

ORIG

IN THE SUPREME COURT OF THE STATE OF NEVADA

LISA MYERS,
Appellant/Petitioner,

vs.

CALEB O. HASKINS,
Respondent.

) Supreme Court Case No. 59626
) District Court Case No. 00-D-
) 434495

FILED

JUN 13 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT

BY *[Signature]*
DEPUTY CLERK

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RECEIVED
Las Vegas District Court

PETITION FOR EN BANC RECONSIDERATION AND RECALL OF REMITTITUR

COMES NOW LISA MYERS, Appellant In Proper Person, and Petitions this Court for En Banc Reconsideration of Order denying Rehearing in the above-referenced matter.

[Signature]

LISA MYERS
9360 West Flamingo Road, Suite 110-326
Las Vegas, Nevada 89147
Telephone: (702) 401.4440
Appellant/Petitioner, in proper person

1. STANDARD OF REVIEW

RULE 40A. PETITION FOR EN BANC RECONSIDERATION

(a) **Grounds for En Banc Reconsideration.** En banc reconsideration of a panel decision is not favored and ordinarily will not be ordered except when (1) reconsideration by the full court is necessary to secure or maintain uniformity of its decisions, or (2) the proceeding involves a substantial precedential, constitutional or public policy issue.

NRAP RULE 41. ISSUANCE OF REMITTITUR

(a) When Issued; Contents.

(1) When Issued. The court's remittitur shall issue 25 days after the entry of judgment unless the time is shortened or enlarged by order. Unless an appeal or

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1 other proceeding is dismissed under Rule 42, a formal remittitur shall issue. The
2 timely filing of a petition for rehearing or en banc reconsideration stays the
3 remittitur until disposition of the petition, unless the court orders otherwise. If the
4 petition is denied, the remittitur shall issue 25 days after entry of the order denying
5 the petition, unless the time is shortened or enlarged by order.

6 **2. ISSUES**

7 **A. THIS APPELLANT'S PETITION FOR REHEARING WAS DENIED AND** 8 **A REMITTITUR WAS ISSUED, DESPITE THE FACT APPELLANT NEVER** 9 **RECEIVED THE ORDER DENYING REHEARING AND JUST RECENTLY** 10 **RECEIVED THE REMITTITUR**

11 Appellant **never** received the Order Denying the Petition for Rehearing and just recently
12 received the Remittitur. Therefore, Appellant is filing this Petition for En Banc
13 Reconsideration and Recall of Remittitur so she may proceed in this matter. Appellant's right
14 of due process have been violated, Appellant is in pro per and is requesting this Court to
15 Recall the Remittitur due to mistake, inadvertance, error, etcetera so Appellant may present
16 her Petition for En Banc Reconsideration and move forth in this matter for an ultimate
17 resolution. Further, this matter was noted as "Expedited" for an unknown reason, thereby
18 prejudicing Appellant in this matter, *See Exhibit "1"*, attached herewith.

19 **B. THIS APPELLANT'S APPEAL WAS DENIED SPECIFICALLY STATING** 20 **THERE WAS A CLERICAL ERROR AS THE FILE DATE OF THE NEOJ** 21 **NOTED WAS THE 3RD INSTEAD OF THE 4TH AND THE SUPREME COURT** 22 **LACKS JURISDICTION WHEN IN FACT THE DISTRICT COURT** 23 **LACKED THE JURISDICTION TO EVEN HEAR THIS MATTER**

24 At the June 13th TPO hearing for extension of the TPO, TPO Hearing Master Lynn Conant
25 refused to hear this matter in her courtroom noting opposing counsel, Ms. Roberts engaged
26 in ex-parte communication by contacting the department, not for a scheduling issue, but to
27 specifically request the TPO matter be completely deferred to the D-case, in which she had
28 a Motion hearing on calendar for June 15th on OST (of which I was again never properly
served with the OST in the D-case or the Opposition/Counter-motion in the T-case and
therefore, I was not given the appropriate time in which to prepare and file a response to
either the Motion, nor the Opposition/Counter-motion under the rules). Further, Ms. Conant
blatantly refused to allow Appellant to speak whatsoever despite the fact this was Appellant's
Motion for Extension of the TPO. Ms. Conant also refused to allow Appellant's right of due
process. Therefore, the issue of the extension on the TPO was deferred to the June 15th OST
hearing (which Appellant had Appealed due to lack of jurisdiction, the fact Huneycutt is not
applicable in this matter and the fact Ms. Roberts is barred by *McMonigle, Murphy*, res
judicata and *La Forge* in that Ms. Roberts previously put forth her Motion and a decision was
rendered January 19th). knowing the D-case matter is still currently on Appeal and under the

1 jurisdiction of the Supreme Court of Nevada.

2 At this June 15th Motion hearing on for OST, Judge Duckworth rendered decisions, made
3 Orders and basically refused to allow me to argue my matter, to include the TPO case. While
4 he stated on record that he knew he didn't have jurisdiction to hear this matter as it is on
5 Appeal, he said he would send correspondence to the Supreme Court proffering his opinions
6 and requesting this Honorable Supreme Court to remand jurisdiction back to his court so he
7 may set for an evidentiary hearing and make a decision in the matter, ultimately prejudicing
8 both the Supreme Court and District Court matters. Despite the fact the District Court matter
9 is on Appeal, opposing counsel, Amanda Roberts re-submitted her Motion for Sole Legal,
10 Primary Physical, Evaluation of this Appellant, etcetera for the second time in this matter,
11 attempting to take advantage of and ultimately defraud the newly appointed Family Court
12 Judge, Duckworth. This Motion was previously decided upon by January 19th before Judge
13 Moss, who advised Ms. Roberts the District Court no longer had jurisdiction of this matter,
14 and as such, this matter could not be heard in the District Court, as it was on Appeal. Judge
15 Moss is no longer assigned to this matter as she recused herself due to engaging in ex-parte
16 communication with opposing counsel, Amanda Roberts, of which Ms. Roberts was the
17 instigator of same on more than one occasion.

18 Opposing counsel "served" a copy of her Opposition and Countermotion upon Applicant's
19 father the prior Thursday evening to apparently forward on to Appellant at Appellant's
20 father's property. There has never been any notation, discussion, etcetera of Appellant's
21 father's address in which he was given these documents by opposing counsel's process
22 server, nor has there ever been confirmation that Appellant resides at this property. Further,
23 Appellant's residential address is confidential with the Court and Appellant never received
24 these documents in the mail prior. Additionally, the content within opposing counsel's
25 pleadings lack the jurisdiction to bring about matters which are currently under the
26 jurisdiction of the Supreme Court of Nevada and in which are specifically on Appeal.
27 Therefore, opposing counsel and Adverse Party are attempting to fraud the Court, have
28 committed perjury and are attempting to prejudice and manipulate this matter so they may
prevail. As such, the Opposition and Countermotion must be stricken and dismissed due to
untimeliness, defective service, lack of jurisdiction, fraud, etcetera. *See* NRCPC Rule 4, Service
of Process and NRCPC Rule 6(d), Time.

22 Ms. Roberts attempted to put forth this Motion for change of custody, etcetera under the
23 Huneycutt case, unfortunately as told to her previously, Huneycutt does not apply in this
24 matter, as this matter in this entirety has been and is still currently on Appeal, under the
25 jurisdiction of the Supreme Court. This Motion was originally calendared for June 28th,
26 however, opposing counsel requested an OST and Judge Duckworth apparently granted same
27 and it is now on calendar for Wednesday, June 15th at 11:00 a.m. In speaking with the JEA
for Department Q this afternoon after receiving their correspondence, which noted a report
from Donna's House was available for review prior to the "return" hearing of June 15th, it
was confirmed this "return" hearing was actually opposing counsel's Motion hearing on OST.

1 The JEA further confirmed this hearing is going forth as scheduled despite the fact an Appeal
2 was filed. Moreover, this matter has yet to have a 16.2 before Judge Duckworth, to begin
3 Discovery (despite the fact Ms. Robert has been unlawfully engaging in discovery against me
4 throughout this process), temporary Orders, etc as this matter has been and is still currently
5 on Appeal due to the actions and Orders of Judge Moss.

6 Further, in receiving an actual copy of the OST the weekend prior to the June 15th OST
7 Motion hearing from my father, it was noted that a process server on behalf of Amanda
8 Roberts, opposing counsel, came to his property stating he was "Ordered to serve legal
9 documents to Brent and Sharon Myers", of which they were involved in a lawsuit, with a note
10 stating to serve Brent and Sharon Myers. The process server never asked for, nor mentioned
11 this Appellant's name whatsoever. In looking at the OST in the D-case, which was signed by
12 Judge Duckworth, it specifically Ordered the following, "...that Defendant Lisa Myers, shall
13 be personally served at the residence of her parents, Brent and Sharon Myers, located at 9999
14 W. Katie Avenue, Las Vegas, Nevada 89147, which is the address where the Defendant was
15 served at the commencement of this action." First, Appellant was never served at this location
16 at any time and that was argued by my prior attorney when this matter first began when Ms.
17 Roberts had filed the Complaint after her client was served with the TPO. Second,
18 Appellant's parents do not reside at that address and the process server actually came to
19 another address in search of my father to serve him directly and not me at all. Third, why isn't
20 NRCF Rule 4 being adhered to? Finally, why are Appellant's parents being served on my
21 behalf and expected to act as liaisons or "servers" themselves in getting an OST passed along
22 to me? Apparently, there is an underlying assumption that it is now Appellant's parents'
23 responsibility to make certain I am notified of the OST hearing. It is the burden of the
24 opposing counsel/opposing party to serve their documents to the party of the case, as such
25 they would've had ample opportunity in which to serve me with a copy of the OST at the
26 TPO hearing scheduled just two days prior to said hearing (Monday, June 13th). Furthermore,
27 along with the OST in the D-case matter, an Opposition/Counter-motion in the TPO matter
28 was attached therewith for the hearing to extend the TPO, as well. While the
Opposition/Counter-motion is untimely under the rules and the service of both the OST and
Opposition are ultimately defective, it is more than likely the Court will again accept opposing
counsel's habitual untimely filings, untimely and defective service of documents to me and
will render a decision, while it be prejudicial and unlawful, in consideration of same.

Moreover, I am concerned with regard to the actions of and decisions made by the previously
assigned Family Court Judge Moss in this matter and specifically her Orders which were
rendered despite the fact she was engaging in ex-parte communication with opposing counsel,
Amanda Roberts, their personal friendship, and the fact Respondent signed a legal contractual
agreement giving me Sole Physical/Sole Legal Custody waiving all visitation, etc of the
subject minor and his mental/physical impairments, violence issues, conviction and
abandonment of the child, of which Judge Moss refused to acknowledge whatsoever, and of
which Judge Duckworth is now refusing to acknowledge and hear. Yet, Judge Duckworth,
after knowing this matter in its entirety is and has been on Appeal (Judge Moss' Orders,

1 which are also deemed "void" under the law), and specifically a Notice of Appeal having been
2 filed on the OST for the June 15th hearing and despite the fact he admitted he had no
3 jurisdiction over this matter, still went forth with the June 15th Motion hearing on OST,
4 rendered new Orders and decisions and stated he will be forwarded correspondence, which
5 would be prepared by opposing counsel to the Supreme Court, ultimately interfering with
6 Appellant's right of due process and prejudicing this matter and the Appellate matters.
7 Opposing counsel, Ms. Roberts even requested Judge Duckworth's assistance in completing
8 the correspondence to the Supreme Court, in which the Judge began to advise her as to the
9 content. Appellant's understanding as to the Judge's role in this matter, is that he is to remain
10 impartial, to refrain from engaging in any type of ex-parte communication and to refrain from
11 acting out of its jurisdiction, as per the Judicial Code of Ethics.

12 This Appellant is again forced to file this Appeal on the NEOJ of TPO in the D-case, heard
13 before Family Court Judge Duckworth as he lacked the jurisdiction to hear this matter.
14 Further, Judge Duckworth would not allow argument for the extension of the TPO and
15 instead threatened to award Respondent with Sole Legal/Physical Custody, allowed Ms.
16 Roberts to yell, disparage, harass, threaten and call Appellant names, to include "murder"-er.
17 Appellant and her child's civil rights were violated and Federal and State laws were not
18 adhered to in any way in Judge Duckworth's courtroom by Judge Duckworth, Ms. Roberts,
19 nor by the TPO court and TPO hearing master Lynn Conant. Ms. Roberts Motion,
20 Opposition and the TPO should've never been heard before the lower court Judge
21 Duckworth, as this matter in its entirety is currently and has been on Appeal with the
22 Supreme Court, let alone a lower court Judge approving of an Order Shortening Time.

23 The TPO court should have heard the extension of the TPO, not deferred this matter to the
24 D-case, especially due after Ms. Roberts having had ex-parte communication with them
25 requesting the deferment and due to the fact the D-case lacks the jurisdiction. Again, it was
26 a direct denial of Appellant and her minor child's rights, failed to protect Appellant's child's
27 safety and prejudiced this matter. Additionally and most importantly, the extension of the
28 TPO should have been granted to protect Appellant's subject minor from Respondent.
Additionally, if it is this Court's request, Appellant/Petitioner will file an Errata to the Notice
of Appeal associated with this matter revising the file date of the NEOJ to November 4th.
Further, and most importantly, as per FRCP 8, Supreme Court Rules and pursuant to Haines
v. Kerner, 404 U.S. 519 (1972) and Hall v. Bellmon, 935 F. 2d 1106 (10th Cir.) (1991), a pro
per litigant is not held to the same standard as an attorney or represented party and further
the Courts are to render their decisions and orders on the **merit** of the pleadings and are
given latitude as such. It is extremely frustrating that this Court has expected me to be held
to a higher standard than these Court officials and attorneys, when I am a pro per litigant
while allowing these officials to, again, do as they so choose.

It is discerning to this Appellant as the lower court approved Appellant and on behalf of the
subject minor, SYDNEY ROSE MYERS-HASKINS' TPO against the Respondent due to
his actions and behavior (his abuse and neglect of the subject minor), which ultimately

1 rendered the subject minor to be taken by ambulance to Summerlin Hospital, be subjected to
2 treatment in the Pediatric Emergency Room, placed on life-support, and admitted into the
3 Pediatric Intensive Care Unit from May 4th through May 7th. The subject minor who has a
4 history of RSV and now of being hospitalized with seizures on life-support. The subject
5 minor has had URI, Gastrointestinal Virus, Vomiting, Diarrhea, Strep (Nasal - rare), Seizures,
6 Fever, been on life-support, oxygen, testing, CAT scan, Lumbar Puncture, EEG, continuous
weight loss, sleep deprivation, bruising, reaction to smoke inhalation, etc. since the
Respondent began having contact with her January 19th, due to Judge Moss' Order, which
is deemed "void" under the law.

7 Respondent began having contact with the subject minor as of January 19, 2011. *See* Court
8 file, medical note from Dr. Leroy Bernstein and medical record of Summerlin Hospital
9 (additional medical records will be supplemented to this pleading), whereby he noted that the
10 subject minor is to remain in the custody of Appellant (mother) due to an illness contracted
11 while under the care and custody of Respondent she had to treat and be medicated for. If the
12 unsupervised contact with Respondent continues, the subject minor will continue to be ill in
13 his care and custody due to his parental neglect and abuse. The subject minor, Sydney Rose
14 was on life-support and was hospitalized, how much more must she endure to this "void" and
prejudicial Order(s) of Judge Moss and the actions, decisions and Orders of Judge Duckworth
before this Honorable Supreme Court interferes and supersedes these Orders and intervenes
to stop this injustice against a mother and her child and the unlawful, unethical behaviors and
actions of the Court and its officers, to include that of opposing counsel?

15 Moreover, Respondent previously signed a Joint Agreement giving Appellant Sole Physical
16 and Sole Legal Custody of the parties minor child waiving any visitation. Respondent also
17 waived any visitation and refused a drug test at the prior TPO hearing, as well. Judge Moss
18 refused to acknowledge this legal contractual agreement between the parties to no avail, *See*
19 Court's file for legal agreement signed by Respondent. Further, Respondent suffers personal
20 mental and physical impairments, to include drug abuse, psychiatric treatments, refusal to take
21 his bipolar medication, etc. (as per documentation and his own testimony as previously
22 provided) and even threatened Appellant, the subject minor and Appellant's mother while the
23 subject minor was recently hospitalized (hospital security and police reports are to be
24 supplemented to the other matters filed with the Supreme Court). Appellant is extremely
concerned for the minor child's health, safety and overall well-being, her Pediatrician is as
well, as the District Court's Order would continue to put the minor child in direct harm's way
by allowing Respondent to have the 3 unsupervised days with her, especially when she
became ill in his "care" and "custody" and he failed to notify Appellant of anything
whatsoever, to include his blatant refusal to answer any questions regarding the minor child.

25 I am perplexed as to why the laws, rules, procedures, to include SCR's and Federal Laws,
26 and the sheer fact this matter is on Appeal is not being adhered to by these Court officials and
27 attorneys, yet again. While I may have limited knowledge in the legal field, *See Doolittle v.*
Doolittle, 70 Nev. 163, 262 P.2d 955 (1953) relying upon *Gammill v. Federal Land*

1 *Bank*, 129 F.2d 502, and *Haley v. Eureka County Bank* 22 P. 1098 (Nev. 1889). See also
2 *Stone v Powell*, 428 US 465, 483 n. 35, 96 Sct. 3037, 49 L. Ed. 2d 1067 (1976), whereby
3 the following was noted, "State courts, like federal courts, have a constitutional obligation
4 to safeguard personal liberties and to uphold federal law." and 28 USCS Sec. 455, and
5 *Marshall v Jerrico Inc.*, 446 US 238, 242, 100 S.Ct. 1610, 64 L. Ed. 2d 182 (1980). "The
6 neutrality requirement helps to guarantee that life, liberty, or property will not be taken on
7 the basis of an erroneous or distorted conception of the facts or the law." Reference also 18
8 USC, with regard to the violence against women act and the Fourteenth Amendment to the
9 United States Constitution with specific regard to the child abuse protection act. Since I am
10 a pro per litigant, under FRCP 8, Supreme Court Rules and pursuant to *Haines v. Kerner*,
11 404 U.S. 519 (1972) and *Hall v. Bellmon*, 935 F. 2d 1106 (10th Cir.) (1991), a pro per litigant
12 is not held to the same standard as an attorney or represented party and further the Courts
13 are to render their decisions and orders on the merit of the pleadings and are given latitude
14 as such. It is extremely frustrating that this Court has expected me to be held to a higher
15 standard than these Court officials and attorneys, when I am a pro per litigant while allowing
16 these officials to, again, do as they so choose.

17 If this Petition is not granted, not only would it continue put the minor child in direct harm's way
18 by allowing for no protection against the Respondent, but would ultimately subject the minor child
19 to further abuse and neglect, illness, possible hospitalization, etcetera by the Respondent. The
20 Respondent has mental and physical impairments, parental neglect/abuse, conviction, extensive
21 history of drug and alcohol abuse, anger problems, domestic abuse issues and his abandonment
22 of the minor child who has a history of RSV, illnesses and loss of weight while in his care and
23 custody, and most recently hospitalization with seizures, undiagnosed virus and life-support as a
24 result of Respondent's parental abuse and neglect. When a child is malnourished, dehydrated and
25 sleep deprived, there exists a failure to thrive for that child, the child's body can begin to have
26 seizures. The Respondent continues to refuse to seek out the extensive medical and psychiatric
27 intervention he is in need of and of which he has filed a VA Disability Claim for, *See Court file*.
28 The lower court, Family Court Judges, continue to allow opposing counsel's unlawful and
unethical behavior and actions, the prejudice of this and Appellant's other matters and for the
acceptance and utilization of Appellant's other unrelated matters, which are still on Appeal. By
this Court's rules, State laws and rules and Federal laws and rules, Appellant/Petitioner's
pleadings should have been granted on their merits, for the protection, safety and well-
being of the subject minor and in consideration of the rights of Appellant/Petitioner and
the subject minor. Further, Appellant/Petitioner's pleadings should have been granted
based on the evidence supporting same. Therefore, Appellant/Petitioner is now filing this
Petition requesting this Court to Rehear its Order Dismissing Appeal in the above-
referenced matters.

3. SUBSTANTIAL LAWS AND RULES OVERLOOKED AND CASES INVOLVED

NRCP Rule 4, Service of Process and NRCP Rule 6(d), Time.

1 LACK OF JURISDICTION - District Court matter is currently on Appeal under
2 the jurisdiction of the Supreme Court of Nevada. Further, the Family Court Judge
3 assigned to the D-case matter lacked the jurisdiction to hear matters associated
4 with the D-case as its is currently on Appeal under the jurisdiction of the Supreme
5 Court of Nevada and, therefore lacked the lawful jurisdiction to hear that matter,
6 let alone a TPO matter assigned to the TPO Court. He "took" jurisdiction
7 wrongfully and in which to hear a unlawful and unethical Motion at the same
8 hearing filed by Respondent's counsel, as well.

9
10
11 **RULE 59. NEW TRIALS; AMENDMENT OF JUDGMENTS**

12 (e) Motion to Alter or Amend a Judgment. A motion to alter or amend the
13 judgment shall be filed no later than 10 days after service of written notice of
14 entry of the judgment.

15
16
17 **RULE 60. RELIEF FROM JUDGMENT OR ORDER**

18 (a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the
19 record and errors therein arising from oversight or omission may be corrected by
20 the court at any time of its own initiative or on the motion of any party and after
21 such notice, if any, as the court orders. During the pendency of an appeal, such
22 mistakes may be so corrected before the appeal is docketed in the appellate court,
23 and thereafter while the appeal is pending may be so corrected with leave of the
24 appellate court.

25 (b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence;
26 Fraud, Etc.

27
28 **RULE 61. HARMLESS ERROR**

No error in either the admission or the exclusion of evidence and no error or
defect in any ruling or order or in anything done or omitted by the court or by any
of the parties is ground for granting a new trial or for setting aside a verdict or
for vacating, modifying or otherwise disturbing a judgment or order, unless
refusal to take such action appears to the court inconsistent with substantial
justice. The court at every stage of the proceeding must disregard any error or
defect in the proceeding which does not affect the substantial rights of the parties.

EDCR RULE 7.21. Preparation of order, judgment or decree.

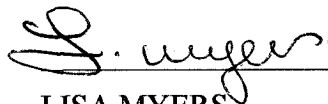
1 The counsel obtaining any order, judgment or decree must furnish the form of the
2 same to the clerk or judge in charge of the court within 10 days after counsel is
3 notified of the ruling, unless additional time is allowed by the court.

4 See *Doolittle v. Doolittle*, 70 Nev. 163, 262 P.2d 955 (1953) relying upon
5 *Gammill v. Federal Land Bank*, 129 F.2d 502, and *Haley v. Eureka County Bank* 22 P.
6 1098 (Nev. 1889). See also *Stone v Powell*, 428 US 465, 483 n. 35, 96 Sct. 3037, 49
7 L. Ed. 2d 1067 (1976), whereby the following was noted, "State courts, like federal
8 courts, have a constitutional obligation to safeguard personal liberties and to uphold
9 federal law." Also, see 28 USCS Sec. 455, and *Marshall v Jerrico Inc.*, 446 US 238, 242,
10 100 S.Ct. 1610, 64 L. Ed. 2d 182 (1980), "The

11 neutrality requirement helps to guarantee that life, liberty, or property will not be taken
12 on the basis of an erroneous or distorted conception of the facts or the law."

13 Appellate/Petitioner reserves her right to supplement additional information and
14 documentation should she deem necessary and as it becomes available.

15 Dated this 5th day of June, 2012.

16 

17 LISA MYERS

18 9360 West Flamingo Road, No. 110-326

19 Las Vegas, Nevada 89147

20 **Appellant/Petitioner, in proper person**

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22 ///
23 ///

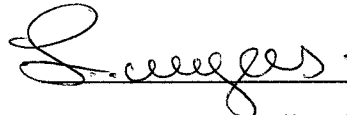
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CERTIFICATE OF MAILING

I hereby certify that on the 17th day of June, 2012, I mailed a true and correct copy of the **PETITION FOR EN BANC RECONSIDERATION AND RECALL OF REMITTITUR** via United States Mail, postage prepaid, to the following:

Amanda M. Roberts
2011 Pinto Lane, Suite 100
Las Vegas, Nevada 89106
Attorney for Respondent

**To date, Ms. Roberts has not confirmed her representation of Respondent in this Appellant matter*



Lisa Myers, Appellant/Petitioner, in proper person