

1 Petitions for *en banc* rehearing are warranted when reconsideration by the
2 full court is necessary to secure or maintain uniformity of decisions by the
3 appellate courts or when then proceeding involves a substantial precedential,
4 constitutional, or public policy issue . *See* NRAP 40A(a).

5 With all due respect to the Court, *en banc* reconsideration is warranted
6 under both uniformity of decisions and substantial precedential / public policy
7 issues. The decision in the matter was published, which makes it Nevada law,
8 not merely the law of this case. By that very nature, the *en banc* rehearing
9 involves substantial precedential / public policy issues. The decision in this case
10 creates conflicts in several legal areas, such as *sub silentio* overruling of cases
11 and unclear limitations periods.

12 **Timeliness**

13 This Petition for En Banc Rehearing is timely. Petitions for *en banc*
14 rehearing must be filed within fourteen (14) days of the decision denying
15 rehearing being entered. *See* NRAP 40A(b). The Order Denying Rehearing was
16 entered on January 13, 2021. Fourteen days from that date is January 27, 2021,
17 which is today. As such, the Petition is timely.

18 **Argument**

19 With all due respect to the Court, the Court misapprehended several key
20 matters in this appeal—matters upon which the Court based its ruling. The Court

1 ignored clear Nevada law on the reasonable time period to file a motion claiming
2 an order is void and as to many purported facts and a procedural history that never
3 existed. Further, the Court determined that the underlying action is not bound by
4 the six-month limitations for fraud in NRCP 60(b). While this is true, the Court
5 ignored the statute of limitations on a fraud matter.

6 With these misapprehensions, there are major public policy concerns,
7 uniformity of decisions concerns, and a substantial issue of precedential value.

8 Jaswinder understands that the decision in this case was published. Aside
9 from the flawed legal arguments, the Court got the facts patently wrong—facts
10 upon which the Court based its decision.

11 **Void Limitations Period**

12 There were two issues argued as to the set aside request—void and fraud.
13 (1 AA 41-50).¹ Under Rule 60(b)(4), a claim that a decree is void is not subject
14 to the six-month limitations period, but is rather subject to a reasonable time
15 standard.² *See* NRCP 60(c)(1). Nevada case law provides that, when seeking to
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17 ¹ Rajwant argued on appeal for the first time that the new NRCP 60(b)(6)
18 applied. This was not discussed by the Court in its decision.

19 ² The Court incorrectly stated that Jaswinder seemingly ignored Rajwant’s
20 60(b)(4) argument—as to the decree being void. (*See* Order at 5). Jaswinder
specifically and artfully argued this in his Answering / Cross-Opening Brief at

1 have a judgment / decree / order declared void, two years from the knowledge of
2 the order is too long to wait and is per se unreasonable. *See Deal v. Baines*, 110
3 Nev. 509, 512-13, 874 P.2d 775, 777-78 (1994).

4 Rajwant testified in her deposition that she knew she was divorced from
5 Jaswinder when she married another man (which was very close in time to the
6 divorce at issue). (Reply Appendix at 19-22). So, that is when the clock began
7 to run for Rajwant—she knew when she signed the divorce papers that she was
8 divorced.

9 The Court determined that the district court did not abuse its discretion in
10 permitting Rajwant to file a set aside motion 14.5 years later as that was a
11 reasonable time to file to set aside the decree. (*See Order at 5*). With all due
12 respect to the Court, this ruling contradicts clear Nevada law—*Deal v. Baines*.

13 As such, the Court must do one of two things—reverse its ruling and
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15 7:12 – 8:5). In fact, the timeliness issue as to the void issue was the main reason
16 Jaswinder file his cross-appeal in the first place. The Court also incorrectly stated
17 that Jaswinder failed to cogently argue on appeal that the fraud was not the kind
18 of fraud contemplated in NRCP 60(b)(3). This is also patently false. (See
19 Answering Brief / Cross-Opening Brief at 7-9). Moreover, Rajwant failed to
20 raise her arguments as to fraud in the district court. (*See generally all Appendices*). As such, her arguments as to this should not be heard. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 623 P.2d 981 (1981).

1 determine that 14.5 years after knowledge of an order is too long to file to request
2 a set aside or it must explicitly overrule *Deal v. Baines*. As the present published
3 decision stands, there is a contradiction in Nevada law.

4 The Court erred in stating that the district court found that Rajwant filed
5 her motion in a reasonable time. (*See* Order at 5). The district court never made
6 such a ruling. (1 AA 143-45). The district court did make a ruling as to the fraud
7 time period, which it said did not begin to run as Nevada was the injured party
8 and no notice was given to Nevada. (1 AA 144:8-12).

9 The Court also erred in determining that Rajwant moved to set aside the
10 decree two months after she discovered Jaswinder married another person. (*See*
11 Order at 5). Jaswinder never married someone else—it was never even alleged
12 that he did. (*See generally* AA, Respondent’s Appendix, and Reply Appendix).
13 In fact, Rajwant confirmed in her deposition that Jaswinder never remarried.
14 (Reply Appendix at 21:13-15). So, Rajwant could not have filed to set aside the
15 decree two months after she discovered Jaswinder remarried because Jaswinder
16 never remarried—never mind that the district court never made any
17 determination whatsoever as to the timeliness of Rajwant’s motion to set aside.

18 The issue of a paper divorce is also extremely problematic and horrible
19 public policy. The Court determined that Rajwant believed she had a paper
20 divorce. (Order at 5). As stated, the district court never made findings or

1 determinations as to this. In fact, the district court made specific findings that
2 Rajwant knew she was divorced and that she knew what the divorce papers said.
3 (Respondent's Appendix at 11). As such, the Court's determinations directly
4 contradict the district court's explicit findings.

5 As to the paper divorce issue being bad policy, keeping this standard
6 contradicts long-standing law that everyone is presumed to know the law and that
7 this presumption is not rebuttable. *See e.g. Smith v. State*, 38 Nev. 477, 151 P.
8 512, 512 (1915). To state that a party not believing in the legal effect of papers
9 they sign is cause to effectively nullify the papers is excruciatingly poor public
10 policy that will open the floodgates. Parties will flood the courts with motion to
11 set aside decrees and to nullify contracts stating they did not believe they were
12 really in effect. This should not be Nevada's public policy.

13 Rajwant knew she was divorced at the time the divorce documents were
14 signed. She said so herself as she married another man shortly thereafter. (Reply
15 Appendix at 19-22). The district court made express findings that Rajwant did
16 know and understand that she was divorced at the time the papers were signed.
17 (Reply Appendix at 11).

18 The entire underlying factual and procedural bases for the Court's
19 determination that the timeliness issue as to the void issue is misplaced. As such,
20 the Court should rehear the matter and determine that Rajwant waiting 14.5 years

1 to request a set aside was unreasonable and that the same is time barred. With
2 that, the Court should reverse the Order and affirm the district court's ultimate
3 decision, albeit for the timeliness issue and not on the merits.

4 **Fraud Limitations Period**

5 Under Rule 60(b), fraud has a six-month limitations period. *See* NRC
6 60(b)(c)(1). Fraud upon the Court is not subject to the six-month limitation
7 period in NRC 60(b). *See NC-DSH, Inc. v. Garner*, 125 Nev. 647, 659, 218
8 P.3d 853, 861-62 (2009). Any action upon a judgment or decree of a Nevada
9 court must be commenced within 6 years. *See* NRS 11.190(1)(a). This is the
10 longest limitations period in Nevada for a civil action. Fraud is subject to a three-
11 year limitations period, but this is from discovery of the fraud. *See* NRS
12 11.190(3)(d). Filing a motion to set aside and filing an independent action for
13 fraud are now considered the same thing. *See NC-DSH, Inc.*, 125 Nev. at 652-
14 53, 218 P.3d at 857-58. In a divorce setting, filing to set aside a decree of divorce
15 due to fraud upon the court is subject not to the six-month limitation in Rule
16 60(b), but rather the statute of limitations. *See Manville v. Manville*, 79 Nev. 487,
17 490, 387 P.2d 661, 662 (1963), *superseded by Rule on other grounds as stated in*

1 *NC-DSH, Inc. v. Garner*, 125 Nev. 647, 218 P.3d 853 (2009).³ **The *Manville***
2 **case is directly on point and supports Jaswinder’s argument.** This is where
3 conflicts in Nevada law will arise if the matter is not reheard *en banc* to correct
4 this conflict created by the published decision in this case which dances around
5 the limitations issue.

6 At the longest, the statute of limitations is 6 years. *See* NRS 11.190(1)(a).
7 Rajwant filed her request to set aside 14.5 years after she knew she was divorced.
8 (*Compare* 1 AA 8 with 1 AA 41). As stated herein (confirmed by both Rajwant
9 and the district court), Rajwant knew she was divorced at the time she signed the
10 divorce papers and she understood what they meant.

11 As such, the limitations period for fraud had long expired before Rajwant
12 filed her motion to set aside. As such, her action should be deemed untimely and
13 barred.

14 The fraud limitations period argument is an academic discussion as the
15 Court specifically upheld *Vaile*. (*See* Order at 9 n. 3). *Vaile* specifically provides
16 that the basis to set aside a decree is void where no party lived in Nevada but all
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19 ³ *NC-DSH, Inc. v. Garner* specifically confirms this holding in *Manville* as
20 the Court specifically cited to *Manville* with a parenthetical citation to this exact
holding. *See* 125 Nev. at 659, 218 P.3d at 861.

1 parties said at the time that someone did. *See Vaile v. Eighth Judicial District*
2 *Court*, 118 Nev. 262, 44 P.3d 506 (2002).

3 Still, under the longest limitations period possible, Rajwant missed her
4 deadline by 8.5 years. As such, the Court should deem Rajwant's motion
5 untimely. With that, the Court should reverse the Order and affirm the district
6 court's ultimate decision, albeit for the timeliness issue and not on the merits.

7 CONCLUSION

8 The Court should rehear this matter *en banc* and reverse the Order. The
9 underlying facts and procedural history upon which the Court relied are
10 misplaced. Jaswinder never remarried. The district court found and Rajwant
11 herself confirmed that she knew and understood she was divorced at the time the
12 divorce papers were filed. As such, she could not have only waited two months
13 from knowledge of the divorce to file the motion to set aside—she waited 14.5
14 years to do so.

15 The limitations period to file to set aside an order for being void is two
16 years from the knowledge of the order. As Rajwant knew at the time (2004) that
17 she was divorced, 2006 was the latest she could file—not 2019. Even with the
18 longest limitations period under Nevada law (6 years), Rajwant still filed her
19 motion 8.5 years late. The conflicting law as to the limitations period for fraud
20 and the *sub silentio* overruling of *Deal v. Banes* needs to be remedied.

1 The policy the Court set in this matter of being able to claim lack of
2 knowledge of the papers a litigant signs and being able to void out the same is
3 extremely poor public policy.

4 With all due respect to the Court, the reliance on “facts” and procedural
5 history upon which the Court relief in its determinations as stated herein were
6 severely misplaced. So many “facts” simply do not exist—and the Court based
7 its decisions on these “facts”. The same goes for the procedural history as to
8 what the district court determined—the Court’s determinations contradict what
9 the district court expressly found.

10 As such, the Court should reverse its Order and should determine that
11 Rajwant’s motion to set aside was untimely. In that, the Court should affirm the
12 ultimate decision by the district court, albeit for different reasons.

13 Dated this 27th day of January, 2021

14 /s/ *F. Peter James*

15

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1 **VERIFICATION**

2 1. I hereby certify that this Petition complies with the formatting
3 requirements of NRAP 32(a)(4) / NRAP 40A(d), the typeface
4 requirements of NRAP 32(a)(5), and the type style requirements of NRAP
5 32(a)(6) because:

6 [X] This Petition has been prepared in a proportionally spaced typeface
7 using Times New Roman in 14 point.

8 2. I further certify that this Petition complies with the page- or type-volume
9 limitations of NRAP 40A(d) because it is either:

10 [X] Proportionately spaced, has a typeface of 14 points or more, and
11 contains 2,298 words (4,667 is the maximum); or

12 [X] Does not exceed 10 pages (as to substantive matters).

13 Dated this 27th day of January, 2021

14 /s/ *F. Peter James*

15

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1 **CERTIFICATE OF SERVICE**

2 The following are listed on the Master Service List and are served via the
3 Court's electronic filing and service system (eFlex):

4 Racheal H. Mastel, Esq.
5 Co-Counsel for Appellant

6 I certify that on this 27th day of January, 2021, I caused the above and
7 foregoing document to be served by placing same to be deposited for mailing in
8 the United States Mail, in a sealed envelope upon which first class postage was
9 prepaid in Las Vegas, Nevada to the attorney(s) / party(ies) listed below at the
10 address(es) indicated below:

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14 By: */s/ F. Peter James*

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16 An employee of the Law Offices of F. Peter James, Esq., PLLC
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