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2
3 IN THE SUPREME COURT OF THE STATE OF NEVADA

4
5 TODD ROBBEN,

6 Petitioner,

7 vs.

8 THE ESTATE OF THOMAS JOSEPH
9 HARRIS TRUST; AND THOMAS J. HARRIS
10 TRUST,

11 Respondents,
12 _____ /

13 RECORD ON APPEAL
14 VOLUME 4

15 COPIES OF ORIGINAL PLEADINGS
16 PAGES 437-598

17
18 TODD ROBBEN
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21 PETITIONER IN PROPER PERSON

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Case No. 2022-PB-00119

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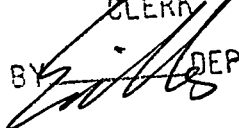
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IN THE NINTH JUDICIAL DISTRICT COURT, STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

TODD ROBBEN,

Petitioner,

vs.

THE ESTATE OF THOMAS
JOSEPH HARRIS; THOMAS J.
HARRIS TRUST,

Respondents.

OBJECTION TO PETITIONER
TODD ROBBEN'S VERIFIED
PETITION TO INVALIDATE THE
THOAMS J. HARRIS WILL AND
TRUST; PETITTOINER'S REQUEST
FOR APPOINTMENT OF
COUNSEL PURSUANT TO NRS §
136.200; EMERGENCY REQUEST
FOR STAY OF FINAL
DISTRIBUTION; PERMPATORY
CHALLENGE TO JUDGE NATHAN
TOD YOUNG

The Estate of Thomas J. Harris (the "Estate"), by and through its duly appointed Successor Executor, Tara M. Flanagan, presents its Objection to Petitioner Todd Robben's Verified Petition to Invalidate the Thomas J. Harris Will and Trust; Petitioner's Request for Appointment of Counsel Pursuant to NRS 136.200; Emergency Request for Stay of Final Distribution; Preemptory Challenge to Judge Nathan Todd Young (the "Petition"). Specifically, the Estate objects to the Petition

1 in full, and timely presents its objection in writing in advance of any initial hearing
2 on the Petition in accordance with NRS 155.160.

3 **INTRODUCTION / STATEMENT OF THE ISSUE**

4 The Petition is properly dismissed against the Estate with prejudice, as fully
5 set forth in the Estate's separate Motion to Dismiss filed in this matter on October 6,
6 2022.

7 Without undermining the merit of the Estate's Motion to Dismiss, the Estate
8 files this objection to the Petition stating its full and complete objection to the
9 contents of the Petition, and fully objecting to and opposing any and all relief
10 requested by the Petition in this matter.

11 **STATEMENT OF RELEVANT PROCEDURE CONCERNING THE ESTATE OF**

12 **THOMAS JOSEPH HARRIS**

13 1. Thomas Joseph Harris (the "Decedent") died on December 30, 2019, as
14 a resident of Douglas County, Nevada.

15 2. The Last Will and Testament of Thomas Joseph Harris was duly lodged
16 with this Court on April 6, 2021.

17 3. The Decedent's Last Will and Testament (the "Decedent's Will" or the
18 "Will") is a pour over will, identifying the Decedent's Trust as the beneficiary of his
19 Will. The Decedent's Trust is The Declaration of Trust Known as the Thomas J.
20 Harris Trust, dated June 12, 2019 (the "Decedent's Trust" or the "Trust").

21 4. The Decedent's Last Will and Testament nominated the following line
22 of Executors: Jeff Robben, Scott Barton, and Tara Flanagan. *Id.*

23 5. On March 10, 2021, Scott Barton filed his Verified Petition for Letters
24 of Special Administration and for Probate of Will and Issuance of Letters
25 Testamentary before Department 1 of the Ninth Judicial District Court. Mr. Barton
26 was the appropriate individual to seek appointment as the Personal Representative
27 of the Estate because the first nominated executor, Jeff Robben, had passed away on
28 November 11, 2020. Mr. Barton's initial petition seeking to administer the Estate

pursuant to the Decedent's Will was assigned case number 2021-PB-00034 (the "Estate Case").

6. On April 6, 2021, the Court in the Estate Case entered its Order Admitting Will to Probate and Issuing Letters Testamentary appointing Scott Barton to serve as the Personal Representative of the Estate, and resultingly, Letters Testamentary were issued to Scott Barton on April 22, 2021, after which Mr. Barton began administering the Estate. *See Exhibit 1.*

7. Several months thereafter, Mr. Barton notified The Honorable Tara Flanagan he was resigning as both the Personal Representative of the Decedent's Estate and as Trustee of the Decedent's Trust. Consistent with her nomination as the next named Executor of the Estate by the Decedent's Will, Ms. Flanagan filed her Petition for Appointment of Successor Executor and for Issuance of Letters Testamentary on June 25, 2021, in the Estate Case.

8. On July 27, 2021, the Court entered its Order Appointing Successor Executor and Issuing Successor Letters Testamentary, and on August 17, 2021 Letters Testamentary were issued to Tara M. Flanagan. *See Exhibit 2.*

9. Pursuant to her appointment as the Successor Executor of the Estate, Ms. Flanagan (hereinafter the "Successor Executor" or the "Petitioner") continued the Estate's administration and worked to diligently conclude the administration of the Estate.

10. On April 14, 2022, the Successor Executor filed her Petition to Confirm First and Final Accounting, Request for Final Distribution, and Request for Payment of Professional's Fees and Costs (the "First and Final Petition") in the Estate Case. A hearing was scheduled on the Successor Executor's First and Final Petition for May 24, 2022.

11. On May 23, 2022, Todd Robben appeared for the first time in the Estate Case through the filing of his Notice of Motion for Continuance and Motion for

Continuance. Mr. Robben's request for a continuance was based on allegations concerning the validity of the Decedent's Will. *See Exhibit 3.*

12. A hearing was conducted in the Estate Case regarding the First and Final Petition on May 24, 2022. The Court heard the presentation of Mr. Robben, as well as multiple arguments from Counsel for the Estate, including but not limited to presentation of the fact Mr. Robben was not an "interested person" in the Estate as defined by Nevada law, and had no standing upon which to appear, to contest the validity to the Decedent's Will, or otherwise state any objection in the Estate Case. At the conclusion of the hearing, the Court granted Mr. Robben a brief continuance out of an "abundance of caution" to present any basis upon which he could be identified as an interested person in the Estate Case, continuing the hearing on the First and Final Petition to June 21, 2022.

13. Thereafter, on June 15, 2022 Mr. Robben filed a Request for Appointment of Counsel in advance of the June 21, 2022 continued hearing. *See Exhibit 4.*

14. A continued hearing was conducted on the First and Final Petition in the Estate Case on June 21, 2022. At the conclusion of the hearing, having heard arguments from Mr. Robben and Counsel for the Estate, the Court granted the Successor Executor's First and Final Petition in full and without exception. Moreover, the Court in the Estate Case ruled Mr. Robben was not an interested person to the proceeding, had produced no evidence upon which he could be found to be an interested person in the Estate Case, and as such had no basis to be appointed Counsel. As a result of the Court's ruling in the Estate case, Mr. Robben has no standing to appear in the Estate Case, and as such has no standing to contest the validity of the Last Will and Testament of Thomas J. Harris. *See Exhibit 5.*

20. The Court codified its ruling through entry of its written Order Granting the First and Final Petition in the Estate Case on June 22, 2022, wherein it specifically found as follows:

Finally, upon thorough review by the court, including review of Mr. Robben's written filings and hearing Mr. Robben's oral presentation at both the May 24, 2022 hearing as well as the June 21, 2022 continued hearing, the Court determines Mr. Robben is not an "interested person" in this Estate as defined by NRS 132.185, and as such has no standing to object to the [First and Final] Petition, be appointed Counsel, or otherwise appear in this proceeding. Specifically, the Court heard from Mr. Robben, and after giving him additional time, Mr. Robben was unable to present any legal basis or admissible evidence to potentially allow a determination he is an interested person in this Estate. Therefore, Mr. Todd Robben is not an interested person to this Estate, and as such has no standing to oppose or object to the Petition, or otherwise appear in these proceedings. *Id.* at p. 5-6, ¶ 32.

18. Thereafter, on June 22, 2022, Mr. Robben filed an Emergency Stay Request – Emergency Verified Motion to Reconsider seeking reconsideration of the Court's Order granting the Estate's First and Final Petition and concluding Mr. Robben was not an interested person and had no standing in the Estate Case. Mr. Robben also filed separate Supplemental Points and Authorities in Support of his Motion to Reconsider on June 23, 2022, and filed a Motion to Expedite Stay Request Pending Reconsideration on June 24, 2022 (these papers are collectively referred to hereafter as Mr. Robben's "Motion to Reconsider").

19. On July 1, 2022, the Estate filed its Opposition to Mr. Robben's Motion to Reconsider, to which Mr. Robben filed a Reply brief on July 5, 2022.

20. Separately, Mr. Robben sought to appeal the Court's July 22, 2022 Order in the Estate Case, filing a Notice of Appeal with the Nevada Supreme Court on June 27, 2022. The Appeal was assigned Appeal No.: 84948. *See Exhibit 6.*

21. Thereafter, on July 8, 2022, the Nevada Supreme Court filed its Order Dismissing Appeal, dismissing in its entirety Mr. Robben's appeal in the Estate Case. See Exhibit 7.

22. Additionally, on July 13, 2022, the District Court entered its Order denying Mr. Robben's Motion to Reconsider and all filings associated with Mr. Robben's Motion to Reconsider. As a result, Mr. Robben's efforts to, in any way, oppose or object to any aspect of the administration of the Decedent's Estate, including any contest of the Decedent's Will, was forever foreclosed and concluded. See Exhibit 8.

23. Now, by and through his initial Petition in this matter, filed in or around July 20, 2022, Mr. Robben identifies the Estate of Thomas J. Harris as a Respondent for purposes of contesting the validity of the Decedent's Will.

24. The Estate filed its Motion to Dismiss the Petition in this matter against the Estate, with prejudice on October 6, 2022. The Motion to Dismiss is fully briefed and pending before the Court.

25. Separately, the Trust filed a Motion for Summary Judgment seeking dismissal of the Petition with prejudice on October 6, 2022. The Motion for Summary Judgment is fully briefed and pending before the Court.

26. The Estate now files its Objection to the Petition.

NARRATIVE RESPONSE & OBJECTION TO THE
RELIEF REQUESTED BY THE PETITION

The Estate presents this full and general Objection to the entirety of the Petition, as well as its objection to all relief requested by the Petition. See NRS 155.160. This Objection is presented in accordance with the meritorious legal arguments presented in the Estate's separately filed Motion to Dismiss, the relevant factual history presented above, and the legal presentation presented below.

In filing this Objection, the Estate will endeavor to follow the order of the presentation of the Petition's allegations pertinent to the Estate.

1 **I. OBJECTION TO THE BEGINNING PORTION OF THE PETITION**

2 The Petition begins by making broad, unsupported allegations regarding the
3 validity of the Decedent's Will, all of which are objected to and denied by the Estate.
4 *See generally* Petition, pgs. 2-5.

5 Namely, the Estate objects to any and all allegations contesting the validity of
6 the Will, which has already been conclusively determined to be valid in the Estate
7 Case. *See Exhibits 1, 5 & 7.* In as much, the Estate denies and objects to any
8 allegations of undue influence related to the Decedent's Will or the Decedent's Estate,
9 as well as to the application of any statutory burden shifting based on wholly
10 unsubstantiated allegations unrelated to the Decedent's Will or the Decedent's
11 Estate.

12 **II. OBJECTION TO THE "INTRODUCTION" OF THE PETITION**

13 The "Introduction" of the Petition does not specifically reference the Decedent's
14 Will or Estate. *See generally* Petition, pgs. 5-7. However, the Estate maintains its
15 general objection to the Petition, including the "Introduction" section of the Petition
16 in an abundance of caution.

17 By and through the "Introduction" section of the Petition, the Estate notes
18 Petitioner alleges his Petition is timely. The Estate denies and opposes this
19 statement, and identifies the Petition is not only untimely, but time-barred, as
20 presented in detail in the Estate's separately filed Motion to Dismiss. *See generally*
21 Estate's Motion to Dismiss; *see also* NRS 137.080.

22 The "Introduction" section of the Petition also references the Estate Case,
23 noting this Court's ability to review the proceedings in the Estate Case in full wherein
24 the Court ruled the Petitioner is not an "interested person in the Estate, with no
25 standing to make any allegations regarding the validity of the Decedent's Will." *See*
26 **Exhibit 5.** The Estate notes it has no opposition to this Court accessing, considering,
27 and reviewing the proceedings in the Estate Case.

1 **III. PETITIONERS REQUEST TO DISQUALIFY JUDGE YOUNG**

2 The Petition next seeks to disqualify Judge Nathan Young from presiding over
3 this matter. The Petition's request to disqualify Judge Young is now moot, as this
4 matter was assigned to Department II of the Ninth Judicial District Court and is
5 being presided over by the Honorable Robert Estes.

6 However, the Estate maintains its general objection to the Petition, and denies
7 and opposes all allegations and comments in the Petition contending Judge Young
8 acted with any bias or unfairness in presiding over the Estate Case. To the contrary,
9 Judge Young reviewed multiple filings and heard multiple presentations by the
10 Petitioner, after careful consideration of which Judge Young determined the
11 Petitioner has no interest in the Estate and no standing to appear in the Estate Case.
12 *See generally* Docket in Estate Case; *see also* **Exhibit 5**. Judge Young's ruling was
13 sustained by the Nevada Supreme Court, which dismissed the Petitioner's appeal of
14 Judge Young's final Order. *See* **Exhibit 7**.

15 **IV. THE PETITIONER IS NOT AN INTERESTED PERSON TO THE DECEDENT'S**
16 **ESTATE**

17 The Petition goes on to make arguments about the Petitioner's status as an
18 interested person. As set forth above, the Petitioner was conclusively found to not be
19 an interested person in the Estate by final orders issued in the Estate Case. *See*
20 **Exhibits 5 & 7**. The preclusive effects of the Orders issued in the Estate Case bar
21 the Petitioner from attempting to relitigate this adjudicated issue before this Court.
22 Moreover, the rulings in the Estate Case correctly applied governing Nevada law –
23 the Petitioner is not an “interested person” in the Estate, and as such cannot contest
24 the validity of the Decedent's Will in this matter. *See* **Exhibit 5**.

25 NRS 132.185 defines an “interested person” as a “person whose right or
26 interest under an estate or trust may be materially affected by a decision of the court.
27 The fiduciary or court shall determine who is an interested person according to the
28 particular purpose of, and matter involved in, a proceeding.” NRS 132.390 goes onto

1 establish "a person may not claim to have a right or interest under an estate after the
2 entry of an order of the court declaring the right or interest invalid."

3 Here, the Petitioner is disinherited from the Decedent's valid Will, and as the
4 Decedent's step-son is not an intestate heir of the Decedent's Estate. *See generally*
5 NRS Ch. 134. Thus, the Petitioner is neither a beneficiary nor an heir of the Estate,
6 and has no interest of any kind in the Estate which could be affected by a decision of
7 this or any Court. *Id.*; *see also Exhibit 5*. As such, and although this section of the
8 Petition again refers almost exclusively to the Trust, the Decedent's Estate objects to,
9 denies, and opposes any allegation the Petitioner is an "interested person" in the
10 Estate, and again identifies the Petitioner is barred from bringing any such
11 allegations in this proceeding. Stated otherwise, the Petitioner has been determined
12 to have no interest in the Estate, and as such cannot attempt to relitigate the validity
13 of the Decedent's Will in this matter. *See Exhibits 5 & 7*.

14 Next, as it relates to this section of his Petition, the Petitioner alleges "[t]he
15 NRS 132.185 issue was never decided on the merits in any court and does not preclude
16 adjudication in this case on the grounds of *res judicata*." This statement is factually
17 and legally incorrect. At the risk of being duplicitous to the Estate's separately filed
18 Motion to Dismiss, the Estate identifies the Petitioner was determined to not be an
19 "interested person" in the Estate Case by final orders with a preclusive effect barring
20 him from making such allegations and claims in this matter. Specifically, a valid
21 final judgement was entered in the Estate Case regarding Mr. Robben's attempt to
22 contest the Decedent's Will. In the Estate Case, the Court issued its Order Granting
23 the First and Final Petition on June 22, 2022. *See Exhibit 5*. NRCP 41(b) states
24 "any dismissal not under this rule – except one for lack of jurisdiction, improper
25 venue, or failure to join a party under Rule 19 – operates as an *adjudication on the*
26 *merits*." (emphasis added). The Court's June 22, 2022 Order was entered after
27 multiple hearings where the Court considered Mr. Robben's attempt to contest the
28 validity of the Decedent's Will, and is a final order regarding Mr. Robben's ability to

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1 contest the Decedent's Will or otherwise object to the administration of the Decedent's
2 Estate. Specifically, the Court's June 22, 2022 Order in the Estate Case dismissing
3 Mr. Robben from the Estate Case was not a dismissal for lack of jurisdiction, improper
4 venue, or failure to join a party under Rule 19 and as such is an "adjudication on the
5 merits" under NRCP 41(b). See **Exhibit 5**, p. 5-6, ¶ 32. Moreover, the Court's June
6 22, 2022 Order in the Estate Case was upheld after Mr. Robben's subsequent Motion
7 to Reconsider was denied, and Mr. Robben's appeal of the Court's June 22, 2022 Order
8 was dismissed by the Nevada Supreme Court. See NRCP 41(b); see also **Exhibits 7**
9 & 8. Furthermore, the United States Supreme Court has interpreted the phrase
10 "adjudication on the merits" to preclude the refiling of the same claim in the same
11 court. *Five Star Capital Corp. v. Rudy*, 124 Nev. 1048, 1058, 194 P.3d 709, 715 (2008)
12 citing to *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 506, 121 S.Ct 1020
13 (2001). As both the Estate Case and this matter were filed in the Ninth Judicial
14 District Court of the State of Nevada, it is "clearly proper to give preclusive effect" to
15 the Orders issued in the Estate Case. *Id.* Consequently, "the NRS 132.185" issue
16 was decided on the merits, enacting a preclusive effect barring the Petitioner from
17 his current efforts to relitigate the validity of the Decedent's Will before this Court.
18 *Id.*; see also *Alcantara ex rel. Alcantara v. Wal-Mart Stores, Inc.*, 130 Nev. at 257; see
19 also NRCP 41(b). Therefore, the Petitioner "may not claim to have a right or interest
20 in the [Estate]" because final orders were entered in the Estate Case "declaring [his
21 alleged] right or interest invalid." See 132.390.

22 In presenting this flawed argument, the Petitioner goes on to reference NRS
23 30.040. NRS 30.040 allows a person "interested" in certain written instruments to
24 seek declaratory relief regarding the construction or validity of the instrument.
25 Consistent with prior analysis, this statute is inapplicable. Specifically, NRS 30.040
26 requires a person to be "interested" in the instrument at issue. With regard to the
27 Estate, the instrument would be the Decedent's Will. Mr. Robben has already been
28 held to not be an interested person to the Decedent's Estate, and to lack standing to

question the validity of the Decedent's Will. *See Exhibits 5 & 7; see also* NRS 132.390. Stated plainly, Mr. Robben has no legal interest in the Decedent's Estate or the Decedent's Will upon which he could request any relief regarding the construction or validity of the Decedent's Will. As such, and for additional reasons set forth in this objection, NRS 30.040 is inapplicable to the Decedent's Estate in this matter.

Despite Mr. Robben's efforts to relitigate this previously decided issue, the fact remains he is not an "interested person" in the Decedent's Estate under NRS 132.185, and as such, has no basis upon which to obtain any audience with, or relief from, this Court

V. NRS 134 IS INAPPLICABLE TO THIS MATTER

Moving forward, the Petition cites to NRS 134.210. NRS 134.210 sets forth one of Nevada's laws of intestate succession. The reason for this reference in the Petition is unclear since the Petitioner only refers to the Trust in reference to this statute. Still, regardless of the purpose behind the Petitioner's reference to NRS 134.210 – it is wholly inapplicable to this matter.

Step-children are not intestate heirs of a decedent under Nevada's laws of intestate succession. *See* NRS Ch. 134. Similarly, NRS 134.210 only allows for distribution under intestacy when a surviving spouse dies intestate and without leaving any heirs. Here, the Decedent died testate, having had his valid Will admitted to probate in the Estate Case, where the Decedent's Estate was fully administered by and through the terms of his valid Will. *See Exhibits 1 & 5*. As such, NRS 134.210 is inapplicable to the Decedent's Estate because the Decedent did not die intestate.

VI. PETITIONER CANNOT BE APPOINTED COUNSEL

The Petition goes onto request the Court appoint him Counsel pursuant to NRS 136.200. NRS 136.200(1) states "[i]f a will is offered for probate and it appears there are minors or unborn members of a class who are interested, or if it appears there are other interested persons who reside out of the county and are unrepresented, the

1 court may, whether there is a contest or not, appoint an attorney for them.” Here,
2 Mr. Robben is unable to be appointed Counsel pursuant to NRS 136.200 because 1)
3 there is no will being admitted to probate in this matter, and 2) Mr. Robben has been
4 determined to not be an interested person in the Decedent’s Estate.

5 First, appointment of Counsel under NRS 136.200 requires the matter to
6 involve a will being admitted to probate. See NRS 136.200(1). In this matter no will
7 is being admitted to probate. The Last Will and Testament of Thomas Harris was
8 previously admitted to probate and administered in a separate proceeding before
9 Department 1 of the Ninth Judicial District Court in Case No. 2021-PB-00034.
10 Resultingly, NRS 136.200 is wholly inapplicable to this matter.

11 Second, by final order of the Court in the Estate Case, Mr. Robben has been
12 ruled to *not* be an “interested person” regarding the Decedent’s Estate or the
13 Decedent’s Will, again making him unable to receive an appointment of Counsel
14 under NRS 136.200.

15 For these reasons, Mr. Robben’s request for the immediate appointment of
16 Counsel is unlawful and cannot be granted.

17 **VII. THE PETITION PRESENTS NO ADMISSIBLE EVIDENCE AND IS BASED ON**
18 **INCORRECT LEGAL ANALYSIS**

19 The Petition concludes with several pages of unsupported, hearsay allegations
20 almost exclusively related to the Trust. Most notably, throughout the Petition
21 Petitioner alleges the Decedent’s Trust is invalid due to the Decedent being unduly
22 influenced. Relying on this bald and unsupported allegation, the Petitioner argues
23 the Trust is to be presumed invalid under NRS 155.096(2), shifting the burden to the
24 Trustee of the Trust to prove its validity. The Petitioner’s argument is incorrect.
25 While NRS 155.097 does allow a transfer instrument to be presumed invalid upon
26 the fulfillment of certain criteria, the application of this presumption and the
27 associated burden shifting provided for in NRS 155.097 can only be made by a ruling
28 of the Court after a demonstration of admissible evidence subject to argument and

1 opposition. The Petitioner cannot simply assert bald allegations of undue influence
2 without the presentation of any admissible evidence in hopes of escaping his burden
3 of proof in this matter.

4 Therefore, although the Petition's allegation of undue influence and arguments
5 related to NRS 155.097 appear aimed at the Trust, the Estate makes clear its denial
6 of, and objection to, these bald unsupported allegations contained in the Petition.
7 Moreover, the Estate identifies the Petitioner's legal arguments are incorrect, as any
8 burden shifting allowed under NRS 155.097 can only be made by the Court after a
9 proper evidentiary presentation by the Petitioner. In this matter, consistent with his
10 deficient efforts in the Estate Case, the Petitioner has made nothing more than
11 unsupported allegations absent any admissible evidentiary support.

12 Moreover, the only possible evidence the Petitioner even refers to is
13 inadmissible hearsay and does not provide any legal or factual credibility to the
14 baseless assertions in the Petition, which he is barred from even bringing in this case.

15 **VIII. SUMMARY**

16 Therefore, the Estate states the following in summary of its general objection
17 to the Petition:

18 1. The Estate denies and objects to the Petitioner's claims he is an interested
19 person in the Estate.

20 2. The Estate denies and objects to any and all allegations of undue influence
21 regarding the Will or the Estate.

22 3. The Estate denies and objects to any and all allegations contesting the
23 validity of the Will.

24 4. The Estate objects to the Court taking judicial notice of Exhibit A to the
25 Petition because the request does not comport with NRS 47.130-47.140.

26 5. Petitioner's request for a peremptory challenge against the Honorable
27 Nathan Tod Young is moot as Judge Young no longer presides over this matter.
28

1 6. The Estate denies and objects to Petitioner's allegation that Judge
2 Young's orders are null and void. The Executor further denies and objects to any
3 statement regarding bias or impropriety alleged against Judge Young.

4 7. The Estate denies Petitioner has a right to appointment of Counsel under
5 NRS 136.200.

6 8. To the extent any allegation of theft in the Petition related to the Estate,
7 the Estate denies any assets were stolen from the Estate and, therefore, Petitioner's
8 request for an accounting of alleged stolen assets should be denied.

9 9. The Successor Executor denies she, or her legal counsel, have committed
10 theft or fraud from the Estate and asserts this statement is made in violation of NRC
11 11, meriting sanctions against the Petitioner as deemed appropriate by the Court.

12 10. The Estate denies Petitioner has a prima facie case of undue influence
13 regarding the Will of the Estate.

14 11. The Estate denies the Petition is timely filed.

15 12. The Estate denies Petitioner is entitled to notice of any Estate proceeding
16 because he is not an interested person in the Estate.

17 13. The Estate denies any transfer of the Settlor's assets were the product of
18 fraud or theft. The Estate re-iterates Petitioner has no standing to pursue said claims
19 regardless because even if he prevailed, he would receive nothing from the Estate as
20 he is not an intestate beneficiary of the Estate, rendering this entire proceeding
21 nothing more than advisory without any benefit or damage inuring to Petitioner.

22 14. The Estate denies Petitioner is an interested person in the Estate because
23 he is not a beneficiary of the Will, nor is he an intestate beneficiary of the Estate of
24 Thomas J. Harris, which the Court has already determined in Case No. 2021-PB-
25 00034.

26 15. The Estate denies Petitioner may seek Declaratory Relief under NRS
27 34.040 related to the Will.
28

1 16. The Estate denies any step-child of Thomas J. Harris would be an
2 intestate beneficiary of his Estate.

3 17. The Estate denies the Petitioner is entitled to an accounting of the Estate
4 because he is not a beneficiary or interested person of the Estate.

5 18. The Estate denies the Trust or Will of Thomas J. Harris is the product of
6 undue influence perpetrated on the Decedent by any person.

7 19. The Estate lacks knowledge or information sufficient to form a belief
8 about the statements made in the Petition related to the personal life, medical history
9 and career of Jeff D. Robben, and based upon this lack of knowledge denies the same
10 in and abundance of caution.

11 20. The Estate denies any and all allegations of conspiracy to defraud
12 Petitioner from Trust or Estate Assets.

13 21. The Successor Executor of the Estate denies any unlawful conduct alleged
14 against her personally, or any violation of judicial ethics.

15 22. The Estate denies any statements of wrongdoing alleged in the prior
16 Estate Case and further posits Petitioner is barred from making such allegations in
17 this Case as all probate related issues alleged by Petitioner were litigated in a
18 separate matter – 2021-PB-00034.

19 23. The Estate denies all factual allegations in the Petition not specifically
20 and expressly admitted herein. The Estate denies and objects to all forms of relief
21 requested in the Petition. The Estate posits the Petition must be summarily
22 adjudicated against Petitioner for reasons addressed separately in motion practice
23 before the Court.

24 **WHEREFORE**, the Estate objects to the Petition in this matter in full, and
25 respectfully request the following relief from this Court:

26 A. Dismissal of the Petition with prejudice and/or judgment in favor of the
27 Estate and against Todd Robben on all claims, theories, or requests for
28 relief in the Petition;

- B. Reimbursement of attorney's fees as allowed by law, statute, rule, common law, equity, and/or the inherent powers of the Court;
- C. Reimbursement of costs as allowed by law, statute, rule, common law, equity, and/or inherent powers of the Court;
- D. For any other relief this Court deems appropriate or just.

AFFIRMATIVE DEFENSES

1. Petitioner lacks standing to bring his claims, causes of action and requests for relief alleged in his July 20, 2022 Petition.

2. Petitioner is not an interested person or beneficiary of the Estate.

3. Petitioner is estopped from seeking the relief demanded in the Petition.

4. The Petition is barred by the doctrine of issue preclusion, claim preclusion, and/or res judicata.

5. The Petition is barred by estoppel.

6. The Petition is barred by the applicable statute of limitations.

7. There is no subject-matter jurisdiction over this matter by this Court.

8. Petitioner cannot obtain the relief he requests because it is unlawful and/or illegal.

9. Petitioner's claims are barred by the statute of frauds.

10. Petitioner's claims are barred by laches and/or unclean hands.

11. The Estate reserves the right to include additional affirmative defenses at any point in this litigation as evidence becomes available for review and inspection giving rise to additional affirmative defenses.

12. The Estate reserves the right to amend this document and assert additional affirmative defenses at trial to conform to the evidence presented at trial, which is not fully known at this preliminary phase of litigation.

13. The Estate asserts any affirmative defense listed in NRCP 8 to the extent applicable in this proceeding, and does not intend to waive any affirmative defenses

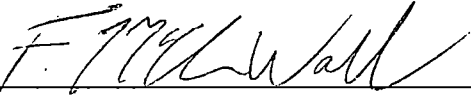
1 by electing not to assert said defense in this preliminary response and objection to
2 the Petition.

3 **AFFIRMATION**

4 The undersigned affirms this document does not contain the social security
5 number or legally private information of any person.

6 **DATED** this 15th day of December, 2022.

7
8 By: _____


F. McClure Wallace, Esq.
Nevada Bar No.: 10264
Wallace & Millsap
510 W Plumb Ln., Ste. A
Reno, Nevada 89509
(775) 683-9599
mcclure@wallacemillsap.com
*Attorneys for Tara M. Flanagan
in her capacity as the
Personal Representative of the
Estate of Thomas Harris*

CERTIFICATE OF SERVICE

The undersigned certifies the foregoing document was served upon Petitioner Todd Robben via United States Mail at the address of P.O. Box 4251 Sonora, California 95370. The foregoing Motion was placed in the mail for service on the date shown below.

Dated this 15th day of December, 2022.

By: 

Caroline Carter, Paralegal

LIST OF EXHIBITS

- 1
2 Exhibit 1 - Order Admitting Will to Probate and Issuing Letters Testamentary;
3 Letters Testamentary issued to Scott Barton
4 Exhibit 2 - Order Appointing Successor Executor, and Issuing Successor Letters
5 Testaments; Letters Testamentary issued to Tara M. Flanagan
6 Exhibit 3 - Notice of Motion for Continuance & Motion for Continuance
7 Exhibit 4 - Petitioner's Request for Appointment of Counsel
8 Exhibit 5 - Order Granting Petition to Confirm First & Final Accounting,
9 Request for Final Distribution, and Request for Payment of
10 Professional Fees and Costs
11 Exhibit 6 - Notice of Appeal
12 Exhibit 7 - Order Dismissing Appeal
13 Exhibit 8 - Order
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Exhibit 1

Exhibit 1

1 Case No.: 2021-PB00034

2 Dept. No.: 1

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APR 02 2021

Douglas County
District Court Clerk

FILED

2021 APR -6 PM 4:23

BOBBIE R WILLIAMS
CLERK

5 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF DOUGLAS

8 IN RE:

9 THE ESTATE OF THOMAS JOSEPH
10 HARRIS,

11 Deceased.

ORDER ADMITTING WILL TO
PROBATE AND ISSUING LETTERS
TESTAMENTARY

14 The Petitioner, Scott Barton, having proved to the satisfaction of the Court that the time
15 for hearing the verified Petition for Probate of Will and Issuance of Letters Testamentary (the
16 "Petition") was, by the Clerk, set for April 6, 2021, and that notice of said hearing has been duly
17 given as required by law, and the Court having reviewed the evidence finds that the facts alleged
18 in said Petition are true and correct, and that said Petition for the Probate of Will and Issuance of
19 Letters Testamentary should be granted.

20 The Court finds as follows:

21 1. Thomas Joseph Harris died on December 30, 2019, in the County of Washoe,
22 State of Nevada, and at the time of his death was a resident of the County of Douglas, State of
23 Nevada.

24 2. Said Decedent left personal property located within the state of Nevada at a value
25 in excess of Three Hundred Thousand Dollars (\$300,000).

26 3. Decedent left a Last Will and Testament dated June 12, 2019 and such Will has
27 been filed with the Clerk of this Court, as provided by law.

28 4. Decedent's Will dated June 12, 2019, was duly executed in all particulars as
required by law, and at the time of the execution of this Will, the Decedent was of sound mind,

1 over the age of eighteen (18) and was not acting under undue influence or duress.

2 5. Decedent's Will appoints Scott Barton as Executor thereof, and Scott Barton has
3 consented to act as Executor. The Will provides that no bond shall be required of Scott Barton.
4 Scott Barton is qualified for and entitled to Letters Testamentary pursuant to the laws of the State
5 of Nevada.

6 6. IT IS HEREBY ORDERED, the Will of the Decedent dated June 12, 2019, is
7 admitted to probate as the Last Will and Testament of said Decedent.

8 7. IT IS FURTHER ORDERED that Scott Barton be appointed Executor of said
9 estate, to serve without bond, and that Letters Testamentary shall issue to him upon his taking the
10 oath required by law.

11 DATED: April 6, 2021

12 
13 DISTRICT JUDGE

14 Submitted by:

15 Abigail G. Stephenson (NV Bar 13593)
16 BLANCHARD, KRASNER & FRENCH
17 5470 Kietzke Lane, Suite 200
18 Reno, Nevada 89511
19 (775) 384-0022
20 Attorneys for Petitioner
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Case No.: 2021-PB00034

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Dept. No.: 1

APR 22 2021

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Douglas County
District Court Clerk

BOBBIE R. WILLIAMS
CLERK

C. WALKER DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

IN RE:

THE ESTATE OF THOMAS JOSEPH
HARRIS,

LETTERS TESTAMENTARY

Deceased.

The Last Will and Testament of Thomas Joseph Harris, deceased, having been duly admitted to probate in our Court, Scott Barton who is named therein, was, by our Court on the 6th day of April, 2021 duly appointed Personal Representative, who, having qualified as such, is hereby authorized to act by virtue thereof. In testimony whereof, I have officially signed these letters and affixed hereto the Seal of said Court this 22 day of April, 2021.

Bobbie R. Williams, CCE, CMP, Clerk

C. WALKER

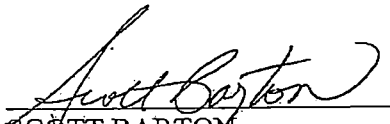
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OFFICIAL OATH

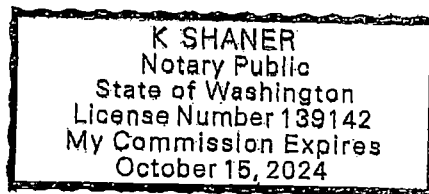
STATE OF WASHINGTON)
) ss.
COUNTY OF CLARK)

I, Scott Barton, whose mailing address is 12505 NE 246th Court, Brush Prairie, WA 98606, solemnly affirm that I will faithfully perform according to the law the duties of the office of Executor of the Estate of Thomas Joseph Harris, deceased, and that all matters stated in any petition or paper filed with the Court by me are true of my own knowledge, or if any matters are stated on information and belief, I believe them to be true.


SCOTT BARTON

SUBSCRIBED AND AFFIRMED before me
on April 9th, 2021.


NOTARY PUBLIC



(SEAL)

CERTIFIED COPY

The document to which this certificate is attached is a full, true and correct copy of the original in file and of record in my office.

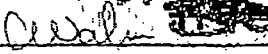
DATE 04/22/2021
BOBBIE R. WILLIAMS, Clerk of Court
of the State of Nevada and for the County of Douglas,
By  Deputy

Exhibit 2

Exhibit 2

1 CASE NO.: 2021 PB00034

2 DEPT NO.: I

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Douglas County
District Court Clerk

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BOBBIE R. WILLIAMS
CLERK

BY **A. PONCE** DEPUTY

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7 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF DOUGLAS

9 IN RE:

10 THE ESTATE OF THOMAS JOSEPH
11 HARRIS,

12 Deceased
13 _____

14 [PROPOSED]
15 ORDER APPOINTING SUCCESSOR EXECUTOR
16 AND ISSUING SUCCESSOR LETTERS TESTAMENTARY

17 Tara M. Flanagan, by and through her counsel of record, F. McClure Wallace
18 and Patrick R. Millsap of Wallace & Millsap, petitioned this Court for appointment
19 of Tara M. Flanagan as Successor Executor of the Estate of Thomas Joseph Harris
20 ("Decedent").

21 The Court finds as follows:

22 The Decedent's Last Will and Testament was admitted to probate and
23 Letters Testamentary were issue to Scott Barton on April 6, 2021.

24 Scott Barton, was appointed and qualified, but has resigned prior to
25 completing the administration of the Estate.

26 There is a need to appoint a Successor Executor to complete the
27 administration of the Estate.
28

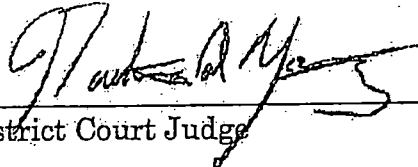
1 Tara M. Flanagan was nominated by the Decedent in his Will to serve as
2 Successor Executor and has consented to serve.

3 Notice was served on all interested beneficiaries, and no objections to the
4 appointment of Tara M. Flanagan as Successor Executor have been filed with this
5 Court.
6

7 **THEREFORE, IT IS ORDERED** that TARA M. FLANAGAN, has leave to
8 qualify as Successor Executor by taking the required oath, and upon so doing,
9 Successor Letters Testamentary shall issue.

10 **IT IS FURTHERED ORDERED** that the Letters Testamentary previous
11 issued to Scott Barton are hereby rescinded.
12

13 **SO ORDERED** this 27 day of July 2021.

14
15 
16 District Court Judge

17 *Submitted by:*
18

19 **WALLACE & MILLSAP**
20

21 **F. MCCLURE WALLACE, ESQ.**

22 State Bar No. 10264

23 **PATRICK R. MILLSAP, ESQ.**

24 State Bar No. 12043

25 **WALLACE & MILLSAP LLC**

26 510 West Plumb Lane, Suite A

27 Reno, Nevada 89509

28 (775) 683-9599 Telephone

(775) 683-9597 Fax

Attorneys for Petitioner

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Douglas County
District Court Clerk

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BOBBIE R. WILLIAMS
CLERK

BY A. PONCE PUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

IN RE:

THE ESTATE OF THOMAS JOSEPH
HARRIS,

Deceased.

LETTERS TESTAMENTARY

On the July 27, 2021, the Court entered its *Order Appointing Successor Executor and Issuing Successor Letters Testamentary* appointing TARA M. FLANAGAN, as Successor Executor of the Estate of THOMAS JOSEPH HARRIS.

Tara M. Flanagan, who having duly qualified is hereby authorized to act and has the authority and shall perform the duties of Executor of the Estate of Thomas Joseph Harris, including the authority vested by the Court's Order of July 27, 2021.

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

Dated this 17 day of August 2021.

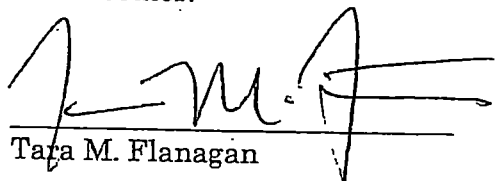
CLERK OF COURT

By: A. PONCE
Deputy Clerk

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OATH

I, TARA M. FLANAGAN as Successor Executor of the Estate of THOMAS JOSEPH HARRIS whose mailing address is in care of Wallace & Millsap LLC, 510 W. Plumb Lane, Suite A, Reno, Nevada 89509 solemnly affirms that I will faithfully perform according to law, the duties of Successor Executor.


Tara M. Flanagan

State of California)
County of Alameda) ss

Subscribed and sworn to before me this
10 day of August 2021.

Y Rosales
NOTARY PUBLIC

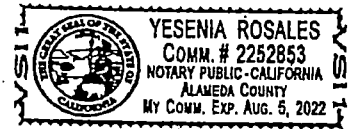


Exhibit 3

Exhibit 3

Todd Robben
In Pro per
PO Box 4251
Sonora, CA 95370
Robben.ty@gmail.com
(209)540-7713

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN RE: THE ESTATE OF THOMAS
JOSEPH HARRIS,

Deceased

CASE NO.: 2021 pb00034

DEPARTMENT: 1

**NOTICE OF MOTION FOR
CONTINUANCE AND MOTION FOR
CONTINUANCE**

This notice and motion for continuance is made by Todd C. Robben, the stepson of Thomas J. Harris. Todd C. Robben only recently learned of the death of Thomas J. Harris and Jeff D. Robben. This motion will be filed and made orally at the petition hearing on May 24th at 1:00pm in Department 1. This motion is made on the following points and authority.

MEMORANDUM OF POINTS AND AUTHORITY

Todd C. Robben was not notified of the death of Thomas J. Harris or Jeff D. Robben or any wills or trusts until the beginning on May 2022. Pursuant to local rule DCR 9 and NRS 155.160, Todd C. Robben objects to any final distribution and

1 requests a continuance to obtain counsel and file legal arguments and affidavits
2 showing Jeff D. Robben had undue influence over Thomas J. Harris to which let to the
3 disinheritance of Todd C. Robben in the last will and testament of Thomas J. Harris
4 and Thomas J. Harris trust.

5 There appears to be no affidavit and reason as to why Todd C. Robben was
6 disinherited. Nevada also mandate mandatory mediation pursuant to NRS 164.930.

7 In addition to undue influence, there appears to be fraud, embezzlement,
8 misappropriation and theft of assets and they manner of how the trust was managed.
9 See NRS 155.007 and NRCP Rule 60.

10
11 **RELIEF REQUEST**
12

13 Todd C. Robben objects to the final distribution and requests a continuance of
14 up to six months to obtain legal counsel and evidence.
15

16
17 Respectfully signed under penalty of perjury,
18

19 /s/ Todd Robben
20

21 05/23/2022
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Exhibit 4

Exhibit 4

1 Todd Robben
2 In Pro per
3 PO Box 4251
4 Sonora, CA 95370
5 Robben.ty@gmail.com
6 (209)540-7713

7 **IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

9
10 IN RE: THE ESTATE OF THOMAS
11 JOSEPH HARRIS,

12
13 Deceased

14 }
15 } **CASE NO.: 2021 PB00034**
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DEPARTMENT: 1

**PETITIONER'S REQUEST FOR
APPOINTMENT OF COUNSEL
PURSUANT TO NRS § 136.200**

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1 Petitioner is an interested person who resides outside the county. The Petitioner, a
2 "non-resident" of Douglas County, Nevada, Petitioner resides in Tuolumne County,
3 California. "being non-residents — Judge Waters appointed appellant Flangas as their
4 counsel pursuant to NRS 136.200." Matter of Estate of Herrmann, 677 P. 2d 594 -
5 Nev: Supreme Court 1984

6 **NRS136.200 Appointment of attorney to represent minors, unborn**
7 **members of interested class or nonresidents; retention of other**
8 **counsel.**

9 If a will is offered for probate and it appears there are minors or unborn
10 members of a class who are interested, or if it appears there are other
11 interested persons who reside out of the county and are unrepresented,
12 the court may, whether there is a contest or not, appoint an attorney for
13 them.

14 Petitioner, Todd Robben, the step-son of Thomas J. Harris and son of Olga
15 Harris is an "interested person" pursuant to NRS 132.185 "Interested person"
16 defined. "Interested person" means a person whose right or interest under an estate
17 or trust may be materially affected by a decision of a fiduciary or a decision of the
18 court. The fiduciary or court shall determine who is an interested person according to
19 the particular purposes of, and matter involved in, a proceeding.

20 The Petitioner is indigent, the Court has granted Petitioner indigent status. At
21 the hearing on May 24th, 2022 in this instant case, the Court granted the Petitioner's
22 request for a continuance, "in an abundance of caution", and gave the Petitioner to
23 June 21st, 2022 to obtain counsel.

24 The Petitioner being indigent and the short notice on top of holiday schedules
25 for lawyers and COVID-19 and a long list of various "conflicts" of interests the
26 Petitioner has been unable to secure legal counsel and counsel willing to work Pro
27 Bono or on contingency.

1 The Nevada Supreme Court has identified NRS 136.200 as a "statutory right" to
2 appointment of counsel in other types of civil cases. "there is no statutory right to
3 appointment of counsel for appellate review in this type of civil case as there is in
4 criminal cases and other types of civil cases. ...NRS 136.200" Casper v. Huber, 456
5 P. 2d 436 - Nev: Supreme Court 1969

6 This Petitioner requests the Court to grant the request and appoint a reputable
7 and conflict free attorney "in an abundance of caution"... The Petitioner has a *prima*
8 *facie* case of undue influence based on the undisputed facts that Jeff D. Robben, the
9 brother of the Petitioner, was 1: The caretaker of Thomas J. Harris; 2: The Financial
10 advisor for Thomas J. Harris; 3: Helped create the current Thomas J. Harris trust; 4.
11 Had "undue influence" and "presumed undue influence" of Thomas J. Harris; 5: Jeff
12 D. Robben influenced Thomas J. Harris to disinherit based on the animus and
13 vexation of Jeff D. Robben.

14 "A rebuttable presumption of undue influence is raised if the testator and the
15 beneficiary shared a fiduciary relationship, but undue influence may also be proved
16 without raising this presumption." In re Estate of Bethurem, 313 P. 3d 237, 241 (2013),
17 at 329. "The essence of a fiduciary or confidential relationship is that the parties do
18 not deal on equal terms, since the person in whom trust and confidence is reposed
19 and who accepts that trust and confidence is in a superior position to exert unique
20 influence over the dependent party." Hoopes v. Hammargren, 725 P. 2d 238, 242
21 (1986) quoting Barbara A. v. John G., 145 Cal.App.3d 369, 193 Cal.Rptr. 422, 432
22 (1983).

23 "Once raised, a beneficiary may rebut such a presumption by clear and
24 convincing evidence." Betherum, at 241. The highest standard of proof, "beyond a
25 reasonable doubt," exists only in criminal litigation. In civil litigation, "clear and
26 convincing evidence" is the highest evidentiary standard. "Clear and convincing
27 evidence" is "evidence establishing every factual element to be highly probable, or as
28

1 evidence [which] must be so clear as to leave no substantial doubt." In re Discipline of
2 Drakulich, 908 P. 2d 709, 715 (1995)(internal quotations and citations omitted).

3 Thus, the Defendants' must meet a difficult, nearly impossible burden, after the
4 burden shift. The burden shift occurs when the contesting party establishes the
5 existence of a fiduciary of confidential relationship.

6 Under NRS 155.097(2), estate planning documents and other beneficiary
7 designations are presumptively invalid as a result of undue influence, fraud or duress
8 under the following circumstances, where the beneficiary:

- 9 • is the person who drafted the document or instrument.
10 • is the caregiver of the person executing the document or instrument.
11 • "materially participated in formulating the dispositive provisions" of the
12 instrument or document.

13 In addition to the fact Jeff D. Robben was the caretaker, financial advisor and
14 helped draft the Thomas J. Harris trust, the Petitioner has at least three affidavits to
15 support facts proving Jeff D. Robben influenced Thomas J. Harris to disinherit based
16 on the animus and vexation of Jeff D. Robben. Petitioner indents to include all
17 beneficiaries, administrators and lawyers of the Thomas J. Harris Trust and Thomas J.
18 Harris and Olga Harris Trust. Additionally, the pleading/filings in a federal lawsuit
19 2:13-cv-00238-MCE-DAD UNITED STATES DISTRICT COURT EASTERN DISTRICT
20 OF CALIFORNIA describe the animus and vexation of Jeff D. Robben against his
21 brother, Todd Robben, the Petitioner. The complaint named Jeff D. Robben as one of
22 the defendants and the following facts:

23 On or about October 18, 2012 Plaintiff Todd Robben was out on bail,
24 which was bonded and insured by defendant Bail Bonds Inc (BBI) of
25 Fallon, Nevada, a Nevada Corporation dba Justin Brothers Bail Bonds,
26 herein "Justin Bros." Defendants Richard Justin is the President and
27 Treasurer, and employee of said Nevada Corporation, Dennis Justin is
the employee and agent of Justin Bros. and co-participant in the events
complained of herein.

1
2 On or about the same said date the brother of plaintiff Jeff Robben acting
3 as an officious intermeddler implored and insisted to his mother (also the
4 mother of plaintiff) who was assuring the bond to withdraw her assurance
5 out of a black heart and with the vile intent to vex, annoy, inflict emotional
6 distress, and injure plaintiff (his own brother) as much as possible;
7 Defendant Jeff Robben knowingly and falsely asserted that plaintiff was
8 both suicidal and homicidal to their mother and to defendants Justin Bros.
9 and Richard and Dennis Justin. This caused plaintiff to lose his bail bond
10 when his mother withdrew her assurance, at the insistence of officious
11 intermeddler Defendant Jeff Robben. The said withdrawal off assurance
12 started a chain reaction where tortfeasors Justin Bros. and their
13 owner/actors Richard Justin and Dennis Justin, employees and agents of
14 (BB1)/ Justin Bros. crossed the state line from Carson City, Nevada where
15 their office is located and entered the state of California, City of South
16 Lake Tahoe ,went to plaintiff's residence without any legal authority, or
17 warrant pursuant to California Penal Code Section 847.5, but under color
18 of state law(either California or Nevada or both) went to plaintiff's home,
19 broke down his home's front door with brute force, assaulted and battered
20 plaintiff with a taser gun, shooting him no less than three times with said
21 device, and beating him. Plaintiff was further brutalized under color of law.
22 He was handcuffed and brutally taken from his home into unlawful custody
23 under color of law. Plaintiff never consented to this touching which was
24 both painful and injurious both physically and mentally to plaintiff.

25
26 Untimely, the federal civil case was dismissed with the Plaintiff settling with the
27 various defendants including Jeff D. Robben with an understanding/contract that the
28 Petitioner was not to be disinherited.

1 The Petitioner has the right to challenge the validity of the trust pursuant to
2 NRS 30.040 Questions of construction or validity of instruments, contracts and
3 statutes:

- 1 1. Any person interested under a deed, written contract or other
2 writings constituting a contract, or whose rights, status or other legal
3 relations are affected by a statute, municipal ordinance, contract or
4 franchise, may have determined any question of construction or validity
5 arising under the instrument, statute, ordinance, contract or franchise and
6 obtain a declaration of rights, status or other legal relations thereunder.

1 The Petitioner also alleges fraud and the failure of the Thomas J. Harris
2 trust to notify the Petitioner of any disinheritance or even the death of Thomas J.
3 Harris and anything related to the will, trust, instruments and probate of the
4 Thomas J. Harris trust.
5

6 Since NRCP Rule 60 includes provisions for fraud and other things like
7 surprises, there is no limiting Petitioner's ability to challenge the validity of the
8 Thomas J. Harris trust. The Petitioner can successfully render the current
9 Thomas J. Harris trust null and void to which the original Thomas J. Harris and
10 Olga Harris Trust would be controlling and to which the Petitioner is a
11 beneficiary.
12

13 The Petitioner is interested in pursuing an amicable resolution to this
14 matter using the court/legal system. The Petitioner feels there is settlement
15 potential since the facts, and as a matter of law, create a presumption of undue
16 influence by Jeff D. Robben over Thomas J. Harris to disinherit the Petitioner and
17 also transfer asserts including the home of Thomas J. Harris in Minden, Nevada
18 into the name and/or trust/instrument of Jeff D. Robben. The entire contents of a
19 Wells Fargo safe deposit box in the name of Thomas J. Harris and may include
20 Olga Harris is missing. Said safe deposit box contained various assets including
21 stock certificates, property, and other legal documents.
22

23
24 .This Petitioner demands a full accounting and paper trails of all assets of
25 Thomas J. Harris, Olga Harris and Jeff Robben and any and all trusts and sus-
26 trusts, shell trusts or corporations, etc.
27

1 This Petitioner's intent is not to have the current beneficiaries of the
2 Thomas J. Harris trust lose anything. The lawyer for the trust, F. McClure
3 Wallace, has the authority to encourage the trust manager/trustee to settle the
4 matter in an amicable fashion.
5

6 The lawyer, F. McClure Wallace has been unethical in his conduct before
7 this very court when he denied existence of the Thomas J. Harris and Olga
8 Harris trust.
9

10 Since there appears to be evidence and eyewitnesses to these facts, the
11 Petitioner is starting the process of working with the proper authorities in various
12 jurisdictions to pursue any and all criminal matters. This includes the Douglas Co.
13 Sheriff and D.A. Mark Jackson who remembers Todd Robben from a set of previous
14 false charges:
15

16 Source: <http://www.nevadaappeal.com/news/crime/10985994-113/robben-charges-jackson-carson>
17

18 and

19 [https://www.mtdemocrat.com/news/da-protester-charged-with-trying-to-solicit-](https://www.mtdemocrat.com/news/da-protester-charged-with-trying-to-solicit-murder/comment-page-2/)
20 [murder/comment-page-2/](https://www.mtdemocrat.com/news/da-protester-charged-with-trying-to-solicit-murder/comment-page-2/)
21

22 and here

23 [https://www.mtdemocrat.com/news/charges-dropped-da-protester-out-of-](https://www.mtdemocrat.com/news/charges-dropped-da-protester-out-of-prison/)
24 [prison/](https://www.mtdemocrat.com/news/charges-dropped-da-protester-out-of-prison/)
25

26 All charges against South Tahoe resident Ty Robben have now been
27 dropped in jailhouse HIT MAN to kill corrupt Carson City Judge Tatro and
28

1 Slander/Libel/Internet Stalking by Geoff Dornan
2 gdornan@nevadaappeal.com

3 Douglas County District Attorney Mark Jackson, the special prosecutor
4 named to handle the cases, previously dismissed libel and harassment
5 charges.

6 He served notice Thursday that he was dropping the charge **Ty Robben**
7 **AKA "Top Ramen"** (new 'jail name' obtained at the Carson City jailhouse
8 since it sounds like his name) **tried to hire a hit man to kill Justice of**
9 **the Peace John Tatro.**

10 Mark Jackson was brought in after the **Carson City DA's office was**
11 **disqualified** from handling the case.

12 **"Based on a full and complete review of all the evidence and the**
13 **existing constitutional, statutory and case law, I filed a notice of**
14 **dismissal today in the Carson Township Justice Court," Jackson**
15 **said in a statement.**

16 He said that means Robben's \$50,000 bail has been lifted, and all
17 pending charges against him have been dismissed.
18 "It is my understanding that Mr. Robben is in the process of being
19 released from the Carson City Jail," Jackson said. Robben stopped by the
20 Tahoe Daily Tribune Friday and said he was hoping to restore his life and
21 family. **He thanked his attorneys for their work to get him released.**

22 **"Thank you to Mark Jackson for standing up and supporting the U.S.**
23 **Constitution," Robben said.**

24 Two weeks ago, Jackson dismissed the other case against Robben, which
25 accused him of libel and stalking and two counts of attempting to
26 intimidate Tatro and his family. He did so stating that Nevada's libel law
27 was "unconstitutionally vague." The stalking charge, he said, simply didn't
28 have enough evidence to support it.

Robben has been battling the state and criminal justice system since he
was terminated by the Taxation Department.

He was angry with Tatro for his conviction on charges of disorderly
conduct centered on his attempt to — allegedly — serve papers on behalf
of a friend on then-NDOT Director Susan Martinovich.
Robben said Judge Tatro and Assistant DA Mark "Freddie" Krueger must
resign and criminal charges must be filed against Judge Tatro for filing a

1 false report against me. Thank you Douglas County DA Mark Jackson
2 for respecting the US Constitution and my 1st & 14th Amendment rights in
3 these matters and the honor to respect the law(s) and look at the facts
unbiased.

4 Robben also posted a story and photos of an alleged requirement for
5 Judge Tatro to take a breathalyzer test prior to taking the bench everyday.
6 Special thanks Attorney Jarrod Hickman and to the entire State of
7 Nevada Public Defenders office including the folks behind the scenes
answering my numerous phone calls from jail.

8 Are you aware of the ruling in Times v. Sullivan (1964) which states this, in
part:

9 As Americans we have a profound national commitment to the principle
10 that debate on Public Issues should be uninhibited, robust, and wide open.
11 And that it may well include vehement, caustic, and sometimes
unpleasantly sharp attacks on government and public officials.

12
13 The Petitioner has been subject to vexation by the Thomas J. Harris trust
14 administrator, Tara M. Flanagan who has abuse her position as a California
15 Superior Court Judge in volition the state judicial ethics & canons to have the
16 Alameda County authorities attempt to intimate this Petitioner from his legal
17 rights to pursue his claims and expose the corruption. According to Cal. Judicial
18 Canon 2: A Judge Shall Avoid Impropriety and the Appearance of Impropriety in
19 All of the Judge's Activities A. Promoting Public Confidence B. Use of the
20 Prestige of Judicial Office.

21
22 ccording to Cal. Judicial Canon 4: A Judge Shall So Conduct the Judge's
23 Quasi-Judicial and Extrajudicial Activities as to Minimize the Risk of Conflict with
24 Judicial Obligations

- 25
26 A. Extrajudicial Activities in General
27 B. Quasi-judicial and Avocational Activities
28 C. Governmental, Civic, or Charitable Activities

1 **D. Financial Activities**
2 **E. Fiduciary Activities**
3 F. Service as Arbitrator or Mediator
4 **G. Practice of Law**
5 **H. Compensation and Reimbursement**

6 There has been a total break-down and failure to communicate by Tara M.
7 Flanagan, F. McClure Wallace and Scott Barton. Tara M. Flanagan knows of the
8 fraud and theft conducted by Scott William Barton Cal. State BAR # 160262, a
9 California lawyer. Pursuant to California Judicial Canon III, D II: (2) Whenever a
10 judge has personal knowledge that a lawyer has violated any provision of the
11 Rules of Professional Conduct, the judge shall take appropriate corrective action.

12 "Silence can only be equated with fraud where there is a legal or moral
13 duty to speak or where an inquiry left unanswered would be intentionally
14 misleading." *United States v. Prudden*, 424 F.2d 1021 p. 1032.(5th Cir. 1970),
15 cert. denied, 400 U.S. 831, 91 S.Ct. 62, 27 L.Ed.2d 62 (1970).
16

17 In an effort to carry out any litigation in this case, a court appointed lawyer
18 is requested to act as an intermediary and legal counsel. The Petitioner cannot
19 be subjected to false claims of harassment or threats to harm anyone. An honest
20 lawyer will be able to work with the opposing counsel to obtain an amicable
21 solution and justice for any criminal wrongdoings.
22

23 In an abundance of caution, and in the interests and furtherance of justice,
24 the Petitioner has a "statutory right" to counsel in this matter and the Court has
25 an opportunity to remedy the situation simply by appointing counsel to which any
26
27
28

1 costs, fees, etc can be paid back by the Petitioner upon a successful resolution
2 and the inclusion of attorneys fees and costs.

3 In good faith, this Petition is holding back evidence, facts and the names
4 of certain individuals to preserve confidentiality upon the Courts decision on
5 appointing counsel. Once counsel is appointed, the evidence can be disclosed to
6 the Defendants' counsel and/or the court.
7

8 If the Court decides against appointing counsel, the Petitioner will pursue
9 this case in pre per. The Petitioner reserves all rights including using extra-
10 judicial remedies, common law liens, salvage liens and any and all other tolls and
11 resources to accomplish justice and a fair remedy
12

13
14 Respectfully signed under penalty of perjury,
15

16
17 /s/ Todd Robben

18 June 15, 2022
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF MAILING

I, Stephen James Robben, declare under penalty of perjury under the law of the State of Nevada that the following is true and correct copy of the filed document. That on (month) June (day) 15th, 2022, service of the document was made pursuant to NRCP 5(b) by depositing a email to: F. McClure Wallace, counsel for Respondent, mcclure@wallacemillsap.com

DATED this 15th day of June, 2022

Submitted By: /s/ Stephen James Robben

Exhibit 5

Exhibit 5

Wallace & Millsap
510 W Plumb Ln., Reno, Nevada / (775) 683-9599

CASE NO.: 2021 PB00034

DEPT NO.: I

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JUN 22 2022

Douglas County
District Court Clerk

FILED

JUN 22 2022 3:11:04

DOUGLAS COUNTY
CLERK

M. CARNEY CITY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

IN RE:

THE ESTATE OF THOMAS JOSEPH
HARRIS,

Deceased

**ORDER GRANTING PETITION TO CONFIRM FIRST AND FINAL
ACCOUNTING, REQUEST FOR FINAL DISTRIBUTION, AND REQUEST
FOR PAYMENT OF PROFESSIONAL'S FEES AND COSTS**

Tara M. Flanagan, in her capacity as the Court appointed Personal Representative (aka "Successor Executor") of the Estate of Thomas Joseph Harris (the "Estate"), by and through her counsel of record, F. McClure Wallace and Patrick R. Millsap of Wallace & Millsap, has presented her Petition to Confirm First and Final Accounting, Request for Final Distribution and Request for Payment of Professional Fees and Costs (the "Petition").

The Court conducted a properly noticed hearing on the Petition on May 24, 2022. The Court received no objections to the Petition. However, also on or about May 24, 2022, Mr. Todd Robben filed a *Notice of Motion for Continuance and Motion for Continuance* requesting up to a six-month continuance of the matter. Based on the presentations of Mr. Robben and Counsel for the Estate at the hearing, the Court granted Mr. Robben a short extension to demonstrate a basis upon which he could assert any standing in this matter, continuing the hearing on the Petition to June 21, 2022. Thereafter, Mr. Robben filed a *Request for Appointment of Counsel* on June 15,

1 2022. The Court then conducted a continued hearing for approval of the Petition on
2 June 21, 2022. Again, the Court received no objections to the Petition beyond the
3 filings and presentation of Mr. Robben. Counsel for the Estate argued in favor of
4 granting the Petition and presented legal arguments in opposition to Mr. Robben's
5 filings and oral presentation, namely that Mr. Robben is not an interested person in
6 this matter as defined by NRS 132.185, and as such lacks standing to object to the
7 Petition or be appointed counsel by the Court pursuant to NRS 136.200.

8 Having considered the Personal Representative's Petition, Mr. Todd Robben's
9 filings, and having heard the presentation of the Personal Representative by and
10 through her Counsel, as well as the presentation of Mr. Todd Robben, appearing in
11 *pro per*, the Court finds as follows:

12 **FINDINGS AND ORDER**

13 1. Thomas Joseph Harris (the "Decedent") died on December 30, 2019, as
14 a resident of Douglas County, Nevada.

15 2. The Decedent's death was caused by a motor vehicle accident in Washoe
16 County, Nevada on or about December 19, 2019. The Decedent was not at fault for
17 the motor vehicle accident.

18 3. The Last Will and Testament of Thomas Joseph Harris was duly lodged
19 with this Court on April 6, 2021.

20 4. The Decedent's Last Will and Testament is a pour over will, identifying
21 the Decedent's Trust as the beneficiary of his Will. The Decedent's Trust is The
22 Declaration of Trust Known as the Thomas J. Harris Trust, Dated June 12, 2019 (the
23 "Decedent's Trust" or the "Trust").

24 5. The Decedent's Last Will and Testament identified the following line of
25 Executors: Jeff Robben, Scott Barton, and Tara Flanagan.

26 6. On March 10, 2021, Scott Barton filed his *Verified Petition for Letters of*
27 *Special Administration (NRS 140.010) and for Probate of Will and Issuance of Letters*
28 *Testamentary (NRS 136.090)*. Mr. Barton was the appropriate individual to seek

1 appointment as the Personal Representative of the Estate because the first
2 nominated executor, Mr. Robben, had passed away on November 11, 2020.

3 7. On April 6, 2021, this Court entered its *Order Admitting Will to Probate*
4 *and Issuing Letters Testamentary* appointing Scott Barton to serve as the Personal
5 Representative of the Estate. Consistent with the Court's Order, Letters
6 Testamentary were issued to Scott Barton on April 22, 2021.

7 8. Upon information and belief, pursuant to his appointment as the
8 Estate's Personal Representative, Scott Barton began his efforts to administer the
9 Decedent's Estate. Namely for purposes of this Petition, Mr. Barton continued Mr.
10 Robben's previously initiated efforts to prosecute the wrongful death claims related
11 to the Decedent's death, including retaining Ms. Julie Throop, Esq. to represent the
12 Estate regarding the wrongful death of the Decedent.

13 9. By and through its retained litigation Counsel, the Estate was able to
14 reach a pre-litigation resolution of all claims regarding the wrongful death of the
15 Decedent, as discussed in greater detail below.

16 10. Thereafter, and before completing the negotiated settlement or gaining
17 Court approval of the settlement on behalf of the Estate, Scott Barton notified Tara
18 Flanagan he was resigning as the Personal Representative of the Estate.

19 11. Consistent with her nomination as the next named executor of the
20 Estate by the Decedent's Will, Ms. Flanagan filed her *Petition for Appointment of*
21 *Successor Executor and for Issuance of Letters Testamentary* on June 25, 2021.

22 12. On July 27, 2021, the Court entered its *Order Appointing Successor*
23 *Executor and Issuing Successor Letters Testamentary*, and on August 17, 2021, the
24 Court issued Letters Testamentary to Tara M. Flanagan.

25 13. Pursuant to her appointment as the Personal Representative of the
26 Estate, on August 30, 2021, Ms. Flanagan filed her Petition to Approve Settlement
27 (the "Petition"), seeking this Court's confirmation of the settlement negotiated by Mr.
28 Barton and Ms. Throop on behalf of the Estate regarding the Decedent's death, as

1 well as authorizing Ms. Flanagan, in her capacity as the Estate's Personal
2 Representative, to complete all remaining steps necessary to effectuate the
3 settlement for the benefit of the Estate.

4 14. Thereafter, the Court held a hearing on September 9, 2021 on the
5 Personal Representative's Petition. The hearing was attended by Thomas A. Harris,
6 Counsel for Mr. Thomas A. Harris, the Personal Representative, Counsel for the
7 Personal Representative, and the Estate's wrongful death Counsel, Julie Throop, Esq.
8 At the hearing the Judge heard from all Counsel regarding the issue of Ms. Throop's
9 attorney fees as raised by Mr. Thomas A. Harris by and through his Counsel. At the
10 conclusion of the hearing, Mr. Harris withdrew any objection he had previously
11 presented to Ms. Throop's fees incurred as wrongful death Counsel for the Estate. As
12 a result, there is no objection before the Court to the Petition to Approve the
13 Settlement filed by the Personal Representative, nor any objection to the settlement
14 placed before the Court for confirmation.

15 15. On September 9, 2021 the Court entered its *Order Granting Petition to*
16 *Approve Settlement*.

17 16. Pursuant to the Court's *Order Granting Petition to Approve Settlement*
18 Tara M. Flanagan, in her capacity as the Estate's Personal Representative, finalized
19 the settlement for the benefit of the Estate and deposited all settlement proceeds in
20 the Estate's bank account. The Court finds Ms. Flanagan's efforts in this regard to
21 have been dutifully and properly fulfilled.

22 17. On April 15, 2022, the Personal Representative filed the subject *Petition*
23 *to Confirm First and Final Accounting, Request for Final Distribution, and Request*
24 *for Payment of Professional's Fees and Costs*.

25 18. Shortly thereafter, the Estate's Inventory and Record of Value was
26 appropriately filed.

27 19. As reported in the Personal Representative's Petition, Notice to
28 Creditors was properly filed on April 22, 2021, and published in the Record Courier

1 on April 29, May 6, and May 13, 2021. Proof of Publication of the Notice to Creditors
2 was filed with the Court on May 20, 2021. No creditor's claims were filed against the
3 Estate.

4 20. All tax returns appropriately required of the Decedent have been filed.
5 A final estate tax return will be filed. There is no known liability due on this return.

6 21. The Administrator has received no other communication or inquiry from
7 any other taxing authority or any other claimant.

8 22. The acts of the Tara Flanagan, in her capacity as the Successor
9 Executor, are ordinary, necessary, and reasonable without exception.

10 23. After all administrative expenses, legal expenses, and claims have been
11 paid, all remaining assets, including any after discovered assets, will be distributed
12 to the Estate's sole beneficiary, the Thomas J. Harris Trust, dated June 12, 2019.

13 24. The time necessary for the Successor Executor to complete the tasks
14 required of her has been ordinary, necessary, and reasonable.

15 25. The gross value of the Estate for computing the Petitioner's Commission
16 is \$620,000.00.

17 26. Pursuant to NRS 150.020, the Petitioner is entitled to \$13,550.00 in
18 ordinary compensation.

19 27. Counsel has rendered valuable services to the Petitioner.

20 28. The rates charged by Wallace & Millsap LLC are ordinary, necessary,
21 and reasonable.

22 29. The services performed by Wallace & Millsap LLC are appropriate,
23 necessary, and reasonable without exception.

24 30. Wallace & Millsap LLC has requested the sum \$20,638.00 in attorney's
25 fees.

26 31. Wallace & Millsap LLC has requested the sum of \$994.78 for costs
27 advanced.

28 32. Finally, upon thorough review by this court, including review of Mr.

Robben's written filings and hearing Mr. Robben's oral presentation at both the May 24, 2022 hearing as well as the June 21, 2022 continued hearing, the Court determines Mr. Robben is not an "interested person" in this Estate as defined by NRS 132.185, and as such has no standing to object to the Petition, be appointed Counsel, or otherwise appear in this proceeding. Specifically, the Court heard from Mr. Robben, and after giving him additional time, Mr. Robben was unable to present any legal basis or admissible evidence to potentially allow a determination he is an interested person in this Estate. Therefore, Mr. Todd Robben is not an interested person to this Estate, and as such has no standing to oppose or object to the Petition, or to otherwise appear in these proceedings.

WHEREFORE, as a result of the foregoing, considering the *Petition to Confirm First and Final Accounting, Request for Final Distribution, and Request for Payment of Professional's Fees and Costs* filed by the Personal Representative, considering Mr. Todd Robben's *Notice of Motion for Continuance and Motion for Continuance*, and hearing the presentation of Counsel and Mr. Robben, the Court having good cause **ORDERS** as follows:

- A. The First and Final Accounting of the Estate is approved without exception.
- B. The acts of the Personal Representative with respect to the administration of the Estate are confirmed without exception
- C. It was proper to generally administer this Estate.
- D. There were no known prior distributions.
- E. The Personal Representative's requested ordinary fees and costs are necessary and reasonable in all respects.
- F. The Personal Representative is authorized and directed to pay herself \$13,550.00 in ordinary fees.

- 1 G. All actions and services rendered by Counsel for the Personal
2 Representative were reasonable and appropriate.
- 3 H. Counsel for the Personal Representative's requested fees and costs were
4 necessary and reasonable in all respects.
- 5 I. The Personal Representative is authorized and directed to pay the law
6 firm of Wallace & Millsap LLC, the sum of \$20,638.00 as compensation
7 for legal services rendered, and to be rendered by said attorney and
8 paralegal for the benefit of the Estate.
- 9 J. The Personal Representative is authorized and directed to pay the law
10 firm of Wallace & Millsap LLC, the sum of \$994.78 for costs advanced
11 and to be advanced in this Estate, for a total payment of fees and costs
12 in the amount of \$21,632.78.
- 13 K. The Personal Representative is authorized and directed to holdback
14 \$5,000.00 for completion of all the Estate's tax needs, including paying
15 the final accounting fees of the Estate.
- 16 L. After all administrative expenses and professional fees are paid, the
17 Personal Representative is authorized and directed to distribute the
18 Estate's remaining assets, including any after discovered assets to The
19 Declaration of Trust Known as the Thomas J. Harris Trust, Dated June
20 12, 2019, by and through Tara Flanagan as Successor Trustee.
- 21
22
23
24
25
26
27
28

Wallace & Millsap
510 W Plumb Ln., Reno, Nevada / (775) 683-9599

1 M. The Personal Representative shall complete any and all remaining task
2 necessary to complete the administration of this Estate, at which time
3 the Executor shall request her discharge from this Court.

4 N. Mr. Todd Robben is not an interested person in this matter, has no
5 standing in the proceedings, and as such his Request for Appointment
6 of Counsel is denied.

7
8
9 IT IS SO ORDERED this 22 day of June 2022.

10
11
12 
District Court Judge

13 Submitted by:

14
15 WALLACE & MILLSAP

16 /s / F. McClure Wallace

17 F. MCCLURE WALLACE, ESQ.

18 State Bar No. 10264

19 PATRICK R. MILLSAP, ESQ.

20 State Bar No. 12043

21 WALLACE & MILLSAP LLC

22 510 West Plumb Lane, Suite A

23 Reno, Nevada 89509

24 (775) 683-9599 Telephone

25 (775) 683-9597 Fax

26 Attorneys for Petitioner
27
28

Exhibit 6

Exhibit 6

1 Todd Robben
2 In Pro per
3 PO Box 4251
4 Sonora, CA 95370
5 Robben.tv@gmail.com
6 (209)540-7713

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FILED

JUN 27 2022 JUN 27 PM 3:42

Douglas County BOBBIE R. WILLIAMS
District Court Clerk CLERK

BY  DEPUTY

Electronically Filed
Jun 29 2022 04:09 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

7 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

9
10 IN RE: THE ESTATE OF THOMAS
11 JOSEPH HARRIS,

12
13 Deceased

CASE NO.: 2021 PB00034

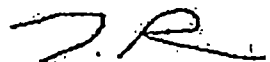
NOTICE OF APPEAL

DEPARTMENT: 1

JUDGE: Nathan Tod Young

14
15
16
17 Petitioner, Todd C. Robben appeals the decision, order and judgment pursuant
18 to NRS §§ 155.190 from Judge Nathan Tod Young on June 21, 2022¹ denying
19 Petitioner counsel and granting the final accounting and final distribution in the above
20 titled case.

21 Respectfully,

22 

23
24 /s/ Todd Robben

25 06/27/2022

26
27 ¹ The order appears to be dated June 22, 2022.

CERTIFICATE OF MAILING

I, Stephen James Robben, declare under penalty of perjury under the law of the State of Nevada that the following is true and correct copy of the filed document. That on June 27, 2022, service of the document was made pursuant to NRCP 5(b) by depositing a email to: F. McClure Wallace, counsel for Respondent, mcclure@wallacemillsap.com

DATED this 27 day of June, 2022

Submitted By: /s/ Stephen James Robben

RECEIVED

Form 2. Case Appeal Statement

JUN 28 2022

FILED

No. 2021-PB-00034

Douglas County Dept. No. I
District Court Clerk

2022 JUN 28 AM 10:06

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE
OF NEVADA IN AND FOR THE COUNTY OF DOUGLAS

LUIS J. WILLIAMS

BY: [Signature] DEPUTY

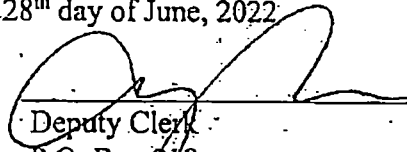
IN RE: THE ESTATE OF
THOMAS JOSEPH HARRIS,
Deceased

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:
Todd Robben.
2. Identify the judge issuing the decision, judgment, or order appealed from:
Nathan Tod Young.
3. Identify each appellant and the name and address of counsel for each appellant:
Todd Robben - P.O. Box 4251, Sonora CA 95370.
4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel):
N/A.
5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42 (attach a copy of any district court order granting such permission):
N/A.
6. Indicate whether appellant was represented by appointed or retained counsel in the district court: N/A
7. Indicate whether appellant is represented by appointed or retained counsel on appeal:
Proper Person.
8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:
Appellant was granted leave to proceed in forma pauperis filed May 23, 2022.
9. Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment, information, or petition was filed):
Order granting Petition to Confirm First and Final Accounting, Request for Final Distribution, and Request for Payment of Professional's Fees and Costs filed June 22, 2022.
10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the court:
This is a probate matter in which the appellant is appealing the Order granting Petition to Confirm First and Final Accounting, Request for Final Distribution, and Request for Payment of Professional's Fees and Costs filed June 22, 2022.

- 1 11. Indicate whether the case has previously been the subject of an appeal to or original writ
2 proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number
3 of the prior proceeding: N/A
4 12. Indicate whether this appeal involves child custody or visitation:
5 No.
6 13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:
7 N/A
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Dated this 28th day of June, 2022


Deputy Clerk
P.O. Box 218
Minden, Nevada 89423
775-782-9820

Wallace & Millsap
510 W Plumb Ln., Reno, Nevada / (775) 683-9599

1 CASE NO.: 2021 PB00034

2 DEPT NO.: I

RECEIVED

JUN 22 2022

Douglas County
District Court Clerk

FILED

2022 JUN 22 AM 11:04

BOBBIE R. WILLIAMS
CLERK

BY *[Signature]* JTY

5 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6 IN AND FOR THE COUNTY OF DOUGLAS

7
8 IN RE:

9 THE ESTATE OF THOMAS JOSEPH
HARRIS,

10 Deceased

11
12 ORDER GRANTING PETITION TO CONFIRM FIRST AND FINAL
13 ACCOUNTING, REQUEST FOR FINAL DISTRIBUTION, AND REQUEST
14 FOR PAYMENT OF PROFESSIONAL'S FEES AND COSTS

15 Tara M. Flanagan, in her capacity as the Court appointed Personal
16 Representative (aka "Successor Executor") of the Estate of Thomas Joseph Harris
17 (the "Estate"), by and through her counsel of record, F. McClure Wallace and Patrick
18 R. Millsap of Wallace & Millsap, has presented her Petition to Confirm First and
19 Final Accounting, Request for Final Distribution and Request for Payment of
20 Professional Fees and Costs (the "Petition").

21 The Court conducted a properly noticed hearing on the Petition on May 24,
22 2022. The Court received no objections to the Petition. However, also on or about
23 May 24, 2022, Mr. Todd Robben filed a *Notice of Motion for Continuance and Motion*
24 *for Continuance* requesting up to a six-month continuance of the matter. Based on
25 the presentations of Mr. Robben and Counsel for the Estate at the hearing, the Court
26 granted Mr. Robben a short extension to demonstrate a basis upon which he could
27 assert any standing in this matter, continuing the hearing on the Petition to June 21,
28 2022. Thereafter, Mr. Robben filed a *Request for Appointment of Counsel* on June 15,

1 2022. The Court then conducted a continued hearing for approval of the Petition on
2 June 21, 2022. Again, the Court received no objections to the Petition beyond the
3 filings and presentation of Mr. Robben. Counsel for the Estate argued in favor of
4 granting the Petition and presented legal arguments in opposition to Mr. Robben's
5 filings and oral presentation, namely that Mr. Robben is not an interested person in
6 this matter as defined by NRS 132.185, and as such lacks standing to object to the
7 Petition or be appointed counsel by the Court pursuant to NRS 136:200.

8 Having considered the Personal Representative's Petition, Mr. Todd Robben's
9 filings, and having heard the presentation of the Personal Representative by and
10 through her Counsel, as well as the presentation of Mr. Todd Robben, appearing in
11 *pro per*, the Court finds as follows:

12 FINDINGS AND ORDER

13 1. Thomas Joseph Harris (the "Decedent") died on December 30, 2019, as
14 a resident of Douglas County, Nevada.

15 2. The Decedent's death was caused by a motor vehicle accident in Washoe
16 County, Nevada on or about December 19, 2019. The Decedent was not at fault for
17 the motor vehicle accident.

18 3. The Last Will and Testament of Thomas Joseph Harris was duly lodged
19 with this Court on April 6, 2021.

20 4. The Decedent's Last Will and Testament is a pour over will, identifying
21 the Decedent's Trust as the beneficiary of his Will. The Decedent's Trust is The
22 Declaration of Trust Known as the Thomas J. Harris Trust, Dated June 12, 2019 (the
23 "Decedent's Trust" or the "Trust").

24 5. The Decedent's Last Will and Testament identified the following line of
25 Executors: Jeff Robben, Scott Barton, and Tara Flanagan.

26 6. On March 10, 2021, Scott Barton filed his *Verified Petition for Letters of*
27 *Special Administration (NRS 140.010) and for Probate of Will and Issuance of Letters*
28 *Testamentary (NRS 136.090)*. Mr. Barton was the appropriate individual to seek

1 appointment as the Personal Representative of the Estate because the first
2 nominated executor, Mr. Robben, had passed away on November 11, 2020.

3 7. On April 6, 2021, this Court entered its *Order Admitting Will to Probate*
4 *and Issuing Letters Testamentary* appointing Scott Barton to serve as the Personal
5 Representative of the Estate. Consistent with the Court's Order, Letters
6 Testamentary were issued to Scott Barton on April 22, 2021.

7 8. Upon information and belief, pursuant to his appointment as the
8 Estate's Personal Representative, Scott Barton began his efforts to administer the
9 Decedent's Estate. Namely for purposes of this Petition, Mr. Barton continued Mr.
10 Robben's previously initiated efforts to prosecute the wrongful death claims related
11 to the Decedent's death, including retaining Ms. Julie Throop, Esq. to represent the
12 Estate regarding the wrongful death of the Decedent.

13 9. By and through its retained litigation Counsel, the Estate was able to
14 reach a pre-litigation resolution of all claims regarding the wrongful death of the
15 Decedent, as discussed in greater detail below.

16 10. Thereafter, and before completing the negotiated settlement or gaining
17 Court approval of the settlement on behalf of the Estate, Scott Barton notified Tara
18 Flanagan he was resigning as the Personal Representative of the Estate.

19 11. Consistent with her nomination as the next named executor of the
20 Estate by the Decedent's Will, Ms. Flanagan filed her *Petition for Appointment of*
21 *Successor Executor and for Issuance of Letters Testamentary* on June 25, 2021.

22 12. On July 27, 2021, the Court entered its *Order Appointing Successor*
23 *Executor and Issuing Successor Letters Testamentary*, and on August 17, 2021, the
24 Court issued Letters Testamentary to Tara M. Flanagan.

25 13. Pursuant to her appointment as the Personal Representative of the
26 Estate, on August 30, 2021, Ms. Flanagan filed her Petition to Approve Settlement
27 (the "Petition"), seeking this Court's confirmation of the settlement negotiated by Mr.
28 Barton and Ms. Throop on behalf of the Estate regarding the Decedent's death, as

1 well as authorizing Ms. Flanagan, in her capacity as the Estate's Personal
2 Representative, to complete all remaining steps necessary to effectuate the
3 settlement for the benefit of the Estate.

4 14. Thereafter, the Court held a hearing on September 9, 2021 on the
5 Personal Representative's Petition. The hearing was attended by Thomas A. Harris,
6 Counsel for Mr. Thomas A. Harris, the Personal Representative, Counsel for the
7 Personal Representative, and the Estate's wrongful death Counsel, Julie Throop, Esq.
8 At the hearing the Judge heard from all Counsel regarding the issue of Ms. Throop's
9 attorney fees as raised by Mr. Thomas A. Harris by and through his Counsel. At the
10 conclusion of the hearing, Mr. Harris withdrew any objection he had previously
11 presented to Ms. Throop's fees incurred as wrongful death Counsel for the Estate. As
12 a result, there is no objection before the Court to the Petition to Approve the
13 Settlement filed by the Personal Representative, nor any objection to the settlement
14 placed before the Court for confirmation.

15 15. On September 9, 2021 the Court entered its *Order Granting Petition to*
16 *Approve Settlement.*

17 16. Pursuant to the Court's *Order Granting Petition to Approve Settlement*
18 Tara M. Flanagan, in her capacity as the Estate's Personal Representative, finalized
19 the settlement for the benefit of the Estate and deposited all settlement proceeds in
20 the Estate's bank account. The Court finds Ms. Flanagan's efforts in this regard to
21 have been dutifully and properly fulfilled.

22 17. On April 15, 2022, the Personal Representative filed the subject *Petition*
23 *to Confirm First and Final Accounting, Request for Final Distribution, and Request*
24 *for Payment of Professional's Fees and Costs.*

25 18. Shortly thereafter, the Estate's Inventory and Record of Value was
26 appropriately filed.

27 19. As reported in the Personal Representative's Petition, Notice to
28 Creditors was properly filed on April 22, 2021, and published in the Record Courier

1 on April 29, May 6, and May 13, 2021. Proof of Publication of the Notice to Creditors
2 was filed with the Court on May 20, 2021. No creditor's claims were filed against the
3 Estate.

4 20. All tax returns appropriately required of the Decedent have been filed.
5 A final estate tax return will be filed. There is no known liability due on this return.

6 21. The Administrator has received no other communication or inquiry from
7 any other taxing authority or any other claimant.

8 22. The acts of the Tara Flanagan, in her capacity as the Successor
9 Executor, are ordinary, necessary, and reasonable without exception.

10 23. After all administrative expenses, legal expenses, and claims have been
11 paid, all remaining assets, including any after discovered assets, will be distributed
12 to the Estate's sole beneficiary, the Thomas J. Harris Trust, dated June 12, 2019.

13 24. The time necessary for the Successor Executor to complete the tasks
14 required of her has been ordinary, necessary, and reasonable.

15 25. The gross value of the Estate for computing the Petitioner's Commission
16 is \$620,000.00.

17 26. Pursuant to NRS 150.020, the Petitioner is entitled to \$13,550.00 in
18 ordinary compensation.

19 27. Counsel has rendered valuable services to the Petitioner.

20 28. The rates charged by Wallace & Millsap LLC are ordinary, necessary,
21 and reasonable.

22 29. The services performed by Wallace & Millsap LLC are appropriate,
23 necessary, and reasonable without exception.

24 30. Wallace & Millsap LLC has requested the sum \$20,638.00 in attorney's
25 fees.

26 31. Wallace & Millsap LLC has requested the sum of \$994.78 for costs
27 advanced.

28 32. Finally, upon thorough review by this court, including review of Mr.

1 Robben's written filings and hearing Mr. Robben's oral presentation at both the May
2 24, 2022 hearing as well as the June 21, 2022 continued hearing, the Court
3 determines Mr. Robben is not an "interested person" in this Estate as defined by NRS
4 132.185, and as such has no standing to object to the Petition, be appointed Counsel,
5 or otherwise appear in this proceeding. Specifically, the Court heard from Mr.
6 Robben, and after giving him additional time, Mr. Robben was unable to present any
7 legal basis or admissible evidence to potentially allow a determination he is an
8 interested person in this Estate. Therefore, Mr. Todd Robben is not an interest^{ed}
9 person to this Estate, and as such has no standing to oppose or object to the Petition,
10 or to otherwise appear in these proceedings.

11
12 **WHEREFORE**, as a result of the foregoing, considering the *Petition to*
13 *Confirm First and Final Accounting, Request for Final Distribution, and Request for*
14 *Payment of Professional's Fees and Costs* filed by the Personal Representative,
15 considering Mr. Todd Robben's *Notice of Motion for Continuance and Motion for*
16 *Continuance*, and hearing the presentation of Counsel and Mr. Robben, the Court
17 having good cause **ORDERS** as follows:

- 18 A. The First and Final Accounting of the Estate is approved without
19 exception.
- 20 B. The acts of the Personal Representative with respect to the
21 administration of the Estate are confirmed without exception
- 22 C. It was proper to generally administer this Estate.
- 23 D. There were no known prior distributions.
- 24 E. The Personal Representative's requested ordinary fees and costs are
25 necessary and reasonable in all respects.
- 26 F. The Personal Representative is authorized and directed to pay herself
27 \$13,550.00 in ordinary fees.
- 28

- 1 G. All actions and services rendered by Counsel for the Personal
2 Representative were reasonable and appropriate.
- 3 H. Counsel for the Personal Representative's requested fees and costs were
4 necessary and reasonable in all respects.
- 5 I. The Personal Representative is authorized and directed to pay the law
6 firm of Wallace & Millsap LLC, the sum of \$20,638.00 as compensation
7 for legal services rendered, and to be rendered by said attorney and
8 paralegal for the benefit of the Estate.
- 9 J. The Personal Representative is authorized and directed to pay the law
10 firm of Wallace & Millsap LLC, the sum of \$994.78 for costs advanced
11 and to be advanced in this Estate, for a total payment of fees and costs
12 in the amount of \$21,632.78.
- 13 K. The Personal Representative is authorized and directed to holdback
14 \$5,000.00 for completion of all the Estate's tax needs, including paying
15 the final accounting fees of the Estate.
- 16 L. After all administrative expenses and professional fees are paid, the
17 Personal Representative is authorized and directed to distribute the
18 Estate's remaining assets, including any after discovered assets to The
19 Declaration of Trust Known as the Thomas J. Harris Trust, Dated June
20 12, 2019, by and through Tara Flanagan as Successor Trustee.
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Wallace & Millsap
510 W Plumb Ln., Reno, Nevada / (775) 683-9599

1 M. The Personal Representative shall complete any and all remaining task
2 necessary to complete the administration of this Estate, at which time
3 the Executor shall request her discharge from this Court.

4 N. Mr. Todd Robben is not an interested person in this matter, has no
5 standing in the proceedings, and as such his Request for Appointment
6 of Counsel is denied.

7
8
9 IT IS SO ORDERED this 22 day of June 2022.

10
11
12 
District Court Judge

13 Submitted by:

14
15 WALLACE & MILLSAP

16 /s / F. McClure Wallace

17 F. MCCLURE WALLACE, ESQ.

18 State Bar No. 10264

19 PATRICK R. MILLSAP, ESQ.

20 State Bar No. 12043

21 WALLACE & MILLSAP LLC

22 510 West Plumb Lane, Suite A

23 Reno, Nevada 89509

24 (775) 683-9599 Telephone

25 (775) 683-9597 Fax

26 Attorneys for Petitioner
27
28

Douglas County District Court

Case Summary Report

Case #: 2021-PB-00034

Case Title: In the Matter of the Estate of Harris; Thomas Joseph

Filed: 03/10/2021

Cause: Probate: Special Administration

DV: N

Case Status: Reopened

Date: 06/24/2022

Archived: 06/24/2022, 06/21/2022, 06/17/2022, 06/01/2022, 05/24/2022, 05/20/2022, 05/18/2022,

Parties

<u>Party</u>	<u>Name</u>	<u>Status</u>		
Petitioner	Barton, Scott			
Petitioner	Flanagan, Tara M			
Other	Robben, Todd			
Decedent	Harris, Thomas Joseph			
<u>Party</u>	<u>Name</u>	<u>Bar #</u>	<u>Status</u>	<u>Representing</u>
Attorney	Stephenson, Abigail G.	13593	Current	
Attorney	Wallace, F. McClure	10264	Current	
Attorney	Millsap, Patrick R.	12043	Current	
Attorney	Hales, James R.	2716	Substituted Out	

Events

<u>Date/Time</u>	<u>Type</u>	<u>Result</u>	<u>Reason</u>
04/06/2021	Petition Hearing	Concluded	
07/27/2021	Petition Hearing	Concluded	
09/07/2021	Petition Hearing	Concluded	
09/21/2021	Petition Hearing	Vacated	
05/24/2022	Petition Hearing	Concluded	
06/21/2022	Petition Hearing	Concluded	

Documents

<u>Date</u>	<u>Code</u>	<u>Description</u>
	MINS	Minutes
	MINS	Minutes
	MINS	Minutes
	MINS	Minutes
	MINS	Minutes
03/10/2021	DFVD	Verified - Petition for Letters of Special Administration and for Probate of Will and Issuance of Letters Testamentary
03/11/2021	DOAP	Order Appointing - Special Administrator
03/15/2021	NHRG	Notice of Hearing
03/15/2021	DCOS	Certificate of Service
03/17/2021	DCOS	Certificate of Service
03/31/2021	DN	Notice of - Remote Appearance
04/02/2021	DPOP	Proof of Publication - Proof and Statement of Publication
04/02/2021	DNAC	Notice of Appearance of Counsel - and Request for remote appearance
04/06/2021	DWIL	Last Will and Testament
04/06/2021	DORD	Order - Admitting Will to Probate and Issuing Letters Testamentary
04/22/2021	DPLT	Letters Testamentary
04/22/2021	DSNA	Statement of Name and Address - of Personal Representative in Accordance With NRS 143.190
04/22/2021	DNTC	Notice to Creditors
04/22/2021	DINP	Instructions for Personal Representative
05/21/2021	DPOP	Proof of Publication - Proof and Statement of Publication
06/25/2021	DPSA	Petition for Appointment of - Successor Executor and for Issuance of Successor Letters Testamentary

<u>Date</u>	<u>Code</u>	<u>Description</u>
06/25/2021	DNAC	Notice of Appearance of Counsel - Notice of Appearance; Request for Special Notice
06/29/2021	NHRG	Notice of Hearing
06/29/2021	COM	Certificate of Mailing
07/01/2021	DREQ	Request - for Special Notice
07/21/2021	DN	Notice of - Notice and Request of Tara M. Flanagan to Appear Remotely Via Zoom at the July 27, 2021 Hearing
07/22/2021	DMIS	Misc. Document - Nature of Response
07/27/2021	DORD	Order - Appointing Successor Executor and Issuing Successor Letters Testamentary
08/17/2021	DPLT	Letters Testamentary
08/30/2021	DIPT	Petition - to Approve Settlement
08/30/2021	NHRG	Notice of Hearing
08/31/2021	MMOT	Motion - Emergency Motion to Dispense of Notice of Hearing, for a Telephonic Hearing at the Courts very Earliest Convenience and Response to the Petition
09/01/2021	DVER	Verification - of Petition to Confirm Settlement
09/03/2021	DOSH	Order Setting Hearing
09/03/2021	DOSH	Order Setting Hearing
09/08/2021	DINP	Instructions for Personal Representative
09/09/2021	DORD	Order - Granting Petition to Approve Settlement
09/16/2021	DNEO	Notice of Entry of Order
04/15/2022	DIPT	Petition - to Confirm First and Final Accounting, Request for Final Distribution, and Request for Payment of Professional's Fees and Costs
04/15/2022	NHRG	Notice of Hearing
04/21/2022	DGIA	Inventory and Appraisement
04/25/2022	DSOA	Substitution of Attorneys
05/12/2022	DREQ	Request - to Appear via Zoom for Hearing
05/16/2022	DORD	Order - Granting Request for Remote Appearance
05/23/2022	DATP	Application to Proceed in Forma Pauperis
05/23/2022	DOPA	Order to Proceed in Forma Pauperis
05/23/2022	MMOT	Motion - Notice of Motion for Continuance and Motion for Continuance
06/15/2022	DREQ	Request - to Appear Remotely Via Zoom for Court Appearance/Hearing
06/16/2022	DREQ	Request - for Appointment of Counsel Pursuant to NRS 136.200
06/16/2022	DORD	Order - Granting Request
06/22/2022	DEXM	Ex Parte Motion - Emergency Stay Request Emergency Verified Motion to Reconsider; Request for Calcification; Notice on Non Hearsay Proof of the Thomas Joseph and Olga Harris Living Trust
06/22/2022	DORD	Order - Granting Petition to Confirm First and Final Accounting, Request for Final Distribution, and Request for Payment of Professional's Fees and Costs
06/23/2022	DSUP	Supplement - Supplemental Points & Authority
06/24/2022	MMOT	Motion - to Expedite Stay Request Pending Reconsideration Request for Submission

CASE NO: 2021-PB-00034

DEPT NO. I

IN THE MATTER OF THE ESTATE OF

Thomas Joseph Harris,

DATE: 06/21/2022

JUDGE: Nathan Tod Young

CLERK: Courtni Walker

COURT REPORTER: Not Reported

PETITIONER'S COUNSEL: F. McClure Wallace

LAW CLERK: John Seddon

BAILIFFS: George Schramm/Les Vido

OTHERS PRESENT:

Todd Robben - Step-son of the decedent (via Zoom)

Thomas A. Harris - Beneficiary (via Zoom)

The above-entitled matter was before the Court this being the time set for CONTINUED PETITION TO CONFIRM FIRST AND FINAL ACCOUNTING, REQUEST FOR FINAL DISTRIBUTION, AND REQUEST FOR PAYMENT OF PROFESSIONAL'S FEES AND COSTS. The petitioner was present in court and represented by counsel.

The verified Petition is on file with the Court and due notice was given as required by law.

The Court is in receipt of Mr. Robben's Request for Appointment of Counsel.

Mr. Wallace opposed the request for appointment of counsel.

The Court finds that Mr. Robben has failed to demonstrate that he is an interested party in this case and the request for appointment of counsel is denied and the petition is granted.

Mr. McClure Wallace will prepare the order.

CASE NO: 2021-PB-00034

DEPT NO. I

IN THE MATTER OF THE ESTATE OF

Thomas Joseph Harris,

DATE: 05/24/2022

JUDGE: Nathan Tod Young

CLERK: Courtni Walker

COURT REPORTER: Not Reported

PETITIONER'S COUNSEL: F. McClure Wallace

LAW CLERK: John Seddon

BAILIFFS: George Schramm/Eric Lindsay

OTHERS PRESENT:

Tara Flanagan - Petitioner

Todd Robben - Stepson of the Decendant

The above-entitled matter was before the Court this being the time set for PETITION TO CONFIRM FIRST AND FINAL ACCOUNTING, REQUEST FOR FINAL DISTRIBUTION, AND REQUEST FOR PAYMENT OF PROFESSIONAL'S FEES AND COSTS. The petitioner was present in court (via Zoom) and represented by counsel.

The verified Petition is on file with the Court and due notice was given as required by law.

Mr. Robben requested a continuance.

Mr. Wallace presented argument regarding Mr. Robben's interest in this matter.

The Court continued this matter to June 21, 2022 at 1:30 p.m.

CASE NO: 2021-PB-00034

DEPT NO. I

IN THE MATTER OF THE ESTATE OF

Thomas Joseph Harris,

DATE: 09/07/2021

JUDGE: Nathan Tod Young

CLERK: Marilyn Carney

COURT REPORTER: Not Reported

PETITIONER'S COUNSEL: Abigail G. Stephenson

LAW CLERK: John Seddon

BAILIFFS: Les Vido

OTHERS PRESENT:

Preston Mathews (via Zoom) - Counsel for Thomas Harris

Julie Throop (via Zoom) - Counsel for Scott Barton

Tara Flanagan (via Zoom) - Petitioner

F. McClure Wallace - Counsel for Tara Flanagan

The above-entitled matter was before the Court this being the time set for Petition to Approve Settlement. The petitioner was present in court and represented by counsel.

The Petition is on file with the Court and due notice was given as required by law.

Hearing no objection, the Court entered an order granting the prayer of the petition.

Mr. McClure will prepare the Order.

CASE NO: 2021-PB-00034

DEPT NO. I

IN THE MATTER OF THE ESTATE OF

Thomas Joseph Harris,

DATE: 07/27/2021

JUDGE: Nathan Tod Young

CLERK: Marilyn Carney

COURT REPORTER: Not Reported

PETITIONER'S COUNSEL: Abigail G. Stephenson

LAW CLERK: Not Present

BAILIFFS: Les Vido/George Schramm

OTHERS PRESENT:

Steven Silva - Counsel for Scott Barton

Tara Flanagan (via Zoom)

James Hales - Counsel for Protected Person

F. McClure Wallace - Counsel for Tara Flanagan

The above-entitled matter was before the Court this being the time set for Petition for Appointment of Successor Executor and for Issuance of Successor Letters Testamentary. The petitioner was present in court via Zoom and represented by counsel.

Mr. Wallace presented statements.

The Petition is on file with the Court and due notice was given as required by law.

Hearing no objection, the Court entered an order granting the prayer of the petition.

CASE NO: 2021-PB-00034

DEPT NO. I

IN THE MATTER OF THE ESTATE OF

Thomas Joseph Harris,

DATE: 04/06/2021

JUDGE: Nathan Tod Young

CLERK: Delores Goelz

COURT REPORTER: Not Reported

PETITIONER'S COUNSEL: Abigail G. Stephenson

LAW CLERK: John Seddon

BAILIFFS: William Addington

OTHERS PRESENT: James Hales (Zoom) - Counsel for Thomas Haris

The above-entitled matter was before the Court this being the time set for VERIFIED PETITION FOR APPOINTMENT OF GENERAL GUARDIAN. The petitioner was not present in court but was represented by counsel.

The verified Petition is on file with the Court and due notice was given as required by law.

Hearing no objection, the Court entered an order granting the prayer of the petition.

RECEIVED

MAY 23 2022

Douglas County
District Court Clerk

Your Name: Todd Robben
Address: P.O. Box 4251
City, State, Zip: Sanora, CA 95370
Telephone: 209-540-7712
Email Address: Tobben.T@gmail.com
Self-Represented

FILED

2022 MAY 23 PM 1:57

BOBBIE R. WILLIAMS
CLERK

BY W. Williams DEPUTY

DISTRICT COURT
COUNTY, NEVADA

THOMAS J. HARRIS

Plaintiff,

vs.

TODD C. ROBBEN

Defendant.

CASE NO.: 2021 PB00034

DEPT: 1

Application to Proceed in Forma Pauperis

Pursuant to NRS 12.015, and based upon the information contained in this Application and Affidavit, I request permission from this Court to proceed without paying filing fees, or other costs and fees as provided in NRS 12.015 because I lack sufficient financial ability.

I understand that if approved, the order allowing me to proceed in forma pauperis will be valid for one year. I will be required to file a new Application to Proceed in Forma Pauperis if I need further filing fees and court costs and fees waived after one year.

EMPLOYMENT: (☒ check one)

☐ I am unemployed.

☒ I am employed. My employer is Waste Management and my job title is Scalehouse Attendant.

☐ I am self-employed. The name of my business is _____.

© 2017 Nevada Supreme Court

Personal Income (write 0 for any income you do not have)		
A	Monthly Wages from Employment (before taxes)	\$ 2,722
B	Monthly Tip Income	\$ 0
C	Monthly Unemployment Benefits	\$ 0
D	Public Benefits/Assistance received each month <input type="checkbox"/> TANF <input type="checkbox"/> SSD <input type="checkbox"/> SSI <input type="checkbox"/> food stamps <input type="checkbox"/> other: <u>WIC</u>	\$
E	Social Security	\$ 0
F	Retirement / Pension	\$ 0
G	Monthly Child Support received	\$ 0
H	Other: _____	\$ 0
TOTAL INCOME (add lines A-H)		\$ 2,722.00

Household Information	
A	How many adults (18 and up) live in the home (include yourself)? 0
B	How many children (under 18) live with you? 0
TOTAL HOUSEHOLD SIZE (add A+B) 0	

Household Income		
List the names of the adults you live with and their estimated monthly earnings:		
Name:	Relationship:	\$ 0
Name:	Relationship:	\$ 0
Name:	Relationship:	\$ 0

Monthly Expenses (write 0 for any expense you do not have)		
A	Rent / Mortgage	\$ 750.00
B	Utilities (electricity, gas, phone, other utilities)	\$ 200.00
C	Food	\$ 400.00
D	Child Care	\$ 0
E	Medical Expenses (including health insurance)	\$ 0
F	Transportation (insurance, gas, bus fare, etc.)	\$ 350.00
G	Other: <u>unemp payback</u>	\$ 1000.00
TOTAL EXPENSES (add lines A-G)		\$ 2700.00

Assets (write n/a and 0 for any assets you do not have)		
Asset	What It's Worth	What you Owe
Checking Account	\$ 0	n/a
Savings Account	\$ 0	n/a
Car (year/make/model): 2002 Subaru	\$ 2,000	\$ 0
House / Real Estate You Own (address:)	\$ 0	\$ 0
Other: none	\$ 0	\$ 0

Declaration In Support of Request to Proceed In Forma Pauperis

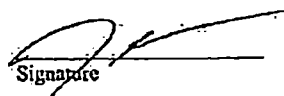
Briefly explain your current financial situation and why you are unable to pay the filing fee. For example, if you are unemployed explain why, for how long, and what efforts you are making to obtain employment. If you are temporarily living with a friend or relative explain for how long and how they help you financially.

I was released from Cal. State prison in April 2020 on false charges. I had no employment during COVID-19 lockdown and only started working in October 2021 for \$16.75. I receive food stamps and state Medical healthcare. I can't afford a \$200+ filing fee and I have due process rights to challenge probate. If any money is obtained in my efforts, I can reimburse the court.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

05/23/2022
Date

Todd Robben
Printed Name


Signature

RECEIVED

MAY 23 2022

Douglas County
District Court Clerk

Your Name: Todd Robben
Address: P.O. Box 4251
City, State, Zip: Sonoma, CA 95370
Telephone: 209-540-7713
Email Address: tobben_ty@gmail.com
Self-Represented

FILED

2022 MAY 23 PM 2:17

BOBBIE R. WILLIAMS
CLERK

BY C. W. Adams DEPUTY

DISTRICT COURT
DOUGLAS COUNTY, NEVADA

THOMAS J. HARRIS

Plaintiff,

vs.

TODD ROBBER

Defendant.

CASE NO. 2021 PB00034

DEPT: 1

Order to Proceed in Forma Pauperis

Upon consideration of the movant's Application to Proceed in Forma Pauperis (Judge will check one box).

☐ Denied. The Court finds that the applicant is not indigent, therefore, IT IS HEREBY ORDERED that the applicant's request to proceed In Forma Pauperis is DENIED.

☒ Granted. The Court finds that there is not sufficient income, property, or resources with which to maintain the action, and good cause appearing therefore,

IT IS HEREBY ORDERED that applicant's request to proceed In Forma Pauperis is GRANTED and (your name) _____ shall be permitted to proceed with this action pursuant to the terms of this Order.

IT IS FURTHER ORDERED that if the above-named party prevails in this action, the Court shall enter an order pursuant to NRS 12.015 requiring the opposing party to pay the Court, within five (5) days, the costs which would have been incurred by the prevailing party, and those costs must then be paid as provided by law.

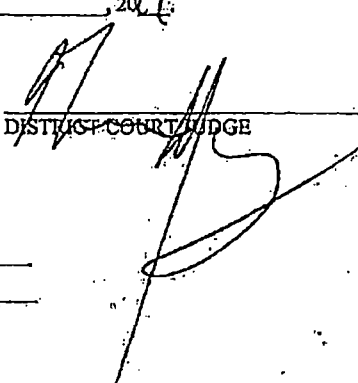
IT IS FURTHER ORDERED that the above-named party shall be permitted to commence or defend the action without costs. The Clerk of Court shall file or issue any necessary writ, process, pleading, or paper without charge.

IT IS FURTHER ORDERED that the Sheriff or other appropriate officer within this State shall make personal service of any necessary writ, pleading, or paper without charge.

IT IS FURTHER ORDERED that this Order shall not apply to costs for transcripts or recordings of court proceedings. A separate application and order shall be required to waive any such fees.

IT IS FURTHER ORDERED that this Order shall expire one year from the date the Order is filed. The party shall be required to reapply for any further waiver after this Order expires.

DATED this 23 day of May, 2021

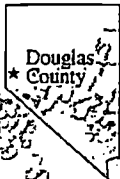

DISTRICT COURT JUDGE

Respectfully Submitted:

(Signature) 

(Printed Name) Todd Robben

In Proper Person



BOBBIE R. WILLIAMS
CLERK OF COURT
COURT ADMINISTRATOR
JURY COMMISSIONER

District Court Clerk's Office
(775) 782-9820
Tahoe Justice Court
(775) 586-7200
East Fork Justice Court
(775) 782-9955

Transmittal to the Supreme Court

To: Nevada Supreme Court
210 South Carson Street
Carson City, Nevada 89710

Date: June 28, 2022

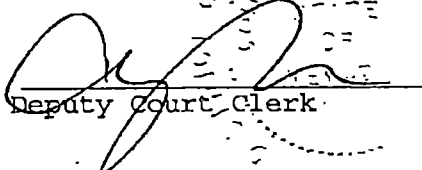
Re: District Court Case #: 2021-PB-00034

District Court Case Name: IN THE MATTER OF THE ESTATE OF THOMAS JOSEPH HARRIS

The following documents are transmitted to the Supreme Court pursuant to the July 22, 1996 revisions to the Nevada Rules of Appellate Procedure. Checked items are NOT included in this appeal:

- ☐ Notice of Appeal
- ☐ Case Appeal Statement
- ☒ Certificate That No Transcript Is Being Requested
- ☒ Defendant's Request for Transcript of Proceedings
- ☒ Notice of Posting of Appeal Bond
- ☐ District Court Docket entries
- ☐ Judgment(s) or order(s) appealed from
- ☒ Order (NRAP FORM 4)
- ☒ Notice of entry of the judgment(s) or order(s) appealed from
- ☒ Certification order directing entry of judgment pursuant to NRCP 54(b)
- ☐ District Court Minutes
- ☒ Exhibit Lists
- ☒ Supreme Court filing fee (\$250.00), if applicable
- ☐ Application and Order to Proceed in Forma Pauperis

Respectfully,
BOBBIE WILLIAMS
CLERK OF THE COURT

By: 
Deputy Court Clerk

1 STATE OF NEVADA)
2) ss
3 COUNTY OF DOUGLAS)

4 I, Alondra Ponce, Deputy Clerk Douglas County, State of
5 Nevada; said Court being a Court of Record, having common law
6 jurisdiction, and a Clerk and a Seal, do hereby certify that the
7 foregoing are true copies of the following originals in Case No.
8 2021-PB-00034 - IN THE MATTER OF THE ESTATE OF THOMAS JOSEPH
9 HARRIS; Notice of Appeal; Case Appeal Statement; District Court
10 Docket Entries; Judgment(s) or Order(s) appealed from; District
11 Court Minutes; Application and Order to Proceed in Forma Pauperis.

12
13 IN TESTIMONY WHEREOF, I have
14 hereunto set my hand and affixed
15 my Official Seal at Minden, in
16 said County and State this
17 28th day of June, A.D., 2022.

18
19
20 Clerk of the Court

21
22 Deputy Court Clerk
23
24
25
26
27
28

Exhibit 7

Exhibit 7

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE ESTATE OF
THOMAS JOSEPH HARRIS,
DECEASED.

No. 84948

TODD ROBBEN,

Appellant,

vs.

TARA FLANAGAN, IN HER CAPACITY
AS THE COURT APPOINTED
PERSONAL REPRESENTATIVE,

Respondent.

FILED

JUL 08 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DISMISSING APPEAL

This is a pro se appeal from a district court order entered in a probate matter. Ninth Judicial District Court, Douglas County; Nathan Tod Young, Judge.

Review of the notice of appeal and documents before this court reveals a jurisdictional defect. NRAP 3A(a) allows only an aggrieved party to appeal. Generally, a party is a person who has been named as a party to the lawsuit and who has been served with process or appeared. *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 447, 874 P.2d 729, 734 (1994). It does not appear that appellant was named as a party in the proceedings below. And while any "interested person" may participate in probate actions, an "interested person" is defined as someone "whose right or interest under an estate or trust may be materially affected by a decision of a fiduciary or a decision of the court. The fiduciary or court shall determine who is an interested person according to the particular purposes of, and matter involved in, a proceeding." NRS 132.185; *see also* NRS 132.390.

Here, the district court determined that appellant was not an interested person in the underlying matter under NRS 132.185 and thus lacked standing to object to the probate petition or otherwise appear in the proceedings. Under these circumstances, it appears appellant lacks standing to appeal under NRAP 3A(a). Accordingly, this court lacks jurisdiction and

ORDERS this appeal DISMISSED.

Silver, J.
Silver

Cadish, J.
Cadish

Pickering, J.
Pickering

cc: Hon. Nathan Tod Young, District Judge
Todd Robben
Wallace & Millsap LLC
Douglas County Clerk

Exhibit 8

Exhibit 8

RECEIVED

JUL 13 2022

Douglas County
District Court Clerk

FILED

2022 JUL 13 AM 10:59

BOBBIE R. WILLIAMS
CLERK

C. WALKER
BY _____ DEPUTY

Case No. 2021-PB-00034

Dept. No. I

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

In Re:

The Estate of

THOMAS JOSEPH HARRIS,

Deceased.

ORDER

THIS MATTER comes before the court upon the following filings: "Emergency Stay Request[;] Emergency Verified Motion to Reconsider; Request for Calcification; Notice of Non Hearsay Proof of The Thomas Joseph and Olga Harris Living Trust" filed on June 22, 2022; Supplemental Points and Authorities filed on June 23, 2022; "Motion to Expedite Stay Request Pending Reconsideration[;] Request for Submission" filed on June 24, 2022; an opposition filed on July 1, 2022; and "Petitioner's Reply in Support of Emergency Stay Request & Emergency Verified Motion to Reconsider; Request for Clarification; Notice of Non Hearsay Proof of The Thomas Joseph and Olga Harris Living Trust" filed on July 5, 2022.

Having examined all relevant pleadings and papers on file herein, the court now enters the following order, good cause appearing:

THAT the requests set forth above are DENIED.

An "Order Granting Petition to Confirm First and Final Accounting, Request for

1 Final Distribution, and Request for Payment of Professional's Fees and Costs" was entered
2 in writing on June 22, 2022. A Notice of Appeal was filed on June 27, 2022, by Todd
3 Robben, with a Case Appeal Statement filed on June 28, 2022. An Order Dismissing
4 Appeal issued on July 8, 2022, by the Supreme Court of the State of Nevada.

5 Separate from the appeal, Todd Robben requests this court reconsider the ruling set
6 forth within the Order dated June 22, 2022. "A district court may reconsider a previously
7 decided issue if substantially different evidence is subsequently introduced or the decision
8 is clearly erroneous." *Masonry and Tile Contractors Ass'n of S. Nev. v. Jolley, Urga &*
9 *Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). Reviewing the filings entered
10 after the written order issued on June 22, 2022, the court does not find substantially
11 different evidence subsequently introduced or that the court's decision is clearly erroneous.
12 Therefore, the motion to reconsider is denied.
13

14
15 Tod Robben also requests this court's order dated June 22nd be stayed. The
16 Supreme Court of the State of Nevada considers the following factors in deciding whether
17 to issue a stay:

- 18 (1) whether the object of the appeal will be defeated if the stay is denied;
19 (2) whether appellant will suffer irreparable or serious injury if the stay is denied;
20 (3) whether respondent will suffer irreparable or serious injury if the stay is granted; and
21 (4) whether appellant is likely to prevail on the merits in the appeal.

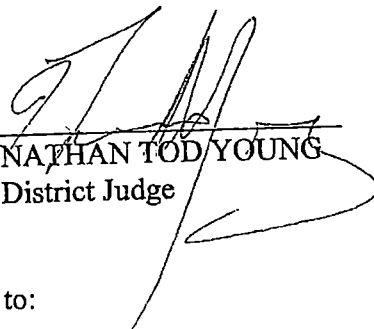
22 *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004) (citing *NRAP*
23 *8(c)*); see also *Fritz Hansen A/S, Petitioner v. Eighth Jud. Dist. Ct.*, 116 Nev. 650, 657,
24 6 P.3d 982, 986 (2000). "We have not indicated that any one factor carries more weight
25 than the others, although *Fritz Hansen A/S v District Court* recognizes that if one or two
26 factors are especially strong, they may counterbalance other weak factors." *Mikohn*
27
28

1 *Gaming Corp.*, 120 Nev. at 251, 89 P.3d at 38.

2 Considering the appeal has now been dismissed, it does not appear likely that
3 appellant is to prevail on the merits given that the object of the appeal has already been
4 defeated. The court finds this to be an especially strong factor. Balancing the relevant
5 considerations, the court finds insufficient reason to grant the requested stay.
6

7 IT IS SO ORDERED.

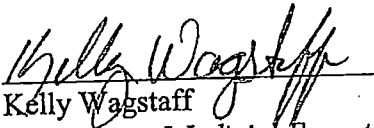
8 Dated this 13 day of July, 2022.


NATHAN TOD YOUNG
District Judge

11 Copies served by mail this 13 day of July, 2022, to:

12
13 Wallace & Millsap
14 510 W. Plumb Lane, Suite A
15 Reno, NV 89509

16 Todd Robben
17 P.O. Box 4251
18 Sonora, CA 95370


Kelly Wagstaff
Department I Judicial Executive Assistant

Wallace & Millsap
510 W Plumb Ln., Reno, Nevada / (775) 683-9599

RECEIVED

DEC 15 2022

FILED

2022 DEC 15 PM 4:14

Douglas County
District Court Clerk

BOBBIE R. WILLIAMS
CLERK

BY  DEPUTY

Case No.: 22-PB-00119

Dept. No.: II

The undersigned affirms this document
does not contain the social security number
or legally private information of any person.

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

TODD ROBBEN,

Petitioner;

vs.

THE ESTATE OF THOMAS J.
HARRIS and THE THOMAS J.
HARRIS TRUST,

Respondents.

LIMITED OPPOSITION TO
PETITIONER'S MOTION FOR A
DECISION ON THE PLEADINGS;
PETITIONER'S MOTION DECLINING
ORAL ARGUMENT

The Honorable Tara Flanagan, in her capacity as Successor Trustee of the Thomas J. Harris Trust dated June 19, 2019 (the "Trust"), and as the Court-appointed Successor Executor of the Estate of Thomas Joseph Harris (the "Estate"),¹ by and through her attorneys of record, Wallace & Millsap LLC, respectfully presents this Limited Opposition to Petitioner's Motion for a Decision on the Pleadings; Petitioner's Motion Declining Oral Argument (the "Motion"). This Opposition is based on the following Points & Authorities, any exhibits attached thereto, any oral argument this Court wishes to entertain, and the papers and pleadings on file before the Court of utility in deciding Petitioner's Motion.

¹ The Trust and the Estate may be collectively referred to herein as the "Respondents."

POINTS & AUTHORITIES

RELEVANT HISTORY

1
2
3
4 1. On or about July 20, 2022, Petitioner Todd Robben (the "Petitioner")
5 filed his Verified Petition to Invalidate the Thomas J. Harris Will and Trust,
6 Petitioner's Request for Appointment of Counsel Pursuant to NRS § 136.200,
7 Emergency Request for Stay of Final Distribution, Preemptory Challenge to Judge
8 Nathan Todd Young, Related Case Number: 2021 PB00034 (the "Petition"). The
9 Court assigned this matter to the Honorable Robert Estes by and through
10 Department II of this Honorable Court. *See generally* Court Docket.

11 2. On October 6, 2022, the Estate filed its Motion to Dismiss the Petition.
12 The Estate's Motion to Dismiss the Petition has been fully briefed and has been
13 submitted to the Court for decision. *Id.*

14 3. On October 6, 2022, the Trust filed a separate Motion for Summary
15 Judgment. The Parties have fully briefed the Trust's Motion for Summary Judgment
16 and have submitted that Motion to the Court for decision. *Id.*

17 4. Thereafter, on November 30, 2022, the Court issued an Order Setting
18 Hearing, wherein the Court scheduled oral argument for January 6, 2023 on the
19 Estate's Motion to Dismiss and the Trust's Motion for Summary Judgment. *Id.*

20 5. Most recently, on December 8, 2022, Petitioner filed his Motion
21 requesting the Court rule on the briefing when deciding the Estate's Motion to
22 Dismiss and the Trust's Motion for Summary Judgment. *Id.*

23 6. To date, the Court has not set an evidentiary hearing to consider the
24 Petition. *Id.* Similarly, the Petitioner has not noticed an evidentiary hearing to
25 consider his Petition.

26 ///

27 ///

28 ///

ORAL ARGUMENT ON THE TRUST'S AND ESTATE'S PENDING DISPOSITIVE MOTIONS

The Respondents do not oppose Petitioner's Motion to the extent it requests the Court rule on the Trust's Motion for Summary Judgment, as well as the Estate's Motion to Dismiss, without conducting oral argument. The Respondents' identified Motions have been fully briefed and are ripe for decision.

With that said, the Respondents recognize the Court's ability to order oral argument, and if the Court maintains the current January 6, 2023, hearing for the purpose of receiving oral argument on the Trust's Motion for Summary Judgment and the Estate's Motion to Dismiss, the Respondents will abide the Court's Order. See NJDCR 6(e).

THE PETITIONER'S REQUEST FOR JUDGMENT ON THE PLEADINGS MUST BE DENIED

The Respondents oppose Petitioner's Motion to the extent it requests a judgment on the pleadings regarding the initial Petition filed in this matter. Specifically, if the Respondents' meritorious dispositive motions, or either of them, are not granted by the Court, an evidentiary hearing must be properly noticed and held on the Petition before any ruling on the Petition can be made. See NRS 164.005, 164.015, 155.010 & 155.160. Stated otherwise, the Court cannot, as a matter of procedure or as a matter of law, rule on the Petition absent an evidentiary hearing as Petitioner seemingly requests.

Specifically, the initial Petition attempts to contest the validity of the Trust. As such, if the Trust's Motion for Summary Judgment is not granted an evidentiary hearing must be scheduled, and the Trust must receive proper notice of the hearing. See NRS 164.005, 164.015, 155.010. Moreover, any interested party may object to the Petition and the relief it requests in writing *at or before* a properly noticed hearing on the Petition, or may appear and object to the Petition orally at a properly noticed hearing on the Petition. See NRS 155.160. Thus, should the Court not grant the Trust's dispositive motion, the Petition cannot be ruled on before an evidentiary

1 hearing is properly noticed and held or else it would improperly eliminate the
2 Respondents' right to object in writing, or orally at the hearing, to the Petition
3 pursuant to NRS 155.160.

4 Similarly, the initial Petition attempts to contest the validity of the Last Will
5 and Testament of Thomas J. Harris. As such, if the Estate's Motion to Dismiss is not
6 granted an initial hearing must be scheduled, and the Petitioner must provide proper
7 notice of the hearing to the Estate. See NRS 137, NRS 155.010. Likewise, and again,
8 any interested party may object to the Petition and the relief it requests in writing *at*
9 *or before* an evidentiary hearing on the Petition, or may appear and object to the
10 Petition orally at a hearing on the Petition. See NRS 155.160. Thus, should the Court
11 not grant the Estate's dispositive motion, the Petition cannot be ruled on before an
12 initial hearing is properly noticed and held, as doing so would deny the Estate its
13 right to object to the Petition *at or before* any such hearing. *Id.*

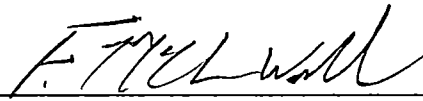
14 The Respondents' respective dispositive motions are meritorious, and if
15 granted, will conclude this matter. However, in an abundance of caution the
16 Respondents each confirm they do fully object to the Petition, and will provide their
17 respective objections to the Petition in writing in advance of any initial hearing
18 noticed on the Petition. See NRS 155.160. In this vein, the Petitioner's Motion states
19 "[t]here is not bench or jury trial to decide facts so the hearing and oral argument are
20 not needed." See Motion, pg. 3, ln. 11-12. The Petitioner's position is incorrect, as
21 should the Respondents' dispositive motions not be granted, they will timely object to
22 the Petition, this will become a contested matter where an evidentiary hearing will
23 be scheduled, and the Petitioner will bear a significant burden of proof.

24 Therefore, the Respondents fully oppose any ruling on the pleadings by this
25 Court on the initial Petition itself, as such a ruling cannot be made as a matter of law
26 because it would violate the governing procedural statutes, and deny the Respondents
27 of their statutorily protected right to object to the Petition at any point prior to, or at,
28 an initial hearing in this matter on the Petition itself. See NRS 155.160.

CONCLUSION

The Respondents do not oppose Petitioner's Motion to the extent it seeks a ruling on the pending Motion to Dismiss, as well as the pending Motion for Summary Judgment, without oral argument. However, the Respondents both fully oppose any request for a ruling on the pleadings regarding the initial Petition in this matter, as such a ruling would be on violation of the statutorily required procedure for this case, and would deny the Respondents their statutory right to object to the Petition.

DATED this 15th day of December 2022.

By: 
F. McClure Wallace, Esq.
Nevada State Bar No. 10264
WALLACE & MILLSAP
510 W. Plumb Lane, Suite A
Reno, Nevada 89509
Ph: (775) 683-9599
mcclure@wallacemillsap.com

CERTIFICATE OF SERVICE

The undersigned certifies the foregoing Opposition was served upon Petitioner Todd Robben via United States Mail at the address of P.O. Box 4251 Sonora, California 95370. The foregoing Opposition was placed in the mail for service on the date shown below.

Dated this 15th day of December 2022.

By: 

Caroline Carter, Paralegal

RECEIVED

DEC 23 2022

Douglas County
District Court Clerk

FILED

2022 DEC 23 PM 4:37

BOBBIE R. WILLIAMS
CLERK

BY  DEPUTY

Todd Robben
In Pro per
PO Box 4251
Sonora, CA 95370
Robben.ty@gmail.com
(209)540-7713

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

TODD ROBBEN,
Petitioner

Vs.

THE ESTATE OF THOMAS JOSEPH
HARRIS; THOMAS J. HARRIS TRUST,
Deceased,
Respondent.

CASE NO.: 2022-PB-00119

PETITIONER'S VERIFIED REPLY IN
SUPPORT OF MOTION FOR A
DECISION ON THE PLEADINGS;
PETITIONER'S MOTION DECLINING
ORAL ARGUMENT

Petitioner, Todd Robben¹, is in receipt of the November 30th, 2022 order setting a hearing for oral arguments on January 06, 2023 at 9:00am in this instant case and Respondent's Limited Opposition filed on December 13, 2022.

MEMORANDUM OF POINTS AND AUTHORITIES

¹ 'however inartfully pleaded,' [are] held to 'less stringent standards than formal pleadings drafted by lawyers.'" Fed. Express Corp. v. Holowecki, 552 U.S. 389, 402 (2008).

1 This Petitioner nor the Respondent has requested oral arguments pursuant to
2 "Ninth Judicial District Court Rule (NJDCR) 6(e) states that decisions on all motions
3 will be rendered without oral argument unless oral argument is requested by the
4 court or the parties. Moreover, District Court Rule 13(1) requires that all motions
5 include a notice of the motion setting the matter on the court law and motion
6 calendar. " Garrettson v. State, 967 P. 2d 428 - Nev: Supreme Court 1998.

8 The Respondents did not comply with DCR 13(1) or request a hearing for its
9 Motion to Dismiss and Motion for Summary Judgment, nor did they provide notice to
10 the Petitioner. The Court may strike the Motion to Dismiss and Motion for Summary
11 Judgment on its own motion for failure to set a hearing. The Petitioner did not
12 request a hearing in his petition.

14 Under NRCP 8(f), "[a]ll pleadings shall be so construed as to do substantial
15 justice." See Chastain v. Clark Cnty. Sch. Dist., 109 Nev. 1172, 1178, 866 P.2d 286,
16 290 (1993).

18 NRCP Rule 12(c) Motion for Judgment on the Pleadings states "After the
19 pleadings are closed—but early enough not to delay trial—a party may move for
20 judgment on the pleadings." At this point the pleadings are closed unless ordered by
21 the court pursuant to NRCP 12 (a)(3)(A) or (B).

23 "Under Rule 12(c), "any party may move for judgment on the pleadings," and
24 under Rule 12(h)(2), the "defense of failure to state a claim upon which relief can be
25 granted . . . may be made . . . by motion for judgment on the pleadings" See
26 also Duff v. Lewis, 114 Nev. 564, 568 (1998) ("It is well established that a motion
27

1 under NRCP 12(c) is designed to provide a means of disposing of cases when
2 material facts are not in dispute and a judgment on the merits can be achieved by
3 focusing on the content of the pleadings." (internal citations and quotations
4 omitted))." Rogich v. Clark County School District, Dist. Court, D. Nevada 2021.

6 "A Rule 12(c) motion is designed to provide a means of disposing of cases
7 when material facts are not in dispute and a judgment on the merits can be achieved
8 by focusing on the content of the pleadings.[3] 5 C. Wright & A. Miller, Federal
9 Practice and Procedure § 1367 (1969). The motion for a judgment on the pleadings
10 has utility only when all material allegations of fact are admitted in the pleadings and
11 only questions of law remain. Id. See also Duhamel v. United States, 127 Ct.Cl. 679,
12 119 F. Supp. 192 (1954)." Bernard v. Rockhill Development Co., 734 P. 2d 1238 -
13 Nev: Supreme Court 1987.

15 There are no disputed facts because the Respondent has conceded to the facts
16 in the Petitioner's petition and Petitioner's oppositions to Respondent's motion to
17 dismiss & motion for summary judgment.

19 The Respondent concedes to Petitioner's purely legal arguments including
20 Barefoot v. Jennings, 456 P. 3d 447 - Cal: Supreme Court 2020 which legally
21 mandates that the petitioner is an interested party and beneficiary. The matters of
22 law as to other issues such as timeliness, jurisdiction, issue preclusion, etc. The
23 Respondent also concedes to Petitioner's Constitutional arguments which combined
24

1 with the facts – the totality & cumulatively² mandate the Petitioner's relief request
2 (prayer for relief). The Respondent get another-bite-at-the-apple in a hearing to
3 which is not identified as a hearing on the pending motions or the petition itself to
4 which the Petitioner did not request a hearing, or jury trial pursuant to NRS 137.020,
5 to this point and he reserves all rights to change his mind in the future.
6

7 The Respondent did not deny the *presumed undue influence* by Jeff D.
8 Robben, along with the other fraud described in the petition (missing safe deposit
9 box contents and the Minden, NV Pebble Beach house were transferred out of the
10 will or trust) and intrinsic/extrinsic fraud-upon-the-court³ which is the factual
11 *gravamen* of the case. Indeed this case is about MASSIVE FRAUD & THEFT
12 "undue influence ... is a species of fraud." In re Estate of Peterson, 77 Nev. 87, 111,
13 360 P.2d 259, 271 (1961).
14
15

16 The Petitioner provided admissible evidence including the existence of
17 presumed undue influence & undue influence, fraud, the existence of the previous
18 trust to which Petitioner was a beneficiary (and interested person) and at least three
19 witness to attest under penalty of perjury that Petitioner was , in fact, named in the
20 previous trust before the undue influence occurred. Said facts are in a verified
21
22

23 ² Nevada Judicial Code of Conduct Canon Rule 2.2 [4] It is not a violation of
24 this Rule for a judge to make reasonable accommodations to ensure self-
25 represented litigants the opportunity to have their matters fairly heard.

26 ³ Fraud on the court is "a species of fraud which does, or attempts to, subvert
27 the integrity of the court itself, or is a fraud perpetrated by officers of the court so
28 that the judicial machinery cannot perform in the usual manner its impartial task
of adjudging cases...." NC-DSH, INC. v. Garner, 218 P. 3d 853 - Nev: Supreme
Court 2009

1 petition which acts as an affidavit to the facts since it is signed under penalty of
2 perjury by the Petitioner. The Respondent cannot overcome this on the pleadings or
3 any evidence proffered to the Court ...or even an offer of proof.
4

5 The Petitioner, and all other Beneficiaries, are being robbed and molested
6 of their inheritance and statutory rights and State and U.S. Constitutional Rights
7 to due-process and equal protection in front of the Petitioner's face. This is
8 very, very provocative.
9

10 The Respondent does not provide any proof or affidavits to support its
11 defense when they had the burden of proof.

12 NRCP Rule 15 Motions, issues of law: Oral hearings or submission on
13 briefs; notice of and compliance with decisions states:
14

15 If the court and the parties agree any issue of law and any motion of any
16 nature or kind may be considered in chambers at any time or place in the state;
17 or such question of law or motion may be submitted on briefs to such judge,
18 and the decision may be filed thereafter at any time. Any proceeding which
19 requires evidence, testimony, or fact finding must be heard in open court within
20 the district that the case is filed and where court is regularly held, except as
21 provided by:

22 1. NRS 1.050(4). The decision shall fix the time when the decision of the
23 court is to be complied with. In all such cases the party who is required to
24 act by such decision shall receive due written notice thereof from the
25 opposite party.

26 2. Time for complying with such decision shall commence to run from the
27 time when service is made in the manner required by N.R.C.P. for service
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15 any statutory burden shifting based on wholly unsubstantiated allegations
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18 The "Introduction" of the Petition does not specifically reference the
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20 **Estate** maintains its general objection to the Petition, including the
21 "Introduction" section of the Petition in an abundance of caution.

22 By and through the "Introduction" section of the Petition, the Estate notes
23 Petitioner alleges his Petition is timely. **The Estate** denies and opposes
24 this statement, and identifies the Petition is not only untimely, but time-
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26 Dismiss. See generally Estate's Motion to Dismiss; see also NRS
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full wherein the Court ruled the Petitioner is not an "interested person in
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8 a person whose right or interest under an estate or trust may be materially
9 affected by a decision of a fiduciary or a decision of the court. The
10 fiduciary or court shall determine who is an interested person according to
11 the particular purposes of, and matter involved in, a proceeding.

12 **NRS 155.160** Responses and objections to proceedings.

13 1. An interested person may appear and make a response or
14 objection in writing at or before the hearing.

15 2. An interested person may appear and make a response or
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17 response or objection at the hearing or grant a continuance to allow the
18 response or objection to be made in writing.

19 3. If the court is not in session at the time set for the hearing of any
20 matter concerning the settlement of the estate of a decedent, anyone
21 opposing the petition therein made may file objections thereto with the
22 clerk.

23 **NRS 132.390** Circumstances in which person is interested person.

24 1. For the purposes of this title, a person is an interested person with
25 respect to:

26 (a) A judicial proceeding, a notice of a proposed action or a
27 nonjudicial settlement, if the person has or claims to have an enforceable
28 right or interest that may be materially affected by the outcome of that
proceeding, proposed action or nonjudicial settlement. While living, a
settlor or a testator shall be deemed to have an enforceable right with

1 respect to any trust or will that he or she created. For the purposes of this
2 paragraph, a person may not claim to have a right or interest under an
3 estate or trust after the entry of an order of the court declaring the right or
interest invalid.

4 (b) An estate of a decedent, if the person:

5 (1) Is an heir, devisee, child, spouse, creditor, settlor or
6 beneficiary;

7 (2) Has a property right in or claim against the estate of a
8 decedent, including, without limitation, the Director of the Department of
9 Health and Human Services in any case in which money is owed to the
10 Department of Health and Human Services as a result of the payment of
benefits for Medicaid;

11 (3) Has priority for appointment as a personal representative; or

12 (4) Is any other fiduciary representing an interested person.

13 (c) A trust, if the person:

14 (1) Is a living settlor or, if a court has appointed a guardian of the
15 estate of the settlor, the guardian of the estate appointed by the court;

16 (2) Is the trustee, including, without limitation, each acting
17 cotrustee;

18 (3) Holds the presently exercisable right to remove or replace the
19 trustee or a cotrustee;

20 (4) Asserts the right to serve as the trustee or as a cotrustee;

21 (5) Is a current beneficiary or a remainder beneficiary of that trust;

22 (6) Holds a presently exercisable power of appointment that
23 permits the holder to designate or change the designation of a current
24 beneficiary or a remainder beneficiary of that trust;

25 (7) Holds a presently exercisable power that permits the holder to
26 designate, remove or otherwise change the designation of a person who,
27 pursuant to this paragraph, would be an interested person;

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testator, would be:

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17 2. For the purposes of this title, the following persons are not
18 interested persons:

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21 petition or proceeding.

22 (b) The Director of the Department of Health and Human Services
23 after any money owed to the Department has been paid in full or with
24 respect to the estate or trust of a decedent who did not receive any
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26 for which the vexatious litigant has been denied standing pursuant to NRS
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27 (d) As to the estate of a decedent:

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2 (1) After a will has been admitted to probate, an heir, child or
3 spouse who is not a beneficiary of the will, except for the purposes of NRS
133.110, 133.160 and 137.080.

4 (2) A creditor whose claim has not been accepted by the personal
5 representative, if the enforcement of the claim of the creditor is barred
6 under the provisions of chapter 11 or 147 of NRS or any other applicable
statute of limitations.

7 (e) As to a trust:

8 (1) The guardian of the person of an interested person, unless
9 the guardian is expressly permitted to act for the interested person under
10 the terms of the trust instrument;

11 (2) A beneficiary or creditor whose right or claim is barred by any
12 applicable statute of limitations, including, without limitation, the statute of
13 limitations found in chapter 11 of NRS or NRS 164.021, 164.025 or
166.170;

14 (3) Any beneficiary of a revocable trust, except as expressly
15 provided in paragraph (d) of subsection 1; or

16 (4) Any disclaimant as to a disclaimed interest, except with
17 respect to the enforcement of the disclaimer.

18 3. As used in this section:

19 (a) "Current beneficiary" has the meaning ascribed to it in NRS
165.020.

20 (b) "Remainder beneficiary" has the meaning ascribed to it in NRS
21 165.020.

22
23 The Petitioner has an undisputed *prima facie* case of presumed undue
24 influence based on the undisputed facts that Jeff D. Robben, the brother of the
25 Petitioner, was 1: The caretaker of Thomas J. Harris; 2: The Financial advisor for
26 Thomas J. Harris; 3: Helped create the current Thomas J. Harris trust; 4. Had
27

1 "undue influence" and "presumed undue influence" of Thomas J. Harris; 5: Jeff D.
2 Robben influenced Thomas J. Harris to disinherit this Petitioner based on the
3 animus and vexation of Jeff D. Robben against his brother and allowed Jeff D.
4 Robben to gain financially.

5 "A rebuttable presumption of undue influence is raised if the testator and the
6 beneficiary shared a fiduciary relationship, but undue influence may also be proved
7 without raising this presumption." *In re Estate of Bethurem*, 313 P. 3d 237, 241
8 (2013), at 329. "The essence of a fiduciary or confidential relationship is that the
9 parties do not deal on equal terms, since the person in whom trust and confidence is
10 reposed and who accepts that trust and confidence is in a superior position to exert
11 unique influence over the dependent party." *Hoopes v. Hammargren*, 725 P. 2d
12 238, 242 (1986) quoting *Barbara A. v. John G.*, 145 Cal.App.3d 369, 193 Cal.Rptr.
13 422, 432 (1983).

14 "Once raised, a beneficiary may rebut such a presumption by clear and
15 convincing evidence." *Bethurem, supra*, at 241. The highest standard of proof,
16 "beyond a reasonable doubt," exists only in criminal litigation. In civil litigation, "clear
17 and convincing evidence" is the highest evidentiary standard. "Clear and convincing
18 evidence" is "evidence establishing every factual element to be highly probable, or
19 as evidence [which] must be so clear as to leave no substantial doubt." *In re*
20 *Discipline of Drakulich*, 908 P. 2d 709, 715 (1995)(internal quotations and citations
21 omitted).

22 *In RE: Jane Tiffany Living Trust* 2001, 124 NEV. 74, 78, 177 P.3D 1060, 1062
23 (2008): "A presumption of undue influence arises when a fiduciary relationship exists
24 and the fiduciary benefits from the questioned transaction. Once raised, a
25 beneficiary may rebut such a presumption by clear and convincing evidence."

26 Thus, the Respondent must meet a difficult, nearly impossible burden, after
27 the burden shift. The burden shift occurs when the contesting party establishes the
28

1 existence of a fiduciary of confidential relationship. The Respondent cannot
2 overcome the Petitioner's undisputed presumed undue influence and undue
3 influence claims and the Petitioner must prevail on the merits if the court allows the
4 Petitioner his due process as mandated by the Nevada and U.S. Constitutions.

5 The Petitioner's verified petition serves as an affidavit since it is signed under
6 penalty of perjury. The Petitioner asserted in his petition that Jeff D. Robben was the
7 fiduciary and caretaker of Thomas J. Harris which automatically creates presumed
8 undue influence. The Respondent does not deny presumed undue influence or even
9 deny Jeff D. Robben was the fiduciary and caretaker thus conceding to that fact.
10

11 The Petitioner asserts facts to also support undue influence which is different
12 than presumed undue influence in addition to the presumed undue influence. The
13 Petitioner states these facts in his verified petition under penalty of perjury. The
14 Respondent offers no proof or offer of proof to which a hearing is required. The
15 Respondent simply concedes but claims a right to an evidentiary hearing to which they
16 offer no proof or facts to defend itself on the pleadings.
17

18 If the Court still requires a hearing, and the Petitioner reserves all rights and
19 requests a tentative ruling or something to narrow the case down to any issue. The
20 Petitioner will attend via phone or Skype or Zoom. If the Court orders Petitioner's
21 witnesses affidavits to be verified by a Notary, the Petitioner can provide that or a
22 telephone conference call and/or Zoom.
23

24 The Petitioner is willing to have a hearing the fraud and essentially the Court
25 should issue an order to show cause to the Respondent's counsel, the Trustee and
26 former Trustees named in the petition to identify the location of the safe deposit box
27
28

1 contents described in the petition. A paper trail with all accounting must be reviewed
2 by the proper authority to determine how, who, why is there missing assets, stocks,
3 bonds, insurance, cash ,etc – there's also a undisputed house from Minden, NV on
4 Pebble Beach Ct. and other properties in Genoa, NV and perhaps more. Everything
5 must be explained as to why Scott Barton resigned and the previous law firm,
6 Blanchard, Krasner & French and its layers all withdrew. The lack of transparency has
7 been unacceptable.
8

9
10 "Silence can only be equated with fraud when there is a legal or moral
11 duty to speak, or when an inquiry left unanswered would be intentionally
12 misleading... We cannot condone this shocking conduct... If that is the
13 case we hope our message is clear. This sort of deception will not be
14 tolerated and if this is routine it should be corrected immediately" U.S. v.
15 Tweel, 550 F2d 997, 299-300

16 "Fraud: An intentional perversion of truth for the purpose of inducing
17 another in reliance upon it to part with some valuable thing belonging to
18 him or to surrender a legal right." Black's 5th, 594 (emphasis added.)
19 "Where a party desires to rescind upon the grounds of mistake or fraud he
20 must upon the discovery of the facts, at once announce his purpose, and
21 adhere to it." Grymes v Saunders, 93 US 55, 62.

22 "...If they proposed to rescind, their duty was to assert that right promptly,
23 unconditionally, and invasively," Richardson v. Lowe, 149 Fed Rep 625,
24 627-28. "Fraud vitiates the most solemn contracts, documents, and even
25 judgments." U.S. vs. Throckmorton, 98 U.S. 61. documents";
26 ("Constitutions")

27 This Petitioner has to assert all rights and front load all possible arguments in
28 this pleading. The plaintiff's civil rights pleading was 150 pages and described by a
federal judge as "inept". Nevertheless, it was held "Where a plaintiff pleads pro se in
a suit for protection of civil rights, the Court should endeavor to construe Plaintiff's
Pleadings without regard to technicalities." Picking v. Pennsylvania Railway, supra

1 "Pro Se parties have the right to Appeal, and submit their briefs on appeal even
2 though they may be in artfully drawn", see Vega v. Johnson, 149 F.3d 354 (5th Cir.
3 1998).

4
5 "Courts will go to particular pains to protect pro se litigants consequences of
6 technical errors if injustice would otherwise result." U. S. v. Sanchez, 88F.3d 1243 (D.C.
7 Cir. 1996). Moreover, "the court is under a duty to examine the complaint to determine if
8 the allegations provide for relief on any possible theory." Bonner v. Circuit Court of St.
9 Louis, 526 F.2d 1331, 1334 (8th Cir. 1975) quoting Bramlet v. Wilson, 495 F.2d 714,
10 716 (8th Cir. 1971).

11
12 The history of bias and prejudice against pro se litigants within the Courts is long.
13 Stephen Elias who had been with Nolo Press, the nation's leading publisher of self-help
14 law books, back in 1997, in an article Bias Against Pro Per Litigants . . . stated: "From
15 the moment they first contact the court system, most people who want to represent
16 themselves, without a lawyer, encounter tremendous resistance. Within the closed
17 universe of the courts, this bias is as pernicious as that based on race, ethnic origins or
18 sex." "People who cannot afford a lawyer are a rebuke to the organized bar's monopoly
19 . . . , because that monopoly is morally—if not legally—justified. . . the ABA has admitted
20 that 100 million Americans can't afford lawyers." ". . . the right to file a lawsuit pro se is
21 one of the most important rights under the constitution and laws." Elmore v.
22 McCammon (1986) 640 F. Supp. 905.

23
24
25 Justice Bradley, "It may be that it is the obnoxious thing in its mildest form; but
26 illegitimate and unconstitutional practices get their first footing in that way; namely, by
27

1 silent approaches and slight deviations from legal modes of procedure. This can only be
2 obviated by adhering to the rule that constitutional provisions for the security of persons
3 and property should be liberally construed. A close and literal construction deprives
4 them of half their efficacy, and leads to gradual depreciation of the right, as if it
5 consisted more in sound than in substance. It is the duty of the Courts to be watchful for
6 the Constitutional Rights of the Citizens, and against any stealthy encroachments
7 thereon. Their motto should be *Obsta Principiis*." Boyd v. United, 116 U.S. 616 at 635
8 (1885).
9

10
11 "It will be an evil day for American Liberty if the theory of a government outside
12 supreme law finds lodgement in our constitutional jurisprudence. No higher duty rests
13 upon this Court than to exert its full authority to prevent all violations of the principles of
14 the Constitution." Downs v. Bidwell, 182 U.S. 244 (1901).
15

16 "To protect the integrity of the litigation process, the court has the inherent power
17 to set aside a judgment for fraud on the court itself. (Aldrich v. San Fernando Valley
18 Lumber Co., *supra*, 170 Cal. App.3d 725, 735-736.) Although reversal does not
19 necessarily follow, such fraud may be found to include "'fraud perpetrated by officers of
20 the court so that the judicial machinery cannot perform in the usual manner its impartial
21 task of adjudging cases that are presented for adjudication.'" (Alexander v. Robertson,
22 *supra*, 882 F.2d 421, 424, quoting 7 Moore & Lucas, Moore's Federal Practice (2d ed.
23 1978) [¶] 60.33, p. 515.)" Russell v. Dopp, 36 Cal. App. 4th 765 - Cal: Court of Appeal,
24 4th Appellate Dist., 2nd Div. 1995.
25
26
27
28

Respectfully signed under penalty of perjury,



/s/ Todd Robben

December 23, 2022

CERTIFICATE OF SERVICE

I, Stephen James Robben, declare under penalty of perjury under the law of the State of Nevada that the following is true and correct copy of the filed document. That on December 23, 2022, service of the document was made pursuant to NRCP 5(b) by depositing a email to: F. McClure Wallace, counsel for Respondent, mcclure@wallacemillsap.com

DATED December 23, 2022

Submitted By: /s/ Stephen James Robben

Todd Robben
In Pro per
PO Box 4251
Sonora, CA 95370
Robben.ty@gmail.com
(209)540-7713

RECEIVED

DEC 23 2022

Douglas County
District Court Clerk

FILED

2022 DEC 23 PM 5:04

BOBBIE R. WILLIAMS
CLERK

[Signature]
DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

TODD ROB BEN,
Petitioner

CASE NO.: 2022-PB-00119

Vs.

PETITIONER'S MOTION TO STRIKE
RESPONDENT'S OBJECTIONS,
MOTION TO DISMISS AND MOTION
FOR SUMMARY JUDGMENT

THE ESTATE OF THOMAS JOSEPH
HARRIS; THOMAS J. HARRIS TRUST,
Deceased,
Respondent.

Petitioner, Todd Robben¹, moves to strike Respondent's objections and
motions to dismiss and motion for summary judgment.

MEMORANDUM OF POINTS AND AUTHORITIES

¹ 'however inartfully pleaded,' [are] held to 'less stringent standards than formal pleadings drafted by lawyers.'" Fed. Express Corp. v. Holowecki, 552 U.S. 389, 402 (2008).

1 This Petitioner nor the Respondent has requested oral arguments pursuant to
2 "Ninth Judicial District Court Rule (NJDCR) 6(e) states that decisions on all motions
3 will be rendered without oral argument unless oral argument is requested by the
4 court or the parties. Moreover, District Court Rule 13(1) requires that all motions
5 include a notice of the motion setting the matter on the court law and motion
6 calendar. " *Garrettson v. State*, 967 P. 2d 428 - Nev: Supreme Court 1998.
7

8 **The Respondents did not comply with DCR 13(1) or request a**
9 **hearing for its Motion to Dismiss and Motion for Summary Judgment, nor**
10 **did they provide notice to the Petitioner. The Court may strike the Motion**
11 **to Dismiss and Motion for Summary Judgment on its own motion for**
12 **failure to set a hearing. The**
13

14 NRCP Rule 15 Motions, issues of law: Oral hearings or submission on
15 briefs; notice of and compliance with decisions states:
16

17 If the court and the parties agree any issue of law and any motion of any
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133.110, 133.160 and 137.080.

4 (2) A creditor whose claim has not been accepted by the personal
5 representative, if the enforcement of the claim of the creditor is barred
6 under the provisions of chapter 11 or 147 of NRS or any other applicable
statute of limitations.

7 (e) As to a trust:

8
9 (1) The guardian of the person of an interested person, unless
10 the guardian is expressly permitted to act for the interested person under
the terms of the trust instrument;

11 (2) A beneficiary or creditor whose right or claim is barred by any
12 applicable statute of limitations, including, without limitation, the statute of
13 limitations found in chapter 11 of NRS or NRS 164.021, 164.025 or
166.170;

14 (3) Any beneficiary of a revocable trust, except as expressly
15 provided in paragraph (d) of subsection 1; or

16 (4) Any disclaimant as to a disclaimed interest, except with
17 respect to the enforcement of the disclaimer.

18 3. As used in this section:

19 (a) "Current beneficiary" has the meaning ascribed to it in NRS
20 165.020.

21 (b) "Remainder beneficiary" has the meaning ascribed to it in NRS
22 165.020.

23 Respectfully signed under penalty of perjury,

24 

25 /s/ Todd Robben

26 December 23, 2022

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1 **CERTIFICATE OF SERVICE**

2

3 I, Stephen James Robben, declare under penalty of perjury under the law of the

4 State of Nevada that the following is true and correct copy of the filed document. That

5 on December 23, 2022, service of the document was made pursuant to NRCP 5(b) by

6 depositing a email to: F. McClure Wallace, counsel for Respondent,

7 mcclure@wallacemillsap.com

8

9 DATED December 23, 2022

10

11 Submitted By: /s/ Stephen James Robben

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DEC 28 2022

Douglas County
District Court Clerk

FILED

2022 DEC 28 PM 2:39

BOBBIE R. WILLIAMS
CLERK

BY *Chal* DEPUTY

1 Your Name: Todd Robben

Your Address: PO Box 4251

2 City, State, Zip: Sonora, CA 95370

Phone: 209-540-7713

3 Email: _____

4 CASE NO. 2022-PB-00119

5 DEPT. NO. 2

6
7 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF DOUGLAS

9
10 TODD ROBBERN

11 _____,
12 Plaintiff/Petitioner,

13 vs.

14 THOMAS J. HARRIS TRUST

15 _____,
16 Defendant/Respondent.

REQUEST TO APPEAR REMOTELY VIA ZOOM
FOR COURT APPEARANCE/HEARING

HEARING DATE: 01-06-2023

TIME OF HEARING: 9:00am

Todd Robben

17 (☐ check one) ☒ Plaintiff / ☐ Defendant (your name) _____

18 hereby submits their request to appear remotely via Zoom for the Court hearing currently scheduled for the (day)

19 06 day of (month) January, 20 23.

20 I acknowledge that it is my responsibility to connect to Zoom at the date and time of the hearing
21 using the instructions provided on the Douglas County District Court, Department I website. I also acknowledge
22 that it is my responsibility to pre-test my audiovisual connection and camera equipment prior to the hearing and
23 familiarize myself with the mute and camera functions of Zoom. If I fail to connect and appear at the time of my
24 hearing, I acknowledge that it will be considered a failure to appear.

25 /s/ Todd Robben

26 Your Signature

27
28 REQUEST TO APPEAR REMOTELY

CERTIFICATE OF MAILING

CERTIFICATE OF SERVICE

I, Stephen James Robben, declare under penalty of perjury under the law of the State of Nevada that the following is true and correct copy of the filed document. That on December 28, 2022, service of the document was made pursuant to NRCP 5(b) by depositing a email to: F. McClure Wallace, counsel for Respondent, mcclure@wallacemillsap.com

DATED December 28, 2022

Submitted By: /s/ Stephen James Robben

DATED this ____ day of ____, 20__

Submitted By: (your signature) _____

REQUEST TO APPEAR REMOTELY

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DEC 30 2022

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Case No. 2022-PB-00119

Douglas County
District Court Clerk

2022 DEC 30 AM 8:52

Dept. No. II

BOBBIE R. WILLIAMS
CLERK

BY  DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

TODD ROBBEN,

Petitioner,

vs.

THE ESTATE OF THOMAS JOSEPH
HARRIS; THOMAS J. HARRIS TRUST,

Respondent.

ORDER DENYING REQUEST TO
APPEAR REMOTELY VIA ZOOM FOR
COURT APPEARANCE/HEARING

THIS MATTER comes before the Court on Petitioner's Request to Appear Via Zoom for Court Appearance/Hearing filed on December 28, 2022. Petitioner's personal appearance will materially assist the Court in assessing the course of action.

Defendant's Request to Appear Via Zoom for Court Appearance/Hearing is DENIED. Petitioner shall appear in person for the January 6, 2023 hearing.

IT IS SO ORDERED.

DATED this 29th day of December, 2022.


ROBERT E. ESTES
SENIOR JUDGE

1 Copies served by mail on December 3rd, 2022, addressed to:

2 Todd Robben
3 P.O. Box 4251
4 Sonora, California 95370

5 F. McClure Wallace, Esq.
6 510 West Plumb Lane
7 Reno, Nevada 89509

Erin C. Plante
Erin C. Plante

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Wallace & Millar
510 W Plumb Ln., Reno, Nevada / (775) 683-9599

RECEIVED

DEC 30 2022

FILED

Case No.: 22-PB-00119

Douglas County
District Court Clerk

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Dept. No.: II

BOBBIE R. WILLIAMS
CLERK

The undersigned affirms this document
does not contain the social security number
or legally private information of any person.

BY  DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

TODD ROBBEN,

Petitioner;

vs.

THE ESTATE OF THOMAS J.
HARRIS and THE THOMAS J.
HARRIS TRUST,

Respondents.

REQUEST TO APPEAR REMOTELY
VIA ZOOM

HEARING DATE: January 6, 2023

HEARING TIME: 9:00 a.m.

The Honorable Tara M. Flanagan, in her capacity as Successor Trustee of the Thomas J. Harris Trust dated June 19, 2019 and as the Court-appointed Successor Executor of the Estate of Thomas J. Harris, hereby submits her request to appear remotely via Zoom for the Court hearing currently scheduled for January 6, 2023 at 9:00 a.m.

Ms. Flanagan has a necessary medical procedure recently scheduled for the same time as the January 6, 2023 hearing which may prevent her from appearing in person at the hearing. Ms. Flanagan is making a diligent effort to reschedule her procedure for another date which will allow her to appear in person, and if that is not possible she is attempting to reschedule her medical procedure until the afternoon of January 6, 2023 so that she may appear via Zoom at the morning hearing. Counsel for Ms. Flanagan will appear in person on the date and time set for the hearing. If

569

Ms. Flanagan is unable to reschedule her medical procedure and appear at the hearing either in person or via Zooms, she confirms her attorney F. McClure Wallace, has full authority to present oral argument on behalf of the Estate of Thomas J. Harris and the Thomas J. Harris Trust.

Ms. Flanagan notes she, by and through her Counsel, is advised the Petitioner intends to appear for the January 6, 2023 hearing via Zoom. Ms. Flanagan has no objection to Petitioner's Request.

Tara M. Flanagan acknowledges that it is her responsibility to connect to Zoom at the date and time of the hearing using the instructions provided on the Douglas County District Court, Department I website. She also acknowledges that it is her responsibility to pre-test her audio/visual connection and camera equipment prior to the hearing and familiarize herself with the mute and camera functions of Zoom.

A proposed Order Granting Request to Appear Via Zoom is attached hereto as **Exhibit 1.**


DATED this 30th day of December 2022.

TARA M. FLANAGAN
Successor Trustee of the Thomas J. Harris Trust and Successor Executor of the Estate of Thomas J. Harris

/s/ Tara M. Flanagan

Tara M. Flanagan

WALLACE & MILLSAP
Counsel for Tara M. Flanagan



F. McClure Wallace, Esq.

State Bar No.: 10264

Patrick R. Millsap, Esq.

Nevada Bar No.: 12043

510 W. Plumb Lane, Suite A

Reno, Nevada 89509

Ph: (775) 683-9599

mcclure@wallacemillsap.com

patrick@wallacemillsap.com

LIST OF EXHIBITS

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Exhibit 1 - Proposed Order Granting Request to Appear Via Zoom

Wallace & Millage
510 W Plumb Ln., Reno, Nevada / (775) 683-9599

Exhibit 1

Exhibit 1

1 Case No.: 22-PB-00119

2 Dept. No.: II

3 The undersigned affirms this document
4 does not contain the social security number
or legally private information of any person.

5 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF DOUGLAS

7 TODD ROBBEN,

8 Petitioner;

9 vs.

10 THE ESTATE OF THOMAS J.
11 HARRIS and THE THOMAS J.
12 HARRIS TRUST,

13 Respondents.

ORDER GRANTING REQUEST FOR
REMOTE APPEARANCE

HEARING DATE: January 6, 2023

HEARING TIME: 9:00 a.m.

14
15 Tara M. Flanagan in her capacity as Successor Trustee of the Thomas J. Harris
16 Trust and as the Court appointed Successor Executor of the Estate of Thomas J.
17 Harris has requested to appear remotely at the January 6, 2023 hearing in the above-
18 captioned matter via the Court's electronic Zoom platform. F. McClure Wallace of
19 Wallace & Millsap, counsel for Tara M. Flanagan will appear at said hearing in
20 person. Accordingly, the Court hereby grants Tara M. Flanagan's request to appear
21 remotely at the January 6, 2023 hearing in the above-captioned matter via Zoom.
22 The Court admonishes Ms. Flanagan that it is her responsibility to connect to Zoom
23 at the date and time of the Hearing.

24 **IT IS SO ORDERED.**

25 Dated this ____ day of January 2023.

27 _____
The Honorable Robert E. Estates
28 Senior Judge

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FILED

DEC 30 2022

2022 DEC 30 PM 3:52

Douglas County
District Court Clerk

BOBBIE R. WILLIAMS
CLERK

BY *[Signature]* DEPUTY

Case No.: 22-PB-00119

Dept. No.: II

The undersigned affirms this document
does not contain the social security number
or legally private information of any person.

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF DOUGLAS

TODD ROBBEN,

Petitioner;

vs.

THE ESTATE OF THOMAS J.
HARRIS and THE THOMAS J.
HARRIS TRUST,

Respondents.

OPPOSITION TO PETITIONER'S
MOTION TO STRIKE
RESPONDENT'S OBJECTION,
MOTION TO DISMISS AND MOTION
FOR SUMMARY JUDGMENT

The Honorable Tara Flanagan, in her capacity as Successor Trustee of the Thomas J. Harris Trust dated June 19, 2019 (the "Trust"), and as the Court-appointed Successor Executor of the Estate of Thomas Joseph Harris (the "Estate"),¹ by and through her attorneys of record, Wallace & Millsap LLC, respectfully presents this Opposition to Petitioner's Motion to Strike Respondent's Objection, Motion to Dismiss and Motion for Summary Judgment (the "Motion"). This Opposition is based on the following Points & Authorities, any exhibits attached thereto, any oral argument this Court wishes to entertain, and the papers and pleadings on file before the Court of utility in deciding Petitioner's Motion.

¹ The Trust and the Estate may be collectively referred to herein as the "Respondents."

MEMORANDUM OF POINTS & AUTHORITIES

I. RELEVANT PROCEDURAL HISTORY

1. On or about July 20, 2022, Petitioner Todd Robben (the "Petitioner") filed his Verified Petition to Invalidate the Thomas J. Harris Will and Trust, Petitioner's Request for Appointment of Counsel Pursuant to NRS § 136.200, Emergency Request for Stay of Final Distribution, Preemptory Challenge to Judge Nathan Todd Young, Related Case Number: 2021 PB00034 (the "Petition"). The Court assigned this matter to the Honorable Robert Estes by and through Department II of this Honorable Court. *See generally* Court Docket.

2. On October 6, 2022, the Estate filed its Motion to Dismiss the Petition. The Estate's Motion to Dismiss the Petition has been fully briefed and has been submitted to the Court for decision. *Id.*

3. On October 6, 2022, the Trust filed a separate Motion for Summary Judgment. The Parties have fully briefed the Trust's Motion for Summary Judgment and have submitted that Motion to the Court for decision. *Id.*²

4. Thereafter, on November 30, 2022, the Court issued an Order Setting Hearing, wherein the Court scheduled oral argument for January 6, 2023 on the Estate's Motion to Dismiss and the Trust's Motion for Summary Judgment. *Id.*

5. More recently, on December 8, 2022, Petitioner filed his Motion requesting the Court rule on the briefing when deciding the Estate's Motion to Dismiss and the Trust's Motion for Summary Judgment. *Id.* On December 15, 2022, the Respondents filed their Limited Opposition to the Petitioner's Request for a Decision on the Pleadings.

6. On December 15, 2022, each Respondent filed its individual Objection to the Petitioner's initial Petition in this matter in accordance with NRS 155.160. Those Objections timely denied all allegations, claims, and any causes of action set

² The Estate's Motion to Dismiss and the Trust's Motion for Summary Judgment may be collectively referred to as the "dispositive motions."

1 forth in the Petition. Still, in presenting their written objections, the Respondents
2 maintain the merit of their respective dispositive motions pending before this Court
3 for decision.

4 7. On December 23, 2022 the Petitioner filed his Reply to the Respondent's
5 Opposition to his Motion for a Decision on the Pleadings. Unfortunately, the
6 improper content of the Petitioner's Reply brief will necessitate a Sur-Reply by the
7 Respondents which will be filed in the immediate future.

8 8. On December 23, 2022, the Petitioner also served his Motion to Strike,
9 which is the subject of this paper and is opposed as set forth in detail below.

10 9. To date, the Court has not set an evidentiary hearing to consider the
11 Petition. *Id.* Similarly, the Petitioner has not noticed an evidentiary hearing to
12 consider his Petition or provided notice of any such evidentiary hearing.

13 **II. INTRODUCTION & FACTS RELEVANT TO THE MOTION**

14 Petitioner's Motion to Strike is an unlawful attempt to deny the Respondents
15 their statutory right to object to Petitioner's initial Petition in this matter, and to
16 bring meritorious dispositive motions seeking to timely and cost-effectively conclude
17 this matter. Motions to Strike are governed by Nevada Rule of Civil Procedure
18 ("NRCPP") 12(f). However, the Petitioner's Motion to Strike does provides no analysis
19 of, or a single reference to, NRCPP 12(f). Stated simply, the Petitioner's Motion to
20 Strike is a baseless document which unnecessarily required the Respondent's to incur
21 attorney's fees and costs. Still, out of respect for this Court and in an abundance of
22 caution, the Estate and Trust provide the Court additional grounds upon which the
23 Motion to Strike should be denied.

24 Procedurally speaking, the Court should deny the Motion because NRCPP 12(f)
25 motions cannot be used to invalidate, contradict or supersede the rights of the
26 Respondents. Indeed, NRS 155.180 states the Rules of Civil Procedure may be
27 applied to estate matters only when they are not inconsistent with Title 12 of the
28 Nevada Revised Statutes. To strike the Respondents' Objections would be

1 inconsistent with the Trust's and the Estate's statutory right for the Court to hear
2 their respective objections to the Petition pursuant to NRS 155.160. As such, the
3 Petitioner's Motion to Strike is procedurally barred by NRS 155.160. Similarly, the
4 Motion is procedurally barred by the plain language of NRCP 12(f), because motions
5 to strike only apply to a "pleading." Neither of the Respondents' Objections filed
6 under NRS 155.160, nor their respective dispositive motions, are "pleadings" as
7 defined by the Nevada Rules of Civil Procedure.

8 Substantively, motions to strike are granted to eliminate spurious issues from
9 litigation. However, motions to strike are disfavored and should never be granted
10 when the material at issue bears on the litigation. The Respondents' Objections bear
11 directly on the issues in this litigation, serving as the statutorily prescribed document
12 by which the Respondents may object to and deny the allegations in the initial
13 Petition. See NRS 155.160 & 155.180. Likewise, the Estate's Motion to Dismiss and
14 the Trust's Motion for Summary Judgment are procedurally recognized motions
15 which identify the legal infirmities suffered by the Petition which render the initial
16 Petition unable to proceed. As such, the Petitioner's Motion to Strike should be
17 denied because the Respondents' Objections and dispositive motions have a direct
18 bearing on litigated issues before the Court.

19 **III. LAW & ARGUMENT**

20 NRCP 12(f) states "[t]he court may strike from a pleading an insufficient
21 defense or any redundant, immaterial, impertinent, or scandalous matter." The
22 Petitioner has unlawfully deployed his Motion to Strike to deprive the Respondents
23 of their statutory right to respond and object to the initial Petition in this case.
24 Therefore, the Respondents respectfully request the Court deny the Motion because
25 a) the Nevada Rules of Civil Procedure cannot be applied to contradict or supersede
26 the rights of interested persons in a matter filed under Title 12 of the Nevada Revised
27 Statutes; b) a motion to strike only applies to pleadings, and neither a NRS 155.160
28 objection and response, a motion to dismiss, nor a motion for summary judgment is a

pleading as defined by the Nevada Rules of Civil Procedure; and c) even if a motion to strike was a procedurally permitted response to an objection or dispositive motion filed in a probate matter, granting the Petitioner's Motion to Strike is inappropriate because Respondents' Objections as well as their dispositive motions bear directly on litigated issues before the Court.

A. An NRCP 12(f) motion to strike cannot be employed to supersede or contradict the statutory and procedural rights of the Respondents in a probate matter proceeding under Title 12 of the Nevada Revised Statutes.

NRS 155.180 states "*except as otherwise specially provided in this title*, all the provisions of law and the Nevada Rules of Civil Procedure regulating proceedings in civil cases apply in matters of probate, when appropriate, or may be applied as auxiliary to the provisions of this title." (emphasis added). Thus, the language of "except as otherwise specially provided in this title" clarifies the Nevada Rules of Civil Procedure do not apply to probate matters when the Rules of Procedure conflict with the statutory rights of interested persons under Title 12 of the Nevada Revised Statutes. NRS 155.160 confers upon an interested person a right to object and respond to petitions. Thus, the Executor cannot employ a Nevada Rule of Civil Procedure, such as NRCP 12(f), to deprive the Respondents of their statutory right to object to the initial Petition which commenced this matter.

In a related but separate analysis, NRS Chapter 155 does *not* prescribe specific rules regarding the filing of dispositive motions by an interested person in response to a petition brought under Title 12 or 13 of the Nevada Revised Statutes. Thus, per NRS 155.180, the Nevada Rules of Civil Procedure related to the filing of dispositive motions are applicable to this matter. As a result, the Estate's Motion to Dismiss filed pursuant to NRCP 12(b), and the Trust's Motion for Summary Judgment filed pursuant to NRCP 56, are procedurally proper filings brought in accordance with the governing rules. Moreover, these dispositive motions are already fully briefed and

1 have been submitted to the Court for decision. Therefore, there is no procedural
2 ground upon which the Petitioner can seek to strike these meritorious dispositive
3 motions.

4 **B. The Petitioner's Motion to Strike is procedurally deficient,**
5 **requiring denial of the Motion, because an NRS 155.160**
6 **objection and response is a not a "pleading" to which NRCP 12(f)**
7 **applies.**

8 Assuming *arguendo* the Petitioner's Motion to Strike is not procedurally
9 barred by the qualifying language of NRS 155.180, the Motion is fatally flawed upon
10 review of NRCP 12(f)'s plain language. Specifically, the rules of statutory
11 interpretation apply to interpretation of the Rules of Civil Procedure. *See Logan v.*
12 *Abe*, 131 Nev. 260, 264, 350 P.3d 1139, 1141–42 (2015) (holding that "[b]ecause the
13 rules of statutory interpretation apply to Nevada's Rules of Civil Procedure, we
14 interpret unambiguous statutes, including rules of civil procedure, by their plain
15 meaning."). NRCP 12(f) unambiguously states it is limited to striking a "pleading."
16 NRCP 7(a) limits pleadings in a civil action to: a complaint, an answer to a complaint,
17 an answer to a counterclaim, an answer to a crossclaim, a third-party complaint, an
18 answer to a third-party complaint, and a reply to an answer. Thus, motions to strike
19 filed pursuant to NRCP 12(f) only apply to complaints, answers and replies to
20 answers filed under the Nevada Rules of Civil Procedure. In other words, NRCP 12(f)
21 does not state a party may file a motion to strike a statutory objection, and to conclude
22 otherwise would read language into the rule that does not exist in violation of the
23 rules of interpretation. *See Orion Portfolio Servs. 2 LLC v. Cty. of Clark ex rel. Univ.*
24 *Med. Ctr. of S. Nevada*, 126 Nev. 397, 402, 245 P.3d 527, 531 (2010) (holding "[w]hen
25 a statute is clear and unambiguous, this court gives effect to the plain and ordinary
26 meaning of the words and does not resort to the rules of construction.").

27 Similarly, per NRCP 7(a), neither the Estate's Motion to Dismiss nor the
28 Trust's Motion for Summary Judgment are "pleadings." Thus, NRCP 12(f) does not

1 allow the Petitioner to file a motion to strike the Respondents' dispositive motion
2 practice, necessitating denial of the Petitioner's Motion to Strike.

3 **C. Substantively, the Petitioner's Motion to Strike should be denied**
4 **because Respondents' filings are not immaterial or redundant**
5 **and, instead, address the merits of this matter.**

6 Under Rule 12(f), "[t]he court may strike from a pleading an insufficient
7 defense or any redundant, immaterial, impertinent, or scandalous matter."
8 *Roadhouse v. Las Vegas Metro. Police Dep't*, 290 F.R.D. 535, 543 (D. Nev. 2013).
9 "Motions to strike are generally regarded with disfavor...." *Id.* The function of a
10 motion to strike pursuant to Rule 12(f) is avoidance of the expenditure of time and
11 money that must arise from litigating spurious issues by dispensing with those issues
12 prior to trial. *Id.* Given their disfavored status, courts often require a showing of
13 prejudice by the moving party before granting a motion to strike. *Id.* Thus, a 12(f)
14 motion is a "drastic remedy" and, therefore, is generally disfavored by courts. *Nevada*
15 *Fair Hous. Ctr., Inc. v. Clark Cty.*, 565 F. Supp. 2d 1178, 1187 (D. Nev. 2008).

16 Motions to strike should not be granted unless it is clear the matter to be
17 stricken could have no possible bearing on the subject matter of the litigation.
18 *Cardinale v. La Petite Acad., Inc.*, 207 F. Supp. 2d 1158, 1161 (D. Nev. 2002).
19 Moreover, motions to strike are also disfavored because they are often used as
20 delaying tactics, and because of the limited importance of pleadings in civil practice.
21 *Id.* at 1162. When evaluating a motion to strike, the Court must view the challenged
22 pleading in the light most favorable to the [non-moving party]. *Id.*

23 Here, the Court should deny the Petitioner's Motion to Strike, because the
24 Respondents' Objections and dispositive motions bear directly on the subject matter
25 of the litigation. Like in *Cardinale* where the Court held a motion to strike cannot be
26 granted whenever the challenged material has a bearing on the subject matter of the
27 litigation; here, the Respondents' Objections serve as the statutorily directed filing
28 by which they are to respond to and present their denial of the allegations contained

1 in the Petitioner's initial Petition. Likewise, the Respondents' dispositive motions
2 present meritorious legal arguments demonstrating in detail mandatory reasons this
3 matter is properly dismissed with prejudice. Moreover, the Respondents' dispositive
4 motions are procedurally proper mechanisms by and through which the Respondents
5 can identify the legal infirmities of the initial Petition in an effort for avoid
6 unnecessary delay and expense being incurred by both the Estate and Trust, which
7 would enact prejudice upon their respective beneficiaries. Thus, the Court cannot
8 grant Petitioner's Motion to Strike because the Respondents' Objections and their
9 respective dispositive motions directly relate to the subject matter of the litigation
10 and do not violate NRCF 12(f).

11 **D. The Limited Content of the Petitioner's Motion to Strike is**
12 **Wrong.**

13 Finally, the Petitioner's Motion to Strike is comprised of only bare, lengthy
14 block citations. Still, attempting to identify its premise, the Motion to Strike appears
15 to have two limited arguments, both of which are flawed. First, Petitioner states the
16 Respondents did not set a required hearing on their dispositive motions. This
17 argument is wrong. The Respondents fully complied with the governing local rule
18 regarding the submission of motions, NJDCR 6(e), stating decisions on all motions
19 shall be rendered *without* oral argument unless otherwise ordered by the Court. *See*
20 NJDCR 6(e). The Respondents dispositive motions have been fully briefed, including
21 the filing of oppositions by the Petitioner, and are currently scheduled for oral
22 argument by order of this Court. *See* Court Docket. Thus, all procedural rules have
23 been fulfilled by the Respondents. In this regard, even if, *arguendo*, a hearing was to
24 be set, it has now been scheduled by the Court, with notice given to all parties. *See*
25 NJDCR 6(e)(1). As a result there has been no prejudice to the Petitioner from any
26 procedural process related to the Respondents filing dispositive motions. Notably,
27 the Petitioner's argument in this regard is contrary to his positions taken in separate
28 papers. Specifically, after the Court recently scheduled oral argument on the

1 Respondents' dispositive motions, the Petitioner filed a motion requesting the
2 Court rule upon the dispositive motions on the papers, and without conducting a
3 hearing. *See* Petitioner's December 8, 2022, Motion for a Decision on the Pleadings.
4 The Petitioner cannot disingenuously make contrary arguments in separate papers
5 and expect this Court to not be wise to such inconsistent behavior.

6 Second, the Petitioner's Motion to Strike appears to assert the Trust and
7 Estate are not interested persons to this matter. This argument is nonsensical. First,
8 the Trust and Estate are the named Respondents to this matter. As such they are
9 parties to this case bearing the legal protections and allowances of both the Nevada
10 Rules of Civil Procedure and all applicable provisions of the Nevada Revised Statutes.
11 *See generally* NRCP; *see* NRS 137.080, NRS 164.010, NRS 164.015, and NRS 155.
12 Moreover, the Trust and Estate are indeed interested persons in this matter as they
13 have "an enforceable right or interest that may be materially affected by the outcome
14 of this proceeding." *See* NRS 132.390(1)(a). Moreover, Judge Flanagan, as the
15 appointed fiduciary of both the Trust and Estate and their acting legal representative
16 is an interested person in this matter, who has a protected right to appear by and
17 through the Trust and Estate for purposes of defending against the baseless
18 allegations made by the Petitioner. *See* NRS 132.390(b)(4) and NRS 132.390(c)(1).
19 To claim the named Respondents to this matter are not interested persons is absent
20 reason or awareness, and highlights the baseless nature of the Petitioner's Motion to
21 Strike.

22 Third, as previously referenced, the Petitioner's Motion to Strike is comprised
23 entirely of "bare citations" to statutes, rules, and copied language from the
24 Respondent's Objections. *See generally* Motion to Strike. As such, the Motion to
25 Strike violates NJDCR 6(b) and further illuminates to the Court the baseless nature
26 of this entire proceeding, as only continually brought further into focus by the
27 Petitioner's repetitive filings lacking any basis in law or substance. Given the "bare"
28

1 presentation of the Motion to Strike, the Court may deny the Motion without
2 consideration. See NJDCR 6(b).

3 **IV. CONCLUSION & REQUESTED RELIEF**

4 Based on the foregoing facts, law, and argument; the Respondents respectfully
5 request the Court deny the Motion to Strike.


6
7 DATED this 30th day of December 2022.

8
9 By: F. McClure Wallace
10 F. McClure Wallace, Esq.
11 Nevada State Bar No. 10264
12 WALLACE & MILLSAP
13 510 W. Plumb Lane, Suite A
14 Reno, Nevada 89509
15 Ph: (775) 683-9599
16 mcclure@wallacemillsap.com
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CERTIFICATE OF SERVICE

The undersigned certifies the foregoing Opposition was served upon Petitioner Todd Robben via United States Mail at the address of P.O. Box 4251 Sonora, California 95370. The foregoing Opposition was placed in the mail for service on the date shown below.

Dated this 30th day of December 2022.

By: 
Caroline Carter, Paralegal

RECEIVED

JAN - 3 2023

Douglas County
District Court Clerk

FILED

2023 JAN -3 AM 10:41

BOBBIE R. WILLIAMS
CLERK

BY AW DEPUTY

Todd Robben
In Pro per
PO Box 4251
Sonora, CA 95370
Robben.ty@gmail.com
(209)540-7713

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

TODD ROBBEN,
Petitioner

CASE NO.: 2022-PB-00119

Vs.

PETITIONER'S NOTICE AND
PROVISIONAL MOTION TO STRIKE
RESPONDENT'S OBJECTIONS,
MOTION TO DISMISS AND MOTION
FOR SUMMARY JUDGMENT

THE ESTATE OF THOMAS JOSEPH
HARRIS; THOMAS J. HARRIS TRUST,
Deceased,
Respondent.

No hearing requested

Petitioner, Todd Robben¹, gives notice and requests leave to file a
"provisional" or amended or supplemental motion to strike at the discretion of the
court. No hearing is requested since the court can decide on the
pleadings/motions.

¹ 'however inartfully pleaded,' [are] held to 'less stringent standards than formal pleadings drafted by lawyers.'" Fed. Express Corp. v. Holowecki, 552 U.S. 389, 402 (2008).

1 Petitioner's previously filed motion to strike and reply in support of said
2 motion is refilled to comply with the due-process requirements and understanding
3 new arguments are not allowed on a reply brief.
4

5 This motion to strike is not made pursuant to NRCP 12(f). See Maheu v. Eighth
6 Judicial Dist. Court, 89 Nev. 214, 217, 510 P.2d 627, 629 (1973) (recognizing the
7 court's inherent power to "control the disposition of the causes on its docket with
8 economy of time and effort for itself, for counsel, and for litigants").
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10 "Respondent arguing as the "Trust", and not the Trustee, the Trust is not an
11 interested party, or interested person and therefore lacked standing to file and/or
12 argue in this instant case and filed a fugitive filing(s)."

13 This filing also adds a point of authority that Respondent did not provide
14 the mandated notice pursuant to NRCP Rule §§ 6 and DCR §§ 13 .Motions: "All
15 motions and similar moving documents, unless made during a hearing or trial,
16 shall be in writing, and if requiring testimony, shall comply with the notice
17 requirements of(a) NRCP 6(c)."
18

19 The Respondents objections are pleadings pursuant to NRCP Rule §§ 8
20 since the objections answer the complaint/petition.
21

22 The Respondent is not made prejudice because they can still file any
23 opposition by seeking leave or at the January 06,2022 hearing – it there is even
24 a hearing to be had since the Respondent did not request a hearing (or provide
25 notice) pursuant to NRCP Rule §§ 6 and DCR §§ 13.
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3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4 This Petitioner nor the Respondent has requested oral arguments pursuant to
5 "Ninth Judicial District Court Rule (NJDCR) 6(e) states that decisions on all motions
6 will be rendered without oral argument unless oral argument is requested by the
7 court or the parties. Moreover, District Court Rule 13(1) requires that all motions
8 include a notice of the motion setting the matter on the court law and motion
9 calendar." *Garrettson v. State*, 967 P. 2d 428 - Nev: Supreme Court 1998.
10

11 The Respondents did not comply with DCR 13(1) by providing proper
12 notice or request a hearing for its Motion to Dismiss and Motion for Summary
13 Judgment, nor did they provide notice to the Petitioner. The Court may strike
14 the Motion to Dismiss and Motion for Summary Judgment on its own motion for
15 failure to set a hearing.
16

17 NRCP Rule 15 Motions, issues of law: Oral hearings or submission on
18 briefs; notice of and compliance with decisions states:
19

20 If the court and the parties agree any issue of law and any motion of any
21 nature or kind may be considered in chambers at any time or place in the state;
22 or such question of law or motion may be submitted on briefs to such judge,
23 and the decision may be filed thereafter at any time. Any proceeding which
24 requires evidence, testimony, or fact finding must be heard in open court within
25 the district that the case is filed and where court is regularly held, except as
26 provided by:

27 1. NRS 1.050(4). The decision shall fix the time when the decision of the
28 court is to be complied with. In all such cases the party who is required to
act by such decision shall receive due written notice thereof from the
opposite party.

1 2. Time for complying with such decision shall commence to run from the
2 time when service is made in the manner required by N.R.C.P. for service
3 of pleadings in a case, but when the parties are present by their respective
4 attorneys when the decision is rendered no notice shall be required.

5 The Respondent responded in the Trust objections:

6 3. Petitioner claims the Trust is the product of undue influence perpetrated
7 by Jeff D. Robben. **The Trust** denies any allegation that Jeff D. Robben
8 unduly influenced the Settlers of the Trust.

9 And in the Respondent responded in the Estate objections:

10 I, OBJECTION TO THE BEGINNING PORTION OF THE PETITION

11 The Petition begins by making broad, unsupported allegations regarding
12 the validity of the Decedent's Will, all of which are objected to and denied
13 by the Estate. See generally Petition, pgs. 2-5.

14 Namely, **the Estate** objects to any and all allegations contesting the
15 validity of the Will, which has already been conclusively determined to be
16 valid in the Estate Case. See Exhibits 1, 5 & 7. In as much, **the Estate**
17 denies and objects to any allegations of undue influence related to the
18 Decedent's Will or the Decedent's Estate, as well as to the application of
19 any statutory burden shifting based on wholly unsubstantiated allegations
20 unrelated to the Decedent's Will or the Decedent's Estate.

21 II. OBJECTION TO THE "INTRODUCTION" OF THE PETITION

22 The "Introduction" of the Petition does not specifically reference the
23 Decedent's Will or Estate. See generally Petition, pgs. 5-7. However, **the**
24 **Estate** maintains its general objection to the Petition, including the
25 "Introduction" section of the Petition in an abundance of caution.

26 By and through the "Introduction" section of the Petition, the Estate notes
27 Petitioner alleges his Petition is timely. **The Estate** denies and opposes
28 this statement, and identifies the Petition is not only untimely, but time-
barred, as presented in detail in **the Estate's** separately filed Motion to
Dismiss. See generally Estate's Motion to Dismiss; see also NRS
137.080.

The "Introduction" section of the Petition also references the Estate Case,
noting this Court's ability to review the proceedings in the Estate Case in
full wherein the Court ruled the Petitioner is not an "interested person in
the Estate, with no standing to make any allegations regarding the validity
of the Decedent's Will." See Exhibit 5. **The Estate** notes it has no

1 opposition to this Court accessing, considering, and reviewing the
2 proceedings in the Estate Case.

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5 The "Estate" and the "Trust" are not interested "parties", interested
6 "persons", a "beneficiary" or the "Trustee" and therefore not allowed to argue in
7 the motions and objections in this instant cast and must be stricken from the
8 record pursuant to NRS 132.185, NRS 132.390 and NRS 155.160.
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10
11 **NRS 132.185** "Interested person" defined. "Interested person" means
12 a person whose right or interest under an estate or trust may be materially
13 affected by a decision of a fiduciary or a decision of the court. The
14 fiduciary or court shall determine who is an interested person according to
the particular purposes of, and matter involved in, a proceeding.

15 **NRS 155.160** Responses and objections to proceedings.

16
17 1. An interested person may appear and make a response or
18 objection in writing at or before the hearing.

19 2. An interested person may appear and make a response or
20 objection orally at the hearing. The court may hear and determine the
21 response or objection at the hearing or grant a continuance to allow the
response or objection to be made in writing.

22 3. If the court is not in session at the time set for the hearing of any
23 matter concerning the settlement of the estate of a decedent, anyone
24 opposing the petition therein made may file objections thereto with the
clerk.

25 **NRS 132.390** Circumstances in which person is interested person.

26
27 1. For the purposes of this title, a person is an interested person with
28 respect to:

1
2 (a) A judicial proceeding, a notice of a proposed action or a
3 nonjudicial settlement, if the person has or claims to have an enforceable
4 right or interest that may be materially affected by the outcome of that
5 proceeding, proposed action or nonjudicial settlement. While living, a
6 settlor or a testator shall be deemed to have an enforceable right with
7 respect to any trust or will that he or she created. For the purposes of this
8 paragraph, a person may not claim to have a right or interest under an
9 estate or trust after the entry of an order of the court declaring the right or
10 interest invalid.

11 (b) An estate of a decedent, if the person:

12 (1) Is an heir, devisee, child, spouse, creditor, settlor or
13 beneficiary;

14 (2) Has a property right in or claim against the estate of a
15 decedent, including, without limitation, the Director of the Department of
16 Health and Human Services in any case in which money is owed to the
17 Department of Health and Human Services as a result of the payment of
18 benefits for Medicaid;

19 (3) Has priority for appointment as a personal representative; or

20 (4) Is any other fiduciary representing an interested person.

21 (c) A trust, if the person:

22 (1) Is a living settlor or, if a court has appointed a guardian of the
23 estate of the settlor, the guardian of the estate appointed by the court;

24 (2) Is the trustee, including, without limitation, each acting
25 cotrustee;

26 (3) Holds the presently exercisable right to remove or replace the
27 trustee or a cotrustee;

28 (4) Asserts the right to serve as the trustee or as a cotrustee;

(5) Is a current beneficiary or a remainder beneficiary of that trust;

(6) Holds a presently exercisable power of appointment that
permits the holder to designate or change the designation of a current
beneficiary or a remainder beneficiary of that trust;

1
2 (7) Holds a presently exercisable power that permits the holder to
3 designate, remove or otherwise change the designation of a person who,
4 pursuant to this paragraph, would be an interested person;

5 (8) Is a creditor of the settlor who has a claim which has been
6 accepted by the trustee or who has asserted the trustee's liability therefor
7 in a probate proceeding or in a civil action under subsection 8 or 9 of NRS
8 111.779; or

9 (9) Is a creditor of the trust who has given the trustee written
10 notice of its claim.

11 (d) A revocable trust that is the subject of a petition under NRS
12 164.015 relating to the validity of the trust or any trust-related document, if
13 the person, after the death of the settlor, under the terms of any version of
14 the trust documents in dispute, would be:

15 (1) A current beneficiary or a remainder beneficiary of that trust;
16 or

17 (2) A trustee or a successor trustee, including, without limitation,
18 a cotrustee.

19 (e) A will that, while the testator is still living, is the subject of a petition
20 under subsection 2 of NRS 30.040, if the person, after the death of the
21 testator, would be:

22 (1) A beneficiary of that will; or

23 (2) A fiduciary designated in or pursuant to the terms of that will.

24 2. For the purposes of this title, the following persons are not
25 interested persons:

26 (a) With respect to a motion, petition or proceeding, any person
27 holding or claiming an interest or right that is not affected by the motion,
28 petition or proceeding.

(b) The Director of the Department of Health and Human Services
after any money owed to the Department has been paid in full or with
respect to the estate or trust of a decedent who did not receive any
benefits from Medicaid.

1 (c) A vexatious litigant with regard to a motion, petition or proceeding
2 for which the vexatious litigant has been denied standing pursuant to NRS
3 155.165.

4 (d) As to the estate of a decedent:

5 (1) After a will has been admitted to probate, an heir, child or
6 spouse who is not a beneficiary of the will, except for the purposes of NRS
7 133.110, 133.160 and 137.080.

8 (2) A creditor whose claim has not been accepted by the personal
9 representative, if the enforcement of the claim of the creditor is barred
10 under the provisions of chapter 11 or 147 of NRS or any other applicable
11 statute of limitations.

12 (e) As to a trust:

13 (1) The guardian of the person of an interested person, unless
14 the guardian is expressly permitted to act for the interested person under
15 the terms of the trust instrument;

16 (2) A beneficiary or creditor whose right or claim is barred by any
17 applicable statute of limitations, including, without limitation, the statute of
18 limitations found in chapter 11 of NRS or NRS 164.021, 164.025 or
19 166.170;

20 (3) Any beneficiary of a revocable trust, except as expressly
21 provided in paragraph (d) of subsection 1; or

22 (4) Any disclaimant as to a disclaimed interest, except with
23 respect to the enforcement of the disclaimer.

24 3. As used in this section:

25 (a) "Current beneficiary" has the meaning ascribed to it in NRS
26 165.020.

27 (b) "Remainder beneficiary" has the meaning ascribed to it in NRS
28 165.020.

1 "Respondent arguing as the "Estate" or "Trust", and not the Trustee, the Trust
2 is not an interested party, an interested person or a beneficiary and therefore lacked
3 standing to file and/or argue in this instant case and filed a fugitive filing(s)."

4
5 In Dawes v. State, 881 P. 2d 670 - Nev: Supreme Court 1994 "Trial courts
6 have broad discretion in deciding whether terms within an instruction should be
7 further defined." See Pena v. Ludwig, 766 S.W.2d 298, 305 (Tex.Ct.App. 1989); 75B
8 Am.Jur.2d Trial § 1237 (1992). Words used in an instruction in their ordinary sense
9 and which are commonly understood require no further defining instructions. See
10 State v. Smith, 160 Ariz. 507, 774 P.2d 811 (1989) ("knowingly" need not be
11 defined); State v. Barnett, 142 Ariz. 592, 594-95, 691 P.2d 683, 685-86 (1984)
12 (failure to define "intentionally" not error); 75B Am. Jur.2d Trial § 1237 (collecting
13 numerous cases holding that "gross and willful misconduct," "knowingly,"
14 "corroboration," "deliberately" and "conspiracy" need no definition)." Id.

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17 "However, when a phrase has a technical legal meaning, that phrase should be
18 defined so that a jury is not misled or confused into applying the plain language as
19 commonly understood. See McBride v. Woods, 124 Colo. 384, 238 P.2d 183, 186
20 (1951) ("unavoidable accident"); see also 75B Am.Jur.2d Trial § 1237 (collecting
21 cases holding that some terms requiring definition include "premeditation and
22 deliberation" in first degree murder cases, "mental incapacity," and procedural
23 phrases)." Dawes v. State, supra.

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25 "Perhaps this argument ...is merely semantic, but in law semantics are rarely
26 properly characterized as mere. If words mean things, and if we should mean the
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1 words that we use" Youngblood v. GC Services Ltd. Partnership, 186 F. Supp. 2d
2 695 - Dist. Court, WD Texas 2002.

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4 The Respondent did not comply with the District Court Rule DCR 13(1) and the
5 Respondent arguing as the "Estate" and/or "Trust", and not the Trustee, the Trust is
6 not an interested party, or interested person and therefore lacked standing to file
7 and/or argue in this instant case and filed a fugitive filing(s). The Estate and Trust
8 are not interests persons which have statutory or constitutional rights.

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10 The amended filing also adds a point of authority that Respondent did not
11 provide the mandated notice pursuant to NRCP Rule 6 and DCR 13 .Motions:
12 "All motions and similar moving documents, unless made during a hearing or
13 trial, shall be in writing, and if requiring testimony, shall comply with the notice
14 requirements of NRCP 6(a)."

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16 "Motions filed in the district court "shall contain a notice of motion. . . with due
17 proof of the service of the same." District Court Rule 13. Hamilton's inquiries did not
18 satisfy the requirements for a motion as they did not contain a notice of motion"
19 Hamilton v. State, Nev: Court of Appeals 2018.

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21 Shall is mandatory - "This court has stated that in statutes, "may" is
22 permissive and "shall" is mandatory unless the statute demands a different
23 construction to carry out the clear intent of the legislature." Givens v. State, 99
24 Nev. 50, 54, 657 P.2d 97, 100 (1983). The "use of 'shall' is mandatory unless a
25 rule's construction demands a different interpretation to carry out the rule's
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1 purpose." Moseley v. Eighth Judicial Dist. Ct., 188 P. 3d 1136 - Nev: Supreme
2 Court 2008.

3 "The court is to strike "fugitive documents," which are those papers "not
4 allowed" by the Local or Federal Rules." See Reiger v. Nevens, No. 3:12-cv-00218-
5 MMD-VPC, 2014 WL 537613, at *3 (D. Nev. Feb. 14, 2014). Jones v. Skolnik, Dist.
6 Court, D. Nevada 2015 No. 3:10-cv-00162-LRH-VPC.

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8 Respondent requests the court to ignore NRS 2.120 (Such rules shall not
9 abridge, enlarge or modify any substantive right and shall not be inconsistent with
10 the Constitution of the State of Nevada) and the enabling act of the Nevada [Chapter
11 40, Statutes of Nevada 1951; now NRS 2.120] - AN ACT relating to rules of civil
12 practice and procedure, and authorizing the supreme court to prescribe such rules
13 for all courts.
14

15 (Approved February 28, 1951)

16
17 NRS 2.120 Adoption of rules for government of courts and State Bar of
18 Nevada; adoption of rules for civil practice and procedure.

19 1. The Supreme Court may make rules not inconsistent with the
20 Constitution and laws of the State for its own government, the government
21 of the district courts, and the government of the State Bar of Nevada.
22 Such rules shall be published promptly upon adoption and take effect on a
date specified by the Supreme Court which in no event shall be less than
30 days after entry of an order adopting such rules.

23 2. The Supreme Court, by rules adopted and published from time to
24 time, shall regulate original and appellate civil practice and procedure,
25 including, without limitation, pleadings, motions, writs, notices and forms of
26 process, in judicial proceedings in all courts of the State, for the purpose
27 of simplifying the same and of promoting the speedy determination of
litigation upon its merits. **Such rules shall not abridge, enlarge or
28 modify any substantive right and shall not be inconsistent with the
Constitution of the State of Nevada.** Such rules shall be published

1 promptly upon adoption and take effect on a date specified by the
2 Supreme Court which in no event shall be less than 60 days after entry of
3 an order adopting such rules.

4 The Petitioner objects to the Respondents motions to strike and summary
5 judgment and both objections based on the above points and authorities. NRS
6 47.040(1)(a) requires a party who objects to the admission of evidence to make "a
7 timely objection or motion to strike..., stating the specific ground of objection." The
8 "failure to specifically object on the grounds urged on appeal preclude[s] appellate
9 consideration on the grounds not raised below." Pantano v. State, 122 Nev. 782, 795
10 n. 28, 138 P.3d 477, 486 n. 28 (2006). "This rule is more than a formality," since an
11 objection educates both the trial court and the opposing party, who is entitled to
12 revise course according to the objections made. 1 Stephen A. Saltzburg, Michael M.
13 Martin & Daniel J. Capra, Federal Rules of Evidence Manual § 103.02[9], at 103-18
14 (9th ed. 2006).
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17 The Respondent, the Trustee or its lawyers have not even attempted to correct
18 their mistake by amending their pleadings, motions ,objections, etc. The Respondent
19 has conceded and therefore the Petitioner has prevailed in this action on the merits
20 and requests the relief requested in the petition.
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22 RELIEF REQUEST

23 Because the Respondent has defaulted and not complied with the Rules
24 and Statutes to properly file its motions to dismiss and motion for summary
25 judgment along with Respondents objections which also do not comply the
26 Rules and Statutes – the Respondents filings must be stricken from the record
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1 and judgment entered in favor of the Petitioner and against the Respondent
2 declaring the Thomas J Harris Trust invalid and the Petitioner is the single
3 remaining beneficiary of the previous Thomas and Olga Harris Living Trust.
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6 Respectfully signed under penalty of perjury,

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9 /s/ Todd Robben

10 January 03, 2023
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2 **CERTIFICATE OF SERVICE**
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4 I, Stephen James Robben, declare under penalty of perjury under the law of the
5 State of Nevada that the following is true and correct copy of the filed document. That
6 on January 03, 2023, service of the document was made pursuant to NRCP 5(b) by
7 depositing a email to: F. McClure Wallace, counsel for Respondent,
8 mcclure@wallacemillsap.com
9

10 DATED January 03, 2023
11

12 Submitted By: /s/ Stephen James Robben
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