

Hanna Warhank  
Michael Talia  
JACKSON, MURDO, & GRANT, PC  
203 N. Ewing  
Helena, MT 59601  
Phone: (406) 442-1300  
hwarhank@jmgattorneys.com  
mtalia@jmgattorneys.com

*Attorneys for Robin R. McCroskey*

IN THE SUPREME COURT OF THE STATE OF MONTANA  
CAUSE NUMBER DA 25-0690

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| In the Matter of the Estate of<br><br>JACK RAYMOND STONE,<br><br>Deceased. | <b>RESPONSE TO MOTION TO<br/>SUPPLEMENT THE RECORD</b> |
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Appellee Robin McCroskey opposes Appellant's January 23, 2026,  
Motion to Supplement the Record on the following grounds:

1. Montana Rule of Appellate Procedure 8 requires that this Court be presented, "...with a record sufficient to enable it to rule upon the issues raised." The record before the District Court, which has been transmitted to this Court, is sufficient for that purpose. No supplementation in this Court is needed. If this Court determines the appraisal at issue should be considered at all, it should be considered on remand in the District Court.

This procedural motion requires some consideration of the merits of the appeal.

2. The issue in this appeal is the calculation of the elective share due to the Estate of Sara Benchoff Stone from the Estate of Jack Stone. Sara died shortly after Jack. The Special Administrator determined that no elective share is due in her *Motion for Approval of Inventory & Appraisement, Determination of No Elective Share, Determination of Homestead Allowance, and Proposed Apportionment of Costs* (Doc. 62) and the District Court agreed in its *Decision and Order Regarding Determination of Values* (Doc. 84).

3. Appellant disagrees with the determination that no elective share is due and argues for the selective application of inflated values to one asset, so he can generate a result that favors him and which would require the return of nonprobate transfers Jack made to his children. Any elective share in this case will not be paid to the surviving spouse, but to her adult children, since the surviving spouse died ten months after the decedent. Payment of an elective share will divest the decedent's children of nonprobate transfers Jack made to them, and give that property to the decedent's step-children.

4. An elective share calculation is based upon the relative value of the property of the decedent (Jack Stone) and the decedent's surviving spouse (Sara Benchoff Stone). The elective share requires calculation of the augmented estate of the decedent. Mont. Code Ann. § 72-2-222(2) (2017).<sup>1</sup> If a surviving spouse has sufficient assets in relation to the decedent, no elective share is due. This is because the value of property owned by the surviving spouse at the time of death is debited from in the augmented estate. *Id.* at § 72-2-222(2)(d)(i). Therefore, consistent methods of valuation must be used for the decedent's assets and the surviving spouse's assets in order to determine the value of an augmented estate. No elective share is due when a surviving spouse has sufficient assets as compared to the decedent.

5. Jack and Sara both owned several properties of significant value in Montana and Texas. The Special Administrator calculated that Jack's assets were valued at \$2.8M and Sara's assets were valued between \$3.5 and \$1.9M, depending on how Sara's interest in her family trust was valued. *Motion for Approval of Inventory & Appraisement, Determination of No Elective Share, Determination of Homestead Allowance, and Proposed Apportionment of Costs*, p. 4 (Doc 62). Sara

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<sup>1</sup> Jack Stone died in 2017, therefore the 2017 code applies.

owned a condo, two houses, 50 timbered and developable acres, and several oil and gas interests in Texas, among other things. Jack's Montana ranch, which is the subject of Appellant's motion, is but one of many properties used to calculate the value of the augmented estate. If tax values are used for all Sara's properties but not for Jack's Montana ranch, the relative values will be skewed to generate a false elective share calculation.

6. Whether the Montana ranch owned by Jack, standing alone, could have been appraised at a higher value, is not relevant under the standard of Montana Rule of Appellate Procedure 8. Similar appraisals have not been obtained for all other assets necessary to calculate the augmented estate according to relative values. All assets of both estates must be valued using the same methods. Additionally, the prejudice which Appellant seeks to show by his instant motion cannot be determined without full appraisals of all Jack and Sara's property, because one high appraisal on Jack's side of the ledger cannot even be considered when Sara's side of the ledger was calculated on tax values.

7. Appellant saw fit to use tax values in the administration of Sara's estate and was estopped by the District Court from complaining about using tax values in this case. *Decision and Order Regarding*

*Determination of Values*, 5 (Doc. 84). The appraisal offered by Appellant has no evidentiary value on its own, which is why the District Court refused it and why this Court should not add it to the record of this case.

8. Appellant's motion to supplement the record should be denied.

DATED this 30<sup>th</sup> day of January, 2026.

JACKSON, MURDO, & GRANT, PC

BY: 

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MICHAEL P. TALIA

*Attorneys for Robin McCroskey*

## Certificate of Compliance

I certify that body of the foregoing brief contains 761 words of proportionately spaced 14-point font, as calculated by Microsoft Word.



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Michael P. Talia

## CERTIFICATE OF SERVICE

I, Hanna Warhank, hereby certify that I have served true and accurate copies of the foregoing Response/Objection - Response to Motion to the following on 01-30-2026:

Oliver Joseph Urick (Attorney)  
PO Box 556  
Urlick Law Firm, PLLC  
Stanford MT 59479  
Representing: Stacie Arntzen  
Service Method: eService

Torger Oaas (Attorney)  
618 W. Main, Ste. 201  
P.O. Box 76  
Lewistown MT 59457  
Representing: Ascension Point Recovery  
Service Method: eService

Mark D. Parker (Attorney)  
401 N. 31st St., Ste. 1600  
P.O. Box 7212  
BILLINGS MT 59101  
Representing: Edmund McAlister Benchhoff  
Service Method: eService

Katherine Elizabeth Antonson (Attorney)  
401 N. 31st St., Ste. 1600  
P.O. Box 7212  
Billings MT 59103  
Representing: Edmund McAlister Benchhoff  
Service Method: eService

Michael Peter Talia (Attorney)  
203 N. Ewing  
Jackson, Murdo & Grant  
Helena MT 59601  
Representing: Robin McCroskey  
Service Method: eService

Bryant Lamar Stone (Other)

P.O. Box 863  
Lewistown MT 59457  
Service Method: Conventional

Electronically signed by Emma Allyn Watkins on behalf of Hanna Warhank  
Dated: 01-30-2026