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2 DON L. ROSS
3 NEVADA BAR NO. 3802
4 JASON MORRIS
5 NEVADA BAR NO. 10689
6 LAUREN D. BERKICH
7 NEVADA BAR NO. 12357
8 **WOODBURN AND WEDGE**
9 6100 Neil Road, Suite 500
10 Post Office Box 2311
11 Reno, Nevada 89505
12 Telephone: (775) 688-3000
13 Facsimile: (775) 688-3088
14 Attorneys for Roger Hillygus

10 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
11 **IN AND FOR WASHOE COUNTY**

12 In the Matter of the

Case No. PR14-00025

14 HILLYGUS FAMILY TRUST,
15 Dated August 17, 1993

Dept. No. PR

16 _____ /
17 **OPPOSITION IN PART TO ORAL MOTION FOR THE**
18 **APPOINTMENT OF GUARDIAN AD LITEM**

19 Roger E. Hillygus, by and through his attorneys Don L. Ross and Lauren D. Berkich
20 of the law firm Woodburn and Wedge, hereby submits his Opposition in Part to Oral Motion
21 for the Appointment of Guardian Ad Litem. This Opposition is based upon the following
22 Memorandum of Points and Authorities.

23 **MEMORANDUM OF POINTS AND AUTHORITIES**

24 H. Eugene Hillygus (hereafter "Gene") and Susan L. Hillygus (hereafter "Sue")
25 executed the trust agreement for the Hillygus Family Trust on August 17, 1993, attached
26 hereto as Exhibit "1." Section 9.1.2. of the Trust Agreement provides as follows:
27

28 9.1.2. If either H. EUGENE HILLYGUS or SUSAN L. HILLYGUS
shall die, or shall for any reason fail to qualify or cease to act as Trustee, the

1 remaining named individual shall act as Trustee. On the death of both
2 Settlers, or upon the incapacity of the Surviving Settlor, ROGER H.
3 HILLYGUS is appointed as Successor Trustee. In the event the above
4 identified [sic] Successor Trustee is unable or unwilling to serve as Successor
5 Trustee, ROBIN R. HILLYGUS-RENWICK shall serve as Successor Trustee.

6 Although the language of this Section is poorly drafted, Section 9.1.2 manifests Gene's and
7 Sue's clear intent that in the event neither of them is unable to act as a Trustee of the trust then
8 their son, Roger H. Hillygus (hereafter "Roger"), is to serve as the Successor Trustee of the
9 trust.

10 The family members and attorneys involved in this unfortunate family drama are all
11 aware that Gene suffers from dementia and that Sue suffers from the effects of Alzheimer's
12 disease. Sue is represented by Gordon Muir. Steve Moss previously represented Gene,
13 however, pursuant to the June 12, 2014 letter attached hereto as Exhibit "1," Mr. Moss was
14 discharged. Gene is currently not represented by counsel in this matter.

15 Despite the fact that Roger has been the acting Successor Trustee, Mr. Moss set his
16 previously filed Petition Regarding Administration of Revocable Trust for hearing,
17 purportedly on behalf of Gene, seeking to appoint Adam Clark as Successor Trustee. Roger's
18 Objection to this Petition was filed on June 18, 2014.¹ The Petition was set for hearing on
19 June 19, 2014. Mr. Moss conceded at the hearing that Roger was the Successor Trustee but
20 insisted, contrary to the terms of the Trust, that Roger be removed as Trustee. Todd Torvinen,
21 counsel for Robin Renwick, made an oral Motion at the hearing for the appointment of a
22 Guardian ad Litem on behalf of Gene and Sue.

23
24 Roger hereby Opposes that Motion as to Sue because a Guardian ad Litem for Sue is
25 not needed. Sue is adequately represented in this proceeding by Gordon Muir. The
26 appointment of a Guardian ad Litem for Sue would unnecessarily increase the costs of
27

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¹ It is respectfully requested that the Court review Roger's Objection filed June 18, 2014 for further factual background of this case.

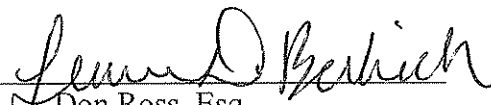
1 administration. The limited Trust resources need to be preserved for Gene and Sue and given
2 that Sue is represented by counsel a Guardian ad Litem is unnecessary for Sue. There's no
3 objection to the appointment of a Guardian ad Litem to represent Gene's interests now that he
4 is not represented by counsel. Roger would agree to the appointment of John Smith or Kathy
5 Breckenridge as Guardian ad Litem, whom the parties previously discussed for this role.
6

7 Given the termination of Mr. Moss, he should not continue to represent either Gene or
8 Sue in this matter. Mr. Moss represented both Gene and Sue when he prepared their estate
9 plan, which is at issue here. When Gene and Sue's interests became adverse in 2013, Mr.
10 Moss aligned himself with Gene without obtaining a waiver of the conflict. Then, in January
11 2014, only Gene executed an amendment to the Trust Agreement prepared by Mr. Moss, well
12 after Gene had been deemed incompetent by his physician Dr. Elliott.² Given the termination
13 of Mr. Moss by Gene and given Mr. Moss' previous actions, Mr. Moss should be excluded
14 from representing any parties in this case.
15

16 Roger appreciates that Gene and Sue should be represented in these proceedings.
17 However, the resources of the estate are limited and should be conserved to provide to Gene
18 and Sue. Therefore, a Guardian ad Litem should be appointed for Gene but not for Sue.

19 The undersigned affirms that this document contains no social security numbers.

20 Dated this 27 day of June, 2014.

21
22 By 
23 Don Ross, Esq.
24 Lauren D. Berkich, Esq.
25 Attorneys for Roger Hillygus
26 Successor Trustee
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² Article 4 of the Trust Agreement requires that an amendment be signed by *both* Settlor.

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CERTIFICATE OF DELIVERY VIA E-FLEX

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Woodburn and Wedge, 6100 Neil Road, Suite 500, Reno, Nevada 89511, and that on the 27th day of June, 2014, I electronically filed the foregoing document with the Clerk of the Court system, which will send an automatic notice of electronic filing to the following:

Stephen C. Moss, Esq.

Todd L. Torvinen, Esq.

Gordon Muir, Esq.

DATED this 27th day of June, 2014.



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EXHIBIT LIST

Exhibit #	Description	# of Pages
1	Letter to Moss	2