal services;
- (3) Compensation at a fiduciary rate for time spent performing fiduciary services; and
- (4) No compensation for time spent performing secretarial or clerical services.

* * *

10. If an attorney is appointed by the court in a guardianship proceeding, he or she may petition the court for compensation for his or her services from the guardianship estate in accordance with the procedure set forth in this section, **except an attorneys appointed as guardian ad litem may only be compensated at a fiduciary rate.**

LACSN's proposed revisions are improper and reading them into NRS 159.344 would violate *Bank of America, N.A. v. SFR Investments Pool 1, LLC*; *Williams v. United Parcel Servs.*; *Pawlik v. Shyang-Fenn Deng*; and *MGM Mirage v. Nevada Insurance Guaranty Ass'n* cited above. Additionally, as explained in the section above, the proposed revisions would damage guardianship proceedings and unnecessarily limit the District Court's discretion in who it can appoint when the Nevada Guardianship Rules and NRS Chapter 159 necessarily allow the Court to appoint attorneys to serve as guardians ad litem and be compensated at an attorney rate under NRS 159.344.

Furthermore, LACSN's proposed revisions would remove the actual standard the District Court may consider under NRS 159.344(5)(g), *i.e.* "the usual and customary fees charged in the relevant professional communities for each task

performed.” As shown by the Order Granting Fees at issue herein, and the numerous cases where the District Court has analyzed and awarded fees, the District Court is expert at knowing and awarding “the usual and customary fees charged” in the Eighth Judicial District and its discretion in awarding fees should not be reversed as no abuse of discretion is present. Order Granting Fees AA 0362-79; *See also* Nev. Const. art. 6, § 4; *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 123 Nev. 468, 474-75, 168 P.3d 731, 736-37 (2007); *Frantz v. Johnson*, 116 Nev. 455, 471, 999 P.2d 351, 361 (Nev. 2000).

Furthermore, because the award of attorney fees was fact intensive, this Court should affirm the District Court’s award of attorney fees, as it was based upon the substantial evidence of Elizabeth Brickfield’s work product in this case, and her Petition for Approval of Guardian Ad Litem’s Fees and Costs, with its Exhibits, that fully complied with NRS 159.344’s requirements, as found by the District Court. AA 0319-32; AA 0362-79. *See Logan v. Abe*, 131 Nev. 260, 266, 350 P.3d 1139, 1143 (2015).

VI. CONCLUSION

This Court should impose sanctions on LACSN pursuant to NRAP 38 given that the Protected Person, Kathleen June Jones, lacks capacity to direct LACSN on this appeal.

This Court should also affirm the District Court’s Findings of Facts, Conclusions of

Law, and Order Granting Guardian Ad Litem Fees that was filed on March 18, 2022 for the following reasons: (1) LACSN failed to raise the Nevada Guardianship Rule 8(I) issue in the District Court regarding the District Court’s alleged failure to specify the guardian ad litem’s rate in its Order Appointing Guardian Ad Litem; (2) despite LACSN’s allegation to the contrary, the District Court had authority to award fees and costs to the guardian ad litem, despite not specifying the guardian ad litem’s rate directly in its Order Appointing Guardian Ad Litem; (3) the District Court properly interpreted NRS 159.0455 and Nevada Guardianship Rule 8 when it appointed the guardian ad litem; (4) the District Court correctly awarded the guardian ad litem attorney’s fees and costs at her attorney rate, rather than a fiduciary rate, and LACSN’s attempt to get this Court to read a substantial evidence “market rate” requirement into NRS 159.344 is improper.

DATED this 16th day of November, 2022.

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By: /s/ John P. Michaelson

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CERTIFICATE OF COMPLIANCE

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 14 point, double-spaced Times New Roman font.

2. I further certify that this brief complies with the page-volume or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points and contains 9801 words.

3. I hereby certify that I am an attorney of record for Respondents Robyn Friedman and Donna Simmons for this matter. I have read this answer, 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, in particular NRAP 28(e), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the

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accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 16th day of November, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Michaelson Law, and that on the 16th day of November 2022, I caused to be served a true and correct copy of the foregoing RESPONDENTS' ANSWERING BRIEF and RESPONDENTS' APPENDIX in the following manner:

By depositing a copy of the above-referenced document for mailing in the United States Mail, first-class postage prepaid, at Las Vegas, Nevada, to the parties listed below at their last-known mailing addresses, on the date above written:

The Honorable Linda Marquis
Eighth Judicial District Court, Dept. B

Jeffrey Sylvester
John P. Michaelson, Esq.

Elizabeth Mikesell, Esq.
Scott Cardenas, Esq
Legal Aid Center of Southern Nevada, Inc.
Attorneys for Kathleen June Jones, Counsel for Purported Counsel for Appellant

Elizabeth Brickfield, Esq., Counsel for Respondent, Respondent, Guardian Ad Litem

Ammon E. Francom
Notification by traditional means

/s/ Heather Ranck

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