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Elizabeth A. Brown
Clerk of Supreme Court

In the Supreme Court of the State of Nevada

IN THE MATTER OF THECHRISTIAN)
FAMILY TRUST u.a.d. 10/11/16)

~~~~~ )  
SUSAN CHRISTIAN-PAYNE, )  
ROSEMARY KEACH AND )  
RAYMOND CHRISTIAN, JR. )

Appellants, )

-vs- )

JACQUELINE UTKIN, )  
Respondents. )  
~~~~~ )

Case No.: 75750

**APPELLANT'S RESPONSE TO MOTION FOR SANCTIONS/FEEES;
COUNTERMOTION TO STRIKE MOTION AND/OR DENY RELIEF**

COMES NOW Appellants, Susan Christian (formerly Susan Christian-Payne),
Rosemary Keach and Raymond Christian Jr., by and through their attorney, Cary Colt
Payne, Esq., of the lawfirm of CARY COLT PAYNE, CHTD., hereby submits this
Response/Opposition and Countermotion.

POINTS AND AUTHORITIES

ANTHONY L. BARNEY, LTD. (hereinafter the “Barney Firm”), has now, as a non-participant in this appeal, has filed a motion for sanctions and for their firm to be awarded attorney’s fees and to sanction appellants and/or their counsel, in response to the Supreme Court’s recent Order (5/7/19). Said Order dismissed his cross-appeal, striking the Barney firm’s Brief, etc., effectively granting the Appellants’ motion in that the Barney Firm was not a party to the action below, but originally appeared as legal counsel to Nancy Christian, and has no standing. As noted in the Order (5/7/19), the Barney Firm did not even oppose the Motion to Strike, etc., and this court concluded that “Barney's and Utkin's failure to oppose the motion constituted an admission that the motion is meritorious, *see Foster v. Dingwall*, 126 Nev. 56, 66, 227 P.3d 1042, 1049 (2010), and grants the motion.”

Apparently, the Barney Firm does not understand the “rule of the case” or intend to follow the rule of law. Now, after the Order has been issued granting the motion that the Barney Firm fails to have standing to participate, the Barney Firm has filed the subject motion, in what appears to be another personal attack on the undersigned counsel, or as some sort of argument already decided. The Barney Firm did not respond to the Motion to Strike or even object to the original docketing statement at the time of original filing almost a year ago.

Without the requisite standing to file the instant motion, the necessity of arguing any potential merits of the motion is immaterial. Notwithstanding, Appellants point out that the underlying motion was filed (4/10/19) after Utkin decided she was opting out (3/12/19). Also see Supreme Court Order Modifying Caption filed June 13, 2018.

The Barney Firm does not represent any party to this appeal and does not have the standing to assert the contentions in the latest Motion, which could only be made, at this point by Jacqueline Utkin, who was the only real party in interest at the time. She “opted out” of any participation. After Utkin opted out, the Barney Firm unilaterally decided to proceed by filing their Combined Brief (3/27/19), arguing Utkin’s position.

The instant filed motion is frivolous, in violation of the Court’s order (5/7/19) under which the Barney Firm cannot participate. It can be considered unwarranted and a desperate and unprofessional act by a lawfirm, to interject into proceedings in which they have no standing, in order to obtain further attorneys fees to which they are not entitled to, and has no basis. See Board. Of Gallery of History v. Datecs Corp., 116 Nev. 286, 994 P.2d 1149 (2000).

An attorney who was only an attorney representing a client, and not an actual party in an action does not have standing to appeal and/or participate in an appeal in their own personal capacity. Albert D. Massi Ltd v. Bellmyre, 111 Nev. 1520, 908

P;2d 705 (1995) This would also indicate that such a non-party (lawfirm) should not file frivolous motions.

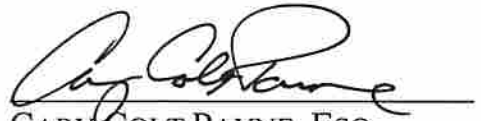
As such, the Barney Firm, a non-party, should be sanctioned (NRAP 38(b)) for such frivolous interference with the remaining appeal at the court's discretion.

CONCLUSION

It is submitted that the Barney Firm lacks any sort of standing to bring the motion, and it is requested that said motion be stricken and/or denied, and that the Barney Firm be sanctioned for their failure to follow the rule of the case/rule of law, unwarranted and frivolous filing(s) in this matter.

Dated: May 16, 2019

Filed by:


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CERTIFICATE OF SERVICE

I certify that pursuant to NRAP 31, on the 16th day of May, 2019, I have served to the following copy of the foregoing as follows:


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