

1 **I. PRELIMINARY STATEMENT**

2 Recent filings in the district court caused us to question what we had written in the
3 *Respondent's Answering Brief* filed last November. In light of our ongoing duty of candor to the
4 Court, both generally and per RPC 3.3, we investigated, and discovered an erroneous representation
5 to this Court. This *Errata* follows.

6 We do not believe that the error discovered leads to any different result than that which we
7 requested in the *Answering Brief*, and we believe that the Court would eventually have discovered
8 the error in our submission discussed in this filing. Besides our ethical duty to point out such an
9 error upon discovery, we also wish to save the Court and its staff from any wasted time dealing with
10 a matter that need not be addressed.

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12 **II. OUR ERROR**

13 We believed, and informed this Court, that the appeal before it was from a post-divorce order
14 denying Jennifer's *Motion to Set Aside February 2, 2007 Order*. It isn't. The *Notice of Appeal* was
15 from the February 2, 2007, order itself—the same order about which that the *Motion to Set Aside* was
16 filed. As we noted in the *Respondent's Answering Brief*, Jennifer treats the two synonymously in
17 her appellate (and trial court) filings, even though she filed no appeal from denial of the *Motion to*
18 *Set Aside*.

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20 **III. HOW AND WHY WE MADE THAT ERROR**

21 Jennifer filed her *Notice of Appeal* on April 9, 2007, and served us with that *Notice*
22 thereafter. We believed, erroneously, that the appellate notice concerned the last hearing we had
23 attended, not the motion hearing attended some months earlier on February 2.

24 Our error was compounded by the failure of Jennifer to file a docketing statement explaining
25 what she was appealing. After being twice admonished by this Court, she eventually did file a
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1 Docketing Statement, but that Statement was never copied to us, despite the Certificate of Service
2 falsely claiming that it had been.¹

3 Additionally, most of the evidence relevant to the appeal actually came from the later hearing
4 – where Mr. Kelleher conceded that Jennifer’s various attorneys had received notice of the earlier
5 hearing and discussed it with her on several occasions – not at the earlier hearing, where Jennifer
6 made no appearance.

7 Opposing counsel might have noticed the error, but if so has never mentioned it, formally or
8 informally. And because he chose to not file a *Reply Brief* (while also not complying with this
9 Court’s rule asking for notice of waiver of the right to file such a *Reply*),² he apparently has not given
10 any such notice to this Court, either.

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12 **IV. EFFECT OF ERROR ON RESOLUTION OF THE APPEAL**

13 Our error as to which order had been appealed should have no effect on the actual disposition
14 of the appeal, but our confusion could cause the Court to waste time dealing with matters it need not
15 consider, which distraction we deeply regret.

16 The appeal is from the original order naming Martine as the proper Survivor’s Benefit Plan
17 (“SBP”) beneficiary, and not the later order refusing to set aside that order. Thus, this Court need
18 not consider whether the district court abused its discretion in refusing to set aside the *Order* filed
19 March 6, 2007, from the hearing of February 2, but only whether the district court was within its
20 discretion in entering the original order.

21 As set out in the *Answering Brief*, the standard of review is “abuse of discretion,” but the
22 Court can and should disregard as irrelevant our discussion of the standards applicable to denials of
23 motions to set aside orders. Only the lower court’s discretion to enter the original order in Martine’s
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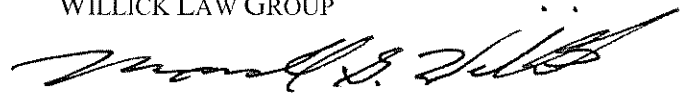
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27 ¹ As noted in both our *Answering Brief* and in our filings in the first appeal, our opponent’s failures to file,
28 failures to serve, and filing of incomplete, false, and redacted documents has been an ongoing problem throughout this
litigation for nearly a decade at this point.

² NRAP 28(c).

1 favor is actually on appeal. And as discussed at some length in the *Answering Brief*, no abuse of
2 discretion is demonstrated by the record.

3 The bulk of the *Answering Brief*, as to why Martine was properly deemed the SBP
4 beneficiary, is precisely on point for the issue actually presented by the appeal actually filed.³ As
5 detailed there, the naming of an SBP beneficiary is within a trial court's discretion, Martine is the
6 appropriate time-rule stakeholder in the survivor's benefits, and (as verified by the Supplement to
7 the File showing the acceptance by DFAS of the order naming Martine as beneficiary) there are no
8 technical or other impediments to such an order.

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11 Respectfully submitted,
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³ See RAB at 15-25.

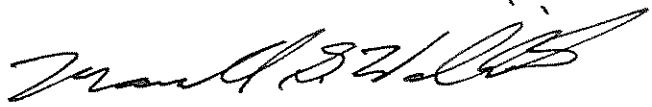
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CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this *Errata to Respondent's Answering Brief*, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e) which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to the record on appeal. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 20th day of August, 2009.

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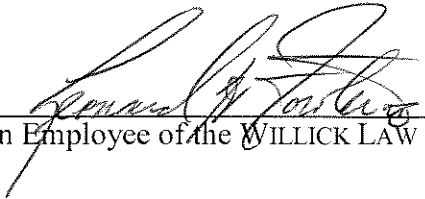
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CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing was made on the 20th day of August, 2009,
by U.S. Mail addressed as follows:

James R. Rosenberger, Esq.
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Attorney for Appellant

That there is regular communication between the place of mailing and the place so addressed.


An Employee of the WILLICK LAW GROUP

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