Administrative Hearing Guidelines. In order to secure your request for this Administrative Hearing [after five years this request is made?], please return the executed Administrative Hearing Guidelines to DFSappeals@ClarkCountyNV.Gov on or before June 23, 2020. *Failure to do so* ***will be construed as forfeiture of your request for Administrative Hearing. As such, your name may be entered into the Central Registry without further notice.***" Emphasis added.

Suspicious of DFS's motives in demanding he sign something he'd never been asked to sign before, and noticing there was no signature line for the DA's Office, that same day, Saturday 6/20/20, Plaintiff emailed the Central Registry Office in Carson City to see if the DFS had already reported him as a child abuser. Eggleston Affidavit attached to AOB. Four days later, Bruce Cole, of the Nevada Department of Health and Human Services, replied by email and attached letter.

"Dear Mr. Eggleston: Pursuant to your request, a background check has been processed in the State of Nevada's Central Registry for any history of child abuse or neglect regarding the above applicant(s). Our findings show: A substantiated finding of NEGLECT on 12/22/2014. For further information, please contact the Clark County, Nevada, Department of Family Services at 702-455-5444." (Interestingly, effort was made to ascertain Plaintiff's identity. He could have been anyone.)

Shocked, as the whole point of the Registry Hearing was to prevent pre-

hearing reportage from happening, Plaintiff sought clarification. "Thank you. Can you clarify? Does that mean the date of abuse was 12/22/14? Or the date of substantiation was 12/22/14? And on what date that information provided to the Registry?" *Ibid.* On 6/25/20, Mr. Cole replied: "The ***report and substantiation*** of NEGLECT was made on 12/22/2014. As it reads in the report, this was on-going situation." *Ibid.* Emphasis in original. Fast and loose, are the words that come to mind.

It took a minute for Plaintiff to comprehend the profound ramifications of this revelation. But as it sunk in, Plaintiff realized the following: (a) all along, the "Fair Hearing" had been a sham; (b) all along, Plaintiff had been on public record as a perpetrator of child abuse and neglect which itself was a fraud, (c) all along, since the substitution of Olson Cannon into the case, this administrative exhaustion defense had been fraudulent asserted, not only against him, but against the district court, this court, and his sons. The Kafkaesque nightmare would not end.

Plaintiff instantly supplemented his exhibits for the pending Registry Hearing, appending the shocking new information provided by Mr. Cole. *Ibid.* Then, at 8:38 p.m. the day before the hearing was set to start, Plaintiff received an email from DFS Appeals (again, with no name), with the bizarre Subject Line, in all caps: "NOTICE OF CANCELLATION OF HEARING DUE TO UNFORESEEN CIRCUMSTANCES BEYOND OUR CONTROL." No Explanation was given. And Kafka started laughing so hard he could be heard from his grave.

Accordingly, since no adequate remedy was available at the agency level, the long-established rule of *Patsy* clearly applies, such "that exhaustion of state administrative remedies should not be required as a prerequisite to bringing an action pursuant to 1983." Accordingly, the Angelo-JJ Order dismissing the entire action should be set aside.

4. Assuming, *arguendo*, there is a "Procedural Carve-out" for §1983 claims, Plaintiff's substantive due process claims survive any assertion of administrative exhaustion.

Even if this Court assumes, for argument's sake, that CAPTA contains a procedural carve-out exception, in the instant case more than procedural due process rights are at stake. The Ninth Circuit and the U.S. Supreme Court have both held on multiple occasions that substantive due process rights, such as the liberty interests invoked when the State attempts to take children away from their parents, are never subject to a carve-out exception. State administrative remedies are never adequate and do not present a jurisdictional bar to adjudicating these claims on the merits.

In a series of three decisions involving parental rights in relation to their children, the U.S. Supreme Court has found as follows:

a. Stanley v. Illinois, 405 US 645, 92 S. Ct. 1208, 31 L. Ed. 2d 551 (1972)

In *Stanley,* the Court recognized that a State has a legitimate interest in the welfare of a child and has the power to separate the child from the parents where parental neglect compromises that welfare; but, the Due Process Clause of the Fourteenth Amendment places strict limitations on the State's right to exercise that power. Put simply, the "means used to achieve" the State's "ends" must pass

constitutional scrutiny, regardless of whether the State's interests and intents were "legitimate". 405 US 645, 652-53.

In a case much like this one, the Court eloquently wrote about the prerogative of a father, who was not married to the mother of his children, to have custody of his children; and the restraint required of the State with regard to his constitutional interests.

"The private interest here, that of a man in the children he has sired and raised, undeniably warrants deference and, absent a powerful countervailing interest, protection. ***It is plain that the interest of a parent in the companionship, care, custody, and management of his or her children 'come(s) to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements.'***" *Id*, at 651, citing *Kovacs v. Cooper*, 336 US 77, 95, 69 S.Ct. 448, 458, 93 L.Ed. 513 (1949) (Frankfurter, J., concurring). Emphasis added.

Indeed, the Court found that a man's right to conceive and raise children is a right more fundamental than property rights, and this right is not extinguished simply because the mother and father are not married. *Id.* This is true not only for Mr. Stanley, but also for Mr. Eggleston. How can it not be?

Instead, finding Plaintiff to be the father, but unmarried to the mother who was suffering from depression and other problems, the County social worker –

Georgina Stuart - simply took it upon herself to decide that Plaintiff's sons would be better off with their Aunt who lived 1600 miles away and whom his sons barely knew – than with their loving and fit father. To justify this bias, we now also know that Stuart concocted lies and reported Mr. Eggleston to the state CAPTA Registry from the beginning, to begin the process of separating him from his sons, and destroying this family asunder. This CAPTA-CANS Child Abuse and Neglect report, of course, has been available to the Courts and family services offices in Illinois, which explains a lot.

Had Clark County afforded Plaintiff a due process hearing to consider the removal of his children (not the farcical "fair hearing" involved here), on the admissions of Stuart herself (made to Plaintiff's attorney, McFarling), Plaintiff's sons would have stayed with him. Without such a hearing, however, the County was emboldened to exercise its awesome power unilaterally and unconstitutionally, based on exaggerated and trumped up charges by a CPS agent concerned more about hiding her errors and protecting herself and her employer from civil rights liability (especially given her history of being sued before – see *Foley*, *supra*).

Looking at the language of *Stanley*, the core issues in this case can be seen by merely substituting the name Plaintiff Steve Eggleston for Peter Stanley, Sr. "What is the state interest in separating children from fathers without a hearing designed to determine whether the father is unfit in a particular disputed case? We observe that

the State registers no gain towards its declared goals when it separates children from the custody of fit parents. Indeed, if [Plaintiff Steve Eggleston] is a fit father [as Stuart admits and the family law judge adjudged], the State spites its own articulated goals when it needlessly separates him from his family. . . . *Id.* at 652-53.

Moreover, on a MTD, the averments in the complaint must be deemed true. Thus, "***nothing in this record*** *indicates that [Plaintiff Steve Eggleston] is or has been a neglectful father who has not cared for his children." Ibid.* Any CPS complaint asserted to create a Registry issue belies the fundamental issue: "Given the opportunity to make his case, [Eggleston] may have been seen to be deserving of custody of his offspring [as the family law judge adjuged]. Had this been so, the State's statutory policy would have been furthered by leaving custody in him [rather than an Aunt with a history of abandoning her mother her sister when she had Alzheimer's]. *Id.* at 653-54.

Indeed, this case is not about jurisdiction, and it is not about a failure to exhaust administrative remedies for CAPTA. The County Defendants have created a show of smoke and mirrors to deceive this Court into committing legal and moral error. The Angelo-JJ Order should thus be vigorously reveresed.

b. Washington v. Glucksberg, 521 U.S. 702, 117 S. Ct. 2258, 117 S. Ct. 2302 (1997)

Five years after *Stanley* was decided, the U.S. Supreme Court again had

occasion to address the balance of power rights between a State, parents, and their children. In *Washington*, the Court made clear that the liberty rights of the Fourteenth Amendment require substantive due process; these are not mere procedural rights; rather, substantive due process rights have been "long and specifically recognized" by the Court as "***the 'essential,' 'basic,' and 'precious' rights to conceive and raise children.***" Emphasis added. The fundamental rights recognized under substantive due process include: "'personal decisions related to marriage...family relationship, child rearing...which often involv[e] the most intimate and personal choices a person may make in a lifetime..." *Id*, at 721.

Under *Washington*, Plaintiff thus enjoyed a strong liberty interest in the right to raise his sons, rather than have them raised by an Aunt they barely knew.

c. Santosky v. Kramer, 455 US 745, 102 S. Ct. 1388, 71 L. Ed. 2d 599 (1982)

Then, five years after *Glucksberg*, the US Supreme Court granted certiorari to decide the case of *Santosky*. With regard to parents' fundamental right to custody of their children, the Court recognized that "it is long settled that custodial parents have a liberty interest in the 'companionship, care, custody, and management' of their children" and ***"this interest does not evaporate simply because they have not been model parents or have lost temporary custody of the child to the state."*** *Id*, at 753.

Indeed, even when the family is weakened by the mental health problems of

the mother, as was the case for the mother of Plaintiff's sons when the County intervened, the State must adhere to constitutional processes and cannot simply decide what is best for the children outside a prompt judicial hearing with fair process. Thus the Court forcefully wrote:

> Even when blood relationships are strained, ***parents retain a vital interest in preventing the irretrievable destruction of their family life***. If anything, persons faced with forced dissolution of their parental rights have a more critical need for procedural protections than do those resisting state intervention into ongoing family affairs. When the State moves to destroy weakened familial bonds, it must provide the parents with fundamentally fair procedures.

Id., 455 US at 752-53. Emphasis added.

Even a cursory examination of the *Santosky* decision is enough to require this Court to put an end to the charade by the County that has resulted in the "grievous loss" of Plaintiff's two young sons, who were ages two and four when they aducted (and that's the accurate word, *abucted*, isnt' it? – a Class D felony). *Id,* at 758. Now, ***over five years later***, he has lost those critical, fundamental years of loving, nurturing, and the opportunity to 'formatively' raise his sons in his image.

> In parental rights termination proceedings, the private interest affected is commanding; the risk of error from using a preponderance standard is substantial; ***and the countervailing governmental interest favoring that standard is comparatively slight.*** [P] When the State initiates a parental rights termination proceeding, it seeks not merely to infringe that fundamental liberty interest, but to

> end it. If the State prevails, it will have worked a unique kind of deprivation.... ***A parent's interest in the accuracy and justice of the decision to terminate his or her parental status is, therefore, a commanding one.***

Ibid. Emphasis added.

Moreover, because "[t]he companionship and nurturing interests of parent and child in maintaining a tight familial bond are reciprocal," there is also an injury to the child from hasty severance of parental rights. So much so, the Court saw "no reason to accord less constitutional value to the child-parent relationship than [it] accord[s] to the parent-child relationship," *Id*, 455 US at 753-54, 760 citing *Stanley, supra*. See, also, *Morrison v. Jones*, 607 F.2d 1269, 1275 (9th Cir. 1979). Indeed, the Ninth Circuit wrote that §1983 permits parents to challenge "a state's severance of a parent-child relationship with the parents". *Brittain v. Hansen*, 451 F.3rd 982, 992 (9th Cir. 2006) (same).

In the instant case, Plaintiff has clearly alleged a violation of his substantive due process rights in the fraud, ambush, and criminal abduction of his sons to another state with the complicity of the County Defendants. This is especially egregious given the fact that Plaintiff was at all time a fit parent and there was no emergency, as established in the District Court's Order adjudicating that ***"Steve Eggleston is fit and proper to be designated sole legal and physical custodian of the minor children...[his sons]."***

Since a reasonable jury could find these actions shock the conscience, the Angelo-JJ Order should be set aside.

5. Plaintiff's procedural due process claims exist separate and apart from the Registry-Fair Hearing process, involve questions of constitutionality not within the jurisdiction of any government agency, and therefore override any assertion of administrative exhaustion.

Administrative agencies have neither the power not the competence to pass upon the constitutionality of their own statutes, laws, or processes. Am. Jur. 2d sections 455, 456, *Constitutional Claims*. *See also PUC Cal v. US*, 355 US 534, 78 S. Ct. 44, 2 L. Ed. 2d 470 (1958); *US v. Radio Corp of America*, 358 US 334, 79 S. Ct. 457, 3 L.Ed. 2d 354 (1959).

Removal of children without a prior hearing is a violation of procedural due process. *Ram v. Rubin*, 118 F.3d 1306 (9th Cir. 1997), held: "the removal of children from their father's home without prior notice of hearing, where the children were not in imminent danger, would violate clearly established constitutional law..." *Id*, at 1311. *See Perkins v. City of West Covina*, 113 F.3d 1004, 1008 (9th Cir. 1997).

In his FAC, Plaintiff alleges the County Defendants defrauded him, ambushed him, and were complicit in the abduction of his children to another state – all in violation of his procedural due process rights. Indeed, NRS 432B.470 required a hearing within 72 hours of the CPS or police coercively placing his sons in the custody of a relative. Instead, the County Defendants were complicit in aiding the Callahan defendants in the criminal abduction of his sons to another state, and no such hearing was ever held or offered.

The Angelo-JJ Order states that the rule of "exhaustion recognized a state must have the opportunity to remedy the procedural failings of its subdivision and agencies in an appropriate forum before being subjected to a claim alleging such a violation. Thus, adequate state remedies were available, but [Plaintiff] failed to take advantage of them. [Plaintiff] cannot present a claim the State failed to provide him with due process," citing *Cotton v. Jackson*, *supra*.

In the instant case, the procedural failings of the County were (a) its failure to give custody of his sons to Plaintiff, who was ready, willing, able and fit, (b) coercive removal of his sons without filing a prior court action (since there was no emergency), (c) failure to provide Plaintiff a court hearing within 72 hours of the removal of his children (even if there was an emergency), (d) proactive complicity in aiding the Callahan defendants in the criminal abduction of his children to another state 1700 miles way, and (e) generally not providing a timely remedy to protect the custody of the children.

Accordingly, the Angelo-JJ Order should be set aside for these reasons alone.

D. The District Court erred in dismissing Plaintiff's state law torts claims, and the Callahan defendants, for failure to exhaust administrative remedies.

The Angelo-JJ Order took the generous liberty of dismissing all state law tort claims on the rationale that they "are predicated on the substantiated findings by the

Department of Family Services and, therefore, all also premature at this point until the administrative process has been completed..." Order, ¶10.

First, these "findings" are not even part of the record. They are not alleged in the FAC and they have not been put in evidence by the County Defendants. They are being offered purely as innuendo. And even if they were in the record, the Court would see that they bear no relevance to the coerced removal of Plaintiff's sons without due process on 1/6/15. (Absurdly, they pertain to an incident over a half year earlier when his youngest son fell into the pool without harm. No report of child abuse or neglect was made and he was fine.)

Secondly, none of these torts could properly be reached in the CAPTA Registry Hearing. That Hearing pertains exclusively to the charge which is not in the record and pertains in no way to Plaintiff's fitness. NRS 128.018. Indeed, the Court's decision *Turner v. Staggs*, 510 P. 2d 879 (1973) is instructive. There the Court reasoned such "arbitrary treatment clearly violates the equal protection guarantees of the United States Constitution...The statutory provisions of this state which provide that no person shall sue a governmental entity...for a demand arising out of a government tort unless he first presents a claim... ***are void and of no effect.***" (Emphasis added.)

Likewise, this Court in *Martinez v. Maruszczak*, 123 Nev. 433, 446, 168 P. 3d 720, 729 (2007) affirmed that Nevada has waived the traditional immunity from

liability for torts. None of the few enumerated exceptions embrace NRS 432B.317, the so-called "Fair Hearing" process for CAPTA Registry reporting, relied upon by the County Defendants.

The intentional tort claims alleged by Plaintiff are "unrelated to any plausible policy objective" that might invoke an exception. And certainly none have any application to the Callahan defendants. Therefore, once again the Angelo-JJ Order should be set aside.

E. If the Motion to Dismiss is treated as a Motion for Summary Judgement, there remains a material question of fact as to whether the CAPTA Registry Hearing was waived as an administrative prerequisite, or is subject to estoppel; alternatively, further discovery should be allowed.

1. Question of Fact

In Nevada, a CPS agent/LSW only has two choices when considering family intervention: (1) voluntary services to help the family or (2) court action. NRS 432B.360 urges voluntary services where the family is willing. It is undisputed here that Plaintiff and his family were willing to engage in voluntary services. Indeed, as alleged in the FAC, Stuart represented the family had been accepted into the Boys Town program beginning 1/6/15. FAC, ¶ 17-24.

The other choice is immediate court action. If CPS feels the children are at risk, it is obligated to petition the court for legal custody absent an emergency. NRS 432B.390. Even then, absent an emergency, children cannot be summarily removed from the family to the State or to a relative, at the whim of the CPS agent, as happened here. To the contrary, the public policy of Nevada strongly favors keeping

families together whenever possible, and the Court often supervises family services to keep families together.

If CPS or the police believe that an emergency warrants the children being taken immediately into custody, the children must be placed in an emergency shelter, a licensed foster home, or with relatives. NRS 432B.470. In that case, Nevada law requires a hearing to be held within 72 hours after a child has been taken into protective custody, excluding weekends and holidays. *Ibid.*

In the instant case, the coerced removal of Plaintiff's sons and placement with relatives required a hearing within 72 hours. None was provided, and the Registry Hearing could never be a substitute for or remedy that, as the boys had already been abducted with the County's active complicity and taken 1700 miles away to the Chicago area.

Furthermore, after Plaintiff appealed Stuart's sudden, self-proclaimed "Finding" of 2/2/15 (which cites no facts), it wasn't until 8/27/15, nearly seven months later, that a second "Finding of Substantiation" was issued. Plaintiff then requested an appeal for a second time, but Clark County didn't set a hearing date, instead abandoning the process.

On 11/10/16, having not heard from the County in well over a year, Plaintiff again attempted to resolve his claims against the County. MTR, Eggleston affidavit, email of 11/10/16, Ex. 4. Instead, as previously detailed, the County took the position

that it had not taken custody of the boys and that there was nothing it could do to return them or provide any other relief. Certainly this constituted an estoppel when combined with the prejudice caused by the delay. *Southern Nev. Mem. Hosp. v. State*, 101 Nev. 387, 391, 705 P.2nd 139, 142 (1985) (quoting *Cheqer, Inc. v. Painter & Decorators*, 98 Nev. 609 (1982)).

Plaintiff then filed the instant civil rights and tort action on 12/29/16. Three months later, in March 2017, more than nineteen months since Plaintiff appealed the self-serving "Substantiation Letter" and more than two years since the County's coerced removal of his sons, and totally out of the blue, Plaintiff received a letter from the County asking him to select between two hearing dates later in the year.

Here is his response:

> Thank you for...the... date options....[P] ...I select Tuesday, August 1, 2017. [P] Given the lateness of this date, as well as other matters, **I make this selection with full reservation of my rights, should a reservation be necessary, to object to the lateness of the hearing and raise any other objection allowed by law. As you may know, I have seen my sons once since they were taken in January 201[5].** I have not been allowed to see or talk to them for well over a year by the person who took them. Can you please tell me why, after all this time, this hearing is now being set?...**I have filed a civil rights complaint...Does this hearing have anything to do with that case?"**

MTR, Eggleston affidavit, email 3/20/17. Emphasis added.

If the Registry Hearing captioned a "Fair Hearing" had anything to do with Plaintiff's filed case, the County would reasonably have been expected to reply to the question, "*I have filed a civil rights complaint...Does this hearing have anything to do with that case?" Ibid.* In fact, no reply was forthcoming, and no claim made that the Registry Hearing needed to proceed first.

Many months later, a new hearing date of 09/11/18 was selected by the County. Plaintiff emailed Ms. Butts on 7/27/18, stating: "For clarification of the record, I do not seek a continuance of the appeal hearing, simply alternative dates...Also, according to the website, I'm urged to make enquires if I have any questions about the hearing. I have these questions, all of which pertain to whether or not I will receive a fair hearing in fact and law (not just name). A copy of this email is attached...". Having received no reply, Plaintiff followed up as follows:

> In addition to my previous questions, I also reference this comment in your letter to me: "You are required to attend the hearing. If you do not attend the hearing, you abandon your rights to an appeal, and *the action of the agency will be implemented*." ***Since the County contends it never took custody of the children, and two of the children were not mine (nor did I have custody of them), exactly what action of the agency will be implemented? I am baffled as to what this might be and concurrently most eager to know what it is, as it seems quite threatening though I have no idea what you are referring to.***

9/20/18 MTR, 16:16-20:2. Emphasis added.

Obviously the warning was intended to apply to a situation where the children were in the County's custody. So when no reply was forthcoming, Plaintiff followed up a second time, yet again:

> I am the Plaintiff in the matter below. On July 19, 2018, CCDFS Legal Unit Supervisor Ms. Devon Butts sent me the email below and a letter, both stating: 'Should you have any questions, please contact Appeals Unit' at this email address. The website also says to contact your office for guidance (not legal advice), thus I am doing so. I have the following questions and concerns and hope that you can provide me guidance as the online information is remarkably inadequate for anyone hoping to have a truly fair trial involving witnesses and children now in a different state.

Ibid.

Plaintiff listed the same questions previously posed and then sent further follow up letters addressing his growing concerns.

> Dear Ms. Butts, I have sent an email with questions to the email provided in your 7/19/18 letter (dfsappeals@clarkcountynv.gov), but have not received a response. That response impacts the dates that witnesses will be available for the 'Fair Hearing' should it go forward.
>
> Also, several very serious items present concern:
>
> 1. Hearing Officer: I have not been officially notified of the name of the Hearing Officer assigned to my case, but note both an actual and apparent conflict of interest in Christene Kelleher, should she be the designated officer. Her own website discloses the conflict: http://kelleherandkelleher.com/attorneys/christine-kelleher/. It is my position that this conflict will further deny my due process rights, in addition to the many prior and ongoing violations.[14]
>
> 2. Potential Collusion with defense counsel in civil rights case. On several occasions, the Fair Hearing Office has taken action in conjunction (and apparent coordination) with developments in my civil rights action against Clark County and Georgina Stuart. Further, it appears that my emails to the Fair Hearing office are being forwarded to the County's defense counsel, which deeply concerns me. And of course, the County has filed a Motion to Dismiss in conjunction with your office, using the affidavit of Ms. Hammack, who is identified on your letterhead as the Assistant Director DFS.
>
> Please disclose to me immediately any ex parte communications with the DA's office assigned to defend my civil rights case and the current private law firm, Olson Cannon Gormley Angulo & Stoberski and Felicia Galati, Esq., if any, regarding or reference my Fair Hearing. For my peace of mind, and the appearance of fairness and justice, can you also please affirm to me under oath that no such ex parte communications have ever been made regarding my matter?"

Ibid.

Plaintiff also sent this letter:

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[14] Note that Ms. Kelleher, in reply to Plaintiff's Motion to Disqualify, later recused herself as she had been sued in her capacity as an attorney for violating the constitutional rights of Mr. Foley. *Foley, supra.*

> "Dear Appeals Unit, I have not yet received a response to my earlier email. Please also note that I object to Christine Kelleher being assigned the Hearing Officer in my matter as she has both an actual and apparent conflict of interest. This is indicated on her own website: http://kelleherandkelleher.com/attorneys/christine-kelleher/. I look forward to your reply.

Ibid.

Clearly, Plaintiff raised a material question of fact as to whether the County Defendants abandoned, waived, and/or were estopped from asserting the Registry/Fair Hearing process as an administrative prerequisite to bringing the present action, thus requiring the Angelo-JJ Order be set aside.

2. Discovery

Even treated as a Motion for Summary Judgement, the County Defendants failed to carry their burden of proof with admissible, undisputed evidence, as required by *Celotex Corp. v. Catrett*, 477 US 317, 322 , 106 S. Ct. 2548, 91 L.Ed. 2d 265 (1986) and its progeny.

Preliminarily, Clark County has a history of accusations violating its child welfare system violates state and federal laws. *Henry v. Willden*, 678 F.3d 991 (9th Cir. 2012); *Miller v. Nevada Child and Family Services Department, Nevada Child Welfare Division, State of Nevada, et al.* (9th Cir. 2002). See, also, *Tamas v. Department of Social & Health Services*, 630 F. 3d 833 (9th Cir. 2010) [Washington]. This inferentially explains the why the hearing process is in shambles.

Specific to discovery in this case, the County Defendants claimed: "[Plaintiff] has failed to establish proper grounds for a continuance. Under NRCP 56(f), a party is required to submit affidavits opposing the Motion which clearly...indicates facts essential to justify the opposition..." Interesting, isn't it, that here the fox is guarding the henhouse: the attorney for the party who destroyed evidence is deciding if further discovery is warranted.

One must step back and ask the fundamental question of whether this ugly procession of frauds is even remotely fair play, invoking the broader due process questions addressed in seminal US Supreme Court decisions like *International Shoe v. Washington*, 326 US 310 , 66 S. Ct. 154, 90 L.Ed. 95 (1945).

Is this what American justice has become? Where a Rule 12(b)(5) Motion to Dismiss can be converted to a FRCP Rule 12(c) Motion with a Rule 56 component, in an Order written secretly by opposing counsel; and, in a proceeding where the District Court should have been bending over backward to allow discovery to a *pro se* Plaintiff, *after* the moving Defendants admittedly destroyed key evidence right before the 2nd MTD was brought?

Moreover, this Court needn't reach Rule 56(f) in a motion conversion scenario that's spinning like a roulette wheel. When a FRCP 12(c) Motion is converted to a FRCP Motion for Judgement for Summary Judgment, the opposing party must be given reasonable opportunity to respond when proper discovery has not been had. *Boyle v. Governor's Veteran's Outreach & Ass. Ctr.*, 925 Fed. 2d 71, 18. Fed. R. Serv. 3d 1099 (3d Cir. 1991).

Moreover, a fair opportunity to respond must be given, and the conversion by the court must be unambiguous. *Clay v. Department of Army*, 239 Fed. Appx. 705 (3d Cir. 2007). *Newman Oil Co. v. Atlantic Richfield Co.*, 597 F.2d 275, 27 Fed. R. Serv. 2d 1162 (Temp Emer. Ct. App. 1979). ***This is especially so where the non-moving party is not represented by counsel.*** *Somerville v. Hall*, 2 F.3d 1563, 26 Fed. R. Serv. 3d 1378 (11th Cir. 1993). *See, also, Advanced Cardiovascular Systems, Inc. v. Scimed Life Systems, Inc.*, 988 F.2d 1157 (Fed. Cir. 1993).

Based on the foregoing, the Angelo-JJ Order should be set aside, or at the least Plaintiff's Motion to Reconsider granted.

F. The 2nd Order of Dismissal should be set aside based on unfair notice, fraud, concealment, destruction of evidence, ethical violations, mistake and/or irregularity.

The law is clear that an order may be set aside based on "mistake, inadvertence, surprise, or excusable able neglect" (FRCP 60(1)), "newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial" (FRCP 60(2)), "fraud (whether previously intrinsic or extrinsic)" (FRCP 60 (3)), or "any other reason that justifies relief" (FRCP 60(6)).

Though Plaintiff did not figure this out right away, the entry of the Angelo-JJ Order was, to say the least, disturbing. As already detailed, an Order drafted by Angelo and Galati based on an *ex parte* communication with someone was submitted and initaled by JJ during the judge's absence on vacation, citing cases and addressing

positions never previously argued, and then dismissing the entire action though the Motion itself didn't seek that and the Callahans did not join in.

Plaintiff was so taken aback by his discovery that he shot off a series of emails to Galati demanding an explanation. Reply to MTR, Plf. Affidavit, Exs. 6-10. After ignoring his emails for days, she finally replied: "Mr. Eggleston...I did not attend the hearing. ***I understand from Mr. Angulo that he received a call from the court clerk telling him to prepare the order consistent with the argument he made before Judge Smith.*** We cannot speak for what the Judge, clerk, etc., did as to signatures, initials, etc." Plaintiff Reply Affidavit, Exh. 11. Emphasis added.

For a moment, Plaintiff could not believe his own eyes. ABA Rule 3.5 expressly forbid *ex parte* communications between court and counsel: "A lawyer shall not: *** (a) seek to influence a judge...or other official by means prohibited by law; (b) communicate *ex parte* with such a person during the proceeding unless authorized to do so by law or court order..." Yet, if you accepted Galati on her word, ***an ex parte communication between the court and Angleo had been concealed from Plaintiff and Galati (remember: Galati claimed not to know about it)***.

Which created a conundrum in Angelo directing her to prepare the Order (if this account was indeed true): Since she was not at the hearing, and there was yet not a Reporter's Transcript, she could not know what Angelo had argued. But apparently that didn't matter, for she obviously took her instructions as *carte blanche*

to draft any order she could come up with (including citing cases and positions not previously shared with Plaintiff or the Judge). Here's how we know something untoward transpired:

(1) Someone realized that Plaintiff was right. The 2nd MTD was clearly untimely. FRCP Rule 12(b)(5). So it had to be converted to another type of motion (summary judgement or motion on the pleadings).

(2) The Order included in Legal Conclusion #11 an item not mentioned in any pleading or at the hearing: "Not only is the litigation prematurely brought, *the Court believes* [now Angelo-Galati are reading the Judge's mind, unless he told them to do it] there is also a basis for administrative abstention under *Buford v. Sun Oil Company*, 319 US 315 (1943)."

Assuming they meant *Burford* (with an *r*), Judge Smith could not possibly have *believed* this because he was on vacation when JJ signed the Order (unless there was an ex parte communication, which is hard to believe ("Hi, Mr. Angelo, this is Judge Smith. I'm tanning on my cruise and wanted you to be sure to add good 'ol *Buford* to the ruling. Have a nice day"). And it is also hard to believe that the Court Clerk's *ex parte* to Angelo would have been: "Look, when you're preparing the Order, if you run across something else you like, even though it was never briefed or argued, just stick it in. He's a stupid *pro se* and won't know the difference anyway."[15]

[15] As a general proposition, *pro se* are supposed to be given more deference in proceedings out of ethical concerns of fairness and due process. It is not a license to steal. *Hale v. Board of Trustees of So. Ill Univ. School of Medicine*, 219 F.Supp. 3d 860 (C.D. Ill. 2016); *Amberg-Blyskal v. Transportation Sec. Admin.*, 832 F.Supp. 2d 445 (E.D. Pa 2011).

(3) The 2nd MTD was only brought on behalf of the County Defendants.[16] ***Not once anywhere at any time did anyone suggest the claims of the Callahan Defendants could be dismissed***...until, lo and behold, the Angelo-JJ Order, where it astonishingly concluded: "IT IS HEREBY ORDERED, ADJUDGED, AND DECREED, the Motion to Dismiss is granted..." and then the nail in the coffin (and *non-sequitur*, since no motion to dismiss was brought by the Callahans): "***The litigation is dismissed***..." (Emphasis added.) It is amazing that Plaintiff even caught this nuance in time to file an appeal, as it would be natural to assume that the Order would not grant relief beyond what the Motion requested.

Accordingly, when these grounds were raised in Plaintiff's Reply to his MTR, the Motion should have been granted and the Angelo-JJ Order set aside.

G. Alternatively, the Motion to Reconsider should have been granted based on new evidence, considerations of due process, and/or fundamental notions of fairness.

Nevada Rules of Practice, Rule 2.24, allow a party to seek a timely reconsideration of a motion where new and different law and facts are alleged. This is in addition to and supplements Motions based on NRCP Rule 60. Plaintiff filed such a Motion. Therefore, for the reasons and on the grounds set forth above, *clearly* new facts and law arose after the 2nd MTD was filed. On this basis, the Motion to Reconsider should have been granted.

[16] The County Defendants have made a practice of not serving the Callahans with any pleading in this case despite the Callahans being served with both complaints and summons. Plaintiff, on the other hand, often at great expense, has served the Callahans with every legal pleading and correspondence in the case, including all appeal documents.

H. The District Court erred in limiting the compensatory damages recoverable against Defendant Georgina Stuart to $100,000, and barring any claim for punitive damages.

Section 1983 civil rights claims are designed to compensate and deter constitutional violations by state and local government officials such as CPS agents. In *Burke v. Regalado*, 935 F.3d 960 (10th Cir. 2019), the appellate court thoroughly analyzed the arguments for and against large compensatory and punitive damages.

In a case brought by the estate of an arrestee injured and killed in jail, against two individual sheriffs, the appellate court affirmed a jury award of $10 million in compensatory damages against two individual sheriffs and $250,000 against one, in his individual supervisory capacity.

Burke is in line with the leading U.S. Supreme Court decision on the subject, *Smith v. Wade*, 461 U.S. 30, 103 S.Ct. 1625, 75 L.Ed.2d 632 (1983), which held punitive damages available against individual defendants in section 1983 actions. See also *Basista v. Weir*, 340 F.2d 74 (1965) (even if no actual damages shown).

Accordingly, the District Court erred in the 1st Order of Dismissal by capping damages at $100,000 and dismissing punitive damages against Stuart who, if Plaintiff's allegations are true, would certainly be subject to them.

IV.

Conclusion and Request for Rule 11 Sanctions.

If exhausting the Registry Hearing process was a valid defense to a civil rights action, the DA's Office, which regularly represents the County in civil rights matters, would have moved to dismiss the OC on that ground. Clearly, until recently,

everyone but Plaintiff was in on the scam: Plaintiff's name had already been reported to the Registry Office, making the "Fair Hearing" moot and useless and its assertion as an administrative remedy fraudulent. Thus, it was a double-whammy: Plaintiff's sons were taken without due process, and his name impugned to the Registry Office – both without due process.

The State of Nevada recognizes that termination of parental rights "is an exercise of awesome power." *Smith v. Smith*, 102 Nev. 263, 266 (1986) (over other gds), *In re Termination of Parental Rights as to NJ*, 116 Nev. 790 800, n. 4 (2000). Severance of the parent-child relationship "is tantamount to imposition of a civil death penalty." *Drury v. Lang*, *supra,* at 433. "Parental fault [must be] proven by clear and convincing evidence." *In re Parental Rights as to KOL*, 118 Nev. 737, 746 (Nev. 2003).

In the instant case, the County Defendants and their attorneys flaunted Plaintiff's fundamental constitutional rights at every turn, defrauding Plaintiff and the Court and turning justice on its ear. Not one on-point case has ever been submitted to support any position taken on anything pertaining to this case.

Therefore, Plaintiff submits that both Orders of Dismissal issued by the lower court should be set aside, and that Rule 11 sanctions be imposed as appropriate so that this kind of charade does not happen again.

Date: August 16, 2020

Respectfully Submitted,

Plaintiff, Steve Eggleston,
Pro Se

CERTIFICATE OF COMPLIANCE

Pursuant to NRAP 32(a), I certify (1) that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type-style requirements of NRAP 32(a)(6), because this brief has been prepared in a proportionally-spaced typeface using Microsoft Office 365 in size 14 Times New Roman font, and (2) 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 proportionately spaced, has a typeface of 14 points or more, and does not exceed 13,000 words (it is exactly 12,398 words) as computed by the Word Count function of the computer on which this AOB was typed (exclusive of the attached Affidavit of Steve Eggleston).

Date: August 16, 2020

Respectfully Submitted,

Plaintiff, Steve Eggleston,
Pro Se

Supporting Affidavit of Plaintiff/Appellant Steve Eggleston

Steve Eggleston, being first duly sworn, deposes and states:

1. I am the Plaintiff and appellant in this case and submit this affidavit in support of APPELLANT'S OPENING BRIEF.

2. Except where stated, the facts set forth are true to my own personal knowledge.

3. The information and evidence contained herein pertains directly to the issues involved on this appeal.

4. On Saturday, June 20, at 12:13 AM (BST), I received in my google email inbox from DFS Appeals. This is a verbatim restatement of that email. I have bolded the sentences beginning with the word Failure:

Notice of Administrative Hearing
DFS Appeals

Dear Mr. Eggleston:

Attached please find the Notice of Administrative Hearing scheduled for June 30th, 2020 and the Administrative Hearing Guidelines. In order to secure your request for this Administrative Hearing, please return the executed Administrative Hearing Guidelines to DFSappeals@ClarkCountyNV.Gov on or before June 23, 2020. **Failure to do so will be construed as forfeiture of your request for Administrative Hearing. As such, your name may be entered into the Central Registry without further notice.**

Thank you.

Legal Unit - Appeals
Department of Family Services
121 S. Martin Luther King Blvd.
Las Vegas, NV 89106
Office: (702) 455-8160

Fax: (702) 455-5665

5. Suspicious of DFS's motives in demanding that I sign something I had not been asked to sign before, and noticing there was no signature line for the DA's Office, that same day, Saturday 6/20/20, I emailed the Central Registry Office in Carson City to see if the DFS had already reported me as a Substantiated perpetrator or child abuse and neglect.

6. Four days later, Bruce Cole, of the Nevada Department of Health and Human Services, replied by email and attached letter. He letter stated verbum: "Dear Mr. Eggleston: Pursuant to your request, a background check has been processed in the State of Nevada's Central Registry for any history of child abuse or neglect regarding the above applicant(s). Our findings show: A substantiated finding of NEGLECT on 12/22/2014. For further information, please contact the Clark County, Nevada, Department of Family Services at 702-455-5444."

7. Shocked, as the whole point of the Registry Hearing was to prevent this from happening, I sought clarification. "Thank you. Can you clarify. Does that mean the date of abuse was 12/22/14? Or the date of substantiation was 12/22/14? And on what date that information provided to the Registry?"

8. On 6/25/20, Mr. Cole replied: "The ***report and substantiation*** of NEGLECT was made on 12/22/2014. As it reads in the report, this was on-going situation."

9. Once the shock had set in, I filed a supplemented pleadings with the DFS Appeals Office, appending the shocking information provided by Mr. Cole.

10. Then, at 8:38 p.m. BST the day before the hearing was set to start, I received an email from DFS Appeals with the bizarre Subject Line in all caps: "NOTICE OF CANCELLATION OF HEARING DUE TO UNFORESEEN CIRCUMSTANCES BEYOND OUR CONTROL." No Explanation was given.

FURTHER AFFIANT SAITH NAUGHT.

Date: August 16, 2020

Respectfully Submitted,

Plaintiff, Steve Eggleston,
Pro Se

CERTIFICATE OF SERVICE

I certify that on August 18, 2020, I served a copy of APPELLANT'S OPENING BRIEF upon all counsel of record and unrepresented parties, by mailing it by first class with sufficient postage prepaid to the following:

For Defendants/Respondents Georgina Stuart and Clark County, Nevada

FELECIA GALATI, ESQ.

Nevada State Bar No. 007341

OLSON CANNON GORMLEY & STOBERSKI

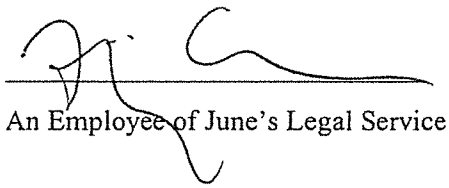
9950 West Cheyenne Avenue

Las Vegas, NV 89129

For unrepresented Defendants/Respondents Lisa Callahan and Brian Callahan

300 Ashley Dr.

New Lenox, IL 60451



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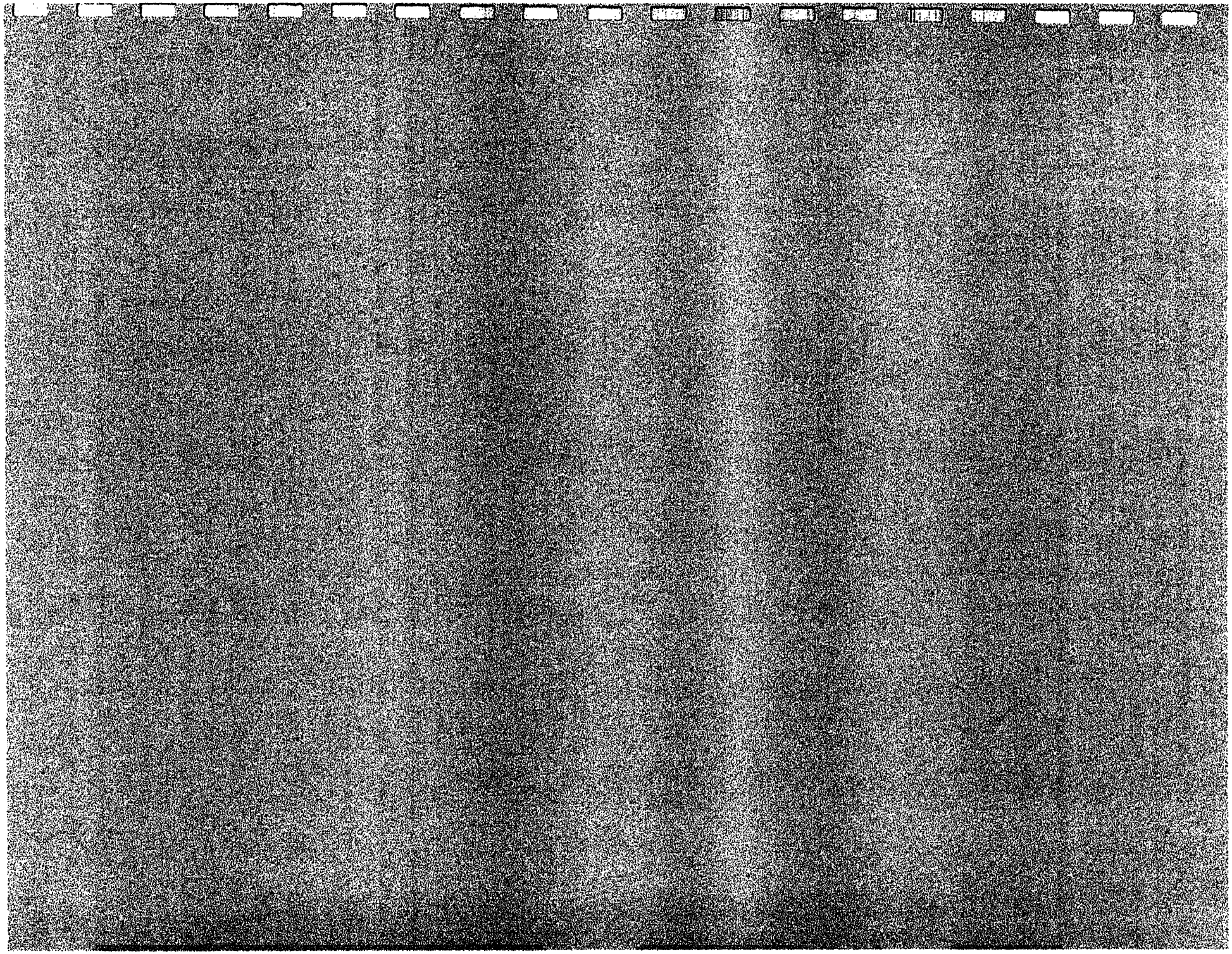

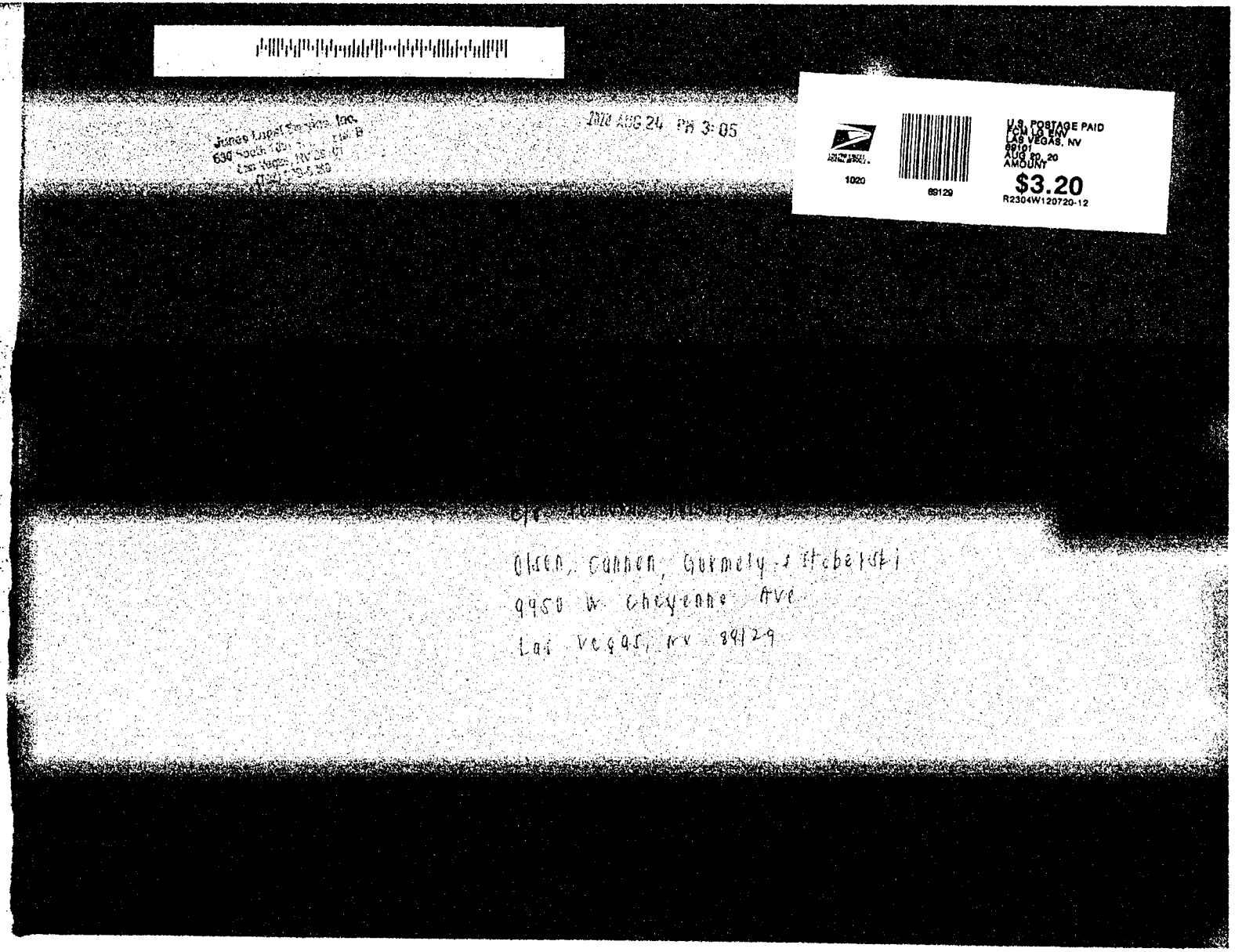
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89129
Olson, Cannon, Gormley & Stoberski
9950 W. Cheyenne Ave.
Las Vegas, NV 89129

EXHIBIT L

Felicia Galati

From: Felicia Galati
Sent: Monday, September 14, 2020 8:42 AM
To: eservice@mcfarlinglaw.com
Cc: Paterno C. Jurani
Subject: FW: Notification of Electronic Filing in EGGLESTON VS. STUART, No. 80838

Importance: High

Dear Ms. McFarling,

I represent Clark County in this matter. I understand you filed a notice of appearance for Mr. Eggleston. I'm not sure if you are aware of this, but you are a witness in the underlying matters and papers relevant to the appeal, including because Mr. Eggleston has referred to you in the First Amended Complaint, listed you as a witness in his disclosure and submitted an affidavit from you from a prior date. As such, you cannot act as counsel pursuant to Nevada Rule of Professional Conduct 3.7 Lawyer as Witness. Therefore, we are requesting that you withdraw from this appeal. If you will not do that, we will file a motion to disqualify. Please advise. Thank you.

Felicia Galati, Esq., Shareholder
Olson Cannon Gormley & Stoberski
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
PH: 702-384-4012
FX: 702-383-0701

From: efiling@nvcourts.nv.gov <efiling@nvcourts.nv.gov>
Sent: Friday, September 11, 2020 3:29 PM
To: Felicia Galati <fgalati@ocgas.com>
Subject: Notification of Electronic Filing in EGGLESTON VS. STUART, No. 80838

Supreme Court of Nevada

NOTICE OF ELECTRONIC FILING

Notice is given of the following activity:

Date and Time of Notice:	Sep 11 2020 03:28 p.m.
Case Title:	EGGLESTON VS. STUART
Docket Number:	80838
Case Category:	Civil Appeal
Document Category:	Notice of Appearance
Submitted by:	Emily McFarling
Official File Stamp:	Sep 11 2020 03:28 p.m.
Filing Status:	**Accepted and Filed**
Docket Text:	Filed Notice of Appearance Notice of Appearance

The Clerk's Office has filed this document. It is now available on the Nevada Supreme Court's E-Filing website. Click here to log in to Eflex and view the document.

Electronic service of this document is complete at the time of transmission of this notice. The time to respond to the document, if required, is computed from the date and time of this notice. Refer to NEFR 9(f) for further details.

Clerk's Office has electronically mailed notice to:

Felicia Galati

No notice was electronically mailed to those listed below; counsel filing the document must serve a copy of the document on the following:

Steve Eggleston
Lisa Callahan
Brian Callahan

This notice was automatically generated by the electronic filing system. If you have any questions, contact the Nevada Supreme Court Clerk's Office at 775-684-1600 or 702-486-9300.

EXHIBIT M

Felicia Galati

From: Emily McFarling <emilym@mcfarlinglaw.com>
Sent: Tuesday, September 15, 2020 11:26 AM
To: Felicia Galati
Cc: Paterno C. Jurani; Client File Copy; Christiane Smith; Maria Rios
Subject: EGGLESTON VS. STUART, No. 80838

Ms. Galati,

I am well aware of the rules of professional conduct on this issue and rule 3.7 does not apply here. It is to avoid the issue of an attorney playing dual roles in the same evidentiary proceeding in district court.

Rule 3.7 only prohibits a lawyer from acting as advocate at a trial in which the lawyer is likely to be a necessary witness. Clearly an appeal is not a trial. If this case has oral arguments, there will be no witnesses called to testify during oral arguments. If this case is remanded back to district court, I do not intend on being counsel of record in the district court and certainly not during a trial in which I may appear as a witness.

Rule 3.7 even allows another lawyer in the lawyer's firm to represent a client when a lawyer at that firm may be called as a witness. If this case is decided only on the briefing, it is easy enough for the attorney of record on the appeal to be another attorney at my office. That being said, if there are oral arguments in this case, I would prefer to be the attorney who does them, but I am sure there are attorneys at my office who would love to be able to do an oral argument. So it is not really a big issue.

After you review the actual rule, please let me know if you intend on taking this issue any further.

Rule 3.7. Lawyer as Witness.

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:
(1) The testimony relates to an uncontested issue;
(2) The testimony relates to the nature and value of legal services rendered in the case; or
(3) Disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

Very truly yours,
Emily McFarling, Esq.

Nevada Board Certified Family Law Specialist
AV Preeminent® Rated Attorney
American Academy of Matrimonial Lawyers Fellow
International Academy of Family Lawyers Fellow

MCFARLING LAW GROUP

6230 W Desert Inn Rd. Las Vegas, NV 89146
702-565-4335 phone | 702-732-9385 fax
Electronic service: eservice@mcfarlinglaw.com
Website: www.mcfarlinglaw.com
Direct email: emilym@mcfarlinglaw.com

From: Felicia Galati <fgalati@ocgas.com>
Sent: Monday, September 14, 2020 8:42 AM
To: eservice <eservice@mcfarlinglaw.com>
Cc: Paterno C. Jurani <pjurani@ocgas.com>
Subject: FW: Notification of Electronic Filing in EGGLESTON VS. STUART, No. 80838
Importance: High

Dear Ms. McFarling,

I represent Clark County in this matter. I understand you filed a notice of appearance for Mr. Eggleston. I'm not sure if you are aware of this, but you are a witness in the underlying matters and papers relevant to the appeal, including because Mr. Eggleston has referred to you in the First Amended Complaint, listed you as a witness in his disclosure and submitted an affidavit from you from a prior date. As such, you cannot act as counsel pursuant to Nevada Rule of Professional Conduct 3.7 Lawyer as Witness. Therefore, we are requesting that you withdraw from this appeal. If you will not do that, we will file a motion to disqualify. Please advise. Thank you.

Felicia Galati, Esq., Shareholder
Olson Cannon Gormley & Stoberski
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
PH: 702-384-4012
FX: 702-383-0701

From: efiling@nvcourts.nv.gov <efiling@nvcourts.nv.gov>
Sent: Friday, September 11, 2020 3:29 PM
To: Felicia Galati <fgalati@ocgas.com>
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Supreme Court of Nevada

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Official File Stamp:	Sep 11 2020 03:28 p.m.
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Brian Callahan

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EXHIBIT N

Felicia Galati

From: Felicia Galati
Sent: Wednesday, September 16, 2020 2:28 PM
To: Emily McFarling
Cc: Client File Copy; Christiane Smith; Maria Rios
Subject: RE: EGGLESTON VS. STUART, No. 80838

Ms. McFarling,

Thank you for your response and concession that you are a witness in the underlying matter. The pending appeal pertains to that matter.

Although Rule 3.7 refers to "a trial," the Nevada Supreme Court has held SCR 178 (the predecessor rule) is derived from, and virtually identical to, ABA Model Rule of Professional Conduct 3.7., which the ABA Commission on Ethics and Professional Responsibility has interpreted to allow a lawyer who is expected to testify at trial to represent his client in pretrial proceedings, with consent, although the lawyer may not appear in any situation requiring the lawyer to argue his own veracity to a court or other body, whether in a hearing on a preliminary motion, an appeal or other proceeding. This interpretation preserves the right to counsel of one's own choice while protecting the integrity of the judicial proceeding. DiMartino v. Eighth Judicial Dist. Court ex rel. Cty. of Clark, 119 Nev. 119, 122, 66 P.3d 945, 947 (2003). Therefore, there is a basis for your disqualification.

Please advise. Thank you.

Felicia Galati, Esq., Shareholder
Olson Cannon Gormley & Stoberski
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
PH: 702-384-4012
FX: 702-383-0701

From: Emily McFarling <emilym@mcfarlinglaw.com>
Sent: Tuesday, September 15, 2020 11:26 AM
To: Felicia Galati <fgalati@ocgas.com>
Cc: Paterno C. Jurani <pjurani@ocgas.com>; Client File Copy <clientcc@mcfarlinglaw.com>; Christiane Smith <christianes@mcfarlinglaw.com>; Maria Rios <mariar@mcfarlinglaw.com>
Subject: EGGLESTON VS. STUART, No. 80838

Ms. Galati,

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  (1) The testimony relates to an uncontested issue;
  (2) The testimony relates to the nature and value of legal services rendered in the case; or
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(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

Very truly yours,
Emily McFarling, Esq.

Nevada Board Certified Family Law Specialist
AV Preeminent® Rated Attorney
American Academy of Matrimonial Lawyers Fellow
International Academy of Family Lawyers Fellow

MCFARLING LAW GROUP

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702-565-4335 phone | 702-732-9385 fax
Electronic service: eservice@mcfarlinglaw.com
Website: www.mcfarlinglaw.com
Direct email: emilym@mcfarlinglaw.com

From: Felicia Galati <fgalati@ocgas.com>
Sent: Monday, September 14, 2020 8:42 AM
To: eservice <eservice@mcfarlinglaw.com>

Cc: Paterno C. Jurani <pjurani@ocgas.com>
Subject: FW: Notification of Electronic Filing in EGGLESTON VS. STUART, No. 80838
Importance: High

Dear Ms. McFarling,

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Felicia Galati, Esq., Shareholder
Olson Cannon Gormley & Stoberski
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
PH: 702-384-4012
FX: 702-383-0701

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Sent: Friday, September 11, 2020 3:29 PM
To: Felicia Galati <fgalati@ocgas.com>
Subject: Notification of Electronic Filing in EGGLESTON VS. STUART, No. 80838

Supreme Court of Nevada

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Case Title: EGGLESTON VS. STUART
Docket Number: 80838

Case Category:	Civil Appeal
Document Category:	Notice of Appearance
Submitted by:	Emily McFarling
Official File Stamp:	Sep 11 2020 03:28 p.m.
Filing Status:	**Accepted and Filed**
Docket Text:	Filed Notice of Appearance Notice of Appearance

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Clerk's Office has electronically mailed notice to:

Felicia Galati

No notice was electronically mailed to those listed below; counsel filing the document must serve a copy of the document on the following:

Steve Eggleston
Lisa Callahan
Brian Callahan

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EXHIBIT O

Felicia Galati

From: Felicia Galati
Sent: Thursday, September 24, 2020 2:30 PM
To: Emily McFarling
Subject: RE: EGGLESTON VS. STUART, No. 80838

Ms. McFarling,

Thank you for your email below. The scope of your involvement in various underlying matters relevant to the district court action and appeal – both in Nevada and Illinois – and beginning in 2015 is such that we cannot wait until after briefing. This issue needs to be addressed now so that there is no waiver and so that Defendants are not prejudiced. The issue is not whether you testified below. The issue is whether you are a witness, and you are, such that you also cannot be the attorney in this appeal. I appreciate that you disagree, but this is an issue that we need the Nevada Supreme Court to decide. Thank you.

Felicia Galati, Esq., Shareholder
Olson Cannon Gormley & Stoberski
9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
PH: 702-384-4012
FX: 702-383-0701

From: Emily McFarling <emilym@mcfarlinglaw.com>
Sent: Wednesday, September 16, 2020 3:53 PM
To: Felicia Galati <fgalati@ocgas.com>
Cc: Client File Copy <clientcc@mcfarlinglaw.com>; Christiane Smith <christianes@mcfarlinglaw.com>; Maria Rios <mariar@mcfarlinglaw.com>
Subject: RE: EGGLESTON VS. STUART, No. 80838

Ms. Galati,

Nowhere in my email did I concede that I am a witness in the underlying matter, nor make any commentary on that issue at all. Please do not put words in my mouth. I noted I would not be representing Mr. Eggleston at any trial on remand because I do not do civil district court cases.

If I had been a witness at a trial and the resulting decision from that trial is what was on appeal, I would agree with your interpretation as to representation of someone in an appeal – as there may be an issue of arguing my own veracity. That is not the case here. I never testified as a witness in the district court proceedings that are on appeal. Additionally, this rule does not have to do with being an attorney of record, but appearance at a particular hearing/trial. You note yourself

that appearing at a pretrial hearing is allowed even if an attorney will be testifying later at a trial. An appeal of a dismissal is certainly much further removed from some eventual trial on remand than a pretrial hearing is from a trial.

But, all that aside, this case is not even likely to get set for oral arguments, which makes the entire issue mostly likely moot. If oral arguments do get set and you still feel there is an issue, we can address it at that time. By then I will have reviewed the record in district court and be more informed about what representations were made by my client as to any potential testimony he planned to present. As we sit now, the only thing I have reviewed is the appeal register of actions as I have been focused on ensuring that my client's runner's mistake in not filing his opening brief got remedied.

Can we address this issue when/if oral arguments get set in this appeal? Or at least in a few weeks after I have had a chance to review the record?

Very truly yours,
Emily McFarling, Esq.

Nevada Board Certified Family Law Specialist
AV Preeminent® Rated Attorney
American Academy of Matrimonial Lawyers Fellow
International Academy of Family Lawyers Fellow

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Sent: Wednesday, September 16, 2020 2:28 PM
To: Emily McFarling <emilym@mcfarlinglaw.com>
Cc: Client File Copy <clientcc@mcfarlinglaw.com>; Christiane Smith <christianes@mcfarlinglaw.com>; Maria Rios <mariar@mcfarlinglaw.com>
Subject: RE: EGGLESTON VS. STUART, No. 80838

Ms. McFarling,

Thank you for your response and concession that you are a witness in the underlying matter. The pending appeal pertains to that matter.

Although Rule 3.7 refers to "a trial," the Nevada Supreme Court has held SCR 178 (the predecessor rule) is derived from, and virtually identical to, ABA Model Rule of Professional Conduct 3.7., which the ABA Commission on Ethics and Professional Responsibility has interpreted to allow a lawyer who is expected to testify at trial to represent his client in pretrial proceedings, with consent, although the lawyer may not appear in any situation

requiring the lawyer to argue his own veracity to a court or other body, whether in a hearing on a preliminary motion, an appeal or other proceeding. This interpretation preserves the right to counsel of one's own choice while protecting the integrity of the judicial proceeding. DiMartino v. Eighth Judicial Dist. Court ex rel. Cty. of Clark, 119 Nev. 119, 122, 66 P.3d 945, 947 (2003). Therefore, there is a basis for your disqualification.

Please advise. Thank you.

Felicia Galati, **Esq.**, Shareholder
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9950 West Cheyenne Avenue
Las Vegas, Nevada 89129
PH: 702-384-4012
FX: 702-383-0701

From: Emily McFarling <emilym@mcfarlinglaw.com>
Sent: Tuesday, September 15, 2020 11:26 AM
To: Felicia Galati <fgalati@ocgas.com>
Cc: Paterno C. Jurani <pjurani@ocgas.com>; Client File Copy <clientcc@mcfarlinglaw.com>; Christiane Smith <christianes@mcfarlinglaw.com>; Maria Rios <mariar@mcfarlinglaw.com>
Subject: EGGLESTON VS. STUART, No. 80838

Ms. Galati,

I am well aware of the rules of professional conduct on this issue and rule 3.7 does not apply here. It is to avoid the issue of an attorney playing dual roles in the same evidentiary proceeding in district court.

Rule 3.7 only prohibits a lawyer from acting as advocate at a trial in which the lawyer is likely to be a necessary witness. Clearly an appeal is not a trial. If this case has oral arguments, there will be no witnesses called to testify during oral arguments. If this case is remanded back to district court, I do not intend on being counsel of record in the district court and certainly not during a trial in which I may appear as a witness.

Rule 3.7 even allows another lawyer in the lawyer's firm to represent a client when a lawyer at that firm may be called as a witness. If this case is decided only on the briefing, it is easy enough for the attorney of record on the appeal to be another attorney at my office. That being said, if there are oral arguments in this case, I would prefer to be the attorney who does them, but I am sure there are attorneys at my office who would love to be able to do an oral argument. So it is not really a big issue.

After you review the actual rule, please let me know if you intend on taking this issue any further.

Rule 3.7. Lawyer as Witness.

(a) A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness unless:

(1) The testimony relates to an uncontested issue;
(2) The testimony relates to the nature and value of legal services rendered in the case; or
(3) Disqualification of the lawyer would work substantial hardship on the client.

(b) A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

Very truly yours,
Emily McFarling, Esq.

Nevada Board Certified Family Law Specialist
AV Preeminent® Rated Attorney
American Academy of Matrimonial Lawyers Fellow
International Academy of Family Lawyers Fellow

MCFARLING LAW GROUP

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From: Felicia Galati <fgalati@ocgas.com>
Sent: Monday, September 14, 2020 8:42 AM
To: eservice <eservice@mcfarlinglaw.com>
Cc: Paterno C. Jurani <pjurani@ocgas.com>
Subject: FW: Notification of Electronic Filing in EGGLESTON VS. STUART, No. 80838
Importance: High

Dear Ms. McFarling,

I represent Clark County in this matter. I understand you filed a notice of appearance for Mr. Eggleston. I'm not sure if you are aware of this, but you are a witness in the underlying matters and papers relevant to the appeal, including because Mr. Eggleston has referred to you in the First Amended Complaint, listed you as a witness in his disclosure and submitted an affidavit from you from a prior date. As such, you cannot act as counsel pursuant to Nevada Rule of Professional Conduct 3.7 Lawyer as Witness. Therefore, we are requesting that you withdraw from this appeal. If you will not do that, we will file a motion to disqualify. Please advise. Thank you.

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From: efiling@nvcourts.nv.gov <efiling@nvcourts.nv.gov>
Sent: Friday, September 11, 2020 3:29 PM
To: Felicia Galati <fgalati@ocgas.com>
Subject: Notification of Electronic Filing in EGGLESTON VS. STUART, No. 80838

Supreme Court of Nevada

NOTICE OF ELECTRONIC FILING

Notice is given of the following activity:

Date and Time of Notice:	Sep 11 2020 03:28 p.m.
Case Title:	EGGLESTON VS. STUART
Docket Number:	80838
Case Category:	Civil Appeal
Document Category:	Notice of Appearance
Submitted by:	Emily McFarling
Official File Stamp:	Sep 11 2020 03:28 p.m.
Filing Status:	**Accepted and Filed**
Docket Text:	Filed Notice of Appearance Notice of Appearance

The Clerk's Office has filed this document. It is now available on the Nevada Supreme Court's E-Filing website. Click here to log in to Eflex and view the document.

Electronic service of this document is complete at the time of transmission of this notice. The time to respond to the document, if required, is computed from the date and time of this notice. Refer to NEFR 9(f) for further details.

Clerk's Office has electronically mailed notice to:

Felicia Galati

No notice was electronically mailed to those listed below; counsel filing the document must serve a copy of the document on the following:

Steve Eggleston

Lisa Callahan

Brian Callahan

This notice was automatically generated by the electronic filing system. If you have any questions, contact the Nevada Supreme Court Clerk's Office at 775-684-1600 or 702-486-9300.

EXHIBIT P

FELICIA GALATI, ESQ.
Nevada Bar No. 007341
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9950 West Cheyenne Avenue
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fgalati@ocgas.com

Attorneys for Defendants
CLARK COUNTY and GEORGINA STUART

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVE EGGLESTON, Plaintiff, v. GEORGINA STUART; CLARK COUNTY, NEVADA; LISA CALLAHAN; BRIAN CALLAHAN; AND DOES I THROUGH 100, INCLUSIVE, Defendants.	CASE NO. A-16-748919-C DEPT. NO. VIII

ORDER ON CLARK COUNTY AND GEORGINA STUART'S MOTION TO DISMISS

On August 28, 2018, this Court conducted a scheduled hearing on Clark County and Georgina Stuart's Motion to Dismiss filed July 24, 2018. Plaintiff was present representing himself in Proper Person. Clark County and Georgina Stuart were represented by their attorney, Peter M. Angulo, Esq. of the law firm of Olson, Cannon, Gormley, Angulo & Stoberski. Having read the submitted filing relative to the Motion to Dismiss and in consideration of the oral arguments made by the parties, the Court hereby

☐ Voluntary Dismissal	☐ Summary Judgment
☐ Involuntary Dismissal	☐ Stipulated Judgment
☐ Stipulated Dismissal	☐ Default Judgment
☒ Motion to Dismiss by Deft(s)	☐ Judgment of Arbitration

grants Clark County and Georgina Stuart's Motion to Dismiss, without prejudice, and makes the following findings of fact and conclusions of law in support thereof:

FINDINGS OF FACT

1. On August 10, 2017, Plaintiff filed a First Amended Complaint for civil rights violations, child abduction, conspiracy and defamation;
2. The Complaint alleges Defendants Clark County and Georgina Stuart, based on an investigation, determined he, along with his wife, had an unsafe environment for their children;
3. On January 7, 2015, Plaintiff signed a Temporary Guardianship surrendering custody of his children to Lisa and Brian Callahan;
4. Thereafter, the Callahans removed the children from the State of Nevada;
5. On February 2, 2015, the Department of Family Services made a finding of child maltreatment against Plaintiff;
6. On February 12, 2015, Plaintiff appealed the substantiated finding to the Department of Family Services;
7. On August 27, 2015, the Appeals Unit Manager for the Department of Family Services issued a finding-upholding the substantiated findings of physical injury neglect-14 N plausible risk of physical injury against Plaintiff as to four minor children;
8. On September 9, 2015, Plaintiff requested a Fair Hearing to appeal that decision;
9. That hearing was originally scheduled to take place-at Plaintiff's request-on August 1, 2017, but was rescheduled for 9/6/17;
10. On August 2, 2017, Plaintiff requested a continuance of the hearing;
11. Accordingly, the hearing was reset for October 24, 2017;
12. On October 4, 2017, Plaintiff requested a second continuance of the hearing;
13. On October 16, 2017, the Department of Family Services agreed to a continuance of the hearing and asked Plaintiff to advise when he could appear so it could be rescheduled;

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14. Plaintiff failed to subsequently contact the Department of Family Services to reset the hearing;
15. On July 19, 2018, having not heard from Plaintiff for several months, the Department of Family Services notified Plaintiff of a new Fair Hearing date set for September 11, 2018;
16. On July 20, 2018, Plaintiff requested a third continuance of the hearing;
17. As of the date of the Motion to Dismiss being filed, the Fair Hearing has not been rescheduled due to Plaintiff not providing available dates;
18. The administrative procedure set forth above-up to and including the provision of a Fair Hearing is required pursuant to the Federal Child Abuse and Neglect Prevention and Treatment Act (CAPTA), Section 106(b)(2)(A)(xi)(11), NRS 432B and Nevada Administrative Code 432B.170;
19. The purpose behind this administrative structure is to afford Plaintiff a right to due process, which is "the right to receive notice of an adverse determination against [him] and give [him] an opportunity to respond in an orderly proceeding;"
20. The review process involves an agency appeal (which has already been utilized by the Plaintiff in this matter) and a Fair Hearing proceeding;
21. NRS 432B.317 requires the conclusion of a Fair Hearing before any judicial review can take place;
22. Plaintiff's constitutional claims set forth in the First Amended Complaint, assert his children were removed from his custody and care without due process of law. Accordingly, the constitutional claim is a Procedural Due Process Claim;
23. For reasons set forth in the conclusions of law, Plaintiff's conspiracy claim is dependent upon the procedural due process claim as a necessary predicate. Accordingly, the two are inextricably intertwined;
24. The remaining claims by Plaintiff are based on assertions of damage arising from the decision by the Department of Family Services set forth above;

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25. By statute, the Fair Hearing officer may uphold or overturn the decision by the Department of Family Services;

26. Plaintiff has the opportunity at the Fair Hearing to be represented by counsel;

27. At the Fair Hearing, witnesses and other evidence in support of the decision or in contradiction thereto can be presented; and

28. As indicated above, Plaintiff has availed himself of this administrative process to challenge the decision of the Department of Family Services. The procedure has not been completed at the present time.

CONCLUSIONS OF LAW

Predicated upon the foregoing facts, the following is an explication of the relevant law in this area upon which this Court relies in reaching its decision:

1. A person who has entered an administrative proceeding must exhaust their administrative remedies before proceeding in District Court. The failure to do so renders the controversy non-justiciable. Lopez v. Nevada Dept. of Corrections, 127 Nev. 1156, 373 P.3d 937 *1 (2011) (citing Allstate Ins. Co. v. Thorpe, 123 Nev. 565, 571, 170 P.3d 989, 993 (2007));
2. The purpose for requiring exhaustion of administrative remedies is (1) to protect the administrative agency's authority by giving it an opportunity to correct its own mistakes before it is brought into Court and (2) it promotes efficiency Id.;
3. In this matter, Plaintiff has asserted a claim under 42 U.S.C. §1983. Generally speaking, exhaustion of remedies is not required for most Section 1983 claims. Patsy v. Board of Regents of Florida, 457 U.S. 496, 516 (1982);
4. In the unique case of a Procedural Due Process claim, however, the litigant asserting a property or a liberty interest violation without due process must first exhaust state remedies before filing suit. Morgan v. Gonzales, 495 F.3d 1084, 1090 n.2 (9th Cir. 2007); Barron v. Ashcroft, 358 F.3d 674, 678 (9th Cir. 2004). See also Rathjen v. Litchfield, 878 F.2d 836, 839-40 (5th Cir. 1989) ("No denial

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of procedural due process occurs where a person has failed to utilize the state procedures available to him");

5. The rule recognizes a State must have the opportunity to remedy the procedural failings of its subdivision and agencies in an appropriate forum before being subjected to a claim alleging such a violation. Thus, if adequate state remedies were available but Plaintiff failed to take advantage of them, Plaintiff cannot present a claim the State failed to provide him with due process. Cotton v. Jackson, 216 F.3d 1328, 1331 (11th Cir. 2000);

6. To assert a Section 1983 conspiracy claim, there must be evidence of an underlying constitutional violation. Radcliffe v. Rainbow Construction Co., 254 F.3df 772, 783 (9th Cir. 2011). Since the Court has concluded the Procedural Due Process claims is unripe, the conspiracy claim is also dismissed;

7. Although this Motion was brought initially under NRCP 12(b)(5), it is, in essence, an NRCP 12(c) motion. The difference between the two is simply one of timing. The standard of proof and consideration for ruling on the Motions are identical and, therefore, Plaintiff's argument that this Motion is untimely is not well taken;

8. Plaintiff has placed a request before the Court for additional time to conduct discovery. However, he failed to establish proper grounds for a continuance. Under NRCP 56(f), a party is required to submit affidavits opposing the Motion which clearly indicates that one cannot-for the reason stated-present facts essential to justify the opposition. Bakerink v. Orthopaedic Associates, Ltd., 94 Nev. 428, 431, 581 P.2d 9, 11 (1978). In this matter, Plaintiff has not made such an argument nor has he provided the appropriate affidavit detailing what facts would be necessary to meaningfully oppose the Motion to Dismiss. Accordingly, the request is not granted;

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9. Plaintiff's argument that Ms. Hammack's affidavit cannot be utilized because she was not disclosed by Defendants is equally unavailing. The evidence before the Court indicates-and Plaintiff did not disagree-that Ms. Hammack was identified by Plaintiff himself in an early case disclosure filed in April of 2018. Accordingly, her identity has been known to Plaintiff since then and there is no unfair or undue surprise in utilizing an affidavit from this witness;

10. Based on the foregoing, this Court grants the Motion to Dismiss without prejudice. It is the Court's impression that the federal procedural due process claim is unripe at the present time because the administrative process has not been completed. Furthermore, the state law claims are predicated on the substantiated findings by the Department of Family Services and, therefore, are also premature at this point until the administrative process has been completed; and

11. Not only is the litigation prematurely brought, the Court believes there is also a basis for administrative abstention under the Buford v. Sun Oil Co., 319 U.S. 315 (1943). The Court further finds there is no reason to allow further discovery on the matter as it has sufficient facts before it to render its decision.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, the Motion to

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Dismiss is granted. This litigation is dismissed, without prejudice, until such time as Plaintiff's Fair Hearing is concluded and an allowed judicial review is exhausted.

DATED this 6 day of September, 2018.

DISTRICT COURT JUDGE

SUBMITTED BY:
OLSON, CANNON, GORMLEY,
ANGULO & STOBERSKI

By: _____
PETER M. ANGULO, ESQ.
9950 W. Cheyenne Avenue
Las Vegas, Nevada 89129
Attorneys for Defendant
CLARK COUNTY and GEORGINA STUART

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EXHIBIT Q

Steve Eggleston, Plaintiff, In Pro Per
Goose Hall, Bourne Farm, East Town Road
Pilton, England, Post Code: ba4 4nx
+44 7801 931682
TheEggman411@gmail.com

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVE EGGLESTON,

Plaintiff,

-vs-

GEORGINA STUART; DEPARTMENT OF FAMILY SERVICES, CHILD SUPPORT SERVICES, CLARK COUNTY, NEVADA; LISA CALLAHAN; BRIAN CALLAHAN; AND DOES 1 THROUGH 100, INCLUSIVE,

Defendants.

CASE NO. A-16-748919-C
DEPT NO. VIII

Plaintiff's 16.1(a)(1) Initial Disclosures

INITIAL DISCLOSURES – (A) WITNESSES

1. Steve Eggleston, Goose Hall, Bourne Hall, East Town Lane, Pilton, England ba4 4nx

2. Dana Amma Day, plaintiff's wife, c/o plaintiff

3. Georgina Stuart, c/o defense counsel

4. Tisa Evans, MEd. Ombudsman for DFS and CCSS, 2432 Martin Luther King Blvd., North Las Vegas, NV 89032, Phone 702-455-1046, Toll free: 1-866-780-9541, Fax: 702-868-2544

5. Timothy Burch, Interim Director DFS, same

6. Paula Hammack, Assistant Director DFS, same

01585

50. Bobby Ferreri, 702-596-3219, 2495 Village View Drive, Henderson, NV 89074

51. Vince Casas, 702-407-5956, last known address same as Ferreri

52. Sheri Hensel, Sr. Family Services Specialist

53. Emily McFarling, Esq, 6230 WE. Desert Inn Rd., Las Vegas, NV 89146

54. Witnesses pertinent to Clark County DHS's history of malfeasance in matters of children protection and DFS/CPS churning.

55. James Rodriguez and Kendall Rodriguez school teachers

56. All the children's paediatricians, doctors and GPs

57. Brian Knaff (arranged for Mayor to propose to Laura), 702-256-9811, 7335 Edna, Las Vegas, NV 89117

58. Shea Arender, 318-282-4532, 2700 South, Las Vegas Blvd., Las Vegas NV 89109

59. Jay Gabriel Cavazos, 313-355-9376, Detroit, MI

60. Retired Judge Gerald Bakarich, Sacramento, California

61. Duncan Faurer, Los Angeles, 702-234-7906

62. Jan LaBuda, Florida, 352- 422-7393

63. James Grover, Los Angeles, CA, 310-591-6207

7. Visitation costs to America/Indiana, including travel, accommodations, au pair, living expenses until boys turn 18: estimated 3 visits for one month each for total 3 months per year for 13 years of 5 people (2 adults and 3 children), roughly $25,000 per year x 13 years = $325,000.

INITIAL DISCLOSURES – (D) INSURANCE

Inapplicable.

Dated:_____

By: ___
_____ _____
Steve Eggleston, plaintiff
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+44 7801 931682
Email: TheEggman411@gmail.com
PLAINTIFF, IN PRO PER