

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

KIRK ROSS HARRISON,

**Appellant/Cross-
Respondent**

No. 66157

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Jun 22 2015 09:20 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

vs.

VIVIAN MARIE LEE HARRISON

**Respondent/Cross-
Appellant.**

_____ /

CHILD CUSTODY FAST TRACK STATEMENT
SUPPLEMENTAL APPENDIX
VOLUME 9

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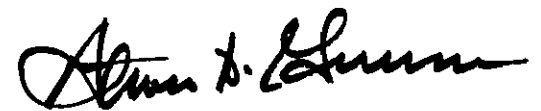
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SUPPLEMENTAL APPENDIX

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CLERK OF THE COURT

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14 DISTRICT COURT
15 CLARK COUNTY, NEVADA
16

17 KIRK ROSS HARRISON,
18 Plaintiff,
19 vs.
20 VIVIAN MARIE LEE HARRISON,
21 Defendant
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CASE NO.: D-11-443611
DEPT NO.: Q

Date of Hearing: 6/5/13
Time of Hearing: 10:00 a.m.

**PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION FOR
ATTORNEYS' FEES AND
SANCTIONS; PLAINTIFF'S
REQUEST FOR REASONABLE
DISCOVERY AND EVIDENTIARY
HEARING; PLAINTIFF'S
COUNTERMOTION FOR
EQUITABLE RELIEF;
PLAINTIFF'S COUNTERMOTION
FOR ATTORNEYS' FEES AND
SANCTIONS; AND PLAINTIFF'S
COUNTERMOTION FOR
DECLARATORY RELIEF**

**UNNECESSARY
PAGES OMITTED**

1 Reply is Vivian’s prescription history for Phentermine, Didrex, Bontril, and Diethylpropion. Based
2 upon the medical records produced from the doctors and pharmacies Vivian utilized and Vivian’s
3 own sworn statement, it is irrefutable that Vivian took Phentermine, Didrex, and Diethylpropion for
4 at least 18 months while she was nursing Rylee, despite FDA warning labels not to. Similarly,
5 Exhibit 12 to the Reply confirms Vivian’s use of the SRRI, Citalopram. Based on Vivian’s own
6 sworn statement and Exhibit 12, Vivian took Citalopram for at least 16 months while she was
7 nursing Rylee, Yet, Vivian’s attorneys describe this type of evidence as “mere speculation on
8 Kirk’s part.”

9 Frankly, it is Vivian’s attorneys who consistently utilize these types of unsavory tactics and
10 baseless accusations, which mandates the preparation of the detailed points and authorities that Kirk
11 has been compelled to file in this action.

12 **c. Dr. Norton Roitman Made the Diagnosis of Narcissistic**
13 **Personality Disorder Based upon True, Detailed, and**
14 **Corroborated Facts**

15 Bluntly stated, the game Vivian’s attorneys are playing is this: National experts in NPD say
16 Vivian doesn’t have NPD, therefore, there was never a legitimate basis for Dr. Roitman to opine she
17 has NPD, it must of all been the fabrication of Kirk. Vivian’s attorneys want this Court to gloss over
18 the fact that the letter opinions from the two national experts are so qualified to be entirely
19 worthless. These two letter opinions were based solely upon brief interviews with Vivian when she
20 was motivated to lie – which her own medical records prove she did.

21 **(1) In Vivian’s Attorneys’ Zeal to Falsely Smear Kirk, They**
22 **Somehow Forgot to Share with the Court a Letter from Dr.**
23 **Roitman, Which They Requested, Which Completely**
24 **Undermines Their Entire Position**

25 The Court will recall in Vivian’s Opposition re Custody, Vivian falsely represented as fact to
26 this Court that Kirk “manufactured allegations,” “manufactured theories,” “invented a case,”
27 “Developed a theory,” “chose [a] personality disorder,” and “chose a diagnosis.” (Vivian’s Opp. Re
28 Custody, p. 8) Kirk’s response to these baseless and spurious allegations is set forth on pages 5
through 11 of Kirk’s Reply re Kirk’s Motion re Custody, filed 1.4.12. It is indisputable that Dr.

1 Norton Roitman's opinions regarding Vivian's Narcissistic Personality Disorder originated with Dr.
2 Roitman and were 100% his opinions.

3 Undaunted by the truth and indisputable facts, Vivian and her counsel have demonstrated,
4 yet again, their willingness to wage yet another baseless assault upon Kirk's character, writing,
5 "Kirk's entire position in this case was based upon fabrication." (Vivian's Reply re Motion for
6 Exclusive Possession, p. 12, l. 20)

7 In Vivian's attorneys' possession is a letter from Dr. Norton Roitman to Mr. Smith, dated
8 June 4, 2012, which was sent by Dr. Roitman in response to a request from Mr. Smith. Kirk
9 respectfully urges the Court to read that letter in its entirety. (Exh. 6, Dr. Roitman letter) Dr.
10 Roitman makes very clear what happened, "After Mr. Harrison presented his affidavit and daughters
11 affidavits **I asked him** to re-sort the items under the diagnostic criteria." (Exh. 6, 2nd ¶) (emphasis
12 added) And later "**In accordance with my request**, Mr. Harrison placed the observations made by
13 his daughters and himself under the diagnostic criteria categories in a word processing document I
14 used as my first draft." (Exh. 6, 3rd ¶) (Emphasis added)

15 Both in his letter and during his deposition, Mr. Roitman was unequivocal that his analysis
16 was exclusively his, "In regard to the analysis, that was exclusively my writing. He did not originate
17 any explanations, concepts or explanations." (Exh. 6, p. 2, 2nd ¶) Further, "The affidavit material
18 was the psychiatric data base, which was the foundation already processed by Mr. Harrison **while**
19 **the analysis was the expert opinion which was 100% my own.** (Exh. 6, p. 2, 2nd ¶) Finally, "Mr.
20 Harrison served a clerical function in the redrafting of the affidavits under the NPD criteria. . . . All
21 the analysis and opinion was based on my knowledge and experience." (Exh. 6, p. 2, 4th ¶4 & 5th ¶)

22 Vivian's attorneys also falsely assert that the table of contents prepared by Kirk "had nearly
23 identical headings to Dr. Roitman's final report." (Vivian's Reply re Motion for Exclusive
24 Possession, p. 12, l. 23-24) The referenced table of contents was marked as Exhibit G during Dr.
25 Roitman's deposition. Except for the ordered listing of the nine criteria under the Diagnostic and
26 Statistical Manual of Mental Disorders (4th ed. 2000) (DSM-IV), which has to be the same, almost
27 none of the headings are the same.
28

Kirk did absolutely nothing improper when he deleted the draft he prepared for Dr. Roitman from his computer. FRCP 26(b)(4)(B) provides, “*Trial-Preparation Protection for Draft Reports or Disclosures*. Rules 26(b)(3)(A) and (B) protect drafts of any report or disclosure required under Rule 26(a)(2), regardless of the form in which the draft is recorded.” The standard of practice in state courts in Nevada is the same. The state courts in Nevada have consistently ruled that drafts of expert reports are not discoverable or admissible. Despite this, Vivian falsely asserts, “As the Court is aware, Kirk’s communication was admissible and discoverable, and in this case, highly relevant material, that Kirk, a seasoned lawyer, destroyed *after* the case was filed.” Vivian’s Reply re Motion for Exclusive Possession, p. 13, l. 4-7) Contrary to these baseless allegations, Kirk acted properly, ethically, well within the rules, and consistent with the standard of practice.

(2) The Therapists Who Met Vivian Based Their Evaluations Only upon What Vivian Told Them, Absolutely Failed to Consider Any Collateral Source Information, And, under Those Circumstances, Appropriately Qualified Their Opinions Based upon the Validity of What Vivian Told Them

Vivian falsely attacks Kirk, yet again, “It was only when Kirk realized that he would never be able to prove his absurd claim that Vivian suffered from “narcissistic personality disorder” that he resolved the case.”³⁹ (Moving papers, p. 27, p. 15-17) Kirk had attempted to resolve custody from the beginning. The custody case was finally resolved after Dr. Roitman advised Kirk the continuation of this contentious case was putting Brooke and Rylee at risk.

Dr. Appelbaum, Dr. Ronningstam and Dr. Thienhaus each based their evaluation of Vivian only upon what Vivian told them during the brief interview they had with Vivian. Dr. Thienhaus met with Vivian briefly twice, the others, only once. Neither of the national experts considered any collateral source information. As a consequence of this common fact among them, each of them qualified their respective opinion upon the truthfulness of what Vivian told them.

³⁹ Vivian makes false accusation after false accusation, personally attacking Kirk in an overt effort to sully Kirk’s reputation before this Court. Kirk has no choice but to defend himself with the truth.

(3) **The Reports of Dr. Applebaum, Dr. Ronningstam and Dr. Thienhaus Are So Qualified They Are of No Value**

There are three issues relative to the reports of Drs. Applebaum, Ronningstam and Thienhaus which the Court needs to be aware. First, the reports of Drs. Applebaum and Ronningstam are only based upon the one brief interview they each had with Vivian – nothing more. Both reports are specifically qualified by that fact. Second, there is compelling circumstantial evidence that an unlicensed therapist, Marvin Gawryn, was coaching Vivian as to what to say, what not to say, and how to behave on the eve of each of the interviews with Dr. Applebaum, Dr. Ronningstam and Dr. Thienhaus. Third, Vivian was motivated during her interviews with Dr. Applebaum, Dr. Ronningstam and Dr. Thienhaus to obtain an opinion to be used in Court that she does not have a personality disorder – she did not meet with any of these doctors seeking help for her problems. As a consequence, there are significant differences as to what is being portrayed in these reports versus what are known facts and what was confirmed by Vivian to her doctors in the physician notes of Dr. Paula Squiterri, Dr. Sean Duffy, the people at Trimcare, and the documentation Vivian completed when she went to see Dr. Jeffry Life actually seeking help. Vivian went to Dr. Squiterri, Dr. Duffy, and Dr. Life seeking help – not for forensic purposes to “win” a case. There are also a number of inconsistencies among the three forensic factual accounts.

i. **Dr. Applebaum’s and Dr. Ronningstam’s Reports Are Only Based upon What Vivian Told Each of Them During a Brief Interview**

There is a glaring material misrepresentation contained in Radford Smith’s letter, dated February 28, 2012, to Dr. Paglini. In the second paragraph on the second page of the letter, Mr. Smith represented to Dr. Paglini, “Dr. Applebaum and Dr. Ronningstam received *and reviewed* the pleadings in this matter (which, in turn, included the reports by Dr. Thienhaus and Dr. Margolis).” (Emphasis added) This representation, at least as to Dr. Ronningstam, simply isn’t true.

Dr. Ronningstam specifically qualifies her opinion by explicitly stating she did not review any prior diagnostic and psychiatric evaluations. Dr. Ronningstam, contrary to the representation to Dr. Paglini, did **not** review Dr. Roitman’s report, Dr. Thienhaus reports or the MMPI administered by Dr. Margolis. In rendering her opinion, Dr. Ronningstam wrote, “**This evaluation was done**

1 **without prior knowledge of other diagnostic and psychiatric evaluations.”** Dr. Ronningstam’s
2 opinion is based only upon a 3 ½ hour evaluation of Vivian on January 6, 2012.

3 Moreover, although Dr. Applebaum concedes he reviewed the documents submitted, it is
4 evident from reading Dr. Applebaum’s opinion that it is based only upon his 2 ½ hour evaluation of
5 Vivian on December 28, 2011. Dr. Applebaum, appropriately qualifies his opinion by stating he is
6 not in a position to determine who is telling the truth and if it turns out Vivian’s account is
7 inaccurate, which it was, he would have to modify his opinion. Dr. Applebaum wrote, **“It is clear**
8 **from the materials that I have reviewed that there are substantial disputes between the parties**
9 **regarding both fact and interpretation. When accounts are in conflict, I am not in a position**
10 **to make a determination regarding which account is accurate. In general, I have relied for the**
11 **conclusions that follow on Ms. Harrison’s account. Should a material aspect of that account**
12 **be proven inaccurate, I recognize that my conclusions may need to be adjusted accordingly.”**

13 (Applebaum report, page 6)

14 **ii. There Is Significant Circumstantial Evidence an**
15 **Unlicensed Therapist, Marvin Gawryn, Was**
16 **Coaching Vivian on the Eve of Each of the**
17 **Interviews with Dr. Applebaum, Dr. Ronningstam**
18 **and Dr. Thienhaus and Therefore Corrupted Those**
19 **Interviews**

20 Marvin Gawryn (“Marvin”) is an unlicensed therapist who Vivian has been seeing since
21 December of 2010. Marvin has never been licensed in the State of Nevada. Marvin was a licensed
22 marriage and family therapist in the State of Washington. Marvin’s license was suspended in the
23 State of Washington on or about September 21, 2011. Marvin had provided therapy services to a
24 couple involved in a committed and intimate relationship. The couple sought treatment from Marvin
25 for relationship issues. Sessions with Marvin included treatment of the clients individually and
26 together. For about a five month period, Marvin **engaged in sexual intercourse** with the wife or
27 female member of the couple approximately two (2) times weekly, **while he was providing therapy**
28 **treatment to her.** Marvin’s license was suspended by the State of Washington as a consequence of
this misconduct. Marvin cannot petition for reinstatement for “at least five (5) years and prior to
such petition, must “undergo a complete psycho-sexual” evaluation and provide an evaluative

1 report. A true and correct copy of the State of Washington Stipulated Finds of Fact, Conclusions of
2 Law and Agreed Order are attached as Exhibit “7.” Despite being informed of the foregoing,
3 Vivian continues to see Marvin to this day. Kirk is not jealous of Vivian’s relationship with Marvin
4 as Vivian falsely alleges.

5 In Nevada, Marvin “officially” describes his services as “Coaching and consultation services
6 for individuals and relationships in addressing a wide range of issues.” Despite Marvin’s attempt to
7 circumvent and obvious blatant violation of the laws of Nevada, Vivian believes she has been in
8 counseling with Marvin and that he is her therapist. Vivian’s Opposition re Custody provides,
9 “Vivian has also been seeing a counselor, Marvin Gawryn, for the past 6 months.” (P. 37, line 24)
10 Moreover, Paragraph 225 of Vivian’s Affidavit provides in relevant part, “Has Kirk seen a therapist
11 or a psychiatrist? No, but I have. Has Kirk tried family counseling? No, but I have and **I continue**
12 **in that counseling to this day.**”

13 Marvin has acted as an advocate for Vivian in this matter. Marvin participated in the
14 mediation sessions with former judge Robert Lueck on Vivian’s behalf. Marvin participated in the
15 mediation with James J. Jimmerson, Esq. on Vivian’s behalf. At one point during this mediation,
16 Marvin offered his “professional” opinion to everyone, including the mediator, that Vivian does not
17 suffer from a narcissistic personality disorder.

18 In his zealous advocacy on Vivian’s behalf, Marvin had no problem second guessing a
19 prescription for Vivian by a licensed psychiatrist in the State of Nevada. On March 1, 2011, Dr.
20 Sean Duffy wrote, “She is in **therapy** with **Marvin Garwin**, daughter has OCD and had seen **that**
21 **therapist**. This is in the last two months. This was to help with her plan for divorce which is going
22 forward at this point. Told **therapist** what dose she was on and **he** looked up and that she is on
23 standard dose. So now she is reconsidering the increaes (sic) in dose as **psychologist** said it might
24 harm her. . . . I disagree with **psychologist** that taking a larger amount would harm her in some way
25 which was not quantified by **him.**” (Exhibit 26 to Kirk’s Reply re Custody) Based on the foregoing,
26 either Vivian told Dr. Duffy that Marvin is a psychologist or, Dr. Duffy, presumed Marvin was a
27 psychologist based on the fact that Marvin was second guessing Dr. Duffy’s prescription dosage.
28

1 Marvin was coaching Vivian on the eve of each of her interviews with Dr. Applebaum, Dr.
2 Ronningstam and Dr. Thienhaus, and therefore, corrupted those interviews.

3 Vivian had an hour coaching session with Marvin on December 26, 2011. Vivian then flew
4 to New York City the next morning on December 27, 2012. Vivian spoke with Marvin on the
5 telephone for six minutes on December 27, 2012. Vivian then met with Dr. Applebaum on
6 December 28, 2012. Vivian telephoned Marvin that evening at 9:08 p.m. Vivian again telephoned
7 Marvin later that night at **12:09 a.m.** on December 29, 2011. Vivian telephoned Marvin yet again at
8 **12:11 a.m.** on December 29, 2011 when Vivian and Marvin spoke for **12 minutes**. Vivian returned
9 home Thursday night, December 29, 2011.

10 Vivian had a two hour coaching session with Marvin on January 4, 2012. Vivian then flew
11 to Boston the next morning on January 5, 2012 and met with Dr. Ronningstam on January 6, 2012.
12 While Vivian was still in Boston, Marvin telephoned Vivian at **1:23 a.m.** on January 7, 2012.
13 Vivian and Marvin spoke for **34 minutes** during that telephone call.

14 Vivian met with Dr. Thienhaus for 1 ½ hours on August 11, 2011 for the first time. Vivian
15 also took the MMPI2 on August 11, 2011. However, Vivian first had coaching sessions with
16 Marvin – 2 hours on July 30, 2011 and 1 ½ hours on August 6, 2011. Marvin has told Kirk that he
17 still has a practice in Seattle, Washington.⁴⁰ It is Kirk's belief that Marvin was in Seattle some time
18 between August 6, 2011 and August 11, 2011.

19 Vivian met with Dr. Thienhaus a second time on September 22, 2011 for 50 minutes. Vivian
20 first had two coaching sessions with Marvin – 2 hours on September 16, 2011 and 1 hour on
21 September 19, 2011.

22 Marvin is an unlicensed, unethical, charlatan and predator. He has acted as both Vivian's
23 therapist and zealous advocate. Vivian cannot deny the significant circumstantial evidence that
24 Marvin was coaching her on the eve of each of the interviews with Dr. Applebaum, Dr.

25
26 ⁴⁰

27 The Washington State Department of Health is undoubtedly unaware of this fact. In all
28 likelihood, Marvin has the same clients he had before the suspension and he is providing the
same services. However, the clients were previously billed for "therapy" and now they are
billed for "coaching."

Ronningstam and Dr. Thienhaus and, therefore, likely corrupted those interviews – which were already of only speculative value by being so expressly qualified and devoid of any collateral information.

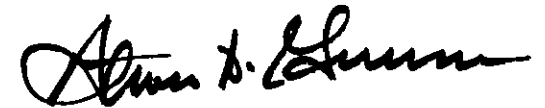
iii. **Motivated to Prevail in the Divorce, Vivian Lied to Dr. Applebaum, Dr. Ronningstam and Dr. Thienhaus**

In therapy sessions, the patient is generally motivated to tell the truth and disclose symptoms and concerns because they are motivated to be released from their suffering. The patient generally feels it is necessary to reveal their irrationalities and dysfunctions to enable the therapist to help them. In contrast, Vivian did not go to Dr. Applebaum, Dr. Ronningstam, and Dr. Thienhaus, motivated to seek help to be released from her suffering, but rather, for an opinion to be used in court that she does not have a personality disorder. It is generally accepted in forensic matters that the subjects may not disclose their vulnerabilities because it is their intent to prevail in their legal interest, rather than alert the examiner to their foibles. Vivian did, in fact, lie to each one of these individuals. Kirk previously enumerated Vivian's lies to Dr. Thienhaus on pages 58 through 61 of Kirk's Reply re Custody, filed 1.4.12. A noteworthy example is whether Vivian suffered from insomnia, which was important to Dr. Thienhaus. Vivian denied suffering from insomnia. However, there is no question Vivian suffered from severe insomnia for seven years. It was well documented by the records of Dr. Squiteri, Dr. Duffy, the medical people at Trim Care, and Dr. Life over the years. It was certainly no secret to Kirk, Tahnee and Whitney.

People, such as Vivian, who use stimulants over several years and foreseeably suffer from chronic insomnia over several years experience the types of symptoms that were extensively documented by Vivian to Dr. Duffy, Dr. Squiteri, people at Trimcare, and Dr. Life, and importantly, were also extensively documented by Kirk, Tahnee and Whitney, such as, anxiety, irritability, being prone to anger, loss of interest in family members, physical aggression, delusional behavior, etc.

4. **The Amount of Attorneys' Fees Incurred by Vivian Is a Consequence of the Manner in Which Vivian's Attorneys Chose to Manage this Case and the Overbilling by Vivian's Attorneys and Experts**

Assuming, *arguendo*, that Vivian was the prevailing party or that Kirk did act in bad faith and there is a disparity income or wealth, Vivian's claim for fees must still fail. The primary cause



CLERK OF THE COURT

1 **EXHS**

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22 **DISTRICT COURT, FAMILY DIVISION**
23 **CLARK COUNTY, NEVADA**

24 KIRK ROSS HARRISON,

25 Plaintiff,

26 vs.

27 VIVIAN MARIE LEE HARRISON,

28 Defendant

CASE NO.: D-11-443611-D

DEPT NO.: Q

Date of Hearing:

Time of Hearing:

29 **EXHIBITS TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR ATTORNEYS'**
30 **FEES AND SANCTIONS; PLAINTIFF'S REQUEST FOR REASONABLE DISCOVERY AND**
31 **EVIDENTIARY HEARING; PLAINTIFF'S COUNTERMOTION FOR EQUITABLE RELIEF;**
32 **PLAINTIFF'S COUNTERMOTION FOR ATTORNEYS' FEES AND SANCTIONS AND**
33 **PLAINTIFF'S COUNTERMOTION FOR DECLARATORY RELIEF**

34 Comes now, Plaintiff, Kirk R. Harrison (hereinafter "Kirk"), by and through his attorneys,
35 Thomas J. Standish, Esq. of the law firm of Jolley Urga Wirth Woodbury & Standish, and Edward L.
36 Kainen, Esq. of the Kainen Law Group, hereby submits his Exhibits To Plaintiff's Opposition To

**UNNECESSARY
PAGES OMITTED**

EXHIBIT “5”

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1 27. My primary motivation to resolve the custody in this matter was to stop any
2 further risk of the effect of this adversarial proceeding upon Brooke and Rylee. I had a meeting
3 with Dr. Roitman and Tom Standish. During that meeting I expressed my total frustration in not
4 being able to resolve this horrible situation for our family. At that point, Dr. Roitman basically
5 told me I didn't get it. He told me I would not be able to fix our family's problems in Family
6 Court. He then advised me the longer this prolonged adversarial divorce proceeding continued,
7 the greater the risk of long term emotional harm to Brooke and Rylee. It was clear Vivian's
8 counsel had no intention whatsoever of advising Vivian to do what was best for her or our
9 children. They were grinding my family emotionally and financially into the ground. Vivian's
10 counsel have and continue to exploit this family financially at the expense of Brooke and Rylee,
11 the other children, and Vivian. My family has been forced to endure an indefensibly prolonged
12 emotional and financial gauntlet in this case as a foreseeable consequence of the conduct of
13 Vivian's counsel.

14 28. Tom Standish was concerned about what he saw was going on in this case and, in
15 addition to reminding me of Dr. Roitman's unequivocal advise to settle custody to protect my
16 children, Mr. Standish advised me, in the strongest possible terms, that if we were unable to
17 settle custody, then the other side would force us to incur additional fees in excess of
18 \$1,000,000.00 to \$1,500,000.00 in discovery and a trial.

19 29. During my career as an attorney, I researched and drafted numerous memoranda
20 of points and authorities. I also reviewed billings to clients by other attorneys who worked with
21 me. Over the years I developed what I found to be a reasonable standard to review bills for the
22 preparation of points and authorities to insure our clients were not overbilled for the work
23 performed. The standard was an average of one hour per page for both research and writing. For
24 example a ten page memorandum of points and authorities should take about ten hours to
25 research and write.

26 30. A large portion of the time it takes to prepare points and authorities is the research
27 of relevant case law and statutes. When preparing opposing points and authorities, it takes time
28 ...

50. After I was back home in Boulder City and Joyce had returned from her Thanksgiving Holiday, Joyce telephoned and asked me for the model and serial numbers of the guns I had described for her while at the ranch. I told her I didn't have the serial numbers in Boulder City, the model of the two shotguns was Benelli SBE II. I told her I bought the two Ruger 22 rifles at Walmart and it was probably the most popular gun sold in the last several years. Joyce seemed like a nice person. I was disappointed to read what she wrote on item 237 of Volume II of II of her Summary Appraisal Report: "I was not able to view these guns. I asked Mr. Harrison for the model and serial numbers and they were not provided." My recollection is that I paid \$229.00 each for the two Ruger 22 rifles at Walmart and that I paid about \$200.00 each for the two Marlin bolt action 22 rifles at Dick's Sporting Goods. I have since checked on the internet and confirmed the Rugers are "10/22s." I cannot remember for sure what I paid for the two shotguns, but I think it was around \$1,300.00 each.

FURTHER AFFIANT SAYETH NAUGHT.

Kirk R. Harrison
Kirk R. Harrison

Subscribed and sworn before me
this 24th day of May, 2013.

Melody Howard
Notary Public

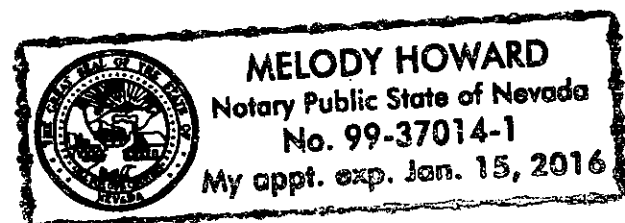


EXHIBIT “6”

June 4, 2012

Radford J. Smith, Esq
SMITH & TAYLOR
Attorneys at Law
64 North Pecos Road
Henderson, Nevada 89074

Regarding Harrison report draft

Dear Mr. Smith,

Here is my response to the task you requested at my deposition a month ago, followed by your letter of June 1, 2012.

After Mr. Harrison presented his affidavit and daughters' affidavits I asked him to re-sort the items under the diagnostic criteria. The material was the same he had already presented to me but ordered as per each party under their names in more or less chronological sequence, which was the only clinical material I was asked to review.

In accordance with my request, Mr. Harrison placed the observations made by his daughters and himself under the diagnostic criteria categories in a word processing document I used as my first draft. I then extended, extracted, reduced or eliminated material since I didn't agree with many of his categorizations. Mr. Harrison was at times over inclusive and inaccurate and several redrafts were necessary.

This process could have been done through interviews instead of writings, or I could have resorted the elements myself which would have incurred a much greater expense. There would have been no greater value to have done it myself as it was a clerical task and didn't require any expertise to type and re-type unchanging material. Once Mr. Harrison grossly reorganized the statements, I cut and paste sections to compose my final document.

Since all the content was derived from the affidavits, the only material I originated was the analysis of the material. All the source material was derived from the affidavits and their sources are referenced in my report.

June 4, 2012
Correspondence
Radford J. Smith, Esq
Regarding Harrison report draft

Whenever Mr. Harrison placed a statement under a category I didn't agree with I moved it or it eliminated it. Overall Mr. Harrison was about 70% accurate in representing information under the correct criteria. Nevertheless every item was reviewed and none of his representations were taken at face value.

In regard to the analysis, that was exclusively my writing. He did not originate any explanations, concepts or explanations. He provided the data base and the psychiatric evidence and proposed what criteria it belonged under. I wrote my own report placing the affidavit elements under the correct category. The same process would have been used whether I did this myself, whether Mr. Harrison was interviewed in person, or if the task was delegated to an assistant. I estimated an increase in charge of 15 hours were I to sort through each statement myself, retyped it, and placed it in the proper location. The outcome would have been the same. The affidavit material was the psychiatric data base, which was the foundation already processed by Mr. Harrison while the analysis was the expert opinion which was 100% my own..

Mr. Harrison pursued literature and excerpted writings from experts in Narcissistic Personality Disorder, most of which I referred him to. He included excerpts from some of these writings which he included in his draft. When I thought the quotes were pertinent I included them in my opinion. I did not include any I thought were irrelevant.

I stand by this process. I regularly use witness statements, deposition transcripts, police reports, medical records, treatment summaries and expert reports as a basis to form a written opinion and expert relevant portions. Disability evaluations almost always include a summary of events, which when verified, can be excerpted as well to explain the treatments, providers, claims, chronology of interventions and results. Many times experts use assistants to review medical records and write summaries. As a reviewer I can agree, change or discard the portions or statements, I discard what doesn't make sense. Mr. Harrison served a clerical function in the redrafting of the affidavits under the NPD criteria.

All the analysis and opinion was based on my knowledge and experience. I am a qualified expert in psychiatric diagnosis and there is no reason for me to depend on a client for my opinion. Whether I did the resorting of the observations myself, depended on an office -based psychiatric assistant, clerk, secretary, nurse or Mr. Harrison wouldn't matter. My report and the opinions are my own.

June 4, 2012
Correspondence
Radford J. Smith, Esq
Regarding Harrison report draft

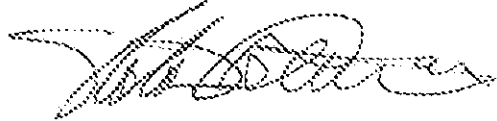
The only issue that would cause me to reconsider the report or it's conclusions would be if the data was inaccurate. If there are contrary findings that refute Mrs. Harrison's alleged behaviors I would reconsider my conclusions and diagnosis. But if the statement are accurate it doesn't matter the process by which the data based got into the report. My opinions are based on the facts as presented, not the process by which they got into in my document.

There are standard procedures in legal matters whereby a firm composes an affidavit draft for review and the expert corrects, revises, adds or subtracts to conjointly write a final draft. This procedure is always qualified by advising the attorney that if there is anything in the document I can't stand by, I won't sign it. There have been affidavit drafts that go back and forth between the offices until it is right. Often times it has been the attorney's paralegal or secretary who is word processing the draft and editing in my corrections. Up to 95% of an affidavit's contents can stay in the form originated by the counsel's office. This process was similar to that procedure, modified by informing the clerical person that portions of the draft needed to be reordered in accordance with my instructions. I discussed my decisions with Mr. Harrison at critical points in the drafting.

There is no way to recreate what materials or writings were re-word processed by Mr. Harrison except to say than all of the affidavit excerpts were typed by him but what order they appeared and in what category was my decision, and the critical portion of the report, the opinion, was 100% mine. While I might have quoted his material or selected word grouping I found to explain my points, I followed the same process I use in all record review and forensic work.

1

Respectfully,



Norton A. Roitman, MD, DFAPA

www.NRoitmanMD.com

Board Certified in Developmental and General Psychiatry

Clinical Professor of Psychiatry and Pediatrics at the University of Nevada School of Medicine

Clinical Faculty Supervisor for Touro University College of Osteopathic Medicine

Distinguished Fellow of the American Psychiatric Association

cc Kirk Harrison, Esq
Tom Standish, Esq

EXHIBIT “7”

**STATE OF WASHINGTON
DEPARTMENT OF HEALTH
SECRETARY OF HEALTH**

In the Matter of

MARVIN GAWRYN
Credential No. MFT.LF.00001356

Respondent

No. M2011-883

**STIPULATED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
AGREED ORDER**

The Licensed Marriage and Family Therapist Program (Program), through Janet Staiger, Department of Health Staff Attorney, and Respondent, represented by counsel, Joseph Shaub, stipulate and agree to the following:

1. PROCEDURAL STIPULATIONS

1.1 On June 27, 2011, the Program issued a Statement of Charges against Respondent.

1.2 Respondent understands that the Program is prepared to proceed to a hearing on the allegations in the Statement of Charges.

1.3 Respondent understands that if the allegations are proven at a hearing, the Secretary of Health (Secretary) has the power and authority to impose sanctions pursuant to RCW 18.130.160.

1.4 Respondent has the right to defend against the allegations in the Statement of Charges by presenting evidence at a hearing.

1.5 Respondent waives the opportunity for a hearing on the Statement of Charges provided that the Secretary accepts this Stipulated Findings of Fact, Conclusions of Law and Agreed Order (Agreed Order).

1.6 The parties agree to resolve this matter by means of this Agreed Order.

1.7 Respondent understands that this Agreed Order is not binding unless and until it is signed and accepted by the Adjudicative Clerk Office.

1.8 If the Secretary accepts this Agreed Order, it will be reported to the Health Integrity and Protection Databank (45 CFR Part 61), the National Practitioner Databank (45 CFR Part 60) and elsewhere as required by law. It is a public document and will be

STIPULATED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND AGREED ORDER
NO. M2011-883

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placed on the Department of Health's website and otherwise disseminated as required by the Public Records Act (Chap. 42.56 RCW) and the Uniform Disciplinary Act RCW 18.130.110.

1.9 If the Secretary rejects this Agreed Order, Respondent waives any objection to the participation at hearing of the Presiding Officer who heard the Agreed Order presentation.

2. FINDINGS OF FACT

Respondent and the Program stipulate to the following facts:

2.1 On July 22, 2001, the state of Washington issued Respondent a credential to practice as a licensed marriage and family therapist. Respondent's credential is currently active.

2.2 Respondent provided therapy services to partners Client A and Client B, approximately once per week from November 17, 2006 through March 8, 2007. Clients A and B were involved in a committed and intimate relationship. Clients A and B sought treatment from Respondent for relationship issues. Sessions with Respondent included treatment of the clients individually and together.

2.3 From March 14, 2007 through January 18, 2011, Respondent provided weekly therapy treatment to Client A.

2.4 In or about September 2010 through January 2011, Respondent engaged in sexual intercourse with Client A approximately two (2) times weekly.

3. CONCLUSIONS OF LAW

Respondent and the Program agree to the entry of the following Conclusions of Law:

3.1 The Secretary of Health, acting through the Presiding Officer, has jurisdiction over Respondent and over the subject matter of this proceeding.

3.2 Respondent has committed unprofessional conduct in violation of RCW 18.130.180(7), (24), WAC 246-16-100(1)(a), and WAC 246-809-049.

3.3 The above violations provide grounds for imposing sanctions under RCW 18.130.160.

4. COMPLIANCE WITH SANCTION RULES

4.1 The disciplining authority applies WAC 246-16-800, *et seq.*, to determine appropriate sanctions. WAC 246-16-800(2)(c) requires the disciplining authority to impose terms based on a specific sanction schedule unless "the schedule does not adequately address the facts in a case."

4.2 Respondent's alleged conduct falls in Tier B of the "Sexual Misconduct or Contact" schedule, WAC 246-16-820. The sanction range associated with that tier does adequately address the alleged facts of this case. The disciplining authority has identified factors that justify a sanction that falls within the maximum range of the above identified tier.

4.3 The disciplining authority considered the following aggravating factors:

- A. Number and frequency of acts.
- B. Potential for harm to clients.
- C. Abuse of trust.
- D. Vulnerability of clients.

5. AGREED ORDER

Based on the Findings of Fact and Conclusions of Law, Respondent agrees to entry of the following Agreed Order:

5.1 Respondent's credential to practice as a licensed marriage and family therapist in the state of Washington is **SUSPENDED**. Respondent may not petition for reinstatement of credential for a period of at least five (5) years from the effective date of this Agreed Order.

5.2 Respondent shall present both portions of his credential to the Department of Health, Secretary of Health, PO Box 47873, Olympia, WA 98504-7873, within ten (10) days of receipt of this Agreed Order.

5.3 Prior to any request for reinstatement Respondent shall undergo a complete psycho-sexual evaluation by a psychiatrist or mental health specialist credentialed by the state of Washington and pre-approved by the Program and provide an evaluative report to the Program. The evaluation must be completed within ninety (90) days of any re-application or modification request.

To assist in the evaluation, Respondent shall provide the evaluator with a copy of this Agreed Order and any releases for information that the evaluator might request. In addition, Respondent shall provide the evaluator with a copy of the file in this matter. If Respondent has not obtained a copy of the file, the Program shall provide a copy of the file to the evaluator, excluding any portions of the file that are legally protected from disclosure or otherwise privileged.

The evaluator shall conduct a complete psycho-sexual evaluation and prepare a report. Respondent shall assure that the evaluator provides the Program with a copy of the evaluation report and all raw data that support the evaluator's findings. The report shall include:

- A. A description of the evaluation process and Respondent's cooperation with that process;
- B. The evaluator's opinion on whether Respondent can practice as a licensed marriage and family therapist without posing an unreasonable risk of harm to the patients or the public and a statement of all factual basis for that opinion;
- C. If the evaluator opines that Respondent cannot practice without posing an unreasonable risk of harm, the evaluator's recommendations, if any, for mental health counseling or other treatment the evaluator believes Respondent should undergo, so that he might safely practice at a later date; and
- D. If the evaluator believes that Respondent can safely practice, a detailed description of any and all practice conditions and restrictions the evaluator recommends imposing. Among other considerations, the evaluator shall determine whether Respondent should undergo ongoing mental health counseling as a condition of practice.

Upon notice and an opportunity for Respondent to be heard, the Program may impose additional conditions after reviewing the documents submitted and Respondent's compliance with this Agreed Order. However, at the discretion of the Program, the terms and conditions of this Agreed Order may be modified and/or Respondent's credential reinstated without limitation and/or restriction without a hearing.

Prior to reinstatement, Respondent must also demonstrate that he meets relevant regulatory requirements for a credential.

5.4 Respondent shall refund to Clients A and B, (and/or any other person or entity who paid on behalf of Clients A and B) all fees Respondent charged with respect to his treatment of Clients A and B for their counseling sessions. Respondent shall provide the Program or its designee with:

A. Within ninety (90) days of the effective date of this Agreed Order, a full accounting of fees charged in relation to such counseling sessions; and

B. Within two (2) years of the effective date of this Agreed Order, proof of payment to Clients A and B (or payor) of a refund for all such fees charged.

Failure to refund the fees charged to Clients A and B (and/or other payor), and to provide the Program with an accounting and proof of payment within the specified times, shall be a violation of this Agreed Order.

5.5 Respondent is responsible for all costs of complying with this Agreed Order.

5.6 Respondent shall inform the Program and the Adjudicative Clerk Office, in writing, of changes in Respondent's residential and/or business address within thirty (30) days of the change.


5.7 The effective date of this Agreed Order is the date the Adjudicative Clerk Office places the signed Agreed Order into the U.S. mail. If required, Respondent shall not submit any fees or compliance documents until after the effective date of this Agreed Order.

6. ACCEPTANCE

I, MARVIN GAWRYN, have read, understand and agree to this Agreed Order. This Agreed Order may be presented to the Secretary without my appearance. I understand that I will receive a signed copy if the Secretary accepts this Agreed Order.


MARVIN GAWRYN
RESPONDENT

9-21-11
DATE


JOSEPH SHAUB, WSBA #25037
ATTORNEY FOR RESPONDENT

9/21/11
DATE

STIPULATED FINDINGS OF FACT,
CONCLUSIONS OF LAW AND AGREED ORDER
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7. ORDER

The Secretary of Health accepts this Stipulated Findings of Fact, Conclusions of Law and Agreed Order.

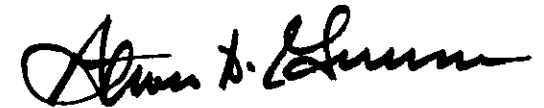
DATED: _____, 2011

HEALTH LAW JUDGE
PRESIDING OFFICER

PRESENTED BY:

JANET STAIGER, WSBA #16573
DEPARTMENT OF HEALTH STAFF ATTORNEY

DATE



CLERK OF THE COURT

RPLY

THOMAS J. STANDISH, ESQ.

Nevada Bar No. 1424

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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

KIRK ROSS HARRISON,

Plaintiff,

vs.

VIVIAN MARIE LEE HARRISON,

Defendant

CASE NO.: D-11-443611

DEPT NO.: Q

Date of Hearing: 10/30/13

Time of Hearing: 10:00 a.m.

PLAINTIFF'S REPLY BRIEF
IN SUPPORT OF PLAINTIFF'S COUNTERMOTIONS
FOR REASONABLE DISCOVERY AND EVIDENTIARY HEARING,
EQUITABLE RELIEF, ATTORNEYS' FEES AND SANCTIONS,
AND DECLARATORY RELIEF

COMES NOW, Plaintiff Kirk Ross Harrison by and through his attorneys,, Thomas J. Standish,
Esq., of the law firm of Jolley, Urga, Wirth, Woodbury & Standish, and Edward L Kainen, Esq., of the

...

...

...

KAINEN LAW GROUP, PLLC
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www.KainenLawGroup.com

**UNNECESSARY
PAGES OMITTED**

Vivian's attorneys have unilaterally delayed this proceeding month after month. They have not honored the agreements they made with opposing counsel. They have employed reprehensible tactics to gain an unfair advantage in the briefing process. They are graciously given extensions of time within which to respond and then not only fail to comply with the extensions, but also fail to reciprocate. They have taken unsavory positions in an effort to deprive opposing counsel of the opportunity to file a responding brief or so severely limit their time to respond as to make it impossible to adequately respond. They have made one material misrepresentation after another to the Court, as if that is accepted practice and acceptable behavior. They have taken a case where the community assets were never in dispute and the opposition repeatedly tried to have custody expeditiously resolved by a third party neutral determination, and have now billed what is likely in excess of One Million Dollars (\$1,000,000.00).

D. Despite Irrefutable Facts To The Contrary, Vivian's Attorneys Continue Their Baseless Assault Upon Kirk and Dr. Roitman

The Court should be aware that a lawsuit was filed on June 26, 2013, in the Second Judicial District in Washoe County, by Vivian Marie Lee Harrison against Norton A. Roitman, M.D. Vivian has not just attacked Dr. Roitman in the pleadings herein. Vivian actually filed a lawsuit against Dr. Roitman, in Reno, for the opinions he rendered in this case. This lawsuit is patently frivolous as Dr. Roitman, in rendering his opinions as an expert in this litigation, does not owe Vivian a tort duty.¹³ A Motion to Dismiss is presently pending and awaiting a hearing.

1. The True Genesis and Development of Dr. Roitman's Opinions

The Court will recall that Vivian's attorneys' frivolous allegations that Kirk "manufactured allegations," "manufactured theories," "invented a case," "developed a theory," "chose [a] personality disorder," and "chose a diagnosis" were made when Vivian's attorneys erroneously assumed there was no irrefutable paper trail as to how Dr. Roitman developed his opinions. Vivian's attorneys wrongly

¹³ One of Kirk's countermotions regarding attorneys' fees, filed May 28, 2013, is for a declaratory judgment that Kirk, upon entry of the divorce decree, has standing to sue Vivian's attorneys, **not for legal malpractice**, but rather for their over billing, as Kirk has paid the majority of their fees. Perhaps the frivolous lawsuit against Dr. Roitman, presumably for malpractice or some other tort, is in response to that countermotion.

1 assumed Kirk would be relegated to simply denying their baseless assertions. The only “evidentiary
2 support” used for this make believe story was in paragraph 136 of Vivian’s statement:

3 136. Approximately three years ago, as our marriage was clearly deteriorating, I saw
4 Kirk with a book on narcissism. He claims that he got the book from Tahnee, but
5 the book he identifies in his affidavit is different than the book he claims Tahnee
6 gave him. From his affidavit, it appears that he looked at the characteristics of
7 this “disorder” and then tried to mold facts to support his opinion.

8 (Vivian’s opposition and countermotion re custody, Exh. A, p. 52, ¶52)

9 This is simply made up nonsense. This is the fictional story line that was falsely created, not
10 based upon facts, but ill-advised unethical advocacy and Vivian’s willingness to lie to the Court yet
11 again. This paragraph is dripping with advocacy stating, “it appears that he looked at the characteristics
12 of this “disorder” and then tried to mold facts to support his opinion.”

13 The book on narcissism which Vivian references, was a book on narcissism that Tahnee was
14 reading *in March of 2010 – not 2008!* On March 1, 2010, Kirk wrote, “Tahnee had me read sections
15 from “Will I ever be good enough – healing the daughters of narcissistic mothers.” (Exh. 1 to Kirk’s
16 motion re custody, filed 9.14.11, ¶103) Kirk did not read any books on narcissism until he received the
17 books on narcissism he ordered after his meeting with Dr. Roitman in January and February of 2010.
18 Unbeknownst to Vivian’s attorneys and Vivian at the time they made these baseless allegations, is the
19 letter of January 4, 2010, that Kirk had prepared and provided to Dr. Roitman. (Exhibit 9 to Kirk’s
20 reply re custody, filed 1.4.12) It was memorialized that Vivian refused to see anyone. Kirk was
21 therefore relegated to preparing this letter and providing it to the best psychiatrist he could find in an
22 effort to identify the causes of Vivian’s aberrant behavior *and to get Vivian help*. The mere existence
23 of this letter, which both Kirk and Dr. Roitman have had since January 2010, totally refutes this
24 fabricated story by Vivian’s attorneys.

25 What is indisputably clear from this letter to Dr. Roitman, is that Kirk was trying to solve an
26 extremely difficult problem for his family. Kirk was not out to get Vivian. Contrary to what Vivian
27 now alleges as fact, Kirk was trying to get help for Vivian and his children.

28 ...

...

...

1 2. **What Is Indisputably Clear From This Letter is That Until Kirk Sat Down**
2 **With Dr. Roitman In January and February of 2010, Kirk Thought Vivian**
3 **Was Bipolar Like her Older Sister**

4 Vivian had always told Kirk that her older sister, Cindy, was bipolar. In the letter to Dr.
5 Roitman, Kirk wrote, "Vivian believes that Cindy was bipolar and insufferable to be around." When
6 Kirk first met Cindy, Vivian told Kirk that Cindy had been a stripper at the Palomino Club in North Las
7 Vegas and probably a prostitute. (Exhibit 9 to Kirk's reply re custody, filed 1.4.12, p. 4) Kirk would
8 see Cindy each year on Christmas eve at Vivian's grandparents' home. Vivian warned Kirk, before he
9 ever met Cindy, that Kirk and everyone else had to be very careful what they said in her presence as
10 Cindy would go crazy. Cindy was unstable and volatile. Vivian had told Kirk that Cindy used the name
11 "Angel" as a stripper. Believing he was being respectful, Kirk made the mistake of addressing Cindy
12 as "Cindy," rather than "Angel," when he first met her. Cindy took off on Kirk screaming obscenities.
13 Cindy was cold and uncaring. During those early years when Kirk first met Cindy, Cindy had a daughter
14 and a younger son. It appeared to Kirk the children were having problems coping with their cold,
15 uncaring, unstable and volatile mother. Vivian told Kirk that Cindy abused prescription drugs and
16 alcohol. Cindy died from a prescription drug overdose, which was probably a suicide. At the time she
17 died, Cindy had two additional young children. The social work people assigned to the case, told Vivian
18 the children had been severely neglected, were in very rough shape, and intellectually underdeveloped
19 for their ages.

20 It is very evident in Kirk's letter to Dr. Roitman of January 4, 2010, that Kirk believed that
21 Vivian was bipolar like her older sister Cindy. In his questions to Dr. Roitman, Kirk wrote, "Vivian's
22 behavior is **so much like the behavior** of her mother and **her sister Cindy**. Is it possible that it is
23 genetic? Is it possible it is caused by a chemical imbalance?" . . . "Is **Vivian bipolar**, suffering from
24 severe depression, or something else? Are the courses of treatment the same or different?" (Exhibit
25 9 to Kirk's reply re custody, filed 1.4.12, p. 37) (Emphasis added.) Consistent with this fact, is the
26 entry Kirk made for November, 16, 2009 in the January 4, 2010 letter to Dr. Roitman, "Later last Friday
27 night, Tahnee told me that she thinks Vivian is bi-polar/manic depressive." (Exh. 9 to Kirk's reply re
28 custody, filed 1.4.12, p. 29) This same statement also appears in Kirk's affidavit. (Exh. 1 to Kirk's
 motion re custody, filed 9.14.11, ¶69) Kirk also made a similar entry on December 5, 2009, stating,

1 “Tahnee said she thinks Vivian is manic-depressive because Vivian has all these times when she has
2 to buy things.” (Exh. 9 to Kirk’s reply re custody, filed 1.4.12, p. 31) See also, (Exh. 1 to Kirk’s motion
3 re custody, filed 9.14.11, ¶75) Consistently, Kirk also wrote in the letter to Dr. Roitman the following:

4 Postpartum triggered, stress induced, pre-menopausal, **bipolar**, average/unhealthy,
5 severe depression, delusional – whatever the condition, whatever the diagnosis, Vivian
6 is missing something inside. Some might say she has lost her soul. She is almost
7 completely self-absorbed. Somehow this has got to be fixed. Intellectually, I believe
8 she must be aware there is a problem, but doesn’t know how to overcome her childhood.
9 That is not to say at this point she even recognizes the correlation between her current
10 problems and her childhood.

11 (Exh. 9 to Kirk’s reply re custody, filed 1.4.12, p. 11)

12 At another point in the letter, Kirk wrote, “Though not trained in psychology other than a college
13 entry level course, I believe Vivian is suffering from a psychosis that is rapidly worsening.” (Exh. 9 to
14 Kirk’s reply re custody, filed 1.4.12, p. 20)

15 At a later point in the letter, sometime between November 8, 2009 and November 13, 2009, Kirk
16 wrote:

17 My belief is that Vivian’s problems started when she gave birth to Brooke over ten years
18 ago. Perhaps initially triggered by postpartum depression, the stress of a new baby,
19 and/or the stress of dealing with teenage girls. However, she has really spiraled
20 downward since Rylee was born on January 24, 2003. She is suffering from depression.
21 **I don’t know for sure the cause.** It was during this time and forward that the
22 consequences of her childhood started to impact her and she started to act more based
23 upon her unhealthy personality than any independent thought. Based upon the “Wisdom
24 of the Enneagram” she is an average/unhealthy Eight, otherwise referred to as “The
25 Challenger.” She has been taking “speed” Phentermine for four to five years. This
26 combination, in my opinion, led to her intellectual and emotional undoing.¹⁴

27 (Exh. 9 to Kirk’s reply re custody, filed 1.4.12, p. 29) (Emphasis added.)

28 At that time, although it is clear Kirk thinks Vivian is bipolar like her sister, Cindy, it is also
evident he doesn’t know what is causing her behavior and that is why he is seeking Dr. Roitman’s
opinion and advice.

...

¹⁴ Kirk’s close friend, Gard Jameson, recommended Kirk read the “Wisdom of the Enneagram.” Kirk ordered this book from Amazon on April 24, 2009. A copy of the Amazon invoice is attached hereto as Exhibit “28.” This book is **not** about narcissism and is the only book Kirk read in his effort to help Vivian, prior to reading the books on narcissism, borderline personality, etc. which Kirk ordered and read after meeting with Dr. Roitman in January and February of 2010.

1 Despite this letter, Vivian's attorneys have continued to claim that Kirk developed the theory
2 of narcissistic personality disorder – obviously unwilling to let something as insignificant as the **truth**
3 stop them in their misguided and unethical zeal to make Kirk “the bad guy.” (Kirk's reply re custody,
4 filed 1.4.12, p. 3, footnote 3) The submission of a written motion to the Court by an attorney is a
5 certification by that attorney that the factual contentions contained therein have evidentiary support and
6 the attorney has made reasonable inquiry under the circumstances to confirm that those factual
7 contentions are valid and correct. NRCP 11(b)(3) Vivian's attorneys had no evidentiary support for
8 their spurious allegations in the first instance, and certainly, after being provided a copy of the letter of
9 January 4, 2010, to Dr. Roitman, Vivian's attorneys knew their rank speculation, which had no basis
10 whatsoever, was absolutely false.¹⁵ Incredulously, despite knowing the truth, Vivian's attorneys
11 continue to make these allegations to this day. As Vivian's attorneys continue to drag this skunk around
12 the courtroom, they are apparently unaware it is they who are embedded with the stench.

13 Vivian's attorneys also attempt to shroud Kirk with a cloak of “bad faith” by arguing that Kirk
14 did not include every sentence in the January 4, 2010 letter in his affidavit, including some sentences
15 which put Vivian in a positive light. Vivian's attorneys argue that this was an attempt by Kirk to not
16 provide Dr. Roitman with the positive things Vivian has done in an attempt to “shape” Dr. Roitman's
17 opinions. This is also intellectually insulting. The January 4, 2010 letter is addressed to Dr. Roitman,
18 was given to Dr. Roitman, and was read by Dr. Roitman. Dr. Roitman was well aware of all the positive
19 ...
20 ...
21

22 ¹⁵ It is troubling that Vivian's attorneys believed that Vivian's fabricated statement that she saw Kirk
23 reading a book on narcissism was sufficient evidentiary support to make such spurious allegations in
24 the first place. The first time Kirk met Dr. Roitman was in January of 2010. Dr. Roitman is extremely
25 well respected with an impeccable reputation. Kirk also enjoys an excellent reputation. Assume,
26 *arguendo*, Kirk actually read a book on narcissism before meeting Dr. Roitman – which he did not.
27 Merely reading a book on narcissism is not sufficient “evidentiary support” under Rule 11 to justify
28 claims that Kirk “manufactured allegations,” “manufactured theories,” “invented a case,” “developed
a theory,” “chose [a] personality disorder,” and “chose a diagnosis.” Kirk also did not read a book on
terrorism prior to the 9/11 attacks. However, if Vivian was willing to claim that she saw Kirk with a
book on terrorism, that apparently, would not stop Vivian and Vivian's attorneys from claiming that he
must have been responsible for the 9/11 attacks. Vivian's attorneys' conduct is far beyond the pale.

1 things Kirk wrote about Vivian when Dr. Roitman rendered his opinions in this case. This Court was
2 also obviously made aware of the contents of the January 4, 2010 letter to Dr. Roitman during the
3 briefing of temporary custody, as Kirk attached it as Exhibit 9 to his Reply, filed 1.4.12.

4 A review of Kirk's letter to Dr. Roitman dated January 4, 2010, and Kirk's affidavit indicates
5 he is memorializing events as they occur. Kirk never read a book about narcissism until after Dr.
6 Roitman read Kirk's letter, and after Dr. Roitman recommended Kirk read writings by Dr. Otto
7 Kernberg on narcissism.

8 **3. Dr. Roitman's Opinions in this Case Were 100% the Opinions of Dr.**
9 **Roitman – Dr. Roitman Originated Those Opinions, Developed Those**
10 **Opinions, And Wrote Those Opinions**

11 The true sequence of events confirm what Dr. Roitman has testified to under oath and as set forth
12 in Dr. Roitman's June 4, 2012 letter to Radford Smith, Esq. (Exh. 6 to Kirk's countermotions, filed
13 5.28.13). The opinions Dr. Roitman rendered in this case were 100% his opinions. Dr. Roitman
14 originated those opinions, developed those opinions and wrote those opinions. The true sequence of
15 events reveals the truth and also reveals the falsity of Vivian and Vivian's attorneys representations to
16 the Court:

17	6/26/99	Brooke is born and Vivian's behavior is noticeably worse in the following years; Kirk initially thought Vivian was suffering from postpartum depression, her condition was temporary and she would get better over time; Vivian did not get better, but seemed to somewhat level off
18		
19	1/24/03	Rylee is born and Vivian's behavior starts spiraling downward after that date getting worse and worse each succeeding year
20		
21	6/9/04	Vivian starts taking Phentermine, Didrex, Bontril and Diethylpropion for the next seven years
22	6 & 7/05	Vivian abducts Brooke and Rylee from Kirk for approximately six weeks; Vivian agrees with Kirk to get counseling upon her return, but later refuses
23		
24	7/19/05	Vivian starts taking an SRRI, Citalopram, for the next six years
25	Summer 05	Vivian loses any interest in the older children and Kirk, confirming this fact to Dr. Duffy; by the fall, Vivian is losing interest in Brooke and Rylee as well
26	1/31/06	In light of Vivian's unstable and volatile behavior and lack of interest in Brooke and Rylee, Kirk concludes he has no choice but to walk away from his practice and take care of Brooke and Rylee – from this point forward, Kirk takes them to and from school, to and from dance and sporting activities, cooks most of their meals, helps them with their homework, buys most of their clothes, plays games with them, takes them to the ranch
27		
28		

1 and on trips, takes them to movies, shopping, etc. Other than sporadic public
2 appearances, Vivian has very little interaction with Brooke and Rylee on a day to day
3 basis, other than sleeping with them when she is in town. All of this continues until mid-
September of 2011, when Vivian starts becoming involved

4 **2006 thru**
5 **mid-2008**

Vivian's condition and behavior continued to deteriorate. Vivian continued to refuse to
get help. Up until this point Kirk kept hoping Vivian's condition was "temporary" and
she would improve. However, Vivian's condition was not getting any better, it was
getting noticeably worse. Kirk decided he had to see the best psychiatrist he could find
to determine the causes of the problems and to learn what had to be done to help Vivian.
Since Vivian refused to see anyone, Kirk started to put together as much information as
possible about Vivian. (Kirk's reply re custody, filed 1.4.12, p. 5, l. 14-27)

8 **12/09**

Once the summary of everything Kirk knew about Vivian was completed, Kirk wanted
to take it to the best psychiatrist he could find. Since Brooke and Rylee were the most
adversely affected by Vivian's condition and aberrant behavior, Kirk wanted a
psychiatrist that specialized in dealing with children and family matters. Kirk called
Gard Jameson, who is a leader in the child advocacy effort in Southern Nevada.¹⁶ Gard
referred Kirk to Dr. Norton Roitman. For the same reasons, Kirk telephoned Jim
Jimmerson, Esq., assuming he would have dealt with psychiatrists in a family context
where children were being impacted. Mr. Jimmerson also referred Kirk to Dr. Roitman.

12 **1/4/10**

Kirk hand-delivered the extensive summary he had prepared to Dr. Roitman's office
(Exh. 9 to Kirk's reply re custody, filed 1.4.12)

14 **1/15/10 thru**
15 **2/11/10**

Kirk and Dr. Roitman meet for two hours. During that meeting, in response to a
question from Dr. Roitman, Kirk "indicated that he was dedicated to the marriage, at
least for the sake of the children, and would very much like to have a good relationship
back with his wife as well." (Roitman deposition, 4.27.12, p. 43, l. 7-10) A copy of the
deposition transcript for Dr. Norton A. Roitman, dated April 27, 2012, is attached hereto
as Exhibit "29." Kirk provides a supplement letter to the 1.4.12 letter to Dr. Roitman.
Dr. Roitman meets with Kirk after Dr. Roitman has read and analyzed the extensive
summary. Dr. Roitman advises Kirk that he thinks Vivian is pathologically narcissistic
and advises Kirk to read articles and books by Otto Kernberg. Dr. Roitman also
discusses the possibility that Vivian may have a borderline personality. Dr. Roitman
also references Cluster B

20 **2010**

After meeting with Dr. Roitman, Kirk orders books on narcissism by Dr. Otto Kernberg
and two books on borderline personality; however, the books on narcissism are written
for medical practitioners and Kirk soon learns he does not have the medical vocabulary
to understand much of what he is trying to read. Kirk orders additional books on
narcissism, borderline personality, the self-absorbed, etc. which are written more for the
lay person. Included are books on coping with and living with a narcissistic personality
disorder. Kirk and Dr. Roitman have a number of telephone calls concerning the
literature that Dr. Roitman recommended. Kirk sees that most of the books on narcissism
use the term "narcissistic personality disorder." Kirk telephones Dr. Roitman to confirm
that the term "pathologically narcissistic," which is used by Dr. Kernberg, means the
same thing as "narcissistic personality disorder" ("NPD"). Kirk reads a book that
provides that NPD is extremely difficult, if not impossible to treat. Kirk telephones Dr.

28 ¹⁶ Mr. Jameson was recently honored as the 2013 "Child Advocate of the Year."

1 Roitman and asks if that is the current state of treatment or if strides in treatment had
2 been made since the writing of that treatise. Kirk recalls talking to Dr. Roitman about
3 the approach used by Dr. Kernberg as compared to the approach used by Dr. Masterson.
4 These discussions took place in the context of Kirk trying to educate himself in order
5 to address a problem for his family, they were not in the context of divorce. Although
6 Kirk cannot recall when, Kirk recalls having telephone calls with Dr. Roitman about
7 books written by Dr. Masterson and Dr. Lowen and specific passages in those books.
8 Kirk recalls talking to Dr. Roitman about the presence of a "cold" mother being a
9 common factor in people who develop NPD. Dr. Roitman and Kirk discussed the risk
10 that Vivian's behaviors will cause Brooke and Rylee to similarly suffer.

11 **3/22/11** Tahnee and Whitney spend over two hours with Andrew Kynaston, Esq. reviewing and
12 editing their affidavits

13 **4 & 5/11** Kirk hand delivers copies of Tahnee's affidavit, Whitney's affidavit, and the most
14 current draft of Kirk's affidavit to Dr. Roitman. After Dr. Roitman had read and
15 analyzed the affidavits, Dr. Roitman and Kirk had a lengthy discussion. Kirk believes
16 this discussion was at Dr. Roitman's office, but it is possible it was over the telephone.
17 Kirk asked Dr. Roitman his opinion of the cause of Vivian's behavior. Dr. Roitman
18 reconfirmed his opinion was that she was suffering from a narcissistic personality
19 disorder. Dr. Roitman noted that Vivian's behavior had significantly worsened since Dr.
20 Roitman had read and analyzed Kirk's letter to him, dated January 4, 2010. Kirk asked
21 Dr. Roitman what was causing the extremely delusional behavior, i.e., the young actor
22 being her "soulmate," Vivian's fear the young actor would see her on a television show
23 before she lost her weight, her fear Tahnee would smother her with a pillow and try to
24 kill her, etc. Dr. Roitman told Kirk that he believed the long term Phentermine use was
25 exacerbating Vivian's NPD behaviors.

26 Kirk asked Dr. Roitman if he would provide an expert report. Dr. Roitman responded that he
27 would, but emphasized the importance of Dr. Roitman qualifying and limiting his opinions based upon
28 the fact that he did not have the opportunity to directly examine Vivian. Kirk asked Dr. Roitman when
he could provide the expert report. Dr. Roitman was pessimistic in light of his existing commitments.
Kirk had been advised that in the event he was unable to settle the matter, it was important to be the
moving party for temporary custody. Kirk was concerned that Bob Dickerson, Esq. was not genuinely
interested in settling the case, and that Mr. Dickerson was possibly preparing a motion for temporary
custody. Kirk asked Dr. Roitman if there was anything he could do to assist Dr. Roitman to facilitate
Dr. Roitman's preparation of the report. Dr. Roitman replied that since Kirk already had the affidavits,
if he could make an initial pass to resort the paragraphs under the DSM-IV nine criteria, that would help
Dr. Roitman, who would then review and revise the data. It should be noted that Kirk just took the
affidavit paragraphs as written and sorted them as Dr. Roitman directed. Kirk simply made the initial
pass to sort the same facts under different categories. Upon examination of Dr. Roitman's report, the
Court will note that Dr. Roitman paraphrased and shortened all of this language. As noted in his letter

1 to Mr. Smith, the clerical function performed by Kirk are regularly performed by assistants. While
2 resorting the paragraphs, Kirk noticed there were paragraphs in the affidavits that did not fit under any
3 of the nine criteria, but were arguably relevant to Vivian's early childhood. Kirk telephoned Dr.
4 Roitman and asked if Dr. Roitman wanted those included as well. He did, so Kirk placed those in a
5 different section. When Kirk was attempting to sort the paragraphs, he telephoned Dr. Roitman stating
6 he thought he might be doing it wrong as it seemed a significant number of the paragraphs were under
7 Criterion 7 (lack of empathy). Dr. Roitman responded that was not unusual and to not worry as Kirk's
8 placements were only preliminary as Dr. Roitman would review each and every entry. As Dr. Roitman
9 noted in his letter to Radford Smith, Esq., Kirk was only about 70% accurate.

10 As there are factual statements regarding Vivian's behavior in the motion for custody, Kirk also
11 provided Dr. Roitman a copy of the then current draft (dated, March, 2011) of Kirk's motion for
12 custody. The section on narcissistic personality disorder is less than one page of the 39 page draft
13 (appearing at the bottom of page 23 and the top of page 24) and consists primarily of quotes from the
14 American Psychiatric Association, Dr. Alexander Lowen, and Dr. Elsa Ronningstam.

15 From about the first of May of 2011 until the final report was prepared and submitted by Dr.
16 Roitman, Kirk had numerous telephone calls with Dr. Roitman. Based upon the telephone calls in early
17 May, Kirk gained the understanding that Dr. Roitman intended to cite the treatises he had previously
18 referred to Kirk, beginning in January and/or February of 2010, and that they had subsequently
19 discussed. Without any request from Dr. Roitman, Kirk, unilaterally, highlighted passages or sections
20 in those treatises and numerous other treatises that Kirk had read. Kirk highlighted those passages or
21 sections in the books, put a post-it on those pages, and provided a box of all the books to Dr. Roitman
22 for his consideration. In an effort to save typing or word processing time for Dr. Roitman, Kirk typed
23 a number of those potential citations for Dr. Roitman's consideration so in the event, Dr. Roitman chose
24 to use any of the quotations, he did not have to type them. Dr. Roitman did not use most of the
25 submitted quotations, including rejecting almost all quotations from books written by authors who were
26 not psychiatrists.

27 Kirk had worked with a number of experts (primarily construction and engineering) in the past,
28 and had a general outline or format which those experts had utilized.. Having never worked with Dr.

1 Roitman before and knowing Dr. Roitman was pressed for time, Kirk unilaterally prepared a general
2 outline for a table of contents that Kirk had obtained from other experts (the construction and
3 engineering experts) with whom he had worked that seemed to have a logical sequence. This table of
4 contents is Exhibit G to Vivian's motion for fees, filed 4.3.13. A cursory review reveals that Dr.
5 Roitman did not think much of Kirk's proposed outline or table of contents. First, Dr. Roitman did not
6 use a table of contents in his report. Second, Dr. Roitman's report is organized and sequenced
7 completely different than what Kirk proposed.

Kirk's proposed outline	Dr. Roitman's Report
Qualifications	Identifying Data and Purpose
Documents Relied Upon	Limitations
Books & Treatises Reviewed	Sources of Information
Assumptions	Conclusions
Limitations on Opinions	History of the current condition
Preliminary Opinions	Developmental History
Analysis	Family History
NPD	Medical History
Characteristics	Review of materials
Created during childhood	NPD origins and impact
In early adulthood	Diagnostic criteria
Has disorder	(9 criteria)
(9 criteria)	Discussion
Difficult to treat	
Risk Brooke & Rylee suffer same fate	
Disturbing pattern of behavior	
Abnormal obsessive behavior	

24 In retrospect, it was presumptuous on Kirk's part to even suggest an outline to Dr. Roitman, but
25 Kirk was trying to save time for Dr. Roitman in Dr. Roitman's preparation of his report. Regardless,
26 there is no doubt it was not utilized. This is yet another example where Vivian's attorneys have
27 attempted to cloak Kirk with bad faith when there are simply no facts to support their position. They
28

1 make much to do of this outline, but there is no doubt it was **not** utilized by Dr. Roitman in the
2 preparation of his report. Another point needs to be made very clearly. Dr. Roitman had previously
3 expressed to Kirk the opinions which are reflected in the latter proposed headings of the outline. For
4 example, it has been previously noted that when Kirk read the treatises which provided that NPD is
5 extremely difficult to treat, he telephoned Dr. Roitman and confirmed that was still the state of the
6 treatment and that was Dr. Roitman's opinion as well. Kirk already knew it was Dr. Roitman's opinion
7 that NPD was extremely difficult to treat when he submitted this outline to Dr. Roitman. Kirk did not
8 originate this opinion or any other opinion in Dr. Roitman's report.

9 In summary, the opinions Dr. Roitman rendered in this case were 100% his opinions. Dr.
10 Roitman originated those opinions, developed those opinions, and wrote those opinions. That is the
11 truth and those are the facts. The fact that Kirk tried to help Dr. Roitman by making a preliminary pass
12 at resorting the facts (which was only about 70% correct), typing quotes that Dr. Roitman might use
13 (most of which he rejected), or submitting a suggested outline to Dr. Roitman (which he ignored) does
14 not change those truthful facts.

15 **a. Despite the Fact That the Opinions Rendered in this Case Were**
16 **100% Dr. Roitman's Opinions and that Dr. Roitman Originated,**
17 **Developed and Wrote Those Opinions, Vivian's Attorneys Now**
18 **Falsely Accuse Kirk Of Suborning Dr. Roitman**

19 Not dissuaded by the truth or the facts, Vivian's attorneys actually accuse Kirk of suborning Dr.
20 Roitman "to unethically diagnose Vivian with NPD without meeting her. . ." (Vivian's opposition to
21 counter motions, p. 4, l. 2-3) Vivian's attorneys, who jointly took Dr. Roitman's deposition, know this
22 accusation is unfounded, as Dr. Roitman testified:

23 In the case of a personality disorder the collateral history is critical, because the person
24 with the personality disorder has a certain blindness to themselves. They can't
25 appreciate the context in which they're operating. Personality disorders have to be
26 gauged based on long-term patterns of functioning first manifested at an early age. And
27 so **collateral history** is one of the essential ingredients in a valid examination.

28 (Dr. Roitman, depo. transcript, 4.27.12, p. 93, l. 18-25; p. 94, l. 1) (Emphasis added.)

As Dr. Roitman pointed out during his deposition, the glaring weakness in the reports of both
Dr. Applebaum and Dr. Ronningstam is that the collateral history was made available to them, but they
both chose to ignore it. (Roitman depo. transcript, p. 160, p. 17-25; p. 161, l. 1-25; p. 162, p. 1-22) Kirk

1 respectfully submits Dr. Applebaum and Dr. Ronningstam turned a blind eye to the collateral history,
2 because if they did not, they could not given the highly “qualified” opinions they did.¹⁷ As opposed to
3 Dr. Applebaum and Dr. Ronningstam, who made a conscious choice to ignore the collateral history that
4 was made available to them, when Dr. Roitman rendered his, also highly “qualified” opinion, he was
5 not able to interview Vivian. Dr. Roitman candidly admitted that his inability to interview Vivian at the
6 time of his report was a weakness in his report, just like Dr. Applebaum’s and Dr. Ronningstam’s
7 ignoring the collateral history was a weakness in their reports.

8
9 **b. Despite the Fact That the Opinions Rendered in this Case Were**
10 **100% Dr. Roitman’s Opinions and that Dr. Roitman Originated,**
11 **Developed and Wrote Those Opinions, Vivian’s Attorneys Now**
12 **Falsely Accuse Kirk Of “Shaping” Dr. Roitman’s Report**

13 The basis for Vivian’s attorneys accusation that Kirk “shaped” Dr. Roitman’s report are some
14 of the headings in Kirk’s proposed outline *that Dr. Roitman did not use!* These are the headings which
15 contained some of the opinions which Dr. Roitman had previously related to Kirk. According to
16 Vivian’s attorneys, if Dr. Roitman’s secretary had typed opinions articulated by Dr. Roitman to her and
17 then provided that typed product to Dr. Roitman, Dr. Roitman’s secretary would be “shaping” Dr.
18 Roitman’s report. This is nonsense. Vivian’s attorneys want this Court to assume that Dr. Roitman and
19 Kirk never met, never talked, and never had any telephone calls. For example, in 2010, Dr. Roitman
20 told Kirk that NPD was extremely difficult, if not impossible to treat. However, Vivian’s attorneys
21 assert that this opinion “was actually first identified by *Kirk* in the report underlying his Table of
22 Contents.” (Vivian’s opposition to counter motions, p. 13, l. 20-21)

23 Kirk respectfully submits that Vivian’s attorneys do not earnestly believe that Kirk originated
24 any of Dr. Roitman’s psychiatric opinions. That proposition is simply too illogical on its face. Dr.
25 Roitman, one of the most respected psychiatrists in this state, is not going to let anyone, including a lay
26 person, who he met for the first time in connection with this case, whom he has had no contact with
27 except in connection with this matter, tell him what is opinions are going to be in this case. It is as if

28 ¹⁷ The Court will recall that Vivian lied to Dr. Thienhaus about her insomnia and the extent of her drug
abuse. Dr. Thienhaus was very critical of Vivian’s Phentermine use and Dr. Life. However, Dr.
Thienhaus also, inexplicably, ignored Tahnee’s and Whitney’s affidavits.

1 Vivian's attorneys are so embroiled in their desire to falsely make Kirk the "bad guy" they lose all sense
2 of reality and common sense.

3 The next baseless assertion made by Vivian's attorneys is that, "Kirk intentionally "stacked the
4 deck" when he gave Dr. Roitman only selected "facts" to support the diagnosis, and removed from his
5 original letter to Dr. Roitman those facts in conflict with his narrative about Vivian." (Vivian's
6 opposition to counter motions, filed 9.12.13, p. 14, l. 10-12) Dr. Roitman still had the January 4, 2010
7 letter from Kirk. Dr. Roitman produced it to Vivian's attorneys. Based upon that letter, Dr. Roitman
8 made the preliminary opinion that Vivian was pathologically narcissistic. Dr. Roitman is the same Dr.
9 Roitman who provided an opinion in this matter. Vivian's attorneys have criticized the length of Kirk's
10 affidavit. Now they criticize Kirk for not putting the January 4, 2010 letter *en masse* into an affidavit.

11
12 **c. Vivian's Attorneys Chronology is Replete with Errors and Misrepresentations**

13 The chronology set forth on pages 16 through 22 is replete with errors and misrepresentations
14 of fact. Kirk will not address each and every error and misrepresentation, as that would take too many
15 pages, but will attempt to quickly address the most glaring.

- 16 1. Kirk never read a book about narcissism until after meeting with Dr. Roitman in
17 January/February of 2010. Kirk **telephoned** Jim Jimmerson for the same reason he
18 telephoned Gard Jameson, he wanted a psychiatrist and assumed Mr. Jimmerson would
19 have dealt with psychiatrists in a family context where children were being impacted.
- 20 2. Despite the claims that Kirk never tried to get Vivian to a counselor, there are several
21 entries in Kirk's affidavit regarding Vivian's refusal to go to counseling. When Vivian
22 returned to the home after abducting Brooke and Rylee for six weeks in 2005, Vivian
23 initially agreed to counseling, then later refused. There are paragraphs in the affidavit
24 where Tahnee is telling Kirk he has to get Vivian into counseling and he is responding
25 he has tried and she will not go and he has no way to make her go. (Kirk's motion for
26 custody, filed 9.14.11, Tahnee aff. p. 4, l. 11-14)
- 27 3. Dr. Roitman opined in January/February 2010 that he thought Vivian was pathologically
28 narcissistic, but also considered borderline personality and what he referred to as Cluster
B.
4. Kirk testified that Vivian's threat of filing a complaint the day after Whitney's wedding
caused the complaint to be filed when it was filed.
5. Kirk's lawyers did not revise the drafts of Tahnee's and Whitney's affidavits and they
signed them. Tahnee and Whitney spent two hours reviewing and revising their own
affidavits.

6. Vivian's attorneys erroneously allege Kirk had no contact with Dr. Roitman between February of 2010 and May 5, 2011. In support of this assertion, Vivian's attorneys cite to pages 128-135 of Dr. Roitman's deposition. There is nothing there to indicate that Dr. Roitman and Kirk did not speak on the telephone numerous times during that period of time. As noted in the chronology above, which is based upon true facts, Kirk and Dr. Roitman had numerous telephone calls during that intervening period. Merely because Dr. Roitman did not bill Kirk for those numerous calls, does not mean they did not occur. Dr. Roitman later indicated that he had a bookkeeper who was not keeping track of the time and she had to be replaced. (Roitman depo. 4.27.12, p. 190, l. 13-14) For example, Kirk had four phone calls with Dr. Roitman in May of 2011 **before** May 5, 2011.
7. The "research" Kirk provided Dr. Roitman were the quotes from the treatises that Dr. Roitman had advised Kirk to read and they had previously discussed. Dr. Roitman rejected the offered quotes from other books that Kirk had read.
8. Contrary to Vivian's attorneys' assertion, Mr. Dickerson already knew there was a contention over custody before the conversation with Tom Standish. Mr. Standish testified that the subject was broached by Mr. Dickerson asking why there was a contention over custody. Mr. Standish simply responded by telling Mr. Dickerson **why** Kirk wanted primary custody.
9. As noted above, contrary to Vivian's attorneys' baseless assertions, Dr. Roitman did not use the same format for his report as in Kirk's proposed outline. The nine criteria are in the order set forth in the DSM-IV. Did Vivian's attorneys really expect Dr. Roitman to change that order? The evaluation is based upon those nine criteria in that order.
10. Mr. Silverman's referenced and quoted email of August 10, 2011 is replete with errors. For example, he alleges, "In their first mediation Husband asked Wife to sign an agreement giving each approximately \$350,000.00 for attorneys fees." (Vivian's opposition, filed 9.12.13, p. 19, l. 16-17) *See also* p. 10, 8-11; p. 46, l. 5-6). The truth is that the proposal was the parties would each get \$400,000.00. However, only \$210,000.00 of that amount would be for attorneys' fees and \$190,000.00 would be for each party's personal use. At that time Kirk explained he needed the \$190,000.00 to buy the Forest Service land. Vivian came back and said she didn't want money divided for attorneys' fees, but had no problem with the parties each getting \$190,000.00. Later, Mr. Silverman suggests \$150,000.00 for each party for attorneys' fees. Elsewhere in their brief, Vivian's attorneys accuse Kirk of bad faith in proposing \$350,000.00 each in attorneys' fees. Perhaps if Vivian's attorneys would stick to the truth, they would know Kirk proposed \$210,000.00 for attorneys' fees as opposed to Mr. Silverman's proposal of \$150,000.00. Of course, that would be turned and twisted as well to accuse Kirk of bad faith in some fabricated regard. A true and correct copy of the proposal Kirk made in May of 2011 is attached hereto as Exhibit "30" and by this reference incorporated herein.
11. Kirk did not know the condo purchase had already "gone in contract." The Court may recall the issue of money for the condo purchase has been previously briefed at length. *See* (Kirk's opposition to Vivian's emergency motion for distribution of funds, filed 10.24.11, p. 10, l. 4-28; p. 11, l. 1-15)
12. Kirk was advised to see Dr. Lenkiet and he did. The agreement between counsel was that each side was to provide expenses incurred for both testifying *and non-testifying* experts. In fact, the Court Minutes of 1/28/13, provide "*Counsel have also discussed experts which may have also acted in the role of consultant. There is an agreement that a billing statement should be produced, subject to argument as to whether a consultant's*

1 *text or undisclosed expert's billing statement should be produced.* There was no
2 oversight. Kirk disclosed what he was required to disclose.

3 13. Vivian's attorneys accuse Kirk stating, "This was Kirk's method; he presented anything
4 he could to gain a favorable temporary order to "use as an advantage" in the custody
5 determination." This was Kirk's first experience in family court. It is nonsensical to
6 accuse Kirk of some grand scheme, when Kirk did everything he possibly could to not
7 serve the complaint and to not file the motion for temporary custody. It was Kirk's hope
8 to mediate and settle everything without filing a motion for custody. It is ironic that but
9 for Vivian's attorneys' refusal to mediate until a motion for temporary custody was filed
10 and their bad faith participation in the mediation, this case would have and should have
11 been resolved at that time. Yet, Vivian's attorneys complain about the motion they
12 forced Kirk to file.

13 14. It should be noted that none of the facts in Tahnee's, Whitney's, or Kirk's affidavits have
14 been met by Vivian's attorneys. The sum and substance of all of her "friends" affidavits
15 is that Vivian did things with Brooke and Rylee in public prior to 2009 and after mid-
16 September of 2011. The notable exception being the perjurious statements of Heather
17 Atkinson and Michelle Walker – one got a house and the other got lots of cash and a
18 Mediterranean cruise. The submission of Exh. KK is an embarrassment. It contains the
19 same misleading references that Vivian's attorneys submitted to the Court prior to the
20 Court's determination of temporary custody. Incredulously, they even reference the
21 statement of Lisbeth Castelan. She is the cleaning lady that came to the house each
22 Wednesday, **after** Kirk had made Brooke and Rylee breakfast and taken them to school.
23 However, Vivian's attorneys submitted a statement from Lizbeth, who speaks almost no
24 English, describing all of the things that Vivian did with Brooke and Rylee before they
25 went to school. *See* (Kirk's reply re custody, filed 1.4.12, p. 65, l. 13-28; p. 66, l. 1-27;
26 67, l. 1-7) Kirk's reply re custody has already addressed the issues in connection with
27 each of the statements identified in Exh. KK and will not repeat it here. *See* (generally
28 pages 63-78 of Kirk's reply re custody)

15 15 The findings of Vivian's own treating physicians – Dr. Duffy and Dr. Squitieri – have
16 never been met as well. There is a reason Vivian's attorneys vigorously opposed an
17 **independent** examination of Vivian.

18 **4. Drafts of Expert Reports are Not Discoverable, Let Alone Admissible –**
19 **Drafts of Expert Reports Have No Evidentiary Value**

20 In Kirk's opposition and countermotion, Kirk addressed the fact that drafts of expert reports are
21 not discoverable and, therefore, not maintaining a draft of an expert report on a computer is proper.

22 More specifically Kirk wrote the following:

23 Kirk did absolutely nothing improper when he deleted the draft he prepared for Dr.
24 Roitman from his computer. FRCP 26(b)(4)(B) provides, "*Trial-Preparation Protection*
25 *for Draft Reports or Disclosures*. Rules 26(b)(3)(A) and (B) protect drafts of any report
26 or disclosure required under Rule 26(a)(2), regardless of the form in which the draft is
27 recorded." **The standard of practice in state courts in Nevada is the same. The state**
28 **courts in Nevada have consistently ruled that drafts of expert reports are not**
discoverable or admissible.

(Kirk's opposition and countermotions, filed 5.28.13, p. 81, l. 1-6) (Emphasis added.)

...

1 Undaunted by the truth, Vivian's attorneys have continued their baseless attack on Kirk, writing,
2 "Draft reports of an expert who is identified to appear at trial are discoverable under Nevada's rules."
3 (Vivian's reply & opposition, filed 9.12.13, p. 12, l. 23-24) This assertion is simply wrong.

4 Thomas Biggar, Esq. was the Discovery Commissioner for the Eighth Judicial District Court for
5 about 18 years – between 1988 until 2006. Attached hereto as Exhibit "31" is the affidavit of Thomas
6 Biggar, Esq. In the third paragraph of this affidavit former Commissioner Biggar unequivocally states,
7 "It is my recollection that during my tenure as Discovery Commissioner, I consistently ruled that drafts
8 of expert reports were not discoverable." Obviously, Vivian's reliance upon Nev. Rules of Prof.
9 Conduct 3.4 is misplaced, as drafts of an expert report are not evidence.

10
11 **E. Vivian's Attorneys' Argument That Kirk's Involvement In the Preparation Of
Points and Authorities Is A Basis For An Award Of Fees Must Fail**

12 As noted previously, there are only two bases upon which an award of attorneys fees can be
13 made. First, if the action proceeds to judgment and there is a prevailing party. That did not happen
14 here. Second, if there is an independent recognized basis for the award of attorneys fees. Absent an
15 independent statute specifically authorizing the award of attorneys fees, then it can only be on the
16 common law basis that the opposing party acted in bad faith by making frivolous allegations.

17 There is not an applicable independent specific statute which authorizes the award of attorneys'
18 fees in this case. As noted in Kirk's opposition, NRS 125.150(3) permits such a motion to be filed, but
19 does not provide that fees should be shifted without justification and without a legally recognized basis
20 to do so. See (Kirk's opposition and countermotions, filed 5.28.13, p. 66, l. 5-28; p. 67, l. 1-4)
21 Therefore, both Kirk and Vivian are relegated to arguing that the opposing party and/or their attorneys
22 acted in bad faith by making frivolous allegations.

23 The fact that Kirk participated in the drafting of points and authorities does not constitute the
24 requisite bad faith/frivolous conduct. Therefore, there is no recognized basis under Nevada law to
25 award attorneys' fees to Vivian, and Vivian's attorneys cannot bootstrap an argument based upon
26 "community efforts." If this were the law, as noted in Kirk's opposition and countermotions, then every
27 party who did any work whatsoever on their case, such as preparing deposition questions, preparing
28 responses to discovery, etc. would be subject to the same baseless argument.