

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT

██████████,
Petitioner,

v.

No. ██████████
HON. GERARD J. LAVELLE

██████████,
Respondent.

JOINT MOTION TO PROCEED WITH CASE USING POWER OF ATTORNEY

COMES NOW ██████████ and ██████████, acting as agents for Respondent, ██████████, by PREGENZER BAYSINGER WIDEMAN & SALE, P.C. (Bridget L. Mullins), and Petitioner, ██████████ (“Husband”), by and through his attorneys of record, NM Divorce & Custody Law, LLC (Mary Ann R. Burmester), and for their joint motion, STATE:

1. This Court has jurisdiction over the parties hereto and the subject matter herein.
2. A Petition for Dissolution of Marriage (“Petition”) was filed on July 19, 2021.
3. Respondent, ██████████ (“Wife”) has not been served with the Petition as of the date of filing this motion due to the circumstances described herein.
4. On August 26, 1999, Wife signed a Durable Power of Attorney which appointed Wife’s brother, ██████████, and Wife’s daughter, ██████████ (who goes by ██████████), to serve as Wife’s successor agents after her husband, the Petitioner. Given the pending divorce, it is not appropriate for Husband to serve as Wife’s agent. The Durable Power of Attorney grants the agents the power to “commence, prosecute, defend and oppose all actions, suits or legal proceedings to which the PRINCIPAL is now or may hereafter become a party, and to compromise and settle claims, whether

- by litigation or otherwise, and submit the same to judgment or other conclusion.” See *Durable Power of Attorney attached to the Affidavit of Pete Dolezal filed separately.*
5. On October 31, 2019, Wife was declared incapacitated by a medical professional and is unable to proceed with litigating this matter. The medical professional’s letter regarding Wife’s capacity will be filed as a sealed court record or submitted to this Court *in camera* due to the private nature of the document.
 6. More recently, in October 2021, Wife’s mental capacity and ability to perform Activities of Daily Living (“ADLs”) was evaluated by Dr. Swanda. Wife’s condition has not improved, and Dr. Swanda’s opinion is that Wife cannot meaningfully participate in decisions concerning her finances and medical/mental health treatment. Dr. Swanda’s report will be filed as a sealed court record or submitted to this Court *in camera* due to the private nature of the document.
 7. In accordance with the Durable Power of Attorney, [REDACTED] and [REDACTED] [REDACTED] are prepared to assist Ms. Ball in litigating and/or resolving the matters and issues herein.
 8. Husband agrees that [REDACTED] and [REDACTED] should be granted the authority to act as Wife’s agent in the litigation or settlement of this matter and file this motion jointly to avoid the added time, cost and burden of the appointment of a guardian and conservator.
 9. But for the pendency of this divorce case, there would be no need for a guardianship or conservatorship proceeding because Wife’s needs can otherwise be managed using her Durable Power of Attorney.
 10. As such, the parties jointly request this Court allow the case to proceed with [REDACTED]

██████████ and ██████████ acting as Wife's agent and be granted the authority by this Court to proceed in settlement or litigation of this matter to assist the parties in resolving the outstanding issues herein.

11. Should at any point in the proceeding the Court have concerns about Wife's representation, a Guardian *ad litem* could be appointed for her in the divorce.

WHEREFORE Respondent's agents, duly appointed in the 1999 Durable Power of Attorney, request this Court to enter the Stipulated Order to Proceed with Case Using Power of Attorney submitted herewith; and for any further relief this Court deems proper and just.

Respectfully submitted,

PREGENZER BAYSINGER WIDEMAN
& SALE, PC

By: /s/ Bridget L. Mullins

Bridget Mullins

Counsel for Respondent

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Respectfully Submitted,

/s/ Mary Ann R. Burmester

MARY ANN R. BURMESTER

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I hereby certify that a true and correct copy of the foregoing pleading was provided to the parties entitled to notice on February 9, 2022.

/s/ Bridget L. Mullins

Bridget Mullins