

Supreme Court, U.S.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

LAWRENCE W. FORD, PETITIONER

v.

ANITA L. BUDDE, RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF
NEVADA

PETITION FOR WRIT OF CERTIORARI

Lawrence W. Ford
P. O. Box 358
Fairfield, CA 94533
(707) 365-3636 (Mess.)
lawisnotblind@comcast.net

Attorney for Petitioner
IN PRO SE

Natalie J. Reed, Esq.
Reed Law Offices, PLLC
611 Forest Street
Reno, Nevada 89509

Therese M. Shanks, Esq.
Robison, Sharp, Sullivan & Brust
71 Washington Street
Reno, Nevada 89503

Attorneys for Respondent

ORIGINAL

3 - QUESTIONS PRESENTED FOR REVIEW

In *United States v. Olano*, this Court held that, under the fourth prong of plain error review, “[t]he Court of Appeals should correct a plain forfeited error affecting substantial rights if the error ‘seriously affect[s] the fairness, integrity, or public reputation of judicial proceedings.’” 507 U.S. 725, 736 (1993). To meet that standard, is it necessary, as the Fifth Circuit Court of Appeals required, that the error be one that “would shock the conscience of the common man, serve as a powerful indictment against our system of justice, or seriously call into question the competence or integrity of the district judge?” In this case it is the Appellate court as well that comes into question, citing cases that argues against itself.

This is a case of first impression that not only raises an important, unique, and interesting question affecting not only the integrity of our judicial system, but also implicates the Due Process provisions of the Fifth and Fourteenth amendments to the U.S. Constitution.

Questions:

1. In a standard of review as used by appellate courts, to review discretionary decisions of lower trial courts, the appellate courts will find that the trial court abused its discretion if the decision was the result of a mischaracterization of the trial court record, was made in plain error, and the erroneous mischaracterized facts are then relied upon in its findings and conclusions. *However, what is* the abuse of discretion standard

1 used for review, in a case where the appellate court itself, upon reviewing
2 a trial court's record, picks out an incorrect material fact, involving an
3 important triggering date in the trial court's record, a date that was never
4 raised or briefed on appeal, then erroneously places this out of order
5 triggering date in and at a point in the record six (6) months later, totally
6 ignoring upon advisement, the true triggering date, and then, in reliance
7 upon this incorrect triggering date, mistakenly imputes the incorrect
8 triggering date into its findings and conclusions, thereby creating an error
9 of such a nature, that it impacts every aspect of the case, and to leave it
10 uncorrected would result in damage to the integrity, reputation, and
11 fairness of the judicial process?

15 2. What is the abuse of discretion standard used for review, where
16 the appellate court ignores its own well-established directions and
17 guidelines regarding rules of professional conduct, and where a district
18 court judge's impartiality might reasonably be questioned where the trial
19 court deliberately ignores a wholly briefed and crucial judicial misconduct
20 matter, where counsels are more likely to obfuscate the court with fraud
21 than enlighten the court?

24 3. What is the abuse of discretion standard used for review, where
25 the appellate court ignores its own well established directions and
26 guidelines regarding a the trial court which rendered its decisions based
27 upon facts that were not supported by the record, and the subsequent

1 decision resulted in plain error, of the kind that a reviewing court
2 supposedly and normally seeks to avoid?

3
4 This case also shows that the reviewing Nevada appellate court, has disregarded
5 the clearly displayed logic of its own prior decisions, its State Supreme Court's logic,
6 and the well-settled logic of this U.S. Supreme Court. In a justice system that is
7 designed to protect against cases fraught with fraud and unjust judicial district
8 courts, and where all cases that are reviewed, are reportedly done so, based upon
9 the reviewable facts of the trial court's record, this court's answer to the question(s)
10 presented will have enormous national impact. The Nevada Supreme Court, that
11 state's court of last resort, in its order denying petition for review, causes the
12 Nevada Appellate Court's opinion to raise this important question of federal and
13 state law, and or judicial logic, which has not been, but should be, settled by this
14 supervisory court. Absent this Supreme Court's review, the dangerous question
15 that would circulate would be, who would trust or should trust our judicial system?

16
17 [T]he belief and fairness in our judicial system, by the common man,
18 especially when he stands alone before a court in an **In Pro Se** status, is not only
19 the lifeblood of our legal system, it is the utopia of truth we all seek to rest with.

20
21 **PARTIES TO THE PROCEEDING**

22
23 Petitioner is Lawrence W. Ford, In Pro Se, and a citizen of the United States
24 of America. Respondent is Anita L. Budde, a citizen of the United States of
25 America.

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DIRECTLY RELATED PROCEEDINGS

Ford v. Budde, No. 77763, Supreme Court of Nevada. Petition for Review denied October 08, 2020.

Ford v. Budde, No. 77763-COA, Nevada Court of Appeals. Order Granting Rehearing in part, Denying in part, and Affirming August 24, 2020.

Ford v. Budde, No. 77763-COA, Nevada Court of Appeals. Order of
Affirmance April 27, 2020.

Ford v. Budde, No. PR16-00328, Second Judicial Court for the State of Nevada, for the County of Washoe. Notice of Appeal filed December 22, 2018.

Ford v. Budde, No. PR16-00328, Second Judicial Court for the State of Nevada, for the County of Washoe. Notice of entry of Order, regarding Report of Administration, et al., entered on December 20, 2018.

Ford v. Budde, No. PR16-00328, Second Judicial Court for the State of Nevada, for the County of Washoe. Notice of entry of Order, regarding Motion to Relieve and Sanction Counsel, entered December 20, 2018.

Ford v. Budde, No.PR16-00328, Second Judicial Court for the State of Nevada, for the County of Washoe. Notice of entry of Order, regarding Motion for *NRCP 59(a)(d), 60(b)(1)(2)(3), 61 and 62(b)*, entered December 20, 2018.

Ford v. Budde, No. PR16-00328, Second Judicial Court for the State of Nevada, for the County of Washoe. Notice of entry of Order, regarding Motion to Relieve and Sanction Counsel, entered December 20, 2018.

1 Ford v. Budde, No. PR16-00328, Second Judicial Court for the State of
2 Nevada, for the County of Washoe. Plaintiff's reply and Objection to pertinent parts
3 of Defendant's Report of Administration, et al., filed on September 25, 2018.
4

5 (Noticed DFX: Documents were submitted upside down)

6 **STATEMENT OF JURISDICTION**

7 The Nevada Court of Appeals issued its opinion on August 24, 2020. The
8 Nevada Supreme Court denied a petition for review on October 08, 2020. This
9 Court has jurisdiction under 28 U.S.C. Sect. 1254(1). See also U.S. Supreme
10 Court, Rule 13. Review on Certiorari: Time for Petitioning, "1.A petition for a
11 writ of certiorari seeking review of a judgment of a lower state court that is subject
12 to discretionary review by the state court of last resort is timely when it is filed with
13 the Clerk within 90 days after entry of the order denying discretionary review."
14

15 **CONSTITUTIONAL AND STATUTORY AUTHORITY INVOLVED**

16 The relevant portions of U.S. Constitution's 5th Amendment say to the federal
17 government that no one shall be "deprived of life, liberty or property without due
18 process of law."

19 The U.S. Constitution's 14th Amendment, uses the same eleven words, called
20 the Due Process Clause, to describe a legal obligation of all states to provide fair
21 procedures.
22
23
24

STATEMENT OF THE CASE

A. Brief Background

1. This starts as a Nevada Probate matter, that began with the death of Katherine Diane Hill-Ford (Hill). Second Judicial District Court # PR16-00328, filed on or about June 14, 2016. Lawrence W. Ford (Ford), Hill's legal spouse and appearing In Pro Se in this entire matter. Anita L. Budde (Budde), appearing through Attorney J. Douglas Clark (Clark), her counsel of record, is the executor of Hill's estate, per Hill's Will, executed prior to the marriage of Ford and Hill.

Prior to appearing in this matter as an In Pro Se, Ford, in March of 2016, contacted the office of Clark, seeking to obtain counsel for himself in this instant matter. Ford discussed the confidential aspects of his case with Clark's paralegal and followed the telephone discussion with a detailed outline of his case, including the actions he intended to take and the defenses he would use in the two main areas of his case. Clark's paralegal indicated that she and Clark had had a full discussion about the details of the case and although Clark wished Ford luck, he declined to take the case citing that he was way too busy to take on another case.

Yet, in June of 2016, Clark, on behalf of Budde, filed the Probate action case number PR16-00328. Subsequently, after later learning that paralegal Lutsch and Clark were in fact from the same office, Ford immediately filed a motion to relieve Counsel Clark due to attorney conflict of interest. After being briefed, the court requested that supporting documents be submitted “in camera” to the court in June of 2017 and Ford complied July 3, 2017. (App- 1) Clark, knowing he would not

1 survive the motion to relieve, sought out attorney Natalie J. Reed (Reed), and she
2 filed her notice of substitution on August 21, 2017. (App- 4) Even though she was
3 officially engaged in the case on August 7, 2017 and notwithstanding that she
4 worked with Clark on the case in January and February of 2017. (App- 71-85)

5 In January 22-23, of 2018, the Trial Court held an evidentiary hearing and
6 did in fact issue its order in that regard on or about **March 16, 2018**.

7 However, on September 14, 2018, a full six months after March 16, 2018,
8 Reed, on behalf of Budde, filed : (1) Report of Administration; (2) Estate Accounting;
9 (3) Petition Settling, Allowing, Confirming, and Approving the Report of
10 Administration and Estate Accounting; (4) Petition for Reimbursement of Personal
11 Representative's Out-of-Pocket Expenses; (5) Petition for Payment of Personal
12 Representative's Statutory Fee; (6) Petition for Payment of Extraordinary Fees to
13 the Personal Representative; (7) Petition for Payment and Reimbursement of
14 Attorneys' Fees and Costs; and (8) Petition for Final Distribution of Estate
15 (hereinafter Report). (App- 7) Attached to said Report as exhibit #7, was the
16 affidavit of attorney Clark, clearly indicating that he had hired attorney Reed in
17 January of 2017, to work on this instant case, researching the exact same area that
18 petitioner Ford told him in confidence, that he would be using for his case against
19 Budde. (App- 71-75)

20 Ford, on September 25, 2018, filed his Objections to the Report, addressing
21 each area of the Report, showing Reed's clear conflict of interest. (App- 28) From
22 this, Reed filed her reply. (App- 47)

1 Based upon Budde's filing of the Report by Reed and Ford's subsequent
2 objections, Ford also filed his motion to relieve and sanction Reed on September 26,
3 2018. First explaining the Clark previous conflict and then Reed's conflict. (App-59)
4

5 Ford then filed his motion for a new trial on September 28, 2018, based solely
6 upon Reed's statements within and in support of the Report, as well as Clark's
7 affidavit and attachments.¹ (App- 107, 71-85)

8

9 **2. The Attorney conflict of interest, misconduct, and fraud
upon the court comes to light**

10

11 As the petitioner would eventually discover, attorneys Clark and Reed had
12 caused the case, by virtue of their participations in it, to be riddled with conflict of
13 interest, misconduct, and fraud upon the Court.

14

15 a. The conflict of interest started with Clark agreeing to represent Budde
16 after Ford had already discussed his case strategy and confidential information
17 with him and representatives of his office.

18

19 b. Because the Petitioner was a former client of Clark and had transferred
20 confidential information to him, the conflict of interest was imputed to Reed and
21 disqualified her once she substituted in as she previously worked on this case with
22 Clark, some 2 to 3 months prior to Ford moving to have Clark removed. (App- 71-
23 77) Conflict of interest is imputed to Reed either as a lawyer or employee of and for
24 Clark. (App- 78-85)

25

26

27 ¹ It is noteworthy to add that while there was indeed a March 16, 2018
28 order issued as a result of the January 23, 2018 evidentiary hearing, the
triggering dates petitioner Ford is referring to, has to do specifically and
only with September 2018 and nothing to do with March 16, 2018.

1 c. The obvious misconduct started when both Clark and Reed, who are
2 seasoned attorneys, agreed to work together in allowing and agreeing in Reed's
3 substitution of herself into the case. **(App-71-85)**

4
5 d. The fraud upon the court takes place when neither Clark nor Reed alerts
6 the petitioner or the court to the obvious conflict of interest, allowing it to continue
7 until finally discovered in the September 14, 2018 filing of the Report. **(App-18-20)**

8
9 **B. District Court Proceedings**

10 Armed with the September 14, 2018 documented and confirmed evidence of
11 both counsel's conflict of interest, misconduct and fraud, contained within the
12 Report, petitioner Ford objected to the Report and immediately moved to have Reed
13 relieved and to set aside the trial based upon a conflict of interest, misconduct and
14 fraud upon the court. **(App- 59, 107)**

15 In regard to the motion to relieve and sanction counsel, due to conflict of
16 interest, misconduct and fraud, the District Trial Court's order stated that,

17 *"The Court finds that Ms. Reed acted ethically and appropriately in this case, and
18 that the tasks that she took on in this case were in compliance with the law and are
19 required to be completed in an estate matter resulting in a full and final distribution
20 of estate assets. For these reasons, the Court finds that Plaintiff's Motion lacks both
21 statutory and ethical grounds upon which it could be granted.*

22 **ACCORDINGLY, THE COURT DENIES PLAINTIFF'S MOTION TO
23 RELIEVE AND SANCTION COUNSEL IN ITS ENTIRETY.**

24 *Dated this 19th day of December, 2018." (App- 105)*

25 In regard to the motion for relief under NRCP 59, 60, 61 and 62, the District
26 Trial Court stated that,

27 *"After reviewing all of the pleadings on file herein, the Court finds that the Plaintiff's
28 Motion reflects a misunderstanding of NRCP 59, NRCP 60, NRCP 61, and NRCP*

1 62, and specifically, a misunderstanding of what is required for relief to be granted
2 under any of those provisions of the Nevada Revised Statutes. As a result of that
3 finding, the Court further finds that the grounds asserted by Mr. Ford in his Motion
4 do not constitute sufficient grounds under Nevada law to grant the relief request in
5 Plaintiff's Motion.

6 **ACCORDINGLY, THE COURT DENIES PLAINTIFF'S MOTION FOR NEW**
7 **TRIAL NRCP 59 (a)(d); RELIEF FROM JUDGMENT OR ORDER NRCP**
8 **60(b)(1)(2)(3); HARMLESS ERROR NRCP 61; AND STAY OF**
9 **PROCEEDINGS NRCP 62(b) IN ITS ENTIRETY.**

10 *Dated this 19th day of December, 2018." (App- 138-139)*

11 Petitioner Ford filed his notice of appeal on December 22, 2018 and was
12 allowed to go forward in Forma Pauperis on January 2, 2019.

13 C. Appellate Court Proceedings

14 The Nevada Appellate Court, affirmed the trial court on all matters and
15 issued its ORDER OF AFFIRMANCE, on April 27, 2020, making the following
16 three main conclusions:

- 17 1. "Ford also asserts that the district court abused its discretion in denying
18 his motion for a new trial and for relief from judgment related to the
19 March 16, 2018, order entered following the evidentiary hearing. But that
20 motion was not timely filed and thus, it was properly denied."(App-161-162)
- 21 2. "Ford further argues that the district court abused its discretion in
22 denying his motion to disqualify counsel based upon an alleged conflict of
23 interest. Based upon our review of the arguments and record before us, we
24 cannot say that the district court manifestly abused its discretion in
25 denying the motion to disqualify. See Nev. Yellow Cab Corp. v. Eighth
26 Judicial Dist. Court, 123 Nev. 44, 54, 152 P.3d 737, 743 (2007)(noting that
27 the district court has broad discretion in matters of disqualification and
28 that a district court's order on disqualification will not be set aside absent
a manifest abuse of that discretion). (App- 161)
- 29 3. "Additionally, Ford faults the court for stating at the hearing on Budde's
30 petitions that it had not seen an objection filed to the petitions. Based
31 upon that statement and the fact that the order does not specifically
32 address his objection, or the arguments contained therein, he asserts that
33 the district court did not properly review all of the evidence presented.

1 But the relevant transcript and the order indicate otherwise. Specifically,
2 while the judge initially made the statement Ford asserts was in error, at
3 a later hearing, just prior to giving the ruling on the matter, the judge
4 stated that she had spent quite a bit of time reviewing everything in the
case and that the report and accounting were approved over Ford's
objection. **(App- 160)**

5 The Nevada Appellate Court concludes its Order stating, "Based on the
6 foregoing, we ORDER the judgment of the district court AFFIRMED."

7 Ford than filed the APPELLANT'S PETITION FOR REHEARING, on May
8 19, 2020. **(App- 165)**

9 On August 24, 2020, the Nevada Court of Appeals filed its ORDER
10 GRANTING REHEARING IN PART, DENYING IN PART, AND AFFIRMING,
11 making the following three main conclusions:

- 1 1. "Accordingly, we grant rehearing and reinstate this appeal for the limited
2 purpose of revising the grounds of which this court addressed Ford's
3 assertion that his objection was not considered. See NRAP 40(e). To the
4 extent Ford seeks rehearing on other issues related to this court's April 27
order of affirmance, his petition is denied. See NRAP 40(c)." **(App-178-179)**
- 5 2. "On appeal. Ford faults the court for stating at the hearing on Budde's
6 petitions that it had not seen an objection filed. Based upon that
7 statement and the fact that the district court's order does not specifically
8 address his objection, or the arguments contained therein, he asserts that
9 the district court did not properly review all of the evidence presented.
10 But the relevant transcripts and the court's order indicate otherwise.
11 While the district court judge did initially state that she did not see Ford's
12 objection, the court subsequently corrected that statement after
13 questioning from Budde's counsel, noting that she did, in fact, have the
14 objection." **(App- 179)**
- 15 3. "Under these circumstances, Ford's assertions that his objection was not
16 considered are unfounded, and his argument in this regard lacks merit.
17 Accordingly, we affirm the district court's resolution of Budde's petitions."
18 **(App-180)**

D. Nevada Supreme Court Proceedings

The Petitioner Ford filed on September 4, 2020, a “PETITION FOR REVIEW BY THE SUPREME COURT”.

On October 8, 2020, The Nevada Supreme Court issued an “ORDER DENYING PETITION FOR REVIEW. Review denied. **NRAP 40B**) It is so ORDERED.” (App-181)

Thus, the matter was not reviewed by the Nevada Supreme Court, the State Court of last resort, which opted to deny the petition for review. (App- 181)

REASONS FOR GRANTING THE PETITION

A. Discussion as to question one:

In a standard of review as used by appellate courts to review discretionary decisions of lower trial courts, the review court will likely find that the trial court abused its discretion if the decision resulted from a mischaracterization of the trial court record, creating a plain error, and the erroneous mischaracterized fact(s) are then relied upon in its findings and conclusions.

The petitioner brought to the Appellate court, an erroneous decision of the trial court, in that the trial court stated that.

“After reviewing all of the pleadings on file herein, the Court finds that the Plaintiff’s Motion reflects a misunderstanding of NRCP 59, NRCP 60, NRCP 61, and NRCP 62, and specifically, a misunderstanding of what is required for relief to be granted under any of those provisions of the Nevada Revised Statutes. As a result of that finding, the Court further finds that the grounds asserted by Mr. Ford in his Motion do not constitute sufficient grounds under Nevada law to grant the relief request in Plaintiff’s Motion. **ACCORDINGLY, THE COURT DENIES PLAINTIFF’S MOTION FOR NEW TRIAL NRCP 59 (a)(d); RELIEF FROM JUDGMENT OR ORDER NRCP 60(b)(1)(2)(3); HARMLESS ERROR NRCP**

1 **61; AND STAY OF PROCEEDINGS NRCP 62(b) IN ITS ENTIRETY.” (App-**
2 **138-139)**

3 Appeals court decisions are supposed to turn on the record, with the appellate
4 court accepting facts as they were revealed in the trial court, not those erroneously
5 inserted after. (See *Brookshire Grocery Company v. Cleon Morgan, Sr, 2018*
6 *Ark. 62, 539 S.W.3d 577*). The March 16, 2018 date was inserted by the appellate
7 court for the first time in Order of Affirmance. (App- 158-159)

8 It is well known that **appellate courts are confined to the record** compiled
9 below **and have no part in a record's composition.**

10 In the matter of *McDaniels v. Kirkland*, 813 F.3d 781 (2015), ... quoting
11 Pinholster, 131 S.Ct. at 1398. The Supreme Court thus held that "the record under
12 review is limited to the record in existence at that same time."

13 It is well settled that an appellate court may not base its decision on matters
14 outside the record on appeal, and that matters not produced and received in
15 evidence below may not be considered. *Moose v. Vesey*, 225 Minn. 64, 29 N.W.2d
16 649 (1947); *Holtberg v. Bommersbach*, 235 Minn. 553, 51 N.W.2d 586 (1952)

17 Notwithstanding that the Nevada reviewing Court requires the issuance of
18 express factual findings in the denial of a NRCP 59 & 60 motion (See *Willard v.*
19 *Berry-Hinckley Indus., 136 Nev., Adv. Op. No. 53 (Aug. 2020)*), the Nevada
20 supreme court also established in *Yochum v. Davis*, four factors that indicate
21 whether NRCP 60(b)(1) relief is appropriate and required district courts to issue
22 explicit factual findings in the first instance on all four *Yochum* factors.

1 Petitioner's motion for relief and a new trial shows that every factor of Yochum v.
2 Davis, as established by this Court, was met by petitioner's 9-28-2018 filing, given
3 the revealing Report of 9-14-2018. (App- 7)

4 The district court then gave only one reason, addressing only one factor, by
5 stating in its order denying said motion, " *the Court finds that the Plaintiff's Motion*
6 *reflects a misunderstanding of NRCP 59, NRCP 60, NRCP 61, and NRCP 62, and*
7 *specifically, a misunderstanding of what is required for relief to be granted under*
8 *any of those provisions*". (App- 138-139) (See Yochum v. Davis, 98 Nev. 484, 486,
9 653 P2.d 1215, 1216 (1982); Epstein v. Epstein, 13 Nev. 1401, 1405, 950 P2d
10 771, 773 (1997).

11 Documents filed In Pro Se are to be liberally construed. It is well known that
12 In pro se filings are held to less stringent standards than formal pleadings drafted
13 by lawyers. Erickson v. Pardus, 551 U.S. 89, 94 (2007); Haines v. Kerner, 404
14 U.S. 519, 596 (1972). See also, Estelle v. Gamble, 429 U.S. 97, 106 (1976).

15 "The salutary purpose of Rule 60(b) is to redress any injustices that may have
16 resulted because of excusable neglect or the wrongs of an opposing party." (Nev.
17 Indus. Dev., Inc. v. Benedetti, 103 Nev. 360, 364, 751 P.2d 802, 805 (1987)).

18 Were it not for the attorneys for the Budde, hiding the fact that they both
19 worked on this case together, the Rule 59, 60 motion would not have been filed!

20 While the appellate court cites at page 5 of the Order of Affirmance,
21 Rosenstein v. Steele, there was no correct result reached for different reasons.

1 This was incorrect fact(s) imputed by the appellate court, making their appellate
2 findings and conclusions incorrect. (App- 162)

3 However, NRCP Rule 59(a) speaks to a new trial being granted to any party
4 on all or part of the issues for any of the following causes or grounds materially
5 affecting the substantial rights of an aggrieved party: (1) Irregularity in the
6 proceedings of theadverse party; (2) Misconduct of the prevailing party; (3)
7 Accident or surprise which ordinary prudence could not have guarded against; (4)
8 Newly discovered evidence material for the party making the motion which the
9 party could not, with reasonable diligence, have discovered and produced at the
10 trial. Rule 60(b)(1)-(3) for almost the same reasons speaks to relief for, “(b)
11 Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; and
12 **Fraud** (whether heretofore denominated intrinsic or extrinsic), misrepresentation
13 or other misconduct of an adverse party;” NRCP 60(b) states that, “This rule
14 does not limit the power of a court to entertain an independent action to
15 relieve a party from a judgment, order, or proceeding, or to set aside a
16 judgment for fraud upon the court.” (See Carlson v. Carlson 108 Nev. 358,
17 832 P.2d 380 (1992), Manville v. Manville, 79 Nev. 487, 387 P.2d 661 (1963)
18 (the six-month limitation has no application when fraud), Occhiuto v.
19 Occhiuto 97 Nev. 143, 625 P.2d 568 (1981), and Savage v. Salzmann, 88 Nev.
20 193, 495 P.2d 367)

21 From the time Reed substituted onto the case, and the appellate court being
22 apprised of petitioner’s contentions of conflict of interest and fraud, should have
23

1 scrutinized it with great care, and any judgment procured by fraud, voided. (App-
2 172-174) See Long v. Shorebank Devl Corp., 182 F.3d 548 (C.A. 7 Ill. 1999).
3 Although NRCP Rule 60(b)(4) is ostensibly subject to the "reasonable" time limit
4 of Rule 60(b), no time limit applies to a motion under a Rule 60(b)(4) because a
5 void judgment can never acquire validity through laches. See Crosby v. Bradstreet
6 Co., 312 F.2d 483 (2nd Cir.) cert. denied, 373 U.S. 911, 83 S.Ct. 1300, 10
7 L.Ed.2d 412 (1963) where the court vacated a judgment as void 30 years after
8 entry. See also Marquette Corp. v. Priester, 234 F.Supp. 799 (E.D.S.C.1964)
9 where the court expressly held that clause Rule 60(b)(4) carries no real time limit.
10

11 In the case of Lioce v. Cohen, 124 Nev. 1, 174 P.3d 970 (2008), the
12 Supreme Court of Nevada citing a plethora of cases, in its conclusion, directing
13 district courts that when deciding a motion for a new trial, the district court
14 must make specific findings, both on the record during oral proceedings and in
15 its order, with regard to its application of the standards described, to the facts of the
16 case before it. The Trial Court did not satisfy this requirement. (App- 138-140)

17 With the level of experience had by attorneys Clark and Reed, this is something
18 that could have only been purposely omitted, as Reed had stated she did not have to
19 tell anyone. (App- 87, 94-101) They knew or should have known as seasoned
20 attorneys that NO Court would sit still and let such a blatant fraud upon the Court
21 and the Judicial System stand. Reed perpetrated a fraud upon the Court, pursuant
22 to NRCP 60(b), that succeeded for over a year, with little regard for our Court's
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1 want of integrity and it most certainly allowed Reed to have irreparable and unfair
2 advantage over this petitioner.
3

4 The petitioner had alleged and met every element of **Rule 59 and 60**,
5 pertaining to the showing of Irregularity, Attorney Misconduct, Accident, Fraud or
6 Surprise, that could have been discovered anywhere near the time requirement
7 stated therein. Counsel Reed, kept quiet about taking on a case that she obviously
8 conflicted out of and there was no way petitioner could have known this prior to
9 finding it in the Report at Clark's affirmation, filed on September 14, 2018. (App-7)

10 Nothing could have been known in time to move for a new trial or any other
11 kind of relief under either **Rule 59(b) or 60(b)**, BECAUSE the attorneys hid this
12 obvious conflict from both the petitioner and the court. This was an unavoidable
13 hindrance. See **Farmers Ins. Group v. District Court, 507 P.2d 865, cert.**
14 **denied; Lambert v. Supreme Court of Colorado, 414 U.S. 878, 94 S. Ct. 156,**
15 **38 L. Ed.2d 123 (1973).**
16

17 It is unbelievable that neither, Clark or Reed were aware of what the conflicts
18 were, or that omitting their working arrangement prior to the August 21, 2017
19 substitution was a **clear act of misconduct**.
20

21 **NRCP Rule 61** indicates that there is harmless error, **unless** refusal to take
22 such action appears to the court, to be inconsistent with substantial justice. **Rule**
23 **62(b)** speaks to a stay on such conditions for the security of the adverse party and
24 that the court can stay a matter pursuant to **Rule 59 or Rule 60**.
25

1 Given petitioner's moving papers, showing that he didn't learn of the rule
2 violations until the September 14, 2018 filing of the Report via Clark's affirmation,
3 and for the trial court to say that petitioner's Motion reflects a misunderstanding of
4 **NRCP rule 59, 60, 61, and 62**, as well as a misunderstanding of what is required
5 for relief to be granted under any of the provisions mentioned, can certainly be
6 construed as strange.
7

8 Yet, the appellate court, charged with reaching a finding and conclusion based
9 upon what is in the trial record, states that,
10
11 "Ford also asserts that the district court abused its discretion in denying his motion
12 for a new trial and for relief from judgment related to the **March 16, 2018**, order
13 entered following the evidentiary hearing. But that motion was not timely filed and
14 thus, it was properly denied." **(App- 161-162)**
15

16 **Petitioner motion for a new trial was based upon what was learned**
17 **in the September 14, 2018 Report filing (App- 113-120)** and petitioner so
18 advised the appellate court of its error in "Appellant's Petition for Rehearing", filed
19 on May 19, 2020, at pages 1-2:25-8, indicating that his motion was "**NOT**" related
20 to a March 16, 2018 order, that **the date of March 16, 2018, was in fact never**
21 **discussed** in his moving papers, reply papers of the motion, nor the appellant's
22 opening brief. In fact, Petitioner's appellant's opening brief at the very beginning of
23 the statement of fact, made it very clear that the dates began with the filing of the
24 Report of Administration on September 14, 2018, and all of petitioner's moving
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1 papers for his objections and all motions were as a result of the report filing,
2 anticipating the order that was and did come.
3

4 If per arguendo, if petitioner's motion was related to the March 16th order and
5 the appellate court had not made the mistake it did, there was still discretionary
6 abuse given that there is no time limit regarding the perpetration of fraud upon a
7 court per NRCP 60(b).
8

9 **A-1. The Appellate Court argues point 1, for the petitioner**

10 What is most incredulous, is that the appellate court cites in footnote 2 of its
11 Order of Affirmance, NC-DSH, Inc. v. Garner, 125 Nev. 647, 218 P.3d 853 (2009)
12 in support of the denial of petitioner's contention that a motion for fraud upon the
13 court was allowable past the 6 month limitation period, and stating that the
14 argument is without merit. (App- 162) However, in another case on point, NC-
15 DSH, Inc. v. Garner, 125 Nev. 647, 650, 218 P.3d 853, 856 (2009) states,
16 “[W]hen a judgment is shown to have been procured by fraud upon the court, no
17 worthwhile interest is served in protecting the judgment.” Id. at 653, 218 P.3d at
18 858 (internal quotation marks omitted). We have defined a “fraud upon the court”
19 as “only that species of fraud which does, or attempts to, subvert the integrity of the
20 court itself, or is a fraud perpetrated by officers of the court so that the judicial
21 machinery cannot perform in the usual manner its impartial task of adjudging
22 cases .” Id. at 654, 218 P.3d at 858 (emphasis added) (internal quotation marks
23 omitted). “An attorney is an officer of the court”; as such, an attorney “owes a duty
24 of loyalty to the court, [which] demands integrity and honest dealing with the
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28

1 court.” Id. at 654-55, 218 P.3d at 858-59 (internal quotation marks omitted). “And
2 when [an attorney] departs from that standard in the conduct of a case[,] he
3 perpetrates fraud upon the court.” Id. at 655, 218 P.3d at 859 (internal quotation
4 marks omitted). Even then, in **Bonnell v. Lawrence**, 128 Nev. 394, 400, 282 P.3d
5 712, 715 (2012), it is allowed to prevent a grave miscarriage of justice.
6

7 **The appellate court did however make an error** and used the wrong
8 triggering date in its findings and conclusions and when the petitioner advised the
9 appellate court, it simply denied that part of the petition for rehearing, leaving the
10 petitioner and the court record with, “Ford also asserts that the district court
11 abused its discretion in denying his motion for a new trial and for relief from
12 judgment related to the **March 16, 2018**, order entered following the evidentiary
13 hearing. But that motion was not timely filed and thus, it was properly denied.”
14
(App- 161-162)

15 Again, the motion was filed as a result of the September 14, 2018 filing and
16 was filed on September 28, 2018. (App-107)

17 The appellate court erred and inserted the wrong date and then made its
18 ruling based on that wrong date.

19 As with the trial courts, *should not the appellate courts* in their decisions
20 outlining their findings and conclusions also be viewed as clearly erroneous, if that
21 decision is not correctly based upon a lower court’s record, but rather a factual
22 mischaracterization that contains an error inserted by that reviewing court. (App-
23 158) Not to mention that the reviewing court was given sound information that
24

1 could only leave the court with a definite and firm knowledge that a *mistake was*
2 *made by their own hand*, and properly raised to that court on a petition for review?
3

4 **This question alone merits review. (App- 166)**

5 In the United States v. Olano, 507 U.S. 725, 736 (1993) and United
6 States v. Marcus, 560 U.S. 258 (2010), the Court gave a clear understanding to
7 the plain-error rule an appellate court can use to correct an error not raised at trial
8 when the appellant demonstrates that (1) there is an error, (2) the error is clear or
9 obvious, (3) the error affected the appellant's substantial rights, and (4) the error
10 seriously affects the fairness, in-tegrity, or public reputation of judicial proceedings.
11

12 It is clear that the petitioner in this case clearly satisfied all four prongs this
13 Court set forth in Olano and/or Marcus, would not the guidelines therein, also
14 apply to this Appellate Court as well, particularly when it was this appellate court
15 that created this blatant error?
16

17 In reviewing the trial court's decision, an appellate court does not substitute
18 its judgment for that of the trial court but decides whether the trial court's decision
19 constitutes an abuse of discretion. See McDaniel v. Yarbrough, 898 S.W.2d 251,
20 254 (Tex.1995); Riddick v. Quail Harbor Condo. Ass'n, Inc., 7 S.W.3d 663, 678
21 (Tex.App.-Houston [14th Dist.] 1999, no pet.).
22

23 The Nevada Appellate Court, due to its own error of inserting the incorrect
24 triggering date, has substituted its own judgment, and thus decided an important
25 question in a way that has so far departed from the accepted and usual course of
26
27
28

1 judicial proceedings, and whose action has created a case of first impression that
2 not only calls for, but demands an exercise of this Court's supervisory power.
3

4 So, question 1 clearly becomes necessary to answer! What is the abuse of
5 discretion standard to be used for review, in a case where the appellate court
6 itself, upon reviewing a trial court's record, picks out an old and non-applicable
7 material fact and uses it as a triggering date, which was never raised in any of
8 petitioner's three (3) September motions that prompted the trial court orders, nor
9 that was never raised or briefed on appeal, then erroneously substitutes this non-
10 applicable order's six (6) old triggering date at a point in the record six (6) months
11 later, and then, in reliance upon this incorrect triggering date, mistakenly imputes
12 the incorrect triggering date into its findings and conclusions, thereby creating an
13 error of such a nature, that it impacts every aspect of the case, and to leave it
14 uncorrected would result in damage to the integrity, reputation, and fairness of the
15 judicial process?
16

17 **B. Discussion as to question two:**

18 On or about September 14, 2018, Budde, through her counsel of record Reed,
19 filed her Report of administration, Reed attached to this Report, two (2)
20 affirmations, one on behalf of herself with attached invoices and one on behalf of
21 Clark, with attached invoices.
22

23 Upon reading the Report, the affirmations of Reed and Clark, along with their
24 attached invoices, it became crystal clear that Reed and Clark had created a conflict
25 of interest. (App- 7, 71-83)
26

1 In or about March of 2016, Ford sought Clark out to represent him in this
2 instant matter, conveying all his confidential information and strategies to Clark
3 and his office. After several days, Clark's office advised the petitioner that he was
4 too busy with other cases and could not take on his case. After approximately two
5 months, unbeknown to Ford, Clark took on the case on behalf of Budde, and against
6 Ford. Clark followed this by hiring Reed to do legal research in the case in the
7 same area that Ford's strategies rests and covering the exact same topics.
8

9
10 In the interim, Ford learns that it is the same Clark representing Budde, that
11 he spoke with and immediately filed to have Clark removed. Ford and Clark
12 briefed the matter before the court in May thru June of 2017, and the court ordered
13 the email documents between the two parties to be filed in-camera. Following the
14 documents being presented in-camera, Clark suspecting the outcome, entered into
15 talks with Reed for her to substitute herself in the case as new counsel for Budde.
16
17 The invoice documents they attached to their affirmations in the Report, shows they
18 discussed it between themselves as well as with Budde. Substitution of counsel was
19 effective on August 7, 2017. **(App- 71-83)**
20

21 On August 7, 2017, per the Report, Reed began her involvement in the case as
22 counsel, and the substitution of attorney is filed on August 21, 2017.
23

24 On September 14, 2018, Reed files the Report and Ford files his objections,
25 addressing those issues, the conflict of interest² and requesting that all matters be
26

27

28 ² Clark came onto the case around June/July 2016, after telling Ford he
was too busy. Clark hired Reed to work with him and do research in the same
area Ford told Clark, in confidence, that he would work in. Reed worked on

1 stayed, so that the conflict of interest issue could be sorted out, given the conflict of
2 interest was ostensible at the very least.
3

4 **Notwithstanding what became petitioner's most extremely unique 19-**
5 **page objection to Budde's Report pointing out how the case had been**
6 **fraught with fraud and tainted from its beginning, petitioner filed his 21-**
7 **page motion to relieve and sanction counsel on 9-26-2018. Reed filed her 7-**
8 **page opposition on 10-10-2018, with petitioner filing his 12-page reply on**
9 **10-18-2018. One 19-page brief and three briefs of 40-pages of a motion that**
10 **argued only attorney conflict of interest (App- 59-103), and the trial court**
11 **responded as follows, (emphasis added)**
12

13
14 *"The Court finds that Ms. Reed acted ethically and appropriately in this case, and*
15 *that the tasks that she took on in this case were in compliance with the law and are*
16 *required to be completed in an estate matter resulting in a full and final distribution*
17 *of estate assets. For these reasons, the Court finds that Plaintiff's Motion lacks both*
18 ***statutory and ethical grounds upon which it could be granted. ACCORDINGLY,***
THE COURT DENIES PLAINTIFF'S MOTION TO RELIEVE AND
SANCTION COUNSEL IN ITS ENTIRETY." (App-104-105)

19 **There are two things** that appear to fall into a bird's eye view, one becomes
20 painfully clear, that **the court did not see the objections to the Report** (as
21 more fully discussed in question 3), filed by Ford, and gave even less attention or
22 weight to the contents of the motion to relieve and sanction counsel, its opposition
23 and reply briefs **and instead responded in a fashion that one can clearly see**
24 **the court only saw and responded to the Report brief as if it were standing**
25

26
27 the case beginning in January through February/March of 2017 and then Clark
28 stepped out and allowed Reed to Substitute in, in August of 2017. They did
this because of Ford's motion to dismiss Clark, all without telling Ford or
the Court.

1 alone, and totally absent of 59-pages from both sides regarding the pros and cons of
2 conflict of interest. There is not one district court judge, having seen 59-pages of a
3 briefed argument on conflict of interest, who would not make some sort of comment
4 pertaining to that argument. These were not briefs weighted to several topics,
5 instead they were all weighted towards conflict of interest, demanding a response.
6

7 This borders on Judicial Misconduct on its face.
8

9 Second, and less obvious is that the lower courts have little respect or
10 patience with In Pro Se litigants who are often perceived as a drag on the courts
11 time and resources and will not simply go away, in their sincere desire for a full and
12 fair opportunity for justice. Thinking he has nothing important to say, doesn't fully
13 understand the system, and doesn't know when to go away and accept his fate, as
14 such, the court and its legal assistants doesn't look at the briefs of the petitioner
15 with respect, in what they hoped would be the latter stages of the case, as if it were
16 Res adjudicata.
17

18 From this, the petitioner files his appeal and the reviewing appellate court
19 issues the following finding and conclusion pertaining to this portion of petitioner's
20 appeal:
21

22 "Ford further argues that the district court abused its discretion in denying his
23 motion to disqualify counsel based upon an alleged conflict of interest. Based upon
24 our review of the arguments and record before us, we cannot say that the district
25 court manifestly abused its discretion in denying the motion to disqualify. See Nev.
26 Yellow Cab Corp. v. Eighth Judicial Dist. Court, 123 Nev. 44, 54, 152 P.3d 737, 743
27 (2007)(noting that the district court has broad discretion in matters of
disqualification and that a district court's order on disqualification will not be set
aside absent a manifest abuse of that discretion). (App-161)
28

1 **B-1. The Appellate Court argues case on point 2 for petitioner**

2 The question to be asked at this point is, where in the record does the trial
3 court even mention "conflict of interest?" Even in citing Nev. Yellow Cab Corp, the
4 reviewing appellate court acknowledges and discusses "conflict of interest", with the
5 cited case is replete with discussion on what constitutes the conflict. See also,
6
7 Ennis v. Ennis, 88 Wis. 2d 82, 276 N.W.2d 341, 348 (Ct. App. 1979), "a serious
8 breach of the Code of Professional Responsibility" and should be disqualified. *Id.* at
9 98, 276 N.W.2d at 347. Noting that the attorney's conflict of interest was
10 "obvious," *id.* at 99, 276 N.W.2d at 348; City of Whitewater v. Baker, 99 Wis.2d
11 449, 299 N.W.2d 584, 586 (Ct. App. 1980)

13 Also, "where an attorney represents a party in a matter in which the adverse
14 party is that attorney's former client, the attorney will be disqualified if the subject
15 matter of the two representations are 'substantially related.' Westinghouse Elec.
16 *Corp. v. Gulf Oil Corp.*, 588 F.2d *886 221, 223 (7th Cir. 1978)

18 Yet, absent the petitioner's lack of understanding, both the trial court and the
19 reviewing court seems to ignore where petitioner points out for the sake of
20 argument, that the obfuscation being attempted and the courts appears to turn
21 their one blind eye towards, again requires, a careful restatement of that 12-point
22 timeline of events central to the issue of the conflict of interest claims:
23

25 1. "On or about March 5, 2016, petitioner's Office contacted Clark's office and
26 exchanged the initial communication of privileged information and work
27 product information, which was the heart of the petitioner's action/defense.
28

1 This included, but was not limited to, an in-depth discussion on issues
2 relating to his community and separate property claims and the co-mingling
3 of all assets related thereto. It is noteworthy that nowhere has Defendant
4 provided any rebuttal to petitioner's claim that highly confidential and
5 privileged information was provided to Mr. Clark. Counsel Clark opted to not
6 represent the petitioner at that time, claiming he was too busy with two other
7 cases. petitioner however, had already provided a roadmap of the sensitive
8 aspects of his case with the expectation that Clark would be willing to
9 establish a client-lawyer relationship. As such, petitioner was a "prospective
10 client" within the meaning of this Rule and in fact an actual client. See
11 petitioner's "In-Camera" documents submitted to the Court on July 3, 2017.
12 However, two (2) months later, following the receipt of the petitioner's vital
13 and privileged information and strategy, and his confidential work product,
14 Clark is on the case for Budde having absorbed the petitioner's information
15 and logic dictates that Reed compared it to the Defendant's information;
16
2. On or about April 24, 2017, petitioner had finally acquired the information
21 to connect the dots and realized that it was in fact Clark and his paralegal
22 Kathi Lutsch, who had received the aforementioned vital information.
23
3. On or about April 27, 2017, petitioner filed his Motion to Relieve and/or
25 Disqualify Counsel.
26
4. On or about May 10, 2017, Clark filed a response to the April 27, 2017
27 "Motion".
28

5. On or about May 11, 2017, petitioner filed his Reply to Clark's above Response.
6. On or about June 28, 2017, the Court issued an Order requesting the In-Camera submission of the e-mails in question between petitioner's office and Clark's office.
7. On or about July 3, 2017, petitioner submitted in camera, as ordered by this Court, the pertinent e-mails, showing that he had to have been considered both a Prospective client and an actual Client of Counsel Clark. As outlined in Nevada Revised Statutes, NRS 49.035 through 49.085 and the applicable rules of the NRPC.
8. Clark responded to the submission of petitioner.
9. On or about July 27, 2017, petitioner replied to Clark's response; and
10. On or about August 21, 2017, Clark conceded, and he and Reed filed the Substitution of Counsel. Ms. Reed's takeover of the case was specifically due to the petitioner's then pending "Motion to Relieve and/or Disqualify Counsel" Clark; (App-71-83)
11. Now again, I would like to direct this Court's attention to the timeframe between points 1 and 2 above and point out that on or about January 5, 2017 thru February 28, 2017, Clark's law firm associated with Reed's law firm and Reed worked on the most important aspects of petitioner's case, that being community and separate property, with the commingling of community and separate property assets, the core issues of petitioner's case. This takes

1 place a short two (2) months before petitioner learns that it was this
2 particular Clark's office that had direct access to his vital and privileged
3 information and strategy and his confidential work product as well.
4

5 12. When the petitioner filed his Motion to Relieve Clark, he had absolutely no
6 idea that Reed had been silently and clandestinely working on the case."

7 It should have been clear to the Court that the petitioner had been a
8

9 Prospective client of Clark while Reed was associated with the case and Clark.

10 NRPC states in pertinent parts and is quite clear at "Rule 1.18(a)-(d),

11 **Duties to Prospective Client:**

12 (a) A person who consults with a lawyer about the possibility of forming a
13 client-lawyer relationship with respect to a matter is a prospective client.

14 (b) Even when no client-lawyer relationship ensues, a lawyer who has learned
15 information from a prospective client shall not use or reveal that information,
except as Rule 1.9 would permit with respect to information of a former client.

16 (c) A lawyer subject to paragraph (b) shall not represent a client with interests
17 materially adverse to those of a prospective client in the same or a substantially
18 related matter if the lawyer received information from the prospective client that
19 could be significantly harmful to that person in the matter, except as provided in
20 paragraph (d). If a lawyer is disqualified from representation under this paragraph,
no lawyer in a firm with which that lawyer is associated may knowingly
undertake or continue representation in such a matter, except as provided in
21 paragraph (d)." (emphasis added after)

22 Counsel Clark knew he could not prevail against this petitioner's motion to
23 remove him, and in order to avoid a dismissal issued by the Court, he gave Reed the
24 case on which she already had the benefit of knowing about petitioner's confidential
25 information. Petitioner had pointed out to the court that counsel's failure to
26 disclose their previous, concurrent working relationship on this case, suggests a
27 certain consciousness of guilt.
28

1 The petitioner also pointed out to the Trial Court that, "Reed's work for Clark
2 centers around the exact confidential communication previously transmitted to
3 Clark. How can Reed perform the work assigned to her without having been
4 provided with the specific facts, details and contentions of the parties' community
5 and/or separate property issues, including their respective positions; positions
6 which Clark could have only learned about through the confidential information
7 petitioner provided. It would be naïve to believe that Clark did not give Reed some
8 insight into his thinking, which would surely have included the confidential
9 information that was already on his mind. Clark gave Reed specific direction for
10 her area of research to be done. Attorney Reed performed what might be viewed as
11 fairly sophisticated work, maintained copious notes and performed considerable
12 research before propounding carefully targeted and exacting discovery upon
13 petitioner, using details that Reed could have only obtained from her predecessor
14 Clark, who had the benefit of petitioner's prior "privileged communications," in spite
15 of her stating she was only an expert witness. (App-)

20 **ABA Rule 1.10** Imputation of Conflicts of Interest: General Rule

21 (a) While lawyers are associated in a firm, none of them shall knowingly
22 represent a client when any one of them practicing alone would be prohibited
23 from doing so by **Rules 1.7 or 1.9**

25 Under **ABA Model Rule 1.18(a)-(c)**, it explains that the possibility of conflicts
26 must be considered before representation is actually undertaken because
27 discussions about **substantially related** matters may lead to conflict problems.

1 If the lawyer obtains too much information from a prior arrangement, that
2 information may be used to conflict out both the lawyer, his firm and those lawyers
3 associated with the firm, especially those who have actually worked on the same
4 case in close proximity as to time, i.e. Reed.

5 If an attorney represents a current client against a former client, the attorney
6 will be subject to disqualification if there is a substantial relationship between the
7 two representations. (**Flatt v. Superior Court (1994) 9 Cal.4th 275, 283.**)

8 Under the **Substantial Relationship Test**, a court may disqualify Counsel
9 when the subject matter of a case bears a “substantial relationship” to a matter in
10 which Counsel previously advised or represented the presently adverse party. This
11 test was enunciated in **T.C. Theatre Corp. v. Warner Bros. Pictures, 113F.**
12 **Supp. 265, 268 (S.D.N.Y. 1953)**. When the substantial relationship exists, the
13 court will irrebuttably presume that the attorney received confidential information
14 relevant to the present case. See also **People ex rel. Dept. of Corporations v.**
15 **SpeeDee Oil Change Systems, Inc., 20 Cal. 4th 1135**. Here, the substantial
16 relationship test is more than satisfied. Clark and Reed worked on the same
17 identical case.”

18 Following the Order of Affirmance, petitioner filed his petition for rehearing
19 with the appellate court on May 19, 2020. The appellate court responded with an
20 Order granting rehearing in part, denying in part, and affirming, in which the
21 portion of petitioner’s rehearing petition pertaining to the discussion supra, was
22 simply denied. (**App- 165, 178**)

1 As was the subsequent petition for review by the Supreme Court. (App- 181)

2 Therefore, question 2, what then is the abuse of discretion standard used for
3 review, where the appellate court ignores its own well-established directions and
4 guidelines regarding rules of professional conduct, and where a district court judge's
5 impartiality might reasonably be questioned where the trial court deliberately
6 ignores a wholly briefed and crucial judicial misconduct matter, where counsels are
7 more likely to obfuscate court with fraud than enlighten the court?

8 With the level of experience had by Clark and Reed, this is something that
9 could have only been purposely omitted, as Reed had stated she did not have to tell
10 anyone. (App- 87) They knew or should have known as seasoned attorneys that
11 NO Court would sit still and let such a blatant fraud upon the Court and the
12 Judicial System stand. It most certainly allowed Reed to have irreparable and
13 unfair advantage over this petitioner.

14 Reed had perpetrated a fraud upon the Court that succeeded for over a year,
15 with little regard for a Court's want of integrity. Reed's actions affect the
16 substantial rights of the petitioner and flies in the face of the plain-error rule, even
17 if that error had not been brought to the district court's attention, such as discussed
18 in **Marcus**.

19 It would be unprofessional for me to say that the above unaccountability is
20 exactly what allows Reed and Clark to smile all the way to the bank and even at
21 this reading, to smirk, but then, I'm not of Clark's caliber, nor do I ever hope to
22 reach Reed's level of unprofessionalism.

1 C. Discussion as to question three:

2 On September 14, 2018, Budde filed a Report of Administration (Report)
3 (App- 7), with affirmations and attached exhibits (App- 71-83). Petitioner
4 unknowingly, filed what became a most unique and timely 19-page objection on
5 September 25, 2018. (App- 28)

6 Petitioner's objections covered several pertinent areas, but most of all, the
7 issue of attorney conflict of interest, unfair advantage and fraud upon the court and
8 sought to stay the entire proceeding until all the issues could be worked out.

9 In spite of petitioner's timely 19-page objection and 5-attached exhibits, the trial
10 court did not address any of petitioner's objections to the Report, but merely stated
11 in its Order of findings and conclusion, prepared by Reed, "The Report of
12 Administration and the Estate Accounting is settled, allowed, confirmed, and
13 approved in its entirety over Mr. Ford's objection."

14 Ford appealed, citing an abuse of discretion by the trial court judge because
15 all the evidence presented was not properly reviewed and considered. The court
16 acknowledged this fact in "THE TRANSCRIPT OF PROCEEDINGS, HEARING ON
17 MOTIONS, November 9, 2018, Reno, Nevada, (Ruling of the Court Transcribed
18 Separately)", (App- 141) , wherein the Court acknowledges the filing of the Report
19 at page 3-4:18-1, and goes on to state at page 4:2-3, "I did not see an objection
20 filed. Did you file an objection, Sir?" (Emphasis added after), The petitioner
21 went on to state at page 4:4, "Yes, we did." Budde's counsel Reed than confirmed
22 the petitioner's reply and objection filing, at page 5:13-15. (App- 141)

1 Ruling of the Court is contained within a separate transcript.)" and goes on to say,
2 "(This portion of the proceedings concluded at 10:13 a.m.)" (App- 146)

3 Second, we have the ruling of the court, re: hearing on the motions. While the
4 cover page is dated November 12, 2018, the ruling actually took place on, FRIDAY,
5 November 9, 2018, RENO, NEVADA, 10:14 A.M, as shown at page 3:1 of the
6 "TRANSCRIPT OF PROCEEDINGS, RULING OF THE COURT, RE: HEARING
7 ON MOTIONS. (App- 148) As one can clearly see, the transcripts were clearly
8 misconstrued, the hearing began and then ended with the court's ruling and with
9 Ford's Objections to the "REPORT OF ADMINISTRATION" of the estate having
10 never been given its due consideration. The fact that the Appeal's Order states at
11 page 3, "the judge stated that she had spent quite a bit time reviewing everything in
12 the case and that the report and accounting were approved over Ford's objection",
13 defies logic and makes no sense at all.

14 The Petitioner filed his petition for rehearing and the appellate court
15 reiterated its denial by stating,

16 2. "On appeal. Ford faults the court for stating at the hearing on Budde's
17 petitions that it had not seen an objection filed. Based upon that statement
18 and the fact that the district court's order does not specifically address his
19 objection, or the arguments contained therein, he asserts that the district
20 court did not properly review all of the evidence presented. But the relevant
21 transcripts and the court's order indicate otherwise. While the district court
22 judge did initially state that she did not see Ford's objection, the court
23 subsequently corrected that statement after questioning from Budde's
24 counsel, noting that she did, in fact, have the objection." (App- 179-180)

25 3. "Under these circumstances, Ford's assertions that his objection was not
26 considered are unfounded, and his argument in this regard lacks merit.
27 Accordingly, we affirm the district court's resolution of Budde's petitions."

1 In spite of the reviewing court's efforts, there was no subsequent correction of
2 the record by questioning Budde's counsel. There was no questioning of Budde's
3 counsel after Budde's counsel confirmed that there was in fact an objection filed.
4

5 While the appellate court stated in its August 24, 2020 ruling, "Moreover, the
6 district court judge correctly noted that Ford's objection only related to certain parts
7 of the petition, which demonstrates that the court reviewed it."
8

9 But this does not demonstrate that the district court reviewed the objections,
10 for several reasons, as the court made several comments, and had to be directed to
11 the almost 20-page objection that addressed the shock at the misconduct and open
12 conflict of interest that was so brazen on the attorneys part. The reasons in part:

13 1.) The court utilized 9-lines to fully identify the Report as being "filed and duly
14 noticed" and then the court stated, "I did not see an objection filed".
15

16 2.) The district court than asked, "Did you file an objection, sir?"
17

18 3.) Petitioner said yes.

19 4.) Budde's counsel then stated, "I just want to make sure that the record is
20 reflective that there was a reply and objection filed by Mr. Ford on 9/25/18."
21

22 What is clearly demonstrated at this point, is that this is a discussion about
23 an upside-down document that was NOT seen prior to this point.
24

25 5.) The court said, "Right. I have it all."

26 6.) The court next said, "His reply was only to certain parts."
27

28 But, what is even more demonstrative of the objections not being seen, is that
while the court was confirming the existence of the objections, it makes no mention

1 of the fact that the uniquely filed objections is the only document in the thousands
2 of pages of the record, that was erroneously filed upside down. (App- 28)
3

4 A document that is scanned filed upside down, is one that is rarely seen by
5 any court, and therefore quite noticeable and a topic of discussion unto itself.
6

7 The objections are very strange to look at, it is akin to a spinning top with its
8 file stamp mixed in with the upside-down words at the bottom of the page. It is
9 extremely odd and most noteworthy; in that it would be the first thing mentioned by
10 a judge during an open hearing where the document was being discussed. I would
11 venture to say that it would almost be insulting to the legal eye. Certainly, one
12 would expect the court to say something more realistic like, Right, I have it, this is
13 weird, the pages are filed upside down, instead of merely rushing to acknowledge it.
14

15 However, once the court saw the objections and read the title, she would have
16 seen that it was titled, Plaintiff's Reply and Objection to Pertinent Parts of
17 Defendant's (1) Report, et al., but merely reciting the title, does not demonstrate
18 that the court reviewed it. (App- 143, 144)
19

20 Had the court reviewed the objections, she would have noticed that it centered
21 on attorney conflict of interest and misconduct between attorney Clark and Reed.
22 Those were the pertinent parts. Again, a district court abuses its discretion when it
23 resolves the matter in a manner "that is against logic and the facts on record."
24

25 Petitioner's motion for relief under NRCP 59 and 60, were centered on
26 appellant's objections to the Report and what was learned from the report.
27 Petitioner's subsequent motion to relieve and sanction counsel was most certainly
28

1 centered on the same petitioner's objections to the Report and what was learned
2 from the report.

3 The reviewing appellate court, instead of trying to read into record something
4 that is not there, should go back to where the district court said, "I did not see an
5 objection filed. Did you file an objection, sir?" This should be controlling, with the
6 evidence and the reasonable inferences which may be drawn therefrom, being
7 viewed in the light most favorable to the appellant. (See *Hahn v. Oregon*
8
9 *Physicians' Service*, 9th Cir., 868 F.2d 1022 (1988); *Langager v. Lake Havasu*
10
11 *Community Hosp.*, 9th Cir. 688 F.2d 664 (1982) *Wineberg v. Park*, 9th Cir., 321
12 F.2d 214 (1963); *Kingston v. McGrath*, 9th Cir., 232 F.2d 495 (1956)

13 Therefore, question 3, what is the abuse of discretion standard used for
14 review, where the appellate court ignores its own well established directions and
15 guidelines regarding the trial court which rendered its decisions based upon facts
16 that were not supported by the record and the subsequent decision resulted in plain
17 error, of the kind that a reviewing court supposedly and normally seeks to avoid?

18 As in *United States v. Atkinson*, 297 U.S. 157 (1936). The court of appeals
19 should correct a plain forfeited error affecting substantial rights if the error
20 "seriously affect[s] the fairness, integrity or public reputation of judicial
21 proceedings." *Id.*, at 160.

22 This is not simply a petition for a writ of certiorari based upon erroneous
23 factual findings or the misapplication of a properly stated rule of law, but rather
24 this may indeed be a case of first impression wherein the state's court of appeal,

1 inserted incorrect triggering date into its decision, a false date that was not used by
2 this petitioner in any of its September 2018 law and motions, which the results
3 prompted the appeal or presented by the petitioner in his opening appellate brief,
4 and then appellate court used that incorrect date and inserted it into their findings,
5 as the foundation and guide for their decision. The error is so serious, given that
6 the application of the date in question, is so pivotal and dispositive to petitioner's
7 case, as to warrant nothing less than ordering this case back to the lower tribunal
8 for correction or "reversed and remanded." (See Olano, Marcus and Bonnell,
9
10 Supa)

11
12 Under the Due Process Clause, the U.S. Constitution says in the Fifth and
13
14 Fourteenth Amendments, to the federal and state governments, as a legal
15 obligation to all, that no one shall be deprived of property without due process.

16 **CONCLUSION**

17 The Court should grant the petition for certiorari.

18
19 Respectfully submitted,

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Lawrence W. Ford
P.O. Box 358
Fairfield, CA 94533
(707) 365-3636 (Mess)
lawisnotblind@comcast.net
IN PRO SE