

1 They're in our filing. And then you addressed them at the  
2 previous hearing.

3 MS. VACCARINO: Not true, Your Honor.

4 MR. SMITH: I didn't -- well, it's outlined in our  
5 motion including the quotes.

6 THE COURT: What -- okay. So what did I -- was this  
7 ten months that --

8 MR. STIPP: Your Honor, if I may --

9 THE COURT: -- before the ten -- what are you  
10 telling me? I've already reduced \$970 to cover that ten  
11 months to judgment?

12 MR. STIPP: No, Your Honor. In our prior pleadings,  
13 this issue was raised by Ms. Stipp and Ms. Vaccarino. The  
14 particular issue was the payment of insurance premiums. There  
15 was a significant amount of money that was owed to me for  
16 unreimbursed re -- expenses for the medical --

17 THE COURT: Get to the point --

18 MR. STIPP: The point was --

19 THE COURT: -- counsel.

20 MR. STIPP: -- is I raised the issue and I had  
21 indicated in my filings that I would just be deducting it.  
22 And the Court didn't rule on the issue. And so I assumed,  
23 Your Honor --

24 THE COURT: Once again, counsel, damn fine legal

1 work. Self help, issue your own orders, follow your own --  
2 follow your own conscience. You'll be lucky if all you do is  
3 wind up in front of the state bar for discipline instead of  
4 the frickin criminal proceedings with that.

5 MR. SMITH: Let me suggest to Your Honor that the  
6 suggestion of my client being in violation of state bar rules  
7 is outrageous, improper.

8 THE COURT: Well, counsel, he just said --

9 MR. SMITH: I would ask --

10 THE COURT: -- I didn't order it so he decided to  
11 deduct it anyway.

12 MR. SMITH: I would ask under the canons of judicial  
13 conduct that you retract that statement from this record. My  
14 client --

15 THE COURT: The statement's retracted.

16 MR. SMITH: Thank you, Your Honor.

17 THE COURT: I'll tell you what. Counsel, how am I  
18 supposed to address -- I mean, how do I even get into this?

19 MR. SMITH: Let me make a suggestion --

20 MS. VACCARINO: You hold him in contempt, Your  
21 Honor.

22 MR. SMITH: -- Your Honor. One of the --

23 MS. VACCARINO: With --

24 MR. SMITH: One of the --

1 MS. VACCARINO: -- all due respect, it's on our  
2 motion.  
3 MR. SMITH: One of --  
4 MS. VACCARINO: That is one way to address it and  
5 then we can go to the state bar. And I'm not trying --  
6 THE COURT: All right.  
7 MS. VACCARINO: -- to be rude, Your Honor --  
8 THE COURT: How about I do this?  
9 MS. VACCARINO: -- but this is his fourth chance.  
10 THE COURT: How about if I do this?  
11 MS. VACCARINO: Fourth. He's the one -- and you  
12 could report him to the state bar if you think he's abusing  
13 process.  
14 THE COURT: Why don't you report him to the state --  
15 MS. VACCARINO: I --  
16 THE COURT: -- bar, counsel?  
17 MS. VACCARINO: That's not my concern. My concern  
18 is to get the child -- the children well supported. And our  
19 arrears amount requested was \$1,060.  
20 THE COURT: Counsel, once again, I -- I read it.  
21 MS. VACCARINO: I just want to make sure the  
22 amount's right in the minutes to the --  
23 THE COURT: So --  
24 MS. VACCARINO: -- arrears.

1 MR. SMITH: -- easier -- if you could just stop  
2 talking when I'm talking, that would be great.  
3 THE COURT: Well, hurry, Mr. Smith.  
4 MR. SMITH: If we --  
5 THE COURT: Please.  
6 MS. VACCARINO: If I may --  
7 MR. SMITH: We can send the parties to mediation to  
8 address these issues.  
9 MS. VACCARINO: Please, no, Your Honor.  
10 THE COURT: And --  
11 MR. SMITH: We have requested that.  
12 THE COURT: -- who are we going to send them to?  
13 MS. VACCARINO: No, Your Honor. We asked --  
14 MR. SMITH: Mediation before the Family Mediation  
15 Center.  
16 THE COURT: No, no, no, no, no.  
17 MS. VACCARINO: That's not for finances, Your Honor,  
18 and he knows that.  
19 THE COURT: All right. Here's what I'm going to do  
20 because --  
21 MS. VACCARINO: And Your Honor, if I just may --  
22 THE COURT: -- obviously --  
23 MS. VACCARINO: He hasn't filed the 30/30 rule. We  
24 want you for -- once and for all to deny his request from '08



1 and '09 so it's clear and off the record for good. He didn't  
2 follow the 30/30. We're asking --

3 THE COURT: Counsel.

4 MS. VACCARINO: -- 1,068.76 --

5 THE COURT: Counsel.

6 MS. VACCARINO: -- through September 1st.

7 THE COURT: Your request to have him held in  
8 contempt is denied. Your request for honk and seatbelt rule  
9 is denied. Your request to reduce \$970 to judgment is  
10 granted, subject to interest and penalties. Your request  
11 regarding tax returns I think I've previously ruled on. Your  
12 request is for any relief that not previously addressed is  
13 denied. Your request for \$7500 in attorneys fees is denied.

14 Your request to deny her motion in its entirety is  
15 denied. Your request for a restraining order relating to  
16 release of material is denied as far as it's not in violation  
17 of statutes or other -- I -- you know, I don't know what's  
18 sealed and what's not sealed and what she did, but there's  
19 nothing in there. I'm not going to issue any restraining  
20 orders or silence anybody.

21 Your request for a modification of support, I'm not  
22 sure what that -- what's the basis for modifying support?

23 MS. VACCARINO: Your Honor, it's very -- it's --

24 THE COURT: I'm not asking you. I'm asking Mr.

1 Smith.  
2 MS. VACCARINO: Okay.  
3 THE COURT: He's the one that requested a  
4 modification of support.  
5 MR. SMITH: Actually, it was the --  
6 MS. VACCARINO: We asked for an increase in --  
7 THE COURT: All right.  
8 MS. VACCARINO: -- support, Your Honor.  
9 MR. SMITH: It was the Plaintiff who is seeking --  
10 THE COURT: Your request to --  
11 MR. SMITH: -- a review.  
12 THE COURT: -- modify support is denied.  
13 MS. VACCARINO: And is there a factual --  
14 THE COURT: Your request for mediation --  
15 MS. VACCARINO: -- and legal reason why?  
16 THE COURT: -- is --  
17 MS. VACCARINO: You're denying a three year review,  
18 Your Honor? Is -- I just need a factual legal --  
19 THE COURT: Denied.  
20 MS. VACCARINO: -- reason why. Your Honor, just for  
21 the record, I don't understand why this case why -- we have a  
22 valid motion where you admonish him for contempt and we have a  
23 child support review after three years and it's just outright  
24 denied with no reasons, Your Honor? It just doesn't seem

1 fair. She's entitled like every other litigant to have her  
2 review.

3 MR. SMITH: I didn't hear --

4 THE COURT: The Court's --

5 MR. SMITH: -- you say that --

6 MS. VACCARINO: And there's a --

7 THE COURT: For all --

8 MR. SMITH: -- the review --

9 MS. VACCARINO: -- CPI increase.

10 THE COURT: For all --

11 MR. SMITH: -- was denied.

12 THE COURT: For all child support related issues,  
13 the Court's going to require that these parties go through --  
14 open an R case, go through there, and then if they're not  
15 satisfied with the results therein --

16 MS. VACCARINO: That's fine.

17 THE COURT: -- they can file an objection to the  
18 findings of the master. That way, I'll have an independent  
19 accounting and verify those sources.

20 MS. VACCARINO: Thank you, Your Honor.

21 THE COURT: For -- what's the child support amount  
22 currently?

23 MS. VACCARINO: It's \$1000 per month. With the CPI  
24 increase, Your Honor, it would be a minimum of a thousand

1 Court's process.

2 VI.

3 CONCLUSION

4 For all the foregoing reasons, it is respectfully requested that this Court order that  
5 CHRISTINA's Cross-Appeal may proceed. This Court should further order that further briefs shall  
6 NOT be filed in this matter without an Order by this Court, and this case should be consolidated  
7 with Supreme Court Case No. 57327. This Court should grant CHRISTINA no less than \$7,500.00  
8 in attorney's fees and costs due to MITCHELL's vexatious, malicious practice of filing frivolous  
9 appeals which he later decides to voluntarily dismiss.

10 DATED this 28<sup>th</sup> day of May, 2013.

11 VACCARINO LAW OFFICE

12 

13 PATRICIA L. VACCARINO, ESQ.  
14 Nevada Bar No. 005157  
15 8861 W. Sahara Ave., Suite 210  
16 Las Vegas, Nevada 89117  
Attorney for Respondent/Cross-Appellant,  
CHRISTINA CALDERON-STIPP

17 ...

18 ...



**CERTIFICATE OF SERVICE**

I certify that on the \_\_\_\_ day of May, 2013, I served a copy of this completed Response to Order to Show Cause on Cross-appeal and Motion to Consolidate Appeals, for an Award of Damages and Costs for Appellant's Frivolous Appeal and for Other Related Relief upon all counsel of record:

☐ By personally serving it upon him/her; or

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

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

Mitchell D. Stipp  
7 Morning Sky Lane  
Las Vegas, Nevada 89135

Dated this 28<sup>th</sup> day of May, 2013.



Signature

**EXHIBIT “A”**

1 TRANS

2 ORIGINAL

FILED

Nov 16 2 39 PM '12

*Ann L. Schum*  
CLERK OF THE COURT

4 EIGHTH JUDICIAL DISTRICT COURT

5 FAMILY DIVISION

6 CLARK COUNTY, NEVADA

7 CHRISTINA CALDERON STIPP, )

8 Plaintiff, )

9 vs. )

CASE NO. D-08-389203-2

10 MITCHELL DAVID STIPP, )

DEPT. M

11 Defendant. )

(SEALED)

12  
13 BEFORE THE HONORABLE WILLIAM POTTER  
14 DISTRICT COURT JUDGE

15 TRANSCRIPT RE: ALL PENDING MOTIONS

16 TUESDAY, SEPTEMBER 25, 2012

17 APPEARANCES:

18 The Plaintiff:  
19 For the Plaintiff:

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PATRICIA L. VACCARINO, ESQ.  
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21 The Defendant:  
22 For the Defendant:

MITCHELL DAVID STIPP  
RADFORD J. SMITH, ESQ.  
64 North Pecos Road  
Suite 700  
Henderson, Nevada 89074  
(702) 990-6448

1 THE COURT: Sure.

2 MS. VACCARINO: -- right now exactly.

3 THE COURT: Anything else?

4 MR. SMITH: Just to answer your question, the  
5 Court's November 4th, 2010 order in which the Court found that  
6 there was joint physical custody is the order that's on  
7 appeal. Both parties have taken the position that the matter  
8 should be remanded to Your Honor for further proceedings.

9 Also, there is a request for -- to undo the fees  
10 that were I guess not addressed in that case or to award fees  
11 that were not addressed in that case.

12 MS. VACCARINO: And Your Honor, we did not request a  
13 remand. We requested an outright reversal.

14 THE COURT: All right.

15 MS. VACCARINO: But there's an -- there might be a  
16 possibility of a remand. So we believe Your Honor that --

17 THE COURT: Okay. All right.

18 MS. VACCARINO: -- our motion --

19 THE COURT: Thanks. Thanks.

20 MS. VACCARINO: And if I may for -- make a record  
21 Your Honor --

22 THE COURT: Of what?

23 MS. VACCARINO: If I may, Your Honor, be allowed  
24 under court rules to provide brief oral argument as to the



1 motion, the issues --

2 THE COURT: No, counsel. You won't be allowed --

3 MS. VACCARINO: May I present the oral --

4 THE COURT: -- to make oral argument.

5 MS. VACCARINO: Is there a reason why, Your Honor,

6 we're not allowed to do so? Because there's a huge issue, a

7 dispute of whether or not you can --

8 THE COURT: Counsel.

9 MS. VACCARINO: -- consider the financial --

10 THE COURT: Counsel.

11 MS. VACCARINO: -- conditions.

12 THE COURT: If I say no, does that mean just -- did

13 I hold up a green light? Was there some -- some mixed signal

14 I gave you?

15 MS. VACCARINO: Just trying to make a record in the

16 event that --

17 THE COURT: Here's the record. No, you can't make

18 oral argument.

19 MS. VACCARINO: Thank you, Your Honor.

20 THE COURT: Thank you. You're very welcome.

21 MS. VACCARINO: May I present the Court with the

22 order to show cause?

23 THE COURT: No, you can't. There is not -- the

24 Court's not going to entertain the order to show cause. I'm

1 not going to have an evidentiary hearing.

2 MS. VACCARINO: Well, he's admitted to some of the  
3 contempt, Your Honor. So and in order --

4 THE COURT: Counsel.

5 MS. VACCARINO: All right, Your Honor.

6 THE COURT: Enlighten me. When did contempt become  
7 your power to wield?

8 MS. VACCARINO: It's not, Your Honor.

9 THE COURT: It's not.

10 MS. VACCARINO: It -- you would have to --

11 THE COURT: Thank you very --

12 MS. VACCARINO: -- sign this --

13 THE COURT: That's a --

14 MS. VACCARINO: -- to address it.

15 THE COURT: -- damn good answer.

16 MS. VACCARINO: Thank you.

17 THE COURT: Straight out of law school.

18 MS. VACCARINO: Are you mad?

19 THE COURT: A plus for the day.

20 MS. VACCARINO: Are you mad at me?

21 THE COURT: No, I'm not mad.

22 MS. VACCARINO: Because I mean, this motion has been  
23 filed --

24 THE COURT: I'm ill.

1 MS. VACCARINO: -- in good faith.  
2 THE COURT: I don't feel very well.  
3 MS. VACCARINO: Okay.  
4 THE COURT: Okay.  
5 MS. VACCARINO: I apologize that you're not feeling  
6 well.  
7 THE COURT: I'm trying cut through this.  
8 MS. VACCARINO: Okay. We appreciate that.  
9 THE COURT: I don't need to hear oral argument,  
10 because I read what you filed.  
11 MS. VACCARINO: Okay.  
12 THE COURT: Okay. Unless you're telling me you did  
13 such a crap job in filing your paperwork that you need to  
14 cover it up.  
15 MS. VACCARINO: The only thing that is --  
16 THE COURT: Then thank you, counsel.  
17 MS. VACCARINO: The only thing additional, Your  
18 Honor, that's not -- you're not aware of is last week on  
19 September 20th the bankruptcy court filed documents in Ms.  
20 (Indiscernible) case that showed that Mr. Stipp got \$70,000 in  
21 March of 12th through his --  
22 THE COURT: All right.  
23 MS. VACCARINO: And --  
24 THE COURT: Thanks.

1 MS. VACCARINO: -- that is something that you --

2 THE COURT: Look.

3 MS. VACCARINO: -- do need to know, because he said  
4 he has no --

5 THE COURT: Here's what I want to do --

6 MS. VACCARINO: Okay.

7 THE COURT: -- today. I'm going to admonish  
8 Defendant. You know, co-counsel, I -- you better hope that  
9 your legal representation to your clients exceeds your  
10 representation of yourself, because coming in and stating on  
11 the record that you're violating an order and granted, the two  
12 of you stipulated, it's an MOU, but coming in and vio -- you  
13 know, stating that you're in violation of the terms just  
14 because you haven't -- you know, neither one of you has  
15 complied with it, you decide you're not going to do it,  
16 doesn't -- doesn't make any sense. And God forbid you ever  
17 gave a client that information, you'd probably be in front of  
18 a disciplinary counsel. I know Mr. Smith is not giving you  
19 that information.

20 Bottom line, there's been violations of the parties'  
21 stipulation. It needs to stop. I'm admonishing both of you.  
22 You need to comply with the orders and the rules that have  
23 been issued by this Court, by prior courts, including contact,  
24 including advanced notice on vacations, including providing



1 itineraries, especially regarding the telephonic  
2 communication. Mr. Smith, has your client -- I mean, has your  
3 client paid the -- his share of the premiums, the insurance  
4 premiums? They're claiming there's ten months of arrears that  
5 he hasn't paid.

6 MR. SMITH: There are also monies that are owed by  
7 Ms. Stipp to him. And so the answer is neither parties have  
8 paid their one half of those obligations, but I would note  
9 that the obligations by Ms. Stipp exceed the obligations by  
10 Mr. Stipp.

11 THE COURT: Was that in -- was that raised in your  
12 opposition somewhere?

13 MR. SMITH: Yes, Your Honor.

14 MS. VACCARINO: They never filed the 30/30 rule,  
15 Your Honor. So they're legally not entitled to make that  
16 offset request three and four years later. And there's no  
17 schedule of arrears either, which is required to get a  
18 judgment. So they have to be denied.

19 (Whispered conversation)

20 THE COURT: All right. Well, \$970 reduced to  
21 judgment. The 97 for half of the insurance has to be paid  
22 each month on or before the last day of each month.

23 MR. SMITH: Your Honor, let me just note that you  
24 had previously addressed these issues on September 23rd, 2010.

1 lower Court failed to include proper findings of fact and conclusions of law in its November 9, 2012  
2 Order. When the lower Court failed to include proper findings in its November 9, 2012 Order, the  
3 lower court ignored the holding in Lawry v. Lawry, 91 Nev. 289, 535 P.2d 158 (1975). In Lawry,  
4 the lower Court failed to address a custodial schedule and child support in issuing final orders in  
5 a divorce action. Upon appeal this Court remanded the matter with instructions, directing the lower  
6 Court to conduct further proceedings due to the lack of findings in the order issued. This Court just  
7 remanded CHRISTINA's Appeal in Supreme Court Case No. 57327 for the same reasons.

8 The lower Court's denial of attorney's fees is ripe for appellate review. CHRISTINA seeks  
9 appellate review of the lower Court's denial of her attorney fee request which is the same issue she  
10 addressed in Supreme Court Case No. 57327. Thus, CHRISTINA's request for consolidation  
11 should be granted, negating the cost of further, unnecessary briefing to be done at this time!

12 According to the parties' Decree and Marital Settlement Agreement, CHRISTINA is entitled  
13 to an award of attorney's fees in any legal action where she is deemed the prevailing party. The  
14 parties' Marital Settlement Agreement states, at Page 10, item 4.7, as follows:

15 **ATTORNEY'S FEES.** If there is any legal action or  
16 proceeding, including any mediation or arbitration proceeding,  
17 to enforce or interpret any provision of this Agreement to  
18 protect or establish any right or remedy of any Party hereto,  
19 the unsuccessful party to such action or proceeding, whether  
20 such action or proceeding is settled or prosecuted to final  
21 judgment, shall pay to the prevailing Party as finally  
22 determined, all costs and expenses, including reasonable  
23 attorneys' fees and costs incurred by such prevailing party in  
24 such action or proceeding in enforcing such judgment, **and in**  
25 **connection with any appeal from such judgment.** Husband  
26 and Wife agree to pay his or her respective attorney's fees and  
27 coss incurred in preparation of this Agreement and in  
28 representation of each in this Action. [Emphasis added.]

23 The lower Court's November 9, 2012 Order and this Court's OSC filed April 12, 2013 reveal  
24 that CHRISTINA clearly prevailed upon numerous issues addressed in her Motion filed on August  
25 20, 2012. CHRISTINA sought an order and a judgment for child support arrears. CHRISTINA's  
26 request for a judgment for child support arrears was **GRANTED**. CHRISTINA's Motion, attached  
27 to her Docketing Statement on file herein, identified many, other legal (statutory and case law)  
28 justifications mandating that the lower Court should have granted fees and costs to CHRISTINA.



1 CHRISTINA requested that MITCHELL not be allowed to issue his own, Court Order regarding the  
2 exchange location for the children. MITCHELL had arbitrarily demanded the children be  
3 exchanged at a dangerous parking lot. The Court **GRANTED** CHRISTINA's request concerning,  
4 and ordered a new, custodial exchange order. CHRISTINA requested a review of child support.  
5 The Court **GRANTED** CHRISTINA's request, and directed the parties to pursue the child support  
6 review through the District Attorney, Child Support Division. The District Court failed to determine  
7 whether CHRISTINA had primary physical custody for the purposes of conducting said review and  
8 failed to honor the finding in the parties' Decree that MITCHELL agreed to pay child support  
9 pursuant to NRS 125B.070, rebutting the cap, as if CHRISTINA was designated as the primary  
10 physical custodian. CHRISTINA requested that the Court issue an Order for MITCHELL to appear  
11 and show cause why he should not be held in contempt. The Court improperly denied said  
12 request as noted above, and this Court has jurisdiction to review the issues on appeal.

13 In denying CHRISTINA's request for attorney's fees, the Court refused to enforce NRS  
14 18.010 and the cases and statutes, including NRS 125B.140, cited in CHRISTINA's Motion filed  
15 September 20, 2012. Indeed, the District Court impliedly and wrongfully altered the terms of the  
16 parties' enforceable Marital Settlement Agreement, requiring CHRISTINA to be the recipient of  
17 an award of fees and costs. The District Court was without authority to alter the terms of the  
18 agreement pursuant to. Canfield v. Gill, 101 Nev. 170, 697 P.2d 476 (1985). Further, the lower  
19 Court in denying CHRISTINA an award of attorney's fees, ignored the holdings in Brunzell v.  
20 Golden Gate National Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). EDCR 7.60, Leeming v.  
21 Leeming, 87 Nev. 530, 490 P.2d 342, Ormachea v. Ormachea and Halbrook v. Halbrook, 971  
22 P.2d 1262, 114 Nev. 1455 (1998). The lower Court issued zero findings in justifying a denial of  
23 CHRISTINA's request for attorney's fees and costs. The lower Court ignored NRS 125B.140 in  
24 refusing to even grant CHRISTINA's attorney's fees and costs relating to the judgment for child  
25 support arrears the District Court did grant upon CHRISTINA's Motion.

26 In Jones v. Jones, 86 Nev. 879, 478 P.2d 148 (1970), this Court held that the lower Court  
27 was required to give reasons for the denial of a request for attorney's fees, and abused its  
28 discretion in failing to do so. Further, in Woods v. Label Inv. Corp., 107 Nev. 419, 812 P.2d 1293

(1991), the Supreme Court held that attorney fees can be recovered when authorized by agreement. As this Court is aware, a denial of attorney's fees by the District Court may constitute abuse of discretion if the trial Court exercises discretion in clear disregard of guiding legal principles. See NRCP 12(b)(5). Bergmann v. Boyce, 109 Nev. 670, 856 P.2d 560, (1993). Determining whether attorney fees should be awarded requires the court to inquire into the actual circumstances of the case, rather than a hypothetical set of facts favoring plaintiff's averments. Baldonado v. Wynn Las Vegas, LLC, 124 Nev. 951. 194 P.3d 96, (2008).

Further, the lower Court erred when it failed to request that CHRISTINA submit an attorney fee memorandum, with attorney invoices attached to consider the factors cited in Brunzell v. Golden Gate National Bank, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969) to wit:

- (1) The qualities of the advocate;
- (2) The character and difficulty of the work performed;
- (3) The work actually performed; and,
- (4) The results obtained.

CHRISTINA was the prevailing party upon many requests made in her Motion. CHRISTINA's request for an OSC to issue and be enforced against MITCHELL was improperly denied. CHRISTINA was represented by a quality advocate, who performed extensive work on CHRISTINA's behalf related to CHRISTINA's Motion, Reply and the District Court proceedings. In failing to issue findings in its order denying attorney's fees, the Court ignored the parties' Marital Settlement Agreement and law cited in the papers filed by CHRISTINA. Certainly, a proper, appellate question still exists for this Court to consider in CHRISTINA's Cross-Appeal as to whether or not the lower Court erred in denying CHRISTINA's request for attorney's fees and costs.

Further, in Halbrook v. Halbrook, 971 P.2d 1262, 114 Nev. 1455 (1998), the Supreme Court stated that this Court has jurisdiction to award post-divorce attorney's fees to a party. Clearly, CHRISTINA was entitled to fees and costs pursuant to all the authority and the facts of this case as cited in the Motion filed on August 20, 2012, submitted with CHRISTINA's Docketing Statement. CHRISTINA submits the Court manifestly abused its discretion in denying her request



1 for an OSC and in failing to grant her attorney's fees and costs incurred.

2 III.

3 **IF THIS COURT FINDS THAT A WRIT IS THE PROPER REMEDY TO ADDRESS THE**  
4 **ORDER TO SHOW CAUSE ISSUE, CHRISTINA REQUESTS THAT HER PAPERS ON FILE**  
5 **IN THIS ACTION BE TREATED AS A PETITION FOR WRIT RELIEF**

6 CHRISTINA is hopeful this Court will agree that the remedy of appeal she is now pursuing  
7 on the lower Court's failure to issue an OSC is the proper remedy. It is CHRISTINA's position  
8 that the issues specifically defined in her Docketing Statement, and clarified above, are all proper,  
9 appealable issues.

10 A writ of mandamus is available to compel the performance of an act that the law requires  
11 or to control a manifest abuse of discretion. See NRS 34.160; Round Hill Gen. Imp. Dist. v.  
12 Newman, 97 Nev. 601, 637 P.2d 534 (1981). A writ of prohibition is available to arrest the  
13 proceedings of a district court exercising its judicial functions, when such proceedings are in  
14 excess of the district court's jurisdiction. NRS 34.320. Both mandamus and prohibition are  
15 extraordinary remedies. The decision to entertain petitions for such relief is the sole discretion  
16 of this Court. See Smith v. District Court, 107 Nev. 674, 818 P.2d 849 (1991). Petitions for  
17 extraordinary relief typically issue only when there is no plain, speedy, and adequate remedy at  
18 law, and this court has consistently held that an appeal is an adequate legal remedy precluding  
19 writ relief. Pan v. Dist. Ct., 120 Nev. 222, 224, 88 P.3d 840, 841 (2004).

20 This Court may still find that the issue of CHRISTINA's request for an OSC is not  
21 appealable, and that writ relief is appropriate. In the interest of judicial economy and pursuant to  
22 the law cited above, CHRISTINA would then request her papers and pleadings on file herein be  
23 treated as a Writ.

24 Pursuant to NRAP 3A, CHRISTINA maintains that the Order entered on November 9, 2012  
25 is a post-judgment, final order. Therefore, pursuant to NRAP 3A, CHRISTINA's Cross-Appeal  
26 should proceed. Also, pursuant to NRCP 3A(b)(2) and the holding in Smith v. Crown Financial  
27 Services of America, 111 Nev. 277, 890 P.2d 769, (1995), an Order of the District Court awarding  
28 attorney fees and costs was deemed a "special order made after final judgment." As such, the  
Order was appealable and CHRISTINA's present Order is appealable. CHRISTINA has an

1 appellate remedy. Likewise, an Order improperly denying fees is a final and appealable Order.

2 In Koester v. Administrator of Estate of Koester, 101 Nev. 68, 693 P.2d 569, (1985) this  
3 Court held as follows:

4 This court has consistently looked past labels in interpreting  
5 NRAP 3A(b)(1), and has instead taken a functional view of  
6 finality, which seeks to further the rule's main objective:  
7 promoting judicial economy by avoiding the specter of  
8 piecemeal appellate review. Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 444, 874 P.2d 729, 733 (1994). In  
9 Clark County Liquor.

10 CHRISTINA wants to avoid more proceedings and seeks to promote judicial economy.  
11 However, this Court may, somehow determine that the proper forum for CHRISTINA to challenge  
12 the lower Court's denial of her request for an OSC hearing is by Writ, despite the facts and  
13 authority cited herein. CHRISTINA alternatively requests that this Court order that the papers on  
14 file herein, addressing the specific OSC Issue, be treated as a proper Writ of Mandamus as  
15 requested above. If the Court issues such an Order, CHRISTINA will cause to be served her  
16 Notice of Cross-Appeal, Docketing Statement and this Response upon the Honorable William S.  
17 Potter. See NRAP 21(a) (setting forth requirements for a writ petition's contents and service,  
18 including that the petition must be filed with the clerk of the Supreme Court with proof of service  
19 on the respondent judge).

#### 18 IV.

#### 19 **THIS APPEAL SHOULD BE CONSOLIDATED AND THE BALANCE OF THE DISTRICT** 20 **COURT RECORD SHOULD BE REVIEWED BY THIS COURT**

21 NRAP 3(b) states as follows:

22 . . .

23 (b) Joint or consolidated appeals.

24 (1) When two or more parties are entitled to appeal from a  
25 district court judgment or order, and their interests make  
26 joinder practiceable, they may file a joint notice of appeal.  
27 They may then proceed on appeal as a single appellant.

28 (2) When the parties have filed separate timely notices of  
appeal, the appeals may be joined or consolidated by the  
Supreme Court upon its own motion or upon motion of a party.

. . .



1 Pursuant to NRAP 27 and NRAP 3(b) CHRISTINA files a Motion to consolidate this appeal  
2 for good cause with Supreme Court Case No. 57327. As noted above, the exact same issues of  
3 the District Court's denial of CHRISTINA's attorney fee request is being addressed in Supreme  
4 Court Case No. 57327. The parties have already fully briefed said issue in that case. Moreover,  
5 the same Rivero findings will need to be addressed in this appeal and Supreme Court Case No.  
6 57327, and a final Order of this Court must issue that CHRISTINA must be deemed the primary  
7 physical custodian of the children. It would be quite costly and a waste of judicial resources and  
8 time to further brief the same issues already noted in CHRISTINA's first Appeal filed with this  
9 Court.

10 Indeed, on May 24, 2013, this Court issued an Order of Reversal and Remand noting in  
11 Footnote one that "...We need not address these additional issues at this time." Those "additional  
12 issues" include similar, due process violations when the Court failed to grant an Evidentiary  
13 Hearing in order to modify custody. The other, additional issue pending appellate resolution is  
14 whether CHRISTINA should have received an award of attorney's fees and costs. In fact, the  
15 remand was ordered so the District Court shall make specific Findings as to how it determined  
16 what constitutes a custodial day. Thus, upon receiving these Findings from the District Court, the  
17 Court can rule upon the issues in the present Cross-Appeal which are identical to or related to the  
18 issues in Supreme Court Case No. 57327.

19 CHRISTINA and her counsel are confident that, if the District Court follows the simple  
20 holding of Rivero, MITCHELL cannot be found to ever having exercised joint physical custody of  
21 the children, even with the timeshare set forth in the November 2010 Order pending Appeal in  
22 Supreme Court Case No. 57327. A day is 24 hours, and MITCHELL cannot receive credit for  
23 even one-half of a day when his visitation periods commence at 6:00 p.m., after CHRISTINA has  
24 tended to nearly every need required for the children before 6:00 p.m. A proper Finding must  
25 issue that CHRISTINA has always been the primary physical custodian, and is entitled to child  
26 support pursuant to NRS 125B without offsets. Also, MITCHELL agreed, in the parties' Decree  
27 and Marital Settlement Agreement to pay child support according to CHRISTINA being the  
28 primary physical custodian of the children, even rebutting the statutory cap set forth in NRS

1 125B.070. This child support agreement was reached, despite the misnomer of joint physical  
2 custody the parties had placed in their previous agreements when improperly labeling the  
3 custodial timeshare.

4 It will certainly serve judicial economy to consolidate the Appeals, and limit further briefing  
5 in the related causes. Pursuant to NRAP 11(2), this Court should transmit the District Court  
6 record from the first Notice of Appeal filed on December 14, 2010 in Supreme Court Case No.  
7 57327 forward, as if this is a proper person case. After all, the Transcript from the September 25,  
8 2012 hearing was filed in the District Court on November 16, 2012. Excerpts of said Transcript  
9 are attached as Exhibit "A". Most of the papers and pleadings from the commencement of the  
10 District Court case are filed in CHRISTINA's Index in Supreme Court Case No. 57327. The entire  
11 District Court record from December 14, 2010 forward should be transmitted to this Court to  
12 review in this Cross-Appeal, and no further briefing should be required for the reasons set forth  
13 above, in the interest of judicial economy and due to CHRISTINA's concerns with an inability to  
14 afford further, costly, legal process. CHRISTINA's Financial Disclosure Form was filed with her  
15 Docketing Statement evidencing her weak, financial condition. One Decision can issue in this  
16 case and Supreme Court Case No. 57327, after the District Court finishes the task ordered by this  
17 Court in the Order of Reversal and Remand filed May 24, 2013.

18 ATTORNEY VACCARINO was retained by CHRISTINA to represent her in the District  
19 Court matter as well as the three appeals commenced in this Court. ATTORNEY VACCARINO  
20 also represents CHRISTINA in Case T-13-148772-T, concerning a recent Temporary Protective  
21 Order CHRISTINA was granted against MITCHELL for his perpetration of domestic violence,  
22 including stalking and harassment. CHRISTINA is still forced to incur fees and costs in the District  
23 Court action and related actions due to MITCHELL's unbearable conduct. Further proceedings  
24 are to be conducted before Judge Potter on June 25, 2013, including CHRISTINA's request for  
25 an OSC to issue and be enforced against MITCHELL. MITCHELL vowed to CHRISTINA, upon  
26 the dissolution of the marriage, that he would use the Court process to ensure that CHRISTINA  
27 used all of her marital settlement funds for post-divorce attorney's fees. MITCHELL has been true  
28 to his word, as revealed in the papers contained in the Index filed in Supreme Court Case No.



1 57327 and with both parties' Docketing Statements filed in this action. MITCHELL has vexatiously  
2 filed frivolous Motions and Appeals to ensure CHRISTINA's attorneys fees and cost are  
3 consistent, constant and excessive. As of this date, CHRISTINA has spent much of her divorce  
4 settlement proceeds on post-divorce litigation and appellate issues. CHRISTINA has returned  
5 to full-time work, working outside the home with the District Attorney's Office, Juvenile Division,  
6 hoping to improve her poor financial status which has been caused by MITCHELL's vexatious,  
7 litigation practices.

8 Again, CHRISTINA requests that the Court request the transcript of the proceedings  
9 pursuant to NRAP 11(a)(2) which states as follows:

10 . . .

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

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

20 (c) Time for Forwarding the Record. The trial court record shall  
21 be forwarded within the time allowed by the Supreme Court,  
22 unless the time is extended by an order entered under Rule  
23 11(d).

23 . . .

24 This Court has already transmitted the record in District Court Case No. D 389203-Z through  
25 April 13, 2010 in SC Case No. 57876. All papers on file and Transcripts of any proceedings  
26 commencing April 14, 2010 forward should be requested by this Court to be transmitted in order  
27 to fully address CHRISTINA's Cross-Appeal in this action. While this is not now a proper person  
28 case, CHRISTINA's counsel may be soon seeking withdrawal because of CHRISTINA's inability

1 to afford the fees and costs.

2 CHRISTINA also requests that this Court order that, besides MITCHELL's response to this  
3 Motion, no further papers, nor briefs, be filed in this action, by either party without specific orders  
4 of the Court. Such Order shall serve judicial economy and avoid more financial destruction and  
5 distress for CHRISTINA and the children.

6 **V.**

7 **CHRISTINA IS ENTITLED TO AN AWARD OF ATTORNEY'S FEES AND COSTS BECAUSE**  
8 **MITCHELL VOLUNTARILY DISMISSED HIS FRIVOLOUS APPEAL**

9 NRAP 38 states as follows:

10 **FRIVOLOUS CIVIL APPEALS--DAMAGES AND COSTS**

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

13 (b) Frivolous Appeals; Attorney Fees as Costs. When an  
14 appeal has frivolously been taken or been processed in a  
15 frivolous manner; when circumstances indicate that an appeal  
16 has been taken or processed solely for purposes of delay,  
17 when an appeal has been occasioned through respondent's  
18 imposition on the court below; or whenever the appellate  
19 processes of the court have otherwise been misused, the court  
20 may, on its own motion, require the offending party to pay, as  
21 costs on appeal, such attorney fees as it deems appropriate to  
22 discourage like conduct in the future.

23 MITCHELL has vexatiously filed and voluntarily dismissed two Appeals he improperly  
24 commenced in approximately 14 months. MITCHELL clearly seeks to cause CHRISTINA to incur  
25 unnecessary attorney's fees and costs with his frivolous filings with this Court and the District  
26 Court. MITCHELL's conduct in voluntarily dismissing his last, two appeals reveals his clear intent  
27 of abuse of process and causing CHRISTINA unnecessary, financial distress. MITCHELL's  
28 Appeals have been filed vexatiously, to harass CHRISTINA, cause her further, financial burden  
and abuse Court process. CHRISTINA has been forced to deplete her savings and available  
funds to pay her attorney's fees and costs incurred in being forced to file meritorious Motions and  
in responding to MITCHELL's frivolous pleadings, papers, motions, appeals in this Court and in  
the lower Court. MITCHELL's conduct in filing two, frivolous Appeals in the past 14 months, only  
to voluntarily dismiss same, forcing CHRISTINA to incur unnecessary fees and costs cannot be



1 ignored. MITCHELL filed his Notices of Appeal, causing CHRISTINA to engage the services an  
2 attorney to represent her in each Appeal filed by MITCHELL. MITCHELL only voluntarily  
3 dismisses his Appeals after he is confident that CHRISTINA has incurred substantial and  
4 unnecessary attorney's fees and costs in responding. In fact, CHRISTINA has, thus far, incurred  
5 approximately \$7,500.00 relating to MITCHELL's frivolous Appeal.

6 As stated above, pursuant to the parties' Marital Settlement Agreement, CHRISTINA is  
7 entitled to recover from MITCH any and all attorney's fees she incurred in any legal matter that she  
8 prevails. When MITCHELL voluntarily dismisses an action, CHRISTINA is the prevailing party.

9 MITCHELL voluntarily dismissed his appeals, causing CHRISTINA to prevail. As such, as  
10 stated above, CHRISTINA is entitled to an award of attorney's fees pursuant to NRAP 38, NRS  
11 18.010, NRCP 7.60, an abundance of case law and the parties' Marital Settlement Agreement,  
12 ("MSA"). This Court confirmed in the April 29, 2013 Order that MITCHELL voluntarily dismissed  
13 his Appeal, and ordered that each party be responsible for their own attorney's fees and costs  
14 related thereto, inadvertently overlooking the fact that the parties' MSA controls. CHRISTINA  
15 seeks an Order, in this case awarding her no less than \$8,000.00 in attorney's fees and costs.

16 Attorney fees and costs on appeal are permitted in those contexts where an appeal has  
17 frivolously been taken or been processed in a frivolous manner. N.R.S. 18.010; Rules App.Proc.,  
18 Rule 38. Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals, 114 Nev. 1348 971  
19 P.2d 383, 114 Nev. 1348, (1998). Also, the Supreme Court may award attorney fees where  
20 appellant raises no new legal arguments or where the Appeal is frivolous. NRCP 38. Woods v.  
21 Label Inv. Corp., 107 Nev. 419 812 P.2d 1293, (1991). MITCHELL concedes his Appeal is  
22 frivolous by voluntarily dismissing same. CHRISTINA has unnecessarily expended attorney's fees  
23 in responding to two, frivolous Appeals filed by MITCH. Pursuant to Matter of Estate of Hermann,  
24 100 Nev. 149 679 P.2d 246 (1984), this Court has the authority to compensate CHRISTINA for her  
25 counsel's services in responding to MITCHELL's frivolous Appeal. An attorney's fee award to  
26 CHRISTINA by this Court may deter MITCHELL's vexatious and contemptuous conduct and  
27 actions. This Court must somehow assist in curbing MITCHELL's unnecessary and repeated  
28 endeavor of filing papers and Appeals and his abuse of CHRISTINA, the lower Court's and this

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Electronically Filed  
May 29 2013 09:37 a.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

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

MITCHELL DAVID STIPP,

Appellant/Cross-Respondent,

vs.

CHRISTINA CALDERON-STIPP,

Respondent/Cross-Appellant.

SUPREME COURT CASE NO. 62299

**RESPONSE TO ORDER TO SHOW CAUSE ON CROSS-APPEAL AND MOTION TO  
CONSOLIDATE APPEALS, FOR AN AWARD OF DAMAGES AND COSTS FOR  
APPELLANT's FRIVOLOUS APPEAL AND FOR OTHER RELATED RELIEF**

COMES NOW, CHRISTINA CALDERON-STIPP, Appellant/Cross-Respondent, ("CHRISTINA"), by and through her attorney, PATRICIA L. VACCARINO, ESQ., ("ATTORNEY VACCARINO"), of the VACCARINO LAW OFFICE, and hereby submits her response to the Order to Show Cause, ("OSC"), on Cross-Appeal filed on April 29, 2013. CHRISTINA also files a Motion with the Court pursuant to NRAP 27, requesting the following relief:

1. An Order allowing CHRISTINA's Cross-Appeal to proceed as to all issues;
2. An Order allowing the remaining issues to be adjudicated in this appeal to be consolidated with and decided in Supreme Court Case No. 57327 pursuant to NRAP 3(b) and according to the entire District Court record in the Appendix filed in Supreme Court Case No. 57327 and the further District Court record in Case D-389203;
3. An Order directing that the remaining District Court record from Supreme Court Case No. 57327 from December 14, 2010 forward should be transmitted to this Court pursuant to NRAP 11(2) in order to fully address CHRISTINA's Cross-Appeal;
4. An Order declaring that no further briefing or argument shall be allowed by



1 Appellant and Respondent. This Court will have enough information and authority  
2 to decide the remaining issues based upon the filings in Case No. 57327 and this  
3 Response and Motion;

4 5. An Order granting CHRISTINA's attorney's fees and costs incurred, and no less  
5 than \$7,500.00, for addressing Appellant/Cross-Respondent's, MITCHELL DAVID  
6 STIPP, ("MITCHELL"), frivolous Appeal which he voluntarily dismissed; and,

7 6. Any further Orders the Court deems just and proper.

8 This Response and Motion is made and based upon the following Points and Authorities,  
9 the attached Exhibit, all papers on file in this action, Supreme Court Case No. 57327 and District  
10 Court Case No. D-389203.

11 DATED this 28<sup>th</sup> day of May, 2013.

12 VACCARINO LAW OFFICE

13 

14 PATRICIA L. VACCARINO, ESQ.  
15 Nevada Bar No. 005157  
16 8861 W. Sahara Ave., Suite 210  
17 Las Vegas, Nevada 891176  
18 Attorney for Respondent/Cross-Appellant,  
19 CHRISTINA CALDERON-STIPP  
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28

1 **POINTS AND AUTHORITIES**

2 I.

3 **FACTS REQUIRING CHRISTINA's CROSS-APPEAL TO PROCEED AND WARRANTING**  
4 **THE GRANTING OF CHRISTINA's MOTION**

5 CHRISTINA filed her Cross-Appeal on December 28, 2012, after being served with  
6 MITCHELL's frivolous Notice of Appeal. CHRISTINA clearly had prevailed upon several issues  
7 at the lower Court's hearing on November 9, 2012. The relevant Order and this Court's Order to  
8 Show Cause, ("OSC"), filed on April 12, 2013 note this fact. On April 12, 2013, MITCHELL  
9 voluntarily withdrew his frivolous appeal, for which he had zero factual and zero legal basis to file.  
10 Indeed, MITCHELL's Docketing Statement improperly asked this Court to overrule and reverse  
11 clear, statutory authority which allows the District Attorney to review the parties' child support  
12 issues.

13 Due to CHRISTINA's severely, diminished financial status stemming from MITCHELL's zeal  
14 to frivolously litigate in the District Court and Supreme Court since 2008, CHRISTINA had not  
15 intended to seek appellate relief from the November 9, 2012 Order. CHRISTINA felt she could  
16 not afford more appellate process. CHRISTINA did a cost/benefit analysis considering the  
17 amount of fees at issue, and reluctantly declined to file her appeal. Yet, when MITCHELL filed  
18 his frivolous appeal, CHRISTINA was compelled to respond with her worthy, cross-appellate  
19 issues. After all, CHRISTINA would be forced to expend time and money in briefing MITCHELL's  
20 appellate issues, and the additional cost to pursue her Cross-Appeal would have been nominal.  
21 MITCHELL has now filed two frivolous appeals and one Cross-Appeal in Supreme Court Case  
22 No. 57327. MITCHELL has voluntarily withdrawn both of his appeals, after CHRISTINA was  
23 forced to expend time and funds responding.

24 MITCHELL has filed two, frivolous Appeals in less than 14 months. The history of  
25 MITCHELL's disturbing and over-litigious practice is as follows:

- 26 1. Supreme Court Case No. 57327 - MITCHELL filed a frivolous Cross-Appeal on  
27 December 14, 2010 in retaliation to CHRISTINA's Notice of Appeal. This Court  
28 issued an OSC, considering dismissal of MITCHELL's Cross-Appeal. The issue of



properly applying Rivero v. Rivero, 125 Nev. 410, 216 P.3d 213 (2009), in determining custody, presented by CHRISTINA caused this Court to request an Amicus Curiae Briefing from the State Bar of Nevada, Family Law Section. This Appeal has been partially decided, with an Order of Reversal and Remand being filed by this Court on May 24, 2013. MITCHELL's remaining Cross-Appeal issue pertains to the attorney's fee issue first raised by CHRISTINA in her Appeal;

2. Supreme Court Case No. 57876 - MITCHELL filed a frivolous Appeal on March 4, 2011. MITCHELL requested voluntary dismissal on April 13, 2012;

3. Supreme Court Case No. 62299 - MITCHELL filed a frivolous Appeal on December 17, 2012. MITCHELL requested voluntary dismissal on March 21, 2013.

When MITCHELL filed the instant Appeal, CHRISTINA made the decision to proceed with her Cross-Appeal because she was already being forced to incur attorney's fees in this case in responding to MITCHELL's frivolous Appeal. In her Cross-Appeal, CHRISTINA set forth the pending and troubling legal issues in her Docketing Statement filed on January 23, 2013. Yet, it now is evident to CHRISTINA and her counsel that the first, third and fifth issues presented to this Court need to be further clarified. CHRISTINA and her counsel believe what is truly at issue are due process violations and procedural and legal errors by the District Court. The lower Court has erred in repeatedly refusing to execute and issue an OSC against MITCHELL and conduct contempt proceedings required by NRS Chapter 22. The first, third and fifth legal issues addressed in CHRISTINA's Docketing Statement should be amended and/or clarified as set forth below. Also, CHRISTINA's second and fourth issues should survive this Court's Order to Show Cause. The issues should be consolidated (NRAP 3(b)) with Supreme Court Case No. 57327 because the same issues should still be pending appeal after remand. Those issues include CHRISTINA's entitlement to attorney's fees and costs and specific Findings which need to be made regarding CHRISTINA being the primary physical custodian of the children pursuant to Rivero in order to clarify, for the future, child support and relocation issues. CHRISTINA's appellate issues should be clarified as follows:

1. Did the Court err in NOT issuing and enforcing an Order to Show Cause against

MITCHELL and conducting the appropriate OSC Evidentiary Hearing? The undisputed facts clearly, AGAIN, revealed MITCHELL was in contempt of specific Court Orders. In fact, MITCHELL conceded the violations in his papers filed.

2. Did the Court err in failing to grant CHRISTINA'S requests for attorney's fees and costs pursuant to contractual provisions set forth in the Decree and Marital Settlement Agreement and the statutes, Rules and case law noted in CHRISTINA's Motion and Reply concerning the September 25, 2012 proceedings?

3. Did the Court err in NOT fully enforcing the Court Orders, by failing to issue an OSC and utilizing the imposition of contempt of Court sanctions, especially in light of the current and previous proceedings where MITCHELL's contempt was not properly addressed by the Court?

4. Did the Court err in failing to make findings that the Decree provides CHRISTINA is entitled to child support according to her having primary physical custody and CHRISTINA does have primary physical custody of the children pursuant to Rivero as it relates to her child support review request?

5. Did the Court deny CHRISTINA her legal and constitutional rights in refusing to, again, grant her request for an Order to Show Cause and allowing contempt hearings to proceed in order to make specific findings and issue sanctions upon the issue of MITCHELL's repeated, contemptuous conduct?

Items numbers one, three and five above are all related issues. The issues have been revised to reflect the distinction of this case with Pengilly v. Rancho Santa Fe Homeowners Ass'n., 116 Nev. 646, 5 P.3d 569 (2000). The issue of the District Court's error in failing to allow a contempt hearing to proceed, in violation of CHRISTINA's constitutional rights and Nevada law, is fully briefed below. On April 29, 2013, this Court granted MITCHELL's request for voluntary dismissal. This Court issued an Order for CHRISTINA to show cause why her Cross-Appeal should not be dismissed. CHRISTINA now provides the Court with legal authority supporting her position that this Court has jurisdiction over the above-referenced issues.

...



1 This Court also ordered that each party shall bear their own attorney's fees and Costs  
2 associated with MITCHELL's Appeal which he voluntarily dismissed. CHRISTINA files this  
3 Motion, requesting an order granting her fees and costs for MITCHELL's frivolous appeal pursuant  
4 to NRAP 38 and the parties' Marital Settlement Agreement.

5 II.

6 **THIS COURT HAS JURISDICTION TO REVIEW THE ISSUES DEFINED AT NO. 20 OF**  
7 **CHRISTINA'S DOCKETING STATEMENT AND CLARIFIED IN THIS RESPONSE**

8 CHRISTINA is confident that this Court should maintain jurisdiction over the review of the  
9 lower Court's Order filed on November 9, 2012. CHRISTINA's Cross-Appeal is meritorious. The  
10 Cross-Appeal must proceed according to the facts and authority contained her papers filed in the  
11 District Court, her Docketing Statement and this Response.

12 CHRISTINA is requesting that this Court review the lower Court's denial of her request for  
13 an OSC to issue and be enforced against MITCHELL. CHRISTINA's legal issue presented is  
14 quite different than an Appeal from a contempt sanction being issued against her. CHRISTINA's  
15 legal question is whether or not the lower Court erred in failing to even issue an order to show  
16 cause, and failing to set a contempt hearing, prior to denying CHRISTINA's request for a finding  
17 of contempt. See NRS 22.100(1) which mandates such a hearing. That statute states, "...Upon  
18 the answer and evidence taken, the Court or Judge or jury, as the case may be **shall** determine  
19 whether the person proceeded against is guilty of the contempt charged."

20 Yet, the lower Court, without justification, flatly refused to issue an OSC, flatly refused  
21 CHRISTINA her statutory entitlement to have contempt proceedings conducted, and flatly refused  
22 to sanction MITCHELL for his admitted, contemptuous conduct. (See transcript from September  
23 25, 2012 proceedings, at page four, line 20 through page 11, line four.) CHRISTINA's Motion for  
24 OSC, child support arrears and other relief filed August 20, 2012 and attached to her Docketing  
25 Statement cited all of the authority and factual basis for the granting of her Motion. CHRISTINA's  
26 Reply Brief filed September 18, 2012, attached to CHRISTINA's Docketing Statement, outlines,  
27 at pages one and two, 11 contemptuous acts and clear violations of Court Orders which  
28 MITCHELL did not deny in his Opposition filed with the District Court. Yet, the District Court,

1 AGAIN, only admonished MITCHELL, and improperly yelled at CHRISTINA's counsel that the  
2 contempt powers can only be wielded by the Judge. CHRISTINA's counsel was not allowed to  
3 make a proper record. (See Exhibit "A", pages five and six.) In Rodriguez v. Eighth Judicial  
4 District Court, 120 Nev. 798, 102 P.3d 41 (2004), this Court held that a civil contempt sanction is  
5 designed to coerce the contemnor into complying with a Court Order. Yet, as the District Court  
6 record on file reveals, MITCHELL has faced no less than three contempt Motions since 2011  
7 without any sanction. MITCHELL will not ever be coerced into complying with any Court Order.  
8 If this Court does not now, reverse the Order and remand with specific instructions for the District  
9 Court to issue an OSC and sanction MITCHELL, he will continue and continue and continue to  
10 disobey Court Orders without any recourse. This Court, in its OSC filed April 29, 2013, cited the  
11 holding in Pengilly, 116 Nev. 646, 5 P.3d 569 (2000), questioning the merits of CHRISTINA's  
12 Cross-Appeal on the OSC issue.

13 In Pengilly, this Court held that it lacked jurisdiction over a Court Order issuing sanctions  
14 after contempt proceedings. This case is distinguishable, because CHRISTINA is not appealing  
15 a sanction after proper contempt proceedings were conducted. CHRISTINA is appealing the  
16 District Court's improper procedure and error in failing to abide by NRS 22 and Nevada law in  
17 ignoring MITCHELL's contemptuous conduct. The lower Court improperly failed to follow proper  
18 procedure, issue the OSC, hold contempt proceedings and sanction MITCHELL. CHRISTINA is  
19 appealing the lower Court's order denying her request for an OSC to issue and be enforced.  
20 CHRISTINA's request for an OSC was improperly denied. See Transcript attached as Exhibit "A".

21 The legal question posed concerning contempt is, "Did the Court err in NOT fully enforcing  
22 the Court Orders, refusing to issue an OSC and refusing to hold contempt proceedings, especially  
23 when the Court record reveals MITCHELL and the Court identified the contemptuous conduct?"  
24 CHRISTINA's legal issue posed is not a request for judicial review of the Court's granting an order  
25 for contempt and for sanctions. The legal question is "Did the Court err in NOT issuing and  
26 enforcing an Order to Show Cause against MITCHELL when the undisputed facts clearly, AGAIN,  
27 revealed he was in contempt of specific Court Orders, when MITCHELL conceded the violations  
28 and when CHRISTINA has no other remedies at law to enforce her contractual and legal rights?"



1 The holding in Pengilly does not provide that CHRISTINA's Cross-Appeal must be dismissed.  
2 This Court may still decide the denial of due process and proper issuance and enforcement of an  
3 OSC by the District Court. If this Court somehow decides such procedural issue can only be  
4 remedied by a writ, it is respectfully requested that CHRISTINA's Cross-Appeal be deemed a  
5 formally filed Writ in lieu of a Cross-Appeal. This case is analogous to Pan v. Eighth Judicial  
6 District Court, 120 Nev. 222, 88 P.3d 840 (2004) in which this Court considered a Writ which  
7 should have been reviewed by filing an Appeal.

8 CHRISTINA has been denied due process, again, because the lower Court improperly  
9 failed to issue an OSC and conduct contempt proceedings, even when MITCHELL concedes  
10 violations of Court Orders. In Ex parte Hedden, 29 Nev. 352, 90 P. 737 (1901), this Court held  
11 as follows:

12 . . .irrespective of whether or not the proceedings prior to a  
13 judgment in a contempt case be civil or criminal, we believe  
14 that unless the contempt is committed in the immediate view  
15 and presence of the court, and when we say immediate view  
16 and presence of the court we mean in the ocular view of the  
17 court, or where the court has direct knowledge of the  
18 contempt, that the rights of every defendant should be  
19 protected as evidently designed by the authors of our statute  
20 when they provided that, when the contempt is not in the  
21 immediate view and presence of the court, the charge should  
22 be made by affidavit and the contemner given the right to show  
23 cause why he should not be punished for contempt, and prove  
24 or disprove the charges against him before judgment be  
25 passed upon him. This right to defend one's self, either civilly  
26 or criminally, in any action which may be instituted wherein his  
27 liberty or property is involved, is the sacred privilege of every  
28 citizen and of such transcendent importance that it cannot be  
taken from him even by legislative enactment. . .

22 CHRISTINA, as a party repeatedly injured by MITCHELL's contemptuous conduct, is also  
23 entitled to her due process as the party who has suffered with MITCHELL's repeated,  
24 contemptuous conduct. CHRISTINA has the right to have her OSC request be fully and properly  
25 examined by the Court. There exists zero legal and factual basis which would give the lower Court  
26 the authority to deny CHRISTINA's request for an OSC to issue, especially when MITCHELL  
27 conceded numerous violations of Court Orders. CHRISTINA is entitled to her due process at an  
28 OSC hearing addressing MITCHELL's contemptuous actions. The lower Court committed judicial



1 error in failing to issue the OSC and conduct contempt proceedings.

2 Pursuant to Hedden and the Fourth Amendment of the United States and Nevada  
3 Constitution, CHRISTINA has the right to due process. MITCHELL's contemptuous actions were  
4 not addressed at a show cause hearing, and such procedure is improper. CHRISTINA suffered and  
5 continues to suffer financial and emotional harm due to MITCHELL's wilful violations of Court  
6 Orders. MITCHELL continues to violate Court Orders because the lower Court repeatedly refuses  
7 to enforce Court Orders by "wielding" its contempt powers and sanctioning MITCHELL.

8 The United States Supreme Court has addressed the requirements of due process in giving  
9 notice of a pending legal proceeding in Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306,  
10 70 S.Ct. 652, 94 L.Ed. 865 (1950). In Mullane, the High Court held that a publication in a local  
11 newspaper, in accordance with N.Y. Bank. Law s 100-c(12) (McKinney 1950), of an accounting for  
12 a common trust fund did not satisfy procedural due process. In so holding, the Court expressed the  
13 following general principles, at 314-315, 320, 70 S.Ct. at 657, 660. An elementary and fundamental  
14 requirement of due process in any proceeding which is to be accorded finality is notice reasonably  
15 calculated, under all the circumstances, to apprise interested parties of the pendency of the action  
16 and afford them an opportunity to present their objections. The fundamental requisite of due process  
17 is the opportunity to be heard. U.S.C.A. Const. Amendment 14.

18 In Browning v. Dixon 114 Nev. 213, 954 P.2d 741 Nev., (1998), this Court concluded that  
19 procedural due process requires diligence. This Court reversed the district court's order denying  
20 appellant's motion to set aside the default judgment entered against him. In this case, the lower  
21 Court has not exercised diligence when, without legal or factual basis, refused to issue and enforce  
22 an OSC against MITCHELL upon at least three Motions filed for said relief.

23 The fundamental requisite of due process is the opportunity to be heard as cited in Grannis  
24 v. Ordean, 234 U.S. 385, 394, 34 S.Ct. 779, 783, 58 L.Ed. 1363 (1914), "This right to be heard has  
25 little reality or worth unless one is informed that the matter is pending and can choose for himself  
26 whether to appear or default, acquiesce or contest." When Judge Potter repeatedly fails to issue  
27 an OSC upon CHRISTINA's Motions, CHRISTINA is denied due process and a full opportunity to  
28 be heard on the merits of her Motion. When the lower Court refuses to enforce valid Court Orders



1 with contempt proceedings, CHRISTINA is denied due process and the protection and guarantees  
2 contained in clear, Court Orders. In fact, the lower Court even granted CHRISTINA a child support  
3 arrears judgment at the September 25, 2012 hearing. The Judge strongly admonished MITCHELL  
4 for his legal "self-help" remedies, revealing the lower Court was well aware of MITCHELL's  
5 contemptuous conduct. See Exhibit "A". Indeed, Pengilly must be distinguished, and this Court  
6 must maintain jurisdiction over CHRISTINA's Cross-Appeal, consolidate the appeals in the interest  
7 of judicial economy, and reverse and remand the District Court's Order with specific instructions.  
8 The lower Court must be required to enforce all Orders with contempt as enumerated in NRS,  
9 Chapter 22.

10 CHRISTINA is an aggrieved party, time and time again, due to MITCHELL's contemptuous  
11 conduct. Pursuant to Valley Bank of Nevada v. Ginsburg, 110 Nev. 440, 446-448, 874 P.2d 729,  
12 734-35 (1994), a party is aggrieved when the district court's order adversely and substantially  
13 effects a personal right or right of property. CHRISTINA is the aggrieved party who is forced to file  
14 a Motion each and every time MITCHELL refuses to follow Court Orders. The District Court is  
15 bound by the parties' Marital Settlement Agreement to award CHRISTINA all of her fees and costs  
16 when CHRISTINA is deemed the prevailing party upon any Motion. Ginsburg holds that aggrieved  
17 parties have a right to the appeal process.

18 The lower Court's Order improperly denied CHRISTINA's request for an OSC to issue. In  
19 Board of Gallery of History v. Datecs Corp., 116 Nev. 286, 994 P.2d 1149, 1150 (2000), this Court  
20 held the District Court's failure to rule on a request constitutes a denial of the request. Therefore,  
21 the lower Court improperly denied CHRISTINA's request for an OSC. The Transcript attached as  
22 Exhibit "A" reveals the request for OSC was denied by the Court at the hearing. (See Exhibit "A"  
23 at page five, line 21 through page seven, line 24.)

24 MITCHELL stated, in and on the Court's record at the hearing, that he has engaged in  
25 contemptuous conduct. The lower Court wrongfully denied CHRISTINA's Motion for an OSC,  
26 ignored MITCH's admissions of his contemptuous actions, and failed to issue the OSC requested  
27 by CHRISTINA. The lower court also improperly denied CHRISTINA's request for attorney's fees  
28 and costs for which CHRISTINA had a solid, statutory and contractual reasons to request. The