

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**
2 PIERRE HASCHEFF, AN Case No. 86976
3 INDIVIDUAL,

4 Appellant/Cross-Appellant,

5 vs.

6 LYNDA HASCHEFF, AN
7 INDIVIDUAL,

8 Respondent/Cross-Appellant.

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9 **AMENDED APPENDIX TO APPELLANT’S OPENING BRIEF**

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11 FENNEMORE CRAIG, P.C.

12 Therese M. Shanks
13 Nevada Bar No. 12890
14 7800 Rancharrah Parkway
15 Reno, NV 89511
16 (775) 788-2257

17 tshanks@fennemorelaw.com

18 *Attorney for Appellant/Cross-Respondent Pierre Hascheff*

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filed suit against Smithfield, claiming Smithfield's forbearance agreement required it to sell back its shares of Pinnacle. The district court determined that the forbearance agreement did not create any obligation upon Smithfield to sell its Pinnacle shares back to shareholders. The express language of the agreement imposed no duty upon Smithfield that could be breached by refusal to sell back the shares, because the agreement only provided that Smithfield was to facilitate a proposed merger. Therefore, Pennsylvania law was that, when a written contract was clear and unequivocal, its meaning must be determined by its contents alone. The agreement contained several obligations and terms between the parties, but it contained no language that Smithfield was obligated to sell its shares. In other words, if the Trust wanted such an obligation in the agreement, then it should have been included in the agreement. Pinnacle then argued that the further assurances clause, wherein the parties agreed to cooperate with each other and execute and deliver all such other instruments and take all such action as either party might reasonably request from time to time, required Smithfield to sell its stock, in order to effectuate the transactions provided for in the contract. The contract set forth a

“(i) designated as “unpublished,” “not for publication,” “non-precedential,” “not precedent,” or the like; and

“(ii) issued on or after January 1, 2007.”

number of specific obligations for both parties, and the further assurances clause ensured that the parties would not obstruct each other's efforts to comply with their specific obligations. However, the clause did not impose a duty upon Smithfield to sell its stock.

In the present case, Lynda attempts to rewrite the contract by saying that MSA §37 required Pierre to deliver unredacted attorney billing entries, a copy of his attorney's malpractice file, and his communications with Todd Jaksick's attorneys, and that when he did not, he breached MSA §37. Pierre delivered all of the requested documentation, and he did nothing otherwise to breach MSA §37. Furthermore, as indicated in *In re Winer Family Trust, supra*, there was nothing in the MSA that specifically required Pierre to deliver the above-mentioned documentation. If Lynda wanted access to those documents, then she should have inserted that express obligation in the MSA.

Similarly, *Pride Acquisitions, LLC v. Osagie*, 2014 WL 4843688, at *5-7 (D.Conn., Sept. 29, 2014) (unpublished decision), also is instructive on the same issue and the legal meaning of a further assurances clause. The further assurance covenant requires a party to cooperate fully in the correction of any closing documents so that all documents will be accurately described in the agreement. The provision is a safety valve. For example, if the contract contains an error such

as a failure to provide a precise legal description of the land or other warranty by the party, the provision operates to ensure that the parties execute future agreements necessary to effectuate the present agreement. It can be used to address a step which inadvertently was not included, in order to consummate the transaction, where there may be a post-closing discovery that the transfer of real estate requires the consent of a party or the assignment of a permit or license to effectuate a promise in the agreement. In other words, you cannot use a further assurance clause to rewrite terms that are not included in the agreement. Furthermore, even if the court were to assume that there was a breach of duty under a further assurance clause, it would have to be a material breach to be actionable.

Even if Pierre arguably breached MSA §37, he provided all the documents requested by Lynda, except for privileged documents, and it certainly would not be a material breach, especially in light of the fact that the redacted entries clearly showed that those fees were related to the Collateral Action which Lynda refused to pay in the first instance. *See, One Hundred Pearl Ltd. v. Vantage Securities, Inc.*, 1995 WL 117609, at *2 (S.D.N.Y., March 16, 1995) (unpublished decision) (the court determined that the party's claim that the covenant of further assurances was breached would be dismissed, because it was premised upon a breach of an

express covenant in the transaction agreement, and the party did not adequately allege what express covenant in the agreement caused the further assurances covenant to apply). Similarly, in the present case, Lynda cannot interpret MSA §37 as a condition precedent to Pierre's right to insist on his express contractual indemnity in MSA §40 and thereby defeat said right.

For all of the above-stated reasons, the Court can find, as a matter of law, that Lynda cannot rewrite MSA §37 to include obligations that do not exist in the MSA. Even if there were express covenants requiring Pierre to deliver certain documents, he delivered all of the documents that Lynda demanded, except privileged communications; furthermore, MSA §37 is simply a covenant that was not materially breached by Pierre, and it is not a condition precedent to Lynda's obligation to indemnify.

In order to find a breach of the covenant for further assurances, a majority of courts require that the party must show that it is tied to an express warranty or covenant in the agreement. *See, Tran v. Hall*, 34 Va. Cir. 157, 1994 WL 1031233 (1994) (unpublished decision) (defendants conveyed property by general warranty deed, and plaintiffs claimed that at the time the deeds were executed, the defendant did not have good title to a portion of the property, consistent with the warranty/covenants of title, and therefore, that a covenant for future assurances

required the defendant to take all such reasonable action to perfect good title consistent with the express warranty); *Werner v. Wheeler*, 127 N.Y.S. 158, 142 A.D. 358 (1911) (the further assurances covenant is in the nature of agreement to complete any further conveyance necessary to vest in the covenantee the title intended to be conveyed which could have been, but was not, conveyed by the deed containing the covenant, and usually is enforced by compelling an action for specific performance); *Martin v. Floyd*, 282 S.C. 47, 317 S.E.2d 133 (1984) (purchasers filed an action against the seller for breach of covenants in a general warranty deed; a covenant for further assurances in a general warranty deed contemplates that the grantor will on demand perform all necessary of the warranty of title); *Kite v. Pittman*, 278 S.W. 830 (Mo.App. 1926) (purchaser alleged that the statutory covenants in a warranty deed included that the property was free and clear of all lawful claims, and when the plaintiff notified the defendant that there was a tenant in possession holding under a lease, the defendant breached not only the express warranty but the covenant of further assurances, when it failed to take any steps to place the plaintiff in possession in compliance with the covenants contained in the warranty deed); *Spiegel v. Seaman*, 160 N.J.Super. 471, 390 A.2d 639 (N.J.Super 1978) (a warranty deed contains five covenants, and a breach occurs when the grantee shows that the

grantor had less than the quality and quantity he was supposed to receive under said conveyance, and the further assurance covenant requires the grantor to execute such instruments or to perform such acts as required in the future to make the title good title, citing 6 Powell, Real Property (1977 rev.), § 905, at 268.14).

If Lynda wanted any proof or documentation in addition to proof of payment as a condition precedent to her obligation to indemnify, then she should have inserted this provision in MSA §40, but she did not. Now realizing that she failed to include this language, she cannot now use MSA §37 as a back door obligation to remedy her failure.

APPELLANT'S ANSWERING BRIEF ON CROSS-APPEAL

ARGUMENT

I

**PIERRE IS ENTITLED TO HIS FEES AND COSTS AS THE
PREVAILING PARTY**

It is clear from the record below and from the district court's findings and conclusions in its February 1, 2021, Order that: (1) all of Pierre's fees, including his fees and costs incurred in the Collateral Action, were reimbursable under MSA §§40 and 38 (4AA740, ll. 16-18); (2) by its specific terms, MSA §40 did not contain or require any advance notice as a precondition to Lynda's indemnity

obligation (4AA737, ll. 23-28; 4AA740, ll. 18-21); (3) the unambiguous contractual indemnity provisions of the MSA precluded the district court from considering the equitable doctrine of laches (4AA740, ll. 21-23); (4) the district court did not find that Pierre had any fiduciary, trust, or confidential relationship with Lynda, or that he breached any such non-existent duties (4AA740-742); and (5) the district court did not find that Pierre breached any implied covenant of good faith and fair dealing (4AA740-742).

However, after making all of these factual findings in favor of Pierre, the district court, *sua sponte*, and without Lynda making any claim for laches, decided solely upon the basis that a twelve-month delay in notifying Lynda of the Malpractice Action, and without any evidence of prejudice, constituted laches. 4AA740-742.

Similarly, just because the district court did not understand and/or misinterpreted Pierre's accounting, it could not have relied upon this mistake in finding that he was not transparent and/or evasive; and even if this were the case, the district court's misinterpretation of this fact was not a proper basis for the district court to impose upon him the equitable remedy of laches.

Since issues of law are within the Court's purview, this Court can, as a matter of law, reverse the district court's decision upon the issue of Pierre's fees

and costs, find in his favor as the prevailing party, and remand this matter to the district court for its determination of a proper award of his costs and fees upon proper proof. The district court already properly found that Pierre provided the required notice pursuant to MSA §35.2, not just once, but on several occasions. 4AA743, ll. 4-10. Contrary to Lynda's assertions, rather than simply working together collaboratively to determine what Lynda owed under MSA §40, the record clearly shows that, from the very beginning, she refused to pay anything, arguing that she had no obligation whatsoever, because Pierre breached his fiduciary duties and the implied covenant of good faith and fair dealing. 2AA243-245; RAB 36-37. Furthermore, even after he provided her with the documentation that she requested, she continued to demand additional documentation that was neither necessary nor relevant to fulfill her obligations under the MSA, causing Pierre to incur unnecessary fees, all of which could have been avoided.

In her Answering Brief, RAB 38-40, and her Opening Brief on Cross-Appeal, AOB 40-44, Lynda argues that Pierre is not entitled to his fees because he was not the prevailing party and did not comply with MSA §35.2, and because she was the prevailing party and the district court erred in not awarding her fees and costs pursuant to MSA §35.2.

The following three critical legal issues were before the district court: (1)

by its specific terms, the contractual indemnity provision did not require Pierre to provide any prior notice to Lynda as a condition precedent to his right to indemnity under MSA §40; (2) all of the fees incurred by Pierre, both in the underlying Collateral Action and the Malpractice Action, were included and reimbursable pursuant to the MSA; and (3) a court is precluded from applying equitable remedies to defeat a right to contractual indemnity, and equitable remedies can be considered only in the event that an equitable right to indemnity arises. Lynda opposed all three of these legal claims by Pierre without citing any legal authority to the contrary, while Pierre cited substantial legal authority for all such legal issues and claims.

To the contrary, Lynda argued to the district court that Pierre was required to give notice (1AA85, ll. 10-15, 18-20); that MSA §40 only included fees and costs in the Malpractice Action (1AA83, ll. 23-28; 1AA84, ll. 9-15; 1AA88, ll. 16-20); and that Pierre was collaterally estopped from exercising his right to indemnity (1AA89, ll. 9-15). The district court found in favor of Pierre on all three significant legal issues and ruled against Lynda on all three significant legal issues. 4AA737, ll. 23-28; 4AA740, ll. 16-21. Lynda did not succeed on any of her legal issues in the district court. Lynda never argued that Pierre was precluded from exercising his right to contractual indemnity because of the equitable

doctrine of laches. To the contrary, this issue was raised *sua sponte* by the district court. 4AA742, ll. 4-9. Therefore, Lynda cannot even argue that she succeeded on that issue; indeed, she did not succeed on any of her claims.

A party may be a prevailing party entitled to recover attorney's fees and costs if it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing its claims. *See, LVMPD v. Blackjack Bonding*, 131 Nev. 80, 90, 343 P.3d 608, 615 (2015); *Valley Electric Ass'n v. Overfield*, 121 Nev. 7, 10, 106 P.3d 1198, 1200 (2005); *see also, Hensley v. Eckerhart*, 461 U.S. 424, 434, 103 S.Ct. 1933, 1940, 76 L.Ed.2d 40 (1983) (to be a prevailing party, a plaintiff need succeed on only some of his claims for relief); *Davis v. Beling*, 128 Nev. 301, 322, 278 P.3d 501, 515-16 (2012) (where an agreement provides an award of attorney's fees to the prevailing party, parties prevail if they succeed on any substantial aspect of the case). Determining whether attorney's fees should be awarded requires the court to inquire into the actual circumstances of the case, rather than a hypothetical set of facts favoring the party's averments. *See, Baldonado v Wynn Las Vegas, LLC*, 124 Nev. 951, 967-68, 194 P.3d 96, 106-07 (2008); *see also, Weston v. Cushing*, 45 Vt. 531, 537 (Vt. 1868) (the court determined that the plaintiff was a prevailing party because he prevailed on the main issue in the case, although not to the full extent of his claims, and although

he received less than his initial claim, it was more than the amount the defendants claimed he should recover).

More importantly, once a party satisfies the definition of a prevailing party, a court has no discretion to deny a fee award to the prevailing party. *See, University of Nevada v. Tarkanian*, 110 Nev. 581, 590, 879 P.2d 1180, 1186 (1994) (once a prevailing party is determined by succeeding on the issues, the court cannot deny the attorney's fees to be awarded to such party, but only can determine whether the amount of the fees claimed is reasonable).

In the present case, the district court failed to award attorney's fees to Pierre after he succeeded on all of his claims, while Lynda did not succeed on any of her claims. 4AA743, ll. 3-12. Lynda never argued or even claimed that the remedy of laches applied in this case. Rather, Lynda argued that Pierre was required to provide notice and to provide his attorney's file and attorney-client communications; that failure to do so breached his fiduciary duty and the covenant of good faith and fair dealing; and that, therefore, Pierre was not entitled to exercise his right of indemnity. The district court did not find that Pierre owed any fiduciary duty to Lynda or that Pierre breached the implied covenant of good faith and fair dealing. As such, the district court found against Lynda's claims in this regard.

Therefore, as a matter of law, this Court can reverse the district court's decision; find on the record that Pierre is the prevailing party; instruct the district court to award attorney's fees and costs to Pierre; and determine whether the attorney's fees and costs are reasonable, after allowing Pierre to file a motion and memorandum of his fees and costs.

CONCLUSION

This Court should uphold the district court's prior findings and conclusions of law as demonstrated above, and should reverse the district court's decision erroneously applying the doctrine of laches, solely upon the basis that Pierre did not notify Lynda sooner than twelve months after the filing of the Malpractice Action, which as a matter of law, the district court could not apply, given its prior findings and conclusions.

In addition, as a matter of law, this Court also can find that Pierre was the prevailing party, and that he is entitled to his costs and attorney's fees, given the district court's finding that he complied with MSA §35. Upon remand, the Court can require appropriate proof of such costs and fees.

The district court concluded that Pierre did not breach MSA §37 and that he provided all documentation requested by Lynda for her to pay one-half of his costs and fees in both the Collateral and Malpractice Actions. Thus, as a matter of law,

the Court can determine that Pierre was justified, under the attorney-client privilege and the common interest work product privilege, in redacting certain privileged billing entries; and that the district court erred in finding that he was not transparent in failing to provide unredacted billing entries, a copy of his attorney's file, and joint defense communications between his attorney and Todd Jaksick's attorney. Alternatively, this Court could remand the case in order for the district court to conduct an *in camera* inspection.

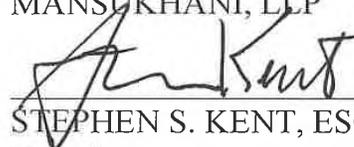
AFFIRMATION

The undersigned hereby declares that the within document does not contain the Social Security Number of any person.

DATED this 14th day of February, 2022.

GORDON, REES, SCULLY,
MANSUKHANI, LLP

By:


STEPHEN S. KENT, ESQ.

Nevada State Bar No. 1251

201 W. Liberty St., Suite 320

Reno, Nevada 89501

Telephone: (775) 321-9800

Attorneys for Appellant/Cross-Respondent

Pierre A. Hascheff

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6), because this brief has been prepared in a proportionally spaced typeface using Word Perfect X4 in Arial Font.

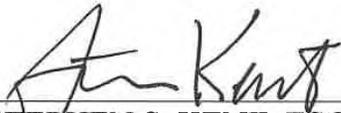
2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 2(e)(2)(A)(i), because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionally spaced and contains 13,482 words.

3. Finally, I hereby certify that I have read this appellate 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)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. 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 14th day of February, 2022.

GORDON, REES, SCULLY,
MANSUKHANI, LLP

By: 
STEPHEN S. KENT, ESQ.
Nevada State Bar No. 1251
201 W. Liberty St., Suite 320
Reno, Nevada 89501
Telephone: (775) 321-9800
Attorneys for Appellant/Cross-Respondent
Pierre A. Hascheff

CERTIFICATE OF SERVICE

Pursuant to Rule 25 of the Nevada Rules of Appellate Procedure, I hereby certify that I am an employee of Kent Law and that on this date, I served a true and correct copy of the attached document as follows:

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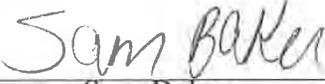
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Debbie A. Leonard, Esq.
Leonard Law, PC
955 S. Virginia Street, Suite 220
Reno, Nevada 89502
Attorneys for Respondent/
Cross-Appellant, Lynda Hascheff

DATED this _14th day of February, 2022.



Sam Baker

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

Case No. 82626

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Clerk of Supreme Court

PIERRE A. HASCHEFF,

Appellant/Cross-Respondent,

vs.

LYNDA L. HASCHEFF,

Respondent/Cross-Appellant.

Appeal From Special Order Entered After Final Judgment
Second Judicial District Court Case No. DV13-00656

**RESPONDENT/CROSS-APPELLANT'S
REPLY BRIEF ON CROSS-APPEAL**

LEONARD LAW, PC
Debbie Leonard (#8260)
955 S. Virginia St., Suite #220, Reno, NV 89502
775-964-4656
debbie@leonardlawpc.com

Attorney for Respondent/Cross-Appellant

NRAP 26.1 DISCLOSURE STATEMENT

The following law firms have lawyers who appeared on behalf of the Respondent/Cross-Appellant Lynda Hascheff or are expected to appear on her behalf in this Court:

Leonard Law, PC
Woodburn and Wedge

DATED March 7, 2021

LEONARD LAW, PC

By: /s/ Debbie Leonard
Debbie Leonard (NV Bar No. 8260)
955 S. Virginia Street, Suite 220
Reno, Nevada 89502
Phone: (775) 964-4656
debbie@leonardlawpc.com

Attorney for Respondent/Cross-Appellant

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INTRODUCTION

Pierre's answering brief on cross appeal agrees with Lynda's analysis of the applicable law: Because the parties' marital settlement agreement ("MSA") contained a prevailing party fee provision, the district court abused its discretion by declining to award fees. Pierre does not dispute that Lynda satisfied the contract's pre-filing obligations before she filed her Motion for Clarification or Declaratory Relief Regarding Terms of MSA and Decree ("DR Motion"). As a result, should the Court affirm the declaratory relief entered in Lynda's favor, Pierre concedes she should be awarded her fees under either MSA §35.1 or MSA §37.

Pierre's only arguments against Lynda's cross appeal are that either he *was* the prevailing party or *should have been* the prevailing party. Both contentions should be rejected. First, in that Pierre obtained none of the relief he sought and appealed the district court's order, it is clear he lost. By contrast, Lynda secured the declaratory relief she sought and successfully fended off Pierre's efforts to have her held in contempt of court. The fact that the district court decided in her favor on a different basis than the theories Lynda advanced does not deprive her of prevailing party status. The district court granted her DR Motion; she won.

Pierre's brief presents no basis to reverse the declaratory relief granted to Lynda. He did not – and cannot – overcome the district court's damning findings, which documented Pierre's persistent misdeeds that prevented Lynda from

determining whether the money he demanded fell within the scope of MSA §40's indemnity language. He also did not – and cannot – overcome the unequivocal law that prohibits him from using the attorney-client privilege as a sword and a shield. By keeping his attorney's tasks a secret, he failed to meet his burden to show that the fees he chose to incur were Lynda's obligation.

For the reasons set forth in Lynda's answering brief on the merits, the Court should affirm the declaratory relief entered in Lynda's favor. And because she prevailed below and should prevail on appeal, the MSA entitles Lynda to fees. Accordingly, Lynda respectfully requests that the Court direct the district court to award her fees.

ARGUMENT

A. Having Obtained The Declaratory Relief She Sought, Lynda Is The Prevailing Party And Entitled To Fees

Contrary to Pierre's contention, because the district court granted Lynda's DR Motion, she is the prevailing party entitled to fees under the MSA. The winning party in a declaratory relief action is the "prevailing party" for the purpose of a fee award. *See MB Am., Inc. v. Alaska Pac. Leasing*, 132 Nev. 78, 89, 367 P.3d 1286, 1292–93 (2016). Other courts deem a party who successfully obtains a declaratory judgment to be the prevailing party for the purposes of awarding fees. *See Lefemine v. Wideman*, 568 U.S. 1, 4 (2012) (awarding fees under 42 U.S.C. §1988); *Rosenfeld v. S. Pac. Co.*, 519 F.2d 527, 529 (9th Cir. 1975) (awarding fees

under 42 U.S.C. §2000e-5(k)); *Owner-Operator Indep. Drivers Ass'n, Inc. v. Swift Transp. Co. (AZ)*, 612 F. App'x 409, 411 (9th Cir. 2015) (awarding fees under 49 U.S.C. §14704(e)); *Montes v. Thornburgh*, 919 F.2d 531, 538 (9th Cir. 1990) (awarding fees under 28 U.S.C. §2412).

This matter involved Lynda's Motion for Clarification or Declaratory Relief Regarding Terms of MSA and Decree. IAA0082. In that DR Motion, Lynda asked the Court to determine "the parties' respective rights and obligations pursuant to their marital settlement agreement." IAA0083-0088. The district court granted Lynda's DR Motion and provided the declaratory relief she sought. 4AA0721-0724. In so doing, the district court described Pierre's conduct as "troubling" and "not transparent." 4AA0721-0722. The district court found that Pierre "failed to provide a complete and transparent accounting," "unilaterally imposed redactions on the billing statements ... thereby obfuscating" their content, used "inconsistent and secretive criteria" for his redactions, and exhibited "conscious disregard and selective enforcement of MSA §40" to Lynda's prejudice.¹ 4AA0721-0723.

¹ Notwithstanding these findings, Pierre ironically accuses Lynda of not acting "collaboratively" and doubles down on his false assertion that Lynda purportedly "refused to pay anything." Cross AB at 56 (citing only his own briefing below). The record is clear that Lynda repeatedly informed Pierre she was prepared to perform her indemnity obligation if Pierre could demonstrate that she owed half the costs for the legal services he chose to incur. 1AA0118-0119, 0124-0125, 0130-0133, 0135-0136, 0168, 0175; 2AA0412-0413. He failed to do so.

Because of Pierre’s misconduct, the district court found that Lynda could not comply with any alleged obligations she might have had under the MSA and therefore concluded it would be inequitable for the district court to order that she do so. 4AA0721-0724. Having heard the testimony and reviewed the evidence, the district court was in the best position to make these findings and conclude that they gave rise to laches. *See Las Vegas Metro. Police Dep’t v. Coregis Ins. Co.*, 127 Nev. 548, 558, 256 P.3d 958, 965 (2011).

The relief that Pierre sought in the district court was a Motion for Order to Show Cause, or in the Alternative, to Enforce the Court’s Orders (“OSC Motion”), in which he asked the district court to hold Lynda in contempt of court and order Lynda to indemnify him and pay his fees and costs. IAA0187. The district court denied all the relief Pierre sought, concluding that he “was unable to make a *prima facie* showing Ms. Hascheff had the ability to comply with the parties’ MSA, yet willfully violated her obligations.” 4AA0723. Pierre concedes in his brief that he failed to meet the standard to obtain a contempt order and has abandoned that argument on appeal. RAB at 6.

The record is clear that Lynda prevailed and Pierre lost. 4AA0721-0724. As a result, she is entitled to fees under the plain language of the MSA. 1AA0072.

B. Lynda Did Not Have To Win On The Legal Theories She Advanced To Be The Prevailing Party Entitled To Fees

Simply because the district court might have applied a different legal theory than the ones advanced by Lynda does not alter the fact that the district court granted her DR Motion and entered declaratory relief in her favor, making her the prevailing party. “A party prevails if it succeeds on any significant issue in litigation which achieves some of the benefit it sought in bringing suit.” *Las Vegas Metro. Police Dep't v. Blackjack Bonding, Inc.*, 131 Nev. 80, 90, 343 P.3d 608, 615 (2015) (internal quotation marks omitted). “To be a prevailing party, a party need not succeed on every issue.” *Id.*; *see Univ. of Nevada v. Tarkanian*, 110 Nev. 581, 596, 879 P.2d 1180, 1189 (1994) (affirming fee award under either a “limited success” analysis, or viewing the plaintiff “as having prevailed on his claim despite some adverse rulings”); *Huerta v. Rogich*, Case No. 67595, 132 Nev. 981, 2016 WL 3432539 at *1 (June 20, 2016) (unpublished disposition) (affirming fee award to party that obtained summary judgment even though it did not “refut[e] the factual and legal basis for appellants’ claims”); *ParksA Am., Inc. v. Harper*, Case No. 132 Nev. 1015, 2016 WL 4082312 at *2 (July 28, 2016) (unpublished disposition) (affirming fee award pursuant to contract’s prevailing party provision even though plaintiffs prevailed on a different legal theory).

Having had her DR Motion granted and obtaining declaratory relief that she was not responsible for indemnifying Pierre due to Pierre’s misconduct, Lynda

clearly satisfied the prevailing party standard. *See Las Vegas Metro. Police*, 131 Nev. At 90, 343 P.3d at 615. The fact that the district court's Order was based on a different legal theory than the ones advanced by Lynda was immaterial. *See id.* As a result, the district court's failure to award her fees under these circumstances was an abuse of discretion. *See id.*

C. Having Filed His Appeal And Argued For Substantive Reversal Of The District Court's Order, Pierre Acknowledges He Was Not The Prevailing Party

Oddly, Pierre's response to Lynda's cross appeal largely consists of an argument that he supposedly prevailed below. Cross AB at 55-60. Had Pierre actually been the prevailing party, however, he would not have filed an appeal requesting reversal of the district court's Order and challenging the denial of his OSC Motion and the grant of Lynda's DR Motion. Pierre filed the appeal because he **did not** prevail on the merits in the district court. Pierre cannot manufacture a win out of thin air when his own actions confirm he lost.

The fact that the district court may have made some factual findings in his favor did not render Pierre the prevailing party because they conferred no benefit to him and failed to create the outcome he sought. *See Las Vegas Metro. Police*, 131 Nev. at 90, 343 P.3d at 615. The district court denied his OSC Motion, rejected his request to have Lynda held in contempt, and failed to award him any of the money he demanded from Lynda. 4AA0721-0724. Given this result, he

cannot be deemed the “prevailing party.” *See Las Vegas Metro. Police*, 131 Nev. at 90, 343 P.3d at 615.

D. Pierre Does Not Dispute That The Plain Language Of The MSA Required That Fees Be Awarded To The Prevailing Party And That Lynda Complied With The MSA’s Pre-Filing Requirements

In arguing that “once a party satisfies the definition of a prevailing party, a court has no discretion to deny a fee award to the prevailing party,” Pierre concedes that should the Court affirm the declaratory relief in Lynda’s favor, the MSA mandates a fee award to Lynda. Cross AB at 59. Where the language of a contract is “clear and unambiguous” that “the prevailing party is entitled to attorney fees incurred in defense or prosecution of the action,” the district court must award fees. *Davis v. Beling*, 128 Nev. 301, 322, 278 P.3d 501, 515 (2012). Refusal to award fees to the prevailing party under the clear terms of a contract is reversible error. *See Mackintosh v. California Fed. Sav. & Loan Ass’n*, 113 Nev. 393, 405-06, 935 P.2d 1154, 1162 (1997). Pierre agrees with Lynda’s analysis. Cross AB at 59.

In addition to agreeing with Lynda on the law, Pierre does not dispute that, should Lynda prevail on the merits, fees should be awarded to her under either MSA §35.1 or MSA §37. His answering brief on cross appeal was silent on this point, thereby conceding it. *See Ozawa v. Vision Airlines, Inc.*, 125 Nev. 556, 563, 216 P.3d 788, 793 (2009) (treating party’s failure to respond to an argument as a

concession that the argument is meritorious); *Bates v. Chronister*, 100 Nev. 675, 682, 691 P.2d 865, 870 (1984) (treating failure to respond to an argument as a confession of error). Pierre likewise does not dispute that Lynda's counsel sent correspondence that complied with the pre-filing requirements in MSA §35.2. 1AA0130-0133. In light of these concessions, should the Court conclude that the district court correctly entered declaratory relief in Lynda's favor, Pierre's brief supports the conclusion that a fee award to Lynda is required.

E. Rearguing The Merits Does Not Transform Pierre From The Losing Party Into The Prevailing Party

Rather than address the points raised in Lynda's cross appeal, Pierre simply regurgitates his arguments as to why he thinks he should have succeeded on the merits. These arguments offer nothing new and, to the contrary, suffer from fatal legal shortcomings that the district court properly rejected.

As Lynda thoroughly addressed in her answering brief on appeal, Pierre failed to meet his burden of proving that the money he demanded from Lynda was within the scope of MSA §40. 1AA0072. Having put the subject matter of his attorney's services at issue, Pierre waived the privilege as to what his attorney did and could not keep that hidden from Lynda while simultaneously demanding she pay for it. *See Wardleigh v. Second Jud. Dist. Ct.*, 111 Nev. 345, 354, 891 P.2d 1180, 1186 (1995). Lynda had no other means of obtaining this information, and the law is clear that Pierre could not use the attorney-client privilege as both a

sword and a shield. *Wynn Resorts, Ltd. v. Eighth Jud. Dist. Ct.*, 133 Nev. 369, 381, 399 P.3d 334, 346 (2017). As a result, the *in camera* review he now requests is improper. Cross AB at 60.

Moreover, fees related to a collateral action were not for the “defense and judgment” in litigation in which Pierre was “sued for malpractice.” 1AA0072. Pierre’s entreaty to the Court to contravene the MSA’s plain language should be rejected, particularly because the Court must strictly construe the indemnity clause against Pierre. *Reyburn Lawn & Landscape Designers, Inc. v. Plaster Dev. Co.*, 127 Nev. 331, 339, 255 P.3d 268, 274 (2011). Pierre could not force Lynda to pay for fees he chose to incur and that were outside the scope of the indemnity. *See id.* Pierre also could not demand indemnification for fees he did not even pay. *See Jones v. Childs*, 8 Nev. 121, 125 (1872). Pierre simply did not prove that the fees he demanded from Lynda were within the ambit of MSA §40.

Pierre does not dispute that MSA §37 required the parties to:

do any and all acts and things reasonably necessary or proper to carry out their obligations under this Agreement. If either party fails or refuses to comply with the requirements of this paragraph ***in a timely manner***, that party shall reimburse the other party for all expenses, including attorney fees and costs, incurred as a result of that failure, and shall indemnify the other for any loss or liability incurred as a result of the breach.

1AA0072 (emphases added). While this language does not include the word “notice,” it certainly requires Pierre to take the steps “necessary and proper” for

Lynda to satisfy her obligations under the MSA. *Id.* Failing to timely inform Lynda of any threatened or actual malpractice action, making unsupported demands, keeping secret the information Lynda needed to determine if his demands were encompassed by MSA §40, and threatening contempt ran afoul the further assurances language in MSA §37. 1AA0072. Pierre either breached this express provision, the implied covenant of good faith and fair dealing that exists in the MSA, or his fiduciary duties that arise from it. *Perry v. Jordan*, 111 Nev. 943, 947, 900 P.2d 335, 337-38 (1995); *Hilton Hotels Corp. v. Butch Lewis Prods., Inc.*, 107 Nev. 226, 232, 808 P.2d 919, 922–23 (1991).

The district court made extensive findings that detailed Pierre’s wrongdoings. Whether under contract or equitable principles, the district court reached the correct result to grant declaratory relief to Lynda and deny Pierre’s motion to have her held in contempt. As a result, declaratory relief in Lynda’s favor should be affirmed, and as the prevailing party, Lynda should be awarded her fees and costs.

CONCLUSION

Because Lynda obtained the declaratory relief she sought and Pierre failed in his efforts to have Lynda held in contempt of court, Lynda was the prevailing party. Pierre agrees that the MSA requires that fees be awarded to the prevailing party in this action, and the district court abused its discretion in declining to award

such fees. As a result, Lynda respectfully requests that the Court affirm the declaratory relief issued in her favor, reverse the denial of fees, and remand to the district court for Lynda to submit documentation in support of the fees she has incurred in this matter.

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED March 7, 2021

LEONARD LAW, PC

By: /s/ Debbie Leonard
Debbie Leonard (NV Bar No. 8260)
955 S. Virginia Street, Suite 220
Reno, Nevada 89502
Phone: (775) 964-4656
debbie@leonardlawpc.com

*Attorney for Respondent/
Cross-Appellant*

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type-style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 14-point font, Times New Roman style. I further certify that this brief complies with the type-volume limitation of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it contains 2,566 words.

Pursuant to NRAP 28.2, I hereby certify that I have read this 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 regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that this brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED March 7, 2021

LEONARD LAW, PC

By: /s/ Debbie Leonard

Debbie Leonard (NV Bar No. 8260)

955 S. Virginia Street, Suite 220

Reno, Nevada 89502

Phone: (775) 964-4656

debbie@leonardlawpc.com

*Attorney for Respondent/
Cross-Appellant*

IN THE COURT OF APPEALS OF THE STATE OF NEVADA

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PIERRE A. HASCHEFF,
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vs.
LYNDA HASCHEFF,
Respondent/Cross-Appellant.

No. 82626 COA

FILED

JUN 29 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

*ORDER AFFIRMING IN PART, REVERSING IN PART,
AND REMANDING*

Pierre A. Hascheff appeals from a district court order granting a motion for clarification or declaratory relief, thereby denying his motion for an order to enforce and/or for an order to show cause and request for indemnification of attorney fees and costs as provided for in a decree of divorce, as well as attorney fees and costs for having to move to enforce the indemnification provision. Lynda Hascheff cross-appeals from the district court's order denying her request for attorney fees and costs as she prevailed on her motion. Second Judicial District Court, Family Court Division, Washoe County; Sandra A. Unsworth, Judge.

The parties were married in 1990.¹ Throughout the marriage, Pierre was an attorney while Lynda was primarily a stay-at-home mother. In April 2013, Pierre filed a complaint for divorce; that same year, he was elected as a Justice of the Peace for Reno Justice Court. In September 2013, the parties reached a Marital Settlement Agreement (MSA) that resolved the issues of their divorce and was ratified, merged, and incorporated in the decree of divorce. The MSA included an "Indemnity and Hold Harmless"

¹We do not recount the facts except as necessary for our disposition.

22-20567

provision set forth in § 40.² Relevant here is the part of that provision that states “[i]n the event Husband is sued for malpractice, Wife agrees to defend and indemnify Husband for one half (1/2) the costs of any defense^{3]} and judgment. Husband may purchase tail coverages of which Wife shall pay one half (1/2) of such costs.”⁴ The MSA also included a provision that if

²MSA § 40 in its entirety provides that

Except for the obligations contained in or expressly arising out of this Agreement, each party warrants to the other that he or she has not incurred, and shall not incur, any liability or obligation for which the other party is, or may be, liable. Except as may be expressly provided in this Agreement, if any claim, action, or proceeding, whether or not well founded, shall later be brought seeking to hold one party liable on account of any alleged debt, liability, act, or omission of the other, the warranting party shall, at his or her sole expense, defend the other against the claim, action, or proceeding. The warranting party shall also indemnify the other and hold him or her harmless against any loss or liability that he or she may incur as a result of the claim, action, or proceeding, including attorney fees, costs, and expenses incurred in defending or responding to any such action. In the event Husband is sued for malpractice, Wife agrees to defend and indemnify Husband for one half (1/2) the costs of any defense and judgment. Husband may purchase tail coverages of which Wife shall pay one half (1/2) of such costs.

³We note that the parties and the district court use “fees and costs” when referencing the obligation stemming from the indemnification provision, and therefore we use this terminology as well.

⁴We assume that the indemnification provision resulting from a possible future malpractice claim was agreed to in part because Pierre earned income as an attorney during the pendency of the marriage. *Cf.*

enforcement of the decree was necessary, the prevailing party in the lawsuit would be entitled to reasonable attorney fees and costs. Specifically, MSA § 35.1 provides that

If either party brings an action or proceeding to enforce any provision of this Agreement, or to enforce any judgment or order made by a court in connection with this Agreement, the prevailing party in that action or proceeding shall be entitled to reasonable attorney fees and other reasonably necessary costs from the other party.

In July 2018, Pierre was subpoenaed as a witness in a trust litigation dispute between beneficiaries to testify regarding legal work he had previously performed as an attorney, including preparation of estate planning documents. Through his legal malpractice insurance carrier, Pierre retained counsel to represent his interests as a witness in the trust litigation in which he was not a party. Subsequently, in December 2018, Pierre's former client, a trustee in the trust litigation, filed a complaint for legal malpractice against Pierre. The malpractice case was subsequently stayed pending resolution of the collateral trust litigation.

In 2020, Pierre notified Lynda that he was seeking the reimbursement of fees and costs associated with his participation as a witness in the collateral trust litigation as well as the fees and costs that he had incurred as a party in the stayed legal malpractice case. Lynda did not pay Pierre, contending that she did not have to pay the fees and costs

Culculoglu v. Culculoglu, No. 67781, 2016 WL 3185998, at *2 (Nev. June 6, 2016) (Order of Affirmance) (noting that a separate debt that was not incurred for the benefit of the community is not a community debt). The record also reflects that Lynda confirmed to Pierre that she would pay her half of the fees and costs in defending the malpractice action, if Pierre demonstrated that the reimbursement he demanded was within the scope of the indemnification language.

associated with Pierre being called as a witness in the trust litigation because Pierre had not been sued for malpractice in that action, and further that she should not be required to reimburse any fees and costs in the malpractice case as he had failed to timely notify her of it. Subsequently, Lynda filed a motion for clarification or declaratory relief, asserting her position based on the foregoing reasons and arguing that she should not be required to indemnify Pierre for his legal fees and costs. Pierre filed an opposition and a motion for an order to show cause, or in the alternative, to enforce the divorce decree. Both parties requested attorney fees and costs necessarily incurred to resolve the dispute.

After conducting an evidentiary hearing, the district court entered an order finding that while the fees and costs incurred by Pierre in both the collateral trust litigation and his legal malpractice case were covered by the "Indemnity and Hold Harmless" provision of the MSA § 40, Pierre was barred from recovering his fees and costs based on the doctrine of laches. Specifically, the court found that Pierre's "conscious disregard and selective enforcement" of the indemnification provision was comparable to a claim for laches, and Pierre's actions prejudiced Lynda as she was given no say in the fees and costs expended by Pierre in the underlying trust action. The district court denied both parties' requests for attorney fees and costs after resolving the matter. This appeal and cross-appeal followed.

On appeal, Pierre contends that the district court erred by applying the doctrine of laches to essentially re-write MSA § 40, as this section does not require Pierre to provide Lynda with advanced notice of a legal proceeding before seeking indemnification, and that Lynda was obligated to indemnify him. Pierre also argues that there was no evidence of prejudice or harm to Lynda from any alleged delay in seeking indemnification from her. Lynda contends, as she did below, that Pierre's

request was not timely, and he was not transparent in seeking fees and costs thus depriving her of the opportunity to exercise her equal and equivalent right to manage the litigation. Lynda also cross-appeals from the district court's denial of her attorney fees and costs request for having to file a motion to resolve the dispute.⁵

Indemnification for fees and costs incurred in the collateral trust litigation

We first consider the district court's denial of Pierre's request for indemnification for the fees and costs he incurred to protect his interests as a percipient witness in the collateral trust litigation. Although the district court determined that he was entitled to indemnification for these fees and costs under MSA § 40, the court ultimately denied his request. In denying Pierre's request, the court correctly recognized that the indemnification provision at issue did not require that Lynda be notified of the litigation by a certain time. However, the court also determined that the delay in notifying Lynda of the trust litigation adversely affected her because she was "given no say in the fees and costs expended by [Pierre] in the collateral trust action." The court also found that Pierre's lack of transparency about the amount of fees and costs he incurred, along with his failure to provide accurate, unredacted billing records, as well as the total amount of the financial obligation incurred, precluded recovery. Pierre argues that he supplied the district court with supporting information and if the court had concerns, it could have conducted an in camera review of the billing records.

This court reviews a district court's order resolving a request for declaratory relief de novo. *Nevadans for Nev. v. Beers*, 122 Nev. 930, 942,

⁵Based on our disposition we need not address the merits of Lynda's cross-appeal as the district court will necessarily be required to address each party's request for attorney fees and costs on remand.

142 P.3d 339, 347 (2006). Further, the interpretation of an agreement-based divorce decree presents a question of law, *see Shelton v. Shelton*, 119 Nev. 492, 497, 78 P.3d 507, 510 (2003), and we also review questions of law de novo, *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 606, 5 P.3d 1043, 1048, (2000). When interpreting an agreement, this court must avoid rewriting the terms to encompass more than what was intended by the parties. *See Rivero v. Rivero*, 125 Nev. 410, 429, 216 P.3d 213, 226 (2009) (holding that the appellate court will not rewrite parties' contracts), *overruled on other grounds by Romano v. Romano*, 138 Nev., Adv. Op. 1, 501 P.3d 980, 984 (2022); *see also Reno Club, Inc. v. Young Inv. Co.*, 64 Nev. 312, 323, 182 P.2d 1011, 1016 (1947) ("This would be virtually creating a new contract for the parties, which they have not created or intended themselves, and which, under well-settled rules of construction, the court has no power to do."); *Edelstein v. Bank of N.Y. Mellon*, 128 Nev. 505, 518, 286 P.3d 249, 258 (2012) ("When interpreting a written agreement between parties, this court is not at liberty, either to disregard words used by the parties . . . or to insert words which the parties have not made use of." (internal quotation marks omitted)).

First, we disagree that MSA § 40 allows for indemnification for legal fees and costs incurred by Pierre while acting in his professional capacity in all circumstances, including testifying as a percipient witness in collateral litigation. Under the relevant provision of MSA § 40, Pierre must first be sued for malpractice before he can seek indemnification for his legal fees and costs. Thus, the condition precedent for Pierre to seek indemnification under § 40 for fees and costs incurred in his professional capacity requires that he be sued for malpractice. *See Cain v. Price*, 134 Nev. 193, 195, 415 P.3d 25, 28-29 (2018) (noting that a condition precedent is an event that must occur before the promisor becomes obligated to

perform); *cf. Gonzalez v. Gonzalez*, No. 82011-COA, 2022 WL 213845 (Nev. Ct. App. Jan. 4, 2022) (Order of Affirmance) (concluding that the plain language of the decree did not place a condition precedent that the wife must satisfy before receiving real property). As Pierre was not sued as a party in the collateral trust litigation, he is precluded from seeking indemnification from Lynda for his decision to retain counsel to represent his interests as a witness. As Lynda aptly points out, the indemnification provision *could* have been written to include indemnification for legal representation in cases where he was not named as a party. As written, however, MSA § 40 does not contemplate indemnification where Pierre testifies as a witness in collateral litigation. Simply, the plain language of this section supports that Pierre must first be sued for malpractice before seeking indemnification for his legal fees and costs and those legal fees and costs must arise from the malpractice action only.

Second, it appears from the district court's order the court may have relied on the language contained in the first part of MSA § 40 to conclude that Pierre could seek indemnification for fees and costs incurred in the collateral trust litigation. Generally, the first part of MSA § 40 contemplates that each party to the agreement warrants that he or she has not incurred or shall not incur a liability or obligation or future liability or obligation for which the other party is or may be liable. And, if the other party is sued for such obligation, the warranting party will defend, indemnify and hold harmless that party for any losses incurred. In essence, this part of MSA § 40 contemplates where the party who did not incur the obligation is sued for it, that party is entitled to indemnification from the other party who warranted that no such liability or obligation existed when the MSA was signed.

This case does not involve the factual scenario where Pierre was sued for an obligation incurred by Lynda that she had failed to disclose or warrant did not exist thereby entitling him to seek indemnification from her. Instead, it was Pierre who incurred the obligation by hiring a lawyer to defend his interests in testifying as a percipient witness in the collateral trust litigation for which he is now seeking indemnification from Lynda. It should be noted that Pierre's obligation is not a shared or mutual obligation for which both parties could ultimately be liable as contemplated by the first part of § 40. Lynda could never have incurred the obligation of attorney fees and costs incurred in the trust litigation on her own or in place of Pierre. Indeed, Lynda, a nonlawyer who did not retain counsel, could never have been sued by the attorney representing Pierre in the collateral trust litigation to collect the fees and costs owed by Pierre. Further, Pierre by signing the MSA, warranted that he would not seek indemnification from Lynda for any obligation he incurred post-divorce, other than for malpractice suits, as discussed herein. Therefore, the first part of the "Indemnification and Hold Harmless" provision in MSA § 40 as written does not permit indemnification from Lynda for the fees and costs incurred in the collateral trust litigation. Further, because Pierre was not sued for malpractice in that litigation, he is not entitled to seek indemnification under the second part of § 40.

In this case, we need not decide whether the district court erred in its evaluation of Pierre's request for fees and costs in the collateral trust litigation, including by not conducting an in camera review, because the court reached the correct result by denying his request. We therefore affirm this part of district court's order. *See Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010) (holding that we

will affirm the district court if it reaches the correct result, even if for the wrong reason).

Indemnification for fees and costs related to the malpractice action

We next address the district court's denial of indemnification for the fees and costs incurred by Pierre in the malpractice action based on laches. We review the court's application of the doctrine of laches for abuse of discretion. See *Radecki v. Bank of New York Mellon as Tr. for Certificateholders of CWABS Inc., Asset-Backed Certificates, Series 2006-BC5*, No. 80892-COA, 2021 WL 2328355, at *1 (Nev. Ct. App. June 4, 2021) (Order of Affirmance). The doctrine of laches is an equitable remedy and appropriately applied where (1) there was an inexcusable delay in seeking action, (2) an implied waiver arose from the petitioner's conduct leading up to the legal action, and (3) the respondent has been prejudiced by the delay.⁶ *Bldg. & Constr. Trades Council of N. Nev. v. State*, 108 Nev. 605, 611, 836 P.2d 633, 637 (1992). Whether laches applies "depends upon the particular facts of each case." *Carson City v. Price*, 113 Nev. 409, 412, 934 P.2d 1042, 1043 (1997). "Laches is more than mere delay in seeking to enforce one's rights, it is delay that works a disadvantage to another." *Home Sav. Ass'n*

⁶The Nevada Supreme Court has recognized that the doctrine of laches applies when a party is prejudiced by a delay in notification such that the party is placed in a changed position to the party's detriment. See, e.g., *Kancilia v. Claymore & Dirk Ltd. P'ship*, No. 61116, 2014 WL 3731862 *2 (Nev. Jul. 24, 2014) (Order of Affirmance) (concluding that the application of laches was appropriate where, as a result of the appellant's delay in filing suit, the respondents destroyed documents and were prejudiced in their ability to present evidence supporting their position that otherwise would have been available); see also *Nationstar Mortg. LLC v. W. Sunset 2050 Tr.*, No. 79271, 2020 WL 6742725 *1 (Nev. Nov. 13, 2020) (Order of Affirmance) (holding that a party's failure to produce evidence until two months before trial constituted sufficient prejudice to support the district court's application of laches).

v. Bigelow, 105 Nev. 494, 496, 779 P.2d 85, 86 (1989). “The condition of the party asserting laches must become so changed that he cannot be restored to his former state.” *Id.*

As discussed above, under the plain language of the indemnification provision, Pierre was not required to notify Lynda as to the existence of the pending malpractice claim against him before seeking indemnification. The district court acknowledged in its order that the party’s indemnification provision did not contain “express and unambiguous language requiring [Pierre] to have provided immediate notice of . . . the malpractice action to [Lynda].” The court further recognized that it was “barred from undertaking equitable considerations regarding MSA § 40’s contractual language.” *See, e.g., Reyburn Lawn & Landscape Designers, Inc. v. Plaster Dev. Co.*, 127 Nev. 331, 339, 255 P.3d 268, 274 (2011) (“When the duty to indemnify arises from contractual language, it generally is not subject to equitable considerations; rather, it is enforced in accordance with the terms of the contracting parties’ agreement.”). Nevertheless, the court applied the doctrine of laches to deny Pierre’s request for indemnification in the malpractice action. While we are uncertain as to the current status of the malpractice case, it was previously stayed pending resolution of the collateral trust litigation. Because of this, plus the undisputed language in MSA § 40 that does not require immediate notification of the action, Lynda is unable to demonstrate the necessary legal prejudice resulting from any alleged delay in notification to support the application of the doctrine of laches. We conclude therefore that the district court abused its discretion in applying laches to grant Lynda’s motion and deny Pierre’s request for indemnification in the malpractice action. *Radecki*, 2021 WL 2328355, at *2.

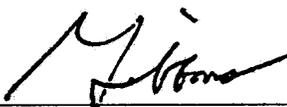
On remand, the district court must necessarily determine whether the fees and costs incurred in the malpractice action are covered by the indemnification provision. In doing so, the district court must make specific factual findings supporting how the court reached its determination. *See Wilford v. Wilford*, 101 Nev. 212, 215, 699 P.2d 105, 107 (1985) (“The district court . . . is required to make specific findings of fact sufficient to indicate the basis for its ultimate conclusions.”). Further, insofar as the indemnification provision contains ambiguous terms such that it is unclear which fees and costs are covered by the provision, the district court is required “to clarify the meaning of a disputed term in an agreement-based decree” and “must consider the intent of the parties in entering into the agreement.” *Mizrachi v. Mizrachi*, 132 Nev. 666, 677, 385 P.3d 982, 989 (Ct. App. 2016). “And in doing so, the court may look to the record as a whole and the surrounding circumstances to interpret the parties’ intent.” *Id.* If the words of a contract are ambiguous, the court will consider “parol or extrinsic evidence” to determine the intent of the parties. *M.C. Multi-Family Dev., LLC v. Crestdale Assocs., Ltd.*, 124 Nev. 901, 913-14, 193 P.3d 536, 544-45 (2008). The district court must make these determinations in the first instance. *See Ryan’s Express Transp. Servs. Inc. v. Amador State Lines, Inc.*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012) (“An appellate court is not particularly well-suited to make factual determinations in the first instance.”).

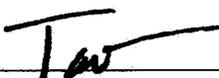
The district court must consider an award of attorney fees and costs in accordance with MSA § 35.1

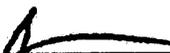
Finally, the district court failed to apply MSA § 35.1 when it denied both parties an award of attorney fees and costs in bringing their respective motions regarding enforcement of the indemnification provision. Because the district court already concluded that the parties complied with

the specific provisions in advance of being able to request attorney fees and costs, on remand the court may only need to determine which party is the prevailing party, and then consider an award of reasonable attorney fees and costs in accordance with the MSA § 35.1.⁷ Therefore, we

ORDER the judgment of the district court AFFIRMED IN PART, REVERSED IN PART, and REMAND this matter to the district court for proceedings consistent with this order.⁸


_____, C.J.
Gibbons


_____, J.
Tao


_____, J.
Bulla

cc: Hon. Sandra A. Unsworth, District Judge, Family Court Division
Melissa Mangiaracina, Settlement Judge
Gordon & Rees Scully Mansukhani LLP/Reno
Leonard Law, PC
Washoe District Court Clerk

⁷We note that MSA § 35.2 sets forth certain requirements that the parties must comply with prior to requesting fees and costs for having to move to enforce a provision of the MSA. It appears that the district court considered this, and in its order, the court found that both parties had complied with MSA § 35.2 and satisfied their obligations. Although on appeal it appears that each party continues to dispute whether MSA § 35.2 was complied with by the other, the district court summarily denied both parties' requests for fees and costs without making specific findings regarding compliance. Therefore, the court may need to revisit this issue on remand when considering an award under § 35.1.

⁸Insofar as the parties raise arguments that are not specifically addressed in this order, we have considered the same and conclude that they either do not present a basis for relief or need not be reached given our disposition of this appeal.

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CODE:

IN THE FAMILY DIVISION
OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

PIERRE A. HASCHEFF,
Plaintiff,

vs.

LYNDA HASCHEFF,
Defendant.

Case No. DV13-00656
Dept. No. 12

ORDER SETTING STATUS HEARING

On June 29, 2022, the Court of Appeals of the State of Nevada entered its Order Affirming in Part, Reversing in Part, and Remanding.

Based on the foregoing, the Court **ORDERS** counsel and the parties to appear at a one-half hour audio/visual status hearing to be held on Wednesday, September 28, 2022 at 11:30 a.m., pursuant to the Administrative Order entered March 16, 2020, and Nevada Supreme Court Rule Part IX-B. Details for the meeting are attached hereto as **Exhibit "1."** Upon joining the audio/visual hearing, you will be placed on a "hold" in a virtual waiting room. Please remain on hold until the Court commences the hearing.

Pursuant to Administrative Order 2020-02(A), the parties are reminded these are formal proceedings and shall be conducted with proper decorum, and appropriate attire is required.

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It is further **ORDERED** that counsel submit a brief, two-page statement on how they believe the matter should proceed and what they believe the outstanding issues are. The statement shall be filed no less than 48 hours prior to the status hearing.

GOOD CAUSE APPEARING, IT IS SO ORDERED that an audio/visual status hearing shall take place September 28, 2022 at 11:30 a.m.

Dated: *August 12, 2022*

Sandra A. Unsworth
Sandra A. Unsworth
District Judge

DV13-00656

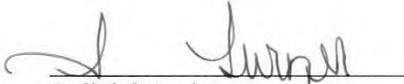
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court in and for the County of Washoe, and that on August 12, 2022, I deposited in the county mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, or via e-filing, a true copy of the foregoing document addressed as follows:

ELECTRONIC FILING:

**SHAWN MEADOR, ESQ.
STEPHEN KENT, ESQ.**


Judicial Assistant

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EXHIBIT "1"

Department 12 is inviting you to a scheduled Zoom meeting.

Topic: DV13-00656 HASCHEFF HASCHEFF
Time: Sep 28, 2022 11:30 AM Pacific Time (US and Canada)

Join Zoom Meeting
<https://washoecourts.zoom.us/j/89793000177?pwd=UkFoMFRqQTdtVE9wMmtOeWhSMk9BZz09>

Meeting ID: 897 9300 0177
Passcode: 157324
One tap mobile
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Dial by your location
+1 669 900 6833 US (San Jose)
+1 719 359 4580 US
+1 253 215 8782 US (Tacoma)
+1 346 248 7799 US (Houston)
+1 669 444 9171 US
+1 309 205 3325 US
+1 312 626 6799 US (Chicago)
+1 386 347 5053 US
+1 564 217 2000 US
+1 646 931 3860 US
+1 929 205 6099 US (New York)
+1 301 715 8592 US (Washington DC)
888 788 0099 US Toll-free
877 853 5247 US Toll-free

Meeting ID: 897 9300 0177
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STEPHEN S. KENT, ESQ.
Nevada State Bar No. 1251
GORDON REES SCULLY MANSUKHANI, LLP
1 E. Liberty St., Ste. 424
Reno, Nevada 89501
Telephone: (775) 467-2601
Facsimile: (775) 460-4901
Email: skent@grsm.com

Attorneys for Plaintiff,
PIERRE A. HASCHEFF

**IN THE FAMILY DIVISION
OF THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE**

PIERRE A. HASCHEFF,)	Case No. DV13-00656
)	
Plaintiff,)	Dept. No.: 12
)	
vs.)	
)	BRIEF RE: OUTSTANDING ISSUES
LYNDA HASCHEFF,)	
)	
Defendant.)	
)	
)	
)	
)	

Pursuant to the Court’s August 12, 2002, Order, Plaintiff, PIERRE HASCHEFF, by and through his undersigned counsel, STEPHEN S. KENT, ESQ., of GORDON REES SCULLY MANSUKHANI, LLP., submits the following brief regarding outstanding issues.

ISSUES ON REMAND

Plaintiff, Pierre Hascheff, believes the issues remaining for the District Courts determination are those stated in the Court of Appeals June 29, 2022, decision:

1. **Determine Fees and Costs Owed Under Indemnity Provisions of Marital Settlement Agreement (Decision, Page 11)**
“On remand, the district court must necessarily determine whether the fees and costs incurred in the malpractice action are covered by the indemnification provision. In doing so, the district court must make specific factual findings

1 supporting how the court reached its determination. *See Wilford v. Wilford*, 101
2 Nev. 212, 215, 699 P.2d 105, 107 (1985) (“The district court . . . is required to
3 make specific findings of fact sufficient to indicate the basis for its ultimate
4 conclusions.”) Further, insofar as the indemnification provision contains
5 ambiguous terms such that it is unclear which fees and costs are covered by the
6 provision, the district court is required “to clarify the meaning of a disputed term
7 in an agreement-based decree” and “must consider the intent of the parties in
8 entering into the agreement.” *Mizrachi v. Mizrachi*, 132 Nev. 666, 677, 385 P.3d
9 982, 989 (Ct. App. 2016). “And in doing so, the court may look to the record as a
10 whole and the surrounding circumstances to interpret the parties’ intent.” *Id.* if
11 he words of a contract are ambiguous, the court will consider “parol or extrinsic
12 evidence” to determine the intent of he parties. *M.C. Multi-Family Dev., LLC v.*
13 *Crestdale Assocs., Ltd.*, 124 Nev. 901, 913-14, 193 P.3d 536, 544-45 (2008). The
14 district court must make these determinations in the first instance. *See Ryan’s*
15 *Express Transp. Servs. Inc. v. Amador State Lines, Inc.*, 128 Nev. 289,299, 279
16 9.3d 166, 172 (2012) (“An appellate Court is not particularly well-suited to make
17 factual determinations in the first instance.”)

11 **2. Consider an award of Fees and Costs (Decision pages 11-12)**

12 Finally, the district court failed to apply MSA § 35.1 when it denied both
13 parties an award of attorney fees and costs in bringing their respective motions
14 regarding enforcement of the indemnification provision. Because the district
15 court already concluded that the parties complied with the specific provisions in
16 advance of being able to request attorney fees and costs, on remand the court may
17 only need to determine which party is the prevailing party, and then consider an
18 award of reasonable attorney fees and costs in accordance with the MSA § 35.1.

17 In summary, on remand the appellate court required the district court to determine 2
18 issues:

19 (1) what fees and costs incurred and related to the malpractice action are covered by the
20 indemnification provision. The court is required to make specific findings to support its
21 determination. In addition if section 40 of the MSA is unclear as to what fees and costs are
22 covered by section 40 the court must (a) clarify the meaning of the disputed term and (B)
23 consider the party's intent at the time they entered into the MSA allowing the court to review the
24 whole record and surrounding circumstances i.e. parole evidence to determine the parties intent
25 and (2) award fees to the prevailing party pursuant to MSA section 35.1 given the fact that the
26 district court already determined that both parties complied with MSA section 35.2

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MEDIATION

The Court has suggested a mediation with Senior Judge Deborah Schumacher. Plaintiff Pierre Hascheff is agreeable to Judge Schumacher conducting a mediation.

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED: Sept. 26, 2022.

GORDON REES SCULLY MANSUKHANI

By: 
Stephen S. Kent (NV Bar No. 1251)
1 E. Liberty Street, Suite 424
Reno, NV 89501
Telephone: (775) 467-2601

Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure, Rule 5(b), I hereby certify that I am an employee of Gordon Rees Scully Mansukhani,LLP and that on this date, I served a true and correct copy of the attached document(s) as follows:

_____ By placing the document(s) in a sealed envelope with first-class U.S. postage prepaid, and depositing it for mailing with the U.S. Postal Service in Reno, Nevada addressed to the person at the address listed below.

X By electronic service. By filing the document with the court’s electronic filing system which serves counsel listed below electronically.

_____ By personally delivering the document(s) listed above, addressed to the person at the address as set forth below.

_____ By Federal Express.

_____ By facsimile

_____ By electronic mail.

Shawn Meador, Esq.
Woodburn and Wedge
6100 Neil Road, Suite 500
Reno, NV 89505

DATED this 26 day of September, 2022.

Sam Baker
Sam Baker

1 SHAWN B MEADOR
2 NEVADA BAR NO. 338
3 WOODBURN AND WEDGE
4 6100 Neil Road, Suite 500
5 Post Office Box 2311
6 Reno, Nevada 89505
7 Telephone: (775) 688-3000
8 Facsimile: (775) 688-3088
9 smeador@woodburnandwedge.com

10 IN THE FAMILY DIVISION
11 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
12 IN AND FOR THE COUNTY OF WASHOE

13
14 PIERRE A. HASCHEFF,

15 Plaintiff,

16 v.

17 LYNDA L. HASCHEFF,

18 Defendant.

CASE NO. DV13-00656

DEPT. NO. 12

19
20
21 **STATUS CONFERENCE STATEMENT**
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1 The issues are: 1) what are the total fees in the malpractice action that were not
2 covered by insurance; 2) what discovery is necessary; and 3) how should the issue of the
3 prevailing party fee award be addressed.

4 Lynda tried to resolve the dispute without litigation. Pierre's choices unreasonably
5 forced her to incur fees at every step of the proceeding. She could not even tell what she
6 owed based on his inconsistent claims. This Court found that he failed to provide a complete
7 and transparent accounting and that his claims were inconsistent and secretive.

8 Pierre then filed an entirely unnecessary contempt motion. Lynda had not refused to
9 pay what she owed; she appropriately sought clarification of what she owed. The issues were
10 briefed in her Motion for Clarification. Pierre's contempt motion forced her to incur yet more
11 fees to address the issues again. He then appealed this court's decision forcing her to incur
12 yet more fees. He did not prevail before this court or on appeal.

13 Lynda's position before and throughout this litigation has been that she is responsible
14 for one half of the fees in the malpractice action that were not covered by insurance but is not
15 responsible for fees in the Jaksick trust litigation. See, e.g., Motion for Clarification filed
16 June 16, 2020, at p. 12, Ins. 24-28 and Exhibits 4, 5, 6, and 7 (at pp. 2 and 4 of Exh. 7); Reply
17 In support of Motion for Clarification¹ filed July 13, 2020, at p. 2, Ins. 25-29 and p. 9, Ins. 4-
18 6; Opposition to Motion for Order to Show Cause filed July 17, 2020, at p. 2, Ins. 24-26.

19 Pierre demanded indemnification for fees incurred in both actions. He refused to
20 provide documents distinguishing the fees incurred in each action. He argued that Lynda's
21 positions were "ill-advised and non-sensical." The Court of Appeals disagreed.

22 The Nevada Court of Appeals held: "we disagree that MSA § 40 allows for
23 indemnification for legal fees and costs incurred by Pierre . . . in collateral litigation." Order
24 at p. 6. "As Pierre was not sued as a party in the collateral trust litigation, he is precluded

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¹ She also argued that Mr. Hascheff waived his right to recover fees in the collateral trust matter. This court, *sua sponte*, adopted a latches analysis.

1 from seeking indemnification from Lynda for his decision to retain counsel to represent his
2 interests as a witness.” Order at p. 7. “MSA § 40 does not contemplate indemnification
3 where Pierre testifies as a witness in collateral litigation” Order at p. 7. “**Pierre must**
4 **first be sued for malpractice before seeking indemnification for his legal fees and costs**
5 **and those legal fees and costs must arise from the malpractice action only.**” Order at p. 7
6 (emphasis added). The trial court reached the correct result by denying Pierre’s request for
7 indemnification of fees incurred in the collateral action. Order at p. 8.

9 Lynda is the prevailing party. The Court of Appeals decision parallels the position she
10 took before and throughout this litigation. She is also the prevailing party in connection with
11 Pierre’s contempt motion and his appeal. He must bear the consequences of his choices.

12 Pierre should be required to provide documents clearly reflecting the fees he incurred
13 in the malpractice action only. This Court may be called upon to evaluate whether the
14 insurance payments should be applied to the malpractice action or the collateral matter.

15 Lynda is the prevailing party. The appropriate procedure for her to present her request
16 for fees is through a standard Wilfong affidavit.

17
18 **Affirmation Pursuant to NRS 239B.030**

19 The undersigned affirms that this document does not contain the personal information
20 of any party.

21 DATED this 26th day of September, 2022.

22 WOODBURN AND WEDGE

23
24 By Shawn B. Meador #14555
25 Shawn B. Meador
26 Attorneys for Defendant
Lynda L. Hascheff

CERTIFICATE OF SERVICE

Pursuant to NRC 5(b), I certify that I am an employee of the law offices of Woodburn and Wedge, 6100 Neil Rd., Suite 500, Reno, Nevada 89511, that I am over the age of 18 years, and that I served the foregoing document(s) described as:

STATUS CONFERENCE STATEMENT

on the party set forth below by:

- Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.
- Personal delivery.
- Second Judicial E flex
- Federal Express or other overnight delivery.

addressed as follows:

X Stephen S. Kent
Kent Law, PLLC
201 West Liberty Street, Suite 320
Reno, NV 89501

The undersigned affirms that this document contains no social security numbers

Dated this 26 day of September, 2022.



Kelly Albright

1 2475
STEPHEN S. KENT, ESQ.
2 Nevada State Bar No. 1251
GORDON REES SCULLY MANSUKHANI, LLP
3 1 E. Liberty St., Ste. 424
Reno, Nevada 89501
4 Telephone: (775) 467-2601
Facsimile: (775) 460-4901
5 Email: skent@grsm.com

6 Attorneys for Plaintiff,
PIERRE A. HASCHEFF

7
8 **IN THE FAMILY DIVISION**
9 **OF THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA**
10 **IN AND FOR THE COUNTY OF WASHOE**

11 PIERRE A. HASCHEFF,) Case No. DV13-00656
12 Plaintiff,) Dept. No.: 12
13 vs.)
14 LYNDA HASCHEFF,)
15 Defendant.)

16
17 **MOTION TO STRIKE**

18 Plaintiff, PIERRE HASCHEFF, by and through his undersigned counsel, STEPHEN S.
19 KENT, ESQ., of GORDON REES SCULLY MANSUKHANI, LLP., pursuant to NRCP 12(f)
20 submits this motion to strike defendant LYNDA HASCHEFF's September 26, 2022, "STATUS
21 CONFERENCE STATEMENT".

22 **INTRODUCTION**

23 The Court's August 12, 2022, Order is clear – the parties were ordered to file a short brief
24 regarding what issues are remaining for resolution. Instead, Defendant filed a brief arguing her
25 entire case in violation of this Court's Order and included claimed settlement negotiations in
26 violation of NRS 48.105, and false statements that she offered to pay the amount in dispute.
27 Defendants brief should be stricken.

1 **ARGUMENT**

2 **1. Defendant's Brief Violated This Court's Order**

3 This courts August 12, 2022, Order was clear in ordering the parties: "submit a brief, two
4 page statement on how they believe the matter should proceed and what they believe the
5 outstanding issues are."

6 Instead, Defendant lists the outstanding issued then proceeds to argue her entire case
7 claiming everything is the opposing party's fault with false statements and settlement discussions
8 in violation of NRS 48.105.

9 Defendant's vitriolic, vehement brief belies her argument because it makes clear that at
10 every turn and every opportunity Defendant has chosen to contest every issue and triviality.

11 Defendant flagrantly ignoring of this court's order puts plaintiff, who restrained from
12 arguing his case in his brief, at a distinct disadvantage by following the court's order.

13 To avoid unbridled violation of orders and statutes, and halt this conduct, Defendant's
14 brief should be stricken.

15 **2. Defendant's False Discussion of The Parties Efforts to Compromise**
16 **Violate NRS 48.105 and Should be Stricken**

17 The rule NRS 48.105 excluding discussions of offers to compromise is well known and
18 based on strong reasoning. The parties offers to compromise should not be admissible in any
19 proceeding because it is irrelevant and it discourages settlement discussions.

20 In every e-mail and letter Defendant's counsel asserts the falsity that his client was
21 always ready to indemnify Judge Hascheff. This of course is false and ignores Defendant's
22 numerous arguments to the contrary that the indemnity should not and could not be enforced and
23 the obvious fact that Defendant has chosen to litigate at every step. Confronted with this,
24 Plaintiff has been forced to seek enforcement of the indemnity clause and has correctly
25 established that he's entitled to indemnity.

26 Defendant should not be allowed to repeatedly violate NRS 48.105 or state obvious
27 falsehoods.

28 Defendant's brief should be stricken because of her violation of NRS 48.105.

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CONCLUSION

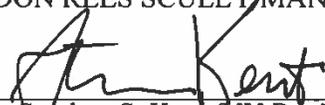
Defendant, Lynda Hascheff, violated this Court's Order and NRS 48.105 in her brief. Out of fairness and prevent this conduct and to ensure orderly proceedings, Defendant's September 26, 2022, brief should be stricken.

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED: September 27, 2022.

GORDON REES SCULLY MANSUKHANI

By: 
Stephen S. Kent (NV Bar No. 1251)
1 E. Liberty Street, Suite 424
Reno, NV 89501
Telephone: (775) 467-2601

Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure, Rule 5(b), I hereby certify that I am an employee of Gordon Rees Scully Mansukhani,LLP and that on this date, I served a true and correct copy of the attached document(s) as follows:

- By placing the document(s) in a sealed envelope with first-class U.S. postage prepaid, and depositing it for mailing with the U.S. Postal Service in Reno, Nevada addressed to the person at the address listed below.
- By electronic service. By filing the document with the court's electronic filing system which serves counsel listed below electronically.
- By personally delivering the document(s) listed above, addressed to the person at the address as set forth below.
- By Federal Express.
- By facsimile
- By electronic mail.

Shawn Meador, Esq.
Woodburn and Wedge
6100 Neil Road, Suite 500
Reno, NV 89505

DATED this 27 day of September, 2022.



Sam Baker

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TRANSCRIPT OF AUDIO-RECORDED

9

STATUS CONFERENCE

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IN THE MATTER OF HASCHEFF V. HASCHEFF

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CASE NO. DB-13-00656

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SEPTEMBER 28, 2022

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Litigation Services Job Number: 1010598

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P R O C E E D I N G S

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THE COURT: Good morning. We are present on case number DB-13-00656 in the matter of Hascheff v. Hascheff. This is the time and place set for a status conference. This matter is taking place by means of a simultaneous audio visual transmission in accord with the current administrative orders of the second judicial district court, as well as in accord with Rule 9B of the Nevada State Supreme Court.

I'm located in the Washoe County Courthouse, which makes that the site of today's court proceedings. May I have appearances, please?

MR. KENT: Good morning. This is Stephen Kent [ph] for plaintiff, Pierre Hascheff. I'm appearing from Washoe County.

THE COURT: Thank you.

MR. METTER: Thank you, Your Honor. Good morning. Shawn Metter [ph] on behalf of Linda Hascheff who's also with us today. We consent to the video and audio recording of the hearing. And I'm appearing from my home office.

THE COURT: Thank you. Um, I don't intend to have the parties sworn in this particular case as this is really a status conference amongst counsel, which is why I'm not going to ask Judge Hascheff to make sure

1 that I have video of him on at this particular
2 occasion.

3 Um, as this matter was presented first by Mr.
4 Hascheff or Judge Hascheff, sir, I'd appreciate your
5 position. I did receive this morning your motion to
6 strike. However it wasn't ex parte nor was it on the
7 request for submission. I did take a gander at it.

8 Um, so I'm more interested in how we move this
9 case forward than I am about what we do related to the
10 statement that Mr. Metter filed. So your position.

11 MR. KENT: Thank you. Um, I think it's fairly
12 clear from [inaudible] decision that, uh, the court
13 has to determine the amount of fees that are due, uh,
14 to Mr. Hascheff for reimbursing the fees that he
15 incurred after the malpractice lawsuit was filed.

16 The court left open the door for interpreting the
17 agreement, uh, saying insofar as the indemnification
18 provision [inaudible]. Uh, so it is unclear what fees
19 are due [inaudible] the court would take for all
20 evidence.

21 So, um, it's our position that more than just
22 paragraph 40 is at issue in, uh, determining what fees
23 are due. There's other paragraphs that talk about, um,
24 reimbursement and indemnity. So that's an issue that
25 has to be determined.

1 And then, um, for that, I think that would
2 require -- it may require the court to take some
3 testimony on that. Uh, and then the court has to
4 determine who is the prevailing party. Um, it seemed
5 fairly clear to me in looking at the opinion that
6 neither party, uh, won all of their issues. So I think
7 that's gonna be difficult.

8 Um, obviously, uh, the court can't award
9 reasonable fees for work that was conducted on issues
10 that [inaudible] started preparing a list of what we
11 believe, uh, Mr. Hascheff is the prevailing party on.
12 Uh, but the courts might have to sort that out, and I
13 think go through the fees and determine what was spent
14 on an issue that that party prevailed on.

15 Um, Mr. Metter says he wants to do discovery. And
16 I'd just like to know on what. And I think we should
17 try to limit, you know, that to the issues that
18 remain. And we should set like a time period for that
19 so it doesn't just go on and on. Um, I'm not sure we -
20 - we need to do discovery. But, um, Mr. Metter hasn't
21 been specific about the discovery he wants to do.

22 And then the court had raised the mediation
23 issue. And my client is, uh, would like to do with
24 mediation. We tried to have a mediation with Judge,
25 uh, Barry [ph]. But, uh, the defendants apparently

1 don't want to mediate with Judge Barry.

2 So those are kind of the issues for us. I think
3 we have to have some guidance from the court. And
4 then, uh, set some of these things that are issues.
5 Thank you.

6 THE COURT: I have one question for you, sir,
7 which wasn't clear with the Supreme Court. My
8 recollection, distinct recollection from the hearing
9 that we ultimately had on this, was that the \$10,000
10 was paid part -- prior to the malpractice action being
11 filed. I don't know if that's correct or not.

12 MR. KENT: I -- I can't tell you that off the top
13 of my head, Your Honor. Um, obviously I think that the
14 -- the opinion talks about [inaudible] limiting
15 indemnity to after the, uh, malpractice action was
16 filed.

17 But, um, I do believe there are other
18 inconsistent, uh, or contradictory provisions in the
19 [inaudible] agreement that, um, indicate that, uh,
20 fees that may be incurred, you know, in a more broad
21 sense could be recovered. So I think that is an issue
22 that we'll be inserting, um, that will have to be
23 resolved.

24 THE COURT: And I also recall that from the --
25 the original hearing, that the amounts that I had from

1 the billings -- and of course they were not the
2 unredacted billings, but the amounts that I had were
3 very limited for the malpractice in that.

4 So do you think it's going to be imperative for
5 me to see copies as the court of appeals suggested
6 even in camera related to these unredacted billings?
7 And I don't know whether Mr. Metter is going to want
8 to see them. And, uh, we'll get to that in a moment.

9 MR. KENT: Yes. I think the court -- we would
10 like to submit them to the court either in camera or
11 we would need a protective order, um, to maintain
12 their confidentiality and not waive the attorney
13 client privilege. So, uh, yes, I think the court will
14 want to see those.

15 I'm not involved in the hearing. So I just want
16 to be sure that I have those, uh, billings, and that
17 what I'm presenting to the court is accurate. So, um,
18 I -- I want to go back to the attorneys and make sure
19 we have everything. And then we will present that to
20 court and counsel.

21 THE COURT: My preference, just so that you're
22 aware, would be that we issue the protective order, so
23 that everyone has the opportunity to see the actual
24 billings. Because I think they're going to become, uh,
25 a major portion of their argument that's gonna be

1 presented to me. And if that's -- if you have comfort
2 with that, that would be my preference.

3 MR. KENT: I actually already started drafting
4 the stipulated protective order, Your Honor. We just
5 want to maintain the confidentiality and the attorney
6 client privilege so that that's not waived.

7 THE COURT: Mr. Metter, you won't have any
8 objection to that, will you?

9 MR. METTER: Not to the concept, Your Honor.

10 THE COURT: Thank you. So you're anticipating
11 then, sir, that we're going to have another hearing on
12 this matter.

13 MR. KENT: I think we would have a hearing, Your
14 Honor, and, uh, present evidence that would be
15 testimony about the various provisions of the
16 agreement, and the invoices, and then argument and
17 briefing on who is the prevailing party, specifically
18 about what fees we believe, you know, are recoverable
19 or aren't recoverable.

20 Again, I don't think a party can recover
21 attorney's fees for work that was done on issues that
22 they were unsuccessful with. We have to find a way to
23 sort that out.

24 THE COURT: So my question is, is how much time
25 do you anticipate needing for a hearing in this

1 matter.

2 MR. KENT: Uh, I think it's a little hard to
3 estimate at this point. But I would think at least a
4 half a day.

5 THE COURT: Thank you very much. Mr. Metter?

6 MR. METTER: All I hear is continue to create
7 delay and cause my client to incur yet more fees. I
8 think the court of appeals order is absolutely clear
9 and unambiguous, that Pierre must first be sued for
10 malpractice before seeking indemnification for his
11 legal fees and costs.

12 And those legal fees and costs must arise from
13 the malpractice action only. That language could not
14 be more clear. It does not say once he is sued for
15 malpractice, he may recover his fees in the collateral
16 action. The rep- -- the order repeatedly,
17 consistently, and unambiguously states that the fees
18 in the collateral action are not recoverable.

19 It is outrageous, in my opinion, that we're
20 sitting here, September 28th, and none of us, at least
21 neither me, my client, nor this court, know the fees
22 that Mr. Hascheff claims were incurred directly in
23 connection with the malpractice action.

24 I've asked five times since the court of appeals
25 order was entered, that Mr. Hascheff produce the

1 documents that show what fees were incurred in the
2 malpractice action that were not covered by insurance.
3 I have received not a single document nor clear
4 understanding of what that fee is, exactly the same as
5 during the litigation with prior counsel.

6 I'm astounded to hear that Mr. Hascheff now wants
7 to assert claims that he did not make in the initial
8 motion practice or at the initial hearing, that there
9 is some now secret claim that there are other terms
10 that would cover this.

11 That some other motion, this is the motion about
12 his obligation pursuant to the indemnity clause in the
13 agreement that was litigated. Not some other claim. So
14 to suggest that we're now going to litigate some other
15 claim is completely inconsistent with due process.

16 I outlined the court of appeal's order and my
17 client's position throughout the litigation. Because
18 our position is that the issues left to be resolved by
19 the court are remarkably similar. The first is how
20 much were the fees that Mr. Hascheff incurred directly
21 related to the malpractice actions that were not
22 covered by insurance.

23 The second issue then is who is the prevailing
24 party entitled to fees and how is that resolved.
25 Because the court of appeal's opinion is exactly

1 parallel to my client's position, but before
2 litigation was initiated and throughout the
3 litigation, she is the prevailing party on all issues.
4 The only other issue was the contempt motion that Mr.
5 Hascheff filed that was denied.

6 Therefore we believe the appropriate procedure
7 with respect to the prevailing party fee clause is a
8 simple Wilfong [ph] affidavit, not hearings, and
9 motions, and other expenses that my client is forced
10 to incur.

11 With respect to the discovery, it is exactly what
12 we've been asking for for years. The documents that
13 reflect how much the fees are that Mr. Hascheff
14 incurred directly out of the malpractice action, not
15 the collateral action. And the only thing I've ever
16 been provided is one fee entry for preparing, signing,
17 filing the stipulation to stay.

18 THE COURT: Which was approximately --

19 MR. METTER: And that is the only work I'm aware
20 of that was ever done in connection with the
21 malpractice action.

22 THE COURT: And that was approximately \$300.

23 MR. METTER: That's -- except for I was recently
24 told an \$800 number without documents, but was not
25 told whether that was the total fee or half of the

1 fee. Or what it was for or where it came from.

2 THE COURT: So it appears to be the first thing
3 that should happen is, is that we should sign the
4 stipulation in regards to the unredacted fees, so that
5 they can be reviewed by the court, and arguments can
6 be made by counsel related to that.

7 I'm still not clear whether or not the entirety
8 of the monies that were paid by Judge Hascheff were
9 paid related to the collateral action. And even though
10 the court said I got there in the wrong way, it still
11 said my ruling stood in regards to the collateral
12 action.

13 I don't know how you, sir, claim that I'm now
14 supposed to look beyond the MSA paragraph 40 when
15 that's the only paragraph that the court of appeals
16 even looked at. My order also addressed paragraph 35
17 and some other paragraphs in the MSA in putting its
18 order out.

19 So I think we are bound by looking at paragraph
20 40. And I need to know why we would not be, sir.

21 MR. KENT: When you read the opinion, the opinion
22 talks about chapter 40 -- paragraph 40. But then it
23 goes on, on page 11. And it opens the door to other
24 things.

25 Because it says that, uh, further insofar as the

1 indemnification provision contains ambiguous terms,
2 such that it is unclear which fees and costs are
3 covered by the provision, the district court is
4 required to clarify the meaning of a disputed term in
5 an agreement based degree, and must consider the
6 intent of the parties in entering into the agreement.

7 I'm not going to read the cite. And in doing so
8 the court may look through the record as a whole and
9 the surrounding circumstances to interpret the party's
10 intent. If the words of the contract are ambiguous,
11 the court will consider [inaudible] intrinsic evidence
12 to determine the intent of the parties. The district
13 court must make the determinations in the first
14 instance.

15 The marital settlement agreement has other
16 provisions that talk about recovery of expenses and
17 fees. And it's not, you know, we just looked at one
18 paragraph. Uh, and that language to me left open the
19 door to look at the entire agreement. And we believe
20 that the entire agreement when read, uh, indicates
21 that, uh, other fees are recoverable.

22 And we -- we, you know, we want to make that
23 argument, um, that I think the court needs to, you
24 know, listen to our argument here and make a decision
25 about that. Um, you know, it's certainly not our

1 intent to delay things. We attempted for right out of
2 the box [inaudible] the decision. Because I think the
3 decision does give a lot of guidance to the parties,
4 that we go and try to get this case resolved.

5 I told Mr. Metter that we would produce the
6 billings, you know, in my first communication. Because
7 obviously how can we expect to recover monies that we,
8 you know, don't provide the invoices for. But I was
9 not involved in the original proceeding.

10 So I don't want to just, uh, base what I conclude
11 on things that were produced before that I don't know
12 are complete. I want to make sure they're complete and
13 then provide a demand with backup documents, which I
14 sent from the beginning when I attempted to
15 communicate with Mr. Metter.

16 Um, so obviously that has to be done. And I think
17 it has to be clear. And, uh, you know, we indicated
18 that, you know, from the beginning of my involvement.
19 Um, the -- the idea that we don't know that the fees
20 or they've been a mystery, I don't think that's really
21 accurate.

22 The -- the redacted invoices were produced. And I
23 think the court and Mr. Metter are talking numbers. So
24 there had to be something there. So to say that, you
25 know, there never was anything there, I don't think

1 that's, uh, very helpful because it's not accurate.

2 So, um, we would like to be able to make the
3 argument because I think the court did leave that door
4 open. I know Mr. Metter disagrees. But, uh, just
5 reading the opinion, tries to make sense of it just
6 like everyone else.

7 Um, and then, uh, we have to -- the court is
8 clear, we have to decide on the prevailing party. But
9 to say that Linda Hascheff prevail on all issues is
10 also inaccurate. Because she always argued that the
11 indemnity was unenforceable, and that [inaudible]
12 prevented its enforcement, that notice was required.

13 You know, so to say, hey, I was willing to pay,
14 you know, it's not accurate. Uh, she confessed to
15 that. And it's been these parties disagreeing about
16 this agreement. And so it's both parties disagreed
17 about a lot of things. And that's why we're here
18 today. Not just one party.

19 I think that's -- that suggestion is also
20 inaccurate. It's not helpful because, uh, it doesn't
21 focus on how we get the case resolved. Um, and that's
22 -- that's what my client has told me. He wants to get
23 the case resolved. Uh, and that has been our focus.
24 That's where we'd like to concentrate our efforts.

25 Uh, we basically run into a brick wall in those

1 efforts. You know, we -- the court suggested that
2 [inaudible] to us. Uh, but apart from that we, uh, we
3 have to determine what fees are due. You know, we have
4 to produce those fees and backup documents. I agree
5 with that. We need to get a protective order into
6 place, so those are protected.

7 And the parties have to agree that we maintain
8 those as confidential because there's other litigation
9 ongoing. And that information, you know, could affect
10 that other litigation, which we don't want. That's not
11 beneficial to any party.

12 So, um, we would do that. And then we will have
13 to I think take evidence on what was the party's
14 intent regarding indemnification. That's what the --

15 THE COURT: And the intent doesn't come into
16 play, sir. The intent doesn't come into play because
17 the court was very specific. If you look at page
18 eight, further Pierre by signing the MSA warranted
19 that he would not seek indemnification from Linda for
20 any obligation he incurred post-divorce other than for
21 malpractice suits as discussed therein.

22 Therefore the first part of the indemnification
23 and hold harmless provision of MSA paragraph 40 as
24 written does not permit indemnification from Linda for
25 the fees and costs incurred in a collateral trust

1 action. Further, because Pierre was not sued for
2 malpractice in that litigation, he is not entitled to
3 seek indemnification under the second part of
4 paragraph 40.

5 MR. KENT: Right. That's talking about paragraph
6 40. There's another paragraph in the agreement,
7 including 35, that we have to use also. Those other
8 paragraphs allow for the recovery of costs and also
9 help define the indemnity obligation. And that --
10 that's the -- that's what we are asserting and that's
11 our argument.

12 You know, we're not making the argument today.
13 We're in a status conference. But, uh, we will make
14 that argument, and the court will have to decide
15 whether the court agrees or not, or you know
16 [inaudible]

17 THE COURT: The paragraph 35 --

18 MR. METTER: Your Honor, if I may have a moment -
19 -

20 THE COURT: Just one minute. Paragraph 35 deals
21 with prevailing party. So the supreme court only spoke
22 about prevailing party and paragraph 40.

23 MR. KENT: Right. That doesn't mean that those
24 are the only issues. The court doesn't say that. And I
25 don't know how else you can interpret the language I

1 read on page 11. It, you know, it talks about the
2 intent of the parties. You know, and [inaudible] --

3 THE COURT: But it doesn't open it up. It says,
4 on remand the district court must necessarily consider
5 whether the fees and costs incurred in the malpractice
6 action are covered by the indemnification provision.
7 That's the start of that paragraph that you read to
8 me.

9 MR. KENT: Right. And then the court goes on to,
10 what is the intent of the parties, is there any
11 ambiguous provisions, um, and the necessity of taking
12 intrinsic evidence [inaudible] --

13 THE COURT: So you're -- you're looking at the
14 inconsistencies in what the -- the -- the court
15 ordered from the appellate court, where it point blank
16 says certain things about paragraph 40. And now you're
17 trying to open the door for that to be something your
18 client never filed during the original trial in this
19 matter.

20 He never asked for anything that related to
21 paragraph 40. Isn't that correct?

22 MR. KENT: I don't agree with that. We're trying
23 to enforce the entire agreement, not you know, one
24 paragraph. And no agreement is just based on one part
25 of it. It's the whole agreement, Your Honor. And that

1 agreement has other provisions in it.

2 And I don't -- you have to reconcile language on
3 page 11 of the opinion. I think it is kind of
4 confusing because [inaudible] you know, I'm -- I'm not
5 disputing what you're saying [inaudible] about
6 paragraph 40.

7 But then they go on in page 11 and they say what
8 they say, which, um, isn't just -- it's opening the
9 door to other issues as described in those words. So
10 it allows us to make that argument. And we want to
11 make that argument.

12 But I would ask of the court not make that
13 decision today. Uh, we need to [inaudible] and show
14 the court our position which we're not, you know,
15 we're not prepared to do that today. Today is a status
16 conference.

17 THE COURT: But on the motion for order to show
18 cause, which was filed on July 8th of 2020, Mr.
19 [inaudible] filed specifically a motion for order to
20 show cause or in the alternative to enforce the court
21 orders. And as only Mr. [inaudible] can do, he
22 actually blocks out that the provision that that
23 motion was based on was paragraph 40.

24 How do you now expand to say that I have to look
25 at the whole agreement, the entire MSA, without you

1 having to file a new motion?

2 MR. KENT: Because it's -- he wasn't seeking to
3 enforce just paragraph 40. He was seeking to enforce
4 the whole marital settlement agreement, including the
5 provision on collection of attorney's fees. So you
6 know, there's more than chapter 40 -- excuse me,
7 paragraph 40. And there -- you don't look at just one
8 part of an agreement.

9 The court specifically talked about what were the
10 parties' intent on what fees should be covered under
11 the indemnity. It's plain in par- -- in page 11. It
12 does on for like, you know, three paragraphs. So you
13 know, it's there and it says what it says. And that,
14 uh, what else could it be, uh, you know.

15 We're just telling the court that that's the
16 argument we're going to make. Today is not the day to
17 make that decision. Perhaps the court will reject that
18 argument. But we would like to make the argument, and
19 have the court look at our argument and our authority,
20 and then make a decision.

21 THE COURT: But the opinion states the court will
22 only look at the entire agreement if -- and the intent
23 of the parties and/or extrinsic evidence if the court
24 finds the terms of the indemnification to be
25 ambiguous. And then earlier in its opinion it said it

1 wasn't ambiguous.

2 MR. KENT: Well I don't, you know, I write the
3 opinion. But it -- it says that in the beginning. And
4 then it goes on and it says, you know, if it's
5 ambiguous -- and of course the only way to know if
6 it's ambiguous is to ask the parties, you know, was
7 this ambiguous or not. And what is ambiguous? You
8 know, is there a contradictory provision that is
9 broader?

10 You know, those are all things that have to be
11 looked at. And the court will have to decide, you
12 know, given what the court of appeals said, whether or
13 not, you know, there's other language to be considered
14 in determining the intent of the parties, and whether
15 it's ambiguous, and you know.

16 THE COURT: Your client -- your client, a lawyer,
17 and a judge, is the one that's going to claim that
18 paragraph 40 was ambiguous. Before I'm going to even
19 consider that, then I'm going to need an affidavit
20 from him saying why he believed that this paragraph
21 was ambiguous.

22 So at this point in time I want the unredacted --
23 I want the protective order in place and I want the
24 unredacted receipts provided to us. And then I will
25 take a short brief about whether or not there's going

1 to be -- and -- and I mean short because I'm trying to
2 keep Ms. Hascheff's fees down. A short brief, three,
3 four pages tops, about why you believe that this
4 marital settlement agreement, paragraph 40, was
5 ambiguous.

6 Your other alternative is -- and Mr. Metter, this
7 is up to you -- is whether or not you want to just
8 present this matter to a senior judge so that there's
9 no expense to your client.

10 MR. METTER: Well there still would be an expense
11 to my client, Your Honor. I would -- she would have to
12 pay me for my time. And here we are --

13 THE COURT: I understand. But I meant no expense
14 for the mediator --

15 MR. METTER: Here's down the road, we don't know
16 what his most recent theory is. And he's not prepared
17 to talk about his most recent theory today. And we
18 still don't know what number he claims. Why -- under
19 what possible circumstances would I encourage my
20 client to go to the settlement conference with that
21 kind of level of secrecy and ever evolving claims.

22 THE COURT: I don't disagree.

23 MR. METTER: There were obviously other claims
24 that Mr. Kent made that were untrue. But I -- I don't
25 need to address them here. You know, Mr. Kent's

1 argument renders the entire court of appeals order
2 meaningless and irrelevant.

3 There's only one way to read it, and that's the
4 way Your Honor has, that if Mr. Hascheff can show that
5 there's some ambiguity about whether all or only a
6 part of the fees incurred in the malpractice action
7 are covered by indemnity. It doesn't go outside of the
8 indemnity.

9 If it did, it would render the entire order
10 completely meaningless, which is contrary to standard
11 principles of law.

12 THE COURT: And that's where I'm -- I'm falling
13 right now. Sir, I need the bills and I need to know
14 how you believe that this is ambiguous. Because I
15 don't think -- I read that order three times again
16 last night to go back through it. And it was clear
17 that although the court said that I got there the
18 wrong way, that I was right, that what he incurred
19 related to the collateral matter, was not part of the
20 malpractice.

21 And unless you can show that paragraph 40 was
22 ambiguous, and they sure didn't think it was, they
23 considered his request for indemnification to protect
24 his witness, didn't -- didn't even rise to the level
25 that it was part of paragraph 40. And in denying his

1 request, the court correctly recognized the
2 indemnification provision did not require that Linda
3 be notified of the litigation.

4 So she didn't have to be notified at the time. He
5 could keep this all to himself. He -- but then when he
6 sent her the bill, the bill he sent to this woman
7 wasn't for collateral aspects. He sent a bill to this
8 woman saying that it was for the malpractice action.

9 So I need to see those unredacted bills. So I
10 want the order signed. Um, can it be done -- are you
11 almost completed with your stipulation, sir?

12 MR. KENT: No.

13 THE COURT: Okay. How much more time do you need
14 for the stipulation? How much more time?

15 MR. KENT: I'd like to have a week. And Mr.
16 Metter will have to look at it, of course. You know,
17 so --

18 THE COURT: Mr. Metter, that should be
19 acceptable. I'll be out of town for a few days in the
20 beginning of October. So we'll give him a week from
21 today to get it to you. And then I'll be back in the
22 office as of the 12th. Um, and so if you could get it
23 to me by that date, that would be great.

24 MR. METTER: Thank you, Your Honor.

25 THE COURT: If there's an issue with the language

1 in it though, guess what, I have no docket. I will
2 find a clerk. And you may reach out to Ms. Turner and
3 we'll have a hearing on whether or not there -- we
4 agree on the nature of that stipulation. Because
5 that's the most important part right now. I need to
6 see those unredacted bills. That's what I need to see.

7 And from there I think the best you're going to
8 be able to do --

9 MR. KENT: [inaudible]

10 THE COURT: Excuse me, sir?

11 MR. KENT: We can -- we can send the unredacted
12 invoices to you tomorrow. It's, you know, it's the
13 closing party that we're concerned about. You know, we
14 -- we have no problem providing it in camera to you,
15 you know, immediately. So that's not the issue.

16 THE COURT: But Mr. -- but you've already said
17 that you'll let Mr. Metter have them with a protective
18 order. He's wanted them. He's wanted them from day
19 one. So I want that protective order and I want him to
20 see them. And so we'll get this back to me and we'll
21 know what we're doing.

22 And then I think at best you're going to give me
23 a three to four page brief or affidavit about how your
24 client, the lawyer, the judge, felt that this was an
25 ambiguous term in his decree.

1 MR. KENT: Remember, Your Honor, that, uh, our
2 client did argue that section 40 did include pre-
3 lawsuit fees and the court found that they included.
4 So if [inaudible] --

5 THE COURT: And the -- the appellate court said
6 it was wrong.

7 MR. KENT: Okay. But we're -- we have intelligent
8 experienced lawyers who have a different opinion. So
9 that to me would indicate some ambiguity.

10 THE COURT: No. I think I went too far down the
11 rabbit hole, if you want to be realistic.

12 MR. KENT: [inaudible]

13 THE COURT: So I want the exchange of
14 information. I want the order to me or the stipulation
15 to me no later than October 12th. And if you can't
16 have it to me by that date, I want there to be a
17 status conference on that date.

18 From there I'll give you an additional -- I'll
19 give you to the 31st of October to file your three-
20 page document. Mr. Metter, I'll give you two weeks
21 thereafter to file yours. And there will be no reply.
22 Acceptable?

23 MR. METTER: Thank you, Your Honor.

24 MR. KENT: Yes. And that is on, uh, whether the
25 document is ambiguous, correct, Your Honor?

1 THE COURT: Correct. Correct.

2 MR. KENT: Sounds good. Thank you.

3 THE COURT: All right. We'll be in recess.

4 MR. METTER: Thank you, Your Honor.

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I, Chris Naaden, a transcriber, hereby declare under penalty of perjury that to the best of my ability the above 26 pages contain a full, true and correct transcription of the tape-recording that I received regarding the event listed on the caption on page 1.

I further declare that I have no interest in the event of the action.

August 17, 2023

Chris Naaden



(Status conference in re: Hascheff v. Hascheff, 9-28-22)

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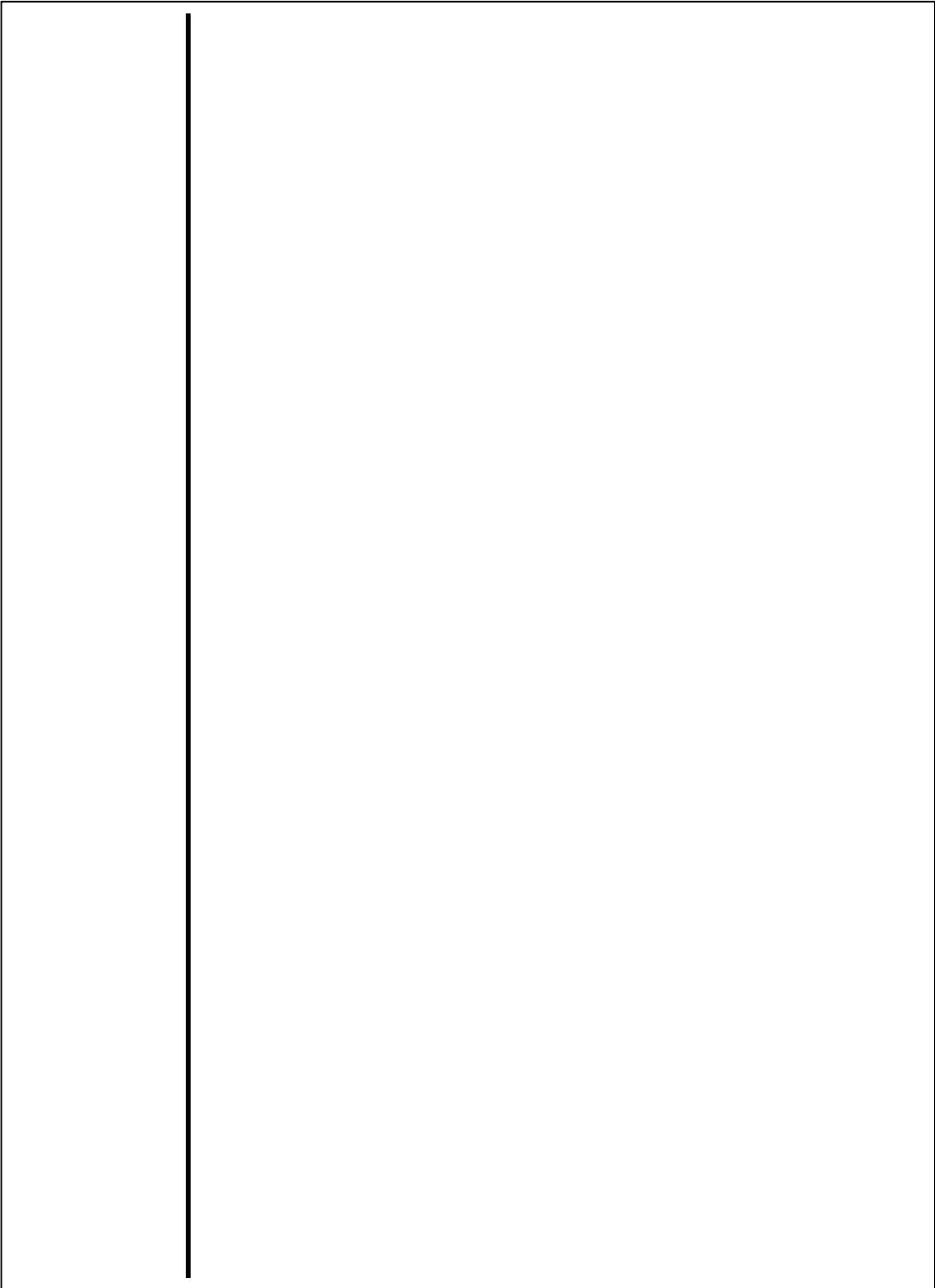
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IN THE FAMILY DIVISION

7

OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8

IN AND FOR THE COUNTY OF WASHOE

9

10

PIERRE A. HASCHEFF,

11

Plaintiff,

12

Case No. DV13-00656

13

vs.

Dept. No.12

14

LYNDA HASCHEFF,

15

Defendant.

16

17

ORDER AFTER STATUS HEARING

18

This matter came before the Court on September 28, 2022, by audio visual means pursuant to the Administrative Order entered March 16, 2020, and Nevada Supreme Court Rule Part IX-B. The hearing was set for a status hearing pursuant to the Order Setting Status Hearing entered August 12, 2022. Plaintiff, Pierre Hascheff, was present represented by Stephen Kent, Esq. Defendant, Lynda Hascheff, was present represented by Shawn B. Meador, Esq.

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At the hearing, Mr. Kent stated the reimbursement of fees due to Mr. Hascheff by Ms. Hascheff will need to be determined. Mr. Kent stated paragraph 40 of the parties' Marital Settlement Agreement (MSA) entered September 30, 2013 is ambiguous with regard to recoverable fees. He stated there are other provisions in the MSA regarding the recovery of expenses and fees that may need to be addressed. He requested a hearing be set where testimony could be provided regarding the issues in this case. Mr. Kent offered to provide a copy of the unredacted invoices that reflect the fees incurred by Mr. Hascheff for both the collateral matter and the malpractice action to

1 the Court and Ms. Hascheff if a protective order could be entered regarding the confidentiality of
2 the documents as there are other ongoing litigations that could be affected by those disclosures.

3 Mr. Meador argued a hearing would only cause delay and more legal fees for Ms. Hascheff
4 and is not necessary to address the issues in the case. Mr. Meador stated he requested a copy of the
5 unredacted invoices to determine the actual fees incurred by Mr. Hascheff directly related to the
6 malpractice action that were not covered by insurance multiple times. He has not received those
7 documents as of this hearing. He also stated a determination needs to be made on who the
8 prevailing party was entitled to fees and he believes Ms. Hascheff was the prevailing party on all
9 issues. Mr. Meador disagreed with Mr. Kent regarding the order of remand and stated paragraph 40
10 of the MSA was very clear and unambiguous in that any recoverable fees must arise from a
11 malpractice action only and not any collateral actions. Mr. Meador did not object to signing a
12 stipulation for a protective order in order to receive a copy of the unredacted invoices.

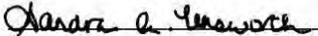
13 Based on the foregoing and good cause appearing, the Court enters the following Orders:

14 1. The parties shall file with the Court and exchange a copy of the unredacted invoices that
15 reflect the fees incurred by Mr. Hascheff along with the signed stipulation related to the protective
16 order to maintain the confidentiality of the unredacted invoices by October 12, 2022. If this cannot
17 be completed by that date, counsel shall appear for a status hearing on October 12, 2022 by audio
18 visual means. A Zoom link will be provided to counsel upon the status hearing being set.

19 2. Thereafter, Mr. Hascheff shall file with the Court a brief three-page statement no later
20 than October 31, 2022, related to his claims of ambiguity of paragraph 40 of the MSA. Ms.
21 Hascheff shall file her brief three-page response no later than two weeks thereafter. A reply shall
22 not be filed and counsel shall submit their statements to the Court. Thereafter, the Court will then
23 enter an order on how to proceed.

24 **GOOD CAUSE APPEARING, IT IS SO ORDERED.**

25 Dated this 29 day of September 2022.

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Sandra A. Unsworth
District Judge

28 DV13-00656

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CERTIFICATE OF SERVICE

Pursuant to NRCp 5(b), I certify that I am an employee of the Second Judicial District Court in and for the County of Washoe, and that on September 29, 2022, I deposited in the county mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, or by e-filing, a true copy of the foregoing document addressed as follows:

ELECTRONIC FILING:

**STEPHEN KENT, ESQ. for PIERRE HASCHEFF
SHAWN MEADOR, ESQ. for LYNDA HASCHEFF**



Judicial Assistant

1 2610
STEPHEN S. KENT, ESQ.
2 Nevada State Bar No. 1251
GORDON REES SCULLY MANSUKHANI, LLP
3 1 E. Liberty St., Ste. 424
Reno, Nevada 89501
4 Telephone: (775) 467-2601
Facsimile: (775) 460-4901
5 Email: skent@grsm.com

6 Attorneys for Plaintiff,
PIERRÉ A. HASCHEFF

7
8 **IN THE FAMILY DIVISION**
9 **OF THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA**
10 **IN AND FOR THE COUNTY OF WASHOE**

11 PIERRE A. HASCHEFF,) Case No. DV13-00656
12 Plaintiff,) Dept. No.: 12
13 vs.)
14 LYNDA HASCHEFF,)
15 Defendant.)

16
17 **NOTICE OF FILING INVOICES AND**
18 **DECEMBER 26, 2018 COMPLAINT (CONFIDENTIAL)**

19 Pursuant to the Court's September 29, 2002 order, the Plaintiff, PIERRE HASCHEFF, by
20 and through his undersigned counsel, STEPHEN S. KENT, ESQ., of GORDON REES SCULLY
21 MANSUKHANI, LLP., hereby files the attached confidential attorney-client privileged invoices
and December 26, 2018, Complaint.

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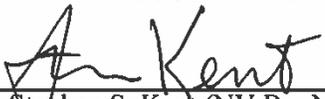
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AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the document does not contain the social security number of any person.

DATED: October 12, 2022.

GORDON REES SCULLY MANSUKHANI

By: 

Stephen S. Kent (NV Bar No. 1251)
1 E. Liberty Street, Suite 424
Reno, NV 89501
Telephone: (775) 467-2601

Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure, Rule 5(b), I hereby certify that I am an employee of Gordon Rees Scully Mansukhani,LLP and that on this date, I served a true and correct copy of the attached document(s) as follows:

- By placing the document(s) in a sealed envelope with first-class U.S. postage prepaid, and depositing it for mailing with the U.S. Postal Service in Reno, Nevada addressed to the person at the address listed below.
- By electronic service. By filing the document with the court's electronic filing system which serves counsel listed below electronically.
- By personally delivering the document(s) listed above, addressed to the person at the address as set forth below.
- By Federal Express.
- By facsimile
- By electronic mail.

Shawn Meador, Esq.
Woodburn and Wedge
6100 Neil Road, Suite 500
Reno, NV 89505

DATED this 12th day of October, 2022.



Sam Baker

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INDEX OF EXHIBITS

No.	Description
1.	Invoices
2.	December 26, 2018 Complaint

Exhibit 1

CONFIDENTIAL ATTORNEY-CLIENT PRIVILEGE

Exhibit 1

**Pages AA 863 to AA 887 filed under Seal per
Stipulation to Seal Portions of Appellant's
Appendix.**

**Pages AA 863 to AA 887 filed under Seal per
Stipulation to Seal Portions of Appellant's
Appendix.**

Exhibit 2

**CONFIDENTIAL
ATTORNEY-CLIENT
PRIVILEGE**

Exhibit 2

1 7. The TBJ Trust is a 23% owner of TSS and its membership interest is being
2 challenged as a result of Defendant's legal services.

3 8. Defendant was an attorney, and as such, had a duty to use such skill, prudence, and
4 diligence as other members of his profession commonly possess and exercise.

5 9. As Plaintiffs' attorney, Defendant owed a duty to Plaintiffs to use skill, prudence,
6 and diligence as lawyers of ordinary skill and capacity possess in exercising and performing tasks
7 which they undertake.

8 10. Todd is Trustee of the Todd Jaksick Family Trust, a 23% owner of TSS, owner of
9 the Lake Tahoe House. As a result of Defendant's negligence, Todd has been sued in his capacity
10 as Trustee of the Todd Jaksick Family Trust.

11 11. Todd is Trustee of the TBJ Trust, a 23 % owner of TSS, owner of the Lake Tahoe
12 House. As a result of Defendant's negligence, Todd has been sued as Trustee of the TBJ Trust.

13 12. Todd is manager of various limited liability companies in which Sam's Family
14 Trust holds membership interests. As a result of the Defendant's negligence, Todd is being sued
15 in his capacity as manager of the various limited liability companies.

16 13. Defendant provided legal services to and for Todd and his father Samuel S. Jaksick
17 ("Sam") from 2007 through 2012.

18 14. Defendant's legal services, among others, included;

19 a. Drafting Todd's Indemnification Agreement;

20 b. Creating TSS for the purposes of having an option to buy the Lake Tahoe
21 House;

22 c. Drafting an option for TSS to acquire title to the Lake Tahoe House;

23 d. Drafting Sam's Second Amendment Trust, with Todd as a Co-Trustee and
24 beneficiary;

25 e. Facilitating TSS's exercise of the option it had to purchase the Lake Tahoe
26 House; and

27 f. Causing Todd's Family Trust and The TBJ Trust to be 23% owners of TSS.

28 15. Defendant's legal services provided to and for Todd, The TBJ Trust and Todd's

1 Family Trust were done in a negligent and careless manner. Those legal services caused Todd to
2 be sued in Second Judicial District Court, Case No. PR17-0045 and Case No. PR17-0046 filed in
3 Washoe County, Nevada.

4 16. Defendant's negligent legal services have resulted and caused the Plaintiffs to
5 sustain substantial damages well in excess of \$100,000. Stanley Jaksick and Wendy Jaksick have
6 both brought claims against Todd in Case No. PR17-00445 and Case No. PR17-00446.

7 17. As a proximate cause of Defendant's negligent and careless legal services provided
8 to and for Plaintiffs, Todd was sued in December of 2017 and February of 2018. Those lawsuits
9 were filed by beneficiaries of Sam's Family Trust and of The Issue Trust and the lawsuits gave
10 Todd first notice of the Defendant's negligence.

11 18. On December 17, 2018, expert reports were exchanged in the lawsuits filed by
12 Sam's daughter, Wendy. These reports first provided Todd, individually and as Trustee, with
13 actual notice of the Defendant's negligence. These reports appear to be based on misinformation
14 and wrongfully accusing Defendant of committing egregious and serious errors in performing
15 estate planning services for Samuel S Jaksick, Jr. Nonetheless, these reports gave Todd his first
16 actual notice of the alleged wrongdoing by the Defendant as follows:

17 a. The estate plan devised by Defendant was a bad one and subjected Todd to
18 lawsuits;

19 b. The Indemnification Agreement was poorly drafted and subjected Todd to
20 conflicts of interest;

21 c. The Lake Tahoe House documents were poorly devised and implemented
22 causing Todd to get sued; and

23 d. The Second Amendment was poorly drafted and implemented, causing
24 Todd to get sued.

25 19. Todd has been directly damaged by Defendant's negligence. The Plaintiffs also
26 contracted with Defendant requiring Defendant to provide competent legal advice and services.
27 Defendant breached the contracts.

28 20. Todd is entitled to be indemnified by Defendant for any sums he pays to Wendy

1 and/or Stanley Jaksick in the litigation filed by Wendy and Stanley.

2 21. Todd is entitled to recover all fees and costs incurred in defending Wendy's and
3 Stanley's lawsuits.

4 22. Todd is entitled to recover fees and costs incurred in this case.

5 **FIRST CLAIM—NEGLIGENCE**

6 23. Plaintiffs incorporate all prior paragraphs and allegations.

7 24. Defendant and Plaintiffs had a lawyer/client relationship from 2007 to January
8 2013.

9 25. Defendant was engaged as Plaintiffs' counsel and attorney.

10 26. Defendant provided legal services for the Plaintiffs as described hereinabove.

11 27. The Todd B. Jaksick Family Trust is a 23% owner of TSS. Its interests and
12 membership are being challenged as a result of Defendant's legal services.

13 28. The TBJ Trust is a 23% owner of TSS and its membership interest is being
14 challenged as a result of Defendant's legal services.

15 29. Defendant breached his duty of care to the Plaintiffs as described hereinabove.

16 30. Defendant's breaches of duty constitute legal malpractice and professional
17 negligence.

18 31. Defendant's breaches of duties of care owed to the Plaintiffs, his malpractice and
19 his professional negligence as described herein above caused Plaintiffs to sustain damages in
20 excess of \$15,000.

21 32. Plaintiffs are entitled to recover all damages caused by Defendant's breaches of
22 duties, negligence and malpractice, according to proof, in addition to attorney's fees incurred
23 herein.

24 33. Plaintiffs did not know of and did not have information to be aware of Defendant's
25 negligence, breaches of duties and of the malpractice until December of 2017.

26 **SECOND CLAIM—BREACH OF CONTRACT**

27 34. Plaintiffs incorporate all prior paragraphs and allegations.

28 35. Plaintiffs and Defendant entered into contracts described hereinabove, whereby

1 Defendant was to and did provide legal services for Plaintiffs.

2 36. The contracts for professional services were supported by adequate consideration.

3 37. The contracts were breached by Defendant.

4 38. The Plaintiffs performed all aspects and requirements of the contracts.

5 39. As a result of Defendant's breaches of the contracts described hereinabove,
6 Plaintiffs have sustained consequential damages in excess of \$15,000 and are entitled to fees and
7 costs.

8 **THIRD CLAIM—INDEMNIFICATION**

9 40. Plaintiffs incorporate herein all prior paragraphs and allegations.

10 41. Defendant's negligence and breaches of contract have caused Plaintiffs to be sued
11 by Stanley Jaksick and Wendy Jaksick in Case Nos. PR17-00445 and PR17-00446.

12 42. Plaintiffs adamantly deny any wrongdoing regarding the issues raised in the
13 lawsuits filed by Wendy and Stanley. Plaintiffs are aware of the Defendant's substantial efforts to
14 protect Samuel S. Jaksick, Jr. and his heirs and beneficiaries, and Plaintiffs believe and allege
15 herein that the Defendant proceeded at all times in good faith and with the best interests of the
16 Plaintiffs and Samuel S. Jaksick, Jr. as his first priority. However, if Plaintiffs are found liable to
17 Stanley and/or Wendy or should Plaintiffs, or any one of them, be required to pay in any way
18 Stanley and/or Wendy, Plaintiffs are entitled to recover such amounts by way of indemnification
19 from Defendant.

20 43. Plaintiffs have been obligated to and have paid legal fees for defending Wendy and
21 Stanley's lawsuit in amounts in excess of \$100,000. Plaintiffs are entitled to be indemnified for all
22 fees and costs paid to date and for all fees and costs incurred in the future for defending Plaintiffs
23 in the Wendy and Stanley lawsuits. This indemnification claim has therefore accrued.

24 WHEREFORE, Plaintiffs seek judgment as follows;

- 25 1. For consequential damages according to proof in excess of \$15,000;
26 2. For indemnification of any and all sums Plaintiffs must pay Wendy and/or Stanley;
27 3. For fees and costs incurred in the Wendy and Stanley lawsuits;
28 4. For fees and costs incurred in this action; and

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5. For such other relief as is appropriate under the circumstances.

DATED this 26th day of December 2018.

ROBISON, SHARP, SULLIVAN & BRUST
A Professional Corporation
71 Washington Street
Reno, Nevada 89503



KENT R. ROBISON
LINDSAY L. LIDDELL
*Attorneys for Todd B. Jaksick, Individually, and as
Trustee of the Todd B. Jaksick Family Trust and as
Trustee of the TBJ Trust*

Robison Sharp,
Sullivan & Brust
71 Washington St.
Reno, NV 89503
(775) 329-3151

1 Gary R. Silverman (NSB# 409) Michael V. Kattelman (NSB#6703),
John Springgate (NSB #1350), Alexander C. Morey (NSB#11216)
2 Benjamin E. Albers (NSB #11895)
Silverman Kattelman Springgate Chtd.
500 Damonte Ranch Pkwy., #675
3 Reno, Nevada 89521
Telephone: 775/322-3223
4 Facsimile: 775/322-3649
Attorneys for Plaintiff,
5 PIERRE A. HASCHEFF

6 **IN THE FAMILY DIVISION**
7 **OF THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**

9 PIERRE A. HASCHEFF,) Case No.: DV13-00656
10)
Plaintiff,) Dept. No.: 12
11)
vs.)
12)
LYNDA HASCHEFF,)
13)
Defendant.)
14)

15 **BRIEF STATEMENT**

16 Plaintiff, PIERRE HASCHEFF, by and through his undersigned counsel, JOHN
17 SPRINGGATE, ESQ., SILVERMAN KATTELMAN SPRINGGATE, CHTD., hereby
18 submits the following brief to the Court in accord with the Order After Status Hearing,
19 September 29, 2022.
20

21 **Factual Background.**

22 On February 1, 2021, this Court issued its "Order Granting Motion for
23 Clarification or Declaratory Relief; Denying Motion for Order to Enforce and/or for an
24 Order to Show Cause; Order Denying Request for Attorney's Fees and Costs."
25 (Hereafter the "District Court Order"). The matter was timely appealed, and cross
26 appealed, and on June 29, 2022, the Court of Appeals issued its Order Affirming in Part,
27 Reversing in Part, and Remanding. Thereafter, this Court issued, *inter alia*, an Order
28

1 after Status Hearing, which directed that the parties file with the Court, and exchange
2 copies of, the unredacted invoices showing the fees incurred by Mr. Hascheff, together
3 with a protective order, and that thereafter Mr. Hascheff would file a brief three page
4 statement related to his claims of ambiguity, followed by a response, the Court to then
5 enter an order on how to proceed. Order, September 29, 2022, page 2. The invoices have
6 been filed under seal, pursuant to the Protective Order, provided to counsel, and this
7 brief follows.

9 On remand, the Court of Appeals required the district court to determine two
10 issues:

11 (1) what fees and costs incurred and related to the malpractice action are covered by the
12 indemnification provision, and (2) consider an award of attorney's fees to the prevailing
13 party pursuant to MSA Section 35.1, given the fact that the district court already
14 determined that both parties complied with MSA Section 35.2. Opinion, fn 7, pg 12.

16 In determining which fees and costs are covered, the court must make specific
17 findings to support its determination. In addition, if Section 40 of the MSA is unclear as
18 to what fees and costs are covered by Section 40, the court must (a) clarify the meaning
19 of the disputed term and (b) consider the parties' intent at the time they entered into the
20 MSA.

21 **1. What Fees and Costs were incurred and related to the malpractice**
22 **action?**

24 The unredacted billing invoices have been filed in camera for the court to review.
25 The time entries and descriptions Mr. Hascheff contends relate to the malpractice action
26 are highlighted. The summary of those fees (Ex 1) shows that a majority of the fees were
27 incurred on or after December 26, 2018, the date the malpractice action was filed. The
28

1 Court of Appeals held that a condition precedent for Mr. Hascheff to seek
2 indemnification was that he first be sued. Opinion, pg. 6. But what fees are then
3 included? The scope of the fees must include more than professional representation of
4 the client in court. It is undisputed that the joint defense/common interest work
5 product privilege applied between Todd Jaksick ("TJ"), his lawyer, Pierre Hascheff, and
6 Hascheff's attorney in the malpractice action. Although some of the fees and costs were
7 incurred during the collateral litigation, where Hascheff was a witness, they are related
8 to the malpractice action in addition to those fees incurred in the malpractice action
9 itself. For example, preparation of Hascheff for testimony necessarily involves
10 consideration of whether his statements as a witness would expose him to liability in the
11 malpractice action. These matters are too interrelated to consider individually, and thus
12 the Court must consider this interplay in resolving the ambiguity of what fees and costs
13 apply.
14

15
16 For the common interest work product doctrine to apply, litigation need not
17 already have been commenced or even imminent; rather, potential litigation must be a
18 real possibility at the time the documents in question are prepared, and the court must
19 pay close attention to the special protection afforded to opinion work product. *See,*
20 *Eden Isle Marina, Inc. v. U.S.*, 89 Fed.Cl. 480, 505 (2009). Here, real litigation had
21 occurred, and was not just a potential.
22

23 The common interest privilege applies even though the party receiving it is a non-
24 party to any anticipated or pending litigation, where one of the parties was a litigant and
25 the other party was a potential target of litigation. *See, King Drug Co. of Florence, Inc.*
26 *v. Cephalon, Inc.*, 2011 WL 2623306 at *3 (E.D. Pa. July 5, 2011) (unpublished
27 decision).
28

1 In *Wynn Resorts, Limited v. Eighth Judicial District Court in and for County of*
2 *Clark*, 133 Nev. 369, 370, 384, 399 P.2d 334, 338, 347-48 (2017), the Nevada Supreme
3 Court joined the majority of courts in determining that the work product common
4 interest doctrine applied, adopting the “because of” test to determine whether materials
5 were prepared in anticipation of litigation. 133 Nev. at 384, 399 P.2d at 348. The court
6 is required to look at the totality of the circumstances, which requires the court to look
7 to the context of the communication and content of the document to determine whether
8 the privilege applies. 133 Nev. at 84-85, 399 P.2d at 348.

10 The Appellate Court was also persuaded based on the respective parties’
11 arguments regarding Section 38 of the MSA which refers to wife's obligation to defend
12 and indemnify husband "for any malpractice claims" referring to Section 40 of the MSA.
13 When both sections are read together, wife must pay for one half of the fees and costs
14 related to "any defense" and judgment after husband is sued for malpractice. Therefore
15 a majority of the fees incurred after December 30, 2018 should be included as within the
16 scope of Section 40. The Appellate Court reasoning allowing the District Court to
17 consider extrinsic evidence and the parties’ intent results from the Court’s obligation to
18 interpret a contractual ambiguity, the argument Plaintiff made to this court, and the
19 Appellate Court was persuaded by it.

21 It is also important to note that Section 24 of the MSA provides that Lynda
22 Hascheff is responsible for the joint community obligations of which the marital
23 community benefited during the marriage, and before the effective date of the MSA. The
24 malpractice claim arose from the Plaintiff’s law practice, which was the sole source of
25 income during the marriage, and therefore a community obligation. Therefore, in
26 addition to Section 40, Lynda Hascheff would be responsible for one half of the fees and
27

1 costs incurred related to all community claims, expenses or debts. Lynda Hascheff
2 repeatedly argued that the malpractice claims and action were a joint community
3 obligation. Even without Section 24 of the MSA, the case law clearly provides that both
4 spouses are liable for community obligations even after divorce and their now separate
5 property is subject to those obligations.
6

7 Therefore, the court can take additional evidence to determine that the “fees and
8 costs” covered by the MSA section 40, and the MSA as a whole, include fees incurred
9 after December 26, 2018, the date of the complaint, whether they are specifically
10 denoted as relating to the malpractice claim in the billings. Of note, Mr. Hascheff did
11 not prepare the invoices, his attorneys did, and not for purposes of collecting indemnity
12 from his ex-wife. His recap of those applicable charges is attached hereto as Exhibit 1.
13 Although the amounts are low, Hascheff was compelled to appeal due to the argument
14 that he has “waived” indemnity, and given the possibility of future claims, could not
15 leave that argument unchallenged.
16

17 Wherefore, following this brief, and Ms. Hascheff’s, he requests that the Court set
18 a brief hearing to argue the prevailing party, and resolve this action.

19 **AFFIRMATION**

20 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the
21 preceding document does not contain the social security number of any person.

22 DATED this 31st day of October, 2022.

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26 _____
27 John Springgate, Esq. (SBN 1350)
28 Silverman Kattelman Springgate, Chtd.
500 Damonte Ranch Pkwy, Ste 675
Reno, NV 89521
Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure, Rule 5(b), I hereby certify that I am an employee of Silverman Kattelman Springgate, Chtd., and that on this date, I served a true and correct copy of the attached document(s) as follows:

- By placing the document(s) in a sealed envelope with first-class U.S. postage prepaid, and depositing it for mailing with the U.S. Postal Service in Reno, Nevada addressed to the person at the address listed below.
- By electronic service. By filing the document with the court's electronic filing system which serves counsel listed below electronically.
- By personally delivering the document(s) listed above, addressed to the person at the address as set forth below.
- By Federal Express.
- By facsimile
- By electronic mail.

Shawn Meador, Esq.
Woodburn and Wedge
6100 Neil Road, Suite 500
Reno, NV 89505

DATED this 31 day of October, 2022.



Olga Garcia

1 SHAWN B MEADOR
2 NEVADA BAR NO. 338
3 WOODBURN AND WEDGE
4 6100 Neil Road, Suite 500
5 Post Office Box 2311
6 Reno, Nevada 89505
7 Telephone: (775) 688-3000
8 Facsimile: (775) 688-3088
9 smeador@woodburnandwedge.com

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IN THE FAMILY DIVISION
IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

PIERRE A. HASCHEFF,

Plaintiff,

v.

LYNDA L. HASCHEFF,

Defendant.

CASE NO. DV13-00656

DEPT. NO. 12

BRIEF RE ALLEGED AMBIGUITY IN PARAGRAPH 40

1 In January of 2020, Pierre Hascheff (“Pierre”), whose daughter had not invited him to
2 her recent wedding, sent his former wife, Lynda Hascheff (“Lynda”), a letter. He claimed he
3 was incurring fees in an “on-going” malpractice action and demanded that she pay him
4 \$5,200.90 pursuant to § 40 of the MSA. He did not tell her the malpractice action had been
5 filed a year earlier, that it was immediately stayed, that no fees were being incurred in that
6 action, or that the fees he incurred were in the collateral action that started a year and a half
7 earlier. See, Motion for Clarification filed June 16, 2020, at p. 10, and Exh. 1 thereto.

8 He later claimed, without explanation, that she owed him \$4,675.90, and then claimed
9 she owed him \$6,363.40. Id. at Exh. 4 and 7. He refused to provide transparency or
10 distinguish fees in the malpractice action from those in the collateral action. Pierre now
11 claims fees “related” to the malpractice action total \$3,195, demands \$1,578 from Lynda, and
12 takes no responsibility for the tens of thousands of dollars of fees his choices caused her to
13 incur.

14 At the recent status conference, Pierre argued that § 40 of the MSA is ambiguous but
15 obligates Lynda to indemnify him for fees incurred in the collateral action. This Court
16 graciously afforded him the opportunity to file “a brief three-page statement . . . related to his
17 claims of ambiguity of paragraph 40 of the MSA.” See, Order After Status Hearing.

18 Pierre’s Brief was filed in violation of this Court’s Order and should be stricken. It
19 exceeds the page limit and fails to identify any ambiguity in § 40. Instead, he offers a new
20 theory to recover fees incurred in the collateral action¹ Section 40 does not obligate Lynda to
21 indemnify Pierre for fees “related” to the malpractice action as he argues. The Order is clear.
22 For the indemnification to apply “**Pierre must first be sued for malpractice . . . and those**
23 **legal fees and costs must arise from the malpractice action only.**” (Emphasis added.)

24 The COA Order unambiguously holds that fees in the collateral action are not covered
25 by § 40. The Appellate Court directed this court, on remand, to determine “whether the fees
26 and costs **incurred in the malpractice action** are covered by the indemnification provision.”

27 _____
¹ Lynda’s counsel demanded that he withdraw his non-complying brief. He failed to do so.

1 (Emphasis added). Thus, any ambiguity in § 40 would be about whether all, or only part, of
2 the fees incurred in the malpractice action are covered by § 40, not whether fees in the
3 collateral action are covered. Pierre, once again, unreasonably forces Lynda to incur fees to
4 address his claim that fees in the collateral action are covered by the indemnity clause.

5 The fees listed on Pierre's Exhibit 1 were not incurred in the malpractice action
6 "only." They were in the collateral action, file (52-8603M), that was opened before the
7 malpractice action was filed to address the subpoena and Pierre's deposition in the collateral
8 action. See, Invoices for Sept. 2018. Pierre tacitly acknowledges the fees were incurred in the
9 collateral action by arguing they "relate" to rather than being incurred in the malpractice
10 action.

11 The fees on 9/18/18 were before the malpractice action was filed and are specifically
12 precluded by the COA Order. Claimed violations of the NRCP do not create an independent
13 cause of action. NRCP Rule 1.0A(d).

14 The fees on 1/24/19 arise out of expert reports in the collateral action. Pierre's
15 counsel surely did not ask Mr. Robinson, plaintiff's counsel in the malpractice action, if those
16 reports proved that Pierre committed malpractice. The fees on 2/20/19 arise out of the expert
17 report in the collateral action in which Pierre was preparing to testify. See, entry 2/21/19. The
18 \$775 entry on 2/22/19 was specifically to prepare for Pierre's testimony in the collateral
19 action.

20 These first four entries, primarily in January and February of 2019, total \$2,900. They
21 all arise out of, or at a minimum involve, Pierre's testimony in the collateral action. The
22 invoices then show that in March and April 2019, Pierre's malpractice carrier paid \$2,500
23 toward his fees. Pierre's position is that none of the malpractice carrier's payments covered
24 the fees he claims relate to the malpractice action. Rather, he takes the position that all of the
25 insurance payments relate to the collateral action and benefit him alone.

26 The time spent on 6/21/19 did nothing to defend Pierre in the malpractice action. If
27 Lynda receives no benefit from the insurance payments, she should not be responsible for this
28 fee. The entry on 7/1/19 is too vague to evaluate. It is unclear what the fees on 9/25/19 refer

1 to since the malpractice action was stayed months earlier. If the entries Pierre relies on from
2 June through September of 2019 were all covered, they total \$295, one half of which is
3 \$147.50.

4 Pierre's argument, that § 40 covers fees he incurred in the collateral action because he
5 claims they relate to the malpractice action, is contrary to the clear and unambiguous language
6 of the COA Order. This Court may review the time entries he identified and determine which
7 of those fees, if any, arise from the malpractice action "only" and determine Lynda's
8 obligation pursuant to Section 40. That is the relief she sought in her Motion to Clarify. See,
9 Lynda's Status Conference Statement filed herein on September 26, 2022.

10 Lynda respectfully requests that the Court establish the appropriate procedure to
11 determine who is the prevailing party and the resulting fee award. See, Id.

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Affirmation Pursuant to NRS 239B.030

The undersigned affirms that this document does not contain the personal information
of any party.

DATED this 2nd day of November, 2022.

WOODBURN AND WEDGE

By  #16011
Shawn B. Meador
Attorneys for Defendant
Lynda L. Hascheff

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WOODBURN AND WEDGE
6100 Neil Road, Suite 300
Reno, NV 89511
Tel: (775) 688-3000

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Woodburn and Wedge, 6100 Neil Rd., Suite 500, Reno, Nevada 89511, that I am over the age of 18 years, and that I served the foregoing document(s) described as:

BRIEF RE ALLEGED AMBIGUITY IN PARAGRAPH 40

on the party set forth below by:

- Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.
- Personal delivery.
- Second Judicial E flex
- Federal Express or other overnight delivery.

addressed as follows:

X John Springgate, Esq.

The undersigned affirms that this document contains no social security numbers

Dated this 2 day of November, 2022.



Kelly Albright

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PIERRE A. HASCHEFF,

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Plaintiff,

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Case No. DV13-00656

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vs.

Dept. No.12

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LYNDA HASCHEFF,

14

Defendant.

15

16

ORDER REGARDING AMBIGUITY IN MSA § 40 AND REMAND

17

Presently before the Court is Plaintiff, Pierre A. Hascheff's ("Mr. Hascheff"), Brief Statement filed on October 31, 2022. Defendant, Lynda Hascheff ("Ms. Hascheff"), was served with the Brief Statement by eFlex on October 31, 2022 and filed her Brief Re Alleged Ambiguity in Paragraph 40 ("Response Brief") on November 2, 2022. The matter was submitted to the Court on November 3, 2022.

22

The parties were divorced pursuant to the Findings of Fact, Conclusions of Law and Decree of Divorce entered November 15, 2013, which ratified, approved, adopted, merged, and incorporated by reference the parties' Marital Settlement Agreement (MSA) filed on September 30, 2013. On February 1, 2021, the Court entered its Order Granting Motion for Clarification or Declaratory Relief; Order Denying Motion for Order to Enforce and/or for an Order to Show Cause; Order Denying Request for Attorneys' Fees and Costs. The matter was timely appealed by Mr. Hascheff and cross appealed by Ms. Hascheff. On June 29, 2022, the Nevada Court of

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1 Appeals issued its Order Affirming in Part, Reversing in Part, and Remanding, which stated on
2 remand the Court must: (1) determine whether the fees and costs incurred in the malpractice action
3 are covered by the indemnification provision in MSA § 40; and (2) consider an award of attorney
4 fees and costs in accordance with MSA § 35.1, including determining which party is the prevailing
5 party.

6 The parties appeared before the Court on September 28, 2022 for a status hearing to
7 determine how to proceed in this matter. Pursuant to the Order After Status Hearing entered
8 September 29, 2022, Mr. Hascheff was ordered to file by October 31, 2022 a brief three-page
9 statement related to his claims of ambiguity in MSA § 40, which he asserted at the hearing was
10 ambiguous with regard to recoverable fees. Ms. Hascheff was ordered to file her three-page
11 response within two weeks thereafter. The Order After Status Hearing states the Court will then
12 enter an order on how to proceed.

13 In his Brief Statement,¹ Mr. Hascheff states in order to resolve the ambiguity of what fees
14 and costs apply under MSA § 40 the Court must consider the interplay between the fees and costs
15 incurred in the collateral action in which Mr. Hascheff was a witness and the fees incurred in the
16 malpractice action as the common interest work product doctrine applies to the common work
17 product produced for both actions.² Mr. Hascheff states, for example, the preparation of Mr.
18 Hascheff for testimony in the collateral action necessarily involved considering whether his
19 statements would expose him to liability in the malpractice action. Mr. Hascheff states the
20 common interest work product doctrine applies even if litigation has not already been commenced
21 and even if the party receiving the common interest privilege is a non-party to any pending
22 litigation, where one of the parties was a litigant and the other party was a potential target of
23 litigation. Mr. Hascheff argues the majority of fees incurred after the malpractice action
24 commenced on December 30, 2018 should be included in the scope of MSA § 40 as Ms. Hascheff

25
26
27 ¹ The Court considered only the first full three pages of the Brief Statement starting on page 1, line 22 and ending on
page 4, line 22, as the statement was limited to three pages by the Court in its Order After Status Hearing. The Court
notes the remaining pages would not have affected this decision as no other legal authority was cited past this point.

28 ² This Court notes in reviewing all the Appellant pleadings, it is only in Appellant's Reply Brief on Appeal and
Answering Brief on Cross-Appeal filed February 14, 2022 that the common interest work product doctrine was raised,
and only as it related to asserting privilege regarding the redaction of billing invoices.

1 must pay for all of the fees and costs related to “any defense” and judgment after Mr. Hascheff is
2 sued for malpractice. Mr. Hascheff notes the time entries related to the malpractice action have
3 been highlighted in the unredacted billing invoices provided to the Court for in camera review and
4 a summary of the fees is listed in the attached Exhibit 1.

5 In her Response Brief, Ms. Hascheff states the Brief Statement should be stricken as it
6 violates the Court’s Order by exceeding the three-page limit set and by failing to identify any
7 ambiguity in MSA § 40. Ms. Hascheff states Mr. Hascheff instead offers a new theory to recover
8 the fees incurred in the collateral action—that MSA § 40 obligates Ms. Hascheff to indemnify Mr.
9 Hascheff for fees “related” to the malpractice action based upon the common interest work product
10 doctrine. Ms. Hascheff asserts this argument is contrary to the unambiguous language of the
11 appellate order, which states indemnification only applies once Mr. Hascheff is sued for
12 malpractice and the legal fees and costs must arise only from the malpractice action. Ms. Hascheff
13 states the appellate order clearly holds that fees in the collateral action are not covered by MSA §
14 40. Ms. Hascheff states the fees listed in Mr. Hascheff’s Exhibit 1 were not incurred only in the
15 malpractice action as the September 18, 2018 fees were incurred before the malpractice action was
16 filed; the January 24, 2019 fees arise out of the expert reports in the collateral action; the February
17 20, 2019 fees also arise out of the expert report in the collateral action in which Mr. Hascheff was
18 preparing to testify; the February 22, 2019 fees were to prepare for Mr. Hascheff’s testimony in the
19 collateral action; the June 21, 2019 fees did nothing to defend Mr. Hascheff in the malpractice
20 action; the July 1, 2019 fee entry is too vague to evaluate; and the September 25, 2019 fees are
21 unclear as the malpractice action was stayed months earlier. Ms. Hascheff states if the June
22 through September 2019 fees were covered, they total only \$295. Ms. Hascheff asserts the Court
23 may review the time entries to determine what fees, if any, arise only from the malpractice action
24 in order to determine Ms. Hascheff’s obligation under MSA § 40. Ms. Hascheff notes this is the
25 relief she sought in her Motion for Clarification or Declaratory Relief Regarding Terms of MSA
26 and Decree filed June 16, 2020. Ms. Hascheff requests the Court establish the procedure to
27 determine the prevailing party and the fee award.

28 ///

1 Based on the foregoing and good cause appearing, the Court finds and orders as follows:

2 **Law**

3 A court has “inherent power to construe its judgments and decrees for the purpose of
4 removing any ambiguity.” *Kishner v. Kishner*, 93 Nev. 220, 225, 562 P.2d 493, 496 (1977).
5 However, this inherent power does not apply to judgments and decrees that are not ambiguous. *Id.*
6 The Nevada Supreme Court “has held that a provision ‘is ambiguous if it is capable of more than
7 one reasonable interpretation.’” *Mizrachi v. Mizrachi*, 132 Nev. 666, 674, 385 P.3d 982, 987
8 (2016) (quoting *In re Candelaria*, 126 Nev. 408, 411, 245 P.3d 518, 520 (2010)). Once a provision
9 or term is determined to be ambiguous, the court must clarify the disputed term. *Id.* at 677, 385
10 P.3d at 989. The court “must consider the intent of the parties in entering the agreement” and “may
11 look to the record as a whole and the surrounding circumstances to interpret the parties’ intent.” *Id.*
12 Parol evidence, or extrinsic evidence, “is admissible for . . . ascertaining the true intentions and
13 agreement of the parties when the written instrument is ambiguous.” *M.C. Multi-Family*
14 *Development, LLC v. Crestdale Assocs., Ltd.*, 124 Nev. 901, 914, 193 P.3d 536, 545 (quoting *State*
15 *ex. rel. List v. Courtesy Motors*, 95 Nev. 103, 106-07, 590 P.2d 163, 165 (1977)) (alteration in
16 original).

17 **Orders**

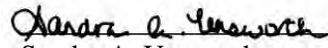
18 The Court finds Mr. Hascheff has failed to point to any specific ambiguous terms in § 40 of
19 the parties’ MSA and failed to describe how MSA § 40 is ambiguous, or capable of more than one
20 reasonable interpretation. The Brief Statement appears to proceed by presuming there is ambiguity
21 present in the provision rather than showing the presence of ambiguity in MSA § 40. Mr. Hascheff
22 makes an argument that the scope of fees under MSA § 40 includes fees incurred in the collateral
23 action due to the common interest work product doctrine and how closely related the work
24 completed in the cases was for Mr. Hascheff’s counsel. The Court finds this is not a reasonable
25 interpretation of MSA § 40 given the law of this case. Specifically, the Nevada Court of Appeals
26 found in the Order Affirming in Part, Reversing in Part, and Remanding that, Mr. Hascheff “is
27 precluded from seeking indemnification from [Ms. Hascheff] for his decision to retain counsel to
28 represent his interests as witness” in the collateral trust litigation as Mr. Hascheff was not sued as a

1 party in the collateral action. The Court of Appeals continued, stating, “the plain language of this
2 section supports that [Mr. Hascheff] must first be sued for malpractice before seeking
3 indemnification for his legal fees and costs and those legal fees and costs must arise from the
4 malpractice action only” (emphasis added). Therefore, the Court finds Mr. Hascheff has failed to
5 show MSA § 40 is ambiguous as to the scope of fees included under MSA § 40 or any other term in
6 MSA § 40.³ As the Court may only look to parol or extrinsic evidence to determine the intent of
7 parties when clarifying an ambiguous term or provision, the Court may not look to such evidence in
8 resolving the indemnification issue.

9 In considering how to proceed, the Court finds setting an additional hearing on this issue
10 would be unnecessary and further increase attorney’s fees, given an evidentiary hearing was already
11 held on December 21, 2020. Accordingly, the Court shall proceed by taking the issue under
12 advisement and determining whether the fees and costs incurred in the malpractice action are
13 covered by the indemnification provision in MSA § 40 and the amount of any such fees and costs
14 that must be indemnified by Ms. Hascheff based upon the existing evidence in the record, including
15 the unredacted invoices provided pursuant to the Stipulated Protective Order. The determination
16 shall issue in a separate order soon to be forthcoming. In the same forthcoming order, the Court
17 will determine which party is the prevailing party under MSA § 35.1. The Court will then give the
18 prevailing party leave to file a *Wilfong* affidavit and supporting billing statements to allow the Court
19 to determine the reasonableness of the fees and costs requested and the amount of the award.

20 **GOOD CAUSE APPEARING, IT IS SO ORDERED.**

21 Dated this 8 day of December 2022.

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24 
25 Sandra A. Unsworth
26 District Judge

26 DV13-00656

27 _____
28 ³ The Court notes at one point Mr. Hascheff appears to have agreed that MSA § 40 lacks ambiguity as Mr. Hascheff
wrote in an email dated April 20, 2020 to Ms. Hascheff’s counsel, “[t]he terms of the indemnity in the agreement are
clear and unambiguous.” *See MSA Motion*, Ex. 5.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court in and for the County of Washoe, and that on September 29, 2022, I deposited in the county mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, or by e-filing, a true copy of the foregoing document addressed as follows:

ELECTRONIC FILING:

**JOHN SPRINGGATE, ESQ. for PIERRE HASCHEFF
SHAWN MEADOR, ESQ. for LYNDA HASCHEFF**



Judicial Assistant

1 Gary R. Silverman (NSB# 409) Michael V. Kattelman (NSB#6703),
John Springgate (NSB #1350), Alexander C. Morey (NSB#11216)
2 Benjamin E. Albers (NSB #11895)
Silverman Kattelman Springgate Chtd.
500 Damonte Ranch Pkwy., #675
3 Reno, Nevada 89521
Telephone: 775/322-3223
4 Facsimile: 775/322-3649
Attorney for Plaintiff

5 **IN THE FAMILY DIVISION**
6 **OF THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA IN**
7 **AND FOR THE COUNTY OF WASHOE**

8 **PIERRE A. HASCHEFF,**

Case No. DV13-00656

9 Plaintiff,

Dept. No. 12

10 vs.

11 **LYNDA HASCHEFF,**

12 Defendant.

13 _____ /
14 **MOTION TO ALLOW BRIEFING ON PREVAILING PARTY**

15 Comes now the Plaintiff, PIERRE HASCHEFF, by and through his undersigned
16 counsel, JOHN SPRINGGATE, ESQ., SILVERMAN KATTELMAN SPRINGGATE,
17 CHTD., and moves the Court for its Order allowing the parties to brief the issue of
18 "prevailing party" under the Marital Settlement Agreement. This Motion is made and
19 based upon the attached memorandum of Points and Authorities, and all the papers and
20 pleadings on file in this action.
21

22 Dated this 27th day of December, 2022.

23 
24 _____
25 John Springgate, Esq. (SBN 1350)
Silverman Kattelman Springgate, Chtd.
500 Damonte Ranch Pkwy, Ste 675
26 Reno, NV 89521
Attorneys for Plaintiff

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POINTS AND AUTHORITIES

On remand in this matter, the Court of Appeals required the District Court to determine two issues: (1) what fees and costs incurred and related to the malpractice action are covered by the indemnification provision, and (2) consider an award of attorney's fees to the prevailing party pursuant to MSA Section 35.1, given the fact that the district court already determined that both parties complied with MSA Section 35.2. Opinion, fn 7, pg. 12.

The Court previously asked the parties for brief statements to address the issue of which fees and costs were incurred and related to the malpractice action. The parties submitted those statements, and the Court ruled in its Order of December 8 that the Court would take the matter under advisement and determine which of the fees and costs were related, taking into account the evidence submitted in the unredacted billings filed under seal. Of note, Mr. Hascheff has already indicated those which he thinks are related, as they are highlighted in the evidence submitted under seal.

The Court further indicated that in a further upcoming order, it would address which party was the "prevailing party" under MSA Sec. 35.1.

Mr. Hascheff submits that the issue of the prevailing party, in the context of the whole of this litigation, is an issue which would be assisted by briefing from the parties, even if that briefing is limited by the Court. To be fair, something more than 3 pages is suggested, the prior briefing schedule having been taken up in part by a recitation of the prior facts, which the Court apparently did not need, although it was helpful to counsel.

Were the parties to submit their briefs on the issue of "prevailing party," it would likely do three things: clarify the issues for the Court, use the parties' time instead of the

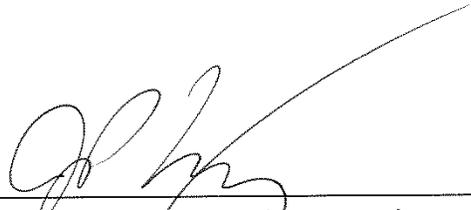
1 Court's, and prevent either party from claiming later that they were precluded from
2 addressing an important issue, or that the Court overlooked an argument.

3 Wherefore, the Plaintiff requests that the Court hold its anticipated order on the
4 prevailing party issue, and allow briefing by the parties, even simultaneous briefing, on
5 that issue to fully flesh out the issues for decision. A hearing or oral argument is not
6 requested, as that has already been requested, and implicitly denied. With knowledge of
7 the parties and counsel for both sides, some opportunity to respond to the claims of the
8 opponents would be appreciated, so simultaneous briefings are requested, with a short
9 response to the claims of the opponent.
10

11
12 **AFFIRMATION**

13 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the
14 preceding document does not contain the social security number of any person.

15 DATED this 27th day of December, 2022.
16

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20 
21 John Springgate, Esq. (SBN 1350)
22 Silverman Kattelman Springgate, Chtd.
23 500 Damonte Ranch Pkwy, Ste 675
24 Reno, NV 89521
25 *Attorneys for Plaintiff*
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CERTIFICATE OF SERVICE

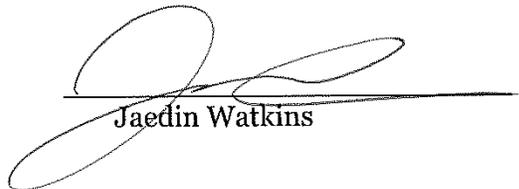
Pursuant to NRCP 5 (b), I hereby certify that I am an employee of Silverman, Kattelman Springgate, Chtd, and on the date set forth below, I served a true copy of the foregoing **MOTION TO ALLOW BRIEFING ON PREVAILING PARTY** on the party(ies) identified below by:

- Placing an original or true copy thereof in a sealed envelope, postage prepaid for collection and mailing in the United States Mail at Reno, Nevada to
- Hand Delivery via Reno Carson Messenger Service
- Facsimile to the following numbers:
- Federal Express or other overnight delivery
- Reno Carson Messenger Service
- Certified Mail, Return receipt requested
- Electronically, using Second Judicial District Court's ECF system
- Electronic mail to:

addressed to:

Shawn Meador, Esq.
Woodburn and Wedge
6100 Neil Road Suite 500
Reno, NV 89505

Dated this 21st day of December, 2022.


Jaedin Watkins

1 SHAWN B MEADOR
2 NEVADA BAR NO. 338
3 WOODBURN AND WEDGE
4 6100 Neil Road, Suite 500
5 Post Office Box 2311
6 Reno, Nevada 89505
7 Telephone: (775) 688-3000
8 Facsimile: (775) 688-3088
9 smeador@woodburnandwedge.com

10
11 IN THE FAMILY DIVISION
12
13 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
14
15 IN AND FOR THE COUNTY OF WASHOE

16 PIERRE A. HASCHEFF ,

17 Plaintiff,

18 v.

19 LYNDA L. HASCHEFF,

20 Defendant.

CASE NO. DV13-00656

DEPT. NO. 12

21 **OPPOSITION TO MOTION TO ALLOW BRIEFING ON PREVAILING PARTY**

22 This Court has already indicated that it has the ability to determine whether Pierre or
23 Lynda Hascheff is the prevailing party in this action pursuant to which Pierre demanded that
24 Lynda indemnify him for a sum in excess of \$5,000. Pierre has not demonstrated that this
25 Court lacks the ability to make that decision. Nor has he provided any prima facia showing
26 that he can articulate an argument that has not been previously raised or about which this
27 Court is not fully aware.

28 Pierre falsely suggests this Court previously “asked” for a brief statement to address
the issue of fees and costs subject to the indemnity clause. Pierre’s prior counsel requested
the right to brief his tortured claim that the indemnity clause of the MSA is ambiguous in light

1 of the COA Order.¹ Pierre then failed to comply with the Court's Order regarding that
2 briefing and failed to make any cogent argument to support his claim the agreement is
3 ambiguous.

4 This motion is simply part of the pattern of Pierre, represented by his third lawyer,
5 wrongfully forcing his former wife to incur legal fees. That pattern has existed since the day
6 Pierre first sent Lynda the misleading letter claiming that he was continuing to incur legal fees
7 to defend an ongoing malpractice action. Thereafter, he refused to provide documents
8 demonstrating what fees he had incurred in the malpractice action. Rather, he demanded she
9 indemnify him for fees incurred in the collateral trust action. He forced Lynda to incur fees to
10 respond to his Motion for Order to Show Cause in which he insisted she should be held in
11 contempt of court for refusing his demand.
12

13 To this date, even after the COA order that defined the fees for which Pierre is entitled
14 to indemnity, and this Court's Order following the briefing Pierre requested, he still refuses to
15 identify the fees that arise directly out of the malpractice action as opposed to those he claims
16 are related to the malpractice action.
17

18 Pierre's motion should be denied. He should be required to pay the fees Lynda has
19 incurred in connection herewith.
20

21 In the alternative, if this Court determines that briefing on the issue of whether Pierre
22 or Lynda is the prevailing party would be appropriate, Pierre should be obligated to pay the
23 fees Lynda will incur for her counsel to prepare her prevailing party brief.

24 In his underlying Motion, Pierre complains about this Court's prior page limitation.
25 He insists that to be fair to him, this Court should allow him more than three pages to brief the
26 prevailing party issue. Assuming a minimum of three hours for Lynda's counsel to prepare a
27

28 ¹ Pierre's current counsel did not participate in the status conference that led to the briefing so may not have been aware that Pierre's counsel insisted that he needed the opportunity to address the claimed ambiguity. Pierre did participate in that status conference.

1 detailed prevailing party brief, at counsel's \$450 hourly rate, Pierre should be required to
2 advance Lynda the sum of \$1,350 in fees if this Court believes briefing is necessary or
3 appropriate.
4

5
6 **Affirmation Pursuant to NRS 239B.030**

7 The undersigned affirms that this document does not contain the personal information
8 of any party.

9 DATED this 8 day of January 2023.

10 WOODBURN AND WEDGE

11 By 
12 Shawn B. Meador
13 Attorneys for Defendant
14 Lynda L. Hascheff
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Woodburn and Wedge, 6100 Neil Rd., Suite 500, Reno, Nevada 89511, that I am over the age of 18 years, and that I served the foregoing document(s) described as:

NOTICE OF ENTRY OF ORDER

on the party set forth below by:

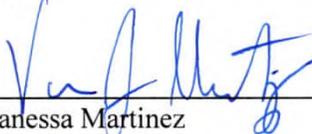
- Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.
- Personal delivery.
- Second Judicial E flex
- Federal Express or other overnight delivery.

addressed as follows:

X John Springgate, Esq.

The undersigned affirms that this document contains no social security numbers

Dated this ___ day of January, 2023.



Vanessa Martinez

1 Gary R. Silverman (NSB# 409) Michael V. Kattelman (NSB#6703),
2 John Springgate (NSB #1350), Alexander C. Morey (NSB#11216)
3 Benjamin E. Albers (NSB #11895)
4 Silverman Kattelman Springgate Chtd.
5 500 Damonte Ranch Pkwy., #675
6 Reno, Nevada 89521
7 Telephone: 775/322-3223
8 Facsimile: 775/322-3649
9 Attorney for Plaintiff

10 **IN THE FAMILY DIVISION**
11 **OF THE SECOND JUDICIAL DISTRICT FOR THE STATE OF NEVADA IN**
12 **AND FOR THE COUNTY OF WASHOE**

13 **PIERRE A. HASCHEFF,**

Case No. DV13-00656

14 Plaintiff,

Dept. No. 12

15 vs.

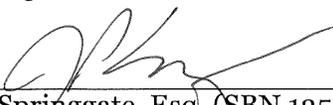
16 **LYNDA HASCHEFF,**

17 Defendant.

18 **REPLY ON MOTION TO ALLOW BRIEFING**
19 **ON THE ISSUE OF PREVAILING PARTY**

20 Comes now the Plaintiff, PIERRE HASCHEFF, by and through his undersigned
21 counsel, JOHN SPRINGGATE, ESQ., SILVERMAN KATTELMAN SPRINGGATE,
22 CHTD., and enters his Reply on his Motion for an Order allowing the parties to brief the
23 issue of "prevailing party" under the Marital Settlement Agreement. This Motion is made
24 and based upon the attached memorandum of Points and Authorities, and all the papers
25 and pleadings on file in this action.

26 Dated this 17th day of January, 2023.

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28 _____
29 John Springgate, Esq. (SBN 1350)
30 Attorney for Plaintiff

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POINTS AND AUTHORITIES

Mr. Hascheff filed his motion requesting briefing on the issue of “prevailing party,” as that would be a significant issue for the Court to consider in an award of fees. Mr. Hascheff contended that allowing the parties to brief the issue, even in a cursory form, would clarify the issues for the Court, utilize the parties’ time instead of the Court’s, and preclude either party from claiming that some issue was overlooked in the decision, sparking even more litigation.

The Opposition raises no cogent argument against the request, save that it would cause both parties to spend more funds, which is certainly true, but as the Court has already invoked page limitations in its briefing, this is a relatively limited issue. Mr. Hascheff has submitted, under seal, the billings that are pertinent to this matter, and indicated the ones that he contends he should be compensated for under the terms of the Marital Settlement Agreement.

Under the remand from the Court of Appeals, this court must determine who the prevailing party is in the litigation, and then determine whether the fees to be awarded are reasonable given the context of the litigation. Ms. Hascheff made several legal claims during the District Court and appellate court proceedings which required Mr. Hascheff to respond to each, resulting in substantial amounts of legal fees being incurred by both parties. . The District Court and appellate court ruled against her on all of her legal claims, except that she was required to pay only those fees and costs incurred with respect to the malpractice action after it was filed on December 26, 2018.

1 Her position at the outset of the District Court and appellate court litigation was
2 she was not obligated to pay any fees and costs, whether related to the malpractice
3 action or not. This position was rejected by the appellate court in their order. Ms.
4 Hascheff repeatedly argued in her pleadings that she did not owe any fees and costs in
5 her pleadings because Mr. Hascheff had “forfeited his indemnity rights” because: (1)
6 He failed to provide her timely notice (2) breached his fiduciary duties to her (3)
7 breached his covenant of good faith and fair dealing (4) waived and was collaterally
8 estopped from exercising his indemnity rights (5) the doctrine of laches and other
9 equitable remedies precluded his right to indemnity (6) he failed to provide privileged
10 communications and documents as a condition precedent to his right to indemnity, and
11 (7) he breached section 37 of the MSA by failing to provide notice of the malpractice
12 action.
13

14 Citations to the relevant portions of the pleadings and transcripts can be
15 provided, if the Court so directs.
16

17 None of those arguments were sustained on the appeal. The Court of Appeals did
18 rule that that she was required to pay only those fees and costs incurred with respect to
19 the malpractice action after it was filed on December 26, 2018. Only after the court
20 decided against her, that Mr. Hascheff did not forfeit his rights to indemnity, did she
21 agree that she should pay part of the fees and cost related to the malpractice action,
22 which amount is still an open question to be resolved by this court.
23

24 Mr. Hascheff took the position that this court must review all the time entries in
25 his attorneys invoices incurred after the malpractice action was filed on December 26,
26 2018 to determine what costs and fees were “related to” the malpractice action. Those
27 fees and costs have been provided to this court which are directly referenced in the

1 malpractice complaint, including referring to expert reports which called into question
2 whether Mr. Hascheff was negligent in his estate planning advice. Ms. Hascheff took the
3 position that she was responsible only for those fees related to staying the malpractice
4 action by Mr. Hascheff's attorney, in the amount of \$295.

5 Wherefore, Plaintiff, Pierre Hascheff, seeks an order that would allow the parties
6 to expand upon and brief the issue of the "prevailing party," prior to the issuance of the
7 Court's order. As before, in the Motion itself, this need not be extensive, and may even
8 be simultaneous. In light of the amount of fees and costs claimed due by both parties
9 through the litigation, this additional amount seems reasonable.

11 **AFFIRMATION**

12 Pursuant to NRS 239B.030, the undersigned does hereby affirm that the
13 preceding document does not contain the social security number of any person.

14 DATED this 17th day of January, 2023.

15 

16 _____
17 John Springgate, Esq. (SBN 1350)
18 Silverman Kattelman Springgate, Chtd.
19 500 Damonte Ranch Pkwy, Ste 675
20 Reno, NV 89521
21 *Attorneys for Plaintiff*

CERTIFICATE OF SERVICE

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Pursuant to NRCP 5 (b), I hereby certify that I am an employee of Silverman, Kattelman Springgate, Chtd, and on the date set forth below, I served a true copy of the foregoing **REPLY** on the party(ies) identified below by:

- Placing an original or true copy thereof in a sealed envelope, postage prepaid for collection and mailing in the United States Mail at Reno, Nevada to
- Hand Delivery via Reno Carson Messenger Service
- Facsimile to the following numbers:
- Federal Express or other overnight delivery
- Reno Carson Messenger Service
- Certified Mail, Return receipt requested
- Electronically, using Second Judicial District Court’s ECF system
- Electronic mail to:

addressed to:

Shawn Meador, Esq.
Woodburn and Wedge
6100 Neil Road Suite 500
Reno, NV 89505

Dated this 17 day of January, 2023.



Olga Garcia

1 CODE

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IN THE FAMILY DIVISION

7

OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8

IN AND FOR THE COUNTY OF WASHOE

9

10 PIERRE A. HASCHEFF,

11 Plaintiff,

12

vs.

Case No. DV13-00656

13

14 LYNDA HASCHEFF,

Dept. No. 12

15

Defendant.

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17

ORDER DENYING MOTION TO ALLOW BRIEFING ON PREVAILING PARTY

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Presently before the Court is Plaintiff, Pierre A. Hascheff's ("Judge Hascheff"), Motion to Allow Briefing on Prevailing Party ("Motion") filed December 27, 2022. Defendant, Lynda Hascheff ("Ms. Hascheff"), was served with the Motion by eFlex on December 27, 2022 and filed her Opposition to Motion to Allow Briefing on Prevailing Party ("Opposition") on January 9, 2023. Mr. Hascheff filed his Reply on Motion to Allow Briefing on the Issue of Prevailing Party ("Reply") on January 17, 2023 and then submitted the Motion to the Court for decision on January 18, 2023.

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28

The parties were divorced pursuant to the Findings of Fact, Conclusions of Law and Decree of Divorce entered November 15, 2013, which ratified, approved, adopted, merged, and incorporated by reference the parties' Marital Settlement Agreement (MSA) filed on September 30, 2013. On February 1, 2021, the Court entered its Order Granting Motion for Clarification or

1 Declaratory Relief; Order Denying Motion for Order to Enforce and/or for an Order to Show
2 Cause; Order Denying Request for Attorneys' Fees and Costs. The matter was timely appealed by
3 Judge Hascheff and cross appealed by Ms. Hascheff. In the June 29, 2022 Order Affirming in Part,
4 Reversing in Part, and Remanding, the Nevada Court of Appeals remanded two issues to this
5 Court: (1) "whether the fees and costs incurred in the malpractice action are covered by the
6 indemnification provision in [§ 40]" of the parties' MSA; and (2) determining which party is the
7 prevailing party for the purposes of an award of attorney fees and costs in accordance with MSA §
8 35.1. The Court held a status hearing on September 28, 2022 to determine how to proceed with the
9 remanded issues. Pursuant to the Order After Status Hearing entered September 29, 2022, the
10 parties were ordered to: (1) file a copy of the unredacted invoices along with a proposed protective
11 order; and (2) file brief three-page statements related to Judge Hascheff's claims of ambiguity in
12 MSA § 40. In the Order Regarding Ambiguity in MSA § 40 and Remand entered December 8,
13 2022, the Court found Judge Hascheff had failed to show MSA § 40 is ambiguous. The Court
14 stated it would take the remanded issues under advisement and issue a decision based upon the
15 evidence in the record, including the unredacted invoices.

16 In the Motion, Judge Hascheff requests the Court enter an order allowing the parties to brief
17 the issue of which party is the prevailing party under MSA § 35.1. Judge Hascheff states the Court
18 previously asked the parties for brief statements on the issue of which fees and costs were incurred
19 and related to the malpractice action. Judge Hascheff asserts limited briefing would assist the
20 Court in determining which party is the prevailing party by clarifying the issues, using the parties'
21 time instead of the Court's time, and preventing either party from later claiming they were
22 precluded from addressing an important issue or that the Court overlooked an argument. Judge
23 Hascheff requests simultaneous briefings of more than three pages in length, with a short response
24 to address the claims of the other party.

25 In the Opposition, Ms. Hascheff states the Motion should be denied as the Court already
26 indicated it has the ability to determine the prevailing party. Ms. Hascheff asserts the Motion fails
27 to demonstrate the Court lacks this ability and fails to make a prima facie showing of an argument
28 not previously raised. Ms. Hascheff notes the Court did not ask for the brief statements, but rather

1 Judge Hascheff's prior counsel requested such briefing based on his assertion that MSA § 40 is
2 ambiguous. Ms. Hascheff asserts the Motion is part of a pattern of forcing Ms. Hascheff to
3 unnecessarily incur legal fees and as such, Judge Hascheff should be required to pay her attorney's
4 fees associated with the Opposition. Ms. Hascheff states if the Court determines additional
5 briefing is appropriate, Judge Hascheff should be ordered to advance \$1,350 in legal fees for Ms.
6 Hascheff's attorney to prepare the brief.

7 In the Reply, Judge Hascheff states the Opposition provides no cogent argument against the
8 request for limited briefing on the prevailing party issue, except that both parties will incur more
9 legal fees. Judge Hascheff states the limited nature of the briefing would limit the fees incurred.
10 Judge Hascheff asserts this Court and the Court of Appeals ruled against all of Ms. Hascheff's
11 claims, except that she was required to pay only those fees and costs incurred in the malpractice
12 action filed on December 26, 2018. Judge Hascheff alleges Ms. Hascheff's position at the outset of
13 this litigation was that she was not obligated to pay any fees and costs, whether related to the
14 malpractice action or note, because Judge Hascheff failed to timely provide notice, precluding his
15 right to indemnity under the doctrine of laches, in addition to many other grounds. Judge Hascheff
16 asserts Ms. Hascheff only agreed that she should pay part of the fees and costs incurred in the
17 malpractice action after the Court of Appeals decided against her.

18 Based on the foregoing, the Court finds and orders as follows:

19 **Order**

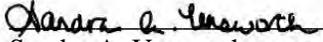
20 The Court **DENIES** the Motion. The purpose of the status hearing held on September 28,
21 2022 was to determine how to proceed with the two remanded issues. Judge Hascheff raised the
22 issue of the alleged ambiguity in MSA § 40 and as a result, the Court ordered the parties to brief
23 the issue. Neither party raised the need to brief the issue of prevailing party. In the Motion, Judge
24 Hascheff provides no case law, statute, rules, or other legal authority in support of his request for
25 briefing on the prevailing party issue. The only reasoning stated in the Motion as to why the Court
26 needs the parties' assistance in determining prevailing party is that a party may later claim they
27 were precluded from addressing an important issue or the Court might overlook an argument. The
28 Court is not persuaded by this argument. As Judge Hascheff failed to request briefing on the

1 prevailing party issue at the September 28, 2022 status hearing and as this Court is capable of
2 determining the prevailing party in this matter without the parties' assistance, the Court denies the
3 request for further briefing.

4 If Ms. Hascheff wishes to pursue an award of attorney's fees, she may file a motion for
5 attorney's fees, along with a *Wilfong* affidavit and supporting billing documentation, within 21 days
6 of written notice of entry this Order in compliance with NRPC 54(d)(2).

7 **GOOD CAUSE APPEARING, IT IS SO ORDERED.**

8 Dated this 15 day of February, 2023.

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12 Sandra A. Unsworth
13 District Judge

14 DV13-00656
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court in and for the County of Washoe, and that on February 15, 2023, I deposited in the county mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, or by e-filing, a true copy of the foregoing document addressed as follows:

ELECTRONIC FILING:

**JOHN SPRINGGATE, ESQ. for PIERRE HASCHEFF
SHAWN MEADOR, ESQ. for LYNDA HASCHEFF**



Judicial Assistant

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IN THE FAMILY DIVISION

7

OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8

IN AND FOR THE COUNTY OF WASHOE

9

10 PIERRE A. HASCHEFF,

11 Plaintiff,

12 vs.

Case No. DV13-00656

13 LYNDA HASCHEFF,

Dept. No.12

14 Defendant.

15

16 **ORDER REGARDING INDEMNIFICATION OF FEES AND COSTS UNDER MSA § 40;**
17 **ORDER REGARDING PREVAILING PARTY UNDER MSA § 35.1**

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23

Presently before the Court are the issues remanded by the Nevada Court of Appeals in its June 29, 2022 Order Affirming in Part, Reversing in Part, and Remanding. Specifically, this Court must: (1) “necessarily determine whether the fees and costs incurred in the malpractice action are covered by the indemnification provision in [§ 40]” of the parties’ Marital Settlement Agreement (MSA); and (2) “consider an award of attorney fees and costs in accordance with MSA § 35.1,” including determining which party is the prevailing party.

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28

The parties were divorced pursuant to the Findings of Fact, Conclusions of Law and Decree of Divorce entered November 15, 2013, which ratified, approved, adopted, merged, and incorporated by reference the parties’ MSA filed on September 30, 2013. On February 1, 2021, the Court entered its Order Granting Motion for Clarification or Declaratory Relief; Order Denying Motion for Order to Enforce and/or for an Order to Show Cause; Order Denying Request for

1 Attorneys' Fees and Costs. The matter was timely appealed by Judge Hascheff and cross appealed
2 by Ms. Hascheff. The two issues stated herein were remanded by the Court of Appeals. The Court
3 held a status hearing on September 28, 2022 to determine how to proceed with the remanded
4 issues. At the status hearing, counsel for the parties agreed to a protective order related to the
5 unredacted invoices, and counsel for Judge Hascheff requested briefing related to alleged
6 ambiguity in MSA § 40. At no time did either counsel express concern about the Court's ability to
7 determine who was the prevailing party. Pursuant to the Order After Status Hearing entered
8 September 29, 2022, the parties were ordered to: (1) file a copy of the unredacted invoices along
9 with a proposed protective order; and (2) file brief three-page statements related to Judge
10 Hascheff's claims of ambiguity in MSA § 40. Unredacted invoices were provided to the Court
11 and parties pursuant to the Stipulated Protective Order filed October 13, 2022. In the Order
12 Regarding Ambiguity in MSA § 40 and Remand entered December 8, 2022, the Court found Judge
13 Hascheff had failed to show MSA § 40 is ambiguous. In the same Order, the Court stated it would
14 take the remanded issues under advisement and issue a decision based upon the evidence in the
15 record, including the unredacted invoices. On December 27, 2022, Judge Hascheff filed a Motion
16 to Allow Briefing on Prevailing Party. The Court denied the Motion in the Order Denying Motion
17 to Allow Briefing on Prevailing Party entered February 15, 2023.

18 The Court, having reconsidered the two issues remanded by the Court of Appeals based on
19 upon the evidence in the record, including the exhibits and testimony from the evidentiary hearing
20 on December 21, 2020 and the unredacted invoices provided pursuant to the Stipulated Protective
21 Order, now finds and orders as follows:

22 A. Indemnification Under MSA § 40 for Legal Fees Incurred in the Malpractice Action.

23 MSA § 40 states:

24 Except for the obligations contained in or expressly arising out of this
25 Agreement, each party warrants to the other that he or she has not
26 incurred, and shall not incur, any liability or obligation for which the
27 other party is, or may be, liable. Except as may be expressly provided
28 in this Agreement, if any claim, action, or proceeding, whether or not
well founded, shall later be brought seeking to hold one party liable
on account of any alleged debt, liability, act, or omission of the other,
the warranting party shall, at his or her sole expense, defend the other
against the claim, action, or proceeding. The warranting party shall

1 also indemnify the other and hold him or her harmless against any
2 loss or liability that he or she may incur as a result of the claim,
3 action, or proceeding, including attorney fees, costs, and expenses
4 incurred in defending or responding to any such action. **In the event**
5 **Husband is sued for malpractice, Wife agrees to defend and**
6 **indemnify Husband for one half (1/2) the costs of any defense and**
7 **judgment[.]** Husband may purchase tail coverages of which Wife
8 shall pay one half (1/2) of such costs. (emphasis added).

9 The Court of Appeals found in the Order Affirming in Part, Reversing in Part, and
10 Remanding that Judge Hascheff “is precluded from seeking indemnification from [Ms. Hascheff]
11 for his decision to retain counsel to represent his interests as witness” in the collateral trust action
12 as he was not sued as a party in the collateral trust action. The Court of Appeals continued, stating
13 “the plain language of this section supports that [Judge Hascheff] must first be sued for malpractice
14 before seeking indemnification for his legal fees and costs and those legal fees and costs must arise
15 from the malpractice action only” (emphasis added). The Court of Appeals did not consider
16 whether this Court “erred in its evaluation of [Judge Hascheff’s] request for fees and costs in the
17 collateral trust litigation . . . because the court reached the correct result by denying his request.”
18 Therefore, this Court considers legal fees and costs incurred after the date Judge Hascheff was sued
19 for malpractice and arising from the malpractice action only.

20 The Court finds Judge Hascheff was sued for malpractice on December 26, 2018, the date
21 of the filing of the Complaint against Judge Hascheff by Todd Jaksick, which was admitted as
22 Confidential Exhibit G at the evidentiary hearing on December 21, 2020. The malpractice case
23 was stayed thereafter pending the resolution of the collateral trust action.

24 Based upon the unredacted invoices provided under the Stipulated Protective Order, the
25 Court finds Judge Hascheff incurred legal fees as a result of the malpractice action on the following
26 dates and in the following amounts:

- 27 a. January 24, 2019: \$825.00
- 28 b. February 20, 2019: \$1,175.00
- c. June 21, 2019: \$200.00
- d. July 1, 2019: \$20.00

1 e. September 25, 2019: \$75.00¹

2 As each time entry for the above dates references either the Complaint or the suit against
3 Judge Hascheff or evaluating his potential liability and claimed damages in the malpractice suit,
4 the Court finds these fees arose from the defense of the malpractice action. The Court did not
5 include any fees charged to Judge Hascheff prior to the commencement of the malpractice suit² or
6 fees charged for representation in the collateral trust litigation.³ Pursuant to MSA § 40, Ms.
7 Hascheff must indemnify Judge Hascheff for one-half of these legal fees, which total \$2,295.00.
8 Thus, Ms. Hascheff shall pay \$1,147.50 to Judge Hascheff within 30 days of entry of this Order.

9 B. Prevailing Party Under MSA § 35.1.

10 MSA § 35.1 states:

11 If either party to this Agreement brings an action or proceeding to
12 enforce any provision of this Agreement, or to enforce any judgment
13 or order made by a court in connection with this Agreement, the
14 prevailing party in that action or proceeding shall be entitled to
reasonable attorney fees and other reasonably necessary costs from
the other party.

15 The Nevada Supreme Court has stated, “[a] party prevails if it succeeds on *any significant*
16 *issue* in litigation which achieves some of the benefit it sought in bringing suit.” *Las Vegas Review-*
17 *Journal v. City of Henderson*, 137 Nev., Adv. Op. 81, 500 P.3d 1271, 1276 (2021) (quoting *Las*
18 *Vegas Metro. Police Dep’t v. Blackjack Bonding, Inc.*, 131 Nev. 80, 90, 943 P.3d 608, 615 (2015))
19 (emphasis in original). A party does not need to succeed on every issue to be the prevailing party.
20 *Las Vegas Metro. Police Dep’t*, 131 Nev. at 90, 943 P.3d at 615.

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22

23 ¹ Despite the parties advising the Court that the malpractice action was stayed almost immediately, this charge related to
24 staying the proceedings occurred approximately nine months later.

25 ² A fee of \$125.00 was incurred on September 18, 2018 that appears to be related to concerns regarding malpractice but
26 as it was incurred prior to the filing of the malpractice action and contemporaneously with issues related to Judge
Hascheff’s deposition in the collateral trust litigation, the Court finds Ms. Hascheff is not required to indemnify this fee
under MSA § 40.

27 ³ As to a fee of \$700.00 incurred on February 21, 2019 for 3.50 hours of time, the description of the charge references
28 the review of a complaint, but it is unclear which case it refers to and how much time was spent on reviewing the
complaint as compared to the five other tasks listed in the description that arise from the collateral trust litigation.
Additionally, while Judge Hascheff asserted the February 21, 2019 fee should be indemnified in Exhibit 1 to his Brief
Statement filed October 31, 2022, his monetary claim was listed as \$0. As to a fee of \$775.00 incurred on February 22,
2019, the description of the charge clearly indicates the charge was incurred in the collateral trust litigation.

1 The current litigation commenced on June 16, 2020 when Ms. Hascheff filed her Motion
2 for Clarification or Declaratory Relief Regarding Terms of MSA and Decree (“Clarification
3 Motion”). Judge Hascheff thereafter filed his Motion for Order to Show Cause, or in the
4 Alternative, to Enforce the Court’s Orders (“OSC Motion”) on July 8, 2020.

5 In the Clarification Motion, Ms. Hascheff requested the “Court enter an Order clarifying
6 that Ms. Hascheff is only responsible for fees incurred in the malpractice action and that she is not
7 responsible for the fees or costs he chose to incur to have personal counsel protect his interests in
8 connection with his role as a percipient witness in the [collateral trust litigation].” In the
9 Clarification Motion, Ms. Hascheff asserts she has not refused to indemnify Judge Hascheff for
10 malpractice fees covered by MSA § 40, only the fees he incurred in connection with his role as a
11 percipient witness in the collateral trust litigation. Ms. Hascheff did raise other arguments,
12 including that “Judge Hascheff should be equitably estopped from asserting such a claim based on
13 his breach of fiduciary duty and his breach of the covenant of good faith and fair dealing,” such as
14 by keeping the malpractice action secret from Ms. Hascheff until January 15, 2020.

15 In the OSC Motion, Judge Hascheff requested the Court issue an order for Ms. Hascheff to
16 show cause why she intentionally disobeys the MSA by refusing to indemnify Judge Hascheff for
17 fees incurred after the filing of the malpractice complaint, or in the alternative enforce the MSA
18 and order the payment of indemnification in the amount of \$4,924.05.⁴ In the OSC Motion, Judge
19 Hascheff asserts MSA § 40 requires “the payment of all attorney fees and costs relating to the
20 [collateral] trust litigation as it directly related to the malpractice action.” Judge Hascheff states
21 Ms. Hascheff seeks to delay payment and gain leverage with her Clarification Motion.

22 Both parties requested attorney’s fees and costs in their respective Motions under MSA §
23 35.1.

24 In the Order Granting Motion for Clarification or Declaratory Relief; Order Denying
25 Motion for Order to Enforce and/or for an Order to Show Cause; Order Denying Request for
26 Attorneys’ Fees and Costs entered February 1, 2021, the Court granted Ms. Hascheff’s
27

28

⁴ Prior to the filing of Ms. Hascheff’s Clarification Motion and Judge Hascheff’s OSC Motion, Judge Hascheff had requested \$5,200.90 on January 15, 2020 and then \$4,675.90 on February 5, 2020 be indemnified by Ms. Hascheff.

1 Clarification Motion, denied Judge Hascheff’s OSC Motion based on the doctrine of laches, and
2 denied both parties’ requests for awards of attorney’s fees and costs. In the Order Affirming in
3 Part, Reversing in Part, and Remanding, the Court of Appeals found this Court “abused its
4 discretion in applying laches to grant [Ms. Hascheff’s] motion and deny [Judge Hascheff’s] request
5 for indemnification in the malpractice action” and remanded the matter to this Court. On remand,
6 the Court herein determined the amount Ms. Hascheff must indemnify Judge Hascheff under MSA
7 § 40 for legal fees incurred in defense of the malpractice suit filed on December 26, 2018,
8 specifically excluding fees incurred in the collateral trust litigation as required by the Court of
9 Appeals.

10 Accordingly, the Court finds Ms. Hascheff is the prevailing party in this matter. Ms.
11 Hascheff’s Clarification Motion sought clarification from the Court regarding what fees she owed
12 Judge Hascheff under MSA § 40 and asserted she is not required to indemnify fees arising from the
13 collateral trust litigation. As the Court of Appeals held MSA § 40 only applies to fees and costs
14 that arise from the malpractice action, this Court found herein Ms. Hascheff must indemnify Judge
15 Hascheff for only those fees, which amount to \$1,147.50. Thus, the Court finds Ms. Hascheff is
16 the prevailing party as she received the predominate relief requested in her Clarification Motion.

17 In regard to Judge Hascheff’s OSC Motion, the Court finds Ms. Hascheff did not willfully
18 disobey the parties’ MSA but properly sought clarification when the parties disagreed on what fees
19 were covered by MSA § 40. The Court finds Ms. Hascheff could not have complied with the MSA
20 without the Court’s assistance as even this Court could not determine the proper amount of fees
21 until provided with the unredacted invoices under the Stipulated Protective Order.⁵ The Court
22 further finds enforcement is unnecessary as Ms. Hascheff indicated in her Clarification Motion she
23 is willing to pay the fees required under MSA § 40 but simply needed the Court to clarify what fees
24 she is required to pay. Given that Ms. Hascheff’s Clarification Motion indicates she is willing to
25 indemnify the fees required under MSA § 40, it appears to this Court that the filing of Judge
26 Hascheff’s OSC Motion three weeks later was premature. Thus, the Court finds Judge Hascheff

27
28 ⁵ The Court notes the redacted invoices originally admitted into evidence at the December 21, 2020 evidentiary hearing as Plaintiff’s Exhibit I and Defendant’s Exhibit 15 feature redactions that obscure the descriptions of almost all of the charges actually related to the malpractice action.

1 has not prevailed on any significant issue in his OSC Motion as the use of the Court's contempt
2 and enforcement powers are unnecessary and inappropriate under these circumstances.

3 C. Compliance with MSA § 35.2.

4 Although the Court previously found the parties complied with the notice requirements of
5 MSA § 35.2, based upon footnote 7 in the Court of Appeal's Order Affirming in Part, Reversing in
6 Part, and Remanding, this Court reanalyzes Ms. Hascheff's compliance with MSA § 35.2 and finds
7 as follows:

8 MSA § 35.2 states:

9 A party intending to bring an action or proceeding to enforce this
10 Agreement shall not be entitled to recover attorney fees and costs
11 under this provision unless he or she first gives the other party at least
12 10 [days] written notice before filing the action or proceeding. The
13 written notice shall specify (1) whether the subsequent action or
14 proceeding is to enforce the original terms of the Agreement; (2) the
15 reasons why the moving party believes the subsequent action or
16 proceeding is necessary; (3) whether there is any action that the other
17 party may take to avoid the necessity for the subsequent action or
18 proceeding; and (4) a period of time within which the other party may
19 avoid the action or proceeding by taking the specified action. The first
20 party shall not be entitled to attorney fees and costs if the other party
21 takes the specified action within the time specified in the notice.

22 The Court finds Ms. Hascheff provided written notice to Judge Hascheff 14 days prior to
23 filing her Clarification Motion on June 16, 2020 as evidenced by a letter dated June 2, 2020 from
24 Ms. Hascheff's counsel to Judge Hascheff's counsel admitted as Defendant's Exhibit 8 at the
25 evidentiary hearing on December 21, 2020. The letter states, among other things:

26 Pursuant to paragraph 35.2 of the parties' MSA, if we have not been
27 able to reach an agreement within ten days of the date of this letter my
28 client will file a declaratory relief action so that the court can
determine my client's liability under these facts. To assure there is no
confusion, my client's position is that she is responsible for one-half
of the fees and costs associated with the malpractice action, that she is
not responsible for Judge Hascheff's fees and costs as a percipient
witness.

Having found timely written notice was provided, the Court analyzes whether the letter met
the four requirements of MSA § 35.2 as follows:

1 (1) *Whether the subsequent action or proceeding is to enforce the original terms of the*
2 *Agreement:* The Court finds the June 2, 2020 letter specifies the declaratory relief action Ms.
3 Hascheff intends to file is to enforce the original terms of the MSA as it seeks the Court's
4 clarification of the MSA so Ms. Hascheff is not forced to indemnify Judge Hascheff for fees and
5 costs not covered by MSA § 40.

6 (2) *The reasons why the moving party believes the subsequent action or proceeding is*
7 *necessary:* The Court finds the June 2, 2020 letter specifies Ms. Hascheff believes the declaratory
8 relief action is necessary as the parties were unable to agree on the extent of Ms. Hascheff's
9 liability to indemnify Judge Hascheff under the MSA.

10 (3) *Whether there is any action that the other party may take to avoid the necessity for the*
11 *subsequent action or proceeding:* The Court finds the June 2, 2020 letter specifies Judge Hascheff
12 may avoid the necessity for the filing of the declaratory relief action by reaching an agreement
13 regarding the fees and costs Ms. Hascheff would be liable for under the MSA.

14 (4) *A period of time within which the other party may avoid the action or proceeding by*
15 *taking the specified action:* The Court finds the June 2, 2020 letter specifies a period of 10 days
16 from the date of the letter in which the agreement must be made to avoid the filing of the
17 declaratory action. Ms. Hascheff's Clarification Motion was filed 14 days after the date of the
18 letter.

19 As Ms. Hascheff complied with the terms of MSA § 35.2, an award of attorney's fees and
20 costs may be awarded under MSA § 35.1 as she prevailed on the Clarification Motion.

21 **Order**

22 A. Indemnification Under MSA § 40.

23 The Court orders Ms. Hascheff to indemnify Judge Hascheff within 30 days of the entry of
24 this Order in the amount of \$1,147.50 for fees and costs incurred in the defense of the malpractice
25 action pursuant to MSA § 40.

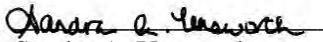
26 B. Award of Attorney's Fees Under MSA § 35.1.

27 As Ms. Hascheff was the prevailing party in this matter and as she complied with MSA §
28 35.2 prior to filing her Clarification Motion, the Court finds Ms. Hascheff is entitled to an award of

1 her reasonable attorney fees and other reasonably necessary costs she incurred in her Clarification
2 Motion pursuant to MSA § 35.1. Ms. Hascheff shall file a *Wilfong* affidavit and supporting billing
3 documents within 21 days of the entry of this Order.

4 **GOOD CAUSE APPEARING, IT IS SO ORDERED.**

5 Dated this 17 day of February, 2023.

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9 Sandra A. Unsworth
District Judge

10 DV13-00656
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court in and for the County of Washoe, and that on February 17, 2023, I deposited in the county mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, or by e-filing, a true copy of the foregoing document addressed as follows:

ELECTRONIC FILING:

**JOHN SPRINGGATE, ESQ. for PIERRE HASCHEFF
SHAWN MEADOR, ESQ. for LYNDA HASCHEFF**


Judicial Assistant

1 SHAWN B MEADOR
2 NEVADA BAR NO. 338
3 WOODBURN AND WEDGE
4 6100 Neil Road, Suite 500
5 Post Office Box 2311
6 Reno, Nevada 89505
7 Telephone: (775) 688-3000
8 Facsimile: (775) 688-3088
9 smeador@woodburnandwedge.com

10
11 IN THE FAMILY DIVISION
12
13 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
14
15 IN AND FOR THE COUNTY OF WASHOE
16

17 PIERRE A. HASCHEFF ,

18 Plaintiff,

19 v.

20 LYNDA L. HASCHEFF ,

21 Defendant .

CASE NO. DV13-00656

DEPT. NO. 12

22 **NOTICE OF FILING WILFONG AFFIDAVIT**

23 Pursuant to this Court's Order dated February 17, 2021, counsel hereby submits the
24 attached Wilfong affidavit in connection with Ms. Hascheff's Clarification Motion pursuant
25 to MSA § 35.1.

26 **Affirmation Pursuant to NRS 239B.030**

27 The undersigned affirms that this document does not contain the personal information
28 of any party.

DATED this 10th day of March, 2023.

WOODBURN AND WEDGE

By/s/ *Shawn B Meador*

Shawn B. Meador
Attorneys for Defendant
Lynda L. Hascheff

1 Code:
2 SHAWN B MEADOR
3 NEVADA BAR NO. 338
4 WOODBURN AND WEDGE
5 6100 Neil Road, Suite 500
6 Post Office Box 2311
7 Reno, Nevada 89505
8 Telephone: (775) 688-3000
9 Facsimile: (775) 688-3088
10 smeador@woodburnandwedge.com
11 Attorney for Lynda Hascheff

12
13 IN THE FAMILY DIVISION
14
15 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
16
17 IN AND FOR THE COUNTY OF WASHOE

18 PIERRE A. HASCHEFF ,

19 Plaintiff,

20 v.

21 LYNDA L. HASCHEFF ,

22 Defendant .

CASE NO . DV13-00656

DEPT. NO . 12

23
24 **AFFIDAVIT OF SHAWN B MEADOR**

25 Shawn B Meador, being first duly sworn, deposes and states as follows:

26 1. I am a shareholder of Woodburn and Wedge, counsel for Lynda Hascheff, and
27 have been primarily responsible for her representation in this matter. My associate, Bronagh
28 Kelly, provided minimal assistance on this matter. I make this affidavit of my own personal
knowledge.

29 2. Pursuant to Miller v. Wilfong, the affidavit supporting a request for an award of
30 legal fees must address: a) the quality of the advocate; b) the character and difficulty of the
31 work; c) the work performed; and d) the result obtained.

32 3. Quality of the Advocate: The undersigned graduated from the University of
33 Utah, College of Law, Order of the Coif and Law Review in 1983, has been licensed to practice
34 law in the State of Nevada and has been a member in good standing of the State Bar of Nevada

1 since 1983. I am recognized as a Family Law Specialist by the Nevada State Bar. I have a
2 Martindale Hubble AV Preeminent rating. I am a Fellow of the American Academy of
3 Matrimonial Lawyers. I am the former Chair of the Family Law Section of the Nevada State
4 Bar. I am the former President of Washoe Legal Services. I am a Nevada Supreme Court
5 Settlement Conference Judge who is assigned family law cases that are on appeal. I am a
6 Member of the Board of Bar Examiners and have frequently written and graded the Family
7 Law, evidence, and professional responsibility questions for Nevada State Bar Exams. I have
8 spoken and written extensively on the issues of family law. My practice is primarily devoted to
9 family law and family law mediation. I have handled hundreds, if not thousands, of family law
10 cases over approximately the last 39 years.

11 4. Character & Difficulty of the Work: The fees and costs Ms. Hascheff incurred
12 were a result of her former husband's demand for indemnification of fees allegedly incurred in
13 connection with a malpractice action filed against him. This matter could have, and with
14 reasonable cooperation, should have been resolved quickly and inexpensively. Ms. Hascheff
15 consistently stated, unequivocally, that she would honor her obligations pursuant to the Parties'
16 Marital Settlement Agreement and Decree of Divorce. She simply sought confirmation of what
17 she contractually owed, rather than being forced to accept her former husband's unsupported
18 demand that she owed him in excess of \$5,000.

19 Ms. Hascheff was prepared to honor her indemnity agreement even though she was
20 frustrated that her former husband failed: i) to notify her that he had become involved in the
21 collateral litigation, ii) to notify her that he claimed that he feared the collateral litigation could
22 lead to a malpractice claim; iii) to advise her that he claimed that fees he incurred in the
23 collateral litigation were covered by the indemnity clause; iv) to consult with her in any way
24 about the collateral litigation; v) to advise her how that litigation could potentially lead to a
25 malpractice action; vi) to notify her when he was sued for malpractice; vii) to notify her that the
26 vast majority of the \$5,000 he demanded were incurred prior to the filing of any malpractice
27 action; viii) to explain to her whether there was any basis for the malpractice action; ix) failed
28 to notify her about or include her in any decisions regarding the malpractice action including

1 his stipulation to stay the malpractice action that was filed by his client with whom he has a
2 good working relationship and cooperated fully in connection with the collateral action; x) to
3 keep her advised of fees incurred in the malpractice action; xi) to provide her with
4 documentation regarding what part of his fees in the malpractice action had been paid by his
5 malpractice carrier. Notwithstanding these failures, Mr. Hascheff demanded that his former
6 wife indemnify him for fees he incurred in the collateral action without acknowledging that the
7 fees had been incurred primarily in the collateral action.

8 Rather than providing her with thoughtful information on which she could evaluate her
9 indemnity obligation, Mr. Hascheff sent her a misleading demand letter in which he stated that
10 the malpractice action was on-going even though it was stayed by stipulation when he sent the
11 letter. He failed to tell her about the stay. He failed to provide documents on which she or her
12 counsel could thoughtfully evaluate his demand for indemnity.

13 Mr. Hascheff's misleading demand letter was sent to Ms. Hascheff long after he began
14 incurring legal fees but only shortly after the parties' daughter failed to invite her father to her
15 wedding. It appeared to Ms. Hascheff that the indemnity demand letter was sent in retaliation
16 because Mr. Hascheff blamed her for his strained relationship with his daughter. The hardball
17 manner in which Mr. Hascheff chose to pursue his indemnity claim projects that there is a
18 reasonable probability that her concern that he was using his demands and the litigation in
19 retaliation is true and resulted in substantially greater fees than should have been necessary.

20 During the underlying divorce litigation, Mr. Hascheff bullied and intimidated Ms.
21 Hascheff. She reported to counsel that Mr. Hascheff repeatedly threatened her about the
22 unreasonableness of her demands and repeatedly told her that her lawyer was running up the
23 bill and was just costing her money and that she should listen to him rather than to her lawyer.
24 Based on his bullying tactics, she signed the MSA relying on Mr. Hascheff's advice rather than
25 relying on her own counsel's advice. Following entry of the divorce, Mr. Hascheff continued
26 to bully and intimidate her. Ms. Hascheff believed that Mr. Hascheff's demands for indemnity
27 were part of the on-going pattern of their post-separation relationship and while she was
28 prepared to pay what she owed, she was no longer prepared to be bullied to pay something she

1 did not owe. Although the sum Mr. Hascheff demanded was relatively modest, Ms. Hascheff
2 was unprepared to be bullied, and reasonably demanded proof that the demand Mr. Hascheff
3 made was accurate. He refused to provide that proof. Ms. Hascheff incurred substantial fees
4 simply to obtain the basic records on which Mr. Hascheff based his demand and when he was
5 finally compelled by Court Order to provide that information, the documents did not support
6 his demands.

7 The correspondence attached as exhibits to Ms. Hascheff's underlying motion reflect
8 that Ms. Hascheff acknowledged her legal obligations pursuant to the parties' MSA and Decree
9 and made reasonable efforts to resolve the dispute without the need for litigation. Mr.
10 Hascheff, however, failed and refused to provide the information that her counsel requested.
11 The tone of his, and his lawyers' communications demonstrate that there was no room for
12 negotiation and resolution but, to the contrary, he demanded that Ms. Hascheff comply with his
13 demands or face threats that she would be obligated to pay his legal fees. Rather than
14 providing the documents to support his demands, Mr. Hascheff made inconsistent demands
15 about how much he claimed Ms. Hascheff owed him and threats about forcing her to pay his
16 legal fees if she did not bow to his demands.

17 Throughout the litigation Mr. Hascheff insisted that Ms. Hascheff had no right to know
18 any meaningful information and had no right to see the bills for which he sought indemnity.
19 Rather, his position was that all she needed to see were checks he wrote to his counsel even
20 though it was impossible to tell from those checks what work they paid for. Mr. Hascheff
21 insisted that his former wife was not entitled to any meaningful information, she simply had to
22 pay what he demanded that she pay. It is still unclear to counsel whether any of the fees Mr.
23 Hascheff incurred directly arising out of the malpractice action were covered by payments from
24 his insurance carrier.

25 To comply with her obligations pursuant to the MSA and Decree given Mr. Hascheff's
26 refusal to provide transparent and accurate information, Ms. Hascheff filed a motion seeking
27 this Court's guidance and clarification. Mr. Hascheff's opposition was long, complex, and
28 failed to address the issues and concerns Ms. Hascheff raised. Rather, he continued to insist

1 that her legal obligation was simply to pay him what he demanded. His Opposition forced her
2 to incur substantial fees to address his strident arguments and multiple citations to authority.
3 From her counsel's perspective, it appeared that Mr. Hascheff not only had counsel to assist
4 with his work, but, as a lawyer, was assisting his own counsel with the work to make the
5 process as difficult and expensive for Ms. Hascheff as possible.

6 And then, after Ms. Hascheff's motion for clarification was fully briefed, Mr. Hascheff
7 filed a motion to hold Ms. Hascheff in contempt of court raising and briefing exactly the same
8 issues that had already been raised and briefed in connection with Ms. Hascheff's motion and
9 his opposition thereto.

10 Since no meaningful new issues or relevant law were articulated in his contempt
11 motion, Mr. Hascheff necessarily had some other motivation for filing it. It appeared to Ms.
12 Hascheff and her counsel that he was using the contempt motion to force her to incur yet more
13 legal fees to make the process as expensive and difficult as possible for her, while it appeared
14 he was doing much of his own work for himself at no cost to himself, to bully her into
15 conceding to his demands. Whether that was his intention, or not, it was the practical result.
16 She had to incur substantial fees to respond to his contempt motion that was entirely
17 unnecessary, unhelpful and without merit.

18 Mr. Hascheff's unreasonable and inconsistent demands and refusal to provide relevant
19 documents, such as bills to show what fees he incurred in the malpractice action as opposed to
20 the collateral action, forced Ms. Hascheff to incur fees to prepare for and try the matter.

21 Mr. Hascheff, unsatisfied with the result, then appealed this court's decision, forcing
22 Ms. Hascheff to incur substantial fees in connection with his appeal. The Court of Appeals
23 read and interpreted the parties' MSA and Decree in exactly the same way Ms. Hascheff had
24 throughout the process and remanded for further actions with respect to the prevailing party fee
25 agreement included in the parties' MSA and Decree.

26 Fees on appeal are recoverable pursuant to a prevailing party fee clause. See, Musso v.
27 Binick, 104 Nev. 613, 764 P.2d 477 (1988). As the Nevada Court noted: "The purpose of such
28 contractual provisions, to indemnify the prevailing party for the full amount of the obligation, is

1 defeated and the party's contract rights are diminished if the party is forced to defend [her]
2 rights on appeal at [her] own expense." Id. at 614. The Court of Appeals interpreted the
3 parties' MSA and Decree in the same way as Ms. Hascheff did throughout the process and
4 remanded for further actions. Thus, she was undeniably the prevailing party with respect to
5 Mr. Hascheff's appeal.

6 Mr. Hascheff's post-appeal litigation conduct paralleled his prior litigation conduct that
7 forced Ms. Hascheff to incur legal fees that she should not have been forced to incur. His new
8 lawyer, Mr. Kent continued to refuse to provide billing records or other information and then,
9 when required to do so demanded an expensive confidentiality agreement.

10 Mr. Hascheff, through Mr. Kent, then made an unsupportable argument that the
11 indemnity language of the MSA was ambiguous and asked the Court to allow him to brief that
12 alleged ambiguity. Mr. Hascheff's claim that the MSA was ambiguous was, necessarily
13 inconsistent and incompatible with his prior contempt motion. A litigant cannot prevail on a
14 contempt motion unless the order at issue is clear and unambiguous. See, Southwest Gas Corp.
15 v. Flintkote, Co, U.S. Lime Div., 99 Nev. 657, 127, 659 P.2d 861 (1983); Cunningham v.
16 Eighth Judicial Dist. Ct., 102 Nev. 551, 729 P.2d 1328 (1986). If the MSA was ambiguous as
17 Mr. Kent argued on Mr. Hascheff's behalf, the contempt motion Mr. Hascheff filed and Ms.
18 Hascheff was forced to incur fees to respond to, was entirely without merit.

19 Thus, either Mr. Hascheff's original contempt motion or his later claim that the MSA is
20 ambiguous, was made in violation of Rule 11 of the Nevada Rules of Civil Procedure and the
21 Nevada Rules of Professional Conduct. But then, after this Court graciously gave Mr. Hascheff
22 the opportunity to brief the alleged ambiguity, he changed counsel again. His brief then failed
23 to comply with this Court's Order and failed to even address the alleged ambiguity he claimed
24 necessitated the briefing. Mr. Hascheff failed to identify the fees directly arising out of the
25 malpractice action when he produced his billing records pursuant to this Court's Order.

26 While the fees Ms. Hascheff incurred in connection with the briefing Mr. Hascheff
27 requested related to the claimed ambiguity were modest, his post-appeal litigation conduct
28 reflects the way in which he litigated his indemnity claim throughout the litigation that did

1 cause Ms. Hascheff to incur incredible legal fees and costs that she should not have been forced
2 to incur. At every step of the proceeding, Mr. Hascheff made it more expensive and difficult
3 for her.

4 The COA Order arising out of Mr. Hascheff's failed appeal clearly articulates the
5 meaning of the MSA and Decree. The COA interpreted Ms. Hascheff's obligations pursuant to
6 the MSA and Decree in the same way Ms. Hascheff did throughout the litigation. The
7 fundamental issue on remand, therefore, was who was the prevailing party.

8 And yet, notwithstanding that clear direction from the COA, Mr. Hascheff continued to
9 insist that the MSA and Decree meant something different than the definition in the COA
10 Order. Mr. Hascheff then once again changed lawyers. However, he continued to refuse to
11 provide accurate and transparent information about the legal fees incurred in the malpractice
12 action, and continued to argue that he was, in some way, the prevailing party. All of those
13 efforts were without merit and yet forced Ms. Hascheff to incur yet more fees to respond.

14 Then, Mr. Hascheff demanded that he be allowed to brief the prevailing party fee issue,
15 even though he failed to make that request at the status conference following entry of the COA
16 Order and notwithstanding this Court's clear direction that it did not need briefing. Mr.
17 Hascheff failed to demonstrate there was any need for or basis for his motion to be allowed to
18 brief the issue. Once again, Ms. Hascheff was forced to incur fees to respond.

19 5. Work Performed: The work Ms. Hascheff's counsel performed and the fees she
20 was charged is reflected in her redacted billing statements that are attached as **Exhibit A**
21 hereto. Counsel will provide unredacted copies to the court *en camera* at the Court's request if
22 the Court has any questions or concerns.

23 Ms. Leonard represented Ms. Hascheff in connection with Mr. Hascheff's failed appeal.
24 Her *Wilfong* affidavit is attached hereto as **Exhibit B** hereto.

25 6. Result Obtained: The trial court rejected Mr. Hascheff's demands. The COA
26 Order rejected Mr. Hascheff's claims and arguments. This Court rejected Mr. Hascheff's post-
27 appeal motions. This Court determined that Ms. Hascheff is the prevailing party.

28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Woodburn and Wedge, 6100 Neil Rd., Suite 500, Reno, Nevada 89511, that I am over the age of 18 years, and that I served the foregoing document(s) described as:

NOTICE OF FILING OF WILFONG AFFIDAVIT

on the party set forth below by:

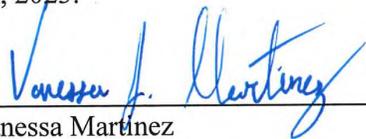
- Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.
- Personal delivery.
- Second Judicial E flex
- Federal Express or other overnight delivery.

addressed as follows:

X John Springgate, Esq.

The undersigned affirms that this document contains no social security numbers

Dated this 10th day of March, 2023.



Vanessa Martinez

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EXHIBIT LIST

<u>Exhibit No.</u>	<u>Document Title</u>	<u>No. of Pages</u>
1	Redacted Billing Statements	41
2	Wilfong Affidavit for Debbie Leonard and Supporting Documentation	28

FILED
Electronically
DV13-00656
2023-03-10 02:12:19 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 9553216

EXHIBIT A

EXHIBIT A

Woodburn and Wedge
ATTORNEYS AND COUNSELORS AT LAW
6100 Neil Road, Suite 500
P.O. Box 2311
Reno, Nevada 89505
<http://www.woodburnandwedge.com>

Telephone: (775) 688-3000

Fax: (775) 688-3088

Lynda Hascheff
3417 Skyline Blvd
Reno, NV 89509

February 21, 2020
Invoice #: [REDACTED]
Resp. Atty: SBM
Client: 017206
Matter: 000001
Page: 1

RE: Hascheff v. Hascheff

For Professional Services Rendered Through January 31, 2020

Federal Tax I.D. No.: [REDACTED]

Total Services	\$1,659.00
Applicable Tax	
Total Disbursements	\$3.25
Total Current Charges	\$1,662.25
Previous Balance	\$1,371.07
Current Interest	
Less Payments	(\$1,371.07)
PAY THIS AMOUNT	\$1,662.25

We accept Visa, Discover and MasterCard payments on account. Please call our Accounting Department at (775) 688-3000 if you would like to make a payment by credit card.

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3417 Skyline Blvd
Reno, NV 89509

February 21, 2020
Invoice #: [REDACTED]
Resp. Atty: SBM
Client: 017206
Matter: 000001
Page: 1

RE: Hascheff v. Hascheff

For Professional Services Rendered Through January 31, 2020

Federal Tax I.D. No.: [REDACTED]

SERVICES

Date	Person	Description of Services	Hours	Amount
01/21/2020	SBM	Review MSA re [REDACTED].	0.2	\$84.00
01/22/2020	SBM	Meet w/Linda and loop in her sister Lucy re [REDACTED].	1.0	\$450.00
01/27/2020	SBM	Review complaint, review underlying file, send Lynda and Lucy a long email [REDACTED].	1.3	\$585.00
01/29/2020	SBM	Exchange series of emails with Linda re [REDACTED].	0.2	\$90.00
01/30/2020	SBM	Meet w/Lynda and call Lucy to discuss [REDACTED], phone call with Phil K re lawsuit, phone call with Lucy re [REDACTED].	1.0	\$450.00
Total Professional Services			3.7	\$1,659.00

DISBURSEMENTS

Date	Description of Disbursements	Amount
01/22/2020	Photocopies (9 @ \$0.25)	\$2.25
01/24/2020	Color Photocopies (2 @ \$0.50)	\$1.00
Total Disbursements		\$3.25

Woodburn and Wedge

February 21, 2020
Invoice #: [REDACTED]
Resp. Atty: SBM
Client: 017206
Matter: 000001
Page: 2

Total Services	\$1,659.00	
Total Disbursements	\$3.25	
Total Current Charges		\$1,662.25
Previous Balance		\$1,371.07
<i>Less Payments</i>		<i>(\$1,371.07)</i>
PAY THIS AMOUNT		\$1,662.25

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Lynda Hascheff
3417 Skyline Blvd
Reno, NV 89509

March 18, 2020
Invoice #: [REDACTED]
Resp. Atty: SBM
Client: 017206
Matter: 000001
Page: 1

RE: Hascheff v. Hascheff

For Professional Services Rendered Through February 29, 2020

Federal Tax I.D. No.: [REDACTED]

Total Services	\$765.00
Total Current Charges	\$765.00
Previous Balance	\$1,662.25
Current Interest	
PAY THIS AMOUNT	\$2,427.25

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March 18, 2020
Invoice #: [REDACTED]
Resp. Atty: SBM
Client: 017206
Matter: 000001
Page: 1

RE: Hascheff v. Hascheff

For Professional Services Rendered Through February 29, 2020

Federal Tax I.D. No.: [REDACTED]

SERVICES

Date	Person	Description of Services	Hours	Amount
02/03/2020	SBM	Review emails between Lucy and Pierre, exchange email with Lucy.	0.2	\$90.00
02/10/2020	SBM	Review emails from Lucy with communications from Pierre, send email to Lucy re [REDACTED]	1.0	\$450.00
02/11/2020	SBM	Exchange emails with Lucy re [REDACTED]	0.2	\$90.00
02/24/2020	SBM	Exchange emails with Lynda re [REDACTED], review and respond to email from Lucy.	0.3	\$135.00
Total Professional Services			1.7	\$765.00
Total Services			\$765.00	
Total Current Charges				\$765.00
Previous Balance				\$1,662.25
PAY THIS AMOUNT				\$2,427.25

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Lynda Hascheff
3417 Skyline Blvd
Reno, NV 89509

April 13, 2020
Invoice #: [REDACTED]
Resp. Atty: SBM
Client: 017206
Matter: 000001
Page: 1

RE: Hascheff v. Hascheff

For Professional Services Rendered Through March 31, 2020

Federal Tax I.D. No.: [REDACTED]

Total Services	\$540.00
Total Current Charges	\$540.00
Previous Balance	\$2,427.25
Current Interest	
Less Payments	(\$2,427.25)
PAY THIS AMOUNT	\$540.00

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Lynda Hascheff
3417 Skyline Blvd
Reno, NV 89509

April 13, 2020
Invoice #: [REDACTED]
Resp. Atty: SBM
Client: 017206
Matter: 000001
Page: 1

RE: Hascheff v. Hascheff

For Professional Services Rendered Through March 31, 2020

Federal Tax I.D. No.: [REDACTED]

SERVICES

Date	Person	Description of Services	Hours	Amount
03/02/2020	SBM	Exchange emails with Pierre re legal fees issues, exchange emails with Lucy and Lynda re [REDACTED].	0.6	\$270.00
03/03/2020	SBM	Phone call with KB and conference with JM re [REDACTED], exchange emails with Lucy and Lynda re [REDACTED], send email to Pierre.	0.6	\$270.00
Total Professional Services			1.2	\$540.00
Total Services			\$540.00	
Total Current Charges				\$540.00
Previous Balance				\$2,427.25
Less Payments				(\$2,427.25)
PAY THIS AMOUNT				\$540.00

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Lynda Hascheff
3417 Skyline Blvd
Reno, NV 89509

May 07, 2020
Invoice #: [REDACTED]
Resp. Atty: SBM
Client: 017206
Matter: 000001
Page: 1

RE: Hascheff v. Hascheff

For Professional Services Rendered Through April 30, 2020

Federal Tax I.D. No.: [REDACTED]

Total Services	\$270.00
Total Current Charges	\$270.00
Previous Balance	\$540.00
Current Interest	
PAY THIS AMOUNT	\$810.00

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P.O. Box 2311
Reno, Nevada 89505
<http://www.woodburnandwedge.com>

Telephone: (775) 688-3000

Fax: (775) 688-3088

Lynda Hascheff
3417 Skyline Blvd
Reno, NV 89509

May 07, 2020
Invoice #: [REDACTED]
Resp. Atty: SBM
Client: 017206
Matter: 000001
Page: 1

RE: Hascheff v. Hascheff

For Professional Services Rendered Through April 30, 2020

Federal Tax I.D. No.: [REDACTED]

SERVICES

Date	Person	Description of Services	Hours	Amount
04/20/2020	SBM	Review email from Pierre in which he states that he has retained T. Torvinen, send email to T. Torvinen and to T. Alexander re [REDACTED] forward Pierre's email to Lynda and Lucy.	0.6	\$270.00
Total Professional Services			0.6	\$270.00
Total Services			\$270.00	
Total Current Charges				\$270.00
Previous Balance				\$540.00
PAY THIS AMOUNT				\$810.00

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Reno, Nevada 89505
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Lynda Hascheff
3417 Skyline Blvd
Reno, NV 89509

July 17, 2020
Invoice #: [REDACTED]
Resp. Atty: SBM
Client: 017206
Matter: 000001
Page: 1

RE: Hascheff v. Hascheff

For Professional Services Rendered Through June 30, 2020

Federal Tax I.D. No.: [REDACTED]

Total Services	\$10,395.00
Total Current Charges	\$10,395.00
Previous Balance	\$810.00
Current Interest	
PAY THIS AMOUNT	\$11,205.00

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 6100 Neil Road, Suite 500
 P.O. Box 2311
 Reno, Nevada 89505
<http://www.woodburnandwedge.com>

Telephone: (775) 688-3000

Fax: (775) 688-3088

Lynda Hascheff
 3417 Skyline Blvd
 Reno, NV 89509

July 17, 2020
 Invoice #: [REDACTED]
 Resp. Atty: SBM
 Client: 017206
 Matter: 000001
 Page: 1

RE: Hascheff v. Hascheff

For Professional Services Rendered Through June 30, 2020

Federal Tax I.D. No.: [REDACTED]

SERVICES

Date	Person	Description of Services	Hours	Amount
06/01/2020	SBM	Review correspondence from T. Torvinen, review declaration from T. Alexander, review Alexander's billing statements, phone call with Lynda and Lucy re [REDACTED], draft letter to T. Torvinen and forward to Lynda and Lucy for review.	3.2	\$1,440.00
06/02/2020	SBM	Review emails from Lynda and Lucy re [REDACTED] review MSA, review malpractice complaint, edit letter to Todd and send to Lynda and Lucy for review, finalize and send letter to T. Torvinen.	1.5	\$675.00
06/08/2020	SBM	Phone call with Lucy, research [REDACTED]	1.9	\$855.00
06/09/2020	SBM	Work on research for motion [REDACTED]	1.6	\$720.00
06/10/2020	SBM	Work on motion for declaratory relief.	2.5	\$1,125.00
06/11/2020	SBM	Phone call with Lynda and Lucy, draft letter to T. Torvinen re [REDACTED], work on draft motion for clarification etc.	3.1	\$1,395.00
06/12/2020	SBM	Exchange emails with Lucy and Lynda, work on motion for clarification etc., phone call with Lucy.	2.6	\$1,170.00
06/14/2020	SBM	Review Lucy's draft edits to motion, exchange emails with Lucy re [REDACTED]	1.1	\$495.00
06/15/2020	SBM	Exchange emails with Lynda and Lucy, review documents sent by Lucy, review case law cited by Lucy, redraft motion for clarification and forward to Lucy and Lynda for review, edit revised draft motion.	5.0	\$2,250.00
06/16/2020	SBM	Edit and finalize motion [REDACTED]	0.4	\$180.00
06/17/2020	SBM	Exchange emails re [REDACTED]	0.2	\$90.00
Total Professional Services			23.1	\$10,395.00

Woodburn and Wedge

July 17, 2020
Invoice #: [REDACTED]
Resp. Atty: SBM
Client: 017206
Matter: 000001
Page: 2

Total Services	\$10,395.00
Total Current Charges	\$10,395.00
Previous Balance	\$810.00
PAY THIS AMOUNT	\$11,205.00

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Lynda Hascheff
3417 Skyline Blvd
Reno, NV 89509

September 14, 2020
Invoice #: [REDACTED]
Resp. Atty: SBM
Client: 017206
Matter: 000001
Page: 1

RE: Hascheff v. Hascheff

For Professional Services Rendered Through August 31, 2020

Federal Tax I.D. No.: [REDACTED]

Total Services	\$6,330.00
Total Current Charges	\$6,330.00
Previous Balance	\$11,205.00
Current Interest	
PAY THIS AMOUNT	\$17,535.00

We accept Visa, Discover and MasterCard payments on account. Please call our Accounting Department at (775) 688-3000 if you would like to make a payment by credit card.

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P.O. Box 2311
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Fax: (775) 688-3088

Lynda Hascheff
3417 Skyline Blvd
Reno, NV 89509

September 14, 2020
Invoice #: [REDACTED]
Resp. Atty: SBM
Client: 017206
Matter: 000001
Page: 1

RE: Hascheff v. Hascheff

For Professional Services Rendered Through August 31, 2020

Federal Tax I.D. No.: [REDACTED]

SERVICES

Date	Person	Description of Services	Hours	Amount
07/01/2020	SBM	Exchange Lynda and Lucy re [REDACTED].	0.1	\$45.00
07/07/2020	SBM	Review Judge Hascheff's opposition to motion, exchange email with Lynda and Lucy, start work on reply.	2.6	\$1,170.00
07/08/2020	SBM	Work on Reply in support of motion [REDACTED].	3.4	\$1,530.00
07/09/2020	SBM	Edit draft Reply, exchange emails with Lucy re [REDACTED].	0.7	\$315.00
07/09/2020	SHB	Researched requirements for contempt.	1.0	\$150.00
07/10/2020	SBM	Review contempt authority, assign task to Sam to prepare legal section of opposition to contempt motion.	0.2	\$90.00
07/13/2020	SBM	Work on opposition to contempt motion.	2.2	\$990.00
07/14/2020	SBM	Work on opposition to Motion for Order to Show Cause and forward to Lynda and Lucy for review.	2.7	\$1,215.00
07/14/2020	SHB	Researched when a fiduciary obligation arises.	1.0	\$150.00
07/15/2020	SBM	Exchange emails with Lynda and Lucy re [REDACTED].	0.4	\$180.00
07/16/2020	SBM	Edit and finalize opposition to motion for order to show cause, exchange email with Lynda.	1.1	\$495.00
Total Professional Services			15.4	\$6,330.00

Woodburn and Wedge

September 14, 2020
Invoice #: [REDACTED]
Resp. Atty: SBM
Client: 017206
Matter: 000001
Page: 2

Total Services	\$6,330.00
Total Current Charges	\$6,330.00
Previous Balance	\$11,205.00
PAY THIS AMOUNT	\$17,535.00

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Lynda Hascheff
3417 Skyline Blvd
Reno, NV 89509

October 13, 2020
Invoice #: [REDACTED]
Resp. Atty: SBM
Client: 017206
Matter: 000001
Page: 1

RE: Hascheff v. Hascheff

For Professional Services Rendered Through September 30, 2020

Federal Tax I.D. No. [REDACTED]

Total Services	\$765.00
Total Current Charges	\$765.00
Previous Balance	\$17,535.00
Current Interest	
PAY THIS AMOUNT	\$18,300.00

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Telephone: (775) 688-3000

Fax: (775) 688-3088

Lynda Hascheff
3417 Skyline Blvd
Reno, NV 89509

October 13, 2020
Invoice #: 438093
Resp. Atty: SBM
Client: 017206
Matter: 000001
Page: 1

RE: Hascheff v. Hascheff

For Professional Services Rendered Through September 30, 2020

Federal Tax I.D. No.: [REDACTED]

SERVICES

Date	Person	Description of Services	Hours	Amount
09/09/2020	SBM	Review court's order, exchange emails with Lynda and Lucy.	0.6	\$270.00
09/10/2020	SBM	Review order, exchange emails with Lynda and Lucy.	0.4	\$180.00
09/11/2020	SBM	Phone call with Lynda and Lucy re [REDACTED].	0.5	\$225.00
09/16/2020	SBM	Schedule hearing.	0.2	\$90.00
Total Professional Services			1.7	\$765.00
Total Services				\$765.00
Total Current Charges				\$765.00
Previous Balance				\$17,535.00
PAY THIS AMOUNT				\$18,300.00

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Fax: (775) 688-3088

Lynda Hascheff
3417 Skyline Blvd
Reno, NV 89509

December 09, 2020
Invoice #: [REDACTED]
Resp. Atty: SBM
Client: 017206
Matter: 000001
Page: 1

RE: Hascheff v. Hascheff

For Professional Services Rendered Through November 30, 2020

Federal Tax I.D. No.: [REDACTED]

Total Services	\$45.00
Total Current Charges	\$45.00
Previous Balance	\$18,300.00
Current Interest	
PAY THIS AMOUNT	\$18,345.00

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Telephone: (775) 688-3000

Fax: (775) 688-3088

Lynda Hascheff
3417 Skyline Blvd
Reno, NV 89509

December 09, 2020
Invoice #: [REDACTED]
Resp. Atty: SBM
Client: 017206
Matter: 000001
Page: 1

RE: Hascheff v. Hascheff

For Professional Services Rendered Through November 30, 2020

Federal Tax I.D. No.: [REDACTED]

SERVICES

Date	Person	Description of Services	Hours	Amount
11/13/2020	SBM	Exchange emails with Lynda re [REDACTED] [REDACTED]	0.1	\$45.00
		Total Professional Services	0.1	\$45.00
		Total Services	\$45.00	
		Total Current Charges		\$45.00
		Previous Balance		\$18,300.00
		PAY THIS AMOUNT		\$18,345.00

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Lynda Hascheff
3417 Skyline Blvd
Reno, NV 89509

January 11, 2021
Invoice #: [REDACTED]
Resp. Atty: SBM
Client: 017206
Matter: 000001
Page: 1

RE: Hascheff v. Hascheff

For Professional Services Rendered Through December 31, 2020

Federal Tax I.D. No.: [REDACTED]

Total Services	\$13,965.00
Applicable Tax	
Total Disbursements	\$87.47
Total Current Charges	\$14,052.47
Previous Balance	\$18,345.00
Current Interest	
PAY THIS AMOUNT	\$32,397.47

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Reno, NV 89509

January 11, 2021
Invoice #: [REDACTED]
Resp. Atty: SBM
Client: 017206
Matter: 000001
Page: 1

RE: Hascheff v. Hascheff

For Professional Services Rendered Through December 31, 2020

Federal Tax I.D. No.: [REDACTED]

SERVICES

Date	Person	Description of Services	Hours	Amount
12/01/2020	SBM	Exchange emails with Lucy re [REDACTED].	0.1	\$45.00
12/04/2020	SBM	Prepare for status conference.	0.2	\$90.00
12/07/2020	SBM	Prepare for and participate in status conference with Court, exchange emails with Lynda and Lucy re [REDACTED], send email to Torvinen re authentication of emails.	1.2	\$540.00
12/09/2020	SBM	Exchange email with T. Torvinen re [REDACTED], briefly review summary from Lucy to prepare for hearing.	0.4	\$180.00
12/10/2020	SBM	Review Court's order, motions, exhibits and Lucy's memos to prepare for zoom meeting, zoom meeting with Lynda and Lucy to [REDACTED].	1.9	\$855.00
12/11/2020	SBM	Exchange emails with T. Torvinen re [REDACTED].	0.4	\$180.00
12/14/2020	SBM	Start preparing for hearing and making decisions about what exhibits will be necessary, exchange emails with Lynda and Lucy re [REDACTED].	1.7	\$765.00
12/15/2020	SBM	Work on preparing for hearing and organizing exhibits.	1.3	\$585.00
12/16/2020	SBM	Continue reviewing file and documents, review Jaksick pleadings to prepare for hearing, exchange emails with Lynda and Lucy, send email to Todd re [REDACTED], send Todd email re [REDACTED].	1.0	\$450.00
12/17/2020	SBM	Work on preparing for hearing, review Pierre's trial statement, review proposed exhibits, exchange emails with Lynda and Lucy etc.	4.4	\$1,980.00

Woodburn and Wedge

January 11, 2021
 Invoice #: [REDACTED]
 Resp. Atty: SBM
 Client: 017206
 Matter: 000001
 Page: 2

SERVICES

Date	Person	Description of Services	Hours	Amount
12/17/2020	BMK	Review of disclosure of witnesses; Conference with SBM re [REDACTED]; Research ability to be both expert and percipient witness in same matter; Draft motion in limine [REDACTED]; Review of MSA motion and motion for OSC for history and facts surrounding underlying trust action.	5.8	\$1,740.00
12/18/2020	SBM	Work on trial preparation, work on hearing statement and motion in limine.	0.7	\$315.00
12/18/2020	BMK	Continue to revise percipient witness argument re [REDACTED] Amend to incorporate hearing statement with additional exhibits and finalize.	1.3	\$390.00
12/19/2020	SBM	Work on preparing for hearing, send email to Torvinen re [REDACTED]	5.4	\$2,430.00
12/20/2020	SBM	Exchange emails with Lynda and Lucy, continue preparing for hearing.	2.5	\$1,125.00
12/21/2020	SBM	Prepare for and participate in zoom hearing, phone call with Lynda and Lucy re [REDACTED]	4.9	\$2,205.00
12/23/2020	SBM	Exchange emails with Torvinen's office and Lynda re [REDACTED] (no charge).	0.2	\$90.00
Total Professional Services			33.4	\$13,965.00

DISBURSEMENTS

Date	Description of Disbursements	Amount
12/15/2020	Photocopies (320 @ \$0.25)	\$80.00
12/24/2020	Tia E. Ortiz- Special Messenger Services-	\$3.73
12/24/2020	Tia E. Ortiz- Special Messenger Services-	\$3.74
Total Disbursements		\$87.47

Total Services	\$13,965.00
Total Disbursements	\$87.47
Total Current Charges	\$14,052.47
Previous Balance	\$18,345.00
PAY THIS AMOUNT	\$32,397.47

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ATTORNEYS AND COUNSELORS AT LAW
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Telephone: (775) 688-3000

Fax: (775) 688-3088

Lynda Hascheff
3417 Skyline Blvd
Reno, NV 89509

March 15, 2021
Invoice #: [REDACTED]
Resp. Atty: SBM
Client: 017206
Matter: 000001
Page: 1

RE: Hascheff v. Hascheff

For Professional Services Rendered Through February 28, 2021

Federal Tax I.D. No.: [REDACTED] 5

Total Services	\$90.00
Total Current Charges	\$90.00
Previous Balance	\$32,397.47
Current Interest	
PAY THIS AMOUNT	\$32,487.47

We accept Visa, Discover and MasterCard payments on account. Please call our Accounting Department at (775) 688-3000 if you would like to make a payment by credit card.

Woodburn and Wedge
ATTORNEYS AND COUNSELORS AT LAW
6100 Neil Road, Suite 500
P.O. Box 2311
Reno, Nevada 89505
<http://www.woodburnandwedge.com>

Telephone: (775) 688-3000

Fax: (775) 688-3088

Lynda Hascheff
3417 Skyline Blvd
Reno, NV 89509

March 15, 2021
Invoice #: [REDACTED]
Resp. Atty: SBM
Client: 017206
Matter: 000001
Page: 1

RE: Hascheff v. Hascheff

For Professional Services Rendered Through February 28, 2021

Federal Tax I.D. No.: [REDACTED]

SERVICES

Date	Person	Description of Services	Hours	Amount
02/01/2021	SBM	Exchange emails with Lynda and Lucy re [REDACTED].	0.2	\$90.00
		Total Professional Services	0.2	\$90.00
		Total Services	\$90.00	
		Total Current Charges		\$90.00
		Previous Balance		\$32,397.47
		PAY THIS AMOUNT		\$32,487.47

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Lynda Hascheff
3417 Skyline Blvd
Reno, NV 89509

August 16, 2022
Invoice #: [REDACTED]
Resp. Atty: SBM
Client: 017206
Matter: 000001
Page: 1

RE: Hascheff v. Hascheff

For Professional Services Rendered Through July 31, 2022

Federal Tax I.D. No.: [REDACTED]

Total Services	\$4,085.00
Total Current Charges	\$4,085.00
PAY THIS AMOUNT	\$4,085.00

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Lynda Hascheff
 3417 Skyline Blvd
 Reno, NV 89509

August 16, 2022
 Invoice #: [REDACTED]
 Resp. Atty: SBM
 Client: 017206
 Matter: 000001
 Page: 1

RE: Hascheff v. Hascheff

For Professional Services Rendered Through July 31, 2022

Federal Tax I.D. No.: [REDACTED]

SERVICES

Date	Person	Description of Services	Hours	Amount
07/01/2022	SBM	Review order on appeal, exchange emails with D. Leonard, send email to Lynda re [REDACTED].	0.5	\$225.00
07/04/2022	SBM	Exchange emails with Lynda re [REDACTED].	0.2	\$90.00
07/05/2022	SBM	Review underlying pleadings and order from COA, exchange email with D. Leonard, phone call with Lynda re [REDACTED].	2.0	\$900.00
07/06/2022	SBM	Exchange email with Debbie Leonard re [REDACTED].	0.2	\$90.00
07/08/2022	SBM	Review and respond to email from Judge Unsworth's assistant, send email to S. Kent re [REDACTED].	0.5	\$225.00
07/11/2022	SBM	Review and respond to email from S. Kent re [REDACTED], review COA order, exchange series of emails with Lynda and Lucy re [REDACTED].	1.5	\$675.00
07/12/2022	SBM	Exchange emails with Debbie and Lynda re [REDACTED], ask McCade to look at law of case.	0.4	\$180.00
07/12/2022	MJW	Draft memo regarding the court of appeals order with research on the doctrine of the law of the case.	2.0	\$350.00
07/13/2022	SBM	Exchange emails re [REDACTED] and joint phone call re [REDACTED].	0.3	\$135.00
07/14/2022	SBM	Exchange emails with Lynda, Lucy and Debbie re [REDACTED].	0.5	\$225.00
07/25/2022	SBM	Exchange emails with Debbie re [REDACTED], exchange emails with S. Kent re [REDACTED].	0.5	\$225.00
07/26/2022	SBM	Exchange emails with Lynda re [REDACTED], send email to S. Kent re [REDACTED].	0.3	\$135.00

Woodburn and Wedge

August 16, 2022
Invoice #: [REDACTED]
Resp. Atty: SBM
Client: 017206
Matter: 000001
Page: 2

SERVICES

Date	Person	Description of Services	Hours	Amount
07/27/2022	SBM	Read and respond to email from Amy re [REDACTED].	0.2	\$90.00
07/28/2022	SBM	Review email from Amy, Steve Kent's response and reply to Kent's response, exchange email with Lynda and Lucy re [REDACTED].	0.3	\$135.00
07/29/2022	SBM	Exchange emails with Lynda and Lucy re [REDACTED], exchange email with J. Berry re [REDACTED].	0.7	\$315.00
07/30/2022	SBM	Send email to Lynda and Lucy re [REDACTED].	0.2	\$90.00
Total Professional Services			11.1	\$4,085.00
Total Services			\$4,085.00	
Total Current Charges				\$4,085.00
PAY THIS AMOUNT				\$4,085.00

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Lynda Hascheff
3417 Skyline Blvd
Reno, NV 89509

September 13, 2022
Invoice #: [REDACTED]
Resp. Atty: SBM
Client: 017206
Matter: 000001
Page: 1

RE: Hascheff v. Hascheff

For Professional Services Rendered Through August 31, 2022

Federal Tax I.D. No.: [REDACTED]

Total Services	\$1,845.00
Total Current Charges	\$1,845.00
Previous Balance	\$4,085.00
Current Interest	
PAY THIS AMOUNT	\$5,930.00

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 Reno, NV 89509

September 13, 2022
 Invoice #: [REDACTED]
 Resp. Atty: SBM
 Client: 017206
 Matter: 000001
 Page: 1

RE: Hascheff v. Hascheff

For Professional Services Rendered Through August 31, 2022

Federal Tax I.D. No.: [REDACTED]

SERVICES

Date	Person	Description of Services	Hours	Amount
08/01/2022	SBM	Exchange email with Lynda re [REDACTED]	0.2	\$90.00
08/03/2022	SBM	Exchange emails with Jan Berry and L. Hascheff re [REDACTED], exchange emails with S. Kent, send letter to S. Kent.	0.7	\$315.00
08/08/2022	SBM	Phone call with contact re [REDACTED], review Order denying Wendy's appeal from ruling against her in her lawsuit against Todd, send email to Lynda and Lucy re [REDACTED]	0.7	\$315.00
08/11/2022	SBM	Exchange email with Lynda re [REDACTED]	0.2	\$90.00
08/12/2022	SBM	Exchange emails with Court re [REDACTED], exchange emails with Lynda re [REDACTED], draft letter to S. Kent and forward to Lynda for review.	1.0	\$450.00
08/15/2022	SBM	Review correspondence from S. Kent, draft response and forward to Lynda to review.	0.4	\$180.00
08/16/2022	SBM	Exchange emails with Lynda, read letter from Steve, amend draft letter to Steve, forward to Lynda for review, finalize and send to Steve.	0.6	\$270.00
08/17/2022	SBM	Exchange emails with Lucy re [REDACTED].	0.3	\$135.00
Total Professional Services			4.1	\$1,845.00

Woodburn and Wedge

September 13, 2022
Invoice #: [REDACTED]
Resp. Atty: SBM
Client: 017206
Matter: 000001
Page: 2

Total Services	\$1,845.00	
Total Current Charges		\$1,845.00
Previous Balance		\$4,085.00
PAY THIS AMOUNT		\$5,930.00

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Lynda Hascheff
3417 Skyline Blvd
Reno, NV 89509

October 25, 2022
Invoice #: [REDACTED]
Resp. Atty: SBM
Client: 017206
Matter: 000001
Page: 1

RE: Hascheff v. Hascheff

For Professional Services Rendered Through September 30, 2022

Federal Tax I.D. No.: [REDACTED]

Total Services	\$4,080.00
Total Current Charges	\$4,080.00
Previous Balance	\$5,930.00
Current Interest	
Less Payments	(\$500.00)
PAY THIS AMOUNT	\$9,510.00

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Lynda Hascheff
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 Reno, NV 89509

October 25, 2022
 Invoice #: [REDACTED]
 Resp. Atty: SBM
 Client: 017206
 Matter: 000001
 Page: 1

RE: Hascheff v. Hascheff

For Professional Services Rendered Through September 30, 2022

Federal Tax I.D. No.: [REDACTED]

SERVICES

Date	Person	Description of Services	Hours	Amount
09/15/2022	SBM	Exchange emails with Lynda re [REDACTED]	0.2	\$90.00
09/19/2022	SBM	Review letter from S. Kent, exchange email with Lynda and Lucy, work on draft status conference statement and forward to Lynda and Lucy for review.	1.5	\$675.00
09/20/2022	SBM	Review emails from Lynda and Lucy, edit draft status conference statement, edit letter to S. Kent, forward draft status conference statement to Lynda and Lucy.	1.3	\$585.00
09/21/2022	SBM	Work on status conference report, exchange emails with Lynda and Lucy.	0.6	\$270.00
09/22/2022	SBM	Review emails from Lynda and Lucy, edit draft status conference statement, exchange emails with Lynda, Kelly and Cassie re [REDACTED] [REDACTED] review bills, review Cassie's email, review emails Lynda sent.	1.3	\$585.00
09/22/2022	CJW	Looked through client disclosures to determine whether client or insurance paid fees for divorce matter.	0.6	\$120.00
09/26/2022	SBM	Finalize and send letter to S. Kent re [REDACTED] [REDACTED] finalize and file status conference statement, review Pierre's status conference statement, exchange emails with Lynda and Lucy re [REDACTED] [REDACTED]	0.9	\$405.00
09/27/2022	SBM	Work on preparing for hearing and exchange emails with Lynda re [REDACTED] review Pierre's motion to strike and exchange emails with Lynda and Lucy re [REDACTED] [REDACTED]	1.3	\$585.00
09/28/2022	SBM	Prepare for and participate in Status Conference, exchange emails with Lynda and Lucy re [REDACTED]	1.5	\$675.00
09/29/2022	SBM	Review court's order, review emails from Lynda and Lucy.	0.2	\$90.00

Woodburn and Wedge

October 25, 2022
Invoice #: [REDACTED]
Resp. Atty: SBM
Client: 017206
Matter: 000001
Page: 2

SERVICES

<u>Date</u>	<u>Person</u>	<u>Description of Services</u>	<u>Hours</u>	<u>Amount</u>
		Total Professional Services	9.4	\$4,080.00
		Total Services	\$4,080.00	
		Total Current Charges		\$4,080.00
		Previous Balance		\$5,930.00
		Less Payments		(\$500.00)
		PAY THIS AMOUNT		\$9,510.00

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Lynda Hascheff
3417 Skyline Blvd
Reno, NV 89509

November 18, 2022
Invoice #: [REDACTED]
Resp. Atty: SBM
Client: 017206
Matter: 000001
Page: 1

RE: Hascheff v. Hascheff

For Professional Services Rendered Through October 31, 2022

Federal Tax I.D. No.: [REDACTED]

Total Services	\$3,240.00
Total Current Charges	\$3,240.00
Previous Balance	\$9,510.00
Current Interest	
PAY THIS AMOUNT	\$12,750.00

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Lynda Hascheff
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 Reno, NV 89509

November 18, 2022
 Invoice #: [REDACTED]
 Resp. Atty: SBM
 Client: 017206
 Matter: 000001
 Page: 1

RE: Hascheff v. Hascheff

For Professional Services Rendered Through October 31, 2022

Federal Tax I.D. No.: [REDACTED]

SERVICES

Date	Person	Description of Services	Hours	Amount
10/03/2022	SBM	Review draft confidentiality stipulation and forward to Lynda and Lucy, exchange emails with Lynda.	0.3	\$135.00
10/04/2022	SBM	Draft letter to S. Kent, exchange emails with Lynda and Lucy re [REDACTED].	0.5	\$225.00
10/05/2022	SBM	Edit, finalize and send letter to S. Kent re [REDACTED].	0.2	\$90.00
10/07/2022	SBM	Revise letter to S. Kent, edit and revise draft stipulation, exchange emails with Lynda and Lucy re [REDACTED], exchange series of emails with J. Springgate re [REDACTED].	2.0	\$900.00
10/11/2022	SBM	Exchange emails with S. Kent, finalize and file confidentiality stip, exchange email with Lynda re [REDACTED].	0.3	\$135.00
10/13/2022	SBM	Exchange emails with Lynda re [REDACTED], send email to S. Kent re [REDACTED].	0.4	\$180.00
10/18/2022	SBM	Exchange emails with Lynda re [REDACTED].	0.2	\$90.00
10/20/2022	SBM	Phone call with J. Springgate, send email to J. Springgate following call requesting clarification of Pierre's claims etc., exchange email with Lynda, review invoices, calculate indemnity, send email to J. Springgate re [REDACTED].	1.7	\$765.00
10/25/2022	SBM	Exchange emails with J. Springgate re [REDACTED].	0.2	\$90.00
10/31/2022	SBM	Review Pierre's Offer of Judgment, review Pierre's brief re [REDACTED] exchange emails with Lynda and Lucy, start work on responsive brief.	1.4	\$630.00
Total Professional Services			7.2	\$3,240.00

Woodburn and Wedge

November 18, 2022
Invoice #: [REDACTED]
Resp. Atty: SBM
Client: 017206
Matter: 000001
Page: 2

Total Services	\$3,240.00	
Total Current Charges		\$3,240.00
Previous Balance		\$9,510.00
PAY THIS AMOUNT		\$12,750.00

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Lynda Hascheff
3417 Skyline Blvd
Reno, NV 89509

December 20, 2022
Invoice #: [REDACTED]
Resp. Atty: SBM
Client: 017206
Matter: 000001
Page: 1

RE: Hascheff v. Hascheff

For Professional Services Rendered Through November 30, 2022

Federal Tax I.D. No.: [REDACTED]

Total Services	\$3,645.00
Total Current Charges	\$3,645.00
Previous Balance	\$12,750.00
Current Interest	
PAY THIS AMOUNT	\$16,395.00

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Lynda Hascheff
 3417 Skyline Blvd
 Reno, NV 89509

December 20, 2022
 Invoice #: [REDACTED]
 Resp. Atty: SBM
 Client: 017206
 Matter: 000001
 Page: 1

RE: Hascheff v. Hascheff

For Professional Services Rendered Through November 30, 2022

Federal Tax I.D. No.: [REDACTED]

SERVICES

Date	Person	Description of Services	Hours	Amount
11/01/2022	SBM	Review Pierre's Brief Statement, review underlying documents necessary to respond, draft responsive brief, forward to Lynda for review, exchange emails with Lynda and Lucy re [REDACTED]	4.2	\$1,890.00
11/02/2022	SBM	Exchange emails with Lynda and Lucy, edit draft brief, exchange email with J. Springgate re [REDACTED]	2.4	\$1,080.00
11/03/2022	SBM	Finalize and file brief, exchange emails with Lynda re [REDACTED], exchange emails with court's AA re filing request for submission, exchange email with J. Springgate re [REDACTED]	0.5	\$225.00
11/07/2022	SBM	Exchange emails with Lynda re [REDACTED]	0.4	\$180.00
11/09/2022	SBM	Send email to Springgate re [REDACTED]	0.2	\$90.00
11/21/2022	SBM	Exchange emails with Lynda re [REDACTED]	0.1	\$45.00
11/29/2022	SBM	Review and respond to email from J. Springgate [REDACTED]	0.3	\$135.00
Total Professional Services			8.1	\$3,645.00
Total Services				\$3,645.00
Total Current Charges				\$3,645.00
Previous Balance				\$12,750.00
PAY THIS AMOUNT				\$16,395.00

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Lynda Hascheff
3417 Skyline Blvd
Reno, NV 89509

February 16, 2023
Invoice #: [REDACTED]
Resp. Atty: SBM
Client: 017206
Matter: 000001
Page: 1

RE: Hascheff v. Hascheff

For Professional Services Rendered Through January 31, 2023

Federal Tax I.D. No.: [REDACTED]

Total Services	\$1,335.00
Total Current Charges	\$1,335.00
Previous Balance	\$16,395.00
Current Interest	
PAY THIS AMOUNT	\$17,730.00

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Lynda Hascheff
3417 Skyline Blvd
Reno, NV 89509

February 16, 2023
Invoice #: [REDACTED]
Resp. Atty: SBM
Client: 017206
Matter: 000001
Page: 1

RE: Hascheff v. Hascheff

For Professional Services Rendered Through January 31, 2023

Federal Tax I.D. No.: [REDACTED]

SERVICES

Date	Person	Description of Services	Hours	Amount
12/08/2022	SBM	Review court's order rejecting Pierre's claims, exchange emails with Lynda and Lucy re [REDACTED]	0.4	\$180.00
12/08/2022	BMK	Prep NOE of Order.	0.2	\$60.00
12/20/2022	SBM	Send email to J. Springgate re [REDACTED].	0.2	\$90.00
12/22/2022	SBM	Exchange email with J. Springgate re [REDACTED]	0.2	\$90.00
12/27/2022	SBM	Review Pierre's motion, send Rule 11 email to Springgate, exchange emails with Lynda.	0.3	\$135.00
01/05/2023	SBM	Draft opposition to motion to allow briefing of prevailing party issue.	1.0	\$450.00
01/06/2023	SBM	Exchange email with Lynda re [REDACTED]	0.1	\$45.00
01/06/2023	BMK	Finalize Hascheff opposition.	0.2	\$60.00
01/08/2023	SBM	Exchange emails with Lucy re [REDACTED].	0.2	\$90.00
01/18/2023	SBM	Review Pierre's Reply, send J. Springgate a Rule 11 email.	0.3	\$135.00
Total Professional Services			3.1	\$1,335.00
Total Services				\$1,335.00
Total Current Charges				\$1,335.00
Previous Balance				\$16,395.00
PAY THIS AMOUNT				\$17,730.00

FILED
Electronically
DV13-00656
2023-03-10 02:12:19 PM
Alicia L. Lerud
Clerk of the Court
Transaction # 9553216

EXHIBIT B

EXHIBIT B

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DECLARATION OF DEBBIE LEONARD

I, Debbie Leonard, do hereby swear under penalty of perjury that the assertions of this declaration are true and correct.

1. I am over the age of eighteen (18) years. I have personal knowledge of the facts stated within this declaration. If called as a witness, I would be competent to testify to these facts.

2. I was appellate counsel of record for Lynda Hascheff in Court of Appeals Case No. 82626 related to the appeal filed by Pierre Hascheff and the cross-appeal filed by Ms. Hascheff. This Declaration is filed in support of Ms. Hascheff’s Motion for Attorneys’ Fees and to address the factors set forth in *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) for fee requests.

3. I am an attorney duly licensed to practice law in the State of Nevada since 2002 and the State of California since 2003. I am a graduate of the University of California, Berkeley School of Law (Boalt Hall). Following law school, I clerked for the Honorable David W. Hagen in the United States District Court for the District of Nevada. I have twenty years of litigation experience with a focus on appellate practice. I have briefed and argued numerous appeals before the Nevada Court of Appeals, Nevada Supreme Court, and Ninth Circuit Court of Appeals.

4. I chaired the State Bar of Nevada’s Appellate Litigation Section, and am currently serving an appointment to the Nevada Supreme Court’s Commission on Nevada Rules of Appellate Procedure. I also serve as the Lead Editor of the Nevada Appellate Practice Manual. I formerly served as a Lawyer Representative for the United States District Court.

5. I believe that I have a good reputation with the judges before whom I practice and my fellow members of the Bar. My ability to competently handle this matter is demonstrated in the appellate briefs I filed and Court of Appeals decision affirming in part the declaratory relief in Ms. Hascheff’s favor.

1 6. I am the owner of Leonard Law, PC, which I started in June 2019. Prior to
2 starting Leonard Law, I was a partner with McDonald Carano LLP and chaired its Appellate
3 Practice Group. I was retained by Ms. Hascheff due to my extensive appellate experience.

4 7. Attorneys' fees incurred by Ms. Hascheff on appeal in this matter are reflected in
5 the monthly invoices prepared by Leonard Law. Attached to this Declaration as Exhibit 1 are
6 true and correct copies of invoices prepared by Leonard Law, through and including August
7 2022. I reviewed these invoices each month prior to submitting them to the client. At that time, I
8 determined whether the fees charged were reasonable.

9 8. The invoices have limited redactions for entries protected by the attorney/client
10 privilege and/or work product protection. Should the Court wish to see unredacted versions of
11 the invoices, Ms. Hascheff can submit them for *in camera* review. By submission of these
12 invoices, Ms. Hascheff does not intend to waive, nor should she be construed to waive, any
13 attorney/client communication privilege, work product protection, or other privilege.

14 9. The invoices accurately reflect the time expended on this case and the fees
15 charged for that time from April 2021 through August 2022.

16 10. Pursuant to contract with Ms. Hascheff, my hourly rate in effect during this
17 engagement was \$400/hour, and \$200/hour for my paralegal, Tricia Trevino. These hourly rates
18 are low compared to the standard hourly rates I charge, which range from \$425 to \$510 per hour
19 for my time and \$200 to \$225 per hour for Ms. Trevino's time.

20 11. A summary of Leonard Law's fees by timekeeper is attached to this Declaration
21 as Exhibit 2. Each timekeeper's rate is multiplied by the hours worked to calculate the lodestar
22 amount. This summary shows the total that was billed to Ms. Hascheff. The total fees that were
23 billed to the client amounted to \$38,840.00, and all invoices have been paid. I will provide a
24 supplemental declaration updating the amount for additional attorney's fees incurred through the
25 filing date of Ms. Hascheff's Reply in Support of Motion for Attorneys' Fees.

26 12. All attorneys' fees and professional time charged in the monthly invoices were
27 necessarily incurred to represent Ms. Hascheff on appeal. The amount of work required to
28

1 represent Ms. Hascheff on appeal was commensurate with the nature of, and proportionate to the
2 scope of, the arguments made by Mr. Hascheff. Legal issues that needed to be researched
3 included contractual indemnification provisions, contract interpretation, laches, attorney-client
4 privilege, and breach of the covenant of good faith and fair dealing. The correspondence in the
5 record was extensive, requiring me to succinctly explain the chronology of events that gave rise
6 to the litigation and appeal.

7 13. The Court of Appeals ultimately affirmed in part the declaratory relief in Ms.
8 Hascheff's favor based on the arguments I made. The Court interpreted the parties' Marital
9 Settlement Agreement in the manner that I urged in the briefs, specifically concluding that the
10 indemnification provision did not include fees related to the collateral trust litigation in which
11 Mr. Hascheff was a witness and that the Court must award fees to the prevailing party.

12 14. For all of Ms. Hascheff's submissions to the appellate courts, all professionals
13 used the requisite legal research, analytical and writing skills, and document preparation skills to
14 properly perform the legal services for which Leonard Law was retained.

15 15. Mr. Hascheff's success on appeal demanded the work that I put into it.

16 16. In light of the foregoing, all fees billed to Ms. Hascheff were reasonable.

17 I declare under penalty of perjury under the laws of Nevada that the foregoing is true and
18 correct.

19 Dated: February 7, 2023

20 
21 _____
22 DEBBIE LEONARD

EXHIBIT 1

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**Pages AA 997 to AA 1000 filed under Seal
per Stipulation to Seal Portions of
Appellant's Appendix.**

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