MS. MUIRHEAD: There was nc changes, but they knew how the --

THE COURT: Yes.

MS. MUIRHEAD: -- State was doing it. If you look through the legislative history -- and I would submit that the statute is ambiguous. When you look through the legislative history and I've attached --

THE COURT: So what's your point of paragraph 3?

MS. MUIRHEAD: That that's what he argued he wanted that -- he -- that was his argument and they didn't adopt it. They didn't --

MR. WILLICK: Wrong.

MS. MUIRHEAD: -- comment about it at all.

MR. WILLICK: I said leave the language exactly the same as it was, because it's exactly correct under the way the program calculates.

MS. MUIRHEAD: Okay.

THE COURT: All right.

MS. MUIRHEAD: His program --

THE COURT: Yes, I hear your argument --

MS. MUIRHEAD: Okay.

THE COURT: -- and I hear your argument.

MS. MUIRHEAD: His program calculates --

THE COURT: I'll weigh in on that.

MS. MUIRHEAD: -- daily penalties. There is nothing in the statute that talks about daily penalties. When I read the statute -- and I have the big English background too -- when I read the statute, I saw the word installment. What does installment mean to me? Monthly child support obligation. It was a no-brainer for me when it talks about the amount of the monthly child support payment that becomes un- -- that is unpaid or any portion thereof. So if Scotlund didn't pay any of his $1,300 that you have recently decided he should have paid, then it's 10 percent of $1,300. If you don't divide it by 12 per annum, you come up with $130. If you divide it by 12 per annum, you come up with $10.83.

THE COURT: Okay.

MS. MUIRHEAD: If he only paid 1,000 of his 1,300 due, that leaves the portion thereof of the installment that's left undue to be $300. 10 percent of $300 is 30 or divided by 12, on and on. The leg -- we -- they talked about this in the legislative history about it being a one time penalty to be assessed monthly for the noncustodial parents failure to pay. They talk about it not wanting to be double interest. This is double interest in those years where prior --

MR. WILLICK: Objection. I don't believe those words appear in the legislative history. And the unserved examples that was dumped on us in open court today, I can't possible go

through the 200 pages, the negative counsel's assertion, but if she's going to claim that those words are in there somewhere, it behooves her to identify the exact spot in question.

THE COURT: Attorney Winne did it in his brief.

MR. WILLICK: I don't recall ever seeing the words one time in the legislative history.

THE COURT: Or not one time, double interest.

MR. WILLICK: That's what she just said is in the legislative history.

MS. MUIRHEAD: It is in the legislative history.

MR. WILLICK: And she has dumped on us --

THE COURT: No. Well, Attorney Ewert said that, a one time assessment.

MR. WILLICK: Well, that's what they do. The discussion is --

THE COURT: Yeah. And they take no position. I understand.

MR. WILLICK: Right.

THE COURT: No position one way or the other.

MR. WILLICK: No. And we're all in agreement but what --

THE COURT: The result.

MR. WILLICK: -- what it --

THE COURT: The consequences.

MR. WILLICK: -- what it does.

THE COURT: Yes.

MR. WILLICK: The question --

THE COURT: Yes.

MR. WILLICK: -- is what the legislature --

THE COURT: Yes.

MR. WILLICK: -- said they wanted to do.

THE COURT: Yes.

MR. WILLICK: And that's what counsel just misstated, which was the reason for my objection.

MS. MUIRHEAD: Assemblyman --

THE COURT: Noted.

MS. MUIRHEAD: -- Carpenter --

THE COURT: Okay. Where are you now?

MS. MUIRHEAD: It's page 20. And there's lots of discussion of Exhibit 5. Talks about how they -- they know that the penalty is being calculated.

THE COURT: You're in Exhibit 5?

MS. MUIRHEAD: Second paragraph, page 20. Assemblyman Carter [sic], it says a 10 percent --

MR. WILLICK: Wait a minute.

THE COURT: I'd like to -- wait. I'd like to have it in front of me too. Exhibit 5.

MR. CRANE: What is the --

MR. WILLICK: This is the 2005 proceedings. This has nothing to do with the 1993 proceedings in which the thing was cooked up. I mean, counsel just misstated a matter of fact. She said that in 1993 when the penalty was conceived, it was designed as a one time penalty for the legislative history.

THE COURT: I thought we were referring to --

MR. WILLICK: I --

THE COURT: -- the -- Chairman Sader's (ph) proceedings.

MS. MUIRHEAD: 2005 was when they discussed AB473 (ph) changes to NRS 125B 095.

MR. WILLICK: Which would have changed it to do what it is the State does and that brief amendment was rejected.

THE COURT: Rejected and the statute was left with all words intact. But you're on page 20. Let me get to where you're at and I'd like to see what you're arguing. Everybody there? I'm almost there.

MR. CRANE: We're on page 20.

MR. WILLICK: We're on page 20 of the 2000 --

THE COURT: Okay. Carpenter? It says a 10 percent penalty. Go ahead.

MS. MUIRHEAD: Well, I'm in the prior page 2 from Mr. Carpenter.

THE COURT: Okay.

MS. MUIRHEAD: I am concerned about the amount of interest that you're going to be charging.

THE COURT: Going to be charging.

MS. MUIRHEAD: You're charging 10 percent every month, so in a year that adds up to 120 percent. They couldn't pay -- but it's 10 percent. A lot of these people won't be able to pay that. So they're talking about how they understand the State does it.

MR. WILLICK: And Mr. Carpenter was wrong, because it's not done 10 percent every month. The State does it 10 percent once, and that was corrected later in the submissions by Mr. Winne and others.

THE COURT: Okay. All right. Continue. At the end of the proceedings, is -- does the chairman -- Sader (ph), is that his name?

MR. WILLICK: Sader (ph), yes.

THE COURT: Yes. Does he speak to summarize for the whole committee?

MR. WILLICK: No.

THE COURT: He doesn't. Okay.

MR. WILLICK: The committee took it under advisement after the -- I think my testimony is the last item in the legislative --

THE COURT: And they have to -- do they vote

democratically?

MR. WILLICK: I'm sorry?

THE COURT: Do they vote democratically on the acceptance or rejection of the amendment?

MR. WILLICK: I don't --

THE COURT: Is that how --

MR. WILLICK: -- the only thing that exists in the legislative history after the testimony that you see ending on page 24 --

THE COURT: Yeah.

MR. WILLICK: -- which are my comments --

THE COURT: Yes.

MR. WILLICK: -- is the fact that the bill was amended to include the employer caused delinquency clause and no other changes. That's the only thing it'll say.

MS. MUIRHEAD: Right. So if the employer caused the delinquency, meaning if he failed to --

THE COURT: That's not at issue in this case.

MS. MUIRHEAD: Well, but it is actually an issue when you -- if you interpret it.

MR. WILLICK: No, it isn't. It isn't.

THE COURT: It's not --

MR. WILLICK: The only thing had to do --

MS. MUIRHEAD: May I finish?

THE COURT: Okay.

MS. MUIRHEAD: It -- it is an issue in this case, because if the employer caused the delinquency, number one, if he failed to withhold the wages that month from an NCP, then it would -- then the -- the legislature says if the court finds that it's the fault of the employer for failing to hold the wa-- wages that month, or if the employer sends the --

THE COURT: Yes. Has that occurred in this case?

MS. MUIRHEAD: No, it didn't occur in this case, but it's indicative of the fact that we were talking about installment means monthly objection,

THE COURT: Okay.

MS. MUIRHEAD: And we seem to not be focused on that. Why is it that my client has penalties in a month -- do you -- I mean, here's the question for the court. My guy paid all of his child support in May of 2008, all $1,300 of his child support. Yet according to Mr. Willick's program, he was assessed penalties of $977 for the month of May.

MR. WILLICK: And that's because the other installments previously accrued remained outstanding --

THE COURT: Going back to 2000.

MR. WILLICK: -- in the words of the statute.

THE COURT: Okay.

MS. MUIRHEAD: Even in --

MR. WILLICK: He isn't being assessed a penalty on the amounts he did pay.

THE COURT: Because of the methodology that they do.

MR. WILLICK: Only the amounts he didn't pay.

MS. MUIRHEAD: Penalties are supposed to be an incentive to get people --

THE COURT: Okay.

MS. MUIRHEAD: -- to pay timely. Interest --

THE COURT: You support the DA's methodology --

MS. MUIRHEAD: Oh, I do.

THE COURT: -- that it should be one time?

MS. MUIRHEAD: I absolutely -- I support it should be one time. The only difference that I diverge from the DA possibly -- and I understand why the DA dropped it and I'm going to you; okay? Because it's in the brief. But just answer your question, I cannot ignore the fact that it does say per annum in there; okay? So conceivably, it should be $10.83, which is the 10 percent of -- divided by 12 --

THE COURT: Yeah.

MS. MUIRHEAD: -- times the $1,300. But at $10.83, I would agree that it's not really a reasonable penalty to assess somebody who owes $1,300 a month; okay? Because that's not going to be an incentive for them pay. Interest on the other hand is to compensate the custodial parent for the loss of her

money. Penalties are supposed to serve a completely different function. He paid all of his May 2008 support. He should not be assessed a penalty for May. If he fails to pay in June, he should be assessed the penalty for June. We are treating the penalties the way the State does it.

THE COURT: So what happens to all the prior years?

MS. MUIRHEAD: They all add up. I mean, I did my little hand thing that I didn't need to bring it, because the DA had it; okay? He didn't pay in 2000. He didn't pay in January 2000, 120 -- excuse me, 130. January 2000.

THE COURT: But it stays --

MS. MUIRHEAD: Whatever.

THE COURT: -- it doesn't get --

MS. MUIRHEAD: 130, 260, 390, on and on and on. I add up all those months and then I add the following years after.

THE COURT: Okay.

MS. MUIRHEAD: Does that mean --

THE COURT: Yeah. That -- it --

MS. MUIRHEAD: -- does that cut to the chase?

THE COURT: -- you're absolutely arguing the way the DA does it.

MS. MUIRHEAD: Yeah, the only difference is that I would submit that -- I can't ignore the fact that the per annum --

THE COURT: Okay.

MS. MUIRHEAD: -- is in there. And, you know, the other issue -- there's two other issues. First of all, there's an equal protection argument. On -- it treats similarly situated people, noncustodial parents, differently. If they're fortunate enough to go through the DA's office, okay, then they're paying thousands of dollars in penalties less than if they're stuck with Mr. Willick's program. So that's a big problem in and of itself. Also if you're charging on the unpaid total of child support arrears -- and I don't know, maybe there's a different way to put it, but that to me, that's the simple life; okay? I really don't see any difference between the way the penalties are being calculated versus the way the interest is being calculated other than the interest rate; okay? Furthermore, it's a proportionate penalty that's being charged to the noncustodial parent. So in other words, if a noncustodial parent, his obligation is $100 a month, their penalty is $10. If their noncustodial parent's obligation is $1,300 a month because they're a higher wage earner, 10 percent of their obligation is $130. So we're treating -- it's really an element of fairness. We're appropriately assessing a penalty based upon someone's divergent income.

THE COURT: Okay. One -- a one word answer. Is your -- on the equal protection argument, is your daily -- or well,

calculations -- oh, boy, I just lost my train of thought -- any different? She's arguing that a lower wage earner and a higher wage earner are treated equally if we apply the straight monthly penalty; correct?

MR. WILLICK: Well, actually no, Your Honor. What she said is if you're a low int- -- if you're a low income person and you happen to be prosecuted by the DA rather than by private counsel, you could end up on these facts paying less in penalties. That's what she's saying is legal protection.

MS. MUIRHEAD: No, there's two arguments. There's two equal protection arguments. One is -- forgetting about the amount that some -- that it earns. One is if you're stuck in Mr. Willick's program, you're paying a heck of a lot more than if you're lucky enough to be a part of the State program.

MR. WILLICK: Well, that's not true for all people. That's only true under some circumstances. If it's six months in, you'll be paying a lot more to the DA --

THE COURT: With the DA; right.

MR. WILLICK: -- than you'll be paying to something that calculates more accurately.

THE COURT: That's what's paradoxical about your programs.

MR. WILLICK: The question is whether you provide a continuing incentive. Ms. Muirhead was also wrong on her math.

She said that, gee, at the one year anniversary date, there would be another $10.83. No, no. That's the daily calculation --

MS. MUIRHEAD: No.

MR. WILLICK: -- pursuant to my program. Under her explanation, but not her math, on the one year anniversary date --

MS. MUIRHEAD: I didn't say the one year anniversary --

MR. WILLICK: -- from --

MS. MUIRHEAD: -- monthly.

THE COURT: Your penalties are not higher on the short end, but as they accrue on the long term, they're going to be much more severe.

MS. MUIRHEAD: $10.83.

THE COURT: But the DA is straight up across the board.

MS. MUIRHEAD: $10.83.

MR. WILLICK: The DA assesses --

MS. MUIRHEAD: If he doesn't pay --

MR. WILLICK: -- a --

MS. MUIRHEAD: -- if he doesn't pay in May of 2000, his penalty, if you do it divided by 12 --

THE COURT: Yes, it's a lot greater under Marshal's

program than the DA's program.

MR. WILLICK: And what the DA should be doing --

MS. MUIRHEAD: I'm sorry, I can't hear, what?

THE COURT: Yeah. I'm going to stick with Ms. Muirhead. Thank you.

MR. WILLICK: Okay.

THE COURT: Okay.

MS. MUIRHEAD: 10 percent, if you do it per annum, Mr. Vaile would pay $10.83 cents if he fails to pay June of 2008.

MR. WILLICK: No, he wouldn't. It would be $130 on the last date of the next month.

MS. MUIRHEAD: Divided by --

THE COURT: I'm not going to get into a math war --

MS. MUIRHEAD: Okay.

THE COURT: -- here. I think the programs are what they are; okay? And it spits --

MS. MUIRHEAD: And this is --

THE COURT: -- out the numbers.

MS. MUIRHEAD: Okay. And this a total --

THE COURT: And we have to choose between the numbers.

MS. MUIRHEAD: He, Mr. Willick, asked the DA to enforce the wage withholding. This is case now Title 4(d) case. If it's a 4(d) case, it's in the system and we need to adopt the DA's interpretation of penalties. So that's an important factor

also that can't be avoided in this case.

THE COURT: Did you find anything else in the legislative history of interest or should be highlighted? And I think -- and now you just this today, Mr. Willick, too; right; with the all exhibits?

MR. WILLICK: Who knows.

THE COURT: And this is all one packet that was obtained from the assembly judiciary committee?

MS. MUIRHEAD: This was all obtained from the legislative counsel bureau.

THE COURT: Yes.

MS. MUIRHEAD: I attached the entire minutes --

THE COURT: Okay.

MS. MUIRHEAD: -- from 2005 and the entire --

THE COURT: Okay.

MS. MUIRHEAD: -- history of the legislative bill, even stuff that wasn't even related to child support and --

THE COURT: Anything else you wish to highlight in this -- this packet?

MS. MUIRHEAD: Well, I can certainly tell you, Your Honor, when you look at this, it's consistent with the way the State is doing this.

MR. WILLICK: Objection. There's no reference to anything. And we object to being sandbagged.

THE COURT: Oh, I think that's for me to weigh out.

MS. MUIRHEAD: That's fine.

THE COURT: I just got this today.

MS. MUIRHEAD: That's fine.

THE COURT: Sc I mean, I may probably want to have a sit down and read this entire thing.

MS. MUIRHEAD: You know, and one of -- and one of the other comments was, you know, this has been repeated again and again. Mr. Ewert made a comment that in his personal opinion, he thought it was inappropriate for someone who had stolen his children, kidnaped the kids and committed fraud, to get the benefit of tens of thousand dollars of reduction in penalties. There was a finding by the Nevada Supreme Court that there was no fraud. And that issue is completely unrelated --

MR. CRANE: What?

MR. WILLICK: That's fraud.

MS. MUIRHEAD: And I really --

MR. WILLICK: Objection.

MS. MUIRHEAD: -- object to Mr. Ewert's making those types of statements. We are talking about if Scotlund Vaile owes money, how much, consistent with Nevada law. He should pay nothing more and nothing less than he owes consistent with Nevada law, not Mr. Willick's program. Every dollar that Mr. Willick collects from this case, he gets 40 percent. He has an

interest in inflating these numbers. He inflated the original numbers as far as the total number of payments were due and the principal and he's not -- I wouldn't say inflated, his flawed program assesses my client more that $40,000 extra in penalties.

THE COURT: Were you --

MS. MUIRHEAD: I mean, I will look --

THE COURT: -- did you feel you did sufficient work on this with obtaining the history on everything?

MS. MUIRHEAD: I have all of the history.

THE COURT: Everything is fully briefed in your end.

MS. MUIRHEAD: I have all the history. What I will do --

THE COURT: Because I'll tell you, I think this matter will be submitted under advisement at the --

MS. MUIRHEAD: Well, what I would like to do --

THE COURT: Yeah.

MS. MUIRHEAD: -- is just -- and I don't want to send any letters, but I -- now I have to figure out --

THE COURT: You have to be done by filings.

MS. MUIRHEAD: Okay. So there's no objection to me filing things.

THE COURT: Okay. And I was going to rule on that. It wouldn't be subject to GOAD, because this is an ongoing issue.

MS. MUIRHEAD: Okay.

THE COURT: But I'm going to take this matter under advisement.

MS. MUIRHEAD: Let me -- let me point to the specific provisions to -- to support what I am saying today. I will make sure that Mr. --

THE COURT: Do you want additional time to do one more supplemental brief?

MS. MUIRHEAD: To deal with what's in the legislative history.

THE COURT: Okay. I -- I don't know if you would want to file a responsive brief.

MR. WILLICK: Oh, most certainly, because every representation --

THE COURT: I think you would.

MR. WILLICK: -- she's made has been false.

THE COURT: Okay. Because then you're going to --

MR. WILLICK: So I have to presume that anything that's pointed out in the future will be false.

THE COURT: And we have -- I think we have the benefit of the packet now. Okay. MR. WILLICK: If I can -- very briefly, there's only five points here. Counsel made at least five misstatements of fact. First, she said that after the matter remained outstanding for a year where she digresses

with the DA is that an additional $10.83 would be due. That's what she said. She's wrong. What would be due under the DA's methodology if they were doing it on an annual basis is that on the anniversary date of this particular, April 1, 2000, that particular month's child support payment. On April 1, 2001, if they were doing it per annum, another $130 would come in. And on April 1, 2002, another $130 would come due. And if they did that and accumulated it, their total would be pretty close to mine. I can't do that level of math in my head, but their computer program is not capable apparently of doing an annual recomputation even when an arrearage remains outstanding, which is what the statute says, and is unpaid year after year after year. They simply don't calculate it. But if they did, which is what Ms. Muirhead says they should be doing, their total would be very similar to my total.

THE COURT: Now, what I wanted to ask you -- I'll ask it on the back end.

MR. WILLICK: Okay. And then she said I don't see how it's any different from interest. It's different from interest if you bothered to take the time to go through the law review article explaining it and the help program that's built into it, it explains all the different ways in which the calculations are done.

MS. MUIRHEAD: The law review article only talks about

interest. It doesn't talk about penalties. Does it? Does it talk about penalties?

THE COURT: Well, it's -- try not to get argumentative.

MS. MUIRHEAD: I -- I mean, I'm --

MR. WILLICK: The --

MS. MUIRHEAD: You know, he keeps telling me that I'm too lazy to bother to read the law review article. It only talks about penalties. I mean, it only talks about interest.

THE COURT: About interest. Okay.

MS. MUIRHEAD: It doesn't talk about penalties. So how is it relevant?

THE COURT: Mr. Willick.

MS. MUIRHEAD: I'm not as bright as you. Tell me.

MR. WILLICK: The calculation methodology built into the interest portion of the program are in fact replicated in terms of turning matters into a daily accrual. And the logic is set up in the original article. It's explained in the help program how that applies to interest. The differences are multiple, including that you don't begin the calculation until an amount has remained for at least 30 days, or one-twelfth of 365 days, after it was due, because that's when a penalty begins to accrue. That is built in in a looping calculation in the program. Additionally, no penalties of any kind kick in until

the magic date. And I forgot what it is, but it's the date that the statute became effective. I just don't remember the date off the top of my head.

THE COURT: Okay.

MR. WILLICK: The effective date of 125B 095, irrespective of how old the arrearage is. That's built in. So there's -- there's multiple differences for how the calculations are done. In terms of the DA enforcing this court's order and so the court should abandon its own orders in favor of how the DA might recalculate it, that's nonsense. In every case I've done for the last 30 years, the district attorney's office has always conformed the amount to be collected to the amount set out by a family court order. If there's been a variation in that procedure, I haven't heard about it. And in terms of --

THE COURT: But they want -- they want a sum certain.

MR. WILLICK: Yeah.

THE COURT: They want sum certain.

MR. WILLICK: Exactly. And in terms of this 40 percent that counsel has just apparently made up out of whole cloth, that's news to me. What I know about this case is that I have incurred in hourly fees about a million dollars in attorney's fees during the eight years I have been chasing this guy. And he has paid --

THE COURT: I don't think we're going to argue

attorney's fees --

MR. WILLICK: -- nothing.

THE COURT: -- today. I understand.

MR. WILLICK: So counsel was wrong in her math. She's lying about the fees. She is incorrect on the calculation methodologies. Her totals are wrong. Her summary of the legislative history is false. And I really don't have much else to say about the calculation. I think that pretty much says it all.

THE COURT: It can -- okay.

MR. WILLICK: I would ask before the gentlemen leave that if they've caught anything that has come up in our back and forth that they feel compelled to add that they should be allowed to do so, but other than that --

THE COURT: Yes, I was going to ask the district attorney and I was going to pose a question to all three counsel. First of all, Mr. Ewert, any final comments on today's arguments?

MR. EWERT: Just briefly, Your Honor. During Mr. Willick's argument, he suggested that there's a potential conflict between the 4(d) program and the custodial parents because of some disincentive to have large uncollected child support --

THE COURT: And I don't think the trial court is

designed to decide politics.

MR. EWERT: Yes, but the point I was trying to make --

THE COURT: Noted.

MR. EWERT: What I was trying to make is this. Our incentive is to get accurate realistic orders, always knowing that if a custodial parent does not agree, that parent is always free to go into court on her own with her own counsel. And we would conform to that order with the exception of family court cases that adjudicate child support when the State has the paid tenant and is an assignee. That's the only time we don't conform. I think this knows that.

THE COURT: Yes.

MS. MUIRHEAD: Approach, Your Honor.

THE COURT: Thank you.

MS. MUIRHEAD: This is his filing, June 23rd, 2008.

THE COURT: Who's his?

MS. MUIRHEAD: Mr. Willick.

THE COURT: Okay.

MS. MUIRHEAD: And he has --

THE COURT: Wait, what's it titled?

MS. MUIRHEAD: It's his itemized billing statement. And he has two checks from DA's office, 7,829.35 and 120. 60 percent to client, 4,769.61 and 40 percent to the outstanding balance.

MR. WILLICK: Counsel has leaped to an assertion like jumping over a unicorn. That has to do with a specific arrangement for a partial payment on a million dollar outstanding attorney's fee bill between me and my client, not having anything to do with a contingency fee.

THE COURT: Okay. I won't comment --

MS. MUIRHEAD: I didn't say there was a contingency --

THE COURT: You can put it on the table. I won't comment. I don't think we'll get to fees today. It's another -- it's going to be a big contested issue. Anything else, Ms. Muirhead?

MS. MUIRHEAD: I didn't --

THE COURT: Oh, okay.

MS. MUIRHEAD: -- and just for the record, I didn't say it was a contingency fee. I said he's getting a portion of whatever child support is paid so he has an incentive.

THE COURT: I don't want to comment on that today, because you asked for extra time to --

MS. MUIRHEAD: I appreciate that, Your Honor.

THE COURT: -- fully argue that. Okay.

MS. MUIRHEAD: I will stop -- I -- I will do my work instead of --

THE COURT: You are permitted --

MS. MUIRHEAD: -- making it the court's burden to --

to go through the legislative history --

THE COURT: One more supplemental brief from you, one more responsive brief from Mr. Willick's office. Does the DA have any burning desire to file additional briefs. And should I open that opportunity as well for the AG?

MS. MUIRHEAD: I think the AG would like an opportunity after they review the tape.

MR. TEUTON: Can I approach? I think the attorney general may want respond.

THE COURT: Oh. Mr. Teuton.

MR. TEUTON: I don't know that they will, but at least they'd have -- if they have the opportunity to do so.

THE COURT: Optional. And I'll leave it optional for AG as well. They might be interested in the video of today's hearing.

MS. MUIRHEAD: I'm sorry, you said you might or -- or just the AG?

THE COURT: But I have to set deadlines, number one.

MS. MUIRHEAD: AG; right? Just AG if he wants -- you don't want to --

MR. TEUTON: Well --

THE COURT: I'll leave it optional for them. You have the window of opportunity --

MS. MUIRHEAD: Okay.

THE COURT: -- as does the AG to file any friend of the court briefs. One other burning question that -- and I don't know the answer to it, is that the ultimate decision that will come out of this court, the trial court. On the -- the statute, clear or ambiguous, is that any consequences to -- we have a DA methodology in place. And I don't want -- if a decision would result in essentially ignoring your program or, you know, I guess I'm looking at Mr. Ewert right there. If a decision came out of this case, this is one thing that I'm going to be deciding if it's going to impact or not is that if I make a decision, would I be totally ignoring the DA's methodology or their actual program that they are hired to do under the 4(d) program.

MR. WILLICK: May I be heard on that?

THE COURT: You can jump in.

MR. WILLICK: This again expresses the opinion that the court lacks jurisdiction to tell the --

THE COURT: Yes.

MR. WILLICK: -- state that they are --

THE COURT: That was my issue.

MR. WILLICK: -- doing the matters incorrectly, but it's not required. If you conclude that the statute is unambiguous and you conclude that the way the program is calculating it is correct, you simply have to make that finding

that will be binding in this case until and unless somebody appeals it and the Nevada Supreme Court says that your conclusion is wrong in any case. But you have not made the State of Nevada, the district attorney's office or any other public agency a party to this case. You've invited them to attend to give the court information. So your order, with respect, would not be binding on the DA because -- and that's where Mr. Winne is correct. He's -- it's not a matter of jurisdiction. He kind of misstates that, but they're not parties to this case.

THE COURT: Very good.

MR. EWERT: And just another way of restating that, I essentially agree --

THE COURT: Yeah.

MR. EWERT: -- is that in --

THE COURT: Whatever I decide I'm not destroying your program.

MR. EWERT: -- if you decide -- and the State will --

THE COURT: Yes.

MR. EWERT: -- continue to use this methodology if you decide in this particular case that the State's version is not --

THE COURT: And -- yes.

MR. EWERT: -- what in your mind confirms with the

statute, next time our office provides you with penalty calculations in another case you might give it a little less credibility, but of course it won't bind us on other cases before other judges unless there's a change in the statute or a Supreme Court opinion.

THE COURT: Yes.

MR. WILLICK: I agree completely.

MS. MUIRHEAD: And when -- and then you made Mr. Vaile, who was unfortunate enough to have the D case make a determination, be punished because he wasn't lucky enough to go through the DA. Nobody ever thinks they're lucky to have a case in front of the DA, but in Mr. Vaile's case, he'd be lucky.

THE COURT: Okay.

MS. MUIRHEAD: You know -- and what's going to happen is this case is going to go up on appeal no matter what.

THE COURT: I --

MS. MUIRHEAD: And it's going to create new, you know, one way bright line. Go from there.

THE COURT: Okay.

MS. MUIRHEAD: All right. Thank you, Your Honor.

THE COURT: The request -- your oral request today to continue the matter as to arguing attorney's fees and his renewed motion for sanctions is granted. We would defer that in additional time. At -- concerning the pace of how this case

goes, then we would need a couple of hours additional time just to argue that. The interest and penalties issue is under advisement. And whatever the theoretical decision is going to be, will there be a dispute as -- there is no dispute as to principal?

MS. MUIRHEAD: Correct.

THE COURT: There is no dispute as to interest?

MR. WILLICK: Correct.

THE COURT: Okay. And there is a huge dispute on penalties which I will decide under -- on 125B.095. Okay. Now the order to show cause, the contempt for nonpayment of child support, they would be entitled under due process to a hearing on the matter if they -- if they're going to face the sanctions under 22.010, et cetera. And so that would have to be set for an evidentiary hearing and he can present his defenses to the nonpayment.

MS. MUIRHEAD: Your Honor, if I may approach. And --

THE COURT: Okay.

MS. MUIRHEAD: -- it's in the opposition copy. Do you have a copy of the opposition?

MR. EWERT: Your Honor, is -- the DA's office, are we free to go?

THE COURT: Yes. Thank you very much. And we will courtesy copy you if you wish the decision, the written decision

EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ROBERT S. VAILE, Plaintiff, v. CISILIE A. VAILE, Defendant.	)	CASE NO. 98D230385 DEPT. I

BEFORE THE HONORABLE CHERYL B. MOSS, DISTRICT COURT JUDGE

TRANSCRIPT RE: ALL PENDING MOTIONS

WEDNESDAY, JUNE 11, 2008

APPEARANCES:

For the Plaintiff: GRETA MUIRHEAD, ESQ.
(Unbundled Capacity)

For the Defendant: RICHARD L. CRANE, ESQ.
MARSHAL S. WILLICK, ESQ.
JOSEPH W. RICCIO, ESQ.

Also present: LEONARD FOWLER

TRANSCRIPT PREPARED BY:

VERBATIM REPORTING & TRANSCRIPTION, LLC

You still owe child support of -- at the level that you were capable of earning income at --

THE COURT: Until you come in to file a motion.

MR. WILLICK: -- because it's a voluntary --

THE COURT: Yeah.

MR. WILLICK: -- under employment.

THE COURT: Yeah.

MR. WILLICK: So he's not going to get anything by going to law school.

MS. MUIRHEAD: Are you done?

MR. WILLICK: No.

MS. MUIRHEAD: Okay.

THE COURT: No, he's not.

MR. WILLICK: As to counsel's truly amazing series of comments about the penalty, I have to least go on the record there.

THE COURT: I think we -- okay. Go ahead. I didn't want to get into that today, but --

MR. WILLICK: I -- I understand --

THE COURT: Yeah. That will be a later time.

MR. WILLICK: -- but I -- well, I don't want there to be another time. We want this to be --

THE COURT: On penalties.

MR. WILLICK: -- the very last order ever entered. So

I want to make --

THE COURT: I --

MR. WILLICK: -- my record complete this time.

THE COURT: Okay.

MR. WILLICK: I'll suggest that the family practice manual was starting on page 1.119 and going through 1.1 --

THE COURT: Is that an NRS?

MR. WILLICK: -- 1.2. No, I'm -- I'm dealing with the family practice manual.

THE COURT: Oh, I don't think --

MR. WILLICK: Is --

THE COURT: I don't own that copy.

MR. WILLICK: The update? You don't have it?

THE COURT: I don't have -- I think I have an electronic version, but go ahead.

MR. WILLICK: The update -- well, okay. I'll suggest that it's out there. The practice manual was issued in '03. This section of the manual is the single largest expansion in the redo of the manual. It was done by Dawn Throne, Bruce Shapiro and Ed Ewert.

MR. CRANE: Assistant DA.

MR. WILLICK: The DA in charge of child support. The original language as been vetted and approved. And I quote from it. In addition to interest, when there's court order for child

support obligation and the obligor is delinquent in the amount of support owed for more than one month's support, the court must add a 10 percent per year penalty on each delinquent payment from the date it was due for all sums accruing on or after October 15th, 1995. Those that did any statutory research would know that there was a two year delay in the phase-in of this to allow people to become current because a proper application of the penalty calculation makes the amount of arrearage massive. So the implementation of the statute was delayed for two years to allow people to catch up on their back child support. And if they didn't, for each amount that goes unpaid, it's 10 percent per year. The law review article explaining this has been out for over 10 years. It has never been challenged by anybody. Every district court in this state has approved the calculations as done by this program. For a supposed UIFSA master to demonstrate such a staggering level of non-knowledge as to how the calculations work is amazing. But that's how it works. It's how it's always worked.

THE COURT: Well, the statute itself says for ev- -- for every installment where it remains unpaid --

MR. WILLICK: Yes.

THE COURT: -- unpaid --

MR. WILLICK: And I really don't care what her husband might think the proper way of doing the calculations is. It was

a --

THE COURT: Don't the DA's have their own computer programs similar to yours?

MR. WILLICK: No.

MS. MUIRHEAD: And it's 10 percent --

MR. WILLICK: Not exactly.

MS. MUIRHEAD: And it's 10 percent of the monthly payment. So Mr. Willick is saying --

MR. WILLICK: The --

THE COURT: Okay.

MS. MUIRHEAD: -- that it's 10 percent of the unpaid arrears. And the DA assesses penalties based on 10 percent of the monthly payment, not the --

MR. WILLICK: I will suggest that I have had 40 child support cases in the Nevada Supreme Court. I have had my calculations challenged about half a dozen times --

THE COURT: But what about the DA? Why would they be doing something different than your --

MR. WILLICK: I don't think they are. Counsel simply doesn't comprehend.

THE COURT: Should we get some --

MS. MUIRHEAD: Perhaps we should get Mr. Ewert on the phone. Would the court be willing do to that?

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."

LEGAL DISCUSSION

82. The Nevada Supreme Court in ***Irving v. Irving***, 134 P3d. 718, 720 (2006) stated,

> "Because the interpretation of a statute is a question of law, the proper standard of review is de novo. This court follows the plain meaning of a statute absent an ambiguity. Whether a statute is deemed ambiguous depends upon whether the statute's language is susceptible to two or more reasonable interpretations. When a statute is ambiguous, we look to the Legislature's intent in interpreting the statute. Legislative intent may be deduced by reason and public policy."

83. In the instant case, both Attorney Willick and the State of Nevada agree that NRS 125B.095(2) is ambiguous and open to different interpretations.

84. Consequently, the MLP and the NOMADS programs are at odds with each other in calculating the 10% penalty on Mr. Vaile's past unpaid child support amounts to the tune of a $40,000.00+ difference.

85. The Court believes the parties behind the MLP and the NOMADS program both agree that the legislative intent behind NRS 125B.095 is to "motivate" a child support obligor to pay each month in a timely manner.

86. The Court therefore FINDS there is no dispute that the legislative intent of AB 604 and AB 473 is "motivational".

87. The trial court in this case, notwithstanding, must also take a closer look at the legislative history on how to interpret the phrases "installment", "per annum", and "or a portion thereof".

88. As quoted in ***Irving***, ***supra***, the court may deduce legislative intent "by reason and public policy".

89. Attorney Willick's MLP calculator appears to give more emphasis on the phrase "per annum" because the 10% penalty is ongoing year after year, but with a lesser resulting penalty in the first 24 months.

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90. This view heavily supports public policy of "motivating" the obligor parent to pay timely, but there is a greater financial consequence for the noncustodial obligor who waits many years beyond the first 24 months.

91. Attorney Willick argued that a one-time penalty will not necessarily motivate the obligor parent because that is just what it is, a one-time penalty that will sit and not grow on the books.

92. In his Brief filed on August 14, 2008, Attorney Willick writes,

"Welfare then ignores the penalty forever, failing to calculate ***any*** penalty for the second (or any later) year a sum remains outstanding. The private Bar, by contrast, calculates the penalty in accordance with how much of a year has passed, so that the penalty imposed on an obligation due in January, is less in February than it is in March, and continues to be assessed for however many years an installment remains outstanding, giving meaning to the statutory phrases 'per annum' and 'remains unpaid'."

93. Certainly, this is a compelling public policy reason, but the ***Irving*** case also directs the trial court to look to "reasoning" to deduce legislative intent.

94. Under the "reasoning" factor, apart from the public policy aspect, Assemblyman Carpenter reasoned that the obligor parent would never be able to pay an "impossible amount" that grows exponentially.

95. In addition, the State of Nevada argued that the MLP penalties amount grows larger and exceeds the NOMADS amount after 23 months.

96. However, as discussed in more detail below, the technical implementation of assessing the 10% penalty MUST comport with the Federal Child Support Enforcement Program.

97. The State of Nevada pointed out in their Supplemental Friend of the Court Brief filed September 5, 2008, that MLP starts exceeding the NOMADS penalty calculations after 23 months. Page 3, lines 3-4.

98. The State of Nevada appears to take a more balanced interpretation of the two phrases "per annum" and "portion thereof" by using a fractional percentage of 8.33% (10% divided by 12 months) and assessing it on any remaining unpaid portion of child support.

99. In other words, both phrases are given equal weight and consideration under the State of Nevada's interpretation. "Per annum" is complied with by dividing 10% into 12 months. "Portion thereof" is complied with by

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assessing the fractional 8.33% penalty to the unpaid portion of child support for a particular calendar month.

100. As discussed above, Attorney Muirhead also argued that the word "installment" in Section 1 of NRS 125B.095 should require the court to focus on a particular month and that month only.

101. She pointed out that even though Mr. Vaile paid $1300 for the entire month of May 2008, he was still penalized $976.11. Consequently, she believed that the word "installment" is rendered meaningless.

102. From a "reasoning" standpoint, the assessment of $976.11 (when an entire month of support was paid) appears less reasonable and less logical because the 10% penalty is only supposed to be imposed on any "remaining unpaid amount" ***for that month only*** according to the statute, thus giving meaning to the word "installment" as well.

103. The MLP, however, calculates differently by complying with "per annum" on an ongoing year after year basis.

104. Another illustration of "reasoning" is analyzed and deduced by the Court here.

105. As cited above, the legislative history comments from Louise Bush, Chief of Child Support Enforcement, Welfare Division, Nevada Department of Human Resources is worth mentioning again:

"NRS 125B.095 states that a penalty of 10 percent per annum must be assessed when an obligation for child support is delinquent. The common usage of "per annum" means "by the year" and in common application means a fractional interest calculation. The phrase "per annum" contained in the penalty statute suggests that the late payment penalty should be calculated like interest. However, according to the legislative history from the Sixty-Seventh Session and an Attorney General's Opinion, legislators intended the penalty to be a one-time late fee, akin to a late fee one would pay for a delinquent credit card payment rather than another interest assessment. Typically, late payment penalties are designed to encourage timely payment while interest charges are intended to compensate creditors for loss of use of their money. This concept is highlighted by the comments then Assemblyman Robert Sader made during the Sixty-Seventh Session while addressing the intent of a child support late payment penalty. Mr. Sader said, 'it should be clear in the statutes that there is a penalty for not paying on time. You want to motivate somebody to pay on time and have an enforceable penalty. That is what this is about.' Mr. Sader further commented that the purpose of the penalty was intended to be motivational, such as a late payment fee attached to any billing. This bill removes the

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ambiguous language currently found in NRS 125B.095 clearly aligning the statutory language with the legislative intent of assessing a one-time late fee."

106. Attorney Willick offered the following: "[I]f you owe money to Best Buy, and don't pay on time, they hit you up with a late payment fee. And if you don't pay the bill by the ***next*** month? They charge you again – every time a billing cycle passes without you making the payment you owed originally."

107. Attorney Muirhead, in her Brief filed August 1, 2008, offered this: "[C]ounsel for Plaintiff has attached a copy of her recent Embarq telephone bill. You will note that the due date is August 9, 2008 in the amount of $15.68. If the $15.68 is received after August 20, 2008, a penalty or late payment fee of $5.00 is imposed as it is now $20.68 that is due. (Exhibit 3) In the legislative history in support of AB 604 (NRS 125B.095), page 61, former Attorney General Frankie Sue Del Papa commented that '...delinquent power bills to late credit card payments are assessed late fees and penalties, yet missed child support payments are not...' (Exhibit 4)".

108. Louise Bush's comments and Attorney Muirhead's comments appear more logically congruous.

109. Attorney Willick's Best Buy example above is correct to a degree. However, logically extending the example, if the debtor actually does pay all or part of the bill, or even at least the minimum monthly amount due that Best Buy is demanding the following month, ***no late fee (penalty) will be charged*** for that month.

110. What happens, however, is that the amount for the late penalty/fee for the previous month is added to the total bill and the debtor is charged interest on the amount with the added penalty/late fee included. The debtor can never go back and have the late fee eliminated or reversed. This would "motivate" the debtor to pay on time the next month or the same penalty would apply.

111. On a more technical note, the MLP Program clearly has the capabilities of assessing the 10% penalty depending on the due date of the child support obligation.

112. From a public policy standpoint, Attorney Willick argued that obligor parents who have different due dates, whether early in the month, the middle of the month, or the end of the month, will be treated equally via the MLP calculations.

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113. However, according to the State of Nevada, NOMADS is designed to comply with Federal CSEP requirements, not because it cannot calculate what the MLP Program can do. The NOMADS calculator has been doing this since 1995.

114. Moreover, the State of Nevada, in their briefing filed September 5, 2008, page 3 lines 14-23, expressly pointed out that the CSEP agency must follow federal law.

"CSEP looks at all the payments within the month 45 CFR 302.51(a)(1) requires distribution of child support payments within the month be credited to the child support amount due in the month. Therefore, the monthly payment emphasis rather than a date specific emphasis comes from the federal requirement, not a system requirement. This is even more imperative when more than 75% of all CSEP collections on the 98,853 enforcement cases come from income withholdings (IW) and a majority of those are on a biweekly pay period basis. If CSEP took the defendant's view of the world it would be penalizing all the obligors on IW who are paid on a biweekly pay period with their employers. CSEP must follow the requirements of the Federal Child Support Enforcement Program and provide collection of child support on a massive scale."

115. Under a "reasoning" viewpoint, federal preemption and deference must be followed by the state trial court.

116. This Court, however, concedes that that federal preemption issue was not raised during the legislative hearings of AB 604 and AB 473, but the instant proceedings in this case no doubt creates a dilemma for CSEP to enforce the issuance of penalties that might risk losing federal benefits across the board.

117. This Court, however, believes that while the legislative history is silent on this issue raised by Deputy Attorney General Winne in his Friend of the Court Brief, this is an important public policy concern the Court should not ignore.

118. While Attorney Willick suggested "the tail is wagging the dog", it does not appear that CSEP is refusing to implement a different method of calculating child support penalties for convenience of administration.

119. Rather, CSEP has rational reasons for complying with (CFR) federal regulations. Otherwise, huge amounts of federal funding would be lost. This Court is not aware of how the MLP Program avoids this dilemma.

120. Further, because more than a majority of the Nevada CSEP cases involve income withholding on a biweekly pay period basis, it appears that the

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MLP calculation methods could never be reconciled with the NOMADS method of calculation because NOMADS is subject to federal regulations.

121. The State of Nevada also argues that the 2005 Legislature did not take any action to change the status quo of how CSEP assesses the 10% penalty.

122. There was a two-year deferment of implementing the penalty from 1993 to October 15, 1995, in order for CSEP to implement the penalty calculation program.

123. Twelve years later, when AB 473 was submitted for consideration in 2005 requesting clarification of NRS 125B.095, the status quo was maintained and no changes were adopted by the Legislature.

124. In the Nevada Supreme Court case of ***Oliver v. Spitz***, 76 Nev. 5, 6, (1960), the Court wrote,

"* * * only in a clear case will the court interfere and say that * * * a rule or regulation is invalid because it is unreasonable or because it is in excess of the authority of the agency promulgating it. Moreover, an administrative rule or regulation must be clearly illegal, or plainly and palpably inconsistent with law, or clearly in conflict with a statute relative to the same subject matter, such as the statute it seeks to implement, in order for the court to declare it void on such ground.

"It is only where an administrative rule or regulation is completely without a rational basis, or where it is wholly, clearly, or palpably arbitrary, that the court will say that it is invalid for such reason." 73 C.J.S., sec. 104(a), p. 424.

Furthermore acquiescence by the legislature in promulgated administrative rules made pursuant to express authority may be inferred from its silence during a period of years. Norwegian Nitrogen Co. v. United States, 288 U.S. 294, 313, 53 S.Ct. 350, 77 L.Ed. 796.

(Emphasis added).

125. As discussed above, the Court FINDS there is a rational basis for why NOMADS calculates penalty in a particular manner (i.e., complying with federal regulations or lose federal funding).

126. The Court further FINDS that CSEP's method of calculating penalties gives equal and balanced consideration to the phrases "installment", "per annum" and "portion thereof" contained in NRS 125B.095.

127. The manner in which the MLP Program does its calculations, on the other hand, puts more emphasis on "per annum" above all the other phrases, and appears to take away the meaning of "installment" (focusing on a

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particular month and that month only) by calculating penalties in months where the obligor has paid the full amount of child support.

128. But "public policy" is only half of the equation. The other half of the equation requires the Court to look at "reasoning". ***Irving, supra.***

129. This Court believes a more reasonable interpretation of NRS 125B.095 requires giving balanced and equal considerations to the meaning of "installment", "per annum", and "portion thereof".

130. The Court must also follow prior Nevada case law which states that when an administrative agency develops and implements certain regulations and practices, the regulations cannot be invalidated if there was a "rational basis" behind them.

131. Attorney Willick wrote in his Brief filed August 14, 2008, page 14: "Specifically, in 2005 Welfare cooked up AB 473, which would have altered the statutory penalty as follows:

[~~The amount of the penalty is~~] ***If imposed***, a 10 percent [per annum, or portion thereof, that the] ***penalty must be applied at the end of each calendar month against the amount of an*** installment ***or portion of an installment that*** remains unpaid[.] ***in the month in which it was due.***

All aspects of the calculation of interest and penalties were discussed at length in the resulting hearing held before the Assembly Judiciary Committee. After hearing and reading everything about why the law was the way it was, why the Welfare Division was trying to change the law to conform to their outdated computer capabilities, and why it would be a really terrible idea to do so, the Legislature left the "how-to-compute penalties" portion of the statute exactly as it was, knowing how the private Bar had been doing the calculations for 17 years (as to interest) and 10 years (as to penalties)."

132. However, Attorney Willick's argument is contrary to case law established by the Nevada Supreme Court in ***Oliver v. Spitz, supra.***

133. Rather, as dictated by ***Oliver***, because the Legislature did not enact the Welfare's proposal to revise NRS 125B.095 and essentially remained silent on the instant penalties issue since 1993, thus leaving the CSEP's method of calculating penalties status quo, this Court can infer that the Legislature has given "express authority" to CSEP. ***Oliver, supra.***

134. The Court also has viewed the instant case from another "reasoning" perspective. When one looks at the total end result of Mr. Vaile's final

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assessment of child support arrears consisting of principal in the amount of $114,469.96 and interest of $43,444.42 through May 31, 2008 according to the NOMADS calculations (which is minimally different from the MLP calculations), and looking at the marked differences in penalties $12,148.29 (NOMADS) versus $52,333.55 (MLP), the NOMADS calculated penalties are approximately 10% of the principal amount of $114,469.96 while the MLP calculated penalties are approximately 50% of the same amount. The "end result" is that the noncustodial obligor is really being charged 50% in penalties under the MLP Program.

135. Attorney Willick's view that "deadbeat" parents should be motivated to pay is not unreasonable public policy given the frustration of custodial parents waiting for child support money that is supposed to go to the children.

136. However, the Court believes that in reality, an end result of penalties amounting to 50% of the amount of the principal arrears (at least after the first 23 months of nonpayment), leads to an unreasonable financial impact on the noncustodial obligor.

137. The Court, however, does **not** in any way condone a course of conduct of nonpayment or late payments. There are additional remedies for the custodial obligee parent such as contempt, sanctions, attorney's fees and incarceration.

138. The Court FINDS that the MLP Program is **not** flawed. The MLP Program merely uses a different interpretation of NRS 125B.095.

139. Accordingly, this Court believes that all prior calculations under the MLP in other cases in this department, and possibly other departments, should not be rendered void because this was an "issue of first impression" and both sides of the instant case agree the statute is clearly ambiguous.

140. The Court notes that Attorney Willick expressed that he would recalibrate his MLP Program if this Court found a different interpretation.

141. Finally, the Court is cognizant that the penalties issue is a very important issue to both Plaintiff and Defendant, as well as the Attorney General's Office and the District Attorney for the Child Support Division.

142. Therefore, IT IS HEREBY ORDERED that this Findings of Fact, Conclusions of Law, and Decision and Order Re: Child Support Penalties NRS 125B.095 shall be certified as a final order for purposes of any appeal to the Nevada Supreme Court.

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143. IT IS FURTHER ORDERED that Plaintiff's request for relief and request for reconsideration of the penalties amount is granted.

144. IT IS FURTHER ORDERED that through May 2008, the child support penalties amount is $12,148.29.

145. IT IS FURTHER ORDERED that because NRS 125B.095 is ambiguous and subject to different interpretations, and because this Court required extensive legal briefing and oral argument on the issue of calculating child support penalties, each party shall bear their own attorney's fees and costs.

146. IT IS FURTHER ORDERED that there is a separate issue of attorney's fees requested by Attorney Willick pursuant to NRS 125B.140 which states:

Enforcement of order for support.

1. Except as otherwise provided in chapter 130 of NRS and NRS 125B.012:

(a) If an order issued by a court provides for payment for the support of a child, that order is a judgment by operation of law on or after the date a payment is due. Such a judgment may not be retroactively modified or adjusted and may be enforced in the same manner as other judgments of this state.

(b) Payments for the support of a child pursuant to an order of a court which have not accrued at the time either party gives notice that he has filed a motion for modification or adjustment may be modified or adjusted by the court upon a showing of changed circumstances, whether or not the court has expressly retained jurisdiction of the modification or adjustment.

2. Except as otherwise provided in subsection 3 and NRS 125B.012; , 125B.142; and 125B.144:

(a) Before execution for the enforcement of a judgment for the support of a child, the person seeking to enforce the judgment must send a notice by certified mail, restricted delivery, with return receipt requested, to the responsible parent:

(1) Specifying the name of the court that issued the order for support and the date of its issuance;

(2) Specifying the amount of arrearages accrued under the order;

(3) Stating that the arrearages will be enforced as a judgment; and

(4) Explaining that the responsible parent may, within 20 days after the notice is sent, ask for a hearing before a court of this state concerning the amount of the arrearages.

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(b) The matters to be adjudicated at such a hearing are limited to a determination of the amount of the arrearages and the jurisdiction of the court issuing the order. At the hearing, the court shall take evidence and determine the amount of the judgment and issue its order for that amount.

(c) The court shall determine and include in its order:

(1) Interest upon the arrearages at a rate established pursuant to NRS 99.040, from the time each amount became due; and

(2) A reasonable attorney's fee for the proceeding,

unless the court finds that the responsible parent would experience an undue hardship if required to pay such amounts. Interest continues to accrue on the amount ordered until it is paid, and additional attorney's fees must be allowed if required for collection.

(d) The court shall ensure that the social security number of the responsible parent is:

(1) Provided to the Division of Welfare and Supportive Services of the Department of Health and Human Services.

(2) Placed in the records relating to the matter and, except as otherwise required to carry out a specific statute, maintained in a confidential manner.

3. Subsection 2 does not apply to the enforcement of a judgment for arrearages if the amount of the judgment has been determined by any court.

(Emphasis added).

147. The Court reviewed the Willick Law Group billing statements for the time period June 10, 2008 through July 6, 2008. This was attached to their Motion to Strike filed on July 8, 2008 as Exhibit A.

148. The Willick Law Group charged a total of $20,443.11 for the above billing. However, some of the charges did not pertain to the issues of child support arrears and interest.

149. Therefore, the Court only looked at billing charges relevant to the issues on this Decision and Order. As noted above, under NRS 125B.140(2)(c)(2), the Court shall determine and include a "reasonable attorney's fee".

150. Here, the Court FINDS the Plaintiff, Mr. Vaile, is in arrears in the amount of $114,469.96 through the end of May 2008. Under the statute, the Defendant is entitled to a reasonable attorney's fee.

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151. IT IS FURTHER ORDERED that the Defendant, Cisilie A. Porsboll, f/k/a Cisilie A. Vaile, shall be awarded the sum of $12,000.00 as and for attorney's fees in accordance with NRS125B.140.

152. A copy of this Findings of Fact, Conclusions of Law and Final Decision and Order shall be provided to Greta Muirhead, Esq., Marshal Willick, Esq., Deputy Attorney General Donald W. Winne, Jr., and the Clark County District Attorney, Child Support Division.

153. SO ORDERED.

Dated this 17 day of April, 2009.

CHERYL B. MOSS
District Court Judge

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EIGHTH JUDICIAL DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ROBERT S. VAILE,

Plaintiff,

v.

CISILIE A. VAILE,

Defendant.

CASE NO. 98D230385

DEPT. I

BEFORE THE HONORABLE CHERYL B. MOSS, DISTRICT COURT JUDGE

TRANSCRIPT RE: ALL PENDING MOTIONS

FRIDAY, JULY 11, 2008

APPEARANCES:

For the Plaintiff: GRETA MUIRHEAD, ESQ.
(Unbundled Capacity)

For the Defendant: RICHARD L. CRANE, ESQ.
MARSHAL S. WILLICK, ESQ.
JOSEPH W. RICCIO, ESQ.

Also present: ROBERT W. TEUTON, ESQ.
EDWARD W. EWERT, ESQ.
Deputy District Attorneys

LEONARD FOWLER

TRANSCRIPT PREPARED BY:

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MS. MUIRHEAD: And if you'll look on page -- the top of page 3, I talk about all of that. So we absolutely positively, even if you rule against my client on the penalties issue, have a problem with the previous number in the arrears to judgment.

THE COURT: Okay. We are arguing attorney's fees and I haven't decided whether that's --

MS. MUIRHEAD: I understand, but we need to make a --

THE COURT: All right. So --

MS. MUIRHEAD: -- a point.

THE COURT: -- back to the --

MS. MUIRHEAD: But just to make sure that the court --

THE COURT: I appreciate the head's up.

MS. MUIRHEAD: But to get the -- I understand --

THE COURT: You were the one who are requesting we're not fully ready to argue it.

MS. MUIRHEAD: No matter what, even if you rule against me on the penalties, those arrears that he reduced to judgment that you reduced to judgment in a prior order need to be changed.

THE COURT: Okay.

MS. MUIRHEAD: Okay. Thank you.

MR. WILLICK: We have done a long time ago without --

THE COURT: All right. Penalties.

MR. WILLICK: Right. Let's get to the penalties issue. And by the way, I take -- I take personal responsibility for the existence of this problem. I guess there's a certain amount of poetic justice in that. To explain, Nevada is a very small state and the total of number of people that are active in any given field is usually pretty little. I am partially responsible for the existence of NRS 125B 095. One, as a member of the federal council that was working with the legislature at the time. More directly, wearing my other hat as a member of the board of directors of the Clark County Legal Services, we have repeatedly over 10 years tried to prod the various prosecutorial agencies of Nevada to include a calculation of penalties in their collection of child support. They ultimately did so, and their way of doing so is what set up the conflict currently before the court. So in I suppose a ironic way, I have caused my own difficulty here today by causing them to do what I now disagree with them about. But this how the calculations go. Nevada law requires a 10 percent per annum penalty to be assessed on delinquent child support greater than the amount of one month's support pursuant to NRS 125B 095. The penalty calculation as we do it is not terribly dissimilar to how an interest calculation would be done. Specifically, penalty amounts are not compounded. The EMLAW (ph) program determines the total arrearage, finds out how much of that is

greater than the amount of the current obligation due for one month, divides 10 percent by the number of days in the current year to get a daily penalty rate. And then accrues it. The number of days for daily calculations determines the amount of the penalty assessed. Under the district attorney's methodology, a full penalty is assessed on any amount not paid when due. In other words, if the payment due in a month is 1,300 and 600 is paid, the amount unpaid is $700. On the last day of the next month following that date, the district attorney will assess a 10 penalty on the $700 in the amount of $70. The next month, if nothing is paid, $130 penalty will be assessed on the arrearage of $1,300 that came due. And it happens on the last day of the month following the nonpayment of the full amount. Nothing happens the next month or the month after or the month after or the month after or the month after. That's essentially the difference which gives rise to what's before you today. Their method does not consider any distinctions between an amount due and unpaid for 30 days or an amount due and unpaid for 24 hours. If there is an amount of child support due in a calendar month that remains unpaid on the last day of the following calendar month, the full penalty is assessed on the arrearage. According to Mr. Winne, the State assesses that penalty every year, as I'm going to mention in a moment. And you can tell by looking at their hypothetical calculation in

Vaile, that's simply not true.

MS. MUIRHEAD: Mr. Wyle's [sic] the AG.

MR. WILLICK: Under --

MS. MUIRHEAD: I'm sorry. Just to make clear.

MR. WILLICK: I know that.

THE COURT: Yes.

MS. MUIRHEAD: I'm sorry. Just clarifying for the judge.

MR. WILLICK: Mr. Wynn's amicus brief says in a footnote -- can I have Mr. Wynn's submission? Find it please. Mr. Wynn's (ph) submission says in a footnote that the State will renew the penalty each year it goes unpaid. As far as we can tell, that doesn't happen. There's a footnote that -- I think it's a four or five, that talks about differences -- here it is. It's footnote number -- footnote number 8 on page 5. And it purports to assert that a penalty is repeated at each 12 month iteration after assessment. As far as we can tell, that doesn't happen. And I'm looking again at the calculation that's been supplied. But more to the point, that's essentially the difference. Before I talk about Mr. Wynn's (ph) submission -- and I do have a few remarks about it --

THE COURT: Do you have any disagreement about footnote 8?

MR. WILLICK: Yes. And I don't believe it correctly

states what is true. I don't believe that under the methodology as shown me by this sample calculation a second annual penalty is ever assessed for an outstanding arrearage amount, but I would ask the district attorney, who is of course much better versed in what they're doing and how they're doing it, to answer that factual question. And frankly, I wanted to hear exactly what I did on interest, which is state what I believe to be true in terms of methodological applications, and ask the district attorney if I have accurately stated the differences between how the calculations are done or if I have missed anything, so the court can have a clear understanding of what is being submitted.

THE COURT: All right. Mr. Ewert.

MR. EWERT: Your Honor, having followed what he said, I believe he was correct, but may I paraphrase it so that I can make sure that everybody understands the way we do? I want to say preliminary that I'm seriously conflicted in this case. The reason for that conflict in my own mind as a deputy DA assistant, if this court were to find that the State's methodology for calculating penalties is correct and that Mr. Willick's is not, I believe that Mr. Vaile will benefit by tens of thousands of dollars in penalties that will be lost under Mr. Willick's program. In other words, there is a difference, in the hypothetical presented to the court and the counsel for the period of April 2000 through May, June of '08. The difference

in the cumulated penalties is somewhere in the neighborhcod of about $30,000. Mr. Willick's program as accumulated penalties of over $50,000 by the time you look at the accumulated penalties May or June of 2008. If you look at the final total in the DA or the State calculations, we come up with about 12,000. If the court and counsel want to look at that hypothetical, I would direct --

MR. WILLICK: It's right there.

MR. EWERT: And the court's --

MR. CRANE: Just use mine here.

MR. WILLICK: -- yeah, the court is --

MS. MUIRHEAD: Your Honor, I just want you to take a look at the statute, something that Mr. Willick neglected to indicate, is that the statute talks about an installment. A penalty must be added by operation of this section to the amount of the installment.

MR. EWERT: Your Honor --

MS. MUIRHEAD: I know you're in the middle and I'll just --

MR. EWERT: -- I'll get to that in moment.

THE COURT: Yeah. Yeah.

MR. EWERT: Now in the hypothetical provided, the DA penalty calculations begin on page 8 of 15. Counsel, you want to look at that. We all start with the zero balance of --

through March of 2000 and then begin accumulating the obligation, 1,300 a month, beginning April 2000. Then when you look at the final page, that's 15 of 15, you'll see that the total penalty accumulated under the State method, right there, it says total penalty 12,148.29.

THE COURT: Yes.

MR. EWERT: And if you compare that to Mr. Willick's program, which hopefully the court can find quite easily, the arrears --

MS. MUIRHEAD: Penalty.

MR. EWERT: -- the accumulated penalties.

MS. MUIRHEAD: 51,347.83 per the report dated --

MR. EWERT: Yes. So --

MS. MUIRHEAD: -- July 10th.

MR. EWERT: -- we are more than $30,000 apart. And for me personally for someone who has by record committed a fraud upon the court in the course of divorce proceedings in this very case, for that person to receive a --

MS. MUIRHEAD: Object --

MR. EWERT: -- windfall under the law --

MS. MUIRHEAD: Whoa.

MR. EWERT: -- under the law --

THE COURT: Wait a minute.

MR. EWERT: -- would be personally repugnant. That's

just explaining my conflict. Also as a deputy DA --

MS. MUIRHEAD: He's outside the scope of his testimony as a contractor of the State of Nevada. His personal opinion is not relevant. He is here to testify about how the State calculates penalties and where the State came up with that. And that came from -- the regulation handbook, section 615. He is not --

MR. EWERT: And may I finish, Your Honor?

THE COURT: Okay. Do you want to respond to that?

MR. EWERT: And the next thing I was going to say is as a deputy DA, we work under the auspices of the welfare division, and for me to take a position contrary to the State's methodology would put me at odds with the State. That puts me in a very uncomfortable professional position.

THE COURT: Is that your --

MR. EWERT: All --

THE COURT: -- that's just your point?

MR. EWERT: Yes, just to explain to my conflict.

THE COURT: Your disclaimer is noted.

MR. EWERT: Thank you. Now the court's indulgence as well. What I'd like to do is direct counsel and the court to look at the differences in methodology and note the following. In the State's method, the State initially charges higher penalties. As Mr. Willick explained, for example, if say in

March of 2000, 1,300 fell due, the State, by the end of April, charges $130 for that missed installment. That is the annual penalty that's being applied in April, when if it's an annual 10 percent, you would think that --

MS. MUIRHEAD: Once again, he's outside his -- his testimony here today is supposed to just simply be he's a contractor with the State of Nevada and all of this other argument is not appropriate --

MR. EWERT: With all do respect --

THE COURT: Okay. And I --

MR. EWERT: -- it's not argument. I'm trying to explain the methodology.

THE COURT: Your objection is noted again. I'd like to at least finish that and then you can address it.

MR. EWERT: Thank you. So in the --

THE COURT: You were saying that -- yeah, the 130 would be imposed in April.

MR. EWERT: Right, on the $1,300 missed payment --

THE COURT: From March.

MR. EWERT: -- from the previous month.

THE COURT: Right.

MR. EWERT: Now, if it's 10 percent per annum, I mean, logically you would think it would be 130 as divided by 12 months, or under Mr. Willick's methodology, the 365 days. It's

a little more complex, but for my simple mind, I just think of it as 12 months and you would apply 130 divided by 12 if you were doing it a month by month basis. Did the court follow me on that?

THE COURT: Yes. Yes.

MR. EWERT: One-twelfth of 130 in April, another one -- you know, one-twelfth of 130 for next one.

THE COURT: And that's the State's method?

MR. EWERT: That's what the State's method does.

THE COURT: Okay.

MR. WILLICK: Actually, I think she just asked a question you didn't answer. She just asked if you -- if you actually calculate one-twelfth, and I don't believe you do.

MR. EWERT: Right. The State's method does not calculate the one-twelfth and apply it for that month; it calculates the entire annual 10 percent penalty and inserts it that month. 1,300 fell due instead of applying one-twelfth of 130, it applies 130. Now the State's method does not -- the State's method applies that 130 penalty only one time ever. And I believe that's what Mr. Willick was referring to when he says that the footnote in the brief was not accurate. Mr. Willick's methodology applies the penalty --

MS. MUIRHEAD: And Mr. Willick's already testified and he has testified about how --

THE COURT: Yes, I understand.

MR. EWERT: -- differently.

MS. MUIRHEAD: Well, but this is how the State does it.

THE COURT: Okay. I'll allow him to reiterate his -- Mr. Willick's methodology. And he's here in court. He can object if it's stated inaccurately.

MR. EWERT: So as we understand it, Mr. Willick's methodology imposes or accrues the penalty each period that the child support installment remains unpaid. The State's methodology again only one time ever. In the short term, if you look at the first year for example --

THE COURT: So it sort of snowballs.

MR. EWERT: It accumulates.

THE COURT: Yes.

MR. EWERT: In the short term, if you look at say the first year of unpaid payments, very likely the penalties calculated by the State's system will be higher than the penalties calculated by Mr. Willick's system. Over the course of the time, over 10 years as the court sees in this hypothetical, Mr. Willick's ends up with much high accumulated penalties, because it imposes not a one time penalty the way the State's system does, but a penalty as long as the installment remains unpaid.

THE COURT: Is there any public policy impact by what you just described?

MR. EWERT: Well, if I understand the court's question correctly, for the 4(d) program, there is a public policy impact. The 4(d) program is often accused in the media of not doing a good job of collecting child support. And one of the statistics always thrown out or noted by the federal government is how much child support has fallen due and how much we've collected. And there are these huge numbers of uncollected child support. So it's in the government's public perception interest not to accumulate huge arrears that are not really practically -- practically collectable. There is a different public interest in the government program than there is in the private sector. In the private sector, higher accumulated penalties provide the party who is owed those penalty more leverage for negotiating.

MS. MUIRHEAD: Objection. No foundation for this kind of -- these statements. Maybe we should go into how Mr. -- how long Mr. Ewert has been in private practice.

MR. EWERT: I was just responding to the court's questions about public policy.

THE COURT: Continue, Mr. Ewert.

MR. EWERT: But that my -- all I want to do in conclusion is offer my opinion of how the case will be analyzed

in this situation.

THE COURT: Any disagreements --

MR. EWERT: One looks --

THE COURT: -- with the attorney general's brief then? Is everything in here -- I guess being the district attorney, you would --

MR. EWERT: I wouldn't want to put myself in a position of saying I disagree with it, yeah.

THE COURT: Okay.

MR. EWERT: If I may, Your Honcr. As I understand it, the role of the court is number one to look at the statute and decide whether on its face it's ambiguous. As the Nevada Supreme Court has stated, if a statute is not ambiguous, you do not look to legislative history. If the court finds that it is ambiguous, you would then look to legislative history. Is the statute that says 10 percent per annum or a portion thereof as long as an installment remains unpaid ambiguous? That's --

MS. MUIRHEAD: That's up to the court to decide.

MR. EWERT: -- the initial court's -- yeah, initial decision for the court. And unless there are further questions, I have nothing to add.

THE COURT: Okay. I would go back to Mr. Willick then to respond to the district attorney's description, explanation.

MR. WILLICK: I concur with essentially everything he

said and I do understand the political tightrope. We were informed in 2004 that the funding available to the State of Nevada Welfare 4(d) Program was partially contingent on --

MS. MUIRHEAD: Objection, Your Honor. Objection. You might as well swear him in, because he's testifying about what he was informed in 2004. He's now become a witness in this case.

THE COURT: Okay. You objection is noted. It is well briefed in the attorney general's in front of the court brief.

MS. MUIRHEAD: So we don't need to hear -- he wants to continue to testify, great.

THE COURT: No, I will allow him to speak to that.

MR. WILLICK: You were --

MS. MUIRHEAD: Is he testifying, Your Honor?

THE COURT: I think he's just giving us a historical background.

MS. MUIRHEAD: And what's that based on? His -- we know his own -- the fact that he claims he was there and he knows it all.

THE COURT: Over -- overruled. Mr. Willick.

MR. WILLICK: 2004 during the meetings between Clark County Legal Services, the district attorney, the welfare department and the attorney general's office, we were informed of the funding formulas that go into the financing of our public

welfare 4(d) program. Mr. Ewert has just made a reference to the public perception as part of a response to the court's question on public policy, because beyond public policy or public perception, it's actually part of the funding formula. It is in, however distressingly, the State's best interest as a bureaucracy to minimize the amount of child support that remains outstanding and their funding formula is partially dependent on the ratio of collections to the amount of child support found to be due. And if they do anything that increases the amount of child support that is actually due, then they decrease their ratio of collections, and by doing so, imperil their own funding. The bureaucracy therefore has an interest which is somewhat adverse to that of its clients, which is the full collection of arrears of -- under the statute. I would like to at this point, since the court has apparently reviewed Mr. Wynn's (ph) submission, address the law, logic and policy there. To answer the court's question a moment ago, I have no argument with anything that Ewert said. That is not a matter of word choice and how to explain things. I believe he's tried to be as clear as he can. The only place where I think he spoke that I -- I'm not sure you were with him is what the State's methodology actually does. He tried to correct it and I want to make sure the court understands they do not calculate in March one-twelfth of 130.

THE COURT: No, they don't.

MR. WILLICK: They impose 130. And then in --

THE COURT: One time.

MR. WILLICK: -- April, that amount doesn't change.

THE COURT: I think the operative words are one time.

MR. WILLICK: Yes.

THE COURT: Okay.

MR. WILLICK: So one of the -- I -- there was a little confusion. I just want to make sure that was clear. Going --

THE COURT: The footnote 8 was illustrative of that.

MR. WILLICK: And the footnote 8 is in error. I mean, Mr. Ewert can't say that. I can. There was a number of things --

THE COURT: Which -- all of it is an error or which portion is an error?

MR. WILLICK: Sure. It says $100 per month not paid for one year. Willick's position would require the NCP to pay 120 in penalties. Well, that's not actually accurate. Well, okay. It's not accurate, because he is presuming it's an end of year calculation. It isn't. It's a daily accrual. It's not 1,200 due once; it's 100 due on the first of each 12 consecutive months.

THE COURT: So what would your number be?

MR. WILLICK: I --

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THE COURT: So what would your number be?

MR. WILLICK: I --

THE COURT: 100 a month.

MR. WILLICK: -- that's why I have a computer program. I can't do that kind of math in my head.

THE COURT: Okay.

MR. WILLICK: But it's going to be a number of less than that. I just need --

THE COURT: Less.

MR. WILLICK: -- it's going to be significantly less than that.

THE COURT: Okay.

MR. WILLICK: CSEP would require NCP to pay 120. And then the rest of the footnote is an error as well. Now, extend that out again another year, Willick would charge 240. That's also not accurate. After -- because it has to do with a total number of days that each accruing amount was unpaid. It'll be a different number than that and a lower number than that, but I can't tell you the number. And CSEP would charge 120 for a total of 240. That's also incorrect, because they only charge it once. That second penalty never appears. Every word of that footnote is wrong as a matter of just fact. Mr. Winne -- I testified right behind him at the hearings in 2006. I respect his legal acumen. I believe him to be a reliable and responsible public servant doing his job. It's a perfectly legitimate legal analysis that he's done, but his facts and his

logic are just wrong. For example, he's perfectly correct in saying that all of the words of a statute should be given some effect under rules of statutory construction. Perfectly legitimate legal position. Then he says per annum or part thereof says that there should be no difference in effect between an arrearage being a day late and being a year late. That's just wrong. It's wrong under every holding of every Nevada Supreme Court case I have ever read. It's an indefensible legal position. First, you also have to read the first half of the sentence and the rest of the words, that the installment remains unpaid. If you're going to give some effect to those words as well, it remains unpaid the next month and the next month and the next month. You can't simply ignore those words, because they don't fit in to your preconceived notion of the outcome you're trying to reach. As a matter of basic English syntax, which is the foundation for the computer program, this tells me that the rate is 10 percent per year per annum. It has to be per annum. If it's owed for less than a year, the penalty charge should be less than 10 percent, because it hasn't been owed for a year. And if it's owed for more than a year, it should be greater than 10 percent, because it's owed for more than a year. That's what per annum means. Then he claims that the welfare computer charges a penalty each year. It doesn't. We just went over that. Under his reading, given

the way they really do things, the words per annum have no meaning. They charge a one time penalty and that's it. There is no per annum in the state's calculations. Mr. Winne reads a few fragments of the legislative history. I believe that I was there that he reads them correctly. And he analogizes the statements that were made by Mr. Sader (ph) and by other that testified to the principal of late fees charged by stores. That was his analogy. And it's perfectly okay as far as it goes, but his facts again are just wrong. If you go to Best Buy and you owe them a hundred bucks and you don't pay that hundred bucks and they hit you up with a late penalty, and they do, what happens when the next month rolls around? Well, the answer is they charge you again and again and again, because the idea, every time a billing cycle passes where you have failed to make the payment as promised, they ding you with another late penalty because it's still remaining unpaid. The idea is that they continue an incentive to get you to pay the bill. And the incentive is that if you don't pay the bill, it will get worse and you will owe more money. It would be crazy for Best Buy to say you owe this amount in January. If you don't pay, you get assessed a late penalty in February and then you're off the hook. It doesn't make any difference in March, April, May, June, July, August, nothing else ever happens to you bad for failing to make that payment. So it's happened, too bad, so

sad. That's not what corporations do. It's not what banks do. But that's exactly what Mr. Winne is claiming the State should do. It would be lousy public policy to have that for exactly the same reason that no store would do it. Assessing a late fee that doesn't get worse the longer someone owes a matter does not provide an incentive for them to actually pay the amount due. And as Mr. Winne has recited and Mr. Ewert has acknowledged and as the program was designed, that's exactly what the state was trying to come up with when the penalty was conceived in the first place, provide a continuing incentive for folks to actually make their payments sooner rather than later. Mr. Winne claims to be unable to understand this, but I believe that he is constrained, as Mr. Ewert is constrained, in to not being perhaps fully forthright about the point. It would take the Nevada Supreme Court about 30 seconds to reach the conclusion that the purpose of the penalty is to get people a continuing incentive to actually make their child support payments. That's why there was a two year hiatus before it went into effect. The announcement to the universe, everybody go out and pay your child support because this big penalty is going to come down on your heads if you don't. That's unique in Nevada law to the best of my knowledge. A two year period before a law goes into effect to give everybody that much time to catch up.

THE COURT: I think they disagreed with you on that

point. The brief disagreed with you on that.

MR. WILLICK: Did it? If so --

THE COURT: It's somewhere.

MR. WILLICK: -- I -- I got this a couple of days ago. I have read it --

THE COURT: It was --

MR. WILLICK: -- but I didn't catch that.

MS. MUIRHEAD: The legislative history indicates that --

THE COURT: Maybe it was you that argued it.

MS. MUIRHEAD: The legislative history, which is in here, indicates that the two year delay was because the welfare department needed time to get their computer system up to par and so they asked for the court -- they asked for legislator --

THE COURT: It's not critical to this decision.

MR. WILLICK: Yeah.

MS. MUIRHEAD: Right. Well, I think act- --

MR. WILLICK: And it's unsubstantiated and it's irrelevant because in the past --

MS. MUIRHEAD: It's in the legislative history.

MR. WILLICK: -- it remains --

MS. MUIRHEAD: -- they're -- that's the record of the bill.

THE COURT: Okay.

MR. WILLICK: And in 1993, nothing happened between '93 and '95 which is why Clark County Legal Services started harassing the district attorney's office and what was then the pro bono project in '97, '98, '99 and 2000 and then after the merger with Clark County Legal Services harassed them again in 2001, 2 and 3, leading to the open forum that has been discussed in the legislative history in 2004 at which we came and presented these calculations and pointed out the inaccuracies in the then proposed 616 guidelines, which even has addition errors in it. It has errors in its principal calculations. We were unable to figure exactly how they were doing their interest calculations. It wasn't in fact a spreadsheet. It was merely a table that somebody had typed numbers into and the numbers were in error.

THE COURT: Okay.

MR. WILLICK: We now know, because Mr. Ewert has given us a copy of the manual from two years later, that those errors were never fixed. They were still in the table in 2006. The methodology -- I mean, let's remember what happened here. Welfare called the attorney general's office, told them to come up with legal cover to rationalize why --

MS. MUIRHEAD: Objection.

MR. WILLICK: -- it would be okay --

MS. MUIRHEAD: Objection.

MR. WILLICK: -- for that --

THE COURT: Objection's noted.

MR. WILLICK: -- to continue using their outdated computer program methodology. And they got what they asked for. As a political matter, that's a little questionable, but it surely does not make the math or logic embedded in the outdated computer program anymore compelling than it was on the date the penalty provision was passed, because the computer program is exactly the same thing that was in place then.

THE COURT: I would like to focus on your position of the statute is ambiguous.

MR. WILLICK: All right. Now -- okay. I -- I've got that right here.

THE COURT: Or you can argue both ways.

MR. WILLICK: Yes, I can.

THE COURT: Okay.

MR. WILLICK: But I'm going to. Mr. Winne argues, and correctly, that the statute could certainly be perceived by a judicial officer as ambiguous. And I say that, because he has himself come up with a plausible, if in my opinion illogical, alternative application of the statute in order to bend over backwards to rationalize how the State is capable of doing it. So we built in a switch so that the user can make the program perform the calculations in different ways. Switches.

MR. FOWLER: Oh, I'm sorry.

MR. WILLICK: Because we know that we don't know what the Nevada Supreme Court would say if this matter was completely and squarely developed, we built an entire table full of switches into the program to allow the court to do different things -- well the user, regardless of the court. For instance, when the program was first developed, it would -- there had not yet been a formal holding by the Nevada Supreme Court that interest should never be compounded. So I built in a switch that would allow like a bank would do compound interest on a -- on a credit card, we built in the capacity to do compound interest calculations, but we turned it off as a default, because I did not believe that that's the way the law would develop. In fact --

MS. MUIRHEAD: You know -- I'm sorry, Your Honor. I -- I would like you to make a finding that Mr. Willick is testifying as to how the Marshal (ph) program works.

THE COURT: Well, he's the creator of the program, yes.

MS. MUIRHEAD: So he is testifying. Would you -- would you agree with that statement, Your Honor?

THE COURT: He's arguing the nature of his program.

MS. MUIRHEAD: And who better to argue with it than the creator? Therefore, he's testifying and he's a witness.

MR. WILLICK: In the unfortunate event --

THE COURT: My ruling is, it's the -- this judge and all the other judges have accepted in prior cases the Marshal (ph) law program. We're here to decide if it is in line with the statute and as to its -- well, I don't know the word, accuracy or validity or conformity with the statute.

MR. WILLICK: Thank you, Your Honor.

MS. MUIRHEAD: So he needs to get --

MR. WILLICK: There's a --

MS. MUIRHEAD: -- in the witness box and testify about the program.

THE COURT: I don't need his testimony. He can explain to me how the program works. I've never had an in depth explanation until today on that -- on that program.

MR. WILLICK: Your Honor -- okay. Thank you, Your Honor.

THE COURT: Okay.

MR. WILLICK: There is a number of possible modifications that could be made. We, wherever possible, used what the Nevada Supreme Court had actually said in its interest cases, because there was no penalty provision at the beginning in its interest cases as -- as the clue for how to do the calculations. The reason, for example, that the default is applied payments -- well, applied payments to the oldest amount

due. That was because it was a case on point that said so. That's the Foster versus Marshal (ph) point.

THE COURT: Does the DA disagree with that? I think the DA --

MR. WILLICK: DA doesn't do it that way, because they said that under 4(d) regulation, they were required to apply every incoming payment to the current month's arrearage. I -- I haven't researched it and I haven't argued with them. We built in a switch that anybody that wanted to run the program could do the calculations the way the DA would do the calculations could.

THE COURT: All right. Mr. Ewert, any com- -- input on that?

MR. EWERT: Well, Your Honor, that I'm not expert on how Nomad's (ph) program works and --

THE COURT: Okay. It's -- this is a computer thing.

MR. EWERT: -- if that were become -- yeah, we would need a --

THE COURT: It's a software thing.

MR. EWERT: Right.

MR. WILLICK: And I wasn't trying to lay that on him personally. That's just what were told they did and why they did it. we know that that's what they do. What we didn't know is why. It doesn't have an effect in the modern world for that whole interest rates held before 1987 and now. The interest --

that has essentially disappeared. The reason --

THE COURT: Is the technicalities of the software program used by the agency or by your off- -- or your own program --

MR. WILLICK: Yes.

THE COURT: -- is that -- And I'm just trying to save time here -- would that be relevant to the ultimate resulting numbers that would come out after the computer spits out the numbers?

MR. WILLICK: Slightly.

THE COURT: Okay.

MR. WILLICK: It's the -- it's the rationale for that $40 differential --

THE COURT: Oh, yes.

MR. WILLICK: -- over eight years between my total and their total. I'm not saying they added wrong; I'm saying their methodology of addition will give you a different total. If you round to eight places as opposed to three places, it will over time get a different total.

THE COURT: That's my question. This was a --the hypothetical was it was a span of eight years?

MR. WILLICK: Yes. Well, about that --

THE COURT: Okay.

MR. WILLICK: -- 2000 to 2008.

THE COURT: Will the numbers look different 4 years, 12 years, 20 years? Would the difference grow or shrink if you take the hypothetical --

MR. WILLICK: I would have to presume that it would grow over time. If there is a differential, it would only increase as the time span increases.

THE COURT: Okay.

MS. MUIRHEAD: Because --

MR. WILLICK: So it will be -- but it will be different at different points in time. That's what Mr. Ewert was trying to say. If this was a six month case, if it was only six months -- THE COURT: Yes.

MR. WILLICK: -- of child support due and unpaid, they would hit this guy for about four times what I would. I can't do that math in my head, but it would be many times higher than the program would spit out in penalty calculations, because they would have called for 100 percent of the annual penalty to come do on the last day of the next month that the payment would gone unpaid. The program would have calculated for each one of those.

THE COURT: A smaller amount.

MR. WILLICK: Only the numbers of days in ratio to a year that the amount had remained unpaid and outstanding --

THE COURT: Is that a critical point here now, Mr.

Ewert? You understand that was in the back of my head there if an non -- an obligor parent would get hit with a lot more interest on the short end -- short term?

MS. MUIRHEAD: It's not interest. It's penalties. That's the problem.

MR. EWERT: That is proper --

THE COURT: The penalties.

MR. EWERT: -- that is proper --

THE COURT: Penalties.

MR. EWERT: -- understanding of the difference in methodology and the question before the court. The ultimate sense is which method most closely follows the statute.

THE COURT: It sounds ironic, because then the long term -- but then in the long term, they merge sort of. It's so --

MS. MUIRHEAD: They -- they don't --

MR. WILLICK: They'll cross.

THE COURT: Yeah.

MS. MUIRHEAD: Because --

MR. WILLICK: Because as it remains outstanding for a long enough period --

THE COURT: Okay.

MR. WILLICK: -- there will come a day at some point and the amount of days that an amount has remained unpaid will

exactly match --

THE COURT: And I understand.

MR. WILLICK: -- the --

THE COURT: I have to give you your time to argue as well. So --

MS. MUIRHEAD: Just to -- just to make -- we have just a point of clarification right now.

THE COURT: Yeah.

MS. MUIRHEAD: Mr. Willick's program charges penalties on the total unpaid child support arrears. That's the same way we calculate interest. There's --

MR. WILLICK: That's counsel's argument and she make that in a minute. I'd like to wrap up so we don't get confused.

THE COURT: All right. And we're at nine --

MS. MUIRHEAD: No, but I mean, that's --

THE COURT: Okay.

MS. MUIRHEAD: -- that's why. So when we had a -- at one point he had -- my client had an arrears in the old schedule of $141,000. So that was 10 -- 10 percent divided by 12 of $141,000.

MR. WILLICK: Actually, counsel is incorrect. But she's incorrect, because she doesn't understand the methodology of the mathematics.

THE COURT: Okay.

MR. WILLICK: It's the legal argument nonsense. The -

THE COURT: I'm just watching our time here. It's 9:30.

MR. WILLICK: Sure. And I -- I only got another four or five comments about Mr. Winne and then I'll shut up, sit down and let counsel --

THE COURT: Great. Thank you.

MR. WILLICK: -- address the arguments. You cut -- what the court asked me was is the statute ambiguous.

THE COURT: Ambiguous, right. We're still on that.

MR. WILLICK: And that what I was trying to answer. My answer is I don't think so, which is why I did not build a switch in for how to apply the penalties. My reading of it as an English language sentence is the only one construction, and that's a construction built in. If I had seen an ambiguity from a logical analysis per statute, I would have built in a switch to the program to allow for the penalty to be calculated in more than one way. But when I see -- may I have a statute book? When I have a statute which says the amount of the penalty is 10 percent per annum or portion thereof that the installment remains unpaid. I take that under English as a direction to find the portion of a year that an installment remains unpaid and apply a 10 percent per year penalty to that amount, because

that's what the sentence says. Now you can dance on the head of a pin and try to get it to say something it doesn't and try to get it to say backwards that that really means that this -- that per annum or portion thereof, one means exactly the same as the other, but that's -- that's semantic nonsense. It means what it says. It was not written by people that were trying to create a semantic game. And what it says is what the program does. It calculates 10 percent per year of each installment that remains unpaid for as long as it remains unpaid. That's what the statute says.

THE COURT: Okay.

MR. WILLICK: That's what we do. Mr. Winne -- and this is where we -- we part company. Only a bureaucrat could make a straight faced argument that going to the legislature and asking them to amend a statute to match how the welfare computer calculates penalties and having that amendment rejected somehow constitutes an endorsement of all the welfare system calculates interest merely because they're a public agency. That is the single bit of dishonesty that I find in Mr. Wynn's (ph) submission. It's nonsense. They wanted to change the statute so that everybody had to calculate penalties the way they do. And the legislature -- and I mind you, Barbara Buckley (ph) from Clark County Legal Services who is completely informed as to all of the history here is on that committee to which this argument

was made -- said no, we're not going to, because it's wrong. The documentation built into the program's help system explains which defaults are selected and why. One of them is on the screen that you just gave. As you move the cursor from one switch to another, you get a different selection showing you what has been selected and why it's been selected.

THE COURT: Okay.

MR. WILLICK: If someone wanted to use months which would disregard the extra days within a month and an arrearage remains due, you can flip two switches and makes this computer calculate less accurately. If you did, you'll replicate the welfare division's calculations, because you will ignore the number of days if you say Mr. Vaile, you must pay child support on the 10th, and he doesn't, and he pays it on the 30th, if I calculate it, there's going to be both interest and penalties for the difference between the 10th and the 30th. If they calculate it, there won't. So my reading of the prior child support cases which says that an amount is due within the framework of the court's order calls for there have to be a legal effect between them. And I think it's unconstitutional to tell people that a penalty due for a day is the same as a penalty due for a year. I think that the Nevada Supreme Court, if the question was squarely presided, would say you can't do that people. It would be inherently an equal protection

violation to say that to people. It's not how banks do it. It's not how corporations do it. It's not how the default settings of EMLAW (ph) do it, but if you want a less accurate computation, you can bend over backwards and force the system to give it to you. We ask the court to choose the application of the statute that's compatible with the purpose that the statute was intended to serve to give all outstanding child support obligors an ongoing incentive to make payments sooner rather than later. And the incentive is provided by making sure that more is owed if you pay later than is owed if you pay sooner. The logic is not really very difficult to understand. I'll answer any questions the court has. I don't want counsel to be deprived of her time to address it.

THE COURT: Appreciate that. Thank you. Okay. Ms. Muirhead

MS. MUIRHEAD: Thank you, Your Honor. Attached as Exhibit 6 to my supplemental brief is an April 8th, 2005 letter from Mr. Willick to the assembly. And he makes the argument that he has made twice today that --

THE COURT: Do you have a Bates stamp number?

MS. MUIRHEAD: Pardon me?

THE COURT: It's not Bates stamp numbered? There's --

MS. MUIRHEAD: Here, I'll trade you copies. This copy is more --

THE COURT: Well, I can find it. This is Exhibit 1, Exhibit 2 --

MS. MUIRHEAD: Okay.

THE COURT: -- Exhibit 3 was Mr. Ewert's letter. Exhibit 4 is the -- something. I'm looking for the next. Oh, I ran -- you ran out of green sheets here.

MS. MUIRHEAD: Yeah.

THE COURT: Exhibit 8.

MS. MUIRHEAD: Well, this is my green sheets up here.

THE COURT: Exhibit 6. I'm there.

MS. MUIRHEAD: Okay.

THE COURT: Okay.

MS. MUIRHEAD: Exhibit 6 is the letter from Willick to the assembly where he argues that we should be charging people different amounts based upon when the payment is due. He argues a equal protection argument, just like he's made today. That it's not fair to charge somebody the same penalty whether the penalty is due, if the child support payment is due on the 1st versus the 5th versus the 25th. That argument was taken into account on August -- in August of 2005 when the assembly met to discuss revisions to 125B 095. they did not adopt his position. They paid --

MR. WILLICK: Objection. They did entirely. The only amendment that was made in 2005 was the statement that if your

employer causes a -- an arrearage to accrue, you are not to be assessed a penalty. That was the only change made to the statute in 2005. My position was accepted. The State's position was rejected. Their proposed rewrite of subsection (b), which tells you how to calculate the penalty, was rejected by the assembly. And counsel's statement is simply false.

THE COURT: It would help, Ms. Muirhead, if you point to me key paragraphs in this letter.

MR. CRANE: Excuse me, Your Honor, could you tell us where this letter is located and where --

THE COURT: Yeah, it's Exhibit 6. It's like --

MR. CRANE: '05.

THE COURT: -- this 20 pages from the back end.

MS. MUIRHEAD: One, two, three -- it's paragraph three --

THE COURT: It's --

MS. MUIRHEAD: -- of -- of April 8th, 2005. The -- found it?

THE COURT: Paragraph -- what page are you on?

MS. MUIRHEAD: It starts in -- it's Exhibit 6, Your Honor. Are you or the letter?

THE COURT: Yeah, let me get -- have Mr. Crane get there.

MR. CRANE: Ah, there it is.

THE COURT: Okay. What page? Page 1.

MS. MUIRHEAD: Page 1 of 11.

THE COURT: Paragraph 3.

MS. MUIRHEAD: The troublesome aspect is that the proposed amendment to 125B 095(2), specifically the phrase penalty must be applied at the end of each calendar month, et cetera. This would imply an identical penalty in the last day of the month against two obligors. One of them had a child support payment coming due on the 1st and the other one who had a payment due on the 25th. This would be bad public policy since -- all sums calculated to the family for each possibly -- I use a due process argument. But they didn't accept that. They knew --

MR. WILLICK: But counsel's simply wrong. Objection. 125B 095(2) was left exactly the same after this proceeding as it was before.

THE COURT: And Attorney Winne --

MS. MUIRHEAD: And they knew how the State was doing it.

THE COURT: -- I think stated that simultaneously in his friend of the court brief.

MR. WILLICK: Counsel is misstating --

THE COURT: There was no --

MR. WILLICK: -- the fact.

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SEP 11 11 18 AM '08

CLERK OF COURT

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ROBERT SCOTLUND VAILE,

Plaintiff,

vs.

CISILIE A. PORSBOLL, FNA CISILIE A. VAILE,

Defendant

CASE NO: 98-D-230385-D
DEPT. NO: I

DATE OF HEARING: 06/11/2008
TIME OF HEARING: 9:00 A.M.

NOTICE OF ENTRY OF ORDER

TO: ROBERT SCOTLUND VAILE, Plaintiff; and

TO: . GRETA G. MUIRHEAD, ESQ., attorney representing Plaintiff.

PLEASE TAKE NOTICE that the *Order For Hearing Held June 11, 2008*, was filed in open court on August 15, 2008, and has been duly entered on the above file stamped date, by filing with the Clerk, and the attached is a true and correct copy thereof.

DATED this 10th day of September, 2008.

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MARSHAL S. WILLICK, ESQ.
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LAW OFFICE OF
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CERTIFICATE OF MAILING

I hereby certify that service of the foregoing *Notice of Entry of Order* was made on the ____ day of 11th September 2008, pursuant to NRCP 5(b), by depositing a copy of same in the United States Mail in Las Vegas, Nevada, postage prepaid, addressed as follows:

Greta G. Muirhead, Esq.
9811 West Charleston Blvd., Suite 2-242
Las Vegas, Nevada 89117
Attorney for Plaintiff

Employee of the WILLICK LAW GROUP

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ORIGINAL

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8-15 20 08
CHARLES J. SHORT
CLERK OF THE COURT
BY Connie Kalsho DEPUTY
CONNIE KALSHO

ORDR
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DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ROBERT SCOTLUND VAILE,

Plaintiff,

vs.

CISILIE VAILE PORSBOLL,

Defendant.

CASE NO: 98-D-230385
DEPT. NO: I

DATE OF HEARING: 06/11/2008
TIME OF HEARING: 9:00 A.M.

ORDER FOR HEARING HELD JUNE 11, 2008

This matter came before the Court on Plaintiff's *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*, Plaintiff's *Renewed Motion For Sanctions*, and Plaintiff's *Ex Parte Motion to Recuse*, and Defendant's *Oppositions*. Defendant, Cisilie A. Porsboll, f.k.a. Cisilie A. Vaile was not present ~~as she resides in Norway~~, but was represented by her attorneys of the WILLICK LAW GROUP, and Plaintiff was not present but was represented by Greta G. Muirhead, Esq., in an *unbundled capacity* for this hearing only, having been duly noticed, and the Court having read the papers and pleadings on file herein by counsel and being fully advised, and for good cause shown:

IT IS HEREBY ORDERED that:

1. An *Order to Show Cause* is issued as to why the Plaintiff failed to attend the Judgment Debtor Examination, Plaintiff's counsel will accept service on behalf of Plaintiff.

2. Plaintiff's *Motion to Recuse* is DENIED.

3. Plaintiff's *Motion for Sanctions* is DEFERRED.

4. Defendant's *Motion* for the posting of a bond is DENIED.

5. A GOAD Order is GRANTED IN PART, Plaintiff is not to file any further Motions filed in proper person due to the ~~inordinate~~ number of filings, unless it is pre-approved through chambers first, and copied to Defendant prior to being filed with the clerk.

6. If Robert Scotlund Vaile does not appear on July 11, 2008, at 8:00 A.M. and provide good cause for failure to appear on June 11, 2008, for his examination of judgment debtor, a warrant for his arrest may be issued.

7. Plaintiff, Robert Scotlund Vaile, shall file an *Affidavit of Financial Condition* with the Court in accordance with current Nevada Law before July 11, 2008.

8. Plaintiff is not allowed to make any further appearances via telephone and must appear in person for all hearings where he is not represented by counsel.

9. Based upon equitable considerations and contract principles, the sum certain for the child support obligation is set at $1,300.00 per month from August 1998, the date of the Decree.

10. Defendant's counsel shall file with the Court an updated billing statement, and the request for reconsideration of prior fees, and further attorney's fees, is deferred to the hearing set for July 11, 2008.

11. Plaintiff, Robert Scotlund Vaile, shall be given the opportunity at the next hearing to offer explanation as to why he has failed to pay child support since April, 2000.

12. Child support arrears, which were reduced to judgment at the March 3, 2008, hearing remain in effect, but are subject to revision under NRCP 60(a), as to the issue of interest and penalties, if it is discovered that there has been a mathematical error in their computation.

13. Plaintiff's request for child support credit from May 2000 until April 2002, is DENIED.

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14. At the next hearing in this matter, the Court requires the input of the District Attorneys Office, either by direct testimony, affidavit, or letter, as to the calculations for penalties on a child support obligation.

15. Plaintiff's request to strike the statement of the law concerning criminal thresholds for failure to pay child support, contained in the March 3, 2008, *Order* is DENIED, as it just recites a statute.

DATED this 15 day of August, 2008.

DISTRICT COURT JUDGE

Respectfully Submitted By:
WILLICK LAW GROUP

MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 002515
RICHARD CRANE, ESQ.
Nevada Bar No. 009536
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Attorneys for Defendant

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Approved as to Form and Content By:
GRETA G. MUIRHEAD, ATTORNEY AT LAW

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ORIGINAL

FILED

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

Oct 9 3 32 PM '08

CLERK OF THE COURT

R. S. VAILE,

Plaintiff,

vs.

CISILIE A. VAILE,

Defendant

Case No. 98-D-230385
Dept. No. "I"

NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, FINAL DECISION AND ORDER

TO: R. S. VAILE, Plaintiff In Proper Person

TO: MARSHAL S. WILLICK, ESQ., Attorney for Defendant

PLEASE TAKE NOTICE that a Findings of Fact, Conclusions of Law, Final Decision and Order was entered in the above-entitled matter on the 9th day of October, 2008, a true and correct copy of which is attached hereto.

Dated this 9 day of October, 2008.

By: _____
AZUCENA ZAVALA
Judicial Executive Assistant to the
Honorable Cheryl B. Moss

CERTIFICATE OF MAILING

I hereby further certify that on this 9 day of October, 2008, I caused to be mailed to Plaintiff/Defendant Pro Se a copy of the **Notice of Entry of Findings of Fact, Conclusions of Law, Final Decision and Order** at the following address:

R. S. VAILE, Plaintiff In Proper Person
P.O. Box 727, Kenwood, CA 95452

I hereby certify that on this 9 day of October, 2008, I caused to be delivered to the Clerk's Office a copy of the **Notice of Entry of Findings of Fact, Conclusions of Law, Final Decision and Order** which was placed in the folders to the following attorneys:

MARSHAL S. WILLICK, ESQ., Attorney for Defendant

By: _____
AZUCENA ZAVALA
Judicial Executive Assistant

CHERYL B. MOSS
DISTRICT JUDGE
FAMILY DIVISION, DEPT. I
LAS VEGAS, NV 89101

FILED

Oct 9 3 32 PM '08

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

R. S. VAILE,

Plaintiff,

vs.

CISILIE A. VAILE,

Defendant

_____/

Case No. 98-D-230385

Dept. No. I

FINDINGS OF FACT, CONCLUSIONS OF LAW, FINAL DECISION AND ORDER

1. The procedural history in this case is as follows:

2. On November 14, 2007 Plaintiff, Cisilie Vaile n/k/a Porsboll, through counsel, filed a 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.

3. On December 4, 2007 Defendant, Robert Scotlund Vaile, filed a 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.

4. On December 19, 2007 Defendant filed an Opposition to Plaintiff's Motion and Countermotion for Fees and Sanctions under EDCR 7.60.

5. On January 10, 2008, Plaintiff filed a Response Memorandum in Support of Motion to Dismiss Defendant's Pending Motion....and Opposition to Defendant's Countermotion for Fees and Sanctions.

CHERYL B. MOSS
DISTRICT JUDGE
FAMILY DIVISION, DEPT. I
LAS VEGAS, NV 89101

January 15, 2008 Hearing

6. On January 15, 2008 a hearing was held. Plaintiff, Mr. Vaile, failed to appear.

7. As a result, Plaintiff was defaulted, and Defendant was granted relief requested in their Motion as follows:

   A. Child support was set as a fixed amount at $1,300.00 per month.
   B. Child support arrears in the amount of $226,569.23 were reduced to judgment.
   C. Defendant was awarded $5,100.00 in attorney's fees.

8. On January 23, 2008 Plaintiff filed a Motion to Set Aside Order of January 15, 2008, and to Reconsider and Rehear the Matter, Motion to Reopen Discovery, and Motion to Stay Enforcement of the January 15, 2008 Order.

9. On February 11, 2008 Defendant filed an Opposition to Plaintiff's Motion to Set Aside Order of January 15, 2008....and Countermotion for Dismissal under EDCR 2.23 and the Fugitive Disentitlement Doctrine, for Fees and Sanctions under EDCR 7.60 and for a Goad Order Restricting Future Filings.

10. On February 19, 2008 Plaintiff filed a Reply to Opposition to Motion to Set Aside Order....and Opposition to Defendant's Countermotions.

March 3, 2008 Hearing

11. On March 3, 2008 a hearing was held to address the above listed Motions, Oppositions, and Countermotions. The Court ruled as follows:

   A. Plaintiff's Motion to Dismiss was denied.
   B. Plaintiff's Motion to Set Aside Order of January 15, 2008 was granted.
   C. Plaintiff's Motion to Reopen Discovery was denied.
   D. Defendant's Motion for a Goad Order was denied.
   E. The child support arrears amount was confirmed unless Norway modifies it.
   F. Defendant was awarded $10,000.00 attorney's fees which were reduced to judgment.

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DISTRICT JUDGE
FAMILY DIVISION, DEPT. I
LAS VEGAS, NV 89101

12. On March 31, 2008 Plaintiff filed 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.

13. On April 14, 2008 Defendant filed an Opposition to Plaintiff's Motion for Reconsideration and Countermotion for Goad Order or Posting of Bond and Attorney's Fees and Costs.

14. On April 22, 2008 Plaintiff filed a Reply Memorandum in Support of Motion for Reconsideration....and Opposition to Countermotions.

15. On May 2, 2008 Defendant filed an Ex Parte Motion for Examination of Judgment Debtor. The Ex Parte Order was filed on May 10, 2008.

16. On May 5, 2008 Plaintiff filed a Renewed Motion for Sanctions.

17. Also on May 5, 2008 Defendant filed an Opposition to Plaintiff's Renewed Motion for Sanctions and Countermotion for Requirement for a Bond, Fees and Sanctions under EDCR 7.60.

18. On May 20, 2008 Plaintiff filed a Reply Memorandum in Support of Plaintiff's Renewed Motion for Sanctions and Opposition to Countermotions.

19. On June 5, 2008 Plaintiff filed an Opposition to Defendant's Ex Parte Motion for Examination of Judgment Debtor.

20. Also on June 5, 2008 Plaintiff filed a Motion to Recuse the undersigned Judge.

June 11, 2008 Hearing

21. On June 11, 2008, the Court heard the matter on the various motions, oppositions, countermotions, and replies. The Court ordered the following:

A. The Motion to Recuse was denied.
B. The Court had personal jurisdiction over the parties to order child support at the time of entry of the Decree.
C. Based on part performance and for purposes of determining a sum certain for the District Attorney to enforce, the fixed amount of $1,300.00 per month for child support was ordered.
D. The child support arrears judgment stands but is subject to modification pursuant to NRCP 60(a) and for any payments credited on Plaintiff's behalf.

CHERYL B. MOSS
DISTRICT JUDGE
FAMILY DIVISION, DEPT. I
LAS VEGAS, NV 89101

E. The issue of interest and penalties was to be argued at a return hearing on July 11, 2008.
F. An evidentiary hearing was set for Plaintiff to show cause why he should not be held in contempt for failure to pay child support since April 2000.
G. Both parties' requests for attorney's fees were deferred.

22. The Evidentiary Hearing on the Order Show Cause for non-payment of child support went forward on September 18, 2008.

23. This Final Decision and Order follows.

Findings of Fact, Conclusions of Law and Final Decision

24. **NRS 125B.020 (1) states, Obligation of parents.**

1. The parents of a child (in this chapter referred to as "the child") have a duty to provide the child necessary maintenance, health care, education and support.

25. **NRS 125.210 states, Powers of court respecting property and support of spouse and children.**

1. Except as otherwise provided in subsection 2, in any action brought pursuant to NRS 125.190, the court may:

(a) Assign and decree to either spouse the possession of any real or personal property of the other spouse;

(b) Order or decree the payment of a fixed sum of money for the support of the other spouse and their children;

(c) Provide that the payment of that money be secured upon real estate or other security, or make any other suitable provision; and

(d) Determine the time and manner in which the payments must be made.

2. The court may not:

(a) Assign and decree to either spouse the possession of any real or personal property of the other spouse; or

(b) Order or decree the payment of a fixed sum of money for the support of the other spouse,

CHERYL B. MOSS
DISTRICT JUDGE
FAMILY DIVISION, DEPT. I
LAS VEGAS, NV 89101

if it is contrary to a premarital agreement between the spouses which is enforceable pursuant to chapter 123A of NRS.

3. Except as otherwise provided in chapter 130 of NRS, the court may change, modify or revoke its orders and decrees from time to time.

4. No order or decree is effective beyond the joint lives of the husband and wife.

26. **NRS 130.10111 states, "Duty of support" defined.**

"**Duty of support**" means an obligation imposed or imposable by law to provide support for a child, spouse or former spouse, including an unsatisfied obligation to provide support.

27. **NRS 425.350 states, Duty of parent to support child; assignment of right to support upon acceptance of assistance; appointment of administrator as attorney in fact; enforceability of debt for support; notice of assignment.**

1. A parent has duties to support his children which include any duty arising by law or under a court order.

2. If a court order specifically provides that no support for a child is due, the order applies only to those facts upon which the decision was based.

3. By accepting assistance in his own behalf or in behalf of any other person, the applicant or recipient shall be deemed to have made an assignment to the division of all rights to support from any other person which the applicant or recipient may have in his own behalf or in behalf of any other member of the family for whom the applicant or recipient is applying for or receiving assistance. Except as otherwise required by federal law or as a condition to the receipt of federal money, rights to support include, but are not limited to, accrued but unpaid payments for support and payments for support to accrue during the period for which assistance is provided. The amount of the assigned rights to support must not exceed the amount of public assistance provided or to be provided. If a court order exists for the support of a child on whose behalf public assistance is received, the division shall attempt to notify a located responsible parent as soon as possible after assistance begins that the child is receiving public assistance. If there is no court order for support, the division shall with service of process serve notice on the responsible parent in the manner prescribed in subsection 2 of NRS 425.3822 within 90 days after the date on which the responsible parent is located.

CHERYL B. MOSS
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FAMILY DIVISION, DEPT. I
LAS VEGAS, NV 89101

4. The recipient shall be deemed, without the necessity of signing any document, to have appointed the administrator as his attorney in fact with power of substitution to act in his name and to endorse all drafts, checks, money orders or other negotiable instruments representing payments for support which are received as reimbursement for the public assistance previously paid to or on behalf of each recipient.

5. The rights of support assigned under subsection 3 constitute a debt for support owed to the division by the responsible parent. The debt for support is enforceable by any remedy provided by law. The division, through the prosecuting attorney, may also collect payments of support when the amount of the rights of support exceeds the amount of the debt for support.

6. The assignment provided for in subsection 3 is binding upon the responsible parent upon service of notice of the assignment. After notification, payments by the responsible parent to anyone other than the division must not be credited toward the satisfaction of the debt for support. Service of notice is complete upon:

(a) The mailing, by first-class mail, of the notice to the responsible parent at his last known address;

(b) Service of the notice in the manner provided for service of civil process; or

(c) Actual notice.

28. **NRS 31A.280, states, Effect of order for assignment; duty of employer to cooperate; modification of amount assigned; reimbursement of employer; refusal of employer to honor assignment; discharge of employer's liability to pay amount assigned.**

1. An order for an assignment issued pursuant to NRS 31A.250 to 31A.330, inclusive, operates as an assignment and is binding upon any existing or future employer of an obligor upon whom a copy of the order is served by certified mail, return receipt requested. The order may be modified or revoked at any time by the court.

2. To enforce the obligation for support, the employer shall cooperate with and provide relevant information concerning the obligor's employment to the person entitled to the support or that person's legal representative. A disclosure made in good faith pursuant to this subsection does not give rise to any action for damages for the disclosure.

CHERYL B. MOSS
DISTRICT JUDGE
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3. If the order for support is amended or modified, the person entitled to the payment of support or that person's legal representative shall notify the employer of the obligor to modify the amount to be withheld accordingly.

4. To reimburse the employer for his costs in making the payment pursuant to the assignment, he may deduct $3 from the amount paid to the obligor each time he makes a payment.

5. If an employer wrongfully refuses to honor an assignment or knowingly misrepresents the income of an employee, the court, upon request of the person entitled to the support or that person's legal representative, may enforce the assignment in the manner provided in NRS 31A.095 for the enforcement of the withholding of income.

6. Compliance by an employer with an order of assignment operates as a discharge of the employer's liability to the employee as to that portion of the employee's income affected.

Contempt and the Order to Show Cause

29. There is presently a wage withholding on Mr. Vaile's wages for $1,300.00 per month plus $130.00 towards child support arrears.

30. Mr. Vaile testified he presently earns a salary of $120,000.00 per year. In early 2008, he received a $10,000.00 signing bonus.

31. Therefore, his gross monthly income is $130,000.00 divided by 12 months equals $10,833.00 gross per month rounded down.

32. The Plaintiff, now known as Cisilie Porsboll, has alleged that her ex-husband, Robert Scotlund Vaile, willfully failed to pay child support since April 2000.

33. In Defendant's Fourth Supplement filed on July 30, 2008 the District Attorney began involuntary wage withholding on July 3, 2006.

34. From April 2000 to July 3, 2006 there were no payments from Mr. Vaile to Mrs. Porsboll for child support.

35. After July 3, 2006 payments withheld for child support did not total the full amount of $1,300.00 per month.

36. Also, after July 3, 2006 there were gaps in payments where no monies were collected over a span of several months.

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37. Some of the gaps of zero payments are as follows:
9/1/06-11/1/06 (2 months)
12/1/06-2/1/07 (2 months)
6/1/07-3/1/08 (9 months)

38. At the commencement of the September 18, 2008 trial, the accuracy of Defendant's Schedule of Arrearages filed on July 30, 2008, as it pertains to Amounts Due, Amount of Payment Received, and Interest was not at issue. (The Court's decision on the Penalties issue is presently on hold based on a recent filing by Mr. Vaile of a Petition for Writ of Mandamus on the denial of Plaintiff's Motion to Disqualify Attorney Marshal Willick).

Contempt

39. **NRS 22.030 states, Summary punishment of contempt committed in immediate view and presence of court; affidavit or statement to be filed when contempt committed outside immediate view and presence of court; disqualification of judge.**

1. If a contempt is committed in the immediate view and presence of the court or judge at chambers, the contempt may be punished summarily. If the court or judge summarily punishes a person for a contempt pursuant to this subsection, the court or judge shall enter an order that:

(a) Recites the facts constituting the contempt in the immediate view and presence of the court or judge;

(b) Finds the person guilty of the contempt; and

(c) Prescribes the punishment for the contempt.

2. If a contempt is not committed in the immediate view and presence of the court or judge at chambers, an affidavit must be presented to the court or judge of the facts constituting the contempt, or a statement of the facts by the masters or arbitrators.

3. Except as otherwise provided in this subsection, if a contempt is not committed in the immediate view and presence of the court, the judge of the court in whose contempt the person is alleged to be shall not preside at the trial of the contempt over the objection of the person. The provisions of this subsection do not apply in:

(a) Any case where a final judgment or decree of the court is drawn in question and such judgment or decree was entered in such court by a

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predecessor judge thereof 10 years or more preceding the bringing of contempt proceedings for the violation of the judgment or decree.

(b) Any proceeding described in subsection 1 of NRS 3.223, whether or not a family court has been established in the judicial district.

40. In the instant case, NRS 22.010 subsection 2 applies as this is an "indirect contempt".

41. Defendant is required under the statute to submit an affidavit or a petition for order show cause.

42. The Court finds Defendant has complied with this provision in several ways.

43. First, Mrs. Porsboll's counsel filed a Countermotion on December 19, 2007 and requested that Mr. Vaile "be detained until he pays a significant amount of the monies he is in arrears". Opposition and Countermotion, page 8.

44. An affidavit of attorney was attached on page 10 attesting to the facts in the Countermotion in Defendant's absence due to her residing in Norway.

45. Second, on February 11, 2008 Mrs. Porsboll's counsel filed an Opposition and Countermotion asserting the same claims that Mr. Vaile has "refused to honor and obey" court orders.

46. An affidavit of attorney was attached on page 14 attesting to the facts in the Countermotion in Defendant's absence due to her residing in Norway.

47. Third, on April 11, 2008 Mrs. Porsboll's counsel filed an Opposition and Countermotion.

48. This pleading contained a more extensive recitation of her claims against Mr. Vaile that he, among other things, "has not voluntarily paid a dime of child support", that he is in "massive arrears" and that "a bench warrant be issued for his arrest for felony arrearages in child support".

49. An affidavit of attorney was attached on page 19 attesting to the facts in the Countermotion in Defendant's absence due to her residing in Norway.

50. Fourth, on May 2, 2008 Mrs. Porsboll's counsel filed an Ex Parte Motion for Order Allowing Examination of Judgment Debtor. Mrs. Porsboll's counsel requested such an Order for the purpose of satisfying judgments for child support arrears and attorney's fees.

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51. Mrs. Porsboll's counsel further claimed that Mr. Vaile has not honored the court orders and his arrearages "continue to grow on a daily basis." Page 3.

52. An affidavit of attorney was attached on page 4 attesting to the facts in the Motion.

53. Fifth, on May 5, 2008 Mrs. Porsboll's counsel filed an Opposition and Countermotion. Counsel made the same claims against Mr. Vaile and requested he be detained for nonpayment of child support.

54. Mrs. Porsboll's counsel also requested that Mr. Vaile post a $10,000.00 bond.

55. An affidavit of attorney was attached on page 8 attesting to the facts in the Countermotion in Defendant's absence due to her residing in Norway.

56. Sixth, on July 23, 2008 a written Order Show Cause was filed with the Court and subsequently served on the Plaintiff.

57. Based on the above, the Court finds that Mr. Vaile clearly has been put on notice of the claims of nonpayment of child support and of Mrs. Porsboll's requests for contempt sanctions.

58. An order must be reduced to writing, signed by a Judge, and filed with the Clerk of the Court. Division of Child Family Svcs. v. Eighth Judicial Dist. Ct. of Nevada, 92 P.3d 1239 (2004).

59. Here, prior Orders signed by the Court have been filed relating to child support arrears judgments against Mr. Vaile.

60. Although the amount of child support arrears has been challenged in previous hearings, the Court finds the amount of arrears nonetheless is very substantial such that Mr. Vaile cannot claim he is current with his child support obligation for purposes of this Court determining contempt.

61. It should be noted that Mr. Vaile presently has an appeal pending on the validity of the child support arrears judgments due to lack of jurisdiction.

62. Mr. Vaile also presently has a Petition of Writ of Mandamus pending as to the Court's denial of his request to disqualify attorney Marshal Willick.

63. Notwithstanding, Mr. Vaile had no objection going forward with the Evidentiary Hearing on September 18, 2008.

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64. The Court also ruled that the trial would go forward as the appeal does not result in an automatic stay.

65. Mr. Vaile made an oral request to stay the trial, but the Court denied his oral request as there was no basis to grant a stay.

66. In McCormick v. Sixth Judicial Dist. Ct. ex rel. Humboldt County, 67 Nev. 318, 218 P.2d 939 (1950), the Nevada Supreme Court stated, "[T]he inability of the contemners to obey the order (without fault on their part) would be a complete defense and sufficient to purge them of the contempt charged. But in connection with this well-recognized defense two comments are necessary. Where the contemners have voluntarily or contumaciously brought on themselves the disability to obey the order or decree, such defense is not available." (citations omitted).

67. One of Mr. Vaile's defenses at the September 18, 2008 trial was that he believed the District Court had no jurisdiction to enforce the child support provisions of the Decree of Divorce based on the Nevada Supreme Court's 2002 opinion.

68. Mr. Vaile testified that in the Texas proceedings following the Nevada Supreme Court's decision in April 2002, Mrs. Porsboll and her Texas attorneys allegedly requested that the Decree of Divorce not be enforced as a whole.

69. Mrs. Porsboll's Nevada counsel asserted in Closing Arguments there was no such request by Mrs. Porsboll's Texas counsel.

70. The Court finds there was no substantial evidence at trial to support Mr. Vaile's contention.

71. Further, the Court finds that the Nevada Supreme Court appeal filed by Mr. Vaile on September 15, 2008 does not "retroactively excuse" him from paying his child support obligation since April 2000.

72. Mr. Vaile should not be able to "hide behind" his illogical rationalization that he is not required to pay any child support at all because of alleged lack of jurisdiction.

73. Under Nevada law, every parent, including Mr. Vaile, has a BASIC duty to financially support their children.

74. Mr. Vaile did not pay child support for six years and three months between April 2000 and July 2006.

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75. Even after July 2006 only partial payments were collected via involuntary wage assignment. Mr. Vaile has never paid voluntary child support since April 2000.

76. While it is true there are custodial parents who, for many years, do not actively seek collection of child support for a number of reasons, the Vaile case is different.

77. Mrs. Porsboll testified she always anticipated receiving child support from Mr. Vaile. As discussed below, Mrs. Porsboll did not waive her right to receive child support.

78. The procedural history in this case is tortuous.

79. Mr. Vaile is highly intelligent and now legally trained. He even admitted he entered law school because of the Nevada case. He has a Master's degree. He has a Juris Doctor degree from Washington and Lee University in Virginia. He passed the California Bar Exam on the first try and is awaiting issuance of a license to practice law in that state.

80. Mrs. Porsboll, who lives in Norway, would not have had the resources or skills to maneuver through the legal system that Mr. Vaile has demonstrated.

81. From November 2007 to September 18, 2008, it took approximately 10 months to get to trial.

82. During this time period, Mr. Vaile filed several intervening motions and two Petitions for Writ of Mandamus to the Nevada Supreme Court.

83. As noted above, the Court finds there have been no direct or voluntary payments from Mr. Vaile from April 2000 to the present. There have only been involuntary wage withholdings by the District Attorney's Office since July 3, 2006.

84. The Nevada Revised Statutes clearly contemplate a BASIC obligation and duty of a parent to support their children.

85. Mrs. Porsboll has provided 100% of the children's financial support from April 2000 until an involuntary wage withholding was instituted in July 2006.

86. The involuntary wage withholding did not consistently result in full collection of the $1,300.00 amount each month until recently in 2008.

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87. Financial support should not have been borne by one parent alone, especially for over six years, as has occurred in this case.

88. The better logic would be to submit the child support payments, even under protest, and vigorously pursue any appeals.

89. And even if Mr. Vaile prevails and claims a refund (had he paid the child support under protest but that is not the case here), the children would likely be entitled to such monies no matter what.

90. Mr. Vaile also submitted a defense argument that because Mrs. Porsboll was receiving government child assistance from Norway, he would be "excused" from paying child support.

91. The Court finds this argument irrelevant. The Court is not aware of any statute or case law that says an obligor parent is excused from paying child support based on government assistance from a foreign country.

92. NRS 201.020 criminalizes the "persistent" refusal to pay court-ordered child-support. One persists in refusing to pay child support *whenever* there are two or more consecutive months during which the supporting parent willfully, and without legal excuse, refuses to remit the full amount required by court order. Any such willful refusal to remit the full amount required by court order constitutes a refusal to pay "support and maintenance' for that month. Any such willful refusal to pay the full amount required persisting for more than one year would violate the felony provisions of the statute. We emphasize, however, that NRS 201.020 is inapplicable whenever a parent's persistent *failure* to provide support does not rise to the statutory standard of "willfully" *refusing* to comply with court-ordered support. Thus, the standard for nonsupport is objectively defined, and a conviction under the statute depends upon a factual finding of a persistent, willful refusal, without legal excuse, to pay court-ordered support during the relevant time period. Sheriff, Washoe County, Nevada v. Vlasak, 111 Nev. 59; 888 P.2d 41 (1995).

93. Here, the Court finds the definition of "willful" to mean two or more consecutive months that an obligor parent willfully does not pay the full amount in the court order.

94. However, this is different from "failure" to pay. An obligor parent might not be able to pay due to a number of reasons such as involuntary temporary loss of a job (but not willful underemployment) or for medical reasons and inability to work.

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95. As discussed above, the Court finds it unreasonable that Mr. Vaile would go six years and three months without paying child support to Mrs. Porsboll because of his belief that he was not jurisdictionally and legally required to do so.

96. Mr. Vaile could have paid the monies under protest. In this way, at least their two daughters would have received financial support.

97. The Court finds Mr. Vaile did not pay for over six years. Under NRS 201.020, "persistent refusal" occurs when an obligor parent willfully refuses to pay two or more consecutive months of support.

98. The length of time that Mr. Vaile did not pay indicates willful conduct. Mr. Vaile could have paid the child support under protest until his jurisdictional arguments could be resolved in the appellate court.

99. Mrs. Porsboll testified that Mr. Vaile has the ability to earn substantial income based on his educational background and prior history of earning over $100,000.00 per year.

100. Mr. Vaile testified to his employment history.

101. In 1998, he was working in England earning 70 British pounds per hour as a contractor or about $100.00 US per hour. This translated into an income in excess of $100,000 per year.

102. In 1999, Mr. Vaile earned the same income.

103. In May 2000, he relocated to Texas and ceased doing consulting work as of February 2000.

104. Mr. Vaile did not work from February to May 2000.

105. Subsequently, he consulted for Bank of America and a staffing company in Dallas. He was earning about $50.00 per hour.

106. Mr. Vaile worked in Texas during all of 2001. His wages were $53,700 annually.

107. In 2002, he earned $67,000.

108. In 2003, he earned $87,000 or $106,000 if Medicare earnings are included.

109. In 2004, he earned $62,400.

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110. In 2005, he earned nothing. He entered law school in August 2004. His first year was in McGeorge Law School in Sacramento, California.

111. Mr. Vaile then transferred to Washington and Lee University in Virginia and graduated in May 2007.

112. Mr. Vaile worked while a law student at Washington and Lee University.

113. During law school, he was employed part time in early 2006 doing Sober Driving, a program sponsored by the university. He earned $75.00 for a 4-hour shift and worked one shift approximately every two weeks.

114. Mr. Vaile also had summer employment before his third year of law school working for Baker Botts. By that time, the District Attorney's Office began withholding.

115. The withholding was $936 monthly. He earned $2500.00 per week for six weeks or $15,000.

116. In Fall 2006, he worked for the Sober Driving program again until final exams period at the end of March 2007.

117. Mr. Vaile graduated in May 2007.

118. From May 2007 to February 2008, he did not work.

119. Mr. Vaile was hired by Deloitte & Touche in February 2008.

120. Based on the above, Mr. Vaile earned significant income until he entered law school.

121. From April 2000 forward, when child support payments stopped, he clearly earned at least $50,000 per year.

122. The Court finds Mr. Vaile had the ability and financial resources to pay child support. He could have even paid the child support under protest.

123. The Court finds based on Mr. Vaile's employment history the lack of child support payments shows willful conduct.

124. "An order on which a judgment of contempt is based must be clear and unambiguous, and must spell out the details of compliance in clear, specific and unambiguous terms so that the person will readily know exactly what duties or obligations are imposed on him. Cunningham v. Eighth Judicial Dist. Court, 102 Nev. 551 (1986).

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125. In the case at bar, the Court finds Mr. Vaile was on notice in the Decree of Divorce of his basic obligation to pay child support.

126. However, Mr. Vaile would argue that the child support provision in the Decree was convoluted and confusing based on the fact that the parties had to exchange tax returns yearly and had to apply a complicated mathematical formula.

127. This Court later decided at the June 11, 2008 hearing that $1,300.00 amount was the "sum certain" to be enforced.

128. Under contract principles, specifically rescission and reformation, the convoluted portions of the Decree were vacated and modified by the Court to reflect $1,300.00 per month as a "sum certain" unless one party files a motion to modify in the appropriate jurisdiction, either Norway or California depending on who the moving party is.

129. Neither Mr. Vaile nor Mrs. Porsboll complied with exchanging their tax returns each year following entry of the Decree of Divorce. Neither party made any effort to apply and utilize the convoluted mathematical formula.

130. It is therefore possible that the child support order was not clear or unambiguous for purposes of the Court's authority to find Mr. Vaile in contempt.

131. However, the Court finds Mr. Vaile nevertheless paid nothing for over six years.

132. The Court finds his conduct willful because Mr. Vaile understood he had a BASIC duty and obligation to pay child support. In fact, Mr. Vaile voluntarily paid child support from the time the Decree was entered until April 2000.

133. The Court believes its authority to find him in contempt is not merely eradicated by the fact that the Decree of Divorce contained a convoluted formula for purposes of determining his child support amount each year.

134. To find otherwise would be contrary to the policy behind NRS 125B.020(1) which states that a parent has a duty to support their children.

135. Mr. Vaile submitted another defense argument at trial. He claimed that he and Mrs. Porsboll had an "agreement" and that she allegedly believed she could not enforce the Decree of Divorce because of the Nevada Supreme Court decision.

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136. First, the Court finds the Nevada Supreme Court decision only vacated those portions of the decree relating to child custody and visitation, not child support.

137. Second, the Court finds there was "colorable jurisdiction" because Mr. Vaile sought the divorce in Nevada, and he submitted himself to jurisdiction for purposes of paying child support.

138. Third, Mr. Vaile actually paid child support from August 1998 to April 2000. This means he understood during this time period that he had a duty to support their children.

139. When Mr. Vaile claimed he had physical custody of the children from May 2000 to April 2002 and therefore should not be obligated to pay, this Court denied his request because there were already findings by the Hague Court that he wrongfully removed the children from Norway. The children were placed back in their mother's custody in 2003.

140. Fourth, it is inconceivable that Mrs. Porsboll had the legal training to understand her legal rights to collect child support. She lives in a foreign country. She retained the Willick Law Group to represent her. The Willick Law Group has never withdrawn as her counsel.

141. Mrs. Porsboll signed no written agreements for waiver of child support. She would have consulted with her lawyers if she were to sign any agreements. No agreements were ever signed or presented to the Court.

142. Mrs. Porsboll had Texas attorneys representing her. Her Nevada counsel argued in Closing Arguments at the September 18, 2008 trial that no such representation of waiver or desire not to enforce child support was made before a Texas tribunal.

143. The Court finds any waiver on Mrs. Porsboll's part would have to have been intentional, knowing, and voluntary. There was no evidence or testimony at the trial to support an intentional, knowing, and voluntary waiver in Texas or in Nevada. Moreover, such a waiver would have been placed on the court record by her counsel.

144. To the contrary, Mrs. Porsboll contacted the Norwegian government for child support. She testified her understanding was that if there were no efforts taken for collection of child support in Nevada, the Norwegian government would step in to enforce and collect.

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145. In addition, Mrs. Porsboll asked her Nevada counsel to go forward with federal court proceedings to seek a judgment for arrearages.

146. In her trial testimony, Mrs. Porsboll denied ever telling Mr. Vaile she would not collect child support from him.

147. She also testified Mr. Vaile was educated and capable of earning a substantial income.

148. Further, she testified she was suspicious of his efforts to hide money just before the divorce was filed in Nevada.

149. Based on all of the above, the Court FINDS AND ORDERS AS FOLLOWS:

150. Mr. Vaile willfully refused to pay child support from April 2000 to July 2006.

151. Mr. Vaile is in contempt of the Decree of Divorce.

152. Mr. Vaile was on notice under the Decree of Divorce to pay child support.

153. Mr. Vaile paid $1,300.00 per month from August 1998 to April 2000.

154. There were no payments until the District Attorney's Office commenced wage withholding on July 3, 2006.

155. All child support payments since July 3, 2006 have been collected involuntarily.

156. Under NRS 22.010, the Court, in its discretion, could monetarily sanction Mr. Vaile up to $500.00 for every month he willfully did not pay child support. He did not pay from April 2000 to July 2006 or a total of 76 months. $500.00 x 76 = $38,000.00.

157. However, the Court will **NOT** issue monetary sanctions for the 76 months of zero child support payments based on its finding above that the original child support provision in the Decree of Divorce was not clear and specific.

158. If the original child support order contained in the Decree is not exactly clear and specific, then the Court cannot find Mr. Vaile in contempt.

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159. At the June 11, 2008 hearing, the Court subsequently clarified the child support order declaring a sum certain of $1,300.00 per month and eliminated the complex mathematical formula.

160. Mr. Vaile is obligated to continue to pay child support of $1,300.00 per month until it is modified.

161. The Nevada Court does not presently have authority to modify child support because both parents no longer live in the State of Nevada.

162. This child support order is now clear, specific, and unambiguous for purposes of any claims of future contempt.

163. The Court also noted above that its authority to find Mr. Vaile in contempt for zero payments of child support is **NOT** merely because of a convoluted mathematical formula contained in the Decree of Divorce.

164. The Court still finds Mr. Vaile in contempt for non-payment of child support for over six years.

165. As previously stated, he could have paid ANY amount of child support (other than ZERO) and expressed he was doing so under protest.

166. Under NRS 22.010, the Court has discretion to impose up to 25 days incarceration for every month Mr. Vaile willfully refused to pay child support. A total of 76 months could result in a maximum total of 1900 days of jail time.

167. However, the Court has consistently imposed much lower sanctions if there are reasons to support lesser sanctions.

168. First, this is essentially the first time Mrs. Porsboll has requested contempt against Mr. Vaile for non-payment of child support before the Court. The Court would treat this as a "first offense" type case.

169. Second, the Court anticipates that so long as Mr. Vaile continues to work at his present employment with Deloitte & Touche earning substantial income in excess of $100,000.00 per year, Mrs. Porsboll would continue to receive child support payments from him.

170. Third, the Court typically allows for "purging" of contempt by giving Mr. Vaile the power to take himself out of contempt by paying a portion of his arrearages and maintaining steady payments in the future.

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171. If he complies and purges the contempt, any prior contempt findings would be dismissed completely and retroactively.

172. The Court is aware that Mr. Vaile has a pending application for a license to practice law in the State of California, having passed the bar exam already.

173. If Mr. Vaile elects to purge himself from contempt with this Court and comply with the child support order in the future, the contempt finding would be retroactively "erased" or "expunged" from the record.

174. Here, the child support PRINCIPAL ARREARS total $118,369.96 as of August 1, 2008.

175. The STATUTORY INTEREST on the arrears amounts to a total of $45,089.27.

176. The combined total is $163,459.23.

177. Therefore, IT IS ORDERED that Mr. Vaile may purge out of his contempt if he pays approximately 10 percent of the total child support arrears, exclusive of statutory penalties. The Court sets a reasonable purge amount at **$16,000.00**.

178. IT IS FURTHER ORDERED that Mr. Vaile shall be given a reasonable time and a reasonable payment schedule to purge out of contempt and pay the amount of $16,000.00 to the Clark County District Attorney's Office.

179. Mr. Vaile shall pay in eight monthly installments as follows:

$2,000.00 due no later than November 15, 2008
$2,000.00 due no later than December 15, 2008
$2,000.00 due no later than January 15, 2009
$2,000.00 due no later than February 15, 2009
$2,000.00 due no later than March 15, 2009
$2,000.00 due no later than April 15, 2009
$2,000.00 due no later than May 15, 2009
$2,000.00 due no later than June 15, 2009

180. IT IS FURTHER ORDERED that the above payment schedule is reasonable, and if Mr. Vaile fails to comply with the payments and deadlines set, the finding of contempt shall stand retroactive to the date of filing of this Decision and Order.

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181. IT IS FURTHER ORDERED that the wage withholding by the District Attorney for the payments of $1,300.00 for current support and $130.00 for arrears shall continue. This Decision and Order shall have no impact on the involuntary wage assignment for CURRENT support.

182. IT IS FURTHER ORDERED that if Mr. Vaile fails to purge out of contempt, the Court shall hold a hearing to determine compliance or lack thereof and the potential imposition of contempt sanctions, including incarceration.

183. If Mr. Vaile fails to appear in the Nevada courtroom, the Clark County District Attorney shall then refer the matter to the California District Attorney in the county where Mr. Vaile resides for enforcement of this Court's Orders, for issuance of a bench warrant, and/or for incarceration.

184. IT IS FURTHER ORDERED that if Mr. Vaile's physical and mailing addresses change in the future, he shall file his new address(es) in Case Number D230385 no later than 30 days from the date he moved.

185. IT IS FURTHER ORDERED that if Mr. Vaile's telephone number(s) change in the future, he shall file his new telephone number(s) in Case Number D230385 no later than 30 days from the date he acquired the new number(s).

PLAINTIFF'S RENEWED MOTION FOR SANCTIONS

186. On May 5, 2008 Plaintiff filed a Renewed Motion for Sanctions.

187. Also on May 5, 2008 Defendant filed an Opposition to Plaintiff's Renewed Motion for Sanctions and Countermotion for Requirement for a Bond, Fees and Sanctions Under EDCR 7.60.

188. On May 20, 2008 Plaintiff filed a Reply Memorandum in Support of Plaintiff's Renewed Motion for Sanctions and Opposition to Countermotions.

189. In his Renewed Motion for Sanctions, Mr. Vaile alleges that Mrs. Porsboll's counsel misrepresented to the Court there was a fixed amount of $1,300.00 per month for child support in the Decree of Divorce.

190. The Court did not establish the sum certain of $1,300.00 per month until the hearing of June 11, 2008.

191. A misrepresentation to the Court must be knowing and intentional.

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192. The Court finds Mrs. Porsboll's counsel's statements to the Court were not knowing and intentional.

193. Rather, counsel argued that a fixed amount must be determined for purposes of collection and enforcement by the District Attorney. This is what they requested in their original motion filed on November 14, 2007.

194. Second, Mr. Vaile asserts that Mrs. Porsboll's counsel stated that he (Mr. Vaile) knowingly refused to honor the federal court judgment and refused to pay child support despite the fact that involuntary wage withholding commenced on July 3, 2006.

195. The Court finds there was no knowing and intentional misrepresentation if, at the time of the filing of their November 14, 2007, Motion, there was a then valid federal court judgment for arrears.

196. The Ninth Circuit Court of Appeals later vacated the child support arrears judgment contained in the Federal District Court judgment.

197. Mrs. Porsboll's counsel relied on the federal court judgment until it was later vacated by the Ninth Circuit. This does not constitute a knowing and intentional misrepresentation.

198. As to Mr. Vaile's claim that Mrs. Porsboll's counsel represented that he (Mr. Vaile) knowingly refused to pay child support, the Court finds there was no knowing or intentional misrepresentation.

199. It is true that Mr. Vaile failed to make any direct or voluntary child support payments from April 2000 to the present.

200. It is also true that Mr. Vaile commenced paying child support, albeit involuntarily, through wage assignment, as of July 3, 2006.

201. Obviously, the statement made by Mrs. Porsboll's counsel is subject to having two interpretations. As such, there can be no finding of a knowing and intentional misrepresentation if there is more than one meaning behind the statement.

202. Third, Mr. Vaile alleges that Mrs. Porsboll's counsel made a misrepresentation that he (Mr. Vaile) earned in excess of $100,000.00 per year.

203. The Court finds there is no knowing or intentional misrepresentation if Mrs. Porsboll's counsel had limited information about Mr. Vaile's income at the time they filed their Motion on November 14, 2007.

CHERYL B. MOSS
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204. As was established at trial, Mr. Vaile did initially earn in excess of $100,000.00 annually from the date of filing of the Decree of Divorce until 2000.

205. In 2001, Mr. Vaile earned $53,700.00. But Mrs. Porsboll's counsel did not have the benefit of this information available to them at the time they filed their November 14, 2007 Motion.

206. Counsel also did not have Mr. Vaile's financial earnings for 2002 forward until the information was made available to them in preparation for the Order Show Cause Evidentiary Hearing.

207. Mrs. Porsboll's counsel had limited information. After the Decree was filed on August 21, 1998 neither party exchanged tax returns on a yearly basis forward. Accordingly, there was no information available to Mrs. Porsboll or her counsel as to Mr. Vaile's income.

208. Fourth, Mr. Vaile alleges that Mrs. Porsboll's counsel failed to inform the Court at the January 15, 2008 hearing that he (Mr. Vaile) filed a Motion to Dismiss on December 4, 2007.

209. It should be noted that when he filed his Motion to Dismiss on December 4, 2007 Mr. Vaile did not request a hearing date. There was no Notice of Motion Hearing filed, and therefore the Motion was accepted by the Clerk of Court without setting a court date.

210. The Court finds no knowing and intentional misrepresentation. Mrs. Porsboll's counsel was not required to disclose or discuss Mr. Vaile's Motion to Dismiss during the January 15, 2008 hearing because it was not before the Court for adjudication that day.

211. Further, the fact that Mrs. Porsboll's counsel filed an Opposition to the Motion to Dismiss prior to the January 15, 2008 hearing does not indicate they had a duty to inform the Court.

212. Counsel had an ethical duty to file the Opposition in a timely manner in accordance with the 10-day rule or the Motion to Dismiss would have gone unopposed.

213. However, none of the above findings demonstrate a knowing and intentional misrepresentation to the Court.

214. Mrs. Porsboll's counsel discussed only what was properly before the Court and what orders and judgments have already been obtained in the federal

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court (although the child support judgment was later vacated by the Ninth Circuit).

215. Fifth, Mr. Vaile contends that Mrs. Porsboll's counsel allegedly misrepresented that he (Mr. Vaile) was not paying child support when counsel admitted that the District Attorney's Office had collected $9,000.00 from wage withholdings.

216. As discussed above, Mrs. Porsboll's counsel made a statement that Mr. Vaile knowingly refused to pay child support. The statement was not knowing and intentional. It could be subject to differing interpretations.

217. The statement could mean that there were no direct or voluntary payments by Mr. Vaile. Under this interpretation, this would be a true statement.

218. The statement could also mean that the amount collected ($9,000.00) was trivial (in Mrs. Porsboll's counsel's opinion) in relation to what counsel termed as "massive arrears." Under this interpretation, counsel could have made the statement to make a point.

219. Sixth, Mr. Vaile asserts that Mrs. Porsboll handed over collection and enforcement of child support to Norway and that her counsel was merely attempting to advance their own interests.

220. Mr. Vaile attached a letter to his Motion from the National Insurance Collection Agency in Norway, as well as the response letter from the Willick Law Group dated April 13, 2007.

221. The Court reviewed the contents of both letters.

222. The Norwegian agency's letter is clear as to their intent. The agency was inquiring if payments have been collected and that such payments should be forwarded from the United States to Norway.

223. The Norwegian agency also acknowledged there was a collections case in Nevada, but was merely asking if the case was passive. If so, the agency requests the case be transferred to Virginia.

224. The Court finds the letter does not indicate the agency wanted to actively enforce collection in Norway if the State of Virginia were to take the case from the State of Nevada.

225. Accordingly, there was no knowing and intentional misrepresentation by Mrs. Porsboll's counsel because there was nothing in the agency's letter affirmatively stating that Norway would actively pursue collection.

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226. Rather, the agency was merely inquiring as to which state would handle collection of child support.

227. Seventh, Mr. Vaile also alleges that Mrs. Porsboll's counsel advised the Court there were no simultaneous proceedings in Norway for collection of child support.

228. The Court finds this statement accurate based on the contents of the Norwegian agency's letter.

229. As noted above, the agency was asking if the Nevada case was active. Otherwise, Norway would ask that the case be transferred to Virginia (where Mr. Vaile was residing and attending law school at the time).

230. The agency's statement that Mrs. Porsboll "handed over collection to this office" is interpreted to plainly mean that she assigned her rights to the agency for the purpose of receiving the child support payments, not to actively pursue collection.

231. The agency was aware Nevada was doing the collections but was unsure if the Nevada case was active. If not, the agency wanted the State of Virginia to handle collection of payments.

232. This process is similar to custodial parents assigning their rights to the District Attorney's Office for purposes of receiving and distributing payments.

233. Based on the above, IT IS ORDERED that Mr. Vaile's Motion for Renewed Sanctions is hereby denied in its entirety.

ATTORNEY'S FEES

234. The Court is aware this is highly contested litigation.

235. Both parties requested attorney's fees and costs.

236. *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349 (1969), applies. "Under *Brunzell*, when courts determine the appropriate fee to award in civil cases, they must consider various factors, including the qualities of the advocate, the character and difficulty of the work performed, the work actually performed by the attorney, and the result obtained.

237. In family law cases, trial courts are required to evaluate the Brunzell factors when deciding attorney fee awards. Additionally, in Wright v.

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Osburn, this court stated that family law trial courts must also consider the disparity in income of the parties when awarding fees. Therefore, parties seeking attorney fees in family law cases must support their fee request with affidavits or other evidence that meets the factors in Brunzell and Wright.

238. The first factor considered is the quality of the advocate. Here, the Court finds that Mrs. Porsboll's counsel has been diligent and prepared throughout these proceedings, as well as prompt in court appearances.

239. Mrs. Porsboll's counsel has qualities of competency and experience in conducting trials in Family Court.

240. The second factor is the character and difficulty of the work performed.

241. The Court finds Mrs. Porsboll's attorneys have tackled all the issues in this case with competence. This case was highly contentious.

242. Mr. Vaile filed numerous motions leading to a *Goad* Order. The Willick Law Group has had to file numerous pleadings to respond to Mr. Vaile's Motions.

243. Mr. Vaile is legally trained having graduated from a prestigious law school and having passed the California Bar Exam on the first try.

244. As a result, the character and difficulty of the work increased significantly as the Willick Law Group had to respond to all of Mr. Vaile's legal claims.

245. The third factor is the work actually performed by the attorney. The Willick Law Group has filed several updated billing statements.

246. The amount of work actually performed was astronomical.

247. The fourth factor is the result obtained. The Court finds Mrs. Porsboll and her counsel prevailed on the issue of contempt as it pertains to Mr. Vaile failing to pay child support from April 2000 to July 3, 2006.

248. The Court also finds that Mrs. Porsboll and her counsel prevailed in successfully defending Mr. Vaile's Motion for Renewed Sanctions.

249. The Court also finds that Mr. Vaile prevailed on the issue of monetary contempt sanctions because NRS 22.010 required a clear and unambiguous order as to a fixed amount of $1,300.00 per month for child support. The amount was not determined as fixed until the hearing of June 11, 2008.

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250. However, as discussed in detail above, the Court's authority to make a finding of contempt was **not** eradicated merely because the Decree of Divorce contained a convoluted mathematical formula.

251. Mr. Vaile had a "basic" duty and obligation to financially support their two minor children.

252. Mr. Vaile paid no voluntary or direct payments for over 6 years. The facts and testimony at trial established he had the means and resources to pay the child support in years where he earned in excess of at least $50,000.00 (years 1999-2001).

253. Mrs. Porsboll was the primary prevailing party at trial. The Willick Law Group attorneys obtained favorable results for her. Mrs. Porsboll is entitled to attorney's fees and costs in this regard under NRS 18.010.

254. The fifth factor considered by this Court is the disparity in income between the parties. The trial court must evaluate the incomes of the parties in family law cases as noted above.

255. The Court viewed both parties' historical and present financial conditions and finds there have been past and present gross disparities in income.

256. The Court reviewed the attorney billing statement from Mrs. Porsboll's counsel in their Fourth Supplement filed on July 30, 2008. The fees totaled over $53,000.00.

257. However, the bill includes charges relating to the issue of judgment debtor examination, the issue of child support penalties, the issue of the Motion to Strike, and the issue of the Motion to Reconsider. These issues are not the subjects of this decision.

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CHERYL B. MOSS
DISTRICT JUDGE
FAMILY DIVISION, DEPT. I
LAS VEGAS, NV 89101

258. Accordingly, IT IS ORDERED that Mrs. Porsboll shall be awarded the sum of $15,000.00 as and for ATTORNEY'S FEES AND COSTS.

259. SO ORDERED.

Dated this 9 day of October, 2008.

CHERYL B. MOSS
District Court Judge

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DISTRICT JUDGE
FAMILY DIVISION, DEPT. I
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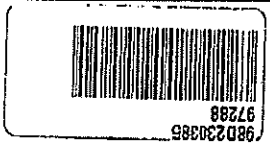

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CLERK OF THE COURT

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WILLICK LAW GROUP
MARSHAL S. WILLICK, ESQ.
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RICHARD L. CRANE, ESQ.
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email@willicklawgroup.com
Attorneys for Defendant/Petitioner

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DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ROBERT SCOTLUND VAILE,

Plaintiff/Respondent,

vs.

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

Defendant/Petitioner.

CASE NO: 98-D-230385-D
DEPT. NO: I

DATE OF HEARING: N/A
TIME OF HEARING: N/A

NOTICE OF APPEAL

TO: ROBERT SCOTLUND VAILE, Plaintiff In Proper Person,

TO: GRETA MUIRHEAD, ESQ., Unbundled Attorney for Plaintiff,

NOTICE IS HEREBY GIVEN that the WILLICK LAW GROUP, attorneys for Defendant/Petitioner, Cisilie A. Porsboll f.k.a. Cisilie A. Vaile, hereby appeals to the Supreme Court of Nevada from the *Findings of Fact, Conclusions of Law, Final Decision and Order Re: Child*

*****

*****

*****

WILLICK LAW GROUP
3591 East Bonanza Road
Suite 200
Las Vegas, NV 89110-2101
(702) 438-4100

Support Penalties Under NRS 125B.095, rendered by the Hon. Cheryl B. Moss, and entered the 17th day of April, 2009, a true and correct copy of which is attached hereto.

DATED this 2nd day of ~~April~~ May, 2009.

Respectfully Submitted by:
WILLICK LAW GROUP

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
(702) 438-4100
Attorneys for Defendant/Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY service of the forgoing *Notice of Appeal* was made on this 4th day of May, 2009, pursuant to EDCR 7.26(a), by faxing, and mailing via the United States Postal Service a true copy of the same addressed as follows:

Mr. Robert Scotlund Vaile
P.O. Box 727
Kenwood, California 95452
Plaintiff *In Proper Person*

Greta G. Mulrhead, Esq.
9811 West Charleston Blvd., Suite 2-242
Las Vegas, Nevada 89117
Fax No. (702) 434-6033
Unbundled Attorney for Plaintiff

Employee of the WILLICK LAW GROUP

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CLERK OF THE COURT

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

R. S. VAILE,

Plaintiff,

vs.

CISILIE A. VAILE,

Defendant

Case No. 98-D-230385
Dept. No. "I"

NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW, FINAL DECISION AND ORDER RE: CHILD SUPPORT PENALTIES NRS. 125B.095

TO: **R. S. VAILE**, Plaintiff In Proper Person

TO: **GRETA MUIRHEAD, ESQ.**, Unbundled Attorney for Plaintiff

TO: **MARSHAL S. WILLICK, ESQ.**, Attorney for Defendant

TO: **DONALD W. WINNE, JR, ESQ.**, Attorney General's Office

TO: **TERESA LOWRY, ESQ.**, Clark County District Attorney, Child Support Division

PLEASE TAKE NOTICE that a Findings of Fact, Conclusions of Law, Final Decision and Order was entered in the above-entitled matter on the 17th day of April, 2009, a true and correct copy of which is attached hereto.

Dated this 17 day of April, 2009.

By: _____
AZUCENA ZAVALA
Judicial Executive Assistant to the
Honorable Cheryl B. Moss

CHERYL B. MOSS
DISTRICT JUDGE
FAMILY DIVISION, DEPT I
LAS VEGAS NV 89101

CERTIFICATE OF MAILING

I hereby further certify that on this 17 day of April, 2009, I caused to be mailed to Plaintiff/Defendant Pro Se a copy of the **Notice of Entry of Findings of Fact, Conclusions of Law, Final Decision and Order** at the following address:

R. S. VAILE
P.O. Box 727
Kenwood, CA 95452
Plaintiff In Proper Person

I hereby certify that on this 17 day of April, 2009, I caused to be delivered to the Clerk's Office a copy of the **Notice of Entry of Findings of Fact, Conclusions of Law, Final Decision and Order** which was placed in the folders to the following attorneys:

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

MARSHAL S. WILLICK, ESQ.
3591 E. Bonanza Rd., Suite 200
Las Vegas, Nevada 89101
Attorney for Defendant

DONALD W. WINNE, JR, ESQ.
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Senior Deputy Attorney General

TERESA LOWRY, ESQ.
Clark County District Attorney, Child Support Division
301 Clark Avenue, Suite 100
Las Vegas, Nevada 89101

By: Azucena Zavala
AZUCENA ZAVALA
Judicial Executive Assistant

CHERYL B. MOSS
DISTRICT JUDGE
FAMILY DIVISION, DEPT. I
LAS VEGAS, NV 89101

FILED

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DISTRICT COURT

CLARK COUNTY, NEVADA

CLERK OF THE COURT

R. S. VAILE,

Plaintiff,

vs.

Case No. 98-D-230385

Dept. No. I

CISILIE A. VAILE,

Defendant

_____/

FINDINGS OF FACT, CONCLUSIONS OF LAW, FINAL DECISION AND ORDER RE: CHILD SUPPORT PENALTIES UNDER NRS 125B.095

PROCEDURAL HISTORY:

1. This matter was taken under advisement on the issue of calculation of the 10% penalty referenced in NRS 125B.095.

2. A pertinent procedural history in this case is summarized as follows:

3. On November 14, 2007, Defendant, Cisilie Vaile, through counsel, filed a 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.

4. On December 4, 2007, Plaintiff, Robert Scotlund Vaile, filed a 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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5. On December 19, 2007, Defendant filed an Opposition to Plaintiff's Motion and Countermotion for Fees and Sanctions under EDCR 7.60.

6. On January 10, 2008, Plaintiff filed a Response Memorandum in Support of Motion to Dismiss Defendant's Pending Motion....and Opposition to Defendant's Countermotion for Fees and Sanctions.

7. On January 15, 2008, a hearing was held and Plaintiff failed to appear. As a result, Plaintiff was defaulted and Defendant was granted relief requested in their Motion. Child support was set at $1,300.00 per month, child support arrears in the amount of $226,569.23 were reduced to judgment, and Defendant was awarded $5,100.00 in attorney's fees.

8. On January 23, 2008, Plaintiff 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.

9. On February 11, 2008, Defendant filed an Opposition to Plaintiff's Motion to Set Aside Order....and Countermotions for Dismissal under EDCR 2.23 and the Fugitive Disentitlement Doctrine, for Fees and Sanctions under EDCR 7.60 and for a *Goad* Order Restricting Future Filings.

10. On February 19, 2008, Plaintiff filed a Reply to Opposition to Motion to Set Aside Order....and Opposition to Defendant's Countermotions.

11. On March 3, 2008, a hearing was held to address the above listed motions, oppositions, and countermotions. The Court ordered the following:

    A. Plaintiff's Motion to Dismiss was denied.
    B. Plaintiff's Motion to Set Aside was granted.
    C. Plaintiff's Motion to Reopen Discovery was denied.
    D. Defendant's Motion for a *Goad* Order was denied.
    E. The child support arrears amount was confirmed unless Norway modifies said amount.
    F. Defendant was awarded $10,000.00 attorney's fees, and the amount was reduced to judgment.

12. On March 31, 2008, Plaintiff filed 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.

13. On April 14, 2008, Defendant filed an Opposition to Plaintiff's Motion for Reconsideration and Countermotion for *Goad* Order or Posting of Bond and Attorney's Fees and Costs.

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14. On April 22, 2008, Plaintiff filed a Reply Memorandum in Support of Motion for Reconsideration....and Opposition to Countermotions.

15. On May 2, 2008, Defendant filed an Ex Parte Motion for Examination of Judgment Debtor. The Order for Examination of Judgment Debtor was filed on May 10, 2008.

16. On May 5, 2008, Plaintiff filed a Renewed Motion for Sanctions.

17. Also on May 5, 2008, Defendant filed an Opposition to Plaintiff's Renewed Motion for Sanctions and Countermotion for Requirement for a Bond, Fees and Sanctions under EDCR 7.60.

18. On May 20, 2008, Plaintiff filed a Reply Memorandum in Support of Plaintiff's Renewed Motion for Sanctions and Opposition to Countermotions.

19. On June 5, 2008, Plaintiff filed an Opposition to Defendant's Ex Parte Motion for Examination of Judgment Debtor.

20. Also on June 5, 2008, Plaintiff filed a Motion to Recuse the undersigned Judge.

21. On June 11, 2008, the Court heard the matter on the various motions before it. The Court ordered the following:

    A. that it had personal jurisdiction over the parties to order child support;
    B. that based on part performance and for purposes of determining a sum certain for the District Attorney to enforce, the amount of $1,300.00 per month for child support was ordered;
    C. that the child support arrears judgment stands but is subject to modification pursuant to NRCP 60(a) and for any payments credited on Plaintiff's behalf;
    D. that the issues of interest and penalties were to be argued at a return hearing on July 11, 2008;
    E. that attorney's fees were deferred.

22. Each side was permitted to file supplemental points and authorities on the issue of child support penalties.

23. After the hearing was conducted on June 11, 2008, the principal amount was not in dispute based on the Court's Order for enforcing a sum certain of $1,300.00 per month less any credits for payments applied.

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24. Further, the method of calculating statutory interest on the child support arrears was not disputed by the parties as they agreed the difference in their respective calculations was minimal.

25. What was disputed was the calculation of the 10% penalty on any amounts that remain unpaid.

26. The District Attorney utilizes its NOMADS (Nevada Online Multi-Automated Data Systems) program.

27. The Marshal Law Program calculates penalties differently.

28. In other words, there is a conflict in the interpretation of NRS 125B.095(2) which states:

> **125B.095. Penalty for delinquent payment of installment of obligation of support.**
>
> 1. Except as otherwise provided in this section and NRS 125B.012, *if an installment of an obligation to pay support for a child which arises from the judgment of a court becomes delinquent in the amount owed for 1 month's support, a penalty must be added by operation of this section to the amount of the installment.* This penalty must be included in a computation of arrearages by a court of this state and may be so included in a judicial or administrative proceeding of another state. A penalty must not be added to the amount of the installment pursuant to this subsection if the court finds that the employer of the responsible parent or the district attorney or other public agency in this State that enforces an obligation to pay support for a child caused the payment to be delinquent.
>
> (Emphasis added).
>
> ***2.*** *The amount of the penalty is 10 percent per annum, or portion thereof, that the installment remains unpaid. 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.*
>
> (Emphasis added).

NOMADS vs. MARSHAL LAW PROGRAM (MLP):

29. On July 9, 2008, the State of Nevada, Division of Welfare and Supportive Services, Child Support Enforcement Program (CSEP) filed a Friend of the Court Brief in anticipation of the July 11, 2008, hearing.

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30. The State of Nevada, represented by the Attorney General's Office, acknowledged that NRS 125B.095 is ambiguous and subject to more than one interpretation.

31. Reference was made to the legislative history of AB 604 (1993 Legislative Session) as well as the history of AB 473 (2005 Legislative Session).

32. The State of Nevada asserted that the legislative history indicates that a child support penalty was intended to be a "one time penalty" versus an "ongoing interest charge".

33. The Senior Deputy Attorney General, Donald W. Winne, Jr., wrote, "In fact, based on all the comments contained in the record, the intent of the legislation clearly supports CSEP's position that the NCP [noncustodial parent] is encouraged to pay current monthly payments within the month they are due or a one-time penalty will be charged for failure to pay the current child support obligation in full within one month it is due."

34. Further, "...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."

35. The State of Nevada essentially argued that the MLP charges the 10% penalty every year, as if it were a continuous interest charge, rather than impose a one-time penalty within a particular month that the child support amount, or a portion thereof, remains unpaid.

36. The State of Nevada further argued that based on its interpretation of NRS 125B.095 and how penalties are calculated, child support obligors/payors are treated equally and not disproportionately.

37. Under the Marshal Law Program, the State of Nevada contends that obligors who are subject to Income Withholding (IW) by their employers incur penalties because they receive, for instance, biweekly paychecks.

38. If, for instance, child support payments are due on the 1st day of the month, the method of involuntary wage withholding would draw money only on the biweekly paydays, which is usually twice per month.

39. Consequently, the MLP would assign an automatic penalty because the entire child support was not paid on the 1st day of that particular month.

40. On the other hand, if the child support is due on the last day of the month, it is possible that the obligor will avoid a penalty if all paycheck

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withholdings received for that month satisfy the entire child support amount.

41. The NOMADS Program, on the other hand, simply imposes a penalty once at the end of the month.

42. Because the NOMADS Program looks only at what amount is left unpaid at the end of the month, it automatically assigns a penalty.

43. The MLP, on the other hand, assigns a penalty on the unpaid amount as soon as the "due date" is triggered without considering if the obligor pays the entire amount in full at the end of the month.

44. Attorney Muirhead demonstrated that when Plaintiff paid the entire $1300 obligation in the month of May 2008, he was still assessed a penalty of $976.11 by the MLP Program. She asserted that since the entire month was paid in full, the 10% penalty should not have been imposed at all.

45. Attorney Muirhead argued that the operative word in Section 1 of NRS 125B.095 was "installment". She believed that "installment" means that the Court should only look to that one particular month to see if all or any portion of the child support amount remains unpaid before assessing a penalty.

46. The State of Nevada has argued that it is the administrative agency that is responsible for developing and interpreting regulations to carry out its enforcement functions.

47. The regulation referred to is NRS 425.365. The State of Nevada asserts that deference must be given to it when the agency interprets the NRS statutes pertaining to its functions to enforce and regulate, unless the interpretation is found to be arbitrary or capricious.

48. On July 11, 2008, a return hearing was held on further proceedings on the penalties issue.

49. Also on July 11, 2008, Attorney Muirhead filed in open court Plaintiff's Supplemental Brief. The Brief was 176 pages long, and included the legislative histories of AB 604 and AB 473.

50. Extensive oral arguments were taken on the record. The hearing lasted several hours.

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FAMILY DIVISION, DEPT. I
LAS VEGAS, NV 89101

51. On August 14, 2008, The Willick Law Group, on behalf of Defendant, filed a Supplemental Brief on Child Support Principal, Penalties, and for Attorney's Fees.

52. Essentially, Attorney Willick asserts that the MLP does not charge double interest.

53. Rather, based on their interpretation of NRS 125B.095, the MLP imposes a 10% penalty on any remaining unpaid amount within a given month. The amount of the penalty depends on the due date of the child support obligation, whether it is the 1st day of the month, the 15th day, or the last day of the month.

54. In their brief, Attorney Willick contended that when MLP is applied, the total amount of the penalty "at the end of the year" actually turns out to be LESS than what NOMADS calculates.

55. As an example, on page 11 of their August 14, 2008 Supplemental Brief, Attorney Willick explains the MLP calculates a year-end penalty of $89.50 while the State of Nevada CSEP Agency calculates $230.00 based on "hypothetical sums due and sums paid" as illustrated in the Welfare Division's Manual.

56. However, the amount of the penalties under the MLP calculations grows much larger than what NOMADS would charge after 23 months. In her Brief filed August 1, 2008, Attorney Muirhead compared the calculations after 24 months.

57. Under MLP, the penalties would be $3,244.75. Under NOMADS, the penalties total $3,120.00.

58. As more months pass after the 24th month, the MLP calculations of the penalties continue to grow even larger until it reached in excess of $52,000 by May 2008, while the NOMADS Program assessed penalties in excess of $12,000 through the same time frame.

59. Consequently, the different interpretations of the statute have resulted in grossly disparate calculations of the 10% penalty.

60. Attorney Willick seemed to suggest that NRS 125B.095 (2) should be interpreted to give full meaning to the words "per annum".

61. This means that any remaining child support sums that are unpaid each year (and every year thereafter) continue to accrue penalties, albeit at a

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DISTRICT JUDGE
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lesser rate before 24 months elapse, as opposed to NOMADS assessing a one-time penalty at the end of the month and no further penalties accrue.

62. This is the main difference in the calculations between MLP and NOMADS.

63. Attorney Willick argued that the State of Nevada's interpretation ignores the "per annum" concept by leaving the penalty as a one-time fine at the end of each month.

64. Attorney Willick asserted that the penalty is meant to be applied "per annum" which should mean "every year".

65. Accordingly, the penalty is smaller at year's end, but it continues to accrue each year thereafter thus giving full consideration to the words "per annum".

66. The MLP also considers the words "or portion thereof" by assessing a penalty depending on the due date of the child support obligation.

67. Attorney Willick submitted that the MLP can automatically calculate the penalty in this fashion, and NOMADS allegedly cannot do such calculations.

68. Exhibit 1 to the State of Nevada's July 9, 2008 Friend of the Court Brief is an Attorney General Opinion Letter on NRS 125B.095.

69. The AG's Office submitted that the words "per annum" cannot render the phrase "or portion thereof" as mere surplusage.

70. Accordingly, the AG's Office takes the position that the statute, read as a whole, takes into consideration "per annum" by dividing 10% into 12 months or 8.33%, and takes into consideration "or portion thereof" by imposing the 8.33% penalty once at the end of each month on any unpaid sum.

71. In the case at bar, the two different interpretations of the statute result in a marked difference in calculations of the 10% penalty as between MLP and NOMADS.

72. NOMADS calculated a penalty of $12,148.29 through May 2008. MLP calculated a penalty of $52,333.55. There is a difference between the two programs of over $40,000.00.

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REVIEW OF AB 604 and AB 473 LEGISLATIVE HISTORY:

73. As to AB 604, during the June 23, 1993 session of the Senate Committee on Judiciary, page 17, Assemblyman Robert M. Sader said to the Committee, "You want to motivate somebody to pay on time and have an enforceable penalty ... that is what this is about."

74. The testimony of Attorney Frankie Sue Del Papa before the Committee states the 10% penalty "will serve as an incentive to parents to remain current on monthly support obligations."

75. As to AB 473, the Assembly Committee on Judiciary met on April 11, 2005. On page 19, Assemblyman Carpenter noted,

"I have a concern about the amount of interest that you are going to be charging. You are charging 10 percent every month so in a year that adds up to 120 percent. If they couldn't pay whatever was due at the end of that first month, they certainly are not going to be able to pay the amount at the end of the year. I didn't see anything wrong with the way it was written before when it was 10 percent a year. But at 10 percent a month, a lot of these people will never be able to pay that amount. I'm probably one of the biggest sticklers that people ought to pay their child support, but they can't pay something that is impossible to pay, and you keep adding penalty upon penalty or interest upon interest. It really defeats the whole situation."

76. Susan Hallahan, Chief Deputy District Attorney, Family Division, Washoe County, responded:

"This bill does not purport to change how penalties are calculated. The penalty statute as it states right now is 10 percent per annum or a portion thereof. It has to be added to the portion of the monthly payment that was not paid. If you were to, for example, charge the penalty at the end of the year, then there could be a noncustodial parent that doesn't pay anything from January through November and then in December pays $1200 to satisfy their annual child support obligation." Interest and penalties are separate. The purpose of interest is to make the custodial parent whole for the value of her money that she should have received or he should have received today but doesn't receive until 6 months from now. The purpose of the penalty is to encourage the obligor to pay each and every month as he is ordered to pay. This penalty is a one-time snapshot and is charged only during that calendar month for any delinquency you have. So if the obligor pays each month, he or she would not accrue an additional penalty."

77. Assemblyman Carpenter followed with:

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"It says a 10 percent penalty must be applied at the end of each calendar month against the amount of an installment or a portion of the installment that remains unpaid in the month in which it was due. So it seems to me if they owed $100 and there is a 10 percent penalty that month, it would make it $110. Then the next month it is going to be another 10 percent of $110 so that's $111. Simple interest would be 120 percent at the end of the year, so instead of owing $100, they would owe way over $200. It's contradictory in trying to get them to pay, because there is no way they can pay it."

78. Chief Deputy District Attorney Hallahan replied:

"Logically, you would think that would be the way it would work out. But if you owe $100 and I don't pay it this month, I am assessed $10 at the end of the month. If I don't pay $100, I have another $10 and now it's $20. If I don't pay anything for the whole year and I owe $1,200, I am assessed 10 percent penalty which is $120. Whether you calculate it at the end of the month or at the end of the year, it still is $120."

79. Louise Bush, Chief of Child Support Enforcement, Welfare Division, Nevada Department of Human Resources, commented:

"NRS 125B.095 states that a penalty of 10 percent per annum must be assessed when an obligation for child support is delinquent. The common usage of "per annum" means "by the year" and in common application means a fractional interest calculation. The phrase "per annum" contained in the penalty statute suggests that the late payment penalty should be calculated like interest. However, according to the legislative history from the Sixty-Seventh Session and an Attorney General's Opinion, legislators intended the penalty to be a one-time late fee, akin to a late fee one would pay for a delinquent credit card payment rather than another interest assessment. Typically, late payment penalties are designed to encourage timely payment while interest charges are intended to compensate creditors for loss of use of their money. This concept is highlighted by the comments then Assemblyman Robert Sader made during the Sixty-Seventh Session while addressing the intent of a child support late payment penalty. Mr. Sader said, 'It should be clear in the statutes that there is a penalty for not paying on time. You want to motivate somebody to pay on time and have an enforceable penalty. That is what this is about.' Mr. Sader further commented that the purpose of the penalty was intended to be motivational, such as a late payment fee attached to any billing. This bill removes the ambiguous language currently found in NRS 125B.095 clearly aligning the statutory language with the legislative intent of assessing a one-time late fee."

80. Donald W. Winne, Jr., Deputy Attorney General, Nevada Department of Human Resources, offered the following:

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"I, frankly, think it leaves some question as to whether or not this is a one-time late payment fee. I can tell you that when this bill was originally passed, it was clear they wanted us to be like a credit card. If you don't pay on time, this is your one-time late fee. I'm not personally comfortable with the current language as it exists. I don't represent the agency. You asked me here as a person who got involved in this because I drafted this opinion. I would agree with you, Mr. Conklin, the language as it appears still needs work in order for me to feel comfortable, after going through this exercise and making sure they get the intent correct, that this is just a one-time late fee and it won't be adding up like Mr. Carpenter was worried about."

81. Attorney Willick of the Willick Law Group commented:

"By way of background, everything is now clocked in accordance with how the court sets the child support obligation. Specifically, courts have a great deal of leeway and exercise a great deal of discretion as to how support should be paid. For example, all due on the first of the month, due on the 10th and 25th, or all due on the last day of the month, et cetera. There are all kinds of untold variations on that throughout the child support orders currently in effect. I will start with subsection 2 because it is the bigger problem. If subsection 2 is altered as stated, it would treat similarly situated people differently. For example if Person A had a child support order due on the 1st and Person B had a child support obligation due on the 25th, Person A would basically have 29 days within which to pay child support without incurring a penalty. Person B would only have 5 days. That difference, in my opinion, would rise to the level of a constitutional concern because it would treat similarly situated people differently. The problem is shifting the focus from a child support due date clock to a month-end due date clock. It leads to a great deal of problems. It would also cause a differential in the calculation date and the due date for how much should be paid between those 2 individuals causing a great deal of confusion, as a practical matter, in the family courts of this state. It would be very difficult to calculate in the real world, although I suppose it would be possible. It would lead to an appearance of greater unfairness to similarly situated people. .... 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 a particularly difficult calculation problem. We have 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 to make do a job that it is not suited to do. They are attempting to conform the law to conform how their computer works. I would suggest that this is a bad basis for altering public

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Conclusion

NRS 125B.095 is ambiguous. The defendant never presents any objective verified evidence or case law that states otherwise. When a statute 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 noncustodial parent (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 26th day of August 2008.

CATHERINE CORTEZ MASTO
Attorney General

By: _____
DONALD W. WINNE, JR.
Senior Deputy Attorney General
Health and Human Services Division
(775) 684-1141

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 26th day of August 2008.

CATHERINE CORTEZ MASTO
Attorney General

By: _____
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 29TH day of August 2008, I served one true copy of the attached **SUPPLEMENTAL FRIEND OF THE COURT BRIEF** by U.S. Mail, postage prepaid, to:

Marshal Willick
3591 E. Bonanza Road Ste 200
Las Vegas, Nevada 89110
Fax: (702) 438-5311

Greta Muirhead
9811 W. Charleston Blvd. #2242
Las Vegas, Nevada 89117
(702) 434-6033

Mary L. Case-Liebhold
An employee of the Office of the Attorney General

ATTACHMENT 1

AB27

Introduced on: Jan 29, 2003

By: Judiciary

Revises method for adjusting presumptive maximum amounts of child support owed by noncustodial parents. (BDR 11-244)

Fiscal Notes

Effect on Local Government: No.
Effect on State: No.

Most Recent History Action: Approved by the Governor. Chapter 15.
(See full list below)

Past Hearings

Assembly Judiciary	Feb-20-2003	08:00 AM	**Minutes**	No Action
Assembly Judiciary	Feb-25-2003	08:00 AM	**Minutes**	Do pass
Senate Judiciary	Mar-19-2003	08:00 AM	**Minutes**	Do pass

Votes

Assembly Final Passage	Feb-27	Yea 41,	Nay 0,	Excused 1,	Not Voting 0, Absent 0
Senate Final Passage	Mar-24	Yea 20,	Nay 0,	Excused 1,	Not Voting 0, Absent 0

Bill Text (PDF) **As Introduced** **As Enrolled**
Bill Text (HTML) **As Introduced** **As Enrolled**
Amendments (HTML)

Bill History

Jan 29, 2003
- Prefiled. Referred to Committee on Judiciary. To printer.

Jan 31, 2003
- From printer.

Feb 03, 2003
- Read first time.
- To committee.

Feb 25, 2003
- From committee: Do pass.

Feb 26, 2003
- Read second time.

Feb 27, 2003
- Read third time. Passed. Title approved. (Yeas: 41, Nays: None, Excused: 1). To Senate.

Mar 03, 2003

- In Senate.
- Read first time. Referred to Committee on Judiciary. To committee.

Mar 19, 2003
- From committee: Do pass.

Mar 20, 2003
- Read second time.

Mar 21, 2003
- Taken from General File. Placed on General File for next legislative day.

Mar 24, 2003
- Read third time. Passed. Title approved. (Yeas: 20, Nays: None, Excused: 1) To Assembly.

Mar 25, 2003
- In Assembly
- To enrollment.

Mar 26, 2003
- Enrolled and delivered to Governor.

Mar 27, 2003
- Approved by the Governor. Chapter 15.

Effective March 27, 2003.

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Second Session
February 20, 2003

The Committee on Judiciarywas called to order at 8:14 a.m., on Thursday, February 20, 2003. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4405 of the Grant Sawyer State Office Building, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Guest List. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Mr. John Oceguera, Vice Chairman
Mrs. Sharron Angle
Mr. David Brown
Ms. Barbara Buckley
Mr. John C. Carpenter
Mr. Jerry D. Claborn
Mr. Marcus Conklin
Mr. Jason Geddes
Mr. Don Gustavson
Mr. William Horne
Mr. Garn Mabey
Mr. Harry Mortenson
Ms. Genie Ohrenschall
Mr. Rod Sherer

GUEST LEGISLATORS PRESENT:

Senator Terry Care, Senatorial District No. 7, Clark County
Assemblyman Bob McCleary, Assembly District No. 11, Clark County

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst
Risa B. Lang, Committee Counsel
Deborah Rengler, Committee Secretary

OTHERS PRESENT:

Kristin L. Erickson, Chief Deputy District Attorney, Criminal Division, Washoe County District Attorney, and representing the Nevada District Attorney's Association, Reno
Ben Graham, Legislative Representative, Nevada District Attorney's Association, Clark County, Las Vegas
Lucille Lusk, Co-chair, Nevada Concerned Citizens, Las Vegas

Elana L. Hatch, Chief Deputy District Attorney, Family Support Division, Las Vegas
Todd L. Torvinen, Attorney, representing Nevada Trial Lawyers Association, Reno
Marshall S. Willick, citizen, Las Vegas
Leland Sullivan, Chief, Child Support Enforcement, Welfare Division, Department of Human Resources, Carson City
Don Winne, Chief Deputy Attorney General, Office of the Attorney General, representing the Welfare Division, Carson City
Ben Blinn, citizen, Reno
Debbie Cahill, Director of Government Affairs, Nevada State Education Association, Las Vegas

Chairman Anderson made opening remarks and noted a quorum was present. He opened the hearing on Assembly Bill 78.

Assembly Bill 78: Revises penalty for certain sexual offenses committed against children and prohibits suspension of sentence or granting of probation to person convicted of lewdness with child. (BDR 15-1031)

Assemblyman Bob McCleary, Clark County Assembly District No. 11, stated the purpose of the legislation was to send a clear message to sexual predators that if they preyed upon Nevada's youth and were convicted of sexual assault, they would be sentenced to prison "for a long time." Additionally, conduct that resulted in subsequent sexual assault convictions might result in a prison sentence of life without the possibility of parole (LWOP).

Another crime often used in sexual assault negotiations was lewdness with a child. A first conviction would result in a minimum of two years in prison; additional convictions would result in LWOP. Mr. McCleary introduced Kristin Erickson and Ben Graham, who would address the specifics of the legislation.

Kristin L. Erickson, Chief Deputy District Attorney, Criminal Division, Washoe County District Attorney, and representing the Nevada District Attorney's Association, Reno, spoke in support of A.B. 78 because "it made good practical sense." As the law currently stood, there were three tiers for sexual assault crimes not involving substantial bodily harm:

1. Sexual assault of an adult— A defendant convicted of sexual assault of an adult would be sentenced to life with the possibility of parole (LWP) and would be eligible for parole at 10 years, or to a definite term of 25 years with the possibility of parole at 10 years.

2. Sexual assault of a child under 16 (14 to 15 years of age)—A defendant would be sentenced to LWP with parole eligibility at 20 years, or to a definite term of 20 years with parole eligibility at 5 years.

3. Sexual assault of a child under 14 (13 and under)—The defendant would receive a sentence of LWP with parole eligibility at 20 years.

Ms. Erickson recapped the parole years for each tier—10 years for sexual assault of an adult, 20 years with children under 14, and 5 years with 14- and 15-year olds. She said it did not make sense as it currently stood. It was possible to plea-bargain an adult sexual assault charge down to a "fiction" of assault of a 1- or 15-year old because the sentence received would be less. This legislation would change the [charge for assault of a] 14- to 15-year old sentencing range. It would still allow the judge the option of LWP [with parole eligibility at]

Mr. Horne asked whether this statute would affect a 17-year-old boyfriend/ 15-year-old girlfriend scenario. Mr. Graham deferred to Ms. Erickson to answer that question. Ms. Erickson said the legislation should not affect that particular situation, since sexual assault was not consensual. Mr. Horne queried what would happen when parents filed statutory rape charges against boyfriends. Mr. Graham said parents had limited abilities to seek prosecution. The statute made it a lesser offense, the closer the people were in age.

Assemblyman Carpenter questioned why the description of lewdness with a child was being added to this legislation; had it been missed previously. Mr. Graham said it had not been excluded in 1995, but A.B. 78 brought the sentencing in line and provided for an enhanced penalty.

Lucille Lusk, Co-chair, Nevada Concerned Citizens, Las Vegas, appeared in support of A.B. 78 and spoke as one with experience working with adults who were victims of child abuse as children. The consequences of experiencing sexual abuse lasted well into adulthood. The time required to overcome the consequences of sexual abuse was extensive, even when there was no substantial bodily harm associated with the sexual abuse. Consequently, Ms. Lusk said it was "manifestly unjust" for the perpetrator to be released in as little as five years. She opined that this piece of legislation made sense in that regard. The recidivism rate in these cases was extremely high, so the protection of other children should be a primary factor to be taken into consideration. The provision regarding lewdness in A.B. 78 also made sense because of the wide variety of acts that fell under that definition. The additional flexibility for the court would be beneficial. The only place there was reduction in the court's discretion would be the prohibition on probation as it related to lewdness. She said that the most important provision of the bill was the penalty of LWOP for second offenders because of the high rate of recidivism.

Chairman Anderson closed the hearing on A.B. 78. He then opened the hearing on Assembly Bill 62, a similar piece of legislation.

Assembly Bill 62: Increases penalty for committing sexual assault not involving substantial bodily harm against child under age of 16 years. (BDR 15-282)

Mr. Graham stated that A.B. 62 was originally drafted at the request of the Nevada District Attorney's Association, but the provisions were handled in A.B. 78. Rather than indefinitely postpone the bill, Mr. Graham requested that the bill be taken back to await a "meritorious" purpose.

Chairman Anderson closed the hearing on A.B. 62. He stated that A.B. 62 would be taken "back to the board," keeping it alive. He explained that A.B. 62 had been drafted without knowledge that a similar piece of legislation was coming forward and the provisions of A.B. 62 were already included in that subsequent bill. This left a piece of legislation "on the board" in the event that the Committee ran out of bill drafts. Thus, the bill could be brought back to amend this section of the law at a later date.

Chairman Anderson opened the hearing on Assembly Bill 27.

Assembly Bill 27: Revises method for adjusting presumptive maximum amounts of child support owed by noncustodial parents. (BDR 11-244)

Elana L. Hatch, Chief Deputy District Attorney, Family Support Division, Clark County District

Attorney's Office, Las Vegas, said A.B. 27 would correct an unintended result in NRS 125B.070 by applying the Consumer Price Index (CPI) to maximum presumptive amounts of child support, or caps, and not applying CPI to income ranges.

Referring to Exhibit C, Table 1, "July 1, 2002 through June 30, 2003," Ms. Hatch said the right column illustrated the presumptive maximum amounts of child support at cap. On the left, income ranges of noncustodial parents were shown. She said that last session she had brought forth a bill to improve the lives of children by increasing the presumptive maximum amounts of child support at cap in NRS 125B.070; that bill was widely supported. The final version of the bill passed by the Legislature had graduated presumptive maximum amounts of child support as shown in the right column of Table 1. The final version also had CPI applied to the presumptive maximum amounts of child support caps. Both these changes had worked well.

Continuing, Ms. Hatch said that what had not worked well was the application of the CPI to the income ranges. The unintended result was that a noncustodial parent could move from one income range to another with no change in income resulting in a large inappropriate increase or decrease in child support. She noted that she referred to noncustodial parents as "he," but nationwide as of January 2002, 17 percent of noncustodial parents were female. It would appear that the CPI was properly applied to the presumptive maximum amounts of child support caps and inadvertently applied to income ranges.

As the bill passed last session, Ms. Hatch stated the CPI would be added to or subtracted from the child support cap depending on how the economy fluctuated. Table 2 (Exhibit C), titled "Future," illustrated changes to both the child support amounts and the income ranges based on a 1.6 percent increase in the CPI. Table 3 (Exhibit C) illustrated changes to both the child support amounts and the income ranges based on a 4 percent decrease in the CPI. Returning to Tables 1 and 2, Ms. Hatch said if a noncustodial parent who earned $4,235, Step 2 on Table 1, could be reclassified, or pulled down, as Step 1 on Table 2. This illustrated that, with a possible increase in the CPI of 1.6 percent, the noncustodial parent would pay less child support—the unintended result of having the CPI applied to the income range.

Ms. Hatch reported she had met with Brenda J. Erdoes, Legislative Counsel, Legal Division, Legislative Counsel Bureau, who had indicated that there had been no testimony in support or opposition to the legislation enacted last session.

According to Ms. Hatch, the most serious injustice could be seen when comparing income levels on Table 1 and Table 3. A noncustodial parent, with no change in his income but a 4 percent decrease in the CPI, should experience a decrease in his child support. However, the income range would reclassify that noncustodial parent with an income of $4,235 from Step 1 on Table 1 to Step 2 on Table 3, increasing his child support payments. She concluded that the CPI should be added to the presumptive maximum amounts of child support but should not be applied to the income ranges.

In conclusion, Ms. Hatch stated that A.B. 27 proposed to remove the CPI from income ranges, thus correcting the unintended result. Assembly Bill 27 had the support of the Washoe County District Attorney's Office and the Nevada District Attorney's Association. Ms. Hatch disclosed that in her examples she used those income ranges that would be most dramatically affected; noncustodial parents would not be affected if in the middle of the income ranges.

Chairman Anderson said it was [another example of] the inevitable rule of unintended

consequences. Since it was not discussed in the initial legislation, an erroneous assumption was made that income would move relative to CPI and the cost of raising the child would continue to grow. Chairman Anderson queried how to put pressure on noncustodial parents to recognize that the cost of raising the child was increasing, even when their income was not increasing. If the family was still together, the overall cost and the effect on the family itself would be experienced. This rise in costs might encourage parents to find better jobs, which would place them into a higher income range. A big concern was that noncustodial parents no longer felt the obligation to better their economic position in terms of the needs of the family since the family was not there. That was often the time at which and the reason why people changed jobs; they needed more money to make ends meet in the family. Chairman Anderson said the cost obligation to the parent was still there, "so what are we going to do?"

Ms. Hatch responded that NRS 125B.070 had another section that included the percentages of gross monthly income and how child support was determined, and that capped the amount of child support. She stated that graduated steps were realistic. An employment assistance court to assist noncustodial parents to obtain a job or a better job had been established in Clark County. Clark County also had the first and only drug court program in child support court that assisted people with drug and alcohol problems. Clark County was attempting to provide resources to noncustodial parents as allowed by statute, as it was to everybody's benefit if noncustodial parents improved their income and that goods and services addressed by CPI fluctuated, keeping pace with the economy.

Assemblyman Brown questioned whether there had been an analysis completed related to fixed versus variable expenses. Ms. Hatch responded in the affirmative. She said the CPI was reviewed because the child support caps had not been changed since 1987. The Assembly Committee on Judiciary had been instrumental during the last session in amending CPI into the legislation. She acknowledged that there were fixed expenses, but there were also variable expenses. She noted that when she talked about providing services to custodial parents, as well as noncustodians, the Family Support Division was required to do that; it was part of the state and federal program. The goal was to ascertain the correct number and ensure that the law reflected what was happening with the economy. That was the most "just way" to accomplish that.

Todd L. Torvinen, Attorney, representing Nevada Trial Lawyers Association, Reno, recalled that two years ago the CPI adjustment presented by the federal government included goods with different inflation rates and those that were fixed. Mr. Torvinen provided to the Committee two exhibits:

- Exhibit D–United State Department of Agriculture (USDA) "Expenditures on Children by Families, 2001 Annual Report"
- Exhibit E—A summary of the USDA report concerning one-child and two-child families source data applied to a hypothetical situation.

The information provided supported testimony given by Ms. Hatch. Mr. Torvinen said the essence of this technical correction would be to correct nonsensical results:

- While the cost to care for a child rose every year, the child support amount would fall.
- Conversely, if there was deflation, an obligator could be placed in a higher income class, which would also be unfair.

Assemblyman Carpenter questioned when a person was required to report an increased income level. Ms. Hatch said there was a program called "review and adjustment," which allowed for modification of child support orders, and there was a statutory section that addressed it. A noncustodial or custodial parent supplied income information and a request to have the child support adjusted. If the parties did not agree, it would go to court, where the judge would make a decision. Deviations were allowed if the obligator supported other children or there were substantial childcare costs. The parents could also go to family court to have the child support order adjusted.

Marshall S. Willick, citizen, Las Vegas, appeared in support of A.B. 27. He said it was an administrative correction that would "do more good than harm." He noted he took a "snap poll" of the Nevada Chapter of the American Academy of Matrimonial Lawyers in Las Vegas; they concluded it was a good administrative correction.

Chairman Anderson questioned whether the Welfare Division had identified the disparity under discussion.

Leland Sullivan, Chief, Child Support Enforcement, Welfare Division, Department of Human Resources, Carson City, admitted that the Welfare Division had not been aware of the discrepancy until Ms. Hatch brought it to their attention.

Ms. Hatch presented an amendment (Exhibit F) to A.B. 27 written by Madelyn Shipman, Deputy District Attorney, Civil Division, Washoe County District Attorney's Office.

Mr. Sullivan read from a prepared statement (Exhibit G) and appeared in support of A.B. 27 and the amendment regarding interest (Exhibit F). He testified that the child support program was a federal, state, and local partnership operating under Title IV-D of the Social Security Act. The program provided four basic services to Nevada's children and families: the location of the obligor parent, establishment of parentage, establishment of obligations, and enforcement of child support orders. In state fiscal year 2002, the child support program collected and distributed to families over $115 million.

Continuing, Mr. Sullivan said that state programs must comply with Title VI-D mandates to be eligible for federal funding. Federal regulations established program requirements and mandatory services states must provide to families participating in the program. Currently, NRS 125B.140 required the court to determine and award interest on child support arrearages. However, under federal regulations, Title IV-D child support enforcement programs were not required to calculate interest. It was a Title IV-D function to collect interest that had been reduced to a sum certain amount. Requiring the Title IV-D program to calculate interest represented an enormous burden to the program's limited resources. Although the statute directed the courts to calculate interest, in practice the program must provide the calculations to the court to avoid time spent during the hearing process.

Mr. Sullivan reported that as of December 2002, there were 61,034 child support cases in Nevada with arrearage balances. This represented 59 percent of the state's total caseload. The majority of cases entered the child support program with existing arrearage balances, each requiring the program to calculate interest. The interest question was further complicated by the adoption of the federally mandated Uniform Interstate Family Support Act (UIFSA). State differences in arrearages and interest calculations compounded the labor necessary for child support enforcement caseworkers to comply with the provisions of NRS 125B.140. UIFSA

required responding states to enforce the initiating state's order, yet the interest rate of the state, with continuing exclusive jurisdiction, determined the interest rate applied. The Personal Responsibility and Work Opportunity Reconciliation Act mandated distribution requirements and added another layer of complexity to interest.

Further, Mr. Sullivan stated that for TANF (Temporary Assistance to Needy Families) and former TANF cases, there were no fewer than five categories of arrearages, which might or might not be assigned to the state depending on case circumstances. Interest must be addressed separately for each category of arrears. As the statute was written, it created a consistency problem on how interest was applied. The majority of cases going to court in the program would be to establish an obligation, establish parentage, to modify existing obligations, and to address noncompliance issues.

Currently, a significant portion of the caseload did not go before the court in Nevada because:

- 22,000 noncustodial parents resided in other states.
- 35,000 noncustodial parents were paying their child support.
- The Division was attempting to locate 10,000 noncustodial parents.

Pursuant to NRS 125B.095, the program was required to pursue and collect a 10 percent penalty on missing installments of child support. The program anticipated building that function into the system by the end of the calendar year to collect interest and penalties. Recently, Welfare Division staff had met with Clark and Washoe County's child support management staff and had jointly agreed the elimination of interest provisions was in the best interest of the program. Modification of the statute did not compromise the custodian's ability to pursue interest assignments under the general interest provisions contained in NRS 99.040. However, it clearly distinguished it was an option of the court rather than an obligation of the child support program.

Chairman Anderson commented that he had received an e-mail (Exhibit H) from Judge Scott Jordan, Second Judicial District Court, Department 11, Family Division, Washoe County. He said that Judge Jordan indicated that Washoe County had been calculating and collecting interest for eight years. Chairman Anderson queried if Washoe County was performing this task, why was the amendment necessary.

Mr. Sullivan said it was dependant on the judges, the requests submitted to the case manager, and the representative from the district attorney's office. He opined that Washoe County had 11,000 cases with orders for child support obligations, with only 1,000 of those cases actually going to court. Again, Mr. Sullivan noted there was an inconsistency since the statute required the court to address the matter. There was a significant portion—85 to 90 percent of the cases with support obligations—where interest would not be addressed. While Washoe County might not have a problem with those cases that went before the court, there was a fairness issue regarding the majority of the cases that did not go before the court.

Further, Mr. Sullivan mentioned that in this area, if the Division attempted to take all the cases it could before the court, it would increase the court workload fivefold. Thus, a significant burden would be put on the court staff, as well as on the Division staff to calculate and take the information before the court.

Assemblyman Carpenter noted the amendment also addressed attorney's fees. He said it was his understanding that the court had the latitude to determine where the interest would cause a hardship, the obligor would not be forced to pay the interest or could pay a lesser amount. He said he was concerned that a person who had been avoiding child support for many years, when finally found to have the capability to pay child support because he or she had a good income, would contest reasons why he should pay interest. This amendment gave the impression that the obligation was being reduced or eliminated.

Mr. Sullivan responded that A.B. 27 was removing the burden from the child support program. The custodial parent could still pursue legal counsel to assist in the collection of interest. A burden would be placed on the counties if they were forced to calculate the interest on all the obligations that went to court.

Ms. Hatch shared specific information about Clark County, where the situation was not different than in other areas of the state except for the caseload volume. She announced that in Clark County there were 79,000 open, active cases, even some without arrearages. Clark County had accepted approximately 23,000 cases from the Nevada State Welfare Division about 2 years ago. There were over 7,000 open, active cases per attorney. Each case manager supervised 1,000 open, active cases. Collections had exceeded $75 million last year. Ms. Hatch emphasized that the process was working.

In a business sense, the primary interest and goal was identified as collecting current child support for children. There was a "greater" mission to provide food, clothing, and shelter money through these collections. She said this discussion should focus on keeping children and families going and providing the basic needs. Calculating interest on child support was not federally required in child support programs. Ms. Hatch asked the Committee to bear in mind that there was a difference between calculating interest and collecting interest. Federal requirements mandated that Nevada had one computer system in the state to stay "in sync" and to qualify to receive federal funding at a minimum of 66.6 percent or as high as 82 percent in Clark County. Manually calculating interest each month was very time consuming and detracted from collecting child support. Ms. Hatch revealed that Clark County was "tapped out" on resources.

Even though there was a private calculator system, which had been reviewed, Ms. Hatch said Clark County had complex child support orders. The orders had as much variance as judges and courts had creativity, making the orders fit the families. Custodians could establish interest. Clark County District Court would enforce interest judgments, even for Nevada residents with the orders from other states. Without the burden of establishing interest, Clark County could properly enforce child support, as well as establish and collect penalties. Clark County would receive federal reimbursement for penalty work. This amendment (Exhibit G) had the support of the Washoe County District Attorney's Office and the Nevada District Attorney's Association.

Chairman Anderson questioned whether Ms. Hatch recognized the amendment would be a major issue, and if so, why was it not covered in the original draft of the bill. Ms. Hatch disclosed that Clark County had a case where the time involved in "pencil and paper" calculations was estimated per month per child support obligation. It was determined that for a noncustodial parent whose paychecks were paid on the 10th and 25th of each month, possible interest would be assessed for any payment received after the 1st. A decision was reached; Madelyn Shipman wrote the amendment.

Chairman Anderson asked how would the custodial parent, who was forced to hire an attorney to determine why the funds were not being paid, pay the attorney fees. Recognizing that the noncustodial parent had the ability to pay, and if the judges assigned those dollars to the noncustodial parent, Chairman Anderson said the burden of paying those dollars was taken from the judge's ability to assign and left the custodial parent with the attorney obligation. He said this process could disquiet the custodial parent from bringing forth the suit to obtain the money to keep their family together. Ms. Hatch said Clark County reviewed what was happening in child support court, the district attorneys' offices, and the Division of Welfare at no cost to either party. Additionally, family court was part of district court, where custodial or noncustodial parents could appear on their own or with attorneys. In child support court, attorneys' fees were not requested. Attorneys' fees could be requested under another statute.

Mr. Sullivan said the program could be included in NOMADS (Nevada Operations Multi-Automated Data Systems), where there was some existing functionality to calculate the interest. Problems with the existing state law needed to be addressed by the court. There was a small percentage of cases that actually went before the court, where the interest issue could be addressed. He reiterated that the penalty process would assess penalties on missed installments and should be functioning by the end of the year. If a noncustodial parent missed a monthly installment, a penalty would be assessed. The amendment proposed that the interest not be placed as a responsibility of the child support program while the family could still obtain counsel to collect interest. Interest did not increase the monthly amount going to the family. Currently, there was $700 million in arrearages due on the 113,000 cases in the program. It simply added more accounts receivable, which only increased the payment schedule, not the monthly obligations.

Assemblywoman Buckley asked who received the proceeds of the penalty. Mr. Sullivan said the amount of the penalty would be passed along to the family in all cases. Ms. Buckley asked if the computer system could be fixed to collect the penalties, why not collect the interest. Mr. Sullivan said the functionality to calculate the interest was stipulated in the current statute, but collection of the interest could not be enforced until the court addressed and adjudicated it.

Ms. Buckley said she supported the original bill, but not the amendment. She said she would advocate to the counties to provide the resources needed to perform this task. It appeared that the amendment was creating an incentive not to pay child support from a public policy point of view. Ms. Buckley said she would not support that. Ms. Hatch said what was being discussed was the reality of where the program was and the primary goal of the program. She opined the penalty would be an easier computer task; with interest there would be adjustments every six months based on NRS 99, prime plus 2 percent. A penalty was a flat rate; it did not change. Ms. Hatch said it was her goal to communicate with noncustodial parents to inform them of possible penalties to motivate them to keep their payments current. She expressed concern about detracting from the primary goal of the program.

Assemblywoman Angle asked for clarification on how the penalty and interest worked together. She queried how often the 10 percent penalty was calculated and if it was compounded. Secondly, she asked how often the interest was calculated and if it was compounded. Finally, she asked if it was an "either/or" situation or if it was interest plus the penalty. Ms. Hatch responded that interest was prime plus 2 percent, to be adjusted every six months. As she read the statute, she said there was no compounding. The penalty was a flat 10 percent per annum, broken out into a monthly charge, and there was no compounding. Ms. Hatch said it was not possible to calculate interest by "pencil and paper" each month for 79,000 open cases, though some did not have arrearages. Automation was necessary, which would need to take into

consideration policy issues.

Assemblywoman Angle reiterated her question regarding whether the program allowed interest plus penalties or just one. Ms. Hatch said the statute was currently written that the court could charge interest. The court did not have the personnel or the functionality to perform the interest calculations. The court expected the district attorneys' office to perform the calculations. Penalties were an easier calculation to perform as sum certain as stipulated in statute and would not be variable. The program did not permit "either/or." Ms. Hatch said that from her reading of the statutes, she understood that penalties were mandatory; interest had a discretionary aspect and was a court obligation.

Mr. Sullivan said that the program included 33,000 TANF and former TANF cases. When the families began to receive this public assistance, child support was assigned to the state and the federal government. As testified previously, TANF cases had five categories of arrearages, which caused additional complexity when calculating interest and determining whether that interest was passed on to the family or assigned to the state.

Assemblywoman Angle restated her understanding of the situation. She said that interest was discretionary and often was not charged, and the penalty was a mandatory 10 percent, which was charged and was easier to collect. Because of the complexity of calculating the interest, the work was performed but not always passed along. Mr. Sullivan agreed that the penalty was easier to calculate, enforce, and pass to the family.

Don Winne, Chief Deputy Attorney General, Office of the Attorney General, representing the Division of Welfare, Carson City, spoke from the audience and said he appeared only to answer questions if needed.

Ben Blinn, citizen, Carson City, spoke on the discretionary interest to point out what happened to those in prison. If inmates had a job and money could be paid towards restitution or good credits earned, the judge and parole board decided whether to keep the child support current. Yet, inmates still had the responsibility to pay for their loved ones' growth. He said he had seen inmates who "live on the installment plan" and said it was difficult to figure out what they owed. The human element could not be legislated out; it must be considered.

Chairman Anderson indicated to the members of the Committee that Mr. Blinn was a resident of Sparks. He brought to the Committee the reality of time spent in custody, where part of his responsibility had been providing services on death row. Mr. Blinn said he defended inmates in the 1977 trials. Chairman Anderson said Mr. Blinn was a jailhouse lawyer. Mr. Blinn said he would rather be known as a Nevada school educator, which he still was.

Referring back to A.B. 78, Mr. Blinn said the word "calendar" should be added in front of "40 years" so that "good time" did not allow an early release; ten years meant ten calendar years and life meant "natural life." It would eliminate the loophole of allowing anybody to return.

Chairman Anderson closed the hearing on A.B. 27. He noted there were concerns regarding the amendment, but the primary bill could be added to the work session.

Chairman Anderson opened the hearing on Assembly Bill 54, a piece of legislation requested by the Chairman.

Assembly Bill 54: Revises provisions governing parental access to certain records of

MINUTES OF THE MEETING OF THE ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Second Session
February 25, 2003

The Committee on Judiciarywas called to order at 8:30 a.m., on Tuesday, February 25, 2003. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada, and, via simultaneous videoconference, in Room 4401 of the Grant Sawyer State Office Building, Las Vegas, Nevada. Exhibit A is the Agenda. Exhibit B is the Guest List. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Mr. John Oceguera, Vice Chairman
Mrs. Sharron Angle
Mr. David Brown
Ms. Barbara Buckley
Mr. John C. Carpenter
Mr. Jerry D. Claborn
Mr. Marcus Conklin
Mr. Jason Geddes
Mr. Don Gustavson
Mr. William Horne
Mr. Garn Mabey
Mr. Harry Mortenson
Mr. Rod Sherer

COMMITTEE MEMBERS ABSENT:

Ms. Genie Ohrenschall (excused)

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst
Risa B. Lang, Committee Counsel
Deborah Rengler, Committee Secretary

OTHERS PRESENT:

Elana L. Hatch, Chief Deputy District Attorney, Family Support Division, Clark County, Las Vegas
Judge Scott Jordan, Second Judicial District Court, Department 11, Family Division, Washoe County
Mark Kemberling, Senior Deputy Attorney General, Office of the Attorney General, Las Vegas
Michael Pescetta, defense attorney, Las Vegas

Kristin L. Erickson, Chief Deputy District Attorney, Criminal Division, Washoe County District Attorney, and representing the Nevada District Attorney's Association, Reno

Chairman Anderson made opening remarks and noted a quorum was present. He remarked that during a work session, the Committee did not take public testimony unless expressly requested by the Committee. He called attention to the Work Session Document (Exhibit C) prepared by Allison Combs, Committee Policy Analyst. The Work Session Document contained the bills being brought forward for action with any previously submitted amendments. He pointed out that several bills would have fiscal notes attached; Ms. Combs would identify those bills to determine the potential economic impact if the Committee chose to move those pieces of legislation.

Allison Combs, Committee Policy Analyst, explained Assembly Bill 11.

Assembly Bill 11: Provides increased penalty for certain repeat offenses involving vandalism. (BDR 15-191)

Ms. Combs said A.B. 11 was requested by the interim committee to study Categories of Misdemeanors. The bill changed penalties for repeat offenses of vandalism. Those who testified in support and opposition were listed in the Work Session Document, as well as any proposed amendments.

The first amendment dealt with the protected properties section of the bill, which included existing language from another section of the law that was to be repealed and thus was included in the legislation on vandalism. There were three proposals within this amendment:

1. Add libraries to the definition of protected properties.
2. Add parks to the definition of protected properties.
3. Eliminate protected property provisions, so that all property would be treated equally.

Chairman Anderson noted that the City of Reno had submitted an amendment that proposed allowing aggregation of the value of the loss when a person committed multiple offenses.

Assemblywoman Buckley said she was not overwhelmingly convinced that the legislation was required. She expressed concern related to removing jurisdiction from the lower courts, which had more time to oversee community service. If these cases were taken to the District Court to be included with rapes, murders, and sexual assaults, the cases would most likely be plea-bargained away.

Ms. Buckley questioned whether legislation was required for second offenders. She said her preference would be to eliminate "vandalism," since this was the graffiti statute. The penalty for the second offense could be added, as well as including libraries and parks. The remaining amendments were not included in the bill and there were major implications to specify "multiple offenses" that might trigger numerous legal issues. "There is no such thing as a simple bill," Ms. Buckley said.

Assemblyman Horne recalled there had been discussion regarding a $250 threshold, which seemed extremely low. Ms. Combs clarified that the $250 level was the current penalty under

Nevada Revised Statutes (NRS) 193.155 for a public offense. It also mirrored the thresholds that were included in the theft statutes. Mr. Horne asked if that was applied to gross misdemeanors. Ms. Combs replied graffiti was a public offense under NRS 193.155, which had a penalty for a gross misdemeanor of $250 to $5,000.

Assemblyman Carpenter questioned whether a library was already covered as an "educational facility." He expressed concern about changing the jurisdiction within the courts and suggested stipulating a "third offense" rather than multiple offenses.

Assemblyman Brown concurred with Assemblywoman Buckley; the testimony went to the nature of "taggers," or graffiti artists. Calling attention to Section 1, subsection 1, he said it was "so broad" and he particularly had a problem with the last portion of line 4, which said "otherwise damaged the public or private property without the permission of the owner." Mr. Brown stated that the legislation was ascribing a criminal penalty to what could amount to a mere accident. The legislation was addressing graffiti and the serial nature of taggers. Quoting page 2, line 8, where it stated the "second and each subsequent offense where the value of the loss is less than $5,000," Mr. Brown suggested amending the language to state that "the loss is greater than $250 but less than $5,000."

Chairman Anderson commented that the Committee did not appear to desire to move on the bill. There were two choices: indefinitely postpone the bill and take it "back to the board" to be killed at a later date, or pull it back and spend more time on it.

Assemblyman Sherer recommended that A.B. 11 be taken "back to the board."

Ms. Combs explained Assembly Bill 27.

Assembly Bill 27: Revises method for adjusting presumptive maximum amounts of child support owed by noncustodial parents. (BDR 11-244)

The bill proposed that the Consumer Product Index (CPI) would not apply to the income ranges for determining the presumptive maximum amounts of child support. One amendment submitted dealt with the calculation of interest, which would delete the provisions requiring the court to determine and include in its order the interest on arrearages and the attorney's fee for the proceeding. A copy of the proposed amendment was provided within the Work Session Document (Exhibit C, page 10).

Chairman Anderson admitted he had difficulty understanding why the Division of Welfare could not "pick up the interest payments." The person required to pay the interest penalty would probably be of a lower economic status, and less able to make the payments initially, and the chances that there would be an interest penalty could be dramatically greater. He said the person who stood before Judge Scott Jordan's court tended to be from the lower economic strata; obtaining the basic payment from those individuals would be the greatest service. Originally, Chairman Anderson expected the Division to "pick up the interest payments," but after listening to testimony he said he had changed his mind and he supported the amendment.

Assemblyman Carpenter spoke in opposition to the amendment. He said the court had the ability to determine whether the interest should be paid and waive payment if deemed appropriate. Mr. Carpenter said he favored A.B. 27 as submitted.

Assemblywoman Buckley said she concurred with Assemblyman Carpenter in support of A.B. 27 and in opposition to the amendment. There might be some low-income, noncustodial parents who might not be able to afford interest, but they might not pay child support anyway. There were numerous individuals who were able to pay their child support and should. She cautioned against creating a disincentive to paying child support on time when there was no penalty. Half of the states in the country assessed interest, Washoe County did it, and the rest of the state should do it as well. Ms. Buckley said NOMADS (Nevada Operations Multi-Automated Data Systems) could be fixed or interest could be calculated manually. Ms. Buckley suggested that when the Senate bill regarding penalties came over, amendments could include penalties being charged against those counties that were not assessing interest. The statute had been "on the books" for over ten years; Ms. Buckley said it should be followed.

Assemblyman Horne asked for clarification regarding the purpose of the legislation—reduction of the costs relative to the administrative task of collecting interest.

Elana L. Hatch, Chief Deputy District Attorney, Family Support Division, Clark County, Las Vegas, responded that A.B. 27 originated as a result of a meeting of the Title VI-D program in Nevada. She stated the concern was trifold:

1. Clark County was overburdened with 79,000 open cases, where current support and payment on arrears must be collected. Penalties and interest was "icing on the cake," but with limited resources, the primary focus was placed on what kept the children alive—food, clothing, and shelter.

2. In order to be funded at 82 percent, Clark County was required by the federal government to utilize the state computer system, NOMADS. Nevada Operations Multi-Automated Data Systems did not carry the functionality to assess interest and penalties. It was impossible to "pencil and paper" the magnitude of cases per month on penalty and interest questions and policy considerations, especially income withholding.

3. When a noncustodial parent received a paycheck on the 10th or the 25th of the month, payment on the 25th always came in after the 1st, forcing the assessment of interest and penalty. It was unlikely that paymasters would be willing to change the pay scheme to accommodate penalty and interest considerations.

Continuing, Ms. Hatch said what had been considered to be most equitable, since the collection of penalties was "on the books," was to focus on the penalties and not the interest. Talking to Leland Sullivan, the Chief of Child Support Enforcement in the Welfare Division of Nevada's Department of Human Resources, and to Judge Scott Jordan, if the Committee was interested in interest, since half the states collected interest, focus could be placed on the collection of interest and the penalties could be removed as a mandatory requirement.

Judge Scott Jordan, Second Judicial District Court, Department 11, Family Division, Washoe County, said he recognized that during a work session the Committee did not take public testimony, but he was willing to answer any questions. Chairman Anderson asked Judge Jordan to explain why Washoe County was able to calculate and collect interest, while the remainder of the state could not. Judge Jordan replied that Washoe County had been collecting interest for eight years through the District Attorney's Office. He reminded the Committee that whatever policy was enacted regarding this provision, it would affect not only cases that went through the District Attorney's Office, but also cases such as child support

ordered and collected through divorce cases not through the child support enforcement office. He said he respected what Ms. Hatch had said about the overwhelming numbers in Clark County.

Continuing, Judge Jordan said he agreed with Assemblywoman Buckley's comments that imposing interest did create an incentive for noncustodial parents to pay child support as ordered. Washoe County had a child support formula that was intended to set appropriate levels of child support for all income levels of the paying parent. In response to Chairman Anderson's comments, Judge Jordan agreed a large number of the families appearing in court were from relatively low-income levels, both the custodial and noncustodial parents, but he also saw families in all other income ranges. Some people did not pay because they could not, some because they were angry, and some had other priorities. He said the interest was an incentive to encourage individuals to pay on time. Judge Jordan said it was important that judges had the discretion, on a case-by-case basis, to determine in which cases the imposition of interest would be beneficial or detrimental.

Assemblyman Carpenter queried whether the judges had discretion currently. Judge Jordan replied that current law mandated interest but provided the judges with the discretion to waive that interest in appropriate cases.

Chairman Anderson entertained a motion on A.B. 27.

ASSEMBLYMAN CARPENTER MOVED TO DO PASS A.B. 27 WITHOUT AMENDMENTS.

ASSEMBLYMAN GUSTAVSON SECONDED THE MOTION.

THE MOTION CARRIED WITH MR. ANDERSON VOTING NO. (Ms. Ohrenschall was absent for the vote.)

Chairman Anderson assigned the bill to Assemblyman Claborn to present the Floor Statement.

Ms. Combs explained Assembly Bill 33.

Assembly Bill 33: Provides additional penalty for manufacturing methamphetamines in certain circumstances. (BDR 40-817)

The measure did not have any proposed amendments. Background information on the enhanced penalty was provided on page 4 of the Work Session Document (Exhibit C).

Chairman Anderson entertained a motion on A.B. 33.

ASSEMBLYMAN GEDDES MOVED TO DO PASS A.B. 33.

ASSEMBLYMAN CONKLIN SECONDED THE MOTION.

THE MOTION CARRIED. (Ms. Ohrenschall was absent for the vote.)

Chairman Anderson assigned the bill to Assemblyman Horne, the primary sponsor, to present the Floor Statement.

Ms. Combs noted that A.B. 33 did have a fiscal impact, but not this biennium. She said she would include that information for the Assembly Committee on Ways and Means.

Ms. Combs explained Assembly Bill 40.

Assembly Bill 40: Extends period of limitations for commencing civil action after action has been dismissed under certain circumstances. (BDR 2-769)

MINUTES OF THE SENATE COMMITTEE ON JUDICIARY

Seventy-second Session
March 19, 2003

The Senate Committee on Judiciary was called to order by Chairman Mark E. Amodei, at 8:00 a.m., on Wednesday, March 19, 2003, in Room 2149 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster. All exhibits are available and on file at the Research Library of the Legislative Counsel Bureau.

COMMITTEE MEMBERS PRESENT:

Senator Mark E. Amodei, Chairman
Senator Maurice E. Washington, Vice Chairman
Senator Mike McGinness
Senator Dennis Nolan
Senator Dina Titus
Senator Valerie Wiener
Senator Terry Care

GUEST LEGISLATORS PRESENT:

Assemblyman John Oceguera, Assembly District No. 16

STAFF MEMBERS PRESENT:

Nicolas Anthony, Committee Policy Analyst
Bradley Wilkinson, Committee Counsel
Jo Greenslate, Committee Secretary

OTHERS PRESENT:

Elana L. Hatch, Chief Deputy District Attorney, Family Support Division, District Attorney, Clark County
Matthew L. Sharp, Lobbyist, Nevada Trial Lawyers Association
Ernest E. Adler, Lobbyist, Washoe County
Stan Miller, Tort Claims Manager, Litigation Division, Office of the Attorney General
Rose E. McKinney-James, Lobbyist, Clark County School District
Doreen Begley, R.N., Lobbyist, Nevada Hospital Association
Lisa Black, R.N., Lobbyist, Nevada Nurses Association
Lawrence P. Matheis, Lobbyist, Nevada State Medical Association
Neena K. Laxalt, Lobbyist, Nevada Podiatric Medical Association
Debbie J. Smith, Lobbyist, Service Employees International Union Local 1107, Operating Engineers Local No. 3
Carin Ralls, R.N.
Mary C. Walker, Lobbyist, Carson-Tahoe Hospital

CHAIRMAN AMODEI:
We will open the hearing on Assembly Bill (A.B.) 27.

ASSEMBLY BILL 27: Revises method for adjusting presumptive maximum amounts of child support owed by noncustodial parents. (BDR 11-244)

ELANA L. HATCH, CHIEF DEPUTY DISTRICT ATTORNEY, FAMILY SUPPORT DIVISION, DISTRICT ATTORNEY, CLARK COUNTY:
Assembly Bill 27 will correct an unintended result in *Nevada Revised Statutes* (NRS) 125B.070, by applying the consumer price index (CPI) to maximum presumptive amounts of child support, the cap on child support, and not applying CPI to income ranges. Last session I introduced a bill to improve the lives of children by increasing the presumptive maximum amount of child support in NRS 125B.070. This bill was widely supported. The final version of the bill passed by this Legislature had graduated presumptive maximum amounts of child support and has worked well. It also had consumer price indexing applied to presumptive maximum amounts of child support, which has also worked well. Additionally, the final version had CPI applied to income ranges, which has not worked well. The unintended result is that a noncustodial parent can be moved from one income range to another with no change in income, resulting in a large, inappropriate change in child support, either an increase or a decrease. It would appear CPI was properly applied to presumptive maximum amounts of child support and inadvertently added to income ranges.

I provided a handout (Exhibit C) containing tables. As you can see, the child support caps will fluctuate up, down, or stay the same based on CPI. That is the information on the right side of the tables. This is correct, and this is fair. In the income ranges on the left side of the tables, fluctuation is not based on noncustodial parents' income, but on consumer price indexing. This is incorrect and not fair. This is the unintended result. Assembly Bill 27 removes the CPI from income ranges and corrects this unfair, unintended result. This bill also has the support of the Washoe County District Attorney's Office, the Nevada District Attorneys' Association, and the Nevada Child Support Enforcement Program. If you would like, I could review the tables with you or I can answer questions.

CHAIRMAN AMODEI:
The record should reflect we received correspondence from Beverly Salhanick on behalf of the Nevada Trial Lawyers Association indicating their support of A.B. 27 (Exhibit D).

MS. HATCH:
We had two people in Las Vegas who planned to testify. I have their testimonies.

CHAIRMAN AMODEI:
For the record, the testimonies you referred to will be included. I will close the hearing on A.B. 27.

SENATOR NOLAN MOVED TO DO PASS A.B. 27.

SENATOR WIENER SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY.

*****

CHAIRMAN AMODEI:
We will now open the hearing on A.B. 40.

Amendment to AB 27

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AN ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 125B is hereby amended to read as follows:

NRS 125B.140 Enforcement of order for support.

1. Except as otherwise provided in chapter 130 of NRS and NRS 125B.012:

(a) If an order issued by a court provides for payment for the support of a child, that order is a judgment by operation of law on or after the date a payment is due. Such a judgment may not be retroactively modified or adjusted and may be enforced in the same manner as other judgments of this state.

(b) Payments for the support of a child pursuant to an order of a court which have not accrued at the time either party gives notice that he has filed a motion for modification or adjustment may be modified or adjusted by the court upon a showing of changed circumstances, whether or not the court has expressly retained jurisdiction of the modification or adjustment.

2. Except as otherwise provided in subsection 3 and NRS 125B.012, 125B.142 and 125B.144:

(a) Before execution for the enforcement of a judgment for the support of a child, the person seeking to enforce the judgment must send a notice by certified mail, restricted delivery, with return receipt requested, to the responsible parent:

(1) Specifying the name of the court that issued the order for support and the date of its issuance;

(2) Specifying the amount of arrearages accrued under the order;

(3) Stating that the arrearages will be enforced as a judgment; and

(4) Explaining that the responsible parent may, within 20 days after the notice is sent, ask for a hearing before a court of this state concerning the amount of the arrearages.

(b) The matters to be adjudicated at such a hearing are limited to a determination of the amount of the arrearages and the jurisdiction of the court issuing the order. At the hearing, the court shall take evidence and determine the amount of the judgment and issue its order for that amount.

(c) ~~The court shall determine and included in its order:~~

~~(1) Interest upon the arrearages at a rate established pursuant to NRS 99.040, from the time each amount became due; and~~

~~(2) A reasonable attorney's fee for the proceeding, unless the court finds that the responsible parent would experience an undue hardship if required to pay such amounts. Interest continues to accrue on the amount ordered until it is paid, and additional attorney's fees must be allowed if required for collection.~~

~~(d)~~ The court shall ensure that the social security number of the responsible parent is:

(1) Provided to the welfare division of the department of human resources.

(2) Placed in the records relating to the matter and, except as otherwise required to carry out a specific statute, maintained in a confidential manner.

ASSEMBLY JUDICIARY
DATE: 2/20/03 ROOM 3138 EXHIBIT F
SUBMITTED BY: ELANA KATCH

1 of 2

3. Subsection 2 does not apply to the enforcement of a judgment for arrearages if the amount of the judgment has been determined by any court.

(Added to NRS by 1987, 2250; A 1991, 1336; 1993, 2625; 1997, 2297, 2298; 1999, 2681)

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ATTACHMENT 2

AB473

Introduced on: Mar 28, 2005

By: Judiciary

Revises certain provisions governing payment of child support. (BDR 11-1373)

Fiscal Notes

Effect on Local Government: No.
Effect on State: No.

Most Recent History Action: Approved by the Governor. Chapter 115.
(See full list below)

Upcoming Hearings

Past Hearings

Assembly Judiciary	Mar-28-2005 09:00 AM	**Minutes**	Discussed as BDR.
Assembly Judiciary	Apr-11-2005 08:00 AM	**Minutes**	No Action.
Assembly Judiciary	Apr-15-2005 08:00 AM	**Minutes**	Amend, and do pass as amended
Senate Judiciary	May-09-2005 09:00 AM	**Minutes**	Do pass.

Votes

Assembly Final Passage	Apr-25	Yea 42,	Nay 0,	Excused 0,	Not Voting 0,	Absent 0
Senate Final Passage	May-11	Yea 21,	Nay 0,	Excused 0,	Not Voting 0,	Absent 0

Bill Text **As Introduced** **1st Reprint** **2nd Reprint** **As Enrolled**
Amendments **Amend. No.413** **Amend. No.603**

Bill History

Mar 28, 2005
- Read first time. Referred to Committee on Judiciary. To printer.

Mar 29, 2005
- From printer. To committee.

Apr 19, 2005
- From committee: Amend, and do pass as amended.

Apr 20, 2005
- Read second time. Amended. (Amend. No. 413.) To printer.

Apr 21, 2005
- From printer. To engrossment. Engrossed. First reprint.
- Taken from General File.
- Placed on Chief Clerk's desk.

Apr 22, 2005
- Taken from Chief Clerk's desk.
- Placed on General File.
- Read third time. Amended. (Amend. No. 603.) To printer.

Apr 25, 2005
- From printer. To re-engrossment. Re-engrossed. Second reprint.
- Read third time. Passed, as amended. Title approved, as amended. (Yeas: 42, Nays: None.) To Senate.

Apr 26, 2005
- In Senate.
- Read first time. Referred to Committee on Judiciary. To committee.

May 09, 2005
- From committee: Do pass.

May 10, 2005
- Read second time.

May 11, 2005
- Read third time. Passed. Title approved. (Yeas: 21, Nays: None.) To Assembly.

May 12, 2005
- In Assembly. To enrollment.

May 16, 2005
- Enrolled and delivered to Governor.

May 18, 2005
- Approved by the Governor. Chapter 115.
- **Effective October 1, 2005.**

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enforcement when a child has been adjudicated delinquent for a sexual offense. This would extend that to the adult type community notification.

Chairman Horne:
The hearing on A.B. 472 is closed. Any suggestions from the Committee on this bill?

Assemblywoman Buckley:
I think it is a complicated issue that needs some work with pros and cons to fix it up. Without a proponent or opponent, I'd say we should let it go until next session even though it's important, unless there is a similar measure in the Senate and they have worked it out. It just requires a lot of work to make it constitutional.

Chairman Horne:
We won't move this piece of legislation as we have to work more on cleaning it up. Let's open the hearing on Assembly Bill 473.

Assembly Bill 473: Revises certain provisions governing payment of child support. (BDR 11-1373)

Madelyn Shipman, Legislative Advocate, representing Nevada District Attorneys Association:
We have worked on this bill which we thought was a simple bill. There is no such thing in the Legislature. Upon arriving this morning, I found that there were some issues that we have worked out. We have submitted an amendment which is written on the original bill (Exhibit C). The original intent of A.B. 473 was to do just two things. One was to put in the waiver language to be the same as it is with interest and to essentially allow a court to waive for undue hardship the penalties imposed. We thought it was a fairly simple change and consistent with the language in NRS 125B.140 on interest.

The other change was to simply correlate the language as to how the penalty is imposed as to the informal Attorney General's opinion that had been issued regarding how that was going to be done, after the regulatory process was complete. We all have agreed on that language for the penalty. We are all in agreement that the way it was drafted, to have "if imposed" at the beginning of the second paragraph, implied there has to be a hearing prior to the imposition of the penalty. As you may or may not be aware, that is automatically imposed through the NOMADS (Nevada Operations of Multi-Automated Data Systems)

Program at the end of the month on that portion of payment that has not been made and that constitutes a delinquency.

[Madelyn Shipman, continued.] Additional concerns were raised that undue hardship was allowed too much leewey by a court. To actually go back and revisit the ability of a person to pay when a penalty is not intended to be as such. After talking about what our intent was, we drafted another amendment that may not be the right words for bill drafters so they may need to rewrite it. Essentially, the intent is to only have a waiver under this section in NRS 125B.140 for reasons that are outside, essentially, the control of the responsible parent. We would appreciate your support.

Susan Hallahan, Chief Deputy District Attorney, Family Support Division, Washoe County District Attorney's Office, Nevada:
I am here today to testify in support A.B. 473. Currently, NRS 125B.140 authorizes the court to waive interest on child support if the court makes a finding that the charging of that interest would create an undue hardship. Similarly, pursuant to NRS 125B.095, the court is required to charge a penalty, but the court at this time does not have the authority to waive that penalty in an undue hardship situation. We are supporting the language change that would provide that authority.

The Washoe County District Attorney's Office has charged interest on child support debt for about 10 years. We have had some issues with respect to the court interpreting what an undue hardship is. To give you an example of a potential undue hardship finding, most noncustodial parents are ordered to pay their child support via an income withholding. The employers, however, can honor that income withholding notice according to their payroll schedule. So if a parent is ordered to pay, for example, $100 per month in ongoing child support and their employer has a weekly payroll, that employer can send a child support check to the child support division every week. That weekly check would be $23.08. During those months when there are only 4 pay periods in a month, the child support division would receive $92.32 versus $115.40 per month in the months that have 5 pay periods. Yet, over a calendar year, the full $1,200 per year in child support would be paid. So in the calendar months in which $100 is not received, which is generally 10 months out of the year, a noncustodial parent could be assessed interest and penalties. Those are the types of situations where a court would waive interest and would, likewise, waive a penalty.

In addition, an obligor can come into the local district attorney's office and pay their child support over the counter. If they pay that payment on the last day of the month, by the time it gets deposited into the state collection unit and

posted in the collection unit, usually a day or two into the following month has elapsed. So, likewise, an obligor could potentially be charged interest and penalties in that situation as well.

[Susan Hallahan, continued.] We have also had situations where an obligor is in an industrial accident or a car accident and is hospitalized for several months. They don't have the ability to pay their support. The court would waive interest in that scenario as well.

Finally, subsection 2 has been amended to simply clarify the language with respect as to how the penalty is calculated. If someone owes $100 in ongoing child support but only pays $50.00, they are assessed a 10 percent penalty on that remaining $50.00 balance. If they thereafter stay current in their ongoing support obligation, they would incur no further penalties. It is, in essence, a late fee that is intended to encourage a timely payment of child support. The charging of continued interest on that remaining $50.00, until it is paid in full, however, would make the custodial parent whole for the value of her money.

We would support the amendment according to the Trial Lawyers' Association to more specifically define undue hardship to give the court some guidance with respect to the finding to ensure that our intent is followed. That being, interest and penalties should only be waived in a situation where a noncustodial parent is unable to pay their support or is unable to pay that monthly payment for various reasons.

Assemblyman Carpenter:
I have a concern about the amount of interest that you are going to be charging. You are charging 10 percent every month so in a year that adds up to 120 percent. If they couldn't pay whatever was due at the end of that first month, they certainly are not going to be able to pay the amount at the end of the year. I didn't see anything wrong with the way it was written before when it was 10 percent a year. But at 10 percent a month, a lot of these people will never be able to pay that amount. I'm probably one of the biggest sticklers that people ought to pay their child support, but they can't pay something that is impossible to pay, and you keep adding penalty upon penalty or interest upon interest. It really defeats the whole situation.

Susan Hallahan:
This bill does not purport to change how penalties are calculated. The penalty statute as it states right now is 10 percent per annum or a portion thereof. It has to be added to the portion of the monthly payment that was not paid. If you were to, for example, charge the penalty at the end of the year, then there could be a noncustodial parent that doesn't pay anything from January through

November and then in December pays $1,200 to satisfy their annual child support obligation. Interest and penalties are separate. The purpose of interest is to make the custodial parent whole for the value of her money that she should have received or he should have received today but doesn't receive until 6 months from now. The purpose of the penalty is to encourage the obligor to pay each and every month as he is ordered to pay. This penalty is a one-time snapshot and is charged only during that calendar month for any delinquency you have. So if the obligor pays each month, he or she would not accrue an additional penalty.

Assemblyman Carpenter:
It says a 10 percent penalty must be applied at the end of each calendar month against the amount of an installment or a portion of the installment that remains unpaid in the month in which it was due. So it seems to me if they owed $100 and there is a 10 percent penalty that month, it would make it $110. Then the next month it is going to be another 10 percent of $110 so that's $111. Simple interest would be 120 percent at the end of the year, so instead of owing $100, they would owe way over $200. It's contradictory in trying to get them to pay, because there is no way they can pay it.

Susan Hallahan:
Logically, you would think that would be the way it would work out. But if I owe $100 and I don't pay it this month, I am assessed $10 at the end of the month. If I don't pay $100, I have another $10 and now it's $20. If I don't pay anything for the whole year and I owe $1,200, I am assessed 10 percent penalty which is $120. Whether you calculate it at the end of the month or at the end of the year, it still is $120.

Kim Surratt, Legislative Advocate, representing Nevada Trial Lawyers Association:
I came here in opposition of this amendment of A.B. 473 on behalf of the Nevada Trial Lawyers Association (NTLA). I have been working carefully with Ms. Madelyn Shipman and Ms. Susan Hallahan to work on those concerns. The concerns we had were mainly with opening the door wide open for the district court judges on undue hardship without any explanation or definition of what undue hardship is.

Our concern was that the party that is responsible for paying child support would suddenly have a million excuses in front of the court being able to say they were unable to pay their child support. As the penalty becomes larger, it becomes more of a hardship just because it is growing exponentially. It was explained to me this morning this is really meant for some very specialized circumstances, in which the parties are having these penalties beyond their

control, in circumstances, where they are using best efforts to pay their child support. But because of over the counter payments or the way the computer system is working and the wage withholdings are working, then the penalty is being attached in circumstances which are unfair. We worked on the definition adding language about defining undue hardship, and I am not necessarily of the position that it is the appropriate language yet. It definitely needs some bill drafting, and, perhaps, we can work with the bill drafters on this language so that it actually addresses those special circumstances, instead of opening the door wide open.

[Kim Surratt, continued.] In addition, perhaps beyond working with bill drafters, the testimony is taken, and statements on the floor would assist in making sure we are not going in the direction of having all these parents having an excuse, who are just simply not paying their child support.

Assemblywoman Buckley:
I think this needs a lot of work besides paragraph 2. It says that unless the court finds that the responsible parent will experience an undue hardship, then "undue" is defined as "based on an action outside the control." That is worded very unclearly because you are talking about two different things. You are talking about circumstances outside of the control of the parent and just an undue hardship in general.

If you step back and look at this, it could create more problems than it would solve. If you want to say that the court can waive penalties where the parent paid it on time, but it was not credited to the appropriate account, is really what you are trying to do. Otherwise, this area of law is just open to change the standard from the best interests of the child and the support of a child, to claims of undue hardship. It will turn it into the type of legislative hearings where we have discussions regarding a man on trial for support and where the room is packed with people who don't want to pay their child support. I think this would just create more problems than we would solve.

Chairman Horne:
I would caution the drafting of specific instances so that if you had an instance that was not listed, you are not barred. Just be cautious of that as I'm sure we can't think of every particular scenario that could arise that would probably qualify to do that.

Louise Bush, Chief, Child Support Enforcement, Welfare Division, Nevada Department of Human Resources:
[Submitted Exhibit D.] I am here to offer my support of A.B. 473. Nevada law requires delinquent child support obligors be assessed interest and penalties.

NRS 125B.095 states that a penalty of 10 percent per annum must be assessed when an obligation for child support is delinquent. The common usage of "per annum" means "by the year" and in common application means a fractional interest calculation. The phrase "per annum" contained in the penalty statute suggests that the late payment penalty should be calculated like interest. However, according to the legislative history from the Sixty-Seventh Session and an Attorney General's opinion, legislators intended the penalty to be a one time late fee, akin to a late fee one would pay for a delinquent credit card payment rather than another interest assessment.

[Louise Bush, continued.] Typically, late payment penalties are designed to encourage timely payment while interest charges are intended to compensate creditors for the loss of use of their money. This concept is highlighted by the comments then Assemblyman Robert Sader made during the Sixty-Seventh Session while addressing the intent of a child support late payment penalty.

Mr. Sader said, "It should be clear in the statutes that there is a penalty for not paying on time. You want to motivate somebody to pay on time and have an enforceable penalty. That is what this is about." Mr. Sader further commented that the purpose of the penalty was intended to be motivational, such as a late payment fee attached to any billing.

This bill removes the ambiguous language currently found in NRS 125B.095 clearly aligning the statutory language with the legislative intent of assessing a one-time late fee. Assembly Bill 473 also allows the court to waive the penalty if the penalty will cause an undue hardship for the obligor. This is consistent with the waiver provisions of the interest statute, NRS 125B.140, and, as such, is sound public policy. Accordingly, the Welfare Division supports A.B. 473.

Donald W. Winne, Jr., Deputy Attorney General, Nevada Department of Human Resources:
I was neutral on this bill, but after what I heard from Assemblyman Carpenter, I realized in order to help explain the position of the Division, I needed to come forward and give you a copy of the actual opinion which was requested by Nancy K. Ford, Administrator, of the Welfare Division (Exhibit E). It was a formal opinion from our office; however, it was not published as it was deemed something that was requested by an agency which would impact the agency. At least it would probably address some of Assemblyman Carpenter's questions.

Assemblyman Conklin:
The way the bill reads now, with this particular piece of legislation, you would be charged $10 on the $100 per month. Isn't that correct?

Donald Winne:
I don't necessarily agree with the draft language in the bill. But my experience, over the years of dealing with legislative drafters, is that they have a certain way of drafting language which they think is most appropriate. I, frankly, think it leaves some question as to whether or not this is a one-time late payment fee. I can just tell you that when this bill was originally passed, it was clear that they wanted us to be like a credit card. If you don't pay on time, this is your one-time late fee. I'm not personally comfortable with the current language as it exists. I don't represent the agency. You asked me here as a person who got involved in this because I drafted this opinion. I would agree with you, Mr. Conklin, the language as it appears still needs work in order for me to feel comfortable, after going through this exercise and making sure they get the intent correct, that this is just a one-time late fee and it won't be adding up like Mr. Carpenter was worried about.

Marshal S. Willick, Attorney at Law, Willick Law Group:
[Referred to prepared testimony (Exhibit F).] I was somewhat involved in the original legislation leading to the penalty. I have been working fairly closely for the last couple decades both as to interest and penalties. I'm pretty familiar with the calculation methodologies. I have some specific criticisms and an explanation as to why the change is being sought.

By way of background, everything is now clocked in accordance with how the court sets the child support obligation. Specifically, courts have a great deal of leeway and exercise a great deal of discretion as to how support should be paid. For example, all due on the first of the month, due on the 10th and 25th, or all due on the last day of the month, et cetera. There are all kinds of untold variations on that throughout the child support orders currently in effect.

I will start with subsection 2 because it is the bigger problem. If subsection 2 is altered as stated, it would treat similarly situated people differently. For example, if Person A had a child support order due on the 1st and Person B had a child support obligation due on the 25th, Person A would basically have 29 days within which to pay child support without incurring a penalty. Person B would only have 5 days. That difference, in my opinion, would rise to the level of a constitutional concern because it would treat similarly situated people differently. The problem is shifting the focus from a child support due date clock to a month-end due date clock. It leads to a great deal of problems. It would also cause a differential in the calculation date and the due date for how much should be paid between those 2 individuals causing a great deal of confusion, as a practical matter, in the family courts of this state. It would be very difficult to calculate in the real world, although I suppose it would be possible. It would lead to an appearance of greater unfairness to similarly situated people.

[Marshal Willick, continued.] As to the first section, I had no real problem with mirroring the penalty to the interest hardship provision. That is a matter of public policy and appropriate for this Committee to consider. The usual considerations are there. The more options you give the district court, theoretically, the fairer the results can be. The difficulty is that the more options that are available, the more likely it is people will choose to litigate. Therefore, they fight about matters they otherwise might have chosen not to fight about. Consequently, the net costs are increased to all the litigants and to the system itself for having a fight that otherwise might be avoided. That is a policy choice for this Committee. It seems appropriate that if interest is waivable in cases of undue hardship, then the penalty should be waivable in cases of undue hardship. I would suggest that you should not insert a definition of undue hardship in one section without conforming the other section or it will lead to a deferential in standard evolution. It might be better to leave this one to the courts and let the courts evolve a standard of undue hardship. Then correct it if you feel the courts have gone awry. To date, there are no case opinions on this point.

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 a particularly difficult calculation problem. We have 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 conform 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.

Chairman Horne:
The hearing on A.B. 473 is closed.

[Chairman Anderson returned.]

AMENDMENT TO AB 473

Submitted by: Madelyn Shipman
Nevada District Attorney's Association
775-250-4237

Amend by adding a new paragraph 3 to read:

3. For purposes of this section, the word "undue" means a delinquency in the amount owed based on an action outside of the control of the responsible parent.

Amend 125B.140 to add the above language with regard to interest.

ASSEMBLY JUDICIARY
DATE: 4/4/05 EXHIBIT C PAGE 1 OF 3
SUBMITTED BY: Madelyn Shipman

Changed

ASSEMBLY BILL NO. 473–COMMITTEE ON JUDICIARY

MARCH 28, 2005

Referred to Committee on Judiciary

SUMMARY—Revises certain provisions governing payment of child support. (BDR 11-1373)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

EXPLANATION – Matter in bolded italics is new; matter between brackets [omitted material] is material to be omitted.

AN ACT relating to child support; providing that a responsible parent who is delinquent in the payment of certain installments to pay support for a child is not required to pay a penalty if he will experience an undue hardship if required to pay the penalty; revising the manner in which the penalty is imposed; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 125B.095 is hereby amended to read as follows:

125B.095 1. Except as otherwise provided in NRS 125B.012, if an installment of an obligation to pay support for a child which arises from the judgment of a court becomes delinquent in the amount owed for 1 month's support, a penalty must be added by operation of this section to the amount of the installment [.] *unless the court finds that the responsible parent will experience an undue hardship if required to pay the amount of the penalty.* This penalty must be included in a computation of arrearages by a court of this State and may be so included in a judicial or administrative proceeding of another state.

2. ~~[The amount of the penalty is]~~ ~~*If imposed, a*~~ 10 percent ~~[per annum, or portion thereof, that the]~~ *penalty must be applied at the end of each calendar month against the amount of an* installment

At NRS 125B.095(2),
1. Remove "If imposed".
2. Remove the comma.
3. Put a cap on "a".

or portion of an installment that remains unpaid ~~[,]~~ *in the month in which it was due.* 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.

Assemblywoman Giunchigliani:
I think it was Section 11 that specified Chapter 19 of NRS. If you want to process it—and again I'm fine if you don't—just take out Section 11. That way, in the training components there is a "may," regardless, but you're not dedicating the funds from Chapter 19 of NRS. I think that would be too restrictive.

Chairman Anderson:
You're suggesting that we remove all of Section 11 of A.B. 282?

Assemblywoman Giunchigliani:
I'm suggesting that if you went to let the bill go, I am fine with that. I'd be happy to work with the other side. It's whatever this Committee wishes to do.

Chairman Anderson:
Mr. Carpenter, are you still of the mind that there is a need for the bill? Ms. Giunchigliani seems to be of the opinion that the question of guardianship, which is a much broader issue, may need to be studied further.

Assemblyman Carpenter:
If we have a chance to look at this subject in a broader overview, I don't have a problem with that.

Assemblyman Oceguera:
I think the intent of this bill was for this training section. The rest of it is messy. I think Ms. Giunchigliani could put that training section in another bill.

Assembly Bill 473: Revises certain provisions governing payment of child support. (BDR 11-1373)

Allison Combs:
Assembly 473 revises provisions governing the payment of child support. The bill authorizes a court to waive a penalty for delinquent payment of child support if the court determines that the responsible parent will experience an undue hardship.

There was testimony in favor of the bill from the Nevada District Attorneys Association, asking us to clarify the authority of the court in cases involving undue hardship, and to address some problems associated with the timing and calculation of penalties. Concerns were raised during the hearing regarding potential abuse of the new provision, and the way a parent would experience an

undue hardship. There was some concern about the timing of imposing the penalty at the end of the calendar month, and whether this will have an unequal impact on parents with payments due at different times of the month.

[Allison Combs, continued.] There was a concern raised by Assemblyman Carpenter as to when the 10 percent would be imposed, and how it would be calculated. There is an amendment on page 46 (Exhibit B), submitted by Madelyn Shipman. There is a new subsection 2 that would say, "For the purposes of this section, a finding of undue hardship must be limited to circumstances which are outside of the control of the responsible parent." There are modifications to the new subsection 3 to provide, "The penalty is a one-time monthly late payment fee that's added to the monthly child support installment. The amount of the penalty is 10 percent of the monthly child support installment, or a portion of that installment that remains unpaid after the last day of the calendar month."

Madelyn Shipman, J. D., Attorney, Legislative Advocate, representing Nevada District Attorneys Association:
I want to make it clear that we're not doing the penalty at this time; it already exists in law. We're changing the language to clarify how the penalty is being assessed. The language to be amended in your work session document (Exhibit B) deals with Mr. Carpenter's concern about making sure that it's a one-time penalty. It doesn't accumulate interest. It's a one-time payment on the month in which the child support payment was not fully made, and only on the difference. It's like a credit card late payment charge. You get it once and it doesn't accumulate, even if that payment is not made in the following month. If you didn't make the next monthly payment there would be another penalty, but if the payment was made in the following month, the penalty would not attach.

We're not putting the 10 percent penalty on in this session; that was done in previous sessions. We struggled with the undue hardship piece of it. We felt that listing out all of the various reasons you would have a court find an undue hardship was not something we could really do in writing, especially within the time we had. We think this is a good balance to make it clear to a court that we're talking about the things that we brought to you, like wage withholding, where you don't get the full monthly payment in because you have 26 pay periods, or an input data error. If this bill doesn't go forward to allow that kind of correction to be made through the court, we'll have judges who will not do a waiver, even under their inherent authority. We have a master in Washoe who has indicated she would not waive it, even under those circumstances, in the absence of there being some language to allow that.

Assemblyman Carpenter:
It takes care of my concern, and Legal will put it into the appropriate language. For example, if you don't pay $50 dollars, they're going to assess a $5 fee, but it won't accumulate for months and months.

Assemblyman Horne:
Mr. Marshal Willick's testimony seemed compelling to me, and made a statement about the legislation being crafted to correct a problem in their computer system. Could somebody refresh my memory on this?

Madelyn Shipman:
Mr. Willick's testimony was that when a parent is ordered by a court to pay on the 5th of the month, and then another parent is ordered to pay on the 25th of the month, they are being treated differently. The parent who is being ordered to pay on the 5th has 26 days to pay, if it were January, whereas the one on the 25th would only have 6 days to pay and not be penalized. I don't believe that's a Constitutional or a discriminatory issue, or does it raise legal concerns. It may raise concerns with regard to the program that he is utilizing, and requires some changes.

The Federal law anticipates that there is a payment within each month. It's within the calendar month. The NOMADS [Nevada Operations of Multi-Automated Data Systems] program was set up to assess the penalty subsequent to the calendar month. All the federal reports go in based on calendar months.

Assemblywoman Gerhardt:
Is this going to be a one-time occurrence, or are we tailoring payments so that we can accommodate peoples' schedules?

Susan Hallahan, Chief Deputy District Attorney, Washoe County Family Support Division, Nevada:
The undue hardship can occur for a specific time period, and then stop, and then occur again. If I was ordered to pay child support starting in January of 2004, and I did not make payments for January, February, and March, I would be assessed interest and penalties for those three months.

Subsequently, when my wages were garnished on a bi-weekly schedule and I stayed employed for a year, the court would have the ability to waive the penalties and interest that accrued during that one-year time period. The employers are allowed to honor that wage withholding according to their payroll schedule. If they pay bi-weekly, they send a bi-weekly amount. Over a year, I send my full amount, but over the calendar month, I'm short 10 months out of

the year. The court could waive the penalty and interest during those 12 months. When I lose my job in month 13, and I don't make my payments for another three months, then I get a job and I'm on the garnishment again; the interest and penalty I accrued during those three months could potentially be waived. It can start and stop.

Assemblywoman Gerhardt:
You don't have a choice on when you pay your rent and you don't get a choice on when you make your mortgage payment. Why would a child support obligation be any different?

Susan Hallahan:
You don't get a choice, as a responsible parent, when you get to pay. Under Chapter 31A of *Nevada Revised Statutes* (NRS), all child support court orders are required to include a wage withholding. As a responsible parent, you don't have an opportunity to come in and make the payment on the first of the month; you have to pay by a wage withholding. I cannot go to my employer and demand that they send my monthly payment on the first of the month.

Assemblywoman Gerhardt:
I understand your point, but it seems like a lot of hoops to jump through.

Chairman Anderson:
It's not the person making the payment who is setting up the timeline; it's the convenience of the business which is garnishing the wages. We're concerned about the dollar reaching the person who needs it as quickly as possible. The fact that we've required garnishment is a reflection of the court's trust in the person's willingness to pay, because of past bad practices. We're also giving the business the opportunity to make sure this happens. The business gets to take a dollar out for the process, which is one less dollar that could have reached the person who is entitled to it.

I think you're talking about the business that's not moving in a timely fashion.

Kim Surratt, Legislative Representative, Nevada Trial Lawyers Association:
The Nevada Trial Lawyers Association (NTLA) was concerned about opening this door too wide for a lot of excuses for getting penalties. In our case law, we have cases that talk about equitable circumstances for waiving penalties and interest. It's beyond the mistakes of the computer systems. It's situations where a person is in a coma and was unable to make their child support payments; or their employer was supposed to withhold wages and make the payments, but did not.

[Kim Surratt, continued.] Those are circumstances where it's beyond their control. We appear before judges with a mandatory statute that has no discretion in it, but they're using discretion. It's a fine line between controlling that discretion and not controlling it. Nevada Trial Lawyers Association and the private bars' position on it was, if we're going to allow undue hardship—which we already have in the interest statute, we just don't have it in the penalty statute—we define it in a way where we can control it so it's not a big open door.

Last session when I testified, the concern was whether we could lay out these specific circumstances: the computer system issues with the wage withholding, the payment input dates when people pay over the counter versus when it's actually inputted into the system, and the medical hardship circumstances. It gets out of control when you have all these different definitions. If we amend the penalty statute, we will have an interest statute that just says, "undue hardship," without a definition.

In talking to the DAs [district attorneys], I'm not sure the interest statute, and the undue hardship provision in the interest statute, has been an issue. As a practitioner in front of the justices, it has been an issue. Whether or not it's implied, it's just corralling it. I don't know if I've answered your question.

Assemblywoman Gerhardt:
I'm not concerned about somebody who is in a coma or an extreme circumstance. If my mortgage payment date doesn't fall on the date that I'm paid, I scrape together the money and pay early, and it is no longer an issue for me. There are too many exceptions in there. If you have an obligation and you're not taking care of it yourself, and now your employer has to take care of it for you through garnishment, then you have to live with the time frame when those payments are made for you. If it means you need to pay a little bit ahead to be sure that your payments aren't late, I think that's okay. Do you follow my logic?

Assemblywoman Buckley:
Did you work with Mr. Willick on the amendments? No? Okay.

Chairman Anderson:
The legislation is needed so that people won't be doubly penalized and so that more money goes to the client. This is to clarify how dollars move through the system, so you're not reaching into the pocket more than one time. Is that a fair statement to make, Ms. Shipman?

Madelyn Shipman:
That's a fair statement.

Assemblywoman Buckley:
I don't have a concern with waiving the penalty if the employer's pay periods would automatically result in a penalty. I don't have a concern about waiving the penalty if someone brings in their child support payment and by the time it gets credited, it's not timely.

It may end up creating litigation on what constitutes "outside of the control." If the parent lost their job, is that outside of their control? They probably had the opportunity to petition the court and say they've lost their job, and then they wouldn't have a child support obligation in the first place. The custodial parent has notice and planning. We have that already. If someone said, "My bills were really high and my car broke down, your honor," and that wasn't within my control, the child doesn't get their money. They could have taken the bus, but they said it was outside of their control. Maybe a judge doesn't buy that, but do they then use that to litigate more? I know what you're trying to do and I support that, but I don't know if this language gets us there.

Assemblyman Conklin:
I agree with the discussion that's going on. Maybe we could change the language in Sections 1 and 2 of A.B. 473, if necessary, to say, "Unless the court finds that either the employer or the administration is at fault for causing the payment to be late." Then we've closed the loop. If the employer's payroll doesn't match up, there's no fee. If the court gets it on time but doesn't apply it on time, which happens, there's no fee. With regard to anything else, it's just as Ms. Gerhardt said, "You got to pay your rent on time."

In subsection 3 of the amendment on page 46 of the work session document (Exhibit B), I would like to see the "per annum" taken out. We've clearly said that the penalty is 10 percent of the monthly child support, and that it's one time. There's no point in having "per annum" in there.

Susan Hallahan:
On behalf of the Washoe County District Attorney's Office, we would have no objection to that. There is existing Supreme Court case law that would allow, in the event of a coma, an obligor to come in and claim that equitably speaking, there are defenses that apply to this child support. They could use that even if they didn't have specific statutory authority. I would have no objection to that.

My biggest concern, from a practitioner's standpoint, is that whatever we do in the penalty statute, be exactly the same in the interest statute, so that the

court is clear that the interest and/or penalties would be waived only in these circumstances. The "per annum" was taken out.

Chairman Anderson:
We're not doing the per annum, we're doing the 10 percent on the payment per month for the monthly child support that is in two portions.

Mr. Conklin has suggested that we accept Ms. Shipman's amendment, which would be further amended to say, if the court finds that its employers or the administration is at fault, the penalty would be waived. Strike the language in paragraph (2), and hold the language in paragraph (3), of the suggested amendment on page 46 (Exhibit B).

Ms. Lang, do we look like we're okay?

Risa Lang:
I think so.

Assemblywoman Buckley:
Are you proposing that we revise the interest statute as well? I hate to do that because we're affecting every judgment and practitioner out there. We didn't have a hearing on that.

Madelyn Shipman:
I don't believe we have to address the interest statute right now. We have a new process starting throughout most of the state with regard to penalties and interest. If there's a problem, or if there's an issue that comes up, it could be addressed next session.

Chairman Anderson:
Two years is a long time.

Assemblywoman Buckley:
We could have an interim study.

Assemblyman Conklin:
It would be my impression in the reading of the bill that once we figure out the penalty, the only additional interest would be interest on the penalty, and if we clear up the penalty, there's no reason to address the interest. It doesn't make any sense. If we figure out the penalty phase and we get it right and if we move with it, there shouldn't be a reason to address the interest, because either interest is warranted or it's not, based on what we put in the penalty statute.

Madelyn Shipman:
The interest statute, which is not the penalty statute, also has the language of undue hardship in it, but it is not defined. The question was whether that undue hardship in the interest statute should be defined similarly to that in the penalty statute, on which hopefully, we have just reached a consensus with regard to how that should be defined.

The concern is that the interest statute is being utilized by the bar, the private bar particularly, but also in the public bar, or by the child support agencies under certain circumstances, and we don't have enough knowledge at this point in time as to what those are. It isn't appropriate to automatically impose it into the other statute without knowing what that impact would be.

Chairman Anderson:
We're not doing that. We're not going into the other statute.

ASSEMBLYMAN CONKLIN MOVED TO AMEND AND DO PASS ASSEMBLY BILL 473 AS FOLLOWS:

IF THE EMPLOYER OR ADMINISTRATION CAUSED THE PAYMENT TO BE LATE, THEN THE PENALTY IS ELIGIBLE TO BE WAIVED.

ASSEMBLYMAN CARPENTER SECONDED THE MOTION.

THE MOTION CARRIED. (Mr. Mabey was not present for the vote.)

Assembly Bill 452: Revises provisions relating to restoration of certain civil rights to certain convicted persons. (BDR 14-1124)

Assemblyman Oceguera:
I'm reconsidering my position on A.B. 452. I emailed Senator Horsford, and the similar bill they were considering passed 4 to 3. I thought that was close. We might want to keep this vehicle alive, to keep the jurisdiction of our Committee alive, in passing something. I have some suggestions, but it's your call of course.

Chairman Anderson:
A 4 to 3 vote from Committee might not be a good indicator of what fate the bill is going to have. It deals with a sensitive topic. I'm at the will of the Committee. I think we've had an opening discussion on Mr. Munford's bill.

☐ **ASSEMBLY BILL 473—Revises certain provisions governing payment of child support. (BDR 11-1373)**

Sponsored by: Assembly Committee on Judiciary
Date Heard: April 11, 2005

Summary of the Bill

Assembly Bill 473 authorizes a court to waive a penalty for the delinquent payment of child support if the court determines that the responsible parent will experience an undue hardship if required to pay the amount of the penalty.

The bill also revises the amount of the penalty to 10 percent of the amount of an installment or portion of an installment that remains unpaid. This penalty will be applied at the end of each calendar month against the amount of the installment (or portion of an installment) that remains unpaid in the month in which it was due.

Discussion

Representatives of the Nevada District Attorneys' Association testified in support of the measure to clarify the authority of the court in cases involving undue hardship. In addition, the bill also attempts to address problems associated with the timing and calculation of penalties. Concerns were raised regarding the potential for abuse of the new provision authorizing a waiver for parents experiencing an undue hardship. Concern was also raised for the timing of imposing the penalty at the end of the calendar month, which may have an unequal impact on parents with payments due at different times of the month.

Proposed Conceptual Amendments

- Attached is an amendment submitted by Madelyn Shipman, Nevada District Attorneys' Association, which includes the following changes:

  1. **Undue Hardship**—Provide that a finding of undue hardship must be limited to circumstances which are outside of the control of the responsible parent.

  2. **Timing of the Penalty**—Revise subsection 2 to specify that the penalty is a one-time monthly late payment fee added to the monthly child support installment.

     In addition, provide that the amount of the penalty is 10 percent of the monthly child support installment, or a portion of that installment that remains unpaid after the last day of the calendar month.

AMENDMENT TO AB 473

Amend NRS 125B.095 to read as follows:

1. Except as otherwise provided in NRS 125B.012, if an installment of an obligation to pay support for a child which arises from the judgment of a court becomes delinquent in the amount owed for 1 month's support, a penalty must be added by operation of this section to the amount of the installment ***unless the court finds that the responsible parent would experience an undue hardship if required to pay such amounts.*** This penalty must be included in a computation of arrearages by a court of this state and may be so included in a judicial or administrative proceeding of another state.

2. For purposes of this section, a finding of undue hardship must be limited to circumstances which are outside of the control of the responsible parent.

3. The penalty is a one time monthly late payment fee added to the monthly child support installment. The amount of the penalty is 10 percent ***of the monthly child support*** [per annum, or portion thereof, that the] installment, ***or portion of that installment that*** remains unpaid ***after the last day of the calendar month.*** 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.

This amendment is intended to address the two issues raised at the hearing. It makes it clear that the penalty is a one time monthly late payment for the unpaid portion of a monthly installment. It also limits an undue hardship finding to a situation that is out of the control of the responsible parent, i.e., the wage withholding example or the data input error, etc. This language was agreed to by the State, Clark County, Washoe County, Kim Serratt of the NTL and one other attorney reviewing it for the NTL.

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NDAA

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IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

CISILE A. PORSBOL F/K/A CISILIE ANNE VAILE,

Appellant,

vs.

ROBERT SCOTLUND VAILE,

Respondent.

S.C. NO. 53798
D.C. NO: 98-D-230385-D

Appeal from a Judgment of the
Eighth Judicial District Court Family Division

APPELLANT'S APPENDIX

Volume 2

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1	Plaintiff's Supplemental Brief RE: Child Support Principal, Penalties, and Attorney Fees	08/01/2008	CAV00196-CAV00234
1	Supplement to Defendant'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	01/16/2008	CAV00129-CAV00133
2	Supplemental Friend of the Court Brief	09/05/2008	CAV00284-CAV00338

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DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

ROBERT SCOTLUND VAILE,

Plaintiff,

vs.

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

Defendant.

CASE NO: 98D-230385-D
DEPT. NO: I

DATE OF HEARING: N/A
TIME OF HEARING: N/A

DEFENDANT'S SUPPLEMENTAL BRIEF ON CHILD SUPPORT PRINCIPAL, PENALTIES, AND ATTORNEYS FEES

I. INTRODUCTION

At the hearing held July 21, 2008, the Court asked the parties to provide supplemental briefs regarding child support principal, interest, penalties, and attorney fees as it relates to the above case. Based on the brief provided by Plaintiff, and statements made at the last hearing on this matter, Plaintiff and his attorney have conceded that the child support principal and interest are not at issue.

Accordingly, this brief provides a brief background as to the interest calculations, to explain how and why a penalty provision was proposed, and then addresses the methodology used to compute penalties on child support, along with an explanation of variations in how these computations are done by the private bar and the State, and a statement as to attorney's fees in this case.

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II. HISTORY

A. Interest Law

Unpaid installments in child support or spousal support become judgments as a matter of law as of the date they come due and remain unpaid.[1]

The Nevada legal rate of interest was 7% from 1960 to 1979, 8% from 1979 to 1981, and 12% from 1981 to 1987, altered repeatedly in reaction to the hyper-inflation that raged periodically in that time. The Nevada Legislature had to keep amending the legal rate of judgment interest statute – NRS 17.130(2) (along with NRS 99.040(1), governing contracts) each session, 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%.[2] The legislation itself was devoid of details as to precisely how such calculations were to be done, but some instructions were supplied by Nevada Supreme Court decisions before and after the statutory change.[3]

Unfortunately, the cases were not much studied by the Bar or their hired experts. Most lawyers simply ignored interest, except in the biggest cases. Others either developed the ability to perform the calculations by spreadsheet, or hired a local accountant to do the calculations for them. Most of those accountants, however, applied "generally accepted accounting principles" when they

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[1] NRS 125B.140(2)(c) (court orders for child support arrears shall include "interest upon the arrearages at a rate established pursuant to NRS 99.040, from the time each amount became due . . . interest continues to accrue on the amount ordered until it is paid.")

[2] NRS 17.130(2) provides for interest when no rate is provided by contract, or by other statute, or otherwise specified in a judgment:

> the judgment draws interest from the time of service of summons and complaint until satisfied, except for any amount representing future damages, which draws interest only from the time of the entry of the judgment until satisfied at a rate equal to the prime rate at the largest bank in Nevada, as ascertained by the commissioner of financial institutions, on January 1 or July 1, as the case may be, immediately preceding the date of the judgment, plus 2 percent. The rate must be adjusted accordingly on each January 1 and July 1 thereafter until the judgment is satisfied.

[3] The cases are collected and analyzed in the article entitled "A Matter of Interest: Collection of Full Arrearages on Nevada Judgments," first published in the September, 1990, issue of the NTLA *Advocate*, and revised several times since then, most recently as CLE materials at the Twelfth Annual Family Law Showcase (Tonopah, Nevada, 2001). A reworking including an analysis of the Penalties calculation is in draft.

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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 significant variability in whether, how, and how much interest was applied to judgments in Nevada cases. The multiple changes to applicable interest rates also made the calculations technically difficult. For example, pre-July, 1987, arrears had a "fixed" interest rate, while post-July, 1987, arrears "floated," and the number of changes increased every six months. Spreadsheets done by hand had to have separate columns tabulating interest for each "class" of arrearage, to determine when each individual dollar of arrears was paid.

However, even with experience the supporting spreadsheets grew increasingly complex and difficult to follow within a year or so of the 1987 amendments.[4]

B. Calculations by the Private Bar and State

Following the Nevada Supreme Court's directions to calculate interest from and to specific dates,[5] the private Bar has always calculated interest on a daily basis. The Clark County D.A.'s legacy mainframe computer system – NOMADS[6] – was set up originally to operate and report on a monthly batch cycle, and had ***no*** provision to calculate or track interest.

There were some variations between what public agencies and private attorneys did that could create differences when interest was being calculated. For example, back in the days when URESA was the controlling interstate law (now replaced by UIFSA), one distinction between the District Attorneys' and Family Courts' methodologies was the proper first application of an

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[4] By 1989, it was obvious that an automated solution was necessary, and I began work on what ultimately became the Marshal Law ("MLAW") program.

[5] *See, e.g., LTR Stage Lines v. Gray Line Tours*, 106 Nev. 283, 792 P.2d 386 (1990) (damages prior to the filing of a complaint accrued interest from the date the complaint is filed); *Jones v. Jones*, 86 Nev. 879, 478 P.2d 148 (1970) (when a family law judgment requires payments on a series of future dates, any missed payment immediately "draws interest [from that date]. . . until satisfied").

[6] NOMADS was set up in an archaic programming language apparently not currently in use anywhere. There is apparently no adequate documentation of the previous programming work, and making any change of any kind in the input, workings, or output of the existing patch-work requires lengthy efforts by large numbers of people.

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incoming payment. The IV-D methodology required application of payments to present support first, but Nevada case law required application of payments to the oldest arrearage first.[7]

This made a difference to the totals reached, at least when arrears were due from before July, 1987. Rates before that date were fixed, so changing the arrearage to which a payment was applied altered the calculation. It still was no problem, really, since the uniform policy of the District Attorney's offices throughout Nevada was to conform to any total judgment as found by a district court.

C. Attempted Service to the Poor

After 1987, 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, and made requests that the agency perform its statutory mandate to do so.[8] The Board of Directors of that organization was repeatedly told that the limitations of NOMADS made it impossible for the D.A.'s Office to comply with the law. This stalemate continued for many years.

As detailed in various Nevada Supreme Court opinions, the purpose and 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 time of payment.[9] In other words, even when interest is actually calculated on behalf of an obligee, and the sum is actually collected from an obligor, the person owed the money pretty much only breaks even on the original sum owed.

In 1993, the Nevada Legislature tried to come up with some ***additional*** way of encouraging delinquent child support obligors to pay their back child support sooner rather than later. This ultimately became the "penalties provision," NRS 125B.095.

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[7] *See Foster v. Marshman*, 96 Nev. 475, 611 P.2d 197 (1980).

[8] *See* NRS 125B.150(3) ("the district attorney and his deputies do not represent the parent . . . or child . . ., but are rendering a public service as representatives of the State"); NRS 125B.140(2)(c) (interest is to be charged).

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

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The Executive Council of the Family Law Section of the Nevada Bar followed and participated in the development of the new statute, but did not actually draft the language, which read:

> The amount of the penalty is 10 percent per annum, or portion thereof, that the installment remains unpaid. 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.[10]

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, and the Welfare Division claimed that it would take another couple of years before they could get NOMADS programmed to calculate or track the penalty.

The private Bar began applying the penalty in late 1995 when it became effective, and the Family Courts uniformly included a penalty assessment per the statute whenever counsel requested (and calculated) it. The calculation was not particularly difficult. The statutory language directed assessing a penalty of "10 percent per annum, or portion thereof, that the installment remains unpaid."

That language on its face required calculation of an ***annual*** penalty, calculated by focusing on each "installment" to see if it had yet been paid and, if not, calculating a penalty at a 10% annual rate from the time that the sum went unpaid until the Court heard the case. The only information needed was whether a particular "installment" of child support "remains unpaid" (i.e., was in arrears), then multiplying the sum by 10% and figuring out how ***long*** the installment remained unpaid.

So if a $500 installment of child support remained totally unpaid for a month, a penalty of $4.17 ($500 x 10% ÷ 12) accrued. If it still remained unpaid the next month, another such penalty accrued, and so forth. Throughout the 1990s, such penalty calculations were done by spreadsheet and submitted as exhibits to child support motions.[11] To my knowledge, every judge who ever heard

[10] NRS 125B.095(2).

[11] Separate and apart from ***interest*** calculations, which were done by hand, by CPA, or by computer program.

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a child support motion where a penalty was so calculated approved the reasoning, methodology, and totals, over all objections that have ever been made.

In the public sector, however, 1995 came and went without the mandatory calculation of penalties – ***or*** the long-awaited calculation and collection of interest – being performed by the Clark County D.A., or apparently anywhere else in Nevada.[12] Meanwhile, the Attorney General's Office, in conjunction with the Welfare Division, began a process of unifying procedures relating to support collection (and other things) in the 1990s. Reportedly, millions of dollars were expended in efforts to get the outdated NOMADS system to correctly perform interest and penalty calculations.

D. Progress . . . of a Sort

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, and it became far more capable of meeting the needs of the poor.

It is our understanding that the unhappiness of CCLS with the continuing failure of the D.A. to collect interest and penalties on back child support was raised in communications, leading to several meetings over the years between the CCLS Board of Directors and a variety of representatives from the Welfare Division, District Attorney's Office, and Attorney General's Office. Like the Pro Bono Project, CCLS was 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.

At some unspecified point in the past several years,[13] a rough interest calculator was finally engrafted onto the NOMADS programming. It was made capable of tabulating interest in the "whole month" increments that its batch process allowed.

In other words, if a child support installment came due sometime in January, and was not paid, NOMADS could take the then-applicable interest rate, divide it by 12 to get a monthly

[12] As to interest, the Washoe County D.A. had adopted version 2 of the MLAW calculator, and had been collecting interest the same way the private Bar had been doing it for at least several years, starting about 1991.

[13] I've asked when this happened, but have never been given a satisfactory response.

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percentage, and multiply it by the prior month's unpaid installment. Since NOMADS retained its last-day-of-the-month batch cycle, it remained oblivious to any "odd days" and could see no difference between child support obligations due on the first, or the 30th, day of a month, calculating interest on both identically.

III. ARGUMENT

A. Bureaucratic Reconstruction of History

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.[14] CCLS was invited to participate in a "public workshop" convened by the Welfare Division on that subject in 2004. Essentially, in addition to calculating rough interest on a monthly basis, Welfare proposed to assess a single lump-sum ten percent penalty on the last day of the first month that a child support payment was due and unpaid, because NOMADS was capable of performing and tracking such a one-time, month-end calculation.

The proposed policy Manual contained several mathematical, factual, logical, and other errors.[15] It became clear that Welfare would do what NOMADS was capable of doing, irrespective of logic or consequences. As explained by Deputy District Attorney Edward Ewert in his revision and expansion of the Child Support section of the Nevada Family Law Practice Manual:[16]

> 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.

---

[14] Deputy Attorney General Donald Winne, whose involvement is discussed below, asserted in a purported "Friend of the Court Brief" in Case D230385, dated July 9, 2008 (at 2), that the 2004 hearings resulted from "directions" from the 2003 Nevada Legislature; he made no citation to any specific legislation making any such "direction," and I have found none in the record.

[15] The Manual as it existed in 2006 was recently circulated – the mathematical errors in the guidance chart identified in 2004 had not been corrected, at least as of that time; even the principal sums outstanding were not correctly tabulated (the $1,200 listed for May, 2004, should be $1,100). See attached Exhibit 1.

[16] 2008 edition, at § 1.165.

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Still, the assorted glaring deficiencies of the Welfare methodology could not simply be ignored after being pointed out in public, without fear of potential litigation. So the left and right hands of the Welfare bureaucracy had a conversation, resulting in the 2004 request by Administrator Nancy Ford of the Welfare Division to the Attorney General's Office, asking "Does the Welfare Division, Child Support Enforcement Program, have authority under NRS 125B.095 to calculate the child support delinquent penalty on a monthly basis as a one-time late fee penalty?"

Essentially, Welfare asked its Deputy A.G. for legal cover to interpret the statute incorrectly, permitting calculations in a manner that ***just happened*** to be what the archaic NOMADS computer system was capable of providing.

So it is not at all surprising that on October 22, 2004, the Welfare Division was able to obtain a letter[17] from Deputy Attorney General Donald W. Winne reaching the conclusion that the statute was sufficiently ambiguous to allow Welfare to interpret it to permit doing the calculations the way that their computer system was capable of calculating.

B. Bureaucratic Errors and Oversights

The opinion letter had several errors in its own right – such as the conclusion, in the introductory "Background" section, that to follow the "public input" (i.e., the CCLS critique of the Welfare proposal at the "workshop") would "result in significant increases in the amount of child support judgments that obligors would be required to pay." That is just not so, depending on when the matter is determined.

For example, the Welfare 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. Welfare then ignores the penalty forever, failing to calculate ***any*** penalty for the second (or any later) year a sum remains outstanding.

The private Bar, by contrast, calculates the penalty in accordance with how much of a year has passed, so that the penalty imposed on an obligation due in January, is less in February than it

[17] At least one lawyer has incorrectly referenced Mr. Winne's 2004 opinion letter as a formal Attorney General's Opinion on the subject. There was and is no such published authority, just the letter referenced here.

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is in March, and continues to be assessed for however many years an installment remains outstanding, giving meaning to the statutory phrases "per annum" and "remains unpaid."

We replicated the table of hypothetical sums due and sums paid in the Welfare Division's Manual.[18] Over the same one-year time period as the sample in the Manual, the private Bar calculates a total penalty (as of 12/31/04) of $85.90.[19] The Welfare calculation shows $230, grossly *over*stating the penalties actually owed, in the short term, by immediately assessing *in toto* a penalty that is supposed to be applied "per annum."

The Welfare penalty is three times ***greater*** than the private Bar would calculate as due – at least on the one-year hypothetical facts in the Welfare table – so the statement that the private Bar's methodology would "significantly increase" the sum owed is just incorrect as a matter of math.

C. Welfare's Critical Error

Mr. Winne's letter is an exercise in sophistry.[20] It starts with accepted rules of statutory construction, such as that all the words of a statute must be given effect if possible, and then cherry-picks from the legislative history to find a way to disregard nearly all of the actual words in the statute.

Specifically, the opinion letter took the simple phrase "10 percent per annum, or portion thereof, that the installment remains unpaid," and sought to give effect to the modifier "or portion thereof" by reading the words "per annum" ***and*** "that the installment remains unpaid" completely out of the statute. By linguistic backsprings, the letter concludes that since the precise phrasing of

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[18] Section 619-620 of the Division of Welfare and Supportive Services Support Enforcement Manual (MTL 1/06, 1 Jan 06).

[19] See Exhibit 2, copy of the calculation using the data of Exhibit 1. Note that the Arrears Balance Total is incorrect and should have been $500, by simple addition. Welfare's "Interest Accrued" is $117.00 – in reality, it is $56.63. The Total due under the State methodology is $947 as opposed to the $642.53 that is ***actually*** due if the basic math is done correctly. The Welfare error in interest is attributing an interest rate of 10 & 12% when, in actuality, the interest rate was actually 6% from July, 2003, to June, 2004, and 6.25% from July 2004 to December 2004. There is no "arguing" on this point – the Welfare example in their manual is just wrong – mathematically and factually. It literally "does not add up." Ironically, this has the effect of disguising their logic errors under math errors.

[20] "n. A subtle, tricky, superficially plausible, but generally fallacious method of reasoning." Webster's New Universal Unabridged Dictionary (1989) at 1358.

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NRS 125B.095 appears nowhere else in the NRS, the intent of the drafters must have been to perform a one-time-only penalty assessment, which by miraculous coincidence is the only thing NOMADS is capable of doing.[21]

In actuality, the legislative intention was stated with overwhelming clarity: to provide an incentive for child support obligors to pay support sooner, rather than later – a purpose that would be entirely frustrated by a calculation that did not get any worse no matter ***how*** much time elapsed from the due date. And there is no known rule of statutory construction that permits three-quarters of the actual words of a statute to be rendered a nullity in order to give effect to a three-word incidental modifier.

An entire calculation methodology based on the phrase "or portion thereof" would eviscerate the obvious and plain meaning of the statute. "Per annum" ***means*** "per annum" – the penalty is to be applied at the rate of 10% ***per year***.[22] And "remains unpaid" also means what it says – the penalty is to be based on all child support that remains outstanding.

D. Welfare's Flawed Analogy

At several points, the 2004 opinion letter cited to the legislative intent to analogize the statutory penalty to "a [commercial] late payment fee as a motivator for other bills."[23] That analogy does not support a one-time-only penalty assessment.

Every known explanation of late fees notes that they get worse the longer they are late, as in this example for how credit card late fees work:

> Late Fee
> What is it: a charge for making less than the minimum payment or after the payment due date or both
> Which cards have it: all cards
> How much: $15 - $39 each billing cycle you miss a payment or pay less than the minimum

[21] "The tendency of bureaucracy [is] to find purpose in whatever it is doing." John Kenneth Galbraith, *Foreign Policy: The Plain Lessons of a Bad Decade*, in Foreign Policy, Dec. 1970.

[22] This point is *so* obvious that even Ms. Muirhead was obliged to concede the point that a penalty must be applied annually. See July 11, 2008, hearing @ 9:50:44 - 9:52:43. The significance of that concession is detailed below.

[23] Winne letter of Oct. 22, 2004, at 5.

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> How often is it charged: ***once each billing cycle you are late***
> How to avoid it: pay your bills on time or call your creditor ahead of time to make payment arrangements.[24]

In other words, if you owe money to Best Buy, and don't pay on time, they hit you up with a late payment fee. And if you don't pay the bill by the ***next*** month? They charge you again – every time a billing cycle passes without you making the payment you owed originally.

Creating such a continuing incentive for obligors to make payments sooner, rather than later, was just what the Legislature said it was trying to do in 1993 – a purpose that would be frustrated by any policy that did not provide a ***continuing*** incentive to actually make up arrears each passing day.[25] The assertion in the 2004 opinion letter that making late fees continue to accrue over time would result in "double interest on total arrearages owed by an obligor" is just wrong as a matter of fact, and ignores the differences between interest and penalties.

The Nevada Supreme Court should have no problem finding that the statute should be interpreted to provide the incentive it was intended to provide:

> A fundamental rule of statutory interpretation is that the unreasonableness of the result produced by one among alternative possible interpretations of a statute is reason for rejecting that interpretation in favor of another that would produce a reasonable result.[26]

No creditor would say "You owe this specific sum in January. If you don't pay, you get assessed a late payment penalty in February. And then you're off the hook – no further late fees in March, April, May, June, July – just pay when you can." But that is what Welfare wants to do with child support. Such an unreasonable interpretation of a statute – one that does not actually accomplish the stated legislative goal – is to be rejected out of hand.

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[24] http://credit.about.com/od/creditcardbasics/tp/credit-card-fees.htm (emphasis added).

[25] 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 the Welfare methodology is counterproductive, and thus fatally flawed.

[26] *Hughes Properties v. State of Nevada*, 100 Nev. 295, 298, 680 P.2d 970, 971 (1984), *quoting from Sheriff v. Smith*, 91 Nev. 729, 733, 542 P.2d 440, 443 (1975).

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E. The (Deflected) Attempt to Conform the Law to Error

> The major problem facing bureaucracy is not the struggle for power but the evasion of responsibility; bureaucrats are very reluctant to take action.[27]

Having been informed during the 2004 "public workshop" that the proposed Welfare calculation methodology was counterproductive and not in keeping with the obvious legislative intent of the statute, Welfare did what a bureaucracy does in such circumstances – tried to get the law changed to support what it wanted to do. Specifically, in 2005 Welfare cooked up AB 473, which would have altered the statutory penalty as follows:

> ~~[The amount of the penalty is]~~ ***If imposed, a*** 10 percent ~~[per annum, or portion thereof, that the]~~ ***penalty must be applied at the end of each calendar month against the amount of an*** installment ***or portion of an installment that*** remains unpaid [.] ***in the month in which it was due.***

All aspects of the calculation of interest and penalties were discussed at length in the resulting hearing held before the Assembly Judiciary Committee. After hearing and reading everything about why the law was the way it was, why the Welfare Division was trying to change the law to conform to their outdated computer capabilities, and why it would be a really terrible idea to do so, the Legislature left the "how-to-compute-penalties" portion of the statute exactly as it was, knowing how the private Bar had been doing the calculations for 17 years (as to interest) and 10 years (as to penalties).

The same Deputy A.G. who wrote the misguided 2004 opinion letter testified and claimed that the law should be amended to conform to Welfare's view of the legislative history and intent. I testified immediately after, 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 . . . 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.

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[27] Dean Rusk (1909-1994), *As I Saw It* (1990) at 33.

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Immediately after that session, the Assembly Judiciary Committee deleted from the bill draft any mention of amending the how-to-calculate-the-penalty provision, rejecting the Welfare provision entirely.[28]

IV. WELFARE'S APPEARANCE IN THE *VAILE* MATTER

A. Background

The Nevada Supreme Court issued a decision in 2002 entitled *Vaile v. District Court*, which provided for the recovery of the kidnapped children, who had been spirited out of Norway to the United States.[29] Mr. Vaile stopped paying child support when he kidnapped the children in 2000, and never started paying again, even after they were recovered, despite his continued receipt (except for a three-year period when he elected to attend law school in Virginia), of a six-figure income and lavish lifestyle.

Well over $100,000 of principal arrearages in child support accrued from 2000 to 2008, and Cisilie sought to reduce to judgment the principal, interest, and penalties accrued during that time. Ms. Muirhead contacted the Attorney General's office and solicited a "Friend of the Court" brief to buttress Mr. Vaile's contesting of the massive arrears accrued during that time. For reasons commented upon below, the Attorney General's Office agreed.

B. Welfare's "Friend of the Court Brief"

Bureaucracy defends the status quo long past the time when the quo has lost its status.[30]

The brief, dated July 9, 2008, repeats most of the errors and mis-statements discussed above, and makes several new errors. It chose to recast the 2004 request for legal cover as "a legal opinion on the interpretation of NRS 125B.095." It similarly recast the 2005 effort to gut the penalties

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[28] As detailed below, the bureaucratic response to this rejection was to declare victory and assert that it really constituted an endorsement of the rejected Welfare provision.

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

[30] Laurence J. Peter (1919-1990), "Intimate confessions of a quotemonger," San Francisco Sunday Examiner & Chronicle, Jan. 29, 1978.

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statute as a proposal to insert "clarifying language," and labeled the rejection of that effort as the Legislature "taking no action."

With logic only a bureaucrat could conceive, the brief opined that because the legislature "allow[ed] CSEP to continue with its regulation and policies" since 2005, the Legislature must have *really* meant to endorse the defective Welfare proposal while rejecting it. The fact that the question of approving or criticizing Welfare's methodology was not even before the Committee was not mentioned.

Hypocritically, the brief simultaneously asserted that Legislative inaction to change the statutes, with knowledge of how the Bench and Bar had been doing interest and penalty calculations for decades, was meaningless.

After repeating the inaccurate analogy to late fees charged by businesses discussed above, the brief tried to set out comparative calculations, asserting as a matter of fact that the private Bar's calculation of penalties for one year of missed $100 per month child support would be $120. In fact, the number is $66.62. Welfare would have blindly assessed annual penalties on the same arrearage of $120 over 12 months.[21]

The brief never even attempted to compare any calculations of the interest and penalties that would actually accrue in the case at hand. It did, however, note that Welfare was not a party to the case, and that the outcome of the case would not affect it in any way, and so warned the Court that "the Court has no ability to set aside CSEP's regulation." Why Welfare would bother to take a stand in a case that did not affect it in any way is discussed below.

C. Actual Calculation Differences – the Irony of Arguments Made in Ignorance

The facts of the Vaile case involved large sums of arrears outstanding and unpaid for a long period of time, with very minimal payments – the District Attorney only managed to start a partial

[21] Winne brief at 5, n.8. The brief also fails as to its assertion of fact about the effect of a second year of payments due but unpaid, incorrectly claiming that the Family Court would charge $360 to Welfare's $240. This is again false; 10% per year on each missed installment for the amount of time it remained outstanding and unpaid results in a total penalty at the end of two years of $213.56. There was no reason for Welfare to make the false assertions of fact – the calculation is easy to do, and the MLAW program was provided to them for free when it was issued, can be run on any PC, and they could have easily run the calculation before misrepresenting what its output would be.

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garnishment of support in 2006. So all sides agreed that the principal sum of outstanding child support arrears was some $127,400.

Remarkably, the difference in interest calculations over the eight-year time period between NOMADS and a standard MLAW calculation was only some $52.46. The difference is apparently due to only two factors. First, as to the method of rounding - NOMADS rounds each month's interest to the nearest penny, with everything over 0.005 up to the next whole cent, and everything under 0.005 down. The private Bar – like banks and credit card companies – carries fractional cents forward in a "bit bucket" to eight places after the decimal point.

The second, and much larger difference, is that NOMADS is only able to do an end-of-the-month batch calculation, making the actual date of any payment invisible and irrelevant if received anywhere within a month. The private Bar has always calculated all arrearages on a ***daily*** basis, so earlier-received payments are credited earlier and the arrears accrue less interest, while later-received payments are credited later and accrue more interest, as the Nevada Supreme Court has stated should be done.[32]

The big difference was in the penalties. Since nothing at all was collected from Mr. Vaile between 2000 and 2006, the Welfare methodology assessed a 10% penalty when each payment initially went unpaid, and then ignored those installments for all the remaining years that they ***remained*** unpaid. The private Bar methodology, by contrast, continued to accrue penalties, following the statute, at the rate of 10% ***per annum*** for each year that each installment "remained unpaid." The result is that the sum of penalties assessed was really about $50,000, while Welfare's penalty calculation would have yielded some $12,000.[33]

This is where Ms. Muirhead's in-court concession that penalties stated as accruing "per annum" must actually be applied annually makes a difference. Exhibit 3 is a Calculation Summary showing the actual sum of accrued interest and penalties. Exhibit 4 is a Comparison Table, showing

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[32] Obviously, whether these differences would work for or against any particular party in any particular case depends on the dates of the actual payments. More accurate calculations could provide a larger, or smaller, interest calculation than a less accurate calculation if the facts were changed.

[33] This number, 10% of the principal not paid on the date when due, would remain unchanged no matter ***how*** long the installments remain unpaid.

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what the total would be if Ms. Muirhead's in-court-admission-method was actually calculated. It shows that if one were to actually *do* the calculations as she indicated, the total amount of penalty incurred would ***increase*** by $14,207.

The logic is pretty simple. Front-loading the penalty to the first day of the first month that it is unpaid ***necessary*** increases the sum owed, over time, if any payments at all are ever made. While (from prior performances) it seems pretty clear that Ms. Muirhead will scream that she did not mean what she said, the position she took in court could increase her client's total liability by several thousands of dollars, if it was adopted.

Still, it should not be, for the same reason that Welfare's defective "assess once and forget it" methodology is nonsense – both ignore the actual words of the statute, which require that the penalty be assessed at the rate of 10% per year that all unpaid installments remain unpaid. It really is that simple, and both the Welfare and Muirhead obfuscations should be identified – and condemned – for what they are.

D. The Perversion of Bureaucratic Priorities

> The effort expended by the bureaucracy in defending any error is in direct proportion to the size of the error.[34]

When informed that Mr. Vaile – who by all accounts owed well over $100,000 (just in principal) in back child support while making a six-figure annual income – would be present in a Las Vegas courtroom, one might think that the child support enforcement bureaucracy would initiate a criminal prosecution for felony non-support under Nevada law.[35]

One would be wrong. Apparently, the child support "enforcement" agencies of Nevada have not initiated a criminal non-support case for over seven years. In short, they don't care.

On information and belief, however, the funding received by the Welfare Division under the federal IV-D program is linked to the ratio they show of collections to overdue support – if less is

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[34] John Nies (Washington Lawyer), "Nies's Law," in Paul Dickson, comp., *The Official Rules* (1978) at 178.

[35] *See* NRS 201.070(3) (felony non-support threshold is $10,000); *Epp v. State*, 107 Nev. 510, 814 P.2d 1011 (1991); *Sheriff v. Vlasak*, 111 Nev. 59, 888 P.2d 441 (1995).

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shown as "due" compared to what they collect, their statistics look better and they get more money; if ***more*** is shown as due compared to their collections, they get less. Thus, Welfare has a perverse incentive to minimize the sums shown as outstanding and uncollected in child support arrears, putting the interests of the bureaucracy, and the poor persons it claim to serve, at odds.[36]

But why on earth would an agency charged with collection of child support – while stating that it has no legitimate interest in any possible outcome of a particular case – expend the resources to inject two District Attorneys and a Deputy Attorney General into that case anyway? And why on the side of the deadbeat who owed over $100,000 in child support?[37]

Because any bureaucracy's first instinct is toward self-perpetuation and growth, and those interests are seen as imperiled if anyone has the temerity to say that "The emperor has no clothes" when they attempt to get the law to match the counterproductive methodology that NOMADS is able to produce. It was obviously seen as ***much*** more important to push Welfare's position on how to (mis-)calculate penalties than to actually assist in collecting from a deadbeat who owes huge amounts of back child support to assist the children and custodial parent.

V. ACTUAL POLICY-BASED COMPARISON OF CALCULATIONS

A. Interest Calculations

There really can be no legitimate question that the holdings of the Nevada Supreme Court have discussed precise dates as the start or end calculation triggers for interest, so interest should be calculated on the precise number of days that an arrearage remains unpaid.

The Welfare computer uses "months," disregarding the extra days within a month that an arrearage remains due, and thus treats an arrearage due on the first of the month, and on the 30th,

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[36] The bureaucratic euphemism for minimizing the amount of outstanding child support arrears is "setting out 'realistic' arrearage sums to encourage compliance."

[37] In fairness, there is a distinction between why the District Attorneys were present, and why the Attorney General's Office filed a brief. The D.A.s were there at the specific invitation of the Court, having been requested to explain what procedures their office actually followed, and why. The officious intermeddling of the Attorney General's office in this child support arrearage case was entirely voluntary and without legitimate purpose.

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exactly the same. That's not how banks calculate interest. It's not how corporations do it. It's not how the private Bar does it. But it is the only way that NOMADS can do it.

Although the total differential in the majority of cases is likely to be pretty small, that error is being made every day in every case that Welfare processes. And Welfare apparently will never do anything about any of the interest it should have collected since 1987, but failed to collect. Those obligees who relied on Welfare to collect what was due under law are just out of luck, and if those who were short-changed by Welfare's non-collection become public charges at taxpayer expense, we are just out of luck as well.

B. Penalty Calculations

1. The Question of Whether the Statute is Ambiguous

In my personal opinion the statute is not ambiguous. "10 percent per annum, or portion thereof, that the installment remains unpaid" does not truly seem susceptible to alternative good faith interpretations.

Still, Welfare has come up with a plausible, although illogical, alternative interpretation of the words used. And if a statute is ambiguous, a number of rules of statutory construction come into play. Statutory interpretation should avoid meaningless or unreasonable results. When construing a specific portion of a statute, the statute should be read as a whole, and, where possible, the statute should be read to give meaning to all of its parts. Statutes with a protective purpose should be liberally construed in order to effectuate the intended benefits.[38]

In short, statutes are to be interpreted in a manner consistent with the intent of the Legislature. Since the Welfare methodology provides no continuing incentive for deadbeats to actually pay child support sooner rather than later, it fails at the first instance. The way the Family Courts have been calculating and applying interest (since 1987) and penalties (since 1995) *does* provide a continuing incentive for payment sooner rather than later, and therefore is the more reasonable construction.

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[38] *Petition of Phillip A.C.*, 122 Nev. ___, 149 P.3d 51 (Adv. Opn. No. 109, Dec. 28, 2006).

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The assertion of ambiguity of the penalties statute in the A.G.'s 2004 opinion letter gave the Welfare Division legal "wiggle room" to do the calculations in the manner that their outdated computer system can perform, but it certainly did not, and does not, mean that their approach is legally or logically "correct."[39]

For the various reasons set out at the "public workshop" in 2004, and here, the opposite is true. The Welfare Division's approach is inaccurate, sloppy, counterproductive, and ***not*** what was intended when the provision was drafted in 1993. Whether or not Welfare is ever held accountable for its bungling of the issue, it is unconscionable for them to try to get the Family Courts to follow suit.

2. Constitutional Concerns

One final difference of perspective merits explicit mention. The A.G.'s "Friend of the Court" brief in *Vaile* raised the question of an "equal protection" issue raised by the fact that in cases such as that of Mr. Vaile, Welfare would assert a much lower penalty sum than the private Bar tabulates. On that basis, Welfare asserted that the Family Law Bench and Bar should adopt the NOMADS methodology so that the low income persons typically involved in Welfare cases are not treated any differently than they would be in Family Court.

This tail-wags-the-dog argument is both wrong and backward. It is wrong because the clumsy and counterproductive front-loading of penalty calculations by NOMADS actually makes the penalties it applies much ***higher*** than they should be – at least for the first few years that arrearages accrue. So Welfare's position that the private Bar has "higher" penalties is wrong, at least much of the time.

Welfare's position is backward because the "impose-and-forget-about-it" approach to penalties built into NOMADS provides no continuing incentive to actually pay overdue support, and

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[39] For the record, because Mr. Winne has insinuated that my motivations might be suspect, it is worth pointing out that I have no personal dog in the fight as to how the math ***should*** be done, beyond my personal knowledge of what was intended, and my familiarity with the logic and law involved. It would be a simple matter to reprogram MLAW to perform the calculations like Welfare does them – if there was any legitimate reason to do so. In the unlikely event that the Legislature or courts deem it proper to perform either interest or penalty calculations in the less accurate and counterproductive method advocated by the Welfare Division, we will alter MLAW to produce those calculations.

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is contrary to the legislative intent of the statute. There is no legitimate reason for Welfare to ask the Bench and Bar to adopt its error.

The ***actual*** "equal protection" problems are not addressed anywhere in Welfare's or Ms. Muirhead's submissions. As noted in 2004, properly construing the phrase "per annum, or portion thereof' requires assessing the penalty ***every year***. As a basic matter of equal protection, any law that would treat identically being late for a day, and being late for a year – or 10 years – or 100 years – is highly suspect and probably constitutionally infirm. It would not take much effort to put together an equal protection challenge to Welfare's assessment of the same penalty on arrears owed for greatly disparate periods of time.

On the larger scale is Welfare's failure to comply at all with the Nevada statutes governing collection of interest (since 1987) and penalties (since 1995) through about 2005. It is hard to conceive of a larger equal protection problem than the fact that poor people relying on the State instead of private counsel to collect child support arrears simply did not get what the law required them to get. But that failure on Welfare's part is outside the scope of this case.

VI. ATTORNEYS FEES

Plaintiff and his attorney have now embarked on another attack suggesting that the award of attorney's fees by the court is "over-reaching and unconscionable." All that can be said here is that Ms. Muirhead has again missed the point, and misread the order. The July 24, 2003, order has been *res judicata* for over five years, and is no longer appealable. Additionally, the order states:

> Scotlund is to pay Cisilie's attorney's fees, as and for sums expended by Nevada counsel on her behalf in this matter, in the amount of $116,732.09. This award is reduced to judgment as of June 4, 2003, will bear interest at the legal rate, and is enforceable by all lawful means.

The order is to Cisilie, not to me or the WILLICK LAW GROUP. Cisilie is the one with the contract with the WILLICK LAW GROUP, and it is Cisilie that is responsible for paying the attorney's fees to the WILLICK LAW GROUP regardless of what the Court may order Mr. Vaile to pay Cisilie in attorney's fees.

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It is Cisilie who has any stake in what charges on the bill are or are not reasonable. Ms. Muirhead's argues that this is not what Mr. Vaile "signed up for." The amazing part of this argument is that Ms. Muirhead has somehow made Mr. Vaile the WILLICK LAW GROUP's client, as though we have some contract with him, not to pursue for the collections of monies owed our client just because. Somehow, Ms. Muirhead has determined that what we are billing our client is in some way billing Mr. Vaile.

Once again, the sheer scope of misperception and error nearly defies description. "Incorrect" is an adventure of understatement. "Absurd" just does not seem adequate. And "idiotic" – while fair and accurate – has already been sadly required to be over-used in this litigation. We are forced to leave the Court to its own devices in conceptualizing the extent of error in Ms. Muirhead's submission.

While we have no idea how Ms. Muirhead bills or how she believes the process works, but this office, in accordance with *Love*, submits a copy of it billing statement with each motion requesting fees, which includes all litigation related to the request. The Hague Convention and ICARA essentially require the award of all fees incurred in recovering kidnapped children, and the Nevada Supreme Court has pretty much made the same rule as to fees incurred in seeking arrearages in unpaid child support.[40]

There can be no argument that Cisilie has been the prevailing party in recovering the children, and assessing (but not yet collecting) the massive child support arrears that have been run up over the last eight years, entitling her to a commensurate fee award relating to the hundreds of thousands of dollars of fees incurred under NRS 18.010:

> 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**

[40] *Edgington v. Edgington*, 119 Nev. 577, 80 P.3d 1282 (2003) (reversing the denial of attorney's fees to the custodial mother as an abuse of discretion, stating that under NRS 125B.140(c)(2), the district court *must* award fees to the party seeking to enforce a child support obligation unless the court finds that the responsible parent would experience an undue hardship, and that the district court was therefore required to either award fees or find an undue hardship).

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> **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.)

The general provision for fees, NRS 18.010, provides the statutory guidance for what type of findings would support an award. The enumerated requirements include filings made "without reasonable ground or to harass the prevailing party." Additional reference is made to NRCP 11, emphasizing "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." And in this case, Scotlund and Ms. Muirhead have filed nearly a foot-thick pile of . . . irrelevancies and error.

With specific reference to Family Law matters, the Supreme Court has re-adopted "well-known basic elements," which in addition to hourly time schedules kept by the attorney, are to be considered in determining the reasonable value of an attorney's services qualities, commonly referred to as the *Brunzell Factors*:[41]

> 1. *The Qualities of the Advocate:* his ability, his training, education, experience, professional standing and skill.
>
> 2. *The Character of the Work to Be Done:* its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation.
>
> 3. *The Work Actually Performed by the Lawyer:* the skill, time and attention given to the work.
>
> 4. *The Result:* whether the attorney was successful and what benefits were derived.

Each of these factors should be given consideration, and no one element should predominate or be given undue weight.[42] The *Brunzell* factors require counsel to rather immodestly make a

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[41] *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

[42] *Miller v. Wilfong*, 121 Nev. 619, 119 P.3d 727 (2005).

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representation as to the "qualities of the advocate," the character and difficulty of the work performed, and the work ***actually*** performed by the attorney.

First, respectfully, we suggest that supervisory counsel is A/V rated, a peer-reviewed and certified (and re-certified) Fellow of the American Academy of Matrimonial Lawyers, and a Certified Specialist in Family Law.[43]

As to the "character and quality of the work performed," we believe that the file speaks for itself; this *Opposition* is adequate, both factually and legally; we have diligently reviewed the applicable law, explored the relevant facts, and believe that we have properly applied one to the other.

The work actually performed is detailed on the billing summaries supplied to the Court, consistent with the requirements under *Love*.[44] All work indicated was actually performed, and reasonably necessary to the performance of counsel's tasks.

Additional guidance is provided by reviewing the "attorney's fees" cases most often cited in Family Law. Included are the following "factors" for consideration:

> 1. *Discretionary Awards:* Awards of fees are neither automatic nor compulsory, but within the sound discretion of the Court, and evidence must support the request. *Fletcher v. Fletcher*, 89 Nev. 540, 516 P.2d 103 (1973), *Levy v. Levy*, 96 Nev. 902, 620 P.2d 860 (1980), *Hybarger v. Hybarger*, 103 Nev. 255, 737 P.2d 889 (1987).
>
> 2. *Statutory Basis:* A statutory basis is required impose an award of fees. In the absence of any citation, the Court can cite to NRS 18.010(2)(b). *Duff v. Foster*, 110 Nev. 1306, 885 P.2d 589 (1994). In assessing awards under NRS 18.010(2)(b), frivolousness must be determined at the time the complaint is filed. *Barozzi v. Benna*, 112 Nev. 635, 918 P.2d 301 (1996). A money judgment is a prerequisite to an award of attorney's fees under NRS 18.010(2), and costs are awarded separately under NRS 18.020(3). *Smith v. Crown Fin. Servs. of Am.*, 111 Nev. 277, 890 P.2d 769 (1995).
>
> 3. *Specific Agreements:* In the instance of an automatic award of fees, the Court found attorney's fees were awarded under the separation agreement, and therefore, not issued at the discretion of the Court. *Jones v. Jones*, 86 Nev. 879, 478 P.2d 148 (1970), *see Kantor v. Kantor*, 116 Nev. 886, 8 P.3d 825 (2000). For a prevailing party provision in a prenuptial agreement to be applicable, the matter must proceed to judgment, as a stipulation by one party prior to litigating the matter at a hearing on the validity of the agreement is not enough to support an award. *Dimick v. Dimick*, 112 Nev. 402, 915 P.2d 254 (1996).

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[43] Per direct enactment of the Board of Governors of the Nevada State Bar, and independently by the National Board of Trial Advocacy. Mr. Willick was privileged (and tasked) by the Bar to write the examination that other would-be Nevada Family Law Specialists must pass to attain that status two years in a row.

[44] *Love v. Love*, 114 Nev. 572, 959 P.2d 523, 959 P.2d 523 (1998).

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4. *Disparity of Income:* Disparity in income is a factor to be considered in the award of attorney fees. *Wright v. Osburn*, 114 Nev. 1367, 970 P.2d 1071 (1998). In addition to showing a disparity of income in family court cases, the parties must identify the legal basis for the award, and the District Court must evaluate the *Brunzell Factors*. *Miller v. Wilfong*, 121 Nev. 619, 119 P. 3d 727 (2005). The disadvantaged party must be afforded their day in court without destroying their financial position, and should meet the other party in the courtroom on an equal basis; the disadvantaged spouse should not have to liquidate savings. *Sargeant v. Sargeant*, 88 Nev. 223, 495 P.2d 618 (1972).

5. *Timing of Hearings and Continuing Jurisdiction:* The hearing on the award of attorney's fees can be deferred to after adjudication of all other issues when the Court can most fairly evaluate the worth of services and the impact of fees on the situation of the parties. *Leeming v. Leeming*, 87 Nev. 530, 490 P.2d 342 (1971). The power of the Court to award attorney's fees in divorce actions remains part of the continuing jurisdiction for post-judgment motions relating to support and child custody. *Halbrook v. Halbrook*, 114 Nev. 1455, 971 P.2d 1262 (1998). NRS 18.010(2)(b) (prevailing party) and NRS 125.150(3) (divorce fees) can be awarded in a post-judgment motion in a divorce case. *Love v. Love*, 114 Nev. 572, 959 P.2d 523 (1998).

6. *Review of Billing Statements by Parties:* Disclosure of the detailed billing statements is required so the parties may review and dispute expenses contained within prior to the award. *Duff v. Foster*, 110 Nev. 1306, 885 P.2d 589 (1994);, *Love v. Love*, 114 Nev. 572, 959 P.2d 523 (1998); *Kantor v. Kantor*, 116 Nev. 886, 8 P.3d 825 (2000).

Here, Scotlund is a decade-long deadbeat that paid nothing while enjoying a six-figure income, leaving his impoverished former spouse and children to fend for themselves. It has taken counsel nearly a decade of effort to reel him in and begin obtaining a smidgen of what he owes, the vast bulk of which is still outstanding, and counsel has gone unpaid for those efforts for many years.

The bottom line is that attorney's fee are at the discretion of the Court, and it is the Court which decides what is reasonable. Counsel merely provides the Court with what has actually been charged to the client for the work being done to obtain the results received.[45]

Ms. Muirhead's argument that there is no order granting this firm recovery for the time and costs to recover monies assessed against Mr. Vaile is without merit. Ms. Muirhead's attempts to gain sympathy for her being a sole practitioner, or Mr. Vaile being in *pro se* have absolutely nothing to do with the award of attorney's fees, which based on the relevant statutes and cases should be imposed, in full, for the entire sum incurred in trying to achieve justice for the innocent parent and children. What we have done is what has been necessary, as demonstrated by the fact that it has

[45] *Miller v. Wilfong*, 121 Nev. 619, 119 P.3d 727 (2005).

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taken this long and this much effort to get anything from the deadbeat, who still owes more than a million dollars in judgments, fees, and arrears.

VII. CONCLUSION

If the Nevada Supreme Court rules that the penalty 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 the Welfare view of how the statute should be construed has already been rejected by the Nevada Legislature within the past two years, would be counterproductive and illogical if applied, and would be poor public policy if implemented. It simply makes no sense to read the words "per annum" and "remains unpaid" out of a statute intended to assess penalties at 10% per annum on the sum of arrears that remains outstanding. Calculation of both interest and penalties in accordance with the length of time installments of support remain outstanding is logically and legally correct, and serves the purpose for which the statutory provisions were implemented.

And only a bureaucrat could say that going to the Legislature, asking to amend a statute to match how Welfare's computer is able to do calculations, and having that amendment ***rejected***, somehow constitutes an endorsement just because the Legislature did not also publicly chastise the Welfare Division.

It is perhaps reasonable that the bureaucracy wants to find legal cover for the vast sums of money it has spent not managing to upgrade its computer capabilities for the past 20 years, and the equally vast sums it therefore failed to assess and collect against deadbeats who disregard their financial obligations to their children during that time. It is even understandable, if repellant, that the bureaucracy prioritizes protection of its federal funding over actually serving the needs of those who are owed support.

But the bureaucracy should not seek to protect its political interests at the expense of custodial parents, and the children in their custody, who are owed the full measure of interest and penalties in accordance with law. Yet the Welfare bureaucracy continues to fail to correctly assess and collect those sums today, and attacks those who might point its failings out publicly.

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Those responsible for the decades of delay and millions of dollars of wasted expenditure on NOMADS should be identified and publicly censured. And the Nevada Legislature should direct Welfare to actually collect correctly calculated interest ***and*** penalties on child support judgments, neither front-loading, nor later ignoring, statutory penalties. Welfare should be discouraged from continuing the gamesmanship of looking for legal cover with which to paper over its deficiencies, and discouraged from trying to amend the law to match their inaccurate and backward approach.

One way or another, it is time for the dog to re-assert control over the tail.

As to the award of attorney's fees, Mr. Vaile is the one initiating all of this litigation, all over the country in an effort to defy the law, the courts, and pay nothing for support of the children he kidnapped and then abandoned, or for the vast sums incurred in undoing his wrongful acts. While demanding recourse from multiple courts, he has disregarded all judgments entered by those same courts. He paid nothing in child support for over half a decade, while earning huge sums. He has no sympathy coming.

DATED this 18th day of August, 2008.

Submitted by:

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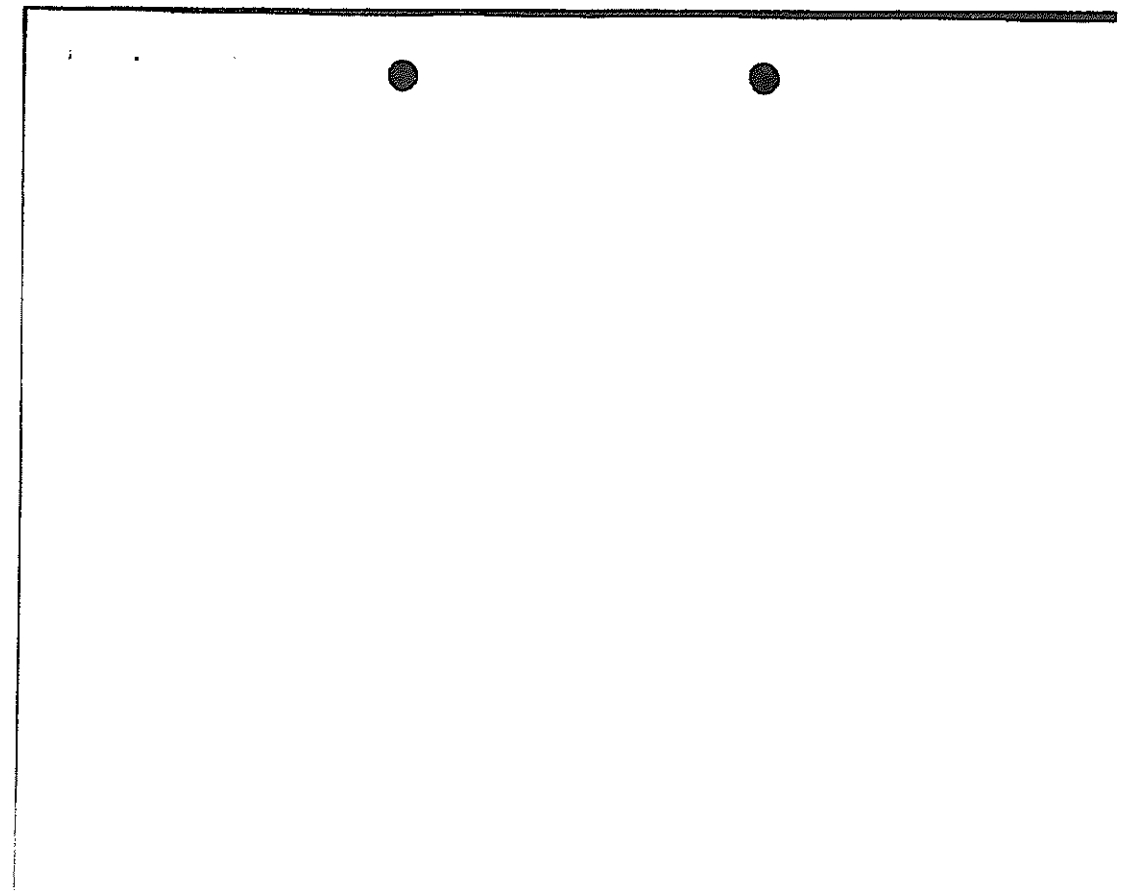

EXHIBIT 1

EXAMPLE – ACCRUAL OF PENALTY AND INTEREST

MONTH	OBLIGATION	AMOUNT PAID	ARREARS BALANCE	PENALTY CHARGED	INTEREST RATE	INTEREST ACCRUED	TOTAL DUE
1/04	$500	$500	0	0	10%	0	0
2/04	$500	$500	0	0	10%	0	0
3/04	$500	$200	$300	0	10%	$2.50	$302.50
4/04	$500	$200	$600	$30	10%	$5.00	$637.50
5/04	$500	0	$1,200	$50	10%	$10.00	$1,395.00
6/04	$500	$200	$1,500	$30	10%	$12.50	$1,640.00
7/04	$500	0	$2,000	$50	12%	$20.00	$2,210.00
8/04	$500	0	$2,500	$50	12%	$25.00	$2,785.00
9/04	$500	$500	$2,500	0	12%	$30.00	$2,815.00
10/04	$500	$2,800	$200	0	12%	$2.00	$317.00
11/04	$500	$300	$400	0	12%	$4.00	$721.00
12/04	$500	$300	$600	$20	12%	$6.00	$947.00
TOTALS			$600	$230		$117.00	$947.00

Note: The arrears balance in the above chart is unadjudicated and therefore the interest accrued is not maintained in NOMADS and is not enforceable until the arrears are adjudicated by the court.

C. NOTICES

The following language must be included in all initial notices and/or Court Master's Findings and Recommendation when Nevada has or will be taking continuing exclusive jurisdiction (CEJ):

- Interest will accrue on all unpaid child support balances for cases with a Nevada controlling order pursuant to NRS 99.040.
- A 10% penalty will be assessed on each unpaid installment, or portion thereof, of an obligation to pay support for a child, pursuant to NRS 125B.095.
- If you pay your child support through income withholding and your full obligation is not met by the amount withheld by your employer, you are responsible to pay the difference between your court ordered obligation and the amount withheld by your employer directly to the state disbursement unit. If you fail to do so, you will be subject to the assessment of penalties and interest.
- You may avoid these additional costs by making your current child support payments each month.

620 DRIVER'S LICENSE SUSPENSION [NRS 425.510 through 425.560]

Chapter 425 of the Nevada Revised Statute (NRS) mandates referring individuals owing overdue child support to the Department of Motor Vehicles and Public Safety (DMV&PS) for suspension of their driver's license. Driver's license suspension is available as an administrative enforcement tool. The intent of driver's license suspension is not to suspend licenses, but to enforce payment of support. If the individual's employer is known, income withholding must be implemented prior to initiating a driver's license suspension.

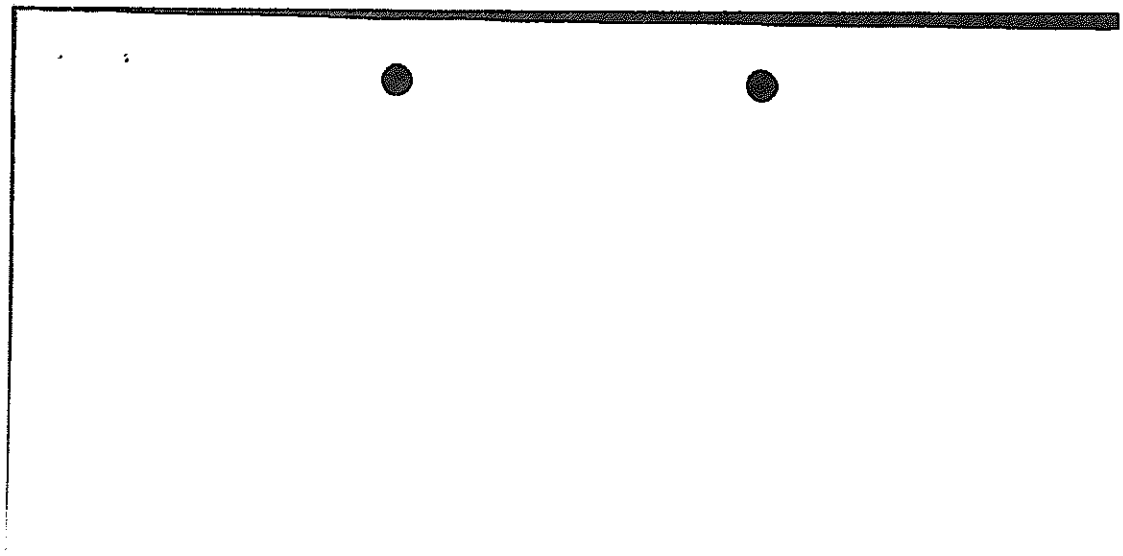

EXHIBIT 2

Arrearage Calculation Summary
Vaile test 1

Page: 1

Report Date: 08/11/2008

Summary of Amounts Due

Total Principal Due 12/31/2004: $500.00
Total Interest Due 12/31/2004: $56.63
Total Penalty Due 12/31/2004: $85.90
Amount Due if paid on 12/31/2004: $642.53
Amount Due if paid on 01/01/2005: $642.75
Daily Amount accruing as of 01/01/2005: $0.22

Accumulated Arrearage and Interest Table

Date Due	Amount Due	Date Received	Amount Received	Accum. Arrearage	Accum. Interest
01/01/2004	*500.00	01/01/2004	500.00	0.00	0.00
02/01/2004	*500.00	02/01/2004	500.00	0.00	0.00
03/01/2004	*500.00	03/01/2004	200.00	300.00	0.00
04/01/2004	*500.00	04/01/2004	200.00	600.00	1.52
05/01/2004	*500.00	05/01/2004	0.00	1100.00	4.47
06/01/2004	*500.00	06/01/2004	200.00	1400.00	10.06
07/01/2004	*500.00	07/01/2004	0.00	1900.00	16.95
08/01/2004	*500.00	08/01/2004	0.00	2400.00	27.00
09/01/2004	*500.00	09/01/2004	500.00	2400.00	39.71
10/01/2004	*500.00	10/01/2004	2800.00	100.00	52.00
11/01/2004	*500.00	11/01/2004	300.00	300.00	52.53
12/01/2004	*500.00	12/01/2004	300.00	500.00	54.07
12/31/2004	0.00	12/31/2004	0.00	500.00	56.63
Totals	6000.00		5500.00	500.00	56.63

* Indicates a payment due is designated as child support.

Child Support Penalty Table

Date Due	Amount Due	Accum. Child Sup. Arrearage	Accum. Penalty
01/01/2004	*500.00	0.00	0.00
02/01/2004	*500.00	0.00	0.00
03/01/2004	*500.00	300.00	0.00
04/01/2004	*500.00	600.00	0.00
05/01/2004	*500.00	1100.00	4.91
06/01/2004	*500.00	1400.00	14.23
07/01/2004	*500.00	1900.00	25.71
08/01/2004	*500.00	2400.00	41.80
09/01/2004	*500.00	2400.00	62.13
10/01/2004	*500.00	100.00	81.80
11/01/2004	*500.00	300.00	81.80
12/01/2004	*500.00	500.00	81.80
12/31/2004	0.00	500.00	85.90
Totals	6000.00	500.00	85.90

* Indicates a payment due is designated as child support.

Notes: Payments are applied to oldest unpaid balance.
Interest and penalties are calculated using number of days past due.
Payments apply to principal amounts only.
Interest is not compounded, but accrued only.
Penalties calculated on past due child support amounts per NRS 125B.095.

Interest Rates Used by Program:

7.00% from Jan 1960 to Jun 1979	8.00% from Jul 1979 to Jun 1981
12.00% from Jul 1981 to Jun 1987	10.25% from Jul 1987 to Dec 1987
10.75% from Jan 1988 to Jun 1988	11.00% from Jul 1988 to Dec 1988
12.50% from Jan 1989 to Jun 1989	13.00% from Jul 1989 to Dec 1989
12.50% from Jan 1990 to Jun 1990	12.00% from Jul 1990 to Jun 1991
10.50% from Jul 1991 to Dec 1991	8.50% from Jan 1992 to Dec 1992
8.00% from Jan 1993 to Jun 1994	9.25% from Jul 1994 to Dec 1994
10.50% from Jan 1995 to Jun 1995	11.00% from Jul 1995 to Dec 1995
10.50% from Jan 1996 to Jun 1996	10.25% from Jul 1996 to Jun 1997
10.50% from Jul 1997 to Dec 1998	9.75% from Jan 1999 to Dec 1999
10.25% from Jan 2000 to Jun 2000	11.50% from Jul 2000 to Jun 2001
8.75% from Jul 2001 to Dec 2001	6.75% from Jan 2002 to Dec 2002
6.25% from Jan 2003 to Jun 2003	6.00% from Jul 2003 to Jun 2004
6.25% from Jul 2004 to Dec 2004	7.25% from Jan 2005 to Jun 2005
8.25% from Jul 2005 to Dec 2005	9.25% from Jan 2006 to Jun 2006
10.25% from Jul 2006 to Dec 2007	9.25% from Jan 2008 to Jun 2008
7.00% from Jul 2008 to Dec 2008	

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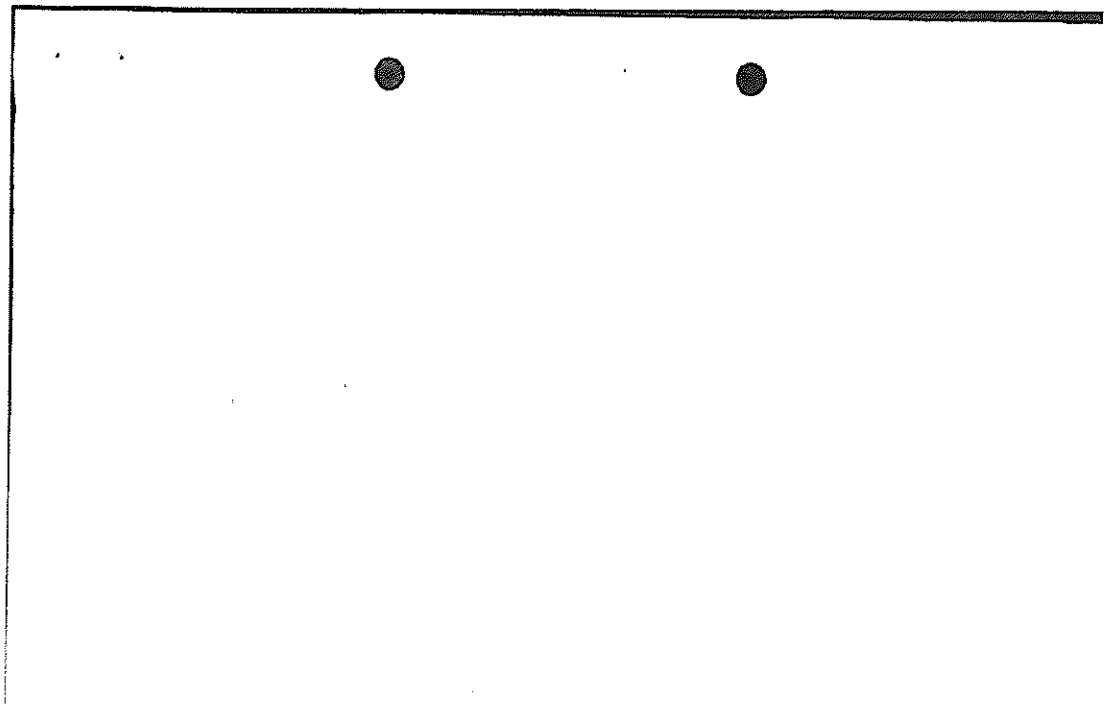

EXHIBIT 3

Arrearage Calculation Summary
Vaile v.Porsboll (Vaile)

Report Date: 08/05/2008

Summary of Amounts Due

Total Principal Due 05/01/2008: $116239.96
Total Interest Due 05/01/2008: $42614.51
Total Penalty Due 05/01/2008: $50403.00
Amount Due if paid on 05/01/2008: $209257.47
Amount Due if paid on 05/02/2008: $209318.61
Daily Amount accruing as of 05/02/2008: $61.14

Accumulated Arrearage and Interest Table

Date Due	Amount Due	Date Received	Amount Received	Accum. Arrearage	Accum. Interest
04/01/2000	*1300.00	04/01/2000	0.00	1300.00	0.00
05/01/2000	*1300.00	05/01/2000	0.00	2600.00	10.92
06/01/2000	*1300.00	06/01/2000	0.00	3900.00	33.49
07/01/2000	*1300.00	07/01/2000	0.00	5200.00	66.26
08/01/2000	*1300.00	08/01/2000	0.00	6500.00	116.91
09/01/2000	*1300.00	09/01/2000	0.00	7800.00	180.22
10/01/2000	*1300.00	10/01/2000	0.00	9100.00	253.74
11/01/2000	*1300.00	11/01/2000	0.00	10400.00	342.38
12/01/2000	*1300.00	12/01/2000	0.00	11700.00	440.41
01/01/2001	*1300.00	01/01/2001	0.00	13000.00	554.38
02/01/2001	*1300.00	02/01/2001	0.00	14300.00	681.35
03/01/2001	*1300.00	03/01/2001	0.00	15600.00	807.50
04/01/2001	*1300.00	04/01/2001	0.00	16900.00	959.87
05/01/2001	*1300.00	05/01/2001	0.00	18200.00	1119.61
06/01/2001	*1300.00	06/01/2001	0.00	19500.00	1297.37
07/01/2001	*1300.00	07/01/2001	0.00	20800.00	1481.69
08/01/2001	*1300.00	08/01/2001	0.00	22100.00	1636.26
09/01/2001	*1300.00	09/01/2001	0.00	23400.00	1800.50
10/01/2001	*1300.00	10/01/2001	0.00	24700.00	1968.79
11/01/2001	*1300.00	11/01/2001	0.00	26000.00	2152.34
12/01/2001	*1300.00	12/01/2001	0.00	27300.00	2339.33
01/01/2002	*1300.00	01/01/2002	0.00	28600.00	2542.21
02/01/2002	*1300.00	02/01/2002	0.00	29900.00	2706.17
03/01/2002	*1300.00	03/01/2002	0.00	31200.00	2861.00
04/01/2002	*1300.00	04/01/2002	0.00	32500.00	3039.86
05/01/2002	*1300.00	05/01/2002	0.00	33800.00	3220.17
06/01/2002	*1300.00	06/01/2002	0.00	35100.00	3413.94
07/01/2002	*1300.00	07/01/2002	0.00	36400.00	3608.67
08/01/2002	*1300.00	08/01/2002	0.00	37700.00	3817.35
09/01/2002	*1300.00	09/01/2002	0.00	39000.00	4033.48
10/01/2002	*1300.00	10/01/2002	0.00	40300.00	4249.85
11/01/2002	*1300.00	11/01/2002	0.00	41600.00	4480.89
12/01/2002	*1300.00	12/01/2002	0.00	42900.00	4711.68
01/01/2003	*1300.00	01/01/2003	0.00	44200.00	4957.62

02/01/2003	*1300.00	02/01/2003	0.00	45500.00	5192.24
03/01/2003	*1300.00	03/01/2003	0.00	46800.00	5410.39
04/01/2003	*1300.00	04/01/2003	0.00	48100.00	5658.82
05/01/2003	*1300.00	05/01/2003	0.00	49400.00	5905.91
06/01/2003	*1300.00	06/01/2003	0.00	50700.00	6168.13
07/01/2003	*1300.00	07/01/2003	0.00	52000.00	6428.58
08/01/2003	*1300.00	08/01/2003	0.00	53300.00	6693.57
09/01/2003	*1300.00	09/01/2003	0.00	54600.00	6965.18
10/01/2003	*1300.00	10/01/2003	0.00	55900.00	7234.44
11/01/2003	*1300.00	11/01/2003	0.00	57200.00	7519.30
12/01/2003	*1300.00	12/01/2003	0.00	58500.00	7801.38
01/01/2004	*1300.00	01/01/2004	0.00	59800.00	8099.49
02/01/2004	*1300.00	02/01/2004	0.00	61100.00	8403.39
03/01/2004	*1300.00	03/01/2004	0.00	62400.00	8693.87
04/01/2004	*1300.00	04/01/2004	0.00	63700.00	9010.98
05/01/2004	*1300.00	05/01/2004	0.00	65000.00	9324.26
06/01/2004	*1300.00	06/01/2004	0.00	66300.00	9654.59
07/01/2004	*1300.00	07/01/2004	0.00	67600.00	9980.65
08/01/2004	*1300.00	08/01/2004	0.00	68900.00	10338.51
09/01/2004	*1300.00	09/01/2004	0.00	70200.00	10703.24
10/01/2004	*1300.00	10/01/2004	0.00	71500.00	11062.88
11/01/2004	*1300.00	11/01/2004	0.00	72800.00	11441.38
12/01/2004	*1300.00	12/01/2004	0.00	74100.00	11814.33
01/01/2005	*1300.00	01/01/2005	0.00	75400.00	12206.59
02/01/2005	*1300.00	02/01/2005	0.00	76700.00	12670.87
03/01/2005	*1300.00	03/01/2005	0.00	78000.00	13097.45
04/01/2005	*1300.00	04/01/2005	0.00	79300.00	13577.74
05/01/2005	*1300.00	05/01/2005	0.00	80600.00	14050.28
06/01/2005	*1300.00	06/01/2005	0.00	81900.00	14546.57
07/01/2005	*1300.00	07/01/2005	0.00	83200.00	15034.61
08/01/2005	*1300.00	08/01/2005	0.00	84500.00	15617.58
09/01/2005	*1300.00	09/01/2005	0.00	85800.00	16209.66
10/01/2005	*1300.00	10/01/2005	0.00	87100.00	16791.45
11/01/2005	*1300.00	11/01/2005	0.00	88400.00	17401.75
12/01/2005	*1300.00	12/01/2005	0.00	89700.00	18001.17
01/01/2006	*1300.00	01/01/2006	0.00	91000.00	18629.69
02/01/2006	*1300.00	02/01/2006	0.00	92300.00	19344.60
03/01/2006	*1300.00	03/01/2006	0.00	93600.00	19999.55
04/01/2006	*1300.00	04/01/2006	0.00	94900.00	20734.89
05/01/2006	*1300.00	05/01/2006	0.00	96200.00	21456.39
06/01/2006	*1300.00	06/01/2006	0.00	97500.00	22212.15
07/01/2006	*1300.00	07/01/2006	0.00	98800.00	22953.42
07/03/2006	0.00	07/03/2006	468.18	98331.82	23008.91
07/17/2006	0.00	07/17/2006	468.18	97863.64	23395.50
08/01/2006	*1300.00	08/01/2006	0.00	99163.64	23807.73
08/02/2006	0.00	08/02/2006	468.18	98695.46	23835.58
09/01/2006	*1300.00	09/01/2006	0.00	99995.46	24667.05
10/01/2006	*1300.00	10/01/2006	0.00	101295.46	25509.48
11/01/2006	*1300.00	11/01/2006	0.00	102595.46	26391.31
11/02/2006	0.00	11/02/2006	80.00	102515.46	26420.12
11/30/2006	0.00	11/30/2006	120.00	102395.46	27226.20
12/01/2006	*1300.00	12/01/2006	0.00	103695.46	27254.95
01/01/2007	*1300.00	01/01/2007	0.00	104995.46	28157.67
02/01/2007	*1300.00	02/01/2007	0.00	106295.46	29071.71
02/23/2007	0.00	02/23/2007	40.00	106255.46	29728.41
03/01/2007	*1300.00	03/01/2007	0.00	107555.46	29907.44

03/09/2007	0.00	03/09/2007	115.00	107440.46	30149.08
03/22/2007	0.00	03/22/2007	120.00	107320.46	30541.31
04/01/2007	*1300.00	04/01/2007	0.00	108620.46	30842.69
04/02/2007	0.00	04/02/2007	40.00	108580.46	30873.19
04/16/2007	0.00	04/16/2007	40.00	108540.46	31300.07
04/30/2007	0.00	04/30/2007	80.00	108460.46	31726.80
05/01/2007	*1300.00	05/01/2007	0.00	109760.46	31757.26
05/11/2007	0.00	05/11/2007	40.00	109720.46	32065.49
05/21/2007	0.00	05/21/2007	37.50	109682.96	32373.61
05/24/2007	0.00	05/24/2007	7843.00	101839.96	32466.01
06/01/2007	*1300.00	06/01/2007	0.00	103139.96	32694.81
07/01/2007	*1300.00	07/01/2007	0.00	104439.96	33563.72
08/01/2007	*1300.00	08/01/2007	0.00	105739.96	34472.92
09/01/2007	*1300.00	09/01/2007	0.00	107039.96	35393.44
10/01/2007	*1300.00	10/01/2007	0.00	108339.96	36295.22
11/01/2007	*1300.00	11/01/2007	0.00	109639.96	37238.37
12/01/2007	*1300.00	12/01/2007	0.00	110939.96	38162.05
01/01/2008	*1300.00	01/01/2008	0.00	112239.96	39127.83
02/01/2008	*1300.00	02/01/2008	0.00	113539.96	40007.20
03/01/2008	*1300.00	03/01/2008	0.00	114839.96	40839.36
04/01/2008	*1300.00	04/01/2008	0.00	116139.96	41739.10
04/07/2008	0.00	04/07/2008	600.00	115539.96	41915.21
04/21/2008	0.00	04/21/2008	600.00	114939.96	42324.02
05/01/2008	*1300.00	05/01/2008	0.00	116239.96	42614.51
Totals	127400.00		11160.04	116239.96	42614.51

* Indicates a payment due is designated as child support.

Child Support Penalty Table

Date Due	Amount Due	Accum. Child Sup. Arrearage	Accum. Penalty
04/01/2000	*1300.00	1300.00	0.00
05/01/2000	*1300.00	2600.00	10.65
06/01/2000	*1300.00	3900.00	32.67
07/01/2000	*1300.00	5200.00	64.64
08/01/2000	*1300.00	6500.00	108.68
09/01/2000	*1300.00	7800.00	163.74
10/01/2000	*1300.00	9100.00	227.67
11/01/2000	*1300.00	10400.00	304.75
12/01/2000	*1300.00	11700.00	389.99
01/01/2001	*1300.00	13000.00	489.09
02/01/2001	*1300.00	14300.00	599.50
03/01/2001	*1300.00	15600.00	709.20
04/01/2001	*1300.00	16900.00	841.70
05/01/2001	*1300.00	18200.00	980.60
06/01/2001	*1300.00	19500.00	1135.18
07/01/2001	*1300.00	20800.00	1295.45
08/01/2001	*1300.00	22100.00	1472.11
09/01/2001	*1300.00	23400.00	1659.81
10/01/2001	*1300.00	24700.00	1852.13
11/01/2001	*1300.00	26000.00	2061.92
12/01/2001	*1300.00	27300.00	2275.61
01/01/2002	*1300.00	28600.00	2507.48
02/01/2002	*1300.00	29900.00	2750.38
03/01/2002	*1300.00	31200.00	2979.75
04/01/2002	*1300.00	32500.00	3244.74
05/01/2002	*1300.00	33800.00	3511.86
06/01/2002	*1300.00	35100.00	3798.93
07/01/2002	*1300.00	36400.00	4087.42
08/01/2002	*1300.00	37700.00	4396.57
09/01/2002	*1300.00	39000.00	4716.76
10/01/2002	*1300.00	40300.00	5037.31
11/01/2002	*1300.00	41600.00	5379.59
12/01/2002	*1300.00	42900.00	5721.50
01/01/2003	*1300.00	44200.00	6085.86
02/01/2003	*1300.00	45500.00	6461.26
03/01/2003	*1300.00	46800.00	6810.30
04/01/2003	*1300.00	48100.00	7207.78
05/01/2003	*1300.00	49400.00	7603.12
06/01/2003	*1300.00	50700.00	8022.68
07/01/2003	*1300.00	52000.00	8439.39
08/01/2003	*1300.00	53300.00	8881.04
09/01/2003	*1300.00	54600.00	9333.72
10/01/2003	*1300.00	55900.00	9782.49
11/01/2003	*1300.00	57200.00	10257.26
12/01/2003	*1300.00	58500.00	10727.39
01/01/2004	*1300.00	59800.00	11224.24
02/01/2004	*1300.00	61100.00	11730.75
03/01/2004	*1300.00	62400.00	12214.87
04/01/2004	*1300.00	63700.00	12743.40
05/01/2004	*1300.00	65000.00	13265.53

06/01/2004	*1300.00	66300.00	13816.07
07/01/2004	*1300.00	67600.00	14359.52
08/01/2004	*1300.00	68900.00	14932.09
09/01/2004	*1300.00	70200.00	15515.66
10/01/2004	*1300.00	71500.00	16091.07
11/01/2004	*1300.00	72800.00	16696.68
12/01/2004	*1300.00	74100.00	17293.40
01/01/2005	*1300.00	75400.00	17921.02
02/01/2005	*1300.00	76700.00	18561.40
03/01/2005	*1300.00	78000.00	19149.79
04/01/2005	*1300.00	79300.00	19812.25
05/01/2005	*1300.00	80600.00	20464.03
06/01/2005	*1300.00	81900.00	21148.58
07/01/2005	*1300.00	83200.00	21821.73
08/01/2005	*1300.00	84500.00	22528.36
09/01/2005	*1300.00	85800.00	23246.03
10/01/2005	*1300.00	87100.00	23951.24
11/01/2005	*1300.00	88400.00	24690.99
12/01/2005	*1300.00	89700.00	25417.57
01/01/2006	*1300.00	91000.00	26179.40
02/01/2006	*1300.00	92300.00	26952.28
03/01/2006	*1300.00	93600.00	27660.34
04/01/2006	*1300.00	94900.00	28455.29
05/01/2006	*1300.00	96200.00	29235.29
06/01/2006	*1300.00	97500.00	30052.34
07/01/2006	*1300.00	98800.00	30853.70
08/01/2006	*1300.00	99163.64	31687.18
09/01/2006	*1300.00	99995.46	32525.55
10/01/2006	*1300.00	101295.46	33347.43
11/01/2006	*1300.00	102595.46	34207.75
12/01/2006	*1300.00	103695.46	35050.33
01/01/2007	*1300.00	104995.46	35931.03
02/01/2007	*1300.00	106295.46	36822.77
03/01/2007	*1300.00	107555.46	37638.12
04/01/2007	*1300.00	108620.46	38550.55
05/01/2007	*1300.00	109760.46	39442.82
06/01/2007	*1300.00	103139.96	40357.50
07/01/2007	*1300.00	104439.96	41205.23
08/01/2007	*1300.00	105739.96	42092.25
09/01/2007	*1300.00	107039.96	42990.32
10/01/2007	*1300.00	108339.96	43870.10
11/01/2007	*1300.00	109639.96	44790.24
12/01/2007	*1300.00	110939.96	45691.39
01/01/2008	*1300.00	112239.96	46633.62
02/01/2008	*1300.00	113539.96	47584.29
03/01/2008	*1300.00	114839.96	48483.92
04/01/2008	*1300.00	116139.96	49456.61
05/01/2008	*1300.00	116239.96	50403.00
Totals	127400.00	116239.96	50403.00

* Indicates a payment due is designated as child support.

Notes: Payments are applied to oldest unpaid balance.
Interest and penalties are calculated using number of days past due.
Payments apply to principal amounts only.
Interest is not compounded, but accrued only.
Penalties calculated on past due child support amounts per NRS 125B.095.

Interest Rates Used by Program:

7.00% from Jan 1960 to Jun 1979	8.00% from Jul 1979 to Jun 1981
12.00% from Jul 1981 to Jun 1987	10.25% from Jul 1987 to Dec 1987
10.75% from Jan 1988 to Jun 1988	11.00% from Jul 1988 to Dec 1988
12.50% from Jan 1989 to Jun 1989	13.00% from Jul 1989 to Dec 1989
12.50% from Jan 1990 to Jun 1990	12.00% from Jul 1990 to Jun 1991
10.50% from Jul 1991 to Dec 1991	8.50% from Jan 1992 to Dec 1992
8.00% from Jan 1993 to Jun 1994	9.25% from Jul 1994 to Dec 1994
10.50% from Jan 1995 to Jun 1995	11.00% from Jul 1995 to Dec 1995
10.50% from Jan 1996 to Jun 1996	10.25% from Jul 1996 to Jun 1997
10.50% from Jul 1997 to Dec 1998	9.75% from Jan 1999 to Dec 1999
10.25% from Jan 2000 to Jun 2000	11.50% from Jul 2000 to Jun 2001
8.75% from Jul 2001 to Dec 2001	6.75% from Jan 2002 to Dec 2002
6.25% from Jan 2003 to Jun 2003	6.00% from Jul 2003 to Jun 2004
6.25% from Jul 2004 to Dec 2004	7.25% from Jan 2005 to Jun 2005
8.25% from Jul 2005 to Dec 2005	9.25% from Jan 2006 to Jun 2006
10.25% from Jul 2006 to Dec 2007	9.25% from Jan 2008 to Jun 2008
7.00% from Jul 2008 to Dec 2008	

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* End Of Report *

EXHIBIT 4

EXHIBIT
4

COMPARISON TABLE

Event Date	Amount Due	Amount Paid	DA Interest	Mlaw Interest	DA Penalty Actually	Penalty the Way Muirhead claims Should Be Done	Mlaw Penalty
4/01/00	$1,300.00	$0.00					
5/01/00	$1,300.00	$0.00	$11.10	$10.92	$130.00	$130.00	$10.65
6/01/00	$1,300.00	$0.00	$33.31	$33.49	$260.00	$260.00	$32.67
7/01/00	$1,300.00	$0.00	$66.62	$66.26	$390.00	$390.00	$64.64
8/01/00	$1,300.00	$0.00	$116.45	$116.91	$520.00	$520.00	$108.68
9/01/00	$1,300.00	$0.00	$178.74	$180.22	$650.00	$650.00	$163.74
10/01/00	$1,300.00	$0.00	$253.49	$253.74	$780.00	$780.00	$227.67
11/01/00	$1,300.00	$0.00	$340.70	$342.38	$910.00	$910.00	$304.75
12/01/00	$1,300.00	$0.00	$440.37	$440.41	$1,040.00	$1,040.00	$389.99
1/01/01	$1,300.00	$0.00	$552.49	$554.38	$1,170.00	$2,210.00	$489.09
2/01/01	$1,300.00	$0.00	$667.07	$681.35	$1,300.00	$2,340.00	$599.50
3/01/01	$1,300.00	$0.00	$814.11	$807.50	$1,430.00	$2,470.00	$709.20
4/01/01	$1,300.00	$0.00	$963.61	$959.87	$1,560.00	$2,600.00	$841.70
5/01/01	$1,300.00	$0.00	$1,125.57	$1,119.61	$1,690.00	$2,730.00	$980.60
6/01/01	$1,300.00	$0.00	$1,299.99	$1,297.37	$1,820.00	$2,860.00	$1,135.18
7/01/01	$1,300.00	$0.00	$1,486.86	$1,481.69	$1,950.00	$2,990.00	$1,295.45
8/01/01	$1,300.00	$0.00	$1,638.53	$1,636.26	$2,080.00	$3,120.00	$1,472.11
9/01/01	$1,300.00	$0.00	$1,799.68	$1,800.50	$2,210.00	$3,250.00	$1,659.81
10/01/01	$1,300.00	$0.00	$1,970.31	$1,968.79	$2,340.00	$3,380.00	$1,852.13
11/01/01	$1,300.00	$0.00	$2,150.41	$2,152.34	$2,470.00	$3,510.00	$2,061.92
12/01/01	$1,300.00	$0.00	$2,339.99	$2,339.33	$2,600.00	$3,640.00	$2,275.61
1/01/02	$1,300.00	$0.00	$2,539.05	$2,542.21	$2,730.00	$6,370.00	$2,507.48
2/01/02	$1,300.00	$0.00	$2,699.93	$2,706.17	$2,860.00	$6,500.00	$2,750.38
3/01/02	$1,300.00	$0.00	$2,868.12	$2,861.00	$2,990.00	$6,630.00	$2,979.45
4/01/02	$1,300.00	$0.00	$3,043.62	$3,039.86	$3,120.00	$6,760.00	$3,244.74
5/01/02	$1,300.00	$0.00	$3,226.43	$3,220.17	$3,250.00	$6,890.00	$3,511.86

Event Date	Amount Due	Amount Paid	DA Interest	Mlaw Interest	DA Penalty Actually	Penalty the Way Muirhead claims Should Be Done	Mlaw Penalty
6/01/02	$1,300.00	$0.00	$3,416.55	$3,413.94	$3,380.00	$7,020.00	$3,798.93
7/01/02	$1,300.00	$0.00	$3,613.99	$3,608.67	$3,510.00	$7,150.00	$4,087.42
8/01/02	$1,300.00	$0.00	$3,818.74	$3,817.35	$3,640.00	$7,280.00	$4,396.57
9/01/02	$1,300.00	$0.00	$4,030.80	$4,033.48	$3,770.00	$7,410.00	$4,716.76
10/01/02	$1,300.00	$0.00	$4,250.18	$4,249.85	$3,900.00	$7,540.00	$5,037.31
11/01/02	$1,300.00	$0.00	$4,476.87	$4,480.89	$4,030.00	$7,670.00	$5,379.59
12/01/02	$1,300.00	$0.00	$4,710.87	$4,711.68	$4,160.00	$7,800.00	$5,721.50
1/01/03	$1,300.00	$0.00	$4,952.18	$4,957.62	$4,290.00	$12,090.00	$6,085.86
2/01/03	$1,300.00	$0.00	$5,182.39	$5,192.24	$4,420.00	$12,220.00	$6,461.26
3/01/03	$1,300.00	$0.00	$5,419.37	$5,410.39	$4,550.00	$12,350.00	$6,810.30
4/01/03	$1,300.00	$0.00	$5,663.12	$5,658.82	$4,680.00	$12,480.00	$7,207.78
5/01/03	$1,300.00	$0.00	$5,913.64	$5,905.91	$4,810.00	$12,610.00	$7,603.12
6/01/03	$1,300.00	$0.00	$6,170.93	$6,168.13	$4,940.00	$12,740.00	$8,022.68
7/01/03	$1,300.00	$0.00	$6,434.99	$6,428.58	$5,070.00	$12,870.00	$8,439.39
8/01/03	$1,300.00	$0.00	$6,694.99	$6,693.57	$5,200.00	$13,000.00	$8,881.04
9/01/03	$1,300.00	$0.00	$6,961.49	$6,965.18	$5,330.00	$13,130.00	$9,333.72
10/01/03	$1,300.00	$0.00	$7,234.49	$7,234.44	$5,460.00	$13,260.00	$9,782.49
11/01/03	$1,300.00	$0.00	$7,513.99	$7,519.30	$5,590.00	$13,390.00	$10,257.26
12/01/03	$1,300.00	$0.00	$7,799.99	$7,801.38	$5,720.00	$13,520.00	$10,727.39
1/01/04	$1,300.00	$0.00	$8,092.49	$8,099.49	$5,850.00	$19,370.00	$11,224.24
2/01/04	$1,300.00	$0.00	$8,391.49	$8,403.39	$5,980.00	$19,500.00	$11,730.75
3/01/04	$1,300.00	$0.00	$8,696.99	$8,693.87	$6,110.00	$19,630.00	$12,214.87
4/01/04	$1,300.00	$0.00	$9,008.99	$9,010.98	$6,240.00	$19,760.00	$12,743.40
5/01/04	$1,300.00	$0.00	$9,327.49	$9,324.26	$6,370.00	$19,890.00	$13,265.53
6/01/04	$1,300.00	$0.00	$9,652.49	$9,654.59	$6,500.00	$20,020.00	$13,816.07
7/01/04	$1,300.00	$0.00	$9,983.99	$9,980.65	$6,630.00	$20,150.00	$14,359.52
8/01/04	$1,300.00	$0.00	$10,336.07	$10,338.51	$6,760.00	$20,280.00	$14,932.09

Event Date	Amount Due	Amount Paid	DA Interest	Mlaw Interest	DA Penalty Actually	Penalty the Way Muirhead claims Should Be Done	Mlaw Penalty
9/01/04	$1,300.00	$0.00	$10,694.92	$10,703.24	$6,890.00	$20,410.00	$15,515.66
10/01/04	$1,300.00	$0.00	$11,060.54	$11,062.88	$7,020.00	$20,540.00	$16,091.07
11/01/04	$1,300.00	$0.00	$11,432.94	$11,441.38	$7,150.00	$20,670.00	$16,696.68
12/01/04	$1,300.00	$0.00	$11,812.11	$11,814.33	$7,280.00	$20,800.00	$17,293.40
1/01/05	$1,300.00	$0.00	$12,198.05	$12,206.59	$7,410.00	$28,210.00	$17,921.02
2/01/05	$1,300.00	$0.00	$12,653.59	$12,670.87	$7,540.00	$28,340.00	$18,561.40
3/01/05	$1,300.00	$0.00	$13,116.99	$13,097.45	$7,670.00	$28,470.00	$19,149.79
4/01/05	$1,300.00	$0.00	$13,588.24	$13,577.74	$7,800.00	$28,600.00	$19,812.25
5/01/05	$1,300.00	$0.00	$14,067.34	$14,050.28	$7,930.00	$28,730.00	$20,464.03
6/01/05	$1,300.00	$0.00	$14,554.30	$14,546.57	$8,060.00	$28,860.00	$21,148.58
7/01/05	$1,300.00	$0.00	$15,049.11	$15,034.61	$8,190.00	$28,990.00	$21,821.73
8/01/05	$1,300.00	$0.00	$15,621.11	$15,617.58	$8,320.00	$29,120.00	$22,528.36
9/01/05	$1,300.00	$0.00	$16,202.05	$16,209.66	$8,450.00	$29,250.00	$23,246.03
10/01/05	$1,300.00	$0.00	$16,791.93	$16,791.45	$8,580.00	$29,380.00	$23,951.24
11/01/05	$1,300.00	$0.00	$17,390.74	$17,401.75	$8,710.00	$29,510.00	$24,690.99
12/01/05	$1,300.00	$0.00	$17,998.49	$18,001.17	$8,840.00	$29,640.00	$25,417.57
1/01/06	$1,300.00	$0.00	$18,615.18	$18,629.69	$8,970.00	$38,610.00	$26,179.40
2/01/06	$1,300.00	$0.00	$19,316.64	$19,344.60	$9,100.00	$38,740.00	$26,952.28
3/01/06	$1,300.00	$0.00	$20,028.12	$19,999.55	$9,230.00	$38,870.00	$27,660.34
4/01/06	$1,300.00	$0.00	$20,749.62	$20,734.89	$9,360.00	$39,000.00	$28,455.29
5/01/06	$1,300.00	$0.00	$21,481.14	$21,456.39	$9,490.00	$39,130.00	$29,235.29
6/01/06	$1,300.00	$0.00	$22,222.68	$22,212.15	$9,620.00	$39,260.00	$30,052.34
7/01/06	$1,300.00	$936.36	$22,974.24	$22,953.42	$9,750.00	$39,390.00	$30,853.70
8/01/06	$1,300.00	$468.18	$23,810.16	$23,807.73	$9,880.00	$39,520.00	$31,687.18
9/01/06	$1,300.00	$0.00	$24,653.18	$24,667.05	$10,010.00	$39,650.00	$32,525.55
10/01/06	$1,300.00	$0.00	$25,507.31	$25,509.48	$10,140.00	$39,780.00	$33,347.43
11/01/06	$1,300.00	$200.00	$26,372.54	$26,391.31	$10,270.00	$39,910.00	$34,207.75

Event Date	Amount Due	Amount Paid	DA Interest	Mlaw Interest	DA Penalty Actually	Penalty the Way Muirhead claims Should Be Done	Mlaw Penalty
12/01/06	$1,300.00	$0.00	$27,247.17	$27,254.95	$10,400.00	$40,040.00	$35,050.33
1/01/07	$1,300.00	$0.00	$28,132.90	$28,157.67	$10,530.00	$50,570.00	$35,931.03
2/01/07	$1,300.00	$40.00	$29,029.74	$29,071.71	$10,660.00	$50,700.00	$36,822.77
3/01/07	$1,300.00	$235.00	$29,937.34	$29,907.44	$10,790.00	$50,830.00	$37,638.12
4/01/07	$1,300.00	$160.00	$30,854.04	$30,842.69	$10,920.00	$50,960.00	$38,550.55
5/01/07	$1,300.00	$7,920.50	$31,780.47	$31,757.26	$11,050.00	$51,090.00	$39,442.82
6/01/07	$1,300.00	$0.00	$32,650.35	$32,694.81	$11,180.00	$51,220.00	$40,357.50
7/01/07	$1,300.00	$0.00	$33,531.34	$33,563.72	$11,310.00	$51,350.00	$41,205.23
8/01/07	$1,300.00	$0.00	$34,423.43	$34,472.92	$11,440.00	$51,480.00	$42,092.25
9/01/07	$1,300.00	$0.00	$35,326.63	$35,393.44	$11,570.00	$51,610.00	$42,990.32
10/01/07	$1,300.00	$0.00	$36,240.93	$36,295.22	$11,700.00	$51,740.00	$43,870.10
11/01/07	$1,300.00	$0.00	$37,166.33	$37,238.37	$11,830.00	$51,870.00	$44,790.24
12/01/07	$1,300.00	$0.00	$38,102.84	$38,162.05	$11,960.00	$52,000.00	$45,691.39
1/01/08	$1,300.00	$0.00	$39,050.45	$39,127.83	$12,090.00	$64,090.00	$46,633.62
2/01/08	$1,300.00	$0.00	$39,915.63	$40,007.20	$12,220.00	$64,220.00	$47,584.29
3/01/08	$1,300.00	$0.00	$40,790.83	$40,839.36	$12,350.00	$64,350.00	$48,483.92
4/01/08	$1,300.00	$1,200.00	$41,676.05	$41,739.10	$12,480.00	$64,480.00	$49,456.61
5/01/08	$1,300.00	$0.00	$42,562.05	$42,614.51	$12,610.00	$64,610.00	$50,403.00
TOTALS	**$127,400.00**	**$11,160.04**	**$42,562.05**	**$42,614.51**	**$12,610.00**	**$64,610.00**	**$50,403.00**
Diff.Mlaw	$0.00	$0.00	$52.46		$37,793.00	($14,207.00)	
DA Total Arrears	$114,469.96						
Mlaw Total Arrears	$114,469.96						

Assessing the penalty each month, annually applying the 10% per annum penalty on the arrears, front-loads and therefore increases the total penalty. This table reflects applying a 10% penalty on the principal arrears outstanding each year, and results in overcharging the NCP over the period above by $14,207.

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CLERK OF THE COURT

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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: N/A TIME OF HEARING: N/A

SUPPLEMENTAL FRIEND OF THE COURT BRIEF

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 Supplemental Friend of the Court Brief. This supplemental brief is based on the attached Points and Authorities as well as all the pleadings and papers on file herein.

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CLERK OF THE COURT

RECEIVED
SEP 05 2008
CLERK OF THE COURT

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.

There is no factual or legal basis to support charging double interest

The defendant's supplemental brief contains no additional verified facts or cited case law to support her position of charging double interest as part of the application of a penalty. The argument weaves a long argument filled with personal attacks but does not provide the Court with any objective evidence or case law to support her position. I am aware that defendant's counsel recently contacted Mr. Sader, the former Chairman of Assembly Judiciary Committee in 1993 when the original bill was passed, in an attempt to obtain an unofficial legislative history supporting his position. Defendant's counsel also sent a complaint letter to this office regarding the Friend of the Court Brief that was requested by this Court, all in an effort to find some support for his position.

Defendant's arguments remind one of the expression: if the facts support your case stand on the facts, if the law supports your case stand on the law, if the nothing supports your case stand up and pound the table. The defendant's counsel's personal perception of CSEP's reasons for programming the calculation of penalties is just his opinion, an opinion not based on facts, but on conjecture and innuendo rather than relying on first hand statements of agency officials and official records of the agency. Defendant's argument attempts to persuade the Court as being authoritative on the history of the subject and statute. Yet, defendant's counsel failed to recall being present in the 2003 Legislature when the Clark County District Attorney's Office and CSEP tried unsuccessfully to amend bill AB 27 by changing the law on interest and penalties as it applied to the program. Defendant's counsel even failed in his research to find the bill[1] as referenced in footnote 14 of the defendant's supplemental brief. *See* Attachment 1 which contains excerpts from the legislative history of

[1] The bill was AB27 in the 2003 Legislature where Elana Hatch from the Clark County District Attorney's Office and Leland Sullivan, Chief of CSEP, offered an amendment to the bill that would have changed the requirement for the program to deal with interest and the discussion carried over to penalties. Assemblywoman Buckley on page 4 of the February 25, 2003 committee meeting stated "The statute has been 'on the books' for over ten years; it should be followed."

AB 27 from the 2003 Legislature which is incorporated herein by reference.

Defendant argues her position does not result in "significant increases in the amount of child support judgments" but presents the proof it does in Defendant's Exhibit 4. After the first 23 months the Marshal Law Program exceeds the penalties imposed by CSEP. The amount grows increasingly based on the interest calculation method and ignores any fully paid monthly payments. The Obligor made a full monthly payment in May of 2007 when he was credited with paying $7,920.50 but he was still assessed a penalty by the Marshall Law Program. The defendant makes an error in her chart by claiming CSEP would assess a penalty, when in fact under CSEP's position, all current monthly obligations/amounts have been fully paid for the month, within the month, and consequently there is no need for a late penalty. However, by this time it is clear that the two positions could not be any farther apart in the application of penalties and completely proves that CSEP's $10,920.00 (without the error) is far less than Marshal Law's $39,442.82, an almost $30,000.00 difference.

CSEP looks at all the payments within the month because 45 CFR 302.51(a)(1) requires distribution of child support payments within the month be credited to the child support amount due in the month. Therefore, the monthly payment emphasis rather than a date specific emphasis comes from the federal requirement, not a system requirement. This is even more imperative when more than 75% of all CSEP collections on the 98,853 enforcement cases come from income withholdings (IW) and a majority of those are on a biweekly pay period basis. If CSEP took the defendant's view of the world it would be penalizing all the obligors on IW who are paid on a biweekly pay period with their employers. CSEP must follow the requirements of the Federal Child Support Enforcement Program and provide collection of child support on a massive scale. The defendant's statements show her lack of comprehension and understanding of the reality of working almost 150,000 child support cases every day while complying with the myriad of federal requirements. CSEP has numerous other considerations for basing the collection and disbursing of child support payments on a monthly schedule rather than a date specific calculation, but they are not at issue in these proceedings.

Finally, the defendant argues that "**Every** known explanation of late fee notes that they get worse the longer they are late . . ." and then cites a non-legal website to support that proposition. Again the defendant cites no proper case law or legislative history to support this statement. However, if the defendant read carefully the explanation she cited she would realize she was supporting CSEP's position. The defendant's quote states a late fee is only charged "once each billing cycle you are late." The key word there is "once." The next quote states "How to avoid it: pay your bill on time. . ."[2] The defendant conveniently left out the statement on the same website that states: "**How much**: $15 - $39 each billing cycle you miss a payment or pay less than the minimum." If the defendant properly applied these statements there would be no interest calculation on the unpaid child support because the penalty would not be applied continuously to all billing cycles where the initial payment remains unpaid because it would be the sum certain amount applied "once" at the end of the monthly billing cycle (i.e. $15-$39 "once" for each month you make a late payment)[3]. Second, when the obligor pays his "bill on time" he should not be assessed a late payment fee. However, the defendant did assess a late penalty when there was a full monthly payment as demonstrated in her own exhibit 4 for the month of May 2007.

The statute is ambiguous, defendant failed to present any evidence to the contrary, the legislative history supports CSEP's position, and CSEP's interpretation is entitled to deference under the law.

The statue is imprecise and open to interpretation and therefore is subject to interpretation based on legislative history. The legislative history of AB 604[4] from the 1993 Legislature supports the one time penalty on missed monthly payments. The defendant presented no objective verified facts or case law that would support a position to the contrary. The defendant, to date, still fails to offer any legislative history, other than the self-serving statements of her counsel, which supports her position.

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[2] See defendant's supplemental brief at the bottom of page 12 and top of page 13.
[3] The defendant seems to forget that a finance charge is assessed to credit card balances as a means of compensating for the use of the credit card company's money just like interest is assessed to an obligor for using the obligee's unpaid child support payments.
[4] The legislative history can be accessed at: http://www.leg.state.nv.us/lcb/research/library/1993/AB604,1993.pdf

The 2005 Legislature knew about CSEP's regulation and interpretation of this statute and by taking no action allowed CSEP to continue with its regulation and policies which clearly fly in the face of defendant'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. The defendant's argument against this position merely cites periodicals, books, and self-serving statements of her counsel. *See* Attachment 2 for a more complete legislative history on this issue.

The only purpose of the appearance of CSEP in this case is because the Court requested a Friend of the Court Brief to explain the calculation of penalties based on the position of CSEP. CSEP does not support the individual actions of the obligor in this case. CSEP is currently providing services because an enforcement case was opened in January of 2006. The Clark County District Attorney's Office appeared and gave the Court an audit based on the position of CSEP. CSEP has not questioned the underlying reasons why the defendant or defendant's counsel has tried to make this case personal. CSEP has a job to perform as required by the Federal Child Support Enforcement Program. CSEP will continue to balance those requirements with the resources made available to work the caseload. The defendant's misunderstandings, misstatements, inaccurate perceptions, and innuendos will not change those federal requirements or CSEP's attempt to comply with those federal requirements. The final personal attack regarding the lack of criminal prosecution is the province and jurisdiction of the local district attorney. Therefore, the defendant's personal attack is again misdirected as that discussion must be brought up with the Clark County District Attorney's Office.

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