

**AFFIDAVIT OF PATRICIA L. VACCARINO, ESQ.**

**STATE OF NEVADA**        )  
**COUNTY OF CLARK**      ) **ss:**

PATRICIA L. VACCARINO, ESQ., having been sworn deposes and says:

1. I am an attorney with the VACCARINO LAW OFFICE , duly licensed to practice law in the State of Nevada. I am the attorney of record for the Appellant/Cross-Respondent, CHRISTINA CALDERON-STIPP, in this matter.

2. I have personal knowledge of the facts and circumstances surrounding this matter, and am competent to testify thereto.

3. I have read the foregoing Opposition and Countermotion. All statements contained therein are true and accurate to the best of my knowledge. The factual statements are supported by the District Court record and the record on Appeal.

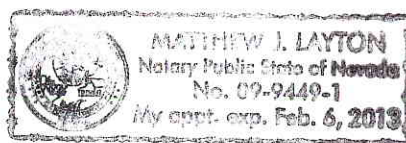
4. I incorporate all factual statements in this Affidavit as though fully set forth.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

  
PATRICIA L. VACCARINO, ESQ.

SUBSCRIBED and SWORN to before  
me this 18<sup>th</sup> day of May 2011.

  
NOTARY PUBLIC in and for  
said County and State.



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Radford J. Smith, Esq.  
990-6456

I further certify that I am an employee of the VACCARINO LAW OFFICE, and that on the 18<sup>th</sup> day of May 2011, I deposited in the U.S. Mail, at Las Vegas, Nevada, in a sealed envelope with postage fully pre-paid thereon, a true and correct copy of the above and foregoing **COMBINED RESPONSE TO RESPONDENT/COUNTERCLAIMANT'S MOTION TO FILE COMBINED FAST TRACK STATEMENT AND RESPONSE OF MAXIMUM OF 25 PAGES AND MOTION TO DIRECT TRANSMITTAL OF CHILD CUSTODY EVALUATION UNDER SEAL, AND COUNTERMOTION FOR NEW ORDER SETTING DUE DATE FOR APPELLANT'S CHILD CUSTODY FAST TRACK RESPONSE AND FOR SANCTIONS** addressed to:

Radford J. Smith, Esq.  
64 Pecos Road, Suite 700  
Las Vegas, NV 89074

huf

## Transaction Report

Send

Transaction(s) completed

No.	TX Date/Time	Destination	Duration P. #	Result	Mode
117	MAY-18 13:28	7029906456	0'07'44" 026	OK	N ECM

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**FACSIMILE COVER SHEET**

DATE: May 18, 2011  
TO: RADFORD J. SMITH, ESQ.  
FAX NO.: 990-6458  
FROM: VACCARINO LAW OFFICE  
RE: Stipp v. Stipp  
Case No. D-389203

COVER PAGE PLUS 25 PAGES**DOCUMENTS****NUMBER OF PAGES**

(EXCLUDING THIS COVER SHEET)

1.	COMBINED RESPONSE TO RESPONDENT/COUNTERCLAIMANT'S MOTION TO FILE COMBINED FAST TRACK STATEMENT AND RESPONSE OF MAXIMUM OF 25 PAGES AND MOTION TO DIRECT TRANSMITTAL OF CHILD CUSTODY EVALUATION UNDER SEAL, AND COUNTERMOTION FOR NEW ORDER SETTING DUE DATE FOR APPELLANT'S CHILD CUSTODY FAST TRACK RESPONSE AND FOR SANCTIONS	25
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COMMENTS:

**EXHIBIT "1"**

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTINA CALDERON STIPP,  
Appellant/Cross-Respondent,  
vs.  
MITCHELL DAVID STIPP,  
Respondent/Cross-Appellant.

No. 57327

**FILED**

APR 18 2011

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

ORDER ALLOWING CROSS-APPEAL TO  
PROCEED AND SETTING BRIEFING SCHEDULE

This is an appeal and cross-appeal from a post-divorce decree order concerning child custody.

When our preliminary review of the docketing statements and NRAP 3(g) documents revealed potential jurisdictional defects, regarding respondent/cross-appellant Mitchell Stipp's cross-appeal, we directed Mitchell to show cause why he was an aggrieved party with standing to appeal, as it appeared that the district court granted his child custody motion. Further, it was unclear whether he could raise the issue of attorney fees and costs in the cross-appeal. Mitchell timely responded to our show cause order to which appellant/cross-respondent Christina Stipp replied.<sup>1</sup> Because the documents submitted in response to our show cause order demonstrate that Mitchell is an aggrieved party, and that the issue

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<sup>1</sup>We deny as moot Christina's April 7, 2011, motion for an extension of time to file her reply, as the clerk of this court filed the reply on April 8, 2011.

of attorney fees and costs can be properly considered in the cross-appeal, we conclude that the cross-appeal may proceed.

Accordingly, the following briefing schedule shall apply. Mitchell shall have 20 days from the date of this order to file and serve a combined response and fast track statement and appendix, addressing Christina's fast track statement and his cross-appeal. Christina shall have 20 days from the date that she is served with the combined response and fast track statement to file and serve a response and appendix to Mitchell's cross-appeal.

We caution the parties that because the appellate issues raised in these appeals concern child custody, no extensions of time will be granted absent extreme and unforeseen circumstances. Counsel's caseload will not be deemed such a circumstance. Hansen v. Universal Health Servs., 112 Nev. 1245, 1247, 924 P.2d 1345, 1346 (1996).

It is so ORDERED.

Dwyer, C.J.

cc: Vaccarino Law Office  
Radford J. Smith, Chtd.  
Mitchell D. Stipp

1 Attached hereto as Exhibit "1" is an Order issued by this Court on April 18, 2011. In this  
2 Order, this Court cautioned the parties and counsel as follows:

3 . . .because the appellate issues raised in these appeals  
4 concern child custody, no extension of time will be granted  
absent extreme and unforeseen circumstances. . .

5 MITCH's Motion to File Combined Fast Track Statement and Response of Maximum of 25  
6 Pages is frivolous, untimely, and should be denied. Due to MITCH waiting until the last day to file  
7 his frivolous Motions with this Court, his combined Fast Track Statement and Response is still not  
8 filed with this Court. Therefore, CHRISTINA requests that the Court issue its decision based  
9 upon her Child Custody Fast Track Statement on file herein.

10 **B. MITCH'S MOTION TO DIRECT TRANSMITTAL OF CHILD CUSTODY EVALUATION**  
11 **UNDER SEAL MUST BE DENIED**

12 EDCR 5.70 states as follows:

13 **Family Mediation and Assessment Center Services.**

14 (a) In domestic relations proceedings where issues of  
15 custody of children or visitation with children are contested,  
16 the judge may refer the matter to the Family Mediation and  
17 Assessment Center of the court for mediation only; for  
services, including mediation; for a written assessment; or for  
other specialized services as set forth in the Center's scope  
of services. A form order, approved by the court, may be used  
for these referrals.

18 (b) The parties may, by stipulation, request that a judge  
19 refer a case for services, including mediation. Such a  
20 stipulation shall note whether mediation had been previously  
attempted in that case and, if so, the dates and results  
thereof. The stipulation must include the parties' full names,  
addresses including zip codes, and telephone numbers.

21 (c) Mediation will be conducted by a Center family  
22 specialist and the procedures adopted by the Center will be  
23 followed. Mediation is confidential. When mediation is  
24 concluded, the judge will be notified of the outcome. Any  
25 mediated agreement will be submitted to the judge, the  
26 parties and their respective attorneys. The judge may accept,  
27 modify, or reject the same. In order to preserve and promote  
28 the integrity of mediation as a dispute-resolution technique,  
the judge will attempt to utilize all reasonable agreements  
reached by the parties in formulating the order. Any request  
by counsel for either party, or the parties themselves, to give  
information to the specialist once mediation has commenced  
must be presented to the Center manager who will determine  
whether the information should be shared with the specialist.  
If the Center manager determines to give the specialist the

1 information, or any part thereof, that information will be  
2 subsequently shared with the other party, if unrepresented, or  
3 that party's attorney.

4 (d) If the pleadings filed with the court contain allegations  
5 of domestic violence by one spouse against another spouse,  
6 then any referral to mediation must contain an order that the  
7 Center implement its domestic violence protocol in the  
8 handling of the case.

9 (e) The specialist will determine what type of written  
10 assessment is appropriate when mediation is unsuccessful  
11 and the case has been referred to the Center for services  
12 other than "mediation only." A written assessment will involve  
13 an evaluation of the parties' parenting ability, relationship with  
14 the children, and overall ability to provide for the children  
15 emotionally, financially and otherwise. A written assessment  
16 containing the findings and recommendations of the specialist  
17 will be submitted to the judge who ordered the services.

18 (f) The decision to order a written assessment is vested  
19 solely with the judge; however, once a referral has been made  
20 for any other service offered by the Center, the Center may  
21 proceed with a written assessment if the assigned specialist  
22 deems such action warranted.

23 (g) The judge may continue any family matter for the  
24 purpose of obtaining Center services. The judge may order  
25 expedited services if the immediate safety or welfare of  
26 children appears in jeopardy.

27 (h) Any written assessment prepared by the Center shall  
28 be delivered to the judge in chambers. Only the parties and  
their attorneys are entitled to read the written assessment.  
Written assessments are confidential, except as provided by  
order of the judge.

Only a licensed attorney may retain possession of a  
written assessment outside the court. Any attorney retaining  
a copy of a written assessment may neither make copies of  
it nor disclose its contents to anyone without advance  
permission of the judge. If an attorney retaining a copy of a  
written assessment leaves the case, the attorney may not give  
the copy to the client. The attorney must either turn the written  
assessment over to another licensed attorney who has  
appeared as successor counsel for that party or return the  
copy to the judge or referee who ordered the written  
assessment.

**No copy of the written assessment, or any part  
thereof, may be made an exhibit to, or a part of, the open  
court file. No child who is the subject of the written  
assessment may see a copy of the written assessment or  
be advised of its contents by anyone. No party may  
reproduce a copy of a written assessment or any part**

1       **thereof except the recommendations section or share the**  
2       **contents of the written assessment with any other**  
3       **person. The written assessment may be received as**  
4       **direct evidence of the facts contained therein which are**  
5       **within the personal knowledge of the specialist who**  
6       **prepared the assessment. [Emphasis added.]**

7       If a party is in proper person that party may not retain a  
8       copy of a written assessment. That party is entitled to read the  
9       written assessment in the judge's courtroom or chambers or  
10      at such other place designated by the judge.

11      (i) Any confidential exhibits attached to an assessment  
12      may not be distributed to anyone without an order of the court  
13      but may be viewed, upon request of counsel or the party in  
14      the event the party is in proper person, in the judge's  
15      courtroom or chamber or such other place designated by the  
16      judge. Statements of a child may only be viewed upon order  
17      of the court.

18      **(j) All original written assessments and confidential**  
19      **exhibits must be returned to the clerk and sealed in a**  
20      **separate file or kept by the judge in chambers subject to**  
21      **the direction of the judge who assigned the case. This**  
22      **separate file may not be viewed by or released to anyone**  
23      **except a judicial officer or an employee of a judicial**  
24      **officer without an order from the court. [Emphasis added.]**

25      (k) The judge may require that either or both of the parties  
26      pay the cost of any services rendered by the Center. The  
27      Center may make a recommendation to the judge as to  
28      mitigating factors, including the ability of a party or parties to  
29      pay such costs. For good cause shown, the manager of the  
30      Center may recommend waiver or deferral of any fee, in  
31      whole or in part, and the judge may so order either upon  
32      recommendation of the manager or on the judge's initiative.  
33      Non-payment of these fees may subject the party to the  
34      issuance of an order to show cause why the party should not  
35      be held in contempt.

36      (l) The Center may formulate guidelines, procedures and  
37      policies relevant to the scope of services offered by the  
38      Center, subject to approval by the family division administrator  
39      in consultation with the family division judges.

40      (m) No attorney or party may stipulate to a written  
41      assessment without prior approval of the judge. In any request  
42      for a written assessment the requesting attorney or party must  
43      demonstrate to the judge why mediation should not be first  
44      attempted.

NRAP 10 states as follows:

## THE RECORD

**(a) The Trial Court Record.** The trial court record consists of the papers and exhibits filed in the district court, the transcript of the proceedings, if any, the district court minutes, and the docket entries made by the district court clerk.

**(1) Retention of Record.** The district court clerk shall retain the trial court record. When the Supreme Court deems it necessary to review the trial court record, the district court clerk shall assemble and transmit the portions of the record designated by the Supreme Court to the clerk of the Supreme Court in accordance with the provisions of Rule 11. Any costs associated with the preparation and transmission of the record shall be paid initially by the appellant, unless otherwise ordered.

### **(b) The Appellate Court Record.**

**(1) The Appendix.** For the purposes of appeal, the parties shall submit to the Supreme Court copies of the portions of the trial court record to be used on appeal, including all transcripts necessary to the Supreme Court's review, as appendices to their briefs. Under Rule 30(a), a joint appendix is preferred.

**(2) Exhibits.** If exhibits cannot be copied to be included in the appendix, the parties may request transmittal of the original exhibits to the Supreme Court under Rule 30(d).

**(c) Correction or Modification of the Record.** If any difference arises about whether the trial court record truly discloses what occurred in the district court, the difference shall be submitted to and settled by that court and the record conformed accordingly. Questions as to the form and content of the appellate court record shall be presented to the Supreme Court. [Emphasis added.]

NRAP 11 states as follows:

## PREPARING AND FORWARDING THE RECORD

**(a) Preparation of the Record.** Upon written direction from the Supreme Court, the district court clerk shall provide the Supreme Court with the papers or exhibits comprising the trial court record. The record shall be assembled, paginated, and indexed in the same manner as an appendix to the briefs under Rule 30. If the Supreme Court determines that its review of original papers or exhibits is necessary, the district court clerk shall forward the original trial court record in lieu of copies.

**(1) Exhibits.** If the Supreme Court directs transmittal of exhibits, the exhibits shall not be included with the

documents comprising the record. The district court clerk shall place exhibits in an envelope or other appropriate container, so far as practicable. The title of the case, the Supreme Court docket number, and the number and description of all exhibits shall be listed on the envelope, or if no envelope is used, then on a separate list.

**(2) Record in Proper Person Cases.** When the Supreme Court directs transmission of the complete record in cases in which the appellant is proceeding in proper person, the record shall contain each and every paper, pleading and other document filed, or submitted for filing, in the district court. The record shall also include any previously prepared transcripts of the proceedings in the district court. If the Supreme Court should determine that additional transcripts are necessary to its review, the court may order the reporter or recorder who recorded the proceedings to prepare and file the transcripts.

**(b) Duty of Clerk to Certify and Forward the Record.** The district court clerk shall certify and forward the record to the clerk of the Supreme Court. The district court clerk shall indicate, by endorsement on the face of the record or otherwise, the date upon which it is forwarded to the Supreme Court.

**(c) Time for Forwarding the Record.** The trial court record shall be forwarded within the time allowed by the Supreme Court, unless the time is extended by an order entered under Rule 11(d).

**(d) Failure of Timely Transmittal; Extensions.**

**(1) Failure of Timely Transmittal.** A district court clerk who fails to forward a timely record on appeal without sufficient excuse may be subject to sanctions.

**(2) Extension of Time; Supporting Documentation and Affidavits.** If the district court clerk cannot timely forward the record, the clerk shall seek an extension of time from the Supreme Court. A motion to extend the time for transmitting the record shall be accompanied by the affidavit of the clerk or deputy clerk setting forth the reasons for the requested extension, and the length of additional time needed to prepare the record.

NRAP 12 states as follows:

**DOCKETING THE APPEAL; FILING OF THE RECORD**

**(a) Docketing the Appeal.** Upon receiving the copies of the notice of appeal and other documents from the district court clerk under Rule 3, the clerk of the Supreme Court shall docket the appeal and immediately notify all parties of the docketing date. Automatic appeals from a judgment of

conviction of death shall be docketed in accordance with SCR 250. If parties on opposing sides file notices of appeal from the same district court judgment or order, in accordance with Rule 4(a), the appellants and cross-appellants shall be designated as provided in Rule 28.1. A subsequent appeal shall in all respects be treated as an initial appeal, including the payment of the prescribed filing fee. Cross-appeals will be filed under the same docket number and calendared and argued with the initial appeal.

**(b) Filing the Record.** Upon receiving the record, the clerk of the Supreme Court shall file it and immediately notify all parties of the filing date.

MITCH's Motion and request to include in the record on appeal sealed and confidential document never filed in the District Court record is untimely and improper. The above-referenced authority is clear, and supports the denial of MITCH's Motion. MITCH did not address the issue of purportedly needing to seek transmittal of the Child Custody Evaluation Report in his Docketing Statement on file in this action. Further, CHRISTINA filed her Notice of Appeal five months ago. If MITCH wanted to pursue inclusion of a sealed and confidential document never offered to be admitted in the District Court record in this Appeal, MITCH was required to file, long ago, with the District Court a Motion requesting such relief.

Also, pursuant to NRAP 10(c), if any difference arises about whether the trial Court record truly discloses what occurred in the District Court, the difference **shall** be submitted to and settled by that Court and the record conformed accordingly. Questions as to the form and content of the appellate record shall be presented to the Supreme Court. The rules concerning the mandatory procedure concerning the District Court record as cited in the NRAP are clear and unambiguous. MITCH has not followed the rules.

Also, this Court has already addressed, in Supreme Court Decisions, the plain language of NRAP 10. In Carson Ready Mix Inc. v. First National Bank, 97 Nev. 474, 635 P.2d 276 (1981), this Court held that the Nevada Rules of Appellate Procedure delineate the proper procedures to be followed for the designation of the record on appeal. Also, in Shugart v. Shugart, 91 Nev. 685, 541 P.2d 1101 (1975), this Court ordered that a statement of the evidence or proceeding which was not submitted to the District Court for settlement and appeal could not be considered as a part of the record on appeal. Similarly, in Moore v. Cherry, 90 Nev. 390, 528 P.2d 1018 (1974), where

1 there was nothing to indicate that a statement of evidence was ever submitted to the District Court  
2 for settlement and approval, the appellant could not attempt to file a statement of the evidence with  
3 the Supreme Court, and the statement could not be consulted as part of the record on appeal.

4 Most compelling is the argument that one of the primary reasons CHRISTINA filed her Notice  
5 of Appeal is because the District Court based its faulty Decision on multiple hearsay statements  
6 and information contained in the Custody Evaluation Report which was never admitted as  
7 evidence. Now, MITCH improperly seeks to have admitted into the Appellate Court record said  
8 hearsay Report. Indeed, CHRISTINA and her counsel cannot now impeach the necessary portions  
9 of a Confidential Report, a hearsay record, on appeal. If the District Court would have erroneously  
10 granted a hearing upon MITCH's underlying Motion to modify the timeshare arrangement filed in  
11 October 2009, then CHRISTINA would have had numerous witnesses testify, including Dr. Paglini,  
12 in order to further reveal that MITCH's Motion should have been denied by the District Court.

13 Indeed, the Evaluation Report helps CHRISTINA's case in many aspects. The Report  
14 disproved MITCH's allegations that CHRISTINA's bad acts caused MIA to suffer emotional trauma  
15 which required a change to the custodial timeshare as MITCH claimed in his Affidavit and Motion  
16 filed in October 2009. However, CHRISTINA and her counsel's position remains that the District  
17 Court and this Court cannot and should not review and accept as supporting evidence a  
18 Confidential Report filled with hearsay statements without allowing CHRISTINA her rights of due  
19 process. A hearsay document not admitted into evidence in the District Court record cannot guide  
20 this Court in reaching a proper Decision.

21 MITCH is an attorney/litigant in this case and the District Court action. MITCH should be  
22 capable of deciphering the Court Rules and case law. Further, MITCH's co-counsel, Radford J.  
23 Smith, Esq. has been practicing for many years, and should have the capacity to understand the  
24 relevant Court Rules and controlling case law if MITCH is confused. Indeed, it appears MITCH is  
25 feigning confusion to further delay an end to this tortured, legal process he instigated with his  
26 frivolous Motion filed in the District Court on October 29, 2009. As stated above, MITCH will stop  
27 at nothing to delay full and final resolution of the Appellate cases. MITCH's short Motions filed with  
28 this Court on May 9, 2011 were haphazardly prepared at the last moment, without citing the

1 appropriate authority and reasons justifying the filing. MITCH wants to delay the appellate process  
2 because he does not want CHRISTINA to proceed with receiving further Orders in the District  
3 Court case which will benefit the children.

4 Pursuant to the above-referenced points and authorities, MITCH's Motion for Direct Transmittal  
5 of Child Custody Evaluation Under Seal must be denied. MITCH must be appropriately  
6 sanctioned for his wilful violations of Court Rules, procedure and this Court's Order filed April 18,  
7 2011. The Court should issue a decision in this matter solely based upon Christina's Child  
8 Custody Fast Track Statement and Appendix without further delay. If the Court is somehow  
9 inclined to allow MITCH's Child Custody and Fast Track Statement to be filed, CHRISTINA seeks  
10 an order from the Court allowing her 20 full days from the Order upon MITCH's Motion and  
11 CHRISTINA's Countermotion to file her Response.

12 **III.**

13 **CHRISTINA'S COUNTERMOTIN FOR ADDITIONAL TIME TO FILE HER FAST TRACK**  
14 **RESPONSE MUST BE GRANTED, IF NECESSARY, AND MITCH SHOULD BE**  
**SANCTIONED FOR ABUSE OF PROCESS**

15 NRAP 3(E)(h) states as follows:

16 . . .

17 **(h) Sanctions.** Any party, attorney, court reporter, or court  
18 recorder who lacks due diligence in compliance with this Rule  
19 may be subject to sanctions by the Supreme Court.  
20 Sanctionable actions include, but are not limited to, failure of  
21 appellant to timely file a fast track statement or respondent's  
22 failure to file a fast track response; and failure of a party to  
23 raise material issues or arguments in a fast track statement or  
24 response.

25 NRAP 38 states as follows:

26 **(a) Frivolous Appeals; Costs.** If the Supreme Court  
27 determines that an appeal is frivolous, it may impose monetary  
28 sanctions.

29 **(b) Frivolous Appeals; Attorney Fees as Costs.** When an  
30 appeal has frivolously been taken or been processed in a  
31 frivolous manner; when circumstances indicate that an appeal  
32 has been taken or processed solely for purposes of delay,  
33 when an appeal has been occasioned through respondent's  
34 imposition on the court below; or whenever the appellate  
35 processes of the court have otherwise been misused, the court  
36 may, on its own motion, require the offending party to pay, as

1 costs on appeal, such attorney fees as it deems appropriate to  
2 discourage like conduct in the future.

3 Indeed, MITCH has failed to follow Court Rules in submitting his Motions to this Court. This  
4 Court must find MITCH has lacked due diligence in seeking the relief as stated in the Motions filed  
5 by MITCH the day his combined Child Custody Fast Track Statement and Response were due  
6 to be filed with this Court.

7 This Court must treat MITCH's Motions as a Motion to Request an Extension in filing and  
8 submitting his Fast Track Statement and Response. Pursuant to NRAP 3E(e)(2) and (3),  
9 requests for extensions must be made properly and in a timely manner. Further, MITCH is  
10 requesting to expand the Appellate Record and his Fast Track Statement and Response after his  
11 documents were due to be filed. Thus, pursuant to NARP 3E(d)(3), the requests for expansion  
12 of his Response and the record were required to be made at least ten days before his Fast Track  
13 Statement and Response were due pursuant to NRAP 3E cited above.

14 CHRISTINA's counsel may need a new deadline from this Court if MITCH's Fast Track  
15 Statement and Response will ultimately be allowed to be filed with this Court. Pursuant to NRAP  
16 27(a)(4), MITCH is entitled to file a Reply to CHRISTINA's Response. Pursuant to the Nevada  
17 Rules of Appellate Procedure, MITCH's Reply will not be due to be filed until Wednesday, May  
18 25, 2011. Then, the parties and counsel must wait for this Court to issue a ruling upon the  
19 Motions and Countermotion.

20 MITCH's Fast Track Statement and Response has not yet been filed with the Supreme Court.  
21 MITCH served his unfiled Fast Track Statement and Response upon CHRISTINA'S counsel by  
22 mailing the same on May 9, 2011. Pursuant to this Court's Order filed on April 18, 2011,  
23 CHRISTINA had 20 days from service by mail to file her Response and Appendix to MITCH's  
24 Cross-appeal. Thus, even if the Court ruled upon MITCH's Motions on May 25, 2011, the day  
25 MITCH's Reply would be due to be filed with the Court, CHRISTINA's Response would be due  
26 only four judicial days later, on June 1, 2011 if CHRISTINA and her counsel were ordered to  
27 somehow be bound by the April 18, 2011 Order.

28 . . .

1 Certainly, CHRISTINA and her counsel need to receive this Court's order upon MITCH's  
2 Motions in order to understand whether and/or when a Response will need to be filed. Indeed,  
3 MITCH has caused unnecessary delay and more chaos in this action. MITCH has not proceeded  
4 with the appropriate diligence required, and he has abused the Court's process. This Court has  
5 new Rules for **FAST**-Track Statements in custody cases. [Emphasis added.] MITCH has placed  
6 this case on the slowest track possible. MITCH should be sanctioned by having to pay  
7 CHRISTINA an award of fees and costs of no less than \$5,000.00 for his conduct and abuse of  
8 process.

9 **IV.**

10 **CONCLUSION**

11 For all the foregoing reasons, it is respectfully requested that MITCH's Motions be denied, that  
12 CHRISTINA's Countermotion be granted, and that sanctions issue against MITCH in the form of  
13 an award of fees and costs. This matter should be solely decided upon CHRISTINA's Child  
14 Custody Fast Track Statement and her Appendix on file herein.

15 DATED this 18<sup>th</sup> day of May 2011.

16 VACCARINO LAW OFFICE

17  
18 

19 PATRICIA L. VACCARINO, ESQ.  
20 Nevada Bar No. 005157  
21 8861 W. Sahara Avenue, Suite 210  
22 Las Vegas, Nevada 89117  
23 Attorney for Appellant/Cross-Respondent  
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3 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

Electronically Filed  
May 18 2011 02:07 p.m.  
Tracie K. Lindeman

4  
5 CHRISTINA CALDERON STIPP,

6 Appellant/Cross-Respondent,

7 vs.

8 MITCHELL DAVID STIPP,

9 Respondent/Cross-Appellant.  
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**Supreme Court No.** 57327  
**District Court Case No.** D-389203

12 **COMBINED RESPONSE TO RESPONDENT/COUNTERCLAIMANT'S MOTION TO FILE**  
13 **COMBINED FAST TRACK STATEMENT AND RESPONSE OF MAXIMUM OF 25 PAGES**  
14 **AND MOTION TO DIRECT TRANSMITTAL OF CHILD CUSTODY EVALUATION UNDER**  
15 **SEAL, AND COUNTERMOTION FOR NEW ORDER SETTING DUE DATE FOR**  
16 **APPELLANT'S CHILD CUSTODY FAST TRACK RESPONSE AND FOR SANCTIONS TO**  
17 **ISSUE AGAINST RESPONDENT**

18 COMES NOW, CHRISTINA CALDERON-STIPP, ("CHRISTINA"), Appellant/Cross-  
19 Respondent, by and through her attorney, PATRICIA L. VACCARINO, ESQ. of the VACCARINO  
20 LAW OFFICE, and hereby submits her Response and Countermotion to the  
21 Respondent/Counterclaimant's, MITCH STIPP, ("MITCH") Motions. CHRISTINA respectfully  
22 requests that the Court deny MITCH's Motions, and issue a Decision based solely upon  
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1 CHRISTINA's Child Custody Fast Track Statement and Appendix on file with this Court. If this  
2 Court allows MITCH's combined Fast-Track Statement and Response to be filed, CHRISTINA will  
3 need additional time to submit her Response beyond what was ordered in this Court's April 18,  
4 2011 Order. This Court should also award CHRISTINA no less than \$5,000.00 in attorney's fees  
5 and costs as a sanction against MITCH.

6 This combined Response and Countermotion is made and based upon the following Points  
7 and Authorities, the Affidavit of Counsel and the Exhibit submitted herewith.

8 DATED this 18<sup>th</sup> day of May 2011.

9 VACCARINO LAW OFFICE

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11 

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15 Las Vegas, Nevada 89117

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1 **POINTS AND AUTHORITIES**

2 **I.**

3 **THE FACTS WARRANT THE DENIAL OF MITCH's MOTIONS**

4 A review of the Supreme Court Docketing Statement and Order filed April 18, 2011 in this  
5 matter reveals that MITCH's combined Fast Track Statement and Response was due to be filed  
6 by May 9, 2011. See Exhibit "1" which is a copy of this Court's April 18, 2011 Order. A review  
7 of the Supreme Court Docketing Statement also reveals that MITCH's Fast Track Statement and  
8 Response and his Appendix were submitted and received by the Court via electronic transmission  
9 on May 9, 2011. The Fast Track Statement and Response have not yet been filed due to  
10 MITCH's Motions filed simultaneously via electronic transmission on May 9, 2011.

11 MITCH's Motions are frivolous, unwarranted and a further means to delay the appellate  
12 process and stay the District Court action. Indeed, at a hearing before Judge Potter on April 12,  
13 2011, Judge Potter stated he would "not touch" certain issues, erroneously believing the Appeals  
14 pending in this Court do not allow him to enforce previous orders or rules upon certain, ancillary  
15 issues addressed in CHRISTINA's Motion filed in the District Court action in March 2011. MITCH  
16 is also continuing to unnecessarily increase fees and costs in the Appellate and District Court  
17 actions.

18 MITCH should not need clarification of the page limitation rules set forth in NRAP 3E. The  
19 Nevada Rules of Appellant Procedure allow a total of 25 pages to be filed, to wit: ten pages for  
20 MITCH's Response and 15 pages for MITCH's Child Custody Fast Track Statement. It is  
21 unbelievable that MITCH would file an untimely Motion when a phone call to a staff attorney at  
22 the Supreme Court Clerk's office would have answered MITCH's purported questions concerning  
23 clarification of the rule concerning page limitations. MITCH continues to delay this matter. MITCH  
24 has caused CHRISTINA to spend more time and money opposing MITCH's bogus Motions while  
25 the initial 20 day deadline for CHRISTINA's counsel her to file her Response as ordered on April  
26 18, 2011 is fast passing. If MITCH was seeking leave to file a longer document, MITCH was  
27 required to move the Court for leave to file a longer document no less than ten days prior to the  
28 deadline filing date of May 9, 2011. MITCH's Motions should have been filed by no later than said

1 time. MITCH's Motion to file his Fast Track Response must be deemed as unwarranted and  
2 untimely filed. The Motion must be denied.

3 Further, MITCH's Motion to Direct Transmittal of Child Custody Evaluation Under Seal is  
4 also improper. Eighth Judicial District Court Rules prevent confidential reports from being copied  
5 and/or released without a Court Order as set forth below. Further, the Child Custody Evaluation  
6 Report MITCH seeks to include in the Court's record to be reviewed by the Supreme Court in this  
7 matter is not part of the District Court record. Indeed, as set forth below, MITCH was required to  
8 file his Motion long ago with the District Court.

9 CHRISTINA's Notice of Appeal was filed on December 14, 2010. MITCH filed his  
10 Docketing Statement on January 18, 2011. Yet, MITCH made no mention that the Confidential  
11 Report was vital to his Cross-Appeal, or that he would be filing a Motion with the District Court for  
12 an Order to transmit the Child Custody Evaluation Report.

13 MITCH has had ample time to file a Motion with the District Court to receive an Order to  
14 have the Confidential Child Custody Evaluation Report made a formal part of the District Court  
15 record and/or be transmitted to the Supreme Court. Five months have passed since CHRISTINA  
16 filed her Notice of Appeal on December 14, 2010. MITCH should have filed the proper and timely  
17 Motion with the District Court long ago.

18 MITCH continues in his efforts to prolong Appellate litigation in this matter so that the real  
19 issues concerning the needs of the young children at issue are not addressed by the District  
20 Court. MITCH must be sanctioned for his continued, wrongful conduct in both the District Court  
21 and the Appellate Court actions. It is also noteworthy that MITCH has failed to respond to the  
22 Order to Show Cause for dismissal issued in Supreme Court Case No. 57876. The Response  
23 was due in that case on May 9, 2011 pursuant to the Court's Order issued on April 18, 2011.  
24 MITCH's Appeal was frivolously filed, again wasting fees, costs and judicial resources.

25 Further, this Court, for good cause, must extend the time for CHRISTINA to file her  
26 Response to MITCH's Child Custody Fast Track Statement, if the filing is necessary, until 20 days  
27 after an Order is entered by this Court upon MITCH's pending Motions. While CHRISTINA's  
28 counsel believes CHRISTINA's Fast Track Response could have been filed timely, it is not due

1 to any fault by CHRISTINA or her counsel that MICH filed his improper Motions on the same day  
2 his Fast Track Response was due to be filed and served. If MITCH's Motion is denied and his  
3 combined Fast-Track Statement and Response will not be filed with this Court, then CHRISTINA  
4 will not even be required to file her Response. Obviously, CHRISTINA's counsel will not know  
5 what needs to be prepared until this Court enters Orders upon the Motions and Countermotion.

## 6 II.

### 7 LEGAL AUTHORITY AND ARGUMENT WARRANTING DENIAL OF MITCH'S MOTINOS

8 NRAP 3E states as follows:

#### 9 **FAST TRACK CUSTODY APPEALS**

10 **(a) Applicability.** This Rule applies to appeals and cross-  
11 appeals from district court orders pertaining to child custody or  
12 visitation in which either the appellant or cross-appellant is  
13 represented by counsel. This Rule applies to appeals docketed  
14 on or after June 1, 2006, and to such appeals pending before  
15 this court and removed or exempted from the settlement  
16 program on or after June 1, 2006. This court having  
17 implemented a pilot program for proper person appeals, this  
18 Rule does not apply in those cases. If, however, either the  
19 appellant or cross-appellant is represented by counsel and the  
20 opposing party is in proper person, the opposing proper person  
21 party must file all documents in compliance with this Rule,  
22 notwithstanding Rule 46(b).

23 **(b) Responsibilities of Appellant.** Appellant and cross-  
24 appellant are responsible for filing the notice of appeal, case  
25 appeal statement, docketing statement, a transcript request  
26 form, and a fast track statement for the case identifying the  
27 appellate issues that are raised.

28 . . .

#### **(d) Filing Fast Track Statement, Response and Appendix.**

29 (1) Filing Fast Track Statement. Within 40 days after the  
30 Supreme Court approves the settlement conference report  
31 indicating that the parties were unable to settle the case or, if  
32 the appeal is removed or exempted from the settlement  
33 program, **within 40 days after the appeal is removed or**  
34 **exempted, appellant and cross-appellant shall file and**  
35 **serve an original and 1 copy of both a fast track statement**  
36 **form and an appendix with the Supreme Court and serve**  
37 **1 copy of the fast track statement and appendix on the**  
38 **opposing party. The fast track statement shall**  
39 **substantially comply with Form 13 in the Appendix of**  
40 **Forms. The fast track statement shall not exceed 15 pages**  
41 **in length and shall include the following: [Emphasis added.]**

(i) A statement of jurisdiction for the appeal;

- 1 (ii) A statement of the case and procedural history of the case;  
2 (iii) A concise statement summarizing all facts material to a  
3 consideration of the issues on appeal;  
4 (iv) An outline of the alleged district court error(s);  
5 (v) Legal argument, including authorities, pertaining to the  
6 alleged error(s) of the district court;  
7 (vi) When applicable, a statement regarding the sufficiency of  
8 the rough draft transcript; and  
9 (vii) When applicable, a reference to all related or prior  
10 appeals, including the appropriate citations for those appeals.

11 **(2) Filing Fast Track Response. Within 20 days from the**  
12 **date a fast track statement is served, the respondent and**  
13 **cross-respondent shall file an original and one copy of a**  
14 **fast track response and serve one copy of the fast track**  
15 **response on the opposing party. The fast track response**  
16 **shall substantially comply with Form 12 in the Appendix of**  
17 **Forms. The fast track response shall not exceed 10 pages**  
18 **in length and shall include additional authority and factual**  
19 **information necessary to rebut the contentions in the fast**  
20 **track statement. [Emphasis added.]**

21 **(3) Expanded Fast Track Statement or Response. A party**  
22 **may seek leave of the Supreme Court to expand the length**  
23 **of the fast track statement or response. The requesting**  
24 **party must demonstrate that the complexity of the case and the**  
25 **issues presented warrant granting the request. A request for**  
26 **expansion must be filed at least 10 days before the fast**  
27 **track statement or response is otherwise due, and must**  
28 **specify the number of additional pages requested.**

(4) **Appendix.** The parties have a duty under Rule 30 to confer and attempt to reach an agreement concerning a possible joint appendix to be filed with the fast track statement. In the absence of an agreement respecting a joint appendix, appellant shall prepare and file a separate appendix with the fast track statement, and respondent may prepare and file a separate appendix with the fast track response. The preparation and contents of appendices shall comply with Rules 30 and 32 and shall be paginated sequentially. Every assertion in the fast track statement or response regarding matters in an appendix shall cite to the specific page number that supports that assertion.

**(e) Extensions of Time.**

**(1) Transcripts or Rough Draft Transcripts.** A court reporter or recorder may request, by telephone, a 5-day extension of time for the preparation of a transcript or rough draft transcript if such preparation requires more time than is allowed under

1 this Rule. The Supreme Court clerk or designated deputy may,  
2 for good cause, grant such requests by telephone or by written  
order.

3 **(2) Fast Track Statements or Responses. Either party may**  
4 **request, by telephone, a 5-day extension of time for filing**  
5 **a fast track statement or response. The Supreme Court**  
6 **clerk or designated deputy may, for good cause, grant**  
7 **such requests by telephone or by written order. [Emphasis**  
8 **added]**

9 **(3) Subsequent Request for Extensions.** Any subsequent  
10 request for an extension of time must be made by written  
11 motion to the Supreme Court. The motion must justify the  
requested extension in light of the time limits provided in this  
Rule, and shall specify the exact length of the extension  
requested. Extensions of time for the filing of fast track  
statements and responses shall be granted only upon  
demonstration of extreme need or merit. Sanctions may be  
imposed if a subsequent motion for an extension of time is  
brought without reasonable grounds.

12 **(f) Appeal Disposition, Full Briefing, or Calendaring.**

13 (1) Based solely upon review of the transcripts or rough draft  
14 transcripts, fast track statement, fast track response, and any  
15 other documents filed with the court, the Supreme Court may  
16 resolve the matter or direct full briefing.

17 (2) A party may seek leave of the Supreme Court to remove an  
18 appeal from the fast track program and direct full briefing. The  
19 motion must demonstrate that the specific issues raised in the  
appeal are complex and/or too numerous for resolution in the  
fast track program. Counsel for the movant must attach a  
written waiver from the client certifying that counsel has  
discussed the implications of full briefing and that the client  
waives expeditious resolution of the appeal.

20 (3) If the Supreme Court orders an appeal to be fully briefed,  
21 the parties are not required to file transcript request forms  
22 pursuant to Rule 9(a) unless otherwise ordered. If a party's  
23 brief cites to a transcript not previously filed in the Supreme  
24 Court, that party shall cause a supplemental transcript to be  
25 prepared and filed in the district court and the Supreme Court  
under Rule 9 within the time specified for filing the brief in the  
Supreme Court's briefing order. If a party's brief cites to  
documents not previously filed in the Supreme Court, that  
party shall file and serve an appropriately documented  
supplemental appendix with the brief.

26 (4) Subject to extensions, and if the Supreme Court does not  
27 order full briefing, the Supreme Court shall dispose of all fast  
28 track child custody appeals within 90 days of the date the fast  
track response is filed.

1           **(h) Sanctions.** Any party, attorney, court reporter, or court  
2 recorder who lacks due diligence in compliance with this  
3 Rule may be subject to sanctions by the Supreme Court.  
4 Sanctionable actions include, but are not limited to, failure  
5 of appellant to timely file a fast track statement or  
6 respondent's failure to file a fast track response; and  
7 failure of a party to raise material issues or arguments in  
8 a fast track statement or response. [Emphasis added.]

9           **(i) Conflict.** The provisions of this Rule shall prevail over  
10 conflicting provisions of any other rule. [Emphasis added.]

11           NRAP 25 states as follows:

12           **Filing and service.**

13           **(a) Filing.**

14           (1) Filing With the Clerk. A paper required or permitted to be  
15 filed in the Supreme Court shall be filed with the clerk as  
16 provided by this Rule.

17           (2) Filing: Method and Timeliness.

18           (A) Filing may be accomplished by mail addressed to the clerk  
19 at the Supreme Court of Nevada, 201 South Carson Street,  
20 Suite 201, Carson City, Nevada 89701-4702.

21           (B) Unless the court by order in a particular case directs  
22 otherwise, a document is timely filed if, on or before the last  
23 day for filing, it is:

24           (i) delivered to the clerk in person in Carson City;

25           (ii) mailed to the clerk by first-class mail, or other class of mail  
26 that is at least as expeditious, postage prepaid; or

27           (iii) dispatched to a third-party commercial carrier for delivery  
28 to the clerk within 3 calendar days; or

            (iv) deposited in the Supreme Court drop box as provided in  
Rule 25(a)(3); or

            (v) transmitted directly to the clerk by facsimile transmission as  
provided in Rule 25(a)(4).

            (3) Supreme Court Drop Box. A paper may be submitted for  
filing with the clerk of the Supreme Court by means of the  
court's drop box as provided in this Rule.

            ...

**(b) Service of All Papers Required.** Unless a rule requires  
service by the clerk, a party person acting for that party must,  
at or before the time of filing a paper, serve a copy on the other  
parties to the appeal or review. Service on a party represented  
by counsel shall be made on the party's counsel.

1 (c) Manner of Service.

2 (1) Service may be any of the following:

3 (A) personal, including delivery of the copy to a clerk or other  
4 responsible person at the office of counsel;

5 (B) by mail;

6 (C) by third-party commercial carrier for delivery within 3  
7 calendar days; or

8 (D) by electronic means, if the party being served consents in  
9 writing.

10 (2) When reasonable, considering such factors as the  
11 immediacy of the relief sought, distance, and cost, service on  
12 a party shall be by a manner at least as expeditious as the  
13 manner used to file the paper with the court.

14 (3) Service by mail or by commercial carrier is complete on  
15 mailing or delivery to the carrier. Service by electronic means  
16 is complete on transmission, unless the party making service  
17 is notified that the paper was not received by the party served.

18 (d) Proof of Service.

19 (1) Papers presented for filing shall contain either of the  
20 following:

21 (A) an acknowledgment of service by the person served; or

22 (B) proof of service in the form of a statement by the person  
23 who made service certifying:

24 (i) the date and manner of service;

25 (ii) the names of the persons served; and

26 (iii) the mail or electronic addresses, facsimile numbers, or the  
27 addresses of the places of delivery, as appropriate for the  
28 manner of service.

(2) Proof of service may appear on or be affixed to the papers  
filed.

(3) The clerk may permit papers to be filed without  
acknowledgment or proof of service but shall require such to  
be filed promptly thereafter. The court will not take any action  
on any such papers, including requests for ex parte relief, until  
an acknowledgment or proof of service is filed.

1 **A. MITCH'S MOTION TO FILE COMBINED FAST TRACK STATEMENT AND RESPONSE**  
2 **OF MAXIMUM OF 25 PAGES SHOULD BE DENIED AS UNNECESSARY AND**  
3 **UNTIMELY FILED**

4 MITCH clearly should have addressed his alleged concerns or questions regarding the  
5 length of the combined Fast Track Statement and Response well before the due date of May 9,  
6 2011. Again, a phone call to a staff attorney at the Supreme Court Clerk's office in April 2011  
7 would have helped MITCH to proceed in a timely manner, with proper direction. Yet, MITCH  
8 waited until the day the combined Fast Track Statement and Response were due to address his  
9 curious and alleged confusion with the Nevada Rules of Appellate Procedure. NRAP 3(E)(d),  
10 cited above, includes the clear language concerning how long Mitch's combined statement is  
11 allowed to be in length.

12 MITCH's Motion should have been filed at least ten days before his Fast Track Statement  
13 and Response were due to be filed pursuant to the Court's Order filed on April 18, 2011. See  
14 NRAP 3E(d)(3) cited above. Throughout the history of the District Court Case, MITCH has  
15 proceeded in such a manner as to continually delay and/or thwart progress and resolution of  
16 important custodial and joint legal custody issues. MITCH, acting as his own attorney, abuses the  
17 Court process in the Supreme Court actions and District Court action to delay all matters whenever  
18 possible. Even today, with explicit orders issued by the District Court, MITCH, continues to delay  
19 those proceedings by preparing erroneous Orders, violating Orders and impeding the entire  
20 process.

21 CHRISTINA and her counsel are hopeful that this Court will not tolerate MITCH's wrongful  
22 conduct, violation of clear Court Orders and Rules and his unbelievable, litigious tactics.  
23 CHRISTINA and her counsel ask this Court to assist them in receiving final and prompt Orders  
24 which are best for the children. MITCH must finally be stopped from employing more abuse of the  
25 legal process. MITCH will employ any legal maneuver he can to keep this matter from full  
26 resolution and in keeping CHRISTINA from receiving final orders which will aid the minor children  
27 at issue.

28 . . .

. . .