

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

Elissa Faith Cadish (formerly known as Elissa Faith Geteles)

2. **Position**: State the position for which you have been nominated.

United States District Judge for the District of Nevada

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Eighth Judicial District Court
200 Lewis Avenue
Las Vegas, Nevada 89155

4. **Birthplace**: State year and place of birth.

1964; Brooklyn, New York

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1986 – 1989, University of Virginia School of Law; J.D., 1989

1982 – 1986, University of Pennsylvania College of Arts and Sciences; B.A. (*magna cum laude*), 1986

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2007 – present
Eighth Judicial District Court of the State of Nevada

200 Lewis Avenue
Las Vegas, Nevada 89155
District Judge

1995 – 2007
Hale Lane Peek Dennison and Howard (now part of Holland & Hart)
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134
Shareholder (2000 – 2007)
Associate (1995 – 1999)

1991 – 1995
Jolley Urga Wirth & Woodbury (now known as Jolley Urga Wirth Woodbury &
Standish)
3800 Howard Hughes Parkway, 16th Floor
Las Vegas, Nevada 89169
Associate

March – August 1991
Southern Nevada Law School Prep
3691 East Sunset Road
Las Vegas, Nevada 89120
Partner/Founder

1989 – 1991
Hon. Philip M. Pro
United States District Court for the District of Nevada
333 Las Vegas Boulevard South
Las Vegas, Nevada 89101
Judicial Law Clerk

Summers 1987, 1989
Jones Day
901 Lakeside Avenue
Cleveland, Ohio 44114
Summer Associate

Summer 1988
Dewey Ballantine (now Dewey Leboeuf)
1301 Avenue of the Americas
New York, New York 10019
Summer Associate

Summer 1988
Shaw Pittman (now Pillsbury Winthrop Shaw Pittman)
2300 N Street, NW

Washington, DC 20037
Summer Associate

Summers 1981 – 1986
Six Flags Great Adventure
1 Six Flags Boulevard
Jackson, New Jersey 08527
Food services employee

Other Affiliations (Uncompensated):

2011 – present
Midnight Printing, Inc.
2721 Losee Road, Suite A
North Las Vegas, Nevada 89030
Officer and Director

2009 – present
Howard D. McKibben Chapter of the American Inn of Court
c/o Alice Denton
Denton Lopez & Cho
601 South Tenth Street, Suite 203
Las Vegas, Nevada 89101
President (2010 – present)
President-Elect (2009 – 2010)

2005 – present
Congregation Ner Tamid Sisterhood
55 North Valle Verde Drive
Henderson, Nevada 89074
Secretary (2005 – 2006)
Parliamentarian (2007 – present)

2002 – present
Jenny Matt Editions, Inc.
2721 Losee Road, Suite A
North Las Vegas, Nevada 89030
Secretary (2002 – present)
President (2011 – present)
Director (2002 – present)

2008 – 2010
Clark County Law Library
309 South Third Street, Suite 400
Las Vegas, Nevada 89155
Member, Board of Directors

2001 – 2006

Southern Nevada Association of Women Attorneys

c/o Mary F. Chapman, Esq.

7465 West Lake Mead, Suite 100

Las Vegas, Nevada 89128

President (2004 – 2006)

Vice President (2002 – 2004)

Director (2001 – 2002)

1991 – 1994

Las Vegas Junior Chamber of Commerce (Jaycees)

No longer in existence

Individual Development Vice President (1993 – 1994)

Community Development Vice President (1992 – 1993)

Secretary (1991 – 1992)

1992 – 1993

Nevada Junior Chamber of Commerce (Jaycees)

No longer in existence

Legal Counsel to Board of Directors

1988 – 1989

Jewish Law Students Association

580 Massie Road

Charlottesville, Virginia 22903

Treasurer

1989

The Libel Show

580 Massie Road

Charlottesville, Virginia 22903

Treasurer

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I have not served in the military and was not required to register for selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Honored as Woman of Valor by Congregation Ner Tamid (2011)

Clark County Bar Association Ambassador of the Year (2010)

Clark County Law Foundation Trial by Peers Judge of the Year (2009)

Selected by the District of Nevada and the State Bar of Nevada to be one of eight Lawyer Representatives for our court to the Ninth Circuit (2006 – 2007)

Won numerous awards based on participation in Las Vegas Junior Chamber of Commerce between 1989 and 1994, including local officer of the quarter and the year, state winner of Speak-Up Competition sent to compete nationally at Ten Outstanding Young Americans program, Star of Excellence award for service to Nevada Junior Chamber of Commerce

Order of the Coif

Virginia Law Review

Pi Sigma Alpha political science honor society

High school class valedictorian

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association (1991 – present)
Section of Labor and Employment Law

American Inn of Court, Howard D. McKibben chapter (approx. 1989 – 1992, 1997 – present)
President-Elect (2009 – 2010)
President (2010 – present)

Clark County Bar Association (1991 – present)
Judicial Representative to Executive Board (2010 – 2011)
New Lawyers Committee (2010 – 2011)

Clark County Law Library
Board of Directors (2008 – 2010)

Eighth Judicial District Court Civil Bench Bar Committee
Chair (2008 – 2011)
Forms Committee
Early Case Resolution Committee

Eighth Judicial District Court Committee interviewing and evaluating candidates for Probate Commissioner position (2008)

Federal Bar Association, Nevada Chapter (approx. 1995 – present)
Southern Nevada Membership Chair (1999)

Lawyer Representative to United States District Court, District of Nevada (2006 – 2007)

Nevada District Judges Association (2007 – present)

Southern Nevada Association of Women Attorneys (approx. 1999 – present)
President (2004 – 2006)
Vice President (2002 – 2004)
Director (2001 – 2002)

State Bar of Nevada (1991 – present)

10. Bar and Court Admission:

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

Ohio, 1989 (inactive)
Nevada, 1991
District of Columbia, 1991 (inactive)

There have been no lapses in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Ninth Circuit, 1995
United States District Court for the District of Nevada, 1991
Ohio state courts, 1989
Nevada state courts, 1991
District of Columbia courts, 1991

There have been no lapses in membership.

11. Memberships:

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school.

Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Asian Chamber of Commerce (2008 – present)

Congregation Ner Tamid (2001 – present)

Religious School Parent Committee Member (2008 – 2011)

Sisterhood Member (2004 – present)

Sisterhood Secretary (2005 – 2006)

Sisterhood Liaison to Temple Office (2006 – 2007)

Sisterhood Parliamentarian (2007 – present)

Democratic Lawyers Caucus (2007 – present)

KNPR Public Radio Station, Member and Day Sponsor (2008 – present)

Las Vegas Junior Chamber of Commerce (Jaycees) (1989 – 1995)

Individual Development Vice President (1993 – 1994)

Community Development Vice President (1992 – 1993)

Secretary (1991 – 1992)

Nevada Junior Chamber of Commerce (Jaycees) (1989 – 1995)

Legal Counsel to Board of Directors (1992 – 1993)

Seniors United (2008 – present)

Sun City Anthem Democratic Club (2008 – present)

United States Junior Chamber of Commerce (Jaycees) (1989 – 1995)

Women's Chamber of Commerce of Nevada (2008 – 2010)

Women's Democratic Club of Clark County (2008 – present)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

I believe that the Jaycees formerly excluded women, but that was obviously prior to my involvement. Otherwise, to the best of my knowledge, none of these

organizations currently discriminates or formerly discriminated on the basis of race, sex, religion or national origin.

12. Published Writings and Public Statements:

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

Since 2008, I have been a Day Sponsor for KNPR public radio station each year and wrote the brief tribute read over the air on my day. The tributes have generally been about my birthday or my children's birthdays. I have been unable to obtain copies of these tributes.

1980s Class Notes, UVA LAW., Fall 2009. Copy supplied.

October 2008 Congregation Ner Tamid bulletin, ad for meet and greet event at the temple on October 19, 2008. Copy supplied.

District Judge Elissa Cadish, 2008 Candidate Guide, Red Rock Democratic Club. Copy supplied.

2008 Retain Judge Elissa Cadish campaign handout. Copy supplied.

2008: I maintained a website to support my judicial reelection campaign. I have been unable to obtain copies of the original website, but a copy of the archived version of the home page is supplied.

Biography for Clark County Courts website, Nov. 16, 2007. Copy supplied.

Letter to NAPABA Convention Attendees, Nov. 15, 2007. Copy supplied.

1980s Class Notes, UVA LAW., Fall 2007. Copy supplied.

1980: letter to the editor of the Howell Booster local newspaper regarding the death of John Lennon. I wrote the letter in response to a prior letter by another individual that criticized Mr. Lennon in a way that I felt was unfair. I have been unable to obtain a copy of the letter.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

Discovery forms proposed by Forms Subcommittee of the Civil Bench Bar Committee of which I was chair, 2011. Copies supplied.

Memo and rule changes proposed by Early Case Resolution Subcommittee of the Civil Bench Bar Committee, 2011. Copies supplied.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

On September 30, 2008, I signed the Nevada Freedom of Information Coalition Open Government Pledge. Copy supplied.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you, including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have not maintained a record of my public speaking appearances. To respond to this question, I have reviewed my files and calendars, conducted extensive Internet and public database searches, and contacted court staff to compile a list that is as complete as possible. Although I have attempted to create as comprehensive a list as possible, there may be other speeches or talks that I have given that I have been unable to recall or identify.

November 19, 2011: Acceptance speech at Women of Valor event honoring me and two other women by Congregation Ner Tamid, Henderson, Nevada. Remarks supplied.

June 2008 through September 2011: I acted as chair of the court's Civil Bench Bar Committee. Accordingly, I ran meetings and provided information regarding the court and various projects to improve the court at each monthly meeting. Meetings were once a month, except we did not meet during June, July, August, or December. Meeting agendas with my notes are supplied.

June 23 – 25, 2011: Participated as presenter during Trial Academy organized by Young Lawyers Section of the State Bar of Nevada during the State Bar's annual conference in Kauai, Hawaii. I was part of a panel of presenters regarding direct and cross examination, and also was present and gave input and feedback during

other portions of the seminar regarding skills necessary in the different parts of a trial. Notes supplied.

January 20, 2011: Brief remarks at Clark County Bar Association luncheon during which I was awarded the CCBA Ambassador of the Year, Las Vegas, Nevada. I have no notes, transcripts, or recordings. Clark County Bar Association, P.O. Box 657, Las Vegas, Nevada 89125.

August 13, 2010: Ethical Considerations at Trial Under Nevada Rules of Professional Conduct, University of Nevada Las Vegas Rebel Rendezvous at Lake Tahoe, Stateline, Nevada. Handout supplied.

June 30, 2010: Administered Oath of Office to Board members of the Southern Nevada Association of Women Attorneys, Las Vegas, Nevada. Oath supplied.

May 3, 2010: Overview of Clark County Courts in connection with Informational Visit by Thai Judicial Delegation, at Regional Justice Center, Las Vegas, Nevada. Outline and press coverage supplied.

April 9, 2010: Conducted Probate Bench Bar Meeting, Clark County Family Court, Las Vegas, Nevada. I have no notes, transcripts, or recordings. The address of the Family Court is 601 North Pecos, Las Vegas, Nevada 89101.

March 12, 2010: Participated as judge of Negotiation Competition at the Boyd School of Law at the University of Nevada Las Vegas. I evaluated student performances and gave them feedback orally as well. I have no notes, transcripts, or recordings. Boyd School of Law, 4505 South Maryland Parkway, Box 451003, Las Vegas, Nevada 89154.

February 27, 2010: Participated as judge of ABA's National Appellate Advocacy Competition involving law students from around the country. I evaluated student performances and gave them feedback orally as well. I have no notes, transcripts, or recordings. American Bar Association, 321 North Clark Street, Chicago, Illinois 60654.

November 10, 2009: Making the Record on Appeal, Howard D. McKibben Chapter of the American Inns of Court, Las Vegas, Nevada. Handout supplied.

October 16, 2009: Delivered remarks and installed Student Council for Dorothy Eisenberg Elementary School, Las Vegas, Nevada. I have no notes, transcripts, or recordings. Dorothy Eisenberg Elementary School, 7770 West Delhi Avenue, Las Vegas, Nevada 89129.

October 3, 2009: Participated as judge for Boyd School of Law's Mock Trial Competition in Las Vegas, Nevada. I evaluated student performances and gave feedback on score sheets. I have no notes, transcripts, or recordings. Boyd

School of Law, 4505 South Maryland Parkway, Box 451003, Las Vegas, Nevada 89154.

August 21, 2009: Serving for Justice: Service of Process, Clark County Bar Association Continuing Legal Education. Notes supplied.

June 4, 2009: Presentation to Southern Nevada Association of Women Attorneys regarding Eighth Judicial District Court update, Las Vegas, Nevada. Notes supplied.

March 18, 2009: Nevada Association of Land Surveyors/Arizona Professional Land Surveyors Mock Trial. The script was not drafted by me, but was provided to me for use in the presentation. Script supplied.

February 26, 2009: Attended Nevada Association of Legal Secretaries (NALS) Installation Dinner and swore in their new officers for the year, Las Vegas, Nevada. I have no notes, transcripts, or recordings. Nevada Association of Legal Secretaries, c/o Timothy Kelley, Vice President, 4412 LaReina Circle, Las Vegas, Nevada 89130.

February 10, 2009: Motion Mania (or A Freudian Approach to Motion Practice): What Do Judges (and Lawyers) Really Want (and Need), Howard D. McKibben Chapter of the American Inns of Court, Las Vegas, Nevada. Handouts and script supplied.

January 12, 2009: Tips & Mistakes, Howard D. McKibben Chapter of the American Inns of Court, Las Vegas, Nevada. Handout supplied.

January 5, 2009: Administered Oath and Pledge for admission to North Dakota Bar to attorney Nathan Severson, Las Vegas, Nevada. I have no notes, transcripts, or recordings.

November 21, 2008: Remarks with advice for new lawyers at the New Admittees Brunch of the Southern Nevada Association of Women Attorneys, Las Vegas Country Club, Las Vegas, Nevada. Remarks supplied.

September 28, 2008: Remarks to the Sun City Anthem Havurah Club, Henderson, Nevada. I introduced myself and generally discussed the Nevada court system and types of cases heard in each court. I have no notes, transcripts, or recording. The club does not have a physical address.

September 27, 2008: Presentation regarding the organization and operation of the District Court in connection with Project REAL's Your Day in Court program, Las Vegas, Nevada. I have no notes, transcripts, or recordings. Project REAL, 310 South Fourth Street, Las Vegas, Nevada 89101.

Fall 2008: Speech promoting my campaign to retain my seat as District Judge, recorded by Cox Cable and later available to Cox subscribers, Las Vegas, Nevada. Remarks supplied.

Fall 2008: Recorded campaign commercial that was available on www.yellowbook.com. Script supplied.

Fall 2008: Recorded commercial that played on television stations in Las Vegas, Nevada during the final weeks of my campaign. Video recording supplied.

Spring 2008: Participated in panel of female lawyers with different career paths doing presentation to attendees from the Organization of Women Law Students (OWLS) from Boyd School of Law, Las Vegas, Nevada. I have no notes, transcripts, or recordings. Organization of Women Law Students, c/o Boyd School of Law, 4505 South Maryland Parkway, Box 451003, Las Vegas, Nevada 89154.

November 13, 2007: Non-Compete and Trade Secret Litigation (or, What You Can Do With Your Non-Compete), Howard D. McKibben Chapter of the American Inns of Court, Las Vegas, Nevada. Handout supplied.

October 12, 2007: Participated in panel presentation at CLE program entitled View from the Bench regarding judges' preferences in oral and written presentations to the court in Las Vegas, Nevada. I have no notes, transcripts, or recordings. State Bar of Nevada, 600 East Charleston Boulevard, Las Vegas, Nevada 89104.

October of each year 2007 to 2011: Administered Oath of Admission to State Bar of Nevada to my law clerks and occasionally other bar admittees, Las Vegas, Nevada. Video recording supplied.

Fall 2007 to present: Jury Welcome Speech, which I use when it is my week to welcome potential jurors to the courthouse, Las Vegas, Nevada. After I had given this speech for six months, I began giving impromptu remarks following the written remarks. Remarks supplied.

August 24, 2007: Speech at my Eighth Judicial District Court Investiture Ceremony regarding my intentions in carrying out my duties and thanking all those who helped me reach that point, Las Vegas, Nevada. Remarks supplied.

February 13, 2007: Pitfalls of Probate & Estate Planning, Howard D. McKibben Chapter of the American Inns of Court, Las Vegas, Nevada. I have no notes, transcripts, or recordings. The Chapter does not have a physical location.

February 2007: Taught portion of CLE presentation put on by the Southern Nevada Association of Women Attorneys along with Anthony Hall, Esq.

regarding general employment law principles, Las Vegas, Nevada. I have no notes, transcripts, or recordings. Southern Nevada Association of Women Attorneys, c/o Mary F. Chapman, Esq., 7465 West Lake Mead, Suite 100, Las Vegas, Nevada 89128.

September 25, 2006, June 30, 2006, March 21, 2006: National teleconference seminar on Effective Interviewing Techniques, Lorman Education Services. Handout supplied.

April 26, 2006: Lawyer Advertising, Howard D. McKibben Chapter of the American Inns of Court, Las Vegas, Nevada. I have no notes, transcripts, or recordings. The Chapter does not have a physical location.

February 14, 2006: Presentation for Council on Education in Management for Human Resource personnel on Nevada Employment Law Update, Las Vegas, Nevada. I have no notes, transcripts, or recordings. The Council on Education in Management, 1338 Hundred Oaks Drive, Charlotte, North Carolina 28217.

January 27, 2006: Taught portion of CLE presentation put on by the Southern Nevada Association of Women Attorneys along with Kathleen England, Esq. regarding an overview of employment law. Handout supplied.

April 4, 2005: Presentation for Council on Education in Management for Human Resource personnel on FMLA Update 2005, Las Vegas, Nevada. I have no notes, transcripts, or recordings. The Council on Education in Management, 1338 Hundred Oaks Drive, Charlotte, North Carolina 28217.

October 12, 2004: The Attorney and the Media, Howard D. McKibben Chapter of the American Inns of Court, Las Vegas, Nevada. Handouts supplied.

May 10, 2004: Presentation for Council on Education in Management for Human Resource personnel on Nevada Personnel Law Update, Las Vegas, Nevada. I have no notes, transcripts, or recordings. The Council on Education in Management, 1338 Hundred Oaks Drive, Charlotte, North Carolina 28217.

March 10, 2004: Presentation on *Brown v. Board of Education*, Howard D. McKibben Chapter of the American Inns of Court, Las Vegas, Nevada. I have no notes, transcripts, or recordings. The Chapter has no physical address.

January 26, 2004: Presentation for Council on Education in Management for Human Resource personnel as part of the Employment Law Certificate in HR Program, Las Vegas, Nevada. Handout supplied.

January 16, 2004: Employment Related Records in Nevada, Lorman Education Services. Handout supplied.

September 12, 2003: Hiring and Firing, Sterling Education Services. I used the same handout as that supplied for the January 16, 2004 event.

January 28, 2003: Mediation and Settlement Conferences, Howard D. McKibben Chapter of the American Inns of Court, Las Vegas, Nevada. Handout supplied.

May 28, 2002: The Trial of a Terrorist for Special Crimes against the United States, Howard D. McKibben Chapter of the American Inns of Court, Las Vegas, Nevada. Handout supplied.

February 21, 2001: Dr. Crook Seeks Justice: Litigating the Defamation Lawsuit, Howard D. McKibben Chapter of the American Inns of Court, Las Vegas, Nevada. Handouts and script supplied.

April 18, 1990: Traps for the Unwary: Avoiding Ethical Hazards, Howard D. McKibben Chapter of the American Inns of Court, Las Vegas, Nevada. Handout supplied.

June 1982: Delivered speech as valedictorian at my high school graduation at Howell High School, Howell, New Jersey. I generally reflected on my years in school and discussed my hopes for future successes for myself and my classmates. I have no notes, transcript or recording. The address of Howell High School is 405 Squankum-Yellowbrook Road, Farmingdale, New Jersey 07727.

During 2008, I ran for election to retain my position as District Judge. My campaign held various fundraisers and events for me throughout the year, including on the following dates: October 5, 2008, September 20, 2008, September 6, 2008, August 14, 2008, June 13, 2008, May 8, 2008, May 1, 2008, and February 28, 2008. At each of these events, I spoke briefly to introduce myself, tell a little about my background, education, experience, and qualifications, and encourage people to support my campaign. Each of these events took place in Las Vegas, Nevada. I also spoke at candidate events sponsored by other organizations including Clark County, the Bunkerville community, the Laughlin community, Sun City Summerlin, the League of Women Voters, Southern Nevada Association of Women Attorneys, Clark County Bar Association, and the Mediators of Southern Nevada. Throughout the year, I also attended many meetings of groups including Democratic clubs, various chambers of commerce, civic organizations and community groups, and attended public events, activities, and parades to meet people and promote my campaign. I specifically recall attending meetings or events of the Sun City Anthem Democratic Club, Henderson Democratic Club, Paradise Democratic Club, Women's Democratic Club, Lawyers Democratic Caucus, Red Rock Democratic Club, Black Democratic Caucus, Si Se Puede Democratic Club, Asian Chamber of Commerce, Asian American Group, Latin Chamber of Commerce, Urban Chamber of Commerce, Hispanics in Politics, Fremont Rotary Club, Kiwanis Club, Philippine American Lions Club, Latin Bar Association,

Sierra Club, Hadassah, Seniors United, Large Vision Business Network Mixer, Women's Chamber of Commerce, Las Vegas Chamber of Commerce, Organization of Women Law Students, University of Nevada-Las Vegas, Boulder City Damboree Parade on the Fourth of July, and Helldorado Day Parade in Las Vegas. At each of these events, I introduced myself and sought support. I have been unable to recall each time I introduced myself in public during that year, as I attended at least one event nearly every night and also attended luncheons and breakfast meetings. I have no notes, transcripts, or recordings from these events.

For several years, from about 2000 to 2007, I was responsible for organizing litigation lunch meetings of the Hale Lane Las Vegas office's litigation group. During these meetings, I regularly presented information regarding current legal developments as well as firm news. I have no notes, transcripts, or recordings from these events. The address of Hale Lane, now part of Holland & Hart, is 9555 Hillwood Drive, Second Floor, Las Vegas, Nevada 89134.

Additionally, for four or five years before I became a judge, I led an annual tour of the state and federal courthouses for summer associates at my firm as well as several other major Las Vegas law firms. I shared information about the courts with tour participants and I also introduced judges and administrators who spoke about their courts and processes. We also had the opportunity each year to observe a naturalization ceremony at the federal court. I have no notes, transcripts, or recordings.

For nearly every year since 1989, I have acted as a judge in the annual "We the People" competition in which high school students give presentations to demonstrate their knowledge of the history and provisions of the United States Constitution. I scored groups and provided oral feedback. I have no notes, transcripts, or recordings.

I believe I conducted other presentations on employment law topics to lawyers and to laypeople employed with corporate clients as well as fellow attorneys within my firm, but am unable to identify the specific dates, places, or topics, other than to say they would have been between 1992 and 2007.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

Carri Geer Thevenot, *Obama Nominates Cadish for Federal Judge*, LAS VEGAS REV. J., Feb. 16, 2012. Copy supplied.

Matters of Trust with Anthony Barney (KNUU radio broadcast July 28, 2011). Audio recording supplied.

Doug McMurdo, *Survey Raises Questions about Women on the Bench*, LAS VEGAS REV. J., May 11, 2010, at 1A. Copy supplied.

Carri Geer Thevenot, *Reid List Could Be Diverse*, LAS VEGAS REV. J., Nov. 28, 2009, at 1B (quotes reprinted in multiple outlets). Copy supplied.

Jane Ann Morrison, *Two Judges 'Fess Up in Massage Caper*, Mar. 27, 2009. Copy supplied.

Athena Awards Red Carpet (television broadcast Nov. 7, 2008). Available at <http://www.youtube.com/watch?v=eLMtjIQcPKg>.

Judicial Election Preview: Meet the Judicial Candidates, COMMUNIQUE, Oct. 2008, at 29. Copy supplied.

Antonio Planas, *District Court Judge Department 6*, LAS VEGAS REV. J., Oct. 19, 2008, at 33JJ. Copy supplied.

Candidates Show Promise of Boosting the Reputation of District Court Bench, LAS VEGAS SUN, Oct. 12, 2008. Copy supplied. Although I was interviewed for this article, I am not directly quoted in it.

Editorial, *For District Court*, LAS VEGAS REV. J., Oct. 16, 2008. Copy supplied. Although I was interviewed for this article, I am not directly quoted in it.

Face to Face with Jon Ralston, Segment 4 (Las Vegas 1 television broadcast Oct. 8, 2008). My segments are available at the links below:

Part 1: <http://www.youtube.com/watch?v=pmpGY46l9Xk>

Part 2: <http://www.youtube.com/watch?v=CAHkTS3EJaQ>

Vote 2008: Judicial Town Hall, (KLVX (PBS) television broadcast Oct. 2, 2008 and Oct. 9, 2008). I have been unable to obtain a copy of the broadcast.

Veterans in Politics, All Talk Radio. Sept. 13, 2008. I have been unable to obtain a copy of the radio broadcast.

William Bessette, *Judging the Judges Part Three: Elissa Cadish*, QVEGAS, Sept. 2008, at 56. Copy supplied.

International Brotherhood of Teamsters 2008 State Candidate Questionnaire, July 2008. Copy supplied.

Citizens for Responsible Government Judicial Candidates Election 2008 questionnaire, May 8, 2008. Copy supplied.

Board of Realtors Political Action Committee 2008 Candidate Questionnaire, May 2008. Copy supplied.

Nevada Animal Owner & Sportsman Voting Alliance 2008 Questionnaire, May 2008. Copy supplied.

Southwest Regional Council of Carpenters, Nevada Carpenters Political Action Committee, Judicial Questionnaire, April 12, 2008. Copy supplied.

Service Employees International Union 2008 Judicial Candidate Questionnaire, April 8, 2008. Copy supplied.

Michael Sommermeyer, *2007 Brought New Judges to the Court*, EN BANC (Clark County Courts, Las Vegas, Nev.), Jan. 2008, at 6. Copy supplied.

Las Vegas Review-Journal Election 2008 Candidate Information Form, 2008. Copy supplied.

Mediators of Southern Nevada Judicial Candidate Questionnaire, 2008. Copy supplied.

2008: I participated in endorsement interviews with various political, civic, and labor organizations to obtain their endorsement of my candidacy. Other than those listed above, I have been unable to recall or identify the organizations and the dates of these interviews.

Press Release, *Judge Elissa Cadish Announces Candidacy to Retain District Court Seat*, Committee to Retain Judge Elissa Cadish, Dec. 21, 2007. Copy supplied.

Press Release, *Hale Lane Lawyer Appointed as District Judge by Nevada Gov. Jim Gibbons*, Hale Lane, Sept. 5, 2007. Copy supplied.

K.C. Howard, *Gibbons Names Bonaventure Replacement*, LAS VEGAS REV. J., July 13, 2007, at 9B. Copy supplied.

Press Release, *Governor Gibbons Appoints Clark District Judge*, Office of the Governor, July 12, 2007. Copy supplied.

Stephanie Tavares, *Q&A*, IN BUS. LAS VEGAS, Mar. 23, 2007, at 5, 8. Copy supplied.

Kathleen M. Paustian, *ENE: What is it? Does it Work?*, NEV. LAW., Jan. 2007, at 29. Copy supplied.

Face to Face, NEV. BUS., Oct. 2005. Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have held the position of District Judge in Department 6 of the Civil/Criminal Division of the Eighth Judicial District Court of the State of Nevada since August of 2007. I was appointed by the Governor of the State of Nevada to fill the position after my predecessor retired in mid-term. I then ran to retain my seat in 2008 in a contested race where I had one challenger. In November 2008, I won the election for a six-year term that expires at the end of 2014. My court is a court of general jurisdiction, covering civil cases with more than \$10,000 in issue and criminal cases involving felonies and gross misdemeanors. I also sat as the probate judge for my court, in addition to my civil and criminal cases, from January 2010 through August 2011.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment? 94

- i. Of these, approximately what percent were:

jury trials:	72%
bench trials:	28%
civil proceedings:	56%
criminal proceedings:	44%

- b. Provide citations for all opinions you have written, including concurrences and dissents.

None. Because I sit in a trial court of general jurisdiction, I do not issue formal published opinions, such as courts of appeal issue. Without reviewing each and every case file, I cannot compile a list of every order that contained a detailed analysis of legal issues and findings of fact, such as would appear in an opinion order. Those orders are on file with the clerk of the court. Because they are not published, I cannot provide citations for them.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (3) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. State v. Carroll, Case No. C266917.

This is a case in which the defendant was charged with seventeen counts of perjury, seventeen counts of offering false instrument for filing or record, and one count of obtaining money under false pretenses. The charges relate to seventeen

affidavits of service, purportedly bearing defendant's signature as process server and a notary public stamp and signature, describing service upon individuals who testified that they had not been served with the papers described in the affidavits relating to cases pending against them in justice court. The charge of obtaining money under false pretenses related to defendant's client, who paid for the service of process on these individuals. I conducted a jury trial in this case in October 2010, at which the jury convicted the defendant on all counts. Thereafter, defendant filed a motion for new trial because the notary public shown on the affidavits, who did not testify at trial, had been located and denied having notarized or signed the documents. Defendant argued that, absent evidence that defendant had been placed under oath or had signed the affidavits in front of a notary public, he could not be convicted of perjury. I granted the motion for a new trial on the perjury counts, finding that there was a probability that the jury would have reached a different verdict had it heard the testimony from the notary public. The state filed a petition for a writ of mandamus or prohibition with the Nevada Supreme Court. The Supreme Court entered an order agreeing with my decision and denying the petition on December 27, 2011. While that was pending, the state obtained an indictment against defendant for seventeen counts of forgery, alleging that defendant had forged the notary public's signature on the affidavits. I ordered the two cases consolidated, and trial is scheduled on the new forgery charges along with retrial of the perjury charges for July 2, 2012.

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2. State v. Nunnery, Case No. C227198.

This was a capital murder case, in which the defendant was charged with murdering a drug dealer over a drug deal gone bad. The defendant was convicted by a jury and the case then proceeded to the penalty phase. The jury was unable to reach a unanimous verdict as to the appropriate sentence and thus resulted in a hung jury. In accordance with Nevada law, I chose to impose a sentence of life without the possibility of parole rather than impanel a new jury in light of the fact that the defendant had already been sentenced to death in another case, he was facing the death penalty in yet another case, and significant mitigation evidence had been presented by the defense.

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3. State v. Burton, Case No. C242842.

This was a high profile case in which the defendant was charged with murdering the manager of a large furniture store on the day after Thanksgiving when he was leaving the store to go to the bank to make the day's deposit. The defendant was 17 years old at the time of the murder. He was found guilty by a jury and, after a penalty hearing, was sentenced by the jury to life without the possibility of parole.

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4. State v. Conner, Case No. C235833.

This was a capital murder case in which the defendant was charged with raping and murdering a young woman in her apartment 25 years ago. At the time of the murder, the case was not solved and became a cold case. Many years later, with the advent of DNA testing, samples taken from the victim and the murder scene were tested and resulted in a hit, showing a match to the defendant, who had been incarcerated in a different state for unrelated charges. The jury found him guilty and, after a penalty hearing, returned with a sentence of death for the murder.

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Christy Craig
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5. State v. Redman, Case No. C243889.

This was a case in which the defendant was charged with stabbing his 12-year-old daughter to death in their mobile home. Defendant asserted a defense of not guilty by reason of insanity. The parties stipulated to have me act as the finder of fact, rather than a jury. After a trial, and analysis of statutes and cases regarding the insanity defense in Nevada, I returned a verdict of guilty but mentally ill.

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6. S. Nev. Health Dist. v. Clark County, Case No. A643953.

This was a case involving a dispute over statutory interpretation regarding funding provided by Clark County for the Southern Nevada Health District, and whether Clark County was required to fund that entity to the full extent of its proposed budget so long as it did not exceed a specified portion of property taxes collected. I ruled in favor of the Southern Nevada Health District, finding that it must be funded pursuant to its budget in accordance with the language of the applicable statutes.

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7. S. Nev. Laborers v. Nev. Dep't of Employment, Training & Rehab., Case No. A614112.

The Southern Nevada Laborers sought a writ of mandate, asserting that State agencies were not complying with the statutory requirements of the Green Jobs Initiative passed by the 2009 Nevada legislature in contracting for training and hiring contractors. The projects at issue had received funding from the federal American Recovery and Reinvestment Act of 2009 relating to promoting energy

efficiency and renewable energy. After review of the briefs, consideration of the arguments at a hearing, and taking the matter under advisement, I denied the requested writ. Order Denying Petition for Writ of Mandate supplied.

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Local Counsel for Plaintiff Southern Nevada Laborers

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(510) 337-1001
Attorney for Plaintiff Southern Nevada Laborers

8. State v. Carpenter, Case No. C270434.

In this case, the defendant was an officer with the Las Vegas Metropolitan Police Department who was facing felony charges of reckless driving causing death and reckless driving causing substantial bodily harm. The charges arose out of a police chase of a suspected drunk driver who began driving erratically when being chased. The chase ended with a multiple vehicle car accident in which the suspected drunk driver died and another unrelated driver was seriously injured. The State asserted that the defendant had been ordered to discontinue the chase and had disregarded those orders. After a jury trial, the jury returned a verdict of not guilty.

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9. Hernandez v. Axson, Case No. A520168.

This was a civil suit arising out of a car accident in which a teenage girl was killed. The van in which she was a passenger had broken down on the highway, and it came to a stop while partially in the travel lane on a busy holiday weekend. Cars coming behind avoided collision with the van but a tractor-trailer hit the van, causing her death. After approximately two weeks of trial, the parties reached a settlement resolving the case.

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10. Perry v. Mohave Elec., Case No. A528668.

This was a civil case arising out of a car accident resulting in the death of a woman. She was driving a car and the other vehicle was an electrical contractor's van loaded with equipment. Liability was disputed at the trial. The jury found defendant liable and awarded a substantial amount of damages. Prior to the verdict the parties had reached an agreement on a capped amount for damages, so the judgment ultimately entered was for that capped amount.

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- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

Because I sit in a trial court of general jurisdiction, I do not issue formal published opinions, such as courts of appeal issue. Without reviewing each and every case file, I cannot compile a list of every order that contained a detailed analysis of legal issues and findings of fact, such as would appear in an opinion order. Those orders are on file with the clerk of the court. However, I list here the most significant opinions that I have written in whole or in which I made substantial revisions to the proposed findings submitted by the parties.

1. State v. Krolicki, Case No. C250045. Order supplied.

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2. State v. Centofanti, Case No. C172534. Order supplied.

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3. Mydlach v. Reed Elsevier, Case No. A476439. Order supplied.

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4. CME Enters., Inc. v. Juan Gabriel Shows, LLC, Case No. A506350. Order supplied.

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5. Franklin v. Greenspan, Case No. A489768. Order supplied.

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Attorney for Defendants/Cross-claimants/Cross-defendants Greenspan

6. Styles v. Friends of Fiji, Case No. A491328. Order supplied.

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7. State v. Broadbent, Case No. C251303. Order supplied.

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8. Hoffman v. Hoffman, Case No. A508821. Order supplied.

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Attorney for Third-party Defendant First American Title Company

9. McKenna v. Las Vegas Solutions, LLC, Case No. A533122. Order supplied.

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10. State v. Reveles, Case No. C246321. Order supplied.

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Attorney for Defendant Reveles

e. Provide a list of all cases in which certiorari was requested or granted.

None.

f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

Boston v. State, No. 58216, 2012 WL 380361 (Nev. Feb. 3, 2012). On September 15, 1988, a jury convicted Mr. Boston of burglary, lewdness with a minor with use of a deadly weapon, assault with a deadly weapon, battery with intent to

commit a crime with use of a deadly weapon, first degree kidnapping with use of a deadly weapon, seven counts of sexual assault with use of a deadly weapon, robbery with use of a deadly weapon, and attempt to dissuade victim or witness from reporting a crime with use of a deadly weapon. He was sentenced on these counts to fourteen consecutive life sentences with the possibility of parole plus consecutive terms totaling ninety-two years. He filed a direct appeal which was dismissed by the Nevada Supreme Court in 1989. He filed a petition for writ of habeas corpus in 1988 which was denied, and later filed a petition in 1990 which was denied after an evidentiary hearing was conducted. His appeal from the latter decision was dismissed as untimely in 1994. He then filed a pro per petition on January 5, 2011 alleging ineffectiveness of counsel and that, because he was a juvenile at the time he committed these offenses, his sentence constituted cruel and unusual punishment, relying in part on the U.S. Supreme Court's decision in Graham v. Florida, 560 U.S. ___, 130 S. Ct. 2011 (2010). I denied the petition on the basis that it was untimely and successive and good cause had not been shown for these procedural defaults. The Nevada Supreme Court reversed in part on the basis that I did not address whether Graham provided good cause for the late and successive petition, and that counsel should have been appointed to address claims relating to that decision. A copy of the District Court order is supplied.

Walters v. Meeks, No. 53856, 2011 WL 4527714 (Nev. Sept. 29, 2011). On April 9, 2009, I granted dismissal of a personal injury suit as a contempt sanction for plaintiffs' failure to comply with court orders and failure to provide a computation of damages pursuant to Nev. R. Civ. P. 16.1(a)(1)(C). Plaintiffs filed a direct appeal with the Nevada Supreme Court. The Nevada Supreme Court reversed, holding that although sanctions were warranted for plaintiffs' conduct, dismissal of the complaint was too severe a sanction. A copy of the District Court order is supplied.

Hicks v. State, No. 56486, 2011 WL 1344143 (Nev. Apr. 6, 2011). On August 20, 2007, a jury convicted Mr. Hicks of burglary while in possession of a firearm, conspiracy to commit robbery, three counts of robbery with use of a deadly weapon, and two counts of battery with use of deadly weapon. Mr. Hicks filed a direct appeal with the Nevada Supreme Court and his appeal was dismissed on jurisdictional grounds. Subsequently, Mr. Hicks filed a petition for writ of habeas corpus alleging ineffective assistance of counsel for the untimely filing of a direct appeal. I granted Mr. Hicks relief and allowed him to file a petition pursuant to Lozada v. State, 110 Nev. 349, 871 P.2d 944 (1994), which I denied on the merits. Mr. Hicks filed a successive and untimely second habeas petition and I denied relief. The Nevada Supreme Court reversed, holding that the time for filing a post-conviction writ based on a Lozada appeal is one year from the date of remittitur, and therefore the petition was timely. Additionally, the Supreme Court held that Mr. Hicks could not have raised his ineffective assistance claims as to Lozada counsel in a previous petition and therefore the second petition was not successive. A copy of the District Court order is supplied. The ruling of this Court was made by Senior District Judge Lee Gates at a hearing in my absence, as

shown by the attached court minutes. However, I signed the subsequently submitted Order documenting this ruling, which constitutes the official ruling of the Court.

Steese v. State, No. 54344, 2010 WL 4514351 (Nev. Nov. 5, 2010). On March 1, 1995, a jury convicted Mr. Steese of murder with use of a deadly weapon, robbery with use of a deadly weapon, burglary, and grand larceny auto. Mr. Steese filed a direct appeal with the Nevada Supreme Court and his conviction was affirmed. Mr. Steese filed a petition for writ of habeas corpus in 2009, which was both untimely and successive, and thus procedurally barred absent a showing of good cause and actual prejudice. Steese argued that his procedural defects should be excused because he is actually innocent. I dismissed the petition as procedurally barred because the alleged evidence of defendant's innocence, an affidavit from Steese's estranged brother, was not kept from Steese by any action of the state. The Nevada Supreme Court reversed, holding that an evidentiary hearing must be held to determine whether Steese's new evidence was reliable and whether he demonstrated that it is more likely than not that no reasonable juror would have found him guilty beyond a reasonable doubt. If this is established, then the procedural bars would be overcome, and I would then look at the substantive Constitutional claims asserted to determine whether they are meritorious. A copy of the District Court order is supplied.

Tabile v. State, No. 55628, 2010 WL 3860402 (Nev. Sept. 29, 2010). On February 16, 2007, a jury convicted Mr. Tabile of first-degree murder, attempted robbery with use of a deadly weapon, first degree kidnapping with use of a deadly weapon, and two counts of possession of stolen property. Mr. Tabile filed a direct appeal with the Nevada Supreme Court and his conviction was affirmed. Subsequently, Mr. Tabile moved for appointment of counsel and filed a proper person writ of habeas corpus. I denied his petition finding that the issues raised in the petition should have been raised on direct appeal and that Mr. Tabile did not raise a viable claim of ineffective assistance of counsel. Mr. Tabile filed a proper person appeal of the order denying his post-conviction writ for habeas corpus. The Nevada Supreme Court reversed, holding that there were facts that required additional development and ordered the appointment of counsel to assist with post-conviction proceedings. A copy of the District Court order is supplied.

Lopez v. State, No. 55546, 2010 WL 3554368 (Nev. Sept. 10, 2010). On May 9, 2007, a jury convicted Mr. Lopez of murder, child abuse and neglect with substantial bodily harm, and two counts of child abuse. Mr. Lopez filed a direct appeal with the Nevada Supreme Court and his conviction was affirmed. Subsequently, Mr. Lopez filed a petition for writ of habeas corpus, which I denied. Mr. Lopez filed a proper person appeal of the order denying his post-conviction proceedings. The Nevada Supreme Court reversed, holding that there were facts that required additional development, and ordered the appointment of counsel to assist with post-conviction proceedings. A copy of the District Court order supplied.

Jenkins v. State, No. 55136, 2010 WL 3554320 (Nev. Sept. 10, 2010). On October 9, 2009, a jury convicted Mr. Jenkins and his co-defendant, Mr. Morgan, of two counts of use of explosives to damage or destroy property, two counts of manufacture and/or possession of an explosive device or incendiary device, five counts of possession of credit or debit card without cardholder's consent, burglary, conspiracy to manufacture and/or possess an explosive or incendiary device, possession of burglary tools, and possession of a firearm by a prohibited person. Mr. Jenkins filed a direct appeal with the Nevada Supreme Court. The Nevada Supreme Court affirmed in part, reversed in part, and remanded, holding that there was insufficient evidence at trial to support a conviction for burglary, use of explosives to damage or destroy property, manufacture and/or possession of explosive or incendiary devices, and conspiracy to manufacture and/or possess an explosive or incendiary device.

Morgan v. State, No. 55192, 2010 WL 3554322 (Nev. Sept. 10, 2010). On October 9, 2009, a jury convicted Mr. Morgan and his co-defendant, Mr. Jenkins, of two counts of use of explosives to damage or destroy property, two counts of manufacture and/or possession of an explosive device or incendiary device, five counts of possession of credit or debit card without cardholder's consent, burglary, conspiracy to manufacture and/or possess an explosive or incendiary device, possession of burglary tools, and possession of a firearm by a prohibited person. Mr. Morgan filed a direct appeal with the Nevada Supreme Court. The Nevada Supreme Court affirmed in part, reversed in part, and remanded, holding that there was insufficient evidence at trial to support a conviction for possession of a firearm by an ex-felon, possession of credit or debit cards without cardholder's consent, and possession of burglary tools.

Rowell v. State, No. 54708 (Nev. Apr. 8, 2010). On September 19, 2007, Mr. Rowell pled guilty to burglary and grand larceny. Mr. Rowell filed a direct appeal with the Nevada Supreme Court and his conviction was affirmed. Subsequently, Mr. Rowell filed a petition for writ of habeas corpus, which I denied. Mr. Rowell filed a proper person appeal of the order denying his post-conviction writ for habeas corpus. The Nevada Supreme Court affirmed in part, reversed in part, and remanded, holding that Mr. Rowell's claim of ineffective assistance of counsel for failure to raise the issue of the appropriate amount of credit for time served warranted further consideration. A copy of the District Court order and Nevada Supreme Court order are supplied.

Ton v. Mid Valley Enters., LLC, Nos. 52860, 53478, 2010 WL 3310703 (Nev. May 12, 2010). On October 27, 2008, I granted summary judgment on claims of misappropriation of likeness, unauthorized commercial use of name and likeness, unreasonable publicity to private facts, unreasonable intrusion upon seclusion of another, intentional and/or negligent infliction of emotional distress, negligence, and unjust enrichment. Plaintiff filed a direct appeal with the Nevada Supreme Court. The Nevada Supreme Court affirmed in part, reversed in part, and

remanded, holding that there remained a genuine issue of material fact whether the release signed by plaintiff allowed defendant to attribute statements to plaintiff that she allegedly did not make. A copy of the District Court order is supplied.

Sonia F. v. Eighth Judicial Dist. Court, 125 Nev. 495 (2009). Plaintiff filed a complaint alleging sexual assault, statutory sexual seduction, battery, intentional and negligent infliction of severe emotional distress, gross negligence, negligence, and negligence per se. The discovery commissioner issued a report and recommendation, which I affirmed, granting plaintiff's motion for protective order in part to preclude certain discovery pertaining to plaintiff's sexual history. Specifically, plaintiff sought to extend the protections of the rape shield law to civil actions. Plaintiff filed a petition for writ of mandamus or prohibition challenging the district court's order affirming the discovery commissioner's report and recommendations. The Nevada Supreme Court granted the petition in part. In a case of first impression, the Nevada Supreme Court held that the rape shield statute does not apply in civil sexual assault cases, but held that discovery in these cases should not be unlimited. The Nevada Supreme Court instructed that the District Court should use its discretion to ensure discovery is relevant and reasonably calculated to lead to the discovery of admissible evidence. A copy of the District Court order is supplied.

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

As a judge in a state trial court of general jurisdiction, all decisions I have issued are unpublished. Those orders are on file with the clerk of the court. Electronic copies of the documents are available online through the Document Access Program to subscribers.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

I have not issued any significant opinions on federal or state constitutional issues.

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have never sat by designation on a federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have

come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself sua sponte. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself sua sponte;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

As a judge, I have assessed the necessity or propriety of recusal by reviewing the Nevada Code of Judicial Conduct as well as cases interpreting those rules and evaluating whether recusal under the circumstances was required. Our court has a recusal system by which I may be automatically removed from a case if any specified attorneys or parties are involved in the case. For a period of approximately 16 months upon taking the bench, I included on that list all of the attorneys at Hale Lane where I worked up until becoming a judge. I also included my counsel and opposing counsel in the then-pending litigation against me, as well as an attorney who I had represented in a case. At present, I have one attorney remaining on the list for automatic recusal, Richard McKnight, who was involved in the filing of the lawsuit against me. I am also again recusing myself from any cases involving the Holland & Hart (formerly Hale Lane) attorneys in its Nevada offices because they are now representing me in my husband's probate case.

Recusal issues have also arisen in the following cases:

Peltier v. Wright, Case No. A498416. I represented Richard Harris in a lawsuit stemming from the breakup of the law firm of Mainor Harris, and the attorneys at Mainor Eglet Cottle were the adverse parties in that case. When those attorneys had their first cases in front of me as a judge, they felt that there would be a conflict because I was opposing counsel in this prior litigation. I declined to recuse myself because I did not have a bias or prejudice against those attorneys as a result of my participation in the prior litigation.

Kiser v. Sierra Ready Mix, LLC, Case No. A509551. I represented Richard Harris in a lawsuit stemming from the breakup of the law firm of Mainor Harris, and the attorneys at Mainor Eglet Cottle were the adverse parties in that case. When those attorneys had their first cases in front of me as a judge, they felt that there would be a conflict because I was opposing counsel in this prior litigation. I

declined to recuse myself because I did not have a bias or prejudice against those attorneys as a result of my participation in the prior litigation.

Maya Makeover LLC v. Physician Sales & Servs., Inc., Case No. A543143. I acted as counsel in litigation where I represented a client against the same parties who were defendants in this case. Defendants were represented by the same counsel in both cases. It further appeared that my former client might be a witness in this case. In light of that fact, and the extensive knowledge I had gained regarding the defendants in the course of the prior litigation, I recused myself.

Cyberview Tech., Inc. v. Kimsey, Case No. A558411. Counsel representing the plaintiff in this case also acted as counsel for opposing parties in the case against me, for which a stipulation for dismissal had been filed prior to the initiation of this case before me. Defendant asserted that my granting of plaintiff's ex parte application for a temporary restraining order at the beginning of this case was somehow related to this counsel opposing me in the other case. I declined to recuse myself because the prior case had absolutely nothing to do with my actions as judge in this case, and there was no bias or prejudice on my part.

State v. Krolicki, Case No. C250045. I discovered that a partner of mine in Hale Lane's Carson City office had represented the defendant in pre-litigation matters, including an investigation that led to the charges being brought in this case. This representation had begun while I was still a partner at Hale Lane before going on the bench, although I was unaware of it. This attorney had not been counsel of record in the criminal case pending in the court. I was required to recuse myself under Canon 3(E)(1)(b) of the then-existing Code of Judicial Conduct which mandates recusal if "a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter." Accordingly, I recused myself promptly on learning of these facts.

Mogler v. Newman, Case No. A543645. After a bench trial and taking the matter under advisement, I ruled in favor of the defendant and against the plaintiff and counterdefendant. The losing parties then sought disqualification, asserting that I was biased against them because I found defendant's testimony to have more credibility than theirs and made certain legal rulings against them. I declined to recuse myself because I was not biased or prejudiced against the moving parties. To the contrary, I had consistently applied the rules of civil procedure and made credibility judgments as a finder of fact. This is not a basis for disqualification under the applicable rules.

State v. Gutierrez, Case No. C262941. I was a victim of an offense similar to those giving rise to the instant case. To avoid the appearance of impropriety and implied bias, I recused myself.

Luckett v. Alcudia, Case No. A628281. There was previously litigation between plaintiff and my former law firm Hale Lane while I was an attorney and shareholder at the firm. To avoid the appearance of impropriety and implied bias, I recused myself.

Dora & Son LLC v. Gaanti, Case No. A589384. Mr. Richard McKnight, counsel for plaintiff, was the attorney of record in a lawsuit in which I was a named defendant. To avoid the appearance of impropriety and implied bias, I recused myself.

MGM Grand Hotel LLC v. Yang, Case No. A607704. Mr. Richard McKnight, counsel for plaintiff, was the attorney of record in a lawsuit in which I was a named defendant. To avoid the appearance of impropriety and implied bias, I recused myself.

Taylor v. Clark County Educ. Ass'n, et al., Case No. A584488. While in private practice, I represented the Clark County Education Association regarding this dispute. To avoid the appearance of impropriety and implied bias, I recused myself.

Greenbaum v. Seegmiller, et al., Case No. A569249. I had represented Richard Harris in a lawsuit stemming from the breakup of the law firm of Mainor Harris. The plaintiff in this case asserted that the defendant had committed malpractice while part of the Mainor Harris firm. To avoid the appearance of impropriety and implied bias, I recused myself.

Larsen v. Wynn Las Vegas, Case No. A577089. Counsel of record in this case had previously been counsel of record for me in a lawsuit in which I was a named defendant. To avoid the appearance of impropriety and implied bias, I recused myself.

Kilantang v. Curtin, et al., Case No. A554988. Counsel of record in this case had previously been counsel of record for me in a lawsuit in which I was a named defendant. To avoid the appearance of impropriety and implied bias, I recused myself.

C & W Enters. v. Franklin, et al., Case No. A459655. Mr. Richard McKnight, counsel for plaintiff, was the attorney of record in a lawsuit in which I was a named defendant. He was counsel for a party in this case. To avoid the appearance of impropriety and implied bias, I recused myself.

Silver State Stone & Tile v. Phoenix Props. LLC, et al., Case No. A520340. While in private practice, I previously represented the defendants. To avoid the appearance of impropriety and implied bias, I recused myself.

Denard v. Smith, et al., Case No. A543493. I had previously represented one of the attorneys in this case in an unrelated matter. To avoid the appearance of impropriety and implied bias, I recused myself.

Baumann v. Thomas, et al., Case No. A522656. I had represented Richard Harris in a lawsuit stemming from the breakup of the law firm of Mainor Harris. He was counsel for a party in this case. To avoid the appearance of impropriety and implied bias, I recused myself.

Savon-Horta v. Kelly, Case No. A537128. I had represented Richard Harris in a lawsuit stemming from the breakup of the law firm of Mainor Harris. He was counsel for a party in this case. To avoid the appearance of impropriety and implied bias, I recused myself.

Harris Assocs. v. Clark County Sch. Dist., Case No. A432013. Counsel for one of the parties had filed a complaint with the State Bar of Nevada against me, arising out of a lawsuit with claims similar to those in this case. To avoid the appearance of impropriety and implied bias, I recused myself.

Mapp v. Feaster, Case No. A534434. My prior law firm represented a party in this case. To avoid the appearance of impropriety and implied bias, I recused myself.

Dinardi v. Cypress Gardens Mobile Home Park, et al., Case No. A500878. I had represented Richard Harris in a lawsuit stemming from the breakup of the law firm of Mainor Harris. He was counsel for a party in this case. To avoid the appearance of impropriety and implied bias, I recused myself.

Markin v. Hale Lane Peek Dennison & Howard, et al., Case No. A504542. My prior law firm was a named defendant in this case. To avoid the appearance of impropriety and implied bias, I recused myself.

Zawalski v. Campbell, et al., Case No. A510459. Counsel of record in this case had previously been counsel of record for me in a lawsuit in which I was a named defendant. To avoid the appearance of impropriety and implied bias, I recused myself.

Wishengrad v. Summerlin Entrada Luxury Apartments, et al., Case No. A567771. I have a long-standing personal friendship with the plaintiff's family, including that I am friends with her father and her aunt, who was the Maid of Honor at my wedding. In order to avoid the appearance of impropriety and implied bias, I recused myself.

15. **Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

I have not held any public offices other than judicial offices nor have I been a candidate or nominee for any such offices.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I am a member of the Sun City Anthem Democratic Club, the Women's Democratic Club of Clark County, and the Democratic Lawyers Caucus. I have not held offices in any political party or election committee, nor have I played a role in a political campaign.

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I clerked for Judge Philip M. Pro in the United States District Court for the District of Nevada, from August 1989 to August 1991.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have not practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each.

Summer 1989
Jones Day
901 Lakeside Avenue
Cleveland, Ohio 44114
Summer Associate

1991 – 1995

Jolley Urga Wirth & Woodbury (now known as Jolley Urga Wirth
Woodbury & Standish)

3800 Howard Hughes Parkway, 16th Floor

Las Vegas, Nevada 89169

Associate

1995 – 2007

Hale Lane Peek Dennison and Howard (now part of Holland & Hart)

9555 Hillwood Drive, Second Floor

Las Vegas, Nevada 89134

Shareholder (2000 – 2007)

Associate (1995 – 1999)

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I did not act as a mediator or arbitrator in alternative dispute resolution proceedings.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

As a junior associate at Jolley Urga Wirth & Woodbury, from 1991 until 1995, I worked primarily on commercial litigation matters, including business torts and real property disputes, as well as employment litigation matters. I was generally performing discrete tasks as assigned by partners, including drafting pleadings and motions, drafting discovery requests, responding to discovery requests, and during the last year or so there, taking and defending depositions.

After joining Hale Lane Peek Dennison and Howard in 1995, I worked on commercial litigation and employment law, primarily representing business clients, and engaged in an active motion practice, discovery practice, trial preparation, mediations, arbitrations, and trials in state and federal court as well as in private dispute resolution contexts. I also advised clients on employment matters including discipline, employee policies and handbooks, and termination procedures. In addition, I engaged in litigation matters involving, among other things, claims of wrongful termination, discrimination, interference with economic advantage, breach of contract, Uniform Commercial Code issues, trade secrets claims, non-compete agreements, RICO claims, and fraud

allegations. Initially, I was performing discrete tasks at the direction of a shareholder, but quickly was given more responsibility and control in cases. By 1997, I managed litigation cases on a day-to-day basis, determined strategy and timing issues, and had more direct contact with clients. I also began to use associates to assist in the tasks to be done on a case including discovery and motion practice. As a shareholder from 2000 on, I dealt with clients from beginning to end of a case, took depositions, argued motions, reviewed documents drafted by others, directed discovery, and managed a significant caseload.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

At Jolley Urga, many of my clients were small businesses, but I also represented a few banking clients and a few individuals. I was doing general commercial litigation and some employment cases. At Hale Lane, I represented large national banks, casino hotel companies, as well as large and small businesses. I had a few cases over the years representing individuals involved in commercial or employment disputes. My areas of practice were commercial litigation and employment law, with a growing focus on employment during the last few years of my practice.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

90% of my practice was in litigation, while 10% involved non-litigation employment advice. I appeared in court once or twice a month from approximately 1998 to 2007. From 1991 to 1998, I only appeared in court approximately two or three times per year.

- i. Indicate the percentage of your practice in:

- | | |
|-------------------------------|-----|
| 1. federal courts: | 50% |
| 2. state courts of record: | 40% |
| 3. other courts: private arb. | 10% |
| 4. administrative agencies: | |

- ii. Indicate the percentage of your practice in:

- | | |
|--------------------------|------|
| 1. civil proceedings: | 100% |
| 2. criminal proceedings: | 0% |

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I tried seven such cases to final decision. In four of those, I was associate counsel, and in three I was chief counsel.

i. What percentage of these trials were:

- | | |
|--------------|-----|
| 1. jury: | 14% |
| 2. non-jury: | 86% |

e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

None.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

1. ITT Sheraton Desert Inn Corp. v. Tafich, Case No. CV-S-96-00204-PMP; 1999.

This case was pending in the United States District Court for the District of Nevada, before Judge Pro. I represented the Desert Inn along with my colleague Stephen Peek. Mr. Tafich had gambled at the Desert Inn, and signed Spanish markers reflecting the credit extended to him in the casino. Desert Inn hired people to collect the amount owed from Tafich in Mexico, where he resided. The Mexican agent attached certain property of Tafich in an attempt to collect the debt. Tafich brought this case against Desert Inn alleging that improper collections methods used by the agent in Mexico had harmed him. On behalf of the Desert Inn, we brought counterclaims for the money Tafich still owed on the markers. I drafted a motion for summary judgment on Tafich's claim, asserting that Mexican law applied to Tafich's claim and that under Mexican law, his claims must fail. Judge Pro granted this motion for summary judgment. We then had a bench trial in December 1998 before Judge Pro regarding Desert Inn's counterclaim for the money he owed, and we ultimately prevailed and obtained a judgment against Tafich. My responsibilities were to understand the facts about the process for issuing a marker, to analyze the accounting documents that all demonstrated the amount owed, to conduct extensive motion practice and brief writing, and to question at trial the Desert Inn witnesses involved in the marker issuance process in order to prove the amount owed.

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(702) 384-8484
Attorney for Plaintiff Tafich

2. Symbol Techs. v. Lemelson, Case No. CV-S-96-00204-PMP; 2001 – 2003.

This case was pending in the United States District Court for the District of Nevada, before Judge Pro. I was hired as local counsel for the plaintiffs Symbol Technologies and Cognex Corporation. This was a very significant patent case, as Mr. Lemelson had become famous as an individual who took advantage of the patent issuance system to obtain patents and receive very large sums in licensing fees for inventions that he neither invented nor produced. The plaintiffs were able to establish prosecution laches on Lemelson's part, meaning that he had contributed to or caused such extensive delays in the patent issuance process, of approximately 30 years, so that he could not then claim that the work of our clients infringed his patents. Judge Pro also found alternately that the products of the plaintiffs did not infringe Lemelson's patents in any event. My role, as a local counsel who was not a patent lawyer but who had significant experience in our federal court, was to attend all hearings that occurred and to attend and provide input during the three-month trial. Specifically, I provided advice regarding how to explain the sometimes technical evidence in a clear and understandable way.

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Co-counsel for Symbol Technologies and Cognex Corporation

3. Banc of Am. Inv. Servs. v. Kaiser, NASD Dispute Resolution Arbitration No. 02-01922; NASD Dispute Resolution Arbitration No. 02-07426; United District Court Case Number CV-S-02-1145-LRH (Judge Larry R. Hicks); 2002 – 2005.

This case is actually multiple cases brought by Mr. Kaiser against Banc of America Investment Services (BAIS), the investment adviser affiliate of Bank of America, and various current and former employees of BAIS. Mr. Kaiser, a disgruntled former BAIS employee, brought several separate National Association of Securities Dealers (NASD) arbitration matters as well as a federal court case complaining about the termination of his employment and challenging the reason for it. When individuals licensed by the NASD leave the employment of a given broker where their license then resides and the broker has been obligated to supervise them, the broker is required to file a Form U-5 listing the reason for the separation of employment, a matter that can obviously impact that individual's future employment prospects since the U-5 information is available to other potential employers licensed with NASD. In connection with the largest NASD arbitration matter brought by Kaiser, I took the lead at the four-day arbitration in January of 2004 before a panel of three arbitrators, and we were able to establish that the reasons given for termination were accurate. BAIS was ordered only to delete a report of a subsequent customer complaint, which occurred due to a disagreement over the interpretation of a technical rule governing how to measure the amount in issue for purposes of evaluating whether such a customer complaint must be reported. After we prevailed in this arbitration, in which Kaiser represented himself, we were able to reach a universal settlement with Kaiser in April of 2005, who by then had hired counsel.

Arbitrators:

James A. Bishop, Esq., NASD Dispute Resolution Arbitration

Barbara L. Edin, Esq., Jordan H. Bodenstein, Esq., Vernon Barnum

Counsel:

Kristina S. Holman, Esq.

K Holman Law

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Attorney for Kaiser

4. Wynn Las Vegas LLC v. Toddre, et al., Case No. A512090; 2005.

This case was pending in the Eighth Judicial District Court before Judge (now Justice) Cherry from October through December of 2005. In this matter, I represented Wynn Resorts in a case brought to enforce a non-compete agreement to which the defendant was a party. Mr. Toddre had been a host and then a floor supervisor at Wynn, who left its employment saying he was going to retire, only to then become the General Manager at the Golden Nugget Laughlin, a property previously owned by Steve Wynn. We initially obtained a Temporary Restraining Order against such competition, and after briefing our motion for a preliminary injunction to continue that injunction, Wynn was able to reach agreement with Landry's, as owner of the Golden Nuggets, that was satisfactory to both sides.

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Attorney for Defendants Toddre and GNL Corp.

5. Wooden, et al. v. MGM Mirage, et al., Case No. A485024; 2005 – 2006.

In this case, which was in the Eighth Judicial District Court before Judge Gonzalez from 2005 until November of 2006, I represented two former Golden Nugget executives who had been at that property for many years. When it was owned by MGM Mirage, stock options were issued to them for MGM Mirage stock. Their agreements provided that on a change of control of their employer, the stock options would automatically vest. Thus, when Golden Nugget was sold by MGM Mirage to Poster Financial Group in January of 2004, this constituted a change of control that triggered the vesting of the options, and our claim was for the value of those vested options, which was significant. MGM argued that the provision was intended only to have the options vest if there was a change of control of MGM as the parent company and stock issuer. This case was filed on behalf of the executives for breach of contract, seeking the value of the denied stock options. I was primarily responsible for client contact and management of the case, through discovery and up to trial preparation. As a result of a settlement conference I attended with the clients, we were able to settle the case shortly before trial, after our efforts had successfully convinced MGM that they had a significant risk of losing at a jury trial.

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Littler Mendelson
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(702) 862-8800
Attorney for Defendants

6. Interface Group – Nevada, Inc., et al. v. Men’s Apparel Guild in California, Inc.,
Case No. CV-S04-0351-JCM-RJJ; 2004 – 2007.

This case was pending in the United States District Court for the District of Nevada before Judge Mahan and later Judge Sandoval. I represented the Las Vegas Sands along with my colleague, Mr. Stephen Peek. Defendant Advanstar was the producer of a twice-yearly Men’s Apparel Guild in California (MAGIC) show in Las Vegas. The show had been held for several years at the Las Vegas Convention Center as well as the Sands Expo Center owned by my client, and Advanstar had entered into contracts for several years at a time. After the Las Vegas Convention Center expanded, Advanstar was able to fit its entire show into that facility. It wished to pay the “rent” to the Sands for the facility, but leave it empty. This left Sands without the significant income it counts on from actually having the people and activity there at the facility. We filed the suit on behalf of Sands, initially seeking injunctive relief to preclude Advanstar from holding the portion of the MAGIC show previously scheduled for Sands at the Las Vegas Convention Center. That motion was denied because the court felt that legal remedies would be adequate. This was followed by substantial discovery and depositions in Las Vegas, Los Angeles, and New York. I was then heavily involved in drafting summary judgment motions and counter motions. Those motions were still pending at the time I took the bench, but were subsequently denied due to the court finding that issues of fact remained. Subsequently, the case was settled by the parties.

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7. Krause v. Silverton Casino LLC, Case No. A536437; 2006 – 2007.

This case was filed in the Eighth Judicial District Court. I represented Ms. Krause, a former Vice President of Food and Beverage at Silverton Hotel Casino. Ms. Krause had signed a non-compete agreement with Silverton. Subsequently, her husband was terminated from his position as Vice President of Marketing at the Silverton, and Ms. Krause felt she needed to resign due to adverse treatment by the owner leading to a

hostile work environment. She obtained a new position in food and beverage at a Las Vegas Strip resort. She did not want to wait for threatened lawsuits to materialize so we affirmatively filed a suit seeking injunctive and declaratory relief that there was no legitimate business reason to keep her from working at this hotel that did not compete with Silverton, a primarily locals casino. Additionally, we argued that there was no consideration for the non-compete agreement, which she was asked to sign several years after starting her employment and which was not required for her continued employment. While injunctive relief was denied, the court agreed that it did not appear that her new position was in competition with the Silverton, and this allowed Ms. Krause to pursue her chosen profession.

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Attorney for Silverton Casino LLC

8. DiBattisto v. PSS World Med. Servs., Case No. CV-S-03-0998-RCJ-RJJ, 2003 – 2004.

This case was pending in the United States District Court for the District of Nevada, before Judge Jones. I represented the plaintiff along with my colleague, Mr. Stephen Peek. Ms. DiBattisto had previously been a top salesperson for PSS, selling medical equipment and supplies to medical offices in Las Vegas. Her husband also worked for PSS. At some point, Mr. DiBattisto left PSS to work for a competitor, Caligor. Thereafter, PSS treated Ms. DiBattisto differently, apparently concerned about her husband working for a competitor. Ms. DiBattisto felt that she was facing a hostile work environment and also left to join Caligor. The suit was filed on behalf of Ms. DiBattisto raising claims relating to the hostile work environment and seeking damages. PSS brought counterclaims based on a non-compete agreement she had signed many years earlier. The court entered a preliminary injunction against her competition with PSS in the Las Vegas Valley during the pendency of the case. I got involved in the litigation after the injunction was in place and the parties were about to embark on substantial discovery. I then participated in several months of intensive written discovery, at least twenty depositions in several different states, and ongoing motion practice in the court. I worked on this matter every day for approximately four months in late 2003 and early 2004. We started a bench trial before Judge Jones, but the parties reached a settlement after a couple of days of trial.

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Attorneys for PSS

9. Harris v. Mainor, et al., Case No. A475860 (Consolidated with A488771, A478909); 2003 – 2006.

This case was pending in the Eighth Judicial District Court before Judge Gates. I represented the plaintiff. All of the attorney parties had practiced together at Mainor Harris, a law firm pursuing personal injury and construction defect cases on a contingency fee basis. In the summer of 2003, the firm broke up. The plaintiff remained in the former Mainor Harris office. Most of the attorneys formed a new firm, Mainor Eglet Cottle. One attorney started his own practice, and another formed a new firm, Quon Bruce. There was significant litigation among the parties regarding how the firm's cases and the legal fees arising therefrom would be handled going forward, which included arguments regarding who was a partner in the firm, duties owed to existing clients, attorney's lien filings, written discovery, and depositions. A trustee was appointed to collect and disburse fees arising from the former firm's cases during the pendency of the action, with periodic disbursements to the partners. Ultimately, the claims of all parties were resolved after a settlement conference with a judge, although there were still disputes regarding the meaning of the settlement after that. Finally, the litigation ended although the case remained open to continue to monitor the collection and disbursement of fees from the cases.

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Attorney for himself and other Mainor Eglet Cottle attorneys

10. Strickland v. Saks Fifth Ave., Case No. A372008; 1997 – 2003.

This case was pending in the United States District Court for the District of Nevada before Judge Rawlinson and then Judge Mahan. I represented Saks Fifth Avenue. This

case involved claims by Ms. Strickland, who worked in the cosmetics department at Saks. She had a dispute with her manager in which he raised his voice to her, allegedly used foul language, and allegedly grabbed her arm on a couple of occasions. She asserted a variety of claims, including sexual harassment/hostile work environment under Title VII of the Civil Rights Act of 1964, intentional infliction of emotional distress, and negligent training and supervision. I managed the case through discovery and motion practice. My partner, Mr. Richard Elmore, was lead trial counsel and I was second chair at this jury trial in April of 2003. After the jury found for the plaintiff, I was involved in filing and briefing the appeal. Before the appeal was decided, a settlement was reached by the parties.

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3000 West Charleston Boulevard, Suite 3
Las Vegas, NV 89102
(702) 259-8640
Attorney for Defendant Cassell

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

It was common for me to be engaged in litigation that did not progress to trial due to settlements or resolution by motion practice. The most significant of these are described above. Additionally, I provided advice to clients regarding employment issues on a regular basis. These issues included handbook provisions, employment agreements, termination procedures, employment applications, and reductions in force. I did not perform any lobbying activities at any time in my career.

Outside of these practice areas, my significant legal activities have involved mentoring, as I feel it is very important to teach new lawyers practice skills as well as professionalism and civility. I provided mentoring and training to many of the new lawyers in my own firm over the years, and later became involved in various bar organizations with these same goals. I was active in the Southern Nevada Association of Women Attorneys, acting as that organization's President from 2004 to 2006. I worked to promote the organization's goals of networking as well as education by arranging speakers for our monthly luncheons and planning other social events. I have also been very active with the Howard D. McKibben chapter of the American Inn of Court, currently acting as its President. This organization is devoted to education and mentoring of attorneys, with a focus on professionalism and civility. I enjoy promoting the Inn's networking opportunities for attorneys at different levels of experience, and watching the less experienced attorneys develop into professionals cognizant of the importance of practicing ethically, viewing even opposing counsel as colleagues. Along the same lines, I recently completed my two-year term on the Executive Board of the Clark County Bar Association, and volunteered to sit as the Board representative to the New Lawyers Committee to focus on mentoring in that context as well. I also volunteered to chair the Civil Bench Bar Committee of my court, which I did for approximately four years, in order to improve the lines of communication between bench and bar and establish a positive working environment where input was welcomed.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any courses.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have no future compensation or future benefits anticipated from previous relationships or employers.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No, I do not intend to pursue outside employment.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached Financial Disclosure Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

Other than parties currently on my recusal list, I do not anticipate any such conflicts of interest when I first assume this position. If such conflicts arise, I will carefully review and analyze the applicable provisions of the code of judicial conduct to determine whether my recusal is warranted. If so, I will promptly recuse myself.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

If such conflicts arise, I will carefully review and analyze the applicable provisions of the Code of Conduct for United States Judges to determine whether my recusal is warranted. If so, I will promptly recuse myself.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

During 2002 and 2003, I regularly gave advice and counsel to associates at Hale Lane working on the Bonwell v. Bagby case (Case No. A444942, Eighth Judicial District Court). The case involved breach of an agreement by the firm's clients to purchase a home for which they later were unable to obtain a loan, and the seller and real estate agent's refusal to return the earnest money deposit, part of which had allegedly not been placed into the escrow account as represented to Ms. Bonwell. Claims asserted included breach of contract, fraud, conversion, and unjust enrichment. Eventually, the real estate

agent filed for bankruptcy, and after a trial in bankruptcy court regarding these claims, the court ruled against our clients. The firm spent a significant amount of time working on this matter, receiving recognition at the annual Clark County Pro Bono Awards Luncheon for two years in a row.

As a judge, I have acted as Chair of the court's Civil Bench Bar Committee and chaired the subcommittee that prepared forms for discovery that are now posted on the court's web site for the use of pro se litigants. The lead attorney from the Civil Law Self-Help Center also participated in this project. Now, the forms are also made available by the Self-Help Center as well.

26. Selection Process:

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

In late August 2009, I was contacted by an attorney who was seeking recommendations for the district court on behalf of United States Senate Majority Leader Harry Reid. He said that my name had come to his attention and asked if I was interested. I indicated that I was. I was contacted within a day or two by someone in Senator Reid's office to schedule a meeting with him. I met with him for approximately a half hour in Nevada on September 2, 2009. I did not have further contact with Senator Reid or others on his behalf, other than brief exchange of greetings with Senator Reid at various events in Las Vegas, until I was contacted by his office on November 7, 2011 to arrange for a video conference with him the following day. I had an interview with him by video conference for approximately a half hour on November 8, 2011. Shortly thereafter, I received a call from Senator Reid indicating that he was going to submit my name to the White House.

Since November 8, 2011, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On December 16, 2011, I met with officials from the White House Counsel's Office and the Department of Justice in Washington, DC. On February 16, 2012, the President submitted my nomination to the Senate.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or

implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.

AFFIDAVIT

I, Elissa F. Cadish, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

2/17/12

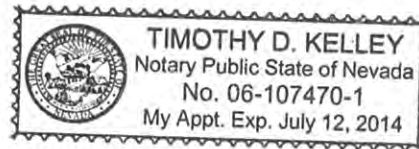
(DATE)

Elissa F. Cadish

(NAME)

Timothy D. Kelley

(NOTARY)



Elissa F. Cadish

[REDACTED]

[REDACTED]

January 7, 2013

The Honorable Patrick J. Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

I have reviewed the Senate Questionnaire I previously filed in connection with my nomination on February 16, 2012 to be United States District Judge for the District of Nevada, as well as my update letter of March 23, 2012. Incorporating the additional information provided below, I certify that the information contained in those documents is, to the best of my knowledge, true and accurate.

Questions 6 and 9:

My term as President of the Howard D. McKibben Chapter of the American Inn of Court ended in May of 2012, and since then I hold the title of Immediate Past President thereof.

Question 12(d):

On October 9, 2012, I moderated a panel discussion regarding civility in legal practice as part of a presentation for the Inn of Court chapter. I have no notes, transcript or recording. The Inn does not have a physical address.

On September 20, 2012, I participated in a panel discussion entitled, "Are We There Yet? Perspectives on Women's Civil Rights Issues" sponsored by the Anti-Defamation League and The Jewish Federation of Las Vegas, which took place at a luncheon at the Las Vegas Country Club. The panel generally addressed the challenges of being a successful professional woman and balancing those demands with commitments to family and outside interests. I have no notes, transcript, or recording. The Anti-Defamation League is located at 8965 South Eastern Avenue, #375, Las Vegas, NV 89123. The Jewish Federation of Las Vegas is located at 2317 Renaissance Drive, Las Vegas, NV 89117.

On July 12, 2012, I did a presentation regarding Motion Practice to attorneys at the Marquis Aurbach Coffing law firm in Las Vegas. Attached is an outline of that presentation which I prepared.

On June 29, 2012, I participated as a presenter during the Trial Academy organized by the Young Lawyers Section of the State Bar of Nevada during the State Bar's annual conference in Coronado, California. My presentation was regarding evidentiary objections. I used the same notes previously supplied regarding my presentation in June of 2011 at that year's Trial Academy.

Question 12(e):

On December 13, 2012, I participated in an interview with attorney Elias George regarding practice tips for new lawyers, to be summarized in a future newsletter for the Young Lawyers Section of the State Bar of Nevada.

Question 13(a):

I have presided over 12 additional cases that have gone to verdict or judgment. Of these, approximately 90% were jury trials and 10% were bench trials. Additionally, 50% were civil and 50% were criminal proceedings.

Question 13(c):

In State v. Carroll, Case No. C266917, trial took place from December 10 through 14, 2012 regarding the forgery charges and the retrial of the perjury charges. The jury convicted defendant of the seventeen forgery counts and acquitted him of the seventeen alternative perjury counts.

In S. Nev. Health Dist. v. Clark County, Case No. A643953, by order filed December 6, 2012, the Nevada Supreme Court affirmed my grant of a writ of mandamus, agreeing with my interpretation of the pertinent statutes. However, the Nevada Supreme Court reversed my grant of a writ of prohibition, finding that the writ of mandamus was the proper vehicle for compelling compliance with the statutes.

Question 13(f):

Holden v. State, No. 58143, 2012 WL 6525854 (Nev. Dec. 12, 2012). On appeal from my order denying a post-conviction petition for writ of habeas corpus, the Nevada Supreme Court affirmed my rulings on thirteen points raised on appeal, but reversed and remanded to hold an evidentiary hearing regarding defendant's claim that his counsel was ineffective for failing to advise him of plea negotiations.

Clark County v. S. Nev. Health Dist., No. 59213, 289 P.3d 212, 128 Nev. Adv. Op. 58 (Nev. Dec. 6, 2012). This is the appeal of the case discussed under Question 13(c) above. While the substance of my ruling was affirmed, the Nevada Supreme Court reversed my issuance of a writ of prohibition, holding that a writ of mandamus was the only appropriate remedy.

Rolf Jensen & Assocs., Inc. v. Eighth Jud. Dist. Ct., No. 57461, 282 P.3d 743, 128 Nev. Adv. Op. 42 (Nev. Aug. 9, 2012, rehearing denied Oct. 16, 2012). In this case, the owner of a hotel had been found in violation of the Americans with Disabilities Act ("ADA") in its hotel rooms and was required to implement substantial and costly changes in those rooms. The hotel owner brought claims herein against the ADA consultant it had retained regarding the design of those hotel rooms, seeking damages for breach of contract, indemnification, and negligent misrepresentation. The consultant sought summary judgment, arguing that the plaintiff's claims were preempted by the ADA. I denied the motion for summary judgment, finding that these claims were not preempted. In an *en banc* decision, the Nevada Supreme Court granted a writ of mandamus and found that the claims asserted pose an obstacle to the objectives of the ADA and are therefore preempted.

Marshall v. Eighth Jud. Dist. Ct., No. 56973, 2012 WL 2366435 (Nev. June 20, 2012). In this case, I had held an attorney in civil contempt and imposed sanctions for his failure to comply with a court order to allow inspection of certain documents. The attorney had requested that another judge hear the contempt trial under a Nevada statute which provides for another judge to consider possible contempt if it was not committed in the immediate view and presence of the court. After briefing by the parties, I found that this statute applied only to criminal contempt and not civil contempt proceedings. The Nevada Supreme Court disagreed and issued a writ of prohibition, holding that a different judge should have presided over the contempt proceedings.

Schettler v. Ralron Capital Corp., No. 56508, 275 P.3d 933, 128 Nev. Adv. Op. 20 (Nev. May 3, 2012). In this case, the defendants were a borrower and guarantor of a loan from Silver State Bank (the "Bank"). The Bank was placed into receivership and the FDIC was appointed as receiver. Notice was published for any of the Bank's creditors to file claims by a set deadline, and no such claim had been filed by defendants. The loan was later acquired by the plaintiff, who sued to collect on the loan. Defendants raised defenses and counterclaims arguing that the Bank had breached the terms of the loan before the receivership. Plaintiff sought summary judgment for the loan balance, and argued that Defendants' defenses and counterclaims were barred by their failure to file an administrative claim after notice was given by the FDIC, pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"). I granted summary judgment to Plaintiff. On appeal, the Nevada Supreme Court agreed with me that FIRREA applied and barred Defendants' counterclaims, but reversed my ruling to the extent it barred affirmative defenses for recoupment based on alleged breaches by the Bank.

The Honorable Patrick J. Leahy
January 7, 2013
Page 4

I am also forwarding an updated Net Worth Statement and Financial Disclosure Report as requested in the Questionnaire. I thank the Committee for its consideration of my nomination.

Sincerely,



Elissa F. Cadish

cc.

The Honorable Charles Grassley
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Motion Practice

Presentation to Marquis Aurbach Coffing

July 12, 2012

I. General Comments

- a. Organization—Introduction, Statement of Facts, Standard of Review, Argument, Conclusion
- b. Address issues of case, not personal attacks on counsel or parties
- c. Remain professional
- d. Proofread your work, dangers of cut and paste
- e. Remember IRAC
- f. Read cases you are citing and provide point cites
- g. Only attach exhibits you need, refer to pertinent portion of exhibit in brief
- h. Provide courtesy copies, with exhibits tabbed
- i. Remember the judge is your audience, make it easy for the judge to rule in your favor
- j. File timely briefs, stipulations to extend time must be provided to and approved by court
- k. I will grant unopposed motions before hearing date
- l. Orders should include necessary findings and reasoning (make it easy for the Supreme Court to affirm decision in your favor)
- m. Agree to reasonable requests for additional time and other accommodations
- n. Maintain objectivity

II. Motions to Dismiss

- a. Standard under state law, not the same as federal
- b. Assume allegations in complaint to be true
- c. Provide authority regarding whether a legal claim exists or not
- d. In commercial cases, be aware of economic loss doctrine

III. Motions for Summary Judgment

- a. Standard under state law, in line with federal law
- b. Cite to evidence supporting each fact relied on, and provide exhibits
- c. Give pertinent portions of deposition testimony, and cite to specific portions
- d. Motion can be filed at outset of case, no requirement to wait until close of discovery
- e. Proper Rule 56(f) request for additional time requires affidavit showing what discovery is needed and how it will show a genuine issue of material fact exists
- f. Evidence relied on must be admissible, and thus must be properly disclosed in discovery

FILED

JUN 28 2011

John J. Holden
CLERK OF COURT

1 **ORDR**
2 **DAVID ROGER**
3 **Clark County District Attorney**
4 **Nevada Bar #002781**
5 **MARC DIGIACOMO**
6 **Chief Deputy District Attorney**
7 **Nevada Bar #006955**
8 **200 Lewis Avenue**
9 **Las Vegas, Nevada 89155-2212**
10 **(702) 671-2500**
11 **Attorney for Plaintiff**

DISTRICT COURT
CLARK COUNTY, NEVADA

12 **THE STATE OF NEVADA,**
13 **Plaintiff,**

14 **-vs-**

15 **JIM B. HOLDEN,**
16 **#2515224**

17 **Defendant.**

CASE NO: 04C202943-1

DEPT NO: VI

FINDINGS OF FACT, CONCLUSIONS OF
LAW AND ORDER

DATE OF HEARING: April 6, 2011
TIME OF HEARING: 8:30 A.M.

18 **THIS CAUSE** having come on for hearing before the Honorable ELISSA CADISH,
19 **District Judge**, on the 6th day of April, 2011, the Petitioner being present, represented by
20 **CHRISTOPHER ORAM**, the Respondent being represented by **DAVID ROGER**, District
21 **Attorney**, by and through **MARC DIGIACOMO**, Chief Deputy District Attorney, and the
22 **Court** having considered the matter, including briefs, transcripts, arguments of counsel, and
23 **documents** on file herein, now therefore, the Court makes the following findings of fact and
24 **conclusions of law:**

FINDINGS OF FACT

25
26 1. On July 12, 2004, Jim Holden (hereinafter "Defendant") and Rodney Evans
27 (hereinafter "Evans") were charged by way of Information with: Count I – Murder with Use
28 of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.165); Count II – Attempt Murder

1 with Use of a Deadly Weapon (Felony – NRS 200.010, 200.030, 193.330, 193.165); Count
2 III – Conspiracy to Commit Murder (Felony – NRS 200.010, 200.030, 199.480); and Counts
3 IV and V – First Degree Kidnapping with Use of a Deadly Weapon (Felony – NRS 200.310,
4 200.320, 193.165). On August 16, 2004, the State filed a Motion to Admit Evidence of
5 Other Bad Acts, Crimes or Wrongs related to a separate homicide committed by Defendant.
6 Defendant filed his opposition on September 9, 2004. This motion was granted on January
7 21, 2005. The State filed a Second Amended Information on August 1, 2005, to remove
8 Evans's name as he had previously pled guilty.¹

9 2. Defendant's jury trial commenced on August 1, 2005. On August 9, 2005, the
10 jury found Defendant guilty of all five (5) counts as alleged in the Second Amended
11 Information. Defendant filed a motion for a new trial on August 16, 2005, claiming that he
12 had been limited in arguing the facts and circumstances surrounding the crime. He filed a
13 supplement to this motion on August 23, 2005. The State filed its opposition on August 26,
14 2005. The district court denied Defendant's motion on August 31, 2005.

15 3. Defendant was present in court with counsel on October 3, 2005, and
16 sentenced to the Nevada Department of Corrections as follows: as to Count I – TWENTY
17 (20) years to LIFE, plus an equal and consecutive term of TWENTY (20) years to LIFE for
18 the use of a deadly weapon; as to Count II – NINETY-SIX (96) months to TWO HUNDRED
19 FORTY (240) months, plus an equal and consecutive term NINETY-SIX (96) months to
20 TWO HUNDRED FORTY (240) months for the use of a deadly weapon, the entire sentence
21 to run consecutively to Count I; as to Count III – TWENTY-FOUR (24) months to ONE
22 HUNDRED TWENTY (120) months, to run concurrently with Counts I and II; as to Count
23 IV – SIXTY (60) months to LIFE, plus an equal and consecutive term of SIXTY (60)
24 months to LIFE for the use of a deadly weapon, to run concurrently with Counts I – III; and
25 as to Count V – SIXTY (60) months to LIFE, plus an equal and consecutive term of SIXTY
26

27 ¹ Evans ultimately pled guilty to one (1) count of Voluntary Manslaughter with Use of a Deadly Weapon (Felony NRS
28 200.040, 200.050, 200.080, 193.165) and Battery with Use of a Deadly Weapon (Felony NRS 200.481). His Guilty Plea
Agreement was filed on January 21, 2005, with the parties stipulating to a sentence of five to twenty years in exchange
for Evans's plea.

1 (60) months to LIFE for the use of a deadly weapon, to run concurrently with Counts I – IV.
2 Defendant's entire sentence was to run concurrently to his sentence in Case No. C214716.²
3 Defendant was further ordered to pay \$13,455.07 in Restitution. He was given eleven (11)
4 days credit for time served. Defendant's Judgment of Conviction was filed on October 27,
5 2005.

6 4. Defendant filed his Notice of Appeal on November 18, 2005. On March 28,
7 2008, the Nevada Supreme Court affirmed Defendant's Judgment of Conviction. Holden v.
8 State, Docket No. 46325 (Order of Affirmance, Mar. 28, 2008). Defendant raised numerous
9 issues on appeal, including (1) whether the district court erred in admitting evidence,
10 including a journal relating to a different murder committed by Defendant, (2) whether the
11 district court erred in admitting the voluntary statement of a witness in violation of Crawford
12 v. Washington, 541 U.S. 36 (2004), and (3) whether the district court erred in instructing the
13 jury on vicarious coconspirator liability. The Court ultimately determined that Defendant's
14 claims did not warrant relief. Remittitur issued on April 22, 2008.

15 5. Defendant filed a Petition for Writ of Habeas Corpus (Post-Conviction) on
16 April 17, 2009. He filed a Motion for Appointment of Counsel on April 27, 2009. The State
17 filed its response to Defendant's petition and opposition to Defendant's motion to appoint
18 counsel on June 23, 2009. Defendant's motion for appointment of counsel was granted on
19 July 8, 2009.

20 6. Defendant filed a Motion for Authorization to Obtain an Investigator and for
21 Payment of Fees Incurred Herein on September 21, 2010. The State filed its opposition on
22 October 1, 2010. Defendant's motion was denied on October 4, 2010.

23 7. Defendant filed the instant Supplemental Brief in Support of Defendant's Writ
24 of Habeas Corpus on September 20, 2010. The State filed its response on January 6, 2011.

25 8. The district court held a hearing on Defendant's petition on February 2, 2011.
26 After listening to the arguments of counsel, this Court ultimately allowed Defendant

27
28 ² In C214716, Defendant pled guilty to one (1) count of Grand Larceny and was sentenced to TWELVE (12) to THIRTY (30) months in the Nevada Department of Corrections. He was given five hundred seventy-two (572) days credit for time served.

1 additional time to conduct an investigation to determine whether there was evidence to be
2 found in regards to bad acts of the decedent that could have been raised at trial. At the April
3 6, 2011, status check, Defendant indicated that he did not find any additional evidence as to
4 the bad acts of the decedent.

5 9. Defendant raised several claims of ineffective assistance of trial and appellate
6 counsel. Defendant claimed that counsel failed to object to the sufficiency of the evidence to
7 support a first degree kidnapping conviction. This claim was raised on appeal and rejected
8 by the Nevada Supreme Court. Accordingly, Defendant fails to demonstrate how counsel's
9 objection would not have been futile. Furthermore, in light of the evidence presented against
10 him, Defendant fails to demonstrate how the result of his trial would have been different but
11 for counsel's alleged failure to object to the first degree kidnapping convictions.

12 10. Defendant's claim that his counsel was ineffective for failing to object that his
13 conviction was based upon an invalid theory of felony murder as there was insufficient
14 evidence to convict him of first degree kidnapping is without merit.

15 11. Defendant's claim that counsel failed to object to the "lying in wait
16 instruction" is belied by the record.

17 12. Defendant's claim that his counsel failed to investigate the allegedly violent
18 history of the victim is without merit. This allegedly violent history was unsupported by the
19 record as well as the additional investigation conducted by current counsel.

20 13. Defendant's claim that trial counsel failed to advise his client of plea
21 negotiations is without merit as the record indicates that neither counsel nor Defendant were
22 aware of the deal allegedly offered by the State.

23 14. Defendant's claim that his counsel was ineffective because he failed to place
24 unrecorded bench conferences on the record is without merit as the majority of the
25 conferences were subsequently explained on the record.

26 15. Since the "Implied Malice," "Premeditation and Deliberation," "Reasonable
27 Doubt," and "Equal and Exact Justice" instructions were the proper statements of the law,
28 Defendant fails to demonstrate how counsel's objections to the instructions would have been

1 successful.

2 16. Defendant further claimed that his counsel was ineffective for "opening the
3 door" to the introduction of Defendant's journal. Since the State was severely limited in
4 introducing the journal, despite counsel's opening statement, Defendant fails to demonstrate
5 that he was prejudiced.

6 17. Defendant failed to demonstrate that he received ineffective assistance of trial
7 counsel.

8 18. Defendant also raised several claims of ineffective assistance of appellate
9 counsel. Defendant's claim that counsel failed to raise the sufficiency of the evidence for the
10 kidnapping and attempt murder charges on direct appeal is belied by the record. To the
11 extent that Defendant was claiming that counsel should have raised the claim differently, in
12 light of the evidence presented against him, he fails to demonstrate how any additional
13 arguments would have been successful on appeal.

14 19. Defendant further claimed that counsel was ineffective for failing to raise the
15 issue of the invalid murder theory and kidnapping instruction on appeal. Since the
16 instruction was an accurate reflection of the law and there was sufficient evidence that
17 Defendant had kidnapped the victims, Defendant fails to demonstrate how counsel would
18 have been successful in raising this claim on appeal.

19 20. Defendant fails to demonstrate how appellate counsel was ineffective in failing
20 to challenge the "lying in wait" instruction as the "lying in wait" instruction constitutes a
21 valid statement of the law.

22 21. Defendant also claimed that his counsel was ineffective for failing to raise on
23 direct appeal the district court's alleged error in precluding defense counsel from eliciting
24 evidence that another witness was afraid of the victims. Defendant fails to demonstrate how
25 appellate counsel would have been successful in raising this claim, however, since this
26 evidence was presented to the jury.

27 22. Defendant further claims that his appellate counsel was ineffective for failing
28 to challenge the self defense language included in the *Tavares* instruction offered by the

1 State. He fails to demonstrate how counsel would have been successful in raising this claim
2 on appeal as the instruction offered by the State was a valid statement of the law.

3 23. Defendant claimed that his appellate counsel was ineffective for failing to raise
4 on direct appeal the district court's decision to allow Defendant's statement that he ingested
5 a line of methamphetamine prior to the crimes in the instant case. Since this evidence was
6 relevant to Defendant's self-defense claim and was not used to show action in conformity
7 therewith, Defendant fails to demonstrate how appellate counsel would have been successful
8 in raising this claim on direct appeal.

9 24. Defendant received effective assistance of appellate counsel.

10 25. Defendant is not entitled to an evidentiary hearing as his claims could be
11 decided based upon the record.

12 26. Defendant received a fair trial.

13 CONCLUSIONS OF LAW

14 1. In Nevada, the appropriate vehicle for review of whether counsel was effective
15 is a post-conviction relief proceeding. McKague v. Warden, 112 Nev. 159, 912 P.2d 255,
16 257, n.4 (1996). Nevada has adopted the standard outlined in Strickland v. Washington, 466
17 U.S. 668, 104 S.Ct. 2052 (1984). Under Strickland, in order to assert a claim for ineffective
18 assistance of counsel, the defendant must prove that he was denied "reasonably effective
19 assistance" of counsel by satisfying a two-pronged test. Strickland at 686-687, 104 S.Ct. at
20 2063-64; see State v. Love, 109 Nev. 1136, 1138, 865 P.2d 322, 323 (1993). Under this test,
21 the defendant must show: first, that his counsel's representation fell below an objective
22 standard of reasonableness, and second, that but for counsel's errors, there is a reasonable
23 probability that the result of the proceedings would have been different. See Strickland, 466
24 U.S. at 687-688 and 694, 104 S.Ct. at 2065 and 2068.

25 2. "Surmounting Strickland's high bar is never . . . easy." Padilla v. Kentucky,
26 130 S.Ct. 1473, 1485 (2010). The question is whether an attorney's representations
27 amounted to incompetence under prevailing professional norms, "not whether it deviated
28 from best practices or most common custom." Harrington v. Richter, 131 S.Ct. 770, 778

1 (2011). Furthermore, "[e]ffective counsel does not mean errorless counsel, but rather
2 counsel whose assistance is '[w]ithin the range of competence demanded of attorneys in
3 criminal cases.'" Jackson v. Warden, Nevada State Prison, 91 Nev. 430, 432, 537 P.2d 473,
4 474 (1975) (quoting McMann v. Richardson, 397 U.S. 759, 771, 90 S.Ct. 1441, 1449
5 (1970)).

6 3. The court begins with the presumption of effectiveness and then must
7 determine whether the defendant has demonstrated by a preponderance of the evidence that
8 counsel was ineffective. Means v. State, 120 Nev. 1001, 103 P.3d 35 (2004). The role of a
9 court in considering allegations of ineffective assistance of counsel is "not to pass upon the
10 merits of the action not taken but to determine whether, under the particular facts and
11 circumstances of the case, trial counsel failed to render reasonably effective assistance."
12 Donovan v. State, 94 Nev. 671, 675, 584 P.2d 708, 711 (1978) (emphasis added) (citing
13 Cooper v. Fitzharris, 551 F.2d 1162, 1166 (9th Cir. 1977)).

14 4. In considering whether trial counsel was effective, the court must determine
15 whether counsel made a "sufficient inquiry into the information . . . pertinent to his client's
16 case." Doleman v State, 112 Nev. 843, 846, 921 P.2d 278, 280 (1996); citing Strickland,
17 466 U.S. at 690-691, 104 S.Ct. at 2066. Once this decision is made, the court will consider
18 whether counsel made "a reasonable strategy decision on how to proceed with his client's
19 case." Doleman, 112 Nev. at 846, 921 P.2d at 280; citing Strickland, 466 U.S. at 690-691,
20 104 S.Ct. at 2066. Finally, counsel's strategy decision is a "tactical" decision and will be
21 "virtually unchallengeable absent extraordinary circumstances." Doleman, 112 Nev. at 846,
22 921 P.2d at 280; see also Howard v. State, 106 Nev. 713, 722, 800 P.2d 175, 180 (1990);
23 Strickland, 466 U.S. at 691, 104 S.Ct. at 2066.

24 5. This analysis does not indicate that the court should "second guess reasoned
25 choices between trial tactics, nor does it mean that defense counsel, to protect himself
26 against allegations of inadequacy, must make every conceivable motion no matter how
27 remote the possibilities are of success." Donovan, 94 Nev. at 675, 584 P.2d at 711; citing
28 Cooper, 551 F.2d at 1166 (9th Cir. 1977). In essence, the court must "judge the

1 reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as
2 of the time of counsel's conduct." Strickland, 466 U.S. at 690, 104 S.Ct. at 2066. Counsel
3 cannot be deemed ineffective for failing to make futile motions. Ennis v. State, 122 Nev.
4 694, 706, 137 P.3d 1095, 1103 (2006).

5 6. Even if a defendant can demonstrate that his counsel's representation fell
6 below an objective standard of reasonableness, he must still demonstrate prejudice and show
7 a reasonable probability that, but for counsel's errors, the result of the trial would have been
8 different. McNelson v. State, 115 Nev. 396, 403, 990 P.2d 1263, 1268 (1999) (citing
9 Strickland, 466 U.S. at 687.) "A reasonable probability is a probability sufficient to
10 undermine confidence in the outcome." Id. Furthermore, claims asserted in a petition for
11 post-conviction relief must be supported with specific factual allegations, which if true,
12 would entitle the petitioner to relief. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222,
13 225 (1984). "Bare" and "naked" allegations are not sufficient, nor are those belied and
14 repelled by the record. Id.

15 7. There is a strong presumption that counsel's performance was reasonable and
16 fell within "the wide range of reasonable professional assistance." See United States v.
17 Aguirre, 912 F.2d 555, 560 (2nd Cir. 1990), citing Strickland v. Washington, 466 U.S. 668,
18 689, 104 S.Ct. 2052, 2065 (1984). The Nevada Supreme Court has held that all appeals
19 must be "pursued in a manner meeting high standards of diligence, professionalism and
20 competence." Burke v. State, 110 Nev. 1366, 1368, 887 P.2d 267, 268 (1994). In order to
21 prove that appellate counsel's alleged error was prejudicial, the defendant must show that the
22 omitted issue would have had a reasonable probability of success on appeal. See Duhamel v.
23 Collins, 955 F.2d 962, 967 (5th Cir. 1992); Heath v. Jones, 941 F.2d 1126, 1132 (1991).

24 8. Furthermore, while a defendant has the ultimate authority to make fundamental
25 decisions regarding his case, the defendant does not have a constitutional right to "compel
26 appointed counsel to press non-frivolous points requested by the client, if counsel, as a
27 matter of professional judgment, decides not to present those points." Jones v. Barnes, 463
28 U.S. 745, 751, 103 S.Ct. 3308, 3312 (1983). In reaching this conclusion the Supreme Court

1 recognized the "importance of winnowing out weaker arguments on appeal and focusing on
2 one central issue if possible, or at most on a few key issues." Id. at 751 -752, 103 S.Ct. at
3 3313. In particular, a "brief that raises every colorable issue runs the risk of burying good
4 arguments . . . in a verbal mound made up of strong and weak contentions." Id. at 753, 103
5 S.Ct. at 3313. The Court also held that, "for judges to second-guess reasonable professional
6 judgments and impose on appointed counsel a duty to raise every 'colorable' claim suggested
7 by a client would disserve the very goal of vigorous and effective advocacy." Id. at 754, 103
8 S.Ct. at 3314. Counsel cannot be deemed ineffective for failing to raise futile issues on
9 appeal. Ennis v. State, 122 Nev. 694, 706, 137 P.3d 1095, 1103 (2006).

10 9. Here, Defendant has not set forth any appellate issues that should have been
11 raised that would have had a reasonable probability of success on appeal. Thus, his claims
12 should be dismissed. Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984).

13 10. Where an issue has already been decided on the merits by the Nevada Supreme
14 Court, the Court's ruling is law of the case, and the issue will not be revisited. Pellegrini v.
15 State, 117 Nev. 860, 884, 34 P.3d 519, 535 (2001); see McNelton v. State, 115 Nev. 396,
16 990 P.2d 1263, 1276 (1999), Hall v. State, 91 Nev. 314, 315-16, 535 P.2d 797, 798-99
17 (1975), see also Valerio v. State, 112 Nev. 383, 386, 915 P.2d 874, 876 (1996); and Hogan v.
18 Warden, 109 Nev. 952, 860 P.2d 710 (1993). A Defendant cannot avoid the doctrine of law
19 of the case by a more detailed and precisely focused argument. Hall, 91 Nev. at 316, 535
20 P.2d at 798-99; see also Pertgen v. State, 110 Nev. 557, 557-58, 875 P.2d 316, 362 (1994).

21 11. To convict a defendant of first degree kidnapping, the State must prove that the
22 Defendant willfully seized, confined, abducted, concealed, or carried away a person by any
23 means whatsoever with the intent to hold or detain that person for the purpose of killing the
24 person or inflicting substantial bodily harm upon the person. NRS 200.310(1). Where, as
25 here, the Defendant is charged with both kidnapping in the first degree and murder, dual
26 convictions are proper when "the seizure, restraint or movement of the victim substantially
27 exceeds that required to complete the associated crime charged." Pascua v. State, 122 Nev.
28 1001, 1005-1006, 145 P.3d 1031, 1034 (2006). Whether the movement of the victims was

1 incidental to the associated offense and whether the movement increased the risk of harm to
2 the victims are questions of fact to be determined by the trier of fact in all but the clearest
3 cases. Sheriff v. Medberry, 96 Nev. 202, 204, 606 P.2d 181, 182 (1980). Dual convictions
4 could stand "where the object is murder and the victim is kidnapped for that purpose."
5 Pascua, 122 Nev. at 1005-1006, 145 P.3d at 1034.

6 12. Courts have broad discretion in settling jury instructions. Cortinas v. State,
7 195 P.3d 315, 319 (2008). Where, as here, an instruction is supported by some evidence, the
8 district court does not abuse its discretion by providing this instruction to the jury. See
9 Ducksworth v. State, 113 Nev. 780, 792, 942 P.2d 157, 165 (1997). Furthermore, the
10 Nevada Supreme Court has previously upheld the "Implied Malice" instruction in Collman
11 v. State, 116 Nev. 687, 7 P.3d 426 (2000), the "Premeditation and Deliberation" instruction
12 was upheld in Nika v. State, 198 P.3d 839 (2008), the "Reasonable Doubt" instruction
13 provided by the district court during the trial is the only instruction allowed on reasonable
14 doubt per NRS 175.211(2), and the "Equal and Exact Justice" instruction was also
15 determined by to be valid in Leonard v. State, 114 Nev. 1196, 969 P.2d 288 (1998).

16 13. A defendant who alleges a failure to investigate must demonstrate how a better
17 investigation would have benefited his case and changed the outcome of the proceedings.
18 Molina v. State, 120 Nev. 185, 87 P.3d 533 (2004). Such defendant must allege with
19 specificity what the investigation would have revealed and how it would have altered the
20 outcome of the trial. United States v. Porter, 924 F.2d 395, 397 (1st Cir. 1991) quoting
21 United States v. Green, 882 F.2d 999, 1003 (5th Cir. 1989). Bare allegations and those
22 claims belied by the record do not warrant relief. Hargrove, 100 Nev. 498, 686 P.2d 222.
23 Furthermore, it is well established that a claim of ineffective assistance of counsel alleging a
24 failure to properly investigate will fail where the evidence or testimony sought does not
25 exonerate or exculpate the defendant. Ford v. State, 105 Nev. 850, 784 P.2d 951 (1989). A
26 defendant's mere dissatisfaction with the outcome of his case is insufficient to establish that
27 counsel was ineffective. Id. at 853. Finally, the attorney, not the client, is tasked with the
28 day-to-day conduct of a trial and thus would have the final decision as to whether a

1 continuance was necessary. Rhyne, 118 Nev. at 8, 38 P.3d at 167.

2 14. The standard of review for sufficiency of the evidence upon appeal is
3 "whether, after reviewing the evidence in the light most favorable to the prosecution, any
4 rational trier of fact could have found the essential elements of the crime beyond a
5 reasonable doubt." Origel-Candido v. State, 114 Nev. 378, 381, 956 P.2d 1378, 1380
6 (1998); see also Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781, 2789 (1979).
7 Furthermore, "it is the jury's function, not that of the court, to assess the weight of the
8 evidence and determine the credibility of the witnesses." Origel-Candido, 114 Nev. at 381,
9 956 P.2d at 1380. It is not the function of the court to decide whether it believes the
10 evidence, rather, it is the jury's role as fact finder "[to fairly] resolve conflicts in the
11 testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to
12 ultimate facts." Jackson, 443 U.S. at 319, 99 S.Ct. at 2789. In rendering its verdict, a jury is
13 free to rely on circumstantial evidence. Wilkins v. State, 96 Nev. 367, 609 P.2d 309 (1980).

14 15. Courts have broad discretion in settling jury instructions. Cortinas, 195 P.3d at
15 319. The Nevada Supreme Court will not disturb a district court's decision on jury
16 instructions absent a clear abuse of discretion. Id. The prosecutor in a criminal case has the
17 duty to request that the jury be instructed on the limited use of prior bad act evidence both at
18 the time of its admission and during the final jury instructions. Tavares v. State, 117 Nev.
19 725, 731, 30 P.3d 1128, 1132 (2001). While NRS 48.045 lists several of the purposes for
20 which uncharged bad act evidence is admissible, including "motive, opportunity, intent,
21 preparation, plan, knowledge, identity, or absence of mistake or accident," this is not an
22 exhaustive list. Id.; NRS 48.045. Evidence of prior bad acts is also admissible and relevant
23 to "show motive and rebut the assertion of self defense." See Ochoa v. State, 115 Nev. 194,
24 200-01, 981 P.2d 1201, 1205-06 (1999); see also NRS 48.045(2).

25 16. Absent an abuse of discretion, a district court's admission of evidence will not
26 be disturbed when its probative value has been balanced against its potential for undue
27 prejudice. Seim v. State, 95 Nev. 89, 97, 590 P.2d 1152, 1157 (1979). While the character of
28 the accused is generally irrelevant to establish his guilt, a defendant who claims self-defense

1 places his credibility and at issue. Pineda v. State, 120 Nev. 204, 88 P.3d 827 (2004). The
2 credibility of a witness can be attacked based upon their ability to perceive the events
3 surrounding the crime. Lobato v. State, 120 Nev. 512, 518, 96 P.3d 765, 770 (2004).
4 Where, as here, the extrinsic evidence is used to impeach the Defendant's ability to perceive
5 the events of the crime, rather than as a prior bad act to show action in conformity therewith,
6 the evidence is admissible. See id.

7 17. The cumulative effect of errors may violate a defendant's due process right to
8 a fair trial. Rose v. State, 123 Nev. 24, ___, 163 P.3d 408, 419 (2007). The relevant factors
9 to consider when deciding whether cumulative error requires reversal are (1) whether the
10 issue of guilt is close, (2) the quantity and character of the error, and (3) the gravity of the
11 crime charged. Id. Furthermore, a defendant "is not entitled to a perfect trial, but only a fair
12 trial..." Ennis v. State, 91 Nev. 530, 533, 539 P.2d 114, 115 (1975).

13 18. A defendant is entitled to an evidentiary hearing if his petition is supported by
14 specific factual allegations, which, if true, would entitle him to relief, unless the factual
15 allegations are repelled by the record. Marshall v. State, 110 Nev. 1328, 1331, 885 P.2d 603,
16 605 (1994), Hargrove, 100 Nev. at 503, 686 P.2d at 225. "The judge or justice, upon review
17 of the return, answer and all supporting documents which are filed, shall determine whether
18 an evidentiary hearing is required." NRS 34.770(1). Defendant's claims were all resolved
19 based on the record without the need to take further evidence so he is not entitled to an
20 evidentiary hearing.

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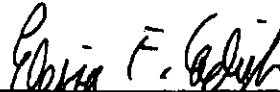
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ORDER


THEREFORE, IT IS HEREBY ORDERED that the Petition for Post-Conviction Relief shall be, and it is, hereby denied.

DATED this 27 day of June, 2011.

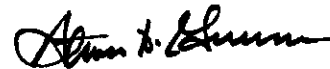


DISTRICT JUDGE
AT

DAVID ROGER
DISTRICT ATTORNEY
Nevada Bar #002781

BY 

MARC DIGIACOMO
Chief Deputy District Attorney
Nevada Bar #006955



CLERK OF THE COURT

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Attorneys for Petitioner,
Southern Nevada Health District

DISTRICT COURT

CLARK COUNTY, NEVADA

SOUTHERN NEVADA HEALTH DISTRICT,

Petitioner,

vs.

Case No.: A643953

Dept. No.: VI

CLARK COUNTY, NEVADA; BOARD OF
COMMISSIONERS OF CLARK COUNTY,
NEVADA; SUSAN BRAGER, Clark County,
Nevada Commissioner; STEVE SISOLAK,
Clark County, Nevada Commissioner; TOM
COLLINS, Clark County, Nevada
Commissioner; LARRY BROWN, Clark County,
Nevada Commissioner; LAWRENCE
WEEKLY, Clark County, Nevada
Commissioner; CHRIS GIUNCHIGLIANI,
Clark County, Nevada Commissioner; MARY
BETH SCOW, Clark County, Nevada
Commissioner; DON BURNETTE, Clark
County, Nevada Manager; DOES I through X;
and ROE CORPORATIONS I through X,
inclusive,

Date of Hearing: August 16, 2011

Time of Hearing: 8:30 a.m.

Respondents.

WRIT OF MANDAMUS AND WRIT OF PROHIBITION

The Court, having considered the petition for writs of mandamus and prohibition filed by
Petitioner, Southern Nevada Health District ("SNHD"), as well as the opposition filed by
Respondents, Clark County, Nevada; Board of Commissioners of Clark County, Nevada; Susan
Brager, Clark County, Nevada Commissioner; Steve Sisolak, Clark County, Nevada

MARQUIS AURBACH COFFING

10001 Park Run Drive
Las Vegas, Nevada 89145
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1 Commissioner; Tom Collins, Clark County, Nevada Commissioner; Larry Brown, Clark County,
2 Nevada Commissioner; Lawrence Weekly, Clark County, Nevada Commissioner; Chris
3 Giunchigliani, Clark County, Nevada Commissioner; Mary Beth Scow, Clark County, Nevada
4 Commissioner; and Don Burnette, Clark County, Nevada Manager (collectively "Clark
5 County"), as well as the reply filed by SNHD, hereby orders as follows:

6 1. SNHD's petition for writs of mandamus and prohibition is hereby GRANTED.

7 2. The Court has jurisdiction pursuant to NRS 34.160 et seq. and NRS 34.330 et seq.
8 to issue writs of mandamus and prohibition in favor of SNHD and against Clark County.

9 3. SNHD sought relief from this Court based upon the interpretation of
10 NRS 439.365 and requested direct funding from Clark County based upon Subsection 1 of this
11 statute which states in relevant part that SNHD's annual ^{operating exp} "budget must be adopted by the board of
12 county commissioners as part of the annual county budget." Additionally, SNHD also sought
13 relief based upon Subsection 2 of this statute for Clark County to allocate the direct funding to
14 SNHD ^{of an amount that does not exceed the amount calculated etc} "by the rate of 3.5 cents on each \$100 of assessed valuation."

15 4. Clark County argued that the language in NRS 439.365(2) stating "an amount that
16 does not exceed" gave Clark County the discretion to set SNHD's annual budget at any amount
17 so long as it did not exceed 3.5 cents on each \$100 of assessed valuation of all taxable property
18 in Clark County.

19 5. The Court, having considered the arguments of each party, and the ^{ex} ~~plain~~ language
20 of NRS 439.365, and the meaning of the statute when considered as a whole, hereby finds that
21 the language of this statute is ambiguous as to the funding issue presented to the Court.

22 6. Due to the ambiguity of NRS 439.365 in the context of this funding issue, the
23 Court has looked to the legislative history to determine the intent of the Legislature in enacting
24 this statute.

25 7. Based upon the Court's review of the legislative history of NRS 439.365 and the
26 uncontroverted arguments of SNHD in this regard, the Court concludes that the Legislature
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1 intended to provide SNHD with a direct source of funding consistent with SNHD's interpretation
2 of NRS 439.365.

3 8. Scott Weiss, Director of Administration at SNHD, submitted an affidavit with
4 SNHD's writ petition supported by SNHD's proposed budget to Clark County, Clark County's
5 approved budget for SNHD, and emails from Clark County staff confirming the following
6 figures: (1) SNHD's budget for fiscal year 2012 approved by the SNHD Board and submitted to
7 Clark County for funding using the 3.5 cent calculation from NRS 439.365 results in direct
8 funding to SNHD in the amount of \$19,870,482 for fiscal year 2012, which began on
9 July 1, 2011; (2) the additional 4 cent rate of operating funds that would have otherwise been
10 sent to the State of Nevada from Clark County, except for the Nevada Supreme Court's ruling in
11 Clean Water Coalition v. The M Resort, LLC, 127 Nev. Adv. Op. No. 24 (May 26, 2011), results
12 in an additional \$1,690,000 that should have been provided to SNHD based upon the 3.5 cent
13 calculation from NRS 439.365; and (3) Clark County's approved budget for SNHD for fiscal
14 year 2012 was only \$5,692,495, thus amounting to a shortfall of \$15,867,987. These amounts
15 provided by SNHD were not contested by Clark County in any of the pleadings submitted to the
16 Court.

17 9. In light of the Court's decision on the interpretation of NRS 439.365, and the
18 uncontested amounts set forth in SNHD's writ petition, Clark County is hereby ordered and
19 directed by way of mandamus to fully fund SNHD for fiscal year 2012 in the amount of
20 \$21,560,482. Additionally, because Clark County has made a monthly transfer to SNHD in July
21 2011 based upon the annual \$5,692,495 amount, Clark County must immediately transfer to
22 SNHD the amount of \$1,322,332.22, which represents the monthly difference between the
23 amount that should have been funded ($\$21,560,482 \div 12 = \$1,796,706.80$) and the amount that
24 was funded ($\$5,692,495 \div 12 = \$474,324.58$). Beginning in August 2011, Clark County shall
25 fully fund SNHD in the monthly amount of \$1,796,706.80 through fiscal year 2012, which ends
26 on the last day of June 2012. Clark County is still required to provide funding to SNHD in the
27 monthly amount of \$474,324.58, which reflects Clark County's annual budget figure of
28

1 \$5,692,495, during the period of any stay. Any amounts transferred to SNHD from Clark
2 County during any stay period that are less than the full funding amount ordered by this Court
3 shall be immediately paid in full upon the termination or lifting of any stay. To the extent that
4 these figures provided by Clark County vary from an actual calculation of the 3.5 cents per \$100
5 of assessed valuation as ordered by this Court, SNHD shall be entitled to the actual calculation
6 amount.

7 10. The Court also hereby prohibits and restrains Clark County by way of order and
8 prohibition from further ~~tampering~~ ^{noncompliance with} SNHD's direct funding mandated by the Legislature
9 according to NRS 439.365, as interpreted by this Court. This writ of prohibition shall apply to
10 future budgets proposed by SNHD that "must be adopted" by Clark County so long as SNHD's
11 proposed budgets do not exceed the 3.5 cent calculation set forth in NRS 439.365(2), as argued
12 by SNHD and adopted by this Court.

13 11. Due to the Court's ruling in favor of SNHD on its petition for writs of mandamus
14 and prohibition, the counterclaims asserted by Clark County are hereby DISMISSED with
15 prejudice.

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12. The Court, having considered Clark County's oral motion for stay pending appeal under NRCF 62, hereby stays these writs of mandamus and prohibition from taking effect until 15 days following their entry. However, the Court will not grant any further stay pending Clark County's request for relief from the Nevada Supreme Court.

IT IS SO ORDERED, this 13 day of September, 2011.

Elm F. Gordin
DISTRICT COURT JUDGE

Respectfully submitted on August 23, 2011, by:

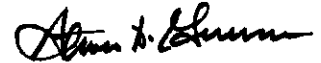
MARQUIS AURBACH COFFING

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CLERK OF THE COURT

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22 **MANDALAY CORPORATION, MANDALAY RESORT**
23 **GROUP, and MGM GRAND RESORTS DEVELOPMENT**

13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**
15

16 **MANDALAY CORPORATION, a Nevada**
17 **Corporation; MANDALAY RESORT**
18 **GROUP, a Nevada Corporation, f/k/a**
19 **CIRCUS CIRCUS ENTERPRISES, INC.;**
20 **and MGM GRAND RESORTS**
21 **DEVELOPMENT, a Nevada Corporation,**
22 **f/k/a MANDALAY DEVELOPMENT,**
23
24 **Plaintiffs,**

21 vs.

22 **KLAI-JUBA ARCHITECTS, LTD., a Nevada**
23 **Corporation; DOUGALL DESIGN**
24 **ASSOCIATES, INC., a Nevada Corporation;**
25 **M.J. DEAN CONSTRUCTION, INC., a**
26 **Nevada Corporation; ROLF JENSEN &**
27 **ASSOCIATES, INC., an Illinois Corporation;**
28 **and DOES 2-50, inclusive,**

26 **Defendants.**

Case No.: A536923
Department: VI

ORDER RE DEFENDANT ROLF
JENSEN & ASSOCIATES, INC.'S
MOTION FOR SUMMARY JUDGMENT
AND STAYING FURTHER
PROCEEDINGS

1 This action involves purported violations of Title III of the Americans with Disabilities Act
2 (ADA), 28 C.F.R. Part 36, 42 U.S.C. § 12183, in the design and construction of the Mandalay Bay
3 Resort & Casino at 3950 Las Vegas Boulevard South in Las Vegas, Nevada ("Mandalay Bay").
4 After surveying the Mandalay Bay property for compliance with the ADA construction standards,
5 28 C.F.R. Part 36, App. A, the United States Department of Justice, Civil Rights Division – the
6 administrative agency charged with enforcing the ADA – issued to Plaintiffs its Findings of
7 Noncompliance (the "DOJ Findings"). In the DOJ Findings, the Department of Justice identified
8 numerous aspects of the Mandalay Bay property that were purportedly designed and/or
9 constructed so as to be inaccessible to, and/or unusable by, individuals with disabilities and
10 therefore noncompliant with the ADA, and mandated that the Plaintiffs undertake significant
11 remediation efforts to remove the architectural barriers.

12 The Plaintiffs thereafter initiated these proceedings against certain of the designers and
13 builders of Mandalay Bay, including defendant ROLF JENSEN & ASSOCIATES, INC. ("RJA"),
14 alleging, *inter alia*, negligence and breach of contract with regard to the defendants' involvement
15 in the design, review, and/or construction of the architectural barriers identified in the DOJ
16 Findings.

17 RJA moved for, and was granted, Partial Summary Judgment with regard to all tort-based
18 claims alleged against it (Professional Negligence, Wrongful Interference with Prospective
19 Economic Advantage, Tort of Another, and Equitable Indemnification) by Nevada's application of
20 the economic loss rule, and also as to Plaintiffs' claim against RJA for Violation of the Nevada
21 ADA. Plaintiffs sought, and were granted, leave to amend their complaint to add a claim for
22 Negligent Misrepresentation against RJA. Asserting that Plaintiffs' negligent misrepresentation
23 claim, too, is precluded by the economic loss rule and their remaining contract-based claims are
24 preempted by the ADA pursuant to the Fourth Circuit Court of Appeals decision in *Equal Rights*
25 *Center v. Niles Bolton* [602 F.3d 597 (2010)], RJA now seeks summary judgment of all remaining
26 claims against it.

27 RJA's Motion for Summary Judgment came on for hearing on July 20, 2010 at 8:30 in
28 Department VI of the Eighth Judicial District Court, in and for Clark County, Nevada; the Hon.

1 Elissa F. Cadish presiding. RJA appeared by and through its counsel of record, Jean A. Weil, Esq.
2 of the law firm of Weil & Drage, APC; Plaintiffs MANDALAY CORPORATION; MANDALAY
3 RESORT GROUP, f/k/a CIRCUS CIRCUS ENTERPRISES, INC.; and MGM GRAND
4 RESORTS DEVELOPMENT, f/k/a MANDALAY DEVELOPMENT (collectively "Mandalay")
5 appeared by and through its counsel of record, Clark T. Thiel, Esq. of the law firm of Howrey,
6 LLP.

7 After the Court ruled from the bench at the close of a full hearing on the motion, RJA
8 orally moved for a permanent stay of all proceedings in this action to allow for the United States
9 Supreme Court time to issue its decision concerning review of the *Niles Bolton* case or,
10 alternatively, a 45-day stay on all proceedings in this matter to allow RJA to file a Petition for
11 Writ of Mandamus with the Nevada Supreme Court.

12 This Court, having read, analyzed and considered all papers and pleadings on file herein,
13 having heard oral arguments of the parties, and with good cause and merit appearing, hereby rules
14 and orders as follows:

15 **Findings of Fact**

16 1. RJA is an accessibility consultant that specializes in interpreting and applying the
17 requirements of the ADA to facilities such as Mandalay Bay. RJA provided professional ADA
18 consulting services "to inform the design team and the owner of the requirements" during the
19 design and construction of the Mandalay Bay Resort & Casino property. [E.g., Affidavit of
20 Kerwin Lee, Ex. G.] RJA's professional services were for the express purpose of assisting
21 Mandalay and its design team in complying with the requirements of the ADA. [*Id.*]

22 2. The DOJ Findings concluded that the Mandalay Bay property was designed and/or
23 constructed so as to be inaccessible to persons with disabilities in violation of the ADA. The DOJ
24 Findings identified more than 425 occurrences of specific non-complying architectural barriers on
25 the property. [Thiel Decl., Ex. 2 at Ex. 7.]

26 **Conclusions of Law**

27 3. Mandalay initiated this action in this Court and brought its claims under the laws of
28 the State of Nevada. Nevada law and procedure therefore apply as to all aspects of these

1 proceedings. Although the Court may find them instructive, this Court is not bound by the
2 opinions of federal courts either within or outside of the District of Nevada or the Ninth Circuit.
3 [*Custom Cabinet Factory of New York v. Eighth Jud. Dist. Ct.*, 119 Nev. 51, 54, 62 P.3d 741, 742-
4 43 (Nev. 2003) (overruled on other grounds); *Blanton v. North Las Vegas Mun. Court*, 103 Nev.
5 623, 633, 748 P.2d 494, 500 (Nev. 1987).]

6 4. Summary judgment is only appropriate when, after a review of the record viewed in
7 the light most favorable to the non-moving party, the evidence does not present any issues of
8 material fact and the law requires judgment for the moving party. [*Wood v. Safeway, Inc.*, 121
9 Nev. 724, 729, 121 P.3d 1026, 1029 (2005).] “The burden of establishing the non-existence of
10 any genuine issue of fact is on the movant.” [*NGA #2 LLC v. Rains*, 113 Nev. 1151, 946 P.2d 163,
11 166-67, (1992).] “If a moving party fails to carry its initial burden of production, the nonmoving
12 party has no obligation to produce anything, even if the nonmoving party would have the ultimate
13 burden of persuasion at trial.” [*Nissan Fire v. Fritz*, 210 F.3d 1099, 1102-03 (9th Cir. 2000).]
14 “[T]he non-moving party is entitled to have the evidence and all reasonable inferences accepted as
15 true.” [*Wilsie v. Baby Grand Corp.*, 105 Nev. 291, 292, 774 P.2d 432, 433 (1989).]

16 5. Absent a strong indication to the contrary, this Court must presume that, when
17 enacting federal law, Congress did not intend to preempt state law. [*Barany v. Buller*, 670 F.2d
18 726, 736 (7th Cir. 1982).] Given this “presumption against pre-emption” [*Wyeth v. Levine*, 555
19 U.S. ___, 129 S.Ct. 1187, 1195 & n.3, 173 L.Ed.2d 51 (2009)], state law will not be preempted
20 “absent an actual conflict” with federal legislation. [*College Loan Corp. v. SLM Corp.*, 396 F.3d
21 588, 598 (4th Cir. 2005).] “This assumption provides assurance that the federal-state balance will
22 not be disturbed unintentionally by Congress or unnecessarily by the courts.” [*Jones v. Rath*
23 *Packing Co.*, 430 U.S. 519, 525, 97 S.Ct. 1305, 51 L.Ed.2d 604 (1977); accord, *Medtronic, Inc. v.*
24 *Lohr*, 518 U.S. 470, 485, 116 S.Ct. 2240, 135 L.Ed.2d 700 (1996).] Courts will “not seek out
25 conflicts between state and federal regulation where none clearly exists.” [*College Loan Corp.*,
26 396 F.3d at 598.]

27 6. “In assessing whether an actual conflict exists” under theories of “conflict” or
28 “obstacle” preemption, this Court is to determine whether the “state law actually conflicts with

1 federal law" in that "it is impossible to comply with both state and federal law or ... the state law
2 stands as an obstacle to the accomplishment of the full purposes and objectives of federal law."
3 [*Anderson v. Sara Lee Corp.*, 508 F.3d 181, 191-92 (4th Cir. 2007); *see also* Department of
4 Justice, Title III Technical Assistance Manual, § III-1.8200 ("Title III does not disturb other
5 Federal laws or any State law that provides protection for individuals with disabilities at a level
6 greater or equal to that provided by the ADA.").]

7 7. An indemnity contract is preempted by the ADA only if it affects rights created by
8 that legislation. [*American Fed. Sav. Bank v. County of Washoe*, 106 Nev. 869, 873, 802 P.2d
9 1270, 1273 (Nev. 1990).]

10 8. The purpose of the ADA is to eliminate discrimination against individuals with
11 disabilities in places of public accommodation. [42 U.S.C. § 12182.] It was not designed to
12 penalize those found to be in violation of its provisions but, rather, to strike a "careful balance ...
13 between the rights of individuals with disabilities and the legitimate interests of business" and to
14 "give the business community the flexibility to meet the requirements of the Act without incurring
15 undue costs." [Statement on Signing the Americans with Disabilities Act of 1990 at 1-2 (July 26,
16 1990).]

17 9. The Department of Justice has issued various secondary materials explaining the
18 ADA and associated regulations. If the ADA "is silent or ambiguous with respect to the specific
19 issue" and "the administrator's reading fills a gap or defines a term in a way that is reasonable in
20 light of the legislature's revealed design, we give the administrator's judgment 'controlling
21 weight.'" [*NationsBank of North Carolina, N.A. v. Variable Annuity Life Ins. Co.*, 513 U.S. 251,
22 256-57, 115 S.Ct. 810, 130 L.Ed.2d 740 (1995) (quoting and citing *Chevron U.S.A. Inc. v. Natural*
23 *Resources Defense Council, Inc.*, 467 U.S. 837 (1984).]

24 10. The Department of Justice has, in the context of landlord-tenant relationships, taken
25 the position that contractual agreements apportioning responsibility for ADA compliance are not
26 in conflict with the purposes of the Act and do not interfere with its ability to effectively enforce
27 its provisions. [H.R. Rep. No. 101-485(II), 104 (*reprinted in* 1990 U.S.C.C.A.N. 303, 387); *see*
28 *also* 28 C.F.R. § 36.201(b) ("... allocation of responsibility for complying with the obligations of

1 this part may be determined by lease or other contract.”); 36 C.F.R., Part 36, App. B – Preamble to
2 Regulation on Nondiscrimination on the Basis of Disability by Public Accommodations and in
3 Commercial Facilities, 56 Fed.Reg. 35544-01, 35555-56 (July 26, 1991) (“Appendix B”) (“The
4 Department wishes to emphasize, however, that the parties are free to allocate responsibilities in
5 any way they choose.”).]

6 11. The Department of Justice has also recognized that reliance on professional
7 consultants furthers the goals and purposes of the ADA, noting that “[i]t is best left to the public
8 accommodations ... to establish policies to assess compliance that are appropriate to the particular
9 circumstances faced by the wide range of public accommodations covered by the ADA,” and
10 recommends “that this process include appropriate consultation with individuals with disabilities
11 or organizations representing them.” [Appendix B, 56 Fed.Reg. at 35569.]

12 12. That an owner’s affirmative obligation to protect against discrimination against
13 disabled persons may be nondelible does not preclude an owner from obtaining a separate but
14 concurrent indemnity obligation (from, e.g., a responsible party or an insurer) for the costs
15 associated with eliminating discriminatory architectural barriers. [*Meyer v. Holley*, 537 U.S. 280,
16 290, 154 L.Ed. 2d 753, 123 S.Ct. 824 (2003); *Ellison v. Shell Oil Co.*, 882 F.2d 349, 353 (9th Cir.
17 1989); *Washington Sports & Enter. v. United Coastal Ins.*, 7 F.Supp.2d 1, 13 (D.D.C. 1998).]

18 13. Contractually apportioning responsibility for eliminating discriminatory
19 architectural barriers therefore does not interfere with the ADA’s goal of “ensur[ing] that public
20 accommodations are accessible to their customers, clients, or patrons.” [Appendix B, 56 Fed.Reg.
21 at 35568.]

22 14. Moreover, because “the services rendered by design professionals in the commercial
23 building process are both integral to the building process and impact the quality of building
24 projects,” Nevada has a “policy of promoting certainty and predictability in allocating risk so that
25 future business activity is not impeded” and recognizes that “in the construction industry ... it is
26 important to maintain a precise allocation of risk secured by contract.” [*Terracon Consultants*
27 *Western, Inc. v. Mandalay Resort Group*, __ Nev. __, 201 P.3d 81, 89 (Nev. 2009).]

28 ////

1 15. Therefore, in Nevada, "an exculpatory provision such as the one in this case is
2 generally regarded as a valid exercise of the freedom of contract." [*Miller v. A&R Joint Venture*,
3 97 Nev. 580, 582, 636 P.2d 277, 278 (Nev. 1981).] As such, an apportionment of liability that
4 was "freely contracted to by the parties" will be enforced unless the court is "convinced that public
5 policy requires [it] to refuse to enforce the provision." [*Id.*]

6 16. The overall structure and policy of the ADA is to regulate the rights and obligations
7 running between Mandalay and those members of the public who use the Mandalay Bay facilities,
8 as opposed to the rights and obligations running between the Plaintiffs and RJA. [42 U.S.C.
9 § 12182.] In contrast, the alleged indemnity agreement between the Plaintiffs and RJA creates a
10 contractual liability on the part of RJA, rather than waiving or modifying any liability that
11 Mandalay has to the public under the ADA. [*American Federal*, 106 Nev. at 873.]

12 17. In moving for summary judgment, RJA has failed to demonstrate that the analysis
13 and holding in *Equal Rights Center v. Niles Bolton Associates, Inc.* [602 F.3d 597 (4th Cir. 2010)]
14 will further the ADA's goal and purpose of eliminating discrimination against individuals with
15 disabilities in places of public accommodation or can be reconciled either with the Department of
16 Justice's interpretation of the ADA as permitting the allocation of compliance costs among
17 responsible parties or with this State's strong public policy favoring the apportionment of liability
18 in construction contracts.

19 18. In moving for summary judgment, RJA has not established that Mandalay's
20 obligations under the ADA are eliminated, limited, extended, or impacted in any manner by virtue
21 of Mandalay's claimed contractual relationship with RJA. The contractual relationship alleged
22 between Mandalay and RJA therefore remains unaffected by Congress's enactment of the ADA.
23 [*E.g., Botosan v. Fitzhugh*, 13 F.Supp.2d 1047, 1054 (S.D. Cal. 1998).]

24 19. Mandalay's claimed contractual rights against RJA do not render Mandalay's
25 compliance with the ADA "impossible," nor do they otherwise conflict with the goals, purposes,
26 or enforcement of the Americans with Disabilities Act. Notwithstanding the allegations regarding
27 an indemnity agreement between Mandalay and its ADA consultant, an aggrieved person is not
28 prevented from bring a civil action against Mandalay "for preventative relief" under the ADA [42

1 U.S.C. § 2000a-3(a)] and, therefore, such an indemnity Agreement would not insulate Mandalay
2 "from liability for discrimination" under the ADA. [*Meyer v. Holley*, 537 U.S. 280, 290, 154
3 L.Ed. 2d 753, 123 S.Ct. 824 (2003).]

4 20. Permitting ADA consultants in Nevada to avoid their contractual indemnity
5 obligations toward those who retain them for the express purpose of preventing ADA violations in
6 this State would not only compromise the federal mandate against discrimination, but would also
7 undermine Nevada's recognition of the parties' freedom to contract and strong public policy goals
8 regarding the precise allocation of risk by contract in the construction industry and the promotion
9 of certainty and predictability in the enforceability thereof. [*Terracon*, 201 P.3d at 89.] In
10 contrast, the contractual apportionment of liability furthers the purposes of the ADA by permitting
11 responsible parties to procure insurance to cover remediation costs; by encouraging owners to
12 consult with those having expertise in the requirements of the Act; by encouraging those holding
13 themselves out to have such expertise to provide their services in a competent and professional
14 manner; and by allowing the costs associated with the removal of discriminatory architectural
15 barriers to be spread among the responsible parties and their insurers.

16 21. RJA's contractual obligations to Mandalay are therefore to be enforced "as a matter
17 of public policy," as they allocate risk between Mandalay and RJA that is not otherwise allocated
18 or covered by the Americans with Disabilities Act, because the allocation of responsibility for
19 remediation is not only consistent with the goals of the ADA but also furthers those goals, and
20 because doing so will provide certainty and predictability in allocating risk so that future business
21 activity is not impeded. [*American Federal*, 106 Nev. at 876; *Terracon*, 201 P.3d at 89; *accord*,
22 28 C.F.R. § 36.201(b); 56 Fed.Reg. at 35556.]

23 22. Nor does the economic loss doctrine relieve RJA from liability for any negligent
24 misrepresentations that it may have made to Mandalay. It is well-established in Nevada that
25 "[o]ne who, in the course of his business, profession or employment, or in any other action in
26 which he has a pecuniary interest, supplies false information for the guidance of others in their
27 business transactions, is subject to liability for pecuniary loss caused to them by their justifiable
28 reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or

1 communicating the information.” [*Bill Stremmel Motors, Inc. v. First Nat. Bank of Nevada*, 94
2 Nev. 131, 134, 575 P.2d 938, 940 (Nev. 1978) (emphasis added).]

3 23. “Negligent misrepresentation is a special financial harm claim for which tort
4 recovery is permitted because without such liability the law would not exert significant financial
5 pressures to avoid such negligence.” [*Terracon, supra*, 206 P.3d at 88.] As such, even in
6 construction actions, negligent misrepresentation will give rise to a claim for recovery of pure
7 economic loss. [*Id.*, see also, e.g., *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 124
8 P.3d 530 (Nev. 2005); *Foster v. Dingwall*, 227 P.3d 1042, ___ Nev. ___ (Nev. 2010); *Bill Stremmel*
9 *Motors, supra*, 94 Nev. 131; *Hazelwood v. Harrah’s*, 109 Nev. 1005, 1012, 862 P.2d 1189 (Nev.
10 1993); *Ideal Elec. Co. v. Flowserve Corp.*, 357 F.Supp.2d 1248 (D.Nev. 2005); *G.K. Las Vegas*
11 *Limited v. Simon Property Group*, 460 F.Supp.2d 1222 (D.Nev. 2006).]

12 24. Mandalay’s claim for negligent misrepresentation against RJA therefore is not
13 barred by the economic loss rule.

14

15 NOW, THEREFORE,

16 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that RJA’s Motion for
17 Summary Judgment is DENIED;

18 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that RJA’s oral
19 Motion for a Permanent Stay of Proceedings is DENIED;

20 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that RJA’s
21 Alternative Motion for an Immediate Temporary Stay of Proceedings is GRANTED, and all
22 proceedings and discovery in this action are stayed until September 3, 2010;

23 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the July 27,
24 2010 Status Check is vacated; and

25 ///

26 ///

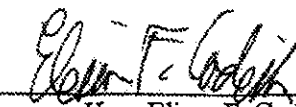
27 ///

28 ///

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Calendar
2 Call shall remain as scheduled on the calendar with this issue to be revisited at some future date
3 and time, depending on circumstances.

4
5 IT IS SO ORDERED.

6 DATED this 21 day of ~~August~~ ^{September}, 2010.

7
8 
9 Hon. Elissa F. Cadish
10 DISTRICT COURT JUDGE T.P.

11
12
13 Respectfully submitted by:
14 **SANTORO, DRIGGS, WALCH, KEARNEY,**
15 **HOLLEY & THOMPSON**
16 Dennis Haney, Esq.
17 Nevada Bar No. 0016
18 Shemilly A. Briscoe, Esq.
19 Nevada Bar No. 9985

20
21 By 

22 In association with

23 **HOWREY LLP**

24 By /s/ Clark T. Thiel
25 Clark T. Thiel, Esq.
26 Nevada Bar No. 10778

27 *Attorneys for Plaintiffs*
28 **MANDALAY CORPORATION, MANDALAY RESORT**
GROUP, and MGM GRAND RESORTS DEVELOPMENT

FILED

SEP 28 3 17 PM '10

[Signature]
CLERK OF THE COURT

ORDR

Paul R. Hejmanowski, Esq. #0094
Elizabeth Brickfield, Esq. #6236
ebrickfield@lionelsawyer.com
LIONEL SAWYER & COLLINS
1700 Bank of America Plaza
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Attorneys for China Post No.1 of the American Legion

**DISTRICT COURT
CLARK COUNTY, NEVADA**

In the Matter of the Administration of)

THE FISCHER TRUST)
dated November 21, 1988)

Case No.: P-10-067881-T
Department: 6

Date: September 28, 2010
Time: 8:30 a.m.

ORDER

A hearing was held, on shortened time, on the China Post No.1 of the American Legion's Motion for an Order to Hold Edward Marshall in Contempt and for Additional Relief (the "Motion"). Present at the hearing were Paul Hejmanowski, Esq. and Elizabeth Brickfield, Esq. of Lionel Sawyer & Collins; Captain Alfred Platt, Commander and Adjutant, American Legion China Post No.1, Bill Anton, Deputy Commander; H. Ownby, temporary trustee of The Fischer Trust and Edward Marshall, Esq. ("Mr. Marshall").

Good cause being found, the Court, having read and considered the papers and the statements of counsel, made the following findings of fact and issued the following orders:

THE COURT FINDS that:

1. Edward G. Marshall is in contempt of this Court's previous order resulting from the September 16, 2010 hearing on this matter which order was entered September 20, 2010. A copy of that order is attached as Exhibit "1".
2. The Court has authority to hear the Motion for an Order Holding Edward Marshall

RECEIVED
SEP 28 2010
CLERK OF THE COURT

LIONEL SAWYER & COLLINS
1700 BANK OF AMERICA
PLAZA
300 SOUTH FOURTH STREET
LAS VEGAS, NEVADA 89101
PHONE 702.383.8888
FAX 702.383.8845

12

1 in civil contempt and denies Mr. Marshall's objection to the Court doing so.

2 3. Mr. Marshall has admitted to the Court that he did not allow the inspection ordered
3 by the Court at the September 16, 2010 hearing held on this matter.

4 4 If Mr. Marshall does not allow the inspection and release of the "original file" on
5 September 28, 2010 at 4:00 p.m., Mr. Marshall will be personally assessed a sanction of Two
6 Hundred Fifty Dollars per day.

7 5. In addition to the monetary sanction set out above, if Mr. Marshall does not provide
8 the access to the "original file", at the hearing to be held on this matter on October 5, 2010 at 8:30
9 a.m., this Court may impose additional sanctions including the issuance of a bench warrant.

10 6. As previously ordered by this Court, Tsai Lan Gerth, the suspended trustee of the
11 Fischer Trust, is to turn over to Lionel Sawyer & Collins, as counsel for H. Ownby, the temporary
12 trustee, all assets of the Fischer Trust no later than Friday, October 1, 2010.

13 7. Mr. Marshall is ordered to return to this Court on Tuesday, October 5, 2010 at 8:30
14 a.m. for further proceedings.

15 Good cause being found:

16 IT IS HEREBY ORDERED that Edward G. Marshall is in contempt of this Court's order
17 resulting from the September 16, 2010 hearing, which order was entered September 20, 2010 and
18 a copy of which is attached hereto as Exhibit "1";

19 IT IS FURTHER ORDERED that Mr. Marshall is ordered to allow Elizabeth Brickfield,
20 Esq., the Lionel Sawyer & Collins personnel she chooses to accompany her and a representative
21 from a third party copying entity of her selection to enter Mr. Marshall's offices at 324 So. Third
22 Street # 200, Las Vegas, Nevada 89101 at 4:00 p.m. on September 28, 2010 when Ms. Brickfield
23 is permitted to inspect the "original file" at the office of Edward G. Marshall, Esq., 324 So. Third
24 Street # 200, Las Vegas, Nevada 89101. At the time of inspection, Elizabeth Brickfield, Esq. and
25 the Lionel Sawyer & Collins personnel accompanying her are to place into the possession of the
26 representative of the third party copying center for copying, the portions of the "original file" up
27 to the entirety of the "original file" which Ms. Brickfield selects to be reproduced;

28 IT IS FURTHER ORDERED that at the time of inspection, Mr. Marshall is to provide

1 responses to Ms. Brickfield's oral inquiries to Mr. Marshall concerning the contents of the "original
2 file", whether contained therein or not; *Ms. Brickfield nor her agents may search through Mr. Marshall's office on their own, but can require about completeness of the file provided and see any items not included.*

3 IT IS FURTHER ORDERED that, as previously ordered by this Court, if Mr. Marshall
4 does not allow the inspection and release of the "original file" on September 28, 2010 at 4:00 p.m.
5 then Mr. Marshall will be personally assessed a sanction of Two Hundred Fifty Dollars per day;

6 IT IS FURTHER ORDERED that if Mr. Marshall does not provide the ordered access to
7 the "original file", this Court may impose additional sanctions, including the issuance of a bench
8 warrant;

9 IT IS FURTHER ORDERED that Tsai Lan Gerth, the suspended trustee of the Fischer
10 Trust, is to turn over to to Lionel Sawyer & Collins as counsel for H. Ownby, all assets of the
11 Fischer Trust no later than Friday, October 1, 2010, as previously ordered by this Court after the
12 ~~October~~ *September* 17, 2010 hearing before the Probate Commissioner;

13 //

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1 IT IS FURTHER ORDERED that Mr. Marshall's requests for a stay of this Court's orders
2 are denied; and

3 IT IS FURTHER ORDERED that the parties will be before this Court on Tuesday, October
4 5, 2010 at 8:30 a.m. for further proceedings.

5 Dated this 28 day of September, 2010.

6
7
8 
9 THE HONORABLE ELISSA F. CADISH
DISTRICT COURT JUDGE

10 Prepared by:

11 LIONEL SAWYER & COLLINS


12 By: 
13 Paul R. Hejmanowski, Esq., Bar. No. 94
14 Elizabeth Brickfield, Esq., Bar No. 6236
15 300 South Fourth Street
16 Las Vegas, Nevada 89101
Telephone No.: (702) 383-8888
Facsimile No.: (702) 383-8845
Email: ebrickfield@lionelsawyer.com
Attorneys for China Post No.1 of the American Legion

EXHIBIT 1

EXHIBIT 1

1 NEOJ

2 Elizabeth Brickfield, Esq. #6236

3 ebrickfield@lionelsawyer.com

4 Matthew R. Policastro, Esq. #9653

5 mpolicastro@lionelsawyer.com

6 LIONEL SAWYER & COLLINS

7 1700 Bank of America Plaza

8 300 South Fourth Street

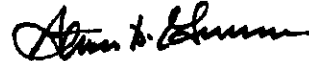
9 Las Vegas, Nevada 89101

10 (702) 383-8888 (Telephone)

11 (702) 383-8845 (Fax)

12 Attorneys for China Post No.1 of the American Legion

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CLERK OF THE COURT

13 DISTRICT COURT

14 CLARK COUNTY, NEVADA

15 In the Matter of the Administration of

16 THE FISCHER TRUST

17 dated November 21, 1988

Case No.: P-10-067881-T

Department: 6

Date: September 16, 2010

Time: 8:30 a.m.

18 **NOTICE OF ENTRY OF ORDER**

19 PLEASE TAKE NOTICE than an ORDER was entered in the above matter on the 20th
20 day of September 2010, a true and correct copy of which is attached hereto.

21 Dated this 20th day of September, 2010.

22 Respectfully submitted by
23 LIONEL SAWYER & COLLINS

24 By: Matthew R. Policastro
25 Elizabeth Brickfield, Esq. #6236

26 Matthew R. Policastro #9653

27 300 South Fourth Street

28 Las Vegas, Nevada 89101

Attorneys for China Post No. 1 of the American Legion

1 CERTIFICATE OF SERVICE

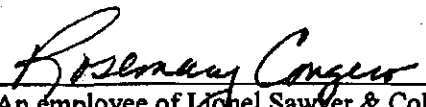
2 I hereby certify that on the 21st day of September, 2010, service of the Notice of Entry
3 of Order was made by depositing a true and correct copy of the same in the United States Mail,
4 First Class postage prepaid, addressed to the following persons at their last known addresses:

5 Jay R. Larsen, Esq.
6 Richard D. Chatwin, Esq.
7 Gerrard Cox Larsen
2450 St. Rose Pkwy., Suite 200
Henderson, NV 89074

John J. Cahill
Clark County Public Administrator
515 Shadow Lane
Las Vegas, Nevada 89106

8 and by hand delivering a true and correct copy of the same to the following persons at their last
9 known address:

10 Tsai Lan Gerth, Trustee
11 Edward Marshall, Esq.
12 324 S. Third Street, #2
Las Vegas, Nevada 89101

13 
14 An employee of Lionel Sawyer & Collins

1 **ORDER**

2 Elizabeth Brickfield, Esq. #6236
3 ebrickfield@lionelsawyer.com
4 Matthew R. Policastro, Esq. #9653
5 mpolicastro@lionelsawyer.com
6 LIONEL SAWYER & COLLINS
7 1700 Bank of America Plaza
8 300 South Fourth Street
9 Las Vegas, Nevada 89101
10 (702) 383-8888 (Telephone)
11 (702) 383-8845 (Fax)
12 Attorneys for China Post No.1 of the American Legion

8 **DISTRICT COURT**
9 **CLARK COUNTY, NEVADA**

10 In the Matter of the Administration of

11
12 **THE FISCHER TRUST**
13 dated November 21, 1988

Case No.: P-10-067881-T
Department: 6

Date: September 16, 2010
Time: 8:30 a.m.

14
15 **ORDER**

16 A hearing was heard on the Petition to Hold Trustee Tsai Lan Gerth and Trustee's Counsel
17 in Contempt and for Sanctions Pursuant to EDCR 7.60 filed by the China Post No.1 of the American
18 Legion and the Declaration of Attorney Marshall filed by Tsai Lan Gerth, as the Trustee of the
19 Fischer Trust dated November 21, 1988 (the Trust and the amendments to the Trust shall be referred
20 to herein as the "Trust").

21 Present at the hearing were China Post No.1's counsel of record, Elizabeth Brickfield, Esq.
22 and Matthew Policastro, Esq. of Lionel Sawyer & Collins; Captain Alfred Platt, Commander and
23 Adjutant, American Legion China Post No.1 and H. Ownby, Vice-Commander of the American
24 Legion China Post No.1 and Edward Marshall, Esq. counsel for Tsai Lan Gerth, as Trustee of the
25 Trust ("Mr. Marshall").

26 Good cause being found, the Court, having read and considered the papers and the statements
27 of counsel, made the following findings of fact and issued the following orders:

1 THE COURT FINDS that:

2 1. For the purposes of these proceedings, Mr. Marshall's "original file" is defined as
3 any or all of the documents which are in Edward G. Marshall's possession and which relate in any
4 manner to Harold E. Fischer, Jr., the Trust, the Estate of Harold E. Fischer, Jr., and all proceedings
5 related to Harold E. Fischer, Jr.. "Document" or "Documents" means all written or graphic matter
6 of every kind or description, however produced or reproduced, whether in draft, final, original or
7 reproduction, signed or unsigned, and regardless of whether approved, sent, received, redrafted or
8 executed, including but not limited to, written communications, letters, correspondence, memoranda,
9 notes, records, business records, media releases or articles, photographs, tape or sound recordings,
10 contracts, agreements, telephone records, facsimile records, logs and/or notations of telephone
11 conversations or personal conversations, diaries, desk calendars, statements, reports, computer
12 records, email, data compilations of any kind and in any form, and material similar to any of the
13 foregoing, however denominated and to whomever addressed. "Document" or "Documents" shall
14 not include exact duplicates where originals are available, but shall include all copies different from
15 originals in any way by virtue of any writings, notations, symbols, characters, impressions or any
16 marks thereon in any form which are in Edward G. Marshall's possession and which relate in any
17 manner to Harold E. Fischer, Jr., the Trust, the Estate of Harold E. Fischer, Jr. and all proceedings
18 related to Harold E. Fischer, Jr..

19 2. Mr. Marshall and Ms. Brickfield, shall agree, no later than the morning of September
20 17, 2010, to a mutually convenient date and time, which time shall be no later than the close of
21 business on September 23, 2010, whereby Mr. Marshall shall allow Elizabeth Brickfield, Esq. and
22 the Lionel Sawyer & Collins personnel she chooses to accompany her to examine and review all of
23 Edward G. Marshall, Esq.'s "original file" at the office of Edward G. Marshall, Esq., 324 So. Third
24 Street # 200, Las Vegas, Nevada 89101. At the time of inspection, Elizabeth Brickfield, Esq. and
25 the Lionel Sawyer & Collins personnel accompanying her shall be allowed to take from Mr.
26 Marshall's office for copying any or all of the "original file" which Ms. Brickfield, Esq. selects. Ms.
27 Brickfield shall return all of the "original file" she takes from Mr. Marshall's office no later than
28 twenty-four hours from the time Ms. Brickfield leaves Mr. Marshall's office. At the September 17,

1 2010 hearing before Commissioner Yamashita, Ms. Brickfield and Mr. Marshall agreed that Ms.
2 Brickfield is to examine and review all of the "original file" on Thursday September 23, 2010 at 9:30
3 a.m.

4 3. Ms. Brickfield shall provide Ms. Marshall with a Receipt of Copy for the "original
5 file" which she removes from his office.

6 4. Ms. Brickfield is to provide a written report to Judge Cadish, prior to October 14,
7 2010 of the results of the examination and review of the "original file".

8 5. American Legion China Post No.1's request for sanctions for Mr. Marshall's failure
9 to comply with Judge Cadish's order of August 30, 2010 allowing inspection of the "original file"
10 will be considered on Judge Cadish's motion calendar of October 14, 2010 at 8:30 a.m..

11 Good cause being found:

12 IT IS HEREBY ORDERED that for the purposes of these proceedings, Mr. Marshall's
13 "original file" is defined as any or all of the documents which are in Edward G. Marshall's
14 possession and which relate in any manner to Harold E. Fischer, Jr., the Trust, the Estate of Harold
15 E. Fischer, Jr. and all proceedings related to Harold E. Fischer, Jr. "Document" or
16 "Documents" means all written or graphic matter of every kind or description, however produced or
17 reproduced, whether in draft, final, original or reproduction, signed or unsigned, and regardless of
18 whether approved, sent, received, redrafted or executed, including but not limited to, written
19 communications, letters, correspondence, memoranda, notes, records, business records, media
20 releases or articles, photographs, tape or sound recordings, contracts, agreements, telephone records,
21 facsimile records, logs and/or notations of telephone conversations or personal conversations,
22 diaries, desk calendars, statements, reports, computer records, email, data compilations of any kind
23 and in any form, and material similar to any of the foregoing, however denominated and to
24 whomever addressed. "Document" or "Documents" shall not include exact duplicates where
25 originals are available, but shall include all copies different from originals in any way by virtue of
26 any writings, notations, symbols, characters, impressions or any marks thereon in any form which
27 are in Edward G. Marshall's possession and which relate in any manner to Harold E. Fischer, Jr.,
28 the Trust, the Estate of Harold E. Fischer, Jr. and all proceedings related to Harold E. Fischer, Jr..

1 IT IS FURTHER ORDERED that Mr. Marshall and Ms. Brickfield, shall agree, no later than
2 the morning of September 17, 2010, to a mutually convenient date and time, which time shall be no
3 later than the close of business on September 23, 2010, whereby Mr. Marshall shall allow Elizabeth
4 Brickfield, Esq. and the Lionel Sawyer & Collins personnel she chooses to accompany her to
5 examine and review all of Edward G. Marshall, Esq.'s "original file" at the office of Edward G.
6 Marshall, Esq., 324 So. Third Street # 200, Las Vegas, Nevada 89101. At the time of examination,
7 Elizabeth Brickfield, Esq. and the Lionel Sawyer & Collins personnel shall be allowed to take from
8 Mr. Marshall's office for copying any or all of the "original file" which Ms. Brickfield, Esq. selects.
9 Ms. Brickfield shall return all of the "original file" she takes from Mr. Marshall's office no later than
10 twenty-four hours from the time Ms. Brickfield leaves Mr. Marshall's office. At the September 17,
11 2010 hearing before Commissioner Yamashita, Ms. Brickfield and Mr. Marshall agreed that Ms.
12 Brickfield is to examine and review all of the "original file" on Thursday September 23, 2010 at 9:30
13 a.m.

14 IT IS FURTHER ORDERED that Ms. Brickfield shall provide Ms. Marshall with a Receipt
15 of Copy for the "original file" which she removes from his office.

16 IT IS FURTHER ORDERED that Ms. Brickfield is to provide a written report to Judge
17 Cadish, prior to October 14, 2010 of the results of the examination and review of the "original file".

18 //

19 //

20 //

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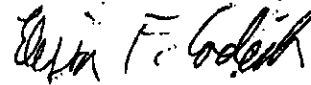
26 //

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1 IT IS FURTHER ORDERED that the American Legion China Post No.1's request for
2 sanctions for Mr. Marshall's failure to comply with Judge Cadish's order of August 30, 2010
3 allowing inspection of the "original file" will be considered on Judge Cadish's motion calendar of
4 October 14, 2010 at 8:30 a.m..


5 Dated this 20th day of September, 2010.

6
7 

8
9 THE HONORABLE ELISSA F. CADISH
DISTRICT COURT JUDGE T.P.

10 Prepared by:

11 LIONEL SAWYER & COLLINS

12 By: 
13 Elizabeth Brickfield, Esq., Bar No. 6236
14 Matthew Policastro, Esq., Bar No. 9653
15 300 South Fourth Street
16 Las Vegas, Nevada 89101
17 Telephone No.: (702) 383-8888
18 Facsimile No.: (702) 383-8845
19 Email: ebrickfield@lionelsawyer.com
20 Attorneys for China Post No.1 of the American Legion
21
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28


CLERK OF THE COURT

1 **NEOJ**
2 **MARK G. SIMONS**
3 **NV Bar Number 5132**
4 **Robison, Belaustegui, Sharp & Low**
5 **71 Washington St.**
6 **Reno, NV 89503**
7 **(775) 329-3151**

8 **Attorneys for RalRon**

9 **IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

10 **IN AND FOR THE COUNTY OF CLARK**

11 **RALRON CAPITAL CORPORATION, A**
12 **Nevada corporation,**

CASE NO.: A-09-590878-C

13 **Plaintiff,**

DEPT. NO.: VI

14 **v.**

NOTICE OF ENTRY OF ORDER

15 **VINCENT T. SCHETTLER; VINCENT T.**
16 **SCHETTLER, Trustee of Vincent T.**
17 **Schettler Living Trust; and DOES 1-10,**
18 **inclusive,**

Defendants.

19 **PLEASE TAKE NOTICE** that an Order Granting Summary Judgment was
20 entered by the Honorable Ellen F. Cadish on the 18th day of March, 2010 and filed with
21 this Court on March 25, 2010 in the above-entitled matter.

22 **A copy of the Order Granting Summary Judgment is attached as Exhibit 1.**

23 **///**

24 **///**

25 **///**

26 **///**

27 **///**

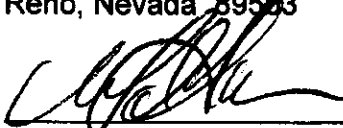
28 **///**

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AFFIRMATION: The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 26th day of March, 2010.

ROBISON, BELAUSTEGUI, SHARP & LOW
A Professional Corporation
71 Washington Street
Reno, Nevada 89503



MARK G. SIMONS
Attorneys for RaiRon

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of ROBISON,
BELAUSTEGUI, SHARP & LOW, Attorneys at Law, a professional corporation, and that
on this date I caused a true copy of the attached **NOTICE OF ENTRY OF ORDER** to be
served via U.S. Mail at Reno, Nevada and addressed as follows:

Rusty Graf
Feldman Graf, P.C.
8515 Edna Ave., Ste. 110
Las Vegas, NV 89117

DATED this 26th day of March, 2010.


JODI ALHASAN

EXHIBIT 1

EXHIBIT 1


CLERK OF THE COURT

OGSJ
MARK G. SIMONS
NV Bar Number 5132
Robison, Belaustegui, Sharp & Low
71 Washington St.
Reno, NV 89503
(775) 329-3151

Attorneys for RalRon

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

RALRON CAPITAL CORPORATION, A
Nevada corporation,

CASE NO.: A-09-590878-C

Plaintiff,

DEPT. NO.: VI

v.

VINCENT T. SCHETTLER; VINCENT T.
SCHETTLER, Trustee of Vincent T.
Schettler Living Trust; and DOES 1-10,
inclusive,

ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

Defendants.

AND RELATED COUNTERCLAIMS

Plaintiff's Motion for Summary Judgment having been fully briefed and argued,
and Good Cause Appearing:

THE COURT hereby **GRANTS** Plaintiff's Motion for Summary Judgment in total
and renders its findings of facts and conclusions of law as follows:

1. The following facts are undisputed. On September 15, 2006, Vincent T.
Schettler ("Schettler") individually executed and delivered to Silver State Bank, a State
Chartered Bank ("Silver State") a business loan agreement and promissory note for the
purpose of establishing a loan from Silver State. On September 15, 2007, Schettler

FINAL DISPOSITIONS	
<input type="checkbox"/> Time Limit Expired	10
<input type="checkbox"/> Dismissed (with or without prejudice)	15
<input type="checkbox"/> Judgment Entered	16
<input checked="" type="checkbox"/> Summary Judgment	17
<input type="checkbox"/> Settle	18
<input type="checkbox"/> Stay Judgment	19
<input type="checkbox"/> Default Judgment	20
<input type="checkbox"/> Transferred	21
<input type="checkbox"/> Voluntary Dismissal	22
<input type="checkbox"/> Judgment Entered	23
<input type="checkbox"/> Judgment Entered	24
<input type="checkbox"/> Judgment Entered	25
<input type="checkbox"/> Judgment Entered	26
<input type="checkbox"/> Judgment Entered	27
<input type="checkbox"/> Judgment Entered	28

1 entered into and executed a Change in Terms Agreement modifying the maturity date
2 of the Promissory Note from September 15, 2007 to September 15, 2008. Also on
3 September 15, 2007, Schettler executed a Commercial Guaranty in his capacity as
4 Trustee of the Vincent T. Schettler Living Trust ("Schettler Trustee"), guarantying to pay
5 all obligations under the foregoing loan. The Federal Deposit Insurance Corporation
6 ("FDIC") was appointed as Receiver for Silver State Bank on or about September 5,
7 2008. Plaintiff RalRon Capital Corporation ("RalRon") established that it purchased the
8 Schettler loan from the FDIC on or about March 19, 2009.
9

10
11 2. The Schettler Defendants¹ admit that all the contracts associated with the
12 loan and the Guaranty are valid and enforceable, that the loan matured on September
13 15, 2008, and that the Schettler Defendants have failed to pay all amounts due on the
14 maturity date.

15 3. RalRon argues that the undisputed facts support its motion for summary
16 judgment for breach of contract and breach of the Guaranty and therefore, judgment is
17 warranted. RalRon argues that the affirmative defenses asserted by the Schettler
18 Defendants are barred by operations of law pursuant to the Financial Institutions
19 Reform, Recovery, and Enforcement Act of 1989 12 U.S.C.A §1821 (hereinafter
20 "FIRREA") and that this Court does not have subject matter jurisdiction over the
21 affirmative defenses and counterclaims relating to the enforcement of the loans against
22 the Schettler Defendants. Specifically, RalRon argues that 12 U.S.C.A.
23 §1821(d)(13)(D) states that no Court has jurisdiction over the Schettler Defendants'
24
25

26
27 ¹Schettler individually and as the Trustee for the Vincent T. Schettler Living Trust
28 are jointly referred to as the Schettler Defendants unless otherwise specified.

1 affirmative defenses to the enforcement of the loans.² Further, RalRon argues that the
2 Schettler Defendants failed to exhaust their administrative remedies contained in the
3 FIRREA, therefore, the Schettler Defendants' counterclaims and affirmative defenses
4 are barred by the claim exhaustion requirements of the FIRREA.³ Alternatively, RalRon
5 argues that it is a super holder in due course under federal law and is a holder in due
6 course under Nevada's UCC provisions. It was undisputed that the FDIC published its
7 *Notice to Creditors and Depositors of Silver State Bank in The Las Vegas Review-*
8 *Journal and/or Las Vegas Sun* in Clark County, Nevada, on September 11, 2008,
9 October 13, 2008 and on November 13, 2008.
10
11

12 4. As successor in interest to the FDIC, RalRon argues that it is entitled to
13 the protections of the FIRREA barring the Schettler Defendants' affirmative defenses
14 and counterclaims relating to the enforcement of the loan.

15 5. The Schettler Defendants' affirmative defenses contend they are excused
16 from payment of the loan and/or are entitled to a set off of damages based upon the
17

18 ²12 U.S.C.A. §1821(d)(13)(D) provides:

19 No court shall have jurisdiction over--

20
21 (i) any claim or action for payment from, or any action seeking a
22 determination of rights with respect to, the assets of any depository
23 institution for which the Corporation has been appointed receiver,
including assets which the Corporation may acquire from itself as such
receiver; or

24 (ii) any claim relating to any act or omission of such institution or the
25 Corporation as receiver.

26
27 ³The Schettler Defendants' counterclaims are for breach of contract, breach of
28 the implied covenant of good faith and fair dealing and estoppel and all are premised
on wrongful acts of Silver State and/or the FDIC.

1 conduct of Silver State and/or the FDIC in "freezing the loan", not loaning additional
2 funds and/or failing to negotiate an extension of the loan's maturity date.

3
4 6. In opposing summary judgment the Schettler Defendants' also argue that
5 (1) they did not receive proper notice to comply with the administrative claim's
6 processing requirements contained in the FIRREA; (2) that their affirmative defenses
7 are not "claims" as contemplated by the FIRREA's provisions; (3) that the conduct of
8 Silver State and/or the FDIC in freezing the line of credit and not loaning any further
9 money was an anticipatory breach of the loan entitling the Schettler Defendants to
10 damages and/or a set-off to RalRon's damages; and (4) additional discovery should be
11 allowed for the Schettler Defendants to investigate other possible claims against Silver
12 State and/or the FDIC.
13

14 7. The Court finds that all contentions and arguments by the Schettler
15 Defendants to avoid entry of summary judgment as requested by RalRon are without
16 merit as follows:

17 A. The FDIC did not provide the Schettler Defendants with specific mailed to
18 pursuant to 12 U.S.C. § 1821(d)(3)(C). The Schettler Defendants contend
19 that because they did not receive specific mailed notice to submit their
20 claims to the FDIC they are not barred from asserting their claims against
21 RalRon. The Schettler Defendants' deficient notice argument is without
22 merit. The Schettler Defendants received notice of the FDIC's
23 appointment as Receiver for Silver State Bank via publication notice. The
24 claims bar date for the Schettler Defendants to assert any claims against
25 the FDIC expired on December 10, 2008. The Schettler Defendants
26
27
28

1 failed to assert any claims against the FDIC within the claims period and
2 before the bar date so all defenses asserted by the Schettler Defendants
3 to the enforcement of the loans were forfeited and are barred as an
4 operation of law under the provisions of the FIRREA. The Court also finds
5 that the Schettler Defendants were not entitled to mailed notice pursuant
6 to 12 U.S.C. § 1821(d)(3)(C) as the Schettler Defendants are not
7 "creditors shown on the institutions books". Further, even if the Schettler
8 Defendants were entitled to mailed notice, the failure of the FDIC to
9 provide mailed notice does not relieve the Schettler Defendants from
10 compliance with the provisions of the FIRREA.⁴

11
12
13 B. The Schettler Defendants' contention that their affirmative defenses are
14 not barred under §1821(d)(13)(D) since they are not "claims" is also
15 without merit. The Court finds that the Schettler Defendants' affirmative
16 defenses are encompassed in the statute's identification of "claims" and
17 are therefore, barred by the protections afforded by the statute to the
18 FDIC. The Schettler Defendants' affirmative defenses are in reality
19 affirmative claims of wrongdoing by Silver State and/or the FDIC in failing
20 to perform under the loan thereby breaching the loan agreement which is
21 the same alleged wrongful conduct articulated in the Schettler
22 Defendants' counterclaims. The Court finds that the contentions asserted
23
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26 ⁴For clarification, the transcript of the summary judgment hearing at page 27,
27 lines 10-11 incorrectly states that "There was specific mailed notice" to the Schettler
28 Defendants. This statement is incorrect and the statement by the Court which was
incorrectly transcribed is that "There was no specific mailed notice" to the Schettler
Defendants.

1 by the Schettler Defendants in support of the putative affirmative defenses
2 and counterclaims fall within the "claims" which are barred by the FIRREA
3 and over which this Court has no subject matter jurisdiction pursuant to
4 §1821(d)(13)(D).
5

6 C. The Schettler Defendants' objection to entry of summary judgment to
7 allow them to conduct discovery to investigate other potential claims
8 against Silver State and the FDIC are also without merit. Additional
9 discovery is unnecessary and unwarranted given that any claim of
10 wrongdoing alleged by the Schettler Defendants against Silver State
11 and/or the FDIC are barred as a matter of law.
12

13 8. The Court finds that as successor in interest to the FDIC, RalRon is
14 afforded the protections and privileges of the FIRREA.

15 9. Summary judgment is therefore **Granted** on RalRon's First Claim For
16 Relief for Breach of Contract against the Schettler Defendants and on the Fourth Claim
17 for Relief for Breach of Personal Guaranty against Schettler as Trustee of the Schettler
18 Living Trust Agreement.
19

20 10. Summary judgment is also **Granted** on RalRon's motion to dismiss the
21 Schettler Defendants' counterclaims in total as those counterclaims are barred by the
22 provisions of the FIRREA.
23

24 11. Damages are awarded in RalRon's favor as follows as of November 16,
25 2009 in the total amount of \$1,303,410.97 (exclusive of attorneys' fees and legal costs
26 incurred) as follows: the principal amount of \$1,114,000; non-default interest through
27 September 16, 2009; default interest thereafter until paid in full in the amount of
28 \$130,295.86 and late fees in the amount of \$59,115.11. RalRon's damages will

