Scotlund Vaile
PO Box 727
Kenwood, CA 95452
(707) 833-2350
Plaintiff in Proper Person

IN THE SUPREME COURT OF THE STATE OF NEVADA

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:_____ District Court Case No: 98D230385

CERTIFICATE OF SERVICE

Petitioner R. Scotlund Vaile hereby certifies that a true and correct copy of the following documents with attached exhibits were served

1) Petition for Writ of Mandamus Pursuant to Nevada Rules of Appellate Procedure Rule 21

2) Emergency Motion to Expedite Supreme Court Review of Petition for Writ of Mandamus

3) Affidavit of R. Scotlund Vaile in Support of Writ of Mandamus Pursuant to Nevada Rules of Appellate Procedure Rule 21

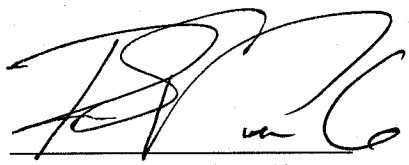
4) Affidavit of R. Scotlund Vaile in Support of Emergency Motion to Expedite Review of Petition for a Writ of Mandamus

by depositing the same in the U.S. Mail at San Francisco, California in a sealed envelope, first-class postage pre-paid and addressed as follows:

Marshal S. Willick
Willick Law Group
3591 E. Bonanza Road, Suite 200
Las Vegas, NV 89110-2101
Attorneys for Defendant Respondent

Honorable Cheryl B. Moss
Eighth Judicial District Court
Family Division
601 North Pecos Road
Las Vegas, NV 89101-2408

Dated this 13th day of August, 2008.



R. Scotlund Vaile
PO Box 727
Kenwood, CA 95452
(707) 833-2350
Plaintiff in Proper Person

ORIGINAL

FILED

AUG 14 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

Scotlund Vaile
PO Box 727
Kenwood, CA 95452
(707) 833-2350
Plaintiff in Proper Person

IN THE SUPREME COURT OF THE STATE OF NEVADA

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: 52244 District Court Case No: 98D230385

PETITION FOR WRIT OF MANDAMUS PURSUANT TO NEVADA RULES OF APPELLATE PROCEDURE RULE 21

I. STATEMENT OF THE FACTS:

1. In April, 2002, this Court held that "the district court did not have personal jurisdiction over either party, nor did it have subject matter jurisdiction over the marital status of the parties when it entered the

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CLERK OF SUPREME COURT
DEPUTY CLERK

08-21051

decree," and furthermore that "[a]s neither the children nor the parents have ever lived here or have a significant relationship with Nevada, virtually no information is available in this state to even arguably create jurisdiction ...." *Vaile v. Eighth Judicial Dist. Court*, 118 Nev. 262, 268, 275 (Nev. 2002). Despite this Court's holding on lack of jurisdiction, the lower court has continued to assert jurisdiction over the parties in this case over the objections of Plaintiff, Mr. Vaile.

2. In November 2007, four years after Defendant Porsboll testified under oath that the child support provision of the parties' agreement had been nullified by this Court's April 2002 opinion, Defendant asserted that the district court had continuing and exclusive jurisdiction of this matter. She requested the district court to retroactively establish a child support arrearage dating back to the date of divorce in 1998, and to reduce said arrears to a sum certain.[1]

3. The instant Petition for Writ of Mandamus relates to the correct amount of penalties under NRS 125B.095 that Mr. Vaile, as the Non-Custodial Parent, shall owe in the event that the exercise of jurisdiction and the establishment of a retroactive child support arrearage is upheld by this Court. The matter of penalties is the subject of continued hearings and filings in this case.

4. Defendant Porsboll claimed that penalties should be calculated according to the formulations of a commercial software program called the Marshal Law Program or "MLAW" program. This program has been marketed and sold to attorneys in the state of Nevada for more than ten years through Marshal Willick and the Willick Law Group. (See attached Exhibit C-2).

[1] The court has not yet signed a final order after reconsidering these matters.

5. Plaintiff Vaile asserted that, in the event that jurisdiction is proper and that retroactive arrearage calculations are allowed, child support penalties should be calculated pursuant to NRS 125B.095. The MLAW program calculates child support in contravention to the State's method for calculating penalties under NRS 125B.095.

6. On July 9, 2008, the Attorney General's Office filed a Friend of the Court Brief with the lower court wherein Deputy Attorney General Donald W. Winne explained how the State of Nevada interprets and calculates child support penalties pursuant to NRS 125B.095 and the legislative history supporting the State's interpretation of the statute. Mr. Winne also explained that the MLAW program had been considered by the State and rejected because it calculated child support penalties contrary to NRS 125B.095. (See attached Exhibit C-1).

7. The MLAW program calculates Mr. Vaile's child support penalties in an amount more than $40,000 greater than the State's calculations performed by the method endorsed by the Attorney General and used by all the District Attorney's offices throughout the state.

8. On June 30, 2008, the software's creator and vendor, Marshal S. Willick, provided evidence, via a letter to the court, regarding his interpretation of the legislative history of the statute and also information on the creation and operation of the MLAW Program. This letter was subsequently made a part of the record. (See attached Exhibit C-2).

9. In addition, Mr. Willick appeared in court at a hearing on July 11, 2008, wherein he insisted on elaborating on his version of the legislative history of NRS 125B.095, his first-hand involvement in

that legislative history, and his interpretation of NRS 125B.095. Mr. Willick then provided testimony regarding the internal operations of his software program. Mr. Willick defended his program against the Attorney General's explanation by asserting that "[Mr. Winne's] facts and his logic are just wrong." (July 11, 2008 Hearing Transcript at 9:19:16).

10. In addition to Mr. Willick, the Clark County DA, Ed Ewert, also provided testimony to the court on July 11, 2008, pursuant to a June 11, 2008 order by Judge Moss. Mr. Ewert reaffirmed the AG's interpretation of the Nevada statute in question. (See Minutes from Hearing attached as Exhibit A).

11. Plaintiff Scotlund Vaile, through his counsel, Greta Muirhead, who appeared at the July 11, 2008 hearing in an unbundled capacity, repeatedly requested that Mr. Willick be sworn in before providing testimony, which would allow for pointed questioning and cross-examination. Judge Moss refused these requests, over Ms. Muirhead's repeated objections. (See July 11, 2008 Hearing Transcript at 9:14:53, 9:28:25, 9:29:11).

12. No other witness, other than vendor Willick, provided testimony or evidence to the court to support the software program's method of calculating child support penalties.

13. During the July 11, 2008 hearing, the court indicated that it was taking the matter under advisement.

14. The software creator and vendor of the MLAW program, Marshal S. Willick and his firm, the Willick Law Group, represent the Defendant in the present action.

15. On July 21, 2008, Mr. Vaile's attorney filed a Motion to Disqualify Marshal Willick and the Willick Law Group as counsel of record for Defendant, based on Nevada Rules of Professional Conduct 3.7, which provides that an attorney ". . . shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness. . . ." (See attached Exhibit C).

16. In a hearing on July 24, 2008, Judge Cheryl B. Moss declined to disqualify Mr. Willick or the Willick Law Group as attorney of record for Ms. Porsboll, and refused to classify the only information she received in support of the MLAW calculations as "evidence" or "testimony." Judge Moss awarded $2,000.00 in attorney's fees and costs to the Willick Law Group for having to defend the Motion to Disqualify. (See Minutes from July 24, 2008 Hearing, attached as Exhibit B).

II. STATEMENT OF THE ISSUE:

May a software vendor, acting on his own behalf and providing the sole witness testimony and evidence based on firsthand knowledge of his computer software program and the legislative history of NRS 125B.095 in a child support penalties action, also act as Defendant's attorney in the same case?

Answer: NO.

Effective May 1, 2006, the Nevada Rules of Professional Conduct, Rule 3.7(a) states the following:

> (a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:
>
> (1) The testimony relates to an uncontested issue;

(2) The testimony relates to the nature and value of legal services rendered in the case; or

(3) Disqualification of the lawyer would work substantial hardship on the client.

In opposition to Plaintiff Vaile's Motion to Disqualify Mr. Willick and the Willick Law Group from further representation of Defendant Porsboll, her counsel in no way downplayed the evidentiary role Mr. Willick filled on this matter. Counsel stated:

> Since Mr. Willick designed the program, he was best suited to answer any questions the Court had concerning the program's operation. Additionally, Mr. Willick was present during the 2003 legislative hearings on possible changes to NRS 125B.095. His historical perspective on those hearings was helpful to the Court on legislative intent but was in no way testimony.[2]

In short, Defendant concedes Mr. Willick's input, but claims the information was not testimonial or evidentiary in nature. Neither Defendant's counsel nor the court addressed how the Defendant could possibly fulfill her burden, whether of proof or to refute,[3] if neither Mr. Willick's letter nor his explication to the court concerning the MLAW program are evidence at all, since they were the ***only information*** presented by Defendant to support her position. Under Mr. Willick's theory, Mr. Vaile would be the only party to present evidence on the matter, and the court would necessarily have to direct the outcome in his favor. Mr. Willick's assertion is not only incorrect, but it is also contrary to his client's interests who

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[2] *Opposition to "Motion to Disqualify Marshal Willick and the Willick Law Group as Attorneys of Record Pursuant to Rules of Professional Conduct 3.7" and Countermotion for Disqualification of Greta Muirhead as Attorney of Record, for Fees, and for Sanctions Against Both Ms. Muirhead and Her Client*, 2-3, attached as Exhibit D.

[3] Mr. Vaile asserts that Defendant has the burden of proof since Defendant seeks to depart from the State's calculation methodology. Even if this assertion is incorrect, under Defendant's theory, she has presented nothing to rebut Mr. Vaile's proof that the MLAW calculations are incorrect based on the testimony and documentary evidence from State sources.

would presumably benefit from evidence to support her position. Mr. Willick's claim to the contrary was made to avoid one ethical rule prohibiting dual advocate-witness roles, only to violate another which prohibits conflicts of interest between advocate and client.

Defendant's theory regarding evidence is flawed. One cannot avoid violation of the State's ethical rule by simply claiming that the firsthand knowledge provided to the court to guide its decision-making shall be termed something other than "evidence." Evidence[4] is anything that "tends to prove or disprove the existence of an alleged fact." Black's Law Dictionary (8th ed. 2004). In this case, the intent of Willick's evidence was to convince the court that his interpretation of penalties as calculated by his MLAW program is correct, and that the State's is incorrect. An attorney who provides evidence to the tribunal while at the same time purporting to advocate for a client, violates the professional rule.

Counsel for Defendant's alternative theory against disqualification was that "even if it was or could be testimony, under *DiMartino* he should still not be disqualified."[5] In short, the argument is that *DiMartino v. Eighth Judicial District*,[6] creates an exception to imposition of this ethical rule. In *DiMartino,* one party added opposing counsel's name to a witness list after filing an amended complaint and simultaneously filed a Motion to Disqualify this counsel. The facts in the *DiMartino* case are inapposite to the facts in the present situation. Plaintiff Vaile did not ask Mr. Willick to testify, instead Mr. Willick insisted on testifying over continual objections by Mr. Vaile's attorney. It was Mr. Willick

---

[4] "Evidence is any matter of fact which is furnished to a legal tribunal, otherwise than by reasoning or a reference to what is noticed without proof, as the basis of inference in ascertaining some other matter of fact." James B. Thayer, *Presumptions and the Law of Evidence*, 3 Harv. L. Rev. 141, 142 (1889).

[5] *Opposition,* 4, Exhibit D.

[6] 119 Nev. 119, 66P.3d 945 (2003).

who claimed especial insight into the legislative history of this case, superior to that of the State, and it was Mr. Willick who claimed to be inventor and owner of the software in question. He cannot now be heard to complain that his evidentiary role was caused by Mr. Vaile, or that the ethical rules do not apply to him.

In *DiMartino*, this Court held that a witness-advocate "***may not appear in any situation requiring the lawyer to argue his own veracity*** to a court or other body, whether in a hearing on a preliminary motion, an appeal or other proceeding."[7] Not only is Mr. Willick his own self-appointed star witness on this issue, he is the *only* witness for Defendant on this issue. His own veracity and that of his firm, due to their business venture into financial software, is certainly at issue because of the tremendous legal, financial, and reputational fallout that may result from adjudication of this issue. Mr. Willick's advocacy in favor of acceptance of the MLAW calculations benefit him much more than his client.

Mr. Willick's veracity is also at issue for additional reasons. Mr. Willick's billing statements revealed that his firm takes 40% of all payments Mr. Vaile makes in support of his children, and redirects them to the Willick Law Group as payment of attorneys fees. Presumably, this contingent collection charge also applies to the $40,000+ overage that Mr. Willick seeks to collect in penalties from Mr. Vaile under the faulty MLAW calculations.

Mr. Willick has not only become a ***necessary*** witness in this case under PRC 3.7, he has become the Defendant's ***only*** witness on this matter, and a witness immune from cross-examination. There is no dispute that information Mr. Willick provided to the court relates to a contested issue of significance, and that the subject matter of the testimony and documentary evidence does not relate to the nature and value of legal services, as those terms are used in PRC 3.7.

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[7] *Id.* at 122 (emphasis added).

While Defendant may claim that a hardship would inure to Defendant Porsboll if Mr. Willick and the Willick Law Group were disqualified, this claim is belied by Mr. Willick's own proclamations that the country of Norway (not Ms. Porsboll) actually hired him and paid him over $40,000 to fund the underlying custody dispute. Furthermore Mr. Willick has stated that there is "no special ability or knowledge or expertise that [is] required . . . to take this child support arrears case...." and that this issue requires qualifications that "a thousand other attorneys in this state" could provide.[8] If these statements are true, then surely Defendant Porsboll would incur no hardship by hiring an attorney who is not a necessary witness in this case to address this simple matter.

In the present case, Mr. Willick chose to become a witness-advocate by testifying about the MLAW Program and his personal interactions with the formation of the legislation at issue. Unlike *DiMartino*, neither Mr. Vaile nor his attorney placed Mr. Willick on any witness list nor did they subpoena or call for his testimony. Mr. Willick chose to put himself in the forefront of this controversy. In so doing, he should have withdrawn as Ms. Porsboll's attorney when he became the witness-advocate and his personal interests superseded those of his client. Instead, he has voraciously fought to defend the MLAW program he created, and in so doing, became the epitome of the witness-advocate that the Rules of Professional Conduct in Nevada prohibit.

III. NECESSITY FOR WRIT OF MANDAMUS

While the matters of lack of jurisdiction, retroactive modification of child support agreement, and the correct interpretation of NRS 125B.095 can wait for the normal course of appeals, the issue of the disqualification of Marshal Willick, Esq. and the Willick Law Group cannot wait for appeal. The issue of penalty calculations is currently pending before the lower court. Because of Mr. Willick's

[8] See Willick's Bar Complaint against Greta Muirhead, attached as Exhibit C-4.

dual roles as both attorney and witness, Mr. Vaile has been prevented from questioning Defendant's evidence or from cross-examining Defendant's only witness on this matter. Resolution of this issue is necessary to prevent irreversible prejudice to Mr. Vaile and the perpetuation of a clear violation of the ethical and evidentiary rules.

The issue before the lower court has significant consequences for both software vendor Willick, the State of Nevada, and non-custodial parents throughout the state. If the Attorney General's methods of calculation are correct and MLAW is flawed, the software vendor and his firm face potential product liability actions, warranty and/or restitution claims, public humiliation, and significant economic detriment. On the other hand, if the State's interpretation of the statute is incorrect, then parties all over the state affected by the incorrect calculation of penalties by the State's child support agencies may potentially seek modification or other legal recourse, while the State struggles to create programs to accommodate a new interpretation of the law. The significance of the issues demands careful adherence to both evidentiary and ethical rules.

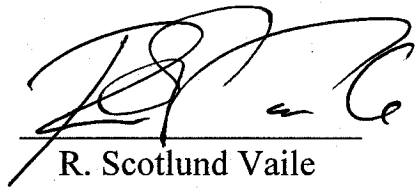
Since the issue of whether the software vendor with his own vested interest in the outcome of the litigation may perform the dual roles of advocate for Defendant and necessary witness may not be adequately addressed after the fact on appeal, it is the necessary subject of this Court's mandamus power to correct at this stage of the proceedings. Accordingly, we request this Court to issue a writ of mandamus directing the lower court to disqualify Mr. Willick and the Willick Law Group from further representation of Defendant Porsboll.

IV. CONCLUSION

Based upon the facts and argument presented above, Petitioner respectfully requests that the Writ of Mandamus be Issued and that this Honorable Court issue an order directing the Honorable Cheryl B. Moss to enter orders disqualifying

Marshal Willick and the Willick Law Group from representation of Defendant Porsboll below and vacating the order awarding $2,000.00 in attorney's fees and costs to the Willick Law Group.

Respectfully submitted this 13th day of August, 2008.



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IN THE SUPREME COURT OF THE STATE OF NEVADA

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:_____ District Court Case No: 98D230385

PETITION FOR WRIT OF MANDAMUS PURSUANT TO NEVADA RULES OF APPELLATE PROCEDURE RULE 21

APPENDIX OF EXHIBITS

98D230385

EXHIBIT A

DISTRICT COURT
CLARK COUNTY, NEVADA

Divorce - Joint Petition **COURT MINUTES** July 11, 2008

98D230385 In the Matter of the Joint Petition for Divorce of:
R S Vaile and Cisilie A Vaile, Petitioners.

July 11, 2008 **8:00 AM** **All Pending Motions**

HEARD BY: Moss, Cheryl B **COURTROOM:** Courtroom 13

PARTIES:

Cisilie Vaile, Petitioner, present
Kaia Vaile, Subject Minor, not present
Kamilla Vaile, Subject Minor, not present
R Vaile, Petitioner, present
Richard Crane, Attorney, present
GRETA MUIRHEAD, Attorney, present

COURT CLERK:

JOURNAL ENTRIES

- Courtroom clerk, Connie Kalski, present.

RETURN HEARING: CHILD SUPPORT PENALTIES AND INTEREST.. PETITIONER ROBERT VAILE'S MOTION FOR SANCTIONS.. PETITIONER CISILIE'S OPPOSITION AND COUNTERMOTION FOR A BOND, FEES, SANCTIONS.. PETITIONER CISILIE'S MOTION TO STRIKE PETITIONER R.S. VAILE'S EXPARTE REQUEST TO CONTINUE JULY 11, 2008 HEARING AS A FUGITIVE DOCUMENT AND REQUEST FOR SANCTIONS AND FOR ATTORNEY'S FEES

Deputy District Attorneys Mr. Robert Teuton, Esq and Mr. Edward Ewart, Esq, present on behalf of the State of Nevada child welfare program. Mr. Leonard Fowler, case manager from Mr. Willick's office present. Ms. Muirhead stated she was present today in an unbundled capacity. Mr. Willick objected and stated Ms. Muirhead has filed many pleadings in this case and for all intense and purposes is counsel of record.

Ms. Muirhead objected to proceeding forward on the sanctions issues but was ready to proceed on the interest and penalties.

Petitioner Robert Scotlund Vaile's Supplemental Brief FILED IN OPEN COURT. Petitioner Robert Scotlund Vaile's Opposition to Petitioner Cisile's Motion to Strike Petitioner Robert Vaile's Exparte

98D230385

Request to Continue July 11, 2008 Hearing as a Fugitive Document and Request for Sanctions and Attorney's fees and Petitioner Robert Valle's Countermotion for Sanctions and Attorney's fees against the Willick Law Group FILED IN OPEN COURT

Arguments by counsel regarding the process of calculating interest on child support arrears. Statements by Deputy District Attorney, Ed Ewart. Further argument.

Court noted a hearing for contempt is reasonable. Mr. Willick's office is to prepare an Order to Show Cause and submit it to the Court for signature. Hearing set. COURT ORDERED, the issue of calculation will be taken under advisement by the Court. This Court will issue a written decision on the matter. Regarding the fees, sanction, and contempt issues, counsel shall prepare briefs and submit them to the Court as stated below. Ms. Muirhead's brief is due by August 1, 2008 by 5:00 p.m.; Mr. Willick's Response is due by August 15, 2008 by 5:00 p.m. The District Attorney and the Attorney General may prepare briefs if they believe it to be necessary. If they choose to prepare briefs, they shall be due by August 29, 2008 by 5:00 p.m. All counsel and all briefs shall provide copies to each other as well as sending courtesy copies to the Court. Matters set for a hearing regarding the Order to Show Cause why Plaintiff should not be held in contempt for failure to pay support. Evidentiary Hearing also set. Defendant lives in the Netherlands and shall be allowed to be present by telephone next court date. Mr. Willick's office shall notify her. There shall be no order necessary for today's hearing.

COURT FURTHER ORDERED, there shall be a hearing set to address the Order from the 6/11/08 hearing.

CLERK'S NOTE: The Court took the file to chambers for review and decision. 7/11/08 ck

INTERIM CONDITIONS:

FUTURE HEARINGS:

Canceled: July 11, 2008 8:30 AM Motion

Canceled: July 11, 2008 8:31 AM Opposition & Countermotion

Canceled: July 11, 2008 8:30 AM Return Hearing

July 21, 2008 8:00 AM Hearing
Moss, Cheryl B
Courtroom 13

Canceled: September 08, 2008 9:30 AM Motion to Strike

September 18, 2008 8:30 AM Order to Show Cause
Moss, Cheryl B
Courtroom 13

98D230385

EXHIBIT B

DISTRICT COURT
CLARK COUNTY, NEVADA

Divorce - Joint Petition **COURT MINUTES** July 24, 2008

98D230385 In the Matter of the Joint Petition for Divorce of:
R S Vaile and Cisilie A Vaile, Petitioners.

July 24, 2008 **1:15 PM** **All Pending Motions**

HEARD BY: Moss, Cheryl B **COURTROOM:** Courtroom 13

PARTIES:

Cisilie Vaile, Petitioner, not present
R Vaile, Petitioner, not present
Richard Crane, Attorney, present
GRETA MUIRHEAD, Attorney, present

COURT CLERK: Rae Packer

JOURNAL ENTRIES

- PLTF'S MOTION TO DISQUALIFY MARSHAL WILLICK AND THE WILLICK LAW GROUP AS ATTORNEY'S OF RECORD...DEFT'S OPPOSITION AND COUNTERMOTION FOR DISQUALIFICATION OF GRETA MUIRHEAD AS ATTORNEY OF RECORD, FEES AND SANCTIONS

Atty Marshal Willick, Bar #2525, also present. Argument on Issues. Atty Crane made an Oral Request for a bond to cover ATTORNEY FEES awarded to The Willick Law Group from Plaintiff.

COURT FINDS, Bar proceedings are completely confidential and anything pertaining to those proceedings is to be stricken from the record. Atty Muirhead attached Bar proceeding documents to her pleadings; therefore, those documents are to be stricken.

COURT FURTHER FINDS, there are no rules as to how many times an attorney may appear UNBUNDLED; therefore, Atty Muirhead is recognized as appearing in this capacity.

COURT FURTHER FINDS, this Court does not need to have information on the Virginia case to resolve issues in the Nevada case.

COURT FURTHER FINDS, Atty Willick's statements on the record as to the Marshal Law Program had to do only with the design and function of the software and is completely irrelevant to the Court's decision as to interpretation of the Statute at issue. There was no testimony provided.

Further, The Willick Law Group has been counsel of record on this case for a substantial amount of time.

COURT ORDERED:

1. Exhibit 4 of Atty Muirhead's original Motion, a letter dated 06/16/08 to the State Bar of Nevada from Willick Law Group RE: Bar Complaint Concerning Greta G. Muirhead, Bar #3957, shall be STRICKEN from the record. This document has not been read by the Court.

2. Exhibit 1 of Atty Muirhead's Reply to Deft's Opposition, a copy of a letter dated 07/08/08 to Atty Willick from the State Bar of Nevada referencing Grievance File #08-100-1012/Greta Muirhead, shall be STRICKEN from the record.

3. Exhibit 2 of Atty Muirhead's Reply to Deft's Opposition, a copy of a letter dated 07/07/08 to Phillip J. Pattee, Assistance Bar Counsel, State Bar of Nevada, referencing Grievance File #08-100-1012/Marshal Willick, shall be STRICKEN from the record.

4. Pltf's Motion to Disqualify Marshal Willick and The Willick Law Group is DENIED.

5. Deft's Opposition and Countermotion for Disqualification of Greta Muirhead is DENIED. This shall be CERTIFIED as the FINAL ORDER. Atty Willick may choose to take the issue to disqualify Atty Muirhead to the Supreme court.

6. Under 18.010, The Willick Law Group is entitled to fees as the prevailing party and is, therefore, awarded $2,000.00 ATTORNEY FEES. Said amount is REDUCED TO JUDGEMENT. Atty Crane's request for a BOND is DENIED.

7. Plaintiff is to file the new FINANCIAL DISCLOSURE FORM forthwith.

8. The Request for Sanctions under NRCP 11 and EDCR 7.60 is DEFERRED.

9. Atty Muirhead's request for fees is DEFERRED. She may submit a copy of her billing statement for time in Court at her stated rate of $300.00 per hour for consideration.

Atty Crane shall prepare an Order from these proceedings and submit same to Atty Muirhead for approval as to form and content.

INTERIM CONDITIONS:

FUTURE HEARINGS:

August 15, 2008 8:00 AM Hearing
Moss, Cheryl B.
Courtroom 15

August 27, 2008 9:00 AM Motion for Order to Show Cause
Moss, Cheryl B
Courtroom 13

Canceled: September 08, 2008 9:30 AM Motion to Strike

September 18, 2008 8:30 AM Order to Show Cause
Moss, Cheryl B
Courtroom 13

September 18, 2008 1:30 PM Evidentiary Hearing
Moss, Cheryl B
Courtroom 13

September 18, 2008 8:30 AM Order to Show Cause
Moss, Cheryl B
Courtroom 13

Friend of the Court Brief concerning how the State of Nevada calculates child support penalties pursuant to NRS 125B.095. (See Exhibit "1").

On June 30, 2008, counsel for Ms Porsboll, Mr. Marshal Willick, responded. On page 8 paragraph 2, line 7 of his June 30th letter, Mr. Willick in discussing Mr. Winne of the Attorney General Office stated that Mr. Winne's "bottom line that the statute [NRS 125B.095}, as phrased is imprecise and arguably ambiguous is probably sound." Mr. Willick 's June 30, 2008 letter dedicates much time testifying as to the legislative intent of NRS 125B.095 and how his Marshal Law computer program works. (Exhibit "2" See page 7, paragraph 6:)

"Those of us that were present when the law was being drafted knew that the **purpose** of the provision was to encourage obligors to make child support payments sooner rather than later-a purpose that would be frustrated by any policy that did not provide a continuing incentive to actually make up arrears each passing day."

Page 7, paragraph 3:

"We replicated the table from the Welfare Division's Manual, at the request of the District Attorney, calculating interest and penalties with Marshal Law for comparison,.."

A copy of Judge Moss' July 3, 2008, letter permitting the filing of the Attorney General's Friend of the Court Brief is attached as Exhibit "3".

On July 11, 2008, a hearing was held at 8:00 a.m. in Dept. I. Starting at 9:34 on and continuing at 9:36:36 Mr. Willick stated to Judge Moss, that he "doesn't think that [NRS 125B.095] is ambiguous." Had it been ambiguous, then he would have ".. built in two different ways to calculate child support penalties."

Mr. Willick provided a firsthand explanation regarding how his computer program, the Marshal Law Program (MLAW) calculates child support interest and penalties. Mr. Willick, although unsworn, provided testimony, presumably as an officer of the Court.

Counsel for Mr. Vaile repeatedly asked the Court to swear Mr. Willick in as he was testifying. Judge Moss declined. Judge Moss stated that Mr. Willick was giving a

EXHIBIT C

GRETA G. MUIRHEAD, ESQ.
Nevada Bar Number 3957
9811 W. Charleston Blvd.
Ste. 2-242
Las Vegas, Nevada 89117
(702) 434-6004
Attorney for Plaintiff
Unbundled

FILED
JUL 21 3 58 AM '08
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

*****

ROBERT SCOTLUND VAILE,

Plaintiff,

vs.

CISILE A. PORSBOLL, f/n/a CISILE A. VAILE

Defendant.

CASE NO. 98D230385D
DEPT NO: I

DATE OF HEARING:
TIME OF HEARING:

MOTION TO DISQUALIFY MARSHAL WILLICK AND THE WILLICK LAW GROUP AS ATTORNEYS OF RECORD PURSUANT TO RULES OF PROFESSIONAL CONDUCT 3.7

COMES NOW, Robert Scotlund Vaile, by and through his attorney, GRETA G. MUIRHEAD, ESQ. appearing in an *unbundled capacity* herein moves for an Order Disqualifying Marshal Willick and the Willick Law Group as Attorneys of Record for Defendant, Cisile A. Porsboll.

Background:

On June 23, 2008, Counsel for Mr. Vaile sent a letter to Judge Moss asking, on behalf of the Attorney General's Office, for permission for the Attorney General to file a

MC

"historical perspective." Said "historical perspective" was based upon the fact that Mr. Willick was there (i.e. present during the 2005 Assembly discussions). Mr. Willick made statements specifically describing how his Marshal Law program works and the "switches" built in. He argued the interpretation of NRS 125B.095 and testified that his program was consistent with his interpretation of NRS 125B.095. Mr. Willick's testimony about how "his" program operates is direct firsthand knowledge being told to the Court—the trier of fact. The intent of the offering of Mr. Willick's statements is for the purpose of establishing a fact that Marshal Law correctly calculates child support penalties and interest and that the penalties and interest calculations performed in this case are accurate figures based upon Mr. Willick's interpretation of the law.

Mr. Willick also testified that he had firsthand experience dealing with the Nevada legislators, including Assemblywoman Barbara Buckley, in his role as a member of the Family Law Section's Executive Council and that the legislators acknowledged that the Marshal Law Program's methodology was correct. (See page 8 of 6/30/08 letter, paragraph 4 and 7/11/08 video record).

Argument:

Since **Mr. Willick** not only is likely to be a necessary witness because he purports to be the authority on the legislative intent of NRS 125B.095 and because of his firsthand knowledge of how his Marshal Law Computer Program works, **HE HAS become a witness in this case.** Mr. Willick's continued involvement and that of his firm's in this case violates Nevada Rules of Professional Conduct, Rule 3.7. Lawyer as Witness and prejudices Mr. Vaile.

Rules of Professional Conduct 3.7. (a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

(a) (1) The testimony relates to an uncontested issue;
(2) The testimony relates to the nature and value of legal services rendered in the case; or
(3) Disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

[Added; effective May 1, 2006.]

The American Bar Association Center for Professional Responsibility provides a commentary explaining Rule 3.7. Said commentary provides in pertinent part, as follows:

> *Advocate*
> Rule 3.7 Lawyer As Witness - Comment
>
> [1] Combining the roles of advocate and witness can prejudice the tribunal and the opposing party and can also involve a conflict of interest between the lawyer and client.
>
> **Advocate-Witness Rule**
>
> [2] The tribunal has proper objection when the trier of fact may be confused or misled by a lawyer serving as both advocate and witness. The opposing party has proper objection where the combination of roles may prejudice that party's rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof.
>
> [3] To protect the tribunal, paragraph (a) prohibits a lawyer from simultaneously serving as advocate and necessary witness except in those circumstances specified in paragraphs (a)(1) through (a)(3). Paragraph (a)(1) recognizes that if the testimony will be uncontested, the ambiguities in the dual role are purely theoretical. Paragraph (a)(2) recognizes that where the testimony concerns the extent and value of legal services rendered in the action in which the testimony is offered, permitting the lawyers to testify avoids the need for a second trial with new counsel to resolve that issue. Moreover, in such a situation the judge has firsthand knowledge of the matter in issue; hence, there is less dependence on the adversary process to test the credibility of the testimony.
>
> [4] Apart from these two exceptions, paragraph (a)(3) recognizes that a balancing is required between the interests of the client and those of the tribunal and the opposing party. Whether the tribunal is likely to be misled or the opposing party is likely to suffer prejudice depends on the nature of the case, the importance and probable tenor of the lawyer's testimony, and the probability that the lawyer's testimony will conflict with that of other witnesses. Even if there is risk of such prejudice, in determining whether the lawyer should be disqualified, due regard must be given to the effect of disqualification on the lawyer's client. It is relevant that one or both parties could reasonably foresee that the lawyer would probably be a witness. The conflict of interest principles stated in Rules 1.7, 1.9 and 1.10 have no application to this aspect of the problem....

In the present case, Mr. Willick has wrongly been simultaneously serving as advocate for Ms. Porsboll and necessary witness concerning the legislative intent of NRS 125B.095 and the methodology of the Marshal Law Program.

The Court may be confused or misled by a lawyer serving as both advocate and witness. Mr. Vaile has a proper objection where the combination of roles is prejudicing

his rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof.

Mr. Willick has, in his letter of June 30, 2008, and in his court "explanation" of July 11, 2008, been testifying on the basis of his personal knowledge. Since it is unclear whether the statements made by Mr. Willick , who has clearly become an "advocate-witness" should be taken as proof or as an analysis of proof, his roles have become compromised. Mr. Vaile would submit that Mr. Willick in his statements of June 30, 2008 and July 11, 2008 seeks to have his explanation taken as proof. Any proof presented by Mr. Willick, based upon his firsthand knowledge of the purported legislative intent and the accuracy of the Marshal Law Program to calculate child support penalties has been asserted to convince this judge to accept his statements as evidence of that the Marshal Law Program correctly calculates penalties consistently with NRS 125B.095.

Mr. Vaile's rights in this litigation have been prejudiced by Mr. Willick's dual roles. Mr. Vaile has had no opportunity to cross exam Mr. Willick is his witness role. Mr. Willick flip-flops his position regarding the ambiguity of the statute. On June 30, 2008, he stated that it was ambiguous and on July 11, 2008 he stated that it was not. Mr. Vaile does not know if the flip-flops were made in Mr. Willick's role as a advocate or as a witness.

Conclusion:

This Court must put a stop to this prejudice. Disqualification of Mr. Willick and his law firm is appropriate and warranted.

There **IS** a contested issue concerning the statutory interpretation of NRS 125B.095. Mr. Willick's testimony does not relate to the nature and value of legal services rendered in this case. Furthermore, Mr. Willick has frequently articulated to both the State Bar of Nevada in his June 16, 2008, Grievance against counsel, Greta Muirhead and to the Court, his opinion that this is a simple child support arrears case. (See Exhibit "4" and June 11, 2008 hearing) There is "nothing unique to Mr. Willick, no special ability or knowledge or expertise" that requires Mr. Willick to remain in this case to serve any legitimate need of Ms. Porsboll. His "qualifications are no more prestigiou than a thousand other attorneys in this state." Any of the "thousands of lawyers in thi State" can adequately represent Ms. Porsboll but only one, Mr. Willick has intima knowledge and has provided first hand testimony concerning his namesake, tl Marshal Law Program.

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Mr. Vaile respectfully submits that Ms. Porsboll will need to retain one of those thousands.

Dated this 21st day of July, 2008.

Respectfully Submitted

GRETA G. MUIRHEAD, ESQ.
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EXHIBIT C-1

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Attorney for State of Nevada,
Division of Welfare & Supportive Services

DISTRICT COURT

CLARK COUNTY, NEVADA

*****

ROBERT SCOTLUND VAILE,

Plaintiff,

vs.

CISILE A. PORSBOLL, f/n/a CISILE A. VAILE,

Defendant.

Case No. D230385
Dept No. I

FRIEND OF THE COURT BRIEF

Date of Hearing: 7/11/08
Time of Hearing : 8:00 A.M.

The State of Nevada, Division of Welfare and Supportive Services, Child Support Enforcement Program (CSEP), by and through counsel, CATHERINE CORTEZ MASTO, Attorney General, and Senior Deputy Attorney General, Don Winne, hereby files this Friend of the Court Brief. This brief is based on the attached Points and Authorities as well as all the pleadings and papers on file herein.

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POINTS AND AUTHORITIES

This pleading is being filed solely for the purpose of ensuring this Court receives first hand the position of CSEP on their interpretation of NRS 125B.095.

Background

CSEP is a federally funded program created under Title IV-D of the Social Security Act and codified in 42 USC § 666 et. seq. CSEP is required to meet these requirements to obtain federal funding for both CSEP and the state's Temporary Assistance for Needy Families Program (TANF).[1] CSEP is overseen and audited by the Federal Office of Child Support Enforcement (OCSE) for compliance with these requirements. CSEP contracts with various District Attorneys' Offices (DAs) throughout the state to provide child support services as required under OCSE. The DAs that provide child support services as part of this program are required by this contract to follow the position of CSEP in the calculation of penalties. OCSE holds CSEP responsible for child support compliance and therefore CSEP controls that program on that basis.

The 2003 Legislature advised CSEP to implement penalties as part of the collection of child support in connection with CSEP's participation in the federal child support enforcement program. When CSEP started to review the implementation of penalties it found the language in NRS 125B.095 ambiguous and requested a legal opinion on the interpretation of NRS 125B.095. CSEP obtained an opinion from the Attorney General's Office and proceeded to pass regulations on the implementation of penalties as part of the collection of child support. A copy of that opinion is attached and incorporated herein by this reference as Exhibit 1. The opinion includes a full legal analysis of the statutory interpretation of NRS 125B.095. Mr. Willick participated in the workshops for these regulations and expressed his position on NRS 125B.095. Mr. Willick's position ran counter to that of CSEP, legislative history of the statute, and the current emphasis by OCSE on child support arrears management.[2]

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[1] In 1996 welfare reform legislation ended the Aid to Families with Dependent Children ("AFDC") entitlement program and replaced it with the Temporary Assistance for Needy Families ("TANF") block grant program. *See* Pub. L. No. 104-193, 110 Stat. 2105 (1996) (adding Section 403, codified at 42 U.S.C. § 603).

[2] OCSE funded studies to ascertain the effectiveness of penalties and interest in the collection and enforcement of child support. See: http://www.acf.hhs.gov/programs/cse/pubs/reports/colorado/bk01.html

In January 2005, CSEP passed regulations based on its interpretation of NRS 125B.095, a copy of regulation 615 is attached hereto and incorporated herein by this reference as Exhibit 2. Mr. Willick offered to share the source code[3] of his program in an effort to persuade CSEP to use it in programming penalties for the program. CSEP's federal requirements for collection and distribution of child support payments contained in 42 USC § 666 et. seq. rendered Mr. Willick's program source code useless to CSEP. Finally, CSEP's position, then and now, is that Willick's position runs counter to the legislative history of the statute.

CSEP worked with another DA to introduce AB473 in the 2005 Legislature to correct the ambiguity of NRS 125B.095 and deal with penalty issues where a late payment was not the fault of the non-custodial parent (NCP). The Legislature heard testimony from all sides, including Mr. Willick. CSEP informed the 2005 Legislature of CSEP's regulation and position on NRS 125B.095. The Legislature ultimately took no action on the clarifying language, but did pass the penalty exception language proposed in the bill. The bottom line is the Legislature left in place the status quo knowing CSEP would operate under their position.

Is the statute ambiguous?

Yes, the statue is imprecise and open to interpretation and therefore is subject to interpretation based on legislative history. See Exhibit 1 for a complete legal analysis on this point. Mr. Willick admitted this in his June 30, 2008 letter to the Court on page 8.[4] Mr. Willick's position is the language in the statute supports his position. However, if the language is open to interpretation the law is clear that legislative history controls.

Does the legislative history support CSEP's position?

Yes, the legislative history of AB 804[5] from the 1993 Legislature supports the one time penalty on missed monthly payments. The Attorney General's Opinion references in detail that throughout the legislative history there are statements that confirm it was intended as a one time penalty versus an ongoing interest charge as proposed by Mr. Willick. See Exhibit 1.

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[3] This is the programming computer code that runs the calculations in his Marshal Law computer program.
[4] "But his 'bottom line' that the statute, as phrased, is imprecise and arguably ambiguous is probably sound."
[5] The legislative history can be accessed at: http://www.leg.state.nv.us/lcb/research/library/1993/AB804,1993.pdf

Mr. Willick, to date, fails to offer any legislative history that supports his position. Mr. Willick alludes in his June 30, 2008 letter to the Court that he had some communication with Chairman Sader on this bill. However, Chairman Sader never mentions on the record any contact with Mr. Willick. Chairman Sader also never makes any statements on the record that support Mr. Willick's position on the application of penalties assessed on missed child support payments. Chairman Sader did state he was concerned with charging interest on the late payment of child support since there already was an interest provision in another bill[6]. In fact, based on all the comments contained in the record, the intent of the legislation clearly supports CSEP's position that the NCP is encouraged to pay current monthly payments within the month they are due or a one time late penalty will be charged for failure to pay the current child support obligation in full within the month it is due.

First, Mr. Willick argues that because the 2005 Legislature failed to adopt the new language proposed by AB473 that it agreed with his position[7]. If that was true why would it allow CSEP to continue with its regulation and policies which clearly fly in the face of Mr. Willick's position? The only certain supposition that can be drawn from the Legislature's inaction on the corrective language of the bill is that it wanted to maintain the status quo. Finally, *Sierra Pac. Power Co. v. Department of Taxation*, 96 Nev. 295, 298, 607 P.2d 1147 (1980) states: "legislative acquiescence to the agency's reasonable interpretation indicates that the interpretation is consistent with legislative intent." The Legislature specifically knew of CSEP's interpretation of NRS 125B.095 and took no action to change the law or the interpretation.

Second, Mr. Willick argues that his position is correct because no person or court has challenged his position or his program. This is a specious argument. In reality, Mr. Willick's statement only proves that until Ms. Muirhead raised the issue, no person to date has been able to connect the dots that in this State there currently exist two ways of calculating

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[6] See Legislative Counsel Bureau's Summary of Legislation on AB 604, page 59 on the discussion between AB 604 and SB 298. Chairman Sader specifically states AB 604 was changed to deal with penalty and the two bills are not inconsistent.

[7] The legislative history is not online at this point. However, if requested I can file a supplement that would include this history if the Court deems it necessary to the resolution of this issue.

penalties for the purposes of child support enforcement. If that argument were to stand then CSEP's position is just as valid because no person or court has challenged CSEP's position or calculation.

Third, Mr. Willick counters that CSEP's position charges the NCP more than his program does based on the "per annum" reference in statute. Yes, the 10% penalty as applied on a monthly basis is more than the 8.33% calculation using a "per annum" theory. However, CSEP wants to make the point up front that the NCP needs to pay all of his child support on time. When families cannot count on those monthly payments, especially in these hard times, they suffer damaging financial effects. CSEP knows based on the legislative history, that this is what the Legislature intended because it refers to the same one time penalties everyone is subject to when they are late paying their other bills. Therefore, just as a business charges fees for late payments, the late penalty on an overdue child support payment was never intended to be an ongoing interest calculation until the sum is paid.

Mr. Willick's program continues calculating 10% percent on the total missed payments just like an additional interest calculation on the total arrears. Therefore, in any given year of 12 months of missed payments, the NCP is charged interest on the missed payments under a NRS 99.040 calculation and a 10% interest applied under Willick's position of NRS 125B.095[8], and hence, the statement contained in the Opinion regarding double interest. The studies referenced in footnote 2 demonstrate that such interest assessments disproportionately impact low income NCPs. This leads to another concern about the unequal treatment of NCPs in this State where, depending on who calculates penalties, NCPs in the same representative class will be treated differently on the penalties they will be required to pay.

Finally, CSEP is an administrative agency tasked with the establishment, collection, and disbursement of child support under federal and state statutes. CSEP is responsible for promulgating regulations pursuant to NRS 425.365 to carry out the functions stated in the last sentence. The statutes that CSEP is required to deal with include NRS 125B.095 which

[8] In an example of $100/month not paid for one year. Willick's position would require the NCP to pay $120 in penalties. CSEP would require NCP to pay $120. Now extend that out again another year and Willick would charge $240 at the end of the second year for a total of $360 and CSEP would charge $120 for a total of $240.

specifically mentions enforcement by CSEP. Therefore, any regulation passed by CSEP is, by law, given deference in the promulgation and enforcement of those regulations, as well as CSEP's interpretation of the statute. See *Oliver v. Spitz*, 76 Nev. 5, 348 P.2d 158 (1960); and also *Cable v. State ex rel. its Employers Insurance Company of Nevada*, 122 Nev. 120, 127 P.3d 528, 532 (2006) (Further, the statutory interpretation of a coordinate governmental branch or an agency . . . is entitled to deference.) CSEP's regulation that interprets NRS 125B.095 cannot be overturned without a finding of arbitrary or capricious action on the part of CSEP. The ability of anyone to prove this point would be difficult at best given the legislative history already discussed herein. Furthermore, since CSEP is not joined as part of this case and is only appearing as a Friend of the Court to inform the Court of its position, the Court has no ability to set aside CSEP's regulation.

Conclusion

In summary, NRS 125B.095 is ambiguous. When a statue is ambiguous, case law requires that courts look to the legislative history to resolve the ambiguity in the statute. Yes, the "per annum" was dropped in CSEP's interpretation because it did not the fit the legislative history or any of the other statutory uses of the phrase "per annum." The application of the "per annum" did not create the extra incentive for the NCP to timely pay in full the monthly child support payment. A 10% penalty on the monthly child support payment will be a proportional penalty that the Legislature intended to get the attention of the NCP on a monthly basis rather than an end-of-year basis. Finally, CSEP's position gives effect to the clear legislative intent of the statute, is correctly linked to implementing the policy of promoting prompt child support payments within the month it is due, and is equally proportional in its application of penalizing low income and high income NCPs based on their child support payments.

Dated this 9 day of July, 2008.

CATHERINE CORTEZ MASTO
Attorney General

By: Linda C Anderson
for DONALD W. WINNE, JR.
Senior Deputy Attorney General

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that this document does not contain the personal information of any person.

DATED this 9 day of July 2008.

CATHERINE CORTEZ MASTO
Attorney General

By: Linda C Anderson
for DONALD W. WINNE, JR.
Senior Deputy Attorney General

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Office of the Attorney General and that on this 9th day of July 2008, I served one true copy of the attached **FRIEND OF THE COURT BRIEF** by facsimile to:

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An employee of the Office of the Attorney General

EXHIBIT C-2

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June 30, 2008

Hon. Cheryl Moss
Eighth Judicial District Court
Family Division
601 North Pecos Road
Las Vegas, Nevada 89101-2408

Re: *Vaile v. Porsboll (Vaile)*, Case No. 98D230385D
Response as Requested by Court

Dear Judge Moss:

Leonard Fowler of this office has relayed to me that this Court has requested a response from us to Ms. Muirhead's unsolicited and *ex parte* letter dated June 23, in which she asks the Court to involve not just the District Attorney's Office, but the Attorney General's Office, in her quixotic quest to find some fault with the interest and penalty calculations performed by the Marshal law Arrearage Calculator. Specifically, she asks to have the A.G.'s office "file an Amicus Curie [*sic*] Brief for this Court describing how the State interprets NRS 125B.095."

Frankly, we have no desire to litigate or to readdress a discussion and determination that was made by all concerned agencies and parties years ago – and which found the program flawless. Nevertheless, as you have requested we respond to Ms. Muirhead's letter, we furnish this response, at our own cost (since neither Scotlund nor Ms. Muirhead have – yet – been made to post a bond to secure their waste of our time and money).

For the record, we do so under protest, since neither Scotlund nor Ms. Muirhead have achieved *Rooney*[1] grounds of making a prima facie case for believing that they have any idea what they are talking about. And in case the point is too subtle – they don't.

I. A TRIP DOWN MEMORY LANE

Reacting to the hyper-inflation that raged periodically in the 1970s, the Nevada Legislature amended the legal rate of judgment interest statute – NRS 17.130(2) (along with NRS 99.040(1), governing contracts) multiple times, and always "behind the curve" of whatever was happening in the economy, since the Legislature met only every two years.

In 1987, the Legislature decided to have the legal interest rate "float," self-adjusting every six months to the prime rate at the largest bank in Nevada, plus 2%. The legislation was devoid of details as to precisely how such calculations were to be done, some of which were supplied by Nevada Supreme Court decisions before and after the statutory change.

Unfortunately, the cases were not much studied by the Bar or their hired experts. Most lawyers simply ignored interest, and most accountants applied "generally accepted accounting principles" when they were hired to do such calculations – even when such principles directly conflicted with the controlling case law (which, of course, the accountants had never read).

This led to enormous variability in whether, and how much, interest was applied to judgments in Nevada cases. The multiple changes to applicable interest rates also made the calculations technically difficult. My office was about the only one to try to do so consistently, but the supporting spreadsheets grew increasingly difficult to follow within a year or so (pre-July, 1987 arrears had a "fixed" interest rate, while post-July, 1987 arrears "floated," and the number of changes increased every six months, etc.)

By 1989, it was obvious that an automated solution was necessary, and I had begun work on what became the Marshal Law program, hiring computer programmers to actually code the flowcharts I created from the existing statutes and case law, so that any actual words of statutes or cases were reflected in the calculations, and where assumptions or choices were made, switches were built in to permit the user to direct the program to perform the calculations the way the user thought the law did or would require. Each "switch" generates a message at the bottom of the last page indicating how it is set.

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[1] *Rooney v. Rooney*, 109 Nev. 540, 853 P.2d 123 (1993).

For example back in the days when URESA was the controlling interstate law (now replaced by UIFSA), one distinction between the District Attorney's and Family Court's calculation methodologies was the proper first application of an incoming payment, since the IV-D methodology required present support first, but Nevada case law required application of dollars to the oldest arrearage. This made a difference to the totals reached, at least for some time, because the pre-July, 1987 rates were fixed, so altering how the payment applied altered the calculation. For "normal" cases, the default position of the switch was (and is) "Payments are applied to oldest unpaid balance."

In September, 1990, I wrote the first article recapping the state of the law in this subject,[2] explaining both what was known and unknown, and how the problem was being addressed. From that time to this, there has been no published authority of which I am aware criticizing or contradicting any of the positions reached and recited.

Version 1 of the Marshal Law program developed by the undersigned was released in 1991, for DOS. It immediately went into fairly wide use in the Family Courts (and in calculation of personal injury damages in other civil cases). There were some technical issues, leading to bug-fixes. But the program itself included a feature which generated an audit trail, showing each and every calculation made by the program in reaching a conclusion. There were a few challenges to the accuracy of the program in the first few years after it was released, but going over the line-by-line, calculation-by-calculation audit trails it produced, no one in any case ever established that the program did not calculate everything it was supposed to, without error or variance from any statute, rule, or case. Every judge in every case that ever considered the matter made exactly that ruling.

The original Pro Bono Project had been unhappy with the failure of the Clark County District Attorney's Office to calculate or collect interest on child support arrearages in Clark County, and made requests that the agency perform its statutory mandate to do so.[3] I was on the Board of Directors of that organization. We were repeatedly told of the limitations of the Clark County D.A.'s legacy computer system – NOMADS – and were told that they just could not figure out how to comply with the law. In the meantime, the Washoe County D.A.'s Office (and, apparently the rest of the D.A.s of Nevada) adopted, used, and collected interest on support arrears using the Marshal Law program, starting in 1991 or 1992.

As detailed in various Nevada Supreme Court opinions, the function of statutory interest is merely to compensate the claimant for the use of money from the time the cause of action accrues until the

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[2] *A Matter of Interest: Collection of Full Arrearages on Nevada Judgments*, NTLA *Advocate*, September, 1990.

[3] *See* NRS 125B.095(2) ("Each district attorney or other public agency in this State undertaking to enforce an obligation to pay support for a child shall enforce the provisions of this section").

time of payment.[4] In 1993, the Nevada Legislature debated trying to come up with some ***additional*** way of encouraging delinquent child support obligors to pay their back child support.

I was, at the time, a member of the Executive Council of the Family Law Section of the Nevada Bar, and was charged with responsibility for following and participating in the development of what ultimately became NRS 125B.095. In that capacity, I corresponded and spoke with Chairman Bob Sader and others to develop the statutory language now in place (although I did not write the statute itself).

A two-year deferral period was built into the effective date of the new "penalty" statute (from 1993 to October 15, 1995) – the idea was to give delinquent support obligors that long to catch up on their back support before the penalty began applying to them.

Meanwhile, in the political sphere, the Attorney General's Office, in conjunction with the Welfare Department, began a process of unifying procedures relating to support collection (and other things) in the 1990s. At some point, the decision was made to try to get NOMADS to correctly perform interest calculations. I am informed that millions of dollars were expended, and no satisfactory conclusion was ever reached.

Version 2 of Marshal Law, ported to the Windows environment that was by then ubiquitous, issued in 1999. At about that time, I had the programmers attack the penalty calculations (which I had been submitting by hand in spreadsheet form along with the automated interest calculations, once they went into effect in 1995). Again, every judge that ever held a hearing on my hand-performed calculations based concluded that they were done correctly and accurately. Again, the foundation for the automated version was a flow-chart showing how the statute worked, and was intended to work, based on the statutory language. The flowchart and hand calculations were circulated throughout the Family Law community at the time, including lawyers, judges, and (I think) the District Attorney and Attorney General's offices. No criticism to the mechanics of the proposed penalty application was ever received.

Until the year 2000, the Clark County Pro Bono Project existed independently of Clark County Legal Services (CCLS). That year, the former was folded into the latter. As part of the deal, a few members of the Board of Directors of the original Pro Bono Project (including me, Bob Dickerson, and Terry Marren) were added to the Board of Directors of CCLS. I have served on the latter Board since that time.

Periodically, the unhappiness of low-income clients (the people that CCLS serves) with the failure of the D.A. to collect interest and penalties on back child support was raised in communications

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[4] *See Ramada Inns v. Sharp*, 101 Nev. 824, 711 P.2d 1 (1985) (speaking of NRS 17.130(2)).

between the Board and the D.A.'s office, leading to several meetings over the years with a variety of representatives from the Welfare Department, District Attorney's Office, and Attorney General's Office. We were consistently told that the problem was the NOMADS computer system, which just could not be made to do the calculations in the way that they obviously should be done. We were consistently told that they were "working on it" – a response we received to inquiries made over more than ten years.

In 2001, Version 3 of Marshal Law was released, adding a penalties calculator under NRS 125B.095, in accordance with the logic circulated throughout 1999 and 2000. Copies of the program were widely circulated to the Bench, Bar, and all public child support agencies (and provided free to anyone who had ever bought an earlier version of the program), and we asked all concerned to identify and report any issues or concerns with how any part of the program operated, ***especially*** as to the penalty calculations. No such concerns were ever reported from any private or public corner. But the child support agencies still were not doing what the controlling statutes required them to do.

II. The Problem and the Partial Solution Reached

The history, mechanics, and math of determining penalties for child support arrearages were discussed in detail by a committee in early 2004, consisting of Barbara Buckley (Executive Director of CCLS) and me, plus representatives of the District Attorney's Office, the Attorney General's Office, and the Welfare Department.

A complete discussion as to the methodology and calculations for determining penalties was had, and no one at that time or at any time since has found that the methodology or calculations as performed by the program contravene any statutory or case law guidance – the MLAW calculations comport with the applicable statute (NRS 125B.095). The program deals with the lack of guidance as to whether the calculation should be performed monthly or daily by permitting either (a user-selectable switch is built into the program), using as the default my view that the more precise daily method is preferred. The program calculates the penalty from the date due and unpaid, for as long as it remains due and unpaid, whether in whole or partial months, on whatever due date is set by the court order.

Those present and participating agreed – in every meeting I had with them – that the program's output was fully and exactly accurate, but they stated that it was not possible to reprogram their computer system (NOMADS) to do the calculations that precisely; for example, they were limited to doing all calculations only at the last day of the month, thus treating identically obligations due on the first or thirtieth day of each month, while acknowledging that this was legally and logically improper.

The continuing pressure from CCLS for the District Attorneys to comply with the statutes eventually led to the promise from the public agencies to begin collecting interest and penalties for the poor. CCLS was invited to participate in the "public workshop" convened by the Welfare Division on that subject in 2004.

We were quietly briefed on the divisions between the Attorney General and District Attorney Offices, apparently stemming from the political consideration that anything that made the amount of uncollected child support appear to be higher made the statistics of collection look worse, thereby imperiling increased federal funding. We were given a copy of the proposed policy memo and Manual, and noted that the proposed guideline chart contained several mathematical errors making it impossible to even figure out the logic underlying the proposal. A variety of factual, mathematical, logical, and other errors were identified and specified.[5]

That led, in turn, to the 2004 request to the Attorney General's Office by Nancy Ford of the Welfare Division, for an opinion of whether the statute could be interpreted in a manner consistent with the limitations of the NOMADS computer system, so that if they did what their equipment was capable of doing, it could be considered "good enough."

As explained by Deputy District Attorney Edward Ewert in his revisions and expansion of the Child Support section of the Nevada Family Law Practice Manual:[6]

> **NOMADS**, like other computers, has its limitations. . . . in the mass production, conveyer-belt case processing world of Nevada's child support enforcement program, the tail wags the dog. To make computerization work for child support enforcement in Nevada, the law and the courts, and most of all, our orders, have to conform to the computer's needs.

So it is not all surprising that on October 22, 2004, the Welfare Division was able to obtain a letter[7] from Deputy Attorney General Donald W. Winne reaching the conclusion that the statute was sufficiently ambiguous to allow the public agencies to interpret the statute in a way permitting the Welfare division to do the calculations in a way that their computer system was capable of calculating.

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[5] We were recently copied with the Manual as it existed in 2006 – the mathematical errors in their guidance chart that we identified in 2004 were not corrected, at least as of that time.

[6] 2008 edition, at § 1.165.

[7] Ms. Muirhead's letter of June 23, 2008, incorrectly indicates that there was a formal Attorney General's Opinion on the subject. There was no such published authority, just the letter opinion referenced here.

The question actually posed was whether the Welfare Division had authority to "calculate the child support enforcement delinquent payment penalty on a monthly basis as a one-time late fee penalty."

The opinion letter has several errors in its own right – such as the conclusion, in the introductory "Background" section, that following the "public input" (i.e., our critique of the Welfare proposal) would "result in significant increases in the amount of child support judgments that obligors would be required to pay." That is just not so.

For example, the State's method of calculation has an entire ***year's*** penalty coming due on the first day of the first month that a month's support is overdue. MLAW, by contrast, calculates the penalty in accordance with how much of a year has passed, so that the penalty imposed on an obligation due, for example, in January, is less in February than it is in March.

We replicated the table from the Welfare Division's Manual, at the request of the District Attorney, calculating interest and penalties with Marshal Law for comparison. Over the same time period as the sample in the Manual, the program calculates a total penalty (as of 12/31/04) of $85.90. Their calculation shows $230, grossly overstating the penalties actually owed, in the short term, by accelerating to immediately-owed a penalty expressly stated as accruing "per annum."

In other words, there is no distinction in the State's calculations between an unpaid arrearage remaining unpaid for 30 days and one remaining unpaid for 11½ months, which undercuts the public policy purpose for which the statute was passed in the first place. The State's penalty is three times ***greater*** than that calculated by the program – at least as of that date and on the hypothetical facts in their table – so the statement that our methodology increases the sum owed is just incorrect as a matter of math.

As noted in 2004, properly construing the phrase "per annum, or portion thereof" requires assessing the penalty ***every year*** and, as a basic matter of equal protection, any law that would treat identically being late for a day, and being late for a year, is highly suspect and probably constitutionally infirm. Those of us that were present when the law was being drafted knew that the ***purpose*** of the provision was to encourage obligors to make child support payments sooner rather than later – a purpose that would be frustrated by any policy that did not provide a continuing incentive to actually make up arrears each passing day.[8]

In any event, the letter from Mr. Winne observed that the phrase in the penalty provision "or portion thereof" appeared to be unique in Nevada law. His letter correctly recited that, if possible, every

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[8] It is a bit ironic, but the opinion letter notes (at 5) that statutes must be construed "with a view to promoting, rather than defeating, [the] legislative policy behind them." This is correct, but with an understanding of the math involved leads to the conclusion that the State's methodology is counterproductive.

word of a statute should be given operative effect under the case law of statutory construction, and observed (at page 5) that "the statue [*sic*] be interpreted to provide that the amount of the penalty is 10 percent of the installment, or portion thereof, that remains unpaid."

Of course, that is ***precisely*** what the Marshal Law program does. Mr. Winne's stated belief (at 6) that doing the calculations as we do them would result in "double interest on total arrearages owed by an obligor" is just wrong as a matter of fact. But his "bottom line" that the statute, as phrased, is imprecise and arguably ambiguous is probably sound.

That conclusion of ambiguity gave him the "wiggle room" to give the Welfare Division permission to perform the calculations in the manner that their outdated computer system could do, but it certainly did not, and does not, mean that their approach is any more "correct" than ours. For the various reasons set out at the "public workshop" in 2004, and in the programming notes to Marshal Law, and in this letter, the opposite is true. The Welfare Division's approach is better than nothing, but it is inaccurate, sloppy, partially counterproductive, and ***not*** what was intended when the provision was drafted in 1993.

All of this was discussed at some length by ***all*** concerned parties in hearings held before the Assembly Judiciary Committee in 2005. The Welfare Department actually asked the Nevada Legislature to amend NRS 125B.095 to ***conform*** to the defective way in which they perform the calculations. After hearing and reading everything about why the law was the way it was, why the Welfare Department was trying to change the law to conform to their outdated computer capabilities, why (from us) that was a really terrible idea, the Legislature left the "how-to-compute-penalties" portion of the statute exactly as it was, knowing how it was interpreted through the MLAW program, and acknowledging that methodology as correct.[9]

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[9] I testified immediately after Mr. Winne at the hearing held April 11, 2005, in part as follows: "Finally, the problem here, with due respect to the district attorneys and the Attorney General's Office, is one of the tail wagging the dog. They are attempting to solve a calculation methodology problem left over from legacy hardware and software which is inadequate to any modern calculation task. It is [not] a particularly difficult calculation problem. We solved it with a microcomputer program for a couple thousand dollars years ago. I have given both the software and the source code to the state repeatedly. They have this legacy software, NOMADS, that they are trying make do a job that it is not suited to do. They are attempting to conform the law to how their computer works. I would suggest that this is a bad basis for altering public policy and altering statutes. I suggest it may be time that they just face up to the fact that they have wasted a huge amount of money on trying to fix something which may or may not ever be fixable. But certainly they should not start amending the law to conform to the problems that we know are built into that hardware system."

III. The Request to Have the Attorney General Present an Amicus Curiae Brief in the Pending Child Support Motion

First, we are unaware of any provision in either the Nevada Rules of Civil Procedure or the Eighth Judicial District Court Rules that ***permits*** a litigant to solicit an amicus brief in a motion proceeding. If there is one, our opponent (who continues making noise and filing requests, while simultaneously claiming to not be counsel of record in the case) has not cited it.

As a general matter, soliciting participation by entirely uninterested third parties in a ***motion hearing*** on child support is ridiculous, and to my knowledge without precedent. To allow our opponent to continue wasting time and money at our expense is without justification.[10] ***Any*** further litigation in this matter should require the advance posting of the full amount of our costs for having to address it – by either Mr. Vaile or his counsel.

So, respectfully, we do not believe that Ms. Muirhead should be permitted to expand these proceedings any further than the grotesquerie they have already been made.

And if the District Attorney, or the Attorney General, or anyone else for that matter, was asked for a second or third opinion as to how the controlling statute should be interpreted, their opinion would be just that – an opinion, not entitled to any particular authority in this Court. If Mr. Winne is correct, and the statute is sufficiently ambiguous to permit more than one reasonable construction, then reasonable minds (if fully informed) could differ on what that construction should be. But his view of how the statute should be construed has already been rejected by the Nevada Legislature within the past two years.

Any actual ***law*** on the subject – that might alter this Court's actions in this case – would be dependent on either changes to the statute, or the question of construction of the current statute being squarely presented to the Nevada Supreme Court. It is perhaps worth noting that we have gone to that Court on half a dozen support arrearage cases involving calculations performed by the Marshal Law program, and we have never heard a peep of negative commentary about the methodology or results of our calculations.

If anyone ever appealed a child support judgment we obtained, and challenged the calculations used, ***then*** they could solicit any amicus briefs they might care to request. But any request that we be made to "justify" the calculations used to determine interest and penalties on child support, which

---

[10] Our office has not been paid a dime of the fees awarded, nor has our client been able to pay more than a tiny fraction of a bill which exceeds $156,000. Mr. Vaile has made no effort to ***any*** of the judgments outstanding against him. Why the Court continues to indulge his requests and antics while he stands in an attitude of utter contempt defies reason.

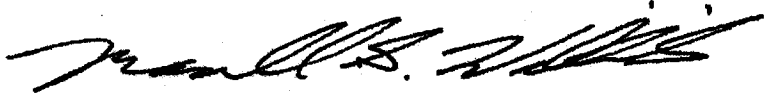
have been in use and practice for over sixteen and seven years (respectively) without first making out a *prima facie* case of error under *Rooney* – which has not and cannot be done – is just nuts.

We ask the Court to remember what is actually going on here. Scotlund has never paid any child support since he kidnapped the kids years ago. The only request made of this Court (and the only thing for which it has jurisdiction) was to state the support due each month in child support as a sum certain, which it has done. This necessarily allows for arrears to be reduced to judgment for collection in accordance with Nevada law.

No further time-wasting indulgence should be given Scotlund, who simply seeks any excuse for evading his legal obligation to support his children, or to his maybe-I'm-a-lawyer-in-this-case-and-maybe-not counsel du jour, Ms. Muirhead, who appears to be far more interested in making noise for personal political purposes than in doing anything having anything to do with the proper support of children, or the correct interpretation of the law.

In short, no "amicus briefs" are warranted, appropriate, or permitted under the applicable rules, and we should end these proceedings with as little additional wasted time, money, and effort as is humanly possible.

Sincerely yours,
WILLICK LAW GROUP



Marshal S. Willick, Esq.

cc: Mrs. Cisilie Porsboll
Greta G. Muirhead, Esq.

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EXHIBIT C-3

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
FAMILY COURTS & SERVICES CENTER
601 NORTH PECOS ROAD
LAS VEGAS, NEVADA 89101-2408

CHERYL B. MOSS
DISTRICT JUDGE

DEPARTMENT I
(702) 455-1857
FAX: (702) 455-2394

July 3, 2008

VIA FACSIMILE

Greta G. Muirhead, Esq.
Attorney for Plaintiff
Facsimile: 434-6033

Marshal S. Willick, Esq.
Richard L. Crane, Esq.
Attorneys for Defendant
Facsimile: 438-5311

Re: R. S. Vaile vs. Cisilie A. Vaile 98-D-230385

Dear Counsel:

I reviewed the video of the last court hearing in this case. This is what transpired:

At 11:10:05 a.m., I requested the District Attorney to confirm that they accept, utilize, or do not object to the Marshal Law Interest and Arrears Calculation Program.

At 11:14:24 a.m., I stated that, to my knowledge, no attorney, litigant, or agency had ever challenged the validity or accuracy of the Marshal Law Program in my courtroom or in any other judge's courtroom.

At 11:15:08 a.m. and 11:25:18 a.m., I specifically requested the District Attorney to appear and be present at the next hearing on July 11, 2008, to confirm that there are no problems with the calculations submitted by Attorney Willick's office.

To clarify, the Court intends to accept the Marshal Law Program at the next hearing unless there is a finding that the program is somehow flawed. I invited the District Attorney to provide input at the next court date.

Exhibit 3

Addressing Attorney Muirhead's request:

As a matter of departmental policy, the attorneys may contact the court on procedural matters such as confirming dates and times of hearing, whether a courtesy copy of a pleading was received, if counsel is running late to court, etc.

However, a letter that may seem to be a procedural request might in fact turn out to be substantive in nature. Consequently, communication by way of letters will not preserve the parties' requests and arguments in the event an appeal is made to the higher court. In other words, both counsel's letters are simply fugitive documents and not part of the court record.

Further, in some situations, I would be faced with the challenge of having to respond immediately to a dispute between counsel while in the midst of handling my heavy caseload, sitting in court all day, attending to my daily duties of signing orders and evaluating OSTs, and taking care of administrative matters in the department. Reading new case files, preparing for court the next day, and writing trial decisions are done on my "spare time" in the evenings, early mornings, and on weekends and holidays.

Given the nature of this case, there will be more disputes anticipated. I have found it appropriate in the past for counsel in any of my cases to file supplemental motions, addendums to one's original motion and countermotion, affidavits, supplemental exhibits, and even oral requests at a hearing to file additional briefs and exhibits.

Opposing counsel obviously has the right to object, to request striking of the document, and to request the Court give no weight.

This would all be conducted and preserved on the record.

Based on the above, to answer Attorney Muirhead's question, she is allowed to file the amicus curiae brief. Attorney Willick points out there are no court rules permitting such, but I believe notwithstanding the non-existence of such a rule, it would be in my discretion. However, I would add that I have the authority to rely on, reject, or strike any such pleadings.

As a final note, the issues in this case are important to all parties involved. Communication by letter correspondence would probably not be advisable if legal issues need to be preserved on the record.

A copy of this letter shall also be forwarded to the District Attorney's Office c/o Attorney Ed Ewert.

Sincerely,

Cheryl B. Moss
District Court Judge

cc: Ed Ewert, Esq. District Attorney's Office

EXHIBIT C-4

WILLICK LAW GROUP

A DOMESTIC RELATIONS & FAMILY LAW FIRM
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‡ FELLOW, INTERNATIONAL ACADEMY OF MATRIMONIAL LAWYERS
◆ NEVADA BOARD CERTIFIED FAMILY LAW SPECIALIST
❦ BOARD CERTIFIED FAMILY LAW TRIAL ADVOCATE BY THE NATIONAL BOARD OF TRIAL ADVOCACY

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TISHA A. WELLS
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FIRM ADMINISTRATOR

SETH WILLICK

E-MAIL ADDRESSES:
[FIRST NAME OF INTENDED RECIPIENT]@WILLICKLAWGROUP.COM

RECEIVED JUN 17 2008

June 16, 2008

State Bar of Nevada
David A. Clark, Esq.
Assistant Bar Counsel
600 E. Charleston Blvd.
Las Vegas, Nevada 89104

Re: BAR COMPLAINT CONCERNING GRETA G. MUIRHEAD, BAR # 3957

Dear Mr. Clark:

This letter is provided as required by Nevada Rules of Professional Conduct 8.3(a), specifically:

> A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

By way of background, this grievance stems from a hearing held on a "*Motion for Reconsideration and to Amend Order or Alternatively, for a New Hearing and Request to Enter Objections and Motion to Stay Enforcement of the March 3, 2008 Order*" filed by Mr. Robert Scotlund Vaile – in proper person – and an *Order for Examination of Judgment Debtor* filed by us, which were both set for hearing on 9:00 A.M. on June 11, 2008, in Department I, before Judge Cheryl Moss.

On June 5, 2008, at approximately 5:15 P.M., Ms. Muirhead appeared at our office and presented us with a *Ex-Parte Motion to Recuse*,[1] based on Ms. Muirhead's filing for election in opposition to the sitting judge in the case. During this visit, we discussed the matter with her, and advised Ms. Muirhead that it was not proper for her to seek recusal of Judge Moss under those circumstances,

[1] *See* Exhibit 1.

Exhibit 4

especially since her *Motion* specifically identified that she was appearing in the case in an unbundled capacity for one hearing only.[2]

Ms. Muirhead indicated that she did not think Judge Moss would recuse, but still thought it was proper for her to proceed with her challenge. She followed up her visit and our conversation with a letter indicating that she still supported her decision to represent Mr. Vaile, as she thought he had "valid concerns" and she considered herself "more than qualified" to represent him.[3] She did not discuss her professional obligations or the Supreme Court's explicit warnings not to do what she was attempting (discussed below).

At the hearing on June 11, Ms. Muirhead admitted that Mr. Vaile sought her out specifically because she was the only candidate running against Judge Moss in the upcoming judicial election. She also admitted that it was "possible" that Mr. Vaile intentionally hired her just to try to force a recusal.[4] We strongly objected to Ms. Muirhead's assertions that Judge Moss should recuse and pointed out that Ms. Muirhead's actions were in violation of NRPC Rule 8.4. Specifically:

> It is professional misconduct for a lawyer to:
>
> (d) Engage in conduct that is prejudicial to the administration of justice.

While the rule is a bit dry, the Nevada Supreme Court's exposition on its meaning has been ***exceedingly*** clear. The recent *Opinion* in *Millen v. Dist. Ct.*[5] could not have provided a much better warning to attorneys not to do what Ms. Muirhead has done in this case:

> A lawyer's acceptance of employment solely or primarily for the purpose of disqualifying a judge creates the impression that, for a fee, the lawyer is available for sheer manipulation of the judicial system. It thus creates the appearance of professional impropriety. Moreover, sanctioning such conduct brings the judicial system itself into disrepute. To tolerate such gamesmanship would tarnish the concept of impartial justice. To permit a litigant to blackball a judge merely by invoking a talismanic "right to counsel of my choice" would contribute to skepticism about and mistrust of our judicial system.[6]

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[2] This case has been ongoing for nearly ten years. Judge Moss has had the case since 2003, making Ms. Murihead's demand that Judge Moss recuse based upon her "one-time" appearance even more egregious.

[3] *See* Exhibit 2, letter from Ms. Muirhead.

[4] *See* Exhibit 1, Page 4.

[5] 122 Nev. Adv. Op. No. 105, December 21, 2006.

[6] *See* Exhibit 3, copy of the *Millen* decision.

Unlike the facts in *Millen*, the record here ***does*** show that Mr. Vaile retained Ms. Muirhead for the purpose of trying to disqualify Judge Moss and forcing reassignment. It was not only in Ms. Muirhead's power, but her ***obligation*** to inform Mr. Vaile that his intentions were not proper, that she would not be a part of such a plan, and to refuse representation.

However, Ms. Muirhead took the representation and then actually argued for recusal ***based*** upon her candidacy, and the trumped up assertion that Judge Moss "would not be impartial" to Mr. Vaile in any decision because of that candidacy.[7] For the record, Judge Moss stated that she had no personal opinion or bias of any kind, based on the fact of an election opponent or otherwise, and declined to recuse.

This office did not want to be forced into the position of having to file this Complaint. We told Ms. Muirhead when she came over that what she was doing was just ethically wrong and would have consequences. I suppose she just took our notice as some kind of litigation strategy, since she blew it off, apparently without securing ethics counsel, or independently researching, the point.

At the hearing, we made a last attempt to allow Ms. Muirhead to walk away without committing the breach of ethics identified in this letter. We explained why she should not be demanding recusal of the judge, cited all relevant authority, and asked the Court to allow her to withdraw with no repercussions. Ms. Muirhead refused, apparently missing the actual issue entirely, and claiming that she was "eminently qualified" to represent Mr. Vaile.

Of course, Ms. Muirhead's qualifications do not mitigate her attempt to prejudice the administration of justice. It was her duty as an officer of the court to reject representation of Mr. Vaile once she was aware of the improper motivation for her selection.

For the record, and with respect to Ms. Muirhead, there is nothing unique to the attorney, no special ability or knowledge or expertise that required her to take this child support arrears case to serve any legitimate need of the client – her qualifications are no more prestigious than a thousand other attorneys in this state that could provide competent representation for Mr. Vaile.

Rather, what Ms. Muirhead had was one singular "qualification" – she was specifically selected for this case by Mr. Vaile as the only candidate running against Judge Moss, and Ms. Muirhead admits that she knew from the outset that the reason for his seeking her out was for the purpose of trying to make a case for forcing a recusal. The substance of this grievance was Ms. Muirhead's decision – on notice of the unethical act being requested of her – to refuse to take part in it.

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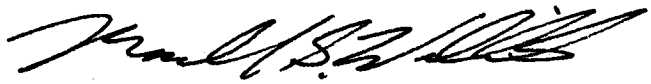
[7] *See* Exhibit 4, copy of video of hearing held June 11, 2008. The discussion of recusal is all made in the first 40 minutes of that hearing.

What the Nevada Supreme Court has identified as "sheer manipulation of the judicial system" which "creates the appearance of professional impropriety" and "brings the judicial system itself into disrepute" would seem to require mandatory reporting, since the Court added that "to tolerate such gamesmanship would tarnish the concept of impartial justice." The concept of impartial justice is one that we hold dear.

We take no joy in filing this grievance, or asking that the Bar take appropriate disciplinary action because of it. However, the practice of law in Nevada has been under scrutiny for a couple of years now, and found wanting. The actions of our judiciary in particular have specifically been targeted and the country is watching, and often laughing.

It is imperative that we, who are expected to be of the highest ethical standards, ensure that our fellow attorneys maintain that same ethical position. When an attorney – especially one running for the bench – steps out of line, we are obligated to report it. There is no waiver, there is no second chance, and we hope that the days of a wink and a nod toward deliberate unethical behavior are past. Rule 8.3 is exceedingly clear. While we deeply regret being required to make this report, we think we are required to do so – and we think the Bar is required to act on it, for the sake of us all.

Sincerely yours,
WILLICK LAW GROUP



Marshal S. Willick, Esq.

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EXHIBIT D

OPP
WILLICK LAW GROUP
MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 002515
3591 E. Bonanza Road, Suite 200
Las Vegas, NV 89110-2101
(702) 438-4100
Attorney for Defendant

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ROBERT SCOTLUND VAILE,

Plaintiff,

vs.

CISILE A. PORSBOLL, FNA CISILIE A. VAILE,

Defendant.

CASE NO: D230385
DEPT. NO: I

DATE OF HEARING: 7/24/08
TIME OF HEARING: 1:15 P.M.

ORAL ARGUMENT REQUESTED: Yes ____ No X

NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING DATE.

OPPOSITION TO "MOTION TO DISQUALIFY MARSHAL WILLICK AND THE WILLICK LAW GROUP AS ATTORNEYS OF RECORD PURSUANT TO RULES OF PROFESSIONAL CONDUCT 3.7" AND COUNTERMOTION FOR DISQUALIFICATION OF GRETA MUIRHEAD AS ATTORNEY OF RECORD, FOR FEES, AND FOR SANCTIONS AGAINST BOTH MS. MUIRHEAD AND HER CLIENT

I. INTRODUCTION

Ms. Muirhead's *Motion* is not supported by law or statute and is just a ploy to distract this Court from her continued unethical behavior in this case. She states at the beginning of each and

every document filed, that she is appearing in an unbundled capacity.[1] However, she files new documents in new matters without regard to her status as unbundled.

Additionally, Ms. Muirhead's *Motion* is procedurally incorrect in that it has no Memorandum of Points and Authorities as required by the rules. This coupled with the fact that she did not cite to any relevant case law or statute on point makes her filing frivolous on its face and subject to direct sanction of both her and her client under both NRCP Rule 11 and EDCR 7.60.

POINTS AND AUTHORITIES

II. FACTS

Ms. Muirhead came onto this case in an unbundled capacity for a child support issue for one hearing only on June 11, 2008.

Ms. Muirhead admitted that she took the case even after Scotlund told her that he had selected her as the only opponent in the judicial race for Department I.

Ms. Muirhead was advised before the June 11, hearing and again at the June 11, hearing that her attempt to get the judge to recuse based upon her appearance was unethical and is sanctionable under *Millen*.[2]

Ms. Muirhead has widened the scope of her representation to include contesting attorney fees, requesting sanctions for a hearing that she never attended, challenging the statute on figuring interest and penalties for child support arrearages, and filing papers in the Supreme Court opposing examination of judgment debtor.[3]

On June 11, and again on July 11, Ms. Muirhead made the issue of MLAW calculations an issue before the Court. Since Mr. Willick designed the program, he was best suited to answer any questions the Court had concerning the program's operation. Additionally, Mr. Willick was present

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[1] In her first filing it specifically stated that it was for that hearing date only.

[2] 122 Nev. Adv. Op. No. 105.

[3] Yet she still says she is in an unbundled capacity in this *Motion*.

WILLICK LAW GROUP
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Las Vegas, NV 89110-2101
(702) 438-4100

during the 2003 legislative hearings on possible changes to NRS 125B.095. His historical prospective on those hearings was helpful to the Court on legislative intent but was in no way testimony.

After bringing both of the above issues before the Court, Ms. Muirhead filed the present *Motion* without any case law or statutory authority included. In fact, no Memorandum of Points and Authorities was included in her filing in violation of EDCR 2.20(a).

III. ARGUMENT

A. The *Motion* is Procedurally Defective

Ms. Muirhead's *Motion* does not contain a Memorandum of Points and Authorities as required by EDCR 2.20(a). The rule specifically states:

> All motions must contain a notice of motion setting the same for hearing on a day when the judge to whom the case is assigned is hearing civil motions and not less than 21 days from the date the motion is served and filed. A party filing a motion must also serve and file ***with it*** a memorandum of points and authorities in support of each ground thereof. The absence of such memorandum may be construed as an admission that the motion ***is not meritorious***, as cause for its denial or as a waiver of all grounds not so supported. [Emphasis added.]

Lack of supporting citations or statutes is grounds for a finding that the *Motion* is not meritorious. This *Motion* is not meritorious.

B. The *Motion* is Unsupported by Statute or Law

Ms. Muirhead provided no statute or case law to support her position. This is because there is none. In fact, the current case law on point here is all contrary to Ms. Muirhead's position.

1. *DiMartino*[4]

Primarily, the finding in *DiMartino* that "Disqualification of the lawyer would work substantial hardship on the client" should be in the forefront of any disqualification argument. Here, Ms. Muirhead – claiming to be in an unbundled capacity – has only been on the case for one month. Mr. Willick has been on this case for over ten years. Having all of that knowledge discarded based

[4] 119 Nev. 119; 66 P.3d 945; (2003).

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upon Ms. Muirhead's unsupported allegations would be a true miscarriage of justice and would serve only to prejudice Cisilie. The Supreme Court went on quoting from *Zurich Ins. Co. V. Knotts*:[5]

> ...that the showing of prejudice needed to disqualify opposing counsel as trial advocate must be more stringent than when the attorney is testifying on behalf of his own client, because adverse parties may attempt to call opposing lawyers as witnesses simply to disqualify them.

Here, Ms. Muirhead brought the argument before the Court. It was she that asked the questions that Mr. Willick was answering and did so without any testimony. The Court correctly identified the information that Mr. Willick provided as strictly historical. However, even if it was or could be testimony, under *DiMartino*, he should still not be disqualified. Ms. Muirhead cites to no authority contrary to this 2003 holding.

2. *Millen*

If this is not enough authority, the Court in *Millen* stated it even more strongly:

> Attorney disqualification is an ***extreme*** remedy that will not be imposed lightly. Invariably, disqualifying an attorney causes delay, increases costs, and deprives parties of the counsel of their choice. Courts should, therefore, disqualify counsel with considerable reluctance and only when no other practical alternative exists. [Emphasis added.]

This is an attempt by Scotlund and his misguided counsel to deprive Cisilie of her counsel of choice. Though Ms. Muirhead stated in open court on June 11, that she was familiar with the *Millen* decision, but still failed to cite to it as contrary authority to her position.

Even though Ms. Muirhead's *Motion* does not come close to the standard for disqualification of attorney in either *DiMartino* or *Millen*, the Court is fully aware that this case would be unduly prejudiced by the disqualification of Mr. Willick. Ms. Muirhead's *Motion* remains frivolous and vexatious based on her failure to cite to any authority in support.

IV. COUNTERMOTION

A. Disqualification of Ms. Muirhead

Ms. Muirhead has stated in open Court that she was aware that Mr. Vaile sought her out specifically to have this judge recuse from the case. Even though it is a sanctionable action, Ms.

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[5] 52 S.W.3d 555, 560 (KY. 2001).

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Muirhead moved forward with that exact argument on June 11, 2008. As such, this Court – in accordance with *Millen* must disqualify Ms. Muirhead and strike all filings signed and entered by her on behalf of Scotlund Vaile.

The *Millen* decision specifically states:

> On the other hand, attorney disqualification may be an appropriate remedy when a lawyer is retained for the purpose of forcing a judge's disqualification, thus obstructing the management of the court's calendar. A party or his attorney should not be permitted to cause the disqualification of a judge by virtue of his or her own intentional actions. Counsel may not be chosen solely or primarily for the purpose of disqualifying the judge.

The Court went on to say:

> A lawyer's acceptance of employment solely or primarily for the purpose of disqualifying a judge creates the impression that, for a fee, the lawyer is available for sheer manipulation of the judicial system. It thus creates the appearance of professional impropriety. Moreover, sanctioning such conduct brings the judicial system itself into disrepute. To tolerate such gamesmanship would tarnish the concept of impartial justice.

Here, Ms. Muirhead acknowledged in open court that Scotlund had contacted her specifically because she was running for the Department I seat. He was aware and sanctioned Ms. Muirhead asking that the judge recuse based upon her entry into the case – even though unbundled.

The Supreme Court was very clear. Sanctioning this behavior brings the entire practice of law into disrepute and lessens the stature of the judiciary in the eyes of the public. This Court ***must*** act to protect the integrity of the office and the overall practice of law. Ms. Muirhead must be disqualified and all filings made by her should be summarily stricken as fugitive documents.

B. Ms. Muirhead Must be Sanctioned For Her Frivolous Filings

1. NRCP 11

Ms. Muirhead's *Motion* is frivolous on its face as it cites to no authority or case law for support. Under NRCP 11(b):

> By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, belief, formed after an inquiry reasonable under the circumstances,
> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in cost of litigation;

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> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and
> (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

Here, Ms. Muirhead provided no support for her contentions and should know that by doing so her *Motion* was frivolous on its face. Having to respond to this frivolous filing has cost us and our client money we do not have. She has needlessly increased the cost of litigation in this matter and should be personally sanctioned for the costs of having to respond to each and every one of her filing made.

As noted above, the existing law is actually contrary to every point asserted by Ms. Muirhead. Her ignoring of the existing case law – and failure to cite it to the Court – is sanctionable in its own right. She knew she cited to no authority, but still filed her *Motion*. She should be sanctioned for her failure to cite to authority and to cite to contrary authority.

Lastly, none of Ms. Muirhead's contentions are supported by any evidentiary material. Even with more time, she would be unable to obtain any evidence to support her contentions. She must be sanctioned for her failure to note this and still file a frivolous and vexatious *Motion*.

2. EDCR 7.60

This Court also has the ability to directly sanction Ms. Muirhead under EDCR 7.60. Specifically EDCR 7.60(b):

> (b) The court may, after notice and an opportunity to be heard, impose upon an attorney or a party any and all sanctions which may, under the facts of the case, be reasonable, including the imposition of fines, costs or attorney's fees when an attorney or a party without just cause:
>
> . . . .
>
> (1) Presents to the court a motion or an opposition to a motion which is obviously frivolous, unnecessary or unwarranted.
>
> (3) So multiplies the proceedings in a case as to increase the costs unreasonably and vexatiously.

It is clear that the *Motion* is frivolous as it contains no support in the law. It is vexatious in that it has caused us to expend additional time and money to oppose. It is more so vexatious in that

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Ms. Muirhead refused to allow this *Motion* to be decided on the papers and has forced us to appear on the matter. She should be sanctioned for her obviously frivolous filing.

Ms. Muirhead's unwarranted filing has increased the litigation in this matter and the associated costs. She should be sanctioned for her specific malice in this case as it is obvious that this has become personal to her and it is clouding her reason as to what is an appropriate filing.

C. Attorneys Fees

The Nevada Legislature has recently taken the extraordinary step of stressing the public policy that parties and counsel who file frivolous motions, refuse to engage in rational settlement discussions, and insist on unnecessary court hearing should be discouraged from doing so by way of direct financial sanctions:

> **NRS 18.010 Award of Attorney's Fees.**
>
> . . . .
>
> 2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:
>
> . . . .
>
> (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. ***It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.***

[Emphasis added.]

In other words, the statute has been sharpened to clearly target those acting without a valid basis or to harass. Scotlund and his counsel are exemplars of why the legislature found it necessary to do so. There is no reasonable basis for the *Motion* he filed and it can only be construed as a frivolous and vexatious filing to increase litigation costs in this case.

Fees should be awarded under NRS 18.010 in this matter and assessed against both Scotlund and his counsel.

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V. CONCLUSION

The *Motion* is frivolous and vexatious. It is nothing more than an attempt to prolong litigation and allow Scotlund an opportunity to evade justice. Ms. Muirhead's disingenuous and completely unsupported assertions are sanctionable under NRCP 11, EDCR 7.60, and are specifically identified for sanctions in both the *DiMartino* and *Millen* cases.

Accordingly, Cisilie prays that the Court enter orders:

1. Find Scotlund's *Motion* to be frivolous on its face.
2. Disqualify Ms. Muirhead in accordance with the holding in *Millen*.
3. Sanction Ms. Muirhead personally under NRCP 11 and EDCR 7.60 for filing an obviously frivolous and vexatious *Motion*.
4. For attorney's fees and costs in the minimum amount of $1,000 from both Ms. Muirhead and Scotlund.[6]
5. For any further relief that this Court deems proper and just.

DATED this 21st day of July, 2008.

Respectfully submitted by:

MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 002515
RICHARD L. CRANE, ESQ.
Nevada Bar No. 009536
3591 East Bonanza Road, Suite 200
Las Vegas, Nevada 89110-2101
Attorneys for Defendant

[6] See Exhibit A, redacted billing statement. This amount will be updated at the time of the hearing.

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AFFIDAVIT OF ATTORNEY

STATE OF NEVADA)
)
COUNTY OF CLARK)

Richard L. Crane, Esq., first being duly sworn, deposes and says that:

1 I am an attorney licensed to practice law in the State of Nevada, I am employed by the WILLICK LAW GROUP and am one of the Nevada attorneys for Cisilie Vaile Porsboll f.k.a. Cisilie A. Vaile, the Defendant in this action.

2 That pursuant to NRS 15.010, and because Cisilie is a resident of Norway, I make this affidavit in her absence.

3 I have read the preceding *Opposition* and *Countermotion* and know the contents thereof as true, except as to the matters that are stated therein on my information and belief, and as to those matters, I believe them to be true. The factual averments contained in the *Opposition* and *Countermotion* are incorporated by reference as if set forth in full herein.

4 I declare under penalties of perjury under the laws of the State of Nevada that the foregoing is true and correct.

RICHARD L. CRANE, ESQ.

SIGNED and SWORN to before me
this 21st day of July, 2008.

NOTARY PUBLIC in and for
said County and State

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
LEONARD H. FOWLER III
Appt. No. 01-66051-1
My Appt. Expires

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EXHIBIT
E

GRETA G. MUIRHEAD, ESQ.
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9811 W. Charleston Blvd.
Ste. 2-242
Las Vegas, Nevada 89117
(702) 434-6004
Attorney for Plaintiff
Unbundled

FILED
JUL 23 3 23 PM '08
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

ROBERT SCOTLUND VAILE,

Plaintiff,

vs.

CISILE A. PORSBOLL, f/n/a CISILE A. VAILE

Defendant.

CASE NO. 98D230385D
DEPT NO: I

DATE OF HEARING: 7/24/08
TIME OF HEARING: 12:45 p.m..

REPLY TO DEFENDANT'S OPPOSITION TO DISQUALIFY MARSHAL WILLICK AND THE WILLICK LAW GROUP PURSUANT TO RULES OF PROFESSIONAL CONDUCT 3.7

COMES NOW, the Plaintiff, ROBERT SCOTLUND VAILE (hereinafter referred to as "Scotlund"), by and through his attorney, GRETA G. MUIRHEAD, ESQ. appearing in an *unbundled capacity*, and here asserts the following:

I. The Unbundled Red Herring:

Opposing counsel complains that Greta Muirhead is somehow unethical because she has filed more than one pleading in an unbundled capacity. Neither Greta Muirhead nor State Bar Counsel Phil Pattee is aware of any rule that prohibits multiple

filings in an unbundled capacity. No rule, statute or case law was cited by opposing counsel to substantiate their repeated wild assertions.

Plaintiff's Motion to Disqualify was supported by Rules of Professional Conduct 3.7. The Rule was laid out for opposing counsel and the court along with the American Bar Association commentary. Judge Moss and her law clerk have plenty of pleadings in this case to review without unnecessarily making them twice as long. Unlike opposing counsel, Greta Muirhead gets to the point quickly in her pleadings---an absence of the words "Memorandum of Points and Authorities" does not make counsel's well thought out and well written pleading procedurally defective.

Mrs. Muirhead advised the Court on June 11, 2008 that Mr. Vaile had "located her" because she had a Website that was specifically created for her Dept. I campaign. (see hearing at 9:27:33). Prior to entering the Dept. I race; Mrs. Muirhead did not have a Website, kept a low profile and had little World Wide Web exposure.

Opposing counsel has lost all credibility with Mrs. Muirhead based upon opposing counsel's misconduct in this case. Opposing counsel's *opinion* as to what is unethical and sanctionable is meaningless at this juncture.

On July 8, 2008, opposing counsel was sent a copy of Mrs. Muirhead's response to the State Bar of Nevada (See Exhibit 1). Said response included e-mails from Mr. Vaile prior to her agreeing to represent him, a declaration from Mr. Vaile and one from D. Bruce Anderson, Esq. After reviewing Mrs. Muirhead's response, it is clearly that Mrs. Muirhead was retained because Mr. Vaile had confidence in her-- her abilities and her integrity and not because she was Judge Moss' opponent. A copy of said response is attached as Exhibit 2.)

Mr. Vaile is satisfied with the representation that Mrs. Muirhead has provided to date. Mrs. Muirhead did not know after the hearing on June 11, 2008, if Mr. Vaile would be satisfied or if she wanted to continue to advance his very substantial legal arguments. Mrs. Muirhead has many obligations and Mr. Vaile has been made aware of her many obligations.

Mrs. Muirhead does not want to become attorney of record in this case, only to discover that she simply does not have the time or resources to properly devote to Mr. Vaile and then be in the position of needing the Court's blessing to withdraw. By remaining in an unbundled capacity, Mrs. Muirhead can exit out of this case at any time, upon notification to Mr. Vaile. There has been and there is NO prejudice, miscommunication or hardship that has inured to Mrs. Porsboll as a consequence of Mrs. Muirhead's unbundled capacity nor has opposing counsel cited any. If opposing counsel is unsure if he should serve Mrs. Muirhead with a document or if he mistakenly serves her, then she will so advise him.

II. Mr. Willick has a Vested Interest in this Litigation:

Defendant continues to bandy about the argument that Mrs. Muirhead is the root cause of all of the problems in this case and is unnecessarily wasting the Court's time on this simple child support case that merely sought to establish a sum certain. If that is the case, then it should be no big deal for a new attorney to step in and represent Mrs. Porsboll's interests. Mr. Willick has been involved in Mrs. Porsboll's case since September of 2000. Since this is July 2008, opposing counsel's exaggeration that Mr. Willick has been "on this case for over ten years." (See page 3, line 26 of Willick's Opposition to Disqualify) is obvious.

Despite constantly complaining that this case is "costing {him} money, Mr. Willick continues to sink his teeth into every pleading, court appearance and the like, similar to a dog who cannot bear to part with his favorite bone. Mr. Willick has a vested interest in this case----his credibility and veracity are at stake along with his pocketbook.

On July 14, 2008, The US District Court for the Western District of Virginia issued a Memorandum Opinion and Order finding that Mr. Willick and Mr. Crane's statements to Mr. Vaile's law school were defamatory per se. (See Attached Exhibit 3). Specifically, Mr. Willick and Mr. Crane tried to get Mr. Vaile kicked out of law school on allegations that he lacked the integrity to practice law and was a criminal. When Mr. Vaile's law school would not buy into Mr. Willick and Mr. Crane's drivel, they turned up the heat and tried to get Mr. Vaile's law school in trouble writing to the ABA and asking them to pull the law school's accreditation.

Mr. Willick and Mr. Crane claim that they want Mr. Vaile to pay Mrs. Porsboll child support and attorney fees—YET, they deliberately tried to interfere with his desire to further his education, retrain and improve his economic prospects. Mr. Willick and Mr. Crane continue on the theme that Mr. Vaile should be incarcerated and also prosecuted for felony non-payment of child support. Along those lines, they have apparently written to the District Attorney asking for a special prosecutor.

There is a WORKING WAGE WITHHOLDING IN THIS CASE. Mrs. Porsboll is getting her money. So too, is Mr. Willick as he is getting a piece of the action—specifically 40% of whatever Mr. Vaile pays in child support—see Willick's billing Exhibit 4). Mr. Willick's goal should be the best interests of Mrs. Porsboll. However, he seeks to defeat Mrs. Porsboll's ability to get child support from Mr. Vaile by trying to hurt his

economic prospects and by repeatedly demanding his incarceration. Mr. Willick wants his 5 pounds of flesh from Mr. Vaile. He is motivated by his desire for retribution against Mr. Vaile; not the best interests of Mrs. Porsboll.

As seen by the Virginia order, Mr. Willick, in defense of Mr. Vaile's defamation action, needs to stay in this case so that Mr. Willick can continue to either sneak or muscle in outrageous findings, orders or claims in this Family Court proceeding to bolster his Virginia defense. Mr. Willick and Mr. Crane's foolishness and pettiness and the resulting consequences thereto to THEM, are simply not this Court's problem and this Court must not allow itself to be used in this fashion.

Mr. Willick is receiving 40% of whatever Mrs. Porsboll collects in this case. He has a motivation and has, in fact, previously exaggerated the child support arrears principal in this case. Likewise, he will directly benefit by a finding of this Court that gives his client and consequently him, more than $40,000.00 in child support penalties beyond what the DA would assess. Mr. Willick's interpretation of the child support penalty statute is flawed and skewed to benefit him. The statute talks about "unpaid installment" **NOT** "unpaid installments". Yet Mr. Willick continues to insist that prior unpaid monthly child support payments build on themselves by accruing penalty much in the same way that accrual of interest does.

Finally Mr. Willick flip-flops his "explanation" of the statute and his program based upon which explanation places him in the best possible light. On June 30, 2008, he stated in his letter to the Court that NRS 125B.095 was ambiguous. Suddenly, in explaining away his failure to calculate child support penalties in more than one way, it wasn't ambiguous on July 11, 2008.

Mr. Willick is a commercial software vendor of the Marshal Law Program. He has marketed and sold this program for more than ten years in the State of Nevada. The Attorney General's Office has filed a Friend of the Court Brief in this case wherein the Attorney General asserts that the Marshal Law Program is flawed and contrary to the State's interpretation and daily use of NRS 125B.095.

Mr. Willick, as a software vendor of the MLAW Program provided testimony via letter on June 30, 2008 and again in open court on July 11, 2008 concerning details of the MLAW Program and the legislative history. The legislative history speaks for itself, but Mr. Willick took it upon himself to pontificate about what the legislature intended and by discussing purported policy issues of the State, the DA and the legal services agencies in this town. **Mr. Willick** compounded the **problem he created** by putting himself in the forefront of this case as a witness testifying and providing details about how the MLAW Program is designed and operates. Mr. Willick is not only a witness in this case, but an interested party.

Mr. Willick may well have been the most appropriate person to explain the MLAW Program to the Court as he allegedly designed it. HOWEVER, once he insisted upon doing that, that, it was time for him to step aside as Mrs. Porsboll's attorney.

III. **Nevada Case Law**:

Mr. Willick and Mr. Crane in their continued quest to personalize this matter and attack counsel rather than the facts and the law allege that Greta Muirhead should be sanctioned for not citing the DiMartino case. Mrs. Muirhead, since she does not cumulatively bill out at $1,110.00 per hour like Mr. Willick's office cannot afford a subscription to Lexis or Westlaw. Mrs. Muirhead didn't cite to DiMartino simply because

she wasn't aware of the case until it was mentioned by Judge Moss on July 21, 2008. Counsel was aware of Millen because it was part of a free Internet Search. Counsel located the Attorney General's opinion letter to Welfare and its involvement in NRS 125B.095 through free sources found on the Internet and through some old fashioned detective work and phone calls.

In any event, DiMartino v. Eighth Judicial District, 119 Nev. 119, 66P.3d 945 (2003) can be distinguished from this case. In DiMartino, opposing counsel put the attorney of record in the case, Marc Singer on a witness list only after filing an amended complaint and at the same time he filed a Motion to Disqualify and an amended pre-trial memorandum. This was done to manipulate the system and as a tactical ploy. There was no guarantee that Mr. Singer, although appearing on the witness list of opposing counsel, would ever actually testify in the case. The Court, in DiMartino found the disqualification to be arbitrary, capricious and error.

In Millen v. District Court, 122 Nev. Adv. Op. 105 (2006), the Court dealt with the issue of recusal lists and if it was proper to disqualify an attorney who unknowingly was on the Court's recusal list. There was no discussion in Millen regarding a witness-advocate.

In the present case, Mr. Willick has become a witness-advocate. Neither Mrs. Muirhead nor Mr. Vaile put Mr. Willick on any witness list. Mr. Willick was not called as a witness or subpoenaed. He **elected** to put himself in the forefront of this controversy by explaining in detail the inner workings of the MLAW Program—the program that he allegedly designed and about the legislative policy and interpretation that went into **his** program. Only after he did that and only after he "testified" in open court did this Motion

to Disqualify ensue. Mr. Willick is a seasoned attorney. Once he realized that he was going to have to provide firsthand knowledge of his computer program as it had been challenged, he should have stepped aside as Mrs. Porsboll's counsel.

Providing firsthand knowledge of something, be it a computer program, an act, a failure to act or the like is **TESTIMONY/EVIDENCE**. Mr. Willick has testified in this case. His veracity as a witness is an issue. Mrs. Muirhead asked the Court to swear him in on July 11, 2008 and identified his statements as testimony. She objected to his testimony as a witness. Mrs. Muirhead's requests were, unfortunately, glossed over by the Court. There was no opportunity to cross examine Mr. Willick who was wearing two hats on July 11, 2008—the litigator and the witness.

IV. Conclusion:

Mrs. Muirhead identified the discrepancy between the MLAW calculations and the DA's interpretation of NRS 125B.095. Said identification was for the purpose of benefiting her client and saving him thousands of dollars. Mrs. Muirhead did not create the problem that has arisen. Mr. Willick by having his finger in too many pots, did.

While it is indeed unfortunate that Mrs. Porsboll will lose her chosen counsel, this is a situation that has no other remedy. Mr. Willick's office is a small one. He, as the senior partner, is believed to be intimately familiar with all of the cases in his office and there is no way to isolate him from the other members on his staff. Mr. Willick has been

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driving this case that has become a train wreck. Mr. Willick has derailed himself and a new conductor must be put on board.

Dated this 23rd day of July, 2008.

GRETA G. MUIRHEAD, ESQ.
Nevada Bar Number 3957
9811 W. Charleston Blvd.
Ste. 2-242
Las Vegas, Nevada 89117
(702) 434-6004
Attorney for Plaintiff
Unbundled

Declaration of Counsel

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

I have read the Reply and the contents are true and correct to the best of my knowledge.

Mr. Vaile is a resident of California and unable to sign this Declaration.

No opposition to their Countermotion to Disqualify Greta Muirhead and for Attorney's Fees is made this date because Mr. Willick's office has not secured, to my knowledge an OST, nor have I been served with a Notice of Hearing. Their Countermotion is not properly before the Court on July 24, 2008. I don't know when it

has been set. I will file an Opposition and my own Countermotion for Fees when necessary.

Further I say not.

Dated this 23rd day of July, 2008.

Greta Muirhead

STATE BAR OF NEVADA

EXHIBIT E-1

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Las Vegas, NV 89104-1563
phone 702.382.2200
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July 8, 2008

Marshal Willick, Esq.
Willick Law Group
3591 East Bonanza Road, Ste. 200
Las Vegas, NV 89110

RE: Grievance File # 08-100-1012 / Greta Muirhead, Esq.

Dear Mr. Willick:

Enclosed is a copy of the correspondence received from attorney Great Muirhead in response to your grievance letter. You may further correspond to this matter if you so desire. If you decide to further correspond, please do so within fourteen (14) days. Following an investigation, this matter will be presented to a screening panel of the Southern Nevada Disciplinary Board. You will be notified following the panel's review and disposition.

Sincerely,

Glenn M. Machado
Assistant Bar Counsel

GMM/lc

Enclosure

Exhibit 1

EXHIBIT E-2

GRETA G. MUIRHEAD
Attorney at Law
9811 W. Charleston Blvd., Ste. 2-242
Las Vegas, Nevada 89117
Phone: 702-434-6004
Fax: 702-434-6033
Gmuirhead2@cox.net

July 7, 2008

Phillip J. Pattee
Assistant Bar Counsel
State Bar of Nevada
600 E. Charleston Blvd.
Las Vegas, Nevada 89104-1563

HAND DELIVERED

Re: Grievance File #08-100-1012/Marshal Willick, Esq.

Dear Mr. Pattee:

Thank you for providing me with a copy of Mr. Willick's complaint. My client, Robert Scotlund Vaile, has given me permission to release the enclosed e-mail correspondence. You will note that certain sentences have been redacted because they either had no relevancy to the issue at hand or contained information not currently in the court record.

Mr. Vaile initially contacted me by e-mail on May 12, 2008. I responded to Mr. Vaile on May 14, 2008, stating that I "assumed" that the main reason he was contemplating hiring me was that he believed that Judge Moss might recuse herself.

On May 14, 2008, Mr. Vaile responded that his wife had found me on the Internet while looking for "ethical family law attorneys". Per Mr. Vaile's e-mail, his wife believed that if I opposed Judge Moss, then I "likely had strong ethics." Mr. Vaile indicated that he wished to hire me to appear on June 11, 2008—the date set for the hearing *in front of Judge Moss*.

Exhibit 2

Mr. Vaile further stated that he was "Not concerned with recusal based on your opposition to Moss. If you believe that recusal may be the only way that I will receive justice, I might be able to provide some grounds for recusal. In response to discovery requests in the defamation suit in Virginia, Mr. Willick listed Judge Moss as a person with information who could support his defense. Not sure that if being a potential witness for Willick is grounds for recusal. I'll need your call on this." In the same e-mail, Mr. Vaile concludes by thanking me for my "sincerity and willingness to listen".

At the hearing on June 11, 2008, I stated that Mr. Vaile **had LOCATED ME on the Internet because I was running against Judge Moss.** (See Tape @9:27:33). **I DID NOT** state that Mr. Vaile **had hired me** because I was running against Judge Moss. Until March 2008, I did not have a Website on the Internet and kept a fairly low profile. Once I decided to run against Judge Moss, I hired a web designer and search engine optimizer so that I could be at the top of the Google hits. My Website: www.electgreta.com identifies me as an attorney experienced in jurisdictional disputes, child support and international child abduction. Mr. Vaile's case, at one time or another, had elements of all three.

On May 15, 2008, I e-mailed Mr. Vaile my retainer agreement. Included within my retainer agreement, which Mr. Vaile signed, was the following statement:

***** Greta Muirhead will file a Notice of Appearance as counsel of record prior to June 11, 2008 hearing and will provide Judge Moss' office with a courtesy copy. Will not, in writing, request a recusal. May ask at onset of hearing, depending upon client's desire to request, orally, a recusal based upon 2008 pending election, which court could very well deny.**

In my May 15th e-mail, I again reminded Mr. Vaile that recusal was "completely discretionary" and promised to send him the new ethics opinion on this, which I did. I opined that it was "probably unlikely" that Judge Moss would recuse based upon her "track record."

Subsequent to that e-mail I had a phone discussion with D. Bruce Anderson, Esq. Bruce has practiced law for more than twenty-two years and has been a trusted friend of mine for more than fifteen years. Bruce believed that perhaps I should file a Motion to Recuse and suggested that failing to do so might be a mistake that could rise to the level of malpractice. Both Bruce and I are always worried about malpractice and we both tend to "do more" rather than "do less" just to be on the safe side. Enclosed is Mr. Anderson's Declaration.

After my conversation with Bruce, I had a phone conversation with Mr. Vaile. Mr. Vaile indicated that *if* I was going to ask for a recusal, that he preferred that I do it in writing as opposed to orally. Mr. Vaile made a reasonable request and I agreed.

Mr. Vaile's Motion was the first Motion to Recuse that I have ever filed. I believed that Judge Moss' "impartiality might reasonably be questioned" and I still believe that today. NCJC Canon 3E(1).

I have enclosed a copy of an e-mail that I sent to UIFSA Hearing Masters Teuton and Beller on December 19, 2006. As you will note, I raised a discussion with the Hearing Masters regarding recusal. Both Hearing Masters agreed that I should follow the advice of the "senior judge" that I had consulted on December 15, 2006 and recuse to preserve the integrity of the judicial system and provide no fodder for anyone to say that they had not "gotten a fair shake". Said senior judge referenced in my e-mail was the Honorable Gloria Sanchez.

Getting a "fair shake" from the court and ensuring that litigants feel like they are getting a fair shake from the court is the cornerstone of my judicial campaign for the Dept. I race. I have enclosed a copy of my campaign brochure.

With regard to the Unbundled Issue, my signed retainer agreement also stated that:

"This Fee Agreement sets forth the agreement between Robert Scotlund Vaile as client and GRETA G. MUIRHEAD, ESQ., concerning legal fees and costs for the following matter: Appear at 6/11/08 hearing or if assigned to new judge, appear at hearing re: child support issue. Review file and prior hearings as it relates to child support and prior purported agreements."

Mr. Vaile hired me to appear specifically on June 11, 2008 and I agreed. While I do not normally handle cases in an unbundled capacity, I agreed because I am extremely busy right now handling my election campaign and caring for my 10-year-old son (I have no summer daycare).

In addition, I have other clients and regularly scheduled days wherein I sit on the UIFSA (Child Support) Bench as an Alternate Hearing Master. I am also on the "on call list" for Guardianship and TPO Court and an arbitrator with the State Bar of Nevada Fee Dispute Committee. I did not believe that I had the time to get involved in Mr. Vaile's case for the long haul; so I agreed that I would review the file as it related to child support and show up on June 11, 2008, making the arguments I deemed appropriate based upon my nearly eighteen years of practice.

In his complaint, Mr. Willick asserts that I was warned in our meeting of June 5, 2008, that I was committing an ethical violation by asking for a recusal of Judge Moss. In fact, the words "ethics" "ethical" or "bar complaint" were never discussed. Instead, Mr. Crane tried to find out how much Mr. Vaile had paid me as a retainer. Mr. Willick told me that Mr. Vaile was "bad" and that he had a history of not paying his lawyers. Mr. Willick **ordered** me to instruct my client that he must attend the June 11, 2008 Examination of Judgment Debtor and told

me that a Bench Warrant *would issue* for Mr. Vaile's arrest if he wasn't there. Mr. Leonard Fowler, Mr. Willick's case manager was also present and referred to Mr. Vaile as "his boy Vaile".

I did not take kindly to Mr. Willick issuing orders to me, telling me how to practice law, and stating unequivocally what the Court would do if faced with a contempt issue. I advised Mr. Willick that I would pass his message on to my client. My son was waiting in Mr. Willick's game room and after verifying that there was nothing else from Mr. Willick, we left.

Mr. Willick sought to intimidate me on June 5, 2008 and that has been his course of conduct ever since.

Mr. Willick asserts in his Bar Complaint that there is "nothing unique to the attorney, no special ability or knowledge, or expertise that required her to take this child support case to serve any legitimate need of the client—her qualifications are no more prestigious that a thousand other attorneys in this state that could provide competent representation for Mr. Vaile."

While there may be more than 11,000 attorneys in the State of Nevada, **only GRETA MUIRHEAD,** has ever reviewed the legislative history, contacted Senior Deputy Attorney General Donald W. Winne, Jr. and identified the contradictions between Mr. Willick's child support interest and penalty computer program's ("Marshal Law") calculations and NRS 125B.095, based upon legislative intent and the State of Nevada's interpretation of that intent. Simply put, Mr. Willick's computer program that he has marketed to attorneys for several years, charges penalties on unpaid child support in a manner that is believed to be inconsistent with the legislative intent of the statute, a plain reading of the statute and with the way that the State of Nevada via the Clark County District Attorney's Office calculates penalties on child support.

Mr. Willick's program charges 10% per anum as a penalty on the total unpaid child support arrears effectively doubling up on the interest already provided for under NRS 125B.140(2)(c)(1). The State of Nevada charges penalties at the rate of 10% of the *monthly* unpaid child support amount or any portion thereof. Mr. Willick's child support penalty calculator assesses ***significantly more*** in penalties to a non-custodial parent than if the penalties were calculated by the child support enforcement agency, the District Attorney's Office.

At the hearing on 6/11/08, Mr. Willick asserted that "no one" had ever raised this issue before. I was able to raise this issue because there is something "unique" to me. I possess "special ability and knowledge" concerning this child support case. Said special knowledge was acquired during my 6+ years as an Alternate Child Support/Paternity Hearing Master in UIFSA Court. I looked at Mr. Willick's calculation of Mr. Vaile's penalties and realized that they were significantly higher when compared to the interest charged, than the penalties assessed on the

MROJ's (master's report) that I regularly review and sign. Based upon NRS 125B.095 and the DA's interpretation of same, I calculate Mr. Vaile's penalties to be approximately $12,000.00. Mr. Willick, on the other hand, based upon what I view as his flawed program, calculates Mr. Vaile's arrears to be more than $55,000.00.

In addition, because as a UIFSA hearing master I am very concerned about the arrears period, payment history and giving appropriate credit, I insisted that Mr. Willick provide me with a full schedule of arrears that showed all child support being assessed against Mr. Vaile and the amount paid. Mr. Willick produced three different schedules of arrears; only the final one was correct regarding the total amount of payments that were due. The other two, alleged significantly higher opening balances.

If the State Bar needs a Declaration from Senior Deputy Attorney General, Don Winne concerning the contention that I am the only Nevada private practitioner to ever call him and identify the contradictions between NRS 125B.095 and Mr. Willick's computer program, I will provide same. Mr. Winne's telephone number is: 775-684-1141

Finally, Mr. Willick argues that I could have "walked away" without committing an ethical violation on June 11, 2008. My client, Mr. Vaile did not attend the June 11, 2008, because he relied on my appearing in his place and stead. Had I walked out of the hearing on June 11, 2008, before properly presenting Mr. Vaile's arguments, I would have most certainly faced a Bar Complaint from Mr. Vaile and would have been putting my malpractice carrier on notice.

I opined in my pleadings that it was "possible" that Mr. Vaile had retained me to obtain a recusal, however the e-mails from Mr. Vaile plainly state otherwise. I cannot get into Mr. Vaile's head and cannot definitively state what he was thinking. Certainly, the fact that I am the only Nevada family law attorney to identify a problem with Mr. Willick's program suggests that with regard to child support issues, my qualifications are head and shoulders above the rest.

I was familiar with the Millen v. District Court case prior to my filing my Ex-Parte Motion to Recuse. I didn't think it has any application to my decision to accept Mr. Vaile's case then and I don't think it has any application now.

In Millen, the Court asserted that ". . . when a judge's duty to sit conflicts with a client's right to choose counsel, the client's right generally prevails, except when the lawyer was retained for the purpose of disqualifying the judge and obstructing management of the court's calendar."

To my knowledge, I was not retained for the purpose of disqualifying Judge Moss nor did my representation of Mr. Vaile obstruct management of the court's calendar. Upon rendering her decision refusing recusal on June 11, 2008, Judge

Moss immediately asked me if I was ready to proceed and argue the merits. I was and I did. The hearing commenced at 9:15 a.m. and concluded at 11:50 a.m. Judge Moss stated that Mr. Vaile's arguments had merit and that there were "significant legal issues" that had been addressed during the nearly three hour hearing.

During the hearing on June 11, 2008 and in the pleadings that I filed in this case on June 5, 2008, I attempted to correct an injustice that was done to my client by both Judge Moss and Mr. Willick. Not only was the administration of justice ***not*** prejudiced by my conduct, it was in fact served by my appearance in this case. If Mr. Vaile cannot get justice in his case, then perhaps the hundreds of non-custodial parents that have been wrongly overcharged by Mr. Willick's child support program will.

I am respectfully requesting that the State Bar of Nevada promptly dismiss Mr. Willick's frivolous bar complaint so that I may move on with my election campaign. You will note that I have enclosed Mr. Willick's correspondence dated June 19, 2008, wherein Mr. Willick threatened to "publicly embarrass" me if I continued to pursue the child support penalty issue.

Please view the entire video of the proceedings on June 11, 2008. Upon doing so you will see that both Mr. Willick and Mr. Crane went well beyond acceptable boundaries of professionalism and not only repeatedly interrupted me, but verbally abused me as well. I believe that Mr. Willick and Mr. Crane's behavior and false statements which were heard by others in the courtroom, may be misconduct as defined in NRPC 8.2(a). If you do not have a complete copy of the video, I have an extra CD that was burned by Family Court's transcript services that you may keep.

Please contact me with any questions, requests for additional information or concerns that you may have.

Sincerely,

Greta G. Muirhead, Esq.

Enclosures.

Cc: Robert Scotlund Vaile, via e-mail

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION

R. Scotlund Vaile,

Plaintiff,

v.

Marshal S. Willick, et al.,

Defendants.

CIVIL ACTION NO. 6:07cv00011

EXHIBIT E-3

MEMORANDUM OPINION AND ORDER

JUDGE NORMAN K. MOON

This matter is before the Court on the parties' cross-motions for summary judgment [Docket #38, #41]. Plaintiff argues in his motion that Defendants published false statements in a series of letters sent to Washington & Lee University School of Law and the American Bar Association that they knew to be untrue and that the letters were sent in malice and with an intent to defame. Defendants argue in opposition that the statements in the letters were materially true and represent part of a judicial opinion issued by the United States District Court for the District of Nevada. For the reasons that follow, the Court will GRANT in PART Plaintiff's motion for summary judgment because the letters are defamatory *per se*, but will DENY in PART because the letters may be privileged depending on whether the letters materially departed from the information within the judicial opinion of the Nevada District Court. The Court will also GRANT in PART Defendants' motion for summary judgment as to Plaintiff's claim for intentional infliction of emotional distress as Plaintiff has not offered any evidence to support his claim, but will DENY in PART because the issue of whether Defendants' letters were privileged is an issue for a jury to decide.

I. BACKGROUND

This matter is the latest in a series of disputes between the plaintiff, R. Scotlund Vaile

Exhibit 3

("Vaile"), and the defendants, Marshall S. Willick ("Willick") and Richard L. Crane ("Crane"). Willick and Crane are members of the Willick Law Group ("WLG"), a Nevada law firm that specializes in family law including, among other things, divorce, annulments, child custody visitation, and child support. Willick and Crane represented Cisilie Vaile Porsboll, Vaile's ex-wife, and Kaia Louise Vaile and Kamilla Jane Vaile, his children, in a series of lawsuits in state and federal courts in Nevada to recover damages from Vaile's removal of the children from their mother's custody without her consent.

The latest suit occurred in the United States District Court of Nevada before the Honorable Roger L. Hunt. The matter was scheduled for trial on February 27, 2006, but Vaile notified the court on February 21, 2006, that he intended to cease his defense and that he would not oppose an eventual judgment entered against him. Judge Hunt issued his decision on March 13, 2006, and awarded Vaile's ex-wife and children damages in the amount of $688,500.00 and attorneys' fees and costs of $272,255.56.

At the time of the Nevada litigation, Vaile was a student at Washington & Lee University School of Law ("W&L") and subsequently graduated in May 2007. On March 24, 2006, Willick sent a letter to W&L that advised that Vaile had been "found guilty of multiple violations of State and Federal law, including kidnaping, passport fraud, felony non-support of children, and violation of RICO." Willick concluded that W&L must be unaware of Vaile's "history" because "[i]t would be astounding if your institution would willingly countenance association with such an individual." Willick attached Judge Hunt's March 13, 2006 decision to his letter and urged W&L to "reconsider [Vaile's] fitness for continued enrollment." He further advised that "no form of federal state, or private money should be used for the support or aid of this individual."

W&L seemingly took no action and, as a result, Crane sent a letter to the American Bar

Association ("ABA") to inform it of W&L's recalcitrance. Crane advised the ABA that Vaile was enrolled at W&L and that "[i]t baffled [the Willick Law Group] that a law school would admit a student found to have committed multiple violation [sic] of State and Federal law, including kidnaping, passport fraud, felony non-support of children, and violation of RICO." Crane attached Judge Hunt's March 13, 2006 decision to his letter, as well as the March 24, 2006 letter to W&L, and called for the ABA to rescind W&L's accreditation because it "knowingly admit[s] students with Mr. Vaile's credentials" and "seem[s] to have little concern" of his conduct because he "is still a student at the school."

Vaile filed this action on March 30, 2007, and alleged, among other things, that Willick's letter to W&L was false and defamatory and that Willick and Crane sent the letters to inflict severe emotional distress upon him. Vaile later added a second claim for defamation because of Crane's letter to the ABA. Vaile also alleged that Willick and Crane violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*, by their conduct and that Willick and Crane conspired to injure his professional and business interests under the Virginia Business Conspiracy Act, Va. Code Ann. § 18.2-499, -500, but these claims were dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6) for failing to state a claim upon which relief could be granted.

Vaile filed the pending motion for summary judgment and argues that Willick and Crane sent the letters to W&L and the ABA with malice and an intent to defame. Vaile further argues that he has never been found guilty of any state or federal laws, and, therefore, the statements in the letters are false and defamatory because they suggest he has been convicted of criminal offenses. In response, Willick and Crane argue that the letters are true or, at worst, substantially true, and do not necessarily suggest a criminal conviction. Willick and Crane assert that the statements, read as a whole with the letters and Judge Hunt's decision, cannot be construed as defamatory *per se* because

they represent the findings of Judge Hunt in his March 13, 2006 decision. Willick and Crane also argue that Vaile is unable to produce any evidence of severe emotional distress to support his claim for intentional infliction of emotional distress and, therefore, that this claim also fails.

II. STANDARD OF REVIEW

Federal Rule of Civil Procedure 56(c) provides that summary judgment shall be granted if the pleadings, the discovery and disclosure materials on file, and affidavits, if any, show that there is no genuine issue as to any material fact, and that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986). The Court does not weigh the evidence or determine the truth of the matter when considering a motion for summary judgment. *Anderson*, 477 U.S. at 249. Instead, "[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *Id.* at 255; *see also Shaw v. Stroud*, 13 F.3d 791, 798 (4th Cir. 1994).

If the nonmoving party bears the burden of proof, "the burden on the moving party may be discharged by 'showing' . . . an absence of evidence to support the nonmoving party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). If the moving party can establish such an absence of evidence, the burden shifts to the nonmoving party to set forth specific facts illustrating genuine issues for trial. Fed. R. Civ. P. 56(e); *see also Celotex*, 477 U.S. at 324. Summary judgment is appropriate if, after adequate time for discovery, the nonmoving party fails to make a showing "sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322.

The nonmoving party may not rest upon mere allegations, denials of the adverse party's pleading, or mere conjecture and speculation. *Glover v. Oppleman*, 178 F. Supp. 2d 622, 631 (W.D. Va. 2001) ("Mere speculation by the non-movant cannot create a genuine issue of material fact.").

If the proffered evidence "is merely colorable, or is not significantly probative, summary judgment may be granted." *Felty v. Graves-Humphreys Co.*, 818 F.2d 1126, 1128 (4th Cir. 1987) (citing *Anderson*, 477 U.S. at 242). Indeed, the trial judge has an affirmative obligation to "prevent 'factually unsupported claims and defenses' from proceeding to trial," *Anderson*, 477 U.S. at 249, and there is no issue for trial "unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party." *Id.* at 249.

III. DISCUSSION

A. The Letters to W&L and the ABA Are Defamatory Per Se

The elements of defamation[1] under Virginia law are (1) publication of (2) an actionable statement with (3) the requisite intent. *Chapin v. Knight-Ridder, Inc.*, 993 F.2d 1087, 1092 (4th Cir. 1993) (citations omitted). A statement is not "actionable" simply because it is false; it must also be defamatory, meaning it must "tend so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." *Id.* quoting (Restatement (Second) of Torts § 559). The issue of whether a statement is actionable is to be determined by the Court as it is a matter of law. *See Yeagle v. Collegiate Times*, 497 S.E.2d 136, 138 (Va. 1998).

Under Virginia law, it is defamatory *per se* to make false statements that among other things, (1) impute the commission of a criminal offense involving moral turpitude, for which the party, if the charge is true, may be indicted and punished; (2) impute that a person is unfit to perform the duties of an office or employment of profit, or want of integrity in the discharge of the duties of such an office or employment; or (3) prejudice a person in his or her profession or trade. *Shupe v. Rose's*

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[1]Virginia does not distinguish between libel, defamation by published writing, and slander, defamation by speech, unlike most states. *Fleming v. Moore*, 275 S.E.2d 632, 635 (Va. 1981).

Stores, Inc., 192 S.E.2d 766, 767 (Va. 1972). If a statement is defamatory *per se*, Virginia law presumes that the plaintiff suffered actual damage to his reputation and, therefore, no proof of damages is required. *Fleming*, 275 S.E.2d at 636. The plaintiff still must establish the requisite intent, however, by a showing that the defendant knew the statement to be false or negligently failed to ascertain its truthfulness. *Great Coastal Express, Inc. v. Ellington*, 334 S.E.2d 846, 852 (Va. 1985). Punitive damages, on the other hand, require a showing of actual malice on the part of the defendant. *Gov't Micro Res., Inc. v. Jackson*, 624 S.E.2d 63, 70 (Va. 2006) (noting that a plaintiff must prove actual malice by clear and convincing evidence that the defendant either knew the statements were false at the time he made them, or that he made them with a reckless disregard for the truth).

The allegedly defamatory meaning of a statement is to be considered in light of the plain and natural meaning of the words used in the context as the community would naturally understand them. *Wells v. Liddy*, 186 F.3d 505, 523 (4th Cir. 1999). Words may be defamatory by their direct and explicit terms and also indirectly, "and it matters not how artful or disguised the modes in which the meaning is concealed if it is in fact defamatory." *Carwile v. Richmond Newspapers*, 82 S.E.2d 588, 592 (Va. 1954). Because a defamatory charge may be made "by inference, implication or insinuation," the Court must look not only to the actual words spoken, but also to all inferences fairly attributable to them. *Id.* Nevertheless, the meaning of the allegedly defamatory words cannot, by innuendo, be extended beyond their ordinary and common acceptation. *Id.*

1. The Statements Within the Letters Impute the Commission of a Crime

Words that impute the commission of a crime "punishable by imprisonment in a state or federal institution" or "regarded by public opinion as involving moral turpitude" are defamatory *per se*. *Great Coastal Express, Inc.*, 334 S.E.2d at 850. The words need not establish all the elements

of the offense imputed, only that a person committed a felony which he did not commit. *Schnupp v. Smith*, 457 S.E.2d 42, 46 (Va. 1995). Words that impute the commission of a felony are defamatory even if the individual committed another felony of the same general character. *James v. Powell*, 152 S.E. 539, 543 (Va. 1930) (finding newspaper liable for libel when it stated that the plaintiff was charged with both murder and robbery when he was charged only with murder).

In this case, the statements within Willick and Crane's letters to W&L and the ABA are "actionable statements" because they impute the commission of a crime upon Vaile that he did not commit. The statements, taken in their plain and popular sense in which the average person would naturally understand them, denote that Vaile was found "guilty" of the crimes of kidnaping, passport fraud, felony non-support of children, and RICO. Technically, a person may be charged with civil kidnaping and racketeering, but passport fraud and felony non-support of children are punishable only as criminal offenses and likely result in imprisonment. *See* 18 U.S.C. § 228 (stating that a person who fails to pay a child support obligation may be imprisoned for up to two years or fined); 18 U.S.C. § 1542 (stating that a person who makes a false statement to acquire a passport, either for his own use or the use of another, may be imprisoned for up to 10 years or fined).

A. Willick's Statement that Vaile Had Been Found "Guilty" Is Defamatory Per Se

The statement in Willick's letter—that Vaile had been found "guilty" of multiple violations of State and Federal law, including kidnaping, passport fraud, felony non-support of children, and violation of RICO—undoubtedly would be understood by those that heard or read it as charging Vaile with the commission *and* conviction of numerous crimes. Willick argues that the word "guilty" applies in both criminal and civil contexts because it is defined as having committed not only a crime, but also a reprehensible act, including a tort or fault. *See Black's Law Dictionary* 637 (5th ed. 1979). The fact that "guilty" applies civilly notwithstanding, the use of the word "felony"

alongside the word "guilty," as well as stating that someone is "guilty" of an offense that only applies in a criminal context, requires the Court to apply the word "guilty" in this sentence in only its criminal context. *See Burgess v. United States*, 128 S.Ct. 1572, 1577 (2008) (noting that the term "felony" is commonly defined to mean "a crime punishable by imprisonment for more than one year"); *Black's Law Dictionary* 555–56 (5th ed. 1979) (defining "felony" as "[a] serious crime usu[ally] punishable by imprisonment for more than one year or death"); *see also Webster's Third New Int'l Dictionary* 836 (1976) (defining "felony" as "any crime for which the punishment in federal law may be death or imprisonment for more than one year"). In addition, it is questionable that an average listener or reader would interpret "kidnaping" and "RICO" in their civil context given their placement alongside the crimes of "passport fraud" and "felony non-support of children."[2] Moreover, Willick's subsequent statement that questioned why W&L "would willingly countenance with such an individual" if it knew of his "history," in conjunction with his earlier statement of Vaile's offenses, intimates that Vaile is a criminal of such ill repute with which one would not willingly associate. Accordingly, the Court finds that the March 24, 2006 letter is defamatory *per se* because it imputes the commission and conviction of a crime to Vaile.

B. Crane's Statement that Vaile Had Committed Violations of Law Is Defamatory Per Se

Similarly, the statement in Crane's letter—that Vaile had been found to have "committed" multiple violations of State and Federal law, including kidnaping, passport fraud, felony non-support of children, and violation of RICO—would also be understood by those that heard or read it as charging Vaile with the commission, and presumably the conviction, of numerous crimes. The statement in Crane's letter is nearly identical to the defamatory statement in Willick's letter, but

[2]This assumes, of course, that an average person would know that a person can be held civilly liable for kidnaping and RICO and that they are not exclusively criminal offenses, which the Court believes to be a dubious proposition.

Crane did alter one key word—changing the word "guilty" in Willick's letter to "committed." Nevertheless, the acts of passport fraud and felony non-support of children are solely criminal acts and, as explained above, the word "felony" can only mean a serious criminal act. Moreover, the words "commit" literally means, among other things, to "perpetrate a crime." *Black's Law Dictionary* 248 (5th ed. 1979); *see also Webster's Third New Int'l Dictionary* 457 (1976) (defining "commit" to mean to "do, perform <convicted of committing crimes against the state>"). Therefore, by saying that Vaile had been "found" to have "committed" multiple violations of State and Federal law, Crane suggests that a judge or jury has held that Vaile did perpetrate a series of crimes. *Black's Law Dictionary* 568 (5th ed. 1979) (defining "find" as "[t]o determine a fact in dispute by verdict or decision," *i.e.*, to find guilty); *see also Webster's Third New Int'l Dictionary* 852 (1976) (defining "find" as "to arrive at a conclusion"). And, much like in Willick's letter, a reader is unlikely to interpret the words "kidnaping" and "RICO" in their civil context when read in conjunction with a person being "found" to have "committed" the felonies of passport fraud and non-support of children. As a result, the Court finds that the statement in the April 13, 2007 letter is also defamatory *per se* because it imputes the commission and conviction of a crime to Vaile.

2. The Letters Also Impute an Unfitness to Study or Practice Law

Further, Willick and Crane's letters are defamatory *per se* as a whole because they suggest Vaile is unfit to continue his studies or otherwise lacks the integrity to continue in the study of law. The study and practice of law is an honorable profession and an individual that has committed or has been convicted of a crime may be found to lack the honesty, trustworthiness, diligence, or reliability required of an applicant to be admitted to the bar. *See, e.g.*, Rules of the Virginia Board of Bar Examiners, § III, 2. Vaile had not yet graduated from W&L or sat for the bar, but he was still subject to the same obligation to prove that he could perform the obligations and responsibilities of

a practicing attorney. There is no question that Willick's letter portrayed Vaile as one unfit to study or practice the law by stating that he has been "found guilty" of several felonies which, if known, would prevent W&L from "willingly countenanc[ing] association with such an individual" and that his "history" of "violations of State and Federal law" was such that W&L should "reconsider his fitness for continued enrollment." Similarly, Crane's letter also portrayed Vaile as unfit to study or practice law by stating that he was "baffled" that W&L would "admit a student found to have committed multiple violations of State and Federal law" and that W&L should lose its accreditation because it admitted such a student and permitted him to continue to study the law. Thus, the Court finds that Willick and Crane's letters are defamatory *per se* not only because they impute the commission of a crime, but also because they impute that Vaile is unfit to perform the duties of a law student or lawyer and that he lacks the integrity required of such employment.

B. Issue of Whether Letters Were Privileged Is Question for Jury

In Virginia, both truth and privilege are defenses to defamation. *Ramey v. Kingsport Publ'g Corp.*, 905 F.Supp. 355, 358 (W.D. Va. 1955). Therefore, the Court must determine whether the defamatory statements within Willick and Crane's letters were either true or privileged.

1. The Truth of the Letters Is Immaterial Because the Letters May Be Privileged

It is well settled that truth is an absolute defense in an action for defamation. *Goddard v. Protective Life Corp.*, 82 F. Supp. 2d 545, 560 (E.D. Va. 2000). A defendant need not plead truth as an affirmative defense in Virginia, however, because the plaintiff now bears the initial burden of proving the falsity of the statements in order to prevail. *Gazette, Inc. v. Harris*, 325 S.E.2d 713, 725 (Va. 1985). The statements need not be literally true for the defendant to prevail; "[s]light inaccuracies of expression are immaterial provided the defamation charge is true in substance, and it is sufficient to show that the imputation is substantially true." *Jordan v. Kollman*, 612 S.E.2d 203,

letters are true, or at worst, substantially true and, therefore, cannot be defamatory. Further, Waite and Crane assert that the letters merely restate the findings made by Judge Hunt in his March 13, 2006 decision. Vaile counters that he has never been convicted, much less charged, of kidnaping, passport fraud, felony non-support of children, or racketeering, and that the only crime with which he actually has been convicted is speeding.

The fact that the parties disagree as to whether or not Vaile has been charged or convicted of a crime ordinarily would create a genuine issue of material fact such that summary judgment would be inappropriate. Moreover, the question of whether a plaintiff has sufficiently proven the falsity of the defamatory statements is to be decided by a jury under Virginia law. *Jordan*, 612 S.E.2d at 207. In this case, however, the question is not whether the letters are substantially true, but rather whether the letters are a substantially accurate representation of the decision issued by Judge Hunt on March 13, 2006.

2. Absolute Privilege to Publish Matters of Public Record Applies to the Letters

There can be no liability for a communication that is privileged. *Warren v. Bank of Marion*, 618 F. Supp. 317, 324 (W.D. Va. 1985); *see also* 50 AM. JUR. 2d *Libel and Slander* § 255 (2008). The defense of privilege is based on public policy to further the right of free speech by protecting certain communications of public or social interests from liability for defamation that otherwise would be actionable. 50 AM. JUR. 2d *Libel and Slander* § 255 (2008). A privilege can either be absolute or qualified depending upon the circumstances of the occasion. *Warren*, 618 F. Supp. at 324.

A qualified privilege is defined as a "communication, made in good faith, on a subject matter

in which the person communicating has an interest, or owes a duty, legal, moral, or social, [and] is qualifiedly privileged if made to a person having a corresponding interest or duty." *Taylor v. Grace*, 184 S.E. 211, 213 (Va. 1936). The defense of qualified privilege may be defeated by a finding of malice on the part of the jury, *Gazette, Inc.*, 325 S.E.2d at 727, but the court first must decide as a matter of law if the communication itself is privileged. *Fuste v. Riverside Healthcare Ass'n*, 575 S.E.2d 858, 863 (Va. 2003).

An absolute privilege, on the other hand, precludes liability for a defamatory statement even if the statement is made maliciously and with knowledge that it is false. *Lindeman v. Lesnick*, 604 S.E.2d 55, 58 (Va. 2004). The publication of public records to which everyone has a right of access is absolutely privileged in Virginia.[3] *Alexander Gazette Corp. v. West*, 93 S.E.2d 274, 279 (Va. 1956); Restatement (Second) of Torts § 611. The privilege is not lost if the record is incorrect or if it contains falsehoods. *Times-Dispatch Publ'g Corp. v. Zoll*, 139 S.E. 505, 507 (Va. 1927). The privilege exists so long as the published report is a fair and substantially accurate account of the public record or proceeding. *Alexander Gazette Corp.*, 93 S.E.2d at 279. If the publication substantially departs from the proceeding or record, however, then the privilege is lost.

The Court finds that the absolute privilege of publication of public records applies to the letters sent by Willick and Crane. The letters contained statements that allegedly represent the finding of the United States District Court of Nevada and attached the entire March 13, 2006 opinion for further reference. Therefore, the question is whether the letters substantially departed from Judge Hunt's decision such that the privilege was lost. This question is one left for the jury, however, because reasonable people could disagree whether the letters are an impartial and accurate

[3]This privilege applies to media and non-media defendants alike. *See, e.g.*, Restatement (Second) of Torts § 611.

account of Judge Hunt's decision. *See Rush v. Worell Enters., Inc.*, 21 Va. Cir. 203, 206–07 (Va. Cir. Ct. 1990) (noting that if the facts are not in dispute and reasonable people could not differ about whether the publication substantially departs from the public record then the trial court may decide if the privilege is lost, but if reasonable people could disagree, the issue should be decided by a jury).

Accordingly, the Court will grant partial summary judgment only as to the letters being defamatory *per se*. The question of whether Willick and Crane lost their absolute privilege by substantially departing from the record and whether Vaile can prove that Willick and Crane acted with the requisite intent sufficient to be awarded compensatory and punitive damages is left for a jury to decide.

C. Vaile Has Not Proven Emotional Distress or Outrageous Behavior

A plaintiff must prove four elements to prevail on a claim for intentional infliction of emotional distress in Virginia: (1) that the wrongdoer's conduct was intentional or reckless; (2) that the conduct was so outrageous and intolerable that it offends against the generally accepted standards of decency and morality; (3) that there is a causal connection between the wrongdoer's conduct and the emotional distress; and (4) that the emotional distress is severe. *Womack v. Eldridge*, 210 S.E.2d 145, 148 (Va. 1974). The issue of whether the conduct may be regarded as so extreme and outrageous as to permit recovery is a matter of law to be decided by the court unless reasonable persons could differ. *Id.*

Vaile alleges that Willick and Crane sent three letters as a pattern of communication to inflict severe emotional distress. The three letters included the Willick letter to W&L, the Crane letter to the ABA, and an unknown communication to Willick's employer in the summer of 2006, Baker Botts LLP. Vaile claimed that the communications caused him to suffer such severe emotional

distress that no reasonable person could be expected to endure and that it disrupted his daily personal life, including his preparation for the bar examination. Vaile has failed to produce any evidence at this point, however, to establish any of the elements. He has not shown that he suffered any emotional distress, severe or otherwise, other than that he felt concerned with his standing in the eyes of his professors at W&L and that the letters made it difficult to concentrate on his studies. In addition, the parties learned during discovery that it was not Willick and Crane that contacted Vaile's summer employer, but rather the Clark County Office of the District Attorney, Family Support Division, for the State of Nevada in order to collect his outstanding child support obligation. Even if this communication led to Vaile's ultimate dismissal from Baker Botts, this result cannot be attributed to the actions of Willick or Craine.

Further, Vaile has not offered any evidence that he has discussed his emotional health with a healthcare professional or designated any expert to testify as to his emotional distress. The emotional distress suffered by Vaile is certainly not of the severity that no reasonable person can be expected to endure. *See Russo v. White*, 400 S.E.2d 160, 163 (Va. 1991) (finding that plaintiff has not suffered extreme emotional distress when she fails to produce any evidence of objective physical injury caused by stress, that she sought medical attention, that she was confined at home or in a hospital, or that she lost income). Moreover, the Court is unable to find as a matter of law that the two letters sent by Willick and Crane are so outrageous and extreme that they offend generally accepted standards of decency. Therefore, the Court cannot find that Vaile has made a sufficient showing to establish the existence of the elements essential to his claim for intentional infliction of emotional distress and will grant summary judgment as to this claim. *Celotex*, 477 U.S. at 322 (holding that summary judgment is appropriate if nonmoving party fails to make a showing sufficient to establish the existence of an element essential to his claim).

IV. CONCLUSION

For the reasons stated herein, the Court hereby GRANTS in PART and DENIES in PART the parties' cross-motions for summary judgment. The Court finds that the letters sent by the Defendants are defamatory *per se* and hereby GRANTS partial summary judgment as to Plaintiff's motion for summary judgment, but only with respect to that issue [Docket #38]. In addition, the Court finds that Plaintiff has not satisfied any of the elements of his claim for intentional infliction of emotional distress and hereby GRANTS Defendants' motion for summary judgment [Docket #41] as to this claim. The Court otherwise DENIES summary judgment on Plaintiff's defamation claims as the question of whether Defendants have lost their absolute privilege and whether Plaintiff can prove that Defendants acted with the requisite intent sufficient to be awarded compensatory and punitive damages is for a jury to decide.

It is so ORDERED.

The Clerk of the Court is hereby directed to send a certified copy of this Order to all counsel of record.

Entered this 14th day of July, 2008

NORMAN K. MOON
UNITED STATES DISTRICT JUDGE

EXHIBIT E-4

Willick Law Group
3591 E. Bonanza Rd., Suite 200
Las Vegas, Nevada 89110-2101
Web page: www.willicklawgroup.com
Billing Q&A seth@willicklawgroup.com

June 16, 2008

Ms. Cisilie Anne Vaile Porsboll
Nordassloyfa 29A
1251 Oslo
Norway

File Number: 00-050.POST

RE: Vaile v. Vaile, Robert

Statement of Account for Services Rendered Through June 16, 2008

Professional Services

Emp	Description	Hours	Amount
Monday, March 3, 2008			
MS	Attend and observed trial or hearing. NO CHARGE	1.70	N/C
LF	Attended hearing.	2.00	220.00
LF	Last Minute hearing preps.	1.00	110.00
RLC	Hearing prep.	0.50	175.00
RLC	Attend hearing.	1.80	630.00
MSW	Prepare for and attend hearing in Dept. I; argue all; instructions to staff.	2.50	1,375.00
Tuesday, March 4, 2008			
RLC	Meeting with Case Manager on how to proceed in collection against Wachovia Bank.	0.30	105.00
LF	Drafting complaint against Wachovia.	2.50	275.00
LF	Drafting and Amended order.	1.20	132.00
Wednesday, March 5, 2008			
LF	Drafted Supplemental Filing AFC.	0.40	44.00
LF	Revised and edited amended order.	1.20	132.00
LF	Drafting complaint for downtown action against Wachovia.	1.20	132.00
Thursday, March 6, 2008			
RLC	Review of Order from 3/3/08.	0.30	105.00
Friday, March 7, 2008			
LF	Reviewed order and transmitted to Court.	0.30	33.00
MSW	Review and Revise Order after hearing; finalize, print, sign, and return to staff.	0.90	495.00

Exhibit 4

Emp	Description	Hours	Amount
Wednesday, March 12, 2008			
RLC	Phone call with DA on client's address and forms for registration in CA.	0.30	105.00
LF	Discussion with attorney on requested information by DA.	0.30	33.00
LF	Received request from DA for copy of Order and related information.	0.20	22.00
Thursday, March 13, 2008			
LF	Run Mlaw Calculations.	0.30	33.00
LF	Drafting response to DA.	0.50	55.00
Friday, March 21, 2008			
LF	Drafted Notice of Entry of Order.	0.50	55.00
LF	Transmitted Amended Order to Scotlund.	0.20	22.00
LF	Assembeld documents requested by DA's Office.	0.50	55.00
Sunday, March 23, 2008			
RLC	Execute NOE for Order.	0.10	35.00
Tuesday, March 25, 2008			
LF	Transmitted NOE to Court and opposing party.	0.20	22.00
Wednesday, March 26, 2008			
LF	Drafting response to DA request for documents and information.	1.70	187.00
Thursday, March 27, 2008			
RLC	Review and execute registration paperwork for DA.	0.50	175.00
Monday, March 31, 2008			
FF	Office conference with Seth re: child support check received from DA; email to Cisilie re: heads up check is coming NO CHARGE	0.10	N/C
Thursday, April 3, 2008			
LF	Discussion with attorney on status.	0.10	11.00
Friday, April 4, 2008			
RLC	Review Motion to reconsider.	0.50	175.00
LF	File maintenaince.	0.20	22.00
Monday, April 7, 2008			
LF	Drafted Subpoena for employment information.	0.20	22.00
RLC	Discussions with Case Manager and MSW.	0.20	70.00

Emp	Description	Hours	Amount
Wednesday, April 9, 2008			
RLC	Begin Opposition on Vaile Motion	2.70	945.00
MSW	Office conference with all relevant staff re: progress and next steps.	0.20	110.00
Thursday, April 10, 2008			
FF	Email to client re: need US bank account opened	0.10	11.00
FF	Review WP12 directories & move new documents that were inadvertantly save in 12 rather than 13 NO CHARGE	0.60	N/C
LF	Discussion with attorneys on collection of attorney fees awards.	0.30	33.00
RLC	Continue work on Opposition.	1.80	630.00
RLC	Meeting with Case Manager and MSW on registration of judgment.	0.30	105.00
RLC	Read email response to subpoena.	0.10	35.00
Friday, April 11, 2008			
RLC	Continue Opposition.	2.10	735.00
Sunday, April 13, 2008			
RLC	Finish Opposition.	2.00	700.00
Monday, April 14, 2008			
LF	Drafting Opposition to Motion to Reconsider.	2.00	220.00
LF	Transmitted opposition.	0.40	44.00
MSW	Review and Revise Opposition.	2.10	1,155.00
Thursday, April 17, 2008			
LF	Discussions with attorneys on followup actions.	0.40	44.00
Thursday, April 24, 2008			
LF	Drafting Order for Examination of Judgment Debtor. Made call to Federal Court to verify procedure for the filing.	1.00	110.00
LF	Drafting Motion for Examination of Judgment Debtor.	1.00	110.00
Friday, April 25, 2008			
LF	Telephone conversation with Federal Court on Examination of Judgment Debtor.	0.30	33.00
LF	Draft and editing of motion and order for examination of judgment debtor.	1.10	121.00
Monday, April 28, 2008			
LF	Drafting and editing motion and order for examination of judgment debtor.	0.50	55.00

Emp	Description	Hours	Amount
Tuesday, April 29, 2008			
RLC	Review Reply Brief.	0.30	105.00
LF	Drafting ex parte motion for examination judgment debtor.	1.40	154.00
Wednesday, April 30, 2008			
RLC	Research statute and review, edit, and complete Ex Parte Motion for State Court.	1.50	525.00
LF	Research and edit of ex parte motion for examination of judgment debtor and order.	1.20	132.00
Thursday, May 1, 2008			
RLC	Review and edit Order for Judgement Debtor Exam.	0.30	105.00
RLC	Draft Opposition to Motion for Rule 11 Sanctions.	0.10	35.00
Friday, May 2, 2008			
RLC	Phone call with Court Staff	0.10	35.00
FF	Prep for filing-Exparte Motion for Order NO CHARGE	0.30	N/C
Sunday, May 4, 2008			
RLC	Continue with Opposition to Rule 11 Motion.	1.40	490.00
Monday, May 5, 2008			
LF	Reviewing e-mails.	0.20	22.00
LF	Reveiwed case status.	0.40	44.00
LF	Telephone conversation with court on Ex Parte Motion and Order for Examination of Judgment Debtor, attempting to have set for same date and time as currently scheduled motion hearing 6/11/08.	0.20	22.00
LF	Transmitted order with copy of motion to court.	0.10	11.00
RLC	Review Opposition.	0.20	70.00
MSW	Review and Revise Opposition to Motion for Sanctions, etc.	0.60	330.00
Tuesday, May 6, 2008			
LF	Case review and status check.	0.30	33.00
Friday, May 9, 2008			
RLC	Meeting with Case manager on hearing dates.	0.50	175.00
RLC	Phone call with Court on motions.	0.20	70.00
LF	Research Federal Judgment Debtor Examination rules.	1.50	165.00
Thursday, May 15, 2008			
LF	Transmitting order and Ex Parte Judgment Debtor.	0.10	11.00
Sunday, May 18, 2008			
RLC	Review of new Ex Parte Motion for Exam of Judgment debtor (Federal).	0.20	70.00

Emp	Description	Hours	Amount
Wednesday, May 21, 2008			
LF	File Maintenance. NO CHARGE	1.00	N/C
Friday, May 23, 2008			
LF	File reveiw and reseach. NO CHARGE	2.00	N/C
LF	Research online case reveiw with file.	1.50	165.00
LF	Attempting to set up US Bank Account.	1.00	110.00
Tuesday, May 27, 2008			
RLC	Review of affidavits and Motion and execution. Also spoke with Virginia counsel about the affidavits,	1.30	455.00
LF	Received and reviewed Memorandum in Support of Renewed Motion.	0.20	22.00
Wednesday, June 4, 2008			
LF	Case review.	0.30	33.00
LF	Received Notice of appearance by Greta G. Muirhead, Esq.	0.10	11.00
LF	Discussions with attorneys on the entry into case of Ms. Muirhead.	0.30	33.00
Thursday, June 5, 2008			
RLC	Phone call with DA on child support collection.	0.20	70.00
LF	Discussion with attorney on case status.	0.20	22.00
Friday, June 6, 2008			
LF	Drafted proposed Bench Warrant.	0.30	33.00
LF	Discussions with attorneys.	0.20	22.00
LF	Drafted Supplement, ran new MLaw calculation based on new information from DA.	1.50	165.00
Sunday, June 8, 2008			
RLC	Execute Supplemental Exhibit.	0.10	35.00
Monday, June 9, 2008			
LF	Hearing preps.	1.70	187.00
Tuesday, June 10, 2008			
RLC	Meeting with JR on case.	0.40	140.00

Summary of Services

FF	Faith Fish	1.00 hr @ 0.00		N/C
FF	Faith Fish	0.10 hr @ 110.00	$	11.00
LF	Leonard Fowler III	34.40 hr @ 110.00	$	3784.00
LF	Leonard Fowler III	3.00 hr @ 0.00		N/C
MS	Mandy Schoepf	1.70 hr @ 0.00		N/C
MSW	Marshal S. Willick	6.30 hr @ 550.00	$	3465.00

RLC	Rick L. Crane	20.30 hr	@ 350.00	$ 7105.00

Total Professional Services	$ 14,365.00
4% Cost charge	3,635.88
Total Including Costs Charge	$ 18,000.88

Costs and Disbursements

Date	Description	Amount
03/25/08	Legal Process Service. Service on: Wachovia Bank	55.00
03/25/08	Legal Process Service. Service on: Wachovia Bank Corp., Inc.	35.00
03/27/08	Legal Process runner service. Out of Area.	20.00
04/04/08	Parking.	9.00
04/22/08	Legal Process Service. Service on: DA Family Support Division.	50.00
	Total Costs and Disbursements	$ 169.00

Interest Charge	$ 61,538.41
TOTAL NEW CHARGES	$ 79,708.29

PAYMENTS AND CREDITS

09/10/00	Applied from Retainer to fee charges	-2,396.00
09/10/00	Applied from Retainer to cost charges	-90.00
09/10/00	Applied from Retainer to tax charges	-14.00
11/01/00	Wire transfer from Norway.	-7,748.00
11/10/00	Released from security deposit to pay on balance.	-488.50
11/13/00	Wire transfer of funds from Norway.	-7,212.00
01/10/01	Applied from Retainer to fee charges	-9,537.73
01/10/01	Applied from Retainer to cost charges	-1,318.66
01/31/01	Clerk of the Court returned check number 12200 for estimated transcript costs.	-390.00
05/10/01	Applied from Retainer to fee charges	-8,207.10
05/10/01	Applied from Retainer to cost charges	-1,767.90
04/18/03	Refund check #03526 from Nevada Supreme Ct.	-250.00
01/14/04	Data entry error on 12/18/03 by FF. Should have been entered in TORT	-70.00
03/12/08	Entries should have been made into the GARN matter for LF on March 4 for 2.5 hours and March 5 for 1.2 hours	-407.00
04/10/08	Applied from Retainer to fee charges	-955.64
04/10/08	Applied from Retainer to cost charges	-2,224.10
04/30/08	Garnishment from Wachovia Corp.	-13.95
05/09/08	Applied from Retainer to fee charges	-351.00
05/09/08	Applied from Retainer to cost charges	-119.00
06/10/08	Applied from Retainer to fee charges	-652.14

06/10/08	Applied from Retainer to cost charges	-50.00
	Total Payments and Credits	$-44,262.72

SUMMARY OF ACCOUNT

Balance Forward	$ 0.00
Total New Charges	79,708.29
Payments and Credits	-44,262.72
TOTAL BALANCE DUE *** Plus Retainer Due Below ***	$129,856.48

Retainer Account

Retainer Balance Forward		$ 0.00
08/22/00	Wire Transfer from Norway.	2,500.00
09/10/00	Applied from Retainer to fee charges	-2,396.00
09/10/00	Applied from Retainer to cost charges	-90.00
09/10/00	Applied from Retainer to tax charges	-14.00
12/27/00	Wire transfer from Norway (100,000 Kroners)	10,856.39
01/10/01	Applied from Retainer to fee charges	-9,537.73
01/10/01	Applied from Retainer to cost charges	-1,318.66
05/10/01	Wire Transfer from Den Norske Bank, Oslo, Norway.	9,975.00
05/10/01	Applied from Retainer to fee charges	-8,207.10
05/10/01	Applied from Retainer to cost charges	-1,767.90
03/25/08	Two checks from DA's office, $7829.35 and $120.00. 60% to client ($4769.61) and 40% to outstanding balance.	3,179.74
04/10/08	Applied from Retainer to fee charges	-955.64
04/10/08	Applied from Retainer to cost charges	-2,224.10
04/22/08	Check 83019408 from State of Nevada (garnishment of child support) original check amount $575.00. 60/40 split to client.	230.00
04/28/08	Paid by Scotlund Vaile (Garnishment). $600.00 check $360.00 directly to client.	240.00
05/09/08	Applied from Retainer to fee charges	-351.00
05/09/08	Applied from Retainer to cost charges	-119.00
05/13/08	Paid by Scotlund Vaile Garnishment	264.00
05/23/08	Paid by Robert Scotlund Vaile (garnishment)	264.00
05/30/08	Garnishment of Robert Vaile.	174.14
06/10/08	Applied from Retainer to fee charges	-652.14
06/10/08	Applied from Retainer to cost charges	-50.00
New Retainer Account Balance		$ 0.00

Trust Account

Beginning Trust Balance		$ 0.00
08/22/00	Wire Transfer from Norway.	2,500.00
10/02/00	Paid to Gregoty & Bradshaw, P.C.: Texas Counsel	-503.50
11/01/00	Payment for legal services from Gregory & Bradshaw, P.C. (Texas Counsel)	-1,508.00
11/10/00	Release of security deposit to pay on balance.	-488.50
Ending Trust Balance		$ 0.00

'REBILL FOR 00-050.POST PREPARED 06/19/08 FOR ACTIVITY THROUGH 06/19/08

Ms. Cisilie Anne Vaile Porsboll
Nordassloyfa 29A
251 Oslo
Norway

RE: Vaile v. Vaile, Robert

Home Telephone: (011) 472-2617 153
Business Telephone: (011) 472-2579 350

Originating Attorney: MSW

Hourly Rate using Rate Schedule 14. Statement Format 1
Simple interest at APR of 18.00% will be charged on amounts past due 30 days
Retainer Funds will be applied against all charges

File Opened 08/07/00. Last Billed 06/10/08 for Activity through 06/10/08
Last Payment: 06/10/08 - $702.14

Previous Balance Due						$139,831.48
Unpaid Balance Forward						$139,831.48
Ref #	Date	Atty	Description	Hours	Rate	Amount
200986	06/10/08	RLC	Hearing preparation.	4.00	350	1,400.00
201022	06/10/08	MSW	Office conference with Attorney Crane, Re: upcoming hearing. (OCA)	0.30	550	165.00
200776	06/11/08	FF	Attend and observe hearing in Dept I; assist LF NO CHARGE	2.40		N/C
200777	06/11/08	FF	Research for c/s calculations & submitted pleadings	0.40	110	44.00
200778	06/11/08	FF	Additional time actually expended on this matter, but not charged to Client as directed by Marshal Willick. NO CHARGE (ADD)	0.20		N/C
200780	06/11/08	FF	Assist in research on MLaw Calculation used at Federal level	0.70	110	77.00
200781	06/11/08	FF	Additional time actually expended on this matter, but not charged to Client as directed by Marshal Willick. NO CHARGE (ADD)	0.20		N/C
200991	06/11/08	RLC	Finalized hearing prep.	0.70	350	245.00
200992	06/11/08	RLC	Attend motion heairng.	3.00	350	1,050.00
201023	06/11/08	MSW	Prepare for and attend hearing in Dept. I; argue all matters, interminably. (PREPH)	4.30	550	2,365.00
201003	06/13/08	RLC	Review of documents for Order to show cause and motion for sanctions.	0.70	350	245.00
201096	06/16/08	RLC	Draft Bar Complaint.	0.80	350	280.00
201103	06/16/08	RLC	Work on MLAW calc to prepare for July 11 hearing.	1.10	350	385.00

Summary of Services

FF	Faith Fish	2.80 hr @ 0.00		N/C
FF	Faith Fish	1.10 hr @ 110.00	$	121.00
MSW	Marshal S. Willick	4.60 hr @ 550.00	$	2530.00
RLC	Rick L. Crane	10.30 hr @ 350.00	$	3605.00

Total Professional Services	18.80	$ 6,256.00

Interest Charge

Late Charge on past due balance of $74,068.84 $ 328.74
Percentage Rate: 18.00 percent
Days in Billing Cycle: 9

TOTAL NEW CHARGES $ 6,584.74

SUMMARY OF ACCOUNT

Balance Forward	$139,831.48
Total New Charges	6,584.74
Payments and Credits	0.00
TOTAL BALANCE DUE *** Plus Retainer Due Below ***	$146,416.22

Aged Balance	Current	Over 30	Over 60	Over 90	Total
Fees	8250.00	6243.00	2165.00	65660.84	82318.84
Costs	0.00	0.00	0.00	0.00	0.00
4% Costs	0.00	0.00	0.00	2230.23	2230.23
Interest	1497.61	979.33	1019.14	58371.07	61867.15
TOTAL	9747.61	7222.33	3184.14	126262.14	146416.22

Total Hours to Date	650.45
Total Fees Case to Date	$118,695.00
Total Costs Case to Date	$ 6,480.91
Total 4% Costs to Date	$ 3,635.88
Total Interest Case to Date	$ 61,867.15
Total Payments Case to Date	$ 43,145.72
Total Credits Case to Date	$ 1,117.00

LATE CHARGE WILL BE CHARGED ON PAST DUE AMOUNTS AT THE RATE OF 18.00 PERCENT

R. Scotlund Vaile
PO Box 727
Kenwood, CA 95452
(707) 833-2350
Plaintiff in Proper Person

IN THE SUPREME COURT OF THE STATE OF NEVADA

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:_____ District Court Case No: 98D230385

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

Petitioner, Robert Scotlund Vaile 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 Division to enter orders disqualifying Marshal Willick and the Willick Law Group from representation of Defendant Porsboll below and vacating the order awarding $2,000.00 in attorney's fees and costs to the Willick Law Group.

Petitioner Vaile requests this Court to review the Petition on an Emergency Basis, to prevent Marshal Willick and his firm from representing Defendant below, and at the same time to continue to testify as the sole witness on the important issue relating to the statutory interpretation of NRS 125B.095. Petitioner asserts that these dual roles are a violation of the Nevada ethical rules, and that they prejudice him from being able to properly dispute the evidence and cross-examine Defendant's witness on this issue. Mr. Willick, the vendor witness, has a vested interest in this case, as he is the creator, owner and distributor of the MLAW Program. The method that this software uses to calculate child support penalties is the instant subject of litigation below. Since Mr. Willick's law firm is currently retaining 40% of all child support payments assessed against Petitioner, it is in Mr. Willick's interest to use a program that incorrectly inflates the amount of child support arrearages.

Petitioner requests that this Court address this ethical violation immediately. Although the other issues below will be subject to ordinary appellate time frames, this issue cannot wait. The correct interpretation of NRS 125B.095 at issue below will potentially affect thousands of non-custodial parents in Nevada. Thorough adjudication of this issue should not be tainted by violation of the ethical and evidentiary rules outlined in the Petition for Writ.

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.

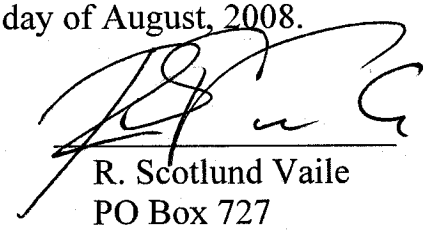
The chief justice may delegate to the clerk authority to decide motions that are subject to disposition by a single justice. An order issued by the clerk pursuant to this rule shall be subject to reconsideration by a single justice pursuant to motion filed within ten (10) days after entry of the clerk's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

Respectfully submitted this 13th day of August, 2008.



R. Scotlund Vaile
PO Box 727
Kenwood, CA 95452
(707) 833-2350
Plaintiff in Proper Person

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Plaintiff in Proper Person

IN THE SUPREME COURT OF THE STATE OF NEVADA

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:_____ District Court Case No: 98D230385

AFFIDAVIT OF R. SCOTLUND VAILE IN SUPPORT OF PETITION FOR A WRIT OF MANDAMUS PURSUANT TO NEVADA RULES OF APPELLATE PROCEDURE RULE 21

R. Scotlund Vaile, under penalty of perjury under the laws of the State of Nevada, declares as follows:

1. I am the Plaintiff in this case.
2. I am making this Declaration in support of the Petition for Writ of Mandamus Pursuant to NRAP Rule 21.

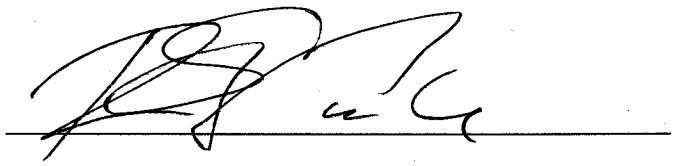
3. I am familiar with the contents of the petition and the emergency motion, and those matters that I do not have personal knowledge of, I state on information and belief.
4. I reside in Kenwood, California.
5. In April of 2002, this Court relinquished both personal and subject-matter jurisdiction of both Plaintiff and Defendant in this case based on the finding that neither party had ever resided in Nevada.
6. In November of 2007, Defendant sought to reduce child support arrears to judgment and retroactively set a sum certain dating back to the 1998 divorce.
7. On December 1, 2007, I moved for dismissal based on this Court's previous pronouncement that neither personal nor subject matter jurisdiction was proper in this case. The court denied my request.
8. Attorney Greta Muirhead agreed to appear for me in the hearings that resulted and discovered that the MLAW calculations for child support penalties were contrary to those calculated under NRS 125B.095.
9. Mr. Willick submitted documentary evidence and then testified at a hearing on this matter on July 11, 2008, specifically addressing the appropriate interpretation of the legislative history and the operation of the computer program in question.
10. On July 21, 2008, Ms. Muirhead filed a Motion to Disqualify Marshal Willick and the Willick Law Group as counsel of record for Defendant, based upon Nevada Rules of Professional Conduct 3.7.
11. In a hearing held on July 24, 2008, Judge Cheryl B. Moss declined to disqualify Mr. Willick or the Willick Law Group as attorney of record for Mrs. Porsboll and refused to classify the only information she received in support of the MLAW Program calculations as "evidence" or "testimony." Judge Moss further awarded $2,000 in attorney's fees and costs to the Willick Law Group for having to defend the Motion to Disqualify.

12. It was and remains my position that if this Court allows the lower court to now take jurisdiction over two parties who have never lived in Nevada, and that retroactive arrearages are proper under Nevada law, then child support penalties should be calculated pursuant to NRS 125B.095, instead of the calculations produced by the MLAW Program.

13. I am respectfully requesting that Judge Moss be immediately directed by this Honorable Court to enter orders disqualifying Marshal Willick and the Willick Law Group from representation of Defendant Porsboll below and vacating the order awarding $2,000.00 in attorney's fees and costs to the Willick Law Group.

14. Further I say not.

Under penalty of perjury, State of Nevada.



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IN THE SUPREME COURT OF THE STATE OF NEVADA

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:_____ District Court Case No: 98D230385

AFFIDAVIT OF R. SCOTLUND VAILE IN SUPPORT OF EMERGENCY MOTION TO EXPEDITE REVIEW OF PETITION FOR A WRIT OF MANDAMUS

R. Scotlund Vaile, under penalty of perjury under the laws of the State of Nevada, declares as follows:

1. I am the Plaintiff in this case.
2. 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 the emergency motion, and those matters that I do not have personal knowledge of, I state on information and belief.
4. I reside in Kenwood, California.
5. In April of 2002, this Court relinquished both personal and subject-matter jurisdiction of both Plaintiff and Defendant in this case based on the finding that neither party had ever resided in Nevada.
6. In November of 2007, Defendant sought to reduce child support arrears to judgment and retroactively set a sum certain dating back to the 1998 divorce.
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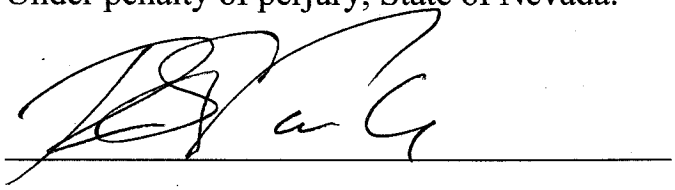

R. Scotlund Vaile