

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

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

Case No. 86096

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Elizabeth A. Brown  
Clerk of Supreme Court

TODD ROBBEN,

Appellant,

vs.

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

Respondents.

**RESPONDENTS' APPENDIX**

# Volume 7

Tara Flanagan, as Personal Representative of the Estate of Thomas J.  
Harris and Trustee of the Thomas J. Harris Trust

By and through her Legal Counsel

Wallace & Millsap

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Respondents, the Estate of Thomas J. Harris and the Thomas J. Harris Trust, by and through Tara Flanagan, in her capacity as the Personal Representative of the Estate of Thomas J. Harris and Trustee of the Thomas J. Harris Trust by and through her Legal Counsel hereby submits her Appendix in compliance with Nevada Rule of Appellate Procedure 30.

| <b>TITLE</b>  | <b>DATE</b> | <b>BATE</b> | <b>VOL.</b> |
|---|-------------|-------------|-------------|
| Declaration of Trust Known as the Thomas J. Harris Trust, dated June 12, 2019   | 6/12/2019   | RA 7-42     | 1           |
| Docketing Statement   | 2/3/2023    | RA 815-825  | 11          |
| Emergency Stay Request; Emergency Verified Motion to Reconsider; Request for Calcification; Notice of Non Hearsay Proof of Thomas Joseph and Olga Harris Living Trust                         | 6/22/2022   | RA 148-212  | 2           |
| Last Will & Testament of Thomas Joseph Harris   | 6/12/2019   | RA 1-6      | 1           |
| Letters Testamentary  | 4/22/2021   | RA 60-61    | 1           |
| Limited Opposition to Petitioner's Motion for a Decision on the Pleadings; Petitioner's Motion Declining Oral Argument filed by The Estate of Thomas J. Harris and The Thomas J. Harris Trust | 12/15/2022  | RA 615-620  | 9           |
| Memorandum of Temporary Assignment  | 8/5/2022    | RA 359      | 5           |
| Minutes of Hearing  | 1/6/2023    | RA 776      | 10          |
| Motion to Dismiss filed by the Estate of Thomas J. Harris   | 10/6/2022   | RA 367-459  | 6           |
| Notice of Appeal  | 6/27/2022   | RA 213-214  | 3           |
| Notice of Appeal filed by Todd Robben   | 2/3/2023    | RA 812-814  | 11          |
| Notice of Entry of Order  | 7/15/2022   | RA 256-262  | 3           |

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| Notice of Entry of Order   | 2/16/2023  | RA 838-853 | 11 |
| Notice of Hearing  | 4/15/2022  | RA 102-105 | 1  |
| Notice of Motion for Continuance and Motion for Continuance  | 5/23/2022  | RA 138-139 | 2  |
| 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; Peremptory Challenge to Judge Nathan Tod Young filed by The Estate of Thomas J. Harris | 12/15/2022 | RA 621-708 | 9  |
| Opposition to Emergency Verified Motion to Reconsider; Request for Calcification (SIC); Notice of Non Hearsay Proof of the Thomas Joseph and Olga Harris Living Trust; Opposition to Emergency Stay Request  | 7/1/2022   | RA 215-232 | 3  |
| Opposition to Petitioner's Motion to Strike Respondent's Objection, Motion to Dismiss and Motion for Summary Judgment filed by The Estate of Thomas J. Harris and The Thomas J. Harris Trust   | 12/30/2022 | RA 743-753 | 10 |
| Order  | 7/13/2022  | RA 253-255 | 3  |
| Order Appointing Special Administrator   | 3/11/2021  | RA 58-59   | 1  |
| Order Appointing Successor Executor and Issuing Successor Letters Testamentary   | 7/27/2021  | RA 98-101  | 1  |
| Order Confirming Transfer to Department 1  | 7/26/2022  | RA 357-358 | 5  |
| Order Dismissing Appeal  | 7/8/2022   | RA 251-252 | 3  |
| Order Granting Motion for Summary Judgment; Motion to Dismiss; & Deeming Petitioner a Vexatious Litigant   | 2/8/2023   | RA 826-837 | 11 |

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| Order Granting Petition to Confirm First and Final Accounting, Request for Final Distribution, and Request for Payment of Professional's Fees and Costs   | 6/22/2022  | RA 140-147 | 2 |
| Order Granting Respondents' Motion to Continue Hearing  | 9/27/2022  | RA 364-366 | 5 |
| Order Setting Hearing   | 9/6/2022   | RA 360-361 | 5 |
| Order Setting Hearing   | 11/30/2022 | RA 607-608 | 9 |
| Order Shortening Time   | 9/19/2022  | RA 362-363 | 5 |
| Order to Proceed in Forma Pauperis  | 7/26/2022  | RA 355-356 | 5 |
| Order Transferring Case to Department I   | 7/26/2022  | RA 353-354 | 5 |
| Petition for Appointment of Successor Executor and for Issuance of Successor Letters Testamentary   | 6/25/2021  | RA 67-74   | 1 |
| Petition to Confirm First and Final Accounting, Request for Final Distribution, and Request for Payment of Professional's Fees and Costs  | 4/15/2022  | RA 106-137 | 1 |
| Petitioner Todd Robben's Objection to Respondent's Motion to Dismiss  | 10/21/2022 | RA 471-514 | 7 |
| Petitioner Todd Robben's Verified Objection to Respondent's Motion for Summary Judgment   | 10/21/2022 | RA 515-556 | 7 |
| Petitioner, Todd Robben's Notice and Affidavits in Support of the Pre-Existing Olga and Thomas J. Harris Living Trust with Petitioner Named Beneficiary   | 11/2/2022  | RA 580-584 | 8 |
| Petitioner, Todd Robben's 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; Peremptory Challenge to Judge Nathan Tod Young filed by The Estate of Thomas J. Harris | 7/26/2022  | RA 263-352 | 4 |

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| Petitioner's First Amended Reply in Support of Motion to Strike Respondent's Objections, Motion to Dismiss and Motion for Summary Judgment  | 1/3/2023   | RA 768-775 | 10 |
| Petitioner's Motion for a Decision on the Pleadings; Petitioner's Motion Declining Oral Argument  | 12/8/2022  | RA 609-614 | 9  |
| Petitioner's Motion to Strike Respondent's Objections, Motion to Dismiss and Motion for Summary Judgment  | 12/23/2022 | RA 717-725 | 10 |
| Petitioner's Motion to Strike Respondent's Unlawful Surreply  | 11/7/2022  | RA 591-595 | 8  |
| Petitioner's Notice and Provisional Motion to Strike Respondent's Objections, Motion to Dismiss and Motion for Summary Judgment   | 1/3/2023   | RA 754-767 | 10 |
| 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 | 7/5/2022   | RA 233-250 | 3  |
| Petitioner's Reply in Support of Motion to Strike Respondents Unlawful Surreply   | 11/21/2022 | RA 600-606 | 9  |
| Petitioner's Verified Reply in Support of Motion for a Decision on the Pleadings; Petitioner's Motion Declining Oral Argument   | 12/23/2022 | RA 726-742 | 10 |
| Reply in Support of Motion to Dismiss   | 10/31/2022 | RA 565-579 | 8  |
| Request to Appear Remotely via Zoom for Court Appearance/Hearing  | 12/28/2022 | RA 854-855 | 11 |
| Resignation of Trustee and Acceptance by Successor Trustee of the Thomas J. Harris Trust dated June 12, 2019  | 5/17/2021  | RA 62-66   | 1  |

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| Submission of Proposed Order Granting Motion for Summary Judgment; Motion to Dismiss; & Deeming Petitioner a Vexatious Litigant                   | 1/10/2023  | RA 800-811 | 11 |
| The Thomas J. Harris Trust's Motion for Summary Judgment  | 10/6/2022  | RA 460-470 | 7  |
| The Thomas J. Harris Trust's Objection & Response to Todd Robben's Petition to Invalidate the Trust   | 12/15/2022 | RA 709-716 | 10 |
| The Thomas J. Harris Trust's Opposition to Motion to Strike   | 11/14/2022 | RA 596-599 | 8  |
| The Thomas J. Harris Trust's Reply Points & Authorities in Support of its Motion for Summary Judgment   | 10/31/2022 | RA 557-564 | 8  |
| The Thomas J. Harris Trust's Supplemental Brief to its Motion for Summary Judgment Addressing Fugitive Affidavits Filed by Petitioner Todd Robben | 11/4/2022  | RA 585-590 | 8  |
| Thomas A. Harris's Response to Petition for Appointment of Successor Executor, Etc.   | 7/22/2021  | RA 75-97   | 1  |
| Transcript of January 6, 2023 Hearing   | 1/6/2023   | RA 777-799 | 11 |
| Verified Petition for Letters of Special Administration (NRS 140.010) and for Probate of Will and Issuance of Letters Testamentary (NRS 136.090)  | 3/10/2021  | RA 43-57   | 1  |
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1 Case No.: 22-PB-00119

2 Dept. No.: II

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K. WILFERT  
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6 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF DOUGLAS

8  
9 TODD ROBBEN,

10 Petitioner;

11 vs.

12 THE ESTATE OF THOMAS J.  
13 HARRIS and THE THOMAS J.  
14 HARRIS TRUST,

15 Respondents.

THE THOMAS J. HARRIS TRUST'S  
MOTION FOR  
SUMMARY JUDGMENT

16  
17 The Honorable Tara Flanagan, Trustee of the Thomas J. Harris Trust,  
18 respectfully moves this Court for an order granting summary judgment against  
19 Petitioner Todd Robben's Petition to Invalidate the Thomas J. Harris Trust.

20 This Motion is based on the following Points & Authorities, any oral argument  
21 this Court wishes to entertain on the Motion and the papers and pleadings on file  
22 with the Court of utility in deciding the Motion.

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1           **POINTS & AUTHORITIES SUPPORTING SUMMARY JUDGMENT**

2  
3           **I.   STATEMENT OF THE ISSUE**

4           NRCP 56 requires entry of summary judgment against the Petition to  
5 Invalidate the Thomas J. Harris Trust (the "Petition"), because Petitioner cannot  
6 meet his evidentiary burden of production to survive summary judgment by  
7 producing admissible evidence establishing Petitioner is an interested person in the  
8 Trust with standing to bring a contest action under NRS 164.015. Petitioner cannot  
9 establish he is an interested person in the Trust through admissible evidence because  
10 he has not produced, nor can he produce, any prior Trust instruments naming him as  
11 a beneficiary or trustee of the Trust. In the absence of said evidence, invalidating the  
12 Trust would not impact Petitioner because he is neither a former beneficiary of the  
13 Trust, nor a beneficiary of the Estate. Since the Petition is a shell proceeding that  
14 will not affect Petitioner regardless of the outcome because he has no beneficial  
15 interest in the Trust or the Estate, summary judgment against the Petition is  
16 mandatory under the evidentiary requirements of NRCP 56.

17  
18           **II.   STATEMENT OF THE CASE PROCEDURE**

19           Thomas Joseph Harris, the Settlor of The Declaration of Trust Known as the  
20 Thomas J. Harris Trust, Dated June 12, 2019 (the "Trust"), died on December 30,  
21 2019, as a resident of Douglas County, Nevada. In addition to the Trust, Mr. Harris  
22 had a corresponding pour over Will that named the Trust as its beneficiary. The Will  
23 was duly lodged with this Court on April 6, 2021. Also on April 6, 2021, the Court  
24 entered its Order Admitting Will to Probate and Issuing Letters Testamentary in  
25 Case No. 2021-PB-00034 before Department I (the "Estate Case"). Letters  
26 Testamentary were issued to Scott Barton on April 22, 2021, after which Mr. Barton  
27 began administering the Estate. Several months thereafter, Mr. Barton notified The  
28 Honorable Tara Flanagan he was resigning as both the Personal Representative of



1 the Decedent's Estate and as Trustee of the Decedent's Trust. Consistent with her  
2 nomination as the next named executor of the Estate by the Decedent's Will, Ms.  
3 Flanagan filed her Petition for Appointment of Successor Executor and for Issuance  
4 of Letters Testamentary on June 25, 2021 in the Estate Case. On July 27, 2021, the  
5 Court entered its Order Appointing Successor Executor and Issuing Successor Letters  
6 Testamentary, and on August 17, 2021, Letters Testamentary were issued to the  
7 Honorable Tara M. Flanagan.

8 Pursuant to her appointment as the Successor Executor of the Estate, Ms.  
9 Flanagan (hereinafter the "Successor Executor" or the "Petitioner") continued the  
10 Estate's administration and worked to diligently conclude the administration of the  
11 Estate. On, April 14, 2022, the Successor Executor filed her Petition to Confirm First  
12 and Final Accounting, Request for Final Distribution, and Request for Payment of  
13 Professional's Fees and Costs (the "First and Final Petition") in the Estate Case. A  
14 hearing was scheduled on the Successor Executor's First and Final Petition for May  
15 24, 2022.

16 On May 23, 2022, Todd Robben appeared for the first time in the Estate case  
17 through the filing of his Notice of Motion for Continuance and Motion for  
18 Continuance. Mr. Robben's request for a continuance was based on allegations  
19 concerning the invalidity of the Decedent's Will.

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

1 A continued hearing was conducted on the First and Final Petition in the  
2 Estate Case on June 21, 2022. At the conclusion of the hearing, having heard  
3 arguments from Mr. Robben and Counsel for the Estate, the Court granted the  
4 Successor Executor's First and Final Petition in full and without exception.  
5 Moreover, the Court in the Estate Case ruled Mr. Robben was not an interested  
6 person in the Estate.

7 Thereafter, Mr. Robben sought reconsideration of the Court's Order holding he  
8 was not an interested person in the Estate. He also appealed that Order to the  
9 Nevada Supreme Court. On July 8, 2022, the Nevada Supreme Court filed its Order  
10 Dismissing Appeal, dismissing in entirety Mr. Robben's appeal in the Estate Case.  
11 Similarly, on July 13, 2022, the District Court entered its Order denying Mr. Robben's  
12 Motion for Reconsideration and all filings associated with Mr. Robben's Motion for  
13 Reconsideration. As a result, Mr. Robben is definitively not an interested person in  
14 the Estate because he could not present any evidence to establish he had an interest  
15 in the Estate. Similar to the Estate Case, Mr. Robben cannot present any evidence  
16 to show he is a beneficiary of the Trust, requiring summary judgment against his  
17 Trust Contest.

18  
19 **III. STATEMENT OF RELEVANT FACTS**

20 Petitioner is not a beneficiary of the current Trust. Petitioner has not produced  
21 any prior Trust Instrument naming him as a beneficiary of the Trust. Petitioner has  
22 not produced any prior wills or testamentary instruments naming him as a  
23 beneficiary if the Court invalidated the Trust. Petitioner is not an intestate  
24 beneficiary or interested person in the Estate. Thus, Petitioner has produced no  
25 admissible evidence establishing he has a beneficial interest in the Trust or Estate if  
26 the Court invalidated the currently operative Trust Instrument.

27 Instead, Petitioner only offers his own testimonial speculation about a  
28 potential beneficial interest in a prior Trust Instrument in support of the Petition.

1 However, testimonial speculation is not sufficient to meet his evidentiary burden of  
2 production to survive summary judgment, requiring summary judgment against the  
3 Petition as discussed below.

4  
5 **IV. LAW & ARGUMENT**

6 NRCP 56(a) states "[t]he court shall<sup>1</sup> grant summary judgment if the movant  
7 shows...there is no genuine dispute as to any material fact and the movant is entitled  
8 to judgment as a matter of law." When construing the summary judgment standard,  
9 the Nevada Supreme Court adopted the United States Supreme Court's holdings in  
10 *Liberty Lobby, Celotex, and Matsushita* dictating when summary judgment is  
11 required. *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005).

12 In *Celotex*, the United States Supreme Court held "summary judgment  
13 procedure is properly regarded...as an integral part of the...Rules as a whole, which  
14 are designed to secure the just, speedy and inexpensive determination of every  
15 action." *Celotex Corp. v. Catrett*, 477 U.S. 317, 327, 106 S. Ct. 2548, 2555, 91 L. Ed.  
16 2d 265 (1986). Therefore, Rule 56 must be construed with due regard for the rights  
17 of persons opposing claims and defenses with no factual basis. *Id.*

18 In order to dispose of baseless claims, the *Celotex* Court held summary  
19 judgment is mandatory against a claimant who cannot establish an essential element  
20 of the claim he or she must prove at trial. *Id.* at 322, 2552. "[A] summary judgment  
21 motion may properly be made in reliance solely on the pleadings, depositions,  
22 answers to interrogatories, and admissions on file." *Id.* at 324, 2553. In response, if  
23 the claimant fails to demonstrate an essential element of its claim, there is no genuine  
24 issue of material fact regarding the claim, because a complete failure of proof  
25 concerning an essential element of the claim renders all other facts immaterial. *Id.*  
26 at 322-323, 2552. As such, the moving party is entitled to a judgment as a matter of

27  
28 <sup>1</sup> "The word 'shall' is generally regarded as mandatory." *Markowitz v. Saxon Special Servicing*, 129  
Nev. 660, 665, 310 P.3d 569, 572 (2013).

1 law whenever the claimant fails to make a sufficient showing on an essential element  
2 of a claim on which he or she has the burden of proof at trial. *Id.* at 323. Interpreting  
3 Rule 56 in this fashion serves Rule 56's principal purpose to isolate and dispose of  
4 factually unsupported claims. *Id.* at 323-324, 2553.

5 Of note, "the mere existence of some alleged factual dispute between the  
6 parties will not defeat an otherwise properly supported motion for summary  
7 judgment; the requirement is...there be no *genuine* issue of *material* fact." *Anderson*  
8 *v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48, 106 S. Ct. 2505, 2510, 91 L. Ed. 2d 202  
9 (1986). As to materiality, the substantive law will identify which facts are material.  
10 *Id.* at 248. A fact is only material if it might affect the outcome of the suit under the  
11 governing substantive law. *Id.* Irrelevant or unnecessary factual disputes do not  
12 preclude summary judgment because they are immaterial. *Id.* The substantive law  
13 governs which facts are material and which facts are irrelevant. *Id.*

14 In addition to the requirement of materiality, factual disputes must be  
15 "genuine" or else summary judgment is mandatory. *Matsushita Elec. Indus. Co. v.*  
16 *Zenith Radio Corp.*, 475 U.S. 574, 586, 106 S. Ct. 1348, 1356, 89 L. Ed. 2d 538 (1986).  
17 Consequently, when the moving party has carried its burden under Rule 56, the  
18 nonmoving party must do more than show there is some metaphysical doubt as to the  
19 material facts. *Id.* The language of Rule 56 requires the nonmoving party to come  
20 forward with specific facts showing there is a "genuine" issue for trial or else have  
21 summary judgment entered against it. *Id.* at 587. As such, "[w]here the record taken  
22 as a whole could not lead a rational trier of fact to find for the non-moving party,  
23 there is no genuine issue for trial." *Id.*

24 In consideration of the United States Supreme Court's holdings in *Liberty*  
25 *Lobby*, *Celotex*, and *Matsushita*, the Nevada Supreme Court required entry of  
26 summary judgment whenever "the pleadings, depositions, answers to interrogatories,  
27 admissions, and affidavits, if any, that are properly before the court demonstrate that  
28 no genuine issue of material fact exists, and the moving party is entitled to judgment

1 as a matter of law." *Wood v. Safeway, Inc.*, 121 Nev. at 731, 121 P.3d at 1031. Nevada  
2 substantive law controls which factual disputes are material and will preclude  
3 summary judgment; other factual disputes are irrelevant. *Id.* A factual dispute is  
4 only genuine if a rational trier of fact could return a verdict for the nonmoving party  
5 when considering the evidence. *Id.* "The nonmoving party is not entitled to build a  
6 case on the gossamer threads of whimsy, speculation, and conjecture." *Id.* at 732.

7       Procedurally, the "party moving for summary judgment bears the initial  
8 burden of production to show the absence of a genuine issue of material fact." *Cuzze*  
9 *v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007).  
10 "If such a showing is made, then the party opposing summary judgment assumes a  
11 burden of production to show the existence of a genuine issue of material fact." *Id.*  
12 The manner in which each party may satisfy its burden of production depends on  
13 which party will bear the burden of persuasion on the challenged claim at trial." *Id.*

14       If the moving party will bear the burden of persuasion at trial, that party must  
15 present evidence that would entitle it to a judgment as a matter of law in the absence  
16 of contrary evidence. *Id.* However, if the nonmoving party will bear the burden of  
17 persuasion at trial, the party moving for summary judgment may satisfy its burden  
18 of production by either (1) submitting evidence that negates an essential element of  
19 the nonmoving party's claim, or (2) pointing out there is an absence of evidence to  
20 support the nonmoving party's case. *Id.* at 602-603. The nonmoving party must then  
21 transcend the pleadings and, by affidavit or other admissible evidence, introduce  
22 specific facts that show a genuine issue of material fact for trial or else summary  
23 judgment is mandatory. *Id.* at 603.

24       In this case, Petitioner will bear the burden of persuasion at trial to invalidate  
25 the Trust. Consequently, Ms. Flanagan may meet her burden of production to obtain  
26 summary judgment by pointing out there is an absence of evidence to support  
27 Petitioner's trust contest. Specifically, Petitioner cannot produce any prior trust  
28 instrument naming his as a beneficiary and, consequently, he is not an interested

1 person in the Trust with standing to proceed with a trust contest. Having pointed  
2 out there is an absence of evidence to support Petitioner's case, the burden of  
3 production shifts to Petitioner to produce admissible evidence demonstrating he is an  
4 interested person in the Trust, or else summary judgment is mandatory. Petitioner  
5 cannot demonstrate he is a current or former beneficiary of the Trust and, therefore,  
6 summary judgment is mandatory as discussed below.

7           **a. This Court should grant summary judgment against the Petition**  
8           **because Petitioner cannot meet his burden of production to**  
9           **survive summary judgment by producing a prior Trust**  
10           **Instrument naming him as a beneficiary of the Thomas J. Harris**  
11           **Trust.**

12           Petitioner has endeavored to contest the validity of the Thomas J. Harris  
13 Trust. However, only an "interested person" in the Trust may contest its validity. In  
14 that regard, NRS 164.015(1) states an "interested person" may petition the Court  
15 concerning the internal affairs of the Trust, including requesting the relief codified in  
16 NRS 153.031. NRS 153.031(1)(d) allows an interested person to petition the Court to  
17 determine whether a trust provision is valid. Similarly, NRS 164.015(3) only  
18 contemplates the procedure for an "interested person" to contest the validity of a  
19 nontestamentary trust. Thus, in order to contest the validity of a nontestamentary  
20 trust under NRS Chapter 164, the petitioner must be an "interested person" in the  
21 Trust.

22           NRS 132.185 generally defines an interested person as "a person whose right  
23 or interest under an estate or trust may be materially affected by a decision of a  
24 fiduciary or a decision of the court." Additionally, NRS 132.390(1)(d) specifically  
25 identifies who are interested persons in a trust contest maintained under NRS  
26 164.015. In that regard, NRS 132.390(1)(d) states "a person is an interested person  
27 with respect to:...[a] revocable trust that is the subject of a petition under NRS  
28 164.015 relating to the validity of the trust or any trust-related document, if the

1 person, after the death of the settlor, under the terms of any version of the trust  
2 documents in dispute, would be:

- 3     • A current beneficiary or a remainder beneficiary of that trust; or  
4     • A trustee or a successor trustee, including, without limitation, a cotrustee."

5       Therefore, only a current or remainder beneficiary of the trust documents in  
6 dispute, or a trustee or successor trustee under the trust documents in dispute is an  
7 interested person with standing to contest a trust under NRS 164.015.

8       In this case, summary judgment against the Petition is mandatory because  
9 Petitioner cannot meet his evidentiary burden of production to survive summary  
10 judgment by producing admissible evidence demonstrating he is an interested person  
11 in the Trust as a former beneficiary or trustee as required by NRS 132.390(1)(d).  
12 More specifically, the Court previously allotted Petitioner time in the Estate  
13 Proceeding to produce a prior will or testamentary instrument establishing he has a  
14 beneficial interest in the Estate if the current Will was invalidated. Petitioner  
15 produced no such evidence, which combined with the fact Petitioner is not an  
16 intestate beneficiary of the Estate, led the Court to hold Petitioner is not an interested  
17 person in the Estate. The Court's Order concluding Petitioner is not an interested  
18 person in the Estate was upheld on appeal. Thus, if Petitioner is not an interested  
19 person in the Estate, he must establish he is a beneficiary of a prior Trust instrument  
20 in order to be an interested person in the Trust with standing enact a trust contest.  
21 However, Petitioner has not produced any prior Trust instruments naming him a  
22 beneficiary or trustee of the Trust; analogous to the Estate proceeding where  
23 Petitioner produced no prior wills or testamentary instruments naming him a  
24 beneficiary after being directed by the Court to do so in the face of dismissal of his  
25 Estate Case. Therefore, summary judgment against the Petition is mandatory  
26 because the Petitioner cannot establish he is a beneficiary or trustee of a prior Trust  
27 instrument as required to be an interested person in the Trust with standing to enact  
28 a trust contest. See NRS 132.390(1)(d). In other words, Petitioner has no standing

1 to contest the Trust because regardless of the Trust's validity, no order of the Court  
2 will effect Petitioner since he cannot demonstrate he is a former beneficiary of the  
3 Trust, nor is he a beneficiary of the Estate.

4 V. CONCLUSION AND REQUESTED RELIEF

5 Based on the foregoing facts, law and argument, the Honorable Tara Flanagan,  
6 as Trustee of the Thomas J. Harris Trust, respectfully requests this Court grant  
7 summary judgment against Mr. Robben's Petition to Invalidate the Thomas J. Harris  
8 Trust because he is not an interested person in the Trust with standing to proceed  
9 any further at the expense of both judicial and trust resources.

10 AFFIRMATION

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

13 DATED this 6th day of October 2022.

14  
15 By: 

F. McClure Wallace, Esq.  
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CERTIFICATE OF SERVICE

The undersigned certifies the Motion for Summary Judgment 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 6th day of October, 2022.

By: 

Caroline Carter, Paralegal

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

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

9  
10 TODD ROBBEN,  
11 Petitioner

CASE NO.: 2022-PB-00119

12  
13 Vs.

PETITIONER TODD ROBBEN'S  
OBJECTION TO RESPONDENT'S  
MOTION TO DISMISS

14  
15 THE ESTATE OF THOMAS JOSEPH  
16 HARRIS; THOMAS J. HARRIS TRUST,  
17 Deceased,  
18 Respondent.

Related cases:

Ninth District Court Case No.:  
2021-PB00034

Nevada Supreme Court Case No.:  
84948

19  
20  
21 Petitioner, Todd Robben, timely objects to the Respondent's Motion to Dismiss  
22 based on the following memorandum of points and authorities.

23 **MEMORANDUM OF POINTS & AUTHORITIES**

24 **I. INTRODUCTION**

25 The Petitioner re-asserts his statutory right to counsel pursuant to Nevada  
26 Revised Statute ("NRS") 136.200 in order secure his property rights and have his  
27 case determined on the merits pursuant to the U.S. and State of Nevada

1 Constitutional due-process and equal-protection of the law<sup>1</sup>. The Respondent  
2 concedes<sup>2</sup> to this argument by failing to address it.

3 The Petitioner makes multiple legal theories, in pro se, using this case to  
4 collaterally attack the probate case number 2021-PB00034 and/or reopen case  
5 number 2021-PB00034 pursuant to Nevada Rules of Civil Procedure ("NRCP") Rule  
6 60(b) and Rule 60(d) which also "does not limit a court's power to entertain an  
7 independent action to relieve a party from a judgment, order, or proceeding".

8 Additionally, the Petitioner can amend his previous petition/filings in case  
9 number 2021-PB00034 pursuant to NRCP 60 and NRCP 15 which would relate back  
10 to the timely filing and correct any problems, add or amend parties, claims or causes  
11 of action. See Tehansky v. Wilson, 428 P. 2d 375 - Nev: Supreme Court 1967  
12 "Appellant further contends that such motion should be given retroactive effect under  
13 NRCP 15(c) to the date of the original pleading, thus avoiding the statute of limitation  
14 violation under NRS 137.080. We agree."

15 This instant case, a collateral attack, is the only way the Petitioner has to  
16 remedy the controversy since the Nevada Supreme Court order in case No. 84948  
17 below claims the Petitioner Todd Robben was not named in the title of the case  
18 number 2021-PB00034 and NRAP 3A(a) allows only an aggrieved party to appeal.  
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24 <sup>1</sup> Petitioner affirmatively asserts he is a "class of one" and "indigent" for the purpose of  
25 class of person classification pursuant to U.S. Fourteenth Amendment equal-protection  
26 clause. Village of Willowbrook v. Olech :: 528 U.S. 562 (2000).

27 <sup>2</sup> "A point not urged in the trial court is deemed to have been waived and will not  
28 be considered on appeal." See Old Aztec Mine, Inc. v. Brown, 623 P. 2d 981 - Nev:  
Supreme Court 1981

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2 IN THE MATTER OF THE ESTATE OF THOMAS JOSEPH HARRIS,  
3 DECEASED. Case No. 84948

4 TODD ROBBEN,

5 Appellant,

6 VS.

7  
8 TARA FLANAGAN, IN HER CAPACITY  
9 AS THE COURT APPOINTED  
PERSONAL REPRESENTATIVE,

10 Respondent

11 ORDER DISMISSING APPEAL

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

15 Review of the notice of appeal and documents before this court reveals a  
16 jurisdictional defect. **NRAP 3A(a) allows only an aggrieved party to  
17 appeal. Generally, a party is a person who has been named as a  
18 party to the lawsuit and who has been served with process or  
19 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.**

20 And while any "interested person" may participate in probate actions, an  
21 "interested person" is defined as someone "whose right or interest under  
22 an estate or trust may be materially affected by a decision of a fiduciary or  
23 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.

24 **Here, the district court determined that appellant was not an  
25 interested person in the underlying matter under NRS 132.185 and thus  
26 lacked standing to object to the probate petition or otherwise appear in  
27 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.**

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**II. ARGUMENT**

**A. THE COURT HAS JURISDICTION TO HEAR THIS CASE.**

This indigent pro se<sup>3</sup> Petitioner has been denied his statutory right to court appointed counsel discussed above and is denied his due-process and equal-protection going forward as a pro se litigant. That said, this Petitioner will clearly articulate this court has jurisdiction and the petition is not time barred or barred by issue or claim preclusion.

The Petitioner without counsel easily defeats the Respondents Motion to Dismiss since this court has jurisdiction of this instant case, and case 2021-PB00034 under NRCP Rule §§ 60, 60(b) and 60(d) and NRS §§ 30 and NRS 136.010 and NRS §§164 and NRS 137.010 (1). Also See NRS 11.500 (allowing a party to recommence an action in a court having jurisdiction where a different court dismissed the same action for lack of subject matter jurisdiction).

The Petitioner can amend his previous petition/filings in case number 2021-PB00034 pursuant to NRCP 60 and NRCP 15 which would relate back to the timely filing and correct any problems, add or amend parties, claims or causes of action. See Tehansky v. Wilson, 428 P. 2d 375 - Nev: Supreme Court 1967 "Appellant further contends that such motion should be given retroactive effect under NRCP 15(c) to the

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<sup>3</sup> "Pro se pleadings are to be considered without regard to technicality; pro se litigants' pleadings are not to be held to the same high standards of perfection as lawyers." Jenkins v. McKeithen, 395 U.S. 411, 421 (1959); Picking v. Pennsylvania R. Co., 151 Fed 2nd 240; Pucket v. Cox, 456 2nd 233; "Pleadings are intended to serve as a means of arriving at fair and just settlements of controversies between litigants. They should not raise barriers which prevent the achievement of that end. Proper pleading is important, but its importance consists in its effectiveness as a means to accomplish the end of a just judgment." Maty v. Grasselli Chemical Co., 303 U.S. 197 (1938).

1 date of the original pleading, thus avoiding the statute of limitation violation under NRS  
2 137.080. We agree."

3 The Respondent confuses the word "court" with the word "case". See Ex Parte  
4 Gardner, 22 Nev. 280, 284 (Nev. 1895) "The judge alone does not constitute a  
5 "court." Burrill defines the term thus: "A 'court' may be more particularly  
6 described as an organized body with defined powers, meeting at certain times  
7 and places for the hearing and decision of causes and other matters brought  
8 before it, and aided in this, its proper business, by its proper officers; viz.:  
9 Attorneys and counsel to present and manage the business, clerks to record  
10 and attest its acts and decisions, and ministerial officers to execute its  
11 commands and secure due order in its proceedings." The Petitioner has filed in  
12 the proper venue and the proper court jurisdiction, i.e. The Ninth District Court in and  
13 for Douglas County, Nevada.

14 The Respondents conceded to this court's subject matter jurisdiction by  
15 arguing in their Motion to Dismiss, page 10 line 3 to 11, and page 12 line 10 to 17  
16 that this court is the same court is the same court as the probate court by stating  
17 "furthermore, even under the Supreme Court's decision interpreting the "adjudication  
18 upon the merits" phrase, preclusion would apply in this case, as the Supreme Court  
19 ruled that the phrase is meant to preclude the refiling of the same claim in the *same*  
20 *court in which the dismissal occurred.*" Five Star Capital Corp. v. Ruby, 194 P. 3d 709 -  
21 *Nev: Supreme Court 2008* citing Semtek Int'l Inc. v. Lockheed Martin Corp., 531 US 497  
22 - *Supreme Court 2001*.

23 Ninth DCR Rule 2. states (a) The Ninth Judicial District consists of two (2)  
24 departments. (b) The Judges of this court may interchange with each other. In  
25 the event of the absence or the incapacity of a Judge, or when agreed by the  
26 Judges, either Judge may act in the department of the other without specific  
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1 assignment of the actions, unless the acting Judge has been disqualified from,  
2 stricken from, or recused himself or herself from the matter.

3 The orders in case number 2021-PB00034 are void since the Respondent  
4 and the Supreme Court in Case No. 84948 (see above) claim the district court  
5 lacked jurisdiction and in case number 2021-PB00034 and since the Petitioner  
6 was also not a party, and/or an interested person in and in case number 2021-  
7 PB00034, this unique collateral attack complies with the Supreme Court decision in  
8 State v. Sustacha, 826 P. 2d 959 - Nev: Supreme Court 1992 which states "In Smith  
9 v. District Court, 63 Nev. 249, 256-57, 167 P.2d 648, 651 (1946), we explained that a  
10 judgment is generally not subject to collateral attack "if the court which  
11 rendered it had jurisdiction of the subject matter and of the parties." Thus, only a  
12 void judgment is subject to collateral attack; a judgment is void only if the issuing  
13 court lacked personal jurisdiction or subject matter jurisdiction."

14 Judge Nathan Tod Young has been disqualified in this instant case and in case  
15 number 2021-PB00034 his orders are null and void in since he was bias against the  
16 Petitioner and there was an appearance of bias in violation of the U.S. fourteenth  
17 Amendment due-process in case number 2021-PB00034 as there is now in this  
18 instant case.

19 "The Due Process Clause of the Fourteenth Amendment establishes a  
20 constitutional floor, not a uniform standard," for a judicial bias claim. Bracy v. Gramley,  
21 520 U.S. 899, 904, 117 S.Ct. 1793, 138 L.Ed.2d 97 (1997). While most claims of judicial  
22 bias are resolved "by common law, statute, or the professional standards of the bench  
23 and bar," the "floor established by the Due Process Clause clearly requires a 'fair trial in  
24 a fair tribunal' before a judge with no actual bias against the defendant or interest in the  
25 outcome of his particular case." *Id.* at 904-05, 117 S.Ct. 1793 (quoting Withrow v.  
26 Larkin, 421 U.S. 35, 46, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975)). The Constitution  
27 requires recusal where "the probability of actual bias on the part of the judge or decision  
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1 maker is too high to be constitutionally tolerable." Withrow, 421 U.S. at 47, 95 S.Ct.  
2 1456. Our inquiry is objective. Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 881,  
3 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009). We do not ask whether [the judge ] actually  
4 harbored subjective bias . Id. Rather, we ask whether the average judge in her position  
5 was likely to be neutral or whether there existed an unconstitutional potential for bias .  
6 Id. "Every procedure which would offer a possible temptation to the average . . . judge to  
7 forget the burden of proof required to convict the defendant, or which might lead him not  
8 to hold the balance nice, clear and true between the State and the accused, denies the  
9 [accused] due process of law." Tumey v. Ohio, 273 U.S. 510, 532, 47 S.Ct. 437, 71  
10 L.Ed. 749 (1927). In the criminal context, Edwards v. Balisok, 520 US 641 - Supreme  
11 Court 1997, states "A criminal defendant tried by a partial judge is entitled to have  
12 his conviction set aside, no matter how strong the evidence against him. Tumey v.  
13 Ohio, 273 U. S. 510, 535 (1927); Arizona v. Fulminante, 499 U. S. 279, 308 (1991).

14 The Petitioner requires counsel to articulate this profound case that raises one  
15 or more issues that involve substantial precedential, constitutional, and public policy  
16 questions identical to the on point case Barefoot v. Jennings, 456 P. 3d 447 - 2020 -  
17 Cal: Supreme Court , which was decided by the California Supreme Court in January  
18 2020, the Court held, "we conclude that claims that trust provisions or  
19 amendments are the product of incompetence, undue influence, or fraud, as is  
20 alleged here, should be decided by the probate court, if the invalidity of those  
21 provisions or amendments would render the challenger a beneficiary of the  
22 trust. [Citation omitted.] So when a plaintiff claims to be a rightful beneficiary of  
23 a trust if challenged amendments are deemed invalid, she has standing to  
24 petition the probate court under section 17200." The California Supreme Court  
25 recognized the inequity that could result if a beneficiary was prohibited from  
26 challenging a trust based on an invalid trust amendment obtained through fraud,  
27 undue influence or lack of capacity that disinherited an interested beneficiary.



1 Nevada routinely looks to California precedent for guidance as it should  
2 with Barefoot v. Jennings, supra to determine the definition of an "interested  
3 person" when the inequity that could result if a beneficiary was prohibited from  
4 challenging a trust based on an invalid trust amendment obtained through  
5 fraud, undue influence or lack of capacity that disinherited an interested  
6 beneficiary.

7 See LOCAL GOVT. EMPLOYEE-MANAGEMENT v. ESEA, 429 P. 3d 658 -  
8 Nev: Supreme Court 2018 "Because no Nevada precedent is instructive on this  
9 issue, we look to California precedent for guidance." See Shapiro v. Welt, 133  
10 Nev. 35, 39, 389 P.3d 262, 268 (2017) (observing that because "California's and  
11 Nevada's anti-SLAPP statutes are similar in purpose and language, we look to  
12 California law for guidance" (internal quotation marks and citations omitted)).

13 See Coker v. Sassone, 432 P. 3d 746 - Nev: Supreme Court 2019 "This court  
14 has repeatedly recognized the similarities between California's and Nevada's anti-  
15 SLAPP statutes, routinely looking to California courts for guidance in this area.[3] See,  
16 e.g., Patin v. Lee, 134 Nev. \_\_\_, 429 P.3d 1248, 1250-51 (2018); Shapiro, 133 Nev. at  
17 40, 389 P.3d at 268 (adopting California's "guiding principles" to define "an  
18 issue of public interest" pursuant to NRS 41.637(4)); John, 125 Nev. at 752, 219  
19 P.3d at 1281 (describing both states' anti-SLAPP statutes as "similar in purpose  
20 and language"). As such, we turn to Park v. Board of Trustees of California  
21 State University, wherein the California Supreme Court explained...

22 In Hamm v. Carson City Nugget, Inc., 450 P. 2d 358 - Nev: Supreme Court  
23 1969 Since the problem has not been decided in Nevada we must look  
24 elsewhere for guidance. The common law is the rule of decision in our courts  
25 unless in conflict with constitutional or statutory commands. NRS 1.030;  
26 Davenport v. State Farm Mutual, 81 Nev. 361, 404 P.2d 10 (1965).  
27

1 After case number 2021 PB00034 was decided and an order issued denying  
2 this Petitioner counsel on the grounds he is not an interested person pursuant to NRS  
3 § 132.185 this Petitioner filed a motion to reconsider and notice of appeal and to  
4 request the stay. Both were denied without reaching the merits of what an "interested  
5 person" is and is not pursuant to NRS 132.185 which states "Interested person"  
6 defined as **"Interested person means a person whose right or interest under an  
7 estate or trust may be materially affected by a decision of a fiduciary or a  
8 decision of the court.** The fiduciary or court shall determine who is an interested  
9 person according to the particular purposes of, and matter involved in, a proceeding."  
10 Based on this definition, **the Petitioner is indeed an Interested person pursuant to**  
11 **NRS 132.185.**

12 Although not named in the trust or will as a beneficiary, as a matter of  
13 law, this Petitioner is legally a "Beneficiary" based "contingent" on his  
14 "present interest" and "*future interest*" which are both vested and contingent and  
15 he would be the owner of an interest by assignment or other transfer from the Thomas  
16 J. Harris Trust ...or from the Thomas J. and Olga Harris Living Trust. See Barefoot v.  
17 Jennings, supra.

18 NRS 132.050 states "Beneficiary" defined. "Beneficiary," as it relates to: 1.  
19 **"A trust, includes a person who has a *present or future interest*, vested or  
20 *contingent*, and the owner of an interest by assignment or other transfer".**

21 Compare NRS 132.050 with the California equivalent Section 17200,  
22 subdivision (b)(3) contemplates the court's determination of "the validity of a trust  
23 provision. "Plainly, the term "trust provision" incorporates any amendments to a trust.  
24 Section 24, subdivision (c) defines a "beneficiary" for trust purposes, as "a  
25 **person who has any present or *future interest*, vested or *contingent*."** Assuming  
26 plaintiff's allegations are true, ***she has a present or future interest***, making her a  
27

1 beneficiary permitted to petition the probate court under section 17200." See Barefoot  
2 v. Jennings, supra.

3 The Nevada Supreme Court summarily dismissed the appeal because they  
4 claim this Petitioner lacks standing and is not a party to the action i.e. not named in  
5 the lawsuit/petition as a respondent/defendant or petitioner/plaintiff. The Nevada  
6 Supreme Court failed to even consider the facts before they were filed that shows the  
7 Petitioner is, in fact, named in the will/trust as being disinherited.

8 The Petitioner styled is argument in case number 2021 PB00034 as the same  
9 argument in Barefoot v. Jennings, infra.

10 If this ruling stands, nobody in Nevada can petition the court for probate  
11 or presumed undue influence or fraud or lack of capacity if they are presumably  
12 not already a beneficiary. This Petitioner was undisputedly "disinherited" albeit by  
13 way of presumed undue influence and undue influence.

14 A similar situation occurred in California in Barefoot v. Jennings, 456 P. 3d 447  
15 - Cal: Supreme Court 2020.<sup>4</sup>

16 In early November 2019, the California Supreme Court heard oral  
17 arguments in the Barefoot case, and in late January 2020, the California  
18 Supreme Court issued its opinion reversing the Court of Appeal decision.  
19 The California Supreme Court held as follows: **"We disagree with the**  
20 **Court of Appeal, and hold today that the Probate Code grants**  
21 **standing in Probate Court to individuals who claim that trust**  
22 **amendments eliminating their beneficiary status arose from**  
23 **incompetence, undue influence or fraud."**

24 California probate Section 17200, subdivision (b)(3) contemplates the  
25 court's determination of "the validity of a trust provision." Plainly, the term  
26 "trust provision" incorporates any amendments to a trust. Section 24,  
27 subdivision (c) defines a "beneficiary" for trust purposes, as "a person who  
28 has any present or future interest, vested or contingent." Assuming  
plaintiff's allegations are true, she has a present or future interest, making

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<sup>4</sup> Source: <https://keystone-law.com/legal-standing-trust-contests/>

1 her a beneficiary permitted to petition the probate court under section  
2 17200.[vii] (Emphasis added).

3 **The California Supreme Court held that with this interpretation, when**  
4 **a plaintiff claims to be a rightful beneficiary of a trust, if the**  
5 **challenged amendments are deemed invalid, then the plaintiff has**  
6 **standing to petition the Probate Court under Section 17200.**

7 **The Court added that this expansive reading of the standing**  
8 **requirement afforded to trust contests under Section 17200 “not only**  
9 **makes sense as a matter of judicial economy, but it also recognizes**  
10 **the probate court’s inherent power to decide all incidental issues**  
11 **necessary to carry out its express powers to supervise the**  
12 **administration of the trust.”**

13 Section 17200, subdivision (b)(3) contemplates the court’s determination  
14 of “the validity of a trust provision.” Plainly, the term “trust provision”  
15 incorporates any amendments to a trust. Section 24, subdivision (c)  
16 defines a “beneficiary” for trust purposes, as “a person who has any  
17 present or future interest, vested or contingent.” Assuming plaintiff’s  
18 allegations are true, *she has a present or future interest*, making her a  
19 beneficiary permitted to petition the probate court under section 17200.[vii]  
20 (Emphasis added)..”

21 The Court cautioned, however, that its ruling in Barefoot did have certain  
22 limitations in its applicability, stating: “Our holding does not allow  
23 individuals with no interest in a trust to bring a claim against the trust.  
24 Instead, we permit those whose well-pleaded allegations show that  
25 they have an interest in a trust — because the amendments  
26 purporting to disinherit them are invalid — to petition the probate  
27 court.”

28 Thus, by so holding, the Supreme Court’s ruling could potentially exclude  
a Decedent’s heirs (who were not named as beneficiaries in any prior  
version of the Decedent’s estate plan, but who would otherwise have a  
beneficial interest through intestate succession in the event the Decedent  
did not have a valid estate plan) from filing a Section 17200 contest in  
Probate Court. Thus, any such contests currently pending by such heirs in  
Probate Court may be subject to attack based on the heirs’ lack of  
standing.

**Accordingly, the effect of the California Supreme Court’s decision**  
**was not to limitlessly expand the universe of potential litigants who**  
**can bring trust contest claims in the future, but rather, to confirm**

1 **that Section 17200 can be used by disinherited beneficiaries as it had**  
2 **been in the past**, while leaving open this unresolved issue concerning a  
3 Decedent's heirs.

4 Cal. Prob. Code § 17200 Current through the 2022 Legislative Session is  
5 the equivalent of NRS 164.015

6 Section 17200 - Petition concerning internal affairs or determine  
7 existence; internal affairs of trust

8 **(a) Except as provided in Section 15800, a trustee or beneficiary of a**  
9 **trust may petition the court under this chapter concerning the**  
10 **internal affairs of the trust or to determine the existence of the trust.**

11 (b) Proceedings concerning the internal affairs of a trust include, but are  
12 not limited to, proceedings for any of the following purposes:

13 (1) Determining questions of construction of a trust instrument.

14 (2) Determining the existence or nonexistence of any immunity, power,  
15 privilege, duty, or right.

16 (3) Determining the validity of a trust provision.

17 (4) Ascertaining beneficiaries and determining to whom property shall  
18 pass or be delivered upon final or partial termination of the trust, to the  
19 extent the determination is not made by the trust instrument.

20 (5) Settling the accounts and passing upon the acts of the trustee,  
21 including the exercise of discretionary powers.

22 (6) Instructing the trustee.

23 (7) Compelling the trustee to do any of the following:

24 (A) Provide a copy of the terms of the trust.

25 (B) Provide information about the trust under Section 16061 if the trustee  
26 has failed to provide the requested information within 60 days after the  
27 beneficiary's reasonable written request, and the beneficiary has not  
28 received the requested information from the trustee within the six months  
preceding the request.

(C) Account to the beneficiary, subject to the provisions of Section 16064,  
if the trustee has failed to submit a requested account within 60 days after  
written request of the beneficiary and no account has been made within  
six months preceding the request.

(8) Granting powers to the trustee.

(9) Fixing or allowing payment of the trustee's compensation or reviewing  
the reasonableness of the trustee's compensation.

- (10) Appointing or removing a trustee.
- (11) Accepting the resignation of a trustee.
- (12) Compelling redress of a breach of the trust by any available remedy.
- (13) Approving or directing the modification or termination of the trust.
- (14) Approving or directing the combination or division of trusts.
- (15) Amending or conforming the trust instrument in the manner required to qualify a decedent's estate for the charitable estate tax deduction under federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by final regulations and rulings of the United States Internal Revenue Service.
- (16) Authorizing or directing transfer of a trust or trust property to or from another jurisdiction.
- (17) Directing transfer of a testamentary trust subject to continuing court jurisdiction from one county to another.
- (18) Approving removal of a testamentary trust from continuing court jurisdiction.
- (19) Reforming or excusing compliance with the governing instrument of an organization pursuant to Section 16105.
- (20) Determining the liability of the trust for any debts of a deceased settlor. However, nothing in this paragraph shall provide standing to bring an action concerning the internal affairs of the trust to a person whose only claim to the assets of the decedent is as a creditor.
- (21) Determining petitions filed pursuant to Section 15687 and reviewing the reasonableness of compensation for legal services authorized under that section. In determining the reasonableness of compensation under this paragraph, the court may consider, together with all other relevant circumstances, whether prior approval was obtained pursuant to Section 15687.
- (22) If a member of the State Bar of California has transferred the economic interest of his or her practice to a trustee and if the member is a deceased member under Section 9764, a petition may be brought to appoint a practice administrator. The procedures, including, but not limited to, notice requirements, that apply to the appointment of a practice administrator for a deceased member shall apply to the petition brought under this section.
- (23) If a member of the State Bar of California has transferred the economic interest of his or her practice to a trustee and if the member is a disabled member under Section 2468, a petition may be brought to appoint a practice administrator. The procedures, including, but not limited to, notice requirements, that apply to the appointment of a practice administrator for a disabled member shall apply to the petition brought under this section.

1 (c) The court may, on its own motion, set and give notice of an order to  
2 show cause why a trustee who is a professional fiduciary, and who is  
3 required to be licensed under Chapter 6 (commencing with Section 6500)  
4 of Division 3 of the Business and Professions Code, should not be  
removed for failing to hold a valid, unexpired, unsuspended license.  
Ca. Prob. Code § 17200

5 Amended by Stats 2010 ch 621 (SB 202), s 11, eff. 1/1/2011.  
6 Amended by Stats 2003 ch 629 (SB 294), s 8, eff. 1/1/2004.  
7 EFFECTIVE 1/1/2000. Amended July 26, 1999 (Bill Number: AB 239)  
(Chapter 175).

8 Compare Cal. Prob. Code § 17200 to Nevada NRS 164.015 Petition  
9 concerning internal affairs of nontestamentary trust; jurisdiction of court;  
10 procedure for contests of certain trusts; final order; appeal.  
11

12 **1. The court has exclusive jurisdiction of proceedings initiated**  
13 **by the petition of an interested person concerning the internal affairs**  
14 **of a nontestamentary trust, including a revocable living trust while the**  
15 **settlor is still living if the court determines that the settlor cannot**  
16 **adequately protect his or her own interests or if the interested person**  
17 **shows that the settlor is incompetent or susceptible to undue**  
18 **influence. Proceedings which may be maintained under this section**  
19 **are those concerning the administration and distribution of trusts,**  
20 **the declaration of rights and the determination of other matters**  
21 **involving trustees and beneficiaries of trusts, including petitions**  
22 **with respect to a nontestamentary trust for any appropriate relief**  
23 **provided with respect to a testamentary trust in NRS 153.031 and**  
24 **petitions for a ruling that property not formally titled in the name of a**  
25 **trust or its trustee constitutes trust property pursuant to NRS**  
26 **163.002.**

27 **2. A petition under this section or subsection 2 of NRS 30.040**  
28 **that relates to a trust may be filed in conjunction with a petition**  
**under NRS 164.010 or at any time after the court has assumed**  
**jurisdiction under that section.**

3. If an interested person contests the validity of a revocable  
nontestamentary trust, the interested person is the plaintiff and the trustee  
is the defendant. The written grounds for contesting the validity of the trust  
constitutes a pleading and must conform with any rules applicable to  
pleadings in a civil action. This subsection applies whether the person

1       contesting the validity of the trust is the petitioner or the objector and  
2       whether or not the opposition to the validity of the trust is asserted under  
3       this section or subsection 2 of NRS 30.040.

4       4. In a proceeding pursuant to subsection 3, the competency of the  
5       settlor to make the trust, the freedom of the settlor from duress, menace,  
6       fraud or undue influence at the time of execution of the will, the execution  
7       and attestation of the trust instrument, or any other question affecting the  
8       validity of the trust is a question of fact and must be tried by the court,  
9       subject to the provisions of subsection 5.

10       5. **A court may consolidate the cases if there is a contest of a**  
11       **revocable nontestamentary trust and a contest relating to a will**  
12       **executed on the same date.** If a jury is demanded pursuant to NRS  
13       137.020 for the contest of the will, the court may instruct the jury to render  
14       an advisory opinion with respect to an issue of fact pursuant to subsection  
15       4 in the contest of the trust.

16       6. Upon the hearing, the court shall enter such order as it deems  
17       appropriate. The order is final and conclusive as to all matters determined  
18       and is binding in rem upon the trust estate and upon the interests of all  
19       beneficiaries, vested or contingent, except that appeal to the appellate  
20       court of competent jurisdiction pursuant to the rules fixed by the Supreme  
21       Court pursuant to Section 4 of Article 6 of the Nevada Constitution may be  
22       taken from the order within 30 days after notice of its entry by filing notice  
23       of appeal with the clerk of the district court. The appellant shall mail a copy  
24       of the notice to each person who has appeared of record. If the  
25       proceeding was brought pursuant to subsection 3, 4 or 5, the court must  
26       also award costs pursuant to chapter 18 of NRS.

27       7. **Except as otherwise ordered by the court,** a proceeding under  
28       this section does not result in continuing supervisory proceedings, and the  
29       administration of the trust must proceed expeditiously in a manner  
30       consistent with the terms of the trust, without judicial intervention or the  
31       order, approval or other action of any court, **unless the jurisdiction of**  
32       **the court is invoked by an interested person or exercised as**  
33       **provided by other law.**

34       8. As used in this section, "nontestamentary trust" has the meaning  
35       ascribed to it in NRS 163.0016.

36       See NRS 164.040 Power or jurisdiction of court not abridged; court may  
37       take action necessary or proper to dispose of matter presented by petition.



1           1. NRS 164.010 and 164.015 do not limit or abridge the power or  
2 jurisdiction of the district court over trusts and trustees.

3           2. The court may enter any order or take any other action  
4 necessary or proper to dispose of the matters presented by a  
5 petition, including the appointment of a temporary trustee to  
6 administer the trust in whole or in part.

7           This Petitioner has asserted a "property right" in the Thomas J. Harris trust, will,  
8 estate and related probate contests and the previous Thomas Joseph and Olga Harris  
9 Living Trust. This Petitioner is denied procedural and substantive due-process and  
10 equal protection of the law pursuant to the U.S. Fourteenth Amendment as well as  
11 Nevada Constitution Article 1 Section 1 "Inalienable rights. All men are by Nature  
12 free and equal and have certain inalienable rights among which are those of enjoying  
13 and defending life and liberty; **Acquiring, Possessing and Protecting property** and  
14 pursuing and obtaining safety and happiness" and Article 1 Section 8 (2) "**No person  
shall be deprived of life, liberty, or property, without due process of law**".

15           "The Federal and Nevada Constitutions provide that no person shall be  
16 deprived of life, liberty, or *property* without due process of law. Essentially, "the  
17 State owes to each individual that process which, in light of the values of a free  
18 society, can be characterized as due." *Substantive due process* ensures that  
19 state action is not random and unpredictable; it restricts the government's  
20 ability to interfere with a person's life, liberty, or *property*. Kirkpatrick v. Dist. Ct.,  
21 43 P. 3d 998 – Nev: Supreme Court 2002. (Emphasis added by Petitioner).

22           For the purpose of the equal protection clause of U.S. Fourteenth Amendment,  
23 the Petitioner is in a class of indigent litigant and also a class-of-one.

24           Additionally, the Revised Nevada Code Of Judicial Conduct Rule 2.6. Ensuring  
25 the Right to Be Heard states "(A) A judge shall accord to every person who has a  
26 legal interest in a proceeding, or that person's lawyer, the right to be heard  
27 according to law."  
28

1 NRS 136.200 is applicable in this current case involving the instant Thomas J.  
2 Harris Trust and will and estate and any related probate including "special  
3 qualifications" because there is fraud and theft of assets in the trust(s), will(s) and  
4 estate(s) including a missing home from Pebble beach Court Minden, Nevada and an  
5 entire safe deposit box of assets.

6 See *In re Herrmann*, 100 Nev. 1, 4-5 (Nev. 1984) 677 P.2d 594 "**Judge Waters**  
7 **appointed appellant Flangas as their counsel pursuant to NRS 136.200.**

8 Subsequently, on March 20, 1973, Judge Waters appointed appellant Ross as co-  
9 counsel to Mr. Flangas. **It appears of record that Mr. Flangas and Mr. Ross had**  
10 **special qualifications, known to Judge Waters, which had application to a**  
11 **matter of vital importance to the Estate of Herrmann**, to-wit: the subdivision and  
12 development of the Lyon County ranch for residential housing purposes."

13 NRS 136.200 also applies to CHAPTER 164 - ADMINISTRATION OF  
14 TRUSTS, NRS 164.005 Applicability of provisions of chapters 132, 153 and 155 of  
15 NRS regulating matters of estates. When not otherwise inconsistent with the  
16 provisions of chapters 162 to 167, inclusive, of NRS, all of the provisions of chapters  
17 132, 153 and 155 of NRS regulating the matters of estates:

- 18 1. Apply to proceedings relating to trusts, as appropriate; or
- 19 2. May be applied to supplement the provisions of chapters 162 to 167,  
20 inclusive, of NRS.

21 Since the will, trust and estate controversy may lead to probate, NRS 136.200  
22 also applies to NRS 30.040 which states "Questions of construction or validity of  
23 instruments, contracts and statutes. Any person interested under a deed, written  
24 contract or other writings constituting a contract, or whose rights, status or other legal  
25 relations are affected by a statute, municipal ordinance, contract or franchise,  
26 may have determined any question of construction or validity arising under the  
27 instrument, statute, ordinance, contract or franchise and obtain a declaration of

1 rights, status or other legal relations thereunder." In a proceeding pursuant to  
2 subsection 3, the competency of the settlor to make the trust, the freedom of the  
3 settlor from duress, menace, fraud or undue influence at the time of execution  
4 of the will, the execution and attestation of the trust instrument, or any other  
5 question affecting the validity of the trust is a question of fact and must be tried  
6 by the court, subject to the provisions of subsection 5.

7 Indeed, the Thomas J. Harris Trust and Will were executed on the same  
8 date, June 12, 2019 See Exhibits A and B in the petition.

9 NRS 164.015 Subsection 5 states "A court may consolidate the cases if  
10 there is a contest of a revocable nontestamentary trust and a contest relating to  
11 a will executed on the same date." If a jury is demanded pursuant to NRS 137.020  
12 for the contest of the will, the court may instruct the jury to render an advisory opinion  
13 with respect to an issue of fact pursuant to subsection 4 in the contest of the trust.  
14  
15

16 **NRS 30.040 Questions of construction or validity of instruments,**  
17 **contracts and statutes.**

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

22 2. A maker or legal representative of a maker of a will, trust or  
23 other writings constituting a testamentary instrument may have  
24 determined any question of construction or validity arising under the  
25 instrument and obtain a declaration of rights, status or other legal  
26 relations thereunder. Any action for declaratory relief under this  
subsection may only be made in a proceeding commenced pursuant to  
the provisions of title 12 or 13 of NRS, as appropriate.  
27  
28

1           3. A principal or a person granted authority to act for a principal  
2 under power of attorney, whether denominated an agent, attorney-in-fact  
3 or otherwise, may have determined any question of construction or validity  
4 arising under the instrument and obtain a declaration of rights, status or  
5 other legal relations thereunder. Any action for declaratory relief under this  
6 subsection may only be made in a proceeding commenced pursuant to  
7 the provisions of title 12 or 13 of NRS, as appropriate.

8           In this instant case, the Petitioner has a right and property interest to both the  
9 estate and trust which is be materially affected by a decision of a fiduciary or a  
10 decision of the court.

11           In case number: 2021 PB00034, the Respondent offers no points of authority,  
12 nor any precedent or case law to support its argument and NRS 132.185 is inapposite  
13 to the Respondent's argument. Nether does Judge Young offer any points of authority,  
14 nor any precedent or case law to support his order ...and the Nevada supreme Court's  
15 order in case 84948. The NRS 132.185 issue was never decided on the merits in any  
16 court and does not preclude adjudication in this case on grounds of issue preclusion  
17 i.e. *res judicata* or claim preclusion i.e. *collateral estopple*.

18           Since this court has jurisdiction, and judge Nathan Tod Young has been  
19 disqualified, and there is both intrinsic and extrinsic fraud, and the crux of the case is  
20 based on fraud, the Petitioner requests and the court can reopen case 2021-PB00034  
21 with the currently assigned senior judge pursuant to NRCP Rule §§ 60 where the  
22 actual claim and merits of the petition are argued making an undisputed *prima facie*  
23 case for presumed undue influence and undue influence that the Respondent  
24 concedes to in this motion and the Respondent's Motion for Summary Judgment.

25           Indeed, "undue influence ... is a species of fraud. A rebuttable  
26 presumption of undue influence is raised if the testator and the beneficiary  
27 shared a fiduciary relationship, but undue influence may also be proved without  
28

1 raising this presumption." *In re Estate of Bethurem*, 313 P. 3d 237, 241 (2013), at  
2 329.

3 Fraud and theft has occurred with undisputed assets missing including a  
4 \$450,000.00 home on Pebble Beach Court in Minden, NV transferred from the  
5 Thomas J. Harris Trust into the position of Jeff D. Robben who was the fiduciary and  
6 caretaker for Thomas J. Harris which creates "presumed undue influence." This is  
7 undisputed and Respondents have conceded this issue. The entire contents of the  
8 safe deposit box of Thomas J. Harris is not accounted for along with stocks, cash,  
9 gold, annuities, 401K, IRAs, pension, insurance, etc. This is undisputed and  
10 Respondents have conceded this issue.

11 There was fraud upon the court perpetuated by Respondent's counsel, Fred  
12 McClure Wallace who misrepresented to the court a material fact that there was no  
13 prior trust called the Thomas Joseph and Olga Harris Living Trust.

14 Judge Nathan Tod Young is disqualified in this instant case yet he presided in  
15 2021-PB00034 despite being bias against the Petitioner in violation of the U.S.  
16 Fourteenth Amendment due-process clause and NRS 1.230 which prohibits a judge  
17 from presiding over any matter when actual or implied bias exists on the part of the  
18 Judge. In Nevada, "a judge has a general duty to sit, unless a judicial canon, statute,  
19 or rule requires the judge's disqualification." *Millen v. Dist. Ct.*, 122 Nev. 1245, 1253,  
20 148 P.3d 694, 700 (2006).

21 It appears there was and still is fraud and a conspiracy to defraud  
22 Petitioner (and the other beneficiaries) out of vast sums of money as proven by  
23 the missing items in the safe deposit box and the home in Minden, Nevada on  
24 Pebble Beach Court was fraudulently transferred out of the Thomas J. Harris  
25 Trust by way of undue influence of Jeff D. Robben. Interestingly, this is a multi-  
26 state problem involving California, Nevada and Washington states. It's  
27

1 understood Scott Barton is a resident of Washington state. Since this involves  
2 interstate commerce and mail fraud, perhaps the feds will be interested too.

3 With the known conflicts-of-interests between Scott Barton and  
4 Blanchard, Krasner & French working both Jeff Robben's trust/will/instruments  
5 and Thomas J. Harris's trust/will/instruments it appears there is a conspiracy  
6 along with Tara Flannagan and you to cover-up the money trail. Indeed, follow-  
7 the-money... Where is it?

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

16 According to Cal. Judicial Canon 4: A Judge Shall So Conduct the Judge's  
17 Quasi-Judicial and Extrajudicial Activities as to Minimize the Risk of Conflict with  
18 Judicial Obligations

19 **A. Extrajudicial Activities in General**

20 B. Quasi-judicial and Avocational Activities

21 C. Governmental, Civic, or Charitable Activities

22 **D. Financial Activities**

23 **E. Fiduciary Activities**

24 F. Service as Arbitrator or Mediator

25 **G. Practice of Law**

26 **H. Compensation and Reimbursement**

27 There has been a total break-down and failure to communicate by Tara M.  
28 Flanagan, F. McClure Wallace and Scott Barton. Tara M. Flanagan knows of the  
fraud and theft conducted by Scott William Barton Cal. State BAR # 160262, a

1 California lawyer. Pursuant to California Judicial Canon III, D II: (2) Whenever a  
2 judge has personal knowledge that a lawyer has violated any provision of the  
3 Rules of Professional Conduct, the judge shall take appropriate corrective action.

4 **"Silence can only be equated with fraud where there is a legal or**  
5 **moral duty to speak or where an inquiry left unanswered would be**  
6 **intentionally misleading."** United States v. Prudden, 424 F.2d 1021 p.  
7 1032.(5th Cir. 1970), cert. denied, 400 U.S. 831, 91 S.Ct. 62, 27 L.Ed.2d 62  
8 (1970).

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

14 The Petitioner continued to be subjected to fraud and the Petitioner's State and  
15 Federal due-process was violated since he was NEVER timely notified by the  
16 Respondent of any probate, trust or will or even the death of Thomas J. Harris and  
17 the Petitioner has been both timely and diligent pursuing judicial relief as soon as  
18 learning of said probate, trust or will and death of Thomas J. Harris discussed below  
19 with controlling case law supporting the Petitioner.

20 Indeed, the Petitioner addressed this NRCP Rule 60 issue in his petition and  
21 the Respondent has conceded to the merits. In NC-DSH, INC. v. Garner, 218 P. 3d  
22 853 - Nev: *Supreme Court 2009* the Nevada Supreme Court stated "As amended  
23 effective January 1, 2005, NRCP 60(b) largely replicates Fed. R.Civ.P. 60(b), as  
24 written before the Federal Rules' 2007 revisions.[1] Like its federal counterpart, NRCP  
25 60(b) has two separate provisions that address fraud. The first is NRCP 60(b)(3),  
26 which provides, **"On motion and upon such terms as are just, the court may**  
27 **relieve a party ... from a final judgment, order, or proceeding for ... fraud**  
28

1 (whether heretofore denominated intrinsic or extrinsic), misrepresentation or  
2 other misconduct of an adverse party." The second provision addressing fraud  
3 appears in NRCP 60(b)'s "savings clause." The savings clause says, "This rule does  
4 not limit the power of a court to entertain an independent action to relieve a  
5 party from a judgment, order, or proceeding, or to set aside a judgment for fraud  
6 upon the court." [2] While a motion under NRCP 60(b)(3) must be made "not more  
7 than 6 months after the proceeding was taken or the date that written notice of entry of  
8 the judgment or order was served," NRCP 60(b) does not specify a time limit for  
9 motions seeking relief for "fraud upon the court."

10 NRCP Rule 60. Relief From a Judgment or Order

11 (a) Corrections Based on Clerical Mistakes; Oversights and  
12 Omissions. The court may correct a clerical mistake or a mistake arising  
13 from oversight or omission whenever one is found in a judgment, order, or  
14 other part of the record. The court may do so on motion or on its own, with  
15 or without notice. But after an appeal has been docketed in the appellate  
16 court and while it is pending, such a mistake may be corrected only with  
17 the appellate court's leave.

18 (b) Grounds for Relief From a Final Judgment, Order, or  
19 Proceeding. On motion and just terms, the court may relieve a  
20 party or its legal representative from a final judgment, order, or  
21 proceeding for the following reasons:

22 (1) mistake, inadvertence, surprise, or excusable neglect;

23 (2) newly discovered evidence that, with reasonable  
24 diligence, could not have been discovered in time to move for a new  
25 trial under Rule 59(b);

26 (3) fraud (whether previously called intrinsic or extrinsic),  
27 misrepresentation, or misconduct by an opposing party;

28 (4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged;  
it is based on an earlier judgment that has been reversed or vacated;  
or applying it prospectively is no longer equitable; or



1  
2 **(6) any other reason that justifies relief.**

3 **(c) Timing and Effect of the Motion.**

4 (1) Timing. A motion under Rule 60(b) must be made within a  
5 reasonable time—and for reasons (1), (2), and (3) no more than 6 months  
6 after the date of the proceeding or the date of service of written notice of  
7 entry of the judgment or order, whichever date is later. The time for filing  
8 the motion cannot be extended under Rule 6(b).

9 (2) Effect on Finality. The motion does not affect the judgment's  
10 finality or suspend its operation.

11 **(d) Other Powers to Grant Relief. This rule does not limit a  
12 court's power to:**

13 **(1) entertain an independent action to relieve a party from a  
14 judgment, order, or proceeding;**

15 **(2) upon motion filed within 6 months after written notice of  
16 entry of a default judgment is served, set aside the default judgment  
17 against a defendant who was not personally served with a summons  
18 and complaint and who has not appeared in the action, admitted  
19 service, signed a waiver of service, or otherwise waived service; or**

20 **(3) set aside a judgment for fraud upon the court.**

21 **(e) Bills and Writs Abolished. The following are abolished: bills of  
22 review, bills in the nature of bills of review, and writs of coram nobis,  
23 coram vobis, and audita querela.**

24 This court has jurisdiction pursuant to Nevada Constitution Article 6 Section 1:

25 **"The judicial power of this State shall be vested in a court system, comprising a  
26 Supreme Court, district courts, and justices of the peace. The Legislature may also  
27 establish, as part of the system, courts for municipal purposes only in incorporated  
28 cities and towns."**

The Supreme of the Land can be found in the decisions of the U.S. Supreme  
Court. In Old Wayne Mut. L. Assoc. v. McDonough, 204 U.S. 8, 27 S.Ct. 236 (1907),

1 the Supreme Court ruled that: "Chief Justice Marshall had long before observed in  
2 Ross v. Himely, 4 Cranch 241, 269, 2 L.ed. 608, 617, that, upon principle, the  
3 operation of every judgment must depend on the power of the court to render that  
4 judgment. In Williamson v. Berry, 8 How. 495, 540, 12 L.ed. 1170, 1189, it was said  
5 to be well settled that *the jurisdiction of ANY COURT exercising authority over a*  
6 *subject 'may be inquired into in EVERY OTHER COURT when the proceedings*  
7 *in the former are relied upon and brought before the latter by a party claiming*  
8 *the benefit of such proceedings,'* and the rule prevails whether 'the decree or  
9 judgment has been given, in a court of admiralty, chancery, ecclesiastical court,  
10 or court of common law, or whether the point ruled has arisen under the laws of  
11 nations, the practice in chancery, *or the municipal laws of states.'*" [Emphasis  
12 added].

13 See Klabacka v. Nelson, 394 P. 3d 940 – Nev. Supreme Court 2017 "NRS  
14 164.015(1), "[t]he court has exclusive jurisdiction of proceedings initiated by the petition  
15 of an interested person concerning the internal affairs of a nontestamentary trust." As  
16 used in both statutes, "court" is defined as "a district court of this State sitting in  
17 probate or otherwise adjudicating matters pursuant to this title." NRS 132.116;  
18 see also NRS 164.005 (applying NRS 132.116 to trust proceedings under Title 13)."

19 In addition to NRCP Rule 60(b) and (d), The petition was also filed in part  
20 pursuant to NRS 164.010 and NRS 164.015 which states:

22 NRS 164.005 Applicability of provisions of chapters 132, 153 and 155 of  
23 NRS regulating matters of estates. When not otherwise inconsistent with  
24 the provisions of chapters 162 to 167, inclusive, of NRS, all of the  
25 provisions of chapters 132, 153 and 155 of NRS regulating the matters of  
estates:

- 26 1. Apply to proceedings relating to trusts, as appropriate; or  
27  
28

1           2. May be applied to supplement the provisions of chapters 162 to  
2 167, inclusive, of NRS.

3  
4 NRS 164.010 Petition for assumption of jurisdiction; circumstances in  
5 which trust is domiciled in this State; determination of venue; powers of  
6 court; petition for removal of trust from jurisdiction of court.

7           1. Upon petition of any person appointed as trustee of an express  
8 trust by any written instrument other than a will, or upon petition of a  
9 settler or beneficiary of the trust, the district court of the county in which  
10 any trustee resides or conducts business at the time of the filing of the  
11 petition or in which the trust has been domiciled as of the time of the filing  
12 of the petition shall assume jurisdiction of the trust as a proceeding in rem  
unless another court has properly assumed continuing jurisdiction in rem  
in accordance with the laws of that jurisdiction and the district court  
determines that it is not appropriate for the district court to assume  
jurisdiction under the circumstances.

13           2. For the purposes of this section, a trust is domiciled in this State  
14 notwithstanding that the trustee neither resides nor conducts business in  
15 this State if:

16           (a) The trust instrument expressly provides that the situs of the trust is  
17 in this State or that a court in this State has jurisdiction over the trust;

18           (b) A person has designated for the trust that this State is the situs or  
19 has jurisdiction, if such person made the designation at a time during  
20 which he or she held the power to make such a designation under the  
express terms of the trust instrument;

21           © The trust owns an interest in real property located in this State;

22           (d) The trust owns personal property, wherever situated, if the trustee  
23 is:

24                   (1) Incorporated or authorized to do business in this State;

25                   (2) A trust company licensed under chapter 669 of NRS;

26                   (3) A family trust company, as defined in NRS 669A.080; or

27                   (4) A national association having an office in this State;

1  
2 (e) One or more beneficiaries of the trust reside in this State; or

3 (f) At least part of the administration of the trust occurs in this State.

4 3. Notwithstanding the provisions of this section, if a court of a  
5 jurisdiction other than this State has jurisdiction over a trust and grants an  
6 order authorizing a transfer of jurisdiction over that trust to this State, the  
7 district court has the power to assume jurisdiction over the trust and to  
8 otherwise supervise the administration of that trust in accordance with the  
9 procedures set forth in this title.

10 4. For the purposes of determining venue, preference is given  
11 in the following order:

12 (a) To the county in which the situs or domicile was most  
13 recently declared by a person granted the power to make such a  
14 declaration under the terms of the trust instrument at the time of the  
15 filing of the petition;

16 (b) To the county in which the situs or domicile is declared in the  
17 trust instrument; and

18 (c) To the county in which the situs or domicile is declared by  
19 the trustee at the time of the filing of the petition in a certification of  
20 the trust which complies with subsection 2 of NRS 164.400 and  
21 subsection 2 of NRS 164.410 and which contains a declaration of the  
22 trust's situs or domicile as authorized in subsection 1 of NRS  
23 164.410.

24 5. When the court assumes jurisdiction pursuant to this  
25 section, the court:

26 (a) Has jurisdiction of the trust as a proceeding in rem as of the  
27 date of the filing of the petition;

28 (b) Shall be deemed to have personal jurisdiction over any trustee  
confirmed by the court and any person appearing in the matter, unless  
such an appearance is made solely for the purpose of objecting to the  
jurisdiction of the court;

© May confirm at the same time the appointment of the trustee and  
specify the manner in which the trustee must qualify; and

1 (d) May consider at the same time granting orders on other matters  
2 relating to the trust, including, without limitation, matters that might be  
3 addressed in a declaratory judgment relating to the trust under  
4 subsection 2 of NRS 30.040 or petitions filed pursuant to NRS  
5 153.031 or 164.015 whether such matters are raised in the petition to  
6 assume jurisdiction pursuant to this section or in one or more  
7 separate petitions that are filed concurrently with the petition to  
8 assume jurisdiction.

9 6. At any time, the trustee may petition the court for removal of the  
10 trust from continuing jurisdiction of the court.

11 7. As used in this section, "written instrument" includes, without  
12 limitation, an electronic trust as defined in NRS 163.0015.

13 [1:22:1953]—(NRS A 1961, 400; 1999, 2377; 2001, 2352; 2015, 3551;  
14 2017, 1695)

15 **NRS 164.015 Petition concerning internal affairs of**  
16 **nontestamentary trust; jurisdiction of court; procedure for contests**  
17 **of certain trusts; final order; appeal.**

18 1. The court has exclusive jurisdiction of proceedings initiated  
19 by the petition of an interested person concerning the internal affairs  
20 of a nontestamentary trust, including a revocable living trust while the  
21 settler is still living if the court determines that the settler cannot  
22 adequately protect his or her own interests or if the interested person  
23 shows that the settler is incompetent or susceptible to undue  
24 influence. Proceedings which may be maintained under this section  
25 are those concerning the administration and distribution of trusts,  
26 the declaration of rights and the determination of other matters  
27 involving trustees and beneficiaries of trusts, including petitions  
28 with respect to a nontestamentary trust for any appropriate relief  
provided with respect to a testamentary trust in NRS 153.031 and  
petitions for a ruling that property not formally titled in the name of a  
trust or its trustee constitutes trust property pursuant to NRS  
163.002.

2. A petition under this section or subsection 2 of NRS 30.040  
that relates to a trust may be filed in conjunction with a petition  
under NRS 164.010 or at any time after the court has assumed  
jurisdiction under that section.

1           3. If an interested person contests the validity of a revocable  
2 nontestamentary trust, the interested person is the plaintiff and the  
3 trustee is the defendant. The written grounds for contesting the  
4 validity of the trust constitutes a pleading and must conform with  
5 any rules applicable to pleadings in a civil action. This subsection  
6 applies whether the person contesting the validity of the trust is the  
petitioner or the objector and whether or not the opposition to the  
validity of the trust is asserted under this section or subsection 2 of  
NRS 30.040.

7           4. In a proceeding pursuant to subsection 3, the competency of  
8 the settlor to make the trust, the freedom of the settlor from duress,  
9 menace, fraud or undue influence at the time of execution of the will,  
10 the execution and attestation of the trust instrument, or any other  
question affecting the validity of the trust is a question of fact and  
must be tried by the court, subject to the provisions of subsection 5.

11           5. A court may consolidate the cases if there is a contest of a  
12 revocable nontestamentary trust and a contest relating to a will  
13 executed on the same date. If a jury is demanded pursuant to NRS  
14 137.020 for the contest of the will, the court may instruct the jury to  
render an advisory opinion with respect to an issue of fact pursuant  
to subsection 4 in the contest of the trust.

15           6. Upon the hearing, the court shall enter such order as it deems  
16 appropriate. The order is final and conclusive as to all matters determined  
17 and is binding in rem upon the trust estate and upon the interests of all  
18 beneficiaries, vested or contingent, except that appeal to the appellate  
19 court of competent jurisdiction pursuant to the rules fixed by the Supreme  
Court pursuant to Section 4 of Article 6 of the Nevada Constitution may be  
20 taken from the order within 30 days after notice of its entry by filing notice  
of appeal with the clerk of the district court. The appellant shall mail a copy  
21 of the notice to each person who has appeared of record. If the  
proceeding was brought pursuant to subsection 3, 4 or 5, the court must  
22 also award costs pursuant to chapter 18 of NRS.

23           7. Except as otherwise ordered by the court, a proceeding  
24 under this section does not result in continuing supervisory  
25 proceedings, and the administration of the trust must proceed  
expeditiously in a manner consistent with the terms of the trust,  
26 without judicial intervention or the order, approval or other action of  
any court, unless the jurisdiction of the court is invoked by an  
27 interested person or exercised as provided by other law.

1           8. As used in this section, "nontestamentary trust" has the meaning  
2 ascribed to it in NRS 163.0016.

3           In his petition, the Petitioner states "Judge Nathan Tod Young is bias and  
4 prejudiced against this Petitioner in case number 2021 PB00034. Judge Young  
5 violated this Petitioner's State and Federal Constitutional due-process and equal  
6 protection rights violated as well as the State Statutory right to appointed counsel. All  
7 Judge Young's orders are null and void since he is bias against this Petitioner and did  
8 not even issue a verbal or written order with a reason as to his alleged claim that this  
9 Petitioner is not an interested person."

10           Judge Nathan Tod Young is disqualified in this instant case and going forward,  
11 in any further future presiding in case number 2021 PB00034.

12  
13           **B. INSUFFICIENT NOTICE AND STATUTE OF LIMITATIONS**  
14

15           In *Continental Insurance Company v. Moseley*, 683 P. 2d 20 - Nev: Supreme  
16 Court 1984 the Nevada Supreme Court held that in this context due process  
17 required more than service by publication.

18           "the estate took no steps to notify appellant of the probate  
19 proceedings other than publishing notice pursuant to NRS 145.050.  
20 The issue presented by this appeal, therefore, is whether the estate's  
21 complete reliance on supplying notice by publication in these  
circumstances complied with the requirements of due process.

22           The guiding principle to be applied was expressed in *Mullane v. Central*  
23 *Hanover Tr. Co.*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950):

24           "An elementary and fundamental requirement of due process in any  
25 proceeding which is to be accorded finality is notice reasonably calculated,  
26 under all the circumstances, to apprise interested parties of the pendency  
of the action and afford them an opportunity to present their objections..."  
27 339 U.S. at 314, 70 S.Ct. at 657.

1 In Mennonite, the Supreme Court applied this principle and found that  
2 mere constructive notice afforded inadequate due process to a readily  
3 ascertainable mortgage holder. Given the facts of this case and the  
4 holdings in Mennonite and Mullane, we conclude that more than service  
5 by publication was required in order to afford due process to appellant. We  
6 therefore reverse the orders of the district courts and remand these  
7 matters for further proceedings consistent with this opinion."

8 The Petitioner was never provided notice pursuant to NRS 164.021 or  
9 NRS 164.025.

10 NRS 164.021 which states:

11 Notice by trustee to beneficiary concerning change of revocable trust to  
12 irrevocable trust; contents of notice; limitation of action to contest validity  
13 of trust.

14 1. When a revocable trust becomes irrevocable because of the  
15 death of a settlor or by the express terms of the trust, the trustee may,  
16 after the trust becomes irrevocable, **provide notice to any beneficiary of  
17 the irrevocable trust, any heir of the settlor or to any other interested  
18 person.**

19 2. The notice provided by the trustee must contain:

20 (a) The identity of the settlor of the trust and the date of execution of  
21 the trust instrument;

22 (b) The name, mailing address and telephone number of any trustee  
23 of the trust;

24 (c) Any provision of the trust instrument which pertains to the  
25 beneficiary or notice that the heir or interested person is not a beneficiary  
26 under the trust;

27 (d) Any information required to be included in the notice expressly  
28 provided by the trust instrument; and

(e) A statement set forth in a separate paragraph, in 12-point boldface  
type or an equivalent type which states: "You may not bring an action to  
contest the trust more than 120 days from the date this notice is provided  
to you."



1           3. The trustee shall cause notice pursuant to this section to be  
2 provided in accordance with the provisions of NRS 155.010.

3           4. No person upon whom notice is provided pursuant to this section  
4 may bring an action to contest the validity of the trust more than 120 days  
5 from the date the notice pursuant to this section is provided, regardless of  
6 whether a petition under NRS 164.010 is subsequently served upon the  
7 person after the notice is provided, unless the person proves that he or  
8 she was not provided notice in accordance with this section.

9           (Added to NRS by 2009, 794; A 2011, 1469; 2021, 988)

10          NRS 164.025 states the following:

11          "Notice of death of settlor; filing of claim against settlor, trust estate or  
12 settlor and trust estate; effect of failure to file claim; notice to Department  
13 of Health and Human Services; notice of rejected claim; effect of failure to  
14 bring suit after notice of rejected claim.

15           1. Regardless of the filing of a petition under NRS 164.010, the  
16 trustee of a nontestamentary trust may after the death of the settlor of the  
17 trust cause to be published a notice in the manner specified in paragraph  
18 (b) of subsection 1 of NRS 155.020 and mail a copy of the notice to  
19 known or readily ascertainable creditors.

20           2. The notice must be in substantially the following form:

21          Claim and/or issue preclusion do not apply since there has been no prior  
22 decision "on the merits" in a court with the proper personal jurisdiction and subject  
23 matter jurisdiction since the Petitioner was not named a party in case 2021-PB00034  
24 and as argued by the Respondent who argues Petitioner lacked standing and the court  
25 lacked jurisdiction.

26          The Petitioner has been diligent upon learning of the existence of the issues  
27 including the death of his brother Jeff Robben, his stepdads death of Thomas J.  
28 Harris, the death of his mother Olga Harris and the issues of the Thomas J. Harris  
Trust and the previous Thomas Joseph and Olga Harris Living Trust. The Petitioner is

1 also entitled to equitable tolling and NRCP Rule 60(b) and (d) "Extrinsic fraud can be  
2 used to toll the proceedings brought by the nieces of the de-ceased to contest his will"

3 Melvin v. Farmer, 561 P. 2d 455 - Nev: Supreme Court 1977 Cited by Michie's

4 Nevada Revised Statutes, Annotated AD Kowalsky - 1986

5 In Oak Grove Investors v. Bell & Gossett Co., 668 P. 2d 1075 - Nev: Supreme  
6 Court 1983:

7 "The court held that the statute of limitations did not begin to run  
8 until the plaintiff learned or in the exercise of reasonable diligence  
9 should have learned of the harm to his property caused by the  
10 existence of the defect. Id. at 1263-64. Accord Regents of the Univ. of  
11 Cal. v. Hartford Accident & Indemn. Co., 21 Cal.3d 624, 147 Cal. Rptr.  
12 486, 581 P.2d 197, 200 (1978); Malesev v. Bd. of County Road Comm'rs,  
13 51 Mich. App. 511, 215 N.W.2d 598 (1974). See Thompson v. Nebraska  
14 Mobile Homes Corp., 647 P.2d 334, 338 (Mont. 1982).

15 When the plaintiff knew or in the exercise of proper diligence should  
16 have known of the facts constituting the elements of his cause of  
17 action is a question of fact for the trier of fact. See Havas v.  
18 Engebregson, 97 Nev. 408, 411-12, 633 P.2d 682, 684 (1981); Millspaugh  
19 v. Millspaugh, 96 Nev. 446, 449, 611 P.2d 201, 202 (1980); Golden  
20 Nugget, Inc. v. Ham, 95 Nev. 45, 48-49, 589 P.2d 173, 175-76 (1979). A  
21 litigant has the right to a trial where the slightest doubt as to the  
22 facts exists. Nehls v. Leonard, 97 Nev. 325, 328, 630 P.2d 258, 260  
23 (1981). In evaluating the propriety of a grant of summary judgment, we will  
24 review the evidence in the light most favorable to the party against whom  
25 summary judgment was rendered. Id.; McDermond v. Siemens, 96 Nev.  
26 226, 607 P.2d 108 (1980).

27 Also See NRS 11.500 (allowing a party to recommence an action in a court  
28 having jurisdiction where a different court dismissed the same action for lack of  
subject matter jurisdiction).

See IN RE HOWELL, Nev: Court of Appeals 2020 citing Costello v. Casler, 254  
P. 3d 631 - Nev: Supreme Court 2011 at 441, 254 P.3d at 635 ("Modern rules of  
procedure are intended to allow the court to reach the merits, as opposed to  
disposition on technical niceties."); see also Droge v. AAAA Two Star Towing, Inc.,

1 136 Nev., Adv. Op. 33, 468 P.3d 862, 878 (Ct. App. 2020) (acknowledging that  
2 pleadings must be liberally construed and are not dependent upon the use of  
3 precise legal terminology).

4  
5 **C. CLAIM AND ISSUE PRECLUSION DOES NOT APPLY**  
6

7 Claim preclusion and/or issue preclusion do not apply since there was fraud  
8 upon the court, the judge was bias/prejudice against the Petitioner and there has been  
9 no prior decision "on the merits" in a court with the proper personal jurisdiction and  
10 subject matter jurisdiction since the **Petitioner was not named a party in case 2021-**  
11 **PB00034** says the Nevada Supreme Court Case No. 84948 stating "Review of the  
12 notice of appeal and documents before this court reveals a jurisdictional defect. NRAP  
13 3A(a) allows only an aggrieved party to appeal. **Generally, a party is a person who**  
14 **has been named as a party to the lawsuit and who has been served with**  
15 **process or appeared.** *Valley Bank of Nev. v. Ginsburg*, 110 Nev. 440, 447, 874 P.2d  
16 729, 734 (1994). **It does not appear that appellant was named as a party in the**  
17 **proceedings below**".

18 "A court generally may not rule on the merits of a case without first  
19 determining that it has jurisdiction over the category of claim in suit (subject-  
20 matter jurisdiction) and the parties (personal jurisdiction)" *Steel Co. v. Citizens*  
21 *for Better Environment*, 523 US 83 - Supreme Court 1998.

22 The Respondent's urge the court to consider NRCP 41(b) which states  
23 "Involuntary Dismissal: Effect. If the plaintiff fails to comply with these rules or a court  
24 order, a defendant may move to dismiss the action or any claim against the defendant.  
25 Unless the dismissal order or an applicable statute provides otherwise, a dismissal  
26 under Rule 41(b) and any dismissal not under this rule—**except one for lack of**  
27

1 jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an  
2 adjudication on the merits.”

3 NRCP 41(b) is inapposite since lacked personal jurisdiction of the Petitioner  
4 was not named a party in case 2021-PB00034 says the Nevada Supreme Court Case  
5 No. 84948.

6 The Respondent's never moved to dismiss Case No. 2021-PB00034  
7 pursuant to NRCP 41 and the case, action and/or claim was not “dismissed with  
8 prejudice”. See Respondent's EXHIBIT 6. “noting that the requirement for claim  
9 preclusion of a valid judgment on the merits does not include cases dismissed  
10 without prejudice” In BRANCH BANKING AND TRUST COMPANY v. CREDITOR  
11 GROUP, Dist. Court, D. Nevada 2015 citing Five Star Capital Corp. v. Ruby, 194 P.3d  
12 709, 713 n.27 (Nev. 2008) FN 1.

13 The order in Case No. 2021-PB00034 concerning the Petitioner is dictum. “A  
14 statement in a case is dictum when it is unnecessary to a determination of the  
15 questions involved.” City of Oakland v. Desert Outdoor Advertising, Inc., 267 P.3d 48,  
16 52 (Nev. 2011) (internal quotations omitted). This definition of dictum as a statement  
17 which is unnecessary to the determination of a case tracks with the fourth element for  
18 applying issue preclusion that an issue must have been “actually and necessarily  
19 litigated” to be precluded. Compare id. with Frei ex rel. Litem v. Goodsell, 305 P.3d  
20 70, 72 (Nev. 2013) (“Whether the issue was actually litigated turns on whether  
21 the common issue was necessary to the judgment in the earlier suit.”).

22 Accordingly, if the state court's factual findings are dicta, then they cannot be used to  
23 preclude BB&T from asserting its misrepresentation and conspiracy claims in Debtor's  
24 bankruptcy. See Goodsell, 305 P.3d at 72 (“Nevada law provides that only where  
25 ‘the common issue was necessary to the judgment in the earlier suit,’ will its  
26 relitigation be precluded.”) (quoting Univ. of Nevada v. Tarkanian, 879 P.2d 1180,  
27 1191 (Nev. 1994)); see also Mullins v. State, 294 S.W.3d 529, 535 (Tenn. 2009)

1 ("Determinations of an issue or issues that are not necessary to a judgment  
2 have the characteristics of dicta and will not be given preclusive effect.") (citing  
3 Restatement (Second) of Judgments § 27 cmt. h (1982)).

4 The Respondent failed to meet the three elements of claim preclusion  
5 discussed in Alcantara v. Wal-Mart Stores, Inc., 321 P. 3d 912 - Nev: Supreme Court  
6 2014 which states For claim preclusion to apply,

- 7 (1) the same parties or their privies must be involved in both cases,  
8  
9 (2) a valid final judgment must be entered in the first case, and  
10 (3) the subsequent action must be "based on the same claims or any part  
11 of them that were or could have been brought in the first case."

12 Ironically, the Respondent's argue the Alcantara v. Wal-Mart Stores, Inc case  
13 above and they assert (3) "the subsequent action must be "based on the same claims  
14 or any part of them that were or could have been brought in the first case." By doing  
15 so, the Respondents concede this Petitioner ... "could have been brought in the first  
16 case".

17 Also see Executive Mgmt. v. Ticor Title Ins. Co., 963 P. 2d 465 - Nev: Supreme  
18 Court 1998:

19 For *res judicata* to apply, three pertinent elements must be present:

- 20 (1) the issue decided in the prior litigation must be identical to the  
21 issue presented in the current action;  
22 (2) the initial ruling must have been on the merits and have become  
23 final; and  
24 (3) the party against whom the judgment is asserted must have been  
25 a party or in privity with a party to the prior litigation.

26 "Generally, the doctrine of *res judicata* precludes parties ... from  
27 relitigating a cause of action or an issue which has been finally determined  
28 by a court..." University of Nevada v. Tarkanian, 110 Nev. 581, 598, 879

1 P.2d 1180, 1191 (1994). We have recognized that "there are two different  
2 species of res judicata ... issue preclusion and claim preclusion." Id. at  
3 598, 879 P.2d at 1191. Although often used to describe both "species," in  
4 its strictest sense, the term "res judicata" refers only to claim preclusion.  
Pomeroy v. Waitkus, 183 Colo. 344, 517 P.2d 396, 399 (1974).

5 Pursuant to the rule of claim preclusion, "[a] valid and final judgment on a  
6 claim precludes a second action on that claim or any part of it." Tarkanian,  
7 110 Nev. at 599, 879 P.2d at 1191. "Claim preclusion applies when a  
8 second suit is brought against the same party on the same claim." In re  
9 Medomak Canning, 111 B.R. 371, 373 n. 1 (Bankr. D.Me.1990). If, as in  
10 the instant case, "the prior judgment is in favor of defendant, plaintiff is  
11 'barred' from bringing another claim based on the same cause of action."  
Id. We have further stated that "[t]he modern view is that claim preclusion  
embraces all grounds of recovery that were asserted in a suit, as well as  
those that could have been asserted, and thus has a broader reach than  
[issue preclusion]." Tarkanian, 110 Nev. at 600, 879 P.2d at 1191.

12 "The general rule of issue preclusion is that if an issue of fact or law was  
13 actually litigated and determined by a valid and final judgment, the  
14 determination is conclusive in a subsequent action between the parties."  
15 Id. at 599, 879 P.2d at 1191 (quoting Charles A. Wright, Law of Federal  
16 Courts § 100A, at 682 (4th ed.1983)). "The doctrine provides that any  
17 issue that was actually and necessarily litigated in [case I] will be estopped  
from being relitigated in [case II]." Id. at 599, 879 P.2d at 1191. Unlike  
claim preclusion, issue preclusion "does not apply to matters which could  
have been litigated but were not." [5] Pomeroy, 517 P.2d at 399.

18 Adopting the language from Justice Traynor's opinion in Bernhard v. Bank  
19 of America National Trust & Savings Ass'n, 19 Cal.2d 807, 122 P.2d 892  
20 (1942), we have stated:

21 **For issue res judicata to apply, three pertinent elements must be  
22 present:**

23 **(1) the issue decided in the prior litigation must be identical to the  
issue presented in the current action;**

24 **(2) the initial ruling must have been on the merits and have become  
25 final; and**

26 **(3) the party against whom the judgment is asserted must have been  
27 a party or in privity with a party to the prior litigation.**

1  
2 **D. PETITIONER IS ENTITLED TO RELIEF**

3 The Petitioner doesn't even need to prove the existence or contents of the  
4 former Thomas Joseph and Olga Harris Living Trust to render the current Thomas J.  
5 Harris Trust null & void based on a *prima facie* case of presumed undue influence  
6 based on the undisputed facts that Jeff D. Robben, the brother of the Petitioner, was  
7 1: The caretaker of Thomas J. Harris; 2: The Financial advisor for Thomas J. Harris; 3:  
8 Helped create the current Thomas J. Harris trust; 4. Had "undue influence" and  
9 "presumed undue influence" of Thomas J. Harris; 5: Jeff D. Robben influenced  
10 Thomas J. Harris to disinherit based on the animus and vexation of Jeff D. Robben.

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

21 If it turns out the Thomas Joseph and Olga Harris Living Trust is lost or  
22 destroyed, the Petitioner can produce two witnesses, Todd C. Robben and Stephen J.  
23 Robben to attest to the existence and contents of the Thomas Joseph and Olga Harris  
24 Living Trust. A third witness may include Abigail G. Stephenson, Esq since the  
25 Thomas Joseph and Olga Harris Living Trust was addressed by Abigail G.  
26 Stephenson, Esq. dated March 6, 2020 from Blanchard, Krasner & French  
27 acknowledging the existence of the August 26, 1998 trust known as the Thomas  
28

1 Joseph and Olga Harris Living Trust. Please see EXHIBIT A in the initial petition filing  
2 of this instant case.

3 Further research will determine if a copy of the Thomas Joseph and Olga  
4 Harris Living Trust exists. If not, Petitioner can produce two witnesses, Todd C.  
5 Robben and Stephen J. Robben to attest to the existence and contents of the Thomas  
6 Joseph and Olga Harris Living Trust pursuant to [1] NRS 136.240(3) which provides:  
7 No will shall be allowed to be proved as a lost or destroyed will unless the same shall  
8 be proved to have been in existence at the death of the person whose will it is claimed  
9 to be, or be shown to have been fraudulently destroyed in the lifetime of such person,  
10 nor unless its provisions shall be clearly and distinctly proved by at least two credible  
11 witnesses.

12 Todd C. Robben and Stephen J. Robben could have attested under oath that  
13 Olga Harris, the mother of Petitioner Todd C. Robben spoke of the will/trust several  
14 times, including Petitioner's wedding day. The beneficiaries included Thomas J.  
15 Harris's son Todd Harris, note Thomas A. Harris was *not* a beneficiary and  
16 disinherited; Olga Harris's sons Jeff D. Robben and Todd C. Robben. Each was to  
17 receive one third.

18 If the court decides otherwise, the case goes to probate with only two  
19 remaining blood heirs, Thomas. A. Harris and Petitioner, Todd C. Robben.

20 This Petitioner has stated and will state again in simple terms that he desires a  
21 situation either by settlement, or court order, to remedy the matter to include the  
22 Petitioner into to trust with a reasonable percentage and to include a full accounting of  
23 any and all assets, money, expenses, etc. A complete transparent paper trail of the  
24 money trail. Where are the contents of the missing safe deposit box addressed as  
25 "Exhibit "A" to Declaration of Trust by Thomas J. Harris". See EXHIBIT B in the initial  
26 petition filing of this instant case.  
27



1       **1. Safe Deposit Box:** All of Trustor's right, title and interest in and to all  
2 contents in the safe deposit box located at Wells Fargo Bank in Carson  
3 City, NV, branch office, including but not limited to cash, bonds, stock,  
4 securities, and tangible property therein.

5       **2. Bank Accounts:** All cash, bonds, stock, securities and other property  
6 held with Wells Fargo Bank, including but not limited to account  
7 #####1233.

8       **3. All Other Personal Property:** All of Trustor's right, title, and interest  
9 subject to all liabilities attached thereto in all automobiles, boats, airplanes,  
10 vehicles, trailers, silverware, chinaware, wine, books, pictures, paintings,  
11 works of art, household furniture and furnishings, clothing, jewelry, pets,  
12 assets in digital form for which Trustor is the owner or author, including  
13 without limitation, lists of passwords, user account information, social  
14 media sites, blogs, e-books, and other Web-hoster materials, all digital  
15 albums and videos, websites on which Trustor conducts business  
16 transactions, and all other personal property (together with any insurance  
17 on such property) now owned or acquired later during Trustor's lifetime.

18       It is undisputed that the house in Minden, Nevada on Pebble Beach Court was  
19 transferred into the name of Jeff D. Robben and/or Jeff D. Robben Trust or sub trust.  
20 Said house of Thomas J. Harris was worth approximately \$450,000.00 dollars and the  
21 money should be put back into the Thomas J. Harris Trust to be distributed to the  
22 beneficiaries. There are questions as to another home on April Drive in South Lake  
23 Tahoe worth approximately \$1, 500,000.00 dollars that should have been in the  
24 Thomas J. Harris trust.

25       This Petitioner believes the estate and trust value of the Thomas J. Harris Trust  
26 is grossly undervalued because of the fraud and theft that has occurred to transfer  
27 assets into other accounts to defraud the Thomas J. Harris beneficiaries of millions of  
28 dollars when just the two homes are added back in addition to the missing contents on  
the safe deposit box. Furthermore, Petitioner must see all insurance (death and life

1 insurance payouts), Pension and 401K information in addition to at least the least  
2 twenty years of IRS and state tax returns.

3  
4 **E. THE PETITIONER IS ENTITLED TO COUNSEL.**

5  
6 This Petitioner, a "non resident" of Douglas County Nevada, is entitled to  
7 counsel as requested in his petition pursuant to NRS 136.200, this court has  
8 jurisdiction, and the Respondent has conceded by not arguing this point. **"A point not  
9 urged in the trial court is deemed to have been waived and will not be  
10 considered on appeal."** See Old Aztec Mine, Inc. v. Brown, 623 P. 2d 981 - Nev:  
11 *Supreme Court 1981.*

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

17 NRS 136.200 Appointment of attorney to represent minors, unborn  
18 members of interested class or **nonresidents**; retention of other counsel.

19  
20 1. If a will is offered for probate and it appears there are minors or  
21 unborn members of a class who are interested, **or if it appears there are  
22 other interested persons who reside out of the county and are  
23 unrepresented, the court may, whether there is a contest or not,  
24 appoint an attorney for them.**

24 The State Bar of Nevada has a pro bono program for indigent people<sup>5</sup> and the  
25 Nevada Supreme Court and State Legislature can provide this court with guidance as

26  
27 <sup>5</sup> <https://nvbar.org/for-the-public/pro-bono-for-the-public/>

1 to funding any non pro bono appointed counsel. It was not the responsibility of this  
2 Plaintiff to inform the court of payment options.

3 The Revised Nevada Code Of Judicial Conduct Rule 3.7. comments state:

4  
5 **[5] In addition to appointing lawyers to serve as counsel for indigent**  
6 **parties** in individual cases, a judge may promote broader access to justice  
7 by encouraging lawyers to participate in pro bono public legal services, if  
in doing so the judge does not employ coercion, or abuse the prestige of  
judicial office.

8  
9 **III. CONCLUSION**

10  
11 Petitioner still requests counsel, yet even without a lawyer, this Petitioner has  
12 provided the facts, evidence and law to support the Thomas J. Trust to be declared  
13 null & void based on the showing of lack of jurisdiction, fraud, surprise, error and this  
14 courts having jurisdiction to decide these matters.

15 Petitioner is not barred by any statute of limitations or issue/claim preclusion.  
16 Petitioner was also timely despite not being provided proper notice by the Respondent  
17 and Petitioner is entitled to any tolling as argued above.

18 The issues of presumed undue influence and undue influence has been  
19 conceded by the Respondent who did not attack the merits of presumed undue  
20 influence and undue influence in the instant Motion to Dismiss or the Respondent's  
21 Motion for Summary Judgment.

22 The crux of the case is identical to Barefoot v. Jennings, *supra* and the Nevada  
23 Courts must rectify this public concern just like California did or else future cases of  
24 undue influence and disinheritance will suffer a miscarriage of justice.

25 NRS 132.050 states "Beneficiary" defined. "Beneficiary," as it relates to: 1.  
26 **"A trust, includes a person who has a *present or future interest*, vested or**  
27 ***contingent*, and the owner of an interest by assignment or other transfer".**

1 Compare NRS 132.050 with the California equivalent Section 17200, subdivision  
2 (b)(3) contemplates the court's determination of "the validity of a trust provision.  
3 "Plainly, the term "trust provision" incorporates any amendments to a trust. Section 24,  
4 subdivision (c) defines a "beneficiary" for trust purposes, as "a person who has  
5 any present or future interest, vested or contingent." Assuming plaintiff's  
6 allegations are true, *she has a present or future interest*, making her a beneficiary  
7 permitted to petition the probate court under section 17200." See Barefoot v.  
8 Jennings, *supra*.

12 Respectfully signed under penalty of perjury,

14 

15 /s/ Todd Robben

17 October 20, 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 October 20, 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 20th day of October, 2022

Submitted By: /s/ Stephen James Robben

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

**RECEIVED**

OCT 21 2022

Douglas County  
District Court Clerk

**FILED**

2022 OCT 21 PM 1:31

BOBBIE R. WILLIAMS  
CLERK

BY 

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

TODD ROB BEN,  
Petitioner

**CASE NO.: 2022-PB-00119**

**Vs.**

**PETITIONER TODD ROB BEN'S  
VERIFIED OBJECTION TO  
RESPONDENT'S MOTION FOR  
SUMMARY JUDGMENT**

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

Related cases:

Ninth District Court Case No.:  
2021-PB00034

Nevada Supreme Court Case No.:  
84948

Petitioner, Todd Robben, timely objects to the Respondent's Motion for  
Summary Judgment based on the following memorandum of points and authorities.

**MEMORANDUM OF POINTS & AUTHORITIES**

**I. INTRODUCTION**

The Petitioner re-asserts his statutory right to counsel pursuant to Nevada  
Revised Statute ("NRS") 136.200 in order secure his property rights and have his

1 case determined on the merits pursuant to the U.S. and State of Nevada  
2 Constitutional due-process and equal-protection of the law<sup>1</sup>. The Respondent  
3 concedes<sup>2</sup> to this argument by failing to address it.

4 The court cannot grant the Respondent's Motion for Summary Judgment on the  
5 grounds there are disputed material facts to be decided by a jury including the  
6 existence of the former trust called the Olga and Thomas J. Harris Living Trust.

7 The Petitioner has verified this pleading signed "under penalty of perjury" and  
8 this pleading acts as Petitioner affidavit of truth in support of his petition. This verified  
9 pleading, the Petitioner having been duly sworn, and signed "under penalty of perjury"  
10 is also "material evidence".

11 The material facts along with the law and controlling case law mandate the  
12 denial of the Respondent's Motion for Summary Judgment on the grounds of disputed  
13 material facts to be decided by a jury. Also, the Petitioner has standing is named in  
14 this instant case as a party to the action, and the Petitioner is an "interested person"  
15 and even a "beneficiary" as a matter of both material facts and law.

16 This Petitioner can prove the existence of the previous trust called the Olga and  
17 Thomas J. Harris Living Trust to which would be the operative trust and any "intestate  
18 succession" is moot. Under Nevada law, the Petitioner would inherit the entire Olga  
19 and Thomas J. Harris Living Trust & Estate, and what is left of the current Thomas J.  
20 Harris Trust and Estate on the grounds the other beneficiaries are deceased.

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23  
24 <sup>1</sup> Petitioner affirmatively asserts he is a "class of one" and "indigent" for the purpose of  
25 class of person classification pursuant to U.S. Fourteenth Amendment equal-protection  
clause. Village of Willowbrook v. Olech :: 528 U.S. 562 (2000).

26 <sup>2</sup> "A point not urged in the trial court is deemed to have been waived and will not  
27 be considered on appeal." See Old Aztec Mine, Inc. v. Brown, 623 P. 2d 981 - Nev:  
28 Supreme Court 1981

1 This Petitioner has presented a remedy to the Respondent's that would keep  
2 the current Thomas J. Harris Living Trust and all current beneficiaries active without  
3 invalidating the trust. Said offer is conditional on including this Petitioner as a  
4 beneficiary receiving at least what Jeff D. Robben and Thomas A. Harris (Thomas J.  
5 Harris son) inherited in total the Petitioner is entitled to the higher amount. With Jeff D.  
6 Robben have passed away in 2020, there is no loss to anyone. The stolen assets  
7 including the house in Minden, NV on Pebble Beach Ct., all other real property, real  
8 estate and the entire contents and assets/money stolen from the safe deposit box  
9 listed in the Thomas J. Harris will and trust. There's more than enough money to pay  
10 this Petitioner and everyone else.

11 Incidentally, the simple fact this case number 2022-PB-00119 has a "PB"  
12 designation indicates this case is, as a matter of fact, in the "probate court" and any  
13 doubts are argued below and on the Petitioner's Objections to the Respond's Motion  
14 to Dismiss.

## 15 II. ARGUMENT

16  
17 The Petitioner also asserts his U.S. Constitutional Seventh Amendment<sup>3</sup>  
18 right to a jury trial to determine all disputed material facts in addition to arguments  
19 made below.  
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25  
26 <sup>3</sup> U.S. 7<sup>th</sup> Amendment states: "In suits at common law, where the value in controversy shall  
27 exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury,  
28 shall be otherwise reexamined in any court of the United States, than according to the rules of  
the common law."



1                   **A.     DISPUTED MATERIAL FACTS MAKE SUMMARY JUDGMENT**  
2   **INAPPROPRIATE**

3                   In SATICOY BAY LLC SERIES 5733 v. MARINES ATLANTIC PORTFOLIO,  
4 LLC, Nev: Supreme Court 2021 "A factual dispute is genuine when the evidence is  
5 such that a rational trier of fact could return a verdict for the nonmoving party."  
6 Id. (quoting Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005)).  
7 "All evidence, and any reasonable inferences drawn from it, must be viewed in a  
8 light most favorable to the nonmoving party." Id. at 135-36, 460 P.3d at 463  
9 (internal quotation marks omitted).

10                  The Petitioner included admissible evidence in his exhibits to his petition in this  
11 instant case. There can be no doubt as to the material fact that there was a prior trust  
12 called the Olga and Thomas J. Harris Trust.

13                  The Petitioner doesn't even need to prove the existence or contents of the  
14 former Thomas Joseph and Olga Harris Living Trust to render the current Thomas J.  
15 Harris Trust null & void based on a *prima facie* case of presumed undue influence  
16 based on the undisputed facts that Jeff D. Robben, the brother of the Petitioner, was  
17 1: The caretaker of Thomas J. Harris; 2: The Financial advisor for Thomas J. Harris; 3:  
18 Helped create the current Thomas J. Harris trust; 4. Had "undue influence" and  
19 "presumed undue influence" of Thomas J. Harris; 5: Jeff D. Robben influenced  
20 Thomas J. Harris to disinherit based on the animus and vexation of Jeff D. Robben.

21                  "A rebuttable presumption of undue influence is raised if the testator and the  
22 beneficiary shared a fiduciary relationship, but undue influence may also be proved  
23 without raising this presumption." In re Estate of Bethurem, 313 P. 3d 237, 241 (2013),  
24 at 329. "The essence of a fiduciary or confidential relationship is that the parties do not  
25 deal on equal terms, since the person in whom trust and confidence is reposed and  
26 who accepts that trust and confidence is in a superior position to exert unique  
27 influence over the dependent party." Hoopes v. Hammargren, 725 P. 2d 238, 242  
28

1 (1986) quoting Barbara A. v. John G., 145 Cal.App.3d 369, 193 Cal.Rptr. 422, 432  
2 (1983). "Once raised, a beneficiary may rebut such a presumption by clear and  
3 convincing evidence." Betherum, at 241.

4 If it turns out the Thomas Joseph and Olga Harris Living Trust is lost or  
5 destroyed, the Petitioner can produce two witnesses, Todd C. Robben and Stephen J.  
6 Robben to attest to the existence and contents of the Thomas Joseph and Olga Harris  
7 Living Trust. A third witness may include Abigail G. Stephenson, Esq since the  
8 Thomas Joseph and Olga Harris Living Trust was addressed by Abigail G.  
9 Stephenson, Esq. dated March 6, 2020 from Blanchard, Krasner & French  
10 acknowledging the existence of the August 26, 1998 trust known as the Thomas  
11 Joseph and Olga Harris Living Trust. Please see EXHIBIT A in the initial petition filing  
12 of this instant case.

13 Further research will determine if a copy of the Thomas Joseph and Olga  
14 Harris Living Trust exists. If not, Petitioner can produce two witnesses, Todd C.  
15 Robben and Stephen J. Robben to attest to the existence and contents of the Thomas  
16 Joseph and Olga Harris Living Trust pursuant to [1] NRS 136.240(3) which provides:  
17 No will shall be allowed to be proved as a lost or destroyed will unless the same shall  
18 be proved to have been in existence at the death of the person whose will it is claimed  
19 to be, or be shown to have been fraudulently destroyed in the lifetime of such person,  
20 nor unless its provisions shall be clearly and distinctly proved by at least two credible  
21 witnesses.

22 Todd C. Robben and Stephen J. Robben could have attested under oath that  
23 Olga Harris, the mother of Petitioner Todd C. Robben spoke of the will/trust several  
24 times, including Petitioner's wedding day. The beneficiaries included Thomas J.  
25 Harris's son Todd Harris, note Thomas A. Harris was *not* a beneficiary and  
26 disinherited; Olga Harris's sons Jeff D. Robben and Todd C. Robben. Each was to  
27 receive one third.  
28

1 If the court decides otherwise, the case goes to probate with only two  
2 remaining blood hairs, Thomas. A. Harris and Petitioner, Todd C. Robben.

3 This Petitioner has stated and will state again in simple terms that he desires a  
4 situation either by settlement, or court order, to remedy the matter to include the  
5 Petitioner into to trust with a reasonable percentage and to include a full accounting of  
6 any and all assets, money, expenses, etc. A complete transparent paper trail of the  
7 money trail. Where are the contents of the missing safe deposit box addressed as  
8 "Exhibit "A" to Declaration of Trust by Thomas J. Harris". See EXHIBIT B in the initial  
9 petition filing of this instant case.

10  
11 **1. Safe Deposit Box:** All of Trustor's right, title and interest in and to all  
12 contents in the safe deposit box located at Wells Fargo Bank in Carson  
13 City, NV, branch office, including but not limited to cash, bonds, stock,  
securities, and tangible property therein.

14 **2. Bank Accounts:** All cash, bonds, stock, securities and other property  
15 held with Wells Fargo Bank, including but not limited to account  
16 #####1233.

17 **3. All Other Personal Property:** All of Trustor's right, title, and interest  
18 subject to all liabilities attached thereto in all automobiles, boats, airplanes,  
19 vehicles, trailers, silverware, chinaware, wine, books, pictures, paintings,  
20 works of art, household furniture and furnishings, clothing, jewelry, pets,  
21 assets in digital form for which Trustor is the owner or author, including  
22 without limitation, lists of passwords, user account information, social  
23 media sites, blogs, e-books, and other Web-hoster materials, all digital  
24 albums and videos, websites on which Trustor conducts business  
25 transactions, and all other personal property (together with any insurance  
26 on such property) now owned or acquired later during Trustor's lifetime.

27 It is undisputed that the house in Minden, Nevada on Pebble Beach Court was  
28 transferred into the name of Jeff D. Robben and/or Jeff D. Robben Trust or sub trust.  
Said house of Thomas J. Harris was worth approximately \$450,000.00 dollars and the

1 money should be put back into the Thomas J. Harris Trust to be distributed to the  
2 beneficiaries. There are questions as to another home on April Drive in South Lake  
3 Tahoe worth approximately \$1, 500,000.00 dollars that should have been in the  
4 Thomas J. Harris trust.

5 This Petitioner believes the estate and trust value of the Thomas J. Harris Trust  
6 is grossly undervalued because of the fraud and theft that has occurred to transfer  
7 assets into other accounts to defraud the Thomas J. Harris beneficiaries of millions of  
8 dollars when just the two homes are added back in addition to the missing contents on  
9 the safe deposit box. Furthermore, Petitioner must see all insurance (death and life  
10 insurance payouts), Pension and 401K information in addition to at least the least  
11 twenty years of IRS and state tax returns.

12 This Petitioner attests the following document is authentic and this pleading is  
13 verified i.e. "signed under penalty of perjury".  
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**BLANCHARD, KRASNER & FRENCH**

A PROFESSIONAL LAW CORPORATION

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5470 KIETZE LANE, SUITE 200  
RENO, NEVADA 89511

ALAN W. FRENCH  
(Deceased)

ADMITTED IN:  
California and Nevada

March 6, 2020

**VIA U.S. PRIORITY MAIL/DELIVERY CONFIRMATION REQUESTED**

Mr. Thomas Anthony Harris  
P.O. Box 364  
Santa Cruz, CA 95061

Re: Estate and Trust of Thomas J. Harris  
Our File No.: 8269-020

Dear Mr. Harris:

Please accept our condolences on the death of Thomas J. Harris ("Thomas"). As you may know, Thomas' wife Olga Harris predeceased him on March 23, 2019. As part of Thomas' and Olga's estate plan, they created a trust known as the Thomas Joseph and Olga Harris Living Trust dated August 26, 1998 (the "Thomas and Olga Harris Trust"). After Olga's death, Thomas terminated the Thomas and Olga Harris Trust, and established a new living trust called the Thomas J. Harris Trust on June 12, 2019. All of the remaining property of the Thomas and Olga Harris Trust was transferred to the Thomas J. Harris Trust (hereafter, the "Trust") on June 12, 2019. A copy of the Trust which includes all of the terms of the Trust as they pertain to you is enclosed for your information. Also enclosed is a copy of Thomas' Last Will and Testament naming the Trust as the sole beneficiary of his Estate, and a Trustee's Notice pursuant to Nevada Revised Statutes § 164.021. The purpose of this letter is to make you aware of the existence of the Trust, the specific gift intended for you from the Trust, and to explain briefly the process of trust administration.

Under NRS Section 164.021, a Trustee may serve a notification to beneficiaries, heirs, or other interested persons when a trust becomes irrevocable by reason of the death of the person who created the trust (the "settlor" or "trustor"). You are receiving the enclosed notice because Thomas, either personally or in honor of Olga (or both), named you as a beneficiary of the Trust.

Pursuant to Paragraph A-4(a) of the Trust, the specific gift intended for you from the Trust is seventeen and one-half percent (17.5%) of the remaining Trust property after paying all of Thomas' just debts, medical expenses, taxes, and other costs of administration of his Estate and the Trust. *Please bear in mind distribution of this gift is subject to availability of funds after all such expenses have been ascertained and satisfied.*

Jeff D. Robben ("Jeff") is the successor trustee of the Trust. As Trustee, Jeff has authority to manage the Trust, make investment decisions, distribute property, and otherwise deal with the Trust's property in accordance with the terms of the Trust. The Trustee is also responsible for keeping financial records and filing tax returns for the Trust. Jeff is working diligently to satisfy the terms of the Trust. These efforts generally take several months or even years before a trust is

1 in a position to distribute property to its beneficiaries. Please be patient as this work is being done.  
2 *To assist the Trustee in fulfilling his duties, please complete the enclosed IRS Form W-9 and*  
3 *return it to the undersigned in the postage-paid envelope provided.*

4 The Trust's property consists mainly of the Trust's beneficial interest in an annuity. At this  
5 time, I am unable to provide you an estimate of the funds you may receive from the residual Trust  
6 estate. Paragraph B-42 of Schedule B of the Trust provides, "The Trustee shall account to the  
7 beneficiaries periodically and, if requested by a beneficiary, at least annually." Please take note  
8 the Trustee intends to provide the first accounting to the beneficiaries in January 2021, for the  
9 period commencing with Thomas' date of death on December 30, 2019 (the date upon which Jeff  
10 became the Trustee), and ending December 30, 2020. The Trustee would like you to be aware that  
11 each beneficiary of the Trust will receive a Schedule K-1 commencing with tax year 2020, which  
12 will be prepared by the Trust's CPA and mailed directly to the beneficiaries, and which you will,  
13 in turn, need to provide to your own tax professionals for your own income tax returns.

14 The law firm of Blanchard, Krasner & French, APC, represents the Trustee and not the  
15 beneficiaries. Thus, we cannot give you legal advice concerning your interest as a beneficiary. If  
16 you have any questions concerning your rights and interests with respect to the Trust, please  
17 consult your own attorney.

18 Sincerely,

19 

20 Abigail G. Stephenson, Esq.  
21 for Blanchard, Krasner & French

22 AGS:mew  
23 Enclosures  
24 cc: Jeff D. Robben, Trustee

25 **B. PETITIONER HAS ADMISSIBLE EVIDENCE**

26 The Petitioner asserted in his verified petition that his evidence, including his  
27 sworn statements, are admissible evidence and not subject to any hearsay limitations.  
28 The Respondent has conceded to this fact and matter of law. The Respondent's do  
not even argue the issue in their Motion for Summary Judgment. **"A point not urged  
in the trial court is deemed to have been waived and will not be considered on  
appeal."** See Old Aztec Mine, Inc. v. Brown, 623 P. 2d 981 - Nev: Supreme Court  
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1 date of the original pleading, thus avoiding the statute of limitation violation under NRS  
2 137.080. We agree."

3 The Respondent confuses the word "court" with the word "case". See Ex Parte  
4 Gardner, 22 Nev. 280, 284 (Nev. 1895) **"The judge alone does not constitute a**  
5 **"court."** Burrill defines the term thus: **"A 'court' may be more particularly**  
6 **described as an organized body with defined powers, meeting at certain times**  
7 **and places for the hearing and decision of causes and other matters brought**  
8 **before it, and aided in this, its proper business, by its proper officers; viz.:**  
9 **Attorneys and counsel to present and manage the business, clerks to record**  
10 **and attest its acts and decisions, and ministerial officers to execute its**  
11 **commands and secure due order in its proceedings."** The Petitioner has filed in  
12 the proper venue and the proper court jurisdiction, i.e. The Ninth District Court in and  
13 for Douglas County, Nevada.

14 **The Respondents conceded to this court's subject matter jurisdiction by**  
15 **arguing in their Motion to Dismiss, page 10 line 3 to 11, and page 12 line 10 to 17**  
16 that this court is the same court is the same court as the probate court by stating  
17 "furthermore, even under the Supreme Court's decision interpreting the "adjudication  
18 upon the merits" phrase, preclusion would apply in this case, as the Supreme Court  
19 ruled that the phrase is meant to preclude the refiling of the same claim in the *same*  
20 *court in which the dismissal occurred."* Five Star Capital Corp. v. Ruby, 194 P. 3d 709 -  
21 *Nev: Supreme Court 2008* citing Semtek Int'l Inc. v. Lockheed Martin Corp., 531 US 497  
22 - *Supreme Court 2001*.

23 Ninth DCR Rule 2. states (a) The Ninth Judicial District consists of two (2)  
24 departments. (b) **The Judges of this court may interchange with each other.** In  
25 **the event of the absence or the incapacity of a Judge, or when agreed by the**  
26 **Judges, either Judge may act in the department of the other without specific**  
27



1 assignment of the actions, unless the acting Judge has been disqualified from,  
2 stricken from, or recused himself or herself from the matter.

3 The orders in case number 2021-PB00034 are void since the Respondent  
4 and the Supreme Court in Case No. 84948 (see above) claim the district court  
5 lacked jurisdiction and in case number 2021-PB00034 and since the Petitioner  
6 was also not a party, and/or an interested person in and in case number 2021-  
7 PB00034, this unique collateral attack complies with the Supreme Court decision in  
8 State v. Sustacha, 826 P. 2d 959 - Nev: Supreme Court 1992 which states "In Smith  
9 v. District Court, 63 Nev. 249, 256-57, 167 P.2d 648, 651 (1946), we explained that a  
10 judgment is generally not subject to collateral attack "if the court which  
11 rendered it had jurisdiction of the subject matter and of the parties." Thus, only a  
12 void judgment is subject to collateral attack; a judgment is void only if the issuing  
13 court lacked personal jurisdiction or subject matter jurisdiction."

14 Judge Nathan Tod Young has been disqualified in this instant case and in case  
15 number 2021-PB00034 his orders are null and void in since he was bias against the  
16 Petitioner and there was an appearance of bias in violation of the U.S. fourteenth  
17 Amendment due-process in case number 2021-PB00034 as there is now in this  
18 instant case.

19 "The Due Process Clause of the Fourteenth Amendment establishes a  
20 constitutional floor, not a uniform standard," for a judicial bias claim. Bracy v. Gramley,  
21 520 U.S. 899, 904, 117 S.Ct. 1793, 138 L.Ed.2d 97 (1997). While most claims of judicial  
22 bias are resolved "by common law, statute, or the professional standards of the bench  
23 and bar," the "floor established by the Due Process Clause clearly requires a 'fair trial in  
24 a fair tribunal' before a judge with no actual bias against the defendant or interest in the  
25 outcome of his particular case." *Id.* at 904-05, 117 S.Ct. 1793 (quoting Withrow v.  
26 Larkin, 421 U.S. 35, 46, 95 S.Ct. 1456, 43 L.Ed.2d 712 (1975)). The Constitution  
27 requires recusal where "the probability of actual bias on the part of the judge or decision  
28

1 maker is too high to be constitutionally tolerable." Withrow, 421 U.S. at 47, 95 S.Ct.  
2 1456. Our inquiry is objective. Caperton v. A.T. Massey Coal Co., 556 U.S. 868, 881,  
3 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009). We do not ask whether [the judge ] actually  
4 harbored subjective bias . Id. Rather, we ask whether the average judge in her position  
5 was likely to be neutral or whether there existed an unconstitutional potential for bias .  
6 Id. "Every procedure which would offer a possible temptation to the average . . . judge to  
7 forget the burden of proof required to convict the defendant, or which might lead him not  
8 to hold the balance nice, clear and true between the State and the accused, denies the  
9 [accused] due process of law." Tumey v. Ohio, 273 U.S. 510, 532, 47 S.Ct. 437, 71  
10 L.Ed. 749 (1927). In the criminal context, Edwards v. Balisok, 520 US 641 - Supreme  
11 Court 1997, states "A criminal defendant tried by a partial judge is entitled to have  
12 his conviction set aside, no matter how strong the evidence against him. Tumey v.  
13 Ohio, 273 U. S. 510, 535 (1927); Arizona v. Fulminante, 499 U. S. 279, 308 (1991).

14 The Petitioner requires counsel to articulate this profound case that raises one  
15 or more issues that involve substantial precedential, constitutional, and public policy  
16 questions identical to the on point case Barefoot v. Jennings, 456 P. 3d 447 - 2020 -  
17 Cal: Supreme Court , which was decided by the California Supreme Court in January  
18 2020, the Court held, "**we conclude that claims that trust provisions or**  
19 **amendments are the product of incompetence, undue influence, or fraud, as is**  
20 **alleged here, should be decided by the probate court, if the invalidity of those**  
21 **provisions or amendments would render the challenger a beneficiary of the**  
22 **trust. [Citation omitted.] So when a plaintiff claims to be a rightful beneficiary of**  
23 **a trust if challenged amendments are deemed invalid, she has standing to**  
24 **petition the probate court under section 17200."** The California Supreme Court  
25 recognized the inequity that could result if a beneficiary was prohibited from  
26 challenging a trust based on an invalid trust amendment obtained through fraud,  
27 undue influence or lack of capacity that disinherited an interested beneficiary.

1 Nevada routinely looks to California precedent for guidance as it should  
2 with Barefoot v. Jennings, supra to determine the definition of an "interested  
3 person" when the inequity that could result if a beneficiary was prohibited from  
4 challenging a trust based on an invalid trust amendment obtained through  
5 fraud, undue influence or lack of capacity that disinherited an interested  
6 beneficiary.

7 See LOCAL GOVT. EMPLOYEE-MANAGEMENT v. ESEA, 429 P. 3d 658 -  
8 Nev: Supreme Court 2018 "Because no Nevada precedent is instructive on this  
9 issue, we look to California precedent for guidance." See Shapiro v. Welt, 133  
10 Nev. 35, 39, 389 P.3d 262, 268 (2017) (observing that because "California's and  
11 Nevada's anti-SLAPP statutes are similar in purpose and language, we look to  
12 California law for guidance" (internal quotation marks and citations omitted)).

13 See Coker v. Sassone, 432 P. 3d 746 - Nev: Supreme Court 2019 "This court  
14 has repeatedly recognized the similarities between California's and Nevada's anti-  
15 SLAPP statutes, routinely looking to California courts for guidance in this area.[3] See,  
16 e.g., Patin v. Lee, 134 Nev. \_\_\_, 429 P.3d 1248, 1250-51 (2018); Shapiro, 133 Nev. at  
17 40, 389 P.3d at 268 (adopting California's "guiding principles" to define "an  
18 issue of public interest" pursuant to NRS 41.637(4)); John, 125 Nev. at 752, 219  
19 P.3d at 1281 (describing both states' anti-SLAPP statutes as "similar in purpose  
20 and language"). As such, we turn to Park v. Board of Trustees of California  
21 State University, wherein the California Supreme Court explained...

22 In Hamm v. Carson City Nugget, Inc., 450 P. 2d 358 - Nev: Supreme Court  
23 1969 Since the problem has not been decided in Nevada we must look  
24 elsewhere for guidance. The common law is the rule of decision in our courts  
25 unless in conflict with constitutional or statutory commands. NRS 1.030;  
26 Davenport v. State Farm Mutual, 81 Nev. 361, 404 P.2d 10 (1965).  
27  
28

1 After case number 2021 PB00034 was decided and an order issued denying  
2 this Petitioner counsel on the grounds he is not an interested person pursuant to NRS  
3 § 132.185 this Petitioner filed a motion to reconsider and notice of appeal and to  
4 request the stay. Both were denied without reaching the merits of what an "interested  
5 person" is and is not pursuant to NRS 132.185 which states "Interested person"  
6 defined as **"Interested person means a person whose right or interest under an  
7 estate or trust may be materially affected by a decision of a fiduciary or a  
8 decision of the court.** The fiduciary or court shall determine who is an interested  
9 person according to the particular purposes of, and matter involved in, a proceeding."  
10 Based on this definition, **the Petitioner is indeed an Interested person pursuant to  
11 NRS 132.185.**

12 Although not named in the trust or will as a beneficiary, as a matter of  
13 law, this Petitioner is legally a "Beneficiary" based "contingent" on his  
14 "present interest" and "future interest" which are both vested and contingent and  
15 he would be the owner of an interest by assignment or other transfer from the Thomas  
16 J. Harris Trust ...or from the Thomas J. and Olga Harris Living Trust. See Barefoot v.  
17 Jennings, supra.

18 NRS 132.050 states "Beneficiary" defined. "Beneficiary," as it relates to: 1.  
19 **"A trust, includes a person who has a present or future interest, vested or  
20 contingent, and the owner of an interest by assignment or other transfer".**

21 Compare NRS 132.050 with the California equivalent Section 17200,  
22 subdivision (b)(3) contemplates the court's determination of "the validity of a trust  
23 provision. "Plainly, the term "trust provision" incorporates any amendments to a trust.  
24 Section 24, subdivision (c) defines a "beneficiary" for trust purposes, as "a  
25 **person who has any present or future interest, vested or contingent."** Assuming  
26 plaintiff's allegations are true, **she has a present or future interest**, making her a  
27

1 beneficiary permitted to petition the probate court under section 17200." See Barefoot  
2 v. Jennings, supra.

3 The Nevada Supreme Court summarily dismissed the appeal because they  
4 claim this Petitioner lacks standing and is not a party to the action i.e. not named in  
5 the lawsuit/petition as a respondent/defendant or petitioner/plaintiff. The Nevada  
6 Supreme Court failed to even consider the facts before they were filed that shows the  
7 Petitioner is, in fact, named in the will/trust as being disinherited.

8 The Petitioner styled is argument in case number 2021 PB00034 as the same  
9 argument in Barefoot v. Jennings, infra.

10 **If this ruling stands, nobody in Nevada can petition the court for probate**  
11 **or presumed undue influence or fraud or lack of capacity if they are presumably**  
12 **not already a beneficiary.** This Petitioner was undisputedly "disinherited" albeit by  
13 way of presumed undue influence and undue influence.

14 A similar situation occurred in California in Barefoot v. Jennings, 456 P. 3d 447  
15 - Cal: Supreme Court 2020.<sup>5</sup>

16 In early November 2019, the California Supreme Court heard oral  
17 arguments in the Barefoot case, and in late January 2020, the California  
18 Supreme Court issued its opinion reversing the Court of Appeal decision.  
19 The California Supreme Court held as follows: **"We disagree with the**  
20 **Court of Appeal, and hold today that the Probate Code grants**  
21 **standing in Probate Court to individuals who claim that trust**  
22 **amendments eliminating their beneficiary status arose from**  
23 **incompetence, undue influence or fraud."**

24 California probate Section 17200, subdivision (b)(3) contemplates the  
25 court's determination of "the validity of a trust provision." Plainly, the term  
26 "trust provision" incorporates any amendments to a trust. Section 24,  
27 subdivision (c) defines a "beneficiary" for trust purposes, as "a person who  
28 has any present or future interest, vested or contingent." Assuming  
plaintiff's allegations are true, she has a present or future interest, making

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<sup>5</sup> Source: <https://keystone-law.com/legal-standing-trust-contests/>



1 her a beneficiary permitted to petition the probate court under section  
2 17200.[vii] (Emphasis added).

3 **The California Supreme Court held that with this interpretation, when**  
4 **a plaintiff claims to be a rightful beneficiary of a trust, if the**  
5 **challenged amendments are deemed invalid, then the plaintiff has**  
6 **standing to petition the Probate Court under Section 17200.**

7 **The Court added that this expansive reading of the standing**  
8 **requirement afforded to trust contests under Section 17200 “not only**  
9 **makes sense as a matter of judicial economy, but it also recognizes**  
10 **the probate court’s inherent power to decide all incidental issues**  
11 **necessary to carry out its express powers to supervise the**  
12 **administration of the trust.”**

13 Section 17200, subdivision (b)(3) contemplates the court’s determination  
14 of “the validity of a trust provision.” Plainly, the term “trust provision”  
15 incorporates any amendments to a trust. Section 24, subdivision (c)  
16 **defines a “beneficiary” for trust purposes, as “a person who has any**  
17 **present or future interest, vested or contingent.”** Assuming plaintiff’s  
18 allegations are true, ***she has a present or future interest***, making her a  
19 beneficiary permitted to petition the probate court under section 17200.[vii]  
20 (Emphasis added)..”

21 The Court cautioned, however, that its ruling in Barefoot did have certain  
22 limitations in its applicability, stating: “Our holding does not allow  
23 individuals with no interest in a trust to bring a claim against the trust.  
24 Instead, **we permit those whose well-pleaded allegations show that**  
25 **they have an interest in a trust — because the amendments**  
26 **purporting to disinherit them are invalid — to petition the probate**  
27 **court.”**

28 Thus, by so holding, the Supreme Court’s ruling could potentially exclude  
a Decedent’s heirs (who were not named as beneficiaries in any prior  
version of the Decedent’s estate plan, but who would otherwise have a  
beneficial interest through intestate succession in the event the Decedent  
did not have a valid estate plan) from filing a Section 17200 contest in  
Probate Court. Thus, any such contests currently pending by such heirs in  
Probate Court may be subject to attack based on the heirs’ lack of  
standing.

**Accordingly, the effect of the California Supreme Court’s decision**  
**was not to limitlessly expand the universe of potential litigants who**  
**can bring trust contest claims in the future, but rather, to confirm**

1 **that Section 17200 can be used by disinherited beneficiaries as it had**  
2 **been in the past**, while leaving open this unresolved issue concerning a  
3 Decedent's heirs.

4 Cal. Prob. Code § 17200 Current through the 2022 Legislative Session is  
5 the equivalent of NRS 164.015

6 Section 17200 - Petition concerning internal affairs or determine  
7 existence; internal affairs of trust

8 **(a) Except as provided in Section 15800, a trustee or beneficiary of a**  
9 **trust may petition the court under this chapter concerning the**  
10 **internal affairs of the trust or to determine the existence of the trust.**

11 (b) Proceedings concerning the internal affairs of a trust include, but are  
12 not limited to, proceedings for any of the following purposes:

13 (1) Determining questions of construction of a trust instrument.

14 (2) Determining the existence or nonexistence of any immunity, power,  
15 privilege, duty, or right.

16 (3) Determining the validity of a trust provision.

17 (4) Ascertaining beneficiaries and determining to whom property shall  
18 pass or be delivered upon final or partial termination of the trust, to the  
19 extent the determination is not made by the trust instrument.

20 (5) Settling the accounts and passing upon the acts of the trustee,  
21 including the exercise of discretionary powers.

22 (6) Instructing the trustee.

23 (7) Compelling the trustee to do any of the following:

24 (A) Provide a copy of the terms of the trust.

25 (B) Provide information about the trust under Section 16061 if the trustee  
26 has failed to provide the requested information within 60 days after the  
27 beneficiary's reasonable written request, and the beneficiary has not  
28 received the requested information from the trustee within the six months  
preceding the request.

(C) Account to the beneficiary, subject to the provisions of Section 16064,  
if the trustee has failed to submit a requested account within 60 days after  
written request of the beneficiary and no account has been made within  
six months preceding the request.

(8) Granting powers to the trustee.

(9) Fixing or allowing payment of the trustee's compensation or reviewing  
the reasonableness of the trustee's compensation.

- (10) Appointing or removing a trustee.
- (11) Accepting the resignation of a trustee.
- (12) Compelling redress of a breach of the trust by any available remedy.
- (13) Approving or directing the modification or termination of the trust.
- (14) Approving or directing the combination or division of trusts.
- (15) Amending or conforming the trust instrument in the manner required to qualify a decedent's estate for the charitable estate tax deduction under federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust as required by final regulations and rulings of the United States Internal Revenue Service.
- (16) Authorizing or directing transfer of a trust or trust property to or from another jurisdiction.
- (17) Directing transfer of a testamentary trust subject to continuing court jurisdiction from one county to another.
- (18) Approving removal of a testamentary trust from continuing court jurisdiction.
- (19) Reforming or excusing compliance with the governing instrument of an organization pursuant to Section 16105.
- (20) Determining the liability of the trust for any debts of a deceased settlor. However, nothing in this paragraph shall provide standing to bring an action concerning the internal affairs of the trust to a person whose only claim to the assets of the decedent is as a creditor.
- (21) Determining petitions filed pursuant to Section 15687 and reviewing the reasonableness of compensation for legal services authorized under that section. In determining the reasonableness of compensation under this paragraph, the court may consider, together with all other relevant circumstances, whether prior approval was obtained pursuant to Section 15687.
- (22) If a member of the State Bar of California has transferred the economic interest of his or her practice to a trustee and if the member is a deceased member under Section 9764, a petition may be brought to appoint a practice administrator. The procedures, including, but not limited to, notice requirements, that apply to the appointment of a practice administrator for a deceased member shall apply to the petition brought under this section.
- (23) If a member of the State Bar of California has transferred the economic interest of his or her practice to a trustee and if the member is a disabled member under Section 2468, a petition may be brought to appoint a practice administrator. The procedures, including, but not limited to, notice requirements, that apply to the appointment of a practice administrator for a disabled member shall apply to the petition brought under this section.



1 (c) The court may, on its own motion, set and give notice of an order to  
2 show cause why a trustee who is a professional fiduciary, and who is  
3 required to be licensed under Chapter 6 (commencing with Section 6500)  
4 of Division 3 of the Business and Professions Code, should not be  
5 removed for failing to hold a valid, unexpired, unsuspended license.  
6 Ca. Prob. Code § 17200

7 Amended by Stats 2010 ch 621 (SB 202), s 11, eff. 1/1/2011.

8 Amended by Stats 2003 ch 629 (SB 294), s 8, eff. 1/1/2004.

9 EFFECTIVE 1/1/2000. Amended July 26, 1999 (Bill Number: AB 239)  
10 (Chapter 175).

11 Compare Cal. Prob. Code § 17200 to Nevada NRS 164.015 Petition  
12 concerning internal affairs of nontestamentary trust; jurisdiction of court;  
13 procedure for contests of certain trusts; final order; appeal.

14 1. The court has exclusive jurisdiction of proceedings initiated  
15 by the petition of an interested person concerning the internal affairs  
16 of a nontestamentary trust, including a revocable living trust while the  
17 settlor is still living if the court determines that the settlor cannot  
18 adequately protect his or her own interests or if the interested person  
19 shows that the settlor is incompetent or susceptible to undue  
20 influence. Proceedings which may be maintained under this section  
21 are those concerning the administration and distribution of trusts,  
22 the declaration of rights and the determination of other matters  
23 involving trustees and beneficiaries of trusts, including petitions  
24 with respect to a nontestamentary trust for any appropriate relief  
25 provided with respect to a testamentary trust in NRS 153.031 and  
26 petitions for a ruling that property not formally titled in the name of a  
27 trust or its trustee constitutes trust property pursuant to NRS  
28 163.002.

2. A petition under this section or subsection 2 of NRS 30.040  
that relates to a trust may be filed in conjunction with a petition  
under NRS 164.010 or at any time after the court has assumed  
jurisdiction under that section.

3. If an interested person contests the validity of a revocable  
nontestamentary trust, the interested person is the plaintiff and the trustee  
is the defendant. The written grounds for contesting the validity of the trust  
constitutes a pleading and must conform with any rules applicable to  
pleadings in a civil action. This subsection applies whether the person

1       contesting the validity of the trust is the petitioner or the objector and  
2       whether or not the opposition to the validity of the trust is asserted under  
3       this section or subsection 2 of NRS 30.040.

4       4. In a proceeding pursuant to subsection 3, the competency of the  
5       settlor to make the trust, the freedom of the settlor from duress, menace,  
6       fraud or undue influence at the time of execution of the will, the execution  
7       and attestation of the trust instrument, or any other question affecting the  
8       validity of the trust is a question of fact and must be tried by the court,  
9       subject to the provisions of subsection 5.

10       5. **A court may consolidate the cases if there is a contest of a**  
11       **revocable nontestamentary trust and a contest relating to a will**  
12       **executed on the same date.** If a jury is demanded pursuant to NRS  
13       137.020 for the contest of the will, the court may instruct the jury to render  
14       an advisory opinion with respect to an issue of fact pursuant to subsection  
15       4 in the contest of the trust.

16       6. Upon the hearing, the court shall enter such order as it deems  
17       appropriate. The order is final and conclusive as to all matters determined  
18       and is binding in rem upon the trust estate and upon the interests of all  
19       beneficiaries, vested or contingent, except that appeal to the appellate  
20       court of competent jurisdiction pursuant to the rules fixed by the Supreme  
21       Court pursuant to Section 4 of Article 6 of the Nevada Constitution may be  
22       taken from the order within 30 days after notice of its entry by filing notice  
23       of appeal with the clerk of the district court. The appellant shall mail a copy  
24       of the notice to each person who has appeared of record. If the  
25       proceeding was brought pursuant to subsection 3, 4 or 5, the court must  
26       also award costs pursuant to chapter 18 of NRS.

27       7. **Except as otherwise ordered by the court,** a proceeding under  
28       this section does not result in continuing supervisory proceedings, and the  
29       administration of the trust must proceed expeditiously in a manner  
30       consistent with the terms of the trust, without judicial intervention or the  
31       order, approval or other action of any court, **unless the jurisdiction of**  
32       **the court is invoked by an interested person or exercised as**  
33       **provided by other law.**

34       8. As used in this section, "nontestamentary trust" has the meaning  
35       ascribed to it in NRS 163.0016.

36       See NRS 164.040 Power or jurisdiction of court not abridged; court may  
37       take action necessary or proper to dispose of matter presented by petition.

1           1.   **NRS 164.010 and 164.015 do not limit or abridge the power or**  
2           **jurisdiction of the district court over trusts and trustees.**

3           2.   **The court may enter any order or take any other action**  
4           **necessary or proper to dispose of the matters presented by a**  
5           **petition, including the appointment of a temporary trustee to**  
6           **administer the trust in whole or in part.**

7           This Petitioner has asserted a "property right" in the Thomas J. Harris trust, will,  
8           estate and related probate contests and the previous Thomas Joseph and Olga Harris  
9           Living Trust. This Petitioner is denied procedural and substantive due-process and  
10          equal protection of the law pursuant to the U.S. Fourteenth Amendment as well as  
11          Nevada Constitution Article 1 Section 1 "Inalienable rights. All men are by Nature  
12          free and equal and have certain inalienable rights among which are those of enjoying  
13          and defending life and liberty; **Acquiring, Possessing and Protecting property** and  
14          pursuing and obtaining safety and happiness" and Article 1 Section 8 (2) "**No person**  
15          **shall be deprived of life, liberty, or property, without due process of law**".

16          "The Federal and Nevada Constitutions provide that no person shall be  
17          deprived of life, liberty, or *property* without due process of law. Essentially, "the  
18          State owes to each individual that process which, in light of the values of a free  
19          society, can be characterized as due." *Substantive due process* ensures that  
20          state action is not random and unpredictable; it restricts the government's  
21          ability to interfere with a person's life, liberty, or *property*. Kirkpatrick v. Dist. Ct.,  
22          43 P. 3d 998 – Nev. Supreme Court 2002. (Emphasis added by Petitioner).

23          For the purpose of the equal protection clause of U.S. Fourteenth Amendment,  
24          the Petitioner is in a class of indigent litigant and also a class-of-one.

25          Additionally, the Revised Nevada Code Of Judicial Conduct Rule 2.6. Ensuring  
26          the Right to Be Heard states "(A) **A judge shall accord to every person who has a**  
27          **legal interest in a proceeding, or that person's lawyer, the right to be heard**  
28          **according to law.**"

1 NRS 136.200 is applicable in this current case involving the instant Thomas J.  
2 Harris Trust and will and estate and any related probate including "special  
3 qualifications" because there is fraud and theft of assets in the trust(s), will(s) and  
4 estate(s) including a missing home from Pebble beach Court Minden, Nevada and an  
5 entire safe deposit box of assets.

6 See *In re Herrmann*, 100 Nev. 1, 4-5 (Nev. 1984) 677 P.2d 594 "**Judge Waters**  
7 **appointed appellant Flangas as their counsel pursuant to NRS 136.200.**

8 Subsequently, on March 20, 1973, Judge Waters appointed appellant Ross as co-  
9 counsel to Mr. Flangas. **It appears of record that Mr. Flangas and Mr. Ross had**  
10 **special qualifications, known to Judge Waters, which had application to a**  
11 **matter of vital importance to the Estate of Herrmann**, to-wit: the subdivision and  
12 development of the Lyon County ranch for residential housing purposes."

13 NRS 136.200 also applies to CHAPTER 164 - ADMINISTRATION OF  
14 TRUSTS, NRS 164.005 Applicability of provisions of chapters 132, 153 and 155 of  
15 NRS regulating matters of estates. When not otherwise inconsistent with the  
16 provisions of chapters 162 to 167, inclusive, of NRS, all of the provisions of chapters  
17 132, 153 and 155 of NRS regulating the matters of estates:

- 18 1. Apply to proceedings relating to trusts, as appropriate; or
- 19 2. May be applied to supplement the provisions of chapters 162 to 167,  
20 inclusive, of NRS.

21 Since the will, trust and estate controversy may lead to probate, NRS 136.200  
22 also applies to NRS 30.040 which states "Questions of construction or validity of  
23 instruments, contracts and statutes. Any person interested under a deed, written  
24 contract or other writings constituting a contract, or whose rights, status or other legal  
25 relations are affected by a statute, municipal ordinance, contract or franchise,  
26 may have determined any question of construction or validity arising under the  
27 instrument, statute, ordinance, contract or franchise and obtain a declaration of

1 **rights, status or other legal relations thereunder.”** In a proceeding pursuant to  
2 subsection 3, the competency of the settlor to make the trust, the freedom of the  
3 settlor from duress, menace, fraud or undue influence at the time of execution  
4 of the will, the execution and attestation of the trust instrument, or any other  
5 question affecting the validity of the trust is a question of fact and must be tried  
6 by the court, subject to the provisions of subsection 5.

7 Indeed, the Thomas J. Harris Trust and Will were executed on the same  
8 date, June 12, 2019 See Exhibits A and B in the petition.

9 NRS 164.015 Subsection 5 states “**A court may consolidate the cases if**  
10 **there is a contest of a revocable nontestamentary trust and a contest relating to**  
11 **a will executed on the same date.”** If a jury is demanded pursuant to NRS 137.020  
12 for the contest of the will, the court may instruct the jury to render an advisory opinion  
13 with respect to an issue of fact pursuant to subsection 4 in the contest of the trust.

14  
15  
16 **NRS 30.040 Questions of construction or validity of instruments,**  
17 **contracts and statutes.**

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

22 2. **A maker or legal representative of a maker of a will, trust or**  
23 **other writings constituting a testamentary instrument may have**  
24 **determined any question of construction or validity arising under the**  
25 **instrument and obtain a declaration of rights, status or other legal**  
26 **relations thereunder.** Any action for declaratory relief under this  
subsection may only be made in a proceeding commenced pursuant to  
the provisions of title 12 or 13 of NRS, as appropriate.



1           3. A principal or a person granted authority to act for a principal  
2 under power of attorney, whether denominated an agent, attorney-in-fact  
3 or otherwise, may have determined any question of construction or validity  
4 arising under the instrument and obtain a declaration of rights, status or  
5 other legal relations thereunder. Any action for declaratory relief under this  
6 subsection may only be made in a proceeding commenced pursuant to  
7 the provisions of title 12 or 13 of NRS, as appropriate.

8           In this instant case, the Petitioner has a right and property interest to both the  
9 estate and trust which is be materially affected by a decision of a fiduciary or a  
10 decision of the court.

11           In case number: 2021 PB00034, the Respondent offers no points of authority,  
12 nor any precedent or case law to support its argument and NRS 132.185 is inapposite  
13 to the Respondent's argument. Nether does Judge Young offer any points of authority,  
14 nor any precedent or case law to support his order ...and the Nevada supreme Court's  
15 order in case 84948. The NRS 132.185 issue was never decided on the merits in any  
16 court and does not preclude adjudication in this case on grounds of issue preclusion  
17 i.e. *res judicata* or claim preclusion i.e. *collateral estoppel*.

18           Since this court has jurisdiction, and judge Nathan Tod Young has been  
19 disqualified, and there is both intrinsic and extrinsic fraud, and the crux of the case is  
20 based on fraud, the Petitioner requests and the court can reopen case 2021-PB00034  
21 with the currently assigned senior judge pursuant to NRCP Rule §§ 60 where the  
22 actual claim and merits of the petition are argued making an undisputed *prima facie*  
23 case for presumed undue influence and undue influence that the Respondent  
24 concedes to in this motion and the Respondent's Motion for Summary Judgment.

25           Indeed, **"undue influence ... is a species of fraud. A rebuttable**  
26 **presumption of undue influence is raised if the testator and the beneficiary**  
27 **shared a fiduciary relationship, but undue influence may also be proved without**  
28

1 raising this presumption." *In re Estate of Bethurem*, 313 P. 3d 237, 241 (2013), at  
2 329.

3 Fraud and theft has occurred with undisputed assets missing including a  
4 \$450,000.00 home on Pebble Beach Court in Minden, NV transferred from the  
5 Thomas J. Harris Trust into the position of Jeff D. Robben who was the fiduciary and  
6 caretaker for Thomas J. Harris which creates "presumed undue influence." This is  
7 undisputed and Respondents have conceded this issue. The entire contents of the  
8 safe deposit box of Thomas J. Harris is not accounted for along with stocks, cash,  
9 gold, annuities, 401K, IRAs, pension, insurance, etc. This is undisputed and  
10 Respondents have conceded this issue.

11 There was fraud upon the court perpetuated by Respondent's counsel, Fred  
12 McClure Wallace who misrepresented to the court a material fact that there was no  
13 prior trust called the Thomas Joseph and Olga Harris Living Trust.

14 Judge Nathan Tod Young is disqualified in this instant case yet he presided in  
15 2021-PB00034 despite being bias against the Petitioner in violation of the U.S.  
16 Fourteenth Amendment due-process clause and NRS 1.230 which prohibits a judge  
17 from presiding over any matter when actual or implied bias exists on the part of the  
18 Judge. In Nevada, "a judge has a general duty to sit, unless a judicial canon, statute,  
19 or rule requires the judge's disqualification." *Millen v. Dist. Ct.*, 122 Nev. 1245, 1253,  
20 148 P.3d 694, 700 (2006).

21 It appears there was and still is fraud and a conspiracy to defraud  
22 Petitioner (and the other beneficiaries) out of vast sums of money as proven by  
23 the missing items in the safe deposit box and the home in Minden, Nevada on  
24 Pebble Beach Court was fraudulently transferred out of the Thomas J. Harris  
25 Trust by way of undue influence of Jeff D. Robben. Interestingly, this is a multi-  
26 state problem involving California, Nevada and Washington states. It's  
27  
28

1 understood Scott Barton is a resident of Washington state. Since this involves  
2 interstate commerce and mail fraud, perhaps the feds will be interested too.

3 With the known conflicts-of-interests between Scott Barton and  
4 Blanchard, Krasner & French working both Jeff Robben's trust/will/instruments  
5 and Thomas J. Harris's trust/will/instruments it appears there is a conspiracy  
6 along with Tara Flannagan and you to cover-up the money trail. Indeed, follow-  
7 the-money... Where is it?

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

16 According to Cal. Judicial Canon 4: A Judge Shall So Conduct the Judge's  
17 Quasi-Judicial and Extrajudicial Activities as to Minimize the Risk of Conflict with  
18 Judicial Obligations

- 19 **A. Extrajudicial Activities in General**  
20 B. Quasi-judicial and Avocational Activities  
21 C. Governmental, Civic, or Charitable Activities  
22 **D. Financial Activities**  
23 **E. Fiduciary Activities**  
24 F. Service as Arbitrator or Mediator  
25 **G. Practice of Law**  
26 **H. Compensation and Reimbursement**

25 There has been a total break-down and failure to communicate by Tara M.  
26 Flanagan, F. McClure Wallace and Scott Barton. Tara M. Flanagan knows of the  
27 fraud and theft conducted by Scott William Barton Cal. State BAR # 160262, a  
28



1 California lawyer. Pursuant to California Judicial Canon III, D II: (2) Whenever a  
2 judge has personal knowledge that a lawyer has violated any provision of the  
3 Rules of Professional Conduct, the judge shall take appropriate corrective action.

4 **"Silence can only be equated with fraud where there is a legal or**  
5 **moral duty to speak or where an inquiry left unanswered would be**  
6 **intentionally misleading."** United States v. Prudden, 424 F.2d 1021 p.  
7 1032.(5th Cir. 1970), cert. denied, 400 U.S. 831, 91 S.Ct. 62, 27 L.Ed.2d 62  
8 (1970).

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

14 The Petitioner continued to be subjected to fraud and the Petitioner's State and  
15 Federal due-process was violated since he was NEVER timely notified by the  
16 Respondent of any probate, trust or will or even the death of Thomas J. Harris and  
17 the Petitioner has been both timely and diligent pursuing judicial relief as soon as  
18 learning of said probate, trust or will and death of Thomas J. Harris discussed below  
19 with controlling case law supporting the Petitioner.

20 Indeed, the Petitioner addressed this NRCP Rule 60 issue in his petition and  
21 the Respondent has conceded to the merits. In NC-DSH, INC. v. Garner, 218 P. 3d  
22 853 - Nev: *Supreme Court 2009* the Nevada Supreme Court stated "As amended  
23 effective January 1, 2005, NRCP 60(b) largely replicates Fed. R.Civ.P. 60(b), as  
24 written before the Federal Rules' 2007 revisions.[1] Like its federal counterpart, NRCP  
25 60(b) has two separate provisions that address fraud. The first is NRCP 60(b)(3),  
26 which provides, "On motion and upon such terms as are just, the court may  
27 relieve a party ... from a final judgment, order, or proceeding for ... fraud  
28

1 (whether heretofore denominated intrinsic or extrinsic), misrepresentation or  
2 other misconduct of an adverse party." The second provision addressing fraud  
3 appears in NRCP 60(b)'s "savings clause." The savings clause says, "This rule does  
4 not limit the power of a court to entertain an independent action to relieve a  
5 party from a judgment, order, or proceeding, or to set aside a judgment for fraud  
6 upon the court." [2] While a motion under NRCP 60(b)(3) must be made "not more  
7 than 6 months after the proceeding was taken or the date that written notice of entry of  
8 the judgment or order was served," NRCP 60(b) does not specify a time limit for  
9 motions seeking relief for "fraud upon the court."

10 NRCP Rule 60. Relief From a Judgment or Order

11 (a) Corrections Based on Clerical Mistakes; Oversights and  
12 Omissions. The court may correct a clerical mistake or a mistake arising  
13 from oversight or omission whenever one is found in a judgment, order, or  
14 other part of the record. The court may do so on motion or on its own, with  
15 or without notice. But after an appeal has been docketed in the appellate  
16 court and while it is pending, such a mistake may be corrected only with  
17 the appellate court's leave.

18 (b) Grounds for Relief From a Final Judgment, Order, or  
19 Proceeding. On motion and just terms, the court may relieve a  
20 party or its legal representative from a final judgment, order, or  
21 proceeding for the following reasons:

22 (1) mistake, inadvertence, surprise, or excusable neglect;

23 (2) newly discovered evidence that, with reasonable  
24 diligence, could not have been discovered in time to move for a new  
25 trial under Rule 59(b);

26 (3) fraud (whether previously called intrinsic or extrinsic),  
27 misrepresentation, or misconduct by an opposing party;

28 (4) the judgment is void;

(5) the judgment has been satisfied, released, or discharged;  
it is based on an earlier judgment that has been reversed or vacated;  
or applying it prospectively is no longer equitable; or

1  
2           **(6) any other reason that justifies relief.**

3           (c) Timing and Effect of the Motion.

4           (1) Timing. A motion under Rule 60(b) must be made within a  
5 reasonable time—and for reasons (1), (2), and (3) no more than 6 months  
6 after the date of the proceeding or the date of service of written notice of  
7 entry of the judgment or order, whichever date is later. The time for filing  
8 the motion cannot be extended under Rule 6(b).

9           (2) Effect on Finality. The motion does not affect the judgment's  
10 finality or suspend its operation.

11           (d) Other Powers to Grant Relief. This rule does not limit a  
12 court's power to:

13           (1) entertain an independent action to relieve a party from a  
14 judgment, order, or proceeding;

15           (2) upon motion filed within 6 months after written notice of  
16 entry of a default judgment is served, set aside the default judgment  
17 against a defendant who was not personally served with a summons  
18 and complaint and who has not appeared in the action, admitted  
19 service, signed a waiver of service, or otherwise waived service; or

20           (3) set aside a judgment for fraud upon the court.

21           (e) Bills and Writs Abolished. The following are abolished: bills of  
22 review, bills in the nature of bills of review, and writs of coram nobis,  
23 coram vobis, and audita querela.

24           This court has jurisdiction pursuant to Nevada Constitution Article 6 Section 1:  
25 **"The judicial power of this State shall be vested in a court system, comprising a**  
26 **Supreme Court, district courts, and justices of the peace. The Legislature may also**  
27 **establish, as part of the system, courts for municipal purposes only in incorporated**  
28 **cities and towns."**

          The Supreme of the Land can be found in the decisions of the U.S. Supreme  
Court. In Old Wayne Mut. L. Assoc. v. McDonough, 204 U.S. 8, 27 S.Ct. 236 (1907),

1 the Supreme Court ruled that: "Chief Justice Marshall had long before observed in  
2 Ross v. Himely, 4 Cranch 241, 269, 2 L.ed. 608, 617, that, upon principle, the  
3 operation of every judgment must depend on the power of the court to render that  
4 judgment. In Williamson v. Berry, 8 How. 495, 540, 12 L.ed. 1170, 1189, it was said  
5 to be well settled that ***the jurisdiction of ANY COURT exercising authority over a***  
6 ***subject `may be inquired into in EVERY OTHER COURT when the proceedings***  
7 ***in the former are relied upon and brought before the latter by a party claiming***  
8 ***the benefit of such proceedings,*** and the rule prevails whether `the decree or  
9 judgment has been given, in a court of admiralty, chancery, ecclesiastical court,  
10 or court of common law, or whether the point ruled has arisen under the laws of  
11 nations, the practice in chancery, *or the municipal laws of states.*" [Emphasis  
12 added].

13 See Klabacka v. Nelson, 394 P. 3d 940 – Nev: Supreme Court 2017 "NRS  
14 164.015(1), "[t]he court has exclusive jurisdiction of proceedings initiated by the petition  
15 of an interested person concerning the internal affairs of a nontestamentary trust." As  
16 used in both statutes, "court" is defined as "a district court of this State sitting in  
17 probate or otherwise adjudicating matters pursuant to this title." NRS 132.116;  
18 see also NRS 164.005 (applying NRS 132.116 to trust proceedings under Title 13)."

19 In addition to NRCP Rule 60(b) and (d), The petition was also filed in part  
20 pursuant to NRS 164.010 and NRS 164.015 which states:

21  
22 NRS 164.005 Applicability of provisions of chapters 132, 153 and 155 of  
23 NRS regulating matters of estates. When not otherwise inconsistent with  
24 the provisions of chapters 162 to 167, inclusive, of NRS, all of the  
25 provisions of chapters 132, 153 and 155 of NRS regulating the matters of  
26 estates:

- 27 1. Apply to proceedings relating to trusts, as appropriate; or

1           2. May be applied to supplement the provisions of chapters 162 to  
2           167, inclusive, of NRS.

3  
4           NRS 164.010   Petition for assumption of jurisdiction; circumstances in  
5           which trust is domiciled in this State; determination of venue; powers of  
6           court; petition for removal of trust from jurisdiction of court.

7           1. Upon petition of any person appointed as trustee of an express  
8           trust by any written instrument other than a will, or upon petition of a  
9           settler or beneficiary of the trust, the district court of the county in which  
10          any trustee resides or conducts business at the time of the filing of the  
11          petition or in which the trust has been domiciled as of the time of the filing  
12          of the petition shall assume jurisdiction of the trust as a proceeding in rem  
13          unless another court has properly assumed continuing jurisdiction in rem  
14          in accordance with the laws of that jurisdiction and the district court  
15          determines that it is not appropriate for the district court to assume  
16          jurisdiction under the circumstances.

17          2. For the purposes of this section, a trust is domiciled in this State  
18          notwithstanding that the trustee neither resides nor conducts business in  
19          this State if:

20           (a) The trust instrument expressly provides that the situs of the trust is  
21           in this State or that a court in this State has jurisdiction over the trust;

22           (b) A person has designated for the trust that this State is the situs or  
23           has jurisdiction, if such person made the designation at a time during  
24           which he or she held the power to make such a designation under the  
25           express terms of the trust instrument;

26           © The trust owns an interest in real property located in this State;

27           (d) The trust owns personal property, wherever situated, if the trustee  
28           is:

          (1) Incorporated or authorized to do business in this State;

          (2) A trust company licensed under chapter 669 of NRS;

          (3) A family trust company, as defined in NRS 669A.080; or

          (4) A national association having an office in this State;



1  
2 (e) One or more beneficiaries of the trust reside in this State; or

3 (f) At least part of the administration of the trust occurs in this State.

4 3. Notwithstanding the provisions of this section, if a court of a  
5 jurisdiction other than this State has jurisdiction over a trust and grants an  
6 order authorizing a transfer of jurisdiction over that trust to this State, the  
7 district court has the power to assume jurisdiction over the trust and to  
8 otherwise supervise the administration of that trust in accordance with the  
9 procedures set forth in this title.

10 4. For the purposes of determining venue, preference is given  
11 in the following order:

12 (a) To the county in which the situs or domicile was most  
13 recently declared by a person granted the power to make such a  
14 declaration under the terms of the trust instrument at the time of the  
15 filing of the petition;

16 (b) To the county in which the situs or domicile is declared in the  
17 trust instrument; and

18 (c) To the county in which the situs or domicile is declared by  
19 the trustee at the time of the filing of the petition in a certification of  
20 the trust which complies with subsection 2 of NRS 164.400 and  
21 subsection 2 of NRS 164.410 and which contains a declaration of the  
22 trust's situs or domicile as authorized in subsection 1 of NRS  
23 164.410.

24 5. When the court assumes jurisdiction pursuant to this  
25 section, the court:

26 (a) Has jurisdiction of the trust as a proceeding in rem as of the  
27 date of the filing of the petition;

28 (b) Shall be deemed to have personal jurisdiction over any trustee  
confirmed by the court and any person appearing in the matter, unless  
such an appearance is made solely for the purpose of objecting to the  
jurisdiction of the court;

© May confirm at the same time the appointment of the trustee and  
specify the manner in which the trustee must qualify; and

1 (d) May consider at the same time granting orders on other matters  
2 relating to the trust, including, without limitation, matters that might be  
3 addressed in a declaratory judgment relating to the trust under  
4 subsection 2 of NRS 30.040 or petitions filed pursuant to NRS  
5 153.031 or 164.015 whether such matters are raised in the petition to  
6 assume jurisdiction pursuant to this section or in one or more  
7 separate petitions that are filed concurrently with the petition to  
8 assume jurisdiction.

9  
10 6. At any time, the trustee may petition the court for removal of the  
11 trust from continuing jurisdiction of the court.

12 7. As used in this section, "written instrument" includes, without  
13 limitation, an electronic trust as defined in NRS 163.0015.

14 [1:22:1953]—(NRS A 1961, 400; 1999, 2377; 2001, 2352; 2015, 3551;  
15 2017, 1695)

16 **NRS 164.015 Petition concerning internal affairs of**  
17 **nontestamentary trust; jurisdiction of court; procedure for contests**  
18 **of certain trusts; final order; appeal.**

19 1. The court has exclusive jurisdiction of proceedings initiated  
20 by the petition of an interested person concerning the internal affairs  
21 of a nontestamentary trust, including a revocable living trust while the  
22 settler is still living if the court determines that the settler cannot  
23 adequately protect his or her own interests or if the interested person  
24 shows that the settler is incompetent or susceptible to undue  
25 influence. Proceedings which may be maintained under this section  
26 are those concerning the administration and distribution of trusts,  
27 the declaration of rights and the determination of other matters  
28 involving trustees and beneficiaries of trusts, including petitions  
with respect to a nontestamentary trust for any appropriate relief  
provided with respect to a testamentary trust in NRS 153.031 and  
petitions for a ruling that property not formally titled in the name of a  
trust or its trustee constitutes trust property pursuant to NRS  
163.002.

2. A petition under this section or subsection 2 of NRS 30.040  
that relates to a trust may be filed in conjunction with a petition  
under NRS 164.010 or at any time after the court has assumed  
jurisdiction under that section.

1           3. If an interested person contests the validity of a revocable  
2 nontestamentary trust, the interested person is the plaintiff and the  
3 trustee is the defendant. The written grounds for contesting the  
4 validity of the trust constitutes a pleading and must conform with  
5 any rules applicable to pleadings in a civil action. This subsection  
6 applies whether the person contesting the validity of the trust is the  
petitioner or the objector and whether or not the opposition to the  
validity of the trust is asserted under this section or subsection 2 of  
NRS 30.040.

7           4. In a proceeding pursuant to subsection 3, the competency of  
8 the settler to make the trust, the freedom of the settler from  
9 duress, menace, fraud or undue influence at the time of execution of  
10 the will, the execution and attestation of the trust instrument, or any  
11 other question affecting the validity of the trust is a question of fact  
and must be tried by the court, subject to the provisions of  
subsection 5.

12           5. A court may consolidate the cases if there is a contest of a  
13 revocable nontestamentary trust and a contest relating to a will  
14 executed on the same date. If a jury is demanded pursuant to NRS  
15 137.020 for the contest of the will, the court may instruct the jury to  
render an advisory opinion with respect to an issue of fact pursuant  
to subsection 4 in the contest of the trust.

16           6. Upon the hearing, the court shall enter such order as it deems  
17 appropriate. The order is final and conclusive as to all matters determined  
18 and is binding in rem upon the trust estate and upon the interests of all  
19 beneficiaries, vested or contingent, except that appeal to the appellate  
20 court of competent jurisdiction pursuant to the rules fixed by the Supreme  
21 Court pursuant to Section 4 of Article 6 of the Nevada Constitution may be  
22 taken from the order within 30 days after notice of its entry by filing notice  
of appeal with the clerk of the district court. The appellant shall mail a copy  
of the notice to each person who has appeared of record. If the  
proceeding was brought pursuant to subsection 3, 4 or 5, the court must  
also award costs pursuant to chapter 18 of NRS.

23           7. Except as otherwise ordered by the court, a proceeding  
24 under this section does not result in continuing supervisory  
25 proceedings, and the administration of the trust must proceed  
26 expeditiously in a manner consistent with the terms of the trust,  
27 without judicial intervention or the order, approval or other action of  
any court, unless the jurisdiction of the court is invoked by an  
interested person or exercised as provided by other law.



1  
2 8. As used in this section, "nontestamentary trust" has the meaning  
3 ascribed to it in NRS 163.0016.

4 In his petition, the Petitioner states "Judge Nathan Tod Young is bias and  
5 prejudiced against this Petitioner in case number 2021 PB00034. Judge Young  
6 violated this Petitioner's State and Federal Constitutional due-process and equal  
7 protection rights violated as well as the State Statutory right to appointed counsel. All  
8 Judge Young's orders are null and void since he is bias against this Petitioner and did  
9 not even issue a verbal or written order with a reason as to his alleged claim that this  
10 Petitioner is not an interested person."

11 Judge Nathan Tod Young is disqualified in this instant case and going forward,  
12 in any further future presiding in case number 2021 PB00034.

13 **D. PETITIONER IS ENTITLED TO RELIEF**

14 The Petitioner doesn't even need to prove the existence or contents of the  
15 former Thomas Joseph and Olga Harris Living Trust to render the current Thomas J.  
16 Harris Trust null & void based on a *prima facie* case of presumed undue influence  
17 based on the undisputed facts that Jeff D. Robben, the brother of the Petitioner, was  
18 1: The caretaker of Thomas J. Harris; 2: The Financial advisor for Thomas J. Harris; 3:  
19 Helped create the current Thomas J. Harris trust; 4. Had "undue influence" and  
20 "presumed undue influence" of Thomas J. Harris; 5: Jeff D. Robben influenced  
21 Thomas J. Harris to disinherit based on the animus and vexation of Jeff D. Robben.

22 "A rebuttable presumption of undue influence is raised if the testator and the  
23 beneficiary shared a fiduciary relationship, but undue influence may also be proved  
24 without raising this presumption." *In re Estate of Bethurem*, 313 P. 3d 237, 241 (2013),  
25 at 329. "The essence of a fiduciary or confidential relationship is that the parties do not  
26 deal on equal terms, since the person in whom trust and confidence is reposed and  
27 who accepts that trust and confidence is in a superior position to exert unique  
28

1 influence over the dependent party." Hoopes v. Hammargren, 725 P. 2d 238, 242  
2 (1986) quoting Barbara A. v. John G., 145 Cal.App.3d 369, 193 Cal.Rptr. 422, 432  
3 (1983). "Once raised, a beneficiary may rebut such a presumption by clear and  
4 convincing evidence." Betherum, at 241.

5 If it turns out the Thomas Joseph and Olga Harris Living Trust is lost or  
6 destroyed, the Petitioner can produce two witnesses, Todd C. Robben and Stephen J.  
7 Robben to attest to the existence and contents of the Thomas Joseph and Olga Harris  
8 Living Trust. A third witness may include Abigail G. Stephenson, Esq since the  
9 Thomas Joseph and Olga Harris Living Trust was addressed by Abigail G.  
10 Stephenson, Esq. dated March 6, 2020 from Blanchard, Krasner & French  
11 acknowledging the existence of the August 26, 1998 trust known as the Thomas  
12 Joseph and Olga Harris Living Trust. Please see EXHIBIT A in the initial petition filing  
13 of this instant case.

14 Further research will determine if a copy of the Thomas Joseph and Olga  
15 Harris Living Trust exists. If not, Petitioner can produce two witnesses, Todd C.  
16 Robben and Stephen J. Robben to attest to the existence and contents of the Thomas  
17 Joseph and Olga Harris Living Trust pursuant to [1] NRS 136.240(3) which provides:  
18 No will shall be allowed to be proved as a lost or destroyed will unless the same shall  
19 be proved to have been in existence at the death of the person whose will it is claimed  
20 to be, or be shown to have been fraudulently destroyed in the lifetime of such person,  
21 nor unless its provisions shall be clearly and distinctly proved by at least two credible  
22 witnesses.

23 Todd C. Robben and Stephen J. Robben could have attested under oath that  
24 Olga Harris, the mother of Petitioner Todd C. Robben spoke of the will/trust several  
25 times, including Petitioner's wedding day. The beneficiaries included Thomas J.  
26 Harris's son Todd Harris, note Thomas A. Harris was *not* a beneficiary and  
27  
28

1 disinherited; Olga Harris's sons Jeff D. Robben and Todd C. Robben. Each was to  
2 receive one third.

3 If the court decides otherwise, the case goes to probate with only two  
4 remaining blood hairs, Thomas. A. Harris and Petitioner, Todd C. Robben.

5 This Petitioner has stated and will state again in simple terms that he desires a  
6 situation either by settlement, or court order, to remedy the matter to include the  
7 Petitioner into to trust with a reasonable percentage and to include a full accounting of  
8 any and all assets, money, expenses, etc. A complete transparent paper trail of the  
9 money trail. Where are the contents of the missing safe deposit box addressed as  
10 "Exhibit "A" to Declaration of Trust by Thomas J. Harris". See EXHIBIT B in the initial  
11 petition filing of this instant case.  
12

13 **1. Safe Deposit Box:** All of Trustor's right, title and interest in and to all  
14 contents in the safe deposit box located at Wells Fargo Bank in Carson  
15 City, NV, branch office, including but not limited to cash, bonds, stock,  
securities, and tangible property therein.

16 **2. Bank Accounts:** All cash, bonds, stock, securities and other property  
17 held with Wells Fargo Bank, including but not limited to account  
18 #####1233.

19 **3. All Other Personal Property:** All of Trustor's right, title, and interest  
20 subject to all liabilities attached thereto in all automobiles, boats, airplanes,  
21 vehicles, trailers, silverware, chinaware, wine, books, pictures, paintings,  
22 works of art, household furniture and furnishings, clothing, jewelry, pets,  
23 assets in digital form for which Trustor is the owner or author, including  
24 without limitation, lists of passwords, user account information, social  
25 media sites, blogs, e-books, and other Web-hoster materials, all digital  
26 albums and videos, websites on which Trustor conducts business  
27 transactions, and all other personal property (together with any insurance  
28 on such property) now owned or acquired later during Trustor's lifetime.

1 It is undisputed that the house in Minden, Nevada on Pebble Beach Court was  
2 transferred into the name of Jeff D. Robben and/or Jeff D. Robben Trust or sub trust.  
3 Said house of Thomas J. Harris was worth approximately \$450,000.00 dollars and the  
4 money should be put back into the Thomas J. Harris Trust to be distributed to the  
5 beneficiaries. There are questions as to another home on April Drive in South Lake  
6 Tahoe worth approximately \$1, 500,000.00 dollars that should have been in the  
7 Thomas J. Harris trust.

8 This Petitioner believes the estate and trust value of the Thomas J. Harris Trust  
9 is grossly undervalued because of the fraud and theft that has occurred to transfer  
10 assets into other accounts to defraud the Thomas J. Harris beneficiaries of millions of  
11 dollars when just the two homes are added back in addition to the missing contents on  
12 the safe deposit box. Furthermore, Petitioner must see all insurance (death and life  
13 insurance payouts), Pension and 401K information in addition to at least the least  
14 twenty years of IRS and state tax returns.

15  
16 **E. THE PETITIONER IS ENTITLED TO COUNSEL.**

17  
18 This Petitioner, a "non resident" of Douglas County Nevada, is entitled to  
19 counsel as requested in his petition pursuant to NRS 136.200, this court has  
20 jurisdiction, and the Respondent has conceded by not arguing this point. **"A point not  
21 urged in the trial court is deemed to have been waived and will not be  
22 considered on appeal."** See Old Aztec Mine, Inc. v. Brown, 623 P. 2d 981 - Nev:  
23 Supreme Court 1981.

24 The Nevada Supreme Court has identified NRS 136.200 as a "statutory  
25 right" to appointment of counsel in other types of civil cases. "there is no statutory  
26 right to appointment of counsel for appellate review in this type of civil case as there is

1 in criminal cases and other types of civil cases. ...NRS 136.200" Casper v. Huber, 456  
2 P. 2d 436 - Nev: Supreme Court 1969.

3 NRS 136.200 Appointment of attorney to represent minors, unborn  
4 members of interested class or **nonresidents**; retention of other counsel.

5  
6 1. If a will is offered for probate and it appears there are minors or  
7 unborn members of a class who are interested, **or if it appears there are**  
8 **other interested persons who reside out of the county and are**  
9 **unrepresented, the court may, whether there is a contest or not,**  
10 **appoint an attorney for them.**

11 The State Bar of Nevada has a pro bono program for indigent people<sup>6</sup> and the  
12 Nevada Supreme Court and State Legislature can provide this court with guidance as  
13 to funding any non pro bono appointed counsel. It was not the responsibility of this  
14 Plaintiff to inform the court of payment options.

15 The Revised Nevada Code Of Judicial Conduct Rule 3.7. comments state:

16 **[5] In addition to appointing lawyers to serve as counsel for indigent**  
17 **parties** in individual cases, a judge may promote broader access to justice  
18 by encouraging lawyers to participate in pro bono public legal services, if  
19 in doing so the judge does not employ coercion, or abuse the prestige of  
20 judicial office.

### 21 III. CONCLUSION

22 The Respondent's Motion for Summary Judgment must be denied based on the  
23 points and authorities above including there is a dispute as to a material fact if the  
24 previous trust, the Olga and Thomas J. Harris Living Trust existed and/or still exists  
25 and it the Petitioner was a beneficiary in the Olga and Thomas J. Harris Living Trust.

26 Petitioner still requests counsel, yet even without a lawyer, this Petitioner has  
27 provided the facts, evidence and law to support the Thomas J. Trust to be declared

28 <sup>6</sup> <https://nvbar.org/for-the-public/pro-bono-for-the-public/>



1 null & void based on the showing of lack of jurisdiction, fraud, surprise, error and this  
2 courts having jurisdiction to decide these matters. Petitioner has made a remedy offer  
3 to amicably resolve these matters in everyone's best interests. Respondent is  
4 unresponsive to a remedy.

5 The issues of presumed undue influence and undue influence has been  
6 conceded by the Respondent who did not attack the merits of presumed undue  
7 influence and undue influence in the instant Motion for Summary Judgment or the  
8 Respondent's Motion to Dismiss.

9 The crux of the case is identical to Barefoot v. Jennings, *supra* and the Nevada  
10 Courts must rectify this public concern just like California did or else future cases of  
11 undue influence and disinheritance will suffer a miscarriage of justice.

12 NRS 132.050 states "Beneficiary" defined. "Beneficiary," as it relates to: 1.  
13 **"A trust, includes a person who has a present or future interest, vested or**  
14 **contingent, and the owner of an interest by assignment or other transfer".**  
15 Compare NRS 132.050 with the California equivalent Section 17200, subdivision  
16 (b)(3) contemplates the court's determination of "the validity of a trust provision.  
17 "Plainly, the term "trust provision" incorporates any amendments to a trust. Section 24,  
18 subdivision (c) defines a "beneficiary" for trust purposes, as "a person who has  
19 **any present or future interest, vested or contingent.**" Assuming plaintiff's  
20 allegations are true, ***she has a present or future interest***, making her a beneficiary  
21 permitted to petition the probate court under section 17200." See Barefoot v.  
22 Jennings, *supra*.

23 Respectfully signed under penalty of perjury,

24 

25 /s/ Todd Robben

26 October 20, 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 October 21, 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 21 day of October, 2022

Submitted By: /s/ Stephen James Robben