EXHIBIT 5

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CLERK OF THE COURT

COMP
JENNIFER V. ABRAMS, ESQ.
Nevada State Bar Number: 7575
THE ABRAMS & MAYO LAW FIRM
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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: I Hearing Date: N/A Hearing Time: N/A ACTION IN TORT ARBITRATION EXEMPTION CLAIMED

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:

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[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.

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[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.

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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.

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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.

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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).

///

have diligently reviewed the applicable law, explored the relevant facts, and believe that we have properly applied one to the other.

The fees charged by paralegal staff are reasonable, and compensable, as well. The tasks performed by staff in this case were precisely those that were "some of the work that the attorney would have to do anyway [performed] at substantially less cost per hour."[12] As the Nevada Supreme Court reasoned, "the use of paralegals and other nonattorney staff reduces litigation costs, so long as they are billed at a lower rate," so "'reasonable attorney's fees' . . . includes charges for persons such as paralegals and law clerks."

Finally, as to the result reached, we ask the Court to find that the result in this action through this date was appropriate, given the factual circumstances and applicable law, and the client derived the benefits reasonable available under the circumstances.

IV. ATTORNEY'S FEES FOR THIS PROCEEDING

The retainer agreements signed by our former client included an express provision governing rights and responsibilities in the event we were required to file and adjudicate a lien, as we have here:

> Client agrees to pay any fees and costs that are incurred by Attorney to collect fees, costs, or expenses from Client, including reasonable attorney's fees.

In accordance with this express contractual provision, we request a further award of fees, in a sum equal to the costs of preparing the lien, this request for adjudication, and our appearance at the hearing requested in this *Motion*, in a sum of not less than $500, which sum is to be updated at the hearing of this *Motion*. *See* NRS 125.150 (attorney's fees may be awarded in any pre- or post-divorce motion); EDCR 7.60 (fees are appropriate when the opponent's motion or opposition is

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[12] *LVMPD v. Yeghiazarian*, 129 Nev. ___, ___ P.3d ___ (Adv. Opn. No. 81, Nov. 7, 2013) citing to *Missouri v. Jenkins*, 491 U.S. 274 (1989).

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frivolous, unnecessary, or vexatious); *Gordon v. Stewart*, *supra* (trial court may make determination, rather than requiring the filing of a new action).

IV. CONCLUSION

Movant respectfully requests that this Court adjudicate our rights and enter its order enforcing the Lien.

DATED this 17th day of February, 2015.

WILLICK LAW GROUP

MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 002515
3591 E. Bonanza Road, Suite 200
Las Vegas, NV 89110
Former Attorney for Plaintiff

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Suite 200
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DECLARATION OF MARSHAL S. WILLICK, ESQ.

1. I, Marshal S. Willick, Esq., am an attorney duly licensed to practice law in the State of Nevada and declare that I am competent to testify to the facts contained in the preceding filing.

2. I have read the Motion and the same is true of my own knowledge, except for those portions based on information and belief, and as to those portions I believe them to be true.

3. Plaintiff, Toni Holyoak, pursuant to the Agreements to Employ Attorney executed by her on January 29, 2014, and September 28, 2015, a copy of which are attached hereto as Exhibits "1" and "2," owes this firm $88,403.95 which balance includes interest through March 17, 2016.

4. A billing statement is submitted herewith as Exhibit "3" showing:

   a. Work done, date and time spent on that work showing the total work done and amount due thereon;[13]

   b. Charges made and payments made on account by our former client and the amount due thereon.

5. I certify that the entries on the time slips were made by members of the staff of this law office each day as the course of the work was completed and each entry was believed true and correct when made.

6. The basis of charges known and agreed upon by our former client and this law firm is as follows: $500.00-$600.00 per hour for Marshal Willick's services; $350.00 - $500.00 per hour for the services of associates; and $110.00 to $275.00 per hour for paralegal/legal assistants and law clerks.

7. I further certify that the entries on the billing statements by all staff were supervised as to the accuracy of the entries made by the office bookkeeper and were

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[13] The billing statement detail for Ms. Holyoak is many pages long and will be provided to the Court upon request. Attached is a summary showing total amount of work done, by which employees, and the cost of that work, a list of hard costs incurred, and the payments made to the account.

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made in the regular course of business and supervised in the regular course of business.

8. I further certify that mailings of the billings have been sent on a regular (twice-monthly) basis. Our records show no unresolved claims of any error or request for correction from our former client.

9. On March 17, 2016, I made and served on our former client by mail, as required by law, a copy of our Lien, a copy of which is attached as Exhibit "4".

10. We request compensation in the amount of $88,403.95 plus interest from March 17, 2016, until paid in full, and for formal entry of Judgment that can be duly recorded; the Court is asked in advance to set aside any bad faith transfers of the assets in question in this litigation that might be attempted in an effort to circumvent the security of our lien.

I declare under penalty of perjury under the laws of the State of Nevada (NRS 53.045 and 28 U.S.C. § 1746), that the foregoing is true and correct.

EXECUTED this 17th day of March, 2016.

MARSHAL S. WILLICK, ESQ.

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DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

TONI HOLYOAK,
Plaintiff/Petitioner

-v.-

ERIC HOLYOAK,
Defendant/Respondent

Case No. D-08-395501-Z

Department H

MOTION/OPPOSITION FEE INFORMATION SHEET

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of $25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of $129 or $57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the $25 or $0 filing fee in the box below.

☒ **$25** The Motion/Opposition being filed with this form is subject to the $25 reopen fee.

-Or-

☐ **$0** The Motion/Opposition being filed with this form is not subject to the $25 reopen fee because:

☐ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.

☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.

☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.

☒ Other Excluded Motion (must specify) _____.

Step 2. Select the $0, $129 or $57 filing fee in the box below.

☒ **$0** The Motion/Opposition being filed with this form is **not** subject to the $129 or the $57 fee because:

☐ The Motion/Opposition is being filed in a case that was not initiated by joint petition.

☒ The party filing the Motion/Opposition previously paid a fee of $129 or $57.

-Or-

☐ **$129** The Motion being filed with this form is subject to the $129 fee because it is a motion to modify, adjust or enforce a final order.

-Or-

☐ **$57** The Motion/Opposition being filing with this form is subject to the $57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of $129.

Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:

☐ **$0** ☒ **$25** ☐ **$57** ☐ **$82** ☐ **$129** ☐ **$154**

Party filing Motion/Opposition: Willick Law Group Date: 3/18/16

Signature of Party or Preparer: _____

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EXHIBIT 13

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

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**

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[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, *Argentena* 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 14

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 15

702.438.4100 info@willicklawgroup.com

WILLICKLAWGROUP

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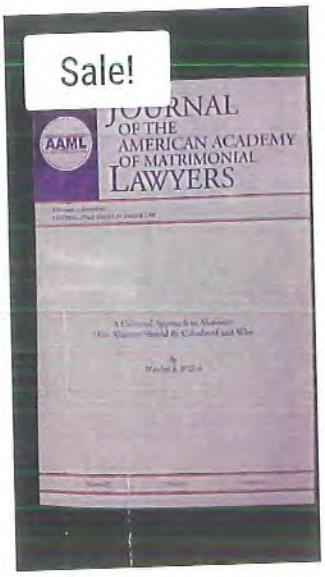

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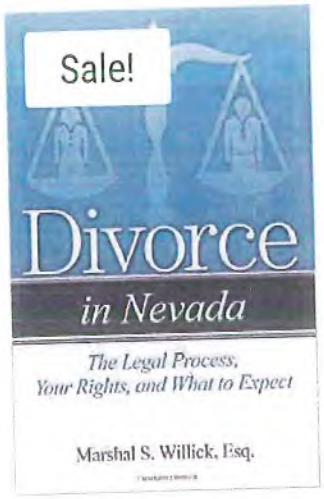
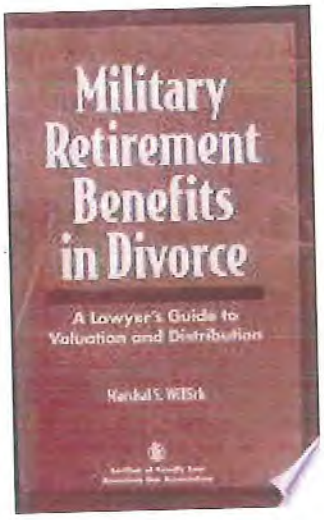


Divorce in Nevada: The Legal Process, Your Rights, and What to Expect

~~$21.95~~

$15.00



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

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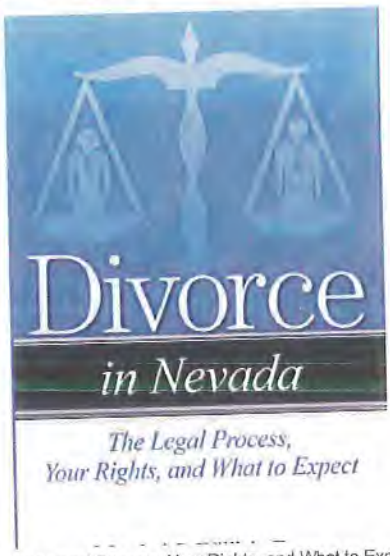
LAS VEGAS REVIEW-JOURNAL

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

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

AA001274

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)

(http://www.facebook.com/sharer.php?u=http://guardianlv.com/2014/06/10-tips-for-getting-a-divorce/&t=10 Tips for Getting Divorced in Nevada)

(http://twitter.com/home?status=10 Tips for Getting Divorced in Nevada => http://guardianlv.com/2014/06/10-tips-for-getting-a-divorce/)

(https://plus.google.com/share?url=http://guardianlv.com/2014/06/10-tips-for-getting-a-divorce/)

(http://www.linkedin.com/shareArticle?mini=true&url=http://guardianlv.com/2014/06/10-tips-for-getting-a-divorce/&title=10 Tips for Getting Divorced in Nevada&summary=&source=Guardian Liberty Voice)

(mailto:?mailto:?subject=Guardian%20Liberty%20Voice%20%3A%20&body=I%20recommend%20this%20page%3A%20.%0AYou%20can%20read%20it%20on%3A%20http%3A%2F%2Fguardianlv.com%2F2014%2F06%2F10-tips-for-getting-a-divorce%2F)

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/)

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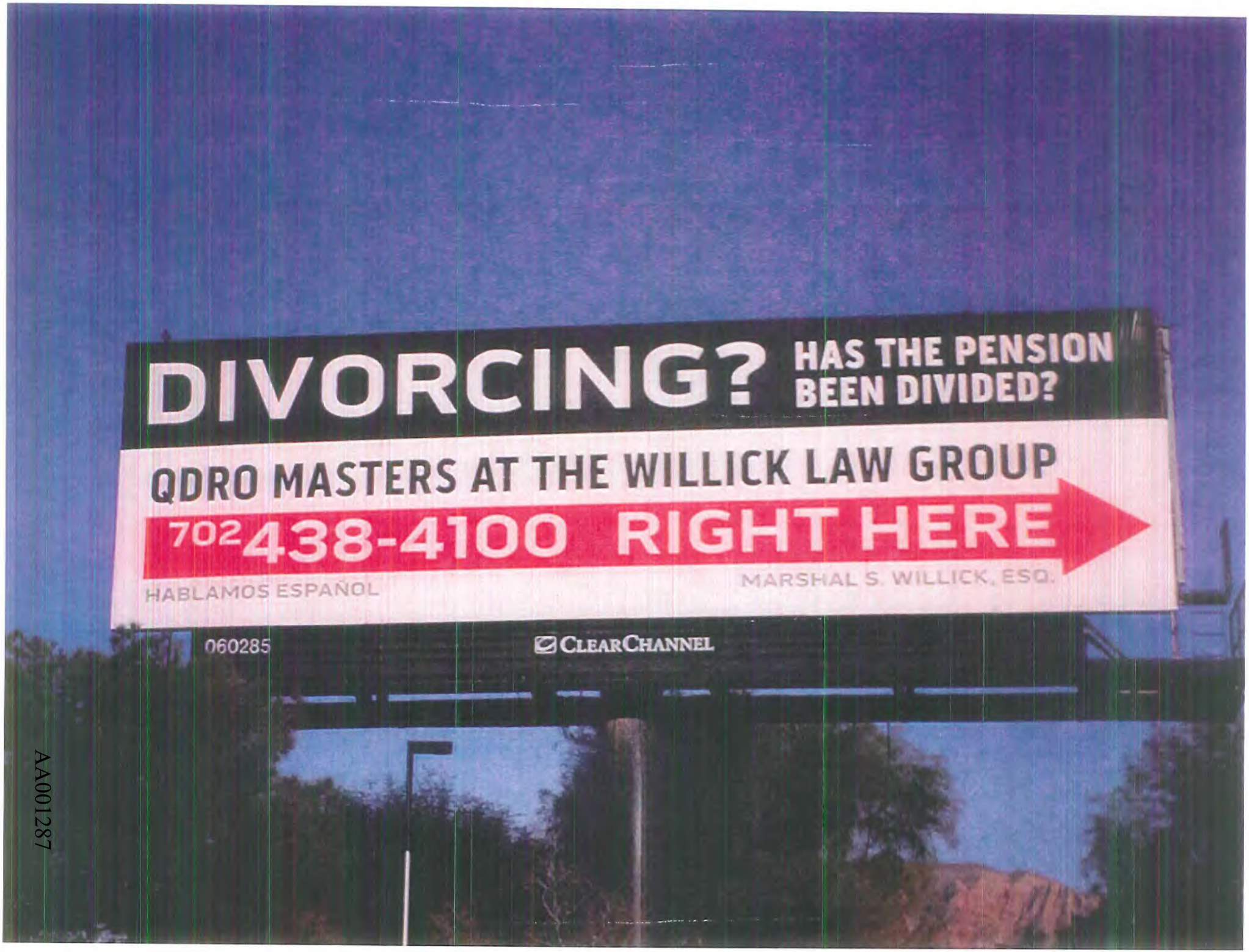
DIVORCING?
HAS THE PENSION BEEN DIVIDED?
QDRO MASTERS AT THE WILLICK LAW GROUP
702 438-4100 RIGHT HERE
HABLAMOS ESPAÑOL
MARSHAL S. WILLICK, ESQ.
060285
CLEAR CHANNEL

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 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.

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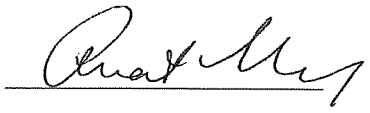
I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed this 2nd day of March, 2017, in Las Vegas, NV



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CLERK OF THE COURT

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Attorneys for: NON-PARTY STEVE SANSON

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

BRANDON PAUL SAITER, Plaintiff, vs. TINA MARIE SAITER, Defendant.	)))))))))	Case No: D-15-521372-D Hearing Date: 3/30/2017 Time: 9:00 a.m. Dept.: L **SPECIAL APPEARANCE**

OPPOSITION TO MOTION FOR ORDER TO SHOW CAUSE RE: CONTEMPT

Non-party Steve Sanson hereby specially appears to oppose Petitioner Brandon Saiter's Motion for an Order to Show Cause against Sanson. The Opposition is based on the Court's lack of personal jurisdiction over Sanson and the Court's lack of subject matter jurisdiction to enforce an Order that is legally void. Void orders can be attacked in any proceeding in any court where the validity of the order comes into issue. Pennoyer v. Neff, 95 U.S. 714, 24 L.Ed. 565 (1877); McDonald v. Mabee, 243 US 90, 61 L.Ed. 608 (1917); U.S. v. Holtzman, 762 F.2d 720 (9th Cir. 1985). Sanson hereby requests that the Court vacate the Order.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Non-party Steve Sanson hereby **specially appears** to oppose Petitioner Brandon Paul Saiter's motion to issue an OSC re: contempt against Sanson for his purported violation of the Court's October 6, 2016 Order in this case (the "Order"). A copy of the Order is attached as Exhibit 3 to Sanson's Declaration ("Sanson Decl.") filed herewith.

This motion is but one part of the over the top, beyond the bounds of reason measures that Abrams is taking to eliminate from public view a court-produced video transcript that simply shows her arguing a client's case in court.

Abrams is apparently so mortified by her own behavior that she will at nothing to get the video out of public view. This includes now asking the Court to find Sanson, the President of Veterans in Politics International, Inc. ("VIPI")[1] which posted the video online, in criminal contempt. Abrams is actually asking the Court to throw Sanson in jail for 54 days, which she unabashedly implies is a good faith break from the 7 years, 4 months and 24 days she thinks he should otherwise receive.[2] Mtn., 17:19-21. All this, for Sanson purportedly violating a Stipulated Order issued in a case in which he is not a party. As shown below, the Court has no jurisdiction over him, and the Order is legally void because it was issued in violation of state and federal laws.

The harassment meted out by Abrams and her fiancé, Marshal Willick, towards Sanson, VIPI and others demonstrate that this motion has much to do with Abrams and little to do with her client. After disseminating the video, Abrams sent the Court an Email complaining that the

[1] VIPI is a non-profit that operates as a government watchdog. It lobbies government on behalf of veterans and works to expose public wrongdoing and corruption. Sanson Decl., ¶ 2. Its philosophy is to safeguard the principles of democracy that countless veterans have lost their lives to protect. VIPI is also for all intents and purposes a member of the media. It operates a weekly internet talk show that features public officials and others who discuss issues of public concern, it writes blogs and articles, administers Facebook pages on which it distributes information, and it sends email updates to its members and others with its latest news. Id.

[2] This in spite of the fact that NRS 22.100(2) caps imprisonment for contempt to 25 days.

video made her look bad. Sanson Decl., ¶ 4, Ex. 2. Indeed, Abrams even argues in this motion that the video should be taken down because "the information being disseminated with the video is *"intended* to place [the undersigned] in a bad light." Mtn., 11:3-5. Tellingly, despite all of the conclusory statements that Abrams makes about how upset her client is over the release of the courtroom video, she fails to provide any affidavit from her client in support of the motion.

Even the "take down" notices that Abrams claims her client sent to VIPI's online service providers were in fact sent by her and Willick. Sanson Decl., ¶11, Ex. 7. Interestingly, she refused to provide copies of these notices to Sanson's counsel and now fails to submit them as exhibits to her motion even though they are prominently discussed in the moving papers.

Abrams and Willick recently each filed separate lawsuits against Sanson and VIPI (and others) in District Court claiming a plethora of identical causes of action. (See, complaints in Abrams v. Schneider, case no. A-17-749318-C and Willick v. Sanson, case, attached as Exs. 4 and 6 respectively to Sanson Decl.) Abrams' complaint is based on VIPI's distribution of the court video and its criticisms of Abrams' court practices. Willick's lawsuit is based on VIPI's criticism of his court practices. While the gravamen of their complaints is defamation, the complaints make fantastical claims of RICO violations (even though there are no factually supported RICO related crimes alleged), intentional and negligent infliction of emotional distress (even though this is improbable given that Abrams and Willick are hardened family law litigators), conspiracy of action (even though no inherently dangerous activity, e.g., drag-racing, is alleged as required for this cause of action), copyright infringement (even though state courts have no subject matter jurisdiction over federal copyright claims), etc.

But Abrams and Willick didn't stop there. They individually and together engaged in a campaign to shut VIPI down by getting its email service provider, Constant Contact, to suspend its account so it could no longer effectively communicate with its members. Sanson Decl., ¶11, Ex. 7. While VIPI has since switched to the Mail Chimp email distribution service, its viewership under this service has significantly dropped. Sanson Decl., ¶ 11. They are also using unfounded claims of privacy and/or copyright infringement (reportedly including claims of ownership the Court's video transcript) to take VIPI's postings off the internet.

Willick has also resorted to viciously disparaging Sanson and VIPI online, falsely claiming that VIPI is a "sham organization," is an "unethical scheme to extort concessions," is used to fund Sanson's personal expenses, fails to file tax returns, has a "sham" radio show and a fraudulent endorsement process. He calls Sanson a "hypocrite…but even worse," "repugnant," "a sleazy extra out of 'Harper Valley PTA,'" "slimy beyond words," and a "two-bit unemployed hustler," who was "forced to flee California." He also accuses Sanson of "shaking down candidates for cash and conspiring with like-minded cronies." Sanson Decl., ¶¶ 8-9, Ex. 5. These statements are worse than those for which Willick and Abrams are suing VIPI and Sanson in their defamation actions.

While the above alone should give this Court pause, the reasons to deny the present motion are embedded in the *most basic* of legal and democratic principles:

1. Courts do not have jurisdiction over non-parties. Sanson is not a party to this action, has never been served with legal process in the case, and does not voluntarily submit to the jurisdiction of this Court. An OSC re: contempt against a non-party would be, among other things, a violation of Sanson's federal and state constitutional due process rights. Moreover, the Order was expressly issued and based on the "Stipulation of the Parties." Sanson was not involved with such stipulation and never agreed to be bound by it. It is axiomatic that stipulations cannot bind non-parties, and neither can orders thereon.

2. Courts do not have subject matter jurisdiction to enforce void or voidable orders. This Order is void because it violates federal and state constitutional free speech rights and was issued in violation of Nevada laws. Discussing and disseminating information about a court proceeding—which is of course presumed public— is a constitutionally- protected right that cannot be infringed absent a "compelling state interest." Such interest must be specifically identified and supported in the Order. Neither the Order nor Petitioner identifies such state interest. Further, any measures taken by the court to address such interest must be narrowly tailored. It is unlawful for the Court to simply seal the entire case, as the Order purports to do. Further, the Order is based on the Stipulation of the Parties and cannot bind non-parties such as Sanson who never agreed to the Stipulation. Accordingly, the Order is void and is therefore

beyond the subject matter jurisdiction of the Court to enforce. Instead, the Court has a legal obligation to vacate it, and Sanson hereby requests that it do so. Jordon v. Gilligan, 500 F.2d 701, 710 (6th Cir., 1974) ("a court must vacate any judgment entered in excess of its jurisdiction.")

3. If this Court grants Petitioner's motion and issues an OSC re: Contempt, which it should not, then Sanson hereby moves to disqualify this judge, and demands that a different judge be assigned to hear such OSC. While contempt hearings in family law cases are typically heard by the judge who issued the underlying order, in this case, this judge has a vested interest in the outcome of such OSC and should be disqualified pursuant to Rule 2.11 of the Code of Judicial Conduct. VIPI's postings indicate that the video transcript that is the subject of the Order reflects negatively on the judge for failing to control her courtroom. This Judge, an elected official, would not be able to avoid the appearance of partiality should she preside over an OSC that would affect whether a video that may reflect poorly on her should be kept from public view.

Accordingly, the Court should deny Petitioner's motion in its entirety.

II. THE COURT DOES NOT HAVE PERSONAL JURISDICTION OVER SANSON

There can be no dispute that Sanson is not a party to this action. The Nevada Supreme Court has "consistently defined a party as someone who has been named a party in the record, and who, as such, is served with process and enters an appearance." Frank Settelmeyer & Sons, Inc. v. Smith & Harmer, Ltd., 124 Nev. 1206, 1212, n.3, 197 P.3d 1051, 1055 (2008). Generally, a stranger to an action cannot appear in the action or make a motion in it (State ex rel. Garaventa Land & Livestock Co. v. Second Jud. Dist. Ct. 61 Nev. 350, 354, 128 P.2d 266, 268 (1942)), nor can a court adjudicate such non-party's rights without appropriate constitutional Due Process protections, including an opportunity to be heard. The United States Supreme Court has held that the validity of the Order may be affected by a failure to give constitutionally required due process notice and an opportunity to be heard. Earle v. McVeigh, 91 U.S. 503, 23 L.Ed. 398 (1875). It should go without saying that no order may be rendered in violation of constitutional protections.

Here, the Order was issued after VIPI (acting through Sanson) disseminated the video, and after VIPI refused to voluntarily and unnecessarily relinquish its First Amendment rights. The Order, undoubtedly drafted by Abrams, purported to retroactively seal all the records in the case and to broadly apply even to non-parties who were never given an opportunity to be heard. This is of course not constitutionally permitted.

Moreover, the Order was expressly entered into by Stipulation of the Parties – again, Sanson was never a party and never stipulated to the form or contents of the Order. He cannot therefore be bound by it. Indeed, it is axiomatic that stipulations cannot bind unrelated third parties.

Petitioner's argument that Sanson should become subject to the Court's jurisdiction because he "interjected himself into this case by taking possession of and disseminating a closed hearing video for the purpose of impacting the outcome of the litigation in exchange for Mr. Schneider's payment to him" and "by reposting two hearing videos after being personally served with an order prohibiting their dissemination" is unfounded. First, no one submits to the jurisdiction of the court simply by obtaining a publicly available video transcript or disseminating it. If that were the law, news agencies and any citizen could be subject to the jurisdiction of every court, which is of course not the case. The allegation that the hearing was "closed" under Rule 5.02 is of no import since, as discussed in Section III.B herein, Rule 5.02 does not operate to seal hearing transcripts. Moreover, it appears that there may have been no basis to close the hearing if it was in fact closed at the time. Further, reposting the hearings after being served with the Order is also of no import since the Court had and continues to have no jurisdiction over Sanson and cannot purport to bind him to an Order based on a stipulation of counsels in a case in which he is not involved. Indeed, Petitioner cites to no law to support this untenable position.

Since the Court lacks personal jurisdiction over Sanson, the motion for OSC re: contempt should be denied for this reason alone.

III. THE COURT LACKS SUBJECT MATTER JURISDICTION AS THE ORDER IS VOID OR VOIDABLE AND CANNOT SERVE AS A BASIS FOR CONTEMPT.

Even if the Court somehow had personal jurisdiction over Sanson, which it does not, it does not have subject matter jurisdiction to enforce the Order since the Order is void for failing to comply with applicable law. In a 1996 family law case, the Nevada Supreme Court held that an order that is void exceeds the subject matter jurisdiction of the court, and the court cannot enforce it:

> In this state it is clearly the law that the violation of an order in excess of the jurisdiction of the issuing court cannot produce a valid judgment of contempt, and that the "jurisdiction" in question extends beyond mere subject matter or personal jurisdiction to that concept described by us in Abelleira v. District Court of Appeal [17 Cal. 2d 280, 109 P.2d 942, 948 (1941)]: "Speaking generally, any acts which exceed the defined power of a court in any instance, whether that power be defined by constitutional provision, express statutory declaration, or rules developed by the courts and followed under the doctrine of stare decisis, are in excess of jurisdiction, [. . . .]

Del Papa v. Steffen, 915 P.2d 245, 249 (1996), quoting, In re Berry, 68 Cal. 2d 137, 65 Cal. Rptr. 273, 280, 436 P.2d 273, 280 (1968) (some citations omitted). The court in Del Papa concluded:

> Although the Whitehead panel had subject matter jurisdiction in the Whitehead case, it acted in excess of that jurisdiction under the First Amendment, NRS 1.090, and the ARJD in ordering that the proceedings in the Whitehead case before this court be kept confidential. Therefore, those orders were void, and their violation cannot produce a valid judgment of contempt.

Id.; See also, State Indus. Ins. System v. Sleeper, 100 Nev. 267, 269, 679 P.2d 1273, 1274 (1984) ("a person may not be held in contempt of a void order"); Kalb v. Feuerstein, 308 U.S. 433, 60 S.Ct. 343 (1940) (a void order does not create any binding obligation).

For the reasons stated below, the Order is void and cannot serve as the basis of a contempt order.

A. COURT PROCEEDINGS ARE OPEN TO THE PUBLIC AS A MATTER OF CONSTITUTIONAL RIGHT, COMMON LAW, AND STRONG PUBLIC POLICY.

In the family law case of Del Papa v. Steffen, 915 P.2d 245, 248 (1996), the Nevada Supreme Court recognized that the unwarranted sealing of court documents or procedures violates constitutional rights:

> Court ordered confidentiality orders implicate First Amendment concerns. The First Amendment prohibits Congress from making any law "abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. amend. I. The Fourteenth Amendment makes this prohibition applicable to state actions as well. U.S. Const. amend. XIV, § 1. The First Amendment guarantees public access to places traditionally open to the public, such as criminal trials. Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 577, 580, 100 S. Ct. 2814, 2827, 2829, 65 L. Ed. 2d 973 (1980). In Richmond, the Supreme Court noted that though the right to attend civil trials was not at issue before it, "historically both civil and criminal trials have been presumptively open." Id. at 580 n. 17, 100 S. Ct. at 2829 n. 17. **A state may deny this right of public access only if it shows that "the denial is necessitated by a compelling government interest, and is narrowly tailored to serve that interest."** Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 607, 102 S. Ct. 2613, 2620, 73 L. Ed. 2d 248 (1982).

(Emphasis added); See also, Civil Rights for Seniors, Nonprofit Corp. v. Admin. Office of the Courts, 313 P.3d 216, 129 Nev. Adv. Op. 80 (Nev. 2013) (acknowledging First Amendment rights of access in criminal and civil judicial proceedings).

Indeed, there is a strong legal presumption, dating to common law, that courtroom proceedings are open to the public. Stephens Media v. Eighth Judicial District Court, 125 Nev. 849 (2009); Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 564–69, 580, n. 17 (1980); Nixon v. Warner Communications, Inc., 435 U.S. 589, 597–98 (1978).

The United States Supreme Court recognized the importance of public access to both criminal and civil courts in Gannett Co., Inc. v. DePasquale, 443 U.S. 368, 386, n. 15 (1979): "For many centuries, both civil and criminal trials have traditionally been open to the public. As early as 1685, Sir John Hawles commented that open proceedings were necessary so 'that truth may be discovered in civil *as well as* criminal matters.'" (Id.; citation omitted; emphasis in

original.) The Court recognized that the salutary effect of public access is as important in civil cases as it is in criminal trials.

In fact, the issue of open proceedings is so important that in 2008 the Nevada Supreme Court convened a special task force to address the problem of attorneys and courts over-sealing court records and promulgated civil rules pertaining to this issue. NRS 1.090 also recognizes this important public policy and provides: "[t]he sitting of every court of justice shall be public except as otherwise provided by law."

Accordingly, the Court must allow the proceedings to be open and public unless it specifically and factually identifies a "compelling government interest" and then, can only impose narrowly tailored measures to protect such state interests.

Petitioner's unsupported argument that Sanson has no right to disseminate or critique the court video because it is, in her opinion, part of a "smear campaigns" (Mtn., 10:16) actually underscores the importance of free speech rights—and makes evident that silencing Sanson's criticism is Abrams' goal in this case and part of the campaign she and Willick have initiated against him. Even if Abrams doesn't like him or his criticism, Sanson has every right to comment on court proceedings. That is the very meaning of having a First Amendment right. Abrams' distaste for its contents and her opinions on whether the speech is justified are entirely irrelevant.

Lastly, Petitioner boldly argues that Sanson is not allowed to watch or disseminate a court video transcript because Sanson was allegedly paid to distribute it or paid to state VIPI's opinion. Not only is this baseless (Sanson Decl., ¶ 12), but the notion that constitutionally protected free speech rights are somehow extinguished if money is involved is illogical and untrue. If that were the law, then television stations that depend on revenue from sponsored commercials, or media that pay for celebrity stories would simply not have free speech rights. Not surprisingly, Petitioner cites to no authority for this argument.

B. IT IS IMPERMISSIBLE TO SEAL ENTIRE CASES.

Sealing entire cases is not permitted under Nevada law.

NRS 125.110(1) requires the following court records to remain public regardless of any attempts to seal a case:

> (a) In case the complaint is not answered by the defendant, the summons, with the affidavit or proof of service; the complaint with memorandum endorsed thereon that the default of the defendant in not answering was entered, and the judgment; and in case where service is made by publication, the affidavit for publication of summons and the order directing the publication of summons.
>
> (b) In all other cases, the pleadings, the finding of the court, any order made on motion as provided in Nevada Rules of Civil Procedure, and the judgment.

Further, while NRS 125.110(2) permits the court to seal certain documents such as certain testimony or exhibits if they are shown to be "private," it is a manifest abuse of discretion for the Court to seal an entire case. In Johanson v. District Court, 182 P.3d 94 (2009), the Nevada Supreme Court stated:

> We conclude that the district court was obligated to maintain the divorce proceedings' public status under NRS 125.110 and manifestly abused any discretion it possessed when it sealed the entire case file. We further conclude that the district court abused its discretion when it issued an overly broad gag order sua sponte, without giving notice or a meaningful opportunity to be heard, without making any factual findings with respect to the need for such an order in light of any clear and present danger or threat of serious and imminent harm to a protected interest, and without examining the existence of any alternative means by which to accomplish this purpose. Gag orders must be narrowly drawn if no less restrictive means are available; they may be entered only when there exists a serious and imminent threat to the administration of justice. This was certainly not the case here.

Id. at 99 (emphasis added).

In violation of these requirements, the Stipulation and Order in this case is impermissibly stated in the broadest possible terms. The Stipulation portion states:

> Counsel then stipulated to seal the case and to disallow any further release of case information and to demand that the current post of the September 29, 2016 hearing video, or any other hearing video from this case be immediately removed from the internet and to prohibit any portion of these proceedings from being disseminated or published and that any such publication or posting by anyone be immediately removed…

Order, at 1:27 – 2:6; emphasis added. The Order portion likewise states:

> …IT IS HEREBY ORDERED that the current post of the September 29, 2016 hearing video, and any and all other hearing video(s) from this case shall be immediately removed from the internet. All persons or entities shall be prohibited from publishing, displaying, showing or making public any portion of these case proceedings; nothing from the case at bar shall be disseminated or published and that any such publication or posting by anyone or any entity shall be immediately removed ...

Order at 2:12-19 (emphasis added). Such blanket prohibition on access to an entire case file is specifically disallowed under Nevada law, and thereby renders the Order void.

C. THERE IS NO COMPELLING STATE INTEREST IN SEALING THE COURT VIDEO.

The Order states that the video transcript of the September 29, 2016 hearing should be sealed because the hearing was closed pursuant to Eighth District Court Rule 5.02.

Yet, Rule 5.02(a) does not purport to justify the sealing of part of a hearing, let alone an entire hearing. Rule 5.02 simply provides that members of the public and others may be excluded from a hearing to the extent that private facts are revealed or discussed:

> In any contested action for divorce, annulment, separate maintenance, breach of contract or partition based upon a meretricious relationship, custody of children or spousal support, the court must, upon demand of either party, direct that the trial or hearing(s) on any issue(s) of fact joined therein be private and upon such direction, all persons shall be excluded from the court or chambers wherein the action is heard, except officers of the court, the parties their witnesses while testifying, and counsel.

Here, there was no finding, nor could there be, that any particular issue discussed at the hearing pertained to any private fact about the parties or their children. While Petitioner makes conclusory allegations about Sanson having disseminated private information, Petitioner's motion is completely devoid of any specificity regarding what particular private information was disseminated. The information it does mention is not private:

(a) At page 4:18-19, Petitioner argues that "the Saiter family's private material" was disseminated. This conclusory statement fails without an identification of what specific private material is being referred to.

(b) At 5:1-2, Petitioner finds objectionable that Sanson disseminated "copies of this Court's orders, and named Brandon and Tina Saiter personally, listing their case number repeatedly." Yet, none of this information is private. In fact, it falls squarely within the purview of NRS 125.110(1) which expressly states that pleadings and all court orders must remain public; the litigants' names and their case numbers are necessarily part of those documents. So, as a matter of law, this information is not private.

(c) At 5:2-3 Petitioner states that Sanson "continues to comment on Mr. Saiter's income and business information." Again there is no specificity to this statement. Any mention of annual income or the type of business Mr. Saiter is in, is typically public record in divorce proceedings. All divorce and custody litigants are required under NRCP, Rule 16.2 to file detailed income and expense declarations that set out this information. Likewise, affidavits of financial condition must be filed when a party seeks fees in connection with a motion for support and other matters. NRCP, Rule 5.32. There is no explanation for why this case should be treated as more confidential than any other family law case.

(d) At 5:4 Petitioner states that Sanson somehow commented on "Ms. Saiter's emotional state," though again there is no specificity to this allegation and no claim that any medical records or other confidential medical fact was disclosed.

(e) Finally, Petitioner argues at 5:4-6 that the video contains "commentary by this Court on very sensitive, personal matters, -- which, frankly, have no place in the public forum." This too is conclusory and fails to identify the subject matter of any confidential information. If it refers to the Court's critical statements about Ms. Abrams firm's court practices, then commentary on that would be exactly the type of speech that would be of public concern and would be protected by the First Amendment -- speech about the actions and statements of an officer of the court and the actions and statements of an elected public official, made during the course of their respective service.

Again, there is nothing private, and certainly nothing about the litigants or their children, that was discussed in the courtroom and that would justify closure under EDRC Rule 5.02, let alone justify a "compelling state interest" to seal the otherwise public record.

Moreover, even if the court wanted to seal part of the hearing, the Order was required to expressly state which part was being sealed, identify the compelling state interest involved in that particular part of the hearing, and then seal only that portion of the record to protect that particular interest. It cannot simply state in conclusory terms, as the Order does, that the transcript is being sealed "in the best interests of the children."

D. THE ORDER SHOULD BE VACATED.

It is well established that orders that are void for failing to comply with applicable law should be vacated. Jordon v. Gilligan, 500 F.2d 701, 710 (6th Cir., 1974) ("a court must vacate any judgment entered in excess of its jurisdiction.")

This Court has broad discretion to and should set aside the Order for mistakes and errors, and can also do so pursuant to N.R.C.P. 59(e) and 60(b). Doing so is well within the Court's sound judgment, and would not be reversible absent an abuse of discretion. Union Petrochemical Corp. of Nevada v. Scott, 96 Nev. 337, 337, 609 P.2d 323, 323 (1980).

Indeed, this is the Court's opportunity to rectify the situation without having the parties incur additional fees and costs to appeal the enforcement of the stipulated Order against non-party Sanson.

IV. IF THE COURT GRANTS THE MOTION FOR OSC, THEN SANSON HEREBY MOVES TO DISQUALIFY THE JUDGE FROM PRESIDING OVER THE OSC.

Rule 2.11 of the Code of Judicial Conduct requires a judge to disqualify herself "in any proceeding in which the judge's impartiality might reasonably be questioned." Here, the article that VIPI issued with the video transcript was critical of the Judge as well as Abrams:

> But, what judge allows a lawyer to bully her in court and then gets her to issue an overbroad, unsubstantiated order to seal and hide the lawyer's actions?
>
> Shouldn't we expect more from our judges in controlling their courtrooms, controlling their cases, issuing orders in compliance with the law, and protecting the people against over-zealous, disrespectful lawyers who obstruct the judicial process and seek to stop the public from having access to otherwise public documents?

Sanson Decl., Ex. 4. By signing an order that purports to take the video off the internet and

cease its further distribution, the court was effectively seeking to stifle public criticism about *herself,* an elected official. As such, the Judge has a vested interest in the outcome of an OSC hearing and would be subject to having her impartiality reasonably questioned. Consequently, Sanson hereby demands that she be disqualified from presiding over an OSC hearing.[3]

V. PETITIONER SHOULD BE ORDERED TO PAY SANSON'S ATTORNEYS' FEES AND COSTS

Petitioner's motion is baseless and his request for attorneys' fees and costs should be denied. Instead, it is Petitioner who should be ordered to pay Sanson's attorneys' fees for filing a motion that lacks legal support and appears to be yet another tool used by Abrams to harass and attempt to intimidate Sanson and VIPI into stifling their constitutionally protected speech.

Sanson's counsel will submit a memorandum of fees and costs should the court grant his request.

VI. CONCLUSION

For all of the reasons stated above, Defendants respectfully request that the Court:

a. Deny the Motion for OSC re: Contempt;

b. Vacate the Order;

c. Order Petitioner to pay Sanson's attorneys' fees and costs; and

d. Order such further relief as the court may deem just and proper.

DATED: March 6, 2017

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(signature block continued on next page)

[3] Petitioner's repeated argument that Sanson, a non-lawyer, at one point stated that only this Court can enforce its order is of no import. NRS §22.030, which applies to non-family law cases, even recognizes otherwise: "Except as otherwise provided in this subsection, if a contempt is not committed in the immediate view and presence of the court, the judge of the court in whose contempt the person is alleged to be shall not preside at the trial of the contempt over the objection of the person."

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By: _____
Attorneys for: Non-party, STEVE SANSON

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 **SPECIAL APPEARANCE -- OPPOSITION TO MOTION FOR OSC RE: CONTEMPT** on the below listed recipients through the Court's wiznet E-service program:

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

Executed this 6th day of March 2017, in Las Vegas, NV

Anat Levy

MOFI

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

BRANDON PAUL SAITER
Plaintiff/Petitioner

v.

TINA MARIE SAITER
Defendant/Respondent

Case No. D-15-521372-D

Dept. L

MOTION/OPPOSITION FEE INFORMATION SHEET

Notice: Motions and Oppositions filed after entry of a final order issued pursuant to NRS 125, 125B or 125C are subject to the reopen filing fee of $25, unless specifically excluded by NRS 19.0312. Additionally, Motions and Oppositions filed in cases initiated by joint petition may be subject to an additional filing fee of $129 or $57 in accordance with Senate Bill 388 of the 2015 Legislative Session.

Step 1. Select either the $25 or $0 filing fee in the box below.

☐ **$25** The Motion/Opposition being filed with this form is subject to the $25 reopen fee.

-OR-

☒ **$0** The Motion/Opposition being filed with this form is not subject to the $25 reopen fee because:

- ☒ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
- ☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
- ☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on _____.
- ☒ Other Excluded Motion (must specify) Party is seeking an OSC re: contempt against non-party. Non-party is contesting the jurisdiction of the court.

Step 2. Select the $0, $129 or $57 filing fee in the box below.

☒ **$0** The Motion/Opposition being filed with this form is not subject to the $129 or the $57 fee because:

- ☐ The Motion/Opposition is being filed in a case that was not initiated by joint petition.
- ☒ The party filing the Motion/Opposition previously paid a fee of $129 or $57. The moving party would have paid the motion fee. Sanson is opposing.

-OR-

☐ **$129** The Motion being filed with this form is subject to the $129 fee because it is a motion to modify, adjust or enforce a final order.

-OR-

☐ **$57** The Motion/Opposition being filing with this form is subject to the $57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of $129.

Step 3. Add the filing fees from Step 1 and Step 2.

The total filing fee for the motion/opposition I am filing with this form is:
☒ **$0** ☐ **$25** ☐ **$57** ☐ **$82** ☐ **$129** ☐ **$154**

Party filing Motion/Opposition: Non-Party, Steve Sanson Date March 6, 2017

Signature of Party or Preparer _____

OPP
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Attorneys for: NON-PARTY STEVE SANSON

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

BRANDON PAUL SAITER, Plaintiff, vs. TINA MARIE SAITER, Defendant.	)))))))))	Case No: D-15-521372-D Hearing Date: 3/30/2017 Time: 9:00 a.m. Dept.: L **SPECIAL APPEARANCE**

DECLARATION OF STEVE SANSON IN OPPOSITION OF MOTION FOR ORDER TO SHOW CAUSE RE: CONTEMPT

I, STEVE SANSON, hereby declare as follows:

1. I am not a party to the instant action and do not voluntarily submit to its jurisdiction. I am SPECIALLY APPEARING IN THIS CASE TO CONTEST THE JURISDICTION OF THE COURT. I make this declaration in support of my Opposition to Petitioner's Motion for an Order to Show Cause Re: Contempt. This declaration based on my

personal knowledge, except as to matters stated to be based on information and belief. I am competent to testify as to the truth of these statements if called upon to do so.

2. I am the President of defendant Veterans in Politics International, Inc. ("VIPI"). VIPI is a non-profit corporation that advocates on behalf of veterans and that works to expose public corruption and wrongdoing. We routinely publish articles online on our VIPI website, various Facebook pages and through Constant Contact group emails. We also host an online weekly talk show which features public officials and others who discuss veterans, political, judicial and other issues of public concern.

3. In October 2016, acting in my capacity as President of VIPI, I posted the court video transcript of the September 29, 2016 hearing in the instant case. The video showed what I believed in good faith was Abrams being disrespectful of the Judge and the Judge failing to adequately control her courtroom. Attached hereto as Exhibit 1 is a true and correct copy of the article that I posted.

4. I thereafter received an email from the Court which attached an email from Jennifer Abrams stating that the video should be taken down in part because she thought it made her look bad. Since VIPI was within its rights to post a video of a court proceeding, I did not take it down. Attached as Exhibit 2 is a true and correct copy of the email from Abrams.

5. I was then personally served with a copy of the October 6, 2016 Court Order in this case. Attached hereto as Exhibit 3 is a true and correct copy of the Order.

6. The Order purported to seal all of the documents and proceedings in the case on a retroactive basis. While I did not agree that the records should be sealed or that there was a legal basis to take the video down, out of an abundance of caution, I took the video out of public view temporarily until I could get further legal advice. Once I learned that the Court had no jurisdiction over VIPI or me, and had no legal basis for sealing the records, I reposted the video online, along with an article reporting on what had taken place and analyzing the practice of sealing court documents. A true and correct copy of the article is attached hereto as Exhibit 4.

7. Shortly after January 9, 2017, I was served with a complaint in which Abrams sued me, VIPI and each of its officers and directors, its former web administrator and her opposing counsel in this family law proceeding. She even sued a VIPI officer who lives in Missouri. None of those officers or directors had anything to do with the postings I made on behalf of VIPI, nor did they know about the posting in advance. In addition, Abrams sued Sanson Corp., an entity which has nothing to do with VIPI or its activities. Attached as Exhibit 5 is a true and correct copy of the operative complaint in that case, without its exhibits.

8. I thereafter learned of a letter that Abrams' fiancé, Marshal Willick, posted online and addressed to me, but never sent to me. A true and correct copy of the letter and the links to it on his website is attached as Exhibit 6.

9. In the letter, among other things, Willick accuses VIPI of manipulating its candidate interview process, using VIPI's income for my personal expenses, not filing tax returns for VIPI, and using VIPI as an "unethical scheme to extort concessions in an ongoing case." He further accuses me of being a "hypocrite…but even worse," "a sleazy extra out of 'Harper Valley PTA," states that I am the very definition of "hypocrite – not to mention slimy beyond words," calls me a "two-bit unemployed hustler," accuses me of "shaking down candidates for cash and conspiring with like-minded cronies" and says "you are repugnant." He also accuses VIPI's radio show of being a "fraud," claims that VIPI is a "sham organization," and claims that I was "forced to flee California." None of those statements are true.

10. On or about February 4, 2017 Willick sued VIPI, me, and all of the same VIPI officers and directors as Abrams sued, alleging the identical causes of action that Abrams alleged in her complaint. He claimed that VIPI's posts criticizing him were defamatory. Attached hereto as Exhibit 7 is a true and correct copy of the complaint.

11. Starting on January 6, 2017 and continuing into February, I have received emails from VIPI's online service providers advising that Jennifer Abrams sent "take down" letters to them and that they were either taking materials off my site or shutting down my service until an investigation could be made. Attached as Exhibit 8 are true and correct copies of take down

notices that I received from YouTube which took down the court transcript video of Abrams in the family court proceeding, Facebook which took down numerous of VIPI's posts on Abrams, Vimeo, and Constant Contact. Constant Contact has shut down VIPI's account so that VIPI could no longer send emails using that account to its followers and members. While VIPI has now switched to distributing its emails via Mail Chimp service, our readership has fallen significantly with this new service provider. I have spent considerable time and aggravation dealing with these take down notices that I believe are completely unwarranted and that are disrupting VIPI's operations.

12. VIPI has never accepted payment from anyone in exchange for publishing articles or disseminating a particular news story to its members or the public. We are a non-profit organization of veterans who have risked their lives to preserve our democracy. We take pride in the work that we do to expose government-related wrongdoing and corruption.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct to the best of my knowledge and belief.

Dated this 5 day of March, 2017 in Las Vegas, NV.

Steve Sanson

EXHIBIT 1

-
-
-
-

VETERANS IN POLITICS

Nevada Attorney attacks a Clark County Family Court Judge in Open Court

A behind the scenes look inside our courtroom

FIND OUT MORE

No boundaries in our courtrooms!

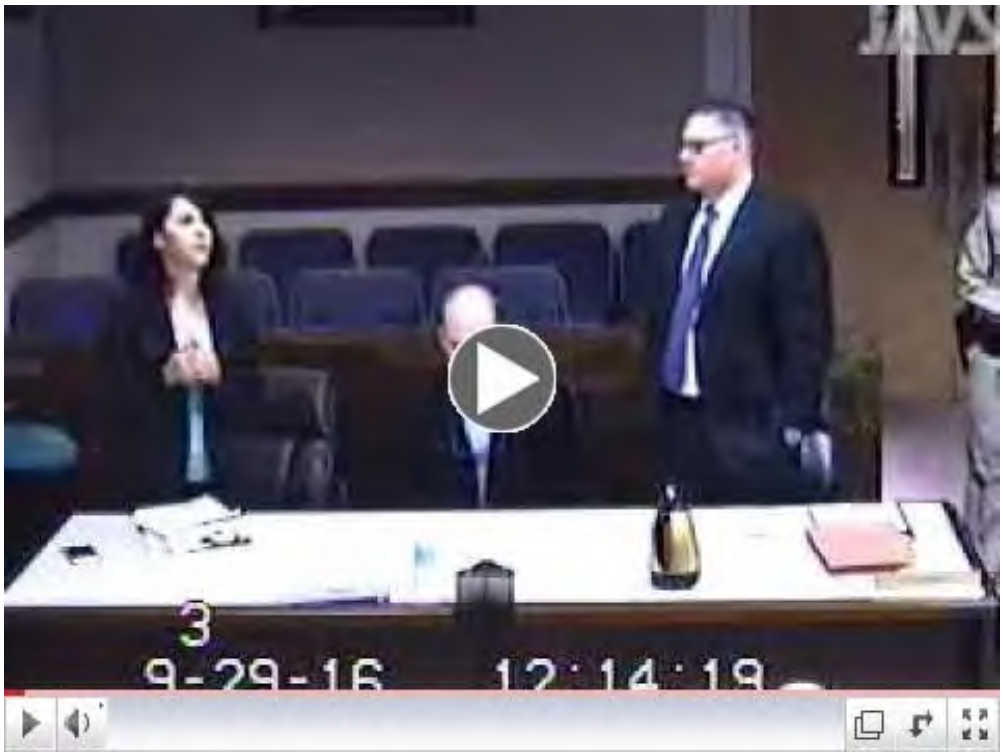
In Clark County Nevada, we have noticed Justice of the Peace handcuffing Public Defenders unjustly as well as Municipal Court Judges incarcerating citizens that are not even before their court.

The above are examples of the court room over stepping

boundaries. But what happens when a Divorce Attorney crosses the line with a Clark County District Court Judge Family Division?

In a September 29, 2016 hearing in Clark County Family Court Department L Jennifer Abrams representing the plaintiff with co-council Brandon Leavitt and Louis Schneider representing the defendant. This case is about a 15 year marriage, plaintiff earns over 160,000 annually and defendant receives no alimony and no part of the business.

There was a war of words between Jennifer Abrams and Judge Jennifer Elliot.



Start 12:13:00 in the video the following conversation took place in open court.

Judge Jennifer Elliot:

I find that there is undue influence in the case.

There are enough ethical problems don't add to the problem.

If that's not an ethical problem I don't know what is.

Court is charged to making sure that justice is done.

Your client lied about his finances.

I am the judge and in a moment I am going to ask you to leave.

Your firm does this a lot and attack other lawyers.

I find it to be a pattern with your firm.

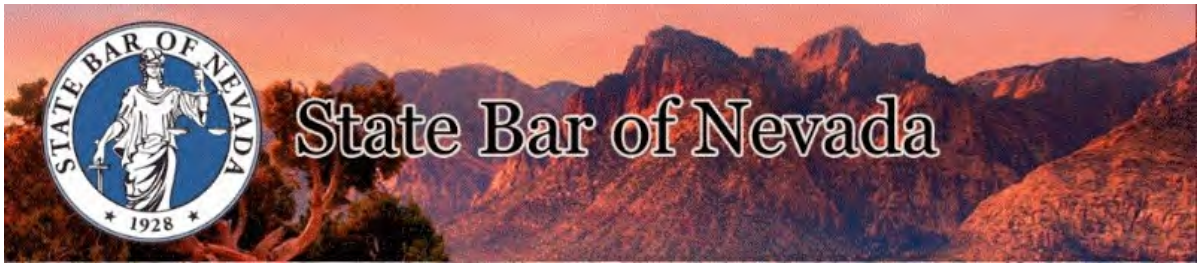
You are going to be taking out of here if you don't sit down.

I am the Judge not you.

Jennifer Abrams:

Excuse me I was in the middle of a sentence.

Is there any relationship between you and Louis Schneider?



At what point should a judge sanction an attorney?

Is a judge too comfortable or intimidated by an attorney that

they give them leeway to basically run their own courtroom?

If there is an ethical problem or the law has been broken by an attorney the Judge is mandated by law to report it to the Nevada State Bar or a governing agency that could deal with the problem appropriately.

Learn More about Nevada State Bar Ethics & Discipline

UPCOMING EVENTS

WEBSITE NEWS GOALS AND VALUES OFFICERS CONTACT US

Veterans In Politics International Inc.
702-283-8088
devildog1285@cs.com
www.veteransinpolitics.org

SIGN UP FOR EMAILS

Confirm that you like this.

Click the "Like" button.

EXHIBIT 2

From: Louis Schneider <lcslawllc@yahoo.com>
To: Jennifer Abrams <jabrams@theabramslawfirm.com>; 'veteransinpoliti@cs.com' <veteransinpoliti@cs.com>; ElliottJ <ElliottJ@clarkcountycourts.us>
Cc: vipipresident <vipipresident@cs.com>
Subject: Re: Nevada Attorney attacks a Clark County Family Court Judge in Open Court
Date: Tue, Oct 11, 2016 10:10 am

I am unsure why I am copied on these e-mails.
I don't want anything to do with this.

Louis
Law Office of Louis C. Schneider
Nevada Bar No. 9683
430 South Seventh Street
Las Vegas, Nevada 89101
Phone: 702-435-2121
Fax: 702-431-3807

From: Jennifer Abrams <jabrams@theabramslawfirm.com>
To: "'veteransinpoliti@cs.com'" <veteransinpoliti@cs.com>; "ElliottJ@clarkcountycourts.us" <ElliottJ@clarkcountycourts.us>
Cc: "lcslawllc@yahoo.com" <lcslawllc@yahoo.com>; "vipipresident@cs.com" <vipipresident@cs.com>
Sent: Monday, October 10, 2016 7:03 PM
Subject: RE: Nevada Attorney attacks a Clark County Family Court Judge in Open Court

Mr. Sanson,

Whoever provided you with the legal analysis below is mistaken. I am not providing you with legal advice here but the authority you cite deals with civil, not family law cases. The hearing was closed and such was announced at the very beginning. See EDCR 5.02, NRS 125.080, and NRS 125.110. I had the case sealed at my client's request because he does not want his children, their friends, or anyone in his circle of friends, family, or business associates to see his private divorce proceedings broadcast on the internet.

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.

Sincerely,

Jennifer V. Abrams, Esq.
Board Certified Family Law Specialist
Fellow of the American Academy of Matrimonial Lawyers
THE ABRAMS & MAYO LAW FIRM
6252 South Rainbow Blvd., Suite 100
Las Vegas, Nevada 89118
Tel: (702) 222-4021
Fax: (702) 248-9750
www.TheAbramsLawFirm.com

From: veteransinpoliti@cs.com [mailto:veteransinpoliti@cs.com]
Sent: Monday, October 10, 2016 4:08 PM
To: ElliottJ@clarkcountycourts.us
Cc: Jennifer Abrams; lcslawllc@yahoo.com; vipipresident@cs.com
Subject: Re: Nevada Attorney attacks a Clark County Family Court Judge in Open Court

Judge Elliot and all involved.

I have to admit this seal that was done on this case is the fastest I have ever seen family court or any court in this state move. Now, I know they have the capability to be fast.

I have talked to many lawyers and Judges, I even spoke to a Justice in DC just to make sure I had all my facts correct.

I must say that you can not seal a case just to seal a case, especially if one of the reasons its been done is to shield the attorney and not the litigants I am referring to Abrams email to you Judge, she said the following (Further, the information is inaccurate and intended to place me in a bad light). Is she protecting herself? Absolutely.

When we expose folks we do it under the umbrella of a journalist and we use the Freedom of information Act.

The case was sealed without a hearing and the video was requested, paid for and posted prior to the sealing. The order to seal the case can not be retroactive.

I have also taking the liberty to investigate the following, general rules on sealing: http://www.leg.state.nv.us/courtrules/SCR_RGSRCR.html (see particularly 3-1 and 4). The entire case cannot be sealed. RJ article: http://www.reviewjournal.com/news/standards-sealing-civil-cases-tougher from when current rules went in. Policy discussion in a criminal case, first couple of pages of https://scholar.google.com/scholar_case?case=6580253056313342241&q=seal+court+record&hl=en&as_sdt=4,29 A unanimous NV opinion keeping records of a divorce open (involving a former judge) https://scholar.google.com/scholar_case?case=3787817847563480381&q=seal+court+record&hl=en&as_sdt=4,29.

It looks like the Nevada State Supreme Court has strict rules on sealing cases as well.

We might have sent out the second article prematurely.. We have also received numerous attorneys pointing us in the direction of other cases Abram's have had her outburst and bullied other Judges and Attorneys. Is she going asked for those cases to be sealed as well?

In addition, we are going to ask for an opinion from the Nevada Judicial Discipline Commission and Nevada State Bar in regards to the sealing of this case.

Steve Sanson
President Veterans In Politics International
702 283 8088

-----Original Message-----
From: Elliott, Jennifer <ElliottJ@clarkcountycourts.us>
To: veteransinpoliti <veteransinpoliti@cs.com>
Cc: jabrams <jabrams@theabramslawfirm.com>; lcslawllc <lcslawllc@yahoo.com>; vipipresident <vipipresident@cs.com>
Sent: Thu, Oct 6, 2016 4:00 am
Subject: Re: Nevada Attorney attacks a Clark County Family Court Judge in Open Court

Hi Steve, thank you for your quick response. 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. We thereafter worked out all the remaining financial matters in the Decree. The hearing that you have was the pinnacle of the conflict between counsel and unfortunately this was affecting the resolution of the case.

A case always goes much better when the attorneys are able to work well together and develop more trust from the beginning. The ability to build trust in this case went south from the gate and created a dynamic that was toxic to seeing and reaching the merits of the case. Thus pleadings filed were accusatory on both sides and a court only knows what comes before it through papers properly filed or reports that have been ordered.

At this juncture it is my belief that both sides felt all financial information had truly been revealed and that both adjusted their positions enough to achieve a solution that was acceptable to both parties.

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. Thank you Steve!

Sent from my iPhone

On Oct 5, 2016, at 11:16 PM, "veteransinpoliti@cs.com" <veteransinpoliti@cs.com> wrote:

> Hi Judge;
>
> I respect you reaching out and asking us to take the video down. We have known you for a very long time, and I know that you understand once we start a course of action we do not raise our hands in defeat. However, with that said we have no intentions on making the litigants uncomfortable, but our job is the expose folks that have lost their way.. Maybe the attorney for the plaintiff should have put her client before her own ego and be respectful of the court, be respectful of her client, advise her client not to perjure himself, treat people with respect (her own co-council she told him to

sit down), the years we have been doing this we are tired of attorneys running a tax payers courtroom. They feel that they are entitled and they will walk over anybody to make a buck.

In combat we never give up and we will not start given up, because we exposed someone.

Steve Sanson
President Veterans In Politics International
www.veteransinpolitics.org
702 283 8088

-----Original Message-----
From: Elliott, Jennifer <ElliottJ@clarkcountycourts.us>
To: veteransinpoliti <veteransinpoliti@cs.com>; jabrams <jabrams@theabramslawfirm.com>
Sent: Wed, Oct 5, 2016 6:02 pm
Subject: Fwd: Nevada Attorney attacks a Clark County Family Court Judge in Open Court

Hi Steve,
I was made aware of this video today and would kindly request that VIP please take it down. Since this hearing the court and parties worked further on resolving the issues and the case was resolved. Leaving this video up can only serve to inflame and antagonize where the parties are trying to move on with terms that will help them restructure their lives in two different homes. We all hope for the best post-divorce atmosphere; the parties will be working together to co-parent their children and I would loath to think they or their friends would encounter this and have to feel the suffering of their parents or relive their own uncomfortable feelings of loss. I know you care about children and families as much as you do about politics and justice, and I appreciate your courtesy in this regard. Thank you for your anticipated cooperation, Judge Jennifer Elliott

Begin forwarded message:

> **From:** Jennifer Abrams <jabrams@theabramslawfirm.com>
> **Date:** October 5, 2016 at 1:48:20 PM PDT
> **To:** "elliottj@clarkcountycourts.us" <elliottj@clarkcountycourts.us>
> **Cc:** Louis Schneider <lcslawllc@yahoo.com>
> **Subject: Fwd: Nevada Attorney attacks a Clark County Family Court Judge in Open Court**
>
>
>
> Judge Elliott,
>
> The below was brought to my attention. These parties don't need a video or other information about their personal divorce posted on the internet. Further, the information is inaccurate and intended to place me in a bad light. I ask that you please demand that this post, video, etc. be immediately removed.
>
> Mr. Schneider is copied on this email.

JVA

Begin forwarded message:

From: Marshal Willick <marshal@willicklawgroup.com>
Date: October 5, 2016 at 11:02:11 AM PDT
To: "Jennifer V. Abrams Esq. (jabrams@theabramslawfirm.com)" <jabrams@theabramslawfirm.com>, "yafasedek3@gmail.com" <yafasedek3@gmail.com>
Subject: FW: [Junk released by Allowed List] Nevada Attorney attacks a Clark County Family Court Judge in Open Court

Thought you ought to know about this as soon as I saw it.

Marshal S. Willick

From: Veterans In Politics International Inc. [mailto:devildog1285@cs.com]
Sent: Wednesday, October 05, 2016 9:59 AM
To: Marshal Willick
Subject: [Junk released by Allowed List] Nevada Attorney attacks a Clark County Family Court Judge in Open Court

Having trouble viewing this email? Click here www.veteransinpolitics.org

Hi, just a reminder that you're receiving this email because you have expressed an interest in Veterans In Politics International Inc.. Don't forget to add devildog1285@cs.com to your address book so we'll be sure to land in your inbox!

You may unsubscribe if you no longer wish to receive our emails.

VETERANS IN POLITICS

Nevada Attorney attacks a Clark County Family Court Judge in Open Court

AA001321

A behind the scenes look inside our courtroom

FIND OUT MORE

No boundaries in our courtrooms!

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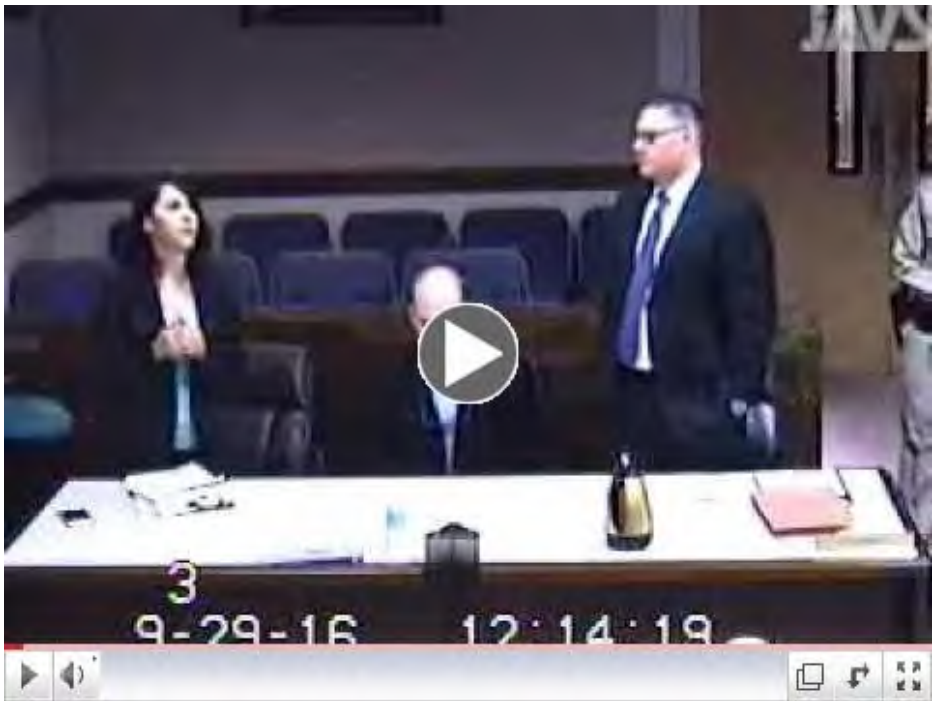

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Jennifer Abrams:

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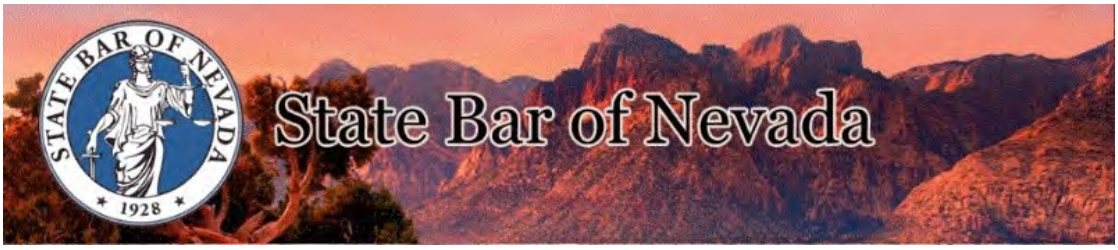

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Learn More about Nevada State Bar Ethics & Discipline

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WEBSITE NEWS GOALS AND VALUES OFFICERS CONTACT US

Veterans In Politics International Inc.
702-283-8088
devildog1285@cs.com
www.veteransinpolitics.org

SHARE THIS EMAIL **SIGN UP FOR EMAILS**

Veterans In Politics International Inc., PO Box 28211, Las Vegas, NV 89126

AA001325

EXHIBIT 3

Electronically Filed
10/06/2016 03:01:49 PM

CLERK OF THE COURT

DISTRICT COURT
FAMILY COURT DIVISION
CLARK COUNTY, NEVADA

BRANDON PAUL SAITER, Plaintiff, vs. TINA MARIE SAITER, Defendant.	CASE NO: D-15-521372-D DEPT NO: L HEARING DATES: 9/29/16 HEARING TIMES: 10:00 a.m.

ORDER PROHIBITING DISSEMINATION OF CASE MATERIAL

This matter having come before the Court for several pending matters on the 29th day of September at 10:00 a.m., Plaintiff Brandon Saiter represented by Jennifer Abrams, Esq. and Brandon Leavitt, Esq. and Defendant, Tina Marie Saiter represented by Louis Schneider, Esq., and the Court hearing preliminary matters, entertained and granted Ms. Abrams request for a closed hearing pursuant to EDCR 5.02, with the exception of permitting the parents of Defendant to remain pursuant to NRS 125.080 (2) (e).

Thereafter, the videotape of this hearing was posted on youtube and a link to the video was emailed to multiple third parties not involved in the case on or about the 3rd day of October, 2016.

On October 5, 2016, the parties resolved all issues required for a Decree of Divorce. Counsel then stipulated to seal the case and to disallow any further release of

JENNIFER L. ELLIOTT
DISTRICT JUDGE
FAMILY DIVISION, DEPT. L
LAS VEGAS, NV 89101

case information and to demand that the current post of the September 29, 2016 hearing video, or any other hearing video from this case be immediately removed from the internet and to prohibit any portion of these proceedings from being disseminated or published and that any such publication or posting by anyone be immediately removed, as the September 29, 2016 hearing was a closed hearing. Additionally, counsels and the parties recognize that the case has been settled and that such an Order is in the best interest of the four (4) children in this case and is also authorized by NRS 125.080, NRS 125.110, EDCR 5.02, and Supreme Court Rules, Part VII, Rule 2(2)(a) and 3(4).

PURSUANT TO THE STIPULATION OF THE PARTIES, IT IS HEREBY ORDERED that the current post of the September 29, 2016 hearing video, or any and all other hearing video(s) from this case shall be immediately removed from the internet. All persons or entities shall be prohibited from publishing, displaying, showing, or making public any portion of these case proceedings; nothing from the case at bar shall be disseminated or published and that any such publication or posting by anyone or any entity shall be immediately removed as the Court finds the stipulation of the parties and this Courts' Order to be in the best interest of the four (4) children in this case and to be fully supported by law (NRS 125.080, NRS 125.110, EDCR 5.02, and Supreme Court Rules, Part VII, Rule 2(2)(a) and 3(4)).

DATED this 6th day of October 2016.

Jennifer Elliott, District Court Judge,
Family Division, Dept. L

JENNIFER L. ELLIOTT
DISTRICT JUDGE
FAMILY DIVISION, DEPT. L
LAS VEGAS, NV 89101

EXHIBIT 4

-
-
-
-

VETERANS IN POLITICS

Law Frowns on Nevada Attorney Jennifer Abrams' "Seal-Happy" Practices

Clark County, Nevada
November 6, 2016

Free access to civil court proceedings is protected by the First Amendment to the U.S. Constitution.

FIND OUT MORE

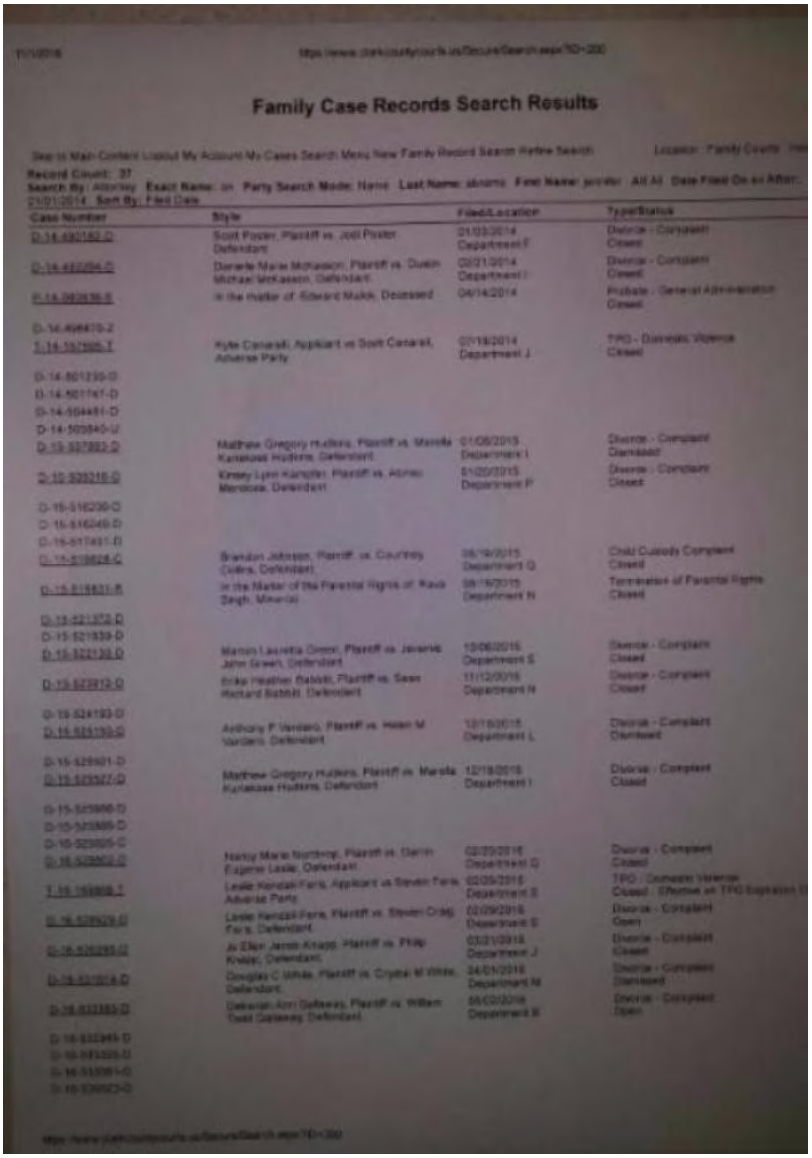
Its importance cannot be overstated!

State and federal courts, including Nevada's Supreme Court, recognize that public access to court proceedings serves vital public policy interests, including, serving as a check on corruption, educating the public about the judicial process, promoting informed discussion of government affairs, and enhancing the performance of the judge, the lawyers and all involved.

As former Nevada Supreme Court Justice Nancy Saitta wrote earlier this year regarding the Supreme Court's rules on sealing civil records, ***"the cornerstones of an effective, functioning judicial system are openness and transparency. Safeguarding these cornerstones requires public access not only to the judicial proceedings but also to judicial records and documents."***

At least one lawyer in Nevada, however, Jennifer Abrams, appears to be **"seal happy"** when it comes to trying to seal her cases. She appears to have sealed many of he r cases in th e past few years, including filing a petition to seal in at least four cases just this past week, on 11/3/2016!

It also appears, however, that at least one of her cases, and perhaps more, may have been sealed to protect her own reputation, rather than to serve a compelling client privacy or safety interest.



Family Case Records Search Results

Learn More

Veterans In Politics International (VIPI) recently released a video of Abrams bullying Judge Jennifer Elliot during a family court hearing in a case entitled Saiter v. Saiter, Case No. D-15-521372-D.

Click onto Nevada Attorney attacks a Clark County Family Court Judge in Open Court

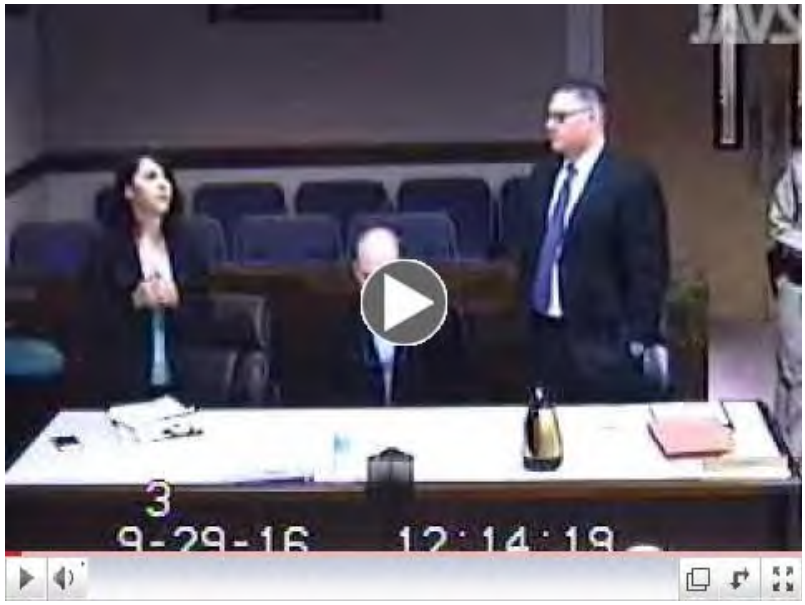
In response to our article, Abrams sought and obtained a court order from Judge Elliott which does not name VIPI, but which purports to

apply to the entirety of the general population. VIPI, however, was served with the Order. The document orders all videos of Abrams' September 29, 2016 judicial browbeating to be taken off the internet.

Click onto District Court Judge Bullied by Family Attorney Jennifer Abrams

The Order further prohibits anyone from " publishing, displaying, showing or making public any portion of these case proceedings." The order goes on to state that "nothing from the case at bar shall be disseminated or published and that any such publication or posting by anyone or any entity shall be immediately removed."

While the order claims in a conclusory fashion to be "in the best interests of the children," nothing in the order explains why. Indeed, the September 29, 2016 video of the proceedings that is on the internet focuses on Abrams's disrespectful exchange with the judge, and does not materially involve the children in the case.



Start 12:13:00 in the video the following conversation took place in open court.

Learn More

Moreover, while the Court Order is broadly stated and purports to prohibit the public viewing or dissemination of "any portion of these

case proceedings," such blanket prohibition on public access to the entire case is specifically **disallowed by law.**

Entire cases cannot be sealed. Moreover, even if a judge wants to seal part of the case, the judge must specifically justify such sealing and must seal only the minimum portion necessary to protect a "compelling privacy or safety interest."

The issue of open proceedings is so important that in 2008 the Review Journal reported the Nevada Supreme Court convened a special task force to address the issue of over-sealing.

Click onto Standards for sealing civil cases tougher

The Supreme Court thereafter enacted rules requiring judges to specify in writing why sealing a record or redacting a portion of it is justified. (Supreme Court Rules, Part VII, Rule 3.) Judges must identify ***"compelling privacy or safety interests that outweigh the public interest in access to the court record."***

This requirement applies even when a party in a family law case tries to seal a case under NRS 125.110, the statute on which Abrams seems to routinely rely. This statute provides that certain evidence in a divorce case, such as records, exhibits, and transcripts of particular testimony, may be deemed "private" and sealed upon request of one of the parties. However, the Court must justify why these records

have to be sealed, and cannot seal the entire case - complaints, pleadings and other documents must remain public.

In the 2009 case of Johansen v. District Court, the Nevada Supreme Court specifically held that broad unsupported orders sealing documents in divorce cases are subject to reversal given the important public policies involved.

The Court stated:

> *"We conclude that the district court was obligated to maintain the divorce proceedings' public status under NRS 125.110 and manifestly abused any discretion it possessed when it sealed the entire case file. We further conclude that the district court abused its discretion when it issued an overly broad gag order sua sponte, without giving notice or a meaningful opportunity to be heard, without making any factual findings with respect to the need for such an order in light of any clear and present danger or threat of serious and imminent harm to a protected interest, and without examining the existence of any alternative means by which to accomplish this purpose. Gag orders must be narrowly drawn if no less restrictive means are available; they may be entered only when there exists a serious and imminent threat to the administration of justice. This was certainly not the case here."*

Click onto Johanson v. Dist. Ct., 182 P. 3d 94 - Nev: Supreme Court 2008

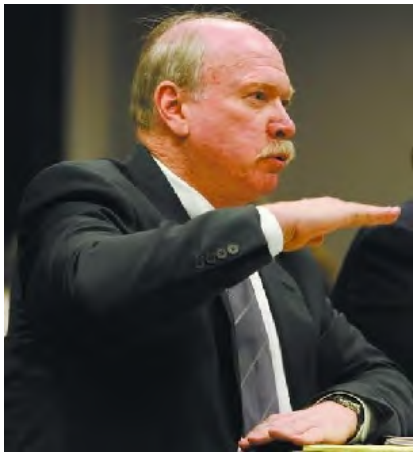
In the *Saiter* case, no notice was given to the general public for a hearing before the Order was issued, there was no opportunity for the public to be heard, no specific findings were made in the Order, and the Order was not drafted narrowly.

Indeed, it was drafted in the broadest possible terms to effectively seal the entire case! It is also questionable whether Judge Elliott had jurisdiction to issue the Order against the general public, who was not before her in court.

This all raises the question: What basis and justifications were given in the other cases which Abrams sought to seal?

Indeed, 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.

Sources indicate that when Abrams was asked in one case by Judge Gerald Hardcastle whether she understood his order, ***she replied that she only understood that the judge intended to bend over backwards for her opposing counsel***.



In another case, Northern Nevada Judge Jack Ames reportedly stood up and walked off the bench after a disrespectful tirade from Jennifer Abrams.

So, who is to blame here?

Of course Jennifer Abrams should be responsible and accountable for her own actions.

But, what judge allows a lawyer to bully her in court and then gets her to issue an overbroad, unsubstantiated order to seal and hide the lawyer's actions?

Shouldn't we expect more from our judges in controlling their courtrooms, controlling their cases, issuing orders in compliance with the law, and protecting the people against over-zealous, disrespectful lawyers who obstruct the judicial process and seek to stop the public from having access to otherwise public documents?

Surely, we should have this minimum expectation. Even in Nevada.

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CLERK OF THE COURT

DISTRICT COURT
FAMILY COURT DIVISION
CLARK COUNTY, NEVADA

BRANDON PAUL SAITER, Plaintiff, vs. TINA MARIE SAITER, Defendant.	CASE NO: D-15-521372-D DEPT NO: L HEARING DATES: 9/29/16 HEARING TIMES: 10:00 a.m.

ORDER PROHIBITING DISSEMINATION OF CASE MATERIAL

This matter having come before the Court for several pending matters on the 29th day of September at 10:00 a.m., Plaintiff Brandon Saiter represented by Jennifer Abrams, Esq. and Brandon Leavitt, Esq. and Defendant, Tina Marie Saiter represented by Louis Schneider, Esq., and the Court hearing preliminary matters, entertained and granted Ms. Abrams request for a closed hearing pursuant to EDCR 5.02, with the exception of permitting the parents of Defendant to remain pursuant to NRS 125.080 (2) (e).

Thereafter, the videotape of this hearing was posted on youtube and a link to the video was emailed to multiple third parties not involved in the case on or about the 3rd day of October, 2016.

On October 5, 2016, the parties resolved all issues required for a Decree of Divorce. Counsel then stipulated to seal the case and to disallow any further release of

AA001339

case information and to demand that the current post of the September 29, 2016 hearing video, or any other hearing video from this case be immediately removed from the internet and to prohibit any portion of these proceedings from being disseminated or published and that any such publication or posting by anyone be immediately removed, as the September 29, 2016 hearing was a closed hearing. Additionally, counsels and the parties recognize that the case has been settled and that such an Order is in the best interest of the four (4) children in this case and is also authorized by NRS 125.080, NRS 125.110, EDCR 5.02, and Supreme Court Rules, Part VII, Rule 2(2)(a) and 3(4).

PURSUANT TO THE STIPULATION OF THE PARTIES, IT IS HEREBY ORDERED that the current post of the September 29, 2016 hearing video, or any and all other hearing video(s) from this case shall be immediately removed from the internet. All persons or entities shall be prohibited from publishing, displaying, showing, or making public any portion of these case proceedings; nothing from the case at bar shall be disseminated or published and that any such publication or posting by anyone or any entity shall be immediately removed as the Court finds the stipulation of the parties and this Courts' Order to be in the best interest of the four (4) children in this case and to be fully supported by law (NRS 125.080, NRS 125.110, EDCR 5.02, and Supreme Court Rules, Part VII, Rule 2(2)(a) and 3(4)).

DATED this 6th day of October 2016.

Jennifer Elliott, District Court Judge,
Family Division, Dept. L

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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 VI OF IX

Appeal from Eight Judicial District Court, Clark County

Senior Judge, Hon. Charles Thompson, Dept. 18

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EXHIBIT 6

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION

R. Scotlund Vaile, *Plaintiff,* v. Marshal S. Willick, et al., *Defendants.*	CIVIL ACTION NO. 6:07cv00011 MEMORANDUM OPINION AND ORDER JUDGE NORMAN K. MOON

This matter is before the Court on the parties' cross-motions for summary judgment [Docket #38, #41]. Plaintiff argues in his motion that Defendants published false statements in a series of letters sent to Washington & Lee University School of Law and the American Bar Association that they knew to be untrue and that the letters were sent in malice and with an intent to defame. Defendants argue in opposition that the statements in the letters were materially true and represent part of a judicial opinion issued by the United States District Court for the District of Nevada. For the reasons that follow, the Court will GRANT in PART Plaintiff's motion for summary judgment because the letters are defamatory *per se*, but will DENY in PART because the letters may be privileged depending on whether the letters materially departed from the information within the judicial opinion of the Nevada District Court. The Court will also GRANT in PART Defendants' motion for summary judgment as to Plaintiff's claim for intentional infliction of emotional distress as Plaintiff has not offered any evidence to support his claim, but will DENY in PART because the issue of whether Defendants' letters were privileged is an issue for a jury to decide.

I. BACKGROUND

This matter is the latest in a series of disputes between the plaintiff, R. Scotlund Vaile

("Vaile"), and the defendants, Marshall S. Willick ("Willick") and Richard L. Crane ("Crane"). Willick and Crane are members of the Willick Law Group ("WLG"), a Nevada law firm that specializes in family law including, among other things, divorce, annulments, child custody visitation, and child support. Willick and Crane represented Cisilie Vaile Porsboll, Vaile's ex-wife, and Kaia Louise Vaile and Kamilla Jane Vaile, his children, in a series of lawsuits in state and federal courts in Nevada to recover damages from Vaile's removal of the children from their mother's custody without her consent.

The latest suit occurred in the United States District Court of Nevada before the Honorable Roger L. Hunt. The matter was scheduled for trial on February 27, 2006, but Vaile notified the court on February 21, 2006, that he intended to cease his defense and that he would not oppose an eventual judgment entered against him. Judge Hunt issued his decision on March 13, 2006, and awarded Vaile's ex-wife and children damages in the amount of $688,500.00 and attorneys' fees and costs of $272,255.56.

At the time of the Nevada litigation, Vaile was a student at Washington & Lee University School of Law ("W&L") and subsequently graduated in May 2007. On March 24, 2006, Willick sent a letter to W&L that advised that Vaile had been "found guilty of multiple violations of State and Federal law, including kidnaping, passport fraud, felony non-support of children, and violation of RICO." Willick concluded that W&L must be unaware of Vaile's "history" because "[i]t would be astounding if your institution would willingly countenance association with such an individual." Willick attached Judge Hunt's March 13, 2006 decision to his letter and urged W&L to "reconsider [Vaile's] fitness for continued enrollment." He further advised that "no form of federal state, or private money should be used for the support or aid of this individual."

W&L seemingly took no action and, as a result, Crane sent a letter to the American Bar

Association ("ABA") to inform it of W&L's recalcitrance. Crane advised the ABA that Vaile was enrolled at W&L and that "[i]t baffled [the Willick Law Group] that a law school would admit a student found to have committed multiple violation [sic] of State and Federal law, including kidnaping, passport fraud, felony non-support of children, and violation of RICO." Crane attached Judge Hunt's March 13, 2006 decision to his letter, as well as the March 24, 2006 letter to W&L, and called for the ABA to rescind W&L's accreditation because it "knowingly admit[s] students with Mr. Vaile's credentials" and "seem[s] to have little concern" of his conduct because he "is still a student at the school."

Vaile filed this action on March 30, 2007, and alleged, among other things, that Willick's letter to W&L was false and defamatory and that Willick and Crane sent the letters to inflict severe emotional distress upon him. Vaile later added a second claim for defamation because of Crane's letter to the ABA. Vaile also alleged that Willick and Crane violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.*, by their conduct and that Willick and Crane conspired to injure his professional and business interests under the Virginia Business Conspiracy Act, Va. Code Ann. § 18.2-499, -500, but these claims were dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6) for failing to state a claim upon which relief could be granted.

Vaile filed the pending motion for summary judgment and argues that Willick and Crane sent the letters to W&L and the ABA with malice and an intent to defame. Vaile further argues that he has never been found guilty of any state or federal laws, and, therefore, the statements in the letters are false and defamatory because they suggest he has been convicted of criminal offenses. In response, Willick and Crane argue that the letters are true or, at worst, substantially true, and do not necessarily suggest a criminal conviction. Willick and Crane assert that the statements, read as a whole with the letters and Judge Hunt's decision, cannot be construed as defamatory *per se* because

they represent the findings of Judge Hunt in his March 13, 2006 decision. Willick and Crane also argue that Vaile is unable to produce any evidence of severe emotional distress to support his claim for intentional infliction of emotional distress and, therefore, that this claim also fails.

II. STANDARD OF REVIEW

Federal Rule of Civil Procedure 56(c) provides that summary judgment shall be granted if the pleadings, the discovery and disclosure materials on file, and affidavits, if any, show that there is no genuine issue as to any material fact, and that the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247–48 (1986). The Court does not weigh the evidence or determine the truth of the matter when considering a motion for summary judgment. *Anderson*, 477 U.S. at 249. Instead, "[t]he evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *Id.* at 255; *see also Shaw v. Stroud*, 13 F.3d 791, 798 (4th Cir. 1994).

If the nonmoving party bears the burden of proof, "the burden on the moving party may be discharged by 'showing' . . . an absence of evidence to support the nonmoving party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). If the moving party can establish such an absence of evidence, the burden shifts to the nonmoving party to set forth specific facts illustrating genuine issues for trial. Fed. R. Civ. P. 56(e); *see also Celotex*, 477 U.S. at 324. Summary judgment is appropriate if, after adequate time for discovery, the nonmoving party fails to make a showing "sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex*, 477 U.S. at 322.

The nonmoving party may not rest upon mere allegations, denials of the adverse party's pleading, or mere conjecture and speculation. *Glover v. Oppleman*, 178 F. Supp. 2d 622, 631 (W.D. Va. 2001) ("Mere speculation by the non-movant cannot create a genuine issue of material fact.").

If the proffered evidence "is merely colorable, or is not significantly probative, summary judgment may be granted." *Felty v. Graves-Humphreys Co.*, 818 F.2d 1126, 1128 (4th Cir. 1987) (citing *Anderson*, 477 U.S. at 242). Indeed, the trial judge has an affirmative obligation to "prevent 'factually unsupported claims and defenses' from proceeding to trial," *Anderson*, 477 U.S. at 249, and there is no issue for trial "unless there is sufficient evidence favoring the nonmoving party for a jury to return a verdict for that party." *Id.* at 249.

III. DISCUSSION

A. The Letters to W&L and the ABA Are Defamatory Per Se

The elements of defamation[1] under Virginia law are (1) publication of (2) an actionable statement with (3) the requisite intent. *Chapin v. Knight-Ridder, Inc.*, 993 F.2d 1087, 1092 (4th Cir. 1993) (citations omitted). A statement is not "actionable" simply because it is false; it must also be defamatory, meaning it must "tend so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him." *Id.* quoting (Restatement (Second) of Torts § 559). The issue of whether a statement is actionable is to be determined by the Court as it is a matter of law. *See Yeagle v. Collegiate Times*, 497 S.E.2d 136, 138 (Va. 1998).

Under Virginia law, it is defamatory *per se* to make false statements that among other things, (1) impute the commission of a criminal offense involving moral turpitude, for which the party, if the charge is true, may be indicted and punished; (2) impute that a person is unfit to perform the duties of an office or employment of profit, or want of integrity in the discharge of the duties of such an office or employment; or (3) prejudice a person in his or her profession or trade. *Shupe v. Rose's*

[1]Virginia does not distinguish between libel, defamation by published writing, and slander, defamation by speech, unlike most states. *Fleming v. Moore*, 275 S.E.2d 632, 635 (Va. 1981).

Stores, Inc., 192 S.E.2d 766, 767 (Va. 1972). If a statement is defamatory *per se*, Virginia law presumes that the plaintiff suffered actual damage to his reputation and, therefore, no proof of damages is required. *Fleming*, 275 S.E.2d at 636. The plaintiff still must establish the requisite intent, however, by a showing that the defendant knew the statement to be false or negligently failed to ascertain its truthfulness. *Great Coastal Express, Inc. v. Ellington*, 334 S.E.2d 846, 852 (Va. 1985). Punitive damages, on the other hand, require a showing of actual malice on the part of the defendant. *Gov't Micro Res., Inc. v. Jackson*, 624 S.E.2d 63, 70 (Va. 2006) (noting that a plaintiff must prove actual malice by clear and convincing evidence that the defendant either knew the statements were false at the time he made them, or that he made them with a reckless disregard for the truth).

The allegedly defamatory meaning of a statement is to be considered in light of the plain and natural meaning of the words used in the context as the community would naturally understand them. *Wells v. Liddy*, 186 F.3d 505, 523 (4th Cir. 1999) Words may be defamatory by their direct and explicit terms and also indirectly, "and it matters not how artful or disguised the modes in which the meaning is concealed if it is in fact defamatory." *Carwile v. Richmond Newspapers*, 82 S.E.2d 588, 592 (Va. 1954). Because a defamatory charge may be made "by inference, implication or insinuation," the Court must look not only to the actual words spoken, but also to all inferences fairly attributable to them. *Id.* Nevertheless, the meaning of the allegedly defamatory words cannot, by innuendo, be extended beyond their ordinary and common acceptation. *Id.*

1. The Statements Within the Letters Impute the Commission of a Crime

Words that impute the commission of a crime "punishable by imprisonment in a state or federal institution" or "regarded by public opinion as involving moral turpitude" are defamatory *per se*. *Great Coastal Express, Inc.*, 334 S.E.2d at 850. The words need not establish all the elements

of the offense imputed, only that a person committed a felony which he did not commit. *Schnupp v. Smith*, 457 S.E.2d 42, 46 (Va. 1995). Words that impute the commission of a felony are defamatory even if the individual committed another felony of the same general character. *James v. Powell*, 152 S.E. 539, 543 (Va. 1930) (finding newspaper liable for libel when it stated that the plaintiff was charged with both murder and robbery when he was charged only with murder).

In this case, the statements within Willick and Crane's letters to W&L and the ABA are "actionable statements" because they impute the commission of a crime upon Vaile that he did not commit. The statements, taken in their plain and popular sense in which the average person would naturally understand them, denote that Vaile was found "guilty" of the crimes of kidnaping, passport fraud, felony non-support of children, and RICO. 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 and likely result in imprisonment. *See* 18 U.S.C. § 228 (stating that a person who fails to pay a child support obligation may be imprisoned for up to two years or fined); 18 U.S.C. § 1542 (stating that a person who makes a false statement to acquire a passport, either for his own use or the use of another, may be imprisoned for up to 10 years or fined).

A. Willick's Statement that Vaile Had Been Found "Guilty" Is Defamatory Per Se

The statement in Willick's letter—that Vaile had been found "guilty" of multiple violations of State and Federal law, including kidnaping, passport fraud, felony non-support of children, and violation of RICO—undoubtedly would be understood by those that heard or read it as charging Vaile with the commission *and* conviction of numerous crimes. Willick argues that the word "guilty" applies in both criminal and civil contexts because it is defined as having committed not only a crime, but also a reprehensible act, including a tort or fault. *See Black's Law Dictionary* 637 (5th ed. 1979). 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. *See Burgess v. United States*, 128 S.Ct. 1572, 1577 (2008) (noting that the term "felony" is commonly defined to mean "a crime punishable by imprisonment for more than one year"); *Black's Law Dictionary* 555–56 (5th ed. 1979) (defining "felony" as "[a] serious crime usu[ally] punishable by imprisonment for more than one year or death"); *see also Webster's Third New Int'l Dictionary* 836 (1976) (defining "felony" as "any crime for which the punishment in federal law may be death or imprisonment for more than one year"). In addition, it is questionable that an average listener or reader would interpret "kidnaping" and "RICO" in their civil context given their placement alongside the crimes of "passport fraud" and "felony non-support of children."[2] Moreover, Willick's subsequent statement that questioned why W&L "would willingly countenance with such an individual" if it knew of his "history," in conjunction with his earlier statement of Vaile's offenses, intimates that Vaile is a criminal of such ill repute with which one would not willingly associate. Accordingly, the Court finds that the March 24, 2006 letter is defamatory *per se* because it imputes the commission and conviction of a crime to Vaile.

B. Crane's Statement that Vaile Had Committed Violations of Law Is Defamatory Per Se

Similarly, the statement in Crane's letter—that Vaile had been found to have "committed" multiple violations of State and Federal law, including kidnaping, passport fraud, felony non-support of children, and violation of RICO—would also be understood by those that heard or read it as charging Vaile with the commission, and presumably the conviction, of numerous crimes. The statement in Crane's letter is nearly identical to the defamatory statement in Willick's letter, but

[2]This assumes, of course, that an average person would know that a person can be held civilly liable for kidnaping and RICO and that they are not exclusively criminal offenses, which the Court believes to be a dubious proposition.

Crane did alter one key word—changing the word "guilty" in Willick's letter to "committed." Nevertheless, the acts of passport fraud and felony non-support of children are solely criminal acts and, as explained above, the word "felony" can only mean a serious criminal act. Moreover, the words "commit" literally means, among other things, to "perpetrate a crime." *Black's Law Dictionary* 248 (5th ed.1979); *see also Webster's Third New Int'l Dictionary* 457 (1976) (defining "commit" to mean to "do, perform <convicted of committing crimes against the state>"). Therefore, by saying that Vaile had been "found" to have "committed" multiple violations of State and Federal law, Crane suggests that a judge or jury has held that Vaile did perpetrate a series of crimes. *Black's Law Dictionary* 568 (5th ed. 1979) (defining "find" as "[t]o determine a fact in dispute by verdict or decision," *i.e.*, to find guilty); *see also Webster's Third New Int'l Dictionary* 852 (1976) (defining "find" as "to arrive at a conclusion"). And, much like in Willick's letter, a reader is unlikely to interpret the words "kidnaping" and "RICO" in their civil context when read in conjunction with a person being "found" to have "committed" the felonies of passport fraud and non-support of children. As a result, the Court finds that the statement in the April 13, 2007 letter is also defamatory *per se* because it imputes the commission and conviction of a crime to Vaile.

2. The Letters Also Impute an Unfitness to Study or Practice Law

Further, Willick and Crane's letters are defamatory *per se* as a whole because they suggest Vaile is unfit to continue his studies or otherwise lacks the integrity to continue in the study of law. The study and practice of law is an honorable profession and an individual that has committed or has been convicted of a crime may be found to lack the honesty, trustworthiness, diligence, or reliability required of an applicant to be admitted to the bar. *See, e.g.*, Rules of the Virginia Board of Bar Examiners, § III, 2. Vaile had not yet graduated from W&L or sat for the bar, but he was still subject to the same obligation to prove that he could perform the obligations and responsibilities of

a practicing attorney. There is no question that Willick's letter portrayed Vaile as one unfit to study or practice the law by stating that he has been "found guilty" of several felonies which, if known, would prevent W&L from "willingly countenanc[ing] association with such an individual" and that his "history" of "violations of State and Federal law" was such that W&L should "reconsider his fitness for continued enrollment." Similarly, Crane's letter also portrayed Vaile as unfit to study or practice law by stating that he was "baffled" that W&L would "admit a student found to have committed multiple violations of State and Federal law" and that W&L should lose its accreditation because it admitted such a student and permitted him to continue to study the law. Thus, the Court finds that Willick and Crane's letters are defamatory *per se* not only because they impute the commission of a crime, but also because they impute that Vaile is unfit to perform the duties of a law student or lawyer and that he lacks the integrity required of such employment.

B. Issue of Whether Letters Were Privileged Is Question for Jury

In Virginia, both truth and privilege are defenses to defamation. *Ramey v. Kingsport Publ'g Corp.*, 905 F.Supp. 355, 358 (W.D. Va. 1955). Therefore, the Court must determine whether the defamatory statements within Willick and Crane's letters were either true or privileged.

1. The Truth of the Letters Is Immaterial Because the Letters May Be Privileged

It is well settled that truth is an absolute defense in an action for defamation. *Goddard v. Protective Life Corp.*, 82 F. Supp. 2d 545, 560 (E.D. Va. 2000). A defendant need not plead truth as an affirmative defense in Virginia, however, because the plaintiff now bears the initial burden of proving the falsity of the statements in order to prevail. *Gazette, Inc. v. Harris*, 325 S.E.2d 713, 725 (Va. 1985). The statements need not be literally true for the defendant to prevail; "[s]light inaccuracies of expression are immaterial provided the defamation charge is true in substance, and it is sufficient to show that the imputation is substantially true." *Jordan v. Kollman*, 612 S.E.2d 203,

207 (Va. 2005).

Willick and Crane argue that, even if the letters do impute that Vaile committed a crime, the letters are true, or at worst, substantially true and, therefore, cannot be defamatory. Further, Willick and Crane assert that the letters merely restate the findings made by Judge Hunt in his March 13, 2006 decision. Vaile counters that he has never been convicted, much less charged, of kidnaping, passport fraud, felony non-support of children, or racketeering, and that the only crime with which he actually has been convicted is speeding.

The fact that the parties disagree as to whether or not Vaile has been charged or convicted of a crime ordinarily would create a genuine issue of material fact such that summary judgment would be inappropriate. Moreover, the question of whether a plaintiff has sufficiently proven the falsity of the defamatory statements is to be decided by a jury under Virginia law. *Jordan*, 612 S.E.2d at 207. In this case, however, the question is not whether the letters are substantially true, but rather whether the letters are a substantially accurate representation of the decision issued by Judge Hunt on March 13, 2006.

2. Absolute Privilege to Publish Matters of Public Record Applies to the Letters

There can be no liability for a communication that is privileged. *Warren v. Bank of Marion*, 618 F. Supp. 317, 324 (W.D. Va. 1985); *see also* 50 AM. JUR. 2d *Libel and Slander* § 255 (2008). The defense of privilege is based on public policy to further the right of free speech by protecting certain communications of public or social interests from liability for defamation that otherwise would be actionable. 50 AM. JUR. 2d *Libel and Slander* § 255 (2008). A privilege can either be absolute or qualified depending upon the circumstances of the occasion. *Warren*, 618 F. Supp. at 324.

A qualified privilege is defined as a "communication, made in good faith, on a subject matter

in which the person communicating has an interest, or owes a duty, legal, moral, or social, [and] is qualifiedly privileged if made to a person having a corresponding interest or duty." *Taylor v. Grace*, 184 S.E. 211, 213 (Va. 1936). The defense of qualified privilege may be defeated by a finding of malice on the part of the jury, *Gazette, Inc.*, 325 S.E.2d at 727, but the court first must decide as a matter of law if the communication itself is privileged. *Fuste v. Riverside Healthcare Ass'n*, 575 S.E.2d 858, 863 (Va. 2003).

An absolute privilege, on the other hand, precludes liability for a defamatory statement even if the statement is made maliciously and with knowledge that it is false. *Lindeman v. Lesnick*, 604 S.E.2d 55, 58 (Va. 2004). The publication of public records to which everyone has a right of access is absolutely privileged in Virginia.[3] *Alexander Gazette Corp. v. West*, 93 S.E.2d 274, 279 (Va. 1956); Restatement (Second) of Torts § 611. The privilege is not lost if the record is incorrect or if it contains falsehoods. *Times-Dispatch Publ'g Corp. v. Zoll*, 139 S.E. 505, 507 (Va. 1927). The privilege exists so long as the published report is a fair and substantially accurate account of the public record or proceeding. *Alexander Gazette Corp.*, 93 S.E.2d at 279. If the publication substantially departs from the proceeding or record, however, then the privilege is lost.

The Court finds that the absolute privilege of publication of public records applies to the letters sent by Willick and Crane. The letters contained statements that allegedly represent the finding of the United States District Court of Nevada and attached the entire March 13, 2006 opinion for further reference. Therefore, the question is whether the letters substantially departed from Judge Hunt's decision such that the privilege was lost. This question is one left for the jury, however, because reasonable people could disagree whether the letters are an impartial and accurate

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[3]This privilege applies to media and non-media defendants alike. *See, e.g.*, Restatement (Second) of Torts § 611.

account of Judge Hunt's decision. *See Rush v. Worell Enters., Inc.*, 21 Va. Cir. 203, 206–07 (Va. Cir. Ct. 1990) (noting that if the facts are not in dispute and reasonable people could not differ about whether the publication substantially departs from the public record then the trial court may decide if the privilege is lost, but if reasonable people could disagree, the issue should be decided by a jury).

Accordingly, the Court will grant partial summary judgment only as to the letters being defamatory *per se*. The question of whether Willick and Crane lost their absolute privilege by substantially departing from the record and whether Vaile can prove that Willick and Crane acted with the requisite intent sufficient to be awarded compensatory and punitive damages is left for a jury to decide.

C. Vaile Has Not Proven Emotional Distress or Outrageous Behavior

A plaintiff must prove four elements to prevail on a claim for intentional infliction of emotional distress in Virginia: (1) that the wrongdoer's conduct was intentional or reckless; (2) that the conduct was so outrageous and intolerable that it offends against the generally accepted standards of decency and morality; (3) that there is a causal connection between the wrongdoer's conduct and the emotional distress; and (4) that the emotional distress is severe. *Womack v. Eldridge*, 210 S.E.2d 145, 148 (Va. 1974). The issue of whether the conduct may be regarded as so extreme and outrageous as to permit recovery is a matter of law to be decided by the court unless reasonable persons could differ. *Id.*

Vaile alleges that Willick and Crane sent three letters as a pattern of communication to inflict severe emotional distress. The three letters included the Willick letter to W&L, the Crane letter to the ABA, and an unknown communication to Willick's employer in the summer of 2006, Baker Botts LLP. Vaile claimed that the communications caused him to suffer such severe emotional

distress that no reasonable person could be expected to endure and that it disrupted his daily personal life, including his preparation for the bar examination. Vaile has failed to produce any evidence at this point, however, to establish any of the elements. He has not shown that he suffered any emotional distress, severe or otherwise, other than that he felt concerned with his standing in the eyes of his professors at W&L and that the letters made it difficult to concentrate on his studies. In addition, the parties learned during discovery that it was not Willick and Crane that contacted Vaile's summer employer, but rather the Clark County Office of the District Attorney, Family Support Division, for the State of Nevada in order to collect his outstanding child support obligation. Even if this communication led to Vaile's ultimate dismissal from Baker Botts, this result cannot be attributed to the actions of Willick or Craine.

Further, Vaile has not offered any evidence that he has discussed his emotional health with a healthcare professional or designated any expert to testify as to his emotional distress. The emotional distress suffered by Vaile is certainly not of the severity that no reasonable person can be expected to endure. *See Russo v. White*, 400 S.E.2d 160, 163 (Va. 1991) (finding that plaintiff has not suffered extreme emotional distress when she fails to produce any evidence of objective physical injury caused by stress, that she sought medical attention, that she was confined at home or in a hospital, or that she lost income). Moreover, the Court is unable to find as a matter of law that the two letters sent by Willick and Crane are so outrageous and extreme that they offend generally accepted standards of decency. Therefore, the Court cannot find that Vaile has made a sufficient showing to establish the existence of the elements essential to his claim for intentional infliction of emotional distress and will grant summary judgment as to this claim. *Celotex*, 477 U.S. at 322 (holding that summary judgment is appropriate if nonmoving party fails to make a showing sufficient to establish the existence of an element essential to his claim).

IV. CONCLUSION

For the reasons stated herein, the Court hereby GRANTS in PART and DENIES in PART the parties' cross-motions for summary judgment. The Court finds that the letters sent by the Defendants are defamatory *per se* and hereby GRANTS partial summary judgment as to Plaintiff's motion for summary judgment, but only with respect to that issue [Docket #38]. In addition, the Court finds that Plaintiff has not satisfied any of the elements of his claim for intentional infliction of emotional distress and hereby GRANTS Defendants' motion for summary judgment [Docket #41] as to this claim. The Court otherwise DENIES summary judgment on Plaintiff's defamation claims as the question of whether Defendants have lost their absolute privilege and whether Plaintiff can prove that Defendants acted with the requisite intent sufficient to be awarded compensatory and punitive damages is for a jury to decide.

It is so ORDERED.

The Clerk of the Court is hereby directed to send a certified copy of this Order to all counsel of record.

Entered this _____ day of July, 2008

NORMAN K. MOON
UNITED STATES DISTRICT JUDGE

EXHIBIT 7

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

ERIC HOLYOAK,

Appellant,

vs.

TONI HOLYOAK,

Respondent.

S.C. NO. 67490
D.C. NO: D-08-393301-Z

RESPONDENT'S ANSWERING BRIEF

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NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. In the course of these proceedings leading up to this appeal, Respondent has been represented by the following attorneys:

a. Christy Brad Escobar, Esq.
ESCOBAR AND ASSOCIATES LAW FIRM, LTD.

b. Marshal S. Willick, Esq. and Trevor M. Creel, Esq.
WILLICK LAW GROUP

There are no corporations, entities, or publicly-held companies that own 10% or more of Respondent's stock, or business interests.

We note that Appellant's NRAP 26.1 disclosure is deficient for failure to name all attorneys representing Eric in the district court, which included James A. Fontano, Esq., of NITZ, WALTON & HEATON, LTD.

DATED this 14th day of September, 2015.

Respectfully Submitted By:
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ROUTING STATEMENT[1]

This case is presumptively assigned to the Court of Appeals per NRAP 17(b)(5), as the issues concern community property rights relating to divorce. However, under NRAP 17(a)(14), this appeal includes issues as to which there is inconsistency between published opinions of the Nevada Supreme Court, which are raised and identified in this brief as counsel has been previously directed to do by members of this Court. If this Court elects to reach and address those issues, the Supreme Court should retain this appeal, as the Court of Appeals would not have jurisdiction to resolve them.

STATEMENT OF THE ISSUES

1. Whether Judge Ochoa's decision to order payments to Toni at Eric's first eligibility for retirement, under a statute that says he may do so or not, should be reviewed under the "abuse of discretion" standard.
2. Whether Nevada law calls for pension divisions under the "time rule."
3. Whether the district court correctly determined that Toni was entitled to receive her share of the pension benefits upon Eric's first eligibility for retirement.
4. Whether the second holding in *Henson* conflicts with the holdings in *Wolff* and *Blanco* and with the statutory requirement of equal division of community property, and therefore should be overturned.

[1] NRAP 28(b) states that a Respondent may file a routing statement if "dissatisfied" with that of the Appellant. The Opening Brief did not include such a statement, so one is provided here.

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STATEMENT OF CASE

Appeal from *Decision* and *Order* finding that a non-employee spouse (Toni) is entitled to begin receiving her time-rule share of the retirement benefits of the employee (Eric) upon his eligibility for retirement, but denying survivorship security for that interest; Hon. Vincent Ochoa, District Court Judge, Department S, presiding.

STATEMENT OF THE FACTS[2]

The parties were married on June 5, 1982, and divorced 26 years later by way of a Nevada *Decree* filed August 14, 2008.[3] At the time of divorce, they had one minor child, who is now emancipated. During the marriage, Eric worked as a police officer and participated in the Nevada Public Employees'

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[2] NRAP 28(b) provides that Respondent may provide a Statement of Facts if "dissatisfied" with that of the Appellant. The "Statement of Facts" in Eric's *Opening Brief* ("AOB") is largely correct, except for various errors identified below for the convenience of the Court, but it is incomplete as to the issues actually presented, so we request that the Court refer to this Statement of Facts instead.

AOB page 5, line 21, refers to Appellant's Appendix ["AA"] 181, line 16 to 189, line 17. The reference should be to AA 189, line 12 to line 17.

AOB page 5, line 27 to page 6, line 1, refers to AA 333-338. The reference should be to AA 324-332.

AOB page 6, line 8, refers to AA 359-356. The reference should be to AA 350-356.

Contrary to the assertion on page 6, line 15, Eric has appealed from *two* orders: the *Decision* of January 27, 2015 (AA 344-349), and the *Order* of May 7, 2015 (AA 401-409); the notices of appeal were not included in Appellant's Appendix, but are supplied in Respondent's Appendix ["RA"] at 9-17.

[3] AA 60-67.

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Retirement System (PERS). At the time of divorce, he was not yet eligible to retire, as he was 47 years old and had about 19 years of service credit.[4]

Neither party was represented by counsel during their divorce. They amended their joint petition filing several times, and divided their community property through a five-page *Memorandum of Understanding* ("MOU") that they mediated with the assistance of former family court judge Robert Gaston, Esq.[5] The MOU was merged into the *Divorce Decree*.[6]

Regarding the PERS retirement, the MOU provided in its entirety:

> The parties agree to split the costs of the preparation of a QDRO. The QDRO will direct the trustee of PERS to pay to each party their proportionate share of the account at the time Eric retires.[7]

Upon divorce, Toni and the parties' minor child moved to Utah. In 2012, Toni had Utah attorney Stan Beutler prepare a QDRO for the division of the PERS benefits and submitted it for filing. The district court signed and filed the QDRO on December 4, 2012.[8]

That QDRO provided that Toni would be the survivor beneficiary under Option 1,[9] although she was not actually eligible to be an Option 1

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[4] *See* AA 353.

[5] The five-page *Memorandum of Understanding* was attached to the parties' *Amended Joint Petition for Summary Decree of Divorce* filed July 17, 2008. AA 19-41. It was referenced as an attachment to the *Second Amended Joint Petition*, but was apparently not actually attached to that filing. AA 42-59.

[6] AA 63.

[7] AA 38.

[8] AA 68-75.

[9] AA 70.

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beneficiary.[10] It also contained the standard language reserving jurisdiction to "enforce, revise, modify or amend" the QDRO as necessary.[11]

Toni eventually realized that the filed QDRO did not actually provide her with survivor benefit protection, so she had Mr. Beutler prepare an Amended QDRO changing the survivorship selection to Option 2, for which she *was* eligible.[12] Again unable to get Eric's signature, Toni direct-submitted it for entry, but this time was advised to submit a *Motion* for its entry, and did so.[13]

Eric submitted an untimely *Opposition* through attorney James Fontano, asserting: that the proposed QDRO was defective because Eric did not agree with its provisions; that "no court" had authority to order a survivorship provision; and that a former spouse could not be a survivor beneficiary.[14]

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[10] Exhibit 1 (CLE materials) at 45-48, explaining that Option 1 for police/fire employees of PERS provides survivorship benefits to a spouse, but only if the spouse is married to the employee at the time of the employee's retirement.

[11] AA 72.

[12] AA 91-96.

[13] AA76-83.

[14] AA 101-105; see also AA 167 (transcript of argument). Mr. Fontano was apparently confused by PERS' use of the term "survivor's benefit" to describe ***both*** post-retirement survivorship benefits under an option selection and the statutory death benefits that are available only to current spouses. *See* Exhibit 1 at 43 & n. 165.

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Toni hired attorney Christy Escobar, who replied, asserting that Toni was entitled to the property awarded to her in the divorce for her lifetime, just as Eric was entitled to the property awarded to him for his lifetime.[15]

The parties first appeared before the district court on October 16, 2013.[16] Eric's primary argument was that Toni was not entitled to either payments at Eric's eligibility or for any survivorship benefits, based on his construction of the three-line term in the MOU.[17] Toni's position was that, as the spouse during the decades that the pension accrued, she was entitled to survivorship protection from divestment of her share of the retirement benefits.[18]

After hearing argument, the district court made an interim determination that Toni was entitled to her time-rule percentage of Eric's retirement benefits both during his life and after his death,[19] but directed the parties to "confer and prepare a new QDRO" and set a return date.[20]

At the return hearing on December 16, 2013, the district court indicated that the matter should have been resolved by the prior rulings, and gave the parties and prior counsel another couple of months to submit a joint order.[21]

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[15] AA 106-136.

[16] AA 151-174 (transcript).

[17] AA 155.

[18] AA 165-66.

[19] AA 168.

[20] RA 1-3.

[21] AA 175-184 (transcript).

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When prior counsel were unable to do so, Toni hired this office in late January, 2014, to bring the matter to a conclusion. We contacted Mr. Fontano in an attempt to resolve the outstanding issues raised by Eric's objections, and prepared a slightly amended QDRO on our letterhead for his review.[22]

When Mr. Fontano finally sent us a response months later, it was merely a rehash of his prior, already-rejected argument that despite the district court's orders, Eric did not *want* retirement benefits to be divided pursuant to the time-rule, did not want Toni to have any survivor benefit protection, and did not want to pay Toni her share at his first eligibility for retirement.[23]

We replied, noting that Mr. Fontano's requests did not comport with the *Decree*, the Court's *Order* filed December 16, 2013, or with Nevada law.[24] Since Eric refused to allow his counsel to sign a QDRO comporting with Judge Ochoa's orders, we requested a hearing in an attempt to conclude the matter.

On April 21, 2014, the Court heard limited argument at a telephonic hearing.[25] During that hearing, counsel discussed the prior CLE sessions and materials on the subject of PERS divisions which included in-depth

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[22] AA 214, 228-235; AA 187-88 (transcript).

[23] AA 214, 236-239.

[24] AA 214-215, 240-243.

[25] AA 185-199.

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discussions of the *Hedlund* case[26] and its briefing, amicus participation, and decision.[27] Some members of this Court were present at those CLE sessions.

During the telephonic hearing, the district court observed that the parties had made their deal five years earlier and that Eric was not free to change his agreement; Eric's lawyer responded that the MOU provision was just "a one-sentence agreement" and that "what the two parties agreed to may have been completely different between the two of them in their minds as to what they were agreeing to."[28] Ultimately, the district court set a briefing schedule.[29]

Upon direct inquiry, Mr. Fontano also promised that Eric would not retire until the issues before the Court were resolved, since his retirement would make some of the benefits at issue unavailable to the district court to distribute.[30]

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[26] *Hedlund v. Hedlund*, No. 48944, *Order of Reversal and Remand* (Sept. 25, 2009); AA 245-249.

[27] No one in this case has suggested use of the *Hedlund* decision as binding precedent in violation of SCR 123 – see AA 219 & fn. 26, and we do not do so here. But the CLE materials and annual Ely Seminar discussions including discussion of that *Order* were part of the argument and record below; the awkwardness of non-reference to materials in which such cases are discussed was part of the basis for now-pending ADKT 504 to amend NRAP 36 to allow unlimited citation to unpublished decisions of the Nevada Supreme Court and the Court of Appeals and amend SCR 123.

[28] AA 195.

[29] AA 196-199. At the district court's request, the briefing was to include the *Hedlund* amicus brief and *Order*.

[30] AA 197.

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Three days before his *Brief* was due, Eric fired Mr. Fontano and retained his present counsel, Neil J. Beller, Esq.[31] We supplied Mr. Beller with extensive background materials, citations, and precedents to make his review of the law and issues easier; we agreed to a further extension of time to get his already-overdue *Brief* on file on the continued explicit promise that Eric would not retire before all issues were resolved.[32]

Mr. Beller filed a brief, which reversed the assertion by Mr. Fontano; instead of saying that the MOU language was vague and the parties might have had different understandings, Mr. Beller argued that the one sentence in the MOU was an unambiguous "contract" that superseded the relevant statutes and all cases decided by this Court as to how retirement benefits are to be divided.[33]

We filed a *Response* noting that Eric's "new" argument had already been rejected by the district court and that, per Nevada law, Toni was entitled to her time-rule portion of the retirement benefits and to have those payments begin at Eric's first eligibility for retirement.[34]

At the district court's specific request,[35] the filing included the *Hedlund Order of Reversal and Remand*[36] and the *Amicus Brief*[37] filed during litigation

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[31] AA 200.

[32] AA 215.

[33] AA 203-209.

[34] AA 212-323.

[35] AA 194.

[36] AA 245-249.

[37] AA 251-307.

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of that appeal, both of which rejected exactly the same arguments that Eric was making, explaining why the time rule is the correct distribution of retirement benefits and that a former spouse is entitled to payment upon the worker's first eligibility for retirement.

The *Amicus Brief* included an exhaustive review of all Nevada cases involving retirement distribution,[38] the legislative history of the PERS statutes,[39] and the history and meaning of NRS 125.155,[40] explaining why there was no conflict between the statutes and this Court's holdings that a spouse is entitled to payments beginning at eligibility for retirement.[41]

Eric opposed the request for fees, stating that he should not have to pay attorney's fees no matter how incorrect his legal arguments were, based on his assertion that the request was "procedurally improper."[42] We replied.[43]

The district court took the matter under advisement for several months. When this Court issued its *Opinion* in *Henson*,[44] Judge Ochoa requested further briefing and we complied.[45] Eric did not file anything in response. After

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[38] AA 264-270.

[39] AA 270-274.

[40] AA 274-281.

[41] AA 281-296.

[42] AA 324-332.

[43] AA 333-338.

[44] *See Henson v. Henson*, 130 Nev. ___, 334 P.3d 933 (Adv. Opn. No. 79, Oct. 2, 2014).

[45] RA 4-8 (*Supplement Addressing Recent New Authority*, filed October 6, 2014).

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another several months, the district court issued its *Decision* on January 27, 2015,[46] starting with a number of finding of facts central to this appeal:

> The parties were married for 26 years.
>
> Eric remarried and named his new wife as his survivor beneficiary.
>
> During divorce mediation, the parties agreed to the one sentence in the MOU about the PERS pension, and "Neither the [MOU], nor the Decree, nor any of the paperwork in the record, indicates any intention on the part of any person involved to do anything other than what the law provides and divide the community portion of all assets equally," including the PERS pension.
>
> Division of a "proportionate share" of a pension indicated intent to comply with Nevada law and make a time-rule division.
>
> The parties disagreed about survivorship benefits, with Toni indicating it was the only way to actually provide her property interest, and Eric claiming that there was no specific agreement to name her as a survivor beneficiary, and doing so would interfere with his desire to name his new wife as his survivor.

The district court then set out "principles of law" that it considered to mandate its rulings, starting with an extensive quote from this Court's *Opinion* in *Henson*, and directly leading to its conclusions of law:

> Because the MOU and *Decree* did not explicitly provide Toni with any survivorship protection, she was not entitled to

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[46] AA 344-349.

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any, because (quoting *Henson*) "the only pension the nonemployee spouse is guaranteed to receive is [the] community property interest in the unmodified service retirement allowance . . . payable through the life of the employee spouse."

The term "proportionate share" means a time rule division, Nevada case law provides for payment at first eligibility, and NRS 125.155 is permissive in nature and does not prohibit such payments, so Toni is entitled to her time-rule share of the PERS pension upon filing a motion asking for it.

We immediately filed a motion to have payments to Toni begin, in accordance with Judge Ochoa's *Decision*.[47] Eric opposed the request, seeking to reargue the entire case, essentially ignoring Judge Ochoa's *Decision* resolving exactly those points.[48] We replied.[49]

At the resulting hearing on April 23, 2015, the district court identified Eric's opposition as a motion for reconsideration and denied it.[50] Observing that Eric had appealed from the *Decision* but never filed a motion for stay, the district court stated that "there's no pre-decision on a motion to stay and a

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[47] AA 350-356.

[48] AA 357-365.

[49] AA 367-378.

[50] AA 390-391, 395-396.

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motion for bond" and inviting the filing of such a motion.[51] The *Order* requiring payments to Toni to begin was entered on May 7.[52]

Eric never filed the motion for stay in the district court as he said he would, and he never complied with the order to begin making payments, either. He simply ignored the rulings until we sought to hold him in contempt for doing so; then he filed a motion in this Court seeking to prevent the order to show cause from going forward.[53]

That most recent filing revealed that Eric has resigned from Metro, and presumably gone into pay status with PERS, thus rendering moot his appeal with the exception of his obligation to pay arrears, as he conceded (at 5-6).[54]

ARGUMENT

I. SUMMARY OF ARGUMENT

The parties both informed the district court that it must construe a vague one-sentence provision of the MOU that was incorporated into their *Decree*. The district court found that it must be interpreted, absent other evidence, as intended to conform to Nevada law; the standard of review of that decision is abuse of discretion.

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[51] AA 391-392, 397-399.

[52] AA 401-409.

[53] Filed September 4, 2015.

[54] Eric's motion mentions the prior failure of this office to file this *Answering Brief*. He is correct; due to an error in this office, there was no calendaring of this brief until receipt of this Court's order issued September 1, graciously extending the time to file it until September 12.

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Nevada law provides for a time-rule division of defined benefit plan pensions, and that the nonemployee spouse is entitled to begin receiving her share at the employee's eligibility for retirement.[55]

The recitation of the (correct) statement that the PERS system would not pay out any funds until the employee retired had no effect on the right of the spouse to payments upon eligibility for retirement, or on the obligation of the employee spouse to make those payments when requested. Nothing in the record provided a hint that Toni's right to those payments had been waived or "contracted" away.

The holding in *Wolff*[56] that a community property division of retirement benefits creates sole and separate property interests in each spouse was correct, but PERS refuses to enforce the Court's holding, leading to disproportionate division of assets and a violation of NRS 125.150(1)(b). The *Wolff* holding is contradicted by the secondary holding in *Henson*, which was based upon an incorrect "fact" about retirement benefit divisions.

Actually, survivorship interests are ***part*** of the property interests and must be divided to effect the equal property mandate of NRS 125.150. In accordance with a recent statutory amendment, omission of a survivorship interest from a decree can and should be corrected by way of post-decree motion practice.

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[55] *See Gemma v. Gemma*, 105 Nev. 458, 778 P.2d 429 (1989); *Fondi v. Fondi*, 106 Nev. 856, 802 P.2d 1264 (1990); *Sertic v. Sertic*, 111 Nev. 1192, 901 P.2d 148 (1995).

[56] *Wolff v. Wolff*, 112 Nev. 1355, 929 P.2d 916 (1996).

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II. THE STANDARD OF REVIEW IS ABUSE OF DISCRETION

Mis-citing the holding of a 1950 case,[57] Eric asserts (at 7) that the standard of review in this appeal is *de novo*. He is incorrect.

Most decisions of family law issues are reviewed for an abuse of discretion.[58] Generally, a court abuses its discretion when it makes a factual finding which is not supported by substantial evidence and is "clearly erroneous."[59] An open and obvious error of law can also be an abuse of discretion,[60] as can a court's failure to *exercise* discretion when required to do so.[61] Also, a court can err in the exercise of personal judgment and does so to a level meriting appellate intervention when ***no*** reasonable judge could reach the conclusion reached under the particular circumstances.[62] A court does ***not***

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[57] *Ormachea v. Ormachea*, 67 Nev. 273, 217 P.2d 355 (1950). Actually, that opinion largely addressed the discretion of the trial court; the referenced pages (67 Nev. at 291-292) concerned whether or not the earlier of two orders rendered were appealable ("If we concede that appellant's rights under the original decision are uncertain, we find no such defect in the final judgment of the trial court.")

[58] *Rivero v. Rivero*, 125 Nev. 410, 428, 216 P.3d 213, 226 (2009); *Wallace v. Wallace*, 112 Nev. 1015, 1019, 922 P.2d 541, 543 (1996).

[59] *Real Estate Division v. Jones*, 98 Nev. 260, 645 P.2d 1371 (1982).

[60] *Franklin v. Bartsas Realty, Inc.*, 95 Nev. 559, 598 P.2d 1147 (1979).

[61] *Massey v. Sunrise Hospital*, 102 Nev. 367, 724 P.2d 208 (1986).

[62] *Franklin v. Bartsas Realty, Inc.*, *supra*; *Delno v. Market Street Railway*, 124 F.2d 965, 967 (9th Cir. 1942).

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abuse its discretion, however, when it reaches a result which could be found by a reasonable judge.[63]

Here, both parties admitted that the language used in their MOU was vague; Eric's counsel asserted that "what the two parties agreed to may have been completely different between the two of them in their minds as to what they were agreeing to"[64] and so asked the district court to construe the language of the MOU incorporated in their *Decree*.

A trial court has inherent authority to construe and interpret its own orders.[65] In doing so, a trial court is to construe agreements incorporated in an order "as meaning what it may reasonably be inferred the parties intended."[66] Reviews of what is "reasonable" are definitionally addressed to discretion and abuse of discretion, which will not be found if the rulings are "supported by substantial evidence."[67] And "substantial evidence" exists whenever the

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[63] *Goodman v. Goodman*, 68 Nev. 484, 236 P.2d 305 (1951).

[64] AA 195.

[65] *See Halverson v. Hardcastle*, 123 Nev. 245, 261, 163 P.3d 428 (2007) (a trial court has the inherent authority to enforce its decrees); *Grenz v. Grenz*, 78 Nev. 394, 274 P.2d 891 (1962) (a trial court has the inherent power to construe its judgments and decrees and remove ambiguities in them); *Murphy v. Murphy*, 64 Nev. 440, 183 P.2d 632 (1947); *Lindsay v. Lindsay*, 52 Nev. 26, 280 P. 95 (1929).

[66] *Murphy, supra*, 64 Nev. at 453.

[67] *Ellis v. Carucci*, 123 Nev. 145, 161 P.3d 239 (2007); *Shydler v. Shydler*, 114 Nev. 192, 196, 954 P.2d 37, 39 (1998).

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evidence before the trial court was that which a "sensible person"[68] or "reasonable person"[69] may "accept as adequate to sustain a judgment."

The determination of the parties' intent was entrusted to the discretion of the district court, and the validity of the ruling made is reviewed in accordance with the "abuse of discretion" standard.

III. NEVADA LAW REQUIRES A TIME RULE DIVISION OF PENSIONS

Eric argues (at 11-12) that NRS 125.155 "overrides the 'time rule' formula defined in *Gemma* and *Fondi*." He is wrong.

In *Wolff*[70] – another PERS case – this Court rejected a similar attack on the *Gemma/Fondi* holdings, and explicitly reaffirmed its holdings in *Gemma*, *Fondi*, and *Sertic*. Contrary to Eric's assertion (at 11-12), and as this Court correctly noted in *Henson*,[71] the time rule does not "estimate" anything, and does not conflict with NRS 125.155 or any other statute.

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[68] *See Schmanski v. Schmanski*, 115 Nev. 247, 251, 984 P.2d 752, 755 (1999); *Williams v. Williams*, 120 Nev. 559, 97 P.3d 1124 (2004).

[69] *Ellis v. Carucci*, 123 Nev. 145, 149,161 P.3d 239, 242 (2007).

[70] *Wolff v. Wolff*, 112 Nev. 1355, 929 P.2d 916 (1996).

[71] "[N]either the divorce decree nor the QDRO here based its award on an 'estimated increase in value.' The divorce decree . . . specified that the pension would be 'divided in accordance with the "time rule"' . . . ."

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IV. NEVADA LAW REQUIRES PAYMENT OF THE SPOUSAL SHARE AT FIRST ELIGIBILITY FOR RETIREMENT

The heart of Eric's appeal (at 7-11) is the contention that the one sentence in the parties' MOU about PERS benefits, incorporated in their *Decree*, was an "unambiguous contract" constituting Toni's waiver of her right to receive pension payments from Eric upon his eligibility to retire. Eric is incorrect.

First, Eric only adopted that argument after his original position – that the MOU sentence was vague and ambiguous and required construction by the district court[72] – resulted in that court finding that there was no evidence in the record that anyone involved in the mediated agreement had any intention to do anything but comply with the case law mandating distribution upon eligibility for retirement.[73] And there is no "independent contract" – the MOU was merged into the *Decree*.[74]

The MOU language correctly states only that the "trustee of Nevada PERS" will make payment to both parties when Eric retires. That terse statement conforms to Chapter 286 of the Nevada Revised Statutes – PERS itself will not pay out any retirement proceeds to ***anyone*** until the employee

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[72] AA 195.

[73] AA 344-345. That included the mediator, former family court judge Robert Gaston, who would not have distributed property contrary to the direction of NRS 125.150 without getting detailed agreement from both parties to do so, as was discussed below. See AA 357 & n. 3, AA 387-388; notably, either Eric never asked Mr. Gaston to verify Eric's retroactive recharacterization of what was mediated, or he did ask and Mr. Gaston told him that the agreement was intended to comply with Nevada law.

[74] AA 63.

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actually retires. The MOU said nothing about Toni receiving a portion of Eric's retirement at his first eligibility from him directly (the only way such pre-retirement payments are *ever* made), or the requirement in the case law that he begin making payments to Toni of her share upon his eligibility for retirement.

As this Court set out in *Sertic*, clarifying the holdings in both *Gemma* and *Fondi*, the normal distribution of a spousal share of a pension is upon the employee spouse's first eligibility for retirement, and if a worker does not retire at first eligibility, the worker must pay the spouse whatever the spouse would have received if the worker ***did*** retire at that time.[75] This is the rule in all community property states, and many other states around the country.[76]

Eric does not even suggest the existence of any contrary authority. Instead, he contends that the parties had a "contract" which somehow made Eric immune from the law. Judge Ochoa noted that while people could decide

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[75] *See* discussion and explanation in Exhibit 1 at 7, 10-11, 15, 21, 25, 35, 68 & fn. 240.

[76] *See, e.g., In re Marriage of Luciano*, 164 Cal. Rptr. 93, 104 Cal. App. 3d 956 (Ct. App. 1980); *In re Marriage of Gillmore*, 629 P.2d 1, 174 Cal. Rptr. 493 (Cal. 1981); *In re Marriage of Scott*, 202 Cal. Rptr. 716, 156 Cal. App. 3d 251 (Ct. App. 1984); *Gemma v. Gemma*, 105 Nev. 458, 778 P.2d 429 (1989); *Koelsch v. Koelsch*, 713 P.2d 1234 (Ariz. 1986); *Ruggles v. Ruggles*, 860 P.2d 182 (N.M. 1993); *Balderson v. Balderson*, 896 P.2d 956 (Idaho 1994); *Blake v. Blake*, 807 P.2d 1211 (Colo. Ct. App. 1990); *Harris v. Harris*, 107 Wash. App. 597, 27 P.3d 656 (Wash. Ct. App. 2001); *Bailey v. Bailey*, 745 P.2d 830 (Utah 1987) (time of distribution of retirement benefits is when benefits are received "or at least until the earner is eligible to retire"); *see also* AA 295-303; discussion in Exhibit 1 at 20-21.

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to divide property other than as provided by law, they had to be very specific in doing so.[77]

The judge was correct – the requirement of equal division of community property is stated right on the face of the statute[78] and has been acknowledged by this Court in at least two recent opinions.[79] As this Court has directed, any language in a divorce decree that could be interpreted more than one way should be construed to conform to the law unless there is extremely clear proof of an intention to do otherwise.[80] This Court has been very critical of attempted "contracts" to avoid requirements under law, particularly when the assertion is of some "implied" contract.[81]

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[77] AA 395-396.

[78] NRS 125.150(1)(b).

[79] *Wolff v. Wolff*, 112 Nev. 1355, 929 P.2d 916 (1996); *Blanco v. Blanco*, 129 Nev. ___, 311 P.3d 1170 (Adv. Opn. No. 77, Oct. 31, 2013). Those are the opinions that were (apparently accidentally) undercut by the second *Henson* holding, creating a conflict, as discussed in the fifth section of this brief.

[80] *See, e.g., Walsh v. Walsh*, 103 Nev. 287, 738 P.2d 117 (1988) (in the absence of express language specifying otherwise, the phrase "one-half of [James'] pension with the United States Government" was construed as referencing the pension ***earned during marriage***).

[81] *See, e.g., Vaile v. District Court*, 118 Nev. 262, 44 P.3d 506 (2002); *Vaile v. Porsboll*, 128 Nev. ___, 268 P.3d 1272 (Adv. Opn. Number 3, Jan. 26, 2012); *Friedman v. Dist. Ct.*, 127 Nev. ___, 264 P.3d 1161 (Adv. Opn. 75, Nov. 23, 2011).

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Any "contract" requires an offer and acceptance, meeting of the minds, and consideration.[82] A "meeting of the minds" requires parties to agree "upon the contract's essential terms."[83] What constitutes "essential terms" varies case-by-case,[84] but if a waiver of rights was intended, that term was missing from the MOU. As Eric acknowledged below, "any waiver of a right must be explicit and clearly intended as a waiver."[85]

The determination of whether there is a contractual agreement is left to the sound discretion of the trial court. If the court determines that an essential term was not included, there is no contract on that term.[86] Here, Judge Ochoa found ***no*** evidence that Toni agreed to waive her right to payment upon Eric's first eligibility for retirement.

Grasping for a rationale under which to deny Toni her share of the property, Eric asserts (at 8-9) that NRS 125.155 requires no payments until actual retirement, but that is simply not so, and Eric's entirely unsupported

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[82] *May v. Anderson*, 121 Nev. 668, 672 n.1, 119 P.3d 1254, 1257 (2005), citing *M & D Balloons, Inc. v. Courtaulds, PLC*, 1990 U.S. Dist. LEXIS 15652, No. 90-C-834, 1990 WL 186077 at 3 (N.D. Ill., Nov. 21, 1990).

[83] *See In re Zappos, Inc.*, ___ Fed. Supp. ___, 2015 U.S. Dist LEXIS 39479 (D. Nev., March 27, 2015); *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. ____, ____, 283 P.3d 250, 255 (Adv. Opn. No. 35, Aug. 9, 2012).

[84] *May v. Anderson*, 121 Nev. 668, 672 n.1, 119 P.3d 1254, 1257 (2005); *see also Johnson v. BP Exploration & Prod. (In re Horizon)*, 786 F.3d 344 (5th Cir. 2015).

[85] AA 140.

[86] The issue of whether the parties had actually entered into a binding contract as claimed by Eric, is reviewed by this Court using an abuse of discretion standard.

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sloppy cut-and-paste from his trial court submission[87] does not demonstrate any conflict between that statute and this Court's decisions.

The rest of Eric's argument (at 9-11) is simply irrelevant. The district court found that there *was* no "contract" to evade Nevada law regarding payment upon eligibility, and Eric presented no evidence except his years-after-the-fact recollection stating that any such thing existed. Eric's quotation (at 10) from NRS 286.6703 is meaningless; as detailed in the *Hedlund Amicus Brief*:

> The provision in question, NRS 286.6703(3)(e), states that an order that will be approved for direct payment by the system, must, among other things, "not require the payment of an allowance or benefit to an alternate payee before the retirement of a member or the distribution to or withdrawal of contributions by a member."
>
> As discussed at length above, the provision in question was adapted from a piece of ERISA, governing private retirements, but without all of the surrounding provisions which collectively permit the splitting off of a spousal share into a separate interest payable based on the life expectancy, etc., of the spouse. As explained by Deputy Attorney General Ray in 1993, the purpose of adopting the language was only to state clearly what PERS would and would not do, not substantively alter divorce law. That interpretation would be consistent with what courts have done regarding "payment at eligibility" case law applied to other retirement systems.[88]

No case, article, or commentary has ever suggested that the statutory language in question – which mirrors that of the statutes governing the Civil Service, and the military – has any greater effect in PERS cases than it does in those cases (i.e., no effect of any kind). The statutory language is simply irrelevant to the case law requiring payment ***by the employee*** to the former

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[87] *Cf.* AOB at 8-9 *with* AA 358. The references to "this court" in the *Opening Brief* were actually directed to the district court.

[88] *See* AA 287.

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spouse upon the employee's eligibility for retirement, and Eric has not suggested the existence of any authority saying otherwise.

Eric's citation (at 11-12) of NRS 125.155 is similarly unavailing. As detailed in the *Hedlund Amicus Brief*,[89] the statute is ***permissive***, not mandatory. The district court in this case so held, because the statute merely states that a court ***may*** order distribution of benefits to a spouse other than at first eligibility (if the court then provides adequate security).[90] Obviously, if a court "may" do something, it can just as easily not do it. Eric's assertion (at 11) that the word "may" in the statute somehow dictates an order simply makes no sense.[91]

Eric's claim (at 9-10) that Toni waived her rights in the MOU is baseless. "Waiver" requires ***proof*** of the unequivocal "intentional relinquishment of a known right."[92] As the district court observed,[93] there is zero evidence in the record to suggest that Toni waived her right to begin receiving her share of the pension upon Eric's eligibility for retirement.

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[89] *See* AA 268-70, 278, 281.

[90] AA 348. As discussed in the CLE materials, this Court noted the same observation in *Hedlund*. *See* AA 247.

[91] See *Butler v. State*, 120 Nev, 879, 102 P.3d 71 (2004) ("May," as used in legislative enactments, is a permissive grant of authority); *Westgate v. Westgate*, 110 Nev. 1377, 887 P.2d 737 (1994); *Libro v. Walls*, 103 Nev. 540, 746 P.2d 632 (1987) (use of term "may" in NRS 125.180 created an equitable defense to a support arrearages claim in the discretion of the trial court).

[92] *See, e.g., Parkinson v. Parkinson*, 106 Nev. 481, 796 P.2d 229 (1990).

[93] AA 396.

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In short, there is nothing in the record, in the statutes, in any case, or in any other authority from anywhere stating that Toni was not entitled to begin receiving her share of the pension upon Eric's eligibility for retirement.

V. ERRORS AND CONFLICTS IN NEVADA CASE LAW REGARDING PERS RETIREMENT AND SURVIVORSHIP BENEFITS

As noted above, multiple members of this Court have attended CLE sessions in which this Court's published and unpublished decisions relating to PERS benefits have been closely analyzed, and in which certain outright errors of fact and law have been noted.[94] Usually, those errors were the result of the advocates presenting the cases simply not understanding – or not properly informing the Court – about the nuances of the retirement benefit programs at issue in the cases.[95]

On several occasions, members of this Court have instructed that the next time an appeal involving PERS retirement and survivorship benefits is

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[94] Including *Retirement Plan Division: What Every Nevada Divorce Lawyer Needs to Know* (State Bar of Nevada, Ely, Nevada, March, 2013); *Qualified Domestic Relations Orders Under ERISA and Nevada PERS: An Update and Guide for Family Lawyers and Family Court Judges* (State Bar of Nevada, Ely, Nevada, March, 2010).

[95] As noted in CLE materials for years, "The law governing division of retirement benefits is complex, and even many of those litigating retirement benefits cases, or forming legislation governing retirement benefit law, are often uninformed or confused as to what benefits exist, or how they are administered." *See* Exhibit 1 at 7; AA 263.

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before the Court. I should remind the Court of the errors and conflicts identified in the CLE sessions so they could be addressed and corrected.[96]

Apparently, the fact that the noted errors and conflicts have been addressed in unpublished orders has been the result of the misperception that these conflicts and problems are rare. They are not – there are ***many*** such cases – but most of the people involved do not have the resources to litigate them at the district court level, nevertheless bring them to the attention of this Court on appeal.[97] Accordingly, they are identified below.

A. The *Wolff* Error as to Establishment of a Sole and Separate Ownership Interest by a Former Spouse in PERS Retirement Benefits

This Court construed the 1993 revision of NRS 125.150 in *Lofgren*,[98] and concluded that the statute ***required*** an equal division of community property unless compelling reasons to do otherwise existed and were expressly provided by the trial court in writing. Retirement benefits earned during a

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[96] As such a request was made following presentation of the 2013 CLE on these subjects, the materials from that seminar are attached as Exhibit 1 for the convenience of the Court.

[97] In this case, for example, Toni has an income of some $2,500 per month (see *Opposition to Motion to Stay* filed in this Court on September 11, 2015, at 5), and as the record shows in part, we are owed tens of thousands of dollars for years of litigation at the district court level, and costs and fees on appeal. *See* AA 315-323; Eric's *Motion to Stay* filed in this Court at Exhibit 5.

[98] *Lofgren v. Lofgren*, 112 Nev.1282, 926 P.2d 296 (1996).

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marriage are specifically included in the category of community property required to be equally divided.[99]

In *Wolff*[100] this Court affirmed the lower court's order that the wife's share would ***not*** revert to the husband if she predeceased him, but would instead continue being paid to her estate, explaining that the community interest was divided upon divorce to two sole and separate interests,[101] so that even if her estate was not listed as an alternate payee as defined in NRS 286.6703(4), the estate was entitled to the payments that she would have received if alive.

The holding was entirely correct as a matter of community property theory, but as this Court has been informed, it is simply ***not*** true in fact, as to either *pre*-retirement survivorship (i.e., the employee spouse dies before retiring) or *post*-retirement survivorship (i.e., the employee spouse dies after retiring).

1. Pensions Are Community Property

Retirement benefits fall under the general definition of community property in NRS 123.220: "all property" acquired after marriage, with certain exceptions. All such property is divided under NRS 125.150 – the key statute governing division of property upon divorce. It mandates an equal distribution

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[99] *Ellett v. Ellett*, 94 Nev. 34, 573 P.2d 1179 (1978); *Forrest v. Forrest*, 99 Nev. 602, 668 P.2d 275 (1983).

[100] *Wolff v. Wolff*, 112 Nev. 1355, 929 P.2d 916 (1996). *See also Blanco v. Blanco*, 129 Nev. ___, 311 P.3d 1170 (Adv. Opn. No. 77, Oct. 31, 2013) (reiterating statutory mandate of equal division of community property absent a written statement of compelling reasons to do otherwise).

[101] *Citing* 15A Am. Jur. 2d *Community Property* § 101 (1976).

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of community property in the absence written findings of a "compelling reason" for an unequal disposition.[102]

Nevada case law has long held that property acquired during marriage is presumed to be community property, and that the presumption can only be overcome by clear and convincing evidence.[103] The first Nevada case explicitly noting that retirement benefits earned during a marriage are divisible community property was *Ellett*.[104]

In *Forrest* ,[105] relying on the line of California opinions dividing the gross sum of all retirement benefits,[106] this Court held that "retirement benefits are divisible as community property to the extent that they are based on services performed during the marriage, whether or not the benefits are presently payable."[107] In other words, the Court held that all forms of retirement benefits, whether or not vested, and whether or not matured, are community property subject to division.

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[102] NRS 125.150(1)(b). The statute also contains an exception to the statutory mandate of equal division where "otherwise provided" by either a premarital agreement or NRS 125.155, but as discussed above and detailed in the CLE materials, there is no mandate in that statute for an unequal distribution of PERS benefits.

[103] See, *e.g.*, *Todkill v. Todkill*, 88 Nev. 231, 495 P.2d 629 (1972).

[104] *Ellett v. Ellett*, 94 Nev. 34, 573 P.2d 1179 (1978).

[105] *Forrest v. Forrest*, 99 Nev. 602, 668 P.2d 275 (1983).

[106] See *In re Marriage of Gillmore*, 629 P.2d 1 (Cal. 1981); *In re Marriage of Brown*, 544 P.2d 561 (Cal. 1976).

[107] *Forrest*, 99 Nev. at 607, 668 P.2d at 279.

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As discussed above and in Exhibit 1, this Court adopted the time rule, the "wait and see" approach, and the rule of payments to the spouse at first eligibility for retirement, following the California line of authorities, in *Gemma*, *Fondi*, and *Sertic*.

2. How PERS Retirement and Survivorship Benefits Actually Work

In every system like PERS – in which the payments (but not the retirement itself) can be divided – the structure of the plan determines what happens to the ***former spouse's*** portion of the payment stream if the spouse dies first: the payments revert to the employee, no matter ***what*** the court order distributing retirement benefits says.

The employee thus has an automatic, cost-free, survivorship benefit built into the law that automatically restores to him the ***full amount of the spouse's share*** of the benefit if she should die before him. If the former spouse dies first, the employee not only continues to get ***his*** share of the benefits, but he will ***also*** get ***her*** share, for as long as he lives, despite the community property principle stated in the *Wolff* opinion.

Where the ***employee*** dies first, however, various results are possible. For a former spouse to continue receiving money after death of the employee, there must be specific provision made by way of a separate, survivorship interest payable to the former spouse upon the death of the employee. Otherwise, payments being made to the former spouse simply stop; the spouse gets nothing, unless an option with a survivorship provision is selected.

This is just one of the ways in which the employee's rights are superior to those of the non-employee, even when benefits are "equally" divided, and

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is an unequal distribution of benefits, despite the mandate in NRS 125.150 that courts equally divide property upon divorce.

Any pension plan with an automatic reversion of the spousal share to the employee should the spouse die first[108] creates a problem in a state like Nevada, in which the marriage and divorce laws provide that the parties have present, existing, and equal interests in property acquired during marriage,[109] and that property is to be divided equally upon divorce.[110]

A former spouse who will be the recipient of retirement benefit payments if the employee spouse lives, but will not get such money if he dies, ***definitionally*** has an "insurable interest" in the life of the employee (this is true for PERS and non-PERS cases). The matter is one of fact, not a matter of discretion, award, or debate, as to any person who has a valid financial interest in the continued life of another.[111]

3. What this Court Attempted to Order in *Wolff*

As stated above, in *Wolff* this Court found that the PERS pension division created entirely separate property retirement interests in the spouses

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[108] This includes Nevada PERS and military retirement, but does not include private pensions under ERISA, where the pension itself can be divided. Civil Service benefits can be made to work one way or the other, either with reversion of the spousal share, or inheritance of that share to the spouse's heirs.

[109] NRS 123.225 provides that the "respective interests of the husband and wife in community property during continuance of the marriage relation are present, existing and equal interests, subject to the provisions of NRS 123.230."

[110] NRS 125.150(1)(b).

[111] *See, e.g.*, 10 U.S.C. §§ 1448(b) & 1450(a)(1); 10 U.S.C. § 1450(a)(4).

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so that the spouse's share would not revert to the employee if she died first, but PERS refuses to enforce that holding as not permitted by the structure of the retirement system.

The Court also reviewed NRS 286.6703 and surmised that if the employee died before retirement, a former spouse alternate payee would nevertheless receive "a refund of the contribution account."[112] On that basis, the Court reversed the order for the employee to obtain a private life insurance policy, finding that it would require an "unequal distribution of debt." This too was an attempted enforcement of the NRS 125.150 obligation to divide community property and debt equally.

However, the Court's surmise was incorrect. Under the PERS system, ***there is no pre-retirement survivorship benefit for a former spouse.*** There are very limited ***death*** benefits that can flow to a surviving current spouse or child, but ***not*** to a former spouse.[113] When a divorce occurs while the employee is still working, the ***only*** way to secure the former spouse's insurable interest in the retirement benefits is through a policy of private life insurance.[114]

The law, legislative history, and public policy considerations at play as to pre-retirement survivor annuities were discussed in the *Hedlund Amicus*

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[112] *Wolff v. Wolff*, 112 Nev. 1355, 1361, 929 P.2d 916, 920 (1996).

[113] As noted above, Mr. Fontano had the same confusion between statutory death and post-retirement survivorship benefits, but they are two very different things.

[114] In "pension-speak," the PERS plan has no "pre-retirement survivor annuity." Other plans – such as all ERISA-based private retirement plans – *do* have such benefits as part of their required structure.

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Brief.[115] The *Wolff* holding reversing the order to provide private insurance for the spousal interest was error, since the benefit simply gave to the wife what the husband had "free" by the structure of the system – a survivorship interest in all funds paid to the wife, which reverted to him automatically if the former spouse died first.[116]

That *Amicus Brief* went over the same considerations relating to ***post***-retirement survivorship interests.[117] The Court's conclusion in *Wolff* about how the PERS system worked was incorrect as a matter of fact, but no one involved in *Henson* had a sufficient grasp of the issue to remind the Court of that error in briefing or at oral argument, leading to the error in *Henson* discussed below.

It is simply not true in a "divided payment stream" sort of retirement system (like PERS or military retirement) that a divorce simply awarding each party an interest in the benefits by percentage can create equal "separate property of each former spouse." That is why PERS refuses to enforce the *Wolff* holding, even refusing to honor any order that recites it.[118]

Rather, the structure of the plan itself creates ***unequal*** interests, requiring the court to enter further orders to actually give meaning to the *Wolff* and *Blanco* holdings – ***and*** the mandate of NRS 125.150 – to equally divide community property and debt. As Ms. DiFranza pointed out in her 2010 Ely

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[115] *See* AA 44-45.

[116] *See* Exhibit 1 at 45-48 & fn. 178.

[117] AA 40-44.

[118] *See* Exhibit 1 at 12, 47-48 & fn. 182 & 184; AA 38-40.

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materials,[119] the value of the survivorship component of the retirement benefits can be a quarter or half of the value of the pension, or more.

Any divorce judgment distributing a survivorship interest to one party but not to the other is ***inherently*** unequal.[120] This requires the divorce court to address and distribute survivorship interests as ***part*** of the pension division in order to make an equal division of a community property pension.

What this Court ***attempted*** to do in *Wolff* was entirely correct, but simply declaring the distribution equal did not make it so -- for the holding to have actual effect in the real world, distribution of the survivorship components is required.

B. The *Henson* Contradiction of the *Wolff* Holding

Henson had two primary holdings. The first was that a non-employee spouse gives notice of her intention to obtain payment of her share of the pension after the employee's eligibility for retirement by filing a motion for those payments. The second was that if the survivorship component of the retirement was not specifically recited on the face of the underlying decree, it is lost to the non-employee spouse.

The *Wolff* holding (community property pensions are to be equally divided) is contradicted by the second holding in *Henson*, which was based upon recitation of a false "fact" about PERS pension divisions. This Court

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[119] *Qualified Domestic Relations Orders Under ERISA and Nevada PERS*, *supra*, posted at http://www.willicklawgroup.com/ely-2010-advanced-track-materials/.

[120] It is the equivalent of a decree awarding a new Mercedes to one party and a 30-year old Yugo to the other and declaring the distribution equal since both "got a car."

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found that the "pension" provision in the decree did not include a survivor beneficiary interest since "neither the employee nor the nonemployee spouse automatically receives a survivor beneficiary interest."[121]

That recitation is just not true because, as detailed above, the employee in any system like PERS ***does*** have an ***automatic*** survivorship interest in the non-employee spouse's benefits. Survivorship interests are ***necessarily*** implicated in any pension division, especially for a system like PERS. But on the basis of the false "fact," the Court concluded that only a lifetime series of payments was at issue.

In *Henson*, this Court also declared: "We are in agreement with California's approach to the distribution of a nonemployee spouse's portion of his or her community interest in an employee spouse's pension plan benefits." The California cases have long held that the survivorship interest of a pension plan is a ***component*** of the community property value of the asset, and is to be divided in any pension distribution.[122] Those holdings were later formalized in legislation.[123]

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[121] *Henson* slip op. at 9.

[122] *See In re Marriage of Nice*, 281 Cal. Rptr. 415, 230 Cal. App. 3d 444 (Ct. App. 1991); *see also In re Marriage of Becker*, 207 Cal. Rptr. 392, 161 Cal. App. 3d 65 (Ct. App. 1984); *In re Marriage of Carnall*, 265 Cal. Rptr. 271, 216 Cal. App. 3d 1010 (Ct. App. 1984); *In re Marriage of Sonne*, 225 P.3d 546, 105 Cal. Rptr. 3d 414 (Cal. 2010), as completed on remand with *In re Marriage of Sonne* [*Sonne II*], 111 Cal. Rptr. 3d 506, 185 Cal. App. 4th 1564 (Ct. App. 2010). There are many more such cases.

[123] California Family Code Section 2610:
(a) Except as provided in subdivision (b), the court shall make whatever orders are necessary or appropriate to ensure that each party receives the party's full community property share in any retirement plan, whether

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NRS 125.150 contains a mandate to distribute benefits and burdens between spouses equally to the degree possible, absent written findings of compelling reasons to do otherwise. It is incumbent on the divorce courts to do so with *whatever* assets the couple has – including pension plans with terms that accord disparate rights between the employee and the spouse.

Adoption in Nevada of the California approach to pension division would be appropriate – the California and Nevada community property systems have the *same* directive of presumptive equal division of community property, and California has well-thought-out pension division case law that seeks to make division of retirement benefits *actually* "equal."

Accordingly, this Court in *Henson* ***should*** have found that any pension division ***inherently*** incorporates a survivorship interest, since the survivorship component is a large part of the value of the retirement benefits. That *is* the California rule, which this Court stated that it was adopting, but apparently no counsel involved in the *Henson* briefing or argument realized it.

Henson did not actually do what the opinion said it was doing; instead, it did nearly the opposite, essentially redefining the spousal share of a PERS pension from community property into a life estate based on the employee's life. If the decree of divorce is silent as to survivor benefits, those benefits are lost to the spouse, dispossessing the spouse if the employee pre-deceases her.

> public or private, including all survivor and death benefits, including, but not limited to, any of the following:
>
> . . . .
>
> (2) Order a party to elect a survivor benefit annuity or other similar election for the benefit of the other party, as specified by the court, in any case in which a retirement plan provides for such an election, provided that no court shall order a retirement plan to provide increased benefits determined on the basis of actuarial value.

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This sets up a system in which every PERS division is grossly *un*equal unless the original divorce counsel is sufficiently skilled and knowledgeable to ensure that the decree formally recites the distribution of every part of the property being divided (specifically, the survivorship component of the retirement benefits).

And that presumes that there *are* lawyers involved. The majority of divorces in Nevada are between proper person litigants – as these parties were – the overwhelming majority of whom have no idea how retirement or survivorship interests work, or what to recite in a divorce decree to properly distribute those interests.

To illustrate the conflict between community property theory and the mandate of NRS 125.150 to equally divide all property, and the second *Henson* holding, just apply it to any other assets that might be distributed – for instance, cars. The *Henson* holding, applied to those assets, would mean that – unless the decree specifically recited otherwise – if the non-employee spouse dies first, the employee spouse gets to keep his own car, and receives her car too; but if the employee spouse dies first, the non-employee spouse's car is taken away.

That result would not be tolerated as to any other item of community property, as a violation of the statutory mandate to provide each spouse with an equal share. Mandating the post-divorce destruction of a property interest whenever survivor benefit language is not specifically recited is just as much a violation of community property theory, as the California courts (and many others) have repeatedly held.

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C. Omitted Property Is Now Subject to Partition

As detailed above, the survivorship component of a pension is simply one part of the retirement benefits, which are required to be divided equally. With the recent passage of AB 362, the Nevada Legislature accepted this Court's invitation in *Doan*[124] to permit partition of any such omitted property. The digest language states:

> Under existing law, in granting a divorce, a court must, to the extent practicable, make an equal disposition of the community property of the parties, unless the action is contrary to a valid premarital agreement between the parties or the court makes written findings setting forth a compelling reason for making an unequal disposition of the community property. (NRS 125.150) The Nevada Supreme Court has held that under Rule 60(b) of the Nevada Rules of Civil Procedure, relief from a divorce decree dividing community property between the parties may be obtained by: (1) filing within 6 months after the final decree a motion for relief or modification from the decree because of mistake, newly discovered evidence or fraud; or (2) showing exceptional circumstances justifying equitable relief in an independent civil action. (Kramer v. Kramer, 96 Nev. 759, 762 (1980); Amie v. Amie, 106 Nev. 541, 542 (1990)) In Doan v. Wilkerson, 130 Nev. Adv. Op. 48, 328 P.3d 498 (2014), the Nevada Supreme Court held that exceptional circumstances justifying equitable relief do not exist when a particular item of community property was disclosed and considered in a divorce action but omitted from the divorce decree. This bill authorizes a party in an action for divorce, separate maintenance or annulment to file a postjudgment motion to obtain an adjudication of any community property or liability that was omitted from the final decree or judgment as the result of fraud or mistake. Under this bill, such a motion must be filed within 3 years after the aggrieved party discovers the facts constituting the fraud or mistake. This bill further provides that the court has continuing jurisdiction to hear such a motion and must make an equal disposition of the omitted community property or liability unless the court finds that certain exceptions apply.

Addressing footnote 5 of *Henson*, a court order resulting from such a partition motion satisfies the requirement for "[a]n order of the court [that]

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[124] *Doan v. Wilkerson*, 130 Nev. ___, 328 P.3d 498 (Adv. Opn. No. 48, June 26, 2014).

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provides an alternative to an unmodified service retirement allowance" under NRS 125.155(3)(a)-(b).

The legislature saw that there was a problem with courts not actually distributing community property omitted either by fraud or mistake from a decree, since Nevada law ***requires*** the equal division of all such property absent findings of a compelling reason to do otherwise. The survivor benefit interests in a pension are ***property*** interests requiring partition; the intent of the statutory change is to prevent a party to a divorce from being denied an equal share of community property without recourse.

D. Resolution of the *Wolff/Henson* Contradiction

As detailed above, the *Wolff* and *Blanco* holdings are consistent with both community property theory and the statutory mandate of NRS 125.150. But the second *Henson* holding directly undercuts that statutory mandate; it causes divorce decrees dividing pensions to be interpreted as not including one of their most valuable components, and thus causes an ***unequal*** distribution of retirement benefits between parties to a divorce whenever (as is typical) the language used is general, vague, or incomplete.

Respectfully, it would be poor public policy to not include the survivorship component of retirement benefits in the definition of "property" that must be divided upon divorce. Doing so directly contradicts this Court's holding in *Wolff* and *Blanco*, and is certain to cause both unjust enrichment and wrongful deprivation in violation of the mandate of NRS 125.150 – all without *any* valid purpose being served.[125]

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[125] Unfortunately, the decisional law of Nevada is widely perceived in other community property states as seeking to find rationalizations for unequal

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As many courts have observed, ensuring that *both* spouses get a survivorship interest securing their respective shares of a pension being divided between them simply provides the non-employee spouse a right already enjoyed by the employee: "the right to receive her share of the marital property awarded to her."[126]

The cost of the survivorship benefit should be divided as well. Unless upon divorce one party is entitled to a greater share of the benefits and a lesser share of the burdens accrued during marriage, it is necessary to deal with the structure of any pension being divided so that the parties benefit, and are burdened, as nearly equally as may be made true.

In a PERS case, that requires dividing the burden of the only survivorship benefit that ***has*** a cost – the one for the benefit of the spouse – between the parties, just as the parties share the zero cost of the employee's survivorship interest in the spouse's life.[127] Otherwise one of them gets a survivorship benefit for free, and the other gets a survivorship benefit at significant cost – which would violate the statutory requirement to equally divide property and debt.

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and inequitable distributions of community property despite the Nevada statutory mandate of presumptive equal division. *See 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 annual Symposium).

[126] *In re Marriage of Payne*, 897 P.2d 888, 889 (Colo. App. 1995). *See* AA 298-303 & fn. 144 for a detailed explanation of the case law and public policy considerations relating to providing a survivorship interest with *every* allocation to a spouse of an interest in a pension.

[127] *See* Exhibit 1 at 46-47.

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Accordingly, the second *Henson* holding should be overturned – the spouse has an inherent survivorship interest in her share of the pension, because it is a valuable component of the retirement benefits and omitting it from distribution would violate the statutory mandate to equally divide community property.

E. Application to this Case

As detailed above, the district court in this case originally found that Toni was entitled to her share of the PERS pension benefits both during life and after Eric's death,[128] just as he is entitled to (and has) his share of the PERS benefits during life and after Toni's death. That ruling was the law of the case,[129] but the district court reversed it based on *Henson*.[130]

If this Court revisits and overturns the second *Henson* holding as requested above, based on either community property theory and an understanding of how PERS actually works, *or* on the new partition statute, then it should remand this case for distribution to Toni of a survivorship interest in her share of the PERS pension.[131]

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[128] AA 168; RA 2.

[129] *See, e.g., Hornwood v. Smith's Food King No. 1*, 107 Nev. 80, 807 P.2d 208 (1991); *Wickliffe v. Sunrise Hospital*, 104 Nev. 777, 766 P.2d 1322 (1988); Black's Law Dictionary 893, (7th ed. 1999).

[130] AA 346-347.

[131] To the degree Eric's retirement during the pendency of this appeal makes it impossible for PERS to honor such an award, the proceedings on remand will be restricted to compensation to Toni for the value of that property interest.

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VI. CONCLUSION

Eric's position that he has greater rights than Toni to the community property acquired during the parties' 26-year marriage is unsupported and unsupportable. Toni is entitled to her time rule interest in the PERS pension benefits upon Eric's eligibility for retirement, and the district court acted well within its discretion in so holding.

Survivorship benefits are a valuable component of a pension, and providing them to only one party upon divorce makes a division of the pension inherently unequal. This Court should therefore revisit the second holding of *Henson* and overturn it as a violation of community property principles and for contradiction of the holdings of *Wolff*, *Blanco*, and the equal-distribution mandate of NRS 125.150. In any event, the Court should recognize that omitted survivorship benefits are property rights subject to partition upon discovery of the omission.

On remand, Toni should receive the same security for her portion of the pension benefits that Eric has for his.

Respectfully submitted,
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[X] This brief has been prepared in a proportionally spaced typeface using Corel WordPerfect Office X6, Standard Edition in font size 14, and the type style of Times New Roman; or

[ ] This brief has been prepared in a monospaced typeface using [*state name and version of word processing program*] with [*state number of characters per inch and name of type style*].

2. I further certify that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

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3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief

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regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 14th day of September, 2015.

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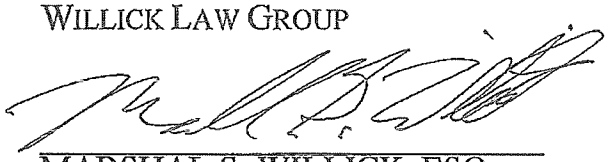

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Pursuant to NRCP 5(b), I certify that I am an employee of the WILLICK LAW GROUP and that on this 14 day of September, 2015, documents entitled *RESPONDENT'S ANSWERING BRIEF* and *RESPONDENT'S APPENDIX* were e-mailed, and were filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list, to the attorney listed below at the address, email address, and/or facsimile number indicated below:

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EXHIBIT 8

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIC HOLYOAK, Appellant, v. TONI HOLYOAK, Respondent.	Docket No. 67490 District Court Case No.: D-08-395501-Z **APPELLANT'S REPLY BRIEF**

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NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1 (a), and must be disclosed.

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Prior to the time Mr. Beller represented Appellant Eric Holyoak, James A. Fontano, Esq., Nitz, Walton & Heaton, Ltd. represented Appellant.

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TABLE OF AUTHORITIES

I. ARGUMENT

Pursuant to NRAP 28 [c], which provides that a reply Brief is limited to answering any new matter set forth in the opposing brief, Appellant Eric will only respond to the new matter asserted by Respondent Toni in her Answering Brief.

I. Respondent's New Matter

Respondent's Errors and Conflicts in Nevada Case Law Regarding PERS Retirement and Survivorship Benefits should not be considered by this Court with regard to the issue of survivorship interest. The issue of "survivorship interest" is not relevant to this appeal.

If Respondent wanted to argue regarding a survivorship interest, then, Respondent had the opportunity to appeal that portion of the Order and Decision of January 27, 2015. AA339, AA342-347. Respondent did not file any notice of appeal within the required time period. Nor did Respondent file a cross-appeal when Appellant filed this Appeal. Thus, Respondent cannot now put forth the statement that this Court should remand this case for distribution to Toni of a survivorship interest in her share of the PERS pension. Survivorship interest is not on appeal in this instant appeal.

It appears Respondent's counsel, Mr. Willick is attempting to again convince this Court that based on public policy, the survivorship component of retirement benefits should be included in the definition of property divided upon divorce. This Court was presented with a Petition for Rehearing in *Henson v. Henson*, 130 Nev., 334 P.3d 933 (Adv.Op. 79, 2014). Said Petition was denied by this Court. This Court has already denied the rehearing in *Henson*. There is no good reason for this Court to again revisit the matter of survivor benefits. Further, as noted in the preceding, if Mr. Willick wanted the matter of survivor benefits pursued further, Respondent should have filed an appeal or cross appeal on that particular issue.

Further, in his Amended Notice of Appeal regarding the May 7, 2015 Order, Eric

specifically stated that order provides that Plaintiff (Toni) is entitled to begin immediately receiving her share of Defendant's (Eric) retirement benefits. That is the only issue relating to Eric's appeal: the time when Toni is entitled to receive those benefits.

II. CONCLUSION

The Divorce Decree and the incorporated MOU, which is a binding contract and agreed upon and signed by both Eric and Toni in 2008, control the issue of when Toni receives her proportionate share of Eric's retirement account. Toni is not entitled to receive any PERS benefits until the time Eric actually retires.

Eric requests this Honorable Court to reverse the May 7, 2015 Court Order that is based on the District Court's Decision of January 27, 2015, and order that Toni is not eligible to receive her proportionate share of Eric's PERS benefits until Eric actually retires.

Eric has now retired from METRO. Thus, Toni is now eligible to receive her proportionate share of Eric's PERS benefits. The only issues before this Court are the four Statement of Issues Eric presented in his Opening Brief. This Court's decision on these issues will impact whether or not Eric will be forced to pay Toni any benefit amounts prior to the point in time (August 7, 2015) that Eric retired.

DATED this 13th day of October, 2015.

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Finally, I hereby certify that I have read this APPELLANT'S REPLY BRIEF and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure 28(e), which requires every section of the brief regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relief is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

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EXHIBIT 9

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIC HOLYOAK,
Appellant,
vs.
TONI HOLYOAK,
Respondent.

No. 67490

FILED

MAY 19 2016

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a post-divorce decree order regarding the distribution of retirement benefits. Eighth Judicial District Court, Clark County; Vincent Ochoa, Judge.

In 1982, appellant Eric Holyoak and respondent Toni Holyoak married. In 2008, they divorced. Appellant was a police officer employed by the Las Vegas Metropolitan Police Department and a participant in the Public Employees Retirement System (PERS). During the divorce proceedings, he was not yet eligible for retirement.

Neither party was represented by an attorney during the divorce proceedings. Further, both parties executed a joint petition for summary decree of divorce, which they amended twice. The petition divided their community property through a memorandum of understanding (MOU), which they mediated with the assistance of a former family court judge. With regard to appellant's PERS retirement account, the MOU stated: "The parties agree to split the costs of the preparation of a [qualified domestic relations order (QDRO)]. The QDRO will direct the trustee of PERS to pay to each party their proportionate

share of the account at the time [appellant] retires." Ultimately, the parties disputed the meaning of this clause before the district court.

Appellant filed a brief detailing his position on several issues relevant to the division of community property, including when he was required to pay respondent's share of the PERS benefits.[1] According to appellant, pursuant to the applicable clause in the MOU, both parties agreed that respondent will receive her share starting from the time of appellant's official retirement. In support of his argument, appellant filed a declaration stating that both parties agreed at the time of the mediation that respondent would not receive her share until appellant officially retired. However, appellant's counsel also acknowledged in an earlier proceeding that the clause in the MOU was simply "a one-sentence agreement" and that "what the two parties agreed to may have been completely different between the two of them in their minds as to what they were agreeing to." Respondent asserted that appellant's interpretation of the clause was incorrect and that Nevada caselaw supported her position that she can receive her share when appellant is eligible to retire. Before the district court, she also noted that one reason

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[1]We note that, in general, a district court lacks jurisdiction to modify property rights, as established by a divorce decree, beyond six months. *See* NRCP 60(b); *Kramer v. Kramer*, 96 Nev. 759, 762, 616 P.2d 395, 397 (1980). However, because the district court in this case merely interpreted the decree and enforced its terms, rather than modifying the parties' interests, the time requirements of NRCP 60(b) do not apply. *See Walsh v. Walsh*, 103 Nev. 287, 288, 738 P.2d 117, 117-18 (1987) (interpreting rather than modifying pension plan provision of divorce decree outside NRCP 60(b)'s six-month period). Further, the MOU was incorporated into the divorce decree, and the district court has inherent authority to construe its decrees in order to remove an ambiguity. *See Kishner v. Kishner*, 93 Nev. 220, 225, 562 P.2d 493, 496 (1977).

for accepting a low amount in spousal support "was her understanding that she would receive her portion of the PERS retirement for the rest of her life." In addition, respondent claimed that she was "under the impression that [appellant] would be retiring sooner than later."

With regard to this issue, the district court ruled in favor of respondent. The district court determined that nothing in the MOU or the divorce decree "indicates any intention on the part of any person involved to do anything other than what the law provides and divide the community portion of all assets equally." Further, the court noted that according to the MOU, respondent "is to receive a 'proportionate share' of [appellant's] Nevada PERS pension benefits" and that this language "was intended to comply with Nevada law." Applying Nevada precedent concerning election of retirement benefits, the court concluded that respondent had an interest in appellant's retirement pension starting from the date of his eligibility. However, the district court noted that respondent must first file a motion "requesting to begin receiving payment of her portion" of the PERS pension benefits.

Following the district court's order, respondent filed a motion for immediate election of her share of appellant's PERS benefits. Ultimately, the court granted the motion, reiterating its previous decision that respondent is entitled to receive her share starting from the date of appellant's eligibility. This appeal follows.[2]

---

[2]We note that in her answering brief, respondent raises issues concerning alleged errors in this court's precedent on survivorship rights. However, respondent did not file a cross-appeal, and thus lacks the ability to challenge the district court's ruling on these issues.

Generally, this court reviews the district court's division of community property for an abuse of discretion. *Wolff v. Wolff*, 112 Nev. 1355, 1359, 929 P.2d 916, 918-19 (1996). Further, this court reviews a district court's factual findings for an abuse of discretion, and will not set aside those findings unless they are clearly erroneous or not supported by substantial evidence. *Ogawa v. Ogawa*, 125 Nev. 660, 668, 221 P.3d 699, 704 (2009). When a district court's interpretation of a divorce decree involves a question of law, however, this court reviews the interpretation de novo. *Henson v. Henson*, 130 Nev., Adv. Op. 79, 334 P.3d 933, 936 (2014).

An agreement to settle pending divorce litigation constitutes a contract and is governed by the general principles of contract law. *Grisham v. Grisham*, 128 Nev., Adv. Op. 60, 289 P.3d 230, 234 (2012). In the context of family law, parties are permitted to contract in any lawful manner. *See Rivero v. Rivero*, 125 Nev. 410, 429, 216 P.3d 213, 226 (2009). "Parties are free to contract, and the courts will enforce their contracts if they are not unconscionable, illegal, or in violation of public policy." *Id.* An enforceable contract requires "an offer and acceptance, meeting of the minds, and consideration." *May v. Anderson*, 121 Nev. 668, 672, 119 P.3d 1254, 1257 (2005).

Further, this court views a contract as "ambiguous if it is reasonably susceptible to more than one interpretation." *Shelton v. Shelton*, 119 Nev. 492, 497, 78 P.3d 507, 510 (2003) (internal quotation and footnote omitted). When interpreting an ambiguous contract, this court looks beyond the express terms and analyzes the circumstances surrounding the contract to determine the true mutual intentions of both parties. *Id.* (footnote omitted). Finally, this court has recognized that an

interpretation that "results in a fair and reasonable contract is preferable to one that results in a harsh and unreasonable contract." *Id.* (internal quotation and footnote omitted).

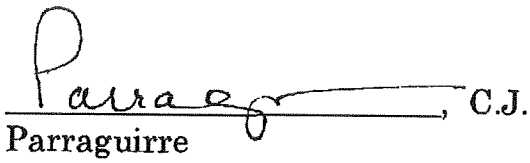
With regard to retirement benefits, those earned during a marriage qualify as community property, even if they are not vested. *Gemma v. Gemma*, 105 Nev. 458, 460-61, 778 P.2d 429, 430 (1989). While the effect of a contract on the timing of a nonemployee spouse's receipt of benefits has not yet been explored, this court has discussed the issue of when a nonemployee spouse is entitled to request his or her share of benefits. In particular, we have held that the nonemployee spouse has a right to his or her share of the employee spouse's benefits starting from the date of eligibility for retirement. *Id.* at 464, 778 P.2d at 432. Moreover, NRS 125.155 gives the court discretion to consider directing the employee spouse to pay the nonemployee spouse his or her share of PERS benefits at the first eligible retirement date or to order that the nonemployee spouse wait until the employee spouse actually retires. *See* NRS 125.155(2).

Here, while part of the district court's analysis is mistaken, the outcome of its order is correct. The clause in the MOU provides that "[t]he QDRO will direct the trustee of PERS to pay to each party their proportionate share of the account at the time [appellant] retires." The district court did not expressly acknowledge the ambiguity of this clause, but we conclude that it is ambiguous because it is reasonably susceptible to more than one interpretation. Appellant interprets the phrase "at the time [appellant] retires" as an agreed-upon determination of the time when respondent is eligible to receive her share. In contrast, respondent contends that the phrase, within the context of the entire clause, pertains

to the time of disbursement of the payments; the clause is merely a procedural instruction to the trustee of PERS to pay the proportionate share after appellant retires. Respondent asserts that the clause does not prohibit her from directly seeking her share from appellant, which is how pre-retirement payments are standardly made. Accordingly, the calculation of the proportionate share is based on the employee spouse's eligibility for retirement, and if the employee spouse does not retire when he is eligible, he must pay the nonemployee spouse the amount that the nonemployee spouse would have received if the employee spouse had retired at that time.

In this case, appellant's interpretation ultimately lacks merit because it results in a harsh and unreasonable contract. The record does not sufficiently show that respondent intended to wait until appellant officially retired to collect her share, and this court has repeatedly held that the nonemployee spouse has a right to her share as soon as the employee spouse is eligible to retire. Upon consideration of the circumstances surrounding the MOU and in light of precedent from this court, we conclude that respondent's interpretation results in a fair and reasonable contract. Even though the district court dismissed the ambiguous nature of the clause in the MOU, its decision was nevertheless correct. *See Rosenstein v. Steele*, 103 Nev. 571, 575, 747 P.2d 230, 233 (1987) ("[T]his court will affirm the order of the district court if it reached the correct result, albeit for different reasons"). Thus, the district court properly ruled that respondent was entitled to receive her share starting from the time that appellant was eligible to retire. Accordingly, we

ORDER the judgment of the district court AFFIRMED.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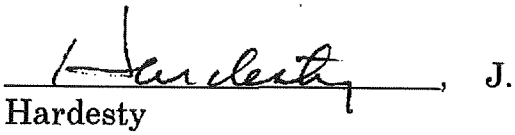
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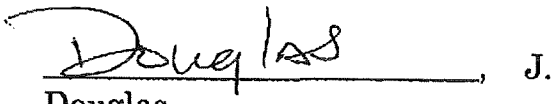
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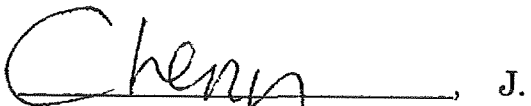
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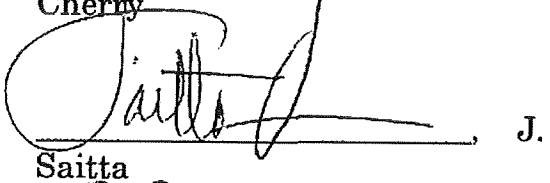
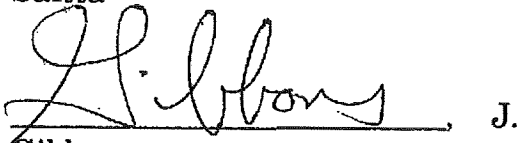

Saitta, J.


Gibbons, J.

cc: Hon. Vincent Ochoa, District Judge
Carolyn Worrell, Settlement Judge
Neil J. Beller, Ltd.
Willick Law Group
Eighth District Court Clerk

PICKERING, J., dissenting:

The parties mediated the issues regarding dissolution of their marriage before Robert E. Gaston, who served for eight years as a district court judge, family court division, before establishing an alternative dispute resolution service dedicated to civil and domestic court cases.[1] Their mediation culminated in a written settlement agreement, prepared under the supervision of Judge Gaston, which they signed on May 20, 2008. Addressing retirement/investment accounts, specifically, Eric's retirement account with PERS, the settlement agreement states that the parties will split the costs of preparing a QDRO, and that the QDRO "will

---

[1]*See Settlement Judge Biographies: Robert E. Gaston*, Nev. Cts., http://nvcourts.gov/Settlement_Program/Biographies/Gaston,_Robert_E_/ (last visited May 12, 2016). I thus do not agree that the parties did not know what they were signing. Right above their signatures, in fact, the following paragraph appears:

> The above Memorandum of Understanding reflects agreements formulated in mediation on the 20th day of May, 2008. By signing this document each party stipulates and agrees that they have carefully read this document, and the document accurately reflects the agreement that each party has entered into on this day, and that each party voluntarily signs this agreement without undue influence, coercion or threat. Both parties represent that they are of sufficient capacity to understand and enter into this agreement. The parties agree that this Memorandum of Understanding represents what each believes to be a fair and reasonable resolution of the issues. Both parties acknowledge the fact that they had the right to have legal counsel, but have waived that right.

direct the trustee of PERS to pay each party their proportionate share of the account at the time Eric retires." A straightforward reading of this clause suggests that the payments occur "at the time Eric retires," not, as the majority would have it, at the time Eric becomes eligible to retire.

"A settlement agreement is a contract governed by general principles of contract law"; when a settlement agreement's "language is unambiguous, this court will construe and enforce it according to that language." *The Power Co. v. Henry*, 130 Nev., Adv. Op. 21, 321 P.3d 858, 863 (2014). As I do not see the settlement agreement as ambiguous, I would enforce it as written. I therefore respectfully dissent.

Pickering, J.

Pickering

EXHIBIT 10

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * * * * * * * *

ERIC HOLYOAK,

Petitioner,

vs.

TONI HOLYOAK,

Respondent.

SC NO: 67490
DC NO: D-08-389501-Z

Electronically Filed
Jan 14 2016 01:14 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

MOTION FOR ORDER OF LIMITED REMAND TO THE DISTRICT COURT

During enforcement motions pursued in the district court, the issues of fees was raised. The trial court judge (Judge Ritchie) expressed concern that the issue might not be entirely collateral, even though the fees concerned only the enforcement proceedings in district court, because fees are also at issue on appeal in this Court, as to earlier proceedings at the district court level.[1]

Accordingly, out of an abundance of caution, the district court has indicated that it would be inclined to enter an order awarding Toni her reasonable attorney's fees and costs incurred at the district court level regarding her requests for enforcement of the underlying orders.

This *Motion* is based upon the pleadings and papers on file herein and the points and authorities provided below.

[1] Remaining pending in the appeal are fees relating to earlier proceedings heard by Judge Ochoa, including Toni's *Motion for Immediate Election of Defendant's (Eric) Nevada PERS Benefits*, filed on February 4, 2015.

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I. FACTS LEADING TO THE FILING OF THIS MOTION

The parties were married on June 5, 1982, and divorced 26 years later by way of a Nevada *Decree* filed August 14, 2008.[2] At the time of divorce, they had one minor child, who is now emancipated. During the marriage, Eric worked as a police officer and participated in the Nevada Public Employees' Retirement System (PERS).

The *Decree* provided that Toni was to receive her proportionate share of the Eric's Nevada PERS retirement. When Toni attempted to implement a Qualified Domestic Relations Order (QDRO) reflecting the parties' agreed upon division, Eric resisted and that action spawned substantial post-divorce litigation.

Ultimately, the district court, issued a *Decision* and *Order* on January 27, 2015.[3] We immediately filed a *Motion* to have retirement payments to Toni begin, as Eric was eligible to retire at the time of the Court's *Decision.*[4] Eric opposed the request, seeking to reargue the entire case, essentially ignoring Judge Ochoa's *Decision* resolving exactly those points.[5] We replied.[6]

At the resulting hearing on April 23, 2015, the district court identified Eric's opposition as a motion for reconsideration and denied it.[7] Observing that Eric had appealed from the *Decision* on February 25, 2015, but never filed a motion for stay, the district court stated that "there's no pre-decision on a motion to stay and a motion for bond" and inviting the filing of such a motion.[8] The *Order* requiring payments

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[2] AA 60-67.

[3] AA 339-349.

[4] AA 350-356.

[5] AA 357-365.

[6] AA 367-378.

[7] AA 390-391, 395-396.

[8] AA 391-392, 397-399.

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to Toni to begin was entered on May 7.[9] Eric subsequently filed an *Amended Notice of Appeal* regarding that *Order* on June 3, 2015.

Since the filing of Eric's original *Notice of Appeal*, substantial attorney's fees and costs and costs have been incurred by Toni at the lower court level seeking enforcement of the underlying district court orders. In light of these expenses, Toni submitted a request to the district court for an award of all of her fees and costs incurred in the enforcement motions. On December 8, 2015, the district court made the following findings:

> 10. The Court also understands that because a judgment has been entered relating to the amounts owed – miscellaneous fees have been incurred in having an appropriate QDRO entered with the Court that is consistent with the law of the case, and that a request for sanctions has been made – fees regarding those issues could be considered under the collateral jurisdiction of the Court, with the understanding that they may not be considered collateral in light of case law, including the *Mack-Manley v. Mack* decision.[10] [time index 11:38:19]. However, in an abundance of caution, the Court is going to certify that it would consider relief for the Plaintiff in this regard as it relates to a judgment for attorney's fees in enforcing the terms of the Court's orders and any contempt proceedings from the date the appeal was filed, coupled with any other appropriate financial relief. [time index 11:38:54].
>
> 11. Whether or not the Court grants attorney's fees or other financial relief to the Plaintiff is up to the Nevada Supreme Court upon a remand after a decision, or upon a procedure to issue an order during the pendency of the appeal approved by the Nevada Supreme Court pursuant to *Huneycutt*.[11] [time index 11:39:22].

Given the above findings, in which the district court indicated that it would consider an award of attorney's fees and costs once an *Order of Limited Remand* was entered permitting the district court do so, this *Motion* follows.

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[9] AA 401-409.

[10] 112 Nev. 849, 138 P.3d 525 (2006).

[11] *Huneycutt v. Huneycutt*, 94 Nev. 79, 575 P.2d 585 (1978).

POINTS AND AUTHORITIES

II. LEGAL ANALYSIS

This Court has held that:

> when an appeal is perfected, the district court is divested of jurisdiction to revisit issues that are pending before this court, [but] the district court retains jurisdiction to enter orders on matters that are collateral to and independent from the appealed order, i.e., matters that in no way affect the appeal's merits.[12]

In *Huneycutt*, this Court adopted a procedure providing that if a party to an appeal believes a basis exists to alter, vacate, or otherwise modify or change an order or judgment challenged on appeal after an appeal from the order or judgment has been perfected in this Court, the party can seek to have the district court certify its intent to grant the requested relief, and the party may then move this Court for remand of the matter to the district court for entry of an order granting the requested relief.[13]

We believe that Toni's request for enforcement of the Court's underlying orders does not constitute a request to alter, vacate, or otherwise modify or change the orders challenged on appeal – quite the opposite, actually. Frankly, we believe these proceedings to be unnecessary, since the fees in question relate solely to post-notice-of-appeal enforcement, and an order awarding them would be independently appealable, and so are definitionally collateral.[14]

However, we acknowledge the district's court's desire to proceed cautiously, and in light of the order entered by the district court, ask this Court to formally remand the portion of the case necessary to permit the district court to enter an order for fees incurred since Eric's filing of his original *Notice of Appeal* relating to the enforcement hearings.

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[12] *Mack-Manley*, 112 Nev. at 855, 138 P.3d at 529-30.

[13] *Huneycutt*, 94 Nev. at 79-81, 575 P. 2d at 585-86.

[14] *Campos-Garcia v. Johnson*, 130 Nev. ___, 331 P.3d 890 (Adv. Opn. No. 64, Aug 7, 2014).

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III. CONCLUSION

The fees being requested relate to post-notice-of-appeal enforcement of the district court's orders; we respectfully request this Court enter an *Order of Limited Remand* affording the district court the authority to render an attorney's fee award for those proceedings.

DATED this 11th day of January, 2016.

Respectfully Submitted By:

WILLICK LAW GROUP

MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 002515
TREVOR M. CREEL, ESQ.
3591 East Bonanza Road, Suite 200
Las Vegas, Nevada 89110-2101
(702) 438-4100
Email@willicklawgroup.com
Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the WILLICK LAW GROUP and on this date 11 day of January, 2016, Respondent's *Motion for Order of Limited Remand to the District Court* was filed electronically with the Clerk of the Nevada Supreme court, and therefore electronic service was made in accordance with the master service list as follows:

Marshal S. Willick, Esq.
WILLICK LAW GROUP
3591 East Bonanza Road, Suite 200
Las Vegas, Nevada 89110-2101
(702) 438-4100
email@willicklawgroup.com
Attorney for Respondent

Neil J. Beller, Esq.
NEIL J. BELLER, LTD.
7408 W. Sahara Ave.
Las Vegas, Nevada 89117
nbeller@njbltd.com
Attorney for Appellant

An Employee of the WILLICK LAW GROUP

P:\wp16\HOLYOAK,T\SCPLEADINGS\00112725.WPD\LF

EXHIBIT 11

IN THE SUPREME COURT OF THE STATE OF NEVADA

ERIC HOLYOAK,
Appellant,
vs.
TONI HOLYOAK,
Respondent.

No. 67490

FILED
FEB 23 2016
TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER DENYING MOTION

This is an appeal from a post-divorce decree order regarding distribution of retirement benefits. Respondent has filed a motion requesting this court remand this appeal to the district court for the limited purpose of allowing the district court to enter an order awarding attorney fees. No good cause appearing, the motion is denied. A remand is not necessary for such purpose. "Although, when an appeal is perfected, the district court is divested of jurisdiction to revisit issues that are pending before this court, the district court retains jurisdiction to enter orders on matters that are collateral to and independent from the appealed order, i.e., matters that in no way affect the appeal's merits." *Mack-Manley v. Manley*, 122 Nev. 849, 855, 138 P.3d 525, 529-30 (2006). The district court retains jurisdiction to resolve matters collateral to the final judgment. *See Lee v. GNLV Corp.*, 116 Nev. 424, 996 P.3d 416 (2000) (defining a final judgment as one that disposes of all issues presented in the case, and leaves nothing for the future consideration of the district court, except for post-judgment issues such as attorney fees and costs). Accordingly, the motion is denied.

It is so ORDERED.

_____, C.J.

cc: Hon. Vincent Ochoa, District Judge
Neil J. Beller, Ltd.
Willick Law Group
Eighth District Court Clerk

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CLERK OF THE COURT

MOT
WILLICK LAW GROUP
MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 002515
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(702) 438-4100
Email: email@willicklawgroup.com
Former Attorney for Plaintiff

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

TONI HOLYOAK,

Plaintiff,

vs.

ERIC HOLYOAK,

Defendant.

CASE NO: D-08-395501-Z
DEPT. NO: H

DATE OF HEARING: 5/2/16
TIME OF HEARING: 10:00 AM

ORAL ARGUMENT Yes X No ___

NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING DATE.

WILLICK LAW GROUP'S MOTION TO ADJUDICATE ATTORNEY'S RIGHTS, TO ENFORCE ATTORNEY'S LIEN, AND FOR AN AWARD OF ATTORNEY'S FEES

The WILLICK LAW GROUP has been substituted out as counsel for our former client. This *Motion* is brought to adjudicate our statutory right to enforce our lien, and an order for attorney's fees in accordance with our written contracts with our former client.

This *Motion* is made and based upon the papers and pleadings on file herein, and the Points and Authorities and Declaration of Marshal S. Willick, Esq., below.

NOTICE OF MOTION

TO: DAWN R. THRONE, ESQ, Current Attorney for Plaintiff, and

TO: TONI HOLYOAK, Plaintiff, and

TO: NEIL J. BELLER, ESQ., Attorney for Defendant, and

TO: ERIC HOLYOAK, Defendant.

YOU WILL EACH TAKE NOTICE that on the 2nd day of May, 2016, at the hour of 10:00 AM .m. in Department H of the above-entitled Court, the Movant, Marshal S. Willick, will move to adjudicate rights he has to be paid attorney's fees and to enforce his attorney's lien.

POINTS AND AUTHORITIES

I. FACTS

Plaintiff, Toni Holyoak, originally hired the WILLICK LAW GROUP on January 29, 2014, for the purpose of negotiating the option selection for a Nevada PERS Plan. This blossomed into representation in a highly contested case in the District Court and in the Nevada Supreme Court.[1] The fee agreements are attached as Exhibits "1" and "2." Since the time of hiring this office, considerable time and work has been expended by this law office on Toni's behalf. Toni's fees exceeded the initial retainer as evidenced by her Statement of Account attached hereto as Exhibit "3." Toni failed to maintain the $2,500 minimum trust requirement as specified in her fee agreement executed on January 29, 2014 (page 1, paragraph 1).

[1] A separate retainer agreement was executed for the Appeal.

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II. ATTORNEY'S LIEN

A. There Is an Unambiguous Statutory Right to an Attorney's Lien

NRS 18.015 Lien for attorney's fees: Amount; perfection; enforcement.

1. An attorney at law shall have a lien upon any claim, demand or cause of action, including any claim for unliquidated damages, which has been placed in his hands by a client for suit or collection, or upon which a suit or other action has been instituted. The lien is for the amount of any fee which has been agreed upon by the attorney and client. In the absence of an agreement, the lien is for a reasonable fee for the services which the attorney has rendered for the client on account of the suit, claim, demand or action.

2. An attorney perfects his lien by serving notice in writing, in person or by certified mail, return receipt requested, upon his client and upon the party against whom his client has a cause of action, claiming the lien and stating the interest which he has in any cause of action.

3. The 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, from the time of service of the notices required by this section.

4. On motion filed by an attorney having a lien under this section, his client or any party who has been served with notice of the lien, the court shall, after 5 days' notice to all interested parties, adjudicate the rights of the attorney, client or other parties and enforce the lien.

5. Collection of attorney's fees by a lien under this section may be utilized with, after or independently of any other method of collection.

The Nevada Supreme Court has recognized that "[t]he attorney's right to be paid is not based upon, or limited to, his lien"; instead it is based upon an express or implied contract, and "[t]he lien is but security for [the attorney's] right."[2] The

[2] *Sarman v. Goldwater, Taber and Hill*, 80 Nev. 536, 540, 396 P.2d 847, 849 (1964); *see Gordon v. Stewart*, 74 Nev. 115, 324 P.2d 234, 235 (1958).

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purpose of NRS 18.015 is to secure attorney's fees and to "encourag[e] attorneys to take cases of those who could not otherwise afford to litigate."[3]

NRS 18.015 unambiguously dictates that an "attorney at law" *has* a lien on his client's cause of action. It is not a matter of debate, dispute, or award. And an attorney may include costs in his lien to the extent such costs were incurred in furtherance of the client's litigation.[4] Further, an attorney's charging or retaining lien may be reduced to personal judgment against a client by the Court hearing the underlying action as a matter of judicial economy,[5] so long as the necessary conditions are satisfied.[6]

Movant filed our Lien for Attorney's Fees on March 17, 2016.[7] Movant now requests that there be an adjudication regarding our rights and an enforcement of our Lien. The current unpaid fees and costs of Toni's case is $88,403.95 plus interest from March 17, 2016. Movant 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.

III. REQUESTED FINDINGS OF REASONABLENESS

In *Argentena,* the Nevada Supreme Court found that in an adjudication such as the one requested here, the district court is required to make findings to support the requested award of fees.

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[3] *Muije v. A North Las Vegas Cab Co.*, 106 Nev. 664, 667, 799 P.2d 559, 561 (1990); *Bero-Wachs v. Law Offices of Logar & Pulver*, 123 Nev. 71, 157 P.2d 704 (2007).

[4] *See Edwards v. Andrews, Davis, Legg, Bixler, etc.*, 650 P.2d 857, 863 (Okla. 1982); *Eleazer v. Hardaway Concrete Co., Inc.*, 315 S.E.2d 174, 177-78 (S.C. Ct. App. 1984).

[5] *Gordon v. Stewart*, 74 Nev. 115, 324 P.2d 234, 235 (1958).

[6] *Argentena Consolidated Mining Co. v. Jolley Urga Wirth Woodbury & Standish*, 125 Nev. 527, 216 P.3d 779, (2009), modified by statutory amendment to NRS 18.015.

[7] *See* Exhibit 4, Lien, which has been attached here without its exhibits (Toni's Fee Agreement and billing statement) to avoid duplicating Exhibits 1, 2 and 3 already attached to this *Motion.*

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With specific reference to Family Law matters, the Court has adopted "well-known basic elements," which in addition to hourly time schedules kept by the attorney, are to be considered in determining the reasonable value of an attorney's services qualities, commonly referred to as the *Brunzell* factors:[8]

> 1. *The Qualities of the Advocate:* his ability, his training, education, experience, professional standing and skill.
>
> 2. *The Character of the Work to Be Done:* its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation.
>
> 3. *The Work Actually Performed by the Lawyer:* the skill, time and attention given to the work.
>
> 4. *The Result:* whether the attorney was successful and what benefits were derived.

Each of these factors should be given consideration, and no one element should predominate or be given undue weight.[9] Additional guidance is provided by reviewing the "attorney's fees" cases most often cited in Family Law.[10]

The *Brunzell* factors require counsel to rather immodestly make a representation as to the "qualities of the advocate," the character and difficulty of the work performed, and the work ***actually*** performed by the attorney.

First, respectfully, we suggest that the supervising counsel 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.[11]

As to the "character and quality of the work performed," we ask the Court to find our work in this matter to have been adequate, both factually and legally; we

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[8] *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

[9] *Miller v. Wilfong*, 121 Nev. 119, P.3d 727 (2005).

[10] Discretionary Awards: Awards of fees are neither automatic nor compulsory, but within the sound discretion of the Court, and evidence must support the request. *Fletcher v. Fletcher*, 89 Nev. 540, 516 P.2d 103 (1973); *Levy v. Levy*, 96 Nev. 902, 620 P.2d 860 (1980), *Hybarger v. Hybarger*, 103 Nev. 255, 737 P.2d 889 (1987).

[11] 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.

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have diligently reviewed the applicable law, explored the relevant facts, and believe that we have properly applied one to the other.

The fees charged by paralegal staff are reasonable, and compensable, as well. The tasks performed by staff in this case were precisely those that were "some of the work that the attorney would have to do anyway [performed] at substantially less cost per hour."[12] As the Nevada Supreme Court reasoned, "the use of paralegals and other nonattorney staff reduces litigation costs, so long as they are billed at a lower rate," so "'reasonable attorney's fees' . . . includes charges for persons such as paralegals and law clerks."

Finally, as to the result reached, we ask the Court to find that the result in this action through this date was appropriate, given the factual circumstances and applicable law, and the client derived the benefits reasonable available under the circumstances.

IV. ATTORNEY'S FEES FOR THIS PROCEEDING

The retainer agreements signed by our former client included an express provision governing rights and responsibilities in the event we were required to file and adjudicate a lien, as we have here:

> Client agrees to pay any fees and costs that are incurred by Attorney to collect fees, costs, or expenses from Client, including reasonable attorney's fees.

In accordance with this express contractual provision, we request a further award of fees, in a sum equal to the costs of preparing the lien, this request for adjudication, and our appearance at the hearing requested in this *Motion*, in a sum of not less than $500, which sum is to be updated at the hearing of this *Motion*. *See* NRS 125.150 (attorney's fees may be awarded in any pre- or post-divorce motion); EDCR 7.60 (fees are appropriate when the opponent's motion or opposition is

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[12] *LVMPD v. Yeghiazarian*, 129 Nev. ___, ___ P.3d ___ (Adv. Opn. No. 81, Nov. 7, 2013) citing to *Missouri v. Jenkins*, 491 U.S. 274 (1989).

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frivolous, unnecessary, or vexatious); *Gordon v. Stewart*, *supra* (trial court may make determination, rather than requiring the filing of a new action).

IV. CONCLUSION

Movant respectfully requests that this Court adjudicate our rights and enter its order enforcing the Lien.

DATED this 17th day of February, 2015.

WILLICK LAW GROUP

MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 002515
3591 E. Bonanza Road, Suite 200
Las Vegas, NV 89110
Former Attorney for Plaintiff

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DECLARATION OF MARSHAL S. WILLICK, ESQ.

1. I, Marshal S. Willick, Esq., am an attorney duly licensed to practice law in the State of Nevada and declare that I am competent to testify to the facts contained in the preceding filing.

2. I have read the Motion and the same is true of my own knowledge, except for those portions based on information and belief, and as to those portions I believe them to be true.

3. Plaintiff, Toni Holyoak, pursuant to the Agreements to Employ Attorney executed by her on January 29, 2014, and September 28, 2015, a copy of which are attached hereto as Exhibits "1" and "2," owes this firm $88,403.95 which balance includes interest through March 17, 2016.

4. A billing statement is submitted herewith as Exhibit "3" showing:

   a. Work done, date and time spent on that work showing the total work done and amount due thereon;[13]

   b. Charges made and payments made on account by our former client and the amount due thereon.

5. I certify that the entries on the time slips were made by members of the staff of this law office each day as the course of the work was completed and each entry was believed true and correct when made.

6. The basis of charges known and agreed upon by our former client and this law firm is as follows: $500.00-$600.00 per hour for Marshal Willick's services; $350.00 - $500.00 per hour for the services of associates; and $110.00 to $275.00 per hour for paralegal/legal assistants and law clerks.

7. I further certify that the entries on the billing statements by all staff were supervised as to the accuracy of the entries made by the office bookkeeper and were

[13] The billing statement detail for Ms. Holyoak is many pages long and will be provided to the Court upon request. Attached is a summary showing total amount of work done, by which employees, and the cost of that work, a list of hard costs incurred, and the payments made to the account.

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made in the regular course of business and supervised in the regular course of business.

8. I further certify that mailings of the billings have been sent on a regular (twice-monthly) basis. Our records show no unresolved claims of any error or request for correction from our former client.

9. On March 17, 2016, I made and served on our former client by mail, as required by law, a copy of our Lien, a copy of which is attached as Exhibit "4".

10. We request compensation in the amount of $88,403.95 plus interest from March 17, 2016, until paid in full, and for formal entry of Judgment that can be duly recorded; the Court is asked in advance to set aside any bad faith transfers of the assets in question in this litigation that might be attempted in an effort to circumvent the security of our lien.

I declare under penalty of perjury under the laws of the State of Nevada (NRS 53.045 and 28 U.S.C. § 1746), that the foregoing is true and correct.

EXECUTED this 17th day of March, 2016.

MARSHAL S. WILLICK, ESQ.

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EXHIBIT 12

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CLERK OF THE COURT

MOT
WILLICK LAW GROUP
MARSHAL S. WILLICK, ESQ.
Nevada Bar No. 002515
3591 E. Bonanza Road, Suite 200
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(702) 438-4100
Email: email@willicklawgroup.com
Former Attorney for Plaintiff

DISTRICT COURT
FAMILY DIVISION
CLARK COUNTY, NEVADA

TONI HOLYOAK,

Plaintiff,

vs.

ERIC HOLYOAK,

Defendant.

CASE NO: D-08-395501-Z
DEPT. NO: H

DATE OF HEARING: 5/2/16
TIME OF HEARING: 10:00 AM

ORAL ARGUMENT Yes X No ____

NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING DATE.

WILLICK LAW GROUP'S MOTION TO ADJUDICATE ATTORNEY'S RIGHTS, TO ENFORCE ATTORNEY'S LIEN, AND FOR AN AWARD OF ATTORNEY'S FEES

The WILLICK LAW GROUP has been substituted out as counsel for our former client. This *Motion* is brought to adjudicate our statutory right to enforce our lien, and an order for attorney's fees in accordance with our written contracts with our former client.

This *Motion* is made and based upon the papers and pleadings on file herein, and the Points and Authorities and Declaration of Marshal S. Willick, Esq., below.

NOTICE OF MOTION

TO: DAWN R. THRONE, ESQ, Current Attorney for Plaintiff, and

TO: TONI HOLYOAK, Plaintiff, and

TO: NEIL J. BELLER, ESQ., Attorney for Defendant, and

TO: ERIC HOLYOAK, Defendant.

YOU WILL EACH TAKE NOTICE that on the 2nd day of May, 2016, at the hour of 10:00 AM .m. in Department H of the above-entitled Court, the Movant, Marshal S. Willick, will move to adjudicate rights he has to be paid attorney's fees and to enforce his attorney's lien.

POINTS AND AUTHORITIES

I. FACTS

Plaintiff, Toni Holyoak, originally hired the WILLICK LAW GROUP on January 29, 2014, for the purpose of negotiating the option selection for a Nevada PERS Plan. This blossomed into representation in a highly contested case in the District Court and in the Nevada Supreme Court.[1] The fee agreements are attached as Exhibits "1" and "2." Since the time of hiring this office, considerable time and work has been expended by this law office on Toni's behalf. Toni's fees exceeded the initial retainer as evidenced by her Statement of Account attached hereto as Exhibit "3." Toni failed to maintain the $2,500 minimum trust requirement as specified in her fee agreement executed on January 29, 2014 (page 1, paragraph 1).

[1] A separate retainer agreement was executed for the Appeal.

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II. ATTORNEY'S LIEN

A. There Is an Unambiguous Statutory Right to an Attorney's Lien

NRS 18.015 Lien for attorney's fees: Amount; perfection; enforcement.

1. An attorney at law shall have a lien upon any claim, demand or cause of action, including any claim for unliquidated damages, which has been placed in his hands by a client for suit or collection, or upon which a suit or other action has been instituted. The lien is for the amount of any fee which has been agreed upon by the attorney and client. In the absence of an agreement, the lien is for a reasonable fee for the services which the attorney has rendered for the client on account of the suit, claim, demand or action.

2. An attorney perfects his lien by serving notice in writing, in person or by certified mail, return receipt requested, upon his client and upon the party against whom his client has a cause of action, claiming the lien and stating the interest which he has in any cause of action.

3. The 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, from the time of service of the notices required by this section.

4. On motion filed by an attorney having a lien under this section, his client or any party who has been served with notice of the lien, the court shall, after 5 days' notice to all interested parties, adjudicate the rights of the attorney, client or other parties and enforce the lien.

5. Collection of attorney's fees by a lien under this section may be utilized with, after or independently of any other method of collection.

The Nevada Supreme Court has recognized that "[t]he attorney's right to be paid is not based upon, or limited to, his lien"; instead it is based upon an express or implied contract, and "[t]he lien is but security for [the attorney's] right."[2] The

[2] *Sarman v. Goldwater, Taber and Hill,* 80 Nev. 536, 540, 396 P.2d 847, 849 (1964); *see Gordon v. Stewart,* 74 Nev. 115, 324 P.2d 234, 235 (1958).

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purpose of NRS 18.015 is to secure attorney's fees and to "encourag[e] attorneys to take cases of those who could not otherwise afford to litigate."[3]

NRS 18.015 unambiguously dictates that an "attorney at law" ***has*** a lien on his client's cause of action. It is not a matter of debate, dispute, or award. And an attorney may include costs in his lien to the extent such costs were incurred in furtherance of the client's litigation.[4] Further, an attorney's charging or retaining lien may be reduced to personal judgment against a client by the Court hearing the underlying action as a matter of judicial economy,[5] so long as the necessary conditions are satisfied.[6]

Movant filed our Lien for Attorney's Fees on March 17, 2016.[7] Movant now requests that there be an adjudication regarding our rights and an enforcement of our Lien. The current unpaid fees and costs of Toni's case is $88,403.95 plus interest from March 17, 2016. Movant 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.

III. REQUESTED FINDINGS OF REASONABLENESS

In *Argentena*, the Nevada Supreme Court found that in an adjudication such as the one requested here, the district court is required to make findings to support the requested award of fees.

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[3] *Muije v. A North Las Vegas Cab Co.*, 106 Nev. 664, 667, 799 P.2d 559, 561 (1990); *Bero-Wachs v. Law Offices of Logar & Pulver*, 123 Nev. 71, 157 P.2d 704 (2007).

[4] *See Edwards v. Andrews, Davis, Legg, Bixler, etc.*, 650 P.2d 857, 863 (Okla. 1982); *Eleazer v. Hardaway Concrete Co., Inc.*, 315 S.E.2d 174, 177-78 (S.C. Ct. App. 1984).

[5] *Gordon v. Stewart*, 74 Nev. 115, 324 P.2d 234, 235 (1958).

[6] *Argentena Consolidated Mining Co. v. Jolley Urga Wirth Woodbury & Standish*, 125 Nev. 527, 216 P.3d 779, (2009), modified by statutory amendment to NRS 18.015.

[7] *See* Exhibit 4, Lien, which has been attached here without its exhibits (Toni's Fee Agreement and billing statement) to avoid duplicating Exhibits 1, 2 and 3 already attached to this *Motion*.

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With specific reference to Family Law matters, the Court has adopted "well-known basic elements," which in addition to hourly time schedules kept by the attorney, are to be considered in determining the reasonable value of an attorney's services qualities, commonly referred to as the *Brunzell* factors:[8]

> 1. *The Qualities of the Advocate:* his ability, his training, education, experience, professional standing and skill.
>
> 2. *The Character of the Work to Be Done:* its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation.
>
> 3. *The Work Actually Performed by the Lawyer:* the skill, time and attention given to the work.
>
> 4. *The Result:* whether the attorney was successful and what benefits were derived.

Each of these factors should be given consideration, and no one element should predominate or be given undue weight.[9] Additional guidance is provided by reviewing the "attorney's fees" cases most often cited in Family Law.[10]

The *Brunzell* factors require counsel to rather immodestly make a representation as to the "qualities of the advocate," the character and difficulty of the work performed, and the work ***actually*** performed by the attorney.

First, respectfully, we suggest that the supervising counsel 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.[11]

As to the "character and quality of the work performed," we ask the Court to find our work in this matter to have been adequate, both factually and legally; we

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[8] *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

[9] *Miller v. Wilfong*, 121 Nev. 119, P.3d 727 (2005).

[10] Discretionary Awards: Awards of fees are neither automatic nor compulsory, but within the sound discretion of the Court, and evidence must support the request. *Fletcher v. Fletcher*, 89 Nev. 540, 516 P.2d 103 (1973); *Levy v. Levy*, 96 Nev. 902, 620 P.2d 860 (1980), *Hybarger v. Hybarger*, 103 Nev. 255, 737 P.2d 889 (1987).

[11] 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.

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