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Tracie K. Lindeman
Clerk of Supreme Court

5 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

6 CHRISTINA CALDERON STIPP,
Appellant/Cross-Respondent,
7 vs.
8 MITCHELL DAVID STIPP,
Respondent/Cross-Appellant.
9

SUPREME COURT CASE NO. 57327

10 **CHILD CUSTODY FAST TRACK RESPONSE**

- 11 **1. Name of party and attorney filing this fast track response:** Christina Calderon-
Stipp; Patricia L. Vaccarino, Esq., Nevada Bar No. 005157, 8861 W. Sahara Ave., Suite 210, Las
12 Vegas, NV 89117, (702) 258-8007
- 13 **2. Proceedings raising same issues:** MITCH filed an Appeal with this Court under Case
14 57876. This Appeal did not address the timeshare issue, but did address the collateral, custody
15 issues concerning joint legal custody, including the appointment of a Parenting Coordinator and
16 MITCH's unfounded request for sole legal custody. This Court should also be aware that, as
17 MITCH's Appeal on file with this Court as referenced above indicates, the District Court has
18 continued to address ancillary issues and enforce its related custody orders while the appellate
19 matters pend. If this Court had the benefit of reviewing the exhaustive amount of paper filed by
20 the parties since this Appeal was properly and prudently filed by CHRISTINA, there would be no
21 question that Judge Potter has entered orders on Joint Legal Custody matters (serious mental
22 healthcare issues) which serve to try and bring a closure to this litigation which MITCH enjoys.
23 Judge Potter has sought to assist the children and this family without further delay. The District
24 Court record is replete with examples of CHRISTINA's dedication to the children's well-being and
25 MITCH's litigation and obstructionist tactics to avoid properly coparenting with CHRISTINA. The
26 children and this family will suffer much more mental, emotional and financial distress should this
27 Court unnecessarily remand this case to the District Court to re-open the proceedings and conduct
28 a full evidentiary hearing upon MITCH's baseless Motion (on issues from 2008 and 2009) as MITCH

1 has suggested to this Court in his Fast Track Statement on file. The District Court has already,
2 post filing the Appeals, properly addressed CHRISTINA's Motions to have the children receive
3 necessary mental health evaluations which MITCH has adamantly opposed since 2008. This Court
4 may be also interested in reviewing the papers filed since the Appeal was filed. Indeed,
5 CHRISTINA attempts to ensure the children's mental, physical and emotional well-being are
6 evidenced in the District Court record. Pursuant to NRAP 10, this Court may want to have the
7 balance of the District Court record transmitted to this Court for review in making a final decision
8 upon this appeal.

9 **3. Procedural history:** CHRISTINA and her counsel respectfully request that this Court refer
10 to her FAST TRACK STATEMENT filed with this Court on March 31, 2011 for the procedural
11 history. Counsel is limited to ten pages for this filing, and it is respectfully requested that the Court
12 refer to CHRISTINA's March 31, 2011 filing.

13 **4. Statement of facts:** The Court changed the custodial status of the parties without making
14 a preliminary Finding under Rooney v. Rooney 109 Nev. 540, 853 P.2d 123 (1993) that an
15 evidentiary hearing was required. The Court also clearly considered facts and occurrences which
16 took place outside the scope of the ten-week period between August 7, 2009 and October 29, 2009
17 in opposition to McMonigle v. McMonigle, 110 Nev. 1407, 887 P.2d 742 (1994).

18 CHRISTINA's full, Statement of Facts is contained in her Fast Track Statement filed with this
19 Court on March 31, 2011. Additionally, since said filing this Court has accepted for review Dr.
20 Paglini's Report. The relevant facts contained in said Report follow.

21 Dr. Paglini's Report clearly negated MITCH's false charges of emotional abuse and other
22 allegations made by MITCH against CHRISTINA. Dr. Paglini was concerned about increasing
23 MITCH's time with the children due to the "deceit and deception" MITCH undertook with respect to
24 his actions in secretly receiving treatment for MIA with two healthcare providers AND BECAUSE
25 THE PARTIES SO RECENTLY AGREED UPON A TIMESHARE ARRANGEMENT. See Dr.
26 Paglini's Report transmitted to this Court. Upon receipt of MITCHELL's Motion filed with this Court
27 on May 9, 2011, a copy of Dr. Paglini's Confidential Report has been ordered to be transmitted to
28 the Supreme Court for review. CHRISTINA and her counsel opposed MITCH's Motion to transmit

1 this Report only because MITCH failed to timely and properly request an expansion of the District
2 Court record, not because Dr. Paglini's Report did not support her position in the District Court and
3 this Court. Dr. Paglini's Report, an offer of proof and not evidence, also fully supports
4 CHRISTINA's position and reversal of the District Court's order. See Dr. Paglini's Confidential
5 Report, ("Report") p 12. ¹ The reports from MITCH in Dr. Paglini's Report reveal that MITCH also
6 suffered with mental health issues which were not the "fault" of a parent, as MITCH wrongfully was
7 attempting to fault CHRISTINA for any mental health issues from which MIA was suffering dating
8 back to prior to 2008. CHRISTINA's Fast Track Statement does include statements and citations
9 directly from MITCH's Affidavit citing his claims CHRISTINA was emotionally abusing MIA. Yet,
10 MITCH's Response Statement filed in this matter falsely and improperly states he never alleged
11 in any pleading or at any hearing that CHRISTINA has emotionally abused MIA or that MIA has
12 been impacted at all by negative statements CHRISTINA made to her. In fact, MITCH's Motion
13 for Reconsideration of the Stipulation and Order he reached with CHRISTINA is telling. See APP
14 VOL IV pp 648-665. In this filed paper, MITCH discussed CHRISTINA's "hatred of him" and asks
15 for CHRISTINA to be psychologically tested. MITCH also claimed CHRISTINA harassed him as
16 a basis to modify the timeshare from primary physical custody to CHRISTINA to "joint custody."
17 APP VOL IV p 660. Also, MITCH attached certain E-mails to his Motion that contain MITCH's false
18 allegations that CHRISITNA had encouraged MIA to make statements such as "Daddy is a cheater".
19 See APP, VOL IV pp 673-674. MITCH also filed an Opposition and Response to CHRISTINA's
20 Motion to Continue the June 4, 2009 hearing. During those proceedings MITCH already alleged
21 that CHRISTINA was emotionally abusing MIA by her hatred and her alienating conduct. In this
22 document, MITCH asks for a custody assessment based upon CHRISTINA conduct and hatred of
23 MITCH. See APP VOL IV pp 684 and 690.

24 Yet, Dr. Paglini's Report adeptly notes that MIA never reported any alleged, negative
25 statements about MITCH to anyone other than MITCH and his secretly and unilaterally hired doctor.

26 ¹Dr. Paglini's Confidential Report is prohibited from being copied by anyone pursuant to EDCR 5.13. Due to the confidential
27 nature of the Report, the Local Court Rule and the fact that this Report should not be published in the Supreme Court Case to be accessed
28 by the public, CHRISTINA's counsel has not made a separate appendix for the Confidential Report. As the Report has been transmitted to
the Supreme Court upon MITCH's Motion, CHRISTINA's counsel will simply cite to the Report with appropriate page number for each citation.

1 As Dr. Paglini's Report notes, MIA only made the statements to Dr. Kalodner, MITCH's secretly
2 hired doctor who "treated" MIA for four months without CHRISTINA's knowledge or consent. See
3 Report p 61. The Report also discusses at length MITCH's drinking history, including his May 2008
4 arrest for driving under the influence. These facts are quite relevant because it goes to
5 CHRISTINA's Countermotion filed addressing MITCH's fraud. In her Motion, CHRISTINA
6 requested that MITCH revert to the previous, stipulated timeshare which allowed MITCH
7 approximately a 20% timeshare with the children by agreement.

8 MITCH's fraudulent and secret use of Dr. Kalodner to attempt to serve his litigation strategy
9 is reprehensible. The parties' Marital Settlement Agreement requires "joint" selection of healthcare
10 providers. APP VOL II pp 246. MITCH not only has a duty to ensure his children's health and
11 to coparent, he has a duty of candor toward the tribunal as an attorney.

12 Dr. Paglini's Report also noted that MITCH reported that he was cited on numerous
13 occasions for speeding. See Report pp 14-15. MITCH failed to advise CHRISTINA of these issues
14 as well when "negotiating" his enhanced timeshare from 20% to 30% with CHRISTINA in June
15 2009.

16 The most compelling part of the Report which defies MITCH's Motion for Joint Custody and
17 his Cross-Appeal can be found at p 16 of the Report. When asked about what CHRISTINA says
18 about MITCH, MIA indicated that her Mom likes her Dad. MIA perceived her parents as getting
19 along. MIA also perceives her mother and Amy as getting along well. MIA denied that her mother
20 spoke poorly of Amy AND MITCH, again disputing the whole basis of MITCH's frivolous Motion filed
21 October 29, 2009 which started this unnecessary, costly and, long, legal process.

22 Dr. Paglini's Report discusses Dr. Kalodner's curious involvement with MIA. The Report
23 notes that Dr. Kalodner reported that beginning December 2009, MITCH reported he was going
24 back to court and wanted to obtain 50/50 custody. In violation of EDCR 5.12, MITCH asked for a
25 letter pertaining to some of MIA's comments made during "treatment." As the Report notes, Dr.
26 Kalodner was very hesitant to write a letter for MITCH. Dr. Kalodner requested MITCH write the
27 outline of the letter. Dr. Kalodner was allowing a parent to create an initial medical record for MIA.
28 Dr. Kalodner reported to Dr. Paglini that she did not see that MIA was being abused, but if she did,

1 would have to report it. See Report pp 33.

2 On November 30, 2009, CHRISTINA filed a Countermotion to Set Aside the August 7, 2009
3 Stipulation and Order due to MITCH's fraud upon the Court. See APP VOL V pp 797-819. In that
4 paper, CHRISTINA also argued the legal preposition of vacatur. See APP VOL V p 819.
5 CHRISTINA clearly cited the law concerning MITCH's fraud in failing to disclose his arrest and
6 prosecution for driving under the influence ("DUI") which occurred prior to the parties reaching the
7 more recent, stipulated timeshare, allowing MITCH an approximate 30% timeshare. MITCH also
8 defrauded CHRISTINA concerning his secret "treatment" of MIA by Dr. Kalodner and utilizing his
9 fraud as a basis for his Motion.

10 **5. Issues on appeal:** CHRISTINA's counsel respectfully requests this Court review
11 CHRISTINA's Fast Track Statement for issues on appeal "a" through "d".

12 e. If this Court somehow decides to remand this case for a full evidentiary hearing
13 pertaining to issues stemming only between August 1, 2009 and October 29, 2009, the Court must
14 also consider CHRISTINA's Countermotion to revert to the previous Stipulation and Order allowing
15 MITCH an approximate 20% timeshare with the children upon CHRISTINA's Countermotion filed
16 on November 30, 2009.

17 **6. Legal argument, including authorities:** MITCH and his counsel in defiance of well-settled
18 legal principals, argue that Judge Sullivan is allowed to make "findings" and change custody
19 without conducting the required evidentiary hearing. MITCH claims Judge Sullivan "found" that MIA
20 has "re-manifested" behaviors. Yet, MITCH and Judge Sullivan are in error. Dr. Paglini stated
21 MITCH was well aware of MIA's defiance issues and meltdowns since 2008. Dr. Paglini reviewed
22 E-mails between MITCH and CHRISTINA regarding MITCH hitting MIA because of her
23 inappropriate behavior approximately one and one-half years earlier. In 2008, MITCH explained
24 to CHRISTINA why he hit MIA, how he was appropriate and that it was not "abuse". The E-Mails
25 indicate that MITCH was dealing with MIA's defiance and related issues well before any dynamics
26 emerged in the case (Summer 2009)". See Report p 62. Thus, there was no "re-manifestation"
27 of MIA's issues, but long standing issues for MIA that both parents agreed were never eliminated.
28 There was not a change in circumstance on this issue for the Court to consider.

1 In fact, CHRISTINA argued, at length that the parties already knew of MIA's long-standing
2 and evolving mental health issues prior to reaching the stipulated timeshare of an approximate
3 70/30 timeshare. CHRISTINA' filing of November 30, 2009 contains points and authorities
4 concerning the fact that MITCH's issues were deemed RES JUDICATA, already addressed and
5 decided by the parties prior to MITCH filing his frivolous Motion. Later, MITCH tried to wrongfully
6 blame the same mental health issues on CHRISTINA when filing his Motion on October 29, 2009.
7 See APP VOL V pp 820-824. In fact, there are E-mails attached to CHRISTINA's filing
8 documenting both parties awareness of MIA's issues and problems in December 2008 and MIA's
9 initial referral to a psychologist which MITCH flatly rejected. The E-mails reveal that MIA called
10 MITCH a "jerk, silly bitch and a liar".

11 MITCH also falsely asserts to this Court that the District Court made a "finding that adequate
12 cause existed" to change custody. Again, well-settled law requires a trial and full due process
13 before any finding can be made by a Court. Judge Sullivan only ordered an evaluation to
14 investigate MITCH's allegation of "abuse and alienation" as cited in CHRISTINA's Fast Track
15 Statement filed on March 31, 2011. In fact, Judge Sullivan commented, "but now you want to
16 throw that all back up", referring to MITCH's latent claims of alleged emotional abuse and alienation.
17 See APP VOL I pp 147-171, specifically pp 161-163.

18 Dr. Paglini's entire Report renders it clear that MITCH's Motion should have been fully
19 denied, without an evidentiary hearing. Also, MITCH's contention is FALSE that the parties
20 Stipulation and Order reached is not RES JUDICATA. The law provides that a Stipulated Order
21 upon any issue is RES JUDICATA. CHRISTINA's Opposition and Countermotion filed on
22 November 30, 2009 contains much legal authority revealing her legal position. See APP VOL IV
23 pp 791-912. MITCH has also erroneously argued that the Report can be received as direct
24 evidence of facts under EDCR 5.13. However, the Report cannot be utilized as evidence in making
25 findings to change custody without following the proper legal procedure. EDCR 5.13 specifically
26 states that the Report "may be received as direct evidence of facts contained therein that are within
27 the personal knowledge of the specialist who prepared the report", not facts that are based upon
28 MITCH's fraud and multiple hearsay statements. Judge Sullivan declined to grant MITCH an

1 evidentiary hearing upon his frivolous Motion and the resulting Report at the return hearing on May
2 6, 2010. MITCH simply could not meet the proper legal standards. Judge Sullivan should have
3 simply and properly labeled the parties' timeshare correctly upon MITCH's Motion and
4 CHRISTINA's Countermotion confirming CHRISTINA as primary custodian.

5 In Wiese v. Granata, 887 P.2d 744, 110 Nev. 1410 (Nev., 1994) the Supreme Court opined
6 that due process requires that notice be given before a party's substantial rights are affected.
7 Litigants are entitled to due process and a full trial on the merits before their custodial rights are
8 permanently changed. Yet, no evidentiary hearing was required to be set, as MITCH did not
9 evidence a prima facie case upon his Motion.

10 Also, as the parties did not truly share "joint" custody under the definition recently defined
11 by our Supreme Court in Rivero, the best interest standard would not apply to MITCH's requested
12 modification. Indeed, if MITCH's case was meritorious and warranted a trial, the Court would have
13 been required to apply the standard set forth in Ellis v. Carucci, 123.Nev., No. 18, 161, P.3d. 239,
14 (2007). The Court's Decision and Order contains double, triple and even quadruple hearsay quotes,
15 conjecture and assumptions, not evidence justifying the Findings and Order of the Court. Judge
16 Sullivan, without a trial, applied only a "best interest" standard, which is not the standard as cited
17 in Ellis.

18 Also, in McMonigle v. McMonigle, 110 Nev. 1407; 887 P.2d 742, (1994), the Supreme Court
19 ruled that the facts warranting the required change of circumstances to change custody must occur
20 from the issuance of the last order. In this case, a trial was and is not warranted. Yet, it is clear
21 many of Judge Sullivan's "Findings" improperly supporting a change in custody indeed stemmed
22 from old, underlying facts and circumstances which existed prior to the August 7, 2009 Stipulation
23 and Order.

24 The District Court should only have reviewed what transpired during that window of time
25 between August 7, 2009 and October 29, 2009 in denying MITCH's Motion. In fact, Judge Sullivan
26 could have reverted to the 80/20 timeshare defined in the previous Stipulation and Order upon
27 CHRISTINA's Countermotion wherein she alleged MITCH's fraud upon her and the Court.

28 MITCH's entire basis for his change in custody to allow him a 50% timeshare was his

1 allegation that CHRISTINA was emotionally abusing MIA and disparaging him and his wife as cited
2 in his October 29, 2009 Motion, but never offered as proof in the Report. The Court-appointed
3 evaluator determined that MITCH had no basis for his claims, and that no emotional abuse was
4 occurring. See citations noted above. No further defense nor trial was necessary based upon Dr.
5 Paglini's Report.

6 In Rooney v. Rooney 109 Nev. 540,853 P.2d 123, the Supreme Court ruled that the District
7 Court must determine, in custodial matters, whether or not the party seeking a change in custody
8 has demonstrated an adequate cause for holding a hearing. After reviewing Dr. Paglini's Report
9 and based upon Nevada law, the Court should have denied MITCH's Motion. Judge Sullivan
10 should have declared CHRISTINA primary custodian under Rivero , and granted CHRISTINA all
11 of her fees and costs incurred.

12 In calculating the percentage of time each party already had with the children in following
13 the previous Stipulation and Order, CHRISTINA was indeed exercising primary custody. In Rivero
14 v. Rivero 125 Nev. ___, 216 P.3d 213 (Adv. Opn. No. 34, Aug. 27, 2009), the Supreme Court
15 provided the proper calculation to be used in determining a joint custodial status. Indeed, the
16 Court's Decision and Order filed November 4, 2010 should have ended at the top of page 17 where
17 the Court properly found that "a joint custody arrangement does not currently exist..." See APP
18 VOL VIII pp 1495-1514. In Rivero, the Court ordered that each parent must have physical custody
19 of the child at least 40% of the time to be a joint custodian.

20 The Supreme Court determined in Rivero that if a party agrees to joint physical custody, and
21 include this or a like term in their custodial agreement, unless both parties receive at least 40% of
22 custodial time with a child, the defining term cannot truly be construed as a joint physical custodial
23 status by the Court. If, in fact, joint custody truly is not being shared by the parties, the Court is
24 bound to so order, and end the analysis.

25 As stated in CHRISTINA's Reply to Respondent's Order to Show Cause Regarding Dismissal
26 of Cross-Appeal filed with this Court on April 8, 2011, the legal issues and requests made in
27 MITCH's Cross-Appeal were not properly presented to the District Court. Pursuant to Nevada and
28 Federal law, such oral or implied requests are RES JUDICATA. It is respectfully requested that the

1 Court review this brief. See Court Orders filed with the District Court on December 8, 2009 and
2 January 13, 2010, with Notice of Entry of Order being filed on February 1, 2010. See APP VOL
3 V pp 981-988.

4 However, pursuant to the parties' Marital Settlement Agreement ("MSA"), the parties' contract
5 required Judge Sullivan to wait to award all fees and costs CHRISTINA incurred. Pursuant to the
6 parties' MSA, the "prevailing party" as "finally determined" is to receive "all costs and expenses,
7 including reasonable attorney's fees and costs, incurred by such prevailing party in such action or
8 proceedings, in enforcing such judgment, and in connection with any appeal
9 from such judgment." [Emphasis added.] SEE APP VOL II p 254. Thus, CHRISTINA is entitled
10 to attorney's fees and costs through the conclusion of this appeal.

11 The District Court record clearly evidences that MITCH and his counsel failed to file a Motion
12 for or to effectuate proper notice and service upon CHRISTINA upon his request for an award of
13 attorney's fees and costs as required by NRCP 5. See cases cited in Christina's Reply filed with
14 this Court April 8, 2011. This Court has consistently held that the effect of improper or no service
15 of even a proper, written Motion leaves the District Court without authority to grant the requested
16 relief. MITCH's failure to properly preserve the issue which is the subject of his Cross-Appeal in
17 the District Court action deprives this Court of the ability to grant MITCH appellate relief. Also,
18 CHRISTINA should be deemed the "prevailing" party upon remand to the District Court.

19 MITCH and his counsel also failed to comply with EDCR 2.20, requiring all Motions to be
20 served and filed, with a memorandum of points and authorities in support of each ground thereof.
21 This Rule was fully cited in CHRISTINA's Reply brief filed with this Court on April 8, 2011.
22 CHRISTINA also relies upon NRCP 7 and NRCP 54 (also fully cited in CHRISTINA's Reply Brief
23 filed with this Court on April 8, 2011). If MITCH believed he was a "prevailing" party in the
24 underlying action and if he believed his request for fees and costs was properly preserved in the
25 Court record, he had to comply with NRCP 54 in properly applying for a fee judgment after the
26 Decision was rendered. Indeed, MITCH had numerous opportunities to properly request an award
27 of fees and costs. Judge Sullivan violated CHRISTINA's rights per the MSA as it relates to
28 attorney's fees and costs. The issue of Dr. Paglini's costs is RES JUDICATA because MITCH

1 never appealed the Order requiring him to solely pay for Dr. Paglini's services. SEE APP VOL V
2 pp 981-988.

3 MITCH filed a "Supplement" prior to the May 6, 2010 hearing on the Return from Dr. Paglini's
4 evaluation and Report. See APP VOL VI pp 1076-1101. Yet, the "Supplement" to which MITCH
5 refers is an untimely and "fugitive" filing. The Supplement is NOT a proper Motion for fees and
6 costs. The Supplement was filed in VIOLATION of EDCR 2.20(e). The mention of fees and costs
7 in an untimely, filed Supplement also violates NRCP 5, NRCP 7 and NRCP 54. Also, pursuant to
8 Nevada law, if the court omitted a ruling upon MITCH's Motion request for fees in a Supplement
9 it is deemed impliedly denied.

10 Judge Sullivan repeatedly revealed his disregard, and disdain or possible confusion
11 regarding for this Court's ruling in Rivero v. Rivero, 216 P.3d 213, Nev., Adv. Opinion No. 46910
12 (2009). On May 6, 2010, Judge Sullivan stated "I'm not worried about Rivero and I can tell the
13 Supreme Court that they can do whatever they want to do and take me off the bench...Far as
14 Rivero, I'm not letting the Rivero at this point say aha, Dad's got 37% of the time, so he doesn't
15 make it..." See APP VOL 1 pp 163-164. CHRISTINA's basic, fundamental legal, procedural and
16 constitutional rights would be disregarded if Judge Sullivan's decision is not reversed and if
17 MITCH's Cross-Appeal is not denied. CHRISTINA is entitled to due process, as supported by
18 Cheek v. FNF Construction Inc., 112 Nev. 1249, 924 P.2d 1347 Nev.,1996.

19 Clearly, it promotes public policy to have custody matters decided in a timely and efficient
20 manner. Regrettably, due to MITCH's abuse of process, the children and CHRISTINA have
21 suffered even more as the District and Appellate Court records reveal. This Court ensures that
22 custodial matters are heard and decided expeditiously pursuant to "Fast Track Rules." NRAP 3E
23 was last revised in 2010. As advocates and judicial officers, we must promote the strong public
24 policy of ensuring that custody matters do not pend in the District Court and the Appellate Court for
25 years and years while the children at issue suffer from the horrible "fall-out" of costly, contested
26 custody litigation and appeals. MITCH's belief that this Court should remand the case to allow a
27 full evidentiary hearing on old issues which do not satisfy his legal burden of modifying custody do
28 not serve this public policy.

1 VERIFICATION

2 I recognize that under **NRAP 3E** I am responsible for timely filing a fast track response and that the
3 Supreme Court of Nevada may impose sanctions for failing to timely file a fast track response. I
4 therefore certify that the information provided in this fast track response is true and complete to the
5 best of my knowledge, information, and belief.

6 DATED this 18th day of July 2011.

7 Respectfully submitted by:

8 VACCARINO LAW OFFICE

9 

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1 **CERTIFICATE OF SERVICE**

2 I certify that on the 18th day of July, I served a copy of **CHILD CUSTODY FAST TRACK**
3 **RESPONSE** upon all counsel of record:

4 ☐ NRAP 25 By personally serving it upon him/her; or

5 ☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es):

6
7 Radford J. Smith, Esq.
8 Mitchell David Stipp, Esq.
64 N. Pecos Rd., #700
Henderson, NV 89074

9
10 Dated this 18 day of July 2011

11 
12 Deborah L. Kollpainter,
13 An Employee of the Vaccarino Law Office