

IN THE SUPREME COURT OF THE STATE OF NEVADA

ATTORNEY AT LAW
9525 HILLWOOD DRIVE, SUITE 140 LAS VEGAS, NV 89134
TEL 702.485.4567 FAX 702.485.4568

Docket 83342 Document 2023-10924

MEMORANDUM OF POINTS AND AUTHORITIES

I. RELEVANT PROCEDURAL HISTORY

1. On July 14, 2021, the District Court entered the ORDER AFFIRMING REPORT AND RECOMMENDATION, ADMITTING WILL TO PROBATE AND TO ISSUE LETTERS TESTAMENTARY.

2. On July 14, 2021, Letters Testamentary were issued to Mr. Hisgen.

3. On August 4, 2021, CHRISTY SWEET (“Appellant”) filed her NOTICE OF APPEAL.

4. On October 20, 2022, the Court of Appeals entered its Opinion affirming the Order.

5. On December 12, 2022, Appellant filed her PETITION FOR REVIEW (the “Petition For Review”) which is currently pending.

6. On January 12, 2023, Mr. Hisgen passed away.

7. On January 27, 2023, Mr. Hisgen’s former counsel filed a MOTION TO EXTEND TIME.

8. On February 8, 2023, the Nevada Supreme Court entered its Order requiring that “[c]ounsel for respondent shall have 60 days from the date of this order to (1) file a motion for the substitution of a personal representative or (2) inform this court that respondent has no personal representative.”

9. On March 6, 2023, the Probate Commissioner entered his REPORT AND RECOMMENDATIONS that Respondents be appointed as administrators of the Estate.

10. On April 7, 2023, the District Court entered an ORDER GRANTING REQUEST FOR JUDICIAL REVIEW AND OBJECTION TO PROBATE COMMISSIONER’S REPORT AND RECOMMENDATIONS which provides for the appointment of Respondents as administrators of the Estate.

11. On April 10, 2023, Letters of Administration with Will Annexed were submitted to the Eighth Judicial District Court, Clerk of Court for issuance.

12. Respondents now move the Court to substitute Respondents as respondents in this matter.

II. ARGUMENT

A. The Notice of Appeal is Premature as the NRCP 59 Motion is Pending.

NRAP 43(a)(1) states as follows:

RULE 43. SUBSTITUTION OF PARTIES

(a) Death of a Party.

(1) After Notice of Appeal Is Filed. If a party dies after a notice of appeal has been filed or while a proceeding is pending in the Supreme Court or Court of Appeals, the decedent's personal representative may be substituted as a party on motion filed by the representative or by any party with the clerk of the Supreme Court. A party's motion shall be served on the representative in accordance with Rule 25. If the decedent has no representative, any party may suggest the death on the record, and the court may then direct appropriate proceedings.

In this case, the District Court has appointed, and letters of administration are pending issuance to Respondents. Further, the interests of the Estate should be protected and represented in respect to the pending Petition For Review filed by Appellant. Accordingly, the Court should order Respondents substitution as Respondents and set new deadlines for response to the Petition For Review.

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III. CONCLUSION

For the reasons set forth above, Respondents respectfully requests that this Court enter an order substituting Respondents as respondents in place of Mr. Hisgen.

DATED this 10th day of April, 2023. _____

/s/ Brian H. Nelson, Esq.

BRIAN H. NELSON, ESQ.

Nevada Bar No. 13203

LAW OFFICES OF BRIAN H. NELSON

9525 Hillwood Drive, Suite 140

Las Vegas, NV 89134

Tel.: 702.485.4567

Email: brian@bhnelson.com

Attorney for Kathryn Sweet and Vanessa

Johnson, Administrators of the Estate of

Marilyn Weeks Sweet

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10TH day of April, 2023, I served a copy of the foregoing **MOTION TO SUBSTITUTE ADMINISTRATORS AS RESPONDENTS** via the Supreme Court of Nevada's E-filing system, in compliance with Nevada Rules of Appellate Procedure and Rule 9 of the Nevada Electronic Filing and Conversion Rules, to the following counsel of record:

Michael A. Olson, Esq.
Mike@blackrocklawyers.com
Thomas R. Grover, Esq.
Tom@blackrocklawyers.com
BLACKROCK LEGAL
10155 W. Twain Avenue, Suite 100
Las Vegas, NV 89147

Michael N. Feder, Esq.
MFeder@dickinson-wright.com
Kerry E. Kleiman, Esq.
KKleiman@dickinson-wright.com
DICKINSON WRIGHT PLLC
3883 Howard Hughes Pkwy. Suite 800
Las Vegas, NV 89169
Pro Bono Counsel for Appellant

/s/ Brian H. Nelson, Esq.

An Employee Of THE LAW OFFICES OF
BRIAN H. NELSON