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ROBERT SCOTLUND VAILE,

THE EIGHTH JUDICIAL DISTRICT

IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE CHERYL B. MOSS, DISTRICT

Respondents.

COURT OF THE STATE OF NEVADA,

JUDGE, FAMILY COURT DIVISION,

Petitioner.

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VS.

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RK OF BUPHEME COUR

IN THE SUPREME COURT OF THE STATE OF NEVADA

NO. 51981

SUPREME COURT CASE NO.:

FILED

EMERGENCY MOTION TO EXPEDITE SUPREME COURT REVIEW OF PETITION FOR A WRIT OF MANDAMUS

Petitioner, Robert Scotlund Vaile, by and through counsel, Greta Muirhead, Esq. has filed a Petition for Writ of Mandamus seeking an Order from this Honorable Court directing the Honorable Cheryl B. Moss, District Court Judge, Dept. I, Eighth Judicial District Court Judge, Family Dvision to vacate the Examination of Judgment Debtor set for July 11, 2008 at 8:00 a.m. and the Order to Show Cause related thereto.

If this Court fails to review the Petition on an Emergency Basis, then it is likely that Judge Moss will remand petitioner into custody on July 11, 2008, if he fails to partake in the judgment debtor examination. If he does partake in the judgment debtor exam, then this very important issue related to statutory interpretation of NRS 21.270(1)(b) will be rendered moot on

ioner anticipates that this Court will be hearing an Appeal in this case in the future lement of this case deals with how NRS 125B.095, the child support penalty statute

08-17379

should be interpreted. Said issue related to NRS 125B.095 while affecting hundreds and possibly tens of thousands of non-custodial parents, although extremely important, can wait for the normal course of an Appeal. This issue cannot.

Petitioner respectfully requests that this Honorable Court or a single Justice of this Honorable Court review and rule on this motion immediately. NRAP 27(c) which is outlined below provides for this emergency review.

RULE 27. MOTIONS

(a) Content of Motions; Response; Reply. Unless another form is elsewhere prescribed by these Rules, an application for an order or other relief shall be made by filing a motion for such order or relief with proof of service on all other parties. The motion shall contain or be accompanied by any matter required by a specific provision of these Rules governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion other than one for a procedural order (for which see subdivision (b)) within seven (7) days after service of the motion, but motions authorized by Rules 8 and 41 may be acted upon after reasonable notice, and the court may shorten or extend the time for responding to any motion. A reply to the opposition to a motion shall not be filed unless permission is first sought and granted by the Supreme Court.

[As amended; effective September 1, 1989.]

(b) Determination of Motions for Procedural Orders. Notwithstanding the provisions of the preceding paragraph as to motions generally, motions for procedural orders, including any motion under Rule 26(b) may be acted upon at any time, without awaiting a response thereto, and pursuant to subsection (c), motions for specified types of procedural orders may be disposed of by the clerk. Any party adversely affected by such action may request reconsideration, vacation or modification of such action.

[As amended; effective January 4, 1999.]

(c) Power of a Single Justice to Entertain Motions; Delegation of Authority to Entertain Motions. In addition to the authority expressly conferred by these Rules or by law, a single justice of the Supreme Court may entertain and may grant or deny any request for relief which under these Rules may properly be sought by motion, except that a single justice may not dismiss or otherwise determine an appeal or other proceeding, and except that the Supreme Court may provide by order or rule that any motion or class of motions must be acted upon by the court. The action of a single justice may be reviewed by the court.

The chief justice may delegate to the clerk authority to decide motions that are subject to disposition by a single justice. An order issued by the clerk pursuant to this rule shall be subject to reconsideration by a single justice pursuant to motion filed within ten (10) days after entry of the clerk's order.

[As amended; effective January 4, 1999.]

(d) Form of Papers; Number of Copies. All papers relating to motions may be typewritten. One copy shall be filed with the original, but the court may require that additional copies be furnished. [As amended; effective January 4, 1999.]

Dated this 7th day of July, 2008.

Respectfully submitted:

Greta G. Muirhead, Esq. Nevada Bar No. 3957 9811 W. Charleston Blvd.

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702-434-6004

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Attorney for Petitioner

Robert Scotlund Vaile

IN THE SUPREME COURT OF THE STATE OF NEVADA

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ROBERT SCOTLUND VAILE,

Petitioner,

VS

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE CHERYL B. MOSS, DISTRICT JUDGE, FAMILY COURT DIVISION,

Respondents.

SUPREME COURT CASE NO.:

<u>DECLARATION OF GRETA MUIRHEAD, ESQ. IN SUPPORT OF EMERGENCY MOTION TO EXPEDITE REVIEW OF PETITION FOR A WRIT OF MANDAMUS PURSUANT TO NEVADA RULES OF APPELATE PROCEDURE RULE 21</u>

Greta Muirhead, Esq. under penalty of perjury under the laws of the State of Nevada, declares as follows:

- I am an attorney duly licensed and authorized to practice law in the State of Nevada.
 My bar number is 3957 and I have been so licensed since October 1990.
- I am making this Declaration in support of the Emergency Motion to Expedite Review of Petition for a Writ of Mandamus Pursuant to NRAP Rule 21.
- 3. I am familiar with the contents of the petition and those matters that I do not have personal knowledge of, I state on information and belief.

Client, to my knowledge, resides out of state in Kenwood, California. It is my not state in Kenwood, California is located in Sonoma County, California.

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- 5. Mr. Vaile, the petitioner does not reside in Clark County, Nevada.
- 6. On June 5, 2008, I filed an Opposition to Ex-Parte Examination of Judgment Debtor.
- 7. On June 11, 2008, Judge Moss heard my client's Opposition. She concluded that the petitioner had to appear for a judgment debtor examination in Clark County because she was "picking section (a)" of NRS 21.270(1). She viewed sections (a) and (b) as mutually exclusive. I do not have a copy of the transcript of the hearing available to me.
- 8. Opposing counsel was anxious for a swift return and the judgment debtor examination was reset to July 11, 2008. Judge Moss, per her comments in Court on June 11, 2008, intends to hear argument on the various matters before the court: attorney's fees; how the child support penalty pursuant to NRS 125B.095 is to be calculated; child support arrears; and an Order to Show Cause: re: contempt for failure to appear for judgment debtor examination on June 11, 2008 and failure to pay child support and then send Mr. Vaile and counsel for Ms. Prosbol until another room at the courthouse for the judgment debtor exam.
- It was and remains my legal position that the petitioner is not obligated pursuant to NRS 21.270(1)(b) to appear in Clark County for a judgment debtor examination.
- 10. Judge Moss believed otherwise and if Mr. Vaile, the petitioner does not partake in the Judgment Debtor Examination, I think it quite likely that Judge Moss will remand him to custody until such time as he does.
- 11. I have attached to the Petition, true and accurate copies of the e-mails that I received from the library technician at the research library of the Legislative Counsel Bureau.

 Also attached is the 1983 amendment.

12. Based upon this amendment, it is clear that NRS 21.270 was intended to prohibit a judgment debtor exam in Clark County wherein the debtor resided outside of the county.

13. I am respectfully requesting that Judge Moss be immediately directed by this Honorable Court to vacate said examination and the Order to Show Cause related to it.

14. Further I say not.

Under penalty of perjury, State of Nevada.

Greta Muirhead