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,

1 Cuttone

ll vs.

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

Respondents.

Supreme Court Case No: <u>52244</u>
District Court Case No: 98D230385

## FILED

OCT 0 1 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. V DEPUTY CLERK

# 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.

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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 41may 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.]

Determination ofMotions for Procedural 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 thereto, and pursuant to subsection (c), motions for specified types of procedural orders may be disposed of by the clerk. affected party adversely by such action may 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** 

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Plaintiff in Proper Person

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### IN THE SUPREME COURT OF THE STATE OF NEVADA

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7	ROBERT SCOTLUND VAILE,	
8		Supreme Court Case No:
9	Petitioner,	District Court Case No: 98D230385
10	170	
	VS.	
11	THE EIGHTH JUDICIAL DISTRICT	
12	COURT OF THE STATE OF	
13	NEVADA, IN AND FOR THE	
14	COUNTY OF CLARK, AND THE HONORABLE CHERYL B. MOSS,	
15	DISTRICT JUDGE, FAMILY COURT	
16	DIVISION,	
17	Respondents.	
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### 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.

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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.
- 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.

R. Scotlund Vaile