IN THE SUPREME COURT OF THE STATE OF NEVADA

RENELYN BAUTISTA, Petitioner, v. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, and THE HONORABLE MATHEW HARTER, DISTRICT JUDGE, Respondents, JAMES PICONE, Real Party in Interest	Electronically Filed Mar 24 2017 01:30 p.m. Elizabeth A. Brown Clerk of Supreme Court Case No. District Court Case No. D-14-495928-P

PETITION FOR WRIT OF MANDAMUS AND/OR PROHIBITION

COMES NOW Petitioner, RENELYN BAUTISTA, ("Renelyn"), by and through her attorneys of record, John D. Jones, and the law firm of BLACK & LOBELLO, and respectfully petitions the District Court for a writ directing the Honorable Mathew Harter to vacate his District Court Order entered on February 22, 2017, in which he denied Petitioner's Motion to Change Custody.

I. SUMMARY OF WRIT

Petitioner Renelyn Bautista ("Renelyn") and Real Party in Interest, James Picone ("James") have one (1) minor child, SOPHIA A. PICONE ("Sophia"), born

October 22, 2011. This writ follows the denial of Petitioner's Motion to Change Custody via Decision and Order entered February 22, 2017 and the entry of an Order Appointing Parenting Coordinator entered the same day in lieu of an actual adjudication of the Motion. This Petition seeks an order from this Court which compels the actual adjudication of the Motion, reverses the Order appointing Special Master, and disqualifies the District Court judge from presiding over this case.

II. PRELIMINARY STATEMENT REGARDING THE RECORD ON REVIEW

The parts of the record which may be essential to an understanding of the matters set forth in the instant "Petition for Writ of Mandamus and/or Prohibition" are being submitted to the court by way of the attached "Petitioner's Appendix." In the following statement of facts and argument, references to the relevant parts of the record will be in the form AA XX, where "AA" represents the Petitioner's Appendix and "XX" represents the page number within the Appendix upon which the relied upon matter may be found.

III. FACTS

The parties were never married. They have one child, Sophie, who is now five years old. The following is a summary of this case from the date of the final custody order to the present.

1. The parties entered a stipulated parenting plan agreeing to share joint

physical custody of Sophie with Renelyn having four days per week and Plaintiff having three. This order was entered on April 8, 2015. (AA 001-016)

2. Three months after the entry of the order, issues arose pertaining to Respondent taking Sophie, who at the time was 3 years old, to work during his custodial time in contradiction to the Court's specific directive to the contrary. (AA 017-090) The Court denied the Motion but commented that a change in Respondent's work schedule would warrant the mediation of a new timeshare, clearly indicating that Respondent's work schedule is relevant to any consideration of best interests. (AA 094-097)

3. In August of 2015, Sophie revealed to her grandmother that the Respondent had penetrated her vagina with his finger. Renelyn reported the matter to the police who investigated the matter through the Special Victims Unit. This revelation led to competing child custody motions (AA 228-246) which were set for hearing on September 16th 2015.

4. At the hearing on September 16th, the District Court Judge placed a call to Dr. John Paglini, an outsource psychological expert who had been appointed to perform a custody evaluation prior to the parties' resolution of their custody case. Dr. Paglini was not involved in the case from the time of the entry of the April 2015 final custody order. Prior to the call to Dr. Paglini on the record, the Court disclosed that his office, upon receiving the competing motions, had called

Dr. Paglini. The purpose and substance of the off the record call is unknown. The call on the record was the Court's attempt to elicit Dr. Paglini's opinions about Petitioner's husband and the reasons he would not want to be involved in the case at that time. Nothing about the issues pending before the District Court had anything to do with Dr. Paglini. (The transcript of the September 16th hearing has been ordered and the appendix will be supplemented upon receipt)

5. Detective Arndt of the Henderson Police department testified regarding the on-going investigation. Specifically, Detective Arndt confirmed that based upon the facts and circumstances of the investigation, that Renelyn was advised to withhold Sophie from Respondent while the investigation proceeded. (The transcript of the September 16th hearing has been ordered and the appendix will be supplemented upon receipt)

5. Detective Arndt confirmed that Henderson P.D. did, in fact, refer the matter to CPS. (The transcript of the September 16th hearing has been ordered and the appendix will be supplemented upon receipt)

6. Detective Arndt informed the Court that Sophie had been interviewed by a child forensic specialist and repeated the disclosure of digital penetration by Respondent. (The transcript of the September 16th hearing has been ordered and the appendix will be supplemented upon receipt)

7. Detective Arndt confirmed that some investigations did not warrant a

referral to the city attorney, but the investigation of Sophie's disclosure did warrant a referral to the city attorney. (The transcript of the September 16th hearing has been ordered and the appendix will be supplemented upon receipt)

8. In November of 2015, Renelyn filed a Motion seeking a one hour modification of the timeshare so that Sophie could attend Sunday School. Respondent had refused her request to adjust the timeshare 1 hour later on both ends which would not have reduced his timeshare or impacted custody. (AA 247-262)

9. In response, the District Court refused to adjudicate the issue and instead appointed a parenting coordinator in December of 2015 and ordered that Renelyn, who is unemployed, be solely responsible for the costs. (AA 340-341)

10. Parenting Coordination was unsuccessful and the first parenting coordinator withdrew. The issue presented in the motion for which the parenting coordinator was appointed was never resolved.

11. On February 17, 2017, Petitioner filed a Motion to Change Custody and for Related Relief. The issues presented therein were significant. Specifically, Petitioner had concrete proof of Respondent's attempts to lure a 15 year-old girl into a sexual relationship with him. (AA 401-456) This Motion also raised the following issues directly related to the best interests of the minor child:

a. Respondent's false allegations of abuse against Petitioner's

husband.

b. Respondent's intentional ramming of the vehicle driven by Petitioner's husband while the minor child was in the car.

c. The refusal of Respondent to co-parent.

d. The failure of parenting coordination.

e. The issue regarding the one hour modification of the exchange time for which the District Court originally appointed a parenting coordinator.

12. The District Court, within five days of the filing of the Motion, issued a Decision and Order denying the Motion (AA 469-473) and appointing another parenting coordinator. (AA 458-467)

13. In this order, the District Court wrote the following:

> For some reason, *Defendant always* seems to take time to bring up past events (even though they are excluded from consideration) before she reveals her new "nugget" of information that she thinks will truly change things. It is an act of desperation, deflection and denial that Defendant alludes to Plaintiff and this Court as being partly responsible for the demise of her latest marriage. (AA 470)
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> Defendant's newest of allegations regarding Plaintiff's involvement with a minor makes no mention whatsoever of what Defendant is doing to have this investigated by *the proper authorities* (FBI, police, CPS, *etc.*), even though it "rises to the level of an emergency." (*id.*)
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> Certainly, Defendant should know by now there *are* other legal avenues for investigation of Plaintiff's alleged criminal behavior than simply to continue to petition Family Court. The fact that these agencies *also* employ a lesser standard of legal proof has already been noted before in this case. As Defendant was also previously informed, it is actually a crime for Defendant *not* to report any wrongdoing that would put the minor child in an alleged

dangerous situation.[1] Also, Defendant has been notified before that CPS can place the child with her on an emergency basis at *anytime*. (AA 470-471)

Also, assuming Defendant's allegations are true, does she not have *unclean hands* by not mandatorily reporting the *serious* (or in her term "emergency") matter to the proper authorities?[2] (AA 471)

IV. STATEMENT OF THE ISSUES AND THE RELIEF SOUGHT

The issues presented by this petition for extraordinary relief are:

1. Did the District Court abuse its discretion when it denied, without a hearing, Renelyn's February 2017 motion to change custody?

2. Did the District Court abuse its discretion when it once again appointed a parenting coordinator rather than adjudicating the issues presented in the motion?

3. Did the District Court abuse its discretion by delegating judicial powers to a third party?

4. Should the District Court judge, upon the adjudication of this Petition be disqualified from further involvement with this case?

V. STATEMENT OF REASONS WHY THE WRIT SHOULD ISSUE

NRS 34.160 states:

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[1] NRS 200.508(2), which incorporates NRS 432B.130.

[2] "He who comes into court must do so with *clean hands*. The *clean hands* rule is of ancient origin and given broad application. It is the most important rule affecting the administration of justice." *Padgett v. Padgett*, 199 Cal.App.2d 652,656 (1962); Lamb v. Lamb, 83 Nev. 425,433 P.2d 265 (1967).

Writ may be issued by supreme court and district courts; when writ may issue. The writ may be issued by the supreme court, a district court or a judge of the district court, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled and from which he is unlawfully precluded by such inferior tribunal, corporation, board or person. When issued by a district court or a judge of the district court it shall be made returnable before the district court.

NRS 34.170 states:

Writ to issue when no plain, speedy and adequate remedy in law. This writ shall be issued in all cases where there is not a plain, speedy and adequate remedy in the ordinary course of law. It shall be issued upon affidavit, on the application of the party beneficially interested.

NRS 34.320 states:

Writ of prohibition defined. The writ of prohibition is the counterpart of the writ of mandate. It arrests the **proceedings** of any tribunal, corporation, board or person exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal, corporation, board or person.

A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust or station,1 or to control an arbitrary or capricious exercise of discretion.2 A writ of mandamus will not issue, however, if petitioner has a plain, speedy and adequate remedy in the ordinary course of law.3 Further, mandamus is an extraordinary remedy, and it is within the discretion of this court to determine if a petition will be considered.

We have previously noted that a petition for a writ of mandamus is the appropriate vehicle to seek disqualification of a judge.

Towbin Dodge, LLC v. Eighth Judicial Dist. Court of State ex rel. Cty. of Clark, 121 Nev. 251, 254–55, 112 P.3d 1063, 1066 (2005)

VI. A WRIT IS WARRANTED ON THE MERITS.

A. THE DISTRICT COURT ABUSED ITS DISCRETION IN DENYING PETITIONER'S MOTION WITHOUT A HEARING AND WITHOUT ALLOWING DISCOVERY.

The Motion before the Court involved serious allegations with actual evidence in the form of Respondent's own emails (AA 434-456) and a Declaration of a third-party witness (AA 429-432) regarding Respondent's actions in driving his car into the car in which the child was being driven. The District Court's response was that Petitioner was somehow required to first go to the "police, FBI, or CPS" regarding Respondent's crimes. The District Court had no knowledge whatsoever whether Petitioner had involved the police, he simply imposed an arbitrary and capricious requirement that Petitioner was required to do so before she could avail herself of the Family Court. It goes without saying that there is no Nevada law supporting the position taken by the District Court.

This analysis by the District Court ignores that none of those agencies have a mandate to issue orders addressing the best interests of the child and modifying custody. The only avenue for Petitioner to prove that it is not in the best interests of the minor child to continue under the current order was the District Court. This avenue was denied to the Petitioner, without the benefit of a hearing.

A criminal burden of proof is much higher than that which applies to a Motion to Change Custody. Thus, even though Petitioner has irrefutable proof of Respondent's attempt to have sex with a 15-year-old girl, the police or the FBI

could choose not to prosecute. Such an event would not change the fact that a five-year-old girl continuing to remain in the care of a person who actively pursued a sexual relationship with an underage girl is not in that five year old's best interests. Moreover, the specific request that discovery be opened was in order to obtain even more proof of Respondent's disgusting sexual proclivities which were clearly established in the uncontroverted emails and messages that Respondent sent which were attached to the Motion. The order of the District Court completely ignores this fact. As such it was an abuse of discretion.

The order of the District Court also completely ignored the incident which was proven by third-party eye witness testimony that Respondent drove his vehicle into the back of the vehicle in which the child was riding. Did the District Court really believe that Respondent's behavior, as established by an independent witness, (AA 429-432) is consistent with the best interests of a five-year-old little girl? The actions of the Respondent constituted an assault and a battery which both constitute domestic violence. Domestic violence raises a presumption against Respondent having joint custody under NRS 125C 00035. Petitioner was entitled to a hearing on these issues. The refusal to grant a hearing or even mention the domestic violence in its order constituted an abuse of discretion on the part of the District Court.

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B. THE DISTRICT COURT ABUSED ITS DISCRETION BY APPOINTING A PARENTING COORDINATOR.

To be clear, the parties to this case never agreed to the appointment of a parenting coordinator. As such, this case differs from *Harrison v. Harrison*, 132 Nev. Adv. Op. 56, 376 P.3d 173, 181–82 (2016) on many levels. In this case, the Court simply refuses to consider the evidence and make orders regarding substantive issues of best interests. How can a parenting coordinator determine whether it is in the best interests to be in the continued care and custody of a parent who tried to have sex with a girl he knew to be 15 years-old? A parenting coordinator cannot make those determinations. Those determinations are what District Court judges are mandated to make.

In addition to the District Court attempting to avoid considering uncontroverted evidence or allowing more evidence to be obtained, the Court delegated the judicial authority it refused to apply to a third-party attorney. In addition to allowing for changes in the current order, the Order for Appointment of Special Master gives away, without the consent of either parent, fundamental Constitutional rights belonging only to parents.

Specifically, the order contains the following delegations of judicial authority and infringements on the rights of parents.

> 2.1 Hourly fees for the services of the Parenting Coordinator shall be set by the Parenting Coordinator pursuant to a written agreement with the parties. All fees shall be advanced equally by the

parties. The Court reserved jurisdiction to re-allocate said payments between the parties. The Parenting Coordinator may determine re-allocation of fees and costs on any single issue if it appears that the conduct of one party warrants same. (AA 459)

3.12 Direct as necessary, one or both parents to utilize community resources, for the following services including but not limited to: random drug screens, parenting classes, and any mental health and/or counseling services, psychotherapy or a substance abuse assessment or treatment for either or both parents, or the child, with the Parenting Coordinator to have access to the results of any psychological testing or other assessments of the child and/ or parents. (AA 460)

3.13(e) health care management issues, including choice of medical providers and payment of unreimbursed medical expenses (including dental, orthodontic, psychological, psychiatric or vision care), pursuant to the Court's order for payment of said expenses; (*Id.*)

(f) education or day care including but not limited to, school choice, tutoring, summer school, and participation in special education testing and programs; allocation of the cost for the foregoing items shall be determined by the Parenting Coordinator, subject to the Court's review, if requested by either party; (*Id.*)

(g) child's participation in religious observances and religious education; (AA 046)

(i) child's travel and passport issues; (*Id.*)

(k) child's appearance and/or alteration of child's appearance, including haircuts, tattoos, ear, face or body piercing; (*Id.*)

(n) requiring the signing of appropriate releases from each parent to provide access to confidential and privileged records, including medical, psychological or psychiatric records of a parent or child. (*Id.*)

4.0(1) Temporary decision-making authority to resolve minor disputes between the parties concerning shared parenting decisions until such time as a Court order is entered modifying the decision. Such decision-making services provided by the Parenting Coordinator

shall apply to both substantive and non-substantive changes to the parenting plan. (AA 462)

5.8 The Parenting Coordinator shall have the authority to determine the protocol of all fact-finding procedures. The Parenting Coordinator shall have the authority to engage in ex-parte communications with the parties and/or their counsel. (AA 463)

5.9 The Parenting Coordinator shall have the authority to interview and require the participation of other persons whom the Parenting Coordinator deems to have relevant information or to be useful participants in the parenting coordination process, including, but not limited to, custody evaluator, teachers, health and medical providers, stepparents, and significant others. (AA 464)

While the forgoing are the most offensive rights and powers provided to a stranger to the parties and their child, many other provisions are troubling in their breadth. For brevity, the entirety of the Order is not analyzed herein.

The analysis in the dissent in *Harrison* is particularly applicable to the facts of this case.

> Notwithstanding NRCP 53 and NRS 125.005(1), "[t]he constitutional power of decision vested in a trial court in child custody cases can be exercised only by the duly constituted judge, and that power may not be delegated to a master or other subordinate official of the court." *Cosner v. Cosner,* 78 Nev. 242, 245, 371 P.2d 278, 279 (1962).
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> This court recently addressed a master's role in *In re A.B.,* 128 Nev. 764, 291 P.3d 122 (2012). In *In re A.B.,* the juvenile court reviewed a dependency master's findings in an abuse and neglect matter. *Id.* at 765, 291 P.3d at 124. This court explained that "a master's findings and recommendations are only advisory" and that "[t]he juvenile court ultimately must exercise its own independent judgment when deciding how to resolve a case." *Id.* at 766, 291 P.3d at 124. Although this court has not addressed the issue of improper delegation in the context of parenting coordinators, many states require "the court to review and approve a [parenting coordinator]'s recommendations." Christine

A. Coates et al., *Parenting Coordination for High–Conflict Families,* 42 Fam. Ct. Rev. 246, 249–50 (2004) ("[T]he opportunity for judicial review [is] a touchstone in what may constitute a lawful delegation of authority versus what is an unlawful delegation of authority."). *See, e.g., In re Marriage of Rozzi,* 190 P.3d 815, 823 (Colo.App.2008) (remanding the case to the trial court to "clarify that the parenting coordinator may make recommendations to the parties to assist them in resolving disputes, but may not make decisions for them"); *In re Paternity of C.H.,* 936 N.E.2d 1270, 1274 (Ind.Ct.App.2010) ("[A] parent coordinator serves a role akin to *182 that of an expert witness who reviews information relevant to the case and develops an opinion to be accepted or rejected by the trial court."); *Silbowitz v. Silbowitz,* 88 A.D.3d 687, 930 N.Y.S.2d 270, 271 (2011) (explaining that the parenting coordinator's "resolutions [must] remain subject to court oversight"). Additionally, it is also an improper delegation of authority if the parenting coordinator is granted binding authority. *See Bower v. Bournay–Bower,* 469 Mass. 690, 15 N.E.3d 745, 748 (2014) (vacating an order giving "the parent coordinator the authority to make binding decisions on matters of custody and visitation" because it "exceeded the bounds of the judge's inherent authority and was so broad in scope that it constitutes an unlawful delegation of judicial authority"); *Kilpatrick v. Kilpatrick,* 198 P.3d 406, 410 (Okla.Civ.App.2008) (holding that an order mandating that "the parenting coordinator's recommendations should be observed as orders of the Court" "constitutes an improper delegation of judicial power" (internal quotation marks omitted)).

The majority reasons that contrary to parenting coordinators in other jurisdictions whose role is defined by statute, parenting coordinators in Nevada are defined by the court and/or the parties. Majority opinion *ante* at 177–78. Interestingly, two of the statutes relied upon by the majority are substantially similar to NRS 125.005(2) with regard to the parenting coordinator's role in the decision-making process, so the majority's statement that "parenting coordinators are not authorized by statute" in Nevada is confounding.[3] *Id. Compare* NRS 125.005(2) ("[T]he referee shall hear all disputed factual issues and make written findings of fact and recommendations to the district judge."), *with* La. Stat. Ann. § 9:358.4(C) (2008) ("When the parties are unable to reach an agreement, the parenting coordinator may make a recommendation in a report to the court for resolution of the

> dispute."), *and* Or. Rev. Stat. Ann. § 107.425(3)(a)(C) (2015) (listing the parenting coordinators' services as including "[p]roviding the parents, their attorneys, if any, and the court with recommendations for new or modified parenting time provisions").
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> More importantly, the Nevada Constitution provides that it is the Legislature's duty to frame the parenting coordinator's function. Nev. Const. art. 6, § 6(2)(a) ("The [L]egislature may provide by law for ... [r]eferees in district courts."). By allowing the court or the parties to dictate the parenting coordinator's role, including the granting of binding authority, the majority is engaging in legislation and impermissibly expanding NRS 125.005(2).[4] Ironically, this expansion likens NRS 125.005(2) to Florida's and North Dakota's parenting coordinator statutes. *See* Fla. Stat. Ann. § 61.125(1) (West 2016) (granting the parenting coordinator the authority to "mak[e] limited decisions"); N.D. Cent. Code § 14–09.2–04 (2009) ("An agreement of the parties or a decision of the parenting coordinator is binding on the parties until further order of the court."). However, as pointed out by the majority, these statutes were authorized by the respective legislatures—not the judiciary.
>
> The district court's order gives the parenting coordinator binding authority, without judicial review, when the parties are in agreement or, in the case of a disagreement, when the disagreeing party fails to file an objection. Furthermore, use of the word "can" provides only for discretionary review by the district court when an objection is filed. Thus, I conclude that the district court is not "exercis[ing] its own independent judgment," *In re A.B.*, 128 Nev. at 766, 291 P.3d at 124, and is improperly delegating its authority to the parenting coordinator, *Cosner,* 78 Nev. at 245, 371 P.2d at 279, by failing to provide for the proper review of the parenting coordinator's decisions.[5]

Harrison v. Harrison, 132 Nev. Adv. Op. 56, 376 P.3d 173, 181–82 (2016)

In addition, the rights and powers taken from Petitioner (and Respondent for that matter) and given to the proposed parenting coordinator are fundamental constitutional rights of parents. The United States Supreme Court in *Troxel vs.*

Glanville, 120 S.Ct 2054, 530 US 57 (2007) summarized American jurisprudence regarding the rights of parents to make decisions regarding the care custody and control of their children as follows:

> The Fourteenth Amendment provides that no State shall "deprive any person of life, liberty, or property, without due process of law." We have long recognized that the Amendment's Due Process Clause, like its Fifth Amendment counterpart, "guarantees more than fair process." *Washington v. Glucksberg*, 521 U.S. 702, 719, 117 S.Ct. 2258 (1997). The Clause also includes a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests." *Id.*, at 720, 117 S.Ct. 2258; *see also Reno v. Flores*, 507 U.S. 292, 301–302, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993).
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> The liberty interest at issue in this case—the interest of parents in the care, custody, and control of their children—is perhaps the oldest of the fundamental liberty interests recognized by this Court. More than 75 years ago, in *Meyer v. Nebraska*, 262 U.S. 390, 399, 401, 43 S.Ct. 625, 67 L.Ed. 1042 (1923), we held that the "liberty" protected by the Due Process Clause includes the right of parents to "establish a home and bring up children" and "to control the education of their own." Two years later, in *Pierce v. Society of Sisters*, 268 U.S. 510, 534–535, 45 S.Ct. 571, 69 L.Ed. 1070 (1925), we again held that the "liberty of parents and guardians" includes the right "to direct the upbringing and education of children under their control." We explained in Pierce that "[t]he child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." *Id.*, at 535, 45 S.Ct. 571. We returned to the subject in *Prince v. Massachusetts*, 321 U.S. 158, 64 S.Ct. 438, 88 L.Ed. 645 (1944), and again confirmed that there is a constitutional dimension to the right of parents to direct the upbringing of their children. "It is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." *Id.*, at 166, 64 S.Ct. 438.

In subsequent cases also, we have recognized the fundamental right of parents to make decisions concerning the care, custody, and control of their children. *See, e.g., Stanley v. Illinois*, 405 U.S. 645, 651, 92 S.Ct. 1208, 31 L.Ed.2d 551 (1972) ("It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children 'come[s] to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements' " (citation omitted)); *Wisconsin v. Yoder*, 406 U.S. 205, 232, 92 S.Ct. 1526, 32 L.Ed.2d 15 (1972) ("The history and culture of Western civilization reflect a strong tradition of parental concern for the nurture and upbringing of their children. This primary role of the parents in the upbringing of their children is now established beyond debate as an enduring American tradition"); *Quilloin v. Walcott*, 434 U.S. 246, 255, 98 S.Ct. 549, 54 L.Ed.2d 511 (1978) ("We have recognized on numerous occasions that the relationship between parent and child is constitutionally protected"); *Parham v. J. R.*, 442 U.S. 584, 602, 99 S.Ct. 2493, 61 L.Ed.2d 101 (1979) ("Our jurisprudence historically has reflected Western civilization concepts of the family as a unit with broad parental authority over minor children. Our cases have consistently followed that course"); *Santosky v. Kramer*, 455 U.S. 745, 753, 102 S.Ct. 1388, 71 L.Ed.2d 599 (1982) (discussing "[t]he fundamental liberty interest of natural parents in the care, custody, and management of their child"); *Glucksberg, supra*, at 720, 117 S.Ct. 2258 ("In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the 'liberty' specially protected by the Due Process Clause includes the righ[t] ... to direct the education and upbringing of one's children" (citing Meyer and Pierce)). In light of this extensive precedent, it cannot now be doubted that the Due Process Clause of the Fourteenth Amendment protects the fundamental right of parents to make decisions concerning the care, custody, and control of their children.

...

The decisional framework employed by the Superior Court directly contravened the traditional presumption that a fit parent will act in the best interest of his or her child. *See Parham, supra,* at 602, 99 S.Ct. 2493. In that respect, the court's presumption failed to provide any protection for Granville's fundamental constitutional right to make

> decisions concerning the rearing of her own daughters. *Cf., e.g., Cal. Fam.Code Ann.* § 3104(e) (West 1994) (rebuttable presumption that grandparent visitation is not in child's best interest if parents agree that visitation rights should not be granted); Me.Rev.Stat. Ann., Tit. 19A, § 1803(3) (1998) (court may award grandparent visitation if in best interest of child and "would not significantly interfere with any parent-child relationship or with the parent's rightful authority over the child"); Minn.Stat. § 257.022(2)(a)(2) (1998) (court may award grandparent visitation if in best interest of child and "such visitation would not interfere with the parent-child relationship"); Neb.Rev.Stat. § 43–1802(2) (1998) (court must find "by clear and convincing evidence" that grandparent visitation "will not adversely interfere with the parent-child relationship"); R.I. Gen. Laws § 15–5–24.3(a)(2)(v) (Supp.1999) (grandparent must rebut, by clear and convincing evidence, presumption that parent's decision to refuse grandparent visitation was reasonable); Utah Code Ann. § 30–5–2(2)(e) (1998) (same); *Hoff v. Berg*, 595 N.W.2d 285, 291–292 (N.D.1999) (holding North Dakota grandparent visitation statute unconstitutional because State has no "compelling interest in presuming visitation rights of grandparents to an unmarried minor are in the child's best interests and forcing parents to accede to court-ordered grandparental visitation unless the parents are first able to prove such visitation is not in the best interests of their minor child"). In an ideal world, parents might always seek to cultivate the bonds between grandparents and their grandchildren. Needless to say, however, our world is far from perfect, and in it the decision whether such an intergenerational relationship would be beneficial in any specific case is for the parent to make in the first instance. And, if a fit parent's decision of the kind at issue here becomes subject to judicial review, the court must accord at least some special weight to the parent's own determination.
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> *Troxel v. Granville*, 530 U.S. 57, 69–70, 120 S. Ct. 2054, 2062, 147 L. Ed. 2d 49 (2000)

Obviously, many of the authorities granted by the District Court Judge to the parenting coordinator over the objection of at least one of the parents are the types of decisions that are guaranteed to parents under the United States Constitution.

The order itself, as written, could subject Petitioner to contempt if she placed her fundamental rights at odds with a person who is a stranger to her child. As such the forced referral to a parenting coordinator in lieu of actually making judicial decisions based upon evidence was an abuse of discretion.

C. THE DISTRICT COURT JUDGE SHOULD BE DISQUALIFIED AS PART OF THE ADJUDICATION OF THIS PETITION.

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A judge shall perform the duties of judicial office impartially and diligently.

....

E. Disqualification.

(1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

N.R.S. 1.235

1.235. Procedure for disqualifying judges other than Supreme Court justices or judges of the Court of Appeals

Currentness

1. Any party to an action or proceeding pending in any court other than the Supreme Court or the Court of Appeals, who seeks to disqualify a judge for actual or implied bias or prejudice must file an affidavit specifying the facts upon which the disqualification is sought. The affidavit of a party represented by an attorney must be accompanied by a certificate of the attorney of record that the affidavit is filed in good faith and not interposed for delay. Except as otherwise provided in subsections 2 and 3, the affidavit must be filed:

(a) Not less than 20 days before the date set for trial or hearing of the case; or

(b) Not less than 3 days before the date set for the hearing of any pretrial matter.

Nev. Rev. Stat. Ann. § 1.235 (West)

Petitioner recognizes the procedures outlined in NRS 1.235. In the interests

of judicial economy and as part of the substantive Petition she is requesting the relief of disqualification of the District Court judge to whom her case is assigned. An affidavit of bias in the District Court will be filed following the filing of this Petition. The record will be supplemented with the Affidavit, and any orders which issue therefrom.

The District Court Judge has evidenced bias against Petitioner repeatedly since the entry of the April 2015 final order. While it is not argued that every motion is entitled to a hearing, what has occurred in this case rises to the level of bias, not judicial economy. The fact that the Court ignored significant issues pertaining to the best interests of the child is the reason Appellate relief exists. The actions of the judge and the way he has disregarded his mandate, however, establish the existence of bias. No judge without bias would ignore the attempt by a parent to have sex with a 15-year-old. No judge without bias would simply assume that Petitioner had not sought the involvement of the police regarding Respondent's attempted pedophilia. Moreover, no judge without bias would issue an order that states unequivocally that Petitioner has "unclean hands" due to her bringing the issue to the attention of the Family Court instead of the police or FBI. (AA 471) This position is so legally untenable that bias must be the source of the finding. At its core, the District Court Judge in this case stated unequivocally that unless Petitioner sought to have Respondent arrested, that the Family Court is not

available to her. No judge without bias would ignore the domestic violence that Respondent's intentional vehicular impact caused. It defies credulity to claim otherwise.

The February 22nd order speaks for itself and this Court's review of the sarcastic and outwardly hostile tone, tenor and language should establish bias on its own.

The bias, however, is most evident in the improper procedure taken at the September 16, 2015 hearing. Even though Dr. Paglini was no longer appointed to the case and even though neither of the parties mentioned Dr. Paglini in their moving papers, the District Court's law clerk called Dr. Paglini off the record and then again, on the record. The purpose of the call was evident by the Court's questions of Dr. Paglini. There was no other reason to call Dr. Paglini than to elicit negative commentary about Petitioner's husband. As such, the improper *ex parte* communication (*See In Re Fine,* 116 Nev. 1001, 13 P3d 400, 2000) and the absolutely unwarranted and completely irrelevant call to Dr. Paglini on the record evidenced the type of bias that has permeated the orders of the District Court in this case.

The undersigned does not take lightly the necessary request for disqualification as he has always held the District Court Judge in question in high regard. Unfortunately, the record is replete with examples of implied, if not actual,

bias which compels disqualification.

VII. CONCLUSION

Petitioner has no adequate remedy at law. The District Court has abdicated its authority and ignored its mandate. Rather than adjudicate real issues supported by actual evidence and eye witness testimony, the Court has deferred all issues pertaining to the best interests of the child to a special master to which neither party agreed. This improper delegation of judicial authority and the best interests of a five year old child create an emergency warranting Writ relief.

Based upon the forgoing, Petitioner respectfully requests that this Court enter an order which compels the actual adjudication of the Motion, reverses the Order appointing Special Master, and disqualifies the District Court Judge from presiding over this case.

RESPECTFULLY SUBMITTED this 24 day of March, 2017.

BLACK & LOBELLO

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702-869-8801
Attorneys for Petitioner,
RENELYN BAUTISTA

VERIFICATION

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

John D. Jones, being first duly sworn on oath, deposes and states as follows:

1. That I am the attorney for the Petitioner, Renelyn Bautista, in the above entitled action.

2. That the legal analysis, argument, procedural history, facts, and references to the record contained in the foregoing emergency petition for writ of mandamus and/or prohibition are within my personal knowledge, and are true and correct the best of my knowledge or based upon information and belief.

Further affiant sayeth naught.

Executed this 24 day of March, 2017.

JOHN D. JONES

Subscribed and sworn to before me
this 24 day of March, 2017.

HEATHER M. RITCHIE
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 02-17-18
Certificate No: 99-54721-1

NOTARY PUBLIC, STATE OF NEVADA
COUNTY OF CLARK

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6), because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2007 in 14 point Times New Roman font.

I further certify that I have read this appellate brief, 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 brief complies with all applicable NEVADA RULES OF APPELLATE PROCEDURE, in particular NRAP Rule 28(e)(1), which requires every assertion in the brief 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.

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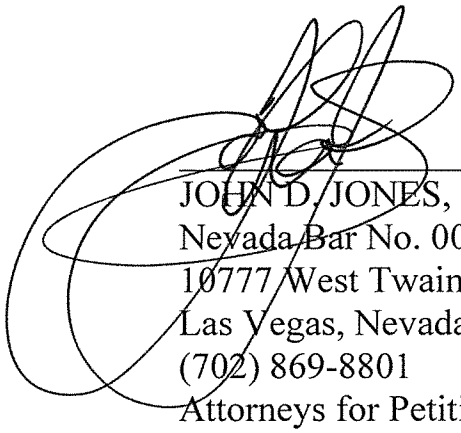
I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the NEVADA RULES OF APPELLATE PROCEDURE.

DATED this 24 day of March, 2017.

BLACK & LOBELLO



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DISCLOSURE STATEMENT PER NRAP 26.1

The undersigned counsel of record for Petitioner, Renelyn Bautista, certifies that the following is a person and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Petitioner is a natural person. There are no parent corporations or publicly held companies involved or related to Petitioner.

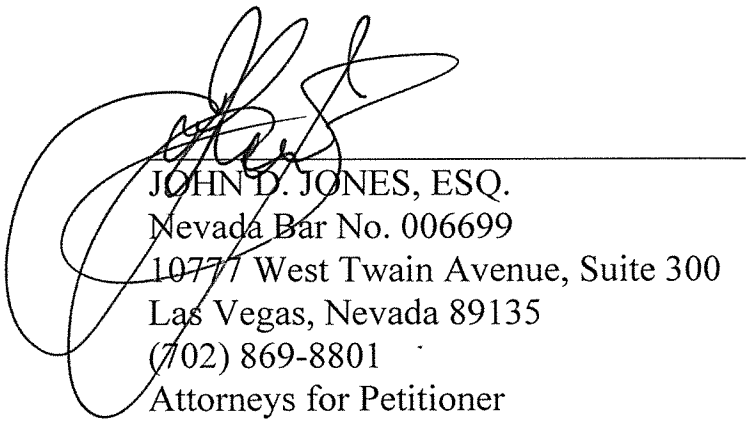
The following are the law firms whose partners or associates have appeared for the Petitioner (including proceedings in the district court or before an administrative agency) or are expected to appear in this court:

BLACK & LOBELLO
10777 W. Twain Ave., 3rd Fl.
Las Vegas, Nevada 89135

DATED this 24 day of March, 2017.

Respectfully submitted,

BLACK & LOBELLO



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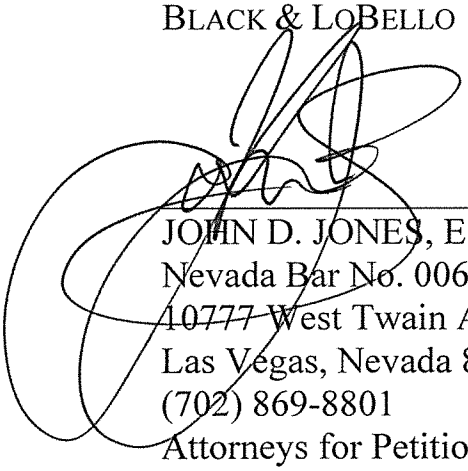
ROUTING STATEMENT - RETENTION IN THE SUPREME COURT

This case is presumptively retained for the Supreme Court to "hear and decide" because it raises "matters raising as a principal issue a question of statewide public importance and seeks to expand upon the recently decided Nevada Supreme Court case (*Harrison v. Harrison*, 132 Nev. Adv. Op. 56, 376 P.3d 173 (2016)). As such, consistency of opinions requires this matter to be decided in the Supreme Court as per NRAP 17(a)(11).

DATED this 24 day of March, 2017.

Respectfully submitted,

BLACK & LOBELLO



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PROOF OF SERVICE

I, Heather Ritchie, declare:

I am over the age of eighteen (18) years and not a party to the within entitled action. I am employed at Black & LoBello, 10777 West Twain Avenue, Las Vegas, Nevada 89135. I am readily familiar with Black & LoBello's practice for collection and processing of documents for delivery by way of the service indicated below.

On March 24, 2017, I served the following document:

PETITION FOR WRIT OF MANDAMUS AND/OR PROHIBITION

On the interested party(ies) in this action as follows:

The Honorable Mathew Harter
Eighth Judicial District Court
Family Court Division, Dept. N
601 N. Pecos Road
Las Vegas, NV 89101

James Picone
6309 Katella Avenue
Las Vegas, NV 89118

By Mail. By placing said document in an envelope or package for collection and mailing, addressed to the person(s) at the address(es) listed above, following our ordinary business practices. I am readily familiar with the firm's practice for collection and processing of mail. Under that practice, on the same date that mail is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service, in a sealed envelope or package with the postage fully prepaid.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed on March 24, 2017, at Las Vegas, Nevada.

Heather Ritchie