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13  
14 IN THE SUPREME COURT OF  
15 THE STATE OF NEVADA

CASE NO.: 57327

16 CHRISTINA CALDERON STIPP,  
17 Appellant/Cross-Respondent,

18 v.

19 MITCHELL DAVID STIPP  
20 Respondent/Cross-Appellant,  
21

22 **RESPONDENT'S REPLY TO COMBINED RESPONSE/OPPOSITION TO MOTIONS TO**  
23 **FILE COMBINED FAST TRACK STATEMENT AND RESPONSE OF MAXIMUM OF 25**  
24 **PAGES AND TO DIRECT TRANSMITTAL OF CHILD CUSTODY EVALUATION UNDER**  
25 **SEAL; RESPONSE TO APPELLANT'S COUNTERMOTION FOR NEW ORDER SETTING**  
26 **DUE DATE FOR APPELLANT'S CHILD CUSTODY FAST TRACK RESPONSE; AND**  
27 **OPPOSITION TO COUNTERMOTION FOR SANCTIONS**  
28

COMES NOW, Respondent/Cross-Appellant, MITCHELL D. STIPP ("Mitchell"), by and through his attorney Radford J. Smith, Esq., and hereby files the above-captioned reply, response and opposition. This filing is made and based upon the following points and authorities.

DATED this 28 day of May, 2011.

RADFORD J. SMITH, CHARTERED

  
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I.

**REPLY TO OPPOSITION TO MOTION RE: COMBINED  
FAST TRACK STATEMENT AND RESPONSE**

On May 9, 2011, Mitchell filed, out of an abundance of caution, a motion requesting that he be allowed to utilize 25 pages in his combined Fast Track Statement and Response. Rather than allowing this Court to rule upon Mitchell's motion without responding or opposing the matter (because Appellant/Cross-Respondent, Christina Calderon-Stipp ("Christina"), does not actually appear to oppose Mitchell's specific page limitation request), Christina has instead filed a lengthy response and opposition to that rather simple motion.

Here, this Court directed Mitchell to file a *combined* Fast Track Statement and Response.<sup>1</sup> NRAP 3E addresses the length of a Fast Track Statement (no greater than 15 pages) and a Response (no greater than 10 pages) but does not address the length of a *combined* Fast Track Statement and

<sup>1</sup> This Court's Order/Procedural-Order dated April 18, 2011 (Document No. 11-11508), at page 2 provides that "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." (emphasis added).

Response, and so, logically, Mitchell combined the length of the two page limitations and surmised that his filing could be 25 pages. Again, out of an abundance of caution, Mitchell filed a motion simply to explain why he chose a maximum of 25 pages.

The notion that Mitchell's motion was designed to delay this appeal is ludicrous (indeed, Christina is the party seeking an extension to file her Fast Track Response), and Christina's citation to NRAP 3E(d)(3) is misplaced. NRAP 3E(d)(3) reads:

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

(emphasis added). Here, Mitchell is not seeking to expand either his Fast Track Statement or Response (which if filed separately he could utilize 25 pages). He is simply seeking guidance where the NRAP do not offer a direct answer. Moreover, Mitchell submitted simultaneously with his motion his Fast Track Statement and Response together with his appendix (which only remain pending for filing until this Court rules on Mitchell's motion).

## II.

### **REPLY TO RESPONSE TO MOTION TO DIRECT TRANSMITTAL OF CHILD CUSTODY EVALUATION UNDER SEAL**

In the decision that is the subject of the parties' appeals, the district court, Judge Sullivan, relied upon and extensively quoted the child custody evaluation performed by Dr. John Paglini, the court appointed psychologist. Mitchell believes that the district court record includes that report, and that the report is an important part of this Court's review of Judge Sullivan's order. EDCR 5.13 does not permit the report to be reproduced by an attorney, however, without an order of the court. The report is part of the court's file, and held under seal, and under EDCR 5.13(f) "may not be viewed or released to anyone

1 except a judicial officer or an employee of a judicial officer without an order of the court.” In other  
2 words, Mitchell cannot copy it (and include it as part of his appendix), but the members of this Court, as  
3 judicial officers, may review the report “without an order of the court.” It is for these reasons that  
4 Mitchell has requested permission to have the report transmitted to this Court for its review.

5 The plain intent of EDCR 5.13 is to prevent the private and protected information from being  
6 disseminated by the parties or their counsel. Mitchell has requested, as part of his motion, that the report  
7 be transmitted under seal.  
8

9 Christina argues in her response that because the report was not filed with the clerk of the district  
10 court, it cannot be part of the record.<sup>2</sup> The procedure used in this case was that prescribed by EDCR  
11 5.13 – each attorney was provided with a copy of the report, and the parties were only permitted to read  
12 it. EDCR 5.13 does not permit the filing of the report, although it does permit the district court to make  
13 it an exhibit, or part of the “open court file.” Judge Sullivan, by extensively quoting the conclusions set  
14 forth in Dr. Paglini’s report, obviously and plainly rendered the report part of the record of this case.  
15 Indeed, Judge Sullivan was free to utilize Dr. Paglini’s report as “direct evidence” of the facts within Dr.  
16 Paglini’s personal knowledge that underlie the quoted conclusions. *See* EDCR 5.13(c).  
17  
18

19 Oddly, Christina, at page 17 of her response, argues that the “most compelling” argument for  
20 exclusion of the report is that the district court “based its faulty Decision on multiple hearsay statements  
21 and information contained in the Custody Evaluation Report.” This argument *supports* the notion that  
22 the district relied upon the report, as it was permitted to do under EDCR 5.13, in formulating its  
23 decision, and thus it was part of the open file of the district court. Christina’s misplaced argument does  
24 not suggest that Dr. Paglini’s report was not part of the record, but instead goes to the notion of whether  
25 Judge Sullivan should have held an evidentiary hearing to support any findings he rendered. That is a  
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28 <sup>2</sup> Christina cites an older version of EDCR 5.70 in her response. Since 2003, the confidentiality of outsourced assessments has been addressed in EDCR 5.13.

1 different issue, and is extensively addressed by Mitchell in his combined Fast Track Statement and  
2 Response.

3 Ironically, while Christina objects to the report being made available to this Court as part of this  
4 record on appeal, she sees fit to characterize the report extensively in her Fast Track Statement and her  
5 response to Mitchell's motion. Mitchell believes such characterizations constitute a violation of EDCR  
6 5.13, and emphasize why this Court should have the actual report to review when determining the basis  
7 for Judge Sullivan's order and whether his quoted conclusions in Dr. Paglini's report were supported by  
8 evidence that Judge Sullivan could properly review under EDCR 5.13.  
9

### 10 III.

#### 11 **RESPONSE TO COUNTERMOTION FOR EXTENSION OF TIME TO FILE CHRISTINA'S** 12 **FAST TRACK RESPONSE AND OPPOSITION FOR ISSUANCE OF SANCTIONS**

13 Christina has not articulated any basis for her claim that Mitchell's motions were filed to delay  
14 this appeal, or were brought in bad faith. Mitchell properly filed two simple motions. In one case, the  
15 NRAP failed to provide guidance on the issue, and in the other case, Mitchell adequately stated his legal  
16 basis for his motion to have Dr. Paglini's report transmitted to this Court as part of the district court's  
17 record. For these reasons, there is no basis to sanction Mitchell by awarding Christina her requested  
18 attorney's fees.  
19

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21 It is unclear how either of Mitchell's motions, or their outcomes, would affect Christina's  
22 response to Mitchell's Fast Track Statement that addresses the issues of law before the Court.  
23 Nevertheless, Mitchell has no objection to a brief continuance.  
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25 ...

26 ...

27 ...

28 ...

IV.

CONCLUSION

For the reasons set forth herein, Mitchell respectfully requests that the Court grant his motions, and deny the affirmative relief Christina has requested in response to those motions.

DATED this 20 day of May, 2011

RADFORD J. SMITH, CHARTERED



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RADFORD J. SMITH, ESQ.

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Attorneys for Respondent/Cross-Appellant Mitchell Stipp

**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing document described as "RESPONDENT'S REPLY TO COMBINED RESPONSE/OPPOSITION TO MOTIONS TO FILE COMBINED FAST TRACK STATEMENT AND RESPONSE OF MAXIMUM OF 25 PAGES AND TO DIRECT TRANSMITTAL OF CHILD CUSTODY EVALUATION UNDER SEAL; RESPONSE TO APPELLANT'S COUNTERMOTION FOR NEW ORDER SETTING DUE DATE FOR APPELLANT'S CHILD CUSTODY FAST TRACK RESPONSE; AND OPPOSITION TO COUNTERMOTION FOR SANCTIONS" by mail pursuant to NRAP 25 on this 20 day of May, 2011, to all interested parties as follows:

Patricia L. Vaccarino, Esq.  
Vaccarino Law Office  
8861 W. Sahara Avenue., Suite 210  
Las Vegas, Nevada 89117

  
An employee of Radford J. Smith, Chartered