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## **I.**

### **INTRODUCTION**

Real Party in Interest Misty Jo Degraw (Misty) submits this Reply to the Court's Order to Show Cause why the instant matter should not be dismissed. Misty incorporates by reference all facts and arguments contained in her Answering Brief filed with the Court on April 21, 2017.

Although the exigency of the underlying Writ no longer exists because Mr. Pickard, attorney for named Petitioner David Harrison Degraw (David), and a member of the Nevada Legislature, has returned from the session, and the parties have entered into a stipulated custody agreement, the underlying basis of Petitioner's Writ, specifically, challenging the District Court's finding that NRS 1.310 is unconstitutional on the basis that it violates the Separation of Powers Clause in the Nevada Constitution, as well as whether David has standing to bring such a Writ effectively on behalf of his attorney, remain justiciable issues of widespread importance that are capable of repetition. As such, Misty asks that this Court enter its decision regarding the Writ Petition on its merits.

## II.

### ARGUMENT

#### **A. This Court Should Entertain the Writ Petition as it Pertains to the Constitutionality of NRS 1.310 and Review the Legal Issues on the Merits.**

The mootness doctrine applies to this Court's exercise of its original jurisdiction to issue extraordinary writ relief. Solid v. Dist. Ct., 133 Nev. Adv.Op. 17, 393 P.3d 666, 670 (2017). The question of mootness is one of justiciability. This court's duty is not to render advisory opinions but, rather, to resolve actual controversies by an enforceable judgment. NCAA v. University of Nevada, 97 Nev. 56, 57, 624 P.2d 10, 10 (1981). Thus, a controversy must be present through all stages of the proceeding, *see* Arizonans for Official English v. Arizona, 520 U.S. 43, 67, 117 S.Ct. 1055, 137 L.Ed.2d 170 (1997); Lewis v. Continental Bank Corp., 494 U.S. 472, 476–78, 110 S.Ct. 1249, 108 L.Ed.2d 400 (1990), and even though a case may present a live controversy at its beginning, subsequent events may render the case moot. University Sys. v. Nevadans for Sound Gov't, 120 Nev. 712, 720, 100 P.3d 179, 186 (2004); Wedekind v. Bell, 26 Nev. 395, 413–15, 69 P. 612, 613–14 (1902). Personhood Nevada v. Bristol, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010). Even when an appeal is moot, however, this Court may consider it if it involves a matter of widespread importance that is capable of repetition, yet evading review. Traffic Control Servs. v. United Rentals, 120 Nev. 168, 171–72, 87 P.3d 1054, 1057 (2004) (recognizing that the capable-of-repetition-yet-evading-review

exception to the mootness doctrine applies when the duration of the challenged action is “relatively short” and there is a “likelihood that a similar issue will arise in the future” (citing Binegar v. District Court, 112 Nev. 544, 548, 915 P.2d 889, 892 (1996) (noting that the matter must be important), and Langston v. State, Dept. of Motor Vehicles, 110 Nev. 342, 344, 871 P.2d 362, 363 (1994) (pointing out that facts unique to a particular party will not give rise to the mootness exception))). Personhood Nevada v. Bristol, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010).

1. Petitioner’s Writ contains a matter of widespread importance that is capable of repetition, yet evading review.

Although the issues contained in the original Writ and Misty’s Answering Brief are now moot as to the instant case, the underlying issues, specifically the unconstitutionality of NRS 1.310—a statute that deprives the judiciary of discretion in reviewing requests for continuances of attorney-legislators who meet the criteria in the statute, entirely divesting the court of its inherent authority to administrate its own procedures, to manage its own affairs, and to ensure the public’s access to justice—and David’s standing to bring such a Writ, are matters of widespread importance that are capable of repetition.

In 2019, the Nevada Legislature, comprised of multiple attorney-legislators, will once again be in session, and some portion of those attorney-legislators will request mandatory continuances of their cases pursuant to NRS 1.310. As

demonstrated by the facts of the underlying case, and the basis of the original Writ Petition, such mandatory continuances not only violate the Separation of Powers Clause of the Nevada Constitution, but may also cause irreparable harm to the litigants in the continued cases, as their matters are placed on hold for months while the legislative session is underway. The district court is given no discretion regarding exigencies that may arise in an affected case, and there are no safeguards to protect against parties who may seek to abuse the process by retaining attorney-legislators with an intent to delay the proceedings to the detriment of opposing parties.

2. The duration of the action is relatively short.

It is clear that the duration of the present action—while seeming to be an eternity to Misty and the children as they endured David’s arbitrary limitations on their time together, without recourse through the district court—was of a relatively short duration, with the Petition having been filed on March 7, 2017, and the Legislative Session having concluded on June 6, 2017.

3. There is a likelihood that a similar issue will arise in the future.

As previously mentioned, the Nevada Legislature, comprised of multiple attorney-legislators, will once again be in session in 2019, and some portion of those attorney-legislators will request mandatory continuances of their cases pursuant to NRS 1.310.



Thus, there is a substantial likelihood that a similar issue will arise in the near future.


### **III.**

#### **CONCLUSION**

Based on the foregoing, Misty respectfully requests that this Court entertain the Writ Petition as it pertains to the constitutionality of NRS 1.310 and enter its decision regarding the Writ Petition on its merits.

**DATED** this 23 day of October, 2017.

**GHANDI DEETER BLACKHAM**

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## **CERTIFICATE OF COMPLIANCE**

Pursuant to NRAP 28.2, undersigned counsel hereby certifies that this Reply complies with the formatting requirements of NRAP 29(d) and NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this Reply has been prepared in a proportionally spaced typeface using Microsoft Word and a size 14 Times Regular font.

Undersigned counsel further certifies that this Reply complies with the page- or type-volume limitations of NRAP 29(e) and NRAP 32(a)(7) because, excluding the parts of the Reply exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 981 words.

Finally, undersigned counsel certifies that I have read this Reply, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Reply complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the Reply regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or

appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity.

Dated this 23 day of October, 2017.

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## **CERTIFICATE OF SERVICE**

The foregoing "Real Party in Interest's Reply to Order to Show Cause" was served this date facsimile transmission and my mailing true and correct copies thereof, via first class mail, postage prepaid and addressed as follows:

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