b. That Willick "routinely has his client's sign a '*contingency agreement*' in which he (Willick) gets 50% of all the moneys he wins."

c. That Willick has exploited the hardships of vulnerable military spouses, children and the sacrifices of our returning service members.

d. That Willick has used the 'poor spouse' and 'needy child' tactic to get the highest award possible, and then helped himself to half of the awarded money.

e. That Willick is nothing more than a "common crook" in a shark skin suit hiding his self-enrichment motives behind ex-spouses and the veteran's children to pad his own bank account.

f. That Willick is ripping off combat disabled veterans.

g. That Willick is stealing from the spouse and child of the combat disabled veteran.

27. Beery incited veterans that have never had any dealings with Willick or the Willick Law Group to file spurious complaints with the Nevada State Bar.

a. Beery caused at least one complaint to be filed with the State Bar of Nevada which was investigated at significant cost to the State Bar and to Mr. Willick and the Willick Law Group. That complaint was found to be meritless.[5]

28. Mr. Mark Beres has sent many false and defamatory emails across state lines, including:

a. Calling Willick a "scumbag lowlife".

b. Claiming that Willick has "written the book on how to plunder a disabled veteran in the family court system."

c. Claiming that Willick has compared veteran's advocates to Adolph Hitler.

d. Claiming that Willick is a "miscreant" who has "worked tirelessly to create a legal environment in which wounded veterans are sitting ducks and lambs to the slaughter."

[5] We are not aware of any other complaints filed with the State Bar of Nevada, but presuming they are all based on the same arguments, they are being dismissed by the State Bar as also meritless.

LAW OFFICE OF
MARSHAL S. WILLICK, P.C.
3551 East Bonanza Road
Suite 101
Las Vegas, NV 89110-2198
(702) 438-4100

e. Claiming that Willick is personally responsible for a "holocaust" inflicted on wounded veterans.

29. The false and defamatory statements by Defendants were intended to incite violence and constitute actionable hate speech.

30. The false and defamatory statements by Defendants have resulted in numerous death threats and threats in general to be directed against Mr. Willick, sent by Defendants directly or caused by their false and defamatory statements:

a. Beery himself published and caused to be re-published a direct threat against Willick by saying, "Any attorneys who target our combat disabled veterans and strip them of their earned disability compensation in a divorce settlement should be lined up and shot with a military grade weapon in order to experience firsthand the pain and agony associated with disfiguring and disabling combat related injuries. And you, Mr. Willick should be first in line."

b. Beery also sent an email on December 13, 2011, with the subject line "Merry Christmas MARSHAL WILLICK - From You [*sic*] Worst Nightmare." This email included a bolded Shakespeare quote, "The first thing we do, let's kill all the lawyers."

c. Don Holland supposedly from Orlando, Florida sent an email that stated, "If the courts had not been corrupted by the judicial alchemy concocted by Willick, and if everyone were to receive the justice they deserve then Willick should wake up with a Horse's head in bed with him!!"

d. A "John Rose" sent an email that stated, "When you publish anything it had better have the right facts, when those facts are used in a Court Room, they better be verifiable! I have waste (sic) enough time with you. I promise you will not be forgetting my name. The 'Rose'."

e. An email from a person only identified as "Bill" stated, "Marshal Willick you are really a piece of shit. A well deserved bullet between your eyes would be waste of a perfectly good bullet. Hope you rot in Hell with my ex-wife."

LAW OFFICE OF
MARSHAL S. WILLICK, P.C.
3551 East Bonanza Road
Suite 101
Las Vegas, NV 89110-2198
(702) 438-4100

f. A person identified only as "Al Garcia" sent an email that said, "I just read your piece on USFSPA dated DEC 5, 2011. Great piece of writing for someone who equivalent to the Taliban and Nazis. You are a disgrace to this country and make a living off of stealing from honorable service member. Try to sue me. I'm already bankrupt and have a house in foreclosure because of guys like you."

g. A letter was received from St. Petersburg, Florida, that stated, "I read your recent "legal note" on alimony received by former spouses of military with great interest. It strikes me that the greatest accomplishment of these women's lives was to spread their legs for a man in uniform. Then they divorce these patriots and the US Government awards them a lifetime of welfare payments from his hard and dangerous work. They are whores and you, sir, are their pimp. You should take into consideration the fact that you are picking a fight with hundreds of thousands of men who were trained by their country to kill. You are siding with the lazy ticks that suck the blood from the men who put their lives on the line for your freedom. You are a moron who enables them. Just because something is legal, that doesn't make it right. We are coming for you, soon."

31. Mr. Gene Simes has been quoted in a number of articles – mostly written by Beery – repeating or attributing to Simes the same false and defamatory statements recounted above.

32. Simes has also posted to a Google Groups web page in response to a warning from legal counsel and others that they were possibly defaming Willick, "No! No! No! Michael, we are going to the root of this hold [*sic*] issue, and there's no turning back for no one do we get this clear! A mission is just what a mission is and on this one we will make our stand!!!!! None of you out there have seen nothing YET! Get ready for Operation White House 2012 and Operation D O J 2012 about three months from now. There's no retreat forecast for OFFE! I will fire everything that I have to accomplish this mission, now! let me get my job done, do we all understand, thank [*sic*]."

33. Simes also posted on this same Google Groups web page defamatory statements about Willick, specifically, Nevada Attorney at Law Marshal Willick no Friend Of our Military, Operation Fire for Effect, and Marshal S. Willick Anti-Military Anti-Veteran Anti-American.

LAW OFFICE OF
MARSHAL S. WILLICK, P.C.
3551 East Bonanza Road
Suite 101
Las Vegas, NV 89110-2198
(702) 438-4100

34. Defendants organized, publicized, and participated in a boisterous assembly at Plaintiffs' place of business, with the intent and effect of interfering with Plaintiffs' business and placing Plaintiffs and Plaintiffs' employees in fear of their personal safety.

V

FIRST CLAIM FOR RELIEF

(DEFAMATION)

35. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

36. Defendants, and/or Defendants' agents, representatives, and/or employees, either individually, or in concert with others, published one or more oral or written false statements which were intended to impugn Mr. Willick's honesty, integrity, virtue and/or personal and professional reputation.

37. Willick and the Willick Law Group are not public figures, as some or all of Defendants have acknowledged in writing, or been notified of in writing.

38. The statements imputed by Defendants to Willick and published by Defendants are slurs on Willick's character including his honesty, integrity, virtue, and/or reputation.

39. The referenced false and defamatory statements would tend to lower the subject in the estimation of the community, excite derogatory opinions about the subject, and hold the subject up to contempt.

40. The referenced false and defamatory statements were unprivileged.

41. The referenced false and defamatory statements were published to at least one third party.

42. The referenced false and defamatory statements were published or republished deliberately or negligently by one or more of each of the Defendants.

43. Some or all of the referenced false and defamatory statements constitute defamation *per se*, making them actionable irrespective of special harm.

44. Publication of some or all of the referenced false and defamatory statements caused special harm in the form of damages to Willick and the Willick Law Group.

LAW OFFICE OF
MARSHAL S. WILLICK, P.C.
3591 East Bonanza Road
Suite 101
Las Vegas, NV 89110-2198
(702) 438-4100

WHEREFORE, Plaintiffs Marshal S. Willick and the Willick Law Group demand judgment against named Defendants for actual, special, compensatory, and punitive damages in an amount deemed at the time of trial to be just, fair, and appropriate in an amount in excess of $10,000.

VI

SECOND CLAIM FOR RELIEF

(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

45. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

46. Defendants and/or Defendants' agents, representatives, and/or/ employees, either individually, or in concert with others, intentionally and deliberately inflicted emotional distress on Plaintiffs by defaming them to many people, including but not limited to the following: several of Willick's friends, co-workers, colleagues, clients, and an unknown number of persons that were subjected to the defamatory comments on the internet.

47. As a result of Defendants' extreme and outrageous conduct, Willick and the Willick Law Group was, is, and, with a high degree of likelihood, will continue to be emotionally distressed due to the defamation.

48. As a result of Defendants' extreme and outrageous conduct, Willick and the Willick Law Group have suffered and will continue to suffer mental pain and anguish, and unjustifiable emotional trauma.

WHEREFORE, Plaintiffs Marshal S. Willick and the Willick Law Group demand judgment against named Defendants for actual, special, compensatory, and punitive damages in an amount deemed by this Court to be just and fair and appropriate, in an amount in excess of $10,000.

VII

THIRD CLAIM FOR RELIEF

(NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS)

49. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

LAW OFFICE OF
MARSHAL S. WILLICK, P.C.
3551 East Bonanza Road
Suite 101
Las Vegas, NV 89110-2198
(702) 438-4100

50. To whatever extent the infliction of emotional distress asserted in the preceding cause of action was not deliberate, it was a result of the reckless and wanton actions of the Defendants, either individually, or in concert with others.

WHEREFORE, Plaintiffs Marshal S. Willick and the Willick Law Group demand judgment against named Defendants for actual, special, compensatory, and punitive damages in an amount deemed by this Court to be just and fair and appropriate, in an amount in excess of $10,000.

VIII

FOURTH CLAIM FOR RELIEF

(FALSE LIGHT)

51. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

52. Defendants and/or Defendants' agents, representatives, and/or employees, either individually, or in concert with others, intentionally made and published false statements about Mr. Willick and the Willick Law Group.

53. The statements made by the Defendants against Mr. Willick were made with the specific intent to cause harm to Plaintiffs and their pecuniary interests, or, in the alternative, the Defendants published the false statements knowing its falsity or with reckless disregard for the truth.

54. The statements made the Defendants place Mr. Willick and the Willick Law Group in a false light and are highly offensive and inflammatory, and thus actionable.

WHEREFORE, Plaintiffs Marshal S. Willick and the Willick Law Group demand judgment against named Defendants for actual, special, compensatory, and punitive damages in an amount deemed at the time of trial to be just, fair, and appropriate in an amount in excess of $10,000.

IX

FIFTH CLAIM FOR RELIEF

(BUSINESS DISPARAGEMENT)

55. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

LAW OFFICE OF
MARSHAL S. WILLICK, P.C.
3551 East Bonanza Road
Suite 101
Las Vegas, NV 89110-2198
(702) 438-4100

56. Defendants and/or Defendants' agents, representatives, and/or employees, either individually, or in concert with others, intentionally made false and disparaging statements about Willick and the Willick Law Group and disparaged Mr. Willick's and the Willick law Group's business.

57. The referenced statements and actions were specifically directed towards the quality of Mr. Willick and the Willick Law Group's services, and were so extreme and outrageous as to affect the ability of Willick and the Willick Law Group to conduct business.

58. The Defendants intended, in publishing the false and defamatory statements and participating in the boisterous assembly, to cause harm to Plaintiffs and its pecuniary interests, or, in the alternative, the Defendants published the disparaging statements knowing their falsity or with reckless disregard for the truth.

59. The false and defamatory statements and boisterous assembly by the Defendants resulted in damages to Mr. Willick and the Willick Law Group.

WHEREFORE, Plaintiffs Marshal S. Willick and the Willick Law Group demand judgment against named Defendants for actual, special, compensatory, and punitive damages in an amount deemed at the time of trial to be just, fair, and appropriate in an amount in excess of $10,000.

X

SIXTH CLAIM FOR RELIEF

(HARASSMENT)

60. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

61. Defendants and/or Defendants' agents, representatives, and/or employees in concert with one another, have threatened bodily injury to the Plaintiffs or caused such threats to be made.

62. Defendants' making of false and defamatory statements and then inviting the recipients of those statements to a boisterous assembly at Plaintiffs' place of business were specifically intended to interfere with Plaintiffs' business, and to cause the apprehension or actuality of economic or personal harm to Plaintiffs and Plaintiffs' employees.

LAW OFFICE OF
MARSHAL S. WILLICK, P.C.
3551 East Bonanza Road
Suite 101
Las Vegas, NV 89110-2198
(702) 438-4100

63. Defendants' efforts to cause persons with no personal knowledge whatsoever of any violations of the Rules of Professional Conduct to nevertheless file spurious complaints with the Nevada Bar was intended to cause economic and personal harm to Plaintiffs.

64. Defendants' actions were intended to result in substantial harm to the Plaintiffs with respect to their physical or mental health or safety, and to cause physical or economic damage to Plaintiffs.

WHEREFORE, Plaintiffs Marshal S. Willick and the Willick Law Group demand judgment against named Defendants for actual, special, compensatory, and punitive damages in an amount deemed at the time of trial to be just, fair, and appropriate in an amount in excess of $10,000.

XI

SEVENTH CLAIM FOR RELIEF

(CONCERT OF ACTION)

65. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

66. Defendants and/or Defendants' agents, representatives, and/or employees in concert with one another, based upon an explicit or tacit agreement, intentionally committed a tort against Willick.

67. Defendants' concert of action resulted in damages to Willick and the Willick Law Group.

WHEREFORE, Plaintiffs Marshal S. Willick and the Willick Law Group demand judgment against named Defendants for actual, special, compensatory, and punitive damages in an amount deemed at the time of trial to be just, fair, and appropriate in an amount in excess of $10,000.

XII

EIGHTH CLAIM FOR RELIEF

(CIVIL CONSPIRACY)

68. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

LAW OFFICE OF
MARSHAL S. WILLICK, P.C.
3551 East Sonrise Road
Suite 101
Las Vegas, NV 89110-2198
(702) 438-4100

69. Defendants and/or Defendants' agents, representatives, and/or employees, either individually, or in concert with others, based upon an explicit or tacit agreement, intended to accomplish an unlawful objective for the specific purposes of harming Mr. Willick and the Willick Law Group's pecuniary interests and Marshal S. Willick's physical well-being.

70. Defendants' civil conspiracy resulted in damages to Mr. Willick and the Willick Law Group.

WHEREFORE, Plaintiffs Marshal S. Willick and the Willick Law Group demand judgment against named Defendants for actual, special, compensatory, and punitive damages in an amount deemed at the time of trial to be just, fair, and appropriate in an amount in excess of $10,000.

XIII

NINTH CLAIM FOR RELIEF

(RICO VIOLATIONS)

71. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

72. Defendants and/or Defendants' agents, representatives, and/or employees, either individually, or in concert with others, engaged in at least two crimes related to racketeering pursuant to NRS 207.360 that have the same or similar pattern, intents, results, accomplices, victims or methods of commission or are otherwise interrelated by distinguishing characteristics and are not isolated incidents.

73. Here, Defendants[6] have all either committed, conspired to commit, or have attempted to commit the following crime(s):

a. Taking property from another under circumstances not amounting to robbery.

b. Perjury or subornation of perjury.

c. Extortion.

d. Offering False Evidence.

[6] The named Defendants – and others – constitute a criminal syndicate as defined in NRS 207.370.

LAW OFFICE OF
MARSHAL S. WILLICK, P.C.
3551 East Bonanza Road
Suite 101
Las Vegas, NV 89110-2198
(702) 438-4100

e. Multiple transactions involving fraud or deceit in the course of an enterprise. (NRS 205.377)

74. Defendants comprise a criminal syndicate: Any combination of persons, so structured that the organization will continue its operation even if individual members enter or leave the organization, which engages in or has the purpose of engaging in racketeering activity.

Here, OFFE, ULSG, Jones & Associates, and VFVC are organizations that have members – headed by Defendants Gene Simes, Michael McKown, Mark Beres, Frederick Jones, and Jere Beery – that do come and go and the organization continues on, and these organizations and their principals have conspired to engage in and have engaged in racketeering activity.

This group also meets the statutory definition – NRS 207.380 – as an enterprise:

> Any natural person, sole proprietorship, partnership, corporation, business trust or other legal entity; and, Any union, association or other group of persons associated in fact although not a legal entity.

Here VFVC is a registered not for profit business and OFFE is sub unit of VFVC. Both can and should be considered individual legal entities.[7]

Jones & Associates is a for profit law firm in Georgia and is definitionally a separate legal entity.[8]

ULSG is also an organization with members and is a registered LLC.

On information and belief, not all Defendants are members of VFVC , OFFE, Jones & Associates, and ULSG, but meet the "association or other group of persons associated in fact" requirements under the statue as an enterprise. The statute explicitly includes both licit and illicit enterprises.

75. Racketeering is the engaging in at least two crimes related to racketeering that have the same or similar pattern, intents, results, accomplices, victims or methods of commission, or are otherwise interrelated by distinguishing characteristics and are not isolated incidents, if at least one

---

[7] OFFE and VFVC operate numerous web sites where the defamation continues. Some of these web sites include: www.offe.org; www.anamericanpromise.org; www.jerebeery.com; www.vfvc.org.

[8] Mr. Jones admitted at the October 9, 2012, hearing that his law practice is a sole proprietorship.

LAW OFFICE OF
MARSHAL S. WILLICK, P.C.
3551 East Bonanza Road
Suite 101
Las Vegas, NV 89110-2198
(702) 438-4100

of the incidents occurred after July 1, 1983, and the last of the incidents occurred within 5 years after a prior commission of a crime related to racketeering.

a. Taking property from another under circumstances not amounting to robbery. (A minimum of four counts and maximum of 12 counts.)

Here, Jere Beery and Gene Simes and other members of the Defaulted organizations – through these organizations – encouraged members and non-members of VFVC, OFFE, and ULSG to file formal complaints with the State Bar of Nevada, even providing a ghost-written letter for the members use, that falsely allege criminal, ethical, and violations of professional conduct by Marshal S. Willick, Esq. The Exhibits that prove this claim have already been admitted by the Court.

Other exhibits admitted by the Court show at least four of these complaints, but the organization boasts the submission of over a dozen.

None of these people filing complaints have ever had any relationship with Willick or his law practice. Willick does not know any of these persons and to the best of his knowledge has never met any of them. He certainly has never represented any of them. None of these persons has or ever had any first hand knowledge of Willick's practice.

Second, the State Bar of Nevada has determined that none of the allegations have any truth. The Court has admitted exhibits in this case that show the State Bar of Nevada found no wrong doing by Willick.

The State Bar was forced to open an investigation based on these complaints, and Willick was forced to respond to the State Bar as to these allegations. The amount of time dedicated by the State Bar to this matter is unknown, but must have been substantial as the Bar was required to respond to each and every complaint. Willick's time is far more quantifiable. He spent over 5 hours gathering documents and drafting the response to the Bar to prove that the allegations were not only unsupported, but were false. The total value of time expended by Willick was over $3,000 and this does not include the costs of missed opportunities or time that should have been spent working on cases for paying clients.

These actions are a direct violation of NRS 205.377 – Multiple transactions involving fraud or deceit in course of enterprise or occupation. The statute states:

LAW OFFICE OF
MARSHAL S. WILLICK, P.C.
3551 East Bonanza Road
Suite 101
Las Vegas, NV 89110-2198
(702) 438-4100

> A person shall not, in the course of an enterprise (VFVC, OFFE, Jones & Associates and ULSG), knowingly and with the intent to defraud (The State Bar of Nevada and Willick), engage in an act (filing fraudulent Bar Complaints), practice or course of business or employ a device, scheme or artifice which operates or would operate as a fraud or deceit upon a person by means of a false representation or omission of a material fact that:
> The person knows to be false or omitted;
> The person intends another to rely on; and
> Results in a loss to any person who relied on the false representation or omission.
> In at least two transactions that have the same or similar pattern, intents, results, accomplices, victims or methods of commission, or otherwise interrelated by distinguishing characteristics and are not isolated incidents within 4 years and in which the aggregate loss or intended loss is more than $650.

It is clear that it was the intent of the Defendants to cause harm to both the State Bar of Nevada and Willick and the aggregate costs far exceed the $650 threshold. Each act (letter sent to the Bar) which violates subsection one constitutes a separate offense and a person who violates subsection one is guilty of a category B felony.

Additionally, NRS 205.0832 defines the actions which constitute theft as including that which:

> Obtains real, personal or ***intangible property or the services of another person***, by a material misrepresentation with intent to deprive that person of the property or services. As used in this paragraph, "material misrepresentation" means the use of any pretense, or the making of any promise, representation or statement of present, past or future fact which is fraudulent and which, when used or made, is instrumental in causing the wrongful control or transfer of property or services. The pretense may be verbal or it may be a physical act.

Additionally the statute goes on to define the theft as a person or entity that "Takes, destroys, conceals or disposes of property in which another person has a security interest, with intent to defraud that person."

Here, as Abraham Lincoln famously pointed out 150 years ago, time is a lawyer's stock in trade. Defendants – with malice – stole valuable time from Willick. Also, the theft of Willick's and Willick Law Group's "good will" by the making of false and defamatory comments and placing both Willick and Willick Law Group in a false light has diminished the value of the business. These are intangible thefts, but thefts nonetheless.[9]

Defendants have sent emails that specifically agree that attacking Willick and the State Bar is perfectly fine.

---

[9] Goodwill – A business's reputation, patronage, and other intangible assets that are considered when appraising the business, especially for purchase. *Black's Law Dictionary* 279 (Bryan A. Garner ed., Pocket ed., West 1996).

LAW OFFICE OF
MARSHAL S. WILLICK, P.C.
3551 East Bonanza Road
Suite 101
Las Vegas, NV 89110-2198
(702) 438-4100

> I see nothing wrong with attacking Marshall Willick and the Nevada Bar. In fact I know of no one better to attack than them... He is as responsible for this debacle as any one individual including Pat Schroeder and Doris Mozley!!

This same Defendant also wrote, "If the courts had not been corrupted by the judicial alchemy concocted by Willick, and everyone were to receive the justice they deserve then Willick should wake up with a Horse's Head in bed with him!!"

These same communications, insofar as they were formal complaints to a Nevada State licensing authority, constitute perjury, and their active solicitation constituted suborning perjury. Additionally, Gene Simes has filed his discovery responses in this action and perjures himself as to his and his organization's relationship with web sites such as An American Promise which lists his phone number as the point of contact for the web site.

b. Extortion

Defendants attempted to extort a particular ruling from the State Bar through a veiled threat. In a letter to the State Bar of Nevada they wrote:

> I strongly suggest you consider your response to my complaint very carefully, as I have seen the canned form letter responses you have sent to other individuals who have submitted complaints against Willick, and I am not impressed.

The letter goes on to make outrageous claims of criminal activity by Willick, violations of constitutional rights, violations of civil rights, violations of federal codes and regulations, and ethical violations, all of which have been proven to be untrue under the law.

A similar letter was sent by another Defendant which makes similar unfounded and false testimony as to Willick's ethical and legal conduct. Again, none of these Defendant's has any first hand knowledge as to Willick's practice and the intent was to do damage to Willick and his business.

Members of this enterprise sent emails admitting that their intent was a "suicide mission." They went on to say that it was their intent to "get under Willick's skin" and that they were "successful". Gene Simes sent an email dated April 6, 2012, where – discussing the planned picket of Willick and his offices – that "a mission is just what a mission is and on this one we will make our stand!!!!!" He goes on to say, "None of you out there have seen nothing YET!

LAW OFFICE OF
MARSHAL S. WILLICK, P.C.
3551 East Bonanza Road
Suite 101
Las Vegas, NV 89110-2198
(702) 438-4100

Lastly, Jere Beery publishes the intent of "Operation Sin City" to all members of the organization/enterprise saying that:

> Our objective is to bring public and media attention to Attorney at Law Marshal Willick and his 25 year long efforts to strip disabled veterans of their disability compensation and retirement pay. Some of us have been working on the 5301 issue for 10 years, and I can tell you with a great deal of certainty that Marshal Willick is directly responsible for the attack on our disability benefits. In fact, 25 years ago Willick wrote the first handbook on how to get the most money out of out (sic) disabled Veterans. Willick was also directly involved with the development and passage of USFSPA. Willick is the Grand Dragon of the attack on disability compensation and retirement pay.[10]

c. Giving False Evidence

The Defendants and others provided false testimony to the State Bar of Nevada and each of the Defendants has repeated the same in fugitive documents filed with this Court as to alleged "violations of constitutional rights", "violations of civil rights", "violations of federal codes and regulations", "criminal activity", and "ethical violations", all of which have been proven to be untrue under the law. Exhibits already admitted in this case document this false testimony.

The Defendants participated in racketeering as defined by Nevada Statute. They ***could*** all be found to be guilty of a category B felony and imprisoned for their actions, but this is a civil action.

These are not the only crimes that Defendants have been involved in. They also meet the elements for violation of criminal libel, criminal harassment, stalking with an aggravating factor of using the internet to further the crime, criminal publishing matter inciting breach of peace or other crime, criminal syndicalism, and threatening or obscene letters or writings.[11] However, these crimes are not specifically enumerated in the statute concerning RICO.

Defendants' illegal conduct resulted in damages to Mr. Willick and the Willick Law Group.

WHEREFORE, Plaintiffs Marshal S. Willick and the Willick Law Group, pursuant to NRS 207.470, are entitled to treble damages as a result of Defendants' criminal conduct in the form of actual, special, compensatory, and punitive damages in amount deemed at the time of trial to be just, fair, and appropriate in an amount in excess of $10,000.

---

[10] The USFSPA was enacted by the 97th Congress in September 1982, with an effective date of 25 June 1981. Mr. Willick graduated from Law School on May 31, 1982. He would have been a busy law student to have been "directly involved in the passage of the USFSPA."

[11] See NRS 207.180.

LAW OFFICE OF
MARSHAL S. WILLICK, P.C.
3551 East Bonanza Road
Suite 101
Las Vegas, NV 89110-2198
(702) 438-4100

XIV

TENTH CLAIM FOR RELIEF
(INJUNCTION)

76. Marshal S. Willick and the Willick Law Group incorporate and re-allege all preceding paragraphs as if fully stated herein.

77. Defendants and/or Defendants' agents, representatives, and/or employees, either individually, or in concert with others, engaged in acts that were so outrageous that injunctive relief is necessary to effectuate justice. WHEREFORE, Plaintiffs request the following injunctive relief:

a. That all named defendants and members of the listed organizations be enjoined from approaching within 1000 feet, of the person of Marshal S. Willick, his vehicle, his home, The Willick law Group and all of its employees, and their places of residence or vehicles.

b. That all defamatory writings, video, postings, or any other documents or public display of the same, concerning Willick, the Willick Law Group, and the employees of the same, be removed from public view within 10 days of the issuance of the injunction.

c. That all innuendo of illegal, immoral, or unethical conduct that has already been attributed by defendants to Willick, must never be repeated by any named Defendant or any member of any of the named organizations. Generalities toward lawyers in general will constitute an offense of this relief.

d. That Mr. Frederick Jones be reported to the State Bar of Georgia for his complicity in the actions of the defendants.

XV
CONCLUSION

78. Marshal S. Willick and the Willick Law Group incorporate and re-allege all preceding paragraphs as if fully stated herein.

WHEREFORE, Marshal S. Willick and the Willick Law Group respectfully prays that judgment be entered against Defendants, and each of them individually, as follows:

LAW OFFICE OF
MARSHAL S. WILLICK, P.C.
3551 East Bonanza Road
Suite 101
Las Vegas, NV 89110-2198
(702) 438-4100

a. General damages in an amount in excess of $10,000 for each and every claim for relief.

b. Compensatory damages in an amount in excess of $10,000 for each and every claim for relief.

c. Punitive damages in an amount in excess of $10,000 for each and every claim for relief.

d. Treble damages for Defendants' RICO violations pursuant to NRS 207.470 in the form of general, compensatory, and/or punitive damages in an amount in excess of $10,000.

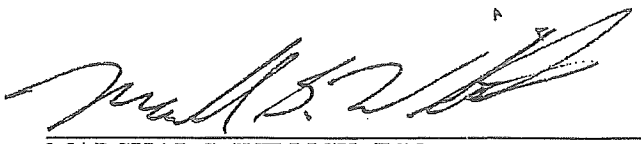
e. All attorney's fees and costs that have and/or may be incurred by Marshal S. Willick and the Willick Law Group in pursuing this action.

f. For such other and further relief this Court may deem just and proper.

DATED this 21st day of May, 2013.

Respectfully submitted:

WILLICK LAW GROUP



MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 002515
3591 E. Bonanza Road, Suite 200
Las Vegas, NV 89110
(702) 438-4100
Attorney for Plaintiffs

LAW OFFICE OF
MARSHAL S. WILLICK, P.C.
3551 East Bonanza Road
Suite 101
Las Vegas, NV 89110-2198
(702) 438-4100

VERIFICATION

STATE OF NEVADA)
)
COUNTY OF CLARK)

MARSHAL S. WILLICK, principal of WILLICK LAW GROUP first being duly sworn, deposes and says:

That his business is the Plaintiff in the above-entitled action; that he has read the above and foregoing ***SECOND AMENDED COMPLAINT FOR DAMAGES*** and knows the contents thereof and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters, he believes them to be true.

MARSHAL S. WILLICK

SUBSCRIBED and SWORN to before me
this 21 day of MAY, 2013

NOTARY PUBLIC in and for said
County and State

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
LEONARD H. FOWLER III
Appt. No. 01-66951-1
My Appt. Expires Jan. 16, 2017

P:\wp13\BEERY\00026478.WPD

LAW OFFICE OF
MARSHAL S. WILLICK, P.C.
3551 East Bonanza Road
Suite 101
Las Vegas, NV 89110-2198
(702) 438-4100

EXHIBIT 3

WILLICK LAW GROUP

A DOMESTIC RELATIONS & FAMILY LAW FIRM
3591 EAST BONANZA ROAD, SUITE 200
LAS VEGAS, NV 89110-2101
PHONE (702) 438-4100 * FAX (702) 438-5311
WWW.WILLICKLAWGROUP.COM

ATTORNEYS

MARSHAL S. WILLICK *†‡❖ ®
TREVOR M. CREEL

* ALSO ADMITTED IN CALIFORNIA (INACTIVE)
† FELLOW, AMERICAN ACADEMY OF MATRIMONIAL LAWYERS
‡ FELLOW, INTERNATIONAL ACADEMY OF MATRIMONIAL LAWYERS
❖ NEVADA BOARD CERTIFIED FAMILY LAW SPECIALIST
® BOARD CERTIFIED FAMILY LAW TRIAL ADVOCATE BY THE NATIONAL BOARD OF TRIAL ADVOCACY

LEGAL ASSISTANTS

LEONARD H. FOWLER III
TISHA A. WELLS
DEISY MARTINEZ-VIERA
MARY STEELE
BRENDA GRAGEOLA

FIRM ADMINISTRATOR

FAITH FISH

E-MAIL ADDRESSES:
[FIRST NAME OF INTENDED RECIPIENT]@WILLICKLAWGROUP.COM

March 3, 2015

Mr. Ira Hansen
Chair, Assembly Judiciary Committee
Legislative Building
401 S. Carson Street, Room 3127
Carson City, NV 89701-4747

Re: AB 140

Pending before your committee is AB 140, which would greatly injure Nevada family law if passed.

Specifically, it would prevent courts from using the actual income of a small group of people – as opposed to everyone else who gets divorced – in setting alimony and possibly child support. It would also permit one party, after a divorce, to effectively put back in his own pocket property awarded by the divorce court as belonging to the other spouse. Again, this would apply unequally, to only the selected group proposing the legislation.

The American Academy of Matrimonial Lawyers (the most prestigious organization of family law attorneys in the world) has formally gone on record as saying this type of legislation should be rejected, because divorce courts should have the ability to consider ***all*** separate property income streams – including VA disability compensation – in determining the actual assets, income, and expenses of the parties when distributing the marital estate, and in setting spousal support and child support. The Academy also urges legislatures to reject any proposal, like this one, that would prevent State divorce courts from protecting their decrees and the parties in divorce cases.

Enclosed for your review are two legal notes supplying the legal background of the situation. Legal note # 47 ("Military Retirement Militant Groups") was issued in December, 2011, and legal note # 53 ("The Actual Legal Analysis as to 38 U.S.C. § 5301 and Alimony") issued in October, 2012.

I have studied these issues, and taught courses to other lawyers on this subject, for over 20 years. AB 140 is awful in every way – masquerading as a flag-waving exercise, its provisions are either

A legal note from Marshal Willick about developments – good, bad, and ugly – in the application of family law to cases involving military personnel (part two).

As set out in the last legal note, family law has accommodated military personnel to facilitate members' participation and fair treatment in child custody, visitation, and support matters.

Despite all the advantages handed to them, however, some military members just can't resist the temptation to ask for even more special treatment. The last legal note (posted at http://www.willicklawgroup.com/newsletters) debunked the rationales under which some members claimed that they were not required to support their children on the basis of the entirety of their income (like everyone else in the United States).

This note turns to a more insidious, and unfortunately, more prevalent larceny – the rationalizations of various former military members who seek to deprive their spouses of half of the retirement benefits earned during marriage, redirecting those sums into the veterans' own pockets, by way of misguided appeals to false "patriotism."

I. SO-CALLED "VETERAN SUPPORT GROUPS" SEEK TO PERVERT FAMILY LAW FOR THEIR PERSONAL ENRICHMENT

A. SYNOPSIS OF THE PROBLEM

Small but well-organized bands of former military members, seeking to undermine the relevant federal law, and many decades of State law designed to treat spouses equally under law, have mounted bursts of lobbying. Their targets are selected State Legislatures seen as vulnerable to enactment of a radical agenda seeking to deprive military spouses of the community or marital property protections held by all other spouses, with the goal of taking the spousal share of retirement benefits and re-directing it to the military members, under any of several rationalizations.

B. BACKGROUND – BIG PICTURE – WHY SPOUSES SHARE IN RETIREMENTS

It is at this point a truism that retirement benefits, usually the most valuable asset of a marriage, are divisible upon divorce to at least the degree to which they were accrued during the marriage. *See, e.g.*, Annotation, *Pension or Retirement Benefits as Subject to Assignment or Division by Court in Settlement of Property Rights Between Spouses*, 94 A.L.R. 3d 176. This is particularly true of military marriages, in which frequent moves are the norm and there is often less opportunity to accumulate large real estate equity.

In every single one of the United States, and in ***every*** retirement system, the decision has been made that marriage is, among other things, an economic partnership, in which the spouses share ***equally*** in the present and future economic benefits earned during marriage. That is true for military retirement benefits, as it is true for every single ***other*** kind of retirement benefits.

Law throughout the country now recognizes military retirement benefits as marital property. The reasons for this consensus are several: the benefits accrued during the marriage; income for both parties during the marriage was reduced in exchange for the deferred pension benefits; and both parties chose to endure the rigors of the military lifestyle and forego possible alternative employment which would have paid more in current wages, in order to have the pension.

But as with the child support laws discussed in the prior note, a certain segment of the military community has decided that its members are so "special" that they should be exempt from the laws governing everyone else – or, more specifically, that their spouses and children should have fewer rights than the spouses and children of all other workers in the country.

If anything, the equities are even clearer, and the arguments more transparently absurd, when employed by former military members trying to find a rationalization permitting them to pocket their former spouses' half of the military retirement benefits earned during the marriage.

C. BACKGROUND – MILITARY RETIREMENT BENEFITS

Even more so than with active duty pay components, the information regarding military retirement benefits is too extensive to fully recap here. Those wishing more detail should see my 1998 book, or the substantial CLE materials entitled "Divorcing the Military: How to Attack, How to Defend," posted along with forms, checklists, and many other practice aids at http://www.willicklawgroup.com/military_retirement_benefits.

For the purpose of this discussion, the primary military retirement benefit is a non-contributory defined benefit pension plan payable after at least 20 years of service, for life, in a monthly amount dependent on the rank and years of service of the member. Additionally, military members can now participate in a version of the "Thrift Savings Plan" (TSP) – essentially the government version of a 401(k) that has long been available to Civil Service employees.

One provision of federal law permits a military retiree, upon a finding of partial or total disability, to waive receipt of retired pay in favor of receipt, instead, of disability pay. It makes sense for a retiree to convert retired pay into a disability award, because a disability award is received tax-free, increasing the bottom line for turning one into the other. And under certain laws, a retired member with a disability can get ***both*** the full retirement pay ***and*** disability pay, concurrently.

In summary, conflict arises when a military retiree does such a conversion ***after*** a divorce in which a spouse was awarded a portion of the military retirement as her separate property, since the conversion to disability shuts off the retirement payments to the spouse (in whole or part), and sends that money, now called "disability pay," to the retired military member instead.

The technicalities of how such waiver and conversion works, and what courts have done about it, is too lengthy to detail here, but those that are interested should see pages 40-61 of the article noted above, where that treatment, nationally over the past 30 years, is detailed.

D. BACKGROUND – NEVADA CASE LAW

The Nevada Supreme Court, siding with the overwhelming majority of courts everywhere, found that a retiree who has waived military retirement benefits for disability, as allowed under the federal retirement scheme, must nevertheless indemnify a former spouse awarded a portion of that retirement benefit and pay to the former spouse what she was receiving before the conversion. *See Shelton v. Shelton*, 119 Nev. 492, 78 P.3d 507, 511 (2003).

The Court was likewise in the mainstream in holding that where retirement benefits contain both retirement and disability components, only the disability component is shielded from distribution ***as property*** upon divorce. The remaining disability portion is not divisible property – but it clearly constitutes a separate property income stream for all other purposes, such as calculating child or spousal support. *See Powers v. Powers*, 105 Nev. 514, 779 P.2d 91 (1989).

II. FEDERAL LAW

A. WHY THE USFSPA EXISTS, AND WHY IT IS FAIR

For many years, recruiters and others described the job of a military spouse as "the hardest job in the military" in recruiting literature, and recognition awards. Whether that statement was accurate or just recruiting hyperbole, there is no doubt that the ability to have the military retirement benefits after retirement has been used for decades as an enticement to ***both*** parties to a military marriage.

The reality of the life of a military spouse almost always involves frequent relocations (prohibiting the development of a personal career and retirement benefits), and extended periods of being solely responsible for family duties that in other households take both parents.

The 1981 United States Supreme Court case (*McCarty*) that gave rise to the federal legislation included the flat statement that "We recognize that the plight of an ex-spouse of a retired service member is often a serious one," and noting that "Congress may well decide, as it has in the Civil Service and Foreign Service contexts, that more protection should be afforded a former spouse of a retired service member."

Congress did, and reversed *McCarty* by enacting the Uniformed Services Former Spouses Protection Act (USFSPA) the following year. The law explicitly returned to the States the ability to divide military retirement between spouses, so that ***military*** retirement benefits – like all other retirement benefits – could be treated by State divorce courts as what they are – a valuable asset accrued during marriage that is received later.

The USFSPA is entirely gender-neutral, exactly like every ***other*** retirement division statute – including the ones governing Civil Service workers, state government workers, and all workers in all civilian businesses. And like every other retirement system in the United States, it makes no difference of any kind what work was done to earn the pension – firing a rifle, arresting bad guys, putting out fires, sitting behind a desk, or teaching first-graders. There is no connection whatever

between the services performed and the fact of accrual of pension benefits during marriage.

Through the details of the USFSPA, military members have more protections than ***any*** of the workers in ***any*** other retirement system. Put another way, the ***spouses*** of military members have fewer, and lesser, rights than the spouses of any other employees in or out of government service. This was verified by the Department of Defense review and comparison of retirement systems in 2001. (Those wishing to compare how various retirement systems actually work can review the materials from the day-long seminar our firm taught on this subject, posted at http://www.willicklawgroup.com/published_works.)

That means that a military servicemember, married to a spouse who works for the Civil Service (or in the private sector) will always get a better deal out of the spouse's retirement than the spouse gets out of the member's retirement. Military members are the single most favored group of retirees in ***any*** retirement system in the United States.

And it's not like military members had no choice. First, no one is ***in*** the military except by choosing to do so. Every member of our all-volunteer armed forces ***decided*** to do that for a living, knowing the risks. Second, those who did not want to share equally in everything earned during military service had another pretty easy solution – don't get married.

B. MEMBERS RECEIVING *ONLY* DISABILITY PAY

A military member might be discharged for disability with far fewer than the 20 years of service required for a regular longevity retirement. Where the member qualifies for a disability retirement, he has a separate property income stream, presumably for life. But it is still income.

A couple years ago, the papers recounted the story of a lineman for the power company who touched a live line and lost use of both arms, and was permanently disabled. His family lost its primary provider, and he was relegated to a limited future life of pain, disability, and reduced opportunities. But that did not erase the fact that he also had obligations – to his children, and to his spouse – that the court in the ensuing divorce was obliged to weigh in determining who would obtain what from whom. His children still required support; he and his spouse still had to equitably divide their property and determine their future support obligations to one another.

It is absolutely no different for disabled military veterans. The loss, to every member of the family, is just the same. The obligation of the courts to determine equity – among ***all*** those involved upon consideration of ***every*** source of income – is just the same.

The source of the disability is simply irrelevant to the distribution of benefits and burdens after such a disability. If there is disability income, it is the separate property of the individual receiving it, meant to compensate for future lost wages – but it ***is*** income. Sorting out who should get, and pay, what, among the individual facts of individual cases, is what divorce courts are for.

III. THE ANTI-USFSPA FRINGE GROUPS

A. WHO THESE GROUPS ARE, AND WHAT THEY WANT

A certain segment of the military retiree community has always hated the USFSPA. They routinely portray themselves as "victims" of the law, because their spouses can obtain a share of the retirement benefits earned during marriage. Unconcerned with concepts such as community property, marital property, marital partnership, or equality, and fixated solely on themselves, they see no irony in demanding upon divorce half of whatever their spouses accrued (pension or otherwise) during the marriage, while screaming with outrage that military retirement benefits are considered divisible property.

The groups in question, pretending to be large organizations and operating under important-sounding names such as "Veterans for Justice," have persuaded themselves that they are so "special" that they deserve to be treated differently than everyone else under the law. One recently put into print that the existence of a Cabinet-level department of veteran affairs justifies the financial rape of his former spouse and children.

They typically advocate that the member should get it ***all*** – any retired pay, and any disability pay, all of which they insist should be "immune" from being considered as the income that it is when a divorce court determines child and spousal support.

It is an ugly but altogether too-often-seen self-delusion. The Nevada Highway Patrol troopers tried a similar tactic, and succeeded in getting NRS 125.155 – which was largely neutered only at the last minute – enacted by claiming that they deserved special treatment (and superior property rights to those of their spouses) because of the job they did while earning retirement benefits. (For a full discussion, see "PERS Primer (extracted from *Hedlund* Amicus)" posted at http://www.willicklawgroup.com/ely_2010_advanced_track_materials.)

But the fringe military-retiree groups are even ***more*** self-impressed, and self-obsessed. They routinely categorize anyone who disagrees with their position (that they get all of the benefits, and their former wives and children get nothing) as "Benedict Arnolds," "sewer rats," and even betrayers of "the Life of the Almighty while He was still on earth." One posted for the world a couple weeks ago that "anti-veteran attorneys [. . .] should all be lined up and shot so they can experience a little of the pain and anguish our combat wounded troops experience. The battle line has been drawn, and we know who the enemy really is."

And some of them have gone beyond rationalizing that they deserve superior rights as a matter of "patriotism," to believing that a higher power gives some theoretical foundation for their greed. They appear unable to process the concept that there should be some actual meaning to the fact that they each once stood at the altar of their respective gods, and proclaimed to their spouses "With all my worldly goods I thee endow." Apparently, they have persuaded themselves that their respective preachers put some kind of special reservation in about military retirement benefits, entitling them to a retroactive Mulligan to their vows.

In other words, they are whack-jobs. But they are persistent. The groups have gone to State legislatures in several jurisdictions (including Arizona, Oklahoma, Alabama, and Maryland) with an assortment of proposals that in any other context would be laughed out of the room as absurd and backward. They range from exempting disability income from consideration in figuring child and spousal support (instead pretending that the income does not exist), to limiting the spousal share of the future lifetime benefits to the length of the marriage, to seeking to re-introduce fault into divorce by only permitting a spouse to share in retirement benefits if the spouse is retroactively adjudged a "good wife" throughout the marriage.

All of those proposals were rejected at the last possible moment in Oklahoma last year. The year before that, some of those provisions were snuck into a bill in Arizona and became law before anyone noticed them, taking advantage of the diversion of attention to immigration and other matters, and a particularly extremist legislature (one Arizona lawyer described the bill as a "compromise" measure, with secondary provisions waiting for later consideration that would revoke voting rights for women and mandate that they stay barefoot and in the kitchen). The Arizona statute effectively nullified decades of solid and nationally-respected case law. (If and when a measure of sanity is returned to the Arizona legislature, repeal of that measure should be the first matter of business.)

B. WHY THEY ARE WRONG

1. THEIR BOGUS ARGUMENTS

The groups have many arguments. One typical line is that a military retirement is not "really" a pension (that might be divided with a spouse) because of the rules governing military members – except when it benefits them. They tend to argue that a military retirement is not a pension, but actually "reduced pay for reduced services," an argument they only abandon, as in *Barker v. Kansas*, 503 U.S. 594 (1992), when the members' tax position required military retirement to ***be*** a pension in order to get tax benefits.

Commonly, they purposely confuse division of the military retirement benefits with alimony, and complain that a spousal share of the military retirement benefits should terminate upon the spouse's remarriage – even though the member's share of all benefits earned by the ***spouse*** during the marriage would not end if the ***member*** remarried – whether the asset in question was cash in the bank, a Civil Service pension, a 401(k) account, or any other asset.

In recent years, they have postured that while "perhaps" it was fair to divide military retirement benefits in 1981, when the USFSPA was enacted, it no longer is so, because so many women are now in the workforce. That argument is utter hogwash, factually and logically.

First, to the extent that spouses ***are*** now in the workforce, the members ***share*** in their spouses' pension benefits, 50/50, as to all benefits earned during marriage. And while they complain at the State level that division of military retirement with spouses is no longer "necessary," the Military Officers Association was testifying before Congress as recently as November, 2011, that the existing

military retirement system should not be altered in the current budget debate because the pension is such an inducement for ***both*** parties to a military marriage to stick out 20 years of service, despite "enormous demands and sacrifices that have no counterpart in civilian employment, including frequent relocations that disrupt spousal earnings and children's education . . . ." *See* "Voice for vets in D.C. fights to preserve retirement," *Air Force Times*, Nov. 21, 2011, at 11.

In fact, those "disruptions and interference" with the ability of a military spouse to create an independent career pension were explicitly a large part of the reason why Congress permitted spouses to share in the retirement benefits in the first place, and that reality has not changed from that time to this one.

The 2011 "Navy Spouse of the Year" is a gentlemen named Robert Duncan of Fallon, Nevada, whose wife is a Judge Advocate General officer. The write-up on his selection included the notation that the parties' child "depended on his dad 'for everything'" while the officer (mom) was deployed, and the observation from Mr. Duncan that:

> The thing about it is you're just one person, judge, jury, and executioner. You've got to do everything. You're not just dad, you're mom. You're mom and dad.

That has been the burden of the non-member military spouse since time immemorial – male or female. The burdens of the military life are substantial, last for decades, and fall on both parties – and are to be offset, in large part, by the promised reward of the substantial retirement benefits, which ***both*** parties endure the military lifestyle in order to receive.

Members of the groups are particularly incensed that, when they seek to convert retirement benefits into disability benefits payable only to themselves, judges have the temerity to indemnify their former spouses from such retroactive recharacterizations and order them to ensure that the former spouses continue to receive what was previously awarded. In other words, they consider it "unfair" that they are not allowed to steal their former spouses' property without interference.

Their arguments vary, depending on the audience and issue of the moment, with the only universal theme that they get more, and everyone else (especially their spouses and children) get less. The point is the utterly shameless hypocrisy and over-reaching of these groups in adopting whatever rationale leads to the conclusion that they get more – to the detriment of their spouses and children.

2. THEIR UN-AMERICAN POLITICAL AGENDA

In America, couples electing to marry pledge themselves and their fortunes to one another for the future. When that does not work out, for whatever reason, they divide that which they accrued during the marriage, and go their separate ways, with a judge ensuring their children are supported, and making a call as to whether the needs and abilities of the parties mean that one of them should help support the other after divorce.

In pretty much any ***other*** community, the prospect of lifetime retirement benefits payable starting

at age 39 or 40, plus cost of living increases forever, sounds pretty good just now. And splitting those benefits with a spouse upon divorce, to the extent earned during marriage, would be met with "of course."

But not with these folks. The members of the fringe groups want to ***retroactively*** decide – after years or decades of marriage – that their spouses do not get half of what is almost always the single most valuable asset accrued during years of mutually living the military lifestyle.

If you run the scenario past any of them of, say, a Sergeant married to a Wal-Mart employee with a 401(k), and ask what should be divided at the end of the marriage and why, all you get is a hysterical screech changing the subject to how "She didn't have to put her life on the line! . . . ." This is true despite the irrelevance of the work performed to the benefits accrued during marriage and to be divided upon divorce, and is the same even where the guy in question ***actually*** maintained trucks at a depot in Kansas.

As discussed in the last prior legal note, and as the United States Supreme Court stated in *Rose*, disability payments are intended for the support of a veteran ***and his family***. But the fringe groups are having none of that; they want any income titled "disability" to land in their pockets invisibly to the courts – unlike any similar income received by any other citizen of the United States.

Zoo keepers "put their lives on the line," as do construction workers, cops, fire-fighters, and a host of others. The sort of entitlement mentality exhibited by the military groups is not (usually) seen from any of those workers, and neither would or should be tolerated if it was tried. Besides, whether a career is risky is irrelevant. It simply makes no difference ***what*** job created the pension benefits that the marital couple decided was worth the risks involved, for whatever rewards would be gained.

The proponents of the fringe-group positions being sold to State legislatures are entirely fixated, unconcerned with any opinion but their own, and have no concept of equal justice under law, equity, reciprocation, spousal or child rights, or anything else that does not mesh with their particular branch of jihad. Trying to have a rational discussion with them is the oratorical equivalent of stepping in bubble gum.

C. "THEY WALK AMONG US"

It should not be assumed that the nut-jobs who cannot focus beyond their own predispositional focus are all located elsewhere. One local member of the military-obsessed fraternity – a lawyer! – actually wrote in, protesting the last legal note (No. 46, "Military allowances for child/spousal support," posted at http://www.willicklawgroup.com/newsletters), and suggesting that garnishing military pay was some kind of illicit money-making scheme.

The inane note ignored, of course, that if garnishment has been ordered, it is because the obligor has ignored his duty to make court-ordered child and spousal support, and that the sum garnished goes to the spouse and children who have been left unsupported. The point is that there are some members of the Nevada Bar who just shouldn't be.

IV. RED HERRINGS, WILD GEESE, AND ASIDES

A. COMPLAINTS ABOUT THE FORMER SPOUSE

We frequently see the screeds of the fanatic groups include horror stories about the two-timing Jezebels they married who spent the time the members were on deployment sleeping their way around the command (or the city, the county, or the continent).

But as one Montana lawyer says: "It's a damn flat pancake that doesn't have two sides." In the 30 years I've done military divorces, I've seen plenty of bad behavior on both sides, including a shocking number of military marriages involving unforgivable recurring physical abuse by members against their spouses and children. This was such a problem on a national scale that the USFSPA was amended years ago to preserve the spousal share of retirement benefits when members were court-martialed for such domestic violence.

However, ***none*** of that misbehavior – on either side – matters to the concept of property division at the termination of a marriage. In modern America, anyone unhappy with their spouse for any reason can choose divorce, but that choice does not alter the fact that valuable assets were accrued ***during*** the time that the parties chose, for whatever reason, to remain married. When the marriage ends, the property accrued during the marriage is to be divided, and neither side should be permitted to retroactively recharacterize the property awarded to the other spouse as his or her own, whether by conversion to disability, or by any other means.

B. AN ASIDE ABOUT US

Postings from members of the groups in question indicate that they have isolated and insulated themselves from meaningful analysis to the point of convincing themselves that their way of perceiving things is the right way – the ***only*** way – the question might even be seen, not even taking into account that their view might reasonably be subordinated to a larger picture of social justice or equal treatment under law.

They seem to have a nearly universal "if you're not with us, you're against us" mindset, unable to comprehend the possibility that informed, honorable people might disagree with them. And they tend to concoct elaborate conspiracy theories when their views are not shared (hence the "line them up and shoot them" comments from one of their members above).

This law firm includes both civilians and several veterans, including two former 30-year career military officers. In our family law practice, we represent military members, and their spouses, in about equal numbers.

The firm regularly provides information to military personnel and JAG offices world-wide, without charge, participating in both "Operation Stand-by" and the military pro bono project since the inception of both programs. We've provided hundreds of hours of free educational programs on

military-related divorce topics, for decades, and as recently as last month. My own family includes both veterans and disabled veterans.

In short, we have no "political" agenda beyond preserving equal treatment of parties under law, and looking out for the best interest of their children. There is no conspiracy, and no other agenda. Our reasons for opposing the fanatical fringe groups are based solely on the lack of merit – logical, legal, or equitable – of their proposals, and not on any other factor.

V. SUGGESTION TO LEGISLATORS

Eventually, these nuts will reach Nevada, and it can only be hoped that there is both a high-enough IQ, and sufficient common-sense resistence to absurdity, to prevent anyone here from drinking their kool-aid.

Nevada law guarantees equal justice under law. It is a cornerstone of our democratic republic that the armed services exist to protect. When a flag-wrapped militant shows up, demanding special privilege in the form of financially victimizing his wife and children, he should be shunned as the opportunistic reprobate that he is.

VI. CONCLUSIONS

Amending the family law system to ensure an opportunity for meaningful participation in family law cases by military personnel is reasonable. Abandoning equity because a participant is or once was in uniform is not. And once a military member retires, he or she is a civilian entitled to equal – not superior – protection of the laws, like every other citizen.

As to child and spousal support, military allowances are just like every other kind of allowances. As to retirement benefits, it dishonors military members, and their spouses, to portray members as any kind of victims, or to suggest that military members are somehow being treated unfairly when they are subject to the same rules governing everyone ***else*** in the country. And it is intellectually dishonest to pretend that seeking repeal or evasion of the USFSPA has anything to do with looking for "fairness." It is mere greed. The single most advantaged group of retirees in the United States has ***no cause whatsoever*** to complain about it.

Here's the "take-away" for the fanatical fringe groups:

– Equal treatment under law does not make you "victims."
– Whether you were previously a paratrooper or a pastry chef, disability income is "income."
– Just because you're adjudged "disabled" does not mean your obligations, to society, to others – and most importantly, to your spouse and children – end. It's about more than you.

The best interest of the child, and equal protection under law, trump all flag-waving claims for special precedence and preference. Military retirement benefits are just like every other bit of property accrued during a marriage, and belong to both parties. This remains true when one party

attempts to convert the form of the benefits to disability after divorce, and thereby steal property already adjudged to belong to somebody else.

VI. QUOTES OF THE ISSUE

"Patriotism is the last refuge of a scoundrel."
– Samuel Johnson, *Life of Boswell*, vol. 2, p. 348 (1775).

"To strike freedom of the mind with the fist of patriotism is an old and ugly subtlety."
– Adlai Stevenson, speech, New York City, Aug. 27, 1952.

"A fanatic is one who can't change his mind and won't change the subject."
– Sir Winston Churchill (1874-1965).

.....

To visit our web site and review its contents, go to http://www.willicklawgroup.com/home. For a great deal more information on military retirement benefits, go to http://www.willicklawgroup.com/military_retirement_benefits. For the archives of previous legal notes, go to http://www.willicklawgroup.com/newsletters.

This legal note is from Marshal S. Willick, Esq., 3591 E. Bonanza Road, Ste 200, Las Vegas, NV 89110. If you are receiving these legal notes, and do not wish to do so, let me know by emailing this back to me with "Leave Me Alone" in the subject line. Please identify the email address at which you got the email. Your State would be helpful too. In the mean time, you could add this to your email blocked list. And, of course, if you want to tell me anything else, you can put anything you want to in the subject line. Thanks.

Cite as: Shelton v. Shelton

2. 119 Nev. Adv. Op. No. 55

October 29, 2003

IN THE SUPREME COURT OF THE STATE OF NEVADA

No. 37483

MARYANN C. SHELTON, N/K/A MARYANN C. MITCHELL,

Appellant,

vs.

ROLAND A. SHELTON,

Respondent.

Appeal from a district court order denying wife's motion to enforce provision in divorce decree awarding her a portion of husband's pension. Eighth Judicial District Court, Family Court Division, Clark County; Robert E. Gaston, Judge.

Reversed and remanded.

Amesbury & Schutt and David C. Amesbury, Las Vegas, for Appellant.

Leavitt Law Firm and Glenn C. Schepps, Las Vegas, for Respondent.

BEFORE AGOSTI, C.J., SHEARING and BECKER, JJ.

OPINION

By the Court, SHEARING, J.:

The principal issue in this appeal is whether relief is available to a former spouse when a veteran unilaterally waives his military pension in order to receive disability benefits, resulting in the former spouse's loss of her community share in the pension. We conclude that, although courts are prohibited by federal law from determining veterans' disability pay to be community property, state law of contracts is not preempted by federal law. Thus, respondent must satisfy his contractual obligations to his former spouse, and the district court erred in denying former spouse's motion solely on the basis that federal law does not permit disability pay to be divided as community property.

FACTS

Respondent Roland Shelton and appellant Maryann Shelton were married on September 6, 1980, in San Diego, California. Roland served in the United States Navy for more than ten years during the marriage. On January 17, 1997, the Sheltons jointly petitioned for a summary decree of divorce in Clark County District Court. On January 29, 1997, the district court entered a decree of divorce

incorporating the parties' joint petition.

Under the terms of the agreement, the parties designated both Roland's military retirement pay and military disability pay as community property, although the agreement awarded all of the disability pay to Roland. The parties, who negotiated the terms without the aid of counsel, agreed that Roland, individually, would be allotted "half of [his] military retirement pay in the amount of $500 and military disability pay in the amount of $174." Maryann would be allotted the other "half of HUSBAND'S military retirement pay in the amount of $577, until her demise."[1] At the time of the divorce, Roland had an outstanding military pension of $1,000 per month, and a disability payment of $174 per month based upon a determination that he was ten percent disabled. Both Roland and Maryann waived any right to spousal support; however, Maryann remained as beneficiary under Roland's military retirement insurance.

Beginning in January 1997, Roland regularly made his required payments to Maryann. In 1999, the Department of Veterans Affairs reevaluated Roland's disability status and concluded that Roland was 100 percent disabled, effective May 1, 1998. Roland elected to waive all his military retirement benefits for an equivalent amount of tax-exempt disability pay as federal law allows.[2] Upon receiving notice of an increased disability rating on February 26, 1999, Roland ceased his payments to Maryann.

Thereafter, Maryann moved the district court for an order enforcing the decree of divorce. Maryann asked for half of Roland's military pension, or $577, as had been agreed upon before the divorce and as was incorporated in the divorce decree. Roland opposed Maryann's motion on the grounds that the divorce decree did not allocate disability pay to Maryann, and that federal law prohibited community property division of veterans' disability benefits. The district court denied Maryann's motion on the basis of the United States Supreme Court's decision in Mansell v. Mansell (Mansell I),[3] despite repeatedly stating how unfair the result was to Maryann. In Mansell I, the Supreme Court held that federal law prevents states from treating military disability pay as divisible community property.[4] The district court also refused to grant Maryann equitable relief for the loss of her $577 monthly income on the basis that it lacked jurisdiction to hear a request for alimony when alimony had been waived in the final divorce decree.

DISCUSSION

Domestic relations are generally within the purview of state courts.[5] However, in McCarty v. McCarty, a 1981 decision, the United States Supreme Court construed federal statutes to prevent state courts from treating military retirement pay as community property.[6] The United States Supreme Court reasoned that federal preemption was necessary as the federal government was interested in maintaining military retirement schemes as an inducement for enlistment and re-enlistment and for effective military personnel management.[7] In response to the broad preemption ruling in McCarty, Congress enacted the Uniformed Services Former Spouses' Protection Act (USFSPA) in 1982.[8] The USFSPA authorizes state courts to divide "disposable retired pay" among spouses in accordance with community property law.[9] Although the USFSPA clearly subjected military retirement pay to community property laws, it did not clearly address whether disability benefits were also subject to state community property or equitable distribution laws.

Subsequently, in Mansell I, the Supreme Court considered whether state courts may treat veterans'

disability benefits as community property. The Court initially noted that "[i]n order to prevent double dipping, a military retiree may receive disability benefits only to the extent that he waives a corresponding amount of his military retirement pay."[10] The Court then held that under USFSPA's "plain and precise language, state courts have been granted the authority to treat disposable retired pay as community property; they have not been granted the authority to treat total retired pay [which includes disability pay] as community property."[11] Because Roland elected to receive full disability pay in lieu of his retirement pay, he argues that Mansell I prevents any payments to Maryann, thus depriving her of her community property interest in Roland's pension. Based on the cases decided after Mansell I, we do not agree.

Many courts have determined that a recipient of military disability payments may not deprive a former spouse of marital property.[12] The courts proceed under various theories, but the underlying theme is that it is unfair for a veteran spouse to unilaterally deprive a former spouse of a community property interest simply by making an election to take disability pay in lieu of retirement pay.[13] Although states cannot divide disability payments as community property, states are not preempted from enforcing orders that are res judicata[14] or from enforcing contracts[15] or from reconsidering divorce decrees,[16] even when disability pay is involved.

In Poullard v. Poullard, the Louisiana Court of Appeal held that the husband had stipulated to give his former wife one half of his retirement pay in consideration of her alimony waiver.[17] The court held that "[n]othing in either the state or federal law prevents a person from agreeing to give a part of his disability benefit to another. . . . [T]he re-designation of pay cannot defeat the prior agreement of the parties."[18]

In Hisgen v. Hisgen, the Supreme Court of South Dakota enforced a property settlement agreement, stating:

That case [Mansell I], however, does not preclude state courts from interpreting divorce settlements to allow a spouse to receive property or money equivalent to half a veteran's retirement entitlement. "[T]he source of the payments need not come from his exempt disability pay; the husband is free to satisfy his obligations to his former wife by using other available assets."[19]

The question of the interpretation of a contract when the facts are not in dispute is a question of law.[20] "A contract is ambiguous if it is reasonably susceptible to more than one interpretation."[21] The best approach for interpreting an ambiguous contract is to delve beyond its express terms and "examine the circumstances surrounding the parties' agreement in order to determine the true mutual intentions of the parties."[22] This examination includes not only the circumstances surrounding the contract's execution, but also subsequent acts and declarations of the parties.[23] Also, a specific provision will qualify the meaning of a general provision.[24] Finally, "[a]n interpretation which results in a fair and reasonable contract is preferable to one that results in a harsh and unreasonable contract."[25]

The property settlement agreement between Roland and Maryann is ambiguous. The agreement states that Roland's military disability is community property, but it awards the entire amount to Roland. The award of military retirement pay to Maryann describes the award as "[o]ne half of HUSBAND'S military retirement in the amount of $577, until her demise," but the amount designated is more than one-half the amount of Roland's retirement pay at the time. Roland paid

Maryann $577 until the time he elected to take disability pay in lieu of retirement pay.

It appears, therefore, that the agreement of the parties was that Roland pay Maryann $577 each month for her portion of the community asset, rather than pay her one-half of his retirement pay, since $577 is more specific than "one-half." Moreover, the parties' subsequent conduct reinforces this conclusion, in that Roland ratified the terms of the agreement by performing his obligations under the decree for a period of two years.[26] In addition, this interpretation yields a fair and reasonable result, as opposed to a harsh and unfair result. Roland cannot escape his contractual obligation by voluntarily choosing to forfeit his retirement pay.[27] It appears that Roland possesses ample other assets from which to pay his obligation without even touching his disability pay. Even if he lacks these assets, nothing prevents him from using his disability payments to satisfy his contractual obligation.[28]

CONCLUSION

Although states are precluded by federal law from treating disability benefits as community property, states are not precluded from applying state contract law, even when disability benefits are involved. The district court's order is reversed and this matter is remanded to the district court for further proceedings consistent with this opinion.

AGOSTI, C.J., and BECKER, J., concur.

**********FOOTNOTES**********

[1] Despite the purported equal division, the numerical disparity between the respective portions of military retirement pay was never addressed.

[2] 38 U.S.C. § 5305 (2000).

[3] 490 U.S. 581 (1989).

[4] Id. at 594-95.

[5] Hisquierdo v. Hisquierdo, 439 U.S. 572, 581 (1979).

[6] 453 U.S. 210, 232-35 (1981); see also Mansell I, 490 U.S. at 584 (discussing McCarty).

[7] McCarty, 453 U.S. at 213, 234.

[8] Pub. L. No. 97-252, 96 Stat. 730 (codified as amended at 10 U.S.C. § 1408). The parties refer to the 1982 version of the statute; however, the relevant parts of the statute have not changed since 1982.

[9] 10 U.S.C. § 1408(c)(1) (2000). Disposable retired pay refers to monthly retired pay minus statutory exceptions. Id. § 1408(a)(4).

[10] Mansell I, 490 U.S. at 583; see also 38 U.S.C. § 5305 (2000) (previously codified at 38 U.S.C. § 3105 (1988)).

[11] 490 U.S. at 589.

[12] In re Marriage of Mansell, 265 Cal. Rptr. 227 (Ct. App. 1989) (Mansell II), cert. denied, 498 U.S. 806 (1990); Ford v. Ford, 783 S.W.2d 879 (Ark. Ct. App. 1990); McHugh v. McHugh, 861 P.2d 113 (Idaho Ct. App. 1993); Adams v. Adams, 725 A.2d 824 (Pa. Super. Ct. 1999); Trahan v. Trahan, 894 S.W.2d 113 (Tex. App. 1995); Owen v. Owen, 419 S.E.2d 267 (Va. Ct. App. 1992); In re Marriage of Jennings, 980 P.2d 1248 (Wash. 1999).

[13] Virtually any military retiree eligible for disability will elect to receive disability pay rather than retirement pay since disability pay is not subject to federal, state and local taxation, and thus increases the recipient's after-tax income. 38 U.S.C. § 5301(a) (2000) (previously codified at 38 U.S.C. § 3101(a) (1988)); Mansell I, 490 U.S. at 583-84.

[14] Mansell II, 265 Cal. Rptr. at 227; Ford, 783 S.W.2d at 879; Trahan, 894 S.W.2d at 113.

[15] Adams, 725 A.2d at 824; McHugh, 861 P.2d at 113; Owen, 419 S.E.2d at 267.

[16] Marriage of Jennings, 980 P.2d at 1248.

[17] 780 So. 2d 498, 499-500 (La. Ct. App. 2001).

[18] Id. at 500 (internal quotation marks omitted).

[19] 554 N.W.2d 494, 498 (S.D. 1996) (quoting Holmes v. Holmes, 375 S.E.2d 387, 395 (Va. Ct. App. 1988)).

[20] Grand Hotel Gift Shop v. Granite St. Ins., 108 Nev. 811, 815, 839 P.2d 599, 602 (1992).

[21] Margrave v. Dermody Properties, 110 Nev. 824, 827, 878 P.2d 291, 293 (1994); see also Pressler v. City of Reno, 118 Nev. __, __, 50 P.3d 1096, 1098 (2002).

[22] Hilton Hotels v. Butch Lewis Productions, 107 Nev. 226, 231, 808 P.2d 919, 921 (1991).

[23] See Trans Western Leasing v. Corrao Constr. Co., 98 Nev. 445, 447, 652 P.2d 1181, 1183 (1982).

[24] See Mayer v. Pierce County Medical Bureau, 909 P.2d 1323, 1327 (Wash. Ct. App. 1995).

[25] Dickenson v. State, Dep't of Wildlife, 110 Nev. 934, 937, 877 P.2d 1059, 1061 (1994).

[26] Hoskins v. Skojec, 696 N.Y.S.2d 303, 304 (App. Div. 1999).

[27] Dexter v. Dexter, 661 A.2d 171, 174-75 (Md. Ct. Spec. App. 1995) (holding that under Maryland contract law, "the pensioned party may not hinder the ability of the party's spouse to receive the payments she has bargained for, by voluntarily . . . waiving . . . the pension benefits"); Johnson v. Johnson, 37 S.W.3d 892, 897 (Tenn. 2001) (holding that the spouse's "vested interest cannot thereafter be unilaterally diminished by an act of the military spouse," and that the trial court must enforce the decree to provide the spouse with guaranteed monthly payment).

[28] Poullard, 780 So. 2d at 500 (holding that "[n]othing in either state or federal law prevents a person from agreeing to give part of his disability benefit to another").

unnecessary (VA disability is already non-divisible as property upon divorce) or promote fraud, unjust enrichment, and wrongful deprivation. Ultimately, of course, former spouses who are deprived of their share of retirement benefits tend to become additional welfare recipients, consigned to an old age of destitution. I have represented many such persons.

Not only would this proposal tell the divorce courts to ignore the income of one party – but not the other – in setting alimony, it would leave former spouses open to unilateral, retroactive recharacterization of benefits awarded to them in divorce by stripping the courts of the power to protect decrees, and victims, from such actions. This would overrule decades of case law (in Nevada, the lead case is *Shelton v. Shelton*, 119 Nev. 492, 78 P.3d 507, 511 (Nev. 2003), in which the Nevada Supreme Court prevented a military member from taking back all of the payments stipulated and ordered to go to her in the divorce years earlier). I've enclosed a copy of the case.

To illustrate why the proposed bill would be an unconstitutional violation of equal protection on its face, consider the facts of the *Brownell* case discussed in legal note # 53. Both parties were totally disabled; the former member received over $3,000 in monthly disability-based income, whereas his spouse received only $200 in food stamps. The member was outraged when the divorce court required him to prevent his former spouse from starving in the street by awarding some alimony.

If AB 140 was the controlling law, ***his*** income would have been rendered "invisible" to the divorce court, but ***her*** $200 in food stamp allowance would not – and would presumably have been split, giving him half of the food stamps in ***addition*** to the $3,000+ in cash. The proposed bill states on its face that no court would have any ability to rectify that inequity.

In short, AB 140 is bad in virtually every way a proposed modification to law can be bad. It would treat similarly situated people unequally, would allow one group of people to cheat another out of benefits awarded to them, would prevent courts from doing equity to the parties in litigation, and would almost certainly leave a number of former spouses (virtually all women) utterly destitute, without any valid reason in law or in equity. The bill should be rejected.

I would be happy to supply whatever further information, background, or assistance the Committee might request.

Sincerely yours,
WILLICK LAW GROUP

Marshal S. Willick, Esq.

P:\wp16\SBN\00080243.WPD

RESOLUTION OPPOSING
PENSION LEGISLATION EXCLUDING DISABILITY PAY FROM PROPERTY AND SUPPORT CASES
Adopted by the American Academy of Matrimonial Lawyers Board of Governors
at its meeting on November 8, 2013

WHEREAS, the American Academy of Matrimonial Lawyers (AAML) is an organization of highly regarded domestic relations attorneys the mission of which is "To provide leadership that promotes the highest degree of professionalism and excellence in the practice of family law," and consists of highly skilled negotiators and litigators who represent individuals in all facets of family law; and

WHEREAS the AAML provides leadership and guidance in family law policy matters assisting states in evaluating, passing, and enforcing just laws for the support of families and the distribution of marital and community property; and

WHEREAS, the AAML has several times reaffirmed its position that state divorce court judges should have the authority to divide all marital or community property between the parties to a marriage, to award spousal support as necessary to do equity to the parties to a marriage, and to provide child support adequate to support of children; and

WHEREAS, AAML positions have specifically addressed military retirement benefits and military-related divorce matters, including a detailed position papers submitted to Congress in 2001 and 2010 regarding the Uniformed Services Former Spouses Protection Act and related issues, in favor of distribution of all retirement benefits earned during marriage and state sovereignty over custody and visitation law; and,

WHEREAS, property division and support laws should apply to all parties fairly and equally, holding no class of citizens above any other, and avoiding preference for any special class of persons as to equal protection of the law; and

WHEREAS, state divorce laws should recognize and account for all benefits and property earned or acquired during a marriage to avoid unjustly enriching or wrongly depriving parties of property and earnings of, or with, benefits earned during marriage; and,

WHEREAS, the election of disability payments from the U.S. Department of Veterans Affairs (VA disability compensation) or the Department of Defense (Combat-Related Special Compensation) can effect a reduction in the share of a military pension that is awarded to a former spouse, often without the knowledge or consent of that former spouse; and

WHEREAS, state divorce courts generally take into consideration all separate property income streams when determining the financial resources available to the parties to a divorce case, and do and should indemnify parties from any post-divorce recharacterization of assets distributed upon divorce that would have the effect of removing payments from a party to whom those payments have been awarded; and

WHEREAS, the majority of state courts take into consideration such disability payments in determining child and spousal support; and

WHEREAS, the majority of state courts allow or require indemnification of the former spouse when a military retiree elects VA disability compensation and that election reduces the former spouse's share of the military pension; and

WHEREAS, the majority of state courts that have ruled on the subject allow or require indemnification when a military retiree elects Combat-Related Special Compensation and that election reduces the former spouse's share of the military pension; and

WHEREAS, single-issue activists are now targeting state legislatures to try to block judges from considering such disability payments in calculating spousal support or child support and divisions of property, and to prevent courts from indemnifying former spouses from post-divorce recharacterization of benefits by the pension-earning spouses; and

WHEREAS such attempts have been successful in Arizona in 2011 (§ 25-530) and in Wyoming in 2013 (SF0046), but defeated in every other jurisdiction in which it has been raised, and every known jurisdiction in which there has been an open, publicized review of such proposals and their actual effects,

NOW, THEREFORE, IT IS RESOLVED that the American Academy of Matrimonial Lawyers urges state legislatures to reject any bill attempting to deny divorce courts the ability to consider all separate property income streams – including VA disability compensation and Combat-Related Special Compensation – in determining the actual assets, income, and expenses of the parties when distributing the marital estate, and in setting spousal support and child support; and,

IT IS FURTHER RESOLVED that the American Academy of Matrimonial Lawyers urges the legislatures of each State to reject any proposal that would prevent State divorce courts from protecting their decrees from the potentially damaging effects of a post-divorce recharacterization of retired pay, and protecting the parties in divorce cases from having the pension payments awarded to them reduced or eliminated through the election of disability pay by the other party.

EXHIBIT 4

MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Seventy-Eighth Session
March 20, 2015

The Committee on Judiciary was called to order by Chairman Ira Hansen at 8 a.m. on Friday, March 20, 2015, in Room 3138 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4406 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda (Exhibit A), the Attendance Roster (Exhibit B), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/App/NELIS/REL/78th2015. In addition, copies of the audio or video of the meeting may be purchased, for personal use only, through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Ira Hansen, Chairman
Assemblyman Erven T. Nelson, Vice Chairman
Assemblyman Elliot T. Anderson
Assemblyman Nelson Araujo
Assemblywoman Olivia Diaz
Assemblywoman Michele Fiore
Assemblyman David M. Gardner
Assemblyman Brent A. Jones
Assemblyman James Ohrenschall
Assemblyman P.K. O'Neill
Assemblywoman Victoria Seaman
Assemblyman Tyrone Thompson
Assemblyman Jim Wheeler

COMMITTEE MEMBERS ABSENT:

None

GUEST LEGISLATORS PRESENT:

Assemblyman John Ellison, Assembly District No. 33

STAFF MEMBERS PRESENT:

Diane Thornton, Committee Policy Analyst
Janet Jones, Committee Secretary
Jamie Tierney, Committee Assistant

OTHERS PRESENT:

Ben Graham, Governmental Relations Advisor, Administrative Office of the Courts
Caleb Harris, representing Disabled American Veterans; Veterans of Foreign Wars
Russ Murray, Private Citizen, Washoe City, Nevada
Vicky Maltman, Private Citizen, Sun Valley, Nevada
Steve Sanson, President, Veterans in Politics International, Inc.
Jeanette Rae, Private Citizen, Reno, Nevada
Marshal S. Willick, Attorney, Willick Law Group, Las Vegas, Nevada
Roger Harada, Attorney, Reno, Nevada
Melissa L. Exline, Attorney, Surratt Law, Reno, Nevada

Chairman Hansen:
[Roll was taken. Committee protocol and rules were explained.] We have two bills to be heard. We will start with Assembly Bill 97 and Mr. Graham.

Assembly Bill 97: Revises provisions governing wills. (BDR 12-505)

Ben Graham, Governmental Relations Advisor, Administrative Office of the Courts:
Historically, if a will is prepared and the person dies, there is a directive in statute—*Nevada Revised Statutes* (NRS) 136.050—that says if someone is aware of the will and knows that the person has passed, he must deliver the will to the clerk of the court. That applies whether you are an attorney, the person's representative, or a family member. In that way, the court knows there is a will, which might be the will that ultimately is admitted into probate. Probate is another formal process where you petition the court to establish a case, and a process where debts are paid and property is distributed according to the will. Often what happens is that a will may not be admitted or probate may not start. The clerk then has the will in his possession.

There was a delay in working on this legislation.

Chairman Hansen:
The bill's sponsor has just arrived.

Assemblyman John Ellison, Assembly District No. 33:
I was tied up in meetings, but I am here today to help sponsor Assembly Bill 97. Assembly Bill 97 clarifies the law regarding when a will of a deceased person becomes part of the permanent record maintained by the clerk of the court. By becoming part of the permanent records, those wills become public records. I will give you an example. A father dies and the children believe that the father had a local attorney draw up a will, but the lawyer, as sole practitioner, has passed away. The children go to the county clerk of the court and request their father's will. Currently, the clerk can refuse to let the children see it without a court order. The law is not clear whether the deceased father's will is considered a public document under NRS Chapter 239. Mr. Graham will present the bill and the friendly amendment from the Supreme Court of Nevada.

Ben Graham:
The amendment that we are proposing (Exhibit C) is one that was worked out after considerable discussion with Ms. Robin Sweet, who is the Director of the Administrative Office of the Courts. She ensures public records and various other documents are available for inspection. As such, the will would not be described as a public record, but it would be available for inspection, whether the will is admitted into probate or not. The amendment that we are offering should be on the Nevada Electronic Legislative Information System (NELIS) and basically says if a will is delivered to the clerk of a court in accordance with NRS 136.050, subsections 1 and 2, it becomes part of the permanent record maintained by the clerk whether there is a petition for probate or the will is filed. As part of the permanent record, the will is open to public inspection unless there is a sealing process. It is a lengthy process, and I would guess that it would be very rare that a will is ever sealed.

What should not have been a problem was. We did a survey of the 17 counties, and the clerks were looking at it in 16 different ways. This bill is an effort to clarify that it is open to public inspection without any formal procedures. We worked carefully with Mr. Ellison and the people who brought this to his attention. There is only one other addition on the amendment, which appears on the third page and makes this effective upon passage and approval.

Assemblyman Jones:
Can you please describe what circumstances there are when the will would be sealed, and how does that occur?

Ben Graham:
It is under Supreme Court Rules, Part VII, Rules Governing Sealing and Redacting of Court Records. It is pages and pages, but it would require a petition. The chances of it getting sealed, which would frustrate the purpose of this legislation, are pretty rare.

Assemblyman Jones:
Can you just give a practical overview from your experience? I am not experienced in probate court. What type of things occur when they seal it?

Ben Graham:
We have not seen that situation where a will has been sealed. There is a process if it is necessary. There is also a process for unsealing it. It has been a lot of years since I served as a personal representative, so I do not recall the sealing process. I am sorry that I did not research that more carefully.

Assemblyman Elliot T. Anderson:
I was wondering about a technical thing in your amendment. It might be better to put "by Supreme Court rule" rather than specifically citing the rule in case the court changes its rules later. Was there a problem that I missed? I was wondering about the onus of the bill, or the reason for the bill.

Ben Graham:
There had not been a problem for a while, but then there was a case where a clerk or two were refusing to allow an attorney—without seeking a court order—to see a will that had been deposited according to the statute. That would be a very expensive and lengthy process. From further research, we discovered that the process was not really uniform as it should be. That is why we worked with these amendments. The rules are somewhat fluid, so at some time if there was a change it would be in the current rules. If a person did want to seal something, they could go to the rules that exist at the time.

Assemblyman Elliot T. Anderson:
I thought we could say Supreme Court rule rather than that part of it in case they change the way the rules are organized; it would be a technical thing.

Assemblyman Ellison:
The problem we have been running into in some of the rural areas is that the clerks are requesting that you get an attorney, go to district court and try to get on the docket, and then get back to the clerk. It is taking a lot of time and a lot of money. That is what this is: a cleanup bill.

Chairman Hansen:
Is there anyone who would like to testify in favor of A.B. 97 at this time? [There was no one.] Is there anyone in opposition at this time? [There was no one.] Is there anyone neutral? [There was no one.] It looks like a clean bill. We will close the hearing on Assembly Bill 97. We will open the hearing on Assembly Bill 140. Mr. Wheeler will do the presentation.

Assembly Bill 140: Revises provisions governing certain domestic relations matters involving veterans with a service-connected disability. (BDR 11-519)

Assemblyman Jim Wheeler, Assembly District No. 39:
Thank you for allowing us to come back and speak about Assembly Bill 140. As you know, we had an abbreviated hearing on this bill that got messed up and the Chairman has graciously allowed us to come back and re-present the bill. With me today is Caleb Harris, who will present most of the bill. I will be here to read the sections of the bill and to answer questions.

Caleb Harris, representing Disabled American Veterans; Veterans of Foreign War:
I am here on behalf of the more than 13,000 veterans I represent as the Legislative Co-Chair for both the Disabled American Veterans (DAV) as well as the Veterans of Foreign Wars (VFW). I am also the chairman of the United Veterans Legislative Council, and I am here on behalf of the numerous veterans in our ranks. We are here to encourage the passage of A.B. 140. [Read from written testimony (Exhibit D).]

Russ Murray, Private Citizen, Washoe City, Nevada:
I am in favor of A.B. 140 and here to encourage your passage of this important legislation. Here is my story. [Read from written testimony (Exhibit E).]

Chairman Hansen:
I know I speak on behalf of the entire Committee when we sincerely thank all of you for your many years of service and the time spent on behalf of all of us. I want you to know that we most sincerely do appreciate what you have done, and I thank you on behalf of the Committee.

Assemblyman O'Neill:
Let me give you a hypothetical situation if I could. You have a person in the military for ten years. He has been married for eight or nine years, basically the whole time he was in. They have children together. The military personnel suffers some injuries and is medically retired out of the service. He receives

a disability payment. Since he did not do the 20 years, he does not get any retirement benefits if I understand correctly.

Caleb Harris:
He can, but that can later be waived in lieu of disability. Initially, he would more than likely get some type of medical retirement benefits.

Assemblyman O'Neill:
He gets the disability payment. They get divorced after nine years. Can any of that be used for child support? I understand the alimony would be protected, but how about child support or anything else that judges may come up with? I have seen judges be rather liberal in their interpretations of issues for awarding fees. That is what I think we are trying to address, is it not?

Caleb Harris:
I will defer that question to Assemblyman Wheeler.

Assemblyman Wheeler:
A lot of the misconception about this bill has to do with child support. If you read the bill, you will see that it says nothing about child support. The disability money is meant for the veteran to be whole again, but also to support his family. Once a divorce happens, the spouse is no longer part of the immediate family. The children are still part of the family. In *Rose v. Rose*, 481 US 619 (1987), a veteran was held in contempt for failing to pay his child support obligations. The question in front of the Supreme Court in Tennessee was whether his disability could be attached or included because of the United States Code. As it turned out, the veteran was held in contempt and that part of his disability was eligible for child support. There is case law throughout the country that says yes, even though it is not meant for alimony based on what the Secretary of the U.S. Department of Veterans Affairs (VA) has said. You can use it for child support and should, but not alimony. That is the misconception of this bill that the trial lawyers who make a lot of money off of divorces want you to think, but it is not true. It is in case law.

Assemblyman Nelson:
I have been reading all of these cases and all of the things from all of the lawyers, and I think I understand that child support is a totally different thing. We are not talking about that. We all agree that under the federal code disability payments cannot be attached, garnished, or levied. There is no question. The only issue we are looking at is whether a divorce court can consider that income as part of the entire picture when deciding whether to award alimony. Is that correct?

Assemblyman Wheeler:
As you said, we all agree that it cannot be attached. Therefore, it cannot be considered for alimony, but it can be for child support.

Assemblyman Nelson:
I think that is two different things. To say that it cannot be attached, that involves a creditor. The argument is that a spouse is not a creditor. The judge should be able to look at the entire universe of available money, not that the judge could ever take those VA payments away from the veteran and give them to the spouse, but they should be considered in the entire universe. If the VA disability payments are 90 percent or 50 percent of the entire community income, that should be considered. In the *Rose v. Rose* case—and I realize that was about child support—the court said that VA disability benefits are not provided to support the veteran alone, but to provide reasonable and adequate compensation for disabled veterans and their families. I understand that is distinguishable because it was child support, but that is the only U.S. Supreme Court decision we have on it, and the state courts seem to be split. There are decisions all over the board on this. I am not arguing with you as much as trying to understand exactly what issue we are looking at. I think this is a difficult, complex issue.

Caleb Harris:
I think the difference you are talking about is execution versus judgment. There is nothing that is going to be in place from the federal courts to implement how judgment is held out within the states in civil matters. The execution of the order, however, is if the judge makes the claim that this amount is to be paid, then they use that money as income to do that. Regardless of whatever judgment they come up with, they will never be able to actually execute it. If they cannot execute it, why should they be able to make the judgment in the first place on that particular money in the case of alimony?

Assemblyman Nelson:
I understand they cannot execute upon it. No one is arguing that. My point is this: we will say the disability income is $2,000 a month, and the veteran is also getting $1,000 a month from working part time. The spouse is also making $1,000 a month. Are you saying that they are equal so there should be no compensation going either way?

Assemblyman Wheeler:
I see what you are getting at. What I am trying to get at is that we make those decisions; we make those laws. That is exactly what we are doing here today. What you said was that this is complex and you are right, but that is why

we are here. That is why they give us the big bucks. Are those two equal? In my eyes, they are. The original $1,000 that goes to the veteran to help make him whole is the $1,000 that may buy the ramp for the house or get him a different vehicle, or get him outside help for his post-traumatic stress disorder (PTSD). That is what it is for. Can he use it for his children? You bet, that is part of it. As far as the $1,000 he makes on the side, if his wife makes $1,000, according to federal law they are equal, and what we are trying to do is bring Nevada into line with federal law as other states are doing across this country.

Assemblyman Elliot T. Anderson:
At the last hearing on this, we were told it was straight codification of the federal law, but now it seems the intent is something beyond that. I was hoping you could get into that. I know some of this bill does codify federal law. *McCarty v. McCarty*, 453 U.S. 210 (1981), (Exhibit F), for example, gets into the fact that a veteran's benefits are not divisible as community property. Is your intent to go beyond codification?

Assemblyman Wheeler:
Our intent is not to go beyond codification. Our intent is to be in compliance, just as other states have done across the country.

Assemblyman Elliot T. Anderson:
Then I would have to say that I believe there are portions of this bill that go beyond federal law. If we are talking about a straight codification, I think there are a few of us that can get there, but I do not know how the new provisions would intersect with federal law so, that is something that I would be willing to work on with you.

Assemblyman Wheeler:
Thank you. We would like you to sit down with Mr. Harris and go over those. We would definitely be willing to listen to that.

Assemblywoman Diaz:
I just heard that the genesis behind the bill is for Nevada to be in compliance. Do we have case law that has been demonstrated time and time again that we are not complying with federal law?

Caleb Harris:
I do not have any case law in front of me, nor have I personally laid eyes on it. I do have an abundance of veterans coming to me explaining their stories. Granted, that is only one side of it and I understand that, but from the side that I am hearing, and I am talking specifically about disabled veterans who have no other income other than their VA disability or social security disability, they are having a large portion of their money being allocated for alimony. It is detrimental to their lifestyle. I do not have the actual evidence of those cases, but I can get them for you if you would like them.

Assemblywoman Diaz:
You will hear case after case; that is what these people are doing here. It has happened as you heard from Mr. Murray. As far as the numbers, we do not have those. We only have personal statements from people, and they will tell you what happened here in Nevada.

Assemblyman Thompson:
Before I ask this question, I want to say thank you all for your service. I see a few ladies here, but how many women are in this situation where the men are seeking alimony? I would like to hear both sides. I am not saying where I stand on this, but I would really like to know.

Caleb Harris:
There is obviously a differentiation as far as how many women and men are in the military. Predominantly, it would be a male issue, but I have had calls from female veterans that have difficulties with this. In fact, this is not in this state, but a personal friend of mine has custody of his children, but his wife's child support payments are being reduced based on his VA disability income. They are using his VA disability compensation as income to offset her child support payments. In that case, not only is he not getting child support as he should be, but the kids ultimately are suffering for it in this particular case.

Assemblyman Thompson:
Please clarify this for me because I thought in your opening remarks you said that this protection of disability income is exempt for child support enforcement.

Caleb Harris:
If everyone was following the rules, that would be the case. That is the reason we are here; to get everyone to follow the rules.

Assemblyman Thompson:
It is about alimony and not child support.

Caleb Harris:
That was just a particular case to show the income and how it could be used both ways. There was alimony in the beginning, but she does not get it any more. It was taken into consideration for her alimony in the beginning.

Assemblyman O'Neill:
When did the federal law go into effect? Out of these various cases that you have heard about where the veterans have been impugned by losing some of their benefits to alimony, how many have occurred since federal law went into effect?

Caleb Harris:
Military retirement benefits were divisible until overturned in 1981 by *McCarty v. McCarty,* at which time they became nondivisible and were not part of community property. Congress came out with 42 U.S. Code § 659 (Exhibit G), which overturned the judgment in *McCarty v. McCarty* that it was not divisible, and it said that retirement funds from that point on are divisible. However, in all of these processes and all of the case laws, none of them approached alimony alone.

Assemblyman O'Neill:
Basically, since 1981, it has been case law that disability benefits should not be considered in alimony. Is that what you are saying? We have a variety of instances where it has been considered, and that is why we need this law.

Caleb Harris:
Rather than case law, it is United States Code. It is a federal finding and we think, obviously, that federal code should dictate how that finding is spent. I do not know when the code was initiated. In the beginning, there was a portion of the retirement that was included and then excluded from being divisible and community property at some point. In 1981, it was overturned and was declared divisible, but only for retirement. It did not include VA disability. The VA disability compensation was left in the umbrella under Title 38, section 5301.

Assemblyman Araujo:
I want to thank all of our veterans here today. I have a warm heart when I see all of you here today because my grandfather is a three-Purple-Heart veteran for this country. Thank you all for the service that you provided us.

Chairman Hansen:
Is there anyone north or south who would like to testify in favor of A.B. 140?

Vicky Maltman, Private Citizen, Sun Valley, Nevada:
My husband is 100 percent service connected from gunshot wounds received in Vietnam lying in a rice paddy. His injuries have not gotten better; I knew that when I married him. I was not with him when he was shot. I did not have to spend the two years in the hospital that he did. Right now, we have a situation where we need some adjustments made to our home to help him. It is going to cost us $800 each for the three estimates that the government requires. That is more than half of our monthly income. If I were to leave my husband today, I would never expect to get any portion of his disability. If you want to look at the retirement that he was eligible for, he might give me $50 a month. I do not think it is my job or my intention to ever take anything away from him that makes him whole and keeps him going in his almost seventy-first year. He has dealt with his injuries for over 40 years. We have been together for 30 years. I do not see any reason—looking at federal law or case law—why his disability income should ever be considered in this. I have talked to a judge in Reno who feels that neither the woman nor the man—depending on who the money is coming from—can survive without a portion of it. He and I had a huge argument over this. I told him that he needed to read federal law. I know that he has ordered disability money for alimony. I do not know if that would be public law. I would not know how to determine who is a veteran. We have more female veterans coming home with PTSD, more female veterans coming home with injuries that their spouses may not be willing to deal with, and in no way should they ever have to give up a portion of the income they receive to help them with their disability.

Steve Sanson, President, Veterans in Politics International, Inc.:
My group has several chapters throughout the country and the world. We endorse candidates to elected seats, champion veterans' rights, and we weed out corruption. Our group does not mince words or play the political backstabbing. [Read from written testimony (Exhibit H).]

I would give up the money to be free of the pain and suffering. The chronic fatigue and migraines are crazy. Every time I come to Reno, I have to give myself a shot in the leg because the elevation causes the migraines. The only people who are against A.B. 140 have never served in the military or do not have service-connected disability benefits.

Assemblywoman Fiore:
I want to thank all of you for being here. When you get paid from the military for your disability, does your check break down your normal pay in one amount and then another for the disability? Is it broken down to where, if you got divorced and your wife was entitled to child support and alimony, is it possible to have those fees come from your base salary and not the disability portion? Is it broken down?

Steve Sanson:
I am no longer on active duty. The only thing I get from the Treasury is my disability benefits.

Assemblywoman Fiore:
I need to understand this. First of all, the father of my children served in the military, so I have the upmost respect for each and every one of you, and I thank you for all that you do. I want to understand. If you are disabled, is your whole check a disability check or do you have a base salary and then disability?

Caleb Harris:
Your whole check is a disability check; however, there is a dependent allotment on that. When you are married, you get a certain dependent allotment. When you are separated or if you are married and end up living in separate residences, that dependent allotment goes away. That in itself suggests that, when you are no longer married, he or she is no longer your spouse and should not get a portion of that money. Even the federal government takes that allotment for that dependent away from you. There is a small allotment within your disability, but it is all a disability check.

Assemblywoman Fiore:
Let us say that you are disabled, you get a disability check, you are divorced, and you have two children. You were married for 20 years and you have a 10-year-old and an 11-year-old child. Your spouse has never worked, she moves out with the children, and you live separately. How do you determine child support and support for her?

Caleb Harris:
There is an avenue through the law. It is not through the court system, but there is an alternative route to approach for attaching wages for child support.

Assemblywoman Fiore:
If we create this law and say that you do not have to pay support with your disability check, what is this other route you are talking about and how would it work? Would you be going around that law? How would that work?

Caleb Harris:
United States Code 38.5301 dictates that it is possible to go through the VA Secretary who has the right to do what you are talking about, and he is the only third party who can. Through this avenue, you would apply through the Defense Finance and Accounting Service, and they would make the decision what to do. If he or she is not taking care of his or her family, there are other avenues in place within the law to use to attach those specific wages through the VA system. We do not oppose that in any way, shape, or form. One of the reasons we have not addressed the child support issue is because that avenue exists. Child support is available in that realm; they make exceptions specifically for it.

Assemblywoman Fiore:
To be clear, you said when you are married and have dependents, your check allots for dependents. If the child is under 18 years old and you are separated or divorced, does your check still allot for dependents?

Caleb Harris:
I am sorry. Say it one more time.

Assemblywoman Fiore:
You said that the military allots for dependents on your check if they are under 18 years old. If you are divorced and your children are under 18 years old, does that check allot for dependents?

Jeanette Rae, Private Citizen, Reno, Nevada:
I am a retired veteran service officer for the State of Nevada. I also retired from the VA Sierra Nevada Health Care System. Where we are getting mixed up a little is that the military is not paying any of these benefits. It is the VA that is paying these benefits, which is disability and not income. It is disability compensation, and even in the definition in Title 38, it is not considered income.

Chairman Hansen:
We can talk after the meeting because we are getting off topic.

Assemblyman Ohrenschall:
You have a veteran who has a service-related disability and she and her spouse have been married ten years, but upon retirement, the marriage goes south. There are no children involved; it is a straight alimony issue. It is a messy divorce and during the proceedings the veteran decides to convert retirement pay to disability pay. She opts for that as a retaliatory move. Would the bill, as written, allow that to be shielded when the veteran chooses to convert?

Caleb Harris:
Yes. There is something in place already, and this bill would cover that. It would be U.S. Code 42, section 659, and it distinguishes between retirement and VA disability compensation. If a person has retirement and he waives it for a portion of the disability, the specific portion he waived is still taxable, garnishable, and divisible. In doing so, it reiterates the fact that there is an umbrella over the possibility of being able to hide the VA disability compensation there. They recognized the issue of veterans trying to hide the money in that manner, and that is why the Social Security Act included that code.

Assemblyman Ohrenschall:
To be clear, and in your opinion, would federal law preclude a veteran from trying to retaliate against a spouse by converting retirement pay to disability?

Caleb Harris:
Yes, sir.

Assemblywoman Seaman:
You stated that it is not income; however, it is still allotted for taking care of the family, for child support. You are eliminating the spousal support, which is still part of taking care of the family. I think that is where the confusion is for some of us.

Assemblyman Wheeler:
Only the disability portion would not be used for spousal support, and would not be available in the calculations for spousal support. You are talking about supporting the family, but, as you know, going through a divorce splits the family. It is not a family any more. The spouse is no longer part of that calculation; the children are.

Assemblyman Elliot T. Anderson:
I want to follow up on Assemblyman Ohrenschall's question because I am looking at section 2, subsection 2—which is on page 2—and it appears to say the court shall not "Indemnify a veteran's spouse or former spouse for any prejudgment or postjudgment waiver or reduction in military retirement or retainer pay related to the receipt of federal disability benefits . . . ." Unless I am missing the meaning of the word indemnify, that means the court cannot protect the spouse if Assemblyman Ohrenschall's hypothetical comes up. I understand what federal law says, but I believe this goes beyond federal law because section 2, subsection 2 speaks to the court. That means the spouse is not held harmless in my opinion. Could you please comment on that?

Caleb Harris:
I do not have the bill in front of me.

Assemblyman Wheeler:
The intent of the bill is not as you have just presented it. I want to make sure I read that into the record. Someone trying to escape alimony by converting is not suddenly disabled because he is getting a divorce. Obviously, the judge needs to have some discretion.

Assemblyman Elliot T. Anderson:
We can work on an amendment.

Caleb Harris:
Toward the bottom it specifically lists service-connected disability. I think the issue you were getting to was the retirement pay that may be waived in lieu of. Is that correct?

Assemblyman Elliot T. Anderson:
Whether it is a waiver or a concurrent receipt issue that the veteran applies for, disability benefits already have a judgment based on the military retirement pay. When the pay is reduced, that is a conversion issue for whatever reason. Whether it was done for legitimate reasons or for bad faith reasons, I still think that is an issue that potentially goes beyond federal law.

Caleb Harris:
We do not oppose what you are saying. If for some reason the verbiage portrays something differently, we can look at that. As far as I understand the intent, it is to make sure that just the VA disability compensation itself is protected. I also understand that sometimes retirement is waived and winds up falling under that umbrella, but they specifically outline that the money has been

waived even though it is coming out as VA disability compensation. The portion of the retirement that they waived is absolutely still divisible. It is not protected like the disability compensation.

Assemblyman Elliot T. Anderson:
When it comes to family law matters, the federal law would allow it, but this bill would preclude it. When it comes to family law issues, if we have permissible authority from the federal government and we decide to change it or not exercise the authority that they have given us, this bill does not speak to Assemblyman Wheeler's intent. I think you will want to take a look at section 2, subsection 2.

Caleb Harris:
I am going to defer to Jeanette Rae.

Jeanette Rae:
The military retirement is only received in addition to compensation when you are rated at 50 percent or greater. The ability to now waive your retirement in order not to have your income taxed only relates to those individuals who are rated below 50 percent. They are currently still subject to concurrent receipt where dollar for dollar your military pay is offset by your compensation. It only relates to those individuals. Anyone 50 percent or over is receiving all of both benefits, so it would be separate. The verbiage may have gotten a little confusing in the bill, and may not have been completely thought out.

Assemblyman Gardner:
Hypothetically, we have a disabled veteran who earns $2,000 a month. He has a spouse earning $1,000 a month. The court, by federal statute and by law, cannot take his disability pay, but what they are doing is awarding alimony and saying they cannot separate them. We cannot give part of your disability pay away, but, in fact, we are giving part of your disability pay to the spouse. Is that what this law is supposed to be fixing?

Assemblyman Wheeler:
That is exactly what this law is supposed to be fixing. As you know, sometimes you spin things a little bit. What we are trying to fix is when they say they do not touch the $500 that you are getting for disability, but the other $1,500 we will take two-thirds of. That is what we are trying to fix; that cannot be used in the calculation.

Chairman Hansen:
Is there anyone else who would like to testify in favor of A.B. 140 at this time? Seeing no one, we will open it up to opposition. Does anyone want to speak in opposition to A.B. 140 at this time? We will go down south first.

Marshal S. Willick, Attorney, Willick Law Group, Las Vegas, Nevada:
I have been studying military and divorce matters for over 30 years. I have written the textbook on the subject. I regularly teach the Judge Advocate General's (JAG) Corps and private practice lawyers everywhere. I have been highly involved in this issue for a very long time.

To make it clear, because there have been statements from people who do not entirely understand how things work, disabilities occur in all lines of work, in the public and private sectors, military, police, firefighters, teachers, et cetera. In all circumstances in family law, disability income that someone receives for a disability suffered is separate property. That has been the law in Nevada for over 50 years. It is always separate property. The question, however, is what a divorce court should do when people with all of the various circumstances that they might have present themselves before the court for the administration of justice. Family law should always be based on the truth. Those who put on the uniform swear to protect American values, and possibly the most important is equality under the law. The proposal as drafted—and I am familiar with the people who originally drafted it and why they did so—does not seek to achieve equal rights. It seeks superior rights, literally, a state license to lie, cheat, and steal: to lie to the court about what income they are receiving, to cheat the spouse and children they swore to provide for, and to steal postdivorce property already awarded to someone else.

To answer Assemblyman Gardner's question, the bill does two things and was drafted specifically to do those two things: to prevent the court from seeing the truth as to who is receiving what at the time that a divorce is in process, and to allow someone postdivorce to reach backward in time and recharacterize money already awarded to someone else as being in a different category. Therefore, they are taking it out of that person's pocket and putting it in their own postdivorce, blocking the ability of the court to do anything about it. There has, unfortunately, been some misinformation.

I have been copied on some of the submissions to this Committee, and there have been some personal attacks. Briefly, let me clear up some misconceptions of motivations or any allegations that spin. No attorney in the state of Nevada to my knowledge has done more for military members in family law protecting their legitimate interests than I have. In my private practice, I have represented many hundreds of military members, including now, in every kind of case.

I helped create the Uniform Deployed Parents Custody and Visitation Act, which this body adopted two years ago. It protects military members from having custodial decisions made against them based on their military service. I am a founding member of the Military Pro Bono Project. I found out last week that I have just been named the American Bar Association's Attorney of the Year for the amount of pro bono work that I do for military members. I am a participant in Operation Stand-by, which helps military officers throughout the world at bases all over the planet. I advise military members of their legal rights and responsibilities related to family law. Last week I helped a Marine in California. My father is a disabled veteran, and I employ two disabled veterans. I get the subject.

To answer Assemblywoman Diaz's question, no, there are no cases of veteran disability benefits being divided in divorce court. It does not happen. If it did happen, I would know about it because no one studies these issues more closely than I do. The *McCarty* case has nothing to do with the subject. It is irrelevant.

To answer Assemblyman Nelson's question, the only quibble I have is that courts are not all over the map on this. The case law is uniform. Unless the game has changed, unless the state chooses to rig the game, the cases are absolutely uniform throughout the United States. I have already supplied this Committee with a recitation of case law (Exhibit I) following *Rose* from all over the United States for the last 30 years. To the best of my knowledge there is no notable alternative authority. There is no authoritative expert opinion in opposition. All of the experts in the United States are in complete agreement on this subject. I know them all: they come from all walks of life, have various political persuasions, come from various states, and all of them are in full agreement on this subject.

It is important that the members of this Committee understand what this bill actually seeks to do. The first speaker quoted policy, but appears not to understand it. Disability benefits are not divisible, but a family court should always know the truth. A family court should always know who is actually receiving what dollars per month. It is the only way to do substantial justice to the people in front of them. The very first thing that this bill seeks to do is hide the truth from the court. The second thing this bill seeks to do is allow someone post-divorce to change the game, and that should not be allowed either. The United States Supreme Court has explained that child support and alimony are not attachments or levies. Everyone who knows the subject is in full agreement on that.

To answer Assemblywoman Fiore's question, yes, in many cases there can be both community property retirement and separate property disability payments going to the same person. Community property is divisible as property and the separate property is acknowledged as separate property income of the person who is getting it no matter why that person is getting separate property income, whether it is because of a military disability or a slip-and-fall at work or that person is a trust-fund baby. Whatever the reason that there is a separate property income stream going to a party, that information is before the court as a fact of the reality of the economic circumstances of the parties and it should never be hidden. There should never be a situation where the poorer person can be compelled to pay money to the richer person, or a party can unilaterally undo a court order by retroactive recharacterization. That is what this bill seeks to do. Apportionment is available under current law for both child support and alimony if a state court orders it. What the bill seeks to do is prevent the state court from ever being able to make the order. It is important for the Committee to understand what the bill actually intends.

To answer Assemblyman Ohrenschall's and Assemblyman Anderson's questions, yes, you have it exactly. The point of drafting the legislation the way it was drafted was to specifically allow for postdivorce recharacterization of what was a property allocation into disability after the divorce and then prevent the court from doing anything to protect the party who has been ordered to receive a portion of the property. That would undo existing Nevada case law.

Answering Assemblywoman Seaman's question, yes, all income is to be considered by a divorce court, from whatever source. That is the only way substantial justice can be done. I would be pleased to answer any technical questions as to what is really being done; what the law actually is nationally or in Nevada. It is important for the Committee to understand how it works before it allows anyone to alter the balance of equities and the ability of the court to do justice to the parties before it.

Assemblyman Gardner:
First, I disagree with your comments regarding personal attacks. Reading your opposition, all 28 pages, you called proponents of this bill "whack-jobs," "nut-jobs," "opportunistic reprobates," "snake oil salesmen," and "fanatics" among others that I read. I would call those personal attacks.

As far as the bill, go back to one of the examples you were talking about to put it in simple terms. A man is receiving $2,000 in disability pay. His wife is a stay-at-home mom. If they get divorced right now, the divorce would look at both parts. What we are saying is that disability income is not divisible, so they

would then say that he has to pay a certain amount of alimony. Is that correct? Would that not be taking a portion of that disability pay, dividing it, and giving it to the spouse?

Marshal Willick:
First, in terms of the matter that you cited, that is an article from years before this bill was drafted having to do with people in another state. Those people threatened my life, threatened my family, and did not like the academic work that I had been posting, publishing, and teaching for the last 20 years and came after me, my office, my family, and my employees personally. I finally had to sue them to stop the death threats. It has very little to do with the people who are in this room right now.

Turning to the issue of the specific question that you asked, all income from all sources is considered in balancing the equities between husbands and wives. Let us suppose you have an unemployed spouse and the only income available to the family is disability income. Then, yes, it can be looked at. With due respect to Assemblyman Wheeler's comment, just because you choose to divorce does not lessen the status of your spouse as family. That is how the court can apportion matters to make sure everyone stays alive. There is the published case from New Hampshire a couple of years ago which is on point. The disabled military veteran was receiving several thousand dollars a month in disability income. The spouse, who was also totally disabled, had no income of any kind other than food stamps. The effect of this bill if passed would be that the only thing the divorce court would be able to see or could take knowledge of is the food stamps. In that circumstance, the military member would keep the several thousands of dollars a month. The spouse would get half of the food stamps, and the other half would be given to the military member in addition to the several thousand dollars a month. The spouse would starve in the streets. That is the intent of this legislation and the reason it should not be passed.

Assemblyman Gardner:
That means, in the hypothetical I put out there, the court would be able to look at the disability benefit and would be able to give a portion of that to the spouse. Is that correct?

Marshal Willick:
I am sorry if I was unclear. No. The benefits themselves are nondivisible. There is no property interest for the spouse. The fact is, one party has several thousands of dollars a month in income and, despite what anyone in this room says, income is income is income. It does not matter how it is labeled or what it is called. If you are receiving money on a monthly basis, from any source, for

family court purposes it is income and is to be taken into account by a court in figuring out how to keep everyone alive. There are never sufficient resources in these cases. In that circumstance where one party and only one party has several thousands of dollars of disability income, the court cannot divide that benefit but can order spousal support payments if otherwise justified under law. Support, whether it is child support or spousal support, is part of the core function of the family court, part of the divorce court's reason for existing. The discretion of the judge to be able to provide for the survival of everyone involved should never be taken away. In this circumstance and under Nevada law, child support guidelines would be a couple hundred dollars a month. If the person who has custody of that child has no income, both that person and the child would be on the streets.

Assemblyman Elliot T. Anderson:
I want to talk about Assemblyman Wheeler's intent, which was codification. I was hoping you would give us your opinion on what portion of the bill codifies and what portions of the bill go beyond. My reading is that section 2, subsection 1, codifies as it relates to disability and being divisible for purposes of community property. Beyond that, I am struggling to see where it codifies. Can you give us your opinion?

Marshal Willick:
There is no portion of this bill that intends to codify or does codify federal law. Existing federal law is quite clear and, to my knowledge, is applied everywhere in the state of Nevada. I know of no contrary cases; none have been brought to my attention. I have a significant appellate practice, so if there were such cases, presumably, people would be seeking me out to challenge them. None have ever been brought to my attention. In section 2, subsection 1, the somewhat surreptitious word is "consider." The point of the legislation is not to prevent the division of disability benefits, which is already prohibited under both state and federal law. As I said, disability—whether it is military, police, fire, state, private sector—is all separate property; it is nondivisible as community property by definition of Nevada law. This seeks to block the court from ever knowing that someone is receiving the money in question. If that party is making $3,000 a month in disability and both parties have $1,000 in income, from the court's point of view—and the proponents admitted this—they want that money to be invisible. They do not want the courts to know about it. They want the court to falsely believe that he has $1,000 a month to live on, and she has $1,000 a month to live on, when the reality is that it is $4,000 to $1,000.

Assemblyman Elliot T. Anderson:
I am trying to understand how the bill, as written, would technically work inside a family law context. I would imagine that you have to disclose everything when you go into court. This bill does not seem to operate that way. It seems to say that you disclose everything coming in and the judge just ignores it. Is that how you see the bill operating, or would you read this to not disclose at all upon going into family court?

Marshal Willick:
Yes. This would prevent disclosure or the court taking any knowledge of it. I do not know whether it would be on the forms and then ignored, or not be on the forms at all. I am not sure that makes any difference. In the one place where this has actually been litigated, Arizona, where the genesis of this bill comes from, an opinion that came out in 2011 interpreting this legislation says,

> We are not unmindful of the troublesome fiction created by (the legislation) requiring a court as (the spouse points) out to "pretend" the Title 38 funds do not exist for the purpose of determining a spouse's income and his or her ability to pay, or need for, spousal maintenance. The legislature, however, has made clear that that is precisely what this court is to do. Until the statute's clear language is modified in some way, it is the court's responsibility to follow the law as written.

The intent of the legislation—and that provision is identical to this provision—is to prevent the court from seeing, knowing, acknowledging, or using the truth.

Assemblywoman Diaz:
We have been focusing a lot on the perspective, or the assumption that, when there is a divorce proceeding, the spouse usually wants to take money from the veteran. I want you to share the other side. I am sure there are instances where the spouse is independent and has her own income. If this law were to go into effect, in those situations where the spouse does not need to be financially supported and the veteran does not have as much income as the spouse, will this law block the veteran's disability income from being contemplated in the equation and would that spouse have to pay more alimony?

Marshal Willick:
Precisely. If the spouse had an independent income of $2,000 a month and the military veteran was receiving disability income of $2,000 a month, this would make the $2,000 that the veteran is receiving invisible to the divorce court. Under this legislation, the military veteran would be able to say that the only ~~income the court is allowed~~ to acknowledge is the $2,000 a month that his

spouse receives. He could say, "I want half of her income because it is necessary for my support, and you are not entitled to consider the income that I am receiving as a reason why I should not have it." In other words, this legislation can easily be used, not just as a shield, but as a sword.

Assemblyman Nelson:
In the hypothetical situation that you were talking about, and let us say the veteran is getting $2,000 a month in disability and the spouse has no income at all—like the New Hampshire case but without the food stamps—the way the law is right now is that the disability income would not be divisible or attachable. Correct?

Marshal Willick:
If I understand your question correctly, it is not divisible or attachable, but it can be considered as income going to one of the two parties in the marriage.

Assemblyman Nelson:
It can be considered, but it cannot be taken by the court. The court could not order that the veteran pay any of that to the spouse.

Marshal Willick:
That money is not specifically identified. The point is that the court takes into consideration the full panoply of both parties' financial circumstances. If one party has $2,000 per month and the other party has zero dollars per month, then, yes, a spousal support, alimony, or child support order can be made based on the reality that one party has more money than the other party from a separate property source.

Assemblyman Nelson:
I understand that, but what I am saying is if the entire universe of money is that disability payment, I thought you said that everyone agrees that it is exempt. The court will not order the veteran to pay any of that to the spouse even though it could consider it.

Marshal Willick:
That money is not specifically divisible. Again, we have to separate what is property versus what is support. A support order is nonspecific as to the source of the funds. It simply says that you, sir, for whatever reason, have whatever money you have and this person does not have money. You are ordered to pay this person some money for support of either spouse or child. It does not make any difference why that person has that money, or whether the source of that money was a previous community property source or a prior separate source. The reality of the situation is that one party, and only one

party, has any funds at all; the other party has nothing. The only way the court can prevent someone from starving in the street is to order one party to support the other. That is part of the function and purpose of the divorce court's existence.

Assemblyman Nelson:
I understand that, but I thought the disability funds are not available. The court could make a support order, but it could not enforce it against disability funds. Is that correct?

Marshal Willick:
No. That is not correct. That was the point of the *Rose* case and the fifty cases that I gave you in the legal note analyzing the law of alimony following up on the *Rose* case.

Assemblyman Nelson:
I probably used the wrong word. Let us focus on alimony; forget child support. It is my understanding that—notwithstanding the *Rose* case which was a child support case—if we are just talking about alimony, the court would not force the veteran to use disability payments to pay alimony.

Marshal Willick:
The court does not force anyone to turn to any particular source. The reality is that, if the only money in the possession of the party happens to have come from disability as opposed to any other separate property income source, the party will use that money or will get other money. It does not make any difference for the purposes of family law why a party has funds. The point to the family court's order is that one party has resources and the other party does not. That court's charter is to make sure both parties survive. It does not make any difference where the money came from or why the money is in that party's possession. It is not an attachment for a levy. That is what the lay people who testify do not understand. A spouse or a child is not a creditor, it is not an attachment for a levy. When the United States Supreme Court said it is for the support of the veteran and his family, they mean the people who are before the divorce court. That is existing law.

To answer a question that was asked earlier, this did not come from 1981; this has been the case for over 60 years. The federal provisions in question go back pre-World War II, and they have simply been recodified over and over. This is the way it has been for a very long time. Disability awards, whether military, private sector, or state, are separate property, but they are income. It is figured by the court and by court order if necessary for enforcement for contempt if a party with resources refuses to obey a court order to support a spouse or

a child who has no resources. That is the purpose of the courts having the power to enforce their orders, but part of this legislation is to prevent courts from having that authority.

Chairman Hansen:
Is there anyone else down south who would like to testify in opposition at this time? Seeing no one, we will come back up north.

Roger Harada, Attorney, Reno, Nevada:
I believe we are going to go in order.

Melissa L. Exline, Attorney, Surratt Law, Reno, Nevada:
We are working together on this, and I want to start with where we agree. I am not here personally to spin anything. I am just an attorney who goes on both sides of this issue. If you had ever told me that I would be sitting in a room with a lot of veterans behind me—given my upbringing—and that I would be here to technically oppose something they were proposing, I would not have believed you.

Chairman Hansen:
You might want to give us your background. Some accusations have been made that people who oppose this bill are people who have no interest in veterans. Put this on the record.

Melissa L. Exline:
I testified very briefly from Ely when we had a short time to speak. I have not served, and I am not going to pretend that I can stand in the shoes of a veteran. My father served in the United States Army for 23 years. Most of that time was spent in the Special Forces—Green Beret—and I understand that he served five tours in Vietnam voluntarily. He retired as an E-8 master sergeant. I can see this issue as a daughter of the spouse who was married to that veteran, as well as the daughter of a veteran. I am here as a family law practitioner who can look at and appreciate both sides of the issue. I do appreciate the service of our veterans.

Protecting our military service members is extremely important, and we strongly believe common ground exists related to A.B. 140. Common ground means we agree on keeping in place that service disability should not be garnished, seized, or levied; that is the law. In speaking with Mr. Harris prior to this hearing, we agreed that the *Shelton* case [*Shelton v. Shelton*, 119 Nev. 492; 78 P.3d 507 (2003)] should remain intact. With that common ground as we look at some of the nuances of A.B. 140, we talked through the various issues that can take

place as the bill is written today. Starting from that common ground is important because judges make mistakes, and we can help educate them.

There are very specific factors that the courts must consider when they are looking at alimony. It says, under *Nevada Revised Statutes* (NRS) 125.150, that the court shall consider the financial condition of each spouse; the nature and value of the respective property of each spouse; contribution of each spouse to any property held by the spouses; duration of the marriage; income, earning capacity, age, and health of each spouse; standard of living during the marriage; the career before marriage; any specialized education or training or the level of marketable skills obtained by each spouse during the marriage; contribution of either spouse as homemaker; the award of property granted by the court in the divorce, other than child support and alimony, to the spouse who would receive the alimony; and physical and mental condition of each party as it relates to the financial condition, health and ability to work of that spouse. When you look at these factors—and we have not delved into these specific factors—one of the words that has been bantered around quite a bit today and there has been a lot of discussion on, is what the court shall consider in looking at the issue of alimony versus the ability to execute, levy, and tap a specific disability award. What does that mean? The alimony factors were lengthy. These issues already weigh in favor of the veteran if, in fact, the court is doing it right.

That is where we have common ground. We want to ensure that veterans with service-related disabilities are potentially given their due and acknowledged. We do not want to do it the wrong way. When I am talking before this body about not doing it the wrong way, I am talking about some of the odd scenarios where we might be improperly pretending like an asset does not exist. I do not want to delve into some esoteric mundane minutia of all of these various factors, but there are odd situations that can be created that I do not think we want to create in Nevada. I think we recognize that service members offer a lot and, often, so do their spouses. The spouse can be a huge support system for the member of the military who may be deployed or out in the field providing for his family. Sometimes they are the unsung heroes in these deployments because they are there for their spouses.

I do not know the nuances of why one particular couple may or may not get divorced. We have a no-fault state. The reality is when you balance the alimony factors the correct way, the likelihood that the VA disability or any of the service-related disabilities are going to be tapped is probably lower because that veteran is coming to the table with a disability. He or she has less ability to work and make a living. It is not about going after the money that the veteran needs to live on. I want to make that clear. I do not have a dog in this

fight. I do not necessarily want to make it so that there is a situation that the service member who needs that money to live on cannot, but we do not want to have it the other way either. When a spouse has these factors weighing in their favor, a court might say that there is $3,000 on this side of the equation and there is hardly anything on the other side. It is the right thing to do to possibly contemplate that this is the only reality that exists for this family in front of me. I am saying to this body do not hamstring the courts, let them make the right decisions. We have to do that in a full and fair way, and I think the specific questions that have been asked highlight the body here and that this Committee understands the issues. We are here and ready to talk through the issues in a hypothetical that highlights the issues very specifically. We are here to make it known that there is common ground on this bill, and there are things that can be done to fix what we perceive as oddities in the way the bill is written and to talk through those in a meaningful way.

Roger Harada:
I am speaking on behalf of myself as a family law practitioner and a veteran. I can tell this Committee with complete honesty that I have no agenda to go after the veterans in any unfair way. I do not believe the legislation being proffered is fair. That is why I have come before you to speak against it.

I am the middle generation of three generations of Harada men who have served in the United States Army. My father served in World War II. He got to the war late, so fortunately he did not see the action that he might have seen when he was initially assigned to the 442nd Regimental Combat Unit, which is the most highly decorated combat regiment in U.S. Army history. He is Japanese American and was initially interned during World War II. His whole family was displaced from their farm in California to an internment camp in Colorado. The entire time that I knew my father—he died some years back—he never spoke ill against his country or being interned. He just did not talk about it or the war.

I served in the 1980s during the Grenada campaign, so I am not really a war veteran. I served for four years in military intelligence and was a paratrooper. I served my last 15 months at Fort Bragg jumping out of planes and making myself shorter than I was before I joined the Army.

My son, Ken Harada, served for five years recently. He was an infantryman and served for a year in Afghanistan. He was in a vehicle that was blown up by an improvised explosive device (IED). Fortunately, he was able to escape from it relatively unscathed. It was a vehicle designed to withstand IED attacks. His fellow troopers did not fare as well—one of them lost his leg—but none of them died. It was an interesting call that I got from the Army. The first thing

out of the Army representative's mouth was that my son was all right. It was interesting. A few days later I heard from my son who let me know that he was okay.

The last thing I would ever want to do is to have my testimony hurt veterans. I want to make that clear. My veteran's benefits paid for my education. I was able to go through undergraduate school and even save a little for my first year of law school. I got veteran's benefits during that time that helped support me, my wife, and my two children while I was going through law school, so I am very grateful for my benefits which enabled me to have an education to speak intelligently about what is going on here.

I have been practicing law for 20 years, and 12 of those years have been almost exclusively domestic relations—family law. In my 20 years of practice, especially the last 12 years, I have never had a client or heard of an opposing party ever say they love paying alimony. Nobody loves paying alimony. It seems to be a divisive issue in family courts. What is going on here is one thing and one thing only, and I do not want any of you to misconstrue this. I do not believe this group of veterans speaks for every group of veterans. This group of veterans in support of this legislation is doing one thing and one thing only, the one thing they do very well—go to war. I am very proud of their service to our country, but they are going to war on alimony. Do not make a mistake about it, no one likes paying alimony and none of these people here want to pay alimony, and frankly, I do not blame them. If it ever comes down to me getting divorced and I have to pay alimony, I will not like it either. But the reality is that all income should be considered in the analysis by a judge in determining alimony.

To make one thing clear, and to distinguish myself from Mr. Willick, who is a very esteemed colleague of mine and a friend and mentor—I have learned so much from him—I personally have never benefited by going against a veteran where that veteran was ever assessed increased alimony because they get VA disability benefits. I have never had a case like that. I have no agenda when I say there are problems with this law.

You may have previously been given a hypothetical (Exhibit J), maybe electronically. That hypothetical is a little off as to the numbers. In this hypothetical, the inequities of what this law intends to do speaks very clearly. Let us make no mistakes about it, A.B. 140, especially subsection 3, seeks to legislatively reverse the Supreme Court of Nevada's decision in *Shelton*. *Shelton* is a case that has been mirrored in many other states, at least a dozen that I can think of. It is meant to address the inequities created that are

highlighted in this hypothetical. In this hypothetical a service member and a wife were married for 23 years. [Read from written hypothetical (Exhibit J).]

The husband made a claim with the VA for disability and ultimately received a 40 percent disability rating resulting in $587 a month in disability compensation. Since it was 40 percent, I want to make it clear that this particular hypothetical only applies to cases where the rating is 40 percent or less. If the disability rating is 10, 20, 30, or 40 percent, this happens. If a veteran gets a disability rating of 50 percent or higher, what happens is what I believe truly happens in all cases. This is where I am on the veteran's side because the war should not be occurring here; it should be occurring in Washington, D.C. In a case where veterans get over 50 percent, that benefit is added on top of their retirement if they get retirement. Like a personal injury action, if anyone were run over by a car by someone being negligent, and you received money for that personal injury action, that would be your separate property under Nevada law. [Continued to read from written hypothetical (Exhibit J).]

I am going to set aside the obvious disparate impact on women because of the nature of the military service equal protection argument and try to give you three quick hypotheticals on why this is unfair, absurd, and impractical. Two wives, in identical situations, were married to retired military. The veterans get the same amount of money. One veteran's spouse gets disability and the other one does not. The money is the same. The wife who is married to the nondisabled veteran will get less money. That is problematic.

Two Nevada doctors went to the University of Nevada Medical School. One went into the service and gets VA disability, while the other had private disability insurance as a benefit from his hospital. Both of them have the same injury and receive the same amount of money. The doctor who is not a veteran will pay more alimony because this law says the doctor who is a veteran does not have that extra income.

There were two men, one a veteran getting VA disability and one who received a personal injury award and is not a veteran. Personal injury awards are separate property. The person who got the personal injury award, which is compensation for a loss, is going to pay more alimony in the same situation than the veteran because this law says we have to ignore that income.

What I am trying to point out is how this legislation is absurd and unfair. The law in the State of Nevada under *Shelton* says—we do not need to codify federal law because the *Shelton* case states what federal law is—disability benefits are not community property. It cannot be divided and cannot be taken

or attached; federal law precludes it, that is the law. What this legislation seeks to do is to put a blindfold on a judge and say this income that you receive cannot be considered for alimony purposes. Assemblyman Nelson's question earlier hit it on the nose: all this law is trying to do is take away the disability income from alimony calculations. Assembly Bill 140 attempts, in a very broad stroke, to put a blindfold on our district court judges. Justice should be blind, but our judges should not be.

Assemblyman Gardner:
If you take the same hypothetical regarding retirement, but instead of it being recharacterized because of a disability, we will say the VA screwed up and they were giving him too much. I have seen this happen where the VA says they were giving you $1,200 a month but should have been giving you $800 a month. How would the court deal with that now, where the money from the VA went down? Would the veteran who got his retirement reduced still have to keep paying what was put in the divorce?

Roger Harada:
No, because of the change of circumstances, he would have grounds to reduce the alimony award. If his income is down, that has to be readjusted just as in a child support case. If you were paying child support and all of a sudden you lost your job—and you are not making the same amount of money—you could go back to the court and tell them that you are not making the same amount of money and your child support should go down.

Assemblyman Elliot T. Anderson:
I want to get into how alimony works. Are any other sources of income not considered by a judge now? Are you aware of anyone having to pay alimony indefinitely? My understanding of alimony is that, generally, it stops after a spouse has time to get her career back on track. If she was a homemaker for a while after giving up her career, that is not an indefinite benefit is it? It is not like child support that goes until the child is 18 years old. Do you know the average time an alimony award lasts?

Melissa L. Exline:
The court generally looks at all sources of all assets. Right now as it stands, this law does not clearly address disclosure, but it would likely be disclosed. From there, the court would have to act like the asset did not exist. That is a separate issue. With respect to alimony, there are a couple of types of alimony: rehabilitative alimony and a long-term alimony. Nevada does not have a formula like other states—California for example—where you plug in the information and it spits out a number. We have factors that the court shall consider in addressing what makes sense for an alimony award.

The rehabilitative alimony looks more to the issue of what the cost of reeducation, school, getting back on your feet, and is it going to take a year or two to do that. It is very fact specific. The way the statute is written, it gives the court flexibility to address it. I would say there is no rule of thumb per se, but many practitioners think if you get 25 percent or a third, that is the ballpark that alimony lands in generally speaking. It can eke up higher depending on the case and the specific instance.

Roger Harada:
I would like to answer the question also and involve Mr. Willick. I know of no circumstance where there is any kind of income that will not be considered by a court. The only case is *Metz*, *Metz v. Metz*, 120 Nev. 786 (2004), that distinguishes between Supplemental Security Income (SSI) and Social Security Disability (SSD), but I think that is for property purposes. Mr. Willick, do you know if SSD is a type of income that cannot be considered for alimony? I do not think it is.

Marshal Willick:
Yes. The *Metz* case makes a distinction between SSD and SSI. They are two different kinds of federal benefits and the program of SSD indicates that it is different from SSI. One of them is considered and used as income from any source for Nevada child support purposes and the other is not. *Metz* was a child support case and not an alimony case. As I tried to make clear earlier, child support and alimony are analyzed identically in terms of what is and is not before the court. Anything that would not be income under federal law for child support purposes would also not be income for alimony purposes. The case law that I submitted to this Committee indicates that military disability benefits are an entirely different category. They are not SSD; they are not SSI. There is a specific federal law which sets these benefits up and every single known federal and state case analyzing it properly has indicated that they are to be considered for both purposes.

Assemblyman Elliot T. Anderson:
Part of my question was answered, but I am still waiting for the average time that you would expect an alimony award to continue.

Roger Harada:
There is no fixed formulary approach to alimony. Alimony is really looked at by the judges as needs and ability to pay.

Assemblyman Elliot T. Anderson:
I understand that. I am looking for anecdotes.

Roger Harada:
As a general rule, we are talking about a marriage of some substantial number of years, typically at least four or five years. The more years, the more likelihood there would be alimony if there is a disparate opportunity to earn income. Generally speaking, I have found the courts fall somewhere in the ballpark of one-third to one-half the number of years of marriage. If you have a 20-year marriage, alimony will probably last around 10 years. There are exceptions.

Assemblyman Jones:
To me, it seems there are two viewpoints of fundamental fairness. The veterans believe if you have a disability, that is something that cannot be taken away. If they could give it back, they would be willing to, but they cannot. You believe, on the other end of the spectrum, that it does not matter that they have income that needs to be split so the spouse gets a percentage of it. In your analogy you said there were two people in the military for a number of years. One has a disability and the other does not. The wife whose spouse has the disability, under this law, would not get it. Would it not be in your analogy that the disability would be on top of the retirement? If there are two servicemen and one gets injured so he gets disability, would not his money then be, say $1,000 plus $500 for the disability, and the other one would just get $1,000? Your analogy is not true to character, is it?

Roger Harada:
If his disability rating is 50 percent or more, then it is a bonus, as it should be in all instances, like a personal injury case. If I were a victim of a personal injury case and I got an annuity for that injury, that annuity would be considered by the court in determining alimony because that was income to me even though it is compensation for personal injury. There is a distinction between community property and income. The problem with the legislation is that it is trying to blur that distinction and I am trying to clarify it. In both cases, the disability and the personal injury award would be separate property, but they would still be income. In your hypothetical, if the veteran has a rating of 50 percent or over, it is additional income. The reality is that the veteran has more money and, therefore, there is a possibility in those two circumstances that the veteran would probably pay more spousal support.

Assemblyman Jones:
The truth is, if there is a disability of 50 percent or more, it is on top of what the retirement would be. The veterans would still have to divide the retirement, but the disability—my leg is missing, or I have huge migraines that prevent me from working—money is so they can function or be recompensed for that specific disability, not the retirement. That is completely different.

Your analogy was trying to say that they are bunched together, but they are not really. Your fairness is saying that it does not matter that they have a disability, that is just more income that they have so they should divide the bigger pot. Although you cannot specifically attach the disability income, they still need to divide the bigger pot. Fundamentally, do we believe it is fair if someone has a disability that is paid to them that it should be considered for their use only, or the money is part of a big pot, so let us divide it?

Melissa L. Exline:
I think you are zeroing in on the issue pretty clearly. The hypothetical that I would propose is that you have two spouses and one is a police officer and the other is a military service member and they are both injured. They both get shot in the line of duty. They both have a disability. As this is written, they are both getting $2,000 a month from their disability, but one is not considered at all by the court; it does not exist. The other is considered by the court, even though they are both disabilities. There is a fairness issue on how that is looked at. I want to make it clear that we are not saying at any point that the disability should be taken. Whether or not an alimony award is given is fact specific and based on need. The need goes both directions. If the veteran or the military service member has need for that money, and it is eaten up by that need, the court should do the right thing and not give that money over in any way, shape, or form. The intent is to give some protections and to do something good for the veteran. When you have two potential disability positions before a court, the way the bill is written, one exists and one does not; one can be considered in the broad scheme of what can and should be considered, and one is not. We can see the situation that creates a lopsidedness. In trying to do something potentially good for a veteran, we may create an odd situation where we have the nonveteran bearing and shouldering more of the burden than is appropriate under the circumstances. That is the concern that we are coming to the table with. We want to make sure the Committee understands that we are potentially and needlessly blindfolding the judge because we are concerned that they will overstep. If the improper cases come down—and I will not say that does not happen—we are legislating for that fringe element. The way the alimony factors are written, it addresses the situation and does not make it so that we should do that in this case.

Assemblyman Jones:
You gave your analogy outside of the bill. First of all, we were talking about veteran versus veteran and now you turned it into veteran versus police officer. That is completely different. We are not dealing with police officers; we are dealing with veterans right now. If you want to sponsor a bill for police officers, we can discuss police officers. Right now we are dealing with veterans so I addressed the specific veteran-veteran, which I thought was

inauthentic because you were using facts which do not really characterize what is going on, and that is why I tried to address Mr. Harada. To change to something else is inauthentic, as well. That was what I was trying to get to, the authenticity of the actual analogy. The question was not really answered.

Chairman Hansen:
We are getting out into the weeds on the hypotheticals. Let us go back to Assemblyman Anderson for one more quick question.

Assemblyman Elliot T. Anderson:
My concern is similar, and I do not know every factual situation that comes up. There is a clear rule of law that says disability benefits are not divisible. However, the court is forced to make a division of property under the law because we are a community property state. Alimony, as it is now, is already discretionary and is not ordered in every case. It is harder to make a clear rule of law and say you cannot consider certain facts when it is discretionary in the first place. My concern is what happens in a situation that we have not contemplated. It is hard to put ourselves in the judge's place as we can see here while talking about hypotheticals and trying to get our heads around it. Traditionally, the trial courts have been given the discretion to consider the facts. I feel like we are saying that they can consider some facts but not others. This is where my worry is. I want to try to get there and work with Assemblyman Wheeler, but we have to ensure that the court has some discretion, otherwise we are opening ourselves up to the unknown.

Chairman Hansen:
Is there anything absolutely new that you have to add?

Roger Harada:
I wish to follow up because I would have answered the question slightly different. I want to speak to what Assemblyman Anderson was saying. I can tie that up. What I am talking about and trying to emphasize is the concept of equal protection. Essentially, equal protection should be two people similarly situated coming before the court with identical situations and being treated the same. When they are treated differently, that is unfair. I do not think it is an inappropriate analogy that Ms. Exline used when she gave us the situation with a veteran and a law enforcement officer. They are both getting disability for being injured in the line of duty, yet the law enforcement officer is going to pay a greater amount of alimony because his disability income is going to be considered by the court. This legislation would render the judge blind to this veterans disability income. What Mr. Willick was trying to say earlier is that A.B. 140 seeks to give the veterans this extra special treatment that nobody else gets. That is what is problematic about this law.

Equal protection is an important concept. At one point in time, we used to treat two men similarly situated differently, and it was legal to do so for one purpose and one purpose only. The depth of pigmentation of one person's skin being darker and deeper meant that they would be treated differently. That is when equal protection was used to strike down those kinds of laws. I am of the belief that equal protection would be used to strike down this law. There is a very real reason why cases like *Shelton*—and there are a lot of cases around the United States just like it—have been appealed to the United States Supreme Court and certioraris have been denied. Contrary to what was alleged earlier, California has not adopted, as far as we know, any similar legislation. Mr. Willick has not been able to find it and neither have I. Two states, Wyoming (Exhibit K) and Arizona (Exhibit L), have passed legislation somewhat similar to this. In Arizona, their law is unique in that it is simpler and not such an attack on alimony. I have looked at the case law in Arizona and they have had four appeals of that piece of legislation where it has been argued that this particular piece of legislation would be applied. Two reported decisions and two unreported decisions, and in all four cases the Supreme Court basically ruled against the legislation. Reading between the lines and reading those cases, I think the Arizona Supreme Court is looking for a case where they can point out the equal protection problem and strike the legislation down. I would think it would be a waste to have this legislation pass by the Legislature only to have the Supreme Court see the inequity of it and later strike it down. It then becomes a war between the Legislature and the Supreme Court in doing what is fair and right.

Chairman Hansen:
We could have a very interesting conversation on equal protection laws on a lot of different levels.

Assemblyman Nelson:
In the *Shelton* case, one of the factors was the recharacterization. What if it had not been recharacterized? What if it had been disability income from the start? Would that have changed things?

Roger Harada:
In the sense of property division, yes, it absolutely would have changed things. If the veteran's disability had been in place before, that would not be a divisible asset. The income would still be considered for alimony purposes, but it is not divisible per se. There is no ability to execute against the statement that I am getting disability income, but it is being taken away from me. There would be a distinction because the disability that existed before would not be dividable.

Chairman Hansen:
Is there anyone else who intends to testify in opposition in the north? Seeing no one, we have already checked in the south.

Assemblyman Ohrenschall:
We have a lot of bills in this Committee where we have to be careful about creating two classes of litigants. There is a sign in the courthouse that says "Equal justice under law." I think we have to tread carefully. Earlier, the proponents said if a veteran sought to recharacterize his retirement pay as disability pay, federal law already does not allow that shielding of assets. Do you agree with that or is there a misunderstanding of current federal law?

Melissa L. Exline:
There is not a federal law right now that says you cannot address a recharacterization. Right now, we have very specific Nevada law that says you can address a recharacterization. I would like to point this out because I think it is important where we have consensus. Going back to where I started my discussion, we actually have some agreement. When you heard Mr. Harris speaking earlier, he conceded on the issue we were focusing on in subsection 3 and the indemnity issue. If there is a recharacterization postdivorce like the hypothetical that was put forward, there is some opening for dialogue on addressing the concern. The intent, as I understand it in speaking with the proponents of this bill, is not to bar a spouse who is getting a property division from keeping her intact rights. We can bridge that gap. Right now, as it stands, federal law does not prohibit that. When we talk about just codifying the federal law, if that was all we were talking about, we would not be here. The problem is that A.B. 140 goes beyond federal law.

Chairman Hansen:
We will conclude the opposition testimony. Is there anyone here to testify in the neutral position? Seeing no one, Assemblyman Wheeler would you like to come back up and tie things up?

Assemblyman Wheeler:
I am here to say that I am tired of being lied to or about. Mr. Willick, for instance, says that the attacks were not personal, yet he said them to us anyway, so apparently they were.

Chairman Hansen:
Hold up. Talk about the bill.

Assemblyman Wheeler:
I am perfectly willing to sit down and work with the opponents of this bill to make good policy. We are not here to make statements; we are here to make policy. We are willing to do that, but I was a little upset about the outright falsehoods that came out from people who basically make their living by how big of a judgment they get. If Mr. Anderson would like to sit down with us, I would be very happy to do it and see what we can do to make good policy.

Chairman Hansen:
We made those offers to both parties. I have a conference room in my office, and we intend to have that conversation. Mr. Harris has already agreed to that.

Caleb Harris:
I submitted as evidence the California bill (Exhibit M) regarding what we are similarly trying to pass here, so it does exist. They said that it does not exist in law currently, and it does. It is in federal law for the waiver in lieu of retirement. It is absolutely in law, 42 U.S. Code § 659 (Exhibit G), Consent to Support Enforcement, says,

> by the Secretary of Veterans Affairs as compensation for a service-connected disability paid by the Secretary to a former member of the Armed Forces who is in receipt of retired or retainer pay if the former member has waived a portion of the retired or retainer pay in order to receive such compensation.

That was specifically listed to be included. To not be included specifically lists "of periodic benefits under title 38." So this code actually does exist for the reasons she was talking about.

I would like to briefly touch on inequality. It would be unfair to take away from a person money that was given to him to try to make him a whole person. Obviously, I believe it is outside the realm of possibility to attach, levy, or seize and that falls within the law. If we take from that person so that they are less apt to be able to care for themselves, build ramps, or have a special vehicle to get to doctor's appointments, that would be a disparity. That would be an inequality, and that is the reason why the federal government has set these codes in place. [Submitted but not discussed are (Exhibit N), (Exhibit O), (Exhibit P), (Exhibit Q), (Exhibit R), (Exhibit S), (Exhibit T), and (Exhibit U).]

Chairman Hansen:
We will close the hearing on A.B. 140. We will open this up for public comment. There is no one, so we will close the public comment period.

Committee business is a bill introduction at this time. We will have a bill draft request (BDR) today.

BDR 10-1093—Enacts the Uniform Voidable Transactions Act. (Later introduced as Assembly Bill 420.)

I will entertain a motion at this time.

ASSEMBLYMAN OHRENSCHALL MOVED TO INTRODUCE BDR 10-1093.

ASSEMBLYMAN GARDNER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

We will recess for five minutes because we have some more BDRs to introduce. No, everyone is leaving so we will reconvene before everyone leaves.

BDR 3-1084—Revises provisions relating to constructional defects. (Later introduced as Assembly Bill 418.)

I will entertain a motion at this time.

ASSEMBLYWOMAN DIAZ MOVED TO INTRODUCE BDR 3-1084.

ASSEMBLYMAN GARDNER SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

BDR 10-1104—Clarifies the applicability of the Uniform Unclaimed Property Act. (Later introduced as Assembly Bill 419.)

I will entertain a motion at this time.

ASSEMBLYMAN OHRENSCHALL MOVED TO INTRODUCE BDR 10-1104.

ASSEMBLYWOMAN SEAMAN SECONDED THE MOTION.

THE MOTION PASSED UNANIMOUSLY.

Is there any other business that needs to be brought before the Committee at this time? Seeing no one, this meeting is adjourned [at 10:35 a.m.].

RESPECTFULLY SUBMITTED:

Janet Jones
Recording Secretary

RESPECTFULLY SUBMITTED:

Karyn Werner
Transcribing Secretary

APPROVED BY:

Assemblyman Ira Hansen, Chairman

DATE:

EXHIBITS

Committee Name: Committee on Judiciary

Date: March 20, 2015 Time of Meeting: 8 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 97	C	Ben Graham, Administrative Office of the Courts	Proposed Amendment
A.B. 140	D	Caleb Harris, representing Disabled American Veterans; Veterans of Foreign War	Written Testimony
A.B. 140	E	Russ Murray, Private Citizen, Washoe City, Nevada	Written Testimony
A.B. 140	F	Assemblyman Elliot T. Anderson and Caleb Harris, representing Disabled American Veterans; Veterans of Foreign War	Supreme Court case *McCarty v. McCarty*
A.B. 140	G	Caleb Harris, representing Disabled American Veterans; Veterans of Foreign War	42 U.S. Code §659
A.B. 140	H	Steve Sanson, Veterans in Politics international, inc.	Written Testimony
A.B. 140	I	Marshal Willick, Willick Law Group	Letter in Opposition, Case Law, and Documentation
A.B. 140	J	Roger Harada, Attorney, Reno, Nevada	Hypothetical Situation
A.B. 140	K	Roger Harada, Attorney, Reno, Nevada	Wyoming State Law
A.B. 140	L	Roger Harada, Attorney, Reno, Nevada	Arizona State Law

A.B. 140	M	Caleb Harris, representing Disabled American Veterans; Veterans of Foreign War	California Law S.B. 285
A.B. 140	N	Caleb Harris, representing Disabled American Veterans; Veterans of Foreign War	Written Testimony
A.B. 140	O	Jack Fleeman, Jessica Anderson, Kenneth M. Roberts Gayle Nathan Gary R. Silverman	Miscellaneous Letters of Opposition
A.B. 140	P	William Fox	Information from the Department of Health and Human Services
A.B. 140	Q	William Fox	Title 38-Veteran's Benefits
A.B. 140	R	William Fox	Written Testimony
A.B. 140	S	American Bar Association	*Mansell v. Mansell*
A.B. 140	T	American Bar Association	Information on Family Law
A.B. 140	U	Steve Sanson, Veterans in Politics International, Inc	Will you let our disabled vets die?

EXHIBIT 5

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: DISCIPLINE OF RICHARD L. CRANE, BAR NO. 9536.

No. 59168

FILED

JAN 10 2013

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF SUSPENSION

This is an automatic review, pursuant to SCR 105(3)(b), of a Southern Nevada Disciplinary Board hearing panel's findings that attorney Richard L. Crane violated one rule of professional conduct and its recommendation that he be suspended from the practice of law for six months and one day.

The underlying facts in this matter provide that Crane was convicted, pursuant to a guilty plea, of coercion (sexually motivated), a felony in violation of NRS 207.193 and NRS 175.547 on October 4, 2010. Crane was given a suspended sentence and placed on probation for an indeterminate period not to exceed 5 years. On October 7, 2010, Crane self-reported his conviction to the state bar pursuant to SCR 111(2). The state bar filed a petition pursuant to bar counsel's reporting requirements as detailed in SCR 111, and this court ordered Crane temporarily suspended on November 15, 2010. In re: Discipline of Crane, Docket No. 57121 (Order of Temporary Suspension and Referral to Disciplinary Board, November 15, 2010).

During the formal disciplinary hearing, Crane admitted to communicating with what he believed to be a 15-year-old minor, agreeing to and arriving at an in-person meeting, and being arrested by officers at

Effective Date: 1/10/2013
Bar No. 9536

that time. Evidence regarding those communications confirms that significant portions were sexual in nature. The disciplinary panel found that Crane violated RPC 8.4(b) (misconduct).

The findings and recommendations of a disciplinary board hearing panel are persuasive; however, our automatic review of a panel decision recommending a suspension is conducted de novo, requiring the exercise of independent judgment by this court. SCR 105(3)(b); In re Stuhff, 108 Nev. 629, 633, 837 P.2d 853, 855 (1992). We conclude that clear and convincing evidence supports the panel's findings, and that Crane violated RPC 8.4(b) (misconduct). SCR 105(2)(e).

The panel further recommended that Crane be (1) suspended from the practice of law for six months and one day from July 8, 2011; and (2) required to submit full payment for the costs of the disciplinary proceeding pursuant to SCR 120 within 30 days after the state bar issues a bill of costs.

Having reviewed the record, we agree that the panel's recommendation of suspension is an appropriate discipline tailored to these circumstances. However, we conclude that the seriousness of Crane's offense warrants a three-year suspension, retroactive to the date of his initial suspension on November 15, 2010.

Further, we order that any petition for reinstatement must demonstrate proof that Crane has (1) continued to seek psychosexual therapy with Mr. John Parrott, a licensed clinical social worker, or a similarly situated professional; (2) met all the requirements and conditions of his criminal probation; and (3) abstained from any further criminal or professional misconduct. Should Crane not furnish the required proofs part of his petition for reinstatement, we note that this

court will be disinclined to approve any recommendation of reinstatement. If, however, Crane offers such proof and reinstatement is to be granted, Crane's reinstatement will still be subject to the condition that he be on probation for two years from the date of reinstatement, with the terms and conditions of probation to be decided by state bar counsel.

Crane shall also pay the costs of the disciplinary proceedings within 30 days of receipt of the Nevada State Bar's bill of costs. See SCR 120. Crane and the State Bar shall comply with all requirements of SCR 115 and SCR 121.1.

It is so ORDERED.

Pickering, C.J.

Gibbons, J.

Hardesty, J.

Parraguirre, J.

Douglas, J.

Cherry, J.

Saitta, J.

cc: Jeffry R. Albregts, Chair, Southern Nevada Disciplinary Board
David Clark, Bar Counsel
Kimberly K. Farmer, Executive Director, State Bar of Nevada
William B. Terry, Chartered
Perry Thompson, Admissions Office, United States Supreme Court

Anat Levy, Esq. (State Bar No. 12250)
ANAT LEVY & ASSOCIATES, P.C.
5841 E. Charleston Blvd., #230-421
Las Vegas, NV 89142
Phone: (310) 621-1199
E-mail: alevy96@aol.com;
Fax: (310) 734-1538
Attorney for: APPELLANTS, Veterans In Politics International, Inc. and Steve W. Sanson

IN THE SUPREME COURT OF NEVADA

VETERANS IN POLITICS INTERNATIONAL, INC.; AND STEVE W. SANSON Appellants, vs. MARSHAL S. WILLICK; AND WILLICK LAW GROUP, Respondents.	SUP. CT. CASE #: 72778 DIST. CT. CASE #: A-17-750171-C (Dept. 18)

APPELLANTS' APPENDIX

VOLUME V OF IX

Appeal from Eight Judicial District Court, Clark County

Senior Judge, Hon. Charles Thompson, Dept. 18

INDEX TO APPELLANTS' APPENDIX

DOCUMENT	DATE	VOL.	BATES NUMBERS
Abrams v. Schneider: Notice of Entry of Order (Granting Anti-SLAPP Motion)	7/24/2017	IX	AA001970-AA001993
Abrams v. Schneider: Minute Order Re: Special Motion to Dismiss Pursuant to NRS 41.660 (Anti-SLAPP); Schneider Defendants Special Motion to Dismiss Plaintiffs SLAPP Suite Pursuant to NRS 41.660 and Requests for Attorney's Fees, Costs, and Damages Pursuant to NRS 41.670	6/22/2017	IX	AA001955-AA001957
Affidavit of Marshal S. Willick in Support of Plaintiff's Opposition to Anti-SLAPP Special Motion to Dismiss Pursuant to NRS 41.650 et. seq.; and Countermotion for Attorney's Fees and Costs	3/13/2017	VII	AA001504-AA001590
Ansell v. Ansell: Amended Deposition Subpoena Deuces Tecum served on Steve Sanson	7/22/2017	IX	AA001962-AA001966
Ansell v. Ansell: Letter from Verizon advising of and attaching Subpoena Deuces Tecum served on Verizon Wireless	7/13/2017	IX	AA001958-AA001961

DOCUMENT	DATE	VOL.	BATES NUMBERS
Ansell v. Ansell: Motion to Quash Subpoena Duces Tecum and Deposition Subpoena Served on Steve Sanson on July 22, 2017	8/4/2017	IX	AA002009-AA002023
Ansell v. Ansell: Motion to Quash Subpoena Served on Verizon Wireless	7/26/2017	IX	AA001994-AA002008
Ansell v. Ansell: Second Amended Notice of Taking Video Taped Deposition Served on Steve Sanson on 7/22/2017	7/22/2017	IX	AA001967-AA001969
Anti-SLAPP Special Motion to Dismiss Pursuant to NRS 41.650 et. seq.	2/17/2017	I	AA000053-AA000081
Complaint for Damages	1/27/2017	I	AA000001-AA000028
Declaration of Anat Levy in Support of Anti-SLAPP Motion (with Exs.)	2/17/2017	II-V	AA000351-AA000946
Declaration of Anat Levy in Support of Motion to Stay Proceedings Pending Appeal on Denial of Defendants' Anti-SLAPP Motion	4/7/2017	VIII-IX	AA001721-AA001909
Declaration of Levy; Proposed Order Attached Thereto	3/26/2017	VIII	AA001674-AA001681
Declaration of Service of Complaint on Steve Sanson	2/4/2017 (service date)	I	AA000029
Declaration of Service of Complaint on Veterans in Politics International, Inc.	2/6/2017 (service date)	I	AA000030

DOCUMENT	DATE	VOL.	BATES NUMBERS
Declaration of Steve Sanson in Support of Anti-SLAPP Motion (with Exs.)	2/17/2017	I-II	AA000082-AA000350
Defendants' Ex Parte Motion to Shorten Time on Motion to Stay Proceedings Pending Appeal on Order Denying Defendants' Anti-SLAPP Motion		IX	AA001910-AA001920
Errata to Opposition to Anti-SLAPP Special Motion to Dismiss Pursuant to NRS 41.650 et. seq.; and Countermotion for Attorney's Fees and Costs	3/8/2017	VII	AA001477-AA001479
Exhibits to Opposition to Anti-SLAPP Motion to Dismiss Pursuant to NRS 41.650 et. seq., and Countermotion for Attorney's Fees and Costs	3/8/2017	VII	AA001446-AA001476
First Amended Complaint	4/3/2017	VIII	AA001692-AA001706
Minute Order of Hearing on Defendants' Anti-SLAPP Motion	3/14/2017	VII	AA001602-AA001603
Motion to Dismiss for Failure to State a Claim (NRCP §12(b)(5))	2/24/2017	V	AA000952-AA000983
Motion to Dismiss Ninth Cause of Action for Copyright Infringement for Lack of Subject Matter Jurisdiction (NRCP §12(b)(1))	2/24/2017	V	AA000947-AA000951

DOCUMENT	**DATE**	**VOL.**	**BATES NUMBERS**
Motion to Stay Proceedings Pending Appeal on Denial of Defendants' Anti-SLAPP Motion	4/7/2017	VIII	AA001709-AA001720
Motion to Strike	2/24/2017	V	AA000984-AA000992
Motion to Strike and Response to Plaintiff's Untimely Supplemental Brief	3/13/2017	VII	AA001591-AA001598
Notice of Appeal	4/3/2017	VIII	AA001707-AA001708
Notice of Association of Counsel	3/13/2017	VII	AA001599-AA001601
Notice of Entry of Order Denying: (i) The VIPI Defendants' Anti-SLAPP Special Motion to Dismiss Pursuant to NRS 41.650 et. seq.; (ii) the Willick Parties'Countermotion for Attorney's Fees and Costs	3/31/2017	VIII	AA001682-AA001691
Notice of Entry of Order Shortening Time	4/11/2017	IX	AA001921-AA001926
Notice of Entry of Order Staying Proceedings	5/9/2017	IX	AA001950-AA001954
Opposition to Anti-SLAPP Special Motion to Dismiss Pursuant to NRS 41.650 et. seq.; and Countermotion for Attorney's Fees and Costs	3/8/2017	VII	AA001422-AA001445

DOCUMENT	DATE	VOL.	BATES NUMBERS
Plaintiffs' Opposition to Defendants Steve W. Sanson and Veterans in Politics International, Inc.'s Motion to Stay Proceedings Pending Appeal on Order Denying Defendants' Anti-SLAPP Motion	4/14/2017	IX	AA001927-AA001933
Plaintiffs' Response to Defendants Steve W. Sanson and Veterans in Politics International, Inc.'s (i) Motion to Dismiss Ninth Cause of Action for Copyright Infringement for Lack of Subject Matter Jurisdiction (N.R.C.P. 12(b)(1)); (ii) Motion to Dismiss for Failure to State a Claim (N.R.C.P. 12(b)(5)); and (iii) Motion to Strike	3/20/2017	VIII	AA001671-AA001673
Reply in Support of Defendants' Anti-SLAPP Special Motion to Dismiss Pursuant to NRS 41.650 et. seq.	3/9/2017	VII	AA001480-AA001498
Reply in Support of Motion to Stay Proceedings Pending Appeal on Order Denying Defendants' Anti-SLAPP Motion	4/18/2017	IX	AA001934-AA001949
Request for Judicial Notice in Support of Motion to Dismiss for Failure to State a Claim (with Exs.)	2/24/2017	V-VI	AA000993-AA001288

DOCUMENT	DATE	VOL.	BATES NUMBERS
Saiter v. Saiter: Declaration of Steve Sanson in Opposition to Motion for Order to Show Cause Re: Contempt	3/6/2017	VI-VII	AA001306-AA001421
Saiter v. Saiter: Notice of Entry of Order	3/21/2017	VIII	AA001787-AA001809
Saiter v. Saiter: Motion for an Order to Show Cause	2/13/2017	I	AA000031-AA000052
Saiter v. Saiter: Opposition to Motion for Order to Show Cause Re: Contempt	3/6/2017	VI	AA001289-AA001305
Supplemental Declaration of Steve Sanson in Support of Anti-SLAPP Motion	3/9/2017	VII	AA001499-AA001503
Transcript of Proceedings Re: Defendants' Anti-SLAPP Special Motion to Dismiss Pursuant to NRS 41.650 et. seq. and Countermotion for Attorney's Fees and Costs	3/14/2017	VIII	AA001604-AA001670

EXHIBIT 7

Electronically Filed
04/05/2016
CLERK OF THE COURT

Toni Holyoak
In Proper Person
717 Hafen Lane #15C
Mesquite, NV 89027

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

Toni Holyoak,

Plaintiff,

vs.

Eric Holyoak,

Defendant

Case No.: D-08-395501-Z

OBJECTION TO WILLICK LAW GROUP'S MOTION TO ADJUDICATE ATTORNEY'S RIGHTS, TO ENFORCE ATTORNEY'S LIEN, AND FOR AN AWARD OF ATTORNEY'S FEES AND COUNTER MOTION FOR BREACH OF FIDUCIARY DUTY AND PROFESSIONAL NEGLIGENCE to be served via U.S. Mail upon the following parties:

Toni Holyoak ("Toni") has substituted Attorney Dawn Thorne, Esq., in place of the Willick Law Group ("Willick") in the above referenced case. However, Toni is unable to afford representation regarding the Willick Law Group's Motion and will therefore proceed in proper person regarding the Willick's Motion. Toni hereby acknowledges that she will proceed in proper person regarding Willick's motion and confirms that Attorney Dawn Throne, Esq., is not responsible for this pleading or its contents.

Dated this 5th day of April, 2016

Toni Holyoak

Facts

Toni retained the Willick Law Firm ("Willick") in January 2014. Willick did not know that her ex-husband, Eric Holyoak, was eligible to retire when she first came to them; moreover, they repeatedly told her that Eric was not eligible to retire until he had been on the police force (with PERS) for 30 years. After one year with their firm on January 27, 2015, an employee from Willick called to inform Toni that he had "looked it up" and found out Eric Holyoak was already eligible to retire and had been for over four years. At that time (on February 2, 2015) Willick filed for Toni to receive immediate retirement benefits. But the lack of knowledge by Willick cost Toni an entire year of benefits.

Toni had a scheduled hearing before Judge Ochoa for another enforcement hearing on September 9, 2015. However, one week before (September 3, 2015) Willick informed Toni that Judge Ochoa had recused himself and they would need to get a court date with a new judge. When Toni inquired she was told that Willick had taken Judge Ochoa on as a client back in June of 2015 and that is why he had to recuse himself. Judge Ochoa knew the history of Eric's defiant attitude toward the court orders that were in place. By taking Judge Ochoa as a client during Toni's case, Willick caused significant delays and additional expenses.

When Toni first appeared before the new judge (Judge Ritchie), he was angry with Marshall Willick stating, "What is going on?" "This record stinks." "When did you take Judge Ochoa on as a client?" Willick had to convince the judge that no one had filed a motion of impropriety and that this was an enforcement hearing only. Judge Ritchie was obviously hesitant to take any steps to hold Eric accountable, at least in part because he did not know Eric's history. After this hearing, Toni was very concerned with Willick's handling of the case. When Toni's sister, Sharon Friddle brought this concern to Marshall Willick's ("Mr. Willick")

attention, he called Toni on speaker phone with two witnesses in his office and screamed and swore at her (even using the "F" word) because of her sister's email. For this hostile phone call, Toni was charged by Mr. Willick, Rick (another attorney), and Mary (paralegal).

Judge Ochoa issued his court ruling on January 27, 2015 stating that Toni lost survivor benefits, but he did give her the right to take out a life insurance policy on Eric at her own expense. It was at that time that Willick asked Toni if she wanted to appeal this ruling. Toni responded, "No, I cannot afford it. I'll be fine with the life insurance." Willick agreed, explaining that it would probably cost a lot of money to appeal the issue. Eric appealed the first eligibility part of Judge Ochoa's court order, and Toni had to respond to that. However, it was not until September of 2015 when Mr. Willick wrote the response to the Supreme Court appeal that Toni realized they were fighting for survivor benefits. After reading the brief to the Supreme Court, Toni asked about obtaining survivor benefits because that issue took up the vast majority of the brief. Willick explained that there was not a chance for Toni to get survivor benefits because they did not appeal the issue. Willick further explained that the argument for survivor benefits would only help people after the case was decided. Toni was shocked when she got the bill charging her over $22,000 for the preparation of that brief, most of which would never benefit her. Before court in October, Willick explained that because Toni had chosen not to fight for survivor benefits, she could not benefit from the appeal of it. He said (in front of witnesses), "I have you on record stating you did not want to appeal survivor benefits." At which time, Toni asked, "Then, why did we?" He explained that one of the justices of the Supreme Court had asked him to fight for survivor benefits. This was another concern Toni's sister raised in her email to Willick shortly after the October court hearing. Willick also wrote in an email that Toni chose not to appeal survivor benefits and that it was an unwise decision on

her part, but that was not the legal advice she previously received from Willick when it was time to make that decision. Willick admits that Toni told him not to fight for survivor benefits but is still trying to charge her for it. He did not fight for survivor benefits for Toni's benefit because if he had he would have done it the right way by filing an appeal. He chose to fight for it in a way that ensued that Toni would not benefit from it. He sent an email to the whole family law section stating that he was going to the Supreme Court and in his opinion the reason the Supreme Court took this case was because of the way he worded his brief on survivor benefits.

When Toni met with Willick a week before oral arguments at the Supreme Court, she expressed her concern that his argument of survivor benefits would overshadow the issue of first eligibility—the main issue that affected Toni's financial future. Toni was right to be concerned about that because over 90% of Marshal Willick's oral argument to the Supreme Court on January 25, 2016 was about survivor benefits. Several times the judges tried to pull him back to first eligibility, at times even asking why he was talking about survivor benefits. Mr. Willick gambled with Toni's livelihood arguing for survivor benefits, which may benefit his name and firm, but according to Trevor Creel, Marshal Willick and PERS will never benefit Toni.

Willick has spent so much time, energy and money on survivor benefits instead of focusing on the life insurance Toni was already awarded and to this date, still does not have because Eric refuses to comply with all four (thus far) court orders. A week before the first hearing with Judge Ritchie, Toni sent an email (October 14, 2015) to Willick asking them to fight vigorously for life insurance, attorney fees, and the collection of the money already awarded. They responded in a patronizing email assuring Toni that they were completely

prepared, but then came to court obviously unprepared. Toni's sister, Kathy Oaks asked Mr. Willick right before court about the life insurance letters, and he knew nothing about the life insurance issue. Toni explained to him that there were two letters from different life insurance companies attesting that Eric has blocked her from getting life insurance; however, they did not have those letters in court, and the letters were the only things the judge asked to see. Furthermore, Mr. Willick did not even mention attorney fees or the collection of the money Toni had been previously awarded for QDRO fees and attorney's fees.

Mr. Willick can fight for anything he wants to fight for on his own dime and his own time, but not to the detriment of Toni's case and then charge her for ALL of it. It will immediately cost Toni $20,000 if Willick loses first eligibility. After the Supreme Court oral argument, Toni confronted Mr. Willick about his lack of argument on first eligibility in front of her aunt, Earlene Macdonald and Bonnie Workman. His response was, "Well, if we lose first eligibility, it's only $20,000." That is almost a year's worth of wages to Toni.

After Toni began to express her frustration with Willick, another attorney called Toni on her personal phone number and explained that she was Mr. Willick's significant other, that she had reviewed the entire case and that no other attorney in town would take the case from Willick. This other attorney did not identify herself as being formally retained by Willick. This was troubling to Toni because she had not given her permission to Willick to distribute any of her personal information like her telephone number or the details of her case.

Toni has filed a fee dispute with the State Bar of Nevada. Additionally, Toni is preparing a formal complaint for malpractice to be heard by the State Bar. Toni will be filing

the complaint by the end of the week. All of the emails, bills and affidavits regarding the facts and allegations made herein can be submitted to the court for an in camera review upon request.

Legal Argument

The court should refuse to adjudicate the lien until after the fee dispute and complaint before the state bar is resolved.

Preliminarily, there is no need to allow Willick to continue to rack up additional fees by requiring oral arguments as Willick has requested at a hearing. EDCR 2.23(c) states: "The judge may consider the motion on its merits at anytime with or without oral argument, and grant or deny it." Additionally, EDCR 5.11(e) states, "the court may issue its decision on the papers without oral argument as provided by Rule 2.23."

Additionally, "When the client asserts that the attorney committed legal malpractice, it is proper for the district court to refuse to decide those issues in a summary proceeding in the pending case." Toni has filed a fee dispute with the Nevada State Bar and will be filing a formal complaint based on a breach of fiduciary duty before April 11, 2016. The court should refuse to adjudicate this action until after the results of the fee dispute and complaint are issued by the Bar. Toni respectfully requests that this Court defer this issue, without requiring oral arguments or an appearance at a hearing, until after the claims before the Nevada State Bar are resolved.

A judgment in excess of the award is invalid for lack of jurisdiction and violation of due process.

If this Court is inclined to hear Willick's motion before the claims at the Bar are resolved, Toni will address the arguments put forth by Willick. Willick has asked this court to issue a personal judgment against "any assets Toni may have." However this is not available to Willick in this type of proceeding. NRS 18.015 allows an attorney two types of liens. Willick is

unclear about which type of lien he seeks to enforce, however one can assume he is requesting a charging lien. A charging lien provides an attorney a lien "upon any claim, demand or cause of action, including any claim for unliquidated damages, which has been placed in the attorney's hands by a client for suit or collection, or upon which a suit or other action has been instituted."[1] Such a lien "attaches to any verdict, judgment or decree entered and to any money or property which is recovered on account of the suit or other action."[2] Willick appears to ask the court a judgment for more than the amount of the statutory charging lien. He "requests permission to take whatever action is necessary to collect on the lien, from whatever assets Toni may possess or may receive in this case."[3] Additionally Mr. Willick claims that the *Gordon* case allows the court to reduce a lien to a personal judgment against a client. Clearly Mr. Willick's intent is to secure a judgment against **any assets** Toni may possess. While this is understandable based on the fact that Mr. Willick's fees are far in excess of any award Toni could expect to collect in this case, there is no legal basis to allow for a personal judgment beyond the award in the underlying case.

The statute simply does not allow an attorney's lien to attach against any amount other than a "verdict, judgment or decree entered and to any money or property which is recovered on account of the suit or other action." *Argentena* explains "a district court may enter judgment against a person or entity if the court has personal and subject matter jurisdiction over the parties and matter in dispute."[4] Further ""[a] district court is empowered to render a judgment either for or against a person or entity **only if it has jurisdiction over the parties and the**

---

[1] See NRS 18.015
[2] Id
[3] See Motion filed
[4] Argentena Consol. Mining Co. v. Jolley Urga Wirth Woodbury & Standish, 125 Nev. 527, 538(Nev. 2009)

subject matter."[5] However, *Argetena* defines the jurisdiction of the court regarding a fee adjudication of an attorney's lien. "Concerning the court's subject matter jurisdiction, the court has **in rem jurisdiction** to resolve a fee dispute between an attorney and client, which arises from a charging lien." Finally, "if a court's jurisdiction is based on its authority over the defendant's person, the action and judgment are denominated "in personam" and can impose a personal obligation on the defendant in favor of the plaintiff. If jurisdiction is based on the court's power over property within its territory, the action is called "in rem" or "quasi in rem." The effect of a judgment in such a case is limited to the property that supports jurisdiction and does not impose a personal liability on the property owner." [6]

The Court's jurisdiction regarding Willick's claim is in rem and only allows collection of up to the award or verdict in the underlying case. Willick cites *Gordon* as justification for a personal judgment against Toni. However, *Gordon* does not authorize a judgment against any property not under the in rem jurisdiction of the court. As such this court may not issue any judgment against any asset other than the award in this case.

Mr. Willick's fees are not reasonable based on the *Brunzell* factors

Toni asserts that Willick's fees are unreasonable under the *Brunzell* factors. First, regarding the qualities of the advocate, Toni does not dispute Mr. Willick's credentials. Rather, Toni asserts that regardless of his past experience or his credentials, Mr. Willick and his firm failed to employ the knowledge, experience, and skill one would expect from such a decorated firm. For example, Willick did not know and failed to research, despite Toni informing the firm of this fact, whether Eric was eligible to retire the day representation began. It was not until

---

[5] *Id.* At 533, Citing *C.H.A. Venture v. G. C. Wallace Consulting*, 106 Nev. 381, 383, 794 P.2d 707, 708 (1990) Emphasis added

[6] *Shaffer v. Heitner*, 433 U.S. 186, 199, 97 S. Ct. 2569, 2577, 53 L. Ed. 2d 683, 694, 1977 U.S. LEXIS 139, *25-26 (U.S. 1977)

almost a year into the representation that the firm "looked it up" and determined that Eric was eligible to retire. This cost Toni a significant amount of money and certainly is not the kind of mistake one would expect based on the description provided by Willick in its Motion. Awards or accolades are no substitute for competent work. The fact remains that the Willick did substandard work in Toni's case. Mr. Willick's past work does not mean that his fees are reasonable based on his current work.

Regarding the character of the work to be done, Willick sent an email to many other attorneys in which he described the issues in the Supreme Court case as technically "modest," and indicates that the Supreme Court is likely hearing the case based on the more complicated issues he presented in the answering brief regarding survivor benefits.[7] It should be noted that Toni specifically asked Willick on multiple occasions to not fight for survivor benefits. The character of the work required was, by Mr. Willick's own published statements, technically "modest" until he complicated the issues against his client's wishes. Therefore the fees charged are not reasonable based on the character of the work performed.

Regarding the work performed by the Attorney, it is obvious that Willick spent a significant amount of time on the case. This is evident from the over $100,000.00 of fees generated by the firm. However, as described above a large percentage of these fees were generated performing work which Toni, on multiple occasions, specifically asked the firm not to do. Additionally, after Toni requested that the firm avoid having multiple attorneys attend hearings and review her case, Willick increased the number of his employees who attended the hearings and increased the number of people working on the case. Mr. Willick and his firm obviously did a lot of work, but most of it was done against the desires of his client. When Toni

[7] See email attached hereto as Exhibit A

voiced her concerns regarding the increase Willick essentially said that she had no say in how he prosecuted her case. This is contrary to the Nevada Rules of Professional Conduct 1.2(a) which states, "a lawyer shall abide by a client's decision concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued." In short, Mr. Willick's fees are not reasonable based on the work actually performed.

Finally, the result obtained, as this court is aware, Toni is not currently set to collect a fifth of the fees charged by Willick. While the firm helped Toni obtain a monthly amount and Toni may be eligible to receive a small lump sum she will never be able to pay the full amount of Mr. Willick's fee based on the recovery. Additionally, Mr. Willick failed to even collect the lump sum currently available. In short the result obtained by Willick does not justify a finding that over five times the award is a reasonable attorneys fee.

Willick's submitted bill shows that he misrepresents the amount owed.

Mr. Willick stated under penalty of perjury that Toni owes $88,403.95, However, the bill submitted by him shows that the $88,403.95 amount includes the replenishment of a retainer. The retainer is obviously not owed after the attorney has been discharged and therefore Mr. Willick has misrepresented the amount due. NRS 199.145 makes it a class D felony for a person to make "a willful and false statement in a matter material to the issue or point in question," in a declaration made under penalty of perjury. Pursuant to NRS 193.130(d) a class D felony is punishable by a minimum 1 year in prison and the court may also assess a fine up to $5,000.00. Although Toni recognizes that the misrepresentation may be a simple mistake, such a mistake in the face of perjury, is exemplary of Willick's lack of care in the underlying case.

Reservation of Right to File Countermotion for Breach of Fiduciary Duty and Professional Negligence

As stated above, Toni has filed a fee dispute with the Nevada State Bar and will be filing a formal complaint as well. Toni would prefer to have the issues addressed by the Bar so as not to distract from the underlying case. However, if this court is inclined to adjudicate Willick's Motion, Toni reserves her right to supplement this pleading with Countermotions including legal arguments and analysis regarding breach of fiduciary duty and professional negligence.

Conclusion

Therefore, Toni respectfully requests that this court issue the following orders:

1. Pursuant to EDCR 2.23 and EDCR 5.11 the Court defers Willick's motion without requiring oral argument;

2. That the Court defers Willick's motion until after the issues before the State Bar of Nevada are resolved;

Alternatively, if the court is inclined to hear Willick's motion Toni respectfully requests that this court issue the following orders:

3. That Willick may not use this proceeding to obtain a personal judgment Toni for anything more than the amount awarded to Toni in the underlying case;

4. That Willick's fees are unreasonable based on the *Brunzell* factors;

5. That Willick's fees are overstated based on its pleadings; and

6. That Toni has reserved the right to amend and supplement this pleading to include Countermotions for Breach of Fiduciary duty and Professional Negligence including legal arguments and analysis.

Dated this 5th day of April 2016

Respectfully Submitted by:

Toni Holyoak, In Proper Person

I, Toni Holyoak, declare under penalty of perjury that the foregoing is an accurate depiction of the events described, that I am competent to testify to the foregoing if required to do so, and that except for where stated I have personal knowledge of the statements made herein.

Dated this 5th day of April 2016

Toni Holyoak

Certificate of Mailing

I, Toni Holyoak, certify that on April 5th, 2016, I caused the above OBJECTION TO WILLICK LAW GROUP'S MOTION TO ADJUDICATE ATTORNEY'S RIGHTS, TO ENFORCE ATTORNEY'S LIEN, AND FOR AN AWARD OF ATTORNEY'S FEES AND COUNTER MOTION FOR BREACH OF FIDUCIARY DUTY AND PROFESSIONAL NEGLIGENCE to be served via U.S. Mail upon the following parties:

Willick Law Group
3591 E. Bonanza Road, Suite 200
Las Vegas, NV 89110

Toni Holyoak
Toni Holyoak

Exhibit A

email: toniholyoak@hotmail.com

phone: 702-416-8616

EXHIBIT 8

MARSHAL S. WILLICK

3591 East Bonanza Road, Ste. 200
Las Vegas, Nevada 89110-2101
(702) 438-4100, ext. 103
Marshal@Willicklawgroup.com
Resume & Lawyer's Biographical Data Form

PROFESSIONAL EXPERIENCE

Sept. 1989 - Present	Principal, Willick Law Group Las Vegas, Nevada Practicing Exclusively in Domestic Relations & Family Law (Trial and Appellate) Certified Family Law Specialist, State Bar of Nevada
Sept. 1985 - Sept. 1989	Partner, LePome, Willick & Gorman Las Vegas, Nevada Trial and Appellate Litigation/Domestic Relations, Corporate, Business
Sept. 1984 - Sept. 1985	Associate, Thorndal, Backus & Maupin Las Vegas, Nevada Litigation
Sept. 1982 - Aug. 1984	Staff Attorney, Supreme Court of Nevada, Central Legal Staff Carson City, Nevada

SELECTED PUBLICATIONS

The Danger of Davidson to Pension Divisions, Nev. Lawyer, Dec. 2016, at 27.

Lawyer Liability in QDRO Cases, 29 Nev. Fam. L. Rep., Fall, 2016, at 1.

Military Retirement Primer, Communiqué, November, 2016, at 22 (Clark County Bar A. Pub'n)

Interest and Penalties on Child Support Arrears: Another Malpractice Trap, 29 Nev. Fam. L. Rep., Winter, 2016, at 12.

The New/Old Law of Partition of Omitted Assets, 28 Nev. Fam. L. Rep., Fall, 2015, at 8.

A Universal Approach to Alimony: How Alimony Awards Should Be Calculated, and Why, 27 J. Am. Acad. Matrim. Law. 153 (2015).

DIVORCE IN NEVADA: THE LEGAL PROCESS, YOUR RIGHTS, AND WHAT TO EXPECT (Addicus Books, 2014).

Securing Your Office, in 34 Family Advocate No. 4 (Spring, 2012) (*The Difficult Client*) at 41.

The Evolving Concept of Marriage and its Effect on Property and Support Law, Nev. Lawyer, May, 2011, at 6.

How Many Days are in a Week and the Meaning of the Rivero II Opinion, 23 Nev. Fam. L. Rep., Fall, 2010, at 15.

Sham Divorces, Civil Rights, and Family Law Experts, 23 Nev. Fam. L. Rep., Spring, 2010, at 16.

The Actual Lessons and Implications of Carmona – and Why Every Divorce Lawyer in the Western United States Should Be Hoping I Prevail on Rehearing, 23 Nev. Fam. L. Rep., Winter, 2010, at 6.

Getting Paid Through an Attorney's Lien after Argentena, 23 Nev. Fam. L. Rep., Winter, 2010, at 17.

Why the Nevada Welfare Division is Calculating Interest and Penalties Incorrectly, and How It Injures Nevada Litigants, 23 Nev. Fam. L. Rep., Winter, 2010, at 19.

The Basics of Family Law Jurisdiction, 22 Nev. Fam. L. Rep., Fall, 2009, at 11.

The Basics of Jurisdiction: A Remedial Course, The Writ (Washoe County Bar), Sept. 2008, at 10 & Nov. 2008 at 12.

Military Retirement Benefits, in DIVIDING PENSIONS AND OTHER EMPLOYEE BENEFITS IN CALIFORNIA DIVORCES, CEB (Continuing Education of the Bar, Jon Heywood, ed., 2008 through present), Section 17.

What Almost Happened to Child Support in Nevada, and Why We Still Have to Fix It, Nev. Lawyer, June, 2007, at 36.

In Search of a Coherent Theoretical Model for Alimony, Nev. Lawyer, Apr., 2007, at 40.

Family Law and Contingency Fees: Time to Reconsider?, Nev. Lawyer, Mar., 2007, at 10.

Nevada Has Effectively Lowered Child Support Across the Board, 19 Nev. Fam. L. Rep., Spr. 2006, at 10.

The Thrift Savings Plan, 28 Family Advocate, No. 2 (ABA Family Law Section, Fall 2005), at 40.

International Kidnapping and the Hague Convention: A Short Introduction, Communiqué, May, 2004, at 25 (Clark County Bar A. Pub'n)

Ten Commonly Missed Aspects to Community Property Valuation and Distribution, Communiqué, June, 2002, at 25 (Clark County Bar A. Pub'n; with Robert Cerceo, Esq.)

A LAWYER'S GUIDE TO MILITARY RETIREMENT AND BENEFITS IN DIVORCE (ABA 1998).

Military Retirement Benefit Standard Clauses, in 18 Family Advocate No. 1 (Summer, 1995) (*Family Law Clauses: The Financial Case*) at 30.

Partition of Omitted Assets After Amie: Nevada Comes (Almost) Full Circle, 6 Nev. Fam. L. Rep., Spring 1992, at 8.

A Matter of Interest: Collection of Full Arrearages on Nevada Judgments, Tonopah Showcase, 2001 (State Bar of Nevada); XIV Advocate, Sept., 1990, at 6 (Nev. Trial Law. A. Pub'n).

Pension and Profit Sharing Plans, in Valuation of Marital Property (State Bar of Nevada 1990), Text for CLE Seminar.

Res Judicata in Nevada Divorce Law: An Invitation to Fraud, 4 Nev. Fam. L. Rep., Spr. 1989, at 1.

Partition of Military Retirement Benefits, in Family Law in Nevada 151 (Legal Education Institute 1989), Text for CLE Seminar.

The Nevada Former Military Spouses Protection Act: Partition of Military Retirement Benefits Omitted from Prior Decrees of Divorce, 2 Nev. Fam. L. Rep., Spr. 1987, at 8.

Professional Malpractice and the Unauthorized Practice of Professions: Some Legal and Ethical Aspects of the Use of Computers as Decision-Aids, 12 Rutgers Computer and Tech. L.J. 1 (1986).

Constitutional Law and Artificial Intelligence: The Potential Legal Recognition of Computers as "Persons," IN PROCEEDINGS OF THE NINTH INTERNATIONAL JOINT CONFERENCE ON ARTIFICIAL INTELLIGENCE 1271 (A. Joshi ed. 1985).

Artificial Intelligence: Some Legal Approaches and Implications, AI Mag., Sum. 1983, at 5.

SELECTED PROFESSIONAL ACTIVITIES

AWARDED

Lifetime Achievement Award (Advanced Family Law CLE Program) 2016
ABA Military Pro Bono Project Outstanding Services Award (American Bar Association & Standing Committee on Legal Assistance for Military Personnel) 2014
Pillar Award (Nevada Bar Family Law Section's Highest Honor) 2010
Access to Justice Awards, Nevada State Bar Lawyer of the Year & Outstanding Small Firm 2006
Pro Bono Attorney of the Year & Lied Award 2005
Pro Bono Law Firm of the Year 2004
Access to Justice Award, Nevada State Bar (Small Firm Category) 1999

APPOINTED

Pro Tem Domestic Violence Commissioner 2009-present
Justice of the Peace Pro Tem, Las Vegas Township, Nevada 2002-2004
Alternate Municipal Court Judge, City of North Las Vegas, Nevada 1989-1997

CERTIFIED

American Academy of Matrimonial Lawyers Certified Mediator 2016

BAR ACTIVITIES, NATIONAL

Chair, Nevada Delegation, Family Law Council of Community Property States 1999-present (Delegate, 1996-1998)

Chair, Legislation Committee of American Academy of Matrimonial Lawyers 2009-2012, 2004-2005 (Member, 1995-present)

Chair, Military Pension/Benefits Committee of American Bar Association Family Law Section 1995-1997, 1999-2003

Co-chair, Congressional Relations/Federal Lobbying Committee of American Bar Association Family Law Section 1992-2001

Chair, Federalization Committee of American Academy of Matrimonial Lawyers 2003-2004 (Member, 1998-2002); Professionalism in the Practice Committee (1998)

Co-chair, Bankruptcy Committee of American Bar Association Family Law Section 1994-1996

Chair, Federal Legislation and Procedures Committee of American Bar Association Family Law Section 1991-1994 (subcommittee chair, 1990-1992)

Member, ABA Family Law Section Marital Property Committee (1991-1995); Law Practice Management Committee 1991-1995

BAR ACTIVITIES, STATE

Member/Reporter, Eighth Judicial District Court Section 5 Rules Redraft Committee (2013-2014)

President, Nevada Chapter of the American Academy of Matrimonial Lawyers (2007-2010)

Chair, Board of Certified Family Law Specialists Test Committee (2005-2007)

Member, Board of Certified Family Law Specialists (2005-present)

Member, Ethics 2000 Committee (2003-2004)

Chair, Nevada State Bar Standing Committee on Ethics and Professional Responsibility 2001-2003 (Member, 1998-2000)

Member, Board of Directors, Legal Aid Center of Southern Nevada 2000-present

Member, Board of Directors, Clark County *Pro Bono* Project 1999-2000

Chair, Nevada State Bar Family Law Section 1995-1997 (Member of Executive Council, 1991-1994)

Managing Editor, Nevada Family Law Practice Manual 1993-2003

Chair, Nevada Child Support Statute Review Committee 1992, 1996

Editor, Nevada Family Law Report (quarterly law review of the Nevada State Bar Family Law Section) 1991-1995

Member, State Bar Specialization Committee 1994-1995

Chair, Judicial Evaluation Committee, Clark County Bar Association 1994-1996 (member 1991)

Chair, Eighth Judicial District Domestic Relations Forms and Rules Review Committee 1991
(Member, 1990)

CONTINUING LEGAL EDUCATION INSTRUCTOR

"Premarital, Postnuptial, and Separation Agreements"
in *Advanced Family Law* (State Bar of Nevada), Las Vegas, Nevada, 2016

"The Basics of Family Court Trial Procedure" (Legal Aid Center of Southern Nevada & Willick Law Group), Las Vegas, Nevada, 2016

"Top QDRO Mistakes Attorneys Make – and How to Avoid Them!" (NBI National webinar), 2016

"Partition Actions: What Every Nevada Divorce Lawyer Needs to Know"
in *Advanced Family Law* (State Bar of Nevada), Las Vegas, Nevada, 2015

"An Alimony Manifesto: How Alimony Awards Should Be Calculated, and Why"
at National CLE Conference (Legal Education Institute), Vail, Colorado, 2014
in *Advanced Family Law* (State Bar of Nevada), Las Vegas, Nevada, 2013

"The Basics of Property Division in Nevada" (Legal Aid Center of Southern Nevada & Willick Law Group), Las Vegas, Nevada, 2013

"Child Custody: A Primer" (Legal Aid Center of Southern Nevada & Willick Law Group), Las Vegas, Nevada, 2013

"Retirement Plan Division: What Every Nevada Divorce Lawyer Needs to Know"
Legal Aid Center of Southern Nevada & Willick Law Group, Las Vegas, Nevada, 2013
State Bar of Nevada, Ely, Nevada, 2013

"Effects on Custody After Fleeing Domestic Violence"
Legal Aid Center of Southern Nevada & Willick Law Group, Las Vegas, Nevada, 2013
State Bar of Nevada, Las Vegas, Nevada, 2012

"Phantom Income and Other Demons: Adjustments to Business Income" (State Bar of Nevada), Ely, Nevada, 2013

"Family Law Appeals" in *Advanced Family Law* (State Bar of Nevada), Las Vegas, Nevada, 2012

"Special Issues in Military Divorce" in *Advanced Family Law* (NBI), Las Vegas, Nevada, 2012

"The Basics of Family Law Jurisdiction" (Legal Aid Center of Southern Nevada & Willick Law Group), Las Vegas, Nevada, 2012

"Legal Standards for Mental Health Professional Outsourced Service Providers" (Clark County Family Mediation Center & Willick Law Group), Las Vegas, Nevada, 2012

"Liens, Judgments, Enforcements: Adjudicating an Attorney's Lien after *Argentena*" (Clark County Bar Ass'n), Las Vegas, Nevada, 2012

"Shakespeare & the Law" (UNLV Boyd School of Law), Las Vegas, Nevada, 2012

"Divorcing the Military: How to Attack . . . How to Defend"
Montana State Bar Association, Helena, Montana, 2012
Pension Rights Center, Washington, D.C., 2012
California Bar Family Law Section (webinar), 2010
Alaska State Bar, Anchorage, Alaska, 2009
U.S. Army JAG Corps, Kansas City, Missouri, 2008
New Mexico State Bar, Albuquerque, New Mexico, 2006
Las Vegas, Nevada, 2001
Kansas City, Kansas, 2001
Lexington, Kentucky, 2000
Vail, Colorado, 1996, 1998
Honolulu, Hawaii, 1995
San Diego, California, 1991
Washington, D.C., 1990
San Antonio, Texas, 1989

"The Great Debates" in *Advanced Family Law* (State Bar of Nevada), Las Vegas, Nevada, 2011

"Military Orders" (ABA), Las Vegas, Nevada, 2011

"Pre-nups and Post-nups" (Financial Divorce Association), National Teleseminar, 2011

"Double-Dipping: Is It an Asset, Income, or Both?" (American Institute of CPAs), Las Vegas, Nevada, 2011

"Characterization, Valuation and Division of Employment-Related Benefits" (Council of Community Property States & State Bar of Louisiana), New Orleans, Louisiana, 2011

"Cohabitation, Tacking, and Property Division" (Financial Divorce Association), National Teleseminar, 2011

"Selected Topics Concerning Enforcement of Judgments: Appeals, Stays, and Liens" in *Advanced Family Law* (State Bar of Nevada), Las Vegas, Nevada, 2010

"Civil Service Retirement and Divorce" (Financial Divorce Association), National Teleseminar, 2010

"State of Nevada Pensions: Information Relevant to Estate Planning & QDROs" (Clark County Bar Association), Las Vegas, Nevada, 2010

"Valuation and Disposition Strategies in a Changing Economy" (Council of Community Property States & State Bar of Washington), Seattle, Washington, 2010

"Qualified Domestic Relations Orders Under ERISA and Nevada PERS" (State Bar of Nevada), Ely, Nevada, 2010

"The Risks & Rewards of Post-Nuptial Agreements" in *Advanced Family Law* (State Bar of Nevada), Las Vegas, Nevada, 2009

"Back to Basics: Overview of Community Property" (Council of Community Property States & State Bar of New Mexico), Albuquerque, New Mexico, 2009

"The Basics of Family Law Jurisdiction" (Clark County Bar Association), Las Vegas, Nevada, 2009

"Kennedy v. DuPont Savings: The Supreme Court Kills Two Conflicts With One Decision" (ALI-ABA Telephone Seminar), National, 2009

"Child Custody & Support Jurisdiction: Separate but Equally Necessary" (State Bar of Nevada), Las Vegas, Nevada, 2008

"Hitting the Jackpot in Pension Cases – Secrets to Getting the Retirement Share Your Client Deserves" & "Marketing a Family Law Practice" (PESI National Divorce Skills Institute) Las Vegas, Nevada, 2006, 2007

"Managing A Family Law Practice" (State Bar of Idaho), Boise, Idaho, 2007

"The Inter-relation of Alimony Awards With Community Property" (Council of Community Property States & State Bar of Nevada), Las Vegas, Nevada, 2007

"Protecting the Interests of and Getting Money From People in the Military: What Can and Cannot Be Done" (International Academy of Matrimonial Lawyers), San Diego, California, 2007

"The Relationship Between Spouses and with Third Parties in Management of Joint, Common and Community Assets During Marriage and During a Divorce Proceeding" (Council of Community Property States & State Bar of Arizona), Phoenix, Arizona, 2006

"Alimony at Twilight: Effects on Establishing and Modifying Spousal Support of Parties Being At or Near Retirement Age" (Legal Education Institute), Aspen, Colorado, 2006

"Guns and Roses: Current Issues Facing Military Families" (California Assn. of Certified Family Law Specialists), Laguna Beach, California, 2005

"Disproportionate Division of Community Property" (Council of Community Property States & State Bar of Texas), Fort Worth, Texas, 2005

"Advanced Family Law: Pensions in Nevada Divorce Law" (Live Oak CLE), Las Vegas, Nevada, 2004

"Nevada Legal Ethics" (Lorman Education Services), Las Vegas, Nevada, 2004

"Divorce and the Family-Owned Business: Practical Considerations for Community Property States" (Council of Community Property States & State Bar of Wisconsin), Madison, Wisconsin, 2004

"International Kidnaping Response for Fun and Profit: Getting the Kids Home & Making the Bad Guys Pay" (Legal Education Institute), Aspen, Colorado, 2004

"Division of Retirement Benefits: The Full Day Course" (State Bar of New Mexico), Santa Ana Pueblo, New Mexico, 2003

"Everything You Wanted to Know About Retirement Benefits But Were Afraid to Ask" (Council of Community Property States & State Bar of Idaho), Coeur d'Alene, Idaho, 2003

"Waivers of Retirement Benefits for Disability Awards: Thrust & Parry" (Legal Education Institute), Aspen, Colorado, 2003

"Legends of the Courtroom" (Live Oak CLE), Las Vegas, Nevada, 2002

"Nevada Legal Ethics: A Year in Review" (State Bar of Nevada), Las Vegas & Reno, Nevada, 2002

"Matrimonial Agreements: Requirements for Validity" (Council of Community Property States & State Bar of Louisiana), New Orleans, Louisiana, 2002

"Characterization, Valuation and Division of Intangible Assets" (Council of Community Property States & State Bar of Washington), Seattle, Washington, 2001

"A Matter of Interest: Collection of Full Arrearages on Nevada Judgments" (State Bar of Nevada), Tonopah, Nevada, 2001

"Issues in Interstate and Multistate Matrimonial Litigation" (Legal Education Institute), Vail, Colorado, 1999 (reprinted, 13 Am. J. of Fam. Law 10-14, 1999)

"What Do You Do When They Don't Say 'I Do'? Cohabitant Relationships and Community Property" (Council of Community Property States & State Bar of Nevada), Las Vegas, Nevada, 1998

"'A Covenant with Death and an Agreement with Hell'; Death Benefits in Federal, State and Private Retirement Systems" (reprinted, 14 Am. J. of Fam. Law 31-43, 2000)
Vail, Colorado, 2000
Tonopah, Nevada, 1998

"Where Will the Money Go? Community Debt Issues & *Pendente Lite* Orders in Community Property States" (Council of Community Property States & State Bar of Arizona), Phoenix, Arizona, 1997

"Seven Tips on Using a Computer in a Family Law Case"
(American Bar Association General Practice Section) San Francisco, California 1997
(State Bar of Nevada) Las Vegas & Reno, Nevada, 1998

"Spousal Support Modifications and Related Issues in the Post-60 Age Group" in "The Perils of Poverty" (American Bar Association Family Law Section), San Francisco, California 1997

"Family Law for Certified Public Accountants," Las Vegas, Nevada, 1994

"Retirement Benefits/Pensions/QDROs" (State Bar of Nevada; Tonopah Showcase), Tonopah, Nevada, 1994

"Pensions in Nevada Divorce Cases" (State Bar of Nevada; Tonopah Showcase), Tonopah, Nevada, 1993

"Key Issues in Family Law," Las Vegas, Nevada, 1993

"Survival Utilities for the Family Lawyer: Three Little Programs" (American Bar Association Family Law Section), Washington, D.C., 1992

"Domestic Relations" – Law 252; (Community College Paralegal Instruction Course), Las Vegas, Nevada, 1990, 1991

"The Use of Personal Computers for Litigation in the 1990s," Las Vegas, Nevada, 1990-1995

"Domestic Law in Nevada: 'Winning' For Your Client," Las Vegas, Nevada, 1989, 1991

"Family Law in Nevada," Las Vegas, Nevada, 1989

"Know Your Rights in Divorce & Child Custody Issues," Las Vegas, Nevada, 1989

EDUCATION

Legal

Georgetown University Law Center, Washington, D.C., J.D. 1982
Editor (Captain), Jessup Cup International Law Moot Court Team, 1981-1982
Parliamentarian, Student Bar Association, 1982

Undergraduate

University of Nevada, Las Vegas, B.A. 1979 (English, With Distinction)
Phi Kappa Phi Honor Society
UNLV and National Dean's Lists
President, Student Senate
Author of Student Constitution
Awarded WICHE Legal Scholarship

AFFILIATIONS AND MEMBERSHIPS

State Bar of Nevada (admitted 1982)
State Bar of California (admitted 1983; inactive)
Fellow, American Academy of Matrimonial Lawyers (elected 1994)
Fellow, International Academy of Matrimonial Lawyers (elected 2000)
Martindale-Hubbell Bar Register of Preeminent Lawyers (2001-present)
American Bar Association
Clark County Bar Association
American, Nevada, and California Bar Family Law Sections
American Judges Association (Associate Member)
Nevada Council of Juvenile and Family Court Judges (Associate Member)
Nevada Network Against Domestic Violence
American Association for Justice
Nevada Association for Justice
Pro Bono Project Honor Roll of Participating Attorneys (1990-present)
Mensa (Nevada President 1975-1979, 1985-1986)

World Future Society (Nevada Coordinator, 1989-1994)

RECENT CASES IN WHICH EXPERT WITNESS TESTIMONY WAS PROVIDED/TAKEN

Hollenbeck v. Hollenbeck, No. 15DR11561 (2016, trial testimony)
ASNY v. Johnson, unfiled (2016, opinion letter)
Kilgore v. Kilgore, No. D-12-459171-D (2016, trial testimony)
Brisson v. Brisson, No. DV15-00670 (2016, opinion letter & trial testimony)
Tulpan v. Tulpan, No. DM 2005-2740 (2016, trial testimony)
Harry v. Snyder, No. A-13-678336-C (2015, opinion letter)
Anderson v. White, et. al, No. 2:13-cv-02097-JCM-VCF (2015, opinion letter)
Cyphers v. Cyphers, No. 14 DRI 000691B (2015, opinion letter)
Stanley v. Stanley, No. 14D005285 (2014, Declaration (opinion letter))
Mackey v. Fenu, No. A-12-663506-C (2014, opinion letter)
Wellington v. Roman, No. A-13-674981 (2014, opinion letter)
Holland v. Taylor, No. D 531842 (2013, deposition testimony)
Bivans v. Bivans, No. D192384 (2013, Independent Expert Opinion Report at Court Invitation)
Fox v. Fox, No. 12DS0126 (2013, trial testimony)
Sage v. Sage, No. D437842 (2013, opinion letter)
Rhodes v. Rhodes, No. D-11-454361-D (2012, opinion letter)
Cataldi v. Posin, No. A10-615025-C (2012, deposition testimony)
Issa v. Malek, Nos. 37-2011-00150022-PR-LS-NC & 37-2011-00150332-PR-EB-NC (2012, trial testimony)
Estate of Bernard Shapiro v. United States, No. 2:06-cv-01149-RCJ (2008-2012, opinion letter)
Harrel v. Hess Case No. 4FA-97-1823 CI (2011, opinion letter)
Csoka v. Jones et al Case No. A-11-640052-C (2011, opinion letter)
Baker v. Baker, Case No. DV10-00667 (2011, opinion letter)
In Re Marriage of Everitt-Sabel, Case No. RF09466027 (2011, opinion letter)
Banning v. Banning, Case No. D-95-187220 (2011, opinion letter)
Rizzolo adv. Henry, No. 2:08-CV-635-PMP-GWF (2010, opinion letter)
In re Jenny Harris, unknown (2010, opinion letter)
Banovich v. Banovich, unknown (2010, opinion letter)
Oxley v. Oxley, unknown (2010, opinion letter)
In re Morrill, unknown (2010, opinion letter)
In re Marriage of Villars and Villars, No. 3AN-02-4409CI (2010, trial testimony)
Club Vista Financial Services, et al. v. Scott Financial Services, et al., No. A579963 (2010, opinion letter)
Villars v. Villars, No. 3 AN-02-4409 Civil (2010, trial testimony)
Leibowitz v. Leibowitz, No. SD 036 455 (2010, trial testimony)
Dunning v. Dunning, No. 08-FA-18 (2009, arbitration hearing testimony)
Smith v. Arzino, No. 108CV109149 (2009, opinion letter)
Decker v. Decker, No. D-09-406881 (2009, trial testimony)
Klock, McCarthy, etc., unknown (2008-2009, arbitration hearing testimony)
Semancik, Weissen, unknown (2009, opinion letter)
Smith v. Sun State, unknown (2009, opinion letter)
Ewoldt v. Lok, No. A530071 (2008, deposition testimony)
Snyder v. Snyder, No. D07-366812D (2008, opinion letter)
Marriage of Nishimoto, No. 03-FL04183 (2007-2008, opinion letter)
Bornhorst v. Anderson, No. FDI-07-765197 (2007, opinion letter)
Frye v. Frye, D340021 (2006, trial testimony)
Boissonnas v. Newbold, No. DV00-02732 (2006, opinion letter)
Gramanz v. Jones, No. A322062 (2005, deposition testimony)
Wu v. Baker, unknown (2005, opinion letter)
In re: Sherwood, No. PD 034943 (2004, opinion letter)

Marriage of Daly, No. D-0101-DM-98-1020 (2004, opinion letter)
Van Kirk v. Van Kirk, No. 00FA823 (2004, opinion letter)
Valentine v. Eustice, 03-CA-002857 (2004, testimonial affidavit)
Holdermann adv. Dixon, No. D221111 (2004, opinion letter)
Marriage of Engeler, unknown (2004, opinion letter)
Sigloch v. Sigloch, No. PD032551 (2003-2004, opinion letter)

OTHER INFORMATION AND DISCLOSURES REQUIRED BY RULE OF PROFESSIONAL CONDUCT 1.4:

Estimate of Completed Jury and Bench Trials

In Nevada, there are no juries in Family Law cases. Mr. Willick has been taking such cases to trial since the 1980s, the number of which by now is estimated in the thousands. Most of these have been in Clark County (Las Vegas), in the original District Court, and in the Family Court once it was established in 1992. A much smaller number of cases were taken to trial in Washoe County (Reno) or other Nevada counties. Mr. Willick has participated in hundreds of divorce and pension cases in the trial courts of other States, as a consultant, expert, or as *amicus curia*.

Estimate of Appeals Briefed or Argued

Mr. Willick has been briefing and arguing appeals in the Nevada Supreme Court since 1984, the number of which by now is estimated at over 100, and has briefed and argued a smaller number of appeals in other States and to the Federal Ninth Circuit Court of Appeals, and twice briefed defense of cases appealed to the United States Supreme Court, obtaining denials of Cert. in both. (Many of these decisions, and the briefs that led to them, are posted on the Appeals page of the firm website.) Mr. Willick has participated in dozens of divorce and pension cases in other State and Federal appellate courts, as a consultant, expert, or as *amicus curia*.

Malpractice Insurance

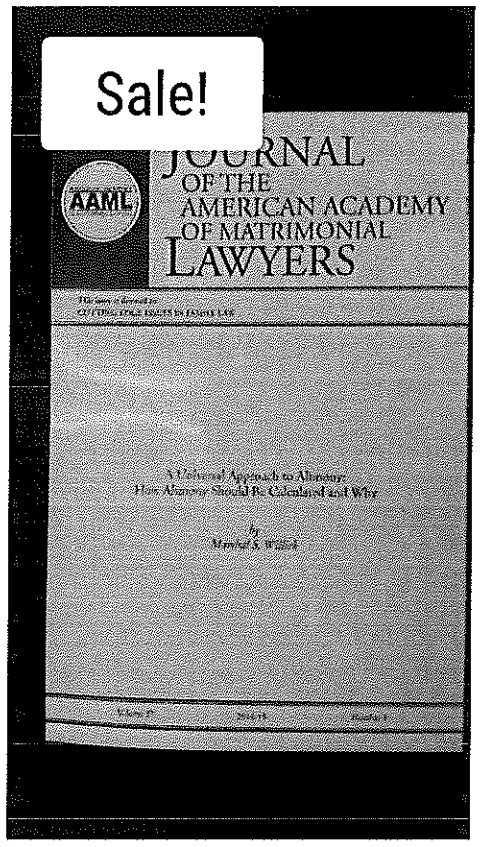
The Willick Law Group does maintain professional liability insurance, through Torus Specialty Insurance Company Harborside Financial Center, Plaza 5, Suite 2600 Jersey City, New Jersey 07311

EXHIBIT 9

702.438.4100 info@willicklawgroup.com

WILLICKLAWGROUP

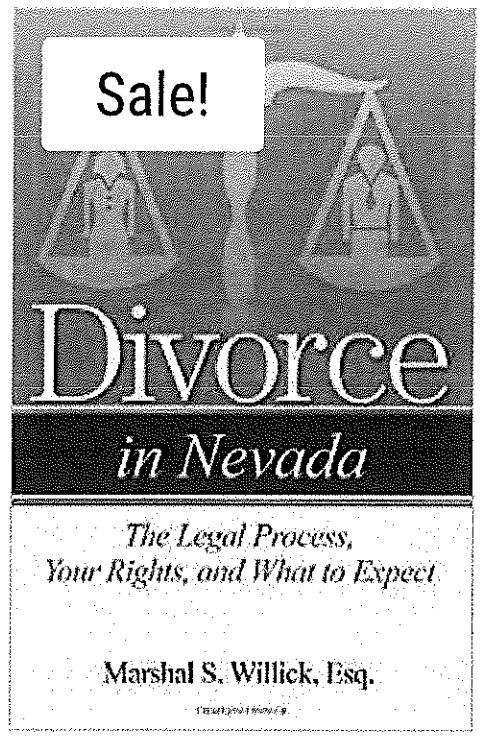
Select Page



A Universal Approach to Alimony: How Alimony Should be Calculated and Why

~~$5.00~~

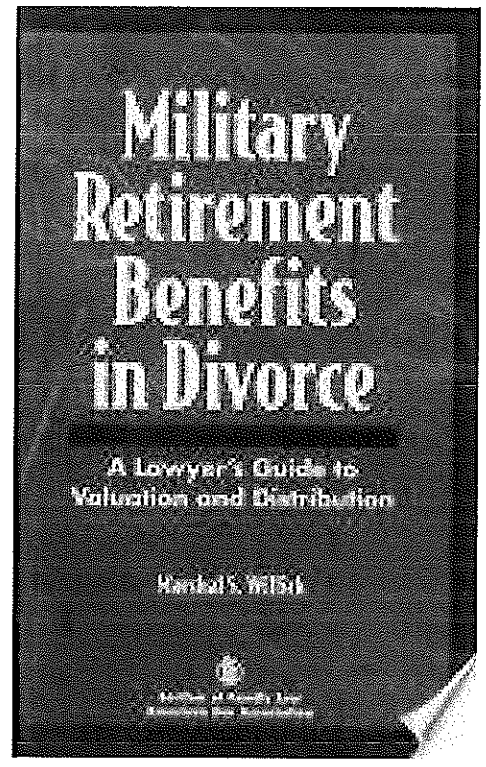
Free!



Divorce in Nevada: The Legal Process, Your Rights, and What to Expect

~~$21.95~~

$15.00



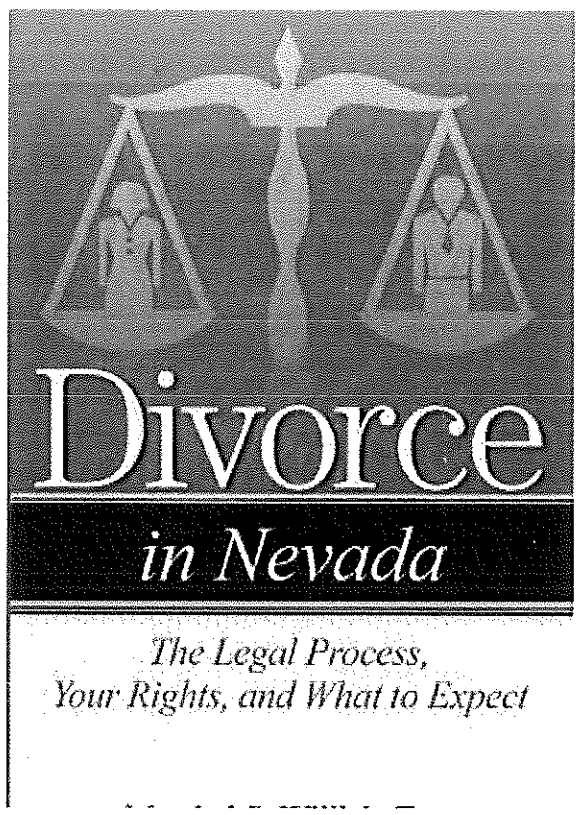
Military Retirement Benefits in Divorce: A Lawyer's Guide to Valuation and Distribution

$25.00

EXHIBIT 10

Posted October 29, 2014 - 5:00pm

Literary Las Vegas: Marshal S. Willick



The book "Divorce in Nevada: The Legal Process, Your Rights, and What to Expect" is part of Addicus Books' "Divorce In" series. (Special to View)

By GINGER MEURER
VIEW STAFF WRITER

"There has long been a need for a reference, written in plain English, from which ordinary men and women can get answers about how the divorce process works in Nevada and what to expect," writes attorney Marshal S. Willick.

The book "Divorce in Nevada: The Legal Process, Your Rights, and What to Expect," part of Addicus Books' "Divorce In" series, is Willick's answer to that need. He includes basic tips on when and how to find a lawyer, the process of serving divorce papers or receiving them and delves into details on custody, residency requirements, support, division of property and more. For more information, visit addicusbooks.com.

Excerpt:

It may have been a few years ago. Or, it may have been many years ago. Perhaps it was only months. But, when you said, "I do," you meant it. Like most people getting married, you

planned to be a happily married couple for the rest of your life.

But things happen. Life brings change. People change. Whatever the circumstance, you now find yourself considering divorce. The emotions of divorce run from one extreme to another as you journey through the process. You may feel relief and be ready to move on with your life. On the other hand, you may feel emotions that are quite painful. Anger. Fear. Sorrow. Guilt. A deep sense of loss or failure. It is important to find support for coping with all these strong emotions.

Because going through a divorce can be an emotional time, having a clear understanding of the divorce process and what to expect will help you make better decisions. And, when it comes to decision making, search inside yourself to clarify your intentions and goals for the future. Let those intentions be your guide.

Las Vegas Book Briefs for...

Comic book festival offers...

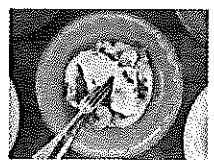

Longtime Las Vegas entertainer and TV host Tony Sacca dies at 65

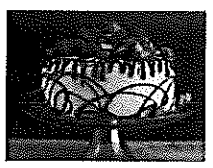

Sounding Off
Vegas Music Summit aims to help artists break into the music business

More Columnists

Buddy Valastro's Chocolate-Covered Pretzel Cake
Rachael Ray Show

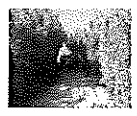
More videos:

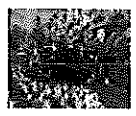




CALENDAR

WED	THU	FRI	SAT	SUN	MON	TUE	A
1	2	3	4	5	6	7	All Week


Welcome Walk
Clark County Wetlands Park
Sunday, Jan 22, 10:00 am


BELLAGIO CONSERVATORY EXHIBIT
Bellagio
Monday, Jan 23,


AUSSIE HEAT
Miracle Mile Shops at Planet Hollywood
Thursday, Jan 26, 10:30 pm


Cool Change
Fiesta Rancho
Friday, Jan 27, 8:30 pm

Search for... Search

LAS VEGAS SUN

Surprise witness: Facebook

Any posts, pictures you put on social media websites can and may be used against you in a (divorce) court of law

By Steve Kanigher

Friday, April 30, 2010 | 2:01 a.m.

Divorce lawyers have a friend in Facebook.

It's a fishing expedition — in a stocked pond. Delving into the social networking website "is fun for lawyers because you can find the proverbial smoking gun," says Mary Anne Decaria of Reno, president of the Nevada chapter of the American Academy of Matrimonial Lawyers.

One recent example: A Las Vegas attorney helped a professional basketball player lower his monthly child support payments to his ex-wife, thanks in part to a photo of the woman's mother on Facebook.

Attorney Marshal Willick set out to prove that the ex-wife had been spending only a few hundred dollars on the basketballer's child even though he was giving her a monthly check of more than $10,000. Willick struck gold when the mother's Facebook page showed her standing next to an expensive new Jaguar automobile. It turned out the ex-wife had used money from her child support checks to buy the car for her mother.

Welcome to 21st century family law, a branch of litigation that over the past five years has become increasingly reliant on Facebook, MySpace, Twitter and other popular social networking websites that volunteer information that can shoot holes through such court contentions as "I'm a responsible parent. Therefore, I deserve custody of the child," or "I'm broke and can't afford alimony."

A survey released in February by the American Academy of Matrimonial Lawyers confirmed the increasing reliance on Internet-based social networking evidence in divorce cases and cited Facebook as by far the leading source of that information.

According to Facebook's numbers, it has about 120 million users in the U.S. Estimates are that slightly more than a million Nevadans are Facebook users who share personal information with friends, relatives and co-workers. Those who aren't careful about its privacy settings often learn to their chagrin that revelations they thought would be kept among a small group of people actually can be broadcast to a far wider audience, however.

And no matter the privacy settings, when a court battle gets under way, lawyers can be counted upon to pursue records for Facebook and other social media.

Las Vegas attorney Edward Kainen, an academy member, has taken advantage of social networking information

on numerous occasions.

"It's fairly common when you deal with child custody cases," Kainen says. People post all sorts of things that lawyers can use against them.

Particularly common are photos of a drunk parent, not exactly the image you would want a judge to see while trying to plead your case in a custody or alimony dispute.

In one case where a man in a divorce case claimed to have no money to pay alimony, Kainen obtained Facebook photos showing the guy in a drunken stupor inside a Las Vegas resort.

"He claimed he was only earning $1,300 a year, but he was partying much like a rock star," Kainen says. The case was resolved in favor of Kainen's client.

In another case, a parent who had custody of a teenager claimed to be properly supervising that child. But Kainen won the case for the other parent partly on the strength of information from a MySpace page in which the teenager bragged about being sexually active.

Willick says the wealth of social networking information that can be gleaned from the Internet has made it indispensable in gathering evidence. He even uses websites such as the popular Wayback Machine to retrieve older, incriminating Internet submissions that an opposing spouse assumed had been removed from cyberspace.

"It's amazing what people tell the universe," he said. "It's unwise to put something on the Internet and say something else in court."

Willick this year won an alimony modification dispute for a woman whose unemployed ex-husband had earned a six-figure salary as an information technology professional. The man, who wanted his alimony payments reduced, had told a judge that he was diligently looking for work in his profession but was unable to find a job. Willick shot holes through that story when he produced the man's Facebook page on which he claimed he was a helicopter pilot.

Willick was able to successfully argue that the man "clearly wasn't seeking work in his field. If you're putting out information that you're a helicopter pilot, you're not likely to get hired by an information technology company."

http://elkodaily.com/news/opinion/commentary-nevada-divorce-rate-still-highest-in-nation/article_b1b7f902-11e3-bf1c-001a4bcf887a.html

Commentary: Nevada divorce rate still highest in nation

Jun 21, 2014

Some 17,300 Nevadans filed for divorce last year, once again making Nevada the state with highest divorce rate in the nation. The top five states were rounded out by Maine, Oklahom Oregon, and Arkansas.

Why the high divorce rate in Nevada?

"It's rather complex," said divorce expert Marshal Willick of Las Vegas. "Our population has mushroomed, and a large percentage of those moving here have financial problems or oth stressors. At the same time, their lack of local extended family may put additional pressure marriages, all of which affects the divorce rate. And Nevada divorces are typically faster an easier to navigate than those in many other places."

Willick, a divorce attorney who has helped thousands of couples divorce, is also author of t newly released book, "Divorce in Nevada — The Legal Process, Your Rights, and What to Ex (Addicus Books, June 2014).

With some 30 years of experience in handing divorce cases, what is Willick's advice to coup who are divorcing?

He offered the following 10 tips for getting divorced in Nevada:

1. Hire an experienced family law attorney early on. Communicate with your attorney clear

and often. "Do it yourself" is often an invitation to disaster.

2. Divorce can raise many issues. There is a common misperception that divorce or family l "simple." But really, family law incorporates nearly every other area of law, including parts interstate jurisdiction, tort, criminal, tax, and general civil law. Make sure you explore all po issues with your lawyer.

3. Family law can be uncivil. Emotions often run hot, because loss of a marriage, having or l contact with a child, and keeping or handing over treasured property triggers sometimes extreme reactions. Even so, you should try to reach agreements whenever you can do so without surrendering your principles, to minimize fees, the emotional toll on you and othe and the duration of the divorce process.

4. Knowledge is power, and time is money. Actively and honestly assist your attorney in understanding all the facts relevant to your financial and custody issues. The more clear, complete, and organized you are, the better your outcome is likely to be, and the lower the to you of getting there.

5. Let go of "fault." In Nevada, determining whether a spouse is "at fault" is irrelevant to wh a divorce will be granted, or to the outcome of most property, alimony and custody issues.

6. Be realistic. Discuss with your lawyer the probable outcomes of property, alimony, and custody disputes, and realize that there are often no "winners" in divorce litigation; your go to get through the process with as little harm, and as bright a foreseeable future, as is poss for you and your children.

7. Take the long view. Try to make those decisions that — 10 years from now — you will wi had made, and make your behavior now something you will be proud to look back on.

8. If you have children with your spouse, remember that the two of you will have lasting tie parents, and make sure your words and actions reflect that reality.

9. Be prepared to feel emotional highs and lows. It is normal, and if you expect it you can d with it better when you feel it. Try to maintain a support network of family and friends to a you with the emotional side of the divorce process, but do not lean on your children as you

emotional support, or try to enlist them as allies — they will have their own needs.

10. Be patient. Contested divorce proceedings can take months, or years, and family law decisions often change the courses of multiple people's lives. Decisions such as custody, ch support, and alimony are usually modifiable. Even final orders of payments due or propert division may take years to complete.

———————

Marshal S. Willick is the principal of the Willick Law Group, an A/V rated family law firm in L Vegas.

Currents

QUIZ: How much do you know about home improvement?

QUIZ: How much do you know about home improvement?

Which states have the most school-related arrests?

Which states have the most school-related arrests?

Photos: A Paris h couture collectio conception to cat +26

Photos: A Pari haute couture collection fron conception to catwalk

Today's top pics: Super Bowl 51 hype kicks-off and more

Your daily 6: Big change for Boy Scouts, deadline

Today In History, Jan. 31: Explorer I

Today's Birthd Jan. 31: Kerry Washington

day for Obamacare and LeBron lashes out

Lillard has 27 and the Blazers beat slumping Hornets 115-98

Muzzin's late goal gives Kings 3-2 win over Arizona

Scheifele, Trouba score as Jets beat Blues 5-3

Chara nets go-ahead goal 3rd, Bruins bea Lightning 4-3

TODAY'S TOP VIDEO

Sen. Hatch: Democrats 'idiots' for boycotting

Sen. Hatch: Democrats 'idiots' for boycotting

This snake got stuck where?

This snake got stuck where?

Sessions grills Yates on duty (2015)

Sessions grills Yates on duty (2015)

Pelosi on ban: Stat of Liberty is in tear

Pelosi on ban: Statue of Libert is in tears

10 Tips for Getting Divorced in Nevada

By Cherese Jackson (http://guardianlv.com/author/cheresejackson/) on June 18, 2014 · No Comment (http://guardianlv.com/2014/06/10-tips-for-getting-a-divorce/#respond)

The divorce rate in Nevada is still the highest in the nation

according to divorce expert Marshal Willick. Willick is a divorce attorney who has helped thousands of couples disconnect and is also the author of the newly released book, *Divorce in Nevada: The Legal Process, Your Rights, and What to Expect.* In conjunction with his expertise he has shared 10 tips for getting divorced in Nevada.

Some 17,300 Nevadans filed for divorce last year, once again making Nevada the state with the highest divorce rate in the nation. The top five states were rounded out by Maine, Oklahoma, Oregon, and Arkansas. The state with the lowest divorce rate is New Jersey.

Why the high divorce rate in Nevada? "It's rather complex," explains divorce expert Marshal Willick of Las Vegas.

Our population has mushroomed, and a large percentage of those moving here have financial problems or other stressors. At the same time, their lack of local extended family may put additional pressure on marriages, all of which affects the divorce rate. And Nevada divorces are typically faster and easier to navigate than those in many other places.

With some thirty years of experience in handing divorce cases, divorce can be an emotionally rough time, says Willick. His advice to couples who are in the process of disconnecting and going their separate ways is,

> *Try to set emotions aside, at least long enough to take the long view and make decisions that they will be comfortable with ten years from now.*

Willick points out that such decision-making is not always easy when you might be filled with anger or hurt.

When asked why he wrote the book Willick responded,

> *I wrote the book to educate those going through divorce. I believe knowledge is power, and reduces fear. Understanding what you are doing, and why you are doing it, can help you make better life decisions, and understanding the process usually makes coping with it easier emotionally.*

Here are 10 tips for getting divorced in Nevada by Attorney Marshal S. Willick:

1. ***Hire an experienced family law attorney early on:*** Communicate with your attorney clearly and often. The "Do it yourself" method is often an invitation to disaster.
2. ***Divorce can raise many issues*:** There is a common misperception that divorce or family law is "simple." But really, family law incorporates nearly every other area of law, including parts of interstate jurisdiction, tort, criminal, tax, and general civil law. Make sure you explore all possible issues with your lawyer.
3. ***Family law can be uncivil*:** Emotions often run hot, because loss of a marriage, having or losing contact with a child, and keeping or handing over treasured property triggers sometimes extreme reactions. Even so, you should try to reach agreements whenever you can do so without surrendering your principles, to minimize fees, the emotional toll on you and others, and the duration of the divorce process.
4. ***Knowledge is power, and time is money*:** Actively and honestly assist your attorney in understanding all the facts relevant to your financial and custody issues. The more clear, complete, and organized you are, the better your outcome is likely to be, and the lower the cost to you of getting there.
5. ***Let go of "fault"*:** In Nevada, determining whether a spouse is "at fault" is irrelevant to whether a divorce will be granted, or to the outcome of most property, alimony, and custody issues.
6. ***Be realistic*:** Discuss with your lawyer the probable outcomes of property, alimony, and custody disputes, and realize that there are often no "winners" in divorce litigation; your goal is to get through the process with as little harm, and as bright a foreseeable future, as is possible for you and your children.

7. ***Take the long view*:** Try to make those decisions that – ten years from now – you will wish you had made, and make your behavior now something you will be proud to look back on.
8. ***If you have children with your spouse, remember that the two of you will have lasting ties as parents*:** Make sure your words and actions reflect that reality.
9. ***Be prepared to feel emotional highs and lows*:** It is normal, and if you expect it you can deal with it better when you feel it. Try to maintain a support network of family and friends to assist you with the emotional side of the divorce process, but do not lean on your children as your emotional support, or try to enlist them as allies – they will have their own needs.
10. ***Be patient*:** Contested divorce proceedings can take months, or years, and family law decisions often change the courses of multiple people's lives. Decisions such as custody, child support, and alimony are usually modifiable. Even final orders of payments due or property division may take years to complete.

Not only has Willick litigated trial and appellate cases in Nevada, he has also participated in hundreds of divorce and pension cases in the trial and appellate courts of other states. Willick has also participated in the drafting of various state and federal statutes in the areas of divorce and property division.

Nevada divorce rate is the highest in the nation however by following these 10 tips shared by divorce expert Marshal Willick the separation process should end much smoother. This expert has helped thousands of couples go their separate ways. In addition to these tips he has written the newly released book *Divorce in Nevada: The Legal Process, Your Rights, and What to Expect*.

Opinion By: *Cherese Jackson (Virginia)*

Sources:

Nevada Judiciary (http://nvcourts.gov/)
Willick Law Group (http://www.willicklawgroup.com/)
Addicus Books

book (http://guardianlv.com/tag/book/), divorce (http://guardianlv.com/tag/divorce/), law

(http://guardianlv.com/tag/law/), Marshal Willick (http://guardianlv.com/tag/marshal-willick/)

10 Tips for Getting Divorced in Nevada added by **Cherese Jackson (http://guardianlv.com/author/cheresejackson/)** *on June 18, 2014*

View all posts by Cherese Jackson → (http://guardianlv.com/author/cheresejackson/)

EXHIBIT 11

Steven: Hi and good afternoon. Tell us about you.

Mr. Willick: I am a local domestic relations attorney, family law attorney. I've been in practice here since 1982. I don't know what else you want to know.

Steven: Well, I've done a lot of research on you, Mr. Willick, and I've known you throughout the years. A lot of the attorneys look at you as the Professor of Family Law. How do you feel about that because you wrote a lot of books and thesis and you've done a lot of instructional seminars and stuff like that?

Mr. Willick: In every state there tends to be one guy who tends to write the instruction manuals and the text books and teach the courses. For here in Family Law that's pretty much my role.

Steven: I just want to get right down to the chase. You and I have been opposite sides of the service connected disability benefits that are ... The Federal law is that you cannot use service-connected disability benefits for anything. Two sessions ago you were on satellite from the Grand Sawyer. You testified on the opposite side of the service connected disability benefits. This session you also testified on the opposite side.

I forgot where you were. You were in one of the rurals. I was in Carson City testifying. You were in one of the rurals. You had a couple folks that showed up in Carson City testifying committee for you. I have your letter that you gave. You wrote specifically when we were talking about Assembly Bill 140, which is the bill to stop Nevada Family Court judges for using service connected disability benefits for alimony. You said it would prevent courts from using the actual income of a small group of people as opposed to everyone else who gets divorced. I've got to ask you something before I continue Mr. Willick, have you ever served in the military?

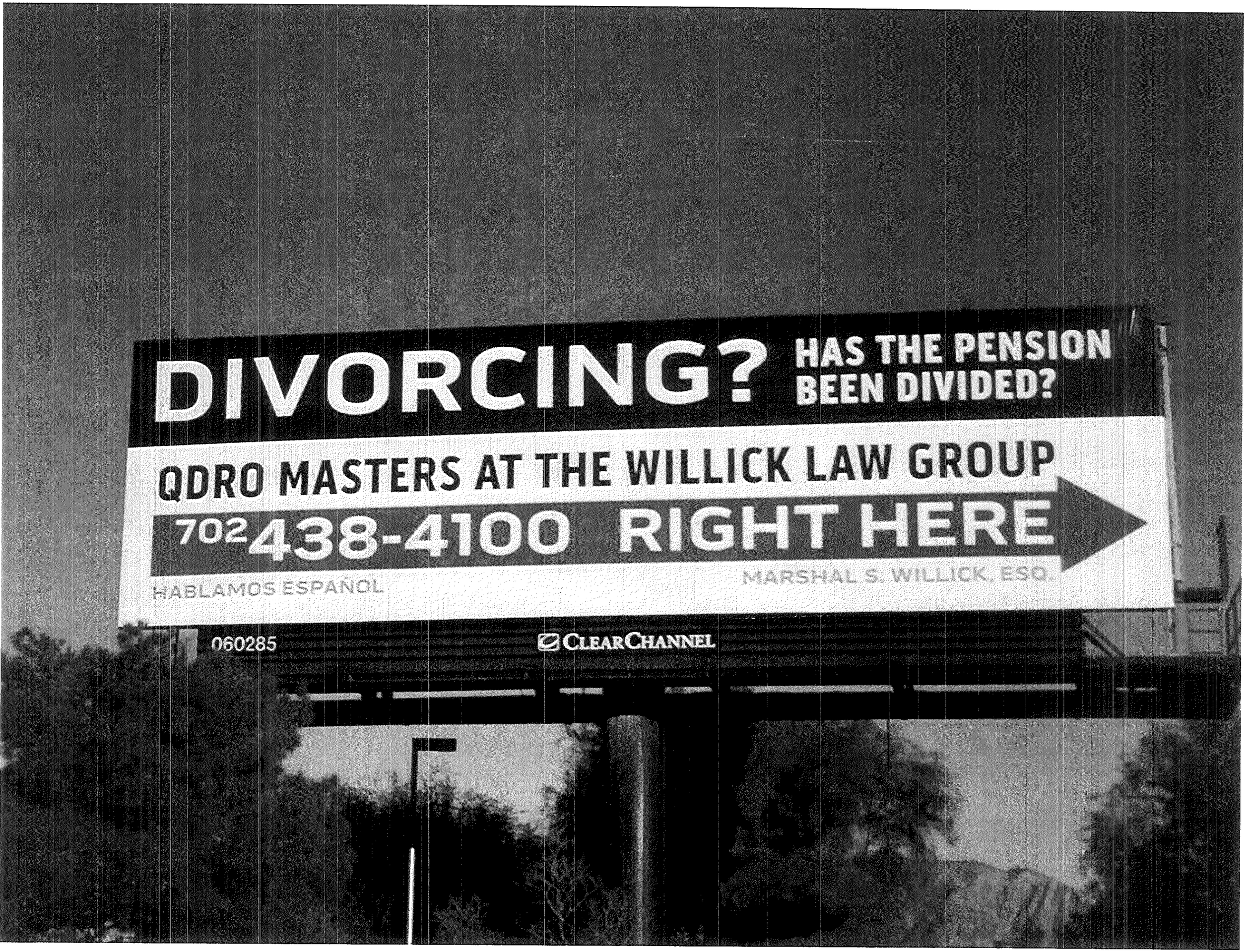
Mr. Willick: No, sir.

Steven: Okay. In another part of this letter you wrote as testimony you said, "I have studied these issues and taught courses to other lawyers on this subject for over 20 years. Assembly Bill 140 is awful in every way, masquerading as a flag waving exercise." I've got to ask because there was another statement you write in your testimony. You were comparing a spouse with their PTSD to a military veteran with his. I've got to ask you something, Mr. Willick. Have you ever shot anybody?

Mr. Willick: No.

Steven: Have you ever taken a life?

EXHIBIT 12


DIVORCING? HAS THE PENSION BEEN DIVIDED?
QDRO MASTERS AT THE WILLICK LAW GROUP
702 438-4100 RIGHT HERE
HABLAMOS ESPAÑOL
MARSHAL S. WILLICK, ESQ.
060285
CLEAR CHANNEL

CERTIFICATE OF SERVICE

I am over the age of 18 and am not a party to the within action.

On this date I asked the court to E-serve a true and correct copy of the document entitled DECLARATION OF ANAT LEVY IN SUPPORT OF ANTI-SLAPP MOTION TO DISMISS on the below listed recipients through its e-serve service on wiznet to the following recipients.

Jennifer Abrams, Esq.
The Abrams & Mayo Law Firm
6252 S. Rainbow Blvd., Ste. 100
Las Vegas, NV 89118
(702) 222-4021
JVAGroup@theabramslawfirm.com

Alex Ghoubadi, Esq.
G Law
320 E. Charleston Blvd., Ste. 105
Las Vegas, NV 89104
(702) 217-7442
alex@alexglaw.com

Courtesy Copy:
Maggie McLetchie, Esq.
McLetchie Shell
702 E. Bridger Ave., Ste. 520
Las Vegas, NV 89101
(702) 728-5300
Maggie@nvlitigation.com

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

Executed this 17th day of February, 2017, in Las Vegas, NV

MDSM
Anat Levy, Esq. (State Bar No. 12550)
ANAT LEVY & ASSOCIATES, P.C.
5841 E. Charleston Blvd., #230-421
Las Vegas, NV 89142
Phone: (310) 621-1199
E-mail: alevy96@aol.com; Fax: (310) 734-1538
Attorney for: DEFENDANTS VETERANS IN POLITICS INTERNATIONAL, INC. AND STEVE SANSON

DISTRICT COURT
CLARK COUNTY, NEVADA

MARSHALL S. WILLICK and WILLICK LAW GROUP, Plaintiffs, vs. STEVE W. SANSON; HEIDI J. HANUSA; CHRISTINA ORTIZ; JOHNNY SPICER; DON WOOOLBRIGHTS; VETERNAS IN POLITICS INTERNATIONAL, INC.; SANSON CORPORATION; KAREN STEELMON; and DOES 1 THROUGH X Defendants.	Case No.: A-17-750171-C Dept. No.: ~~XIX (19)~~ 18 [Filed concurrently with Motion to Dismiss for Failure to State a Claim, Request for Judicial Notice, and Motion to Strike.]

MOTION TO DISMISS

NINTH CAUSE OF ACTION FOR COPYRIGHT INFRINGEMENT FOR LACK OF SUBJECT MATTER JURISDICTION (NRCP §12(b)(1))

Defendants Veterans in Politics International, Inc. and Steve W. Sanson hereby move to dismiss plaintiffs Marshal Willick and his law firm's, Willick Law Group's, ninth cause of action for copyright infringement for lack of subject matter jurisdiction.

The motion is based on the original and exclusive jurisdiction of federal courts over copyright infringement claims.

This motion is made pursuant to NRCP 12(b)(1), and is based on the accompanying Memorandum of Points and Authorities, the accompanying motion to dismiss all of the

remaining causes of action in the complaint pursuant to NRCP 12(b)(5); the pleadings and court records, and any argument and evidence submitted at the time of hearing.

DATED: February __, 2017

By:
Attorney for: VETERANS IN POLITICS INTERNATIONAL, INC. and STEVE W. SANSON

Anat Levy, Esq.
NV Bar No. 12250
Anat Levy & Associates, P.C.
5841 E. Charleston Blvd., #230-421
Las Vegas, NV 89142
Cell: (310) 621-1199
Alevy96@aol.com

NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned counsel will appear at the Clark County Courthouse, Eighth Judicial District Court, Las Vegas, Nevada on the 04 day of April, 2017 at 9:00 A.m. in Department ~~XIX~~ XVIII, or as soon thereafter as counsel may be heard, to bring this MOTION TO DISMISS NINTH CAUSE OF ACTION FOR COPYRIGHT INFRINGEMENT FOR LACK OF SUBJECT MATTER JURISDICTION (NRCP §12(b)(1)), on for hearing.

DATED: February __, 2017

By:
Attorney for: VETERANS IN POLITICS INTERNATIONAL, INC. and STEVE W. SANSON

Anat Levy, Esq.
NV Bar No. 12250
Anat Levy & Associates, P.C.
5841 E. Charleston Blvd., #230-421
Las Vegas, NV 89142
Cell: (310) 621-1199
Alevy96@aol.com

MEMORANDUM OF POINTS AND AUTHORITIES

This motion to dismiss Plaintiff Marshall Willick and his law firm's, Willick Law Group, ninth cause of action for lack of subject matter jurisdiction is made by defendants Veterans in Politics International, Inc. and its President, Steve Sanson.

The background to this case is set forth in Defendants' accompanying motion to dismiss for failure to state a claim with regard to all of the other purported claims in the complaint, under NRCP 12(b)(5), and is incorporated herein by reference.

This motion deals solely with Plaintiffs' ninth cause of action for federal copyright infringement, over which this Court lacks subject matter jurisdiction.

Plaintiffs ninth cause of action presumably pertains to (though the complaint does not specify) photos of plaintiff Marshal Willick that VIPI posted as part of its articles about Plaintiffs and which form the gravamen of the complaint. This purported cause of action should be dismissed for the following reasons:

First, federal courts have *exclusive subject matter jurisdiction* over copyright claims. 28 U.S.C. 1338(a) states in pertinent part as follows:

> "The district courts shall have original jurisdiction of any civil action arising under any Act of Congress relating to patents, plant variety protection, copyrights and trademarks. No State court shall have jurisdiction over any claim for relief arising under any Act of Congress relating to patents, plant variety protection, or copyrights."

Consequently, this Court cannot hear matters pertaining to this purported claim, and this alone suffices to dismiss this cause of action.

Second, Plaintiffs cannot file copyright infringement claim before registering their copyrights with the U.S. Copyright Office. 17 U.S.C. 411(a) states "no civil action for infringement of the copyright in any United States work shall be instituted until . . . registration of the copyright claim has been made in accordance with this title." Plaintiffs admit that they have not yet obtained copyright registrations for their works: "Defendants have infringed upon Plaintiffs' photographic works owned by Plaintiff, for which copyright registration is being

sought…". (Cmplt. ¶ 90.) The registration of copyright is an essential element of a cause of action for copyright infringement.

Accordingly, Defendants respectfully request that the Court:

a. Dismiss the ninth cause of action for Copyright Infringement for lack of subject matter jurisdiction;

b. Order the payment of Plaintiffs' reasonable attorney's fees and costs in connection with this motion; and

c. For such other and further relief as the court deems just and proper.

DATED: February 24, 2017

By: _____
Attorney for: VETERANS IN POLITICS INTERNATIONAL, INC. and STEVE W. SANSON

Anat Levy, Esq.
NV Bar No. 12250
Anat Levy & Associates, P.C.
5841 E. Charleston Blvd., #230-421
Las Vegas, NV 89142
Cell: (310) 621-1199
Alevy96@aol.com

CERTIFICATE OF SERVICE

I am over the age of 18 and am not a party to the within action.

On this date I caused to be served a true and correct copy of the document entitled MOTION TO DISMISS NINTH CAUSE OF ACTION FOR COPYRIGHT INFRINGEMENT FOR LACK OF SUBJECT MATTER JURISDICTION (NRCP §12(b)(1)) on the below listed recipients by requesting the court's wiznet website to E-file and E-serve such document to the email addresses listed below.

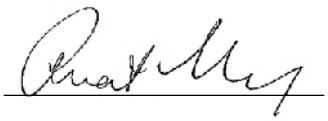
Jennifer Abrams, Esq.
The Abrams & Mayo Law Firm
6252 S. Rainbow Blvd., Ste. 100
Las Vegas, NV 89118
(702) 222-4021
JVAGroup@theabramslawfirm.com

Alex Ghoubadi, Esq.
G Law
320 E. Charleston Blvd., Ste. 105
Las Vegas, NV 89104
(702) 217-7442
alex@alexglaw.com

Courtesy Copy:
Maggie McLetchie, Esq.
McLetchie Shell
702 E. Bridger Ave., Ste. 520
Las Vegas, NV 89101
(702) 728-5300
Maggie@nvlitigation.com

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

Executed this 2nd day of March 2017, in Las Vegas, NV



MDSM
Anat Levy, Esq. (State Bar No. 12550)
ANAT LEVY & ASSOCIATES, P.C.
5841 E. Charleston Blvd., #230-421
Las Vegas, NV 89142
Phone: (310) 621-1199
E-mail: alevy96@aol.com; Fax: (310) 734-1538
Attorney for: DEFENDANTS VETERANS IN POLITICS INTERNATIONAL, INC. AND STEVE SANSON

DISTRICT COURT
CLARK COUNTY, NEVADA

MARSHALL S. WILLICK and WILLICK LAW GROUP, Plaintiffs, vs. STEVE W. SANSON; HEIDI J. HANUSA; CHRISTINA ORTIZ; JOHNNY SPICER; DON WOOOLBRIGHTS; VETERNAS IN POLITICS INTERNATIONAL, INC.; SANSON CORPORATION; KAREN STEELMON; and DOES 1 THROUGH X Defendants.	Case No: A-17-750171-C Dept.: ~~XIX (19)~~ 18 [Filed concurrently with Request for Judicial Notice, Motion to Dismiss for Lack of Subject Matter Jurisdiction, and Motion to Strike.]

MOTION TO DISMISS

FOR FAILURE TO STATE A CLAIM (NRCP § 12(b)(5))

Defendants Veterans in Politics International, Inc. and Steve W. Sanson hereby move to dismiss the complaint for failure to state a claim.

This motion is made pursuant to NRCP 12(b)(5), and is based on the accompanying Memorandum of Points and Authorities, the accompanying Request for Judicial Notice, the accompanying motion to dismiss plaintiffs' ninth cause of action for copyright infringement for lack of subject matter jurisdiction, the accompanying motion to strike, pleadings and court records, and any argument and evidence submitted at the time of hearing.

DATED: February __, 2017

By:
Attorney for: VETERANS IN POLITICS INTERNATIONAL, INC. and STEVE W. SANSON
Anat Levy, Esq.
NV Bar No. 12250
Anat Levy & Associates, P.C.
5841 E. Charleston Blvd., #230-421
Las Vegas, NV 89142
Cell: (310) 621-1199
Alevy96@aol.com

NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned counsel will appear at the Clark County Courthouse, Eighth Judicial District Court, Las Vegas, Nevada on the 04 day of April, 2017 at 9:00 A.m. in Department ~~XIX~~ XVII, or as soon thereafter as counsel may be heard, to bring this MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM (NRCP § 12(b)(5), on for hearing.

DATED: February __, 2017

By:
Attorney for: VETERANS IN POLITICS INTERNATIONAL, INC. and STEVE W. SANSON
Anat Levy, Esq.
NV Bar No. 12250
Anat Levy & Associates, P.C.
5841 E. Charleston Blvd., #230-421
Las Vegas, NV 89142
Cell: (310) 621-1199
Alevy96@aol.com

TABLE OF CONTENTS

Table of Authorities

Cases

Statutes

Treatises

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is a case of a public figure family law attorney, Marshal Willick (and his co-Plaintiff law firm Willick Law Group), apparently believing that he should be immune from criticism.

This case is a companion case to an identical complaint filed by Willick's fiancé, Jennifer Abrams, which case is presently pending before the Hon. Valerie Adair in Dept. 21. (See complaint in Abrams v. Schneider, case no. A-17-749318-C, attached as Ex. 1 to Request for Judicial Notice filed concurrently herewith.). Notably, Willick is representing Abrams in that case, just as Abrams is representing Willick in this case. Both lawyers are suing the same defendants and both allege identical causes of action. Abrams' suit is based on criticisms of her and her firm, and Willick's instant action is based on five recent statements that Defendant Veterans in Politics International, Inc. ("VIPI") made that were critical of Willick and his firm.

Notably, this isn't the first time that plaintiff Willick has filed an identical complaint. In 2012, he sued another veterans group and its colleagues for the same causes of action as in this case (including RICO, emotional distress, false light, etc.), for likewise criticizing him and his firm. (See complaint in Willick et. al. v. Beery et. al., case no. A-12661766-C, attached as Ex. 2 to Request for Judicial Notice.) That case, in which the principal defendants were unrepresented by counsel, lingered in the courts for years and ultimately resulted in a non-monetary settlement with the principal defendants.

It is becoming clear that attorney Willick, and now his fiancé attorney Abrams, are using the court to strong-arm their critics into silence. This Court should put an end to this vexatious tactic.

Defendants VIPI and its President, Steve Sanson[1] hereby move to dismiss Plaintiffs' "everything-but-the-kitchen-sink" complaint which purports to allege claims for defamation, intentional and negligent infliction of emotional distress, false light invasion of privacy,

[1] Other defendants are represented by other counsel.

business disparagement, concert of action, civil conspiracy, RICO violations, copyright infringement and for "injunction," all for five statements that VIPI made online about Plaintiffs from December 25, 2016 to January 14, 2017.

As shown below, each of the statements at issue are either demonstrably true and can be established through judicially noticeable facts or constitute non-actionable opinion as evident by the very allegations in the complaint.

Further, other than factual recitations about the statements themselves, the complaint is devoid, and at best scant, of other facts. Rather, it recites page after page of legal conclusions and recitals of elements of purported claims, none of which suffice to constitute a cause of action.

The complaint fails in its totality for the following reasons:

a. Plaintiffs' first cause of action for defamation, which is the gravamen of the complaint, fails because Defendants' statements, as evident from the Complaint or from matters from which the Court can take judicial notice, were true, substantially true, constituted non-actionable opinion, or were absolutely privileged. Moreover, Plaintiffs are public figures, and have failed to factually allege "malice" by Defendants as required to establish the claim.

b. Plaintiffs' fourth and fifth causes of action for "false light" and "business disparagement," respectively, fail for the same reason. The statements are, as evident from the Complaint or from matters of which the Court can take judicial notice, true or constitute opinion or are privileged. Further, there is no factual allegation to support a claim of special damages as required for a claim for Business Disparagement.

c. Plaintiffs' second and third causes of action for intentional and negligent infliction of emotional distress fail because the claims are based on the same protected speech and cannot therefore serve as a basis for these claims. Moreover, Defendants' statements do not amount to the type of "outrageous" and socially unacceptable conduct required for a claim of intentional infliction of emotional distress, and the purported cause of action for negligent infliction of emotional distress fails to even allege the required elements of the claim let alone allege facts in support of the claim.

And, contrary to the allegations in the complaint, plaintiff Willick Law Group, a corporate entity, is incapable of suffering emotional distress and cannot therefore assert a claim for either one.

d. Plaintiffs' eighth cause of action for purported RICO violations is frivolous. First, only one of the predicate crimes alleged in the complaint is a "RICO related crime" as defined and required by NRS 207.360. And, that single purported crime is pleaded with no facts whatsoever. It is well established that RICO claims must be pled with heightened specificity, the same specificity that is required in an indictment. Hale v. Burkhardt, 104 Nev. 632, 637-638, 764 P.2d 866 (1988) Since this specificity is wholly lacking, the claim should be dismissed. Further, since the rest of the purported crimes alleged are legally irrelevant to the RICO claim, they should be stricken. (See Motion to Strike filed concurrently herewith.) Indeed, some of those purported "crimes," such as wasting Plaintiff Willick's time in having to deal with Defendant's online postings, do not even constitute a crime.

e. Plaintiffs' ninth cause of action for copyright infringement fails for lack of subject matter jurisdiction, because federal courts have exclusive original jurisdiction over copyright claims. 28 U.S.C. 1338(a). Moreover, Plaintiffs failed to register their purported copyrights, a prerequisite to filing a copyright infringement case (17 U.S.C. §411(a)), and ignore that that Defendants' use of the purportedly copyrighted work falls under the Copyright Act's "fair use" exception.

f. With each of the above causes of action failing, plaintiffs' sixth and seventh causes of action for "concert of action" and "civil conspiracy" must necessarily fail as well. Moreover, a cause of action for "concert of action" requires the involvement of a dangerous activity – there is no such dangerous activity alleged in the complaint.

g. Plaintiffs' purported tenth cause of action for injunction fails, first because an injunction is a remedy, not a cause of action. Second, an injunction cannot issue to suppress speech that is critical of a business. Third, an injunction forcing a defendant to apologize, as the complaint seeks, is unconstitutional. Government cannot force a person to speak particular speech.

Accordingly, the complaint should be dismissed in its entirety. In addition, Plaintiffs should not be granted leave to amend as to do so would be futile and will simply result in a waste of court time and resources. The deficiencies in the complaint, which appear to be the result of trying to make a mountain out of a non-existent molehill, simply cannot be rectified given the factual gravamen of the complaint.

II. PLAINTIFFS ARE PUBLIC FIGURES AND DEFENDANTS ARE MEDIA DEFENDANTS

VIPI is a veteran organization in existence since the 1990s. Steve Sanson is VIPI's President. VIPI lobbies on behalf of veterans issues and fights to expose public corruption and wrongdoing in publishing a blog, circulating articles about newsworthy events, and holding a weekly internet talk show in which it invites public officials and members of the public to discuss relevant political, judicial or social issues. VIPI is a media defendant that explains its mission in part as follows:

> **We continue to fight for the freedom [of] our country, to uphold our vow to protect and defend our Country and our United States Constitution, beyond our military service.**

VIPI also holds endorsement candidate interviews that are open to the public and streamed online to the public.

Conversely, Plaintiffs are "public figures." The United States Supreme Court defines "public figures" as "[t]hose who, by reason of the notoriety of their achievements…seek the public's attention," and therefore, "have voluntarily exposed themselves to increased risk of injury from defamatory falsehood concerning them." Gertz v. Robert Welch, Inc., 418 U.S. 323, 342 (1974); see also, Wynn v. Smith, 117 Nev. 6, 16 P.3d 424 (Nev., 2001) (Wynn held to be a public figure.)) The Gertz court created two categories of public figures: general public figures and limited public figures. General public figures are individuals who "achieve such pervasive fame or notoriety that [they] become a public figure for all purposes and in all contexts." Gertz, 418 U.S. 323, 351 (1974). Limited public figures are individuals who have only achieved fame or notoriety based on their role in a particular public issue. Id., at 351-52. One may become a

limited public figure if one "voluntarily injects himself or is drawn into a particular public controversy," thereby becoming a public figure for a limited range of issues. Id. at 351.

Here, Willick touts his firm as "the premiere Family Law firm in Nevada." He voluntarily thrusts himself in the public eye by submitting written and oral testimony to the Nevada legislature on proposed legislation (Request for Judicial Notice, Exs. 3 and 4 respectively), has written dozens of articles on family law issues (see resume, Request for Judicial Notice, Ex. 13), has served as an expert witness in dozens of cases (Id.), has written 3 books on family law matters (Request for Judicial Notice, Ex. 14), is extensively quoted in the Las Vegas Review Journal and other publications (Request for Judicial Notice, Ex. 15), has received local and national awards for his work (Request for Judicial Notice, Ex. 8) and makes public appearances to promote his work and firm. His firm also has a large public billboard right across the street from family court (Request for Judicial Notice, Ex. 16) marketing his firm to the public. At a minimum, Plaintiffs are limited public figures for any issues pertaining to family law.

III. STANDARD OF REVIEW

NRCP 12(b)(5) authorizes the Court to dismiss the complaint for failure to state a claim on which relief may be granted. It is well established that the complaint must "set forth sufficient facts to demonstrate the necessary elements of a claim for relief so that the defendant party has adequate notice of the nature of the claim and the relief sought." Western States Const., v. Michoff, 108 Nev. 931, 936, 840 P.2d 1220, 1223 (1992).

Although "[the nonmoving parties] are entitled to all reasonable factual inferences that logically flow from the particularized facts alleged, . . . conclusory allegations are not considered as expressly pleaded facts or factual inferences." In re Americo Derivative Litigation, 127 Nev. 196, 232, 252 P.3d 681, 706 (2011). Pleadings that consist of "labels and conclusions," a "formulaic recitation of elements of a cause of action," "naked assertions devoid of further factual enhancements," or "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements" will not suffice. Ashcroft v. Iqbal, 556 U.S. 662, 278 (2009).

Further, in determining the adequacy of the complaint on a motion to dismiss, the court may take judicial notice of matters of public record that are outside the pleadings. Niles v. Nat'l Default Servicing Corp., 126 Nev. 742, 367 P.3d 804 (Nev., 2010), citing, Breliant v. Preferred Equities Corp., 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993). This includes taking judicial notice of its own files for purposes of establishing that the documents were filed and what the documents state. "[C]ourts routinely take judicial notice of documents filed in other courts . . . to establish the fact of such litigation and related filings." Kramer v. Time Warner Inc., 937 F.2d 767, 774 (2d Cir. 1991) (citations omitted). "The existence and content of opinions and pleadings are matters capable of accurate and ready determination by resort to official court files that cannot reasonably be questioned." Bogart v. Daley, No. CV 00-101-BR, 2001 WL 34045761, at *2 (D. Or. June 28, 2001) (citing Fed. R. Evid. 201(b)(2)).

Defendants have concurrently filed a Request for Judicial Notice in support of this motion to dismiss. The Request seeks judicial notice of court records, public documents and documents from Plaintiffs' own website. Each of these is permitted as a basis for judicial notice under NRS 47.130(2)(b) which permits the court to take judicial notice of facts that are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute."

IV. PLAINTIFFS FIRST CAUSE OF ACTION FOR DEFAMATION FAILS TO STATE A CLAIM

The elements of a cause of action for defamation are: (1) A false and defamatory statement by a defendant concerning the plaintiff; (2) an unprivileged publication to a third person; (3) fault, amounting to malice if the plaintiff is a public figure, and negligence if the plaintiff is a private figure; and (4) actual or presumed damages. Pegasus v. Reno Newspapers, Inc., 118 Nev. 706, 718, 57 P.3d 82, 90 (2003).

It is well settled that statements of "opinion," as opposed to facts, are not subject to defamation claims. Pegasus, supra, 57 P.3d at 87. A statement "will receive full constitutional protection" if it is not a "provably false" statement. Milkovich v. Lorain Journal Co., 497 U.S.

1, 20, 110 S. Ct. 2695 (1990). "Loose, figurative, or hyperbolic language" is protected by the First Amendment, as it cannot reasonably be interpreted as stating actual, provable facts about an individual. Milkovich, 497 U.S. at 21-23. The more imprecise the meaning is of a statement, the more likely it will be viewed as protected opinion. Id.

For example, in McCabe v. Rattiner, 814 F.2d 839, 842 (1st Cir. 1987), the word "scam" was held to be imprecise and therefore constituted protected opinion. In Wait v. Beck's N.Am. Inc., 241 F.Supp.2d 172, 183 (N.D.N.Y. 2003) the court found that "a statement that someone has acted…unethically generally [is] constitutionally protected statements of opinion." In Biro v. Conde Nast, 883 F.Supp.2d at 453 (SDNY 2012), the court held that the use of the terms "shyster," "con man," and finding an "easy mark" is the type of "rhetorical hyperbole" and "imaginative expression" that is typically understood as a statement of opinion. Citing, Milkovich, supra, 497 U.S. at 20. In Adelson v. Harris, 973 F.Supp.2d 471, 493 (SDNY 2013) (applying NV law), the court held that "characterization of Adelson's money as "dirty" and "tainted" is the sort of rhetorical hyperbole and unfalsifiable opinion protected by the First Amendment."

Moreover, political speech in particular is typically found to be protected "opinion." Courts "shelter strong, even outrageous political speech," on the ground that "the ordinary reader or listener will, in the context of political debate, assume that vituperation is some form of political opinion neither demonstrably true nor demonstrably false." Sack, *Sack on Defamation* at §4:3:1[B], 4-43; Planned Parenthood of the Columbia/Willamette, Inc. v. Am. Coal. of Life Activists, 244 F.3d 1007, 1019 (9th Cir. 2001) (acknowledging the well-recognized principle that political statements are inherently prone to exaggeration and hyperbole.) As stated in Koch v. Goldway, 817 F.2d 507, 509 (9th Cir. 1987), where the "circumstances of a statement are those of a heated political debate … certain remarks are necessarily understood as ridicule or vituperation, or both, but not as descriptive of factual matters."

Further, the use of hyperlinks to source materials makes the statement one of "opinion." Because this underlying information can be read to support the general conclusions in the post, and the latter contains hyperlinks to the former, those conclusions are best viewed as opinions

based on disclosed facts, and are therefore not actionable. Biro v. Condé Nast, (S.D.N.Y., 2014), citing, Adelson v. Harris, 973 F. Supp. 2d 467, 484 (S.D.N.Y. 2013) ("The hyperlink is the twenty-first century equivalent of the footnote for purposes of attribution in defamation law."). Franklin v. Dynamic Details, Inc., 116 Cal.App.4th 375, 379, 10 Cal.Rptr.3d 429 (2004) ("[t]he e-mails disclosed the facts upon which the opinions were based by directing the reader to the FCC Web site and (via a Web link on the FCC Web site) to another company's Web site… A reader of the emails could view those Web sites and was free to accept or reject Axton's opinions based on his or her own independent evaluation.").

As stated in Adelson v. Harris, 973 F.Supp.2d 471, 485 (S.D. NY 2013), applying Nevada law:

> "Protecting defendants who hyperlink to their sources is good public policy, as it fosters the facile dissemination of knowledge on the Internet. It is true, of course, that shielding defendant who hyperlink to their sources makes it more difficult to redress defamation in cyberspace. But this is only so because Internet readers have far easier access to a commentator's sources. It is to be expected, and celebrated, that the increasing access to information should decrease the need for defamation suits."

Within these parameters, the determination of whether a statement is a protected "opinion" is a question of law for the Court to decide. Celle v. Fillipino Reporter Enterprises Inc., 209 F.3d 163, 178 (2d Cir. 2000)

A. Each of the Statements are Either True, Substantially True or Constitute Non-Actionable Opinion.

In this case, the Complaint alleges that the following five statements made by VIPI are defamatory; yet, the statements are either clearly opinion, or they are true and while Plaintiffs claim in a conclusory fashion that they are "false and misleading" or "false and defamatory" (Cmplt., ¶22), Plaintiffs tellingly fail to allege facts on how or why the statements are allegedly false.

a. VIPI's December 25, 2016 statement "[t]his is the type of hypocrisy we have in our community. People that claim to be for veterans but yet they screw us for profit and power" is opinion. As with the word "scam" in the McCabe case or "unethical" in the Wait case, the

words "hypocrisy" and "screw us for profit and power" are so imprecise that they cannot be proven one way or the other as established fact and therefore constitute opinion.

This is especially the case since the statement pertained to political speech. As stated in the Complaint, the statement was hyperlinked to an interview that Plaintiff Willick gave on the VIPI internet radio show "about Assembly Bill 140 … and other issues involving veterans' issues in Family Law…" (Cmplt., ¶¶ 19, 21 ["Included in this post, is a re-post of the 'interview'…].) It is no wonder therefore that the Complaint does not state how the statement is false, as it clearly constitutes opinion, and cannot therefore form the basis for a defamation claim. As stated in Biro v. Conde Nast, supra, "where the plaintiff only asserts that the opinions are false, and does not challenge the veracity of the underlying facts, the plaintiff may not sustain a libel action" citing, Jewell v. NYP Holdings, Inc., 23 F. Supp. 2d 348, 377 (S.D.N.Y. 1998). Accordingly, this statement cannot serve as a basis for a defamation claim.

b. Plaintiffs claim that a January 12, 2017 post stating "[a]ttorney Marshall [sic] Willick and his pal convicted of sexually coercion of a minor Richard Crane was found [sic] guilty of defaming a law student in United States District Court Western District of Virginia signed by US District Judge Norman K. Moon" was defamatory. (Cmplt., ¶ 28.) Yet, this statement, which was inadvertently issued without commas, was at most, ambiguous.[2] This ambiguity, however, was self-clarifying because the statement, as admitted in the Complaint at ¶28c, hyperlinked to the applicable court order finding that Willick indeed engaged in defamation per se in connection with a 2008 defamation case filed against him in Virginia:

The use of hyperlinks to disclose underlying source documents in a statement is encouraged and legally turns ambiguous statements into one of non-actionable opinion. In Jankovic v. Inter'l Crisis Grp., 429 F.Supp.2d 165, 177 n.8 (D.D.C. 2006) the court noted that even if the meaning of an allegedly defamatory statement was unclear, it was clarified by the "two internet links" at the end of the sentence. The Court stated "[w]hat little confusion the

[2] The post was intended to read: "Attorney Marshall [sic] Willick**,** and his pal convicted of sexually coercion of a minor Richard Crane**,** was found guilty of defaming a law student in United States District Court Western District…." VIPI clarified and reposted the statement post on January 18, 2017, rectifying any ambiguity.

sentence could possibly cause is easily dispelled by any reader willing to perform minimal research." See also, Nicosia v. De Rooy, 72 F.Supp.2d 1093 (N.D. Cal. 1999) (internet article accusing Plaintiff of embezzlement found non-defamatory because it hyperlinked to two other hyperlinked articles from which readers could make up their own minds);

Moreover, Plaintiffs' allegation that a Virginia judge stated that using the word "guilty" to describe a judgment in a civil case for damages constitutes defamation per se" is a calculated misread of the Virginia judge's opinion, cited in paragraph 28c of the complaint. In the Virginia case, Willick sent letters to third parties stating that his opponent was "guilty" of acts that are solely criminal in nature and acts that constitute felonies. It is not defamatory at all to state that someone is "guilty" in a civil case on claims that are strictly civil in nature and not criminal. In the statement at issue in the present case, VIPI stated that Willick was found "guilty" of defamation per se. One cannot be criminally guilty of defamation per se. So unlike the statement that Willick made in the 2008 case, in which he falsely accused the plaintiff of having been found "guilty" of numerous crimes including "passport fraud and felony non-support of children," there is no possible insinuation of Willick having committed a criminal act of defamation.

Indeed, as Plaintiffs are well aware, the Court in the 2008 Virginia case made this distinction very clear:

> "Technically, a person may be charged with civil kidnaping and racketeering, but passport fraud and felony non-support of children are punishable only as criminal offenses". . . "The fact that "guilty" applies civilly notwithstanding, the use of the word "felony" alongside the word "guilty," as well as stating that someone is "guilty" of an offense that only applies in a criminal context, requires the Court to apply the word "guilty" in this sentence in only its criminal context."

(Opinion, p. 7-8, attached as Ex. 6 to Request for Judicial Notice.) As such, Willick's use of the word "guilty" in his 2008 case was very different from VIPI's use of the word in this case as VIPI's use of the word in connection with defamation per se, cannot possibly have a criminal connotation.

Other than the allegation that the statement refers to the word "guilty" there is no other factual allegation as to how or why the statement was false or defamatory. Accordingly, this statement, including the use of the word "guilty," cannot serve as a basis for a defamation case.

c. Plaintiffs allege that a January 14, 2017 Facebook post stating "[w]ould you have a Family Attorney handle your child custody case if you knew a sex offender works in the same office? Welcome to the [sic] Willick Law Group," was defamatory. The Complaint admits that the statement was hyperlinked to "eight (8) photographs," but fails to allege what these photographs were. In fact, there were copies of documents showing that Plaintiffs indeed continued to employ Richard Crane, who was in fact convicted of sexual malfeasance with a minor. Again, tellingly, Plaintiffs fail to allege how or why the statement is false. Accordingly, the statement cannot form the basis for a defamation claim.

d. Plaintiffs allege that two January 14, 2017 Facebook posts pertaining to Willick's actions in a case he was handling called Holyoak v. Holyoak, Case no. 67490, dated May 19, 2016 were also defamatory.

(1) The January 14, 2017 VIPI Facebook post stating "[a]ttorney Marshall [sic] Willick loses his appeal to the Nevada Supreme Court," which Plaintiffs admit was hyperlinked to the Holyoak decision. (Cmplt., ¶ 34 "to which he attached 10 photos of the Hollyoak decision…") The statement is in fact true or substantially true, as shown in the Holyoak decision on which it relies.[3] See Plaintiffs' Supreme Court brief, the opponent's reply brief and the Supreme Court's decision in that case, attached as Exhibits 7, 8 and 9 respectively to Request for Judicial Notice. As shown by these Exhibits, Plaintiff tried unsuccessfully in the Holyoak case to have the Nevada Supreme Court overturn prior precedent and find that his client was entitled to survivorship rights in her husband's pension plan. (Ex. 7, pp. 23-38 to Request for Judicial Notice.) Indeed, he devoted nearly half of his brief to this issue. The

[3] Substantial truth is sufficient to defeat an action for defamation. Fendler v. Phoenix Newspapers, Inc., 130 Ariz. 475, 479, 636 P.2d 1257, 1261 (Az. App. 1981) "It is well settled that a defendant is not required in an action of libel to justify every word of the alleged defamatory matter; it is sufficient if the substance, the gist, the sting of the libelous charge be justified, and if the gist of the charge be established by the evidence, the defendant has made his case."

Supreme Court declined to overturn its precedent as Willick failed to properly raise the issue by way of a counter-appeal. (See Footnote 3 in Supreme Court opinion, attached as Ex. 9 to Request for Judicial Notice)

In addition, Willick had filed a motion for partial remand to the District Court pending the appeal, and the Supreme Court denied his motion. (See motion and the court's ruling, attached as Exs. 10 and 11 to Request for Judicial Notice)

Indeed, Plaintiffs again fail to allege how or why this statement is false.

(2) The other January 14, 2017 VIPI Facebook post was related to the Holyoak statement mentioned above, and was a mix of true statements and non-actionable opinion.

> "Nevada Attorney Marshall Willick gets the Nevada Supreme Court decision: From looking at all these papers it's obvious that Willick scammed his client, and later scammed the court by misrepresenting that he was entitled to recover property under his lien and reduce it to judgement. He did not recover anything. The property was distributed in the Decree of Divorce. Willick tried to get his client to start getting retirement benefits faster. It was not with 100,000 in legal bills. Then he pressured his client into allowing him to continue with the appeal."

Willick did in fact get a copy of the Supreme Court opinion, Willick's client in the Holyoak case had already divided the property pursuant to a settlement with her husband before retaining Willick (see Supreme Court opinion which was hyperlinked to VIPI's statement and which recites the facts of the case, attached as Ex. 9, p.1 to Request for Judicial Notice), and Willick did try to get his client to start getting retirement benefits faster (see Willick's Supreme Court brief, attached as Ex. 7 to Request for Judicial Notice).

The rest of the statement is unquestionably VIPI's opinion that Plaintiffs should not have charged their client as much as they did for the work involved. As stated in McCabe v. Rattiner, 814 F.2d 839, 842 (1st Cir. 1987), the word "scam" legally constitutes non-actionable opinion. The statement of whether Willick's services were worth $100,000 in legal fees is obviously opinion. The rest of the statement VIPI's posting, which is also hyperlinked to the Lobello decision in which the Supreme Court laid out the requirements for attorneys to recover fees pursuant to a lien. There's no reason that Sanson on behalf of VIPI would not be entitled to

express an opinion about whether the fees that Willick sought were appropriate. Indeed, Willick's motion for fees in that case and his client's objections to his request demonstrate how contentious the issue of his fees actually was. (See Willick's motion for fees and his client's opposition in the Holyoak case, attached as Exs. 11 and 12 to Request for Judicial Notice)

B. At Least Three of the Communications Are Subject to the Fair Reporting Privilege.

To be actionable, the statement at issue cannot have been privileged. Here, at least 3 of the statements at issue fall within the absolute fair reporting privilege.

Nevada "has long recognized a special privilege of absolute immunity from defamation given to the news media and the general public to report newsworthy events in judicial proceedings." Sahara Gaming Corp. v. Culinary Workers Union Local 226, 115 Nev. 212, 984 P.2d 164, 166 (1999). This privilege extends to online reporting. O'Grady v. Superior Court, 139 Cal.App.4th 1423 (2006).

To benefit from the fair reporting privilege, (1) it must be "apparent either from specific attribution or from the overall context that the article is quoting, paraphrasing or otherwise drawing upon official documents and proceedings; and (2) the statement must constitute a "fair and accurate" description of the underlying proceeding."

In this case, three of the five communications at issue are subject to the privilege: VIPI's January 12, 2017 statement regarding a Virginia Court's finding that Willick committed defamation per se against an opposing party, with the accompanying hyperlink to the applicable Court Order is fair, accurate and should be absolutely privileged. Likewise, VIPI's statement that Willick's colleague, Richard Crane, was found guilty of sexual coercion of the minor and was suspended from the practice of law should be absolutely privileged as the statement is true and hyperlinked to the State Bar judicial proceeding and a Review Journal article reporting on Crane's criminal conviction. VIPI's two January 14, 2017 Facebook posts regarding Willick's actions in the Holyoak case and the Supreme Court decision are also substantially accurate and have hyperlinks to the source materials.

Accordingly, the three above statements are subject to Nevada's absolute Fair Reporting Privilege, and cannot therefore serve as the basis for a defamation claim.

C. Plaintiffs are Public Figures and Must Show Actual Malice by Defendants. The issue of whether Plaintiffs are public figures is a matter of law for the Court to decide. Bongiovi v. Sullivan, 138 P.3d 433, 122 Nev. 556 (Nev., 2006).

The United States Supreme Court defines "public figures" as "[t]hose who, by reason of the notoriety of their achievements…seek the public's attention," and therefore, "have voluntarily exposed themselves to increased risk of injury from defamatory falsehood concerning them." Gertz v. Robert Welch, Inc., 418 U.S. 323, 342 (1974); see also, Wynn v. Smith, 117 Nev. 6, 16 P.3d 424 (Nev., 2001) (Wynn held to be a public figure.)) The Gertz Court created two categories of public figures: general public figures and limited public figures. General public figures are individuals who "achieve such pervasive fame or notoriety that [they] become a public figure for all purposes and in all contexts." Gertz, 418 U.S. 323, 351 (1974). Limited public figures are individuals who have only achieved fame or notoriety based on their role in a particular public issue. Id., at 351-52. One may become a limited public figure if one "voluntarily injects himself or is drawn into a particular public controversy," thereby becoming a public figure for a limited range of issues. Id. at 351.

Here, Willick touts his firm as "the premiere Family Law firm in Nevada." He voluntarily thrusts himself in the public eye by submitting written and oral testimony to the Nevada legislature on proposed legislation (Request for Judicial Notice, Exs. 3 and 4 respectively), has written dozens of articles on family law issues (see resume, Request for Judicial Notice, Ex. 13), has served as an expert witness in dozens of cases (Id.), has written 3 books on family law matters (Request for Judicial Notice, Ex. 14), is extensively quoted in the Las Vegas Review Journal and other publications (Request for Judicial Notice, Ex. 15), has received local and national awards for his work (Request for Judicial Notice, Ex. 8) and makes public appearances to promote his work and firm. His firm also has a large public billboard right across the street from family court (Request for Judicial Notice, Ex. 16) marketing his firm to the public.

It cannot seriously be doubted that Willick and his firm are "public figures" for purposes of defamation law by reason of the notoriety of their achievements, and their voluntary injection into matters of public discourse.

As either public figures or at a minimum limited public figures, Plaintiffs must show by clear and convincing evidence that any purportedly defamatory statement was "made with 'actual malice' – that is, with knowledge that it was false or with reckless disregard of whether it was false or not." New York Times Co. v. Sullivan, 376 U.S. 254 (1964); Harte-Hanks Communications, Inc. v. Connaughton, 109 S.Ct. 2678, 2696 (1989).

A showing of "reckless disregard" for the truth "requires more than a departure from reasonably prudent conduct." Harte-Hanks Communications, Inc. v. Connaughton, 109 S.Ct. 2678, 2696 (1989). Evidence must exist sufficient to suggest that the defendant "in fact entertained serious doubts as to the truth of his publication," St. Amant v. Thompson, 390 U.S. 727, 731 (1968), or had a "high degree of awareness of … probable falsity." Harte-Hanks Communications, 109 S. Ct. at 2696.

Here, there is no factual allegation of malice. As shown above, all of the statements at issue are either true, substantially true, constitute non-actionable opinion, or are privileged. Further, Plaintiffs' complaint admits that the statements were accompanied by hyperlinks to their source materials. Accordingly, Plaintiffs cannot factually allege actual malice, let alone by clear and convincing evidence as required to sustain a claim of defamation.

V. PLAINTIFFS' SECOND AND THIRD CAUSES OF ACTION FOR INTENTIONAL AND NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS, RESPECTIVELY, FAIL TO STATE A CLAIM.

First, it is self-evident that the Willick Law Group cannot pursue a claim for intentional or negligent emotional distress because it is a corporation and has no emotions. Paragraph 6 of the Complaint states that "Willick Law Group is a d.b.a. of Marshal S. Willick P.C., a duly formed professional corporation in the State of Nevada." Accordingly, Willick Law Group's second and third causes of action for intentional and negligent infliction of emotional distress, respectively, must fail.

Second, plaintiff Marshal Willick likewise fails to state a claim for intentional or negligent infliction of emotional distress.

A cause of action for intentional infliction of emotional distress requires (1) extreme and outrageous conduct with either the intention of, or reckless disregard for, causing emotional distress to plaintiff, (2) the plaintiff having suffered severe or extreme emotional distress and (3) actual or proximate causation of the damages by the conduct. Star v. Rabello, 97 Nev. 124, 125, 625 P.2d 90, 92 (1981).

The bar in Nevada for alleging the type of outrageous conduct required for a claim for intentional infliction of emotional distress is very high. In Tuggle v. Las Vegas Sands Corp., No. 215CV01827GMNNJK, 2016 WL 3456912, at ftnt 2 (D. Nev. June 16, 2016), the court found that in the context of the workplace, "regularly belittling Plaintiff, calling her a 'piece of shit,' moving her desk to keep an eye on her, falsely telling her other supervisors disapproved of her work, and berating her for taking approved and legally-protected medical leave" did not constitute "extreme or outrageous" enough conduct to survive a motion to dismiss.

As stated in Burns v. Mayer, 175 F. Supp.2d 1259, 1268 (D.Nev. 2001), liability for emotional distress does not extend to "mere insults, indignities, threats, annoyances, petty oppressions, or other trivialities." Damages can only be recovered in "extreme and outrageous circumstances . . . where the actions of the defendant go beyond all possible bounds of decency, are atrocious and utterly intolerable." Alam v. Reno Hilton Corp. 819 F.Supp. 905, 911 (D. Nev. 1993). Certainly, none of VIPI's statements at issue rise to the level of exceeding all possible bounds of decency and constituting atrocious or utterly intolerable acts.

Moreover, "[t]he less extreme the outrage, the more appropriate it is to require evidence of physical injury or illness from the emotional distress. Nelson v. City of Las Vegas, 99 Nev. 548, 555, 665 P.2d 1141, 1145 (1983). Here, Willick makes no allegation whatsoever of any physical injury or illness and makes no factual allegation of any demonstration of emotional distress. Willick's purported cause of action for intentional infliction of emotional distress must fail.

Willick's cause of action for negligent infliction of emotional distress likewise fails. The elements of cause of action for negligent infliction of emotional distress are: (1) a duty owed by defendant to the plaintiff, (2) breach of said duty by Defendant, (3) the breach is the direct and proximate cause of Plaintiff's emotional distress, and (4) damages (i.e., actual emotional distress). Additionally, there is a "physical impact" requirement where, as here, the negligent act is alleged to have been committed directly against the plaintiff. Chowdhry v. NLVH, Inc., 109 Nev. 478, 851 P.2d 459 (1993).

Here, Willick fails to even allege the perfunctory elements of a cause of action for negligent infliction of emotional distress. His allegation is simply "[t]o whatever extent the infliction of emotional distress asserted in the preceding cause of action was no deliberate, itw as a result of the reckless and wanton actions of the Defendants, either individually, or in concert with others." (Cmplt., ¶ 55.) This does not recite even the legal elements of the claim.

Moreover, plaintiffs wholly fails to allege any facts to show how the statements caused the purported distress and what emotional damages were sustained. This should particularly be required here where Plaintiff is a hardened family law litigator, who runs his own multi-lawyer firm and in his complaint credits himself as practicing "exclusively in the field of Domestic Relations and is A/V rated, a peer-reviewed and certified (and re-certified Fellow of the American Academy of Matrimonial Lawyers, and a Certified Specialist in Family Law" (Cmplt. ¶5). The probability that he suffered any actionable emotional distress from being criticized about his work is highly suspect and unlikely and would probably decrease his client base if they believed he was so easily distressed. Indeed, it is not surprising that Plaintiff makes no allegation, factual or conclusory, that he suffered any physical impact from the statements at issue. Accordingly, Plaintiffs' purported third cause of action for negligent infliction of emotional distress should be dismissed.

VI. PLAINTIFFS' FOURTH CAUSE OF ACTION FOR FALSE LIGHT SHOULD BE DISMISSED.

A cause of action for "false light" invasion of privacy requires that "(a) the false light in which the other was placed would be highly offensive to a reasonable person, and (b) the actor

had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed. Franchise Tax Bd., of Cal., v. Hyatt, 130 Nev. Adv. Op. 71, 335 P.3d 125, 141 (2014), emphasis added. This tort typically arises in the following context: A defendant publishes a statement, for example, a newspaper article, about an embarrassing event and mistakenly places a picture of plaintiff next to the event inplying that the plaintiff was involved when plaintiff actually had nothing to do with the event.

In this case, there is no invasion of privacy whatsoever. Moreover, as shown above, there were no false statements made about Plaintiffs – the statements were either true, substantially true, privileged or constituted non-actionable opinion. Moreover, the statements all had to do with public events – there were no privacy interests involved. The December 25, 2016 statement had to do with a radio interview that Willick gave to VIPI. The January 12, 2017 statement had to do with a publicly available court document in which a federal court in Virginia found that Willick engaged in defamation per se, and to the extent it mentioned Richard Crane, was based on publicly available court documents and newspaper article showing that Crane was convicted of sexual impropriety with a minor and was suspended from the practice of law because of it. The January 14, 2017 post again had to do with Willick's firm employing a sexual predator, Richard Crane, and linking to non-private or privileged documents substantiating this fact. The two January 14, 2017 statements about Willick's actions in the Holyoak case are likewise based on publicly available Supreme Court documents.

It is legally impossible to maintain this cause of action for false light under these circumstances.

VII. PLAINTIFFS' FIFTH CAUSE OF ACTION FOR BUSINESS DISPARAGEMENT FAILS

The elements of a business disparagement claim are: "(1) a false and disparaging statement, (2) the unprivileged publication by the defendant, (3) malice, and (4) special damages." Clark Cty. Sch. Dist. v. Virtual Educ. Software, Inc., 125 Nev. 374, 386, 213 P.3d 496, 501 (Nev. 2009). Further, any claim of "malice" must be alleged with supporting facts, and any claim of special damages must likewise be alleged with particularity. As stated in

NRCP 9(g) "[w]hen items of special damage are claimed, they shall be specifically stated. "Proof of special damages is an essential element of business disparagement." Clark Cty. Sch. Dist. v. Virtual Ed. Software, 125 Nev. 374, 387, 213 P.3d 496, 505 (2009).

Here, Plaintiffs have alleged no facts to support their conclusory claims. The complaint simply states that "Defendants and/or Defendants' agents, representatives, and/or employees, either individually, or in concert with others, intentionally made false and disparaging statements" (Cmpl. ¶61), "the referenced statements and actions were specifically directed towards the quality of Mr. Willick and the Willick Law Group's service," (Id., ¶63), the statements were "so extreme and outrageous as to affect the ability of Mr. Willick and the Willick Law Group to Conduct business" (Id., ¶64) and that "Defendants intended to cause harm to Plaintiffs and its pecuniary interests or published the disparaging statements knowing their falsity or with reckless disregard for the truth" (Id.) and "resulted in damages to Mr. Willick and the Willick Law Group." (Id., ¶65).

Indeed there is not a single fact plead to give any notice to Defendants of the particular actions complained of, the way in which those actions actually damaged the plaintiffs and what actions by Defendants they rely on to claim malice or to show that special damages were incurred. Moreover, as shown above, the defects in this claim cannot be remedied since the statements at issue were all true or constituted non-actionable opinion, and/or were privileged.

As such this cause of action should be dismissed for failure to state a claim.

VIII. PLAINTIFFS' EIGHTH CAUSE OF ACTION FOR RICO VIOLATIONS SHOULD BE DISMISSED.

Only one of the predicate crimes alleged in the complaint is among those enumerated in NRS 207.360 which expressly identifies the crimes that may legally serve as the basis of a RICO claim. Even the allegation of that one enumerated crime, however, is completely devoid of any facts and should therefore be disregarded. It is well established that RICO claims must be alleged with the "same degree of specificity is called for as in a criminal indictment or information." Hale v. Burkhardt, 104 Nev. 632, 637-638, 764 P.2d 866 (1988).

The only allegation in the complaint that appears to refer to a RICO related crime is paragraph 84, which states as follows:

> "Defendants, in the course of their enterprise, knowingly and with the intent to defraud, engaged in an act, practice or course of business or employed a device, scheme or artifice which operates or would operate as a fraud or deceit upon a person by means of a false representation or omission of a material fact that Defendants know to be false or omitted, Defendants intend for others to rely on, and results in a loss to those who relied on the false representation or omission in at least two transactions that have the same or similar pattern, intents, results, accomplices, victims or methods of commission, or are otherwise interrelated by distinguishing characteristics and are not isolated incidents within 4 years and in which the aggregate loss or intended loss is more than $650. (NRS 205.377)."

This mere recitation of this type of "legalese" simply cannot stand as a basis for a RICO claim. Moreover, nowhere in the complaint do Plaintiffs allege that Defendants made any sort of false representation or omission of a material fact to Plaintiffs. Plaintiffs fail to allege that they engaged in any transaction with Defendants let alone two or more, nor do that plead that they lost anything of value as a result of such fraud committed on them. The gravamen of the complaint, the alleged defamation, cannot serve as the basis for this purported crime as defamation is not a criminal act.

The remaining "crimes" alleged in the complaint and listed below aren't even RICO related crimes as required by NRS 207.360. In fact, a couple is not even a crime at all:

1. "Defendants published a false or grossly inaccurate report of court proceedings on numerous occasions, including, but not limited to, the "Virginia post," "VIP Facebook Post #1," and "VIP Facebook Post #2. (NRS 199.340(7))." (Cmplt., ¶ 80.) NRS 199.340(7) relates to "criminal contempt" and is not one of the enumerated crimes in NRS 207.360. (Moreover, nothing about the statements at issue constitutes criminal contempt.)

2. Defendants "gave or sent a challenge in writing to fight Richard Carreon and others. (NRS 200.450)." (Cmplt., ¶ 81). A purported violation of NRS 200.450 likewise is not one of the crimes listed in NRS 207.360. Moreover, to be a predicate act under RICO, the crime must have been committed to the Plaintiff. Hale v. Burkhardt, 104 Nev. 632, 637-638, 764 P.2d 866 (1988). There is no allegation whatsoever that Richard Carreon has anything to

do with Plaintiffs. Moreover, without more allegations on the circumstances of such "challenge," there are insufficient facts from which to draw any inference of a crime having been committed.

3. "Defendants willfully stated, delivered or transmitted to a manager, editor, publisher, reporter or other employee of a publisher of any newspaper, magazine, publication, periodical or serial statements concerning Plaintiffs which, if published therein, would be a liable. (NRS 200.550)." (Cmplt., ¶ 82.) Again, a purported violation of NRS 200.550 is not one of the enumerated crimes in NRS 207.360 that can support a RICO claim.

4. "Defendants, without lawful authority, knowingly threatened to substantially harm the health or safety of Plaintiff and, by words and conduct placed Plaintiffs in reasonable fear that the threat would be carried out. (NRS 200.571.)" (Cmplt., ¶ 83.) NRS 200.571 pertains to the crime of "harassment." Again, this crime is not one of the listed crimes that can support a RICO claim under NRS 207.360. In addition, the complaint is completely devoid of any facts whatsoever to support this allegation.

5. "Defendants posted false and defamatory material no less than 50 times in 10 separate defamatory campaigns against Plaintiffs. The total value of time expended by Marshal S. Willick, and the Willick Law Group staff in responding to inquiries from clients and attempting to have the defamatory material removed from the internet was over $15,000 and this does not include the cost of missed opportunities or time that should have been spent working on cases for paying clients. (NRS 2015.377 and NRS 207.360(9)." (Cmplt., ¶ 85.) Again, neither NRS 2015.377 nor NRS 207.360(9) is RICO related crimes under NRS 207.360.

6. "Defendants – with malice – stole valuable time from Mr. Willick. Also, the theft of Mr. Willick's and Willick Law Group's "good will" by making of false and defamatory comments and placing both Mr. Willick and Willick Law Group in a false light has diminished the value of the business. These are intangible thefts, but thefts nonetheless," citing NRS

205.0832. (Cmplt., ¶ 87). Again, NRS 205.0832 is not one of the enumerated RICO related crimes.[4]

Accordingly, Plaintiffs cannot establish a cause of action for RICO and this claim should be dismissed.

IX. PLAINTIFFS' SIXTH AND SEVENTH CAUSES OF ACTION FOR "CONCERT OF ACTION" AND "CONSPIRACY" SHOULD BE DISMISSED.

Plaintiffs' sixth and seventh causes of action for "concert of action" and "conspiracy" are almost identical and each fails for the following reasons:

1. Both are dependent on another cause of action surviving this motion. Since none of the claims can survive, these dependent claims necessarily fail.

2. A claim for Concert of Action under NRS 41.141(5)(d) requires conduct that is *inherently dangerous or poses a substantial risk of harm to others*. Mere joint negligence, or an agreement to act jointly, does not suffice. GES, Inc. v. Corbett, 117 Nev. 265, 268, 21 P.3d 11, 13 (2001). This cause of action arises when two or more people commit a tort involving a dangerous activity, while acting in concert with one another or pursuant to a common design. Dow Chemical Co., v. Mahlum, 114 Nev. 1468, 970 P.2d 98, 111 (1998). A classic example is in drag racing, where one driver is the cause in fact of plaintiff's injury and the fellow racer is also held liable for the injury. Id.

Here, since no inherently dangerous act is alleged in the complaint, Plaintiffs' Sixth Cause of action for Concert of Action should be dismissed.

3. Plaintiffs' seventh cause of action for civil conspiracy also fails. The claim simply alleges, in a conclusory fashion that "Defendants and/or Defendants' agents, representatives, and/or employees, either individually, or in concert with others, based upon an

[4] Moreover, Plaintiffs misapply NRS 205.0832. The statute requires defendant to "obtain real, personal or intangible property or the services of another person . . ." (emphasis added). There is no allegation whatsoever that Defendants obtained anything. Willick alleges that he wasted his time, but not that Defendant obtained his services. Willick's flawed reading of the statute would essentially turn every litigation in which a litigant felt he was wasting time, and every business dispute in which a company's good will could be diminished, into a criminal act. Not only is that not the law, but it would be an absurd result.

explicit or tacit agreement, intended to accomplish an unlawful objective for the specific purposes of harming Mr. Willick and the Willick Law Group's pecuniary interest." (Cmplt., ¶ 70. "Defendants' civil conspiracy resulted in damages to Mr. Willick and the Willick Law Group." (Cmplt., ¶71.) No facts are alleged in support of these conclusory claims. Accordingly, this cause of action should be dismissed as well.

X. PLAINTIFFS' TENTH CAUSE OF ACTION FOR INJUNCTIVE RELIEF SHOULD BE DISMISSED.

Plaintiffs' purported tenth cause of action for injunction also fails to state a claim. First, injunctive relief is a remedy, not a cause of action.

Second, an injunction cannot issue to suppress speech that is critical of a business. Business interests such as the one asserted by Plaintiffs in this case cannot serve as the basis for an injunction against free expression. In Organization for a Better Austin v. Keefe, 402 U.S. 415 (1971), the United States Supreme Court reversed an injunction against distributing pamphlets critical of a realtor's business practices. The Court noted:

> No prior decisions support the claim that the interest of an individual in being free from public criticism of his business practices in pamphlets or leaflets warrants the use of the injunctive power of a court. … Among other important distinctions, respondent is not attempting to stop the flow of information into his own household, but to the public.

Id., at 419-420.

Third, an injunction cannot issue to force speech, as Plaintiffs are seeking. It is well-established that "the right of freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all." Wooley v. Maynard, 430 U.S. 705, 714, 97 S. Ct. 1428, 1435, 51 L. Ed. 2d 752 (1977). Although this issue has not yet arisen in Nevada, other courts have been loath to force apologies from civil litigants, as forcing someone to speak violates his or her First Amendment rights. See, Griffith v. Smith, 30 Va. Cir. 250 (Va. Cir. 1993, *rev'd on other grounds sub nom.*, Roberts v. Clarke, 34 Va.Cir. 61 (Va.Cir. 1994) ("First Amendment concerns preclude the Court from

ordering the apology originally suggested"). This court should not use its injunctive power to force any speech, much less a formal apology, out of a civil litigant.

XI. THE SUBJECT STATEMENTS WERE MADE BY SANSON ACTIVING WITHIN HIS CAPACITY AS PRESIDENT OF VIPI; PLAINTIFFS FAIL TO ALLEGE ANY FACTS TO SUPPORT SUIT AGAINST SANSON IN HIS PERSONAL CAPACITY; ACCORDINGLY, SANSON SHOULD BE DISMISSED.

NRS 78.747 states in relevant part that "no stockholder, director or officer of a corporation is individually liable for a debt or liability of the corporation . . ." Yet, that is exactly what the complaint seeks to do. The complaint fails to allege any facts that would make Steve Sanson personally liable for actions he took in his capacity as the President of Veterans in Politics International, Inc.

The complaint makes the following admissions:

1. "Sanson is . . . the President of Veterans in Politics International, Inc., and the Treasurer and Secretary of Sanson Corporation." (Cmplt., ¶ 7.)

2. "Veterans in Politics International, Inc. is a duly formed Domestic Non-Profit Corporation" (Cmplt., ¶ 12.)

3. "Sanson Corporation is a duly formed Domestic Corporation in the State of Nevada." (Cmplt., ¶13.)

4. "On or about November 14, 2015, Mr. Willick appeared by invitation on a radio show hosted by Mr. Sanson, *in his capacity of President of Veterans in Politics International, Inc.*," (Cmplt., ¶ 19; emphasis added.)

5. Each of the statements at issue were originally published on either VIPI's website or VIPI's Facebook page (Cmplt, ¶ 20, 26, 30, 32, 34).

6. The December 25, 2016 and January 12, 2017 statements were allegedly republished via (unidentified) Pinterest, Google, and Twitter accounts, and 9 Facebook pages of which 5 have VIPI in their name. There is no allegation that Sanson's alleged republishing of the statements, even to the 3 Facebook pages that have Steve Sanson's name, was not done within his capacity as President of VIPI.

7. The December 25, 2016 statement stated "*Veterans in Politics* defense [sic] Military Veterans Service Connected Disability Benefits." (Cmplt., ¶21; emphasis added.) The very statement, particularly when coupled with the fact that it is on VIPI's website, indicates that the post is being made by VIPI. The statement was allegedly republished in "identical language" in an email blast sent by Steve Sanson (Cmplt., ¶ 23; page 6 ftnt 1), but again, there is no allegation that the email blast was not from or on behalf of VIPI.

In short, there are no allegations or facts alleged in the complaint that would warrant Steve Sanson being sued in his personal capacity. As such, Mr. Sanson should be dismissed from this lawsuit forthwith.

XII. CONCLUSION

For all of the reasons stated above, Defendants respectfully request that the Court:

a. Dismiss the Complaint with prejudice for failure to state a claim;

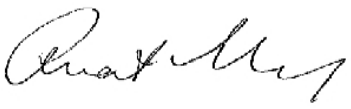
b. Dismiss Steve Sanson in his personal capacity from this case;

c. Not grant leave to amend the complaint;

d. Order the payment of attorneys' fees and costs for the representation of Defendants in the within action, subject to a prove-up hearing;

e. Order such other relief that the court deems just and proper.

DATED: February 24, 2017



By:
Attorney for: VETERANS IN POLITICS INTERNATIONAL, INC. and STEVE W. SANSON
Anat Levy, Esq.
NV Bar No. 12250
Anat Levy & Associates, P.C.
5841 E. Charleston Blvd., #230-421
Las Vegas, NV 89142
Cell: (310) 621-1199
Alevy96@aol.com

CERTIFICATE OF SERVICE

I am over the age of 18 and am not a party to the within action.

On the date indicated below, I caused to be served a true and correct copy of the document entitled **MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM (NRCP § 12(b)(5))** on the below listed recipients by requesting the court's wiznet website to E-file and E-serve such document to their respective email addresses as indicated below.

Jennifer Abrams, Esq.
The Abrams & Mayo Law Firm
6252 S. Rainbow Blvd., Ste. 100
Las Vegas, NV 89118
(702) 222-4021
JVAGroup@theabramslawfirm.com

Alex Ghoubadi, Esq.
G Law
320 E. Charleston Blvd., Ste. 105
Las Vegas, NV 89104
(702) 217-7442
alex@alexglaw.com

Courtesy Copy:
Maggie McLetchie, Esq.
McLetchie Shell
702 E. Bridger Ave., Ste. 520
Las Vegas, NV 89101
(702) 728-5300
Maggie@nvlitigation.com

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

Executed this 2nd day of March, 2017, in Las Vegas, NV

//Anat Levy//

MSTR
Anat Levy, Esq. (State Bar No. 12550)
ANAT LEVY & ASSOCIATES, P.C.
5841 E. Charleston Blvd., #230-421
Las Vegas, NV 89142
Phone: (310) 621-1199
E-mail: alevy96@aol.com; Fax: (310) 734-1538
Attorney for: DEFENDANTS VETERANS IN POLITICS INTERNATIONAL, INC. AND STEVE SANSON

DISTRICT COURT
CLARK COUNTY, NEVADA

MARSHALL S. WILLICK and WILLICK LAW GROUP, Plaintiffs, vs. STEVE W. SANSON; HEIDI J. HANUSA; CHRISTINA ORTIZ; JOHNNY SPICER; DON WOOOLBRIGHTS; VETERNAS IN POLITICS INTERNATIONAL, INC.; SANSON CORPORATION; KAREN STEELMON; and DOES 1 THROUGH X Defendants.	CASE NO. A-17-750171-C DEPT. NO.: ~~XIX (19)~~ 18 [Filed concurrently with Motion to Dismiss for Failure to State a Claim; Motion to Dismiss for Lack of Subject Matter Jurisdiction, and Request for Judicial Notice.]

MOTION TO STRIKE

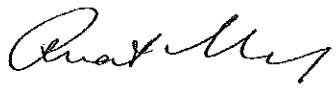
Defendants Veterans in Politics International, Inc. and Steve W. Sanson hereby move, by and through their counsel of record Anat Levy of Anat Levy & Associates, P.C., to strike the following portions of the complaint as immaterial, and/or impertinent and/or scandalous:

- Paragraph 27, footnote 2, starting with "a skirmish in a lengthy…" to the end of the footnote;
- Paragraph 32, the entirety of footnote 3;
- Paragraph 39 in its entirety;
- Paragraph 42 in its entirety;
- Paragraph 74, including subparagraphs a-g, in its entirety;

- Paragraph 80 in its entirety;
- Paragraph 81 in its entirety;
- Paragraph 82 in its entirety;
- Paragraph 83 in its entirety;
- Paragraph 84 in its entirety; and
- Paragraphs 85 through 88, in their entireties.

This motion is made pursuant to NRCP 12(f), and is based on this motion, the notice of motion below, the accompanying Memorandum of Points and Authorities, the motions to strike and filed concurrently herewith, the pleadings and court records, and any argument and evidence submitted at the time of hearing.

DATED: February 24, 2017



By:
Attorney for: VETERANS IN POLITICS INTERNATIONAL, INC. and STEVE W. SANSON
Anat Levy, Esq.
NV Bar No. 12250
Anat Levy & Associates, P.C.
5841 E. Charleston Blvd., #230-421
Las Vegas, NV 89142
Cell: (310) 621-1199
Alevy96@aol.com

NOTICE OF MOTION

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that the undersigned counsel will appear at the Clark County Courthouse, Eighth Judicial District Court, Las Vegas, Nevada on the 04 day of April, 2017 at 9:00 A.m. in Department ~~XIX~~ XVIII, or as soon thereafter as counsel may be heard, to bring this MOTION TO STRIKE, on for hearing.

DATED: February __, 2017

By:
Attorney for: VETERANS IN POLITICS INTERNATIONAL, INC. and STEVE W. SANSON
Anat Levy, Esq.
NV Bar No. 12250
Anat Levy & Associates, P.C.
5841 E. Charleston Blvd., #230-421
Las Vegas, NV 89142
Cell: (310) 621-1199
Alevy96@aol.com

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

NRCP 12(f) permits the Court to strike "any insufficient defense, or any redundant, immaterial, impertinent, or scandalous matter" from a pleading. The purpose of the rule "is to avoid the expenditure of time and money that must arise from litigating spurious issues by dispensing with those issues prior to trial." Fantasy, Inc. v. Fogerty, 984 F.2d 1524, 1527 (9th Cir. 1993), rev'd on other grounds, 510 U.S. 517, 114 S.Ct. 1023 (1994).

II. PORTIONS OF THE COMPLAINT TO BE STRICKEN

The complaint contains numerous provisions that are either wholly irrelevant and/or are impertinent and/or scandalous and should therefore be stricken:

1. Paragraph 27, footnote 2, the words: "a skirmish in a lengthy multi-state pursuit of Mr. Vaile, the most infamous international child kidnapper and deadbeat dad in Nevada for whom an arrest warrant is outstanding, for over a million dollars in back child support, attorney's fees a, and tort damages." Plaintiffs' characterization of Mr. Vaile and what appears to be an attempt to justify why Plaintiffs defamed him in 2008 is immaterial to this case.

2. Paragraph 32, footnote 3 in its entirety: "Mr. Sanson's intent to defame, denigrate, and harm the plaintiffs is so great that he completely ignores the fact that Plaintiffs had absolutely nothing to do with the Lobello decision." This is conjecture. As set forth in Defendants' previously filed anti-SLAPP motion, Defendants hyperlinked one of the statements at issue to the Lobello decision to show what the court looks for in determining when to grant attorneys' fees pursuant to an attorneys' fees lien. This footnote is pure conjecture, irrelevant and scandalous and should be stricken.

3. Paragraph 39 in its entirety: "On January 24, 2017, Defendants posted online an offer to pay "up to $10,000 for verifiable information on Nevada Family Court Attorney marshal Willick." This allegation does not form the basis of any cause of action, is irrelevant and is set forth in an attempt to be scandalous. This should therefore be stricken.

4. Paragraph 42 in its entirety: "Mr. Willick and the Willick Law Group are not

public figures, as some or all of the Defendants have acknowledged." This allegation is immaterial. The issue of whether Plaintiffs are public figures is a question of law for the Court to decide. Accordingly, this paragraph should be stricken.

5. Paragraph 74 in its entirety, including subparagraphs a, b, c, d, e, f and g.

Paragraph 74, including its subparts, is a mere list of what Plaintiffs allege are RICO related crimes (though most are not), and are duplicative of paragraphs 79 through 87 which flesh out with some modicum of facts, at least some of these allegations. Further, all of the subparagraphs, except subparagraphs e (and a legally misapplied subparagraph f that purports to somehow turn a speech case into one of criminal "theft"), are not among the "RICO Related" crimes set forth in, and required by, NRS 207.360 to form the basis of a RICO claim. The paragraph should therefore be stricken as duplicative, conclusory, and scandalous as they accuse Defendants of crimes.

6. Paragraph 80 in its entirety: "Defendants published a false or grossly inaccurate report of court proceedings on numerous occasions, including, but not limited to, the "Virginia post," "VIP Facebook Post #1," and "VIP Facebook Post #2." (NRS 199.240(7))."

A violation of NRS 199.240(7) is not an enumerated RICO related crime under NRS 207.360 and should be stricken as irrelevant, conclusory, and scandalous as it purports to accuse Defendants of a crime.

7. Paragraph 81 in its entirety: "Defendants Steve W. Sanson, Heidi J. Hanusa, Christina Ortiz, Johnny Spicer, Don Woolbright, Veterans in Politics International, Inc. Sanson Corporation, Karen Steelmon, and Does I through X inclusive, gave or sent a challenge in writing to fight Richard Carreon and others. (NRS 200.450).

A violation of NRS 200.450 is not one of the RICO related crimes enumerated in NRS 207.360, thereby rendering this allegation irrelevant. Moreover, it is conclusory, does not pertain to Plaintiffs (Richard Carreon is not a plaintiff in this case), and scandalous as it purports to accuse Defendants of a crime. It should therefore be stricken.

8. Paragraph 82 in its entirety: "Defendants willfully stated, delivered or transmitted to a manager, editor, publisher, reporter or other employee of a publisher of any

newspaper, magazine, publication, periodical or serial statements concerning Plaintiffs which, if published therein, would be a libel. (NRS 200.550)."

A violation of NRS 200.550 is not a RICO related crime under NRS 207.360. The allegation is therefore irrelevant, conclusory and scandalous as it purports to accuse Defendants of a crime. It should therefore be stricken.

9. Paragraph 83 in its entirety: "Defendants, without lawful authority, knowingly threatened to substantially harm the health or safety of Plaintiff and, by words and conduct place Plaintiffs in reasonable fear that the threat would be carried out. (NRS 200.571)."

A violation of NRS 200.571 is not a RICO related crime under NRS 207.360, so this allegation is irrelevant and should be stricken. In addition, the statement is conclusory in that the complaint fails to state any facts regarding physical threats to Plaintiffs, and it is scandalous as it purports to accuse Defendants of a crime. The allegation should therefore be stricken.

10. Paragraph 84 in its entirety: "Defendants, in the course of their enterprise, knowingly and with the intent to defraud, engaged in an act, practice or course of business or employed a device, scheme or artifice which operates or would operate as a fraud or deceit upon a person by means of a false representation or omission of material fact that Defendants know to be false or omitted, Defendants intend for others to rely on, and results in a loss to those who relied on the false representation or omission in at least two transactions that have the same or similar pattern, intents, results, accomplices, victims or methods of commission, or are otherwise interrelated by distinguishing characteristics and are not isolated incidents within 4 years and in which the aggregate loss or intended loss is more than $650. (NRS 205.377)."

This entire paragraph is a legal conclusion, devoid of any facts either within it or alleged anywhere else in the complaint to support it. Needless to say it does not even approach the heightened pleading specificity required for allegations of fraud. Plaintiffs fail to state how they were lied to, what they relied on, how they were defrauded, etc. This allegation should therefore be stricken as irrelevant, conclusory and scandalous for accusing Defendants of a crime.

11. Paragraphs 85 through 88 in their entirety. These paragraphs allege that Defendants engaged in criminal theft because Plaintiffs had to take time to deal with the allegedly defamatory statements and that these statements somehow diminished the value of the Willick Law Group. Plaintiffs engage in a misapplication of the theft statutes as such a reading would essentially turn every defamation case, and indeed, every litigation into a criminal "theft" as litigants take time to deal with each other's acts. Moreover, it would turn every claim of diminution of a business's good will into a criminal act. The theft statutes by their very terms require defendants to have "obtained" real, personal or intangible property or services of another. There are no allegations in the complaint whatsoever that Defendants obtained anything. Accordingly, these paragraphs should be stricken as irrelevant and scandalous as they accuse Defendants of a crime.

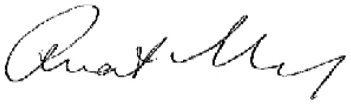
III. CONCLUSION

For all of the reasons stated above, Defendants respectfully request that the Court strike the following portions of the complaint:

- Paragraph 27, footnote 2, starting with "a skirmish in a lengthy…" to the end of the footnote;
- Paragraph 32, the entirety of footnote 3;
- Paragraph 39 in its entirety;
- Paragraph 42 in its entirety;
- Paragraph 74, including subparagraphs a-g, in its entirety;
- Paragraph 80 in its entirety;
- Paragraph 81 in its entirety;
- Paragraph 82 in its entirety;
- Paragraph 83 in its entirety;
- Paragraph 84 in its entirety; and
- Paragraphs 85 through 88, in their entireties.

Defendants also request that the Court order such further relief as the Court deems just and proper.

DATED: February 24, 2017



By:
Attorney for: VETERANS IN POLITICS INTERNATIONAL, INC. and STEVE W. SANSON
Anat Levy, Esq.
NV Bar No. 12250
Anat Levy & Associates, P.C.
5841 E. Charleston Blvd., #230-421
Las Vegas, NV 89142
Cell: (310) 621-1199
Alevy96@aol.com

CERTIFICATE OF SERVICE

I am over the age of 18 and am not a party to the within action.

On the date indicated below, I caused to be served a true and correct copy of the document entitled **MOTION TO STRIKE (NRCP § 12(f))** on the below listed recipients by requesting the court's wiznet website to E-file and E-serve such document to their respective email addresses as indicated below.

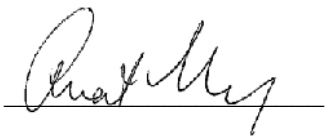
Jennifer Abrams, Esq.
The Abrams & Mayo Law Firm
6252 S. Rainbow Blvd., Ste. 100
Las Vegas, NV 89118
(702) 222-4021
JVAGroup@theabramslawfirm.com

Alex Ghoubadi, Esq.
G Law
320 E. Charleston Blvd., Ste. 105
Las Vegas, NV 89104
(702) 217-7442
alex@alexglaw.com

Courtesy Copy:
Maggie McLetchie, Esq.
McLetchie Shell
702 E. Bridger Ave., Ste. 520
Las Vegas, NV 89101
(702) 728-5300
Maggie@nvlitigation.com

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

Executed this 2nd day of March 2017, in Las Vegas, NV



RFJN
Anat Levy, Esq. (State Bar No. 12550)
ANAT LEVY & ASSOCIATES, P.C.
5841 E. Charleston Blvd., #230-421
Las Vegas, NV 89142
Phone: (310) 621-1199
E-mail: alevy96@aol.com; Fax: (310) 734-1538
Attorney for: DEFENDANTS VETERANS IN POLITICS INTERNATIONAL, INC. AND STEVE SANSON

DISTRICT COURT
CLARK COUNTY, NEVADA

MARSHALL S. WILLICK and WILLICK LAW GROUP, Plaintiffs, vs. STEVE W. SANSON; HEIDI J. HANUSA; CHRISTINA ORTIZ; JOHNNY SPICER; DON WOOOLBRIGHTS; VETERNAS IN POLITICS INTERNATIONAL, INC.; SANSON CORPORATION; KAREN STEELMON; and DOES 1 THROUGH X Defendants.	Case No: A-17-750171-C Dept. No.: ~~XIX (19)~~ 18 [Filed concurrently with Motion to Dismiss for Failure to State a Claim, Motion to Dismiss for Lack of Subject Matter Jurisdiction, and Motion to Strike.]

REQUEST FOR JUDICIAL NOTICE
IN SUPPORT OF MOTION TO DISMISS
FOR FAILURE TO STATE A CLAIM

Defendants Veterans in Politics International, Inc. ("VIPI") and its President, Steve Sanson ("Sanson"), hereby request that the Court take judicial notice of the documents listed below, pursuant to NRS 47.130(2)(b). NRS 47.130(2)(b) permits the court to take judicial notice of facts that are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned, so that the fact is not subject to reasonable dispute."

NRS 47.150 obligates the court to take such notice if requested by a party and supplied with the necessary information as is the case here.

I. Documents/Facts for Which Judicial Notice is Requested

Defendants request that the Court take judicial notice of the following documents:

1. The amended complaint (without exhibits) in Abrams et al. v. Schneider, et al., Eighth Judicial District Court case no. A-17-750171-C, presently pending in Dept. 19, before the Hon. Valerie Adair, a true and correct copy of which is attached as Exhibit 1.

2. The amended complaint in Willick v. Jere Beery et. al, Eighth Judicial District Court, case no. A12661766-C, a true and correct copy of which is attached as Exhibit 2.

3. Plaintiffs' March 3, 2015 letter to Chair of the Assembly Judiciary Committee in opposition to Assembly Bill 140, which letter is public record, a true and correct copy of which is attached as Exhibit 3. The letter was downloaded from Nevada's legislative website.

4. Minutes of the Meeting of the Assembly Committee on Judiciary, dated March 20, 2015, a true and correct copy of which is attached as Exhibit 4. The Minutes are public record and were downloaded from the Nevada's legislative website.

5. The Order of Suspension of Richard Crane, issued by the Supreme Court of Nevada on January 10, 2013, a true and correct copy of which is attached as Exhibit 5.

6. The July 2008 Memorandum Opinion and Order of Judge Norman K. Moon in the Vaile v. Willick action, Case no. 6:07cv00011 before the United States District Court for the Western District of Virginia, a true and correct copy of which is attached as Exhibit 6.

7. Plaintiff's Nevada Supreme Court brief in Holyoak v. Holyoak, a true and correct copy of which is attached as Exhibit 7.

8. Willick's opponent's Reply to Plaintiff's Nevada Supreme Court brief in the Holyoak case, a true and correct copy of which is attached as Exhibit 8.

9. The Supreme Court's Order in the Holyoak case a true and correct copy of which is attached as Exhibit 9.

10. Plaintiffs' motion for limited remand in the Holyoak case, a true and correct copy of which is attached as Exhibit 10.

11. The Nevada Supreme Court's denial of Plaintiff's motion for limited remand in the Holyoak case, a true and correct copy of which is attached as Exhibit 11.

12. Plaintiffs' motion for attorney's fees (without exhibits) in the Holyoak case, a true and correct copy of which is attached as Exhibit 12.

13. Plaintiffs' client's objection to their request for attorneys' fees in the Holyoak case, a true and correct copy of which is attached as Exhibit 13.

14. Marshal Willick's 11-page resume as downloaded from Plaintiffs' website, and attached as Exhibit 14.

15. Images of 3 books written by Marshal Willick and available for public sale, as downloaded from Plaintiffs' website and attached as Exhibit 15.

16. Articles from the Las Vegas Review Journal, the Las Vegas Sun, the Elko Daily and the Guardian LV, either featuring or comprising commentary from Marshal Willick on various issues of divorce law, true and correct copies of which are collectively attached as Exhibit 16.

17. A true and correct picture of Plaintiff's advertising billboard outside of Plaintiff Willick Law Group's offices (across the street from Family Court), attached as Exhibit 17.

II. Exhibits 1-13 Are Public Records of Which the Court Can Take Judicial Notice.

In Niles v. Nat'l Default Servicing Corp., 126 Nev. 742, 367 P.3d 804 (Nev., 2010), the court acknowledged that "a court may take judicial notice of matters of public record," citing, Lee v. City of Los Angeles, 250 F.3d 668, 689 (9th Cir.2001).

Public documents include court documents when submitted to show the fact that the document was filed and what the document claims (as opposed to the truth of unadjudicated facts in those documents. In Kramer v. Time Warner Inc., 937 F.2d 767, 774 (2d Cir. 1991) the court acknowledged that "courts routinely take judicial notice of documents filed in other courts . . . to establish the fact of such litigation and related filings." "The existence and content of opinions

and pleadings are matters capable of accurate and ready determination by resort to official court files that cannot reasonably be questioned." Bogart v. Daley, No. CV 00-101-BR, 2001 WL 34045761, at *2 (D. Or. June 28, 2001) (citing Fed. R. Evid. 201(b)(2). *C.f.* Clark Cnty. Dep't of Family Servs. v. Anne O. (In re R.Y.) (Nev., 2014) ("while court records may be sources of reasonably indisputable accuracy when they memorialize some judicial action, this does not mean that courts can notice the truth of every hearsay statement filed with the clerk.").

Accordingly, all of Exhibits 1-13, except for Exhibits 3 and 4, are court documents submitted to establish their existence, their subject matter and dispositions, all as more fully described in the accompanying Motion to Dismiss for Failure to State a Claim.

Exhibits 3 and 4 are legislative public records downloaded from Nevada's legislative website and is likewise not subject to reasonable dispute as they are "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Moreover, they are proffered not for the truth of the statements they contain, but simply as proof that Plaintiff Willick voluntarily testified, in writing and in person, before the state legislature with regard to Assembly Bill 140 as reflected in those documents.

III. Exhibits 14 and 15 Were Downloaded from Plaintiffs' Website And Are Subject to Judicial Notice.

Exhibit 14 is Plaintiff Willick's 11-page resume and Exhibit 15 is a screenshot of 3 books written by Plaintiff Willick. Both of these documents were downloaded from the Willick Law Group's website and are not subject to reasonable dispute by Willick. These are proffered to show his status as a public figure.

IV. Exhibit 16 is Proper for Judicial Notice.

Exhibit 16 is a picture of a large public billboard as it appears outside of Plaintiffs' law office. The fact of the existence of this billboard is easily verifiable not subject to reasonable dispute.

/ / /

/ / /

Accordingly, Defendants respectfully request that the Court take judicial notice of the attached Exhibits 1 through 16.

DATED: February 24, 2017

By:
Attorney for: VETERANS IN POLITICS INTERNATIONAL, INC. and STEVE W. SANSON
Anat Levy, Esq.
NV Bar No. 12250
Anat Levy & Associates, P.C.
5841 E. Charleston Blvd., #230-421
Las Vegas, NV 89142
Cell: (310) 621-1199
Alevy96@aol.com

CERTIFICATE OF SERVICE

I am over the age of 18 and am not a party to the within action.

On this date I asked the court to E-serve a true and correct copy of the document entitled REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM on the below listed recipients through its e-serve service on wiznet to the following recipients.

Jennifer Abrams, Esq.
The Abrams & Mayo Law Firm
6252 S. Rainbow Blvd., Ste. 100
Las Vegas, NV 89118
(702) 222-4021
JVAGroup@theabramslawfirm.com

Alex Ghoubadi, Esq.
G Law
320 E. Charleston Blvd., Ste. 105
Las Vegas, NV 89104
(702) 217-7442
alex@alexglaw.com

Courtesy Copy:
Maggie McLetchie, Esq.
McLetchie Shell
702 E. Bridger Ave., Ste. 520
Las Vegas, NV 89101
(702) 728-5300
Maggie@nvlitigation.com

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

Executed this 24th day of February, 2017, in Las Vegas, NV

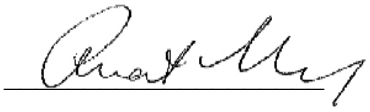


EXHIBIT 1

Electronically Filed
01/27/2017 09:59:17 PM

CLERK OF THE COURT

ACOM
JENNIFER V. ABRAMS, ESQ.
Nevada State Bar Number: 7575
THE ABRAMS & MAYO LAW FIRM
6252 South Rainbow Boulevard, Suite 100
Las Vegas, Nevada 89118
Phone: (702) 222-4021
Email: JVAGroup@theabramslawfirm.com
Attorney for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

JENNIFER V. ABRAMS and THE ABRAMS & MAYO LAW FIRM, Plaintiff, vs. LOUIS C. SCHNEIDER; LAW OFFICES OF LOUIS C. SCHNEIDER, LLC; STEVE W. SANSON; HEIDI J. HANUSA; CHRISTINA ORTIZ; JOHNNY SPICER; DON WOOLBRIGHT; VETERANS IN POLITICS INTERNATIONAL, INC.; SANSON CORPORATION; KAREN STEELMON; and DOES I THROUGH X, Defendant.	Case No.: A-17-749318-C Department: XXI Hearing Date: N/A Hearing Time: N/A ACTION IN TORT ARBITRATION EXEMPTION CLAIMED

AMENDED COMPLAINT FOR DAMAGES

I.
INTRODUCTION

1. Plaintiffs, Jennifer V. Abrams and The Abrams & Mayo Law Firm ("Plaintiffs") bring this action for damages based upon, and to redress, Defendants' Intentional Defamation of the character of the Plaintiffs through libelous writings and slander, for Intentional Infliction of Emotional Distress, Negligent Infliction of Emotional Distress, False Light, Business Disparagement, Harassment, Concert of

Action, Civil Conspiracy, and violations of RICO, all of which were perpetrated individually and in concert with others by defendants Louis C. Schneider, Louis C. Schneider, LLC, Steve W. Sanson, Heidi J. Hanusa, Christina Ortiz, Johnny Spicer, Don Woolbright, Veterans In Politics International, Inc., Sanson Corporation, Karen Steelmon, and Does I Through X (collectively "Defendants").

II.
VENUE AND JURISDICTION

2. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

3. Jurisdiction is proper in Nevada State court as all alleged claims were transmitted to or performed in Nevada by the Defendants individually or in concert with others.

III.
PARTIES

4. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

5. Plaintiff Jennifer V. Abrams, is a natural person and an attorney licensed to practice law in the State of Nevada. She practices exclusively in the field of Domestic Relations and is a peer-reviewed and certified Fellow of the American Academy of Matrimonial Lawyers, and a Certified Specialist in Family Law.

6. The Abrams & Mayo Law Firm is a dba of The Abrams Law Firm, LLC, a duly formed Limited Liability Company in the State of Nevada.

7. Upon information and belief, Louis C. Schneider is a natural person who is admitted to practice law in the State of Nevada and is the managing member of Law Offices of Louis C. Schneider, LLC.

8. Upon information and belief, Law Offices of Louis C. Schneider, LLC is a duly formed Limited Liability Company located in Las Vegas, Nevada.

9. Upon information and belief, Steve W. Sanson is a natural person, the President of Veterans In Politics International, Inc., and the Treasurer and Director of Sanson Corporation.

10. Upon information and belief, Heidi J. Hanusa is a natural person, the Treasurer of Veterans In Politics International, Inc., and the President and Secretary of Sanson Corporation.

11. Upon information and belief, Christina Ortiz is a natural person and the Director of Veterans In Politics International, Inc.

12. Upon information and belief, Johnny Spicer is a natural person and Secretary of Veterans In Politics International, Inc.

13. Upon information and belief, Don Woolbright is a natural person and Secretary of Veterans In Politics International, Inc.

14. Upon information and belief, Veterans In Politics International, Inc. is a duly formed Domestic Non-Profit Corporation whose purported purpose is "[t]o educate, organize, and awaken our veterans and their families to select, support and intelligently vote for those candidates whom would help create a better world, to protect ourselves from our own government(s) in a culture of corruption, and to be the political voice for those in other groups who do not have one."

15. Upon information and belief, Sanson Corporation is a duly formed Domestic Corporation in the State of Nevada.

16. Upon information and belief, Karen Steelmon is a natural person and is the Registrant of the Domain veteransinpolitics.org.

17. Upon information and belief, additional persons and entities have been working with the above named Defendants either individually or in concert and have been added as Doe Defendants in this action until they are personally identified.

18. Jennifer V. Abrams and The Abrams & Mayo Law Firm are informed and believe, and therefore allege, that each of the Defendants designated herein as Louis C. Schneider, Law Offices of Louis C. Schneider, LLC, Steve W. Sanson, Heidi J. Hanusa, Christina Ortiz, Johnny Spicer, Don Woolbright, Veterans In Politics International, Inc., Sanson Corporation, Karen Steelmon, and Does I through X inclusive, are in some way legally responsible and liable for the events referred to herein, and directly or proximately caused the damages alleged herein.

19. At all times material hereto, and in doing the acts and omissions alleged herein, the Defendants, and each of them, including Louis C. Schneider, Law Offices of Louis C. Schneider, LLC, Steve W. Sanson, Heidi J. Hanusa, Christina Ortiz, Johnny Spicer, Don Woolbright, Veterans In Politics International, Inc., Sanson Corporation, Karen Steelmon, and Does I through X inclusive, acted individually and/or through their officers, agents, employees and co-conspirators, each of whom was acting within the purpose and scope of that agency, employment, and conspiracy, and these acts and omissions were known to, and authorized and ratified by, each of the other Defendants.

IV.
FACTUAL ALLEGATIONS

20. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

///

21. Plaintiffs represent Brandon Saiter (hereinafter "Husband") in a divorce action pending in the Eighth Judicial District Court, County of Clark, Nevada, Family Division, Case Number D-15-521372-D (hereinafter "the 'D' Case"), Hon. Jennifer L. Elliott, Department L, presiding.

22. Defendants Louis C. Schneider and Law Offices of Louis C. Schneider, LLC (hereinafter collectively referred to as "Schneider") represent Tina Saiter (hereinafter "Wife") in the "D" Case.

23. On September 12, 2016, Plaintiffs, on behalf of Husband, filed a *Motion for Sanctions and Attorney's Fees* against Schneider in the "D" Case for Schneider's violations of both ethical and procedural rules. Schneider was served via electronic service the same day, September 12, 2016.

24. On September 15, 2016, Schneider sent the following email to Brandon Leavitt, Esq. at The Abrams & Mayo Law Firm, which states in relevant part:

> I've had about all I can take.
> Withdraw your Motion and I'll withdraw from the case.
> Be advised – Tina has asked me not to leave the case.
> I was getting ready to withdraw my motion to withdraw.
> If your firm does not withdraw that motion, I will oppose it **and take additional action beyond the opposition.**
>
> [Emphasis added.]

25. Plaintiffs did not withdraw the *Motion for Sanctions and Attorney's Fees* against Schneider. Said *Motion for Sanctions and Attorney's Fees* was set for hearing on September 29, 2016.

26. Upon information and belief, Schneider engaged in one or more *ex parte* communications with Judge Elliott, either directly or through her staff, between September 25, 2016 and the September 29, 2016 hearing.

27. At the beginning of the hearing on September 29, 2016, Plaintiffs, on behalf of Husband, requested a "closed hearing" pursuant to EDCR 5.02. The request was granted by Judge Elliott and the hearing was closed.

28. At the beginning of the hearing on September 29, 2016, Judge Elliott accused Plaintiffs and Husband of misrepresenting financial information on Husband's Financial Disclosure Form and referred to Plaintiffs as "unethical." By the end of the one-hour and twelve minute hearing, Judge Elliott learned that she was mistaken on a number of factual matters and retracted her incorrect accusations against Plaintiffs.

29. A decision on Plaintiffs' request for sanctions and fees against Schneider in the "D" Case was deferred and is still pending submission and review of additional briefing.

30. The day after the September 29, 2016 hearing, on September 30, 2016 at 8:02 am, Schneider sent an email to Kim Gurule at Video Transcription Services stating, in relevant part:

> Can you please upload the video from yesterday's hearing?
> Thank you.
> :)

31. Upon information and belief, Schneider provided a copy of the September 29, 2016 "closed hearing" to Defendants Steve W. Sanson and Veterans In Politics International, Inc.

32. Upon information and belief, Defendants conspired to affect the outcome of the pending "D" Case by defaming, inflicting emotional distress upon, placing in a false light, disparaging the business of, and harassing Plaintiffs and

inflicting emotional distress upon Judge Elliott, and threatening to continue doing so.

33. On October 5, 2016, Defendants published or caused to be published on YouTube and on veteransinpolitics.org, a website purportedly owned and controlled by Defendants Steve W. Sanson, Heidi J. Hanusa, Christina Ortiz, Johnny Spicer, Don Woolbright, Veterans In Politics International, Inc., Sanson Corporation, Karen Steelmon, and Does I through X inclusive, the video from the "closed hearing" on September 29, 2016 in the "D" Case, with an article entitled "Nevada Attorney attacks a Clark County Family Court Judge in Open Court" (hereinafter "the 'Attack' article").[1]

34. The "Attack" article was published, or republished, or attributed to one another, or disseminated to third parties across state lines, via email across multiple states, including Veterans In Politics International, Inc. sending it directly to the attorneys and paralegals at The Abrams & Mayo Law Firm, and via numerous social media sites including Pinterest, Google+, Twitter, and the following Facebook pages:

a. steve.sanson.1
b. steve.sanson.3
c. veteransinpolitics
d. veteransinpoliticsinternational
e. eye.on.nevada.politics
f. steve.w.sanson
g. Veterans-In-Politics-International-Endorsement-for-the-State-of-Nevada

[1] A copy of the published "Attack" article is attached as Exhibit 1.

h. Veterans in Politics: groups/OperationNeverForget

i. Nevada-Veterans-In-Politics

35. Within the "Attack" article, Defendants defame Jennifer V. Abrams and her law firm, The Abrams & Mayo Law Firm, with a number of false and misleading statements.

36. In the "Attack" article, the Defendants published, or republished, or attributed to one another, or disseminated to third parties across state lines, false and defamatory statements directed against Plaintiffs, including that:

a. Plaintiff, Jennifer Abrams "attacked" a Clark County Family Court Judge in open court;

b. Abrams has "no boundaries in our courtrooms";

c. Abrams is unethical;

d. There is a "problem" requiring Abrams to be reported to the Nevada State Bar; and

e. That Abrams "crossed the line with a Clark County District Court Judge."

37. Despite knowledge that Judge Elliott retracted her accusations at the end of the one hour and twelve minute "closed" hearing, the Defendants published, or republished, or attributed to one another, or disseminated to third parties across state lines, misleading statements about Plaintiffs, directing viewers only to the portion of the video wherein the incorrect and later retracted accusations were made ("Start 12:13:00"), and quoting only those misleading select portions. Although the entire one hour and twelve minute video was posted, Defendants knew or should

have known that viewers were unlikely to watch the entirety (or any) of the video, instead, relying upon the misleading snippets highlighted by Defendants.

38. During a break at another court hearing in the "D" case on October 5, 2016 (immediately after the dissemination of the "Attack" article via email), Defendant Schneider said to Brandon K. Leavitt, Esq., of The Abrams & Mayo Law Firm, that a withdrawal of the *Motion for Sanctions and Attorney Fees* would "make this all go away," or words to that effect.

39. Defendants were given the opportunity to voluntarily withdraw the defamatory material. On October 5, 2016 at 6:02 pm, the Honorable Jennifer Elliott sent an email to Defendants beginning with "I was made aware of this video today and would kindly request that VIP please take it down."

40. Defendants refused to voluntarily withdraw the defamatory material. On October 5, 2016 at 11:16 pm, Defendants Steve W. Sanson and Veterans In Politics International, Inc. responded to Judge Elliott stating in relevant part: ". . . once we start a course of action we do not raise our hands in defeat," and "[i]n combat we never give up and we will not start given (sic) up." Schneider was copied on these exchanges and, by his silence, acquiesced.

41. Defendants were made aware that the information they disseminated was incorrect and again were given an opportunity to withdraw the defamatory material. On October 6, 2016 at 4:00 am, Judge Elliott sent an email to Defendants stating, in relevant part: "I need you to know that I was wrong regarding the finances as they had been disclosed at the outset of the case, from the first filing, albeit late. At the further hearing we had in this matter I put on the record that I believe that he did not hide anything on his financial disclosure form; it was a misunderstanding that

was explained and the record was corrected. . . . I understand that VIP does try to educate and provide information to voters so they will be more informed about who they are putting into office. In this case, the dynamic and the record was changed for the better after that hearing. I think that information would be important to the voters as well. It is my hope that you will reconsider your position."

42. Defendants did not take down the article or the video and, instead, continued to publish, republish, and disseminate the article and video they knew to be false and defamatory.

43. On October 7, 2016, Defendants published, republished, or attributed to one another, or disseminated to third parties across state lines, an advertisement for Law Offices of Louis C. Schneider, stating "Law Offices of Louis Schneider" and "Friends of Veterans in Politics."

44. Upon information and belief, a payment of money was made by Schneider to Defendants Steve W. Sanson, Heidi J. Hanusa, Christina Ortiz, Johnny Spicer, Don Woolbright, Veterans In Politics International, Inc., Sanson Corporation, Karen Steelmon, and Does I through X inclusive.

45. On October 8, 2016, Defendants were served with an Order Prohibiting Dissemination of Case Material entered by Judge Elliott.

46. On October 9, 2016, Defendants published or caused to be published on a website known as veteransinpolitics.org, a website purportedly owned and controlled by Defendants Steve W. Sanson, Heidi J. Hanusa, Christina Ortiz, Johnny Spicer, Don Woolbright, Veterans In Politics International, Inc., Sanson Corporation, Karen Steelmon, and Does I through X inclusive, an article entitled "BULLY District Court Judge Bullied by Family Attorney Jennifer Abrams"

(hereinafter "the 'BULLY' article") along with a copy of the Order Prohibiting Dissemination of Case Material.[2]

47. The "BULLY" article, containing a link to the "Attack" article, has been re-published numerous times via email across multiple states, including Veterans In Politics International, Inc. sending it directly to the attorneys and paralegals at The Abrams & Mayo Law Firm, posting it on Twitter, Pinterest, Google+ and on the following Facebook pages:

a. steve.sanson.1
b. steve.sanson.3
c. veteransinpolitics
d. veteransinpoliticsinternational
e. eye.on.nevada.politics
f. steve.w.sanson
g. Veterans-In-Politics-International-Endorsement-for-the-State-of-Nevada
h. Veterans in Politics: groups/OperationNeverForget
i. Nevada-Veterans-In-Politics

as well as on multiple different Family Court Facebook groups including but not limited to "Nevada COURT Watchers" and "Family Court Support Group (Clark County, NV)."

48. Within the "BULLY" article, Defendants defame Jennifer V. Abrams and her law firm, The Abrams & Mayo Law Firm, with a number of false statements.

[2] A copy of the published "Bully" article is attached as Exhibit 2.

49. The Defendants have published, or republished, or attributed to one another, or disseminated to third parties across state lines, false and defamatory statements directed against Abrams, including:

a. That Abrams bullied Judge Elliott into issuing the Order Prohibiting Dissemination of Case Material;

b. That Abrams' behavior is "disrespectful and obstructionist";

c. That Abrams "misbehaved" in court;

d. That Abrams' behavior before the judge is "embarrassing"; and

e. That Judge Elliott's order appears to be "an attempt by Abrams to hide her behavior from the rest of the legal community and the public."

On October 10, 2016 at 4:08 pm, Defendants responded in an email to Judge Elliott stating, in relevant part: "When we expose folks we do it under the umbrella of a journalist and we use the Freedom of information Act (sic)." and "We might have sent out the second article prematurely..(sic) We have also received numerous attorneys pointing us in the direction of other cases Abram's (sic) have had her outburst and bullied other Judges and Attorneys."

50. On October 10, 2016, Plaintiffs sent an email to Defendants at 7:03 p.m., stating, in relevant part:

> The Freedom of Information Act is inapplicable – it applies to the Federal Government, not State divorce cases. And most importantly, I am not a public figure or an elected official. I am a private citizen with a private law practice. The umbrella of "a journalist" does not apply as I am not running for public office and there are no "voters" that have any right to know anything about my private practice or my private clients.
>
> I am a zealous advocate and will continue to pursue my client's interests without any hesitation whatsoever.

51. Upon information and belief, on or around October 11, 2016, Defendants ran a background search on Plaintiff, Jennifer V. Abrams, and did not find anything negative about her.

52. Defendants responded on October 10, 2016 at 10:03 p.m. via email, again refusing to voluntarily withdraw the false and defamatory material. The email states, in relevant part: "But what I find intriguing is that you think because you are not elected that you are somehow untouchable to the media, then tell that to Lisa Willardson, David Amesbury, Nancy Quon, David Schubert, Barry Levinson, Noel Gage and Richard Crane all Nevada Attorneys not elected and never ran for public office, just to name a few," and "[d]on't forget you practice law in a taxpayer's courtroom." Unlike Plaintiffs, all of the attorneys mentioned were in some manner involved or related to criminal investigations.

53. On or about November 6, 2016, Defendants published or caused to be published on a website known as veteransinpolitics.org, a website purportedly owned and controlled by Defendants Steve W. Sanson, Heidi J. Hanusa, Christina Ortiz, Johnny Spicer, Don Woolbright, Veterans In Politics International, Inc., Sanson Corporation, Karen Steelmon, and Does I through X inclusive, an article entitled "Law Frowns on Nevada Attorney Jennifer Abrams' 'Seal-Happy' Practices" (hereinafter "the 'Seal-Happy' article") along with a printout of "Family Case Records Search Results" revealing the case numbers, parties' names, filing date, and type of action of many of Abrams' cases.[3]

54. The "Seal-Happy" article, containing a link to the "Attack" article, containing a link to the "BULLY" article, and containing a link to the September 29,

[3] A copy of the published "Seal-Happy" article is attached as Exhibit 3.

2016 "closed hearing" video still posted on YouTube, has been re-published numerous times via email across multiple states, including Veterans In Politics International, Inc. sending it directly to the attorneys and paralegals at The Abrams & Mayo Law Firm, posting it on Twitter, Pinterest, Google+ and on the following Facebook pages:

a. steve.sanson.1
b. steve.sanson.3
c. veteransinpolitics
d. veteransinpoliticsinternational
e. eye.on.nevada.politics
f. steve.w.sanson
g. Veterans-In-Politics-International-Endorsement-for-the-State-of-Nevada
h. Veterans in Politics: groups/OperationNeverForget
i. Nevada-Veterans-In-Politics

as well as on Family Court Facebook groups including but not limited to "Family Court Support Group (Clark County, NV)."

55. Within the "Seal-Happy" article, Defendants defame Jennifer V. Abrams and her law firm, The Abrams & Mayo Law Firm, with a number of false statements.

56. The Defendants have published, or republished, or attributed to one another, or disseminated to third parties across state lines, false and defamatory statements directed against Abrams, including that:

a. Abrams "appears to be 'seal happy' when it comes to trying to seal her cases";

b. That Abrams seals cases in contravention of "openness and transparency";

c. That Abrams' sealing of cases is intended "to protect her own reputation, rather than to serve a compelling client privacy or safety interest";

d. That Abrams engaged in "judicial browbeating";

e. That Abrams obtained an order that "is specifically disallowed by law";

f. That Abrams obtained the order against the "general public" with "no opportunity for the public to be heard";

g. That "after issuing our initial story about Abrams' behavior in the *Saiter* case, we were contacted by judges, attorneys and litigants eager to share similar battle-worn experiences with Jennifer Abrams";

h. That Abrams obtained an "overbroad, unsubstantiated order to seal and hide the lawyer's actions"; and

i. That Abrams is an "over-zealous, disrespectful lawyer[] who obstruct[s] the judicial process and seek[s] to stop the public from having access to otherwise public documents."

57. On or about November 14, 2016, Defendants published or caused to be published on a website known as veteransinpolitics.org, a website purportedly owned and controlled by Defendants Steve W. Sanson, Heidi J. Hanusa, Christina Ortiz, Johnny Spicer, Don Woolbright, Veterans In Politics International, Inc., Sanson Corporation, Karen Steelmon, and Does I through X inclusive, an article

entitled "Lawyers acting badly in a Clark County Family Court" (hereinafter "the 'Acting badly' article") along with another hearing video from the "D" Case.[4]

58. The "Acting badly" article, containing a link to the "Attack" article, which contains a link to the "BULLY" article, has been re-published numerous times via email across multiple states, including Veterans In Politics International, Inc. sending it directly to the attorneys and paralegals at The Abrams & Mayo Law Firm, posting it on Twitter, Pinterest, Google+ and on the following Facebook pages:

a. steve.sanson.1

b. steve.sanson.3

c. veteransinpolitics

d. veteransinpoliticsinternational

e. eye.on.nevada.politics

f. steve.w.sanson

g. Veterans-In-Politics-International-Endorsement-for-the-State-of-Nevada

h. Veterans in Politics: groups/OperationNeverForget

i. Nevada-Veterans-In-Politics

59. Within the "Acting badly" article, Defendants defame Jennifer V. Abrams and her law firm, The Abrams & Mayo Law Firm, with a number of false statements.

60. The Defendants have published, or republished, or attributed to one another, or disseminated to third parties across state lines, false and defamatory statements directed against Abrams, including that:

---

[4] A copy of the published "Acting badly" article is attached as Exhibit 4.

a. Plaintiffs were "acting badly" in Clark County Family Court;

b. Abrams' behavior is "disrespectful and obstructionist";

c. Judge Elliott's order appears to be "an attempt by Abrams to hide her behavior from the rest of the legal community and the public"; and

d. Abrams engaged in conduct for which she should be held "accountable."

61. On or about November 16, 2016, Defendants published or caused to be published on a website known as veteransinpolitics.org, a website purportedly owned and controlled by Defendants Steve W. Sanson, Heidi J. Hanusa, Christina Ortiz, Johnny Spicer, Don Woolbright, Veterans In Politics International, Inc., Sanson Corporation, Karen Steelmon, and Does I through X inclusive, an article entitled "Clark County Family Court Judge willfully deceives a young child from the bench and it is on the record" (hereinafter "Deceives" article").[5]

62. The "Deceives" article primarily attacks the Honorable Rena Hughes and also states the following: "In an unrelated story we exposed how Judges and Lawyers seal cases to cover their own bad behaviors. This is definitely an example of that." Following this text is a link "click onto article Law Frowns on Nevada Attorney Jennifer Abrams' 'Seal-Happy' Practices." The "Deceives" article has been re-published numerous times via email across multiple states, including Veterans In Politics International, Inc. sending it directly to the attorneys and paralegals at The Abrams & Mayo Law Firm, posting it on Twitter, Pinterest, Google+ and on the following Facebook pages:

a. steve.sanson.1

[5] A copy of the published "Deceives" article is attached as Exhibit 5.

b. steve.sanson.3

c. veteransinpolitics

d. veteransinpoliticsinternational

e. eye.on.nevada.politics

f. steve.w.sanson

g. Veterans-In-Politics-International-Endorsement-for-the-State-of-Nevada

h. Veterans in Politics: groups/OperationNeverForget

i. Nevada-Veterans-In-Politics

as well as on Family Court Facebook groups including but not limited to "Family Court Support Group (Clark County, NV)."

63. Within the "Deceives" article, Defendants defame Jennifer V. Abrams and her law firm, The Abrams & Mayo Law Firm, with a number of false statements.

64. The Defendants have published, or republished, or attributed to one another, or disseminated to third parties across state lines, false and defamatory statements directed against Abrams, including that:

a. Abrams "appears to be 'seal happy' when it comes to trying to seal her cases"; and

b. Abrams "bad behaviors" were "exposed."

65. On or about December 21, 2016, Defendants published or caused to be published on YouTube, on an account or accounts purportedly managed and controlled by Defendants Steve W. Sanson, Heidi J. Hanusa, Christina Ortiz, Johnny Spicer, Don Woolbright, Veterans In Politics International, Inc., Sanson Corporation, Karen Steelmon, and Does I through X inclusive, three videos entitled:

a. "VIDEO 1 The Abrams Law Firm 10 05 15,"

b. "VIDEO 2 The Abrams Law Firm Inspection part 1,"

c. "VIDEO 3 The Abrams Law Firm Practices p 2."

(hereinafter "the 'Inspection' videos").[6]

66. The "Inspection" videos stemmed from another divorce action wherein Plaintiffs represented Husband, this one a 2014 "D" case, number D-14-507578-D.

67. Upon information and belief, Defendants obtained copies of the "Inspection" videos from Wife in the 2014 "D" case, Yuliya Fohel F.K.A. Delaney.

68. Upon information and belief, Defendants knew, at the time they published, republished, and disseminated the "Inspection" videos, that Yuliya Fohel F.K.A. Delaney had been ordered to remove these same videos from the internet and was prohibited from re-posting said videos either personally or through a third party.

69. The "Inspection" videos depict David J. Schoen, IV, a Certified Paralegal employed at The Abrams & Mayo Law Firm and include personal and private information.

70. Mr. Schoen spoke with Defendant Steve W. Sanson on or about December 22, 2016 and requested that Sanson remove the "Inspection" videos, or at least blur his face and redact his personal information.

71. During the December 22, 2016 conversation with Mr. Schoen, Defendant Steve W. Sanson falsely alleged that Mr. Schoen and Plaintiffs "bullied" and "forced" Yuliya in "unlawfully" entering her home, or words to that effect.

///

[6] A printout of the published "Inspection" videos is attached as Exhibit 6.

72. During the December 22, 2016 conversation with Mr. Schoen, Defendant Steve W. Sanson falsely alleged that Jennifer Abrams is "unethical and a criminal," or words to that effect.

73. During the December 22, 2016 conversation with Mr. Schoen, Defendant Steve W. Sanson falsely alleged that Jennifer Abrams "doesn't follow the law," or words to that effect.

74. During the December 22, 2016 conversation, Mr. Schoen said that it was obvious that Schneider provided a copy of the September 29, 2016 "closed hearing" video to Defendant Steve W. Sanson. Defendant Steve W. Sanson did not deny that he received the video from Schneider and responded: "yeah, okay," or words to that effect.

75. During the December 22, 2016 conversation with Mr. Schoen, Defendant Steve W. Sanson falsely alleged that Jennifer Abrams was "breaking the law by sealing her cases," or words to that effect.

76. During the December 22, 2016 conversation with Mr. Schoen, Defendant Steve W. Sanson incorrectly alleged that he had a right under "the Freedom of Information Act" to disseminate the "closed hearing," despite having been informed that the Freedom of Information Act is inapplicable and despite being served with a court order prohibiting its dissemination.

77. During the December 22, 2016 conversation with Mr. Schoen, Defendant Steve W. Sanson said that Jennifer Abrams is on his "priority list" because she "insulted [his] intelligence" by having him served with an order, allegedly "when the court had no jurisdiction over [him]," or words to that effect.

///

78. During the December 22, 2016 conversation with Mr. Schoen, Defendant Steve W. Sanson said that Jennifer Abrams "started this war" and, had she just dropped the issue after the initial article and video (i.e., the "Attack" article), he never would have "kept digging," or words to that effect.

79. During the December 22, 2016 conversation with Mr. Schoen, Defendant Steve W. Sanson said that he is in possession of "dozens of hours" of hearing videos from multiple cases where Jennifer Abrams is counsel of record, or words to that effect.

80. During the December 22, 2016 conversation with Mr. Schoen, Defendant Steve W. Sanson said that "Jennifer is in bed with Marshal Willick, that explains a lot about the kind of person she is," or words to that effect.[7]

81. The defamatory statements by Defendants were intended to harm Plaintiffs' reputation and livelihood, to harass and embarrass Plaintiffs, and to impact the outcome of a pending action in the "D" case.

82. The defamatory statements by Defendants have caused numerous negative comments to be directed against Plaintiffs.[8]

V.
FIRST CLAIM FOR RELIEF
(DEFAMATION)

83. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

84. Defendants, and/or Defendants' agents, representatives, and/or employees, either individually, or in concert with others, published one or more oral

[7] The relationship between Jennifer V. Abrams and Marshal S. Willick is not being denied.

[8] For example, one person's comment to the "Acting badly" article and video begins with "Hopefully, the jerk has a heart attack from all that anger and stress," referring to Plaintiff's partner, Vincent Mayo, Esq.

or written false or misleading statements which were intended to impugn Plaintiff's honesty, integrity, virtue and/or personal and professional reputation.

85. Jennifer Abrams and The Abrams & Mayo Law Firm are not public figures, as some or all of Defendants have acknowledged in writing, or been notified of in writing.

86. The referenced defamatory statements would tend to lower the subject in the estimation of the community, excite derogatory opinions about the subject, and hold the subject up to contempt.

87. The referenced defamatory statements were not privileged.

88. The referenced defamatory statements were published to at least one third party.

89. The referenced defamatory statements were published or republished deliberately or negligently by one or more of each of the Defendants.

90. Some or all of the referenced defamatory statements constitute defamation *per se*, making them actionable irrespective of special harm.

91. Publication of some or all of the referenced defamatory statements caused special harm in the form of damages to Jennifer Abrams and The Abrams & Mayo Law Firm.

WHEREFORE, Plaintiffs, Jennifer V. Abrams and The Abrams & Mayo Law Firm, demand judgment against named Defendants for actual, special, compensatory, and punitive damages in an amount deemed at the time of trial to be just, fair, and appropriate in an amount in excess of $15,000.

///

///

VI.
SECOND CLAIM FOR RELIEF
(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

92. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

93. Defendants and/or Defendants' agents, representatives, and/or employees, either individually, or in concert with others, intentionally and deliberately inflicted emotional distress on Plaintiffs by defaming them to many people, including but not limited to the following: several of Plaintiff's friends, co-workers, colleagues, clients, and an unknown number of persons that were subjected to the defamatory comments on the internet.

94. As a result of Defendants' extreme and outrageous conduct, Plaintiff was, is, and, with a high degree of likelihood, will continue to be emotionally distressed due to the defamation.

95. As a result of Defendants' extreme and outrageous conduct, Plaintiffs have suffered and will continue to suffer mental pain and anguish, and unjustifiable emotional trauma.

WHEREFORE, Plaintiffs, Jennifer Abrams and The Abrams & Mayo Law Firm, demand judgment against named Defendants for actual, special, compensatory, and punitive damages in an amount deemed by this Court to be just and fair and appropriate, in an amount in excess of $15,000.

VII.
THIRD CLAIM FOR RELIEF
(NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS)

96. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

97. To whatever extent the infliction of emotional distress asserted in the preceding cause of action was not deliberate, it was a result of the reckless and wanton actions of the Defendants, either individually, or in concert with others.

WHEREFORE, Plaintiffs, Jennifer Abrams and The Abrams & Mayo Law Firm, demand judgment against named Defendants for actual, special, compensatory, and punitive damages in an amount deemed by this Court to be just and fair and appropriate, in an amount in excess of $15,000.

VIII.
FOURTH CLAIM FOR RELIEF
(FALSE LIGHT)

98. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

99. Defendants and/or Defendants' agents, representatives, and/or employees, either individually, or in concert with others, intentionally made and published false and misleading statements about Jennifer Abrams and The Abrams & Mayo Law Firm.

100. The statements made by the Defendants against Jennifer Abrams were made with the specific intent to cause harm to Plaintiffs and their pecuniary interests, or, in the alternative, the Defendants published the false and misleading statements knowing its falsity and inaccuracy or with reckless disregard for the truth.

101. The statements made by the Defendants place Jennifer Abrams and The Abrams & Mayo Law Firm in a false light and are highly offensive and inflammatory, and thus actionable.

///

WHEREFORE, Plaintiffs, Jennifer Abrams and The Abrams & Mayo Law Firm, demand judgment against named Defendants for actual, special, compensatory, and punitive damages in an amount deemed at the time of trial to be just, fair, and appropriate in an amount in excess of $15,000.

IX.
FIFTH CLAIM FOR RELIEF
(BUSINESS DISPARAGEMENT)

102. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

103. Defendants and/or Defendants' agents, representatives, and/or employees, either individually, or in concert with others, intentionally made false and disparaging statements about Jennifer Abrams and The Abrams & Mayo Law Firm and disparaged Jennifer Abrams and The Abrams & Mayo Law Firm's business.

104. The referenced statements and actions were specifically directed towards the quality of Jennifer Abrams and The Abrams & Mayo Law Firm's services, and were so extreme and outrageous as to affect the ability of Jennifer Abrams and The Abrams & Mayo Law Firm to conduct business.

105. The Defendants intended, in publishing the false and defamatory statements to cause harm to Plaintiffs and its pecuniary interests, or, in the alternative, the Defendants published the disparaging statements knowing their falsity or with reckless disregard for the truth.

WHEREFORE, Plaintiffs, Jennifer Abrams and The Abrams & Mayo Law Firm, demand judgment against named Defendants for actual, special, compensatory, and punitive damages in an amount deemed at the time of trial to be just, fair, and appropriate in an amount in excess of $15,000.

X.
SIXTH CLAIM FOR RELIEF
(HARASSMENT)

106. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

107. Defendants and/or Defendants' agents, representatives, and/or employees in concert with one another, have engaged in a defamatory campaign against Plaintiff and has threatened the dissemination of additional defamatory campaigns against Plaintiff.

108. Defendants' making of false and defamatory statements and defamatory campaigns against Plaintiffs were specifically intended to interfere with Plaintiffs' business, and to cause the apprehension or actuality of economic harm to Plaintiffs and Plaintiffs' employees.

109. Defendants' actions were intended to result in substantial harm to the Plaintiffs with respect to their mental health or safety, and to cause economic damage to Plaintiffs.

WHEREFORE, Plaintiffs, Jennifer Abrams and The Abrams & Mayo Law Firm, demand judgment against named Defendants for actual, special, compensatory, and punitive damages in an amount deemed at the time of trial to be just, fair, and appropriate in an amount in excess of $15,000.

XI.
SEVENTH CLAIM FOR RELIEF
(CONCERT OF ACTION)

110. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

/ / /

111. Defendants and/or Defendants' agents, representatives, and/or employees in concert with one another, based upon an explicit or tacit agreement, intentionally committed a tort against Plaintiffs.

112. Defendants' concert of action resulted in damages to Jennifer Abrams and The Abrams & Mayo Law Firm.

WHEREFORE, Plaintiffs, Jennifer Abrams and The Abrams & Mayo Law Firm, demand judgment against named Defendants for actual, special, compensatory, and punitive damages in an amount deemed at the time of trial to be just, fair, and appropriate in an amount in excess of $15,000.

XII.
EIGHTH CLAIM FOR RELIEF
(CIVIL CONSPIRACY)

113. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

114. Defendants and/or Defendants' agents, representatives, and/or employees, either individually, or in concert with others, based upon an explicit or tacit agreement, intended to accomplish an unlawful objective and intended to harm Jennifer Abrams and The Abrams & Mayo Law Firm's pecuniary interests and financial well-being.

115. Defendants' civil conspiracy resulted in damages to Jennifer Abrams and The Abrams & Mayo Law Firm.

WHEREFORE, Plaintiffs, Jennifer Abrams and The Abrams & Mayo Law Firm, demand judgment against named Defendants for actual, special, compensatory, and punitive damages in an amount deemed at the time of trial to be just, fair, and appropriate in an amount in excess of $15,000.

XIII.
NINTH CLAIM FOR RELIEF
(RICO VIOLATIONS)

116. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

117. Defendants and/or Defendants' agents, representatives, and/or employees, either individually, or in concert with others, engaged in at least two crimes related to racketeering pursuant to NRS 207.360 that have the same or similar pattern, intents, results, accomplices, victims or methods of commission or are otherwise interrelated by distinguishing characteristics and are not isolated incidents.

118. Here, Defendants[9] have all either committed, conspired to commit, or have attempted to commit the following crime(s):

a. Bribing or intimidating witness to influence testimony (NRS 199.240(b) – cause or induce witness to withhold true testimony).

b. Bribing or intimidating witness to influence testimony (NRS 199.240(c) – cause or induce witness to withhold a record, document or other object from the proceeding).

c. Intimidating public officer, public employee, juror, referee, arbitrator, appraiser, assessor or similar person (NRS 199.300(d) – to do any act not authorized by law and is intended to harm any person other than the person addressing the threat or intimidation with respect to the person's health, safety, business, financial condition or personal relationships).

[9] The named Defendants—and others—constitute a criminal syndicate as defined in NRS 207.370.

d. Criminal contempt (NRS 199.340(4) – willful disobedience to the lawful process or mandate of a court).

e. Criminal contempt (NRS 199.340(7) – publication of a false or grossly inaccurate report of court proceedings).

f. Challenges to fight (NRS 200.450).

g. Furnishing libelous information (NRS 200.550).

h. Threatening to publish libel (NRS 200.560).

i. Harrassment (NRS 200.571).

j. Multiple transactions involving fraud or deceit in the course of an enterprise (NRS 205.377).

k. Taking property from another under circumstances not amounting to robbery (NRS 207.360(9)).

l. Extortion (NRS 207.360(10)).

119. Defendants comprise a criminal syndicate: Any combination of persons, so structured that the organization will continue its operation even if individual members enter or leave the organization, which engages in or has the purpose of engaging in racketeering activity. Here, Veterans In Politics International, Inc., Nevada Veterans In Politics, and Veterans in Politics are organizations—headed by Defendants Steve W. Sanson, Heidi J. Hanusa, Christina Ortiz, Johhny Spicer, Don Woolbright, and Karen Steelmon—that have members that do come and go and the organization continues on. These organizations and their principals have conspired to engage in and have engaged in racketeering activity. These organizations conspire with others, such as Louis C. Schneider and Law Offices of

Louis C. Schneider, LLC, who come and go, to engage in and have engaged in racketeering activity.

120. This group also meets the statutory definition – NRS 207.380 – as an enterprise:

> Any natural person, sole proprietorship, partnership, corporation, business trust or other legal entity; and, any union, association or other group of persons associated in fact although not a legal entity.

Here Veterans In Politics International, Inc. is a registered not-for-profit business and Nevada Veterans In Politics and Veterans in Politics are sub-units of Veterans In Politics International, Inc. Each can and should be considered individual legal entities.[10]

121. Law Offices of Louis C. Schneider, LLC is a for-profit law firm in Nevada and is definitionally a separate legal entity.

122. Sanson Corporation is also a separate legal entity and is a registered Nevada corporation.

123. Even if not all Defendants are members of Veterans In Politics International, Inc., Nevada Veterans In Politics, Veterans in Politics, and Law Offices of Louis C. Schneider, they meet the "association or other group of persons associated in fact" requirements under the statue as an enterprise. The statute explicitly includes both licit and illicit enterprises.

124. Racketeering is the engaging in at least two crimes related to racketeering that have the same or similar pattern, intents, results, accomplices, victims or methods of commission, or are otherwise interrelated by distinguishing characteristics and are not isolated incidents, if at least one of the incidents occurred

[10] Nevada Veterans In Politics and Veteransin Politics operate numerous social media sites where the defamation continues.

after July 1, 1983, and the last of the incidents occurred within 5 years after a prior commission of a crime related to racketeering.

125. Defendants used threats, intimidation, and deception with the intent to cause or induce Plaintiff and Plaintiff's client to withhold testimony against Schneider in the "D" case. (NRS 199.240)(b)).

126. Defendants used threats, intimidation, and deception with the intent to cause or induce Plaintiff and Plaintiff's client to withhold a record, document or other object from the legal proceedings in the "D" case. (NRS 199.240(c)).

127. Defendants, directly or indirectly, addressed threats and intimidation to Judge Elliott with the intent to induce Judge Elliott contrary to her duty to make, omit or delay any act, decision or determination, as the threat or intimidation communicated the intent, either immediately or in the future, to do an act not authorized by law and intended to harm Plaintiffs' emotional health, business, and financial condition. (NRS 199.300(d)).

128. Defendants willfully disobeyed the lawful process or mandate of a court. (NRS 199.340(4)).

129. Defendants published a false or grossly inaccurate report of family court proceedings on numerous occasions, including, but not limited to, the "D" case. (NRS 199.340(7)).

130. Defendants Steve W. Sanson, Heidi J. Hanusa, Christina Ortiz, Johnny Spicer, Don Woolbright, Veterans In Politics International, Inc., Sanson Corporation, Karen Steelmon, and Does I through X inclusive, gave or sent a challenge in writing to fight Richard Carreon and others. (NRS 200.450).

///

131. Defendants willfully stated, delivered or transmitted to a manager, editor, publisher, reporter or other employee of a publisher of any newspaper, magazine, publication, periodical or serial statements concerning Plaintiffs which, if published therein, would be a libel. (NRS 200.550).

132. Defendants threatened Plaintiffs with the publication of a libel concerning Plaintiffs with the intent to extort the withdrawal of the *Motion for Sanctions and Attorney Fees* and related legal proceedings in the "D" case. (NRS 200.560).

133. Defendants, without lawful authority, knowingly threatened to substantially harm the health or safety of Plaintiff and, by words and conduct placed Plaintiffs in reasonable fear that the threat would be carried out. (NRS 200.571).

134. Defendants, in the course of their enterprise, knowingly and with the intent to defraud, engaged in an act, practice or course of business or employed a device, scheme or artifice which operates or would operate as a fraud or deceit upon a person by means of a false representation or omission of a material fact that Defendants know to be false or omitted, Defendants intend for others to rely on, and results in a loss to those who relied on the false representation or omission in at least two transactions that have the same or similar pattern, intents, results, accomplices, victims or methods of commission, or are otherwise interrelated by distinguishing characteristics and are not isolated incidents within 4 years and in which the aggregate loss or intended loss is more than $650. (NRS 205.377).

135. Defendants posted false and defamatory material no less than 130 times in six separate defamatory campaigns against Plaintiffs. The total value of time expended by Jennifer Abrams, and The Abrams & Mayo Law Firm staff in

responding to inquiries from clients, protecting client privacy, and attempting to have the defamatory material removed from the internet was over $15,000 and this does not include the costs of missed opportunities or time that should have been spent working on cases for paying clients. (NRS 205.377 and NRS 207.360(9)).

136. It was the intent of the Defendants to cause harm to Plaintiffs and Plaintiff's client and the aggregate costs far exceed the $650 threshold. Each act which violates subsection one constitutes a separate offense and a person who violates subsection one is guilty of a category B felony.

137. Additionally, NRS 205.0832 defines the actions which constitute theft as including that which:

> Obtains real, personal or ***intangible property or the services of another person***, by a material misrepresentation with intent to deprive that person of the property or services. As used in this paragraph, "material misrepresentation" means the use of any pretense, or the making of any promise, representation or statement of present, past or future fact which is fraudulent and which, when used or made, is instrumental in causing the wrongful control or transfer of property or services. The pretense may be verbal or it may be a physical act.

Additionally the statute goes on to define the theft as a person or entity that "Takes, destroys, conceals or disposes of property in which another person has a security interest, with intent to defraud that person." Time is a lawyer's stock in trade. Defendants—with malice—stole valuable time from Plaintiffs. Also, the theft of Jennifer Abrams and The Abrams & Mayo Law Firm's "good will" by the making of false and defamatory comments and placing both Jennifer Abrams and The Abrams

& Mayo Law Firm in a false light has diminished the value of the business. These are intangible thefts, but thefts nonetheless.[11]

138. Defendants attempted to extort Plaintiffs to withdraw the *Motion for Sanctions and Attorney's Fees* through a series of veiled threats. When Plaintiffs refused to withdraw the motion, Defendants disseminated additional defamatory material with the intent to do damage to Plaintiffs and threatened to continue doing so unless the motion was withdrawn. (NRS 207.360(10)).

139. The Defendants have attempted to or did use extortion to influence the outcome of at least one other pending family law case.

140. Defendants' illegal conduct resulted in damages to Plaintiffs.

WHEREFORE, Plaintiffs, Jennifer Abrams and The Abrams & Mayo Law Firm, pursuant to NRS 207.470, are entitled to treble damages as a result of Defendants' criminal conduct in the form of actual, special, compensatory, and punitive damages in amount deemed at the time of trial to be just, fair, and appropriate in an amount in excess of $15,000.

XIV.
TENTH CLAIM FOR RELIEF
(COPYRIGHT INFRINGMENT)

141. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

142. Defendants have infringed upon Plaintiffs' photographic works owned by Plaintiff, for which copyright registration is being sought, by posting the work on social media websites, including but not limited to, Facebook, Pinterest, Google+,

[11] Goodwill – "A business's reputation, patronage, and other intangible assets that are considered when appraising the business, especially for purchase." *Black's Law Dictionary* 279 (Bryan A. Garner ed., Pocket ed., West 1996).

Twitter, and LinkedIn, without consent, approval or license of Plaintiffs and by continuing to distribute and copy the commercial without compensation or credit to the Plaintiffs.

143. As a direct and proximate result of said infringement by Defendants, Plaintiff is entitled to damages in an amount to be proven at trial.

144. Defendants' infringement of Plaintiffs' photographic works has yielded Defendants profits in an amount not yet determined.

145. Defendants' infringement has been willful and deliberate and was done for the purpose of defaming Plaintiffs and making commercial use of and profit on Plaintiffs' material throughout the country and within this Judicial District. Plaintiffs are entitled to recover increased damages as a result of such willful copying.

146. Plaintiffs are entitled to attorneys' fees and full costs pursuant to 17 U.S.C. § 505 and otherwise according to law.

147. As a direct and proximate result of the foregoing acts and conduct, Plaintiffs have sustained and will continue to sustain substantial, immediate, and irreparable injury, for which there is no adequate remedy at law. Upon information and belief, Plaintiffs believe that unless enjoined and restrained by this Court, Defendants will continue to infringe Plaintiffs' rights in the infringed works. Plaintiffs are entitled to preliminary and permanent injunctive relief to restrain and enjoin Defendants' continuing infringing conduct.

WHEREFORE, Plaintiffs, Jennifer V. Abrams and The Abrams & Mayo Law Firm, demand that:

///

a. Pursuant to 17 U.S.C. § 502(a), Defendants, their agents servants and employees and all parties in privity with them be enjoined permanently from infringing Plaintiff's copyrights in any manner.

b. Pursuant to 17 U.S.C § 504(b), Defendants be required to pay to the plaintiff, such actual damages as the Plaintiffs may have sustained in consequence of Defendants' infringement and all profits of Defendants that are attributable to the infringement of Plaintiffs' copyrights. Plaintiffs request Defendants account for all gains, profits, and advantages derived by Defendants from their infringement.

c. Pursuant to 17 U.S.C. § 504(c)(1), Defendants be required to pay an award of statutory damages in a sum not less than $30,000.

d. The Court finds the Defendants' conduct was committed willfully.

e. Pursuant to 17 U.S.C. § 504(c)(2), Defendants be required to pay an award of increased statutory damages in a sum of not less than $150,000 for willful infringement.

f. Pursuant to 17 U.S.C. § 505, Defendants be required to pay the Plaintiffs' full costs in this action and reasonable attorney's fees.

Defendants' conduct was willful or wanton and done in reckless disregard of Plaintiffs' rights thereby entitling Plaintiffs to recover punitive damages in an amount to be determined at trial.

XV.
ELEVENTH CLAIM FOR RELIEF
(INJUNCTION)

148. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

149. Defendants and/or Defendant's agents, representatives, and/or employees, either individually, or in concert with others are attempting to extort a result in the "D" case litigation by unlawful out-of-court means. The "D" case litigation is ongoing and an injunction is necessary to stop the extortion and continuation of harm and damage to Plaintiffs.

Defendants and/or Defendants' agents, representatives, and/or employees, either individually, or in concert with others, engaged in acts that were so outrageous that injunctive relief is necessary to effectuate justice.

WHEREFORE, Plaintiffs request the following injunctive relief:

a. That all defamatory writings, video, postings, or any other documents or public display of the same, concerning Jennifer Abrams, The Abrams & Mayo Law Firm, and the employees of the same, be removed from public view within 10 days of the issuance of the injunction.

b. That all innuendo of illegal, immoral, or unethical conduct that has already been attributed by defendants to Plaintiffs, must never be repeated by any named Defendant or any member of any of the named organizations. Generalities toward lawyers in general will constitute a violation of the injunction.

c. That a full retraction and apology be authored by Defendants Steve W. Sanson and Louis C. Schneider and disseminated everywhere the defamation occurred, including, but not limited to, the entirety of the mailing list(s), each and every social media site (Facebook, Twitter, Google+, Pinterest, etc.) and anywhere else the defamatory material was disseminated.

XVI.
CONCLUSION

150. Jennifer Abrams and The Abrams & Mayo Law Firm incorporate and re-allege all preceding paragraphs as if fully stated herein.

WHEREFORE, Jennifer Abrams and The Abrams & Mayo Law Firm respectfully pray that judgment be entered against Defendants, and each of them individually, as follows:

1. General damages in an amount in excess of $15,000 for each and every claim for relief;
2. Compensatory damages in an amount in excess of $15,000 for each and every claim for relief;
3. Punitive damages in an amount in excess of $15,000 for each and every claim for relief;
4. Treble damages for Defendants' RICO violations pursuant to NRS 207.470 in the form of general, compensatory, and/or punitive damages in an amount in excess of $15,000;
5. All attorney's fees and costs that have and/or may be incurred by Jennifer V. Abrams and The Abrams & Mayo Law Firm in pursuing this action; and

///

///

///

///

///

6. For such other and further relief this Court may deem just and proper.

DATED this 27th day of January, 2017.

Respectfully submitted:

THE ABRAMS & MAYO LAW FIRM

JENNIFER V. ABRAMS, ESQ.
Nevada State Bar Number: 7575
6252 South Rainbow Boulevard, Suite 100
Las Vegas, Nevada 89118
Phone: (702) 222-4021
Email: JVAGroup@theabramslawfirm.com
Attorney for Plaintiffs

VERIFICATION

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

JENNIFER V. ABRAMS, ESQ., principal of THE ABRAMS & MAYO LAW FIRM first being duly sworn, deposes and says:

That her business is the Plaintiff in the above-entitled action; that she has read the above and foregoing *Amended Complaint for Damages* and knows the contents thereof and that the same is true of her own knowledge, except as to those matters therein stated on information and belief, and as to those matters, she believes them to be true.

FURTHER, AFFIANT SAYETH NAUGHT.

JENNIFER V. ABRAMS, ESQ.

SUBSCRIBED and SWORN to before me
this 27th day of January, 2017, by Jennifer V. Abrams, Esq.

NOTARY PUBLIC

NOTARY PUBLIC
STATE OF NEVADA
County of Clark
MARSHAL S. WILLICK
Appt. No. 93-1732-1
My Appt. Expires Oct. 23, 2018

CERTIFICATE OF SERVICE

I hereby certify that the foregoing *Amended Complaint for Damages* was filed electronically with the Eighth Judicial District Court in the above-entitled matter on Friday, January 27, 2017. Electronic service of the foregoing document shall be made in accordance with the Master Service List, pursuant to NEFCR 9, as follows:

Maggie McLethcie, Esq.
Attorney for Defendants Steve W. Sanson and
Veterans in Politics International, Inc.

Alex Ghibaudo, Esq.
Attorney for Defendants Louis C. Schneider,
Law Offices of Louis C. Schneider, LLC, and
Christina Ortiz

I further certify that on Monday, January 30, 2017, the foregoing *Amended Complaint for Damages* was served on the following interested parties, via 1st Class U.S. Mail, postage fully prepaid:

Heidi J. Hanusa
2620 Regatta Drive, Suite 102
Las Vegas, Nevada 89128

8908 Big Bear Pines Avenue
Las Vegas, Nevada 89143

Johnny Spicer
3589 East Gowan Road
Las Vegas, Nevada 89115

Don Woolbright
20 Fernwood Drive
Saint Peters, Missouri 63376

Sanson Corporation
c/o Clark McCourt, Registered Agent
7371 Prairie Falcon Road, Suite 120
Las Vegas, Nevada 89128

Karen Steelmon
2174 East Russell Road
Las Vegas, Nevada 89119

An Employee of The Abrams & Mayo Law Firm

EXHIBIT 2

Electronically Filed
05/21/2013 02:36:58 PM

CLERK OF THE COURT

COMP
WILLICK LAW GROUP
MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 002515
3591 E. Bonanza Road, Suite 200
Las Vegas, NV 89110-2101
(702) 438-4100
Attorneys for Plaintiffs

DISTRICT COURT,
CLARK COUNTY, NEVADA

MARSHAL S. WILLICK AND THE WILLICK LAW GROUP Plaintiffs, vs. JERE BEERY, GENE D. SIMES, MARK BERES, FREDERICK JONES, MICHAEL K. MCKOWN, DON HOLLAND, VETERANS FOR VETERAN CONNECTION, INC., OPERATION FIRING FOR EFFECT, VETERANS TODAY MILITARY & FOREIGN AFFAIRS JOURNAL, JONES & ASSOCIATES, USFSPA LIBERATION SUPPORT GROUP, DOES I THROUGH X,	CASE NO:A12661766-C DEPT NO: XXIII DATE OF HEARING: N/A TIME OF HEARING: N/A ACTION IN TORT ARBITRATION EXEMPTION CLAIMED

SECOND AMENDED COMPLAINT FOR DAMAGES

I

INTRODUCTION

1. As *Ordered* by this Court on May 14, 2013, Plaintiffs Marshal S. Willick and the Willick Law Group (Plaintiffs) bring this Second Amended action for damages based upon, and to redress, Defendant's Intentional Defamation of the character of the Plaintiffs through libelous writings and speech, for Intentional Infliction of Emotional Distress, Negligent Infliction of Emotional Distress, False Light, Business Disparagement, Harassment, Concert of Action, Civil

Conspiracy and violations of RICO, all of which were perpetrated individually and in concert with others by defendants Mr. Jere Beery (Beery), Mr. Gene D. Simes (Simes), Mr. Mark Beres (Beres), Mr. Frederick Jones, Mr. Michael K. McKown, Mr. Don Holland, Jones & Associates, USFSPA Liberation Support Group, Veterans for Veteran Connection, Inc. (VFVC), Operation Firing For Effect (OFFE), Veterans Today Military & Foreign Affairs Journal, and Does I through X (collectively "Defendants").

II

VENUE AND JURISDICTION

2. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

3. Jurisdiction is proper in Nevada State court as all alleged claims were transmitted to or performed in Nevada by the Defendants individually or in concert with others.

III

PARTIES

4. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

5. Plaintiff Marshal S. Willick, is a natural person and an attorney licensed to practice law in the State of Nevada. He practices exclusively in the field of Domestic Relations and is A/V rated, a peer-reviewed and certified (and re-certified) Fellow of the American Academy of Matrimonial Lawyers, and a Certified Specialist in Family Law.[1]

6. The Willick Law Group is a dba of Marshal S. Willick P.C., a duly formed professional corporation in the State of Nevada.

7. Upon information and belief, Mr. Jere Beery is a natural person and freelance writer and self-professed activist for veteran's rights. He also claims to be the National Public Relations Director for Veterans for Veterans Connection Inc., and Operation Firing For Effect.

[1] Per direct enactment of the Board of Governors of the Nevada State Bar, and independently by the National Board of Trial Advocacy. Mr. Willick was privileged (and tasked) by the Bar to write the examination that other would-be Nevada Family Law Specialists must pass to attain that status.

LAW OFFICE OF
MARSHAL S. WILLICK, P.C.
3551 East Bonanza Road
Suite 101
Las Vegas, NV 89110-2198
(702) 438-4100

8. Upon information and belief, Mr. Gene Simes is a natural person and the National Chairman of an Organization called Operation Fire for Effect, and the President of Veterans For Veterans Connection, Inc.

9. Upon information and belief, Mark Beres is a natural person and self-professed veteran's rights activist and member of the USFSPA Liberation Support Group, located in the Tucson, Arizona area.

10. Upon information and belief, Frederick Jones is a natural person who purports to be an Attorney at Law with the Law Firm of Jones & Associates, located 105 Jonesboro Street, McDonough, Georgia. Mr. Jones purports to be legal counsel to Veterans for Veterans Connection (VFVC), Inc., Operation Fire for Effect (OFFE), and has provided legal counsel to Gene Simes, the President of VFVC and National Chairman of OFFE, another named defendant.

11. Upon information and belief, Michael K. McKown is a natural person claiming to be the USFSPA Liberation Support Group (ULSG) State Representative for the State of Colorado, located in Broomfield, Colorado.

12. Upon information and belief, Don Holland is a natural person and self-professed veteran's rights activist located at 20313 Nettleton Street, Orlando, Florida 32833.

13. Upon information and belief, the USFSPA Liberation Support Group (ULSG), is a duly formed 501(c)(4) charitable organization whose purpose is the repeal of the federal Uniformed Services Former Spouse Protection Act (USFSPA). ULSG is purportedly located at 20770 U.S. Hwy 281 North, Suite 108, PMB 125, San Antonio, Texas, 78258.

14. Upon information and belief, the Law Firm of Jones & Associates, is a duly formed Professional Corporation located in McDonough, Georgia.

15. Upon information and belief, Veterans For Veterans Connection Inc., (VFVC) is a registered non-profit 501(c)(19) veterans service organization headquartered in Walworth, New York.

16. Upon information and belief, Operation Firing For Effect is associated or affiliated with the VFVC and conducts lobbying efforts in Washington, D.C., and in other jurisdictions as targeted by the VFVC.

LAW OFFICE OF
MARSHAL S. WILLICK, P.C.
3551 East Bonanza Road
Suite 101
Las Vegas, NV 89110-2198
(702) 438-4100

17. Upon information and belief, Veterans Today Military & Foreign Affairs Journal is a web-based magazine that publishes articles and news clips on issues concerning veterans and foreign policy. The web site is accessible through the internet in Nevada.

18. Upon information and belief, additional persons and entities have been working with the above named Defendants either individually or in concert and have been added as Doe Defendants in this action until they are personally identified.

19. Marshal S. Willick and the Willick Law Group are informed and believe, and therefore allege, that each of the Defendants designated herein as Jere Beery, Gene D. Simes, Mark Beres, Frederick Jones, Michael K. McKown, Don Holland, Jones & Associates, USFSPA Liberation Support Group, Veterans for Veterans Connection, Inc., Operation Firing for Effect, Veterans Today Military & Foreign Affairs Journal, and Does I through X inclusive, are in some way legally responsible and liable for the events referred to herein, and directly or proximately caused the damages alleged herein.

20. At all times material hereto, and in doing the acts and omissions alleged herein, the Defendants, and each of them, including Jere Beery, Gene D. Simes, Mark Beres, Frederick Jones, Michael K. McKown, Don Holland, Jones & Associates, USFSPA Liberation Support Group, Veterans for Veterans Connection, Inc., Operation Firing for Effect, Veterans Today Military & Foreign Affairs Journal, and Does I through X inclusive, acted individually and/or through their officers, agents, employees and co-conspirators, each of whom was acting within the purpose and scope of that agency, employment, and conspiracy, and these acts and omissions were known to, and authorized and ratified by, each of the other Defendants.

IV

FACTUAL ALLEGATIONS

21. Plaintiffs incorporate and re-allege all preceding paragraphs as if fully stated herein.

22. On or about December 17, 2011, Mr. Jere Beery, claiming to be acting on behalf of Veterans for Veterans Connection, and Operation Firing for Effect, published or caused to be published on a website known as veteranstoday.com, a web site purportedly owned and controlled

LAW OFFICE OF
MARSHAL S. WILLICK, P.C.
3551 East Bonanza Road
Suite 101
Las Vegas, NV 89110-2198
(702) 438-4100

by Veterans Today Military & Foreign Affairs Journal, an article entitled "Veteran Court Conspiracy Exposed."

23. That this same article has been re-published a number of times on different web sites and via email across multiple states, including Beery sending it directly to the Willick Law Group via an email channel intended for use by prospective clients.

24. Within that article, Mr. Beery defames Mr. Willick and his law firm, the Willick Law Group, with a number of false statements.[2]

25. The Defendants have published, or republished, or attributed to one another, or disseminated to third parties across state lines, false and defamatory statements directed against Plaintiffs, including:

a. That Willick has divulged secrets on how to drain every penny possible from a retired military veteran, including any disability compensation the veteran may be receiving.

b. That Willick has made millions of dollars by distorting the facts surrounding veterans' military retirement pay, disability compensation, and Combat Related Special Compensation (CRSC).

c. That Willick intentionally ignores federal protection of veteran's disability compensation.

d. That Willick has claimed that federal law carries absolutely no relevance in dividing veterans' disability compensation in state divorce law.

e. That Willick has said that disability compensation is not protected in any way.

f. That Willick has obtained large alimony and child support awards and then taken a large percentage of those awards for himself.[3]

---

[2] A copy of the published article is attached here.

[3] Current ethical rules in the State of Nevada do not allow contingency agreements in a divorce action. Mr. Willick and his firm have never made a contingency agreement in a divorce action. The allegation addressed here was apparently based upon a deliberately false reading of contracts from the 1980's – close to 30 years ago – for independent actions to partition and recover the spousal share of military retirement benefits silently omitted from decrees of divorce and thus stolen by the military members.

LAW OFFICE OF
MARSHAL S. WILLICK, P.C.
3551 East Bonanza Road
Suite 101
Las Vegas, NV 89110-2198
(702) 438-4100

g. That Willick "routinely has his clients sign a '*contingency agreement*' in which he (Willick) gets 50% of all the moneys he wins."

h. That Willick has used arguments of PTSD to take children away from military members or claiming that a military member has intentionally abandoned his children due to deployments or military service.

i. That Willick has used "underhanded techniques and legal deception designed to illegally strip our veterans of their earned retirement, benefits, and entitlements."

j. Claiming that Willick has argued that veterans are dangerous individuals unfit to care for their children.

k. Claiming that Willick has threatened to expose state and federal politicians and elected judges as "anti-child support" and "anti-alimony" if they do not agree to support his "distorted" interpretation of veterans' benefits.

l. That Willick is directly responsible for the increased number of veterans who are homeless, emotionally distraught, and suicidal.

m. That Willick has violated the Professional Code of Conduct or the "Code of Conduct."[4]

n. That Willick has dismissed federal laws which are protected under the U.S. Constitution.

o. That Willick has forced "(with the threat of jail) disabled veterans to sign a divorce settlement agreement in which their disability compensation is listed as a funding source for alimony and/or child support."

26. That Defendants have published, republished, or attributed to one another, or disseminated to third parties across state lines, additional false and defamatory statements directed against Plaintiffs, including those published by Beery on January 16, 2012, in which he defamed Mr. Willick and the Willick law Group, with a number of false statements, including:

a. Stating that "Veterans Need Skinning."

[4] This was the term used. We believe the intended reference was to the Rules of Professional Conduct.

LAW OFFICE OF
MARSHAL S. WILLICK, P.C.
3551 East Bonanza Road
Suite 101
Las Vegas, NV 89110-2198
(702) 438-4100