

IN THE SUPREME COURT OF THE STATE OF NEVADA

David Harrison Degraw,

Petitioner,

vs.

**The Eighth Judicial District
Court of the State of Nevada, in
and for the County of Clark, and
The Honorable Linda Marquis,
District Court Judge,**

Respondents,

Misty Jo Degraw,

Real Party in Interest.


Sup. Ct. Docket No.

Electronically Filed
Sep 12 2017 11:04 a.m.
Dist. Ct. Case No. ~~2015-01167-B~~

Elizabeth A. Brown
Clerk of Supreme Court

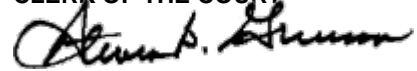
PETITIONER'S APPENDIX TO REPLY

DATED this 11th day of September 2017.


Keith F. Pickard, Esq.
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Attorneys for Petitioner

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8 **EIGHTH JUDICIAL DISTRICT COURT**
9 **FAMILY DIVISION**
10 **CLARK COUNTY NEVADA**

11 * * *

12 **MISTY JO DEGRAW**

13 Plaintiff,

14 vs.

15 **DAVID HARRISON DEGRAW,**

16 Defendant.

Case No.: D-16-543167-D
Dept. No.: B

17 **NOTICE OF ENTRY OF ORDER**

18 PLEASE TAKE NOTICE that an ORDER was entered in the above-entitled
19 matter on the 11th day of September, 2017, a copy of which is attached hereto.

20 DATED this 11th day of September 2017. NEVADA FAMILY LAW GROUP



21 Keith F. Pickard, Esq.
22 Nevada Bar No.: 12470
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Henderson, Nevada 89052

Attorneys for Defendant,
David DeGraw



1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 11th day of September 2017, I served a true and
3 correct copy of Defendant's NOTICE OF ENTRY OF ORDER, pursuant to NRCF
4 5(b), by the following means:

5 ☒ by electronic service, pursuant to NEFCR 9, to be electronically served
6 through the Eighth Judicial District Court's electronic filing system, with
7 the date and time of the electronic service substituted for the date and
8 place of deposit in the U.S. Mail; *and/or*

9 ☐ by placing same to be deposited for mailing in the United States Mail, in
10 a sealed envelope upon which first class postage was prepaid in
11 Henderson, Nevada; *and/or*

12 ☐ by sending the same via facsimile pursuant to EDCR 7.26 (the consent
13 for which was previously established); *and/or*

14 ☐ electronically delivered via email pursuant to EDCR 8.05 (the consent
15 for which was previously established).

16 Brian Blackham, Esq.
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18 Las Vegas, Nevada 89101
19 *Attorney for Plaintiff*

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An Employee of NEVADA FAMILY LAW GROUP



1 **ORDR**

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8 **EIGHTH JUDICIAL DISTRICT COURT**
9 **FAMILY DIVISION**
10 **CLARK COUNTY NEVADA**

11 * * *

11 **MISTY JO DEGRAW**

12 Plaintiff,

13 vs.

14 **DAVID HARRISON DEGRAW,**

15 Defendant.

Case No.: D-16-543167-D
Dept. No.: B

16 **ORDER**

Date of Hearing: March 2, 2017
Time of Hearing: 3:00 P.M.

17 NRCP 1 and EDCR 1.10 govern the procedure in District Court and require the
18 Court be administered to ensure efficient, speedy, and inexpensive determination in
19 every action.

20 These Parties were married in 2004 and have two minor children. A Complaint
21 for Divorce was filed November 29, 2016, and an Answer and Counterclaim filed
22 December 27, 2016. The Court ordered the parties to mediation on January 3, 2017.
23 Plaintiff (Mother) filed a Motion for Temporary Orders Re: Joint Legal and Joint
Physical Custody, Child Support, Attorneys Fees and Costs, and Related Relief on

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09/11/2017

Heather S. Hemin
CLERK OF THE COURT

NEVADA
FAMILY LAW
GROUP
a Nevada limited liability company

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1 January 23, 2017. Counsel for Defendant (Father), Keith F. Pickard, Esq., states he
2 was unable to respond to the Plaintiffs Motion for Temporary Orders, prior to the
3 start of the Nevada Legislative Session on February 6, 2017. Instead, Mr. Pickard
4 filed a Motion to Continue on February 2, 2017, requesting a stay of all litigation in
5 the instant matter pursuant to NRS 1.310.

6 NRS 1.310 requires the adjournment or continuance of litigation for the duration
7 of any legislative session, if an attorney for a party is a member of the Nevada
8 Legislature and states as follows:

9 1. If a party to any action or proceeding in any court or before any
10 administrative body is a member of the Legislature of the State of Nevada,
11 or is President of the Senate, that fact is sufficient cause for the adjournment
12 or continuance of the action or proceeding, including, without limitation,
any discovery or other pretrial or post-trial matter involved in the action or
proceeding, for the duration of any legislative session.

13 2. If an attorney for a party to any action or proceeding in any court or before
14 any administrative body, who was actually employed before the
15 commencement of any legislative session, is a member of the Legislature of
16 the State of Nevada, or is President of the Senate, that fact is sufficient cause
for the adjournment or continuance of the action or proceeding, including,
without limitation, any discovery or other pretrial or post-trial matter
involved in the action or proceeding, for the duration of any legislative
session.

17 3. The adjournment or continuance provided for in subsections 1 and 2 must
18 be granted without the imposition of terms. [Emphasis added.]

19 Mr. Pickard states in his Affidavit that he was retained in this matter prior to the
20 commencement of the legislative session. Mr. Pickard further states in his Affidavit
21 that the parties are operating under a mutually-agreed-upon temporary joint legal
22 and joint physical custody arrangement and that there is currently no emergency
23 circumstance that would warrant challenging the mandatory nature of the

1 continuance afforded under NRS 1.310. Conversely, Counsel for the Plaintiff
2 (Mother) alleges that Father is significantly limiting visitation between mother and
3 the small children. Counsel for Plaintiff further alleges that Mother and children will
4 suffer irreparable harm and be denied an existing right should the Court grant the
5 legislative continuance. NRS 1.310.

6 Through NRS 1.310(2), the Nevada Legislature assures the attendance of its
7 lawyer-legislator membership. NRS 1.310(2) relieves Nevada's lawyer-legislators
8 of the burden of choosing between serving in the legislature and appearing as an
9 attorney in a pending litigation during the legislative session. Legislative
10 continuance usually serves a dual purpose of encouraging good men and women to
11 sacrifice their time in the interest of good government and of protecting a party to a
12 law suit whose attorney may be serving the Legislature. Collier v. Poe, 732 S.W.2d
13 332, 334 (Tex.Crim.App.1987).

14 NRS 1.310 appears on its face to merely postpone pending matters. Postponing
15 adjudication of a dispute, generally, will not give rise to any injury, over and above
16 any inconvenience associated with delay. However, the delay may inflict harm in
17 certain situations that may not be able to be remedied at a later date. NRS 1.310
18 makes no provision for those cases in which delay will cause an injury that can only
19 be prevented by immediate access to the court. NRS 1.310 mandates legislative
20 continuance, eliminating any judicial discretion.

21 The statute, which eliminates judicial discretion, seems to run afoul of the
22 separation of powers doctrine, as it interferes with the judiciary's authority to
23 manage the judicial process. The separation of powers doctrine is the most important

1 foundation for preserving and protecting liberty by preventing the accumulation of
2 power in any one branch of government. *See Secretary of State v. Nevada State*
3 *Legislature*, 120 Nev. 456, 466 (2004). Article 3, section 1, of the Nevada
4 Constitution provides in pertinent part:

5 The powers of the Government of the State of Nevada shall be divided into
6 three separate departments, the Legislative, the Executive and the Judicial;
7 and no persons charged with the exercise of powers properly belonging to
8 one of these departments shall exercise any functions, appertaining to either
9 of the others, except in the cases expressly directed or permitted in the
10 constitution.

11 As coequal branches, each of the three governmental departments has inherent
12 power to administer its own affairs and perform its duties, so as not to become a
13 subordinate branch of government. *Halverson v. Hardcastle*, 123 Nev. 245, 261
14 (2007). The judiciary, of course, has the inherent power to govern its own
15 procedures. A motion for continuance is within the trial courts discretion. *See*
16 *Hopper v. Hopper*, 79 Nev. 86 (1963) (While a failure of justice sometimes can result
17 from a denial of such motion, it is likewise true that a failure of justice can result
18 from granting of the same.)

19 Members of the Nevada Legislature are required to attend sessions of that body
20 and a good-faith request by a lawyer-legislator for a continuance to attend a
21 legislative session should not be arbitrarily denied. However, the Nevada
22 Legislature, through NRS 1.310(2), attempts to exercise the ultimate authority to
23 determine when and under what circumstances litigation involving lawyer-
24 legislators proceeds through the judicial system. As Mr. Pickard declares in his own
25 Affidavit, NRS 1.310 ostensibly removes jurisdiction from the Court to hear the

1 substantive issues of Plaintiffs motion... [Emphasis added.]

2 Other States, with similar legislative continuance statutes, have found the
3 absence of judicial discretion renders the legislative continuance statute
4 unconstitutional, violating the separation of powers doctrine.

5 In A.B.C. Business Forms, Inc. v. Spaet, 201 So.2d 890 (Fla.1967), a Florida trial
6 court granted a legislative continuance and the Florida Supreme Court ordered the
7 trial court to hold a hearing, ruling:

8 (T)he courts should support the legislative attempt to assure the presence of
9 its membership unless the legislative enactment is a clear invasion of the
10 judicial field. Generally, in non-emergency cases (the statute providing for
11 legislative continuances) is constitutional and should be liberally construed.
12 But, as to litigation involving emergency relief and irreparable damage, we
13 find the statute an invasion of the judicial field and violative of constitutional
14 prohibition As a right guaranteed by the Constitution, the courts must be
15 open to every person for relief against injury. Whether, in a given cause, the
16 litigant may suffer irreparable injury in the application of the statute is one
17 of sound judicial discretion, not subject to legislative control.

18 In Thurmond v. Superior Court, 66 Cal.2d 836, 59 Cal.Rptr. 273, 427 P.2d 985
19 (1967), a California trial court granted a legislative continuance in an action against
20 the father of an unborn child for support, maintenance, and medical expenses
21 necessary for the child during pendency of a paternity suit. The California Supreme
22 Court issued a writ of mandamus ordering the trial court to hold a hearing on the
23 motion for continuance.

24 The guardian in the present case points out that the right of the mother and child
25 to apply for relief pendente lite will be materially impaired and perhaps destroyed
26 by the imposition of any substantial continuance; neither the birth of the child nor
27 its need for care and support can be postponed. A similar result could follow in other

1 cases in which a party has a right to invoke a provisional remedy, such as pendente
2 lite support in domestic relations controversies, attachment and sale of perishable
3 goods, receivership of a failing business, and temporary restraining orders or
4 preliminary injunctions. Situations other than those involving provisional remedies
5 may also arise in which a substantial existing right would be defeated or abridged
6 by extended continuances.

7 In Waites v. Sondock, 561 S.W.2d 772 (1977) the Supreme Court of Texas found
8 that a legislative continuance is mandatory except in those cases in which the party
9 opposing the continuance alleges that a substantial existing right will be defeated or
10 abridged by the delay. Further, the Court held that the trial court must hold an
11 evidentiary hearing to determine whether the allegations of irreparable harm are
12 meritorious.

13 In the instant case, Plaintiff opposes the lawyer-legislator's request for legislative
14 continuance and alleges that a substantial existing right will be defeated or abridged
15 by the delay, that she will be irreparably damaged by the delay, and that emergency
16 court invention is warranted.

17 Therefore, the Court FINDS NRS 1.310 unconstitutional as written as it violates
18 the separation of powers doctrine of the Nevada Constitution by allowing the
19 legislature to commandeer the inherent power of the judiciary to govern its own
20 procedures, removing all discretion from the Court. There are instances in which the
21 postponement of an action would result in irreparable harm or defeat an existing
22 right, and emergency relief is warranted. In those instances, the Court must be able
23 to be allowed to exercise discretion.

The Court GRANTS Mr. Pickard's request, IN PART, for stay of the majority of this litigation pending the legislative session. However, based upon the Plaintiff's opposition and the persuasive authority cited herein, the Court will hold a brief evidentiary hearing regarding the merits of Plaintiff's opposition to Mr. Pickard's request to stay as it pertains to the Plaintiff's Motion for Temporary Custody and Temporary Support Orders pending the legislative session on March 8, 2017, at 9:00 a.m.

Mr. Pickard may file the appropriate notice and appear by telephone or skype. Mr. Pickard may also have another one of the attorneys in his firm appear on his behalf.

Copy of this Court's minute order shall be provided to both parties.

IT IS SO ORDERED.

DATED this 16th day of September, 2017.

DISTRICT COURT JUDGE
FAMILY DIVISION

Respectfully submitted by:
NEVADA FAMILY LAW GROUP

Approved as to form and content:
GHANDI DEETER BLACKHAM

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