ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

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ROBERT SCOTLUND VAILE.

Appellant,

vs.

CISILIE A. PORSBOLL f/k/a, CISILIE A VAILE.

Respondent.

SC NO: 52593
DC NO: D-98-230385

FILED

JUN 25 2009

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CLERK OF SUPREME COURT
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CHIEF DEPUTY CLERK

RESPONDENT'S ANSWER TO PETITION FOR EN BANC RECONSIDERATION

Appellant In Proper Person:

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09-14914

IN THE SUPREME COURT OF THE STATE OF NEVADA

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ROBERT SCOTLUND VAILE,

Petitioner,

vs.

CISILIE A. PORSBOLL, F/K/A CISILIE A. VAILE,

Respondent.

SC Case No: 52593
DC Case No: 98-D-230385

ANSWER TO PETITION FOR EN BANC RECONSIDERATION OF ORDER DISMISSING APPEAL

I. INTRODUCTION; SCOPE OF ISSUES

Scott continues trying to re-litigate this Court's 2002 *Opinion* finding that he kidnaped his children. The United States Supreme Court has refused Cert twice, and the Ninth Circuit Court of Appeals has outright forbidden him from filing any more papers on these issues. He has worn out his welcome in those two courts and has become a vexatious and frivolous litigant in every other venue in which he has appeared.[1]

His current *Petition for En Banc Reconsideration* before this Court is more of same; in essence, Scott wants this Court to decide that it never found that he kidnaped his children in 2002 when it ordered return of those kidnaped children to their custodial mother in Norway. All in an

[1] *See Vaile v. Eighth Judicial District Court*, 118 Nev. 262, 44 P.3d 506 (2002) (holding that the kidnapped children were to be returned to their mother in Norway); *Vaile v. Porsboll, et al.*, United States Supreme Court (rejecting Scott's attack on this Court's *Opinion* requiring return of the children); *Vaile v. Vaile*, Case No. D 230385 (finding that as of July 24, 2003, Scott owes $116,732.09 for the attorney's fees incurred in recovering the children by Nevada counsel, and as of October 9, 2008, Scott owes the sum of $118,369.96, in principal, and $45,089.27 in interest for a total of $163,459.23 in child support arrears that Scott has refused to pay since the kidnaping, plus penalties); *In re Kaia Louise Vaile and Kamilla Jane Vaile*, No. 2000-61344–393, District Court of Denton County, Texas 393rd Judicial District (finding as of April 17, 2002, Scott owes attorney's fees of $20,359.00 with interest at 10% per annum, compounded annually, travel expenses of $25,060.00, with interest at 10% per year compounded annually, and an award for $81.00 for costs of court with interest at 10% per annum, compounded annually, for fees incurred in recovering the children by Texas counsel); *Vaile, Cisilie A. v. Vaile, Robert, Scotlund*, No. 00-3031 A/64, Oslo District Court, dated February 6, 2003, confirming Cisilie's custody of the children and entitlement to payment of child support; *Vaile v. Vaile et al.*, No. CV-S-02-0706-RLH-RJJ (*Judgment* dated March 13, 2006, holding Scott liable for $450,000 in combined damages in favor of Cisilie A. Porsboll, Kaia Louise Vaile, and Kamilla Jane Vaile, for injury, pain and suffering, and $100,000 in punitive damages); *Vaile v. Vaile, et al.*, No. 06-15731, Ninth Circuit Court of Appeals (rejecting Scott's attacks on the tort suit judgment).

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effort to evade paying the judgments against him – which exceed $1,000,000 – and to starve out his ex-wife by forcing her to respond to every pleading with no hope of financial support.

This Court's *Order Directing Answer to Petition For En Banc Reconsideration* filed April 23, 2009, appears to confine the issue at hand to the timeliness of Scott's notices of appeal.

Accordingly, this *Answer* is confined to the one issue of Scott's *Petition for En Banc Reconsideration* of the *Order Dismissing Appeal*. If we have misperceived, and the Court actually desires us to address any other matters, we ask that the Court to so direct, and we will submit a supplemental *Answer* accordingly.

II. STATEMENT OF FACTS

Scott's recitation of the procedural history is flawed, and in our opinion deliberately intended to confuse and misdirect the Court. Due to the sheer number of filings and writs/appeals by Scott, counsel was forced to create a flow chart to trace events, which is attached as Exhibit CC, for the Court's convenience. Counsel has only attached documents it considers necessary to the Court's consideration of the issue specified; the full record is larger. The record here is as follows:

The motion that Scott claims to have "revived" the case was Cisilie's *"Motion to Reduce Arrears in Child Support to Judgment, to Establish a Sum Certain Due Each Month in Child Support, and for Attorney's Fees and Costs."* It was filed November 14, 2007 (not, as he states, November 9, 2007).[2]

On December 4, 2007, Scott filed a *Motion to Dismiss [etc.]*[3] Exhibit A.

On January 15, 2008, the court held it's hearing on Cisilie's *Motion*. Scott filed no opposition, and did not appear. The court issued its *Order*, along with *Notice of Entry of the Order*, on January 15, 2008. Exhibit B & C.

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[2] Scott claimed in his December 4, 2007, *Motion* that he received Cisilie's *Motion and Notice of Motion* on November 26, 2007, for the hearing scheduled for January 15, 2008, which still left him more than 50 days to respond.

[3] Full title: "*Motion to Dismiss Defendant's Pending Motion and Prohibition on Subsequent Filings and To Declare this Case Closed Based On Final Judgment by the Nevada Supreme Court, Lack of Subject Matter Jurisdiction, Lack of Personal Jurisdiction, Insufficiency of Process, and/or Insufficiency of Service of Process and Res Judicata, and To Issue Sanctions, or, In the Alternative, Motion to Stay Case.*"

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On January 23, 2008, Scott filed a *Motion to Set Aside Order of January 15, 2008, and to Reconsider and Rehear the Matter, and Motion to Reopen Discovery, and Motion to Stay Enforcement of the January 15, 2008 Order*. Exhibit D. The district court heard his motion on March 3, 2008, and Scott's motion to set aside was (technically) granted in part.[4] The amended order was filed March 20, 2008, and noticed on March 25, 2008. As the January 15 order was set aside, it was no longer appealable, pursuant to NRAP 3A(b)(2).[5]

On February 14, 2008, Scott filed an *Ex Parte Motion for Order Shortening Time*, *Order Shortening Time*, and his *Notice of Entry of Order*. Exhibits E, F, & G. Scott's *Ex Parte Motion for Order Shortening Time*, combined his December 4, 2007, *Motion* with his January 23, 2008, *Motion*. Exhibit A & D.

On March 3, 2008, the court heard Scott's *Motion to Set Aside* and his *Motion to Dismiss*.

On March 20, 2008, the court issued its *Order* substituting more detailed findings and conclusions than had been in the January 15, 2008, *Order*, setting a sum certain dollar amount for child support, and setting the amount of arrears. The court denied various of Scott's combined *Motions: to Dismiss; to Reopen Discovery; for Insufficiency of Process, and/or Insufficiency of Service of Process; to Stay Case; and for Prohibition on Subsequent Filings and to Declare this Case Closed.* The court further noted that the *Order* of March 20, 2008, was a final, enforceable order.[6] Exhibit H.

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[4] Setting aside the summary findings of the January 15 order, and substituting for them the much longer and more detailed findings of fact and conclusions of law in the March 20 order, while making the same substantive arrearage orders and increasing the sum of fees awarded to Cisilie.

[5] Rule 3A(b)(2), in pertinent part: . . . , and from any special order made after final judgment except an order granting a motion filed and served within sixty (60) days following entry of a default judgment, setting aside the judgment pursuant to NRCP 60(b)(1).

[6] The Court should note that Scott has claimed this *Order* was "unenforceable." In fact, he is actually (again) suing this law firm in Virginia at the present time, claiming that he could not be made to actually pay the child support arrears found to be owing because he requested reconsideration (rehearing) of the order after it issued. Of course, such a motion is not a tolling motion (*see Nardozzi v. Clark County Sch. Dist.*, 108 Nev. 7, 823 P.2d 285 (1992)), "a Motion for rehearing cannot reasonably be construed as a motion to alter or amend the judgment pursuant to subsection (e) of [NRCP 59]"). To the degree the order was substantively appealable, Scott had only 30 days of notice of its entry within which to appeal it, regardless of his filings. NRAP 4. And, of course, such a *Motion for Reconsideration* has no impact on the finality and enforceability of an order. *See* NRCP 62 (stays of enforcement); *State ex rel. P.C. v. District Court*, 94 Nev. 42, 574 P.2d 272 (1978) (there is no such thing in this State as an automatic stay of enforcement by simply filing a *Notice of Appeal*, or any motion in the district court – the argument that there should be an automatic stay is "torture [of] our

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On March 25, 2008, *Notice of Entry* of the March 20, 2008, *Order* was filed. Exhibit I.

On March 31, 2008, Scott filed his *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 [sic] Order*. Exhibit J.

On May 5, 2008, Scott filed a motion entitled *Renewed Motion for Sanctions*. Exhibit K. The same day, Cisilie filed her *Motion for Examination of Judgment Debtor*.

On May 10, 2008, the court issued the requested *Order for Examination of Judgment Debtor*, relating to the hundreds of thousands of dollars Scott had been found to owe in child support arrears and attorney's fees, scheduling the examination for June 11, 2008. Exhibit L.

On June 11, 2008, the court held a hearing on Scott's March 31 motion filing that sought reconsideration of the *Order* actually filed March 20.[7]

On July 7, 2008, Scott filed a *Petition for Writ of Mandamus*, challenging the district court's authority to compel him to appear for an examination of judgment debtor, Supreme Court Case No. 51981. The Court directed that Cisilie *Answer* on July 9, 2008; we did so on her behalf, and Scott's petition was denied October 13, 2008. Exhibits M & T.

On July 11, 2008, the district court held its hearing on Scott's *Motion for Sanctions*; Scott's request to examine the child support penalty calculation methodology was continued to July 24, 2008.[8]

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prevailing rules of court," would "render the language meaningless," and "would do untold mischief to the effective administration of justice.")) Rather, to prevent enforcement of an order, a party must specifically request a stay and post a supersedeas bond. If the stay is not granted, the *Order* remains enforceable by all lawful means – including execution and garnishment, until and unless it is reversed. Scott's confusion – or deliberate mis-statement – as to the difference between an order "final" for enforcement purposes and one appealable under the rules is obvious.

[7] At this hearing Ms. Muirhead, made her appearance in an *unbundled* capacity for Scott, and made an oral request for the Judge to recuse as she was running against her in the coming election. This request was denied. Ms. Muirhead then attempted to have the judge recuse because she had been named in interrogatories in a Virginia proceeding between Robert Scotlund Vaile v. Willick Law Group, et. al., Case No. 6:07cv00011. This request was also denied. It should be noted that Scott hired Ms. Muirhead specifically because she was running against Judge Moss in the upcoming election with the intent to force a recusal. Ms. Muirhead aided in this attempt by openly requesting the recusal. While Ms. Muirhead's actions were sanctionable under this Court's decision in *Millen v. Eighth Judicial Dist. Court*, 118 Nev. 1245, 148 P.3d 694 (2006), no sanctions were imposed by the court.

[8] On July 11, 2008, in open court and during a hearing, Scott filed a "Supplemental Brief" for the first time putting into question the methodology of calculation of the sum of penalties under NRS 125B.090. This is why this Court's *Order* filed October 13, 2008, noting that matters had not been finally resolved and any appeals filed prior to that date were

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On August 14, 2008, Scott filed another *Petition for Writ of Mandamus*, Supreme Court Case No. 52244, regarding the district court's ruling refusing to disqualify this firm as counsel, and again Cisilie was directed to *Answer*. That petition was denied on March 5, 2009. Exhibits Q & AA.

On August 15, 2008, the district court issued its *Order for the Hearing Held June 11, 2008.* All of Scotlund's substantive requests were denied. *Notice of Entry* was filed on September 11, 2008. Exhibit N & O. This order partially resolved the matters raised in Scott's March 31 motion filing, and deferred others for later resolution.

On August 26, 2008, Scott petitioned the United States Supreme Court for a Writ of Certiorari, which was denied on November 3, 2008. Exhibit W.

On September 14, 2008, Scott filed his *Notice of Appeal* in this Court, Case No. 52457, seeking to appeal the orders issued August 15, 2008, and March 20, 2008. This appeal was dismissed October 13, 2008, on the basis that the orders were not substantively appealable. Exhibit P & U. Scott's appeal of the March 20 order, even if the order ***had*** been an appealable order, was filed some 143 days after his appeal time had run. An untimely notice of appeal fails to vest jurisdiction in this Court.[9]

On October 9, 2008, the district court issued and entered its *Notice of Entry of Findings of Fact, Conclusions of Law, Final Decision and Order*, finding that Scott did indeed have to pay child support and awarding Cisilie an additional $15,000 in attorney's fees. Exhibit R.

On October 10, 2008, Scott filed what he titled a *Renewed Notice of Appeal*, Supreme Court Case No. 52593, ***again*** seeking to appeal the orders issued August 15, 2008, and March 20, 2008. Exhibit S. This Court dismissed that appeal on January 15, 2009, noting that the attempted appeal of the March 20, 2008, order was untimely, and (again) that the order issued August 15, 2008, was not substantively appealable. Exhibit X.

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from substantively non-appealable orders, was correct. Of course, the March 20, 2008, *Order* reducing to judgment sums of support, interest, and penalties, remained completely enforceable during the pendency of the motion seeking to determine that question. *State ex rel. P.C. v. District Court, supra.*

[9] *Whitman v. Whitman*, 108 Nev, 949, 840 P.2d 1232 (1992), *cert. denied*, 508 U.S. 964, 113 S.Ct. 2941, 124 L. Ed. 2d 690 (1993).

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As detailed above, both orders (March 20 and August 15) were already the subject of Scott's earlier-filed and then-still-pending appeal, as the Court's dismissal of Scott's earlier appeal was not filed until October 13, which fact ***also*** made Scott's purported appeal premature and ineffective.[10] It is contrary to fundamental judicial procedure to permit two actions to remain pending between the same parties upon the identical cause.[11] Additionally, as the Court noted in the dismissal, the orders being appealed were not substantively appealable as they were subject to review and modification.

Scott claims to have next filed what he titled an *Amended Notice of Appeal*, dated November 1, 2008, seeking to appeal the October 9, 2008, *Findings of Fact, Conclusions of Law, Final Decision and Order*, and (***again***) the *Orders* filed August 15, 2008, and March 20, 2008. This purported "amended appeal" does not appear in the record, and was not apparently ever filed.[12] Exhibit V.

On November 4, 2008, Scott filed in this Court his *Motion to Allow Full Briefing and Motion to Extend Time for Filing of Transcript Request*. Supreme Court Case No. 52593. As noted above, this Court issued its *Order Dismissing Appeal* on January 15, 2009. Exhibit X.

On January 28, 2009, Scott filed his *Motion for Rehearing and Reconsideration*, which was denied March 5, 2009, and another appeal, entitled *Second Notice of Appeal*, yet again attempting to appeal the March 20 and August 15 orders, and this time adding the October 9 order. The appeal was itself untimely, as more than 30 days had lapsed since the October 9 order was noticed.[13] In any event, it was not any more substantively appealable than the various other earlier orders, because it was not a final order, but rather specifically deferred decisions on material issues.

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[10] *Hill v. Warden, Nev. State Prison*, 96 Nev. 38, 604 P.2d 807 (1980); *Chapman Indus. v. United Ins. Co. of Am.*, 110 Nev. 454, 874 P.2d 739 (1994).

[11] *Fernandez v. Infusaid Corp., et* al., 110 Nev. 187, 871 P.2d 292 (1994); *Fitzharris v. Phillips*, 74 Nev. 371, 333 P.2d 721 (1958).

[12] From what we know of Scott, this document was probably prepared at some later time, and then sent to us in an attempt to retroactively claim that an appeal had been "filed" in an effort to evade what Scott perceived to be the filing deadline.

[13] Scott's *Notice of Appeal* of the October 9, 2008, order came some 111 days later, 81 days after the time allowed to appeal.

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On February 27, 2009, the district court issued its *Order for Hearing Held July 24, 2008.* Exhibit Y. *Notice of Entry* was filed March 2, 2009. Exhibit Z.

On March 18, 2009, Scott filed his *Petition for En Banc Reconsideration.* The Court issued its *Order Directing Answer to Petition for En Banc Reconsideration* on April 23, 2009.

On April 10, 2009, Scott filed what he entitled *Second Amended Notice of Appeal*, appealing the order dated February 27, 2009, the order dated October 9, 2008, the order of August 15, 2008, and the order of March 20, 2008. The Court treated this as a new appeal, and assigned Supreme Court Case No. 53687. No notice of this appeal has ever been served on this office. Presumably, it remains pending, and should be dismissed for the same reasons as stated previously.

The final order resolving all deferred issues was not entered by the district court until April 17, 2009. Exhibit BB. This order finally ruled on the calculation methodology to be employed for penalties on child support under NRS 125B.090. Because we believe the ruling on that point is in error, we have appealed from that final order.[14] No cross-appeal was filed, and no matters remain pending before the district court.

III. ARGUMENT

A. DEFECTS

1. Scott's *Petition for En Banc Reconsideration* is untimely pursuant to NRAP 40A(b).[15] The *Order Denying Rehearing* was filed March 5, 2009, and Scott's *Petition for En Banc Reconsideration* was due by March 16,[16] but not filed until March 18, 2009, 13 days after the written entry of the panel's decision. The rule requires that such a petition must be made within 10 days of written entry of the panel's decision.

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[14] Case No. 53798.

[15] Rule 40A(b): *Time for filing: effect of filing on finality of judgment.* Any party may petition for en banc reconsideration of a panel's decision within ten (10) days after written entry of a panel decision to deny rehearing. The three day mailing period set forth in Rule 26(c) does not apply to the time limits set by this rule.

[16] The ten days actually ran March 15, but was extended to March 16 because the 15th was a Sunday. NRAP 40A; NRAP 26(c).

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2. Scott's allegation that the full court's reconsideration is necessary to secure and maintain uniformity of the court's decisions is not supported by any citations to prior published opinions, nor does it show how the panel's decision is contrary to any prior, published opinions of this court. In fact, it is not so.

3. Scott's many requests for reconsideration or rehearings do not indicate any grounds that any proceeding involves a substantial precedential, constitutional or public policy issue, nor does it demonstrate the impact of the panel's decision beyond the litigants involved.

4. Scott's *Petition for En Banc Reconsideration* fails specifically to cite any overlooked or misapprehended material fact or a material question of law in the case. It does not suggest that the Court has overlooked, misapplied, or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case.

5. Scott's appeals ***are*** in fact untimely, being either premature or late.[17]

B. THE RELEVANT LEGAL STANDARD

Due to the number of filings in this matter by Scott, the weeding out of what is relevant and germane to the issue before the court has required Respondent to create a time line and a flow chart to explain, examine, and properly show the events in this matter, and how they are related.[18]

En Banc Reconsideration of a panel's decision is not favored by the Court, and a motion seeking such reconsideration must show that it is necessary to secure or maintain uniformity of the Court's decisions, or that the proceedings involve a substantial precedential, constitutional, or public policy issue. Scott has not demonstrated that any such issues are present. Mere naked assertions that the Court had misapprehended any material issue of fact or law does not make it so, nor does it warrant a reconsideration of the Court's order denying the rehearing.

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[17] The Court has noted Scott's untimely or late filings. The most recent appeal by Scott was actually premature, in that he filed it seven days before the final decision was rendered by the lower court. That appeal has yet to be noticed to this office. It should also be noted that his time to file a timely appeal from the actual final *Order* – ironically the only substantively appealable order in the series from which he has attempted to appeal – passed on May 18, 2009.

[18] *See* Exhibit CC.

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C. THE COURT SHOULD DENY *EN BANC RECONSIDERATION*

The panel's decision is not contrary to any prior published opinions. On the face of the documents in this case an *En Banc Reconsideration* of the panel's decision has no purpose other than to further multiply the proceedings, increase costs unreasonably, and waste the Court's time. It is vexatious on its face.

Throughout the record, Scott has claimed that his motions (in the district court and this Court) have been for "rehearing," yet he has not once offered any new evidence for the court to consider in arriving at its decision.[19] Scott has not addressed the fact that all the orders he has appealed from are not appealable. His appeals have been from orders that are not final, from orders that have passed the time for appeal, or are premature in appealing an order of which the order had not yet been issued by the court.

Not a single appeal filed by Scott was timely or appropriate and the Court's decisions on the appealability of those orders has been correct.

Scott now attempts to argue that there is no jurisdiction for the enforcement of his child support obligation, quoting (over-selectively) from the Court's 2002 decision,[20] but neglecting other relevant portions, such as:

> Because the voidable decree has not been set aside, the court had colorable personal jurisdiction over the parties and the subject matter of their marital status. Simply because a court might order one party to pay child support to another in the exercise of its personal jurisdiction over the parties does not permit the court to extend its jurisdiction to the subject matter of child custody and visitation.

And, of course, UIFSA's "Extended Personal Jurisdiction"[21] provides jurisdiction to impose a child support award whenever someone files papers in a Nevada court submitting himself to the jurisdiction of the court.[22]

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[19] *Able Elec., Inc. v. Kaufman*, 104 Nev. 29, 752 P.2d 218 (1988).

[20] *Vaile v. Eighth Judicial District Court*, 118 Nev. 262, 44 P.3d 506 (2002).

[21] *See* NRS ch. 130, Article 2 (Jurisdiction).

[22] NRS 130.201(2): "Submission by the obligor to the jurisdiction of this State by consent, by entering a general appearance or filing a responsive document having the effect of waiving any contest to personal jurisdiction."

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Simply put, Scott's *Petition for En Banc Reconsideration* on its face ***does not*** meet the rigid standards of subsection (a) of NRAP 40A. His *Petition* and whatever other pending appeals he has filed from the various substantively non-appealable orders should be dismissed with prejudice.

IV. CONCLUSION

The *Petition* should be summarily dismissed, with costs assessed against Petitioner.

A review of this response can and should be considered by this Court in deciding the *Motion* we have filed regarding attorney's fees on appeal. This is the fourth time we have been compelled – without compensation – to respond to appellate filings by Scott that should never have been made, based on faulty – or fatuous – "reasoning" and outright falsification of the record on his part.

The history in this matter is nearly beyond belief. The enormous costs of this litigation – over $600,000 in attorney time and costs incurred by this office (and unpaid by anyone) since we sought to recover the kidnaped children nearly a decade ago – is outrageous on any scale, and solely attributable to the continuing abuse of the courts, and this office, by Scott. Scott's continuous, unrelenting, and substantively and procedurally improper filings can only be seen as vexatious, frivolous, and harassing. This Court can – and should – take action to stop it, effective immediately.

Dated this 11th day of June, 2009.

Respectfully Submitted:

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CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this *Answer To Petition for En Banc Reconsideration*, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e) which requires every assertion in the brief regarding matters in the record to be supported by appropriate references to the record on appeal. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 11th day of June, 2009.

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CERTIFICATE OF SERVICE

I hereby certify that service of the foregoing was made on the 11th day of June, 2009, by U.S. Mail addressed as follows:

Robert Scotlund Vaile
P.O. Box 727
Kenwood, California 95452
Petitioner In Proper Person

That there is regular communication between the place of mailing and the place so addressed.

Leonard A. Fowler III
An Employee of the WILLICK LAW GROUP

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