

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

2  
3 RICARDO P. PASCUA,

4                   Appellant,

5  
6 vs.

7 BAYVIEW LOAN SERVICING,  
8 LLC; SEASIDE TRUSTEE, INC.;  
9 AND BANK OF NEW YORK  
10 MELLON,

11                   Respondent.

Case No.: 71770

Electronically Filed  
Jan 18 2018 12:48 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

12  
13                   **MOTION FOR STAY PENDING APPEAL**

14                   Appellant Ricardo P. Pascua ("Pascua"), by and through his counsel of  
15 Robison, Simons, Sharp & Brust, hereby moves this Court for a stay pending  
16 appeal pursuant to NRAP 8(a)(2). This motion is made and based upon the  
17 attached memorandum of points and authorities, and the pleadings and papers on  
18 file herein.  
19  
20

21                   DATED this 18 day of January, 2018.

22  
23 BY: Therese M. Shanks

24                   Therese M. Shanks, Esq.

25                   Nevada Bar No. 12890

26                   Robison, Simons, Sharp & Brust

27                   71 Washington Street

28                   Reno Nevada 89503

                  (775) 329-3151

                  Attorney for Appellant

1                                    **MEMORANDUM OF POINTS AND AUTHORITIES**

2    **I.      FACTUAL BASIS FOR A STAY.**

3                    This issue in this appeal is whether Pascua, as special administrator of his  
4    deceased wife's estate, had standing and/or authority to participate in a foreclosure  
5    mediation of her home. Pascua's counsel recently learned that a foreclosure sale of  
6    the home has been scheduled for April 2, 2018. *See Exhibit 1* (Affidavit of  
7    Therese M. Shanks, Esq.); *see also Exhibit 2* (Emails between Therese M. Shanks,  
8    Esq. and Aaron Waite, Esq.).  
9

10                  Pascua's appeal has been placed with this Court's pro bono appellate  
11    program, and Pascua has qualified for placement as a Pro Bono client of the Legal  
12    Aid Center of Southern Nevada ("LACSN"). He has filed a Statement of Legal  
13    Aid Representation (Pursuant to NRS 12.015), which waives all filing fees and  
14    costs connected in conjunction with the prosecution of his appeal. *See Exhibit 3.*  
15    Pascua was qualified to be a Pro Bono Client of LACSN due to his current  
16    financial condition, which renders him unable to afford the fees associated with  
17    legal representation. Because Pascua is financially unable to post a bond to stay  
18    the foreclosure sale, Pascua moves this Court for a stay pending appeal.  
19

20    ///

21    ///

22    ///

1 **II. ARGUMENT**

2 **A. PASCUA PROPERLY SEEKS A STAY DIRECTLY FROM**  
3 **THIS COURT.**

4 A party may seek a stay pending appeal directly from this Court if “moving  
5 first in the district court would be impracticable.” NRAP 8(a)(2)(A)(i). To obtain  
6 a stay from the District Court, Pascua must first post a supersedeas bond. NRCP  
7 62(d). Due to his financial condition, Pascua is unable to post any such bond.  
8 Therefore, a motion for a stay pursuant to NRCP 62(d) before the District Court is  
9 impracticable, and Pascua seeks relief from this Court.  
10  
11

12 **B. PASCUA WILL SUFFER IRREPARABLE HARM IF A STAY**  
13 **PENDING APPEAL IS NOT GRANTED.**

14 This Court has discretion whether to grant a stay pending resolution of  
15 appeal. NRAP 8(c). In making that decision, this Court considers, among other  
16 factors, “whether appellant . . . will suffer irreparable or serious injury if the stay is  
17 denied,” “whether respondent . . . will suffer irreparable or serious injury if the stay  
18 or injunction is granted,” and “whether the object of the appeal or writ petition will  
19 be defeated if the stay or injunction is denied.” *Id.* “As a rule a . . . stay should be  
20 granted, if . . . it is reasonably necessary to protect appellant or plaintiff in error  
21 from irreparable or serious injury in the case of reversal.” *Kress v. Corey*, 65 Nev.  
22 1, 16-17, 189 P.2d 352, 360 (1948).  
23  
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27 If a stay is not entered, Pascua will lose the home in which he currently  
28 resides. This Court has long recognized that “real property and its attributes are

1 considered unique and loss of real property rights generally results in irreparable  
2 harm[.]” *Dixon v. Thatcher*, 103 Nev. 414, 416, 742 P.2d 1029, 1030 (1987).

3  
4 Furthermore, if a stay is not entered the object of this appeal will be rendered  
5 moot as it will be irrelevant whether Pascua had standing, as a special  
6 administrator, to participate in the foreclosure mediation of a home which has since  
7 been foreclosed upon. The foreclosure sale will occur prior to the completion of  
8 briefing in this appeal, and well before this Court has an opportunity to consider  
9 the merits of Pascua’s appeal. Accordingly, Pascua respectfully requests that this  
10 Court enter a stay of the foreclosure sale pending appeal.  
11  
12

13 Given Pascua’s financial condition, Pascua further requests that this stay be  
14 entered without a bond. This Court is not required to condition a stay upon the  
15 posting of a bond. *See* NRAP 8(a)(2)(E) (stating that this Court *may* require entry  
16 of a bond); *see also Nev. Pub. Emps. Ret. Bd. v. Smith*, 129 Nev. \_\_\_, \_\_\_, 310  
17 P.3d 560, 566 (2013) (holding that the word “may” is “generally directory and  
18 permissive in nature,” and is not mandatory). As shown, because Pascua qualifies  
19 for legal aid assistance, he is not in any position to post a bond with this Court.  
20  
21 Accordingly, Pascua requests that this Court stay the Attorney Fee Judgment  
22 without a bond, pending Pascua’s appeal of the underlying substantive order of the  
23 District Court.  
24  
25

26  
27 ///  
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1 **III. CONCLUSION**

2 For the foregoing reasons, Pascua respectfully requests that this Court stay  
3 the foreclosure sale pending appeal.  
4

5 DATED this 18<sup>th</sup> day of January, 2018.

6  
7  
8 BY: Therese M. Shanks  
9 Therese M. Shanks, Esq.  
10 Nevada Bar No. 12890  
11 Robison, Simons, Sharp & Brust  
12 71 Washington Street  
13 Reno Nevada 89503  
14 (775) 329-3151  
15 *Attorney for Appellant*  
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Aaron Waite, Esq.  
Charles Kennon, Esq.  
Weinstein, Pinson & Riley  
6785 S. Eastern Ave., #4  
Las Vegas, NV 89119  
Attorney for Respondent

Barbara Buckley, Esq.  
LEGAL AID CENTER OF SOUTHERN NEVADA  
725 E. Charleston Blvd.  
Las Vegas, NV 89104

Auguste Fenech  
An employee of Robison, Simons, Sharp & Brust

# EXHIBIT 1

1                   **AFFIDAVIT OF THERESE M. SHANKS, ESQ. IN SUPPORT OF**  
2                   **MOTION FOR STAY PENDING APPEAL**

3 COUNTY OF WASHOE                   )  
4   )ss.  
5 STATE OF NEVADA                   )

6           I, THERESE M. SHANKS, being duly sworn, hereby depose and state:

7           1.     I am pro bono counsel for Appellant Ricardo Pascua in this appeal.

8           2.     Due to the underlying facts of this case, counsel for Respondents  
9  
10   and I have been trying to informally resolve this appeal, but have been unable to  
11   do so.

12           3.     In the course of those discussions, I learned that a foreclosure sale of  
13   the home in which Mr. Pascua currently resides, and which is the subject of this  
14   appeal, has been scheduled for April 2, 2018.

15           4.     Exhibit 2 is a true and correct copy of the email chain between  
16   myself and Mr. Waite discussing the above.

17           FURTHER AFFIANT SAYETH NAUGHT.

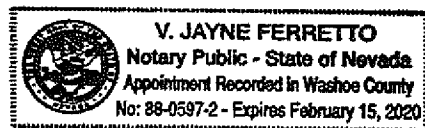
18           Dated this 18<sup>th</sup> day of January, 2018.

19  
20  
21  
22  
23  
24   )  
25   STATE OF NEVADA                    )  
26   COUNTY OF WASHOE                ) ss.

27   Subscribed and sworn to before me by  
28   Therese M. Shanks this 18<sup>th</sup> day of January, 2018.

\_\_\_\_\_  
NOTARY PUBLIC

Therese Shanks  
THERESE M. SHANKS, ESQ.





# EXHIBIT 2

## Therese Shanks

---

**From:** Aaron Waite <AaronW@w-legal.com>  
**Sent:** Tuesday, January 09, 2018 12:22 PM  
**To:** Therese Shanks  
**Subject:** RE: Pascua v. Bayview Loan Serv., LLC

April 2, 2018

Thanks,  
Aaron M. Waite  
Weinstein & Riley, P.S.  
[aaronw@w-legal.com](mailto:aaronw@w-legal.com)  
Direct Dial: 702-507-6403

---

**From:** Therese Shanks [mailto:[tshanks@rssblaw.com](mailto:tshanks@rssblaw.com)]  
**Sent:** Tuesday, January 09, 2018 12:15 PM  
**To:** Aaron Waite  
**Subject:** RE: Pascua v. Bayview Loan Serv., LLC

When is the foreclosure sale scheduled for?

I still have not been able to contact my client.

Therese Shanks, Esq.  
Robison, Simons, Sharp & Brust  
71 Washington Street  
Reno, Nevada 89503  
(775) 329-3151  
[tshanks@rssblaw.com](mailto:tshanks@rssblaw.com)

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---

**From:** Aaron Waite [mailto:[AaronW@w-legal.com](mailto:AaronW@w-legal.com)]  
**Sent:** Monday, January 08, 2018 6:20 PM  
**To:** Therese Shanks  
**Cc:** Jodi Alhasan  
**Subject:** RE: Pascua v. Bayview Loan Serv., LLC

I can stipulate to a 45 day extension.

Thanks,  
Aaron M. Waite  
Weinstein & Riley, P.S.  
[aaronw@w-legal.com](mailto:aaronw@w-legal.com)  
Direct Dial: 702-507-6403

---

**From:** Aaron Waite  
**Sent:** Monday, January 08, 2018 5:17 PM  
**To:** 'Therese Shanks'  
**Cc:** Jodi Alhasan  
**Subject:** RE: Pascua v. Bayview Loan Serv., LLC

Therese:

Please pardon my delayed response. I was out of the office for work much of last week. Because my client has a foreclosure sale scheduled, I need to check with my client on this extension. I don't have a problem granting the extension, but I just need to double check with my client.

Thanks,  
Aaron M. Waite  
Weinstein & Riley, P.S.  
[aaronw@w-legal.com](mailto:aaronw@w-legal.com)  
Direct Dial: 702-507-6403

---

**From:** Therese Shanks [<mailto:tshanks@rssblaw.com>]  
**Sent:** Wednesday, January 03, 2018 11:14 AM  
**To:** Aaron Waite  
**Cc:** Jodi Alhasan  
**Subject:** Pascua v. Bayview Loan Serv., LLC

Good morning,

I have not heard back from my client regarding your settlement offer. I will continue to try to contact him. In the interim, would you be agreeable to my request for a 60 day extension of my opening brief pending settlement discussions? In the hopes of settlement, I would like to save your client any unnecessary briefing or review expenses if we can get this settled. I will need to make a formal motion for a 60 day extension under the rules, and I would like to be able to tell the Court that you are not opposed to the extension.

Therese Shanks, Esq.  
Robison, Simons, Sharp & Brust  
71 Washington Street  
Reno, Nevada 89503  
(775) 329-3151  
[tshanks@rssblaw.com](mailto:tshanks@rssblaw.com)

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# EXHIBIT 3

SOLA

THERESE SHANKS, ESQ.

Nevada Bar No.: 12890

Robinson, Belaustegui, Sharp & Low

71 Washington Street

Reno, Nevada 89503

Telephone (775) 329-3151

tshanks@rbsllaw.com

Attorney for the Appellant

In conjunction with Legal Aid Center of Southern Nevada Pro Bono Project

Electronically Filed

Oct 09 2017 09:23 a.m.

Elizabeth A. Brown

Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

RICARDO P. PASCUA

Appellant,

vs.

BAYVIEW LOAN SERVICING, LLC; SEASIDE  
TRUSTEE, INC.; AND BANK OF NEW YORK  
MELLON

Respondent.

CASE NO. 71770

STATEMENT OF LEGAL AID  
REPRESENTATION  
(PURSUANT TO NRS 12.015)

Party Filing Statement:

☒ Appellant

☐ Respondent

STATEMENT

RICARDO P. PASCUA, has qualified and has been accepted for placement as a Pro Bono client or as a direct client of LEGAL AID CENTER OF SOUTHERN NEVADA, a nonprofit organization providing free legal assistance to indigents, and is entitled to pursue or defend this action without costs, including filing fees and fees for service of writ, process, pleading or paper without charge, as set forth in NRS 12.015.

Dated: September 12, 2017.

BARBARA BUCKLEY, ESQ.

Legal Aid Center of Southern Nevada Preparer  
Nevada Bar No.: 3918

/s/ Barbara E. Buckley

Signature of Legal Aid Center of Southern Nevada Preparer

Submitted by:

Therese M. Shanks, Esq.

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71 Washington Street

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