JULY 2022

NEVADA BAR EXAM

QUESTION NO. 1: ANSWER IN LIGHT BLUE BOOKLET

Carl and his friend David signed up for the annual road bike race sponsored by Go Biking ("GB"), the local bike shop. Carl's wife, Ellen, also wanted to ride in the race but did not have a bike. Ellen was house sitting for a friend, Felicia, who just purchased a new expensive bike. Hoping Felicia would not mind, Ellen took Felicia's bike and signed up for the race.

Each year GB designed and marked the route to assure the safety of the participants. This year GB forgot to ask participants for waivers. GB distributed route maps to all participants that stated, "STAY ON THE MARKED ROUTE FOR YOUR SAFETY."

Carl, Ellen, and David all started the race together. David sped off ahead of Carl and Ellen. To give his friends time to catch up, David turned off the marked route onto a gravel path running through George's backyard. Suddenly, a huge pit bull ran out of the open back door of George's house. Seeing this, George yelled, "Oh no! Not again!" The dog chased David, bit him on the leg, and knocked him off his bike. Shaken and bleeding, David quickly mounted his bike and headed back to the marked route.

Meanwhile, Carl and Ellen followed the marked route to an intersection with a four-way stop, which was on the GB route map. The intersection was widely known for an inordinate number of motor vehicle accidents. Carl proceeded into the intersection slowly, but without stopping. A speeding car driven by Ian plowed across the intersection hitting Carl and

knocking him unconscious. After witnessing the accident, Ellen screamed, jumped off and abandoned her bike, and ran to Carl's side.

Back on the route, David heard the screech of tires and Ellen's scream. As he pedaled toward the intersection, David approached Hector, another cyclist, who was in his way. Grabbing Hector's handlebar, David pushed Hector's bike out of the way causing Hector to fall to the ground. David shouted, "So sorry, but I have to help my friends."

Carl was taken to the hospital by ambulance. He was admitted with a concussion, facial bone fractures and internal injuries. Carl survived but had an extensive hospital stay and recovery. The bike Ellen took from Felicia's house was never recovered and Felicia was furious. Ellen suffered nightmares and headaches for months after the accident. David ended up with stitches and a wound infection in his leg where George's dog bit him.

Please fully discuss all potential claims each of the following parties can raise and all defenses to those claims.

1. **Felicia;**
2. **George;**
3. **David;**
4. **Carl;**
5. **Ellen; and**
6. **Hector.**

JULY 2022

NEVADA BAR EXAM

QUESTION NO. 2: ANSWER IN RED BOOKLET

Hank and Wendy divorced in Fallon, Nevada in 2019 after 15 years of marriage. They have one daughter, Debbie. Hank served in the Navy for 20 years, 12 of which were during the marriage. Wendy worked as a hair stylist. The parties moved four times during the marriage as Hank had new assignments, the last of which was at the Fallon Naval Air Station. Wendy gave up her clients and established new clients with each move.

Pursuant to the parties' Marital Settlement Agreement ("MSA") that was approved and merged into their Decree of Divorce ("Decree") entered July 15, 2019, Wendy was awarded primary physical custody. Hank was required to pay alimony in the sum of $2,000 per month for three years, then $1,500 per month for two years, and then $1,000 per month for the final two years of his alimony obligation. He was also required to pay child support.

The MSA did not address Hank's military retirement benefits. However, the MSA provided that if there were any omitted assets, the court that entered the Decree would have jurisdiction to resolve the parties' rights with respect to the omitted assets.

In 2020, Hank retired from the Navy, transitioned to the Naval Reserves, and obtained private employment at a salary 25% higher than his income at the time of divorce. He was injured in November of 2021 while training in the Reserves. Hank elected to receive military disability in lieu of retirement benefits. When Hank was off work due to the injury, the parties agreed to share joint physical custody of Debbie. The court entered an order approving their agreement in December of 2021, but the order did not address child support.

On June 1, 2022, Wendy filed a motion seeking an increase in her alimony award, retroactive to March of 2020 when Covid restrictions went into place. She argued that due to Covid she had to home-school Debbie and had not been able to earn as much money as she thought she would. She claimed she was struggling financially. Wendy also sought an interest in Hank's military disability benefits. Due to her financial hardship, Wendy also requested that Hank be required to pay the credit card debt the MSA assigned to her.

Hank opposed Wendy's motion. He argued the MSA contemplated that over time Wendy would earn more money and would need less alimony. He claimed Wendy was living beyond her means, taking too many vacations, not working full time, and was cohabiting with her boyfriend.

Hank filed a countermotion to eliminate his alimony obligation. He also sought to reduce his child support obligation retroactive to December of 2021 when he started exercising joint physical custody. He argued that Wendy could earn more and was spending the child support on herself. He also claimed that when her boyfriend's income is included, Wendy's household income is greater than his.

Please fully discuss each parties' legal arguments with respect to:

1. **Wendy's motion:**
    a. **To retroactively increase her alimony award;**
    b. **To confirm her community property interest in Hank's military disability benefits; and**
    c. **To require Hank to pay the credit card debt.**
2. **Hank's motion:**
    a. **To eliminate his alimony obligation; and**
    b. **To modify his child support obligation retroactive to December of 2021.**

JULY 2022

NEVADA BAR EXAM

QUESTION NO. 3: ANSWER IN DARK GREEN BOOKLET

Bill, desperate for money, decided to steal from a Laughlin, Nevada vacation home during the off-season. To convince Dane to help him, Bill assured Dane that it would be an easy job because the place he had been watching had been vacant for weeks. Dane told Bill, "Okay, I will drive you there and help you load the goods into the truck, but I am not going inside any house." They agreed Dane would drive Bill to the house that night under cover of darkness.

Ann, who owned the home Bill had been watching, arrived in Laughlin the same night to spend a restful weekend. Ann was asleep in her bedroom when Bill broke the kitchen window and came into the house. Ann heard the noise, grabbed her handgun, and went to the kitchen to investigate. Startled to see Ann with a gun pointed at him, Bill rushed at Ann and struggled with her to take her gun. During the struggle, the gun went off and Ann fell to the floor. After he saw that Ann was dead, Bill grabbed Ann's gun and ran out to Dane's truck. Once in the truck, Bill screamed at Dane, "Go, go, go!" Not wanting to know what happened in the house, Dane asked no questions and dropped Bill at home.

The investigation into Ann's death led police to consider Bill and Dane as the prime suspects. The homicide detective asked Dane if he would be willing to come down to the station to answer some questions, and Dane asked, "Do I have a choice?" The detective replied, "Not really." He then patted Dane down checking for concealed weapons and locked Dane in the backseat of the department vehicle. While driving, the detective asked Dane, "So why don't you tell me why your truck is on security video in a dead woman's driveway the night she was

killed?" Dane, realizing what Bill must have done, told the detective exactly what he and Bill did that night and that he had no idea that Bill had killed Ann. The detective then took Dane to jail where he was booked and now awaits a joint trial with Bill, who was also arrested.

1. **Please fully discuss all the crimes that could be charged against Bill in Nevada state court.**
2. **Please fully discuss whether Dane can be charged with the same crimes as Bill.**
3. **Please fully discuss whether Dane's statement to the detective is admissible against Dane at trial.**
4. **Assuming Dane's statement is admissible against Dane, is Dane's statement admissible against Bill at their joint trial? Why or why not?**

JULY 2022

NEVADA BAR EXAM

QUESTION NO. 4: ANSWER IN ORANGE BOOKLET

Jason Jackson is licensed to practice law in Nevada. After law school, he went to work for the Nevada Attorney General's office where his client was the Division of Water Resources. After a decade of government work, Jason left to start a solo practice in Carson City. Jason named his firm "Lincoln Litigators." Jason's business cards included a profile of Abraham Lincoln's head and the words "Litigation Specialists." Although Jason's litigation experience was limited to administrative hearings, he thought this branding would attract clients.

Jason was soon hired by Wilson Creek Ranch, Inc. ("WCR") to defend a lawsuit filed by the State of Nevada in federal court over a complicated water rights dispute. Jason's primary contact was Riley, an agricultural engineer employed by WCR. After working closely with one another for several months, Jason and Riley began a consensual sexual relationship. A few weeks later, Jason simultaneously lost interest in both Riley and WCR. Without informing WCR, Jason referred the case out to a law school friend named Christian. Jason knew Christian had not passed the bar exam, but was certain Christian could settle the case without having to appear in court.

Shortly after turning the case over to Christian, Jason received an Offer of Judgment from the State. Jason instructed his secretary to forward the document to Christian, but she neglected to do so. Christian failed to settle the case, and Jason was not prepared to defend the State's pending Motion for Summary Judgment. On the morning of the motion hearing, Jason called the court and falsely claimed to have Covid. The judge agreed to continue the hearing.

Please fully discuss all ethical issues implicated under the Nevada Rules of Professional Responsibility.

JULY 2022

NEVADA BAR EXAM

QUESTION NO. 5: ANSWER IN PURPLE BOOKLET

Alex lived in Las Vegas, Nevada. Alex's friend owned a wholesale carpet store. Alex bought carpet and padding from his friend at a discount and sold them at marked-up prices to the general public from his garage for cash. Alex also offered installation services.

Barry was a physician who owned several commercial office buildings in Las Vegas. Barry frequently remodeled office suites for his tenants. Based on a friend's recommendation, Barry sent an email to Alex seeking to buy carpet and padding, plus installation, for one of his office buildings. Barry's email stated: "I am remodeling a 5,000 square foot office suite in one of my office buildings. I need light brown, high-grade commercial carpet, and foam padding. I will pay you $10,000 for the carpet and padding and $5,000 for the installation. I will pay $10,000 in cash upon installation and the remaining $5,000 in cash 30 days after installation. Installation within seven days." Alex emailed Barry back, stating: "I will sell you a light brown, low-grade commercial carpet, and non-foam padding. The carpet and padding will cost $10,000 and installation will cost $7,500, all payable in cash upon installation of the carpet and padding. Installation within 10 days." Barry did not respond to Alex's email.

Ten days later, Alex installed the light brown, low-grade commercial carpet and non-foam padding in Barry's office building suite. Alex left an invoice for Barry for $17,500, with the

following breakdown of costs: “$10,000 for light brown, low-grade commercial carpet and non-foam padding, and $7,500 for installation, all payable in cash immediately.” Barry sent an electronic payment to Alex’s personal checking account in the amount of $7,500. Alex retained the money but did not acknowledge Barry’s payment.

Please fully discuss whether there is a contract under Nevada law between Alex and Barry, and if so, what are its terms?

JULY 2022

NEVADA BAR EXAM

QUESTION NO. 6: ANSWER IN YELLOW BOOKLET

Pete, a Nevada resident, was involved in a collision with a tractor trailer rig on a highway in rural Nevada. Pete filed a complaint in Nevada state court against Midwest Trucking ("Midwest"), the owner of the rig involved in the collision, and David, the driver of the rig. Midwest is headquartered in Indiana, with its principal place of business in Missouri, and conducts trucking operations throughout the United States. David is a resident of Florida. Pete's complaint included claims for negligence and sought damages "in excess of $15,000."

Even though Midwest had a registered agent, Pete's lawyer served the complaint on Midwest's corporate secretary by having a process server hand him a summons and copy of the complaint in his office in St. Louis. Pete's lawyer mailed a copy of the complaint to David at his Florida address listed in the police report. Twenty days after being served, Midwest removed the action to the United States District Court for the District of Nevada. Midwest included in its notice of removal a summary of recent jury verdicts in the range of $80,000-$100,000 in cases involving similar claims from the District of Nevada.

Five days after removal, Pete's lawyer filed an amended complaint adding Speedy Tire ("Speedy") as a defendant. The amended complaint alleged that Speedy, a Nevada corporation with a repair shop in Elko, Nevada, serviced the brakes on the Midwest rig the day before the collision. Brake failure was identified as a cause of the collision in the initial police report prepared shortly after the incident.

After filing the amended complaint, Pete's lawyer filed a motion to remand the action to state court, claiming that the federal court lacked jurisdiction. The federal court granted the motion and remanded the matter to Nevada state court. After remand, Pete sought entry of default against David but never notified David.

After the matter went to trial in Nevada state court two years later, the jury rendered a verdict in Pete's favor against all defendants for $50,000. Five months after the judgment was entered, David filed a motion challenging it, claiming he was not aware of the lawsuit. Seven months after judgment was entered, Midwest's lawyer moved to set aside the judgment, alleging that Pete and his doctor had falsified medical records and that Midwest only recently became aware of the issue.

Please fully discuss the following:

1. **Was the action properly removed to the United States District Court?**
2. **Was service proper?**
3. **Was it permissible for Pete to file an amended complaint?**
4. **Did the court correctly rule on the motion to remand?**
5. **Should the court consider the motions to set aside the judgment?**

JULY 2021

NEVADA BAR EXAM

QUESTION NO. 7: ANSWER IN DARK BLUE BOOKLET

Larry advertised to lease out a house he owned in Nevada. The house had four bedrooms, each with an attached private bath.

Morris, Nan, Olivia and Peter (collectively "Tenants") thought the house was perfect, as they would each have their own bedroom. They agreed with Larry to lease the house for a period of two years. Each Tenant agreed to sign an individual lease. The leases stated, "I hereby agree to lease the house from Larry for a period of two years, at the rate of $500 per month," and contained no other provisions. Morris, Nan and Olivia met with Larry and each signed their lease. Peter was out of town and was supposed to sign his lease when he returned. He forgot and never signed.

Shortly after the Tenants moved in, a water pipe broke and two of the bedrooms and surrounding areas of the house were flooded, causing severe damage to the floors and walls. Larry immediately sealed the damaged rooms off so the remainder of the house could be safely occupied. However, the Tenants could no longer use the damaged bedrooms and surrounding areas.

Morris and Nan moved into one of the remaining bedrooms as they were in a relationship. Olivia moved into the second remaining bedroom, leaving Peter to sleep on the couch.

The Tenants complained about the water damage and gave Larry time to fix it. When Larry failed to make the necessary repairs, they stopped paying rent.

The stress of the living situation caused Morris and Nan to argue one evening. Morris shoved Nan and she fell back and hit her head on a table. Nan applied for and received a Temporary Protective Order ("TPO") against Morris. Nan moved out the next day, giving Larry a copy of the TPO and notice she was leaving.

Morris no longer wanted to live in the house without Nan and so he entered into a written sublease with Quincy. Quincy paid rent to Morris, but Morris did not pass this rent on to Larry.

Olivia was concerned the house was not safe because of dense landscaping in front of all the windows. To eliminate the perceived threat, she cut down all the landscaping surrounding the house, including two large trees which had provided shade to the house for decades.

Olivia and Peter could not find anywhere else to go so they stayed on for several more months without paying rent. Quincy also stayed based on his sublease with Morris.

Larry wants to file a lawsuit against Tenants and Quincy based on the issues described above.

Please fully discuss all potential claims Larry can assert against each of the following parties and all defenses to those claims.

1. **Morris;**
2. **Nan;**
3. **Olivia;**
4. **Peter; and**
5. **Quincy.**

FILE

Memo to Candidate/ Junior Associate
CEI Cardholder Agreement (Attachment 1)
LNB Home Loan Agreement (Attachment 2)
LNB Financing Statement (Attachment 3)
Writ of Possession (Attachment 4)

Memo to Applicant from Senior Partner

Memorandum

Date: July 27, 2022
From: Senior Partner
To: Applicant
Re: Our client, CEI

I need you to research a question for our client Consumer Electronics, Inc., ("CEI"), a California corporation.

CEI, with stores located in Reno, Nevada and Las Vegas, Nevada, sells home entertainment systems integrating WIFI audio and video. CEI sells almost exclusively on credit. To purchase CEI merchandise on credit, purchasers apply for a CEI credit card. In order to obtain a CEI credit card, the customer is required to complete a credit application and sign a CEI Cardholder Agreement. Once approved, purchasers may purchase CEI merchandise with the CEI credit card.

Hillary Smart, a Las Vegas resident, purchased a $10,000 home entertainment system from CEI at the Las Vegas store on April 15, 2022. She executed the CEI Cardholder Agreement attached as Attachment 1. No down payment was required as the purchase was made with the CEI Credit Card. CEI has chosen not to file UCC-1 financing statements based on advice from previous counsel that the filings were not necessary.

Hillary owns a condominium unit ("Condominium") located in Las Vegas, Nevada. In December 2019 Hillary took out a home equity loan with Last National Bank ("LNB") in the amount of $50,000. In addition to granting LNB a mortgage securing the loan with the Condominium, Hillary pledged her personal property located in the Condominium as collateral. I have included the pertinent portions of the Loan Agreement as Attachment 2. LNB also filed a UCC-1 Financing Statement on December 15, 2019, with the Nevada Secretary of State and I have included a copy of that as Attachment 3.

In June 2022, Bob Smart, Hillary's former husband and a permanent Nevada resident, recorded a judgment he obtained against Hillary for child support. Bob then presented this Judgment Lien to the court and obtained a writ of possession from the 8th Judicial District Court in Clark County, Nevada. I have included a copy of the Writ as Attachment 4. On June 15th Bob served the Writ on the Clark County Sheriff with the instructions to levy on all personal property located within Hillary's residence.

Hillary has failed to make the required monthly payments on her CEI credit card and was notified in writing on May 31, 2022, that she is in default under her CEI Cardholder Agreement. CEI's research shows Hillary has not made a monthly payment to LNB since April 2022 and that LNB sent her a letter on June 15, 2022, declaring her in breach of the home equity loan,

demanding payment of the loan in full. CEI's research concludes that on June 17th, Hillary sold the home entertainment system through an online service DBay, to Darrin for $3,000. CEI's investigator was informed that as soon as she received the $3,000, Hillary placed the home entertainment system in a packing crate provided by Darrin, affixed the USPS shipping label for pick up at her residence on June 19th.

CEI's investigation also found that on June 19th, just before the USPS was scheduled to pick up the packing crate, the sheriff levied on the home entertainment system and seized the packing crate.

Using the file and library provided, please draft a memorandum advising whether our client, CEI, has a viable claim to recover the home entertainment system. The client and I are particularly interested in what rights Darrin, Bob and LNB may have in the entertainment system vis-à-vis CEI and each other, so please include in your memo the priority of rights for all parties and your reasoning. Finally, please include recommendations for CEI on the policies, if any, it should change based on your research about this situation. For this memo you can assume that all attachments in the file were properly signed and, if necessary, filed.

CEI CARDHOLDER AGREEMENT (Attachment 1)

Cardholder Agreement

This Cardholder Agreement dated this 15th day of April 2022 is entered into by Hillary Smart, 2467 Sommerline Drive, Las Vegas, Nevada ("Consumer") and Consumer Electronics, Inc, a California corporation licensed to do business in Nevada ("CEI").

Consumer wishes to obtain a CEI store credit card to purchase goods at CEI stores wherever located.

Consumer may purchase any electronic consumer goods at any CEI store subject to the repayment terms set forth below.

Consumer's credit limit shall initially be $10,000. This credit limit may be adjusted by CEI at any time for any reason whatsoever.

Consumer agrees to make minimum monthly payments on any outstanding balance in the amount of Five Percent (5%) of any outstanding balance. Interest on any outstanding balance shall accrue at One Percent (1%) per month.

Failure to pay any minimum monthly payment together with accrued interest shall constitute a breach and CEI at its sole and absolute discretion may declare a default and the entire outstanding balance shall be due and payable together with interest and attorneys' fees.

Consumer agrees to pay CEI any and all attorneys' fees incurred in collecting any sums due.

Consumer grants CEI a security interest in goods purchased on Consumer's account.

Consumer grants CEI permission to enter Consumer's premises at a reasonable time and upon reasonable notice in the event of default in order to repossess the consumer electronic products purchased with the CEI credit card.

Consumer Electronics, Inc.

By: _____/s/_____

Its: _____

_____/s/_____
Hillary Smart

Home Equity Loan Agreement (Attachment 2)

This Home Equity Loan Agreement ("Agreement") dated this 31st day of December 2019 is entered into by and between Last National Bank, a Nevada corporation ("LNB") and Hillary Smart, 2467 Sommerline Drive, Las Vegas, Nevada ("Smart").

Recitals

A. Smart currently owns a condominium unit in Las Vegas, Nevada, 2467 Sommerline Drive ("Condominium"). The Condominium is subject to a First Deed of Trust in favor of Quality Mortgage Company;
B. Smart desires to borrow $50,000 from LNB; and
C. LNB agrees to loan Smart the $50,000 subject to the following terms and conditions.

In Consideration of the foregoing the Parties agree as follows:

1. LNB agrees to and shall loan to Smart the sum of Fifty Thousand Dollars ($50,000.00) ("Loan") subject to the following terms and conditions.
    a. The loan shall bear interest at the annual rate of Five Percent (5%).
    b. Smart shall make annual interest payments in the amount of Two Thousand Five Hundred Dollars ($2,500.00) on or before January 31, 2020, and each January 31st through and including January 31, 2025, whereupon the entire Fifty Thousand Dollars ($50,000.00) together with all accrued and unpaid interest and fees shall be due and payable.
2. Smart agrees and hereby grants LNB a Deed of Trust on the Condominium securing the loan and shall execute the Deed of Trust, a copy of which is attached hereto as Enclosure 1 concurrently with the execution of this Agreement.
3. Smart represents and warrants that there is currently a Deed of Trust on the Condominium in the amount of Six Hundred Thousand Dollars ($600,000.00) and there are no other liens or encumbrances on the Condominium.
4. Smart also hereby pledges all other personal property located within the Condominium, including consumer electronics, jewelry and other consumer goods with a value in excess of $1,000.00, owned by Smart or which Smart may later acquire.
5. Failure to make any payment due under this Agreement shall constitute a breach. Failure to cure any breach within ten (10) days of written notice shall constitute a material breach and the entire outstanding balance together with outstanding and accrued interest and fees shall become immediately due and payable. In the event of a material breach LNB shall be entitled to enter into the Condominium upon notice at any reasonable time to repossess any property secured by this Agreement.
6. In the event LNB is required to retain counsel to enforce any term of this Agreement it shall be entitled to recover any and all reasonable attorney's fees incurred.

LNB

By: __/s/_____
Its: _____

Hillary Smart

_____/s/_____

[redacted]

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)
B. E-MAIL CONTACT AT FILER (optional)
C. SEND ACKNOWLEDGMENT TO: (Name and Address)

Print Reset

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME					
OR 1b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX	
Smart	Hillary				
1c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY	
2467 Sommerline Drive	Las Vegas	NV	89111	US	

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here ☐ and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME					
OR 2b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX	
2c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY	

3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME					
Last National Bank					
OR 3b. INDIVIDUAL'S SURNAME	FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)		SUFFIX	
3c. MAILING ADDRESS	CITY	STATE	POSTAL CODE	COUNTRY	
100 Las Vegas Blvd.	Las Vegas	NV	89123	US	

4. COLLATERAL: This financing statement covers the following collateral:

All consumer goods located at 2467 Sommerline Drive, LV, NV

5. Check only if applicable and check only one box: Collateral is ☐ held in a Trust (see UCC1Ad, item 17 and Instructions) ☐ being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:

☐ Public-Finance Transaction ☐ Manufactured-Home Transaction ☐ A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:

☐ Agricultural Lien ☐ Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): ☐ Lessee/Lessor ☐ Consignee/Consignor ☐ Seller/Buyer ☐ Bailee/Bailor ☐ Licensee/Licensor

8. OPTIONAL FILER REFERENCE DATA:

Instructions for UCC Financing Statement (Form UCC1)

Please type or laser-print this form. Be sure it is completely legible. Read and follow all Instructions, especially Instruction 1; use of the correct name for the Debtor is crucial.

Fill in form very carefully; mistakes may have important legal consequences. If you have questions, consult your attorney. The filing office cannot give legal advice.

Send completed form and any attachments to the filing office, with the required fee.

ITEM INSTRUCTIONS

A and B. To assist filing offices that might wish to communicate with filer, filer may provide information in item A and item B. These items are optional.

C. Complete item C if filer desires an acknowledgment sent to them. If filing in a filing office that returns an acknowledgment copy furnished by filer, present simultaneously with this form the Acknowledgment Copy or a carbon or other copy of this form for use as an acknowledgment copy.

1. **Debtor's name.** Carefully review applicable statutory guidance about providing the debtor's name. Enter only one Debtor name in item 1 -- either an organization's name (1a) or an individual's name (1b). If any part of the Individual Debtor's name will not fit in line 1b, check the box in item 1, leave all of item 1 blank, check the box in item 9 of the Financing Statement Addendum (Form UCC1Ad) and enter the Individual Debtor name in item 10 of the Financing Statement Addendum (Form UCC1Ad). Enter Debtor's correct name. Do not abbreviate words that are not already abbreviated in the Debtor's name. If a portion of the Debtor's name consists of only an initial or an abbreviation rather than a full word, enter only the abbreviation or the initial. If the collateral is held in a trust and the Debtor name is the name of the trust, enter trust name in the Organization's Name box in item 1a.

1a. Organization Debtor Name. "Organization Name" means the name of an entity that is not a natural person. A sole proprietorship is **not** an organization, even if the individual proprietor does business under a trade name. If Debtor is a registered organization (e.g., corporation, limited partnership, limited liability company), it is advisable to examine Debtor's current filed public organic records to determine Debtor's correct name. Trade name is insufficient. If a corporate ending (e.g., corporation, limited partnership, limited liability company) is part of the Debtor's name, it must be included. Do not use words that are not part of the Debtor's name.

1b. Individual Debtor Name. "Individual Name" means the name of a natural person; this includes the name of an individual doing business as a sole proprietorship, whether or not operating under a trade name. The term includes the name of a decedent where collateral is being administered by a personal representative of the decedent. The term does not include the name of an entity, even if it contains, as part of the entity's name, the name of an individual. Prefixes (e.g., Mr., Mrs., Ms.) and titles (e.g., M.D.) are generally not part of an individual name. Indications of lineage (e.g., Jr., Sr., III) generally are not part of the individual's name, but may be entered in the Suffix box. Enter individual Debtor's surname (family name) in Individual's Surname box, first personal name in First Personal Name box, and all additional names in Additional Name(s)/Initial(s) box.

If a Debtor's name consists of only a single word, enter that word in Individual's Surname box and leave other boxes blank.

For both organization and individual Debtors. Do not use Debtor's trade name, DBA, AKA, FKA, division name, etc. in place of or combined with Debtor's correct name; filer may add such other names as additional Debtors if desired (but this is neither required nor recommended).

1c. Enter a mailing address for the Debtor named in item 1a or 1b.

2. **Additional Debtor's name.** If an additional Debtor is included, complete item 2, determined and formatted per Instruction 1. For additional Debtors, attach either Addendum (Form UCC1Ad) or Additional Party (Form UCC1AP) and follow Instruction 1 for determining and formatting additional names.

3. **Secured Party's name.** Enter name and mailing address for Secured Party or Assignee who will be the Secured Party of record. For additional Secured Parties, attach either Addendum (Form UCC1Ad) or Additional Party (Form UCC1AP). If there has been a full assignment of the initial Secured Party's right to be Secured Party of record before filing this form, either (1) enter Assignor Secured Party's name and mailing address in item 3 of this form and file an Amendment (Form UCC3) [see item 5 of that form]; or (2) enter Assignee's name and mailing address in item 3 of this form and, if desired, also attach Addendum (Form UCC1Ad) giving Assignor Secured Party's name and mailing address in item 11.

4. **Collateral.** Use item 4 to indicate the collateral covered by this financing statement. If space in item 4 is insufficient, continue the collateral description in item 12 of the Addendum (Form UCC1Ad) or attach additional page(s) and incorporate by reference in item 12 (e.g., See Exhibit A). Do not include social security numbers or other personally identifiable information.

Note: If this financing statement covers timber to be cut, covers as-extracted collateral, and/or is filed as a fixture filing, attach Addendum (Form UCC1Ad) and complete the required information in items 13, 14, 15, and 16.

5. If collateral is held in a trust or being administered by a decedent's personal representative, check the appropriate box in item 5. If more than one Debtor has an interest in the described collateral and the check box does not apply to the interest of all Debtors, the filer should consider filing a separate Financing Statement (Form UCC1) for each Debtor.

6a. If this financing statement relates to a Public-Finance Transaction, Manufactured-Home Transaction, or a Debtor is a Transmitting Utility, check the appropriate box in item 6a. If a Debtor is a Transmitting Utility and the initial financing statement is filed in connection with a Public-Finance Transaction or Manufactured-Home Transaction, check only that a Debtor is a Transmitting Utility.

6b. If this is an Agricultural Lien (as defined in applicable state's enactment of the Uniform Commercial Code) or if this is not a UCC security interest filing (e.g., a tax lien, judgment lien, etc.), check the appropriate box in item 6b and attach any other items required under other law.

7. **Alternative Designation.** If filer desires (at filer's option) to use the designations lessee and lessor, consignee and consignor, seller and buyer (such as in the case of the sale of a payment intangible, promissory note, account or chattel paper), bailee and bailor, or licensee and licensor instead of Debtor and Secured Party, check the appropriate box in item 7.

8. **Optional Filer Reference Data.** This item is optional and is for filer's use only. For filer's convenience of reference, filer may enter in item 8 any identifying information that filer may find useful. Do not include social security numbers or other personally identifiable information.

Applicant, Esq.
Jones, Jones & Jones
Las Vegas, NV

Attorneys for Plaintiff Bob Smart

EIGHTH JUDICIAL DISTRICT COURT, STATE OF NEVADA

CLARK COUNTY

BOB SMART Plaintiff, v. Hillary Smart Defendant.	CASE NO.: CV22-00106 DEPT NO.: 8 **WRIT OF POSSESION**

TO: THE SHERIFF OF CLARK COUNTY, NEVADA, GREETINGS

WHEREAS, on June 1, 2022 the above-entitled Court entered an Order Granting Writ of Possession (the "Order") in favor of Plaintiff Bob Smart ("Plaintiff"), and against Defendant Hillary Smart ("Defendant"), for, among other things, Plaintiff's immediate possession of the following (the "Consumer Goods"):

1. CEI Home Entertainment System (S/N A37391)

See Exhibit 1 attached to Order Granting Writ of Possession.

NOW, THEREFORE, in the name of the State of Nevada, you are hereby commanded and directed to seize and take from the possession of Defendant, its agents, or any other person or entity in possession of the same, the Equipment identified above, wherever located but which there is probable cause to believe will be found at the following last known locations:

CEI Home Entertainment System (S/N A37391) located at 2467 Sommerline Drive, Las Vegas, Nevada GPS Coordinates: 38°32'06.4"N 117°09'04.1"W

You are further commanded and directed to keep said Consumer Goods in a secure place, or deliver said property to Plaintiff upon receiving your lawful fees for taking and necessary expenses for keeping the same.

You are further directed to serve a copy of this Writ of Possession on Defendant pursuant to Section 31.870 of the Nevada Revised Statutes.

You are further commanded and directed to return this Writ of Possession, with your proceedings endorsed thereon to the Clerk in the above-entitled Court within twenty (20) days of taking possession of said personal property. Defendants have the right to file a written undertaking for the redelivery of such property in accordance with NRS 31.890.

WITNESS my hand and the seal of this Court this 1st day of June, 2022.

/s/
CLERK OF THE COURT

Submitted by:

Jones, Jones, & Jones

/s/ Applicant

Attorneys for Plaintiff Bob Smart

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Nevada Revised Statutes, Title 8, Ch. 104, Art. 9 [excerpts]

Part 1. General Provisions

NRS 104.9102 **Definitions**
NRS 104.9103 **Purchase-money security interest**
NRS 104.9108 **Sufficiency of descriptions**
NRS 104.9109 **Scope of applicability**

Part 2. Effectiveness of Security Agreement; Attachment of Security Interest; Rights of Parties to Security Agreement

NRS 104.9201 **General effectiveness of security agreement**
NRS 104.9203 **Attachment and enforceability of security interest**
NRS 104.9204 **After-acquired property; future advances**

Part 3. Perfection and Priority

NRS 104.9301 **Determination of law governing perfection and priority of security interests**
NRS 104.9308 **When security interest or agricultural lien is perfected**
NRS 104.9309 **Security interest perfected upon attachment**
NRS 104.9310 **When filing required to perfect security interest**
NRS 104.9315 **Secured party's rights on disposition of collateral**
NRS 104.9317 **Interests that take priority over or take free of unperfected security interest**
NRS 104.9320 **Protection of certain buyers of goods**
NRS 104.9322 **Priorities among conflicting security interests in same collateral**
NRS 104.9324 **Priority of purchase-money security interests**

Part 5. Filing

NRS 104.9502 **Contents of financing statement**
NRS 104.9504 **Indication of collateral in financing statement**

N.R.S. 104.9102

104.9102 Definitions and index of definitions

Effective: July 1, 2013

1. In this Article:

[(a) - (f) omitted]

(g) "Authenticate" means:

(1) To sign; or

(2) With present intent to adopt or accept a record, to attach to or logically associate with the record an electronic sound, symbol or process.

[(h) - (xx) omitted]

(yy) "Lien creditor" means:

(1) A creditor that has acquired a lien on the property involved by attachment, levy or the like.

[rest of statute omitted].

N.R.S. 104.9103

104.9103. Purchase-money security interest: Circumstances of existence; applicability of payments; burden of establishing [excerpted]

1. In this section:

(a) "Purchase-money collateral" means goods or software that secures a purchase-money obligation incurred with respect to that collateral [....]

2. A security interest in goods is a purchase-money security interest:

(a) To the extent that the goods are purchase-money collateral with respect to that security interest.

[....]

N.R.S. 104.9108

104.9108. Sufficiency of descriptions [excerpted]

1. Except as otherwise provided in subsections 3 ... and 5, a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

2. Except as otherwise provided in subsection 4, a description of collateral reasonably identifies the collateral if it identifies the collateral by:

(a) Specific listing;

(b) Category;

(c) Except as otherwise provided in subsection 5, a type of collateral defined in the Uniform Commercial Code;

(d) Quantity;

(e) Computational or allocational formula or procedure; or

(f) Except as otherwise provided in subsection 3, any other method, if the identity of the collateral is objectively determinable.

3. A description of collateral as "all the debtor's assets" or "all the debtor's personal property" or using words of similar import does not reasonably identify the collateral.

[4 omitted]

5. A description only by type of collateral defined in the Uniform Commercial Code is an insufficient description of:

(a) A commercial tort claim; or

(b) In a consumer transaction, consumer goods, a security entitlement, a securities account or a commodity account.

Credits
Added by Laws 1999, c. 104, § 9, eff. July 1, 2001.

N.R.S. 104.9109

104.9109. Scope of applicability [excerpted]

1. [...T]his Article applies to:

(a) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract....

N.R.S. 104.9201

104.9201. General effectiveness of security agreement [excerpted]

1. Except as otherwise provided in the Uniform Commercial Code, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

[2-4 omitted]

Credits
Added by Laws 1999, c. 104, § 12, eff. July 1, 2001.

N.R.S. 104.9203 [excerpted]

104.9203. Attachment and enforceability of security interest; proceeds; formal requisites; supporting obligations

1. A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

2. ... [A] security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(a) Value has been given;

(b) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(c) One of the following conditions is met:

(1) The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned.

[deletions]

Credits
Added by Laws 1999, c. 104, § 14, eff. July 1, 2001. Amended by Laws 2005, c. 233, § 85.

N.R.S. 104.9204 [excerpted]

104.9204. After-acquired property

1. Except as otherwise provided in subsection 2, a security agreement may create or provide for a security interest in after-acquired collateral.

2. A security interest does not attach under a term constituting an after-acquired property clause to:

(a) Consumer goods [...].

Credits
Added by Laws 1999, c. 104, § 14, eff. July 1, 2001. Amended by Laws 2005, c. 233, § 85.

N.R.S. 104.9301 [excerpted]

104.9301. Determination of law governing perfection and priority of security interests

... [T]he following rules determine the law governing perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral:

1. Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

2. While collateral is located in a jurisdiction, the law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

3. Except as otherwise provided in subsections 4, 5 and 6, while tangible negotiable documents, goods, instruments, money or tangible chattel paper is located in a jurisdiction, the law of that jurisdiction governs the effect of perfection or nonperfection, and the priority of a nonpossessory security interest.

[4-6 deleted]

Credits
Added by Laws 1999, c. 104, § 22, eff. July 1, 2001. Amended by Laws 2005, c. 233, § 87.

N.R.S. 104.9308 [excerpted]

104.9308. When security interest or agricultural lien is perfected

1. Except as otherwise provided in this section and NRS 104.9309, a security interest is perfected if it has attached and all of the applicable requirements for perfection ... have been satisfied.

[2-7 deleted]

Credits
Added by Laws 1999, c. 104, § 29, eff. July 1, 2001.

N.R.S. 104.9309

104.9309. Security interest perfected upon attachment [excerpted]

The following security interests are perfected when they attach:
1. A purchase-money security interest in consumer goods....

[deletions]

Credits
Added by Laws 1999, c. 104, § 30, eff. July 1, 2001.

N.R.S. 104.9310 [excerpted]

104.9310. When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply

1. Except as otherwise provided in subsection 2 ..., a financing statement must be filed to perfect all security interests and agricultural liens.

2. The filing of a financing statement is not necessary to perfect a security interest:

[...]

(b) That is perfected under NRS 104.9309 when it attaches.

[deletions]

Credits
Added by Laws 1999, c. 104, § 31, eff. July 1, 2001. Amended by Laws 2005, c. 233, § 88.

N.R.S. 104.9315 [excerpted]

104.9315. Secured party's rights on disposition of collateral and in proceeds

1. Except as otherwise provided in this article ...

(a) A security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien.

[deletions]

Credits
Added by Laws 1999, c. 104, § 36, eff. July 1, 2001.

N.R.S. 104.9317 [excerpted]

104.9317. Interests that take priority over or take free of unperfected security interest or agricultural lien

Effective: July 1, 2013

1. A security interest or agricultural lien is subordinate to the rights of:

(a) A person entitled to priority under NRS 104.9322; and

(b) A person that becomes a lien creditor before the earlier of the time:

(1) The security interest or agricultural lien is perfected; or

(2) One of the conditions specified in paragraph (c) of subsection 2 of NRS 104.9203 is met and a financing statement covering the collateral is filed.

2. Except as otherwise provided in subsection 5, a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

[3 and 4 deleted]

5. ... [I]f a person files a financing statement with respect to a purchase-money security interest before or within 20 days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee or lien creditor which arise between the time the security interest attaches and the time of filing.

Credits

Added by Laws 1999, c. 104, § 38, eff. July 1, 2001. Amended by Laws 2001, c. 140, § 9, eff. July 1, 2001; Laws 2005, c. 233, § 92; Laws 2011, c. 131, § 15, eff. July 1, 2013.

N.R.S. 104.9320 [excerpted]

104.9320. Protection of certain buyers of goods

1. Except as otherwise provided in subsection 5, a buyer in the ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.

-

2. Except as otherwise provided in subsection 5, a buyer of goods from a person who used or bought the goods for use primarily for personal, family or household purposes takes free of a security interest, even if perfected, if the buyer buys:

(a) Without knowledge of the security interest;

(b) For value;

(c) Primarily for his or her personal, family or household purposes; and

(d) Before the filing of a financing statement covering the goods.

[3-5 deleted]

Credits
Added by Laws 1999, c. 104, § 41, eff. July 1, 2001.

N.R.S. 104.9322 [excerpted]

104.9322. Priorities among conflicting security interests in and agricultural liens on same collateral

1. Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

(a) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.

(b) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

[deletions]

Credits
Added by Laws 1999, c. 104, § 43, eff. July 1, 2001.

N.R.S. 104.9324 [excerpted]

104.9324. Priority of purchase-money security interests

1. ...[A] perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods....

[deletions]

Credits
Added by Laws 1999, c. 104, § 45, eff. July 1, 2001.

N.R.S. 104.9502

104.9502. Contents of financing statement; record of mortgage as financing statement; time of filing financing statement

Effective: July 1, 2013

1. Subject to subsection 2, a financing statement is sufficient only if it:

(a) Provides the name of the debtor;

(b) Provides the name of the secured party or a representative of the secured party; and

(c) Indicates the collateral covered by the financing statement.

[deletions]

Credits
Added by Laws 1999, c. 104, § 74, eff. July 1, 2001. Amended by Laws 2011, c. 131, § 18.5, eff. July 1, 2013.

N.R.S. 104.9504

104.9504. Indication of collateral in financing statement

A financing statement sufficiently indicates the collateral that it covers if the financing statement provides:

1. A description of the collateral pursuant to NRS 104.9108; or

2. An indication that the financing statement covers all assets or all personal property.

Credits
Added by Laws 1999, c. 104, § 76, eff. July 1, 2001. Amended by Laws 2001, c. 140, § 18, eff. July 1, 2001.

FILE

FIRST JUDICIAL DISTRICT COURT (CARSON CITY)
STATE OF NEVADA

MEMORANDUM

FROM: Judge Smith

TO: Applicant

RE: Bench Memorandum Regarding Probate Matters Scheduled for Next Week

Welcome! I look forward to working with you as my law clerk. As your first assignment, please prepare a bench memorandum addressing the issues set forth below relating to each of the following matters:

1. In re Estate of Allen

Mr. Allen died without a will. He was a resident of Washoe County and owned property in Washoe County, Elko County and Carson City. Mr. Allen's son, who had been convicted previously of securities fraud, filed a petition to act as Administrator of the Estate. Mr. Allen's grandson, who is a freshman in high school, and the Public Administrator of Washoe County also filed competing petitions.

Should the court take jurisdiction over the matter? Which petition should the court grant?

2. In re Estate of Brown

The will in this matter contains the following language:

> The gifts in this, my Will, are made on the express condition that none of the beneficiaries shall oppose or contest the validity of this Will in any manner. Any beneficiary who contests the validity of this Will or in any way assists in such an act shall automatically forfeit whatever gift he or she would have been entitled to receive under the terms of this Will.

One of the beneficiaries of the will has filed an action challenging the designations of the beneficiaries of the testator's payable-on-death bank accounts. Another beneficiary has filed a will contest based on undue influence because the testator's attorney, who was unrelated to the testator, is one of the beneficiaries of the will.

Does the no-contest clause in the will prohibit these two beneficiaries from receiving their shares of the estate? With respect to the will contest, discuss the burden of proof.

3. In re Estate of Carter

This matter is a petition by the personal representative of the Carter estate for approval by the court of: (1) compensation for his services as personal representative based on the statutory

formula set forth in NRS 150.020; and (2) compensation for his services as an attorney based on the formula set forth in NRS 150.060. A written agreement had been approved previously pursuant to NRS 150.060 for the compensation for attorney services to be based on the value of the estate. The petition also requested, with the documentation required pursuant to NRS 150.061(3), $37,000 in fees for extraordinary attorney expenses for the following purposes: (1) $10,000 for 200 hours' work by his paralegal for document production services for a will contest that was filed; (2) $20,000 for two hours' work preparing a quitclaim deed on a preprinted form for the transfer of estate property from one beneficiary to another; (3) $5,000 for 20 hours' work related to distribution of the testator's life insurance proceeds to the beneficiaries; and (4) $2,000 for 10 hours' work for preparation for and representation of the estate at an administrative hearing before the Nevada Tax Commission. No provision for compensation was provided in the will.

Should the court approve the amounts requested?

Please follow the attached guidelines for drafting bench memoranda.

FIRST JUDICIAL DISTRICT COURT
STATE OF NEVADA

MEMORANDUM

FROM: Court Administrator

TO: Applicants

RE: Format of Bench Memoranda

The purpose of a bench memoranda is to help the judge prepare a final order or prepare for a hearing or oral argument. The bench memorandum is not designed to be a brief as would be submitted by counsel nor a judicial order or opinion.

You are expected to identify key issues and analyze the applicable law. You also are expected to provide a recommendation for the resolution of each of the issues you have identified. The format to be used should be as follows:

(1) Statement of Issue

Provide a brief statement of the question. Statements should be limited to a single sentence.

(2) Analysis

Discussion of the issue based on the relevant facts and applicable law. You may use abbreviations when citing to cases. Omit page references.

(3) Recommendation

A recommendation for a proposed resolution of each issue.

A separate statement of facts should not be provided. The relevant facts should be addressed as part of the analysis or recommendation for each issue. The analysis and recommendations should be closely tied to the relevant case facts. You may use abbreviations when citing to cases. Omit page references.

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NEVADA REVISED STATUTES

NRS 132.237 "Nonprobate transfer" defined. "Nonprobate transfer" means a transfer of any property or interest in property from a decedent to one or more other persons by operation of law or by contract that is effective upon the death of the decedent.

NRS 132.265 "Personal representative" defined. "Personal representative" includes an executor, an administrator, a successor personal representative, a special administrator and persons who perform substantially the same function under the law governing their status.

NRS 137.005 Enforcement of no-contest clauses; exceptions; application to testamentary trusts; authorized actions by personal representative regarding distributions; application to codicil.

1. Except as otherwise provided in subsection 4, a no-contest clause in a will must be enforced, to the greatest extent possible, by the court according to the terms expressly stated in the no-contest clause without regard to the presence or absence of probable cause for, or the good faith or bad faith of the devisee in, taking the action prohibited by the no-contest clause. A no-contest clause in a will must be enforced by the court because public policy favors enforcing the intent of the testator.

2. No extrinsic evidence is admissible to establish the testator's intent concerning the no-contest clause to the extent such intent is clear and unambiguous. The provisions of this subsection do not prohibit extrinsic evidence from being admitted for any other purpose authorized by law.

3. Except as otherwise provided in subsection 4, a devisee's share may be reduced or eliminated under a no-contest clause based upon conduct that is set forth by the testator in the will, including, without limitation, any testamentary trust established in the will. Such conduct may include, without limitation:

(a) Conduct other than formal court action; and

(b) Conduct which is unrelated to the will itself, including, without limitation:

(1) The commencement of civil litigation against the testator's probate estate or family members;

(2) Interference with the administration of a trust or a business entity;

(3) Efforts to frustrate the intent of the testator's power of attorney; and

(4) Efforts to frustrate the designation of beneficiaries related to a nonprobate transfer by the testator.

4. Notwithstanding any provision to the contrary in the will, a no-contest clause in a will must not be enforced by a court and a devisee's share must not be reduced or eliminated under a no-contest clause in a will because:

(a) A devisee acts to:

(1) Enforce the clear and unambiguous terms of the will or any document referenced in or affected by the will;

(2) Enforce the legal rights of the devisee that provide the devisee standing in the probate proceeding;

(3) Obtain court instruction with respect to the proper administration of the estate or the construction or legal effect of the will or the provisions thereof; or

(4) Enforce the fiduciary duties of the personal representative.

(b) The court determines by clear and convincing evidence that the conduct of the devisee was:

(1) A product of coercion or undue influence; or

(2) Caused by the lack of sufficient mental capacity to knowingly engage in the conduct.

(c) A devisee or any other interested person enters into an agreement to settle a dispute or resolve any other matter relating to the will.

(d) A devisee institutes legal action seeking to invalidate a will if the legal action is instituted and maintained in good faith and based on probable cause. For the purposes of this paragraph, legal action is based on probable cause where, based upon the facts and circumstances available to the devisee who commences such legal action, a reasonable person, properly informed and advised, would conclude that the will is invalid.

5. As to any testamentary trust, the testator is the settlor. Unless the will expressly provides otherwise, a no-contest clause in a will applies to a testamentary trust created under that will and the provisions of NRS 163.00195 apply to that trust.

6. Where a devisee takes action, asserts a cause of action or asserts a request for relief and such action or assertion violates a no-contest clause in a will, this section must not prevent the enforcement of the no-contest clause unless the action, cause of action or request for relief claims one of the exceptions to enforcement set forth in subsection 4.

7. Except as otherwise provided in subsection 4, subject to the discretion of the personal representative, as applicable:

(a) A personal representative may suspend distributions to a devisee to the extent that, under a no-contest provision, the conduct of the devisee may cause the reduction or elimination of the interest of the devisee in the trust.

(b) Until a court determines whether the interest of the devisee in the will has been reduced or eliminated, a personal representative may:

(1) Resume distributions that were suspended pursuant to paragraph (a) at any time; or

(2) Continue to suspend those distributions.

(c) To the extent that a devisee has received distributions prior to engaging in conduct that potentially would have caused the reduction or elimination of the interest of the devisee in the will under a no-contest clause, a personal representative may seek reimbursement from the devisee or may offset those distributions.

8. A no-contest clause in a will applies to a codicil even if the no-contest clause was not expressly incorporated in the codicil.

9. As used in this section, "no-contest clause" means one or more provisions in a will that express a directive to reduce or eliminate the share allocated to a devisee or to reduce or eliminate the distributions to be made to a devisee if the devisee takes action to frustrate or defeat the testator's intent as expressed in the will. The term does not include:

(a) Provisions in a will that shift or apportion attorney's fees and costs incurred by the estate against the share allocated to a devisee who has asserted an unsuccessful claim, defense or objection;

(b) Provisions in a will that permit a personal representative to delay distributions to a devisee;

(c) Provisions in a will that require the arbitration of disputes involving the will; or

(d) A forum selection clause in the will.

NRS 136.010 Determination of proper court.

1. The estate of a decedent may be settled by the district court of any county in this State:

(a) In which any part of the estate is located; or

(b) Where the decedent was a resident at the time of death.

2. If the decedent was a resident of this State at the time of death, the district court of any county in this State, whether death occurred in that county or elsewhere, may assume jurisdiction of the settlement of the estate of the decedent only after taking into consideration the convenience of the forum to:

(a) The person named as personal representative or trustee in the will; and

(b) The heirs, devisees, interested persons or beneficiaries to the decedent or estate and their legal counsel.

3. After a properly noticed hearing is held, the district court that first assumes jurisdiction of the settlement of an estate has exclusive jurisdiction of the settlement of that estate, including, without limitation:

(a) The proving of wills;

(b) The granting of letters; and

(c) The administration of the estate.

NRS 139.010 Qualifications. No person is entitled to letters of administration if the person:

1. Is under the age of majority;

2. Has been convicted of a felony, unless the court determines that such a conviction should not disqualify the person from serving in the position of an administrator;

3. Upon proof, is adjudged by the court disqualified by reason of conflict of interest, drunkenness, improvidence, lack of integrity or understanding or other compelling reason;

4. Is not a resident of the State of Nevada, unless the person:

(a) Associates as coadministrator a resident of the State of Nevada or a banking corporation authorized to do business in this State; or

(b) Is named as personal representative in the will if the will is the subject of a pending petition for probate, and the court in its discretion believes it would be appropriate to make such an appointment.

NRS 139.040 Order of priority for right to appointment; priority of nominee.

Administration of the intestate estate of a decedent must be granted to one or more of the persons mentioned in this section, and they are respectively entitled to priority for appointment in the following order:

1. The surviving spouse.
2. The children.
3. A parent.
4. The brother or the sister.
5. The grandchildren.
6. Any other of the kindred entitled to share in the distribution of the estate.
7. The public administrator or a person employed or contracted with pursuant to NRS 253.125, as applicable.
8. Creditors who have become such during the lifetime of the decedent.
9. Any of the kindred not above enumerated, within the fourth degree of consanguinity.
10. Any person or persons legally qualified.

NRS 150.010 Expenses and compensation of personal representative. A personal representative must be allowed all necessary expenses in the administration and settlement of the estate, and fees for services as provided by law, but if the decedent by will makes some other provision for the compensation of the personal representative, this shall be deemed a full compensation for those services, unless within 60 days after his or her appointment the personal representative files a renunciation, in writing, of all claim for the compensation provided by the will.

NRS 150.020 General compensation.

1. If no compensation is provided by the will, or the personal representative renounces all claims thereto, fees must be allowed upon the whole amount of the estate which has been accounted for, less liens and encumbrances, as follows:

(a) For the first $15,000, at the rate of 4 percent.

(b) For the next $85,000, at the rate of 3 percent.

(c) For all above $100,000, at the rate of 2 percent.

2. The same fees must be allowed to the personal representative if there is no will.

3. If there are two or more personal representatives, the compensation must be apportioned among them by the court according to the services actually rendered by each.

4. In addition to the fees described in subsection 1, the court may allow such fees as it deems just and reasonable if the fees authorized pursuant to subsection 1 are not sufficient to reasonably compensate the personal representative.

NRS 150.025 Compensation of personal representative who is an attorney.

1. Notwithstanding any provision to the contrary in the will, a personal representative who is an attorney retained to perform services for the personal representative may receive compensation for services as a personal representative or for services as an attorney for the personal representative, but not both, unless the court:

(a) Approves a different method of compensation in advance; and

(b) Finds that method of compensation to be for the advantage, benefit and best interests of the decedent's estate.

2. The services which are rendered by a personal representative who is an attorney and for which compensation is requested pursuant to this section include services rendered by an employee, associate or partner in the same firm of such an attorney and services rendered by an affiliate of such an attorney.

3. As used in this section, "affiliate" has the meaning ascribed to it in NRS 163.020.

NRS 150.030 Compensation for extraordinary services. Such further allowances may be made as the court deems just and reasonable for any extraordinary services, such as:

1. Management, sales or mortgages of real or personal property.

2. Contested or litigated claims against the estate.

3. The adjustment and payments of extensive or complicated estate taxes.

4. Litigation in regard to the property of the estate.

5. The carrying on of the decedent's business pursuant to an order of the court.

6. Such other litigation or special services as may be necessary for the personal representative to prosecute, defend or perform.

NRS 150.060 Attorneys for personal representatives and minor, absent, unborn, incapacitated or nonresident heirs: General compensation.

1. An attorney for a personal representative is entitled to reasonable compensation for the attorney's services, to be paid out of the decedent's estate.

2. An attorney for a personal representative may be compensated based on:

(a) The applicable hourly rate of the attorney;

(b) The value of the estate accounted for by the personal representative;

(c) An agreement as set forth in subsection 4 of NRS 150.061; or

(d) Any other method preapproved by the court pursuant to a request in the initial petition for the appointment of the personal representative.

3. If the attorney is requesting compensation based on the hourly rate of the attorney, he or she may include, as part of that compensation for ordinary services, a charge for legal services or paralegal services performed by a person under the direction and supervision of the attorney.

4. If the attorney is requesting compensation based on the value of the estate accounted for by the personal representative, the court shall allow compensation of the attorney for ordinary services as follows:

(a) For the first $100,000, at the rate of 4 percent;

(b) For the next $100,000, at the rate of 3 percent;

(c) For the next $800,000, at the rate of 2 percent;

(d) For the next $9,000,000, at the rate of 1 percent;

(e) For the next $15,000,000, at the rate of 0.5 percent; and

(f) For all amounts above $25,000,000, a reasonable amount to be determined by the court.

5. Before an attorney may receive compensation based on the value of the estate accounted for by the personal representative, the personal representative must sign a written agreement as required by subsection 8. The agreement must be prepared by the attorney and must include detailed information, concerning, without limitation:

(a) The schedule of fees to be charged by the attorney;

(b) The manner in which compensation for extraordinary services may be charged by the attorney; and

(c) The fact that the court is required to approve the compensation of the attorney pursuant to subsection 8 before the personal representative pays any such compensation to the attorney.

6. For the purposes of determining the compensation of an attorney pursuant to subsection 4, the value of the estate accounted for by the personal representative:

(a) Is the total amount of the appraisal of property in the inventory, plus:

(1) The gains over the appraisal value on sales; and
(2) The receipts, less losses from the appraisal value on sales; and
(b) Does not include encumbrances or other obligations on the property of the estate.

7. In addition to the compensation for ordinary services of an attorney set forth in this section, an attorney may also be entitled to receive compensation for extraordinary services as set forth in NRS 150.061.

8. The compensation of the attorney must be fixed by written agreement between the personal representative and the attorney, and is subject to approval by the court, after petition, notice and hearing as provided in this section. If the personal representative and the attorney fail to reach agreement, or if the attorney is also the personal representative, the amount must be determined and allowed by the court. The petition requesting approval of the compensation of the attorney must contain specific and detailed information supporting the entitlement to compensation, including:

(a) If the attorney is requesting compensation based upon the value of the estate accounted for by the personal representative, the attorney must provide the manner of calculating the compensation in the petition; and

(b) If the attorney is requesting compensation based on an hourly basis, or is requesting compensation for extraordinary services, the attorney must provide the following information to the court:
(1) Reference to time and hours;
(2) The nature and extent of services rendered;
(3) Claimed ordinary and extraordinary services;
(4) The complexity of the work required; and
(5) Other information considered to be relevant to a determination of entitlement.

9. The clerk shall set the petition for hearing, and the petitioner shall give notice of the petition to the personal representative if he or she is not the petitioner and to all known heirs in an intestacy proceeding and devisees in a will proceeding. The notice must be given for the period and in the manner provided in NRS 155.010. If a complete copy of the petition is not attached to the notice, the notice must include a statement of the amount of the fee which the court will be requested to approve or allow.

10. On similar petition, notice and hearing, the court may make an allowance to an attorney for services rendered up to a certain time during the proceedings. If the attorney is requesting compensation based upon the value of the estate as accounted for by the personal representative, the court may apportion the compensation as it deems appropriate given the amount of work remaining to close the estate.

11. An heir or devisee may file objections to a petition filed pursuant to this section, and the objections must be considered at the hearing.

12. Except as otherwise provided in this subsection, an attorney for minor, absent, unborn, incapacitated or nonresident heirs is entitled to compensation primarily out of the estate of the distributee so represented by the attorney in those cases and to such extent as may be determined by the court. If the court finds that all or any part of the services performed by the attorney for the minor, absent, unborn, incapacitated or nonresident heirs was of value to the decedent's entire estate as such and not of value only to those heirs, the court shall order that all or part of the attorney's fee be paid to the attorney out of the money of the decedent's entire estate as a general administrative expense of the estate. The amount of these fees must be determined in the same manner as the other attorney's fees provided for in this section.

NRS 150.061 Attorneys for personal representatives: Compensation for extraordinary services.

1. If an attorney for a personal representative receives compensation pursuant to NRS 150.060 based on the value of the estate accounted for by the personal representative, the court may allow additional compensation for extraordinary services by the attorney for the personal representative in an amount the court determines is just and reasonable after petition, notice and hearing in the manner provided in NRS 150.060.

2. Extraordinary services by the attorney for a personal representative for which the court may allow compensation include extraordinary services performed by a paralegal under the direction and supervision of the attorney.

3. The petition requesting approval for compensation for extraordinary services must include the following information:
(a) Reference to time and hours;
(b) The nature and extent of services rendered;
(c) The complexity of the work required;
(d) The hours spent and services performed by a paralegal if the compensation includes extraordinary services performed by a paralegal as described in subsection 2; and
(e) Other information considered to be relevant to a determination of entitlement.

4. An attorney for a personal representative may agree to perform extraordinary services on a contingency fee basis if:

(a) There is a written agreement between the personal representative and the attorney that sets forth the manner in which the compensation is to be calculated and that is approved by the court after a hearing; and

(b) The court determines that the compensation provided in the agreement is just and reasonable and that the agreement will be to the advantage of the estate and is in the best interests of the persons interested in the estate.

5. Notice of a hearing required by subsection 4 must be given for the period and in the manner provided in NRS 155.010.

6. As used in this section, “extraordinary services” include, without limitation:
(a) Sales or mortgages of real or personal property;
(b) Operating a decedent’s business;
(c) Participating in litigation relating to the estate;
(d) Securing a loan to pay debts relating to the estate; and
(e) Preparing and filing income tax returns for the estate.

Dickerson v. District Court
Supreme Court of Nevada (1966)

This is an original proceeding in certiorari to review an order of the district court appointing the public administrator of Clark County, Phil Cummings, as the administrator of the estate of Edwin L. Van Dyke.

The qualifications entitling one to letters of administration are designated by NRS 139.010, and the order of priority by NRS 139.040. The provisions of NRS 139.040 fixing priority are mandatory and the court must appoint the person preferred by statute if otherwise competent.

The order appointing the public administrator Phil Cummings, as the administrator of the estate of Edwin L. Van Dyke, is vacated. The district court is directed to issue letters of coadministration to Jacqueline Dickerson, the petitioner herein,

In re Estate of Bethurem
Supreme Court of Nevada (2013)

In this appeal, the beneficiary of a will challenges a district court order invalidating the will as the product of the beneficiary's undue influence. A rebuttable presumption of undue influence is raised if the testator and the beneficiary shared a fiduciary relationship, but undue influence may also be proved without raising this presumption. As a matter of first impression in Nevada, we hold that in the absence of a presumption, a will contestant bears the burden of proving undue influence by a preponderance of the evidence. Because we conclude that the respondent-will contestants failed to meet this burden of proof, we reverse the district court's order invalidating the will as the product of undue influence.

FACTS AND PROCEDURAL HISTORY

Arlan Bethurem died in December 2008. The special administrator of his estate petitioned to have the estate set aside without administration according to Arlan's 2007 will. Arlan's stepdaughters opposed the petition, arguing that a beneficiary of the 2007 will had unduly influenced Arlan. The testimony before the probate commissioner revealed the following facts.

Arlan married his wife Bertha in 1971, and the couple resided in Reno. Bertha had three children from a prior marriage, respondents Sandra Kurtz and Anita Herrera Perez, and a son who is not a party to this action. Bertha and Arlan raised the three children together. In 2004, Arlan executed a will bequeathing his estate to Bertha. In the event that Bertha did not survive him, Arlan's will divided his estate equally between his three stepchildren and a granddaughter.

In late 2005, Bertha became ill and Arlan sought assistance with her care. Bertha's sister, appellant Ines Caraveo, traveled to Reno from her home in Texas to help care for Bertha. Upon arrival in Reno, Ines asked Sandra and Anita to assist with Bertha's care, either physically or financially. Neither was able to do so. Ines became angry with Sandra and Anita for failing to care for Bertha. Sandra and Anita both testified that Bertha said in telephone conversations that she did not like how Ines was speaking to Arlan about their inability to provide care.

Bertha died in May 2006. Ines accompanied Arlan to make funeral arrangements with a priest. The priest testified that Arlan was grief-stricken but lucid at the time of this meeting, and that Arlan expressed disappointment that Sandra and Anita had not been more supportive during Bertha's illness. Sandra and Anita attended Bertha's funeral, where they felt ostracized by family members and other funeral attendants. After Bertha's funeral, Ines returned to Texas but stayed in contact with Arlan through daily telephone conversations. Arlan did not speak to Sandra for several months or to Anita for more than a year. Although Arlan was devastated by the loss of his wife, he continued to drive, go to work, and otherwise provide for his own daily needs.

In April 2007, Arlan contacted his friend and accountant Vicki Preston to prepare a new will. Preston testified that Arlan came to her office alone and appeared in good mental condition. Preston suggested that Arlan speak with an attorney, but he declined to do so and instead provided Preston with handwritten changes to a prior will. Preston testified that these changes were made in Arlan's handwriting. These changes named Ines and Arlan's sister as beneficiaries and expressly disinherited his stepchildren. Preston further testified that she did not speak to Ines about the will and prepared the will according to Arlan's written instructions. After Preston prepared the will, Arlan picked up Preston and Preston's friend in his truck, and they drove to a bank to execute the will before a notary. Preston and her friend served as witnesses to the will. Both witnesses testified that Arlan expressed disappointment that Sandra and Anita had not helped care for Bertha and that he said he wanted to change his will because of their treatment of Bertha while she was ill. Arlan also conveyed title of his home in Reno to himself and Ines as joint tenants with right of survivorship and added Ines to some of his bank accounts.

A month later, Sandra visited Arlan. She later testified that he was very depressed during her visit. After Sandra's departure, Arlan attempted suicide. Sandra then invited Arlan to stay with her in Oregon, and he did so for over two weeks. During his time in Oregon, Arlan called Ines from Sandra's home nearly every day. After spending approximately two weeks in Oregon, Arlan returned to Reno for work.

In October 2008, Arlan lost his job. He decided to sell his home and move to Oregon to be with Sandra. Ines did not want her name removed from the property's title but was willing to sign any documents related to the sale. Around

the same time, Arlan expressed regret to Sandra about changing his will. Arlan told Sandra that he changed the will because he was angry with her. Sandra testified that Arlan had a history of changing his will when he was angry with family members. Arlan named Sandra and Ines as beneficiaries to a savings account of approximately $84,000.

About two months later, Arlan committed suicide. Arlan's home was in escrow at the time of his death, and after closing, Ines received the sale proceeds. Ines and Sandra received equal shares of the $84,000 savings account. Following Arlan's death, Preston was appointed special administrator and petitioned to set aside Arlan's estate without administration to Ines and Arlan's sister as provided in the 2007 will. Sandra and Anita opposed the petition, arguing that Ines had unduly influenced Arlan.

After hearing the testimony summarized above, the probate commissioner found that (1) Preston confirmed Ines made statements to Arlan about Sandra and Anita failing to care for Bertha, (2) Ines "enlisted" Preston to prepare the 2007 will, (3) "Ines mounted a campaign to turn Bertha and Arlan against Bertha's daughters ... by telling Arlan that the children were not doing enough to help their gravely ill mother," and (4) "Ines took every opportunity to remind Arlan and Bertha that Bertha's children were unwilling to help." The probate commissioner concluded that Ines had unduly influenced Arlan by fostering ill will between him and his stepdaughters and the 2007 will was the product of this undue influence. The probate commissioner recommended that the 2004 will be admitted to probate.

On review, the district court found that no evidence supported the probate commissioner's finding that Preston confirmed Ines made statements to Arlan about Sandra and Anita. The district court also concluded that the probate commissioner's finding that Ines enlisted Preston to prepare Arlan's 2007 will was clearly erroneous. However, the district court found these errors harmless. The district court affirmed the probate commissioner's recommendation, explaining that the evidence supported the commissioner's findings that Ines mounted a campaign to turn Arlan and Bertha against Sandra and Anita by telling Arlan that his stepdaughters were unwilling to help care for Bertha. Ines now appeals.

DISCUSSION

Below, we describe the current status of Nevada's undue influence law, discuss the appropriate burden and quantum of proof in a will contest on the grounds of undue influence, and address whether the evidence supports a finding of undue influence in this case.

Undue influence law in Nevada

In order to establish undue influence under Nevada law, "it must appear, either directly or by justifiable inference from the facts proved, that the influence ... destroy[ed] the free agency of the testator." The influence that may arise from a family relationship is only unlawful if it overbears the will of the testator. Moreover, the fact a beneficiary merely possesses or is motivated to exercise influence is insufficient to establish undue influence. Finally, a will cannot be invalidated simply "because it does not conform to ideas of propriety."

We have held that "[a] presumption of undue influence arises when a fiduciary relationship exists and the fiduciary benefits from the questioned transaction." Once raised, a beneficiary may rebut such a presumption by clear and convincing evidence. Undue influence may also be shown in the absence of a presumption. However, we have not previously determined the appropriate burden and quantum of proof required to establish undue influence in the absence of a presumption. Because neither the probate commissioner nor the district court found that a presumption of undue influence was raised in this case, we now discuss the burden and quantum of proof necessary to establish undue influence in the absence of a presumption.

Burden and quantum of proof for establishing undue influence

It is well-recognized that the burden of proving undue influence in a will contest is on the party contesting the will's validity. As to the necessary quantum of proof, Ines urges us to require a will contestant to establish undue influence by clear and convincing evidence because "undue influence ... is a species of fraud." Because this is an issue of first impression, we examine other jurisdictions' treatment of this issue. It appears that the majority of other jurisdictions require undue influence be proved only by a preponderance of the evidence.

In addition, this court has previously alluded to a preponderance of the evidence standard for proving undue influence in cases involving testamentary transfers. We have also recognized the importance of protecting an " 'alleged donor [who] is lacking in such mental vigor as to enable him to protect himself against imposition even though his mental

weakness is not such as to justify his being regarded as totally incapacitated.'"

We now hold that in the absence of a presumption, a will contestant must establish the existence of undue influence by a preponderance of the evidence. In order to meet this standard, the contestant must show that the disposition of property under the will was "more likely than not" the result of undue influence. This approach most closely aligns with our prior decisions alluding to but not expressly stating such a quantum of proof. This approach also provides the best protections to vulnerable alleged donors by making it easier for will contestants to establish undue influence.

Having determined that the preponderance of the evidence is the quantum of proof necessary to establish undue influence in the absence of a presumption, we now address whether substantial evidence supported the district court's finding that Sandra and Anita met this standard.

Substantial evidence did not support the district court's order

This court will not disturb a district court's findings of fact if they are supported by substantial evidence, and we review a district court's legal determinations de novo. "Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion."

Here, the record indicates that before Bertha's death, Ines made statements to Arlan about Sandra and Anita failing to care for Bertha, and these statements upset Bertha. While Ines and Arlan had almost daily contact by telephone after Bertha's death, Sandra testified that Arlan made the calls at least some of the time, and there was no testimony regarding the contents of these telephone conversations. Neither the probate commissioner nor the district court indicated what evidence supported the inference that Ines "mounted a campaign" or "took every opportunity to remind" Arlan that Sandra and Anita had not helped care for Bertha, and we find none in the record.

Nevertheless, the district court affirmed the probate commissioner's recommendation, concluding there was sufficient evidence that the probate commissioner could reasonably conclude that Arlan's 2007 will was the product of undue influence exercised by Ines. The district court did not explain how the facts actually supported by the record led the court to conclude Arlan's free agency had been destroyed, despite correctly stating such a requirement for establishing undue influence.

While Ines may have influenced Arlan through frequent telephone conversations, influence resulting merely from Ines and Arlan's family relationship is not by itself unlawful, and there is no indication in the record that any influence Ines may have exercised prevented Arlan from making his own decisions regarding his will. Moreover, the fact that Ines may have possessed influence does not amount to undue influence unless her influence destroyed Arlan's free agency.

The record shows Ines was angry with Sandra and Anita for failing to care for Bertha, she expressed her anger before Bertha's death, Arlan shared that sentiment, he changed his will in response, and he later regretted doing so. From these facts, no justifiable inference could be drawn that Ines destroyed Arlan's free agency as to the will. Arlan's decision to disinherit his stepchildren may "not conform to ideas of propriety," but this does not justify invalidating his will.

Given "the long-standing objective of this court to give effect to a testator's intentions to the greatest extent possible," and the complete lack of evidence indicating Arlan's decision to change his will was anything but his own, we conclude that the district court's order affirming the probate commissioner's recommendation is not supported by substantial evidence. Therefore, we reverse the district court's order and remand this matter to the district court. On remand, the district court shall order distribution of Arlan's estate according to the 2007 will.

In re Estate of Schrager
Supreme Court of Nevada (2015)

This is a pro se appeal from a district court order awarding attorney fees in a probate action.

Appellant's twin sister converted assets from their mother's estate. As a result, the administrator of the estate and appellant had to employ attorneys to assist in tracking down and attempting to recover those assets. Thereafter, the estate earned a $3,427,692 judgment against appellant's twin sister and her accomplices. After an interim account of the estate was filed stating that the estate had $191,524.30 in liquid assets, appellant's previous attorneys, Solomon Dwiggins & Freer, Ltd. (SDF) and the estate's administrator, respondents in this appeal, requested payment of their attorney fees. Appellant opposed those requests, but ultimately consented to the payment of the administrator's attorney fees during the February 14, 2014, and January 28, 2015, hearings. The district court ordered the estate to pay the administrator's attorney $115,588.61 and SDF $46,166.13. This appeal followed.

Having considered the parties' arguments and the record on appeal, we conclude that the district court properly considered NRS 150.060 and NRS 150.061 in awarding the administrator's attorney fees. Because appellant consented to the payment of the administrator's attorney fees, he has waived any challenge to those attorney fees on appeal. Thus, we affirm the district court's order directing the estate to pay the administrator's attorney fees.

Nevertheless, we conclude that the district court abused its discretion in calculating the amount of fees to be paid to SDF. While the district court did not abuse its discretion in awarding SDF attorney fees because it properly considered NRS 150.060 and NRS 150.061, it did abuse its discretion in awarding SDF $12,426 in attorney fees that arose out of a separate action that did not benefit the estate. The separate action involved the decedent's payable upon death bank accounts and because such bank accounts generally do not pass into the estate, any case dealing with these accounts could not have benefitted the estate. *See* NRS 111.795(2) (providing that the funds in a bank account with a payable upon death designation belong to the payable upon death beneficiary after the account holder's death and the funds will only belong to the account holder's estate if the beneficiary does not survive); NRS 111.799 (explaining that a transfer to a payable upon death beneficiary "is not testamentary or subject to estate administration").

Thus, the district court abused its discretion in awarding SDF $12,426 in attorney fees incurred in relation to this separate action and we reverse that portion of the attorney fees awarded to SDF. Because it is unclear whether the $12,426 was included in the $46,166.13 already paid by the estate or is part of SDF's remaining judgment against the estate, we remand to the district court for further proceedings.