has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest." For these reasons, this Court lacks jurisdiction to entertain MITCH's Cross-Appeal.

III.

THIS COURT ALSO LACKS JURISDICTION OVER MITCH'S CROSS APPEAL PURSUANT TO NRAP 3(A) AND BECAUSE MITCH IS NOT AN AGGRIEVED PARTY

MITCH is simply not an aggrieved party as to his Cross-Appeal. MITCH admits in his Response/"Reply" to the Order to Show Cause issued by this Court that Judge Sullivan granted MITCH what he, his attorney and Judge Sullivan may believe is forty percent (40%) of custodial time with the minor children. This wrongful modification to MITCH's custodial status and agreed-upon timeshare, without an evidentiary hearing, was looked upon as a favorable outcome by MITCH and his counsel. MITCH received more custodial time that the amount to which he previously agreed, so his Motion was, in part, improperly granted. MITCH never requested attorney's fees in a properly filed and served Motion, so he cannot be "aggrieved" as to either the custody or attorney's fee issue.

Also, during the proceedings, MITCH, through his attorney stated on the record that he would welcome a full shared custodial order granting him forty percent (40%) of the time. (See CHRISTINA's APPENDIX Vol. I, pages 1 through 170) MITCH and his counsel even stated they would "accept" Judge Sullivan's suggestion for a 60/40 shared timeshare that they would accept a Parenting Coordinator to help with communication. (See CHRISTINA's APPENDIX Vol. I, pages 35 through 44)

In Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 874 P.2d 729, this Court held that even assuming that the order approving a proposed settlement is substantively appealable, the Supreme Court has has jurisdiction to entertain an appeal only where the appeal is brought by an aggrieved party.

NRAP 3A(a) limits the right of appeal to "part[ies] aggrieved" by a district court's decision. A party is "aggrieved" within the meaning of NRAP 3A(a) "when either a personal right or right of property is adversely and substantially affected" by a district court's ruling. Estate of Hughes

v. First Nat'l Bank, 96 Nev. 178, 180, 605 P.2d 1149, 1150 (1980). In the case at bar, MITCH received an order he liked, wrongfully increasing his time with the children. This erroneous Order results in a change of custody in his favor, without the required evidentiary hearing.

This Court has repeatedly established that a party is "aggrieved" if "either a personal right or right of property is adversely and substantially affected by a District Court's ruling. In Las Vegas Police Prot. Ass'n Metro v. Eighth Judicial Dist. Ct., 122 Nev. 230, 239-40, 130 P.3d 182, 189 (2006) (citations omitted) (quoting Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994)), this Court again explained what facts give rise to the right to appeal.

The term "aggrieved" means a "substantial grievance", as cited in Esmeralda County v. Wildes, 36 Nev. 526, 535, 137 P. 400, 402 (1913), which "includes 'the imposition of some injustice, or illegal obligation or burden, by a court, upon a party, or the denial to him of some equitable or legal right." Las Vegas Police Prot. Ass'n Metro, 122 Nev. at 240, 130 P.2d at 189 (alteration in original) (quoting Esmeralda County, 36 Nev. at 535, 137 P. at 402).

In the Estate of Matthew Lomastro v. American Family Insurance Group 195 P.3d 339 (2009), American Family filed a notice of cross-appeal from the district court's judgment, challenging the district court's determination that it could not contest liability. However, the Supreme Court found that American Family was not aggrieved because the district court ultimately granted summary judgment to American Family on the claims against it. See NRAP 3A(a) (noting that any aggrieved party may appeal).

Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 446, 874 P.2d 729, 734 (1994) provides that a party is aggrieved within the meaning of NRAP 3A(a) when a district court's order adversely and substantially affects either a personal right or a right of property. Because American Family was not aggrieved, it lacked standing to appeal. Thus, this Court dismissed American Family's cross-appeal.

Ford v. Showboat Operating Co., 110 Nev. 752, 755, 877 P.2d 546, 548 (1994) is the case which MITCH cites in his Response/"Reply" to this Court's Order to Show Cause. Yet, that case warrants dismissal of MITCH's Cross-Appeal. Showboat recognizes that a party "who is not aggrieved by a judgment need not appeal from the judgment in order to raise arguments in support

of the judgment not necessarily accepted by the district court.

This Court did not allow Showboat's appeal to proceed because the Court found that Showboat was not an aggrieved party. This case, cited by MITCH, reveals MITCH and his counsel must be aware of the baseless and frivolousness of MITCH's appeal. MITCH's over-litigious nature warrants the granting of CHRISTINA's request for all her fees and costs incurred pursuant to the parties' binging Marital Settlement Agreement as noted above.

As this Court stated in Showboat, Nevada law is in accordance with the federal approach to cross-appeals. NRAP 3A(a) allows an appeal only by a party who is aggrieved by a judgment. A party who prevails in the district court and who does not wish to alter any rights of the parties arising from the judgment is not aggrieved by the judgment.

NRAP 3A(b) and other statutes list the orders and judgments from which an appeal may be taken; no court rule or statute provides for an appeal from a finding of fact or from a conclusion of law. This court has consistently held that the right to appeal is statutory; where no statute or court rule provides for an appeal, no right to appeal exists. State, Taxicab Authority v. Greenspun, 109 Nev. 1022, 1024-25, 862 P.2d 423, 424 (1993); Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 209, 678 P.2d 1152, 1153 (1984); Kokkos v. Tsalikis, 91 Nev. 24., 530 P.2d 756 (1975). Yet, MITCH merely cites to an improperly filed Supplement and a notation to Court Minutes from May 6, 2010 indicating supplements and the entire file would be reviewed in rendering a final decision.

Sierra Creek Ranch v. J.I. 97 Nev, 457, 634 P.2d 458 (1981), is cited in Showboat. MITCH's reliance upon these cases is misplaced, as the law supports dismissal of his cross-appeal. In Sierra, the respondent contended on appeal that, although the district court correctly awarded judgment in its favor, the district court erred in refusing to award it attorney's fees and costs. Id. at 459-60, 634 P.2d at 460. The respondent in that action contended it was aggrieved by the district court's refusal to award fees and costs, and sought to increase its rights under the judgment.

In this case, MITCH never properly requested a judgment for fees and costs. In this matter, MITCH failed to properly request his relief for attorney's fees and properly notice CHRISTINA of his requested relief per Nevada law. This Court must again conclude, that it lacks jurisdiction to

entertain MITCH's Cross-Appeal, and therefore must order dismissal of the Cross-Appeal.

IV.

CONCLUSION

For all the foregoing reasons, this Court must issue an Order of Dismissal of MITCH's Cross-Appeal. This Court lacks jurisdiction to entertain the Cross-Appeal. Undersigned counsel will be soon filing a Motion to Consolidate Supreme Court Case Number 57876 with this case. It will be requested that MITCH's Appeal in that action also face an Order of Dismissal as soon as possible due to serious, jurisdictional defects and based on the principle of res judicata.

DATED this 8th day of April 2011.

Respectfully submitted by:

VACCARINO LAW OFFICE

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CERTIFICATE OF SERVICE

I certify that on the 8 day of April 2011, I served a copy of REPLY TO RESPONDENT'S RESPONSE TO ORDER TO SHOW REGARDING DISMISSAL OF CROSS-APPEAL upon all counsel of record:

[ ] NRAP 25 By personally serving it upon him/her; or

[x] By mailing it by first class mail with sufficient postage prepaid to the following address(es):

Radford J. Smith, Esq.
Mitchell David Stipp, Esq.
64 N. Pecos Rd., #700
Henderson, NV 89074

Dated this 8 day of April 2011.

Matt Layton

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Electronically Filed
Apr 08 2011 04:28 p.m.
Tracie K. Lindeman

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTINA CALDERON STIPP, Appellant/Cross-Respondent, vs. MITCHELL DAVID STIPP, Respondent/Cross-Appellant.	SUPREME COURT CASE NO. 57327

REPLY TO RESPONDENT'S RESPONSE TO ORDER TO SHOW REGARDING DISMISSAL OF CROSS-APPEAL

COMES NOW, Appellant/Cross-Respondent, CHRISTINA CALDERON STIPP, ("CHRISTINA") and hereby submits her Reply to Respondent/Cross-Appellant's, MITCHELL DAVID STIPP, ("MITCH"), Response to the Order to Show Cause issued by this Court on February 22, 2011. Indeed, MITCH has not shown cause as required by this Court's lawful order as to why his cross-appeal should not be dismissed for lack of jurisdiction.

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I.

THE FACTS AND LAW SUPPORT DISMISSAL OF MITCH'S CROSS APPEAL

1. The fact the Supreme Court Issued a Order to Show Cause for Dismissal for lack of jurisdiction prior to even review of Fast Track Statements and the Appendix clearly reveals that there are serious jurisdictional and legal defects with MITCH's Cross Appeal.

2. MITCH has not provided, in his Response/"Reply" filed with this Court, factual or legal justification why his Cross-Appeal must not be dismissed.

3. The legal authority cited by MITCH in his Response/"Reply" to this Court's Order to Show Cause support a dismissal of his Cross- Appeal.

4. This Court is without jurisdiction to address legal issues and requests made in MITCH's Cross-Appeal which were not properly presented to the District Court pursuant to Nevada and Federal law and which oral or implied requests are RES JUDICATA, by virtue of Court Orders filed on December 8, 2009 and June 13, 2010, with Notice of Entry of Order being filed on February 1, 2010 (See CHRISTINA's Appendix on file herein (Vol. V, pages 981-988, specifically at page 985). The Court already addressed fees and cost issues upon MITCH's Motion. However, pursuant to the parties' Marital Settlement Agreement ("MSA"), the parties' contract required Judge Sullivan to wait to award all fees and costs CHRISTINA incurred until receipt of Dr. Paglini's report and his final ruling upon her Countermotion. Pursuant to the parties' MSA, the "prevailing party" as "finally determined" is to receive "all costs and expenses, including reasonable attorney's fees and costs, incurred by such prevailing party in such action or proceedings, in enforcing such judgment, **and in connection with any appeal from such judgment**." [Emphasis added.] Thus, CHRISTINA is entitled to attorney's fees pursuant to her duly filed and served Countermotion.

5. MITCH lacks standing to appeal and this Court lacks jurisdiction pursuant to NRAP 3A, as MITCH is not an "aggrieved" party.

. . .

. . .

II.

MITCH AND HIS COUNSEL FAILED TO PROPERLY FILE AND SERVE NOTICE TO CHRISTINA OF HIS REQUESTED RELIEF WHICH IS NOW THE SUBJECT OF HIS CROSS-APPEAL

NRCP 5 states as follows:

> **SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS**
>
> **(a) Service: When Required. Except as otherwise provided in these rules, every order required by its terms to be served, every pleading subsequent to the original complaint unless the court otherwise orders because of numerous defendants**, every paper relating to discovery required to be served upon a party unless the court otherwise orders, **every written motion other than one which may be heard ex parte, and every written notice, appearance, demand, offer of judgment, designation of record on appeal, and similar paper shall be served upon each of the parties**. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in Rule 4. [Emphasis added.]
>
> **(b) Same: How Made.**
> **(1) Whenever under these rules service is required or permitted to be made upon a party represented by an attorney, the service shall be made upon the attorney unless the court orders that service be made upon the party.**
> **(2) Service under this rule is made by:**
> **(A) Delivering a copy to the attorney or the party** by: (i) handing it to the attorney or to the party; (ii) leaving it at the attorney's or party's office with a clerk or other person in charge, or if there is no one in charge, leaving it in a conspicuous place in the office; or
> (iii) if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person of suitable age and discretion residing there.
> (B) Mailing a copy to the attorney or the party at his or her last known address. Service by mail is complete on mailing; provided, however, a motion, answer or other document constituting the initial appearance of a party must also, if served by mail, be filed within the time allowed for service; and provided further, that after such initial appearance, service by mail be made only by mailing from a point within the State of Nevada.
> (C) If the attorney or the party has no known address, leaving a copy with the clerk of the court.
> **(D) Delivering a copy by electronic means if the attorney or**

> **the party served has consented to service by electronic means**. Service by electronic means is complete on transmission provided, however, a motion, answer or other document constituting the initial appearance of a party must also, if served by electronic means, be filed within the time allowed for service. The served attorney's or party's consent to service by electronic means shall be expressly stated and filed in writing with the clerk of the court and served on the other parties to the action. The written consent shall identify:
>
> (i) the persons upon whom service must be made;
>
> (ii) the appropriate address or location for such service, such as the electronic-mail address or facsimile number;
>
> (iii) the format to be used for attachments; and
>
> (iv) any other limits on the scope or duration of the consent.
>
> An attorney's or party's consent shall remain effective until expressly revoked or until the representation of a party changes through entry, withdrawal, or substitution of counsel. An attorney or party who has consented to service by electronic means shall, within 10 days after any change of electronic-mail address or facsimile number, serve and file notice of the new electronic-mail address or facsimile number.
>
> (3) Service by electronic means under Rule 5(b)(2)(D) is not effective if the party making service learns that the attempted service did not reach the person to be served.
>
> (4) Proof of service may be made by certificate of an attorney or of the attorney's employee, or by written admission, or by affidavit, or other proof satisfactory to the court. Failure to make proof of service shall not affect the validity of service. [Emphasis added.]

The District Court record clearly evidences that MITCH and his counsel failed to file a Motion for or to effectuate proper notice and service upon CHRISTINA upon his request for an award of attorney's fees and costs. Nevada law requires that MITCH should have filed and properly served a Motion for fees and costs in the underlying action to preserve said issue on appeal. CHRISTINA raises these due process/jurisdictional arguments in addition to the lack of standing and jurisdiction (NRAP 3A) of the provisions of the Order from which MITCH cross-appeals.

In Quinlan v. Camden USA, Inc., 126 Nev. Adv. Op. No. 30 (July 29, 2010), Zugel by Zugel v. Miller, 99 Nev. 100, 659 P.2d 296 (1983) and Foley v. Silvagni, 76 Nev. 93, 349 P.2d 1062 (1960), this Court has consistently held that the effect of improper or no service of even a proper, written Motion leaves the District Court without authority to grant the requested relief. MITCH's failure to properly preserve the issue in the District Court action deprives this Court of jurisdiction

over the cross-apppeal.

EDCR 2.20 states:

> **Motions; contents; responses and replies.**
>
> **(a) All motions must contain a notice of motion setting the same for hearing on a day when the judge to whom the case is assigned is hearing civil motions and not less than 21 days from the date the motion is served and filed. A party filing a motion must also serve and file with it a memorandum of points and authorities in support of each ground thereof**. The absence of such memorandum may be construed as an admission that the motion is not meritorious, as cause for its denial or as a waiver of all grounds not so supported. [Emphasis added.]
>
> (b) Within 10 days after the service of the motion, the opposing party must serve and file written opposition thereto, together with a memorandum of points and authorities and supporting affidavits, if any, stating facts showing why the motion should be denied. Failure of the opposing party to serve and file written opposition may be construed as an admission that the motion is meritorious and a consent to granting the same.
>
> (c) An opposition to a motion which contains a motion related to the same subject matter will be considered as a counter-motion. A counter-motion will be heard and decided at the same time set for the hearing of the original motion and no separate notice of motion is required.
>
> (d) A moving party may file a reply memorandum of points and authorities not later than 5 days before the matter is set for hearing. A reply memorandum must not be filed within 5 days of the hearing or in open court unless court approval is first obtained.
>
> (e) A memorandum of points and authorities which consists of bare citations to statutes, rules, or case authority does not comply with this rule and the court may decline to consider it. Supplemental briefs will only be permitted if filed within the original time limitations of paragraphs (a), (b), or (d), or by order of the court.
>
> . . .

MITCH and his counsel also failed to comply with EDCR 2.20, requiring all Motions to be served and filed, with a memorandum of points and authorities in support of each ground thereof. In failing to file and serve a Motion upon CHRISTINA's counsel concerning the issues raised in his Cross-Appeal, MITCH has left the District Court without authority to entertain a Motion for his

fees and costs incurred, and has left this Court without jurisdiction to address the issue on appeal as well. This Court lacks jurisdiction to hear MITCH's frivolous Cross-Appeal.

NRCP 7 states as follows:

PLEADINGS ALLOWED; FORM OF MOTIONS

> (a) Pleadings. There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint, if a person who was not an original party is summoned under the provisions of Rule 14; and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.
>
> **(b) Motions and Other Papers.**
>
> **(1) An application to the court for an order shall be by motion which, unless made during a hearing or trial, shall be made in writing, shall state with particularity the grounds therefor, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.**
>
> (2) The rules applicable to captions, signing, and other matters of form of pleadings apply to all motions and other papers provided for by these rules.
>
> (3) All motions shall be signed in accordance with Rule 11.
>
> (c) Demurrers, Pleas, Etc., Abolished. Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.

NRCP 54 states, in pertinent part, as follows:

JUDGMENTS; ATTORNEY FEES

> (a) Definition; Form. "Judgment" as used in these rules includes a decree and any order from which an appeal lies. A judgment shall not contain a recital of pleadings, the report of a master, or the record of prior proceedings.
>
> . . .
>
> (d) Attorney Fees.
>
> (1) Reserved.
>
> **(2) Attorney Fees.**
>
> **(A) Claim to Be by Motion. A claim for attorney fees** must be made by motion. The district court may decide the motion despite the existence of a pending appeal from the

underlying final judgment.

> **(B) Timing and Contents of the Motion. Unless a statute provides otherwise, the motion must be filed no later than 20 days after notice of entry of judgment is served; specify the judgment and the statute, rule, or other grounds entitling the movant to the award; state the amount sought or provide a fair estimate of it; and be supported by counsel's affidavit swearing that the fees were actually and necessarily incurred and were reasonable, documentation concerning the amount of fees claimed, and points and authorities addressing appropriate factors to be considered by the court in deciding the motion. The time for filing the motion may not be extended by the court after it has expired.** [Emphasis added.]
>
> (C) Exceptions. Subparagraphs (A)-(B) do not apply to claims for fees and expenses as sanctions pursuant to a rule or statute, or when the applicable substantive law requires attorney fees to be proved at trial as an element of damages.

Pursuant to the Court Rules and case law cited above, MITCH should have filed a Motion for attorney's fees with his originating Motion for joint custody or thereafter pursuant to NRCP 54, with the proper notice to CHRISTINA and her counsel. MITCH had until no later than 20 days after entry of Judge Sullivan's November 6, 2010 Order was filed to file a proper request for fees and costs. As the rule recites above, the Motion must be supported by counsel's Affidavit. If MITCH believed he was a "prevailing" party in the underlying action and if he believed his request for fees and costs was properly preserved in the Court record, he had to comply with Court Rules.

The Court's record reveals that Judge Sullivan already ordered that MITCH would bear 100% of the costs associated with Dr. Paglini's lengthy, custody evaluation and report. This evaluation was ordered upon MITCH's request and Motion for joint custody filed in October 2009. (See CHRISTINA's APPENDIX on file herein, Vol. V, pages 981 through 988) Also, the Court ordered, albeit erroneously as it relates to CHRISTINA's Countermotion, each party to bear their own attorney's fees and costs related to the Motions as of the date of the initial hearing before Judge Sullivan on December 8, 2009 on MITCH's Motion and CHRISTINA's Countermotion. (See CHRISTINA's APPENDIX on file herein, Vol. V, pages 981 through 988). This Order filed and entered in the Court record prematurely denied CHRISTINA's requests for her fees and costs. Indeed, Judge Sullivan violated CHRISTINA's rights per the MSA as it relates to attorney's fees

and costs as cited above at page two. The issue of Dr. Paglini's costs is RES JUDICATA because MITCH never appealed the Order requiring him to pay for Dr. Paglini's services.

MITCH mentions in his Response/"Reply" to Order to Show Cause filed electronically on March 23, 2011 at 4:48 p.m. that he filed a "Supplement" prior to the May 6, 2010 hearing on the Return from Dr. Paglini's evaluation and Report. Yet, the "Supplement" to which MITCH refers is an untimely and "fugitive" filing. The Supplement is NOT a proper Motion for fees and costs. The Supplement was filed in VIOLATION of EDCR 2.20(e). The supplement was filed only days before the return hearing and seven months after MITCH filed his originating Motion from which the Appeal and Cross-Appeal stem. The mention of fees and costs in an untimely, filed Supplement also violates NRCP 5, NRCP 7 and NRCP 54.

Thus, MITCH's assertion that he "specifically raised the issue of costs and attorney's fees in the Supplement" which the Court said it would "review" is not sufficient to avoid dismissal of his Cross-Appeal. Indeed, as CHRISTINA and her counsel's Fast Track Statement filed with this Court asserts, numerous concerns exist with how Judge Sullivan procedurally and legally addressed numerous issues in this case.

Judge Sullivan repeatedly revealed his disregard and disdain for this Court's ruling in Rivero v. Rivero, 216 P.3d 213, Nev., Adv. Opinion No. 46910 (2009). CHRISTINA's counsel already cited to some of the unbelievable comments Judge Sullivan made from the bench concerning "Rivero" and the "Supreme Court". Judge Sullivan even had the audacity to state on May 6, 2010 as follows:

> "...I'm not worried about Rivero and I can tell the Supreme Court that they can do whatever they want to do and take me off the bench...Far as Rivero, I'm not letting the Rivero at this point say aha, Dad's got 37% of the time, so he doesn't make it..."

The point of concern about Judge Sullivan's impropriety as it relates to this Reply Brief is that Judge Sullivan clearly failed to follow the parties' Stipulation and Order and Nevada law pertaining to custody issues as cited and briefed in CHRISTINA's Fast Track Statement on file.

CHRISTINA contends Judge Sullivan erred as to the primary issue of custody and timeshare. Judge Sullivan also erred in failing to grant her all of her fees and costs incurred pursuant to the binding MSA on file in the action because MITCH did NOT prevail upon his Motion.

In Wagoner v. Tillinghast, 102 Nev. 385, 724 P.2d 197 (1986), the Supreme Court stated that the importance of procedural due process involving "special" motions was addressed in Maheu v. District Court, 88 Nev. 26, 493 P.2d 709 (1972). In Maheu the Supreme Court stated "For a century, our settled law has been that any "special" motion involving judicial discretion that affects the rights of another, as contrasted to motions "of course," must be made on notice even where no rule expressly requires notice to obtain the particular order sought.

It is clear that CHRISTINA's basic, fundamental legal, procedural and constitutional rights would be disregarded if the Cross-Appeal sustained dismissal. CHRISTINA is entitled to due process of receiving proper notices by proper Motion, and having an opportunity to be heard. In Cheek v. FNF Construction Inc., 112 Nev., 1249 924 P.2D 134112 Appellants, Dennis and Misty Cheek, challenged the summary judgment granted by the district court in favor of respondent, FNF Construction, Inc. ("FNF"). The Cheeks plead that the district court erred in entertaining FNF's motion for summary judgment because they were not afforded adequate notice or service of notice.

This Supreme Court found that the Cheeks did suffer prejudice by the shortened, notice period. Thus, this Court held the district court judge should have required ten days notice under both the local rule and Nevada Rule of Civil Procedure. Since the Cheeks were only afforded seven days notice service by mail was improper, the notice was not legally sufficient. The Supreme Court vacated the order. This Court has held that proper and timely service of a written Motion is mandatory. The request for attorney's fees and costs was not noticed by MITCH in the District Court action. Zero Motions and zero service by MITCH equal zero jurisdiction to adjudicate the issue in the District Court action and zero jurisdiction to cross-appeal.

Also, this Court has already held that an oral Motion for an Order is inappropriate, even when the State of Nevada is the litigant, that party is bound by legal requirements, rules and judicial procedure. See Scott E., a minor, v. the State of Nevada, 113 Nev. 234, 931 P.2d 1370

(1997). This Court cited, in Scott E. in the words of Justice Cardozo as follows:

> Every system of law has within it artificial devices which are deemed to promote ... forms of public good. These devices take the shape of rules or standards to which the individual though he or she be careless or ignorant, must at his peril conform. If they were to be abandoned by the law whenever they had been disregarded by the litigant affected, there would be no sense in making them. Benjamin N. Cardozo, The Paradoxes of Legal Science (1928).

Indeed, MITCH's and his counsel's failure to comply with proper law and procedure may be deemed careless or ignorant. Yet, at MITCH's peril, he is bound by the law.

The United States Supreme Court has addressed the requirements of due process in giving notice of a pending legal proceeding in Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950). In Mullane, the Supreme Court held that publication in a local newspaper, in accordance with N.Y. Bank. Law s 100-c(12) (McKinney 1950), of an accounting for a common trust fund did not satisfy procedural due process. In so holding, the Court expressed the following general principles, at 314-315, 320, 70 S.Ct. at 657, 660: An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. The fundamental requisite of due process is opportunity to be heard. U.S.C.A. Const.Amend. 14.

In Browning v. Dixon 114 Nev. 213, 954 P.2d 741 Nev., (1998), this Court concluded that procedural due process requires diligence. This Court reversed the district court's order denying appellant Dale Browning's motion to set aside the default judgment entered against him. If Judge Sullivan also erred in granting MITCH fees and costs without requiring filing and service of a proper Motion, this Court would be compelled to reverse and vacate such an order.

The fundamental requisite of due process is the opportunity to be heard as cited in Grannis v. Ordean, 234 U.S. 385, 394, 34 S.Ct. 779, 783, 58 L.Ed. 1363 (1914), "This right to be heard