

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

\* \* \* \* \*

ERICH M. MARTIN,  
  
Appellant,  
  
vs.

RAINA L. MARTIN,  
  
Respondent.

Electronically Filed  
SC NO: July 10, 2021 10:07 p.m.  
DC NO: Elizabeth A. Brown  
Clerk of Supreme Court

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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

## Divorce - Complaint

# COURT MINUTES

July 12, 2016

D-15-509045-D                      Erich M Martin, Plaintiff  
vs.  
Raina L Martin, Defendant.

July 12, 2016                      9:00 AM                      All Pending Motions

**HEARD BY:** Burton, Rebecca L.

**COURTROOM:** Courtroom 08

**COURT CLERK:** Valerie Riggs

**PARTIES:**

Erich Martin, Plaintiff, Counter Defendant, present	John Kelleher, Attorney, not present
Nathan Martin, Subject Minor, not present	
Raina Martin, Defendant, Counter Claimant, present	Michele Roberts, Attorney, present

## JOURNAL ENTRIES

- PLTF'S MOTION FOR AN ORDER TO SHOW CAUSE...DEFT'S OPPOSITION TO PLAINTIFF'S MOTION FOR ORDER TO SHOW CAUSE AND COUNTERMOTION TO CLARIFY AND/OR MODIFY CERTAIN CHILD CUSTODY PROVISIONS AND FOR AN ORDER TO SHOW CAUSE AS TO WHY PLAINTIFF SHOULD NOT BE HELD IN CONTEMPT OF COURT FOR HIS WILLFUL VIOLATION OF THIS COURT'S ORDERS, FOR SANCTIONS, FOR ATTORNEY'S FEES AND RELATED RELIEF

Atty Randy Richards, Bar #6794, present for Plaintiff.

Plaintiff present by telephone from Wyoming.

Discussion by Parties and Counsel concerning Plaintiff's request for 13 days of make-up visitation.

PRINT DATE:	10/31/2016	Page 1 of 3	Minutes Date:	July 12, 2016
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**Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.**

RA000405

Court noted the minor child attends a year round school in Defendant/Mom's school zone

Court further noted, Plaintiff/Dad has visitation with the minor child one (1) weekend per month and summer visitation.

Court finds, Court has subject matter jurisdiction over this case, personal jurisdiction over the Parties and child custody, and subject matter jurisdiction over the minor child.

COURT ORDERED the following:

1. Court is NOT inclined to reduce Plaintiff/Dad's visitation time.
2. Parties are REFERRED to Family Mediation Center (FMC) for Mediation to talk about the minor child's travel and school.
3. Parties are to discuss the minor child's activities. Defendant/Mom CANNOT schedule activities on Plaintiff/Dad's time without consent from Plaintiff/Dad.
4. Parties shall follow the Joint Legal Custody provisions.
5. Pursuant to the Decree of Divorce, the receiving Parent shall pay the unaccompanied minor child airline fee.
6. Plaintiff/Dad MUST have his telephone calls with the minor child for 10 minutes.
7. Plaintiff/Dad shall enroll in Smart Start monitoring at his cost, with monitoring 3-5 times per day, when the minor child is with him. Court noted, Plaintiff/Dad has an interlock on his vehicle due to the DUI.
8. Both Parties shall sign up for "Our Family Wizard" by 5:00 p.m. Friday, July 15, 2016. Parties will check "Our Family Wizard" every 48 hours. Parties shall be polite and respectful with information. Parties to send travel information within 24 hours of being booked. Parties shall also share information on the minor child's schooling and medical information.
9. Defendant/Mom shall upload the Life Insurance Policy on "Our Family Wizard" for Plaintiff/Dad to sign.
10. Within 10 days, Parties shall provide timely information to QDRO Masters for the Order Incident to Decree. Plaintiff/Dad shall reimburse Defendant/Mom for 1/2 of the fees for the preparation of

PRINT DATE:	10/31/2016	Page 2 of 3	Minutes Date:	July 12, 2016
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**Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.**

the Order Incident to Decree within 10 days.

11. Return Hearing re: FMC Mediation SET for September 22, 2016 at 11:00 a.m.

Atty Richards shall prepare the Order from today's hearing, Atty Roberts to sign as to form and content.

**INTERIM CONDITIONS:**

**FUTURE HEARINGS:**

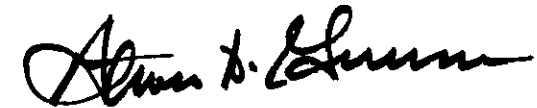
November 23, 2016 9:00 AM Motion  
Courtroom 08  
Burton, Rebecca L.

PRINT DATE:	10/31/2016	Page 3 of 3	Minutes Date:	July 12, 2016
-------------	------------	-------------	---------------	---------------

**Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.**

*57*

*57*



CLERK OF THE COURT

SUPP  
The Law Office of Michele L. Roberts  
MICHELE L. ROBERTS, ESQ.  
Nevada Bar No. 009168  
mlr@michelerobertslaw.com  
1810 E. Sahara Ave, Ste. 138  
Las Vegas, Nevada 89104  
(702) 358-0620  
Attorney for Defendant  
RAINA L. MARTIN

EIGHTH JUDICIAL DISTRICT COURT  
FAMILY DIVISION  
CLARK COUNTY, NEVADA

ERICH M. MARTIN,  
Plaintiff,

CASE NO. D-15-509045-D  
DEPT. NO. C

v.

RAINA L. MARTIN,  
Defendant.

SUPPLEMENT TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR  
ORDER TO SHOW CAUSE AND COUNTER-MOTION TO CLARIFY AND/OR MODIFY  
CERTAIN CHILD CUSTODY PROVISIONS AND FOR AN ORDER TO SHOW CAUSE  
AS TO WHY PLAINTIFF SHOULD NOT BE HELD IN CONTEMPT OF COURT FOR HIS  
WILLFUL VIOLATION OF THIS COURT'S ORDERS, FOR SANCTIONS, FOR  
ATTORNEY'S FEES AND RELATED RELIEF

COMES NOW Defendant, RAINA L. MARTIN, by and through her counsel of record,  
Michele L. Roberts, Esq., of the Law Office of Michele L. Roberts, and respectfully submits  
ers *Supplement to Opposition to Plaintiff's Motion for Order to Show Cause and Counter-*  
*motion to Clarify And/or Modify Certain Child Custody Provisions and for an Order to Show*  
*Cause as to Why Plaintiff Should Not Be Held in Contempt of Court for His Willful Violation*  
*of this Court's Orders, for Sanctions, for Attorney's Fees and Related Relief.*

///

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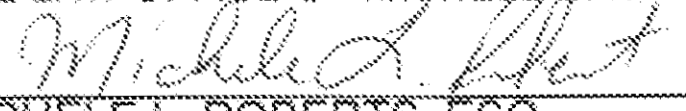
1 Exhibit "A": Defendant's notarized Affidavit

2 Exhibit "I" - E-mail communication between parties regarding Spring Break

3 DATED this 11<sup>th</sup> day of July 2016

4 Respectfully Submitted By:

5 THE LAW OFFICE OF MICHELE L. ROBERTS

6 By   
MICHELE L. ROBERTS, ESQ.

7 Nevada Bar No. 009168

8 1810 E. Sahara Ave., Ste. 138

9 Las Vegas, Nevada 89104

10 mlr@michelerobertslaw.com

11 (702) 358-0620

12 Attorney for Defendant,

13 RAINA L. MARTIN

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that I am an employee of THE LAW OFFICE OF MICHELE L. ROBERTS, and that on the 11<sup>th</sup> day July 2016, I served a true and correct copy of the document described herein by the method indicated below, and addressed to the following:

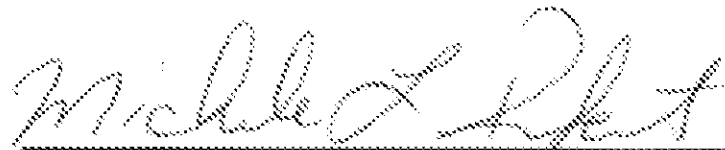
**Document Served: SUPPLEMENT TO DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION FOR ORDER TO SHOW CAUSE AND COUNTER-MOTION TO CLARIFY AND/OR MODIFY CERTAIN CHILD CUSTODY PROVISIONS AND FOR AN ORDER TO SHOW CAUSE AS TO WHY PLAINTIFF SHOULD NOT BE HELD IN CONTEMPT OF COURT FOR HIS WILLFUL VIOLATION OF THIS COURT'S ORDERS, FOR SANCTIONS, FOR ATTORNEY'S FEES AND RELATED RELIEF**

**Person(s) Served:**

John T. Kelleher, Esq.  
KELLEHER & KELLEHER, LLC  
40 S. Stephanie Street, Suite 201  
Henderson, NV 89012  
Attorney for Plaintiff  
ERICH MARTIN

<input type="checkbox"/>	Hand Deliver
<input checked="" type="checkbox"/>	U.S. Mail
<input type="checkbox"/>	Overnight Mail
<input type="checkbox"/>	Facsimile
<input checked="" type="checkbox"/>	E-Mail
<input checked="" type="checkbox"/>	E-Service

E-mail: [kelleherjt@aol.com](mailto:kelleherjt@aol.com)



\_\_\_\_\_  
An Employee of  
THE LAW OFFICE OF MICHELE L. ROBERTS



1 AFFIDAVIT OF RAINA L. MARTIN IN SUPPORT OF HER OPPOSITION TO  
2 PLAINTIFF'S MOTION FOR ORDER TO SHOW CAUSE AND COUNTER-MOTION  
3 TO CLARIFY AND/OR MODIFY CERTAIN CHILD CUSTODY PROVISIONS AND FOR  
4 AN ORDER TO SHOW CAUSE AS TO WHY PLAINTIFF SHOULD NOT BE HELD IN  
5 CONTEMPT OF COURT FOR HIS WILLFUL VIOLATION OF THIS COURT'S  
6 ORDERS, FOR SANCTIONS, FOR ATTORNEY'S FEES AND RELATED RELIEF

7 STATE OF NEVADA }  
8 COUNTY OF CLARK } ss:

9 RAINA L. MARTIN, having been duly sworn, deposes and says:

10 1. That I am the Defendant in the action entitled ERICH M. MARTIN v.  
11 RAINA L. MARTIN, Case No. D-15-509045-D in the Eighth Judicial District Court,  
12 Clark County, Nevada. I am personally familiar with the facts and circumstances  
13 surrounding the foregoing matters, and could and would competently testify thereto,  
14 as follows:

15 2. I have reviewed *Opposition to Plaintiff's Motion for an Order to Show*  
16 *Cause and Counter-Motion to Clarify and/or Modify Certain Child Custody*  
17 *Provisions and for an Order to Show Cause as to Why Plaintiff Should Not Be Held*  
18 *in Contempt of Court for his Willful Violation of this Court's Orders, for Sanctions,*  
19 *for Attorney's Fees and Related Relief.*

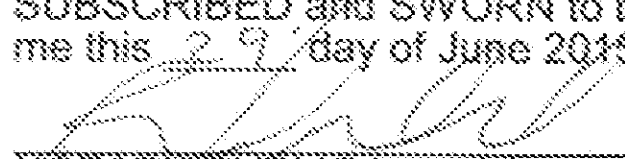
20 3. That the same is true of my own knowledge, except for those matters  
21 therein contained stated upon information and belief, and as to those matters, I  
22 believe them to be true.

23 FURTHER, YOUR AFFIANT SAYETH NAUGHT.

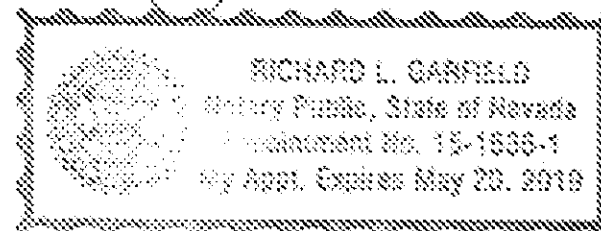
24 DATED this 29 day of June 2016

25   
26 RAINA L. MARTIN

27 SUBSCRIBED and SWORN to before  
28 me this 29 day of June 2016

29   
30 NOTARY PUBLIC in and for said  
31 County and State

32 STATE OF NEVADA  
33 COUNTY of CLARK.



# EXHIBIT I

**Subject:** FW: Flight info for 26MAY16  
**From:** Michele L. Roberts Esq. (mlr@michelelrobertslaw.com)  
**To:** michcubbyblu@yahoo.com;  
**Date:** Wednesday, June 29, 2016 10:41 AM

---

**From:** Raina Martin [mailto:raina.martin@gmail.com]  
**Sent:** Tuesday, June 28, 2016 10:14 PM  
**To:** Michele L. Roberts Esq.  
**Subject:** Fwd: Flight info for 26MAY16

Michele,

Here are the series of additional messages around spring break.

Erich,

Just because you specify a date doesn't mean that that's how it works. I have a job- I have work, too. I cannot just leave my work to accommodate your flight and life schedule without prior arrangements. We are supposed to work together and agree upon things. The whole reason I can't fly him up on the 26th is because I work. How do you think I'm supposed to get him to the airport on the 26th? When you requested those specific dates, at no point did you inform me of any priorities you needed to attend. I'm hoping that you from here on out are capable of working together to make these accommodations better. Also, per the decree you are to inform me if you were taking Nathan out of your state of record.

Thanks,

Raina

On May 23, 2016, at 5:28 PM, Erich Martin <[ghotiboy@hotmail.com](mailto:ghotiboy@hotmail.com)> wrote:

Raina,

I am not by any means ordering you to do anything. I am asking that you honor what you signed and agreed to when signing the divorce decree. We planned to have Nathan on the 26th of May and gave you the required 30 days notice required by the decree. What I do from there is at my discretion. I can go anywhere I want to once I get Nathan and I do not have to tell you 30 days in advance what my itinerary for our vacation is going to be. As I have stated before, I fully intend on letting you know where we will be and provide the required addresses and phone numbers necessary as per the decree. The date that I get Nathan is not up for discussion or debate with you as the decree says on page 4 line 13 "Erich has the option to maximize his monthly visitation by TAKING ANY AND ALL three day weekends, staff development days and any other similar non-school days during the school year as his visitation time." The days I have requested are non-school days and it is my court ordered right to exercise my visitation with Nathan on the date of MY CHOICE not yours. You signed these papers and agreed to these terms in November. You are obligated by law to abide by the decree and send Nathan to me on the date that I requested as long as I give the proper notice.

I did ask 30 days in advance that you contact me so that we may discuss flight arrangements. I hope that from now on you will be more willing to discuss these things with me prior to buying non refundable flights so that this can be avoided in the future. That being said I need to have Nathan by the 26th. If the only way I am going to get him is to pick him up, I will utilize that option given by you... and I will do so.

As per previous conversation, from you dated 19MAY16 I have purchased a flight into Las Vegas that I can cancel by midnight tonight if you decide to fly him unaccompanied to Denver, CO, as per my request of 26APR16. If not I will arrive into the Las Vegas airport at noon, where you or any of your family members/Tony can drop him off to me at noon to check in. The flight I have booked for us to return from Las Vegas to SLC is flight number 541, departing at 2:20 pm on Thursday 26MAY16. Please make any and all necessary arrangements to have Nathan to the airport by noon, so he can make his flight to SLC with me.

Thanks,

Erich and Julie

> Subject: Re: Flight info for 26MAY16  
> From: [raina.martin@gmail.com](mailto:raina.martin@gmail.com)  
> Date: Wed, 18 May 2016 22:11:46 -0700  
> CC: [a6941b@gmail.com](mailto:a6941b@gmail.com); [jayr@lvprmsa.org](mailto:jayr@lvprmsa.org)  
> To: [ghotiboy@hotmail.com](mailto:ghotiboy@hotmail.com)

>

> Erich,

>

> I have tried explaining the situation and you "ordering" me to do something, is not in the decree. You never informed me of your trip to Utah until after I booked our flight for the 28th. I work and am not able to adjust that and my flight is non refundable. I already offered you some solutions and it's your choice. You can either pick him up in Vegas the 26th or you can wait until the 28th when we get in. I have never denied you visitation with Nathan, nor am in now. Please let me know what you'd like to do as the date is approaching.

>

> Thanks,

> Raina

>

>> On May 18, 2016, at 8:39 PM, Erich Martin <[ghotiboy@hotmail.com](mailto:ghotiboy@hotmail.com)> wrote:

>>

>> Raina.

>>

>> I am again writing for Nathan's proper flight info. As per the decree and as per my email, I have properly requested Nathan to fly to CO(Denver airport) on 26MAY16. I have already provided you his return itinerary, so there should be no excuse to not send him.

>> You should likely realize that not sending him a 4th time and breaking the decree is not going to fair well for you in court. Please, send me his itinerary ASAP. Duly you should understand that these are not threats. I have already told you I am taking you to court for the previous denial of Nathan's visits to me. This is merely me asking you to send him like I politely requested.

>>

>> Erich and Julie

>>

>>

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OFFM

7/12, 20 16  
 STEVEN D. GRIERSON  
 CEO / CLERK OF THE COURT

By:

Valerie Riggs  
 VALERIE RIGGS Deputy

DISTRICT COURT  
 FAMILY DIVISION  
 CLARK COUNTY, NEVADA

Erich M. Martin

Plaintiff

Case No.

DIS-509045-D

-vs-

Department

C

Raine L. Martin

Defendant

ORDER FOR FAMILY MEDIATION CENTER  
 SERVICES

IT IS HEREBY ORDERED that, in the spirit of preserving the parents' right to make decisions about the future best interest of their child(ren), the above-named parties will make every attempt to resolve their disputes.

IT IS FURTHER ORDERED that, if a Court Interpreter is needed, it is the parties responsibility to pay the interpreter at the time services are rendered, and the language needed is: \_\_\_\_\_

IT IS FURTHER ORDERED by the Court that, regarding the child(ren) at issue, the Family Mediation Center (FMC) shall:

Provide Confidential Mediation \_\_\_\_\_

(When telephone mediation is ordered, one or both parties must reside out-of-state.)

\_\_\_\_\_ Include a Domestic Violence Protocol

Interview Child(ren) \_\_\_\_\_

Issues: \_\_\_\_\_

Reunify Parent/Child(ren) \_\_\_\_\_

IT IS FURTHER ORDERED that the cost of mediation will be assessed using a sliding scale based on each litigant's individual financial status with a maximum cost of \$300.00 per person. Child(ren) interviews are \$50.00 per child per litigant. Parent/Child(ren) reunifications are \$50.00 per litigant.

IT IS FURTHER ORDERED that the parties and/or their attorneys must report to the Family Mediation Center at 601 N. Pecos Road, Las Vegas, NV 89101, phone (702) 455-4186.

DATED this 12 day of July, 2016.

This matter is reset for

Date:

9/22/16

Time:

11:00am

Liberal Bunter  
 District Judge

Attorney for Plaintiff:

B. Richards

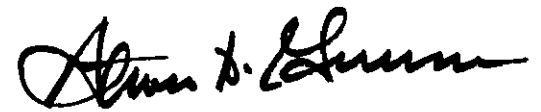
Attorney for Defendant:

M. Roberts

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59





CLERK OF THE COURT

1 **NOTC**  
2 JOHN T. KELLEHER, ESQ.  
3 Nevada State Bar No. 6012  
4 **KELLEHER & KELLEHER, LLC**  
5 40 S. Stephanie Street, #201  
6 Henderson, NV 89012  
7 Telephone (702) 384-7494  
8 Facsimile (702) 384-7545  
9 kelleherjt@aol.com  
10 Attorney for Plaintiff

7  
8 **DISTRICT COURT - FAMILY DIVISION**  
9 **CLARK COUNTY, NEVADA**

10 ERICH M. MARTIN

11 Plaintiff,

12 v.

13 RAINA L. MARTIN,

14 Defendant.

CASE NO.: D-15-509045-D  
DEPT. NO.: C

15 **NOTICE OF INTENT TO APPEAR TELEPHONICALLY**

16 COMES NOW Plaintiff, Erich M. Martin, by and through his attorney of record, John T.  
17 Kelleher, Esq. of Kelleher & Kelleher, LLC, and hereby submits his Notice of Intent to Appear by  
18 Communication Equipment for the hearing which is scheduled for September 22, 2016 at 11:00  
19 a.m.

20  
21 Counsel for Plaintiff, Erich M. Martin, will be present in person in the Courtroom at the  
22 hearing; however, for purposes of this appearance, Plaintiff will be available and can be reached at  
23 (307)275-6343. Plaintiff understands that it is his responsibility to ensure that he can be reached at  
24 this telephone number on the date and at the time of the hearing.

25 ///

26 ///

27 ///

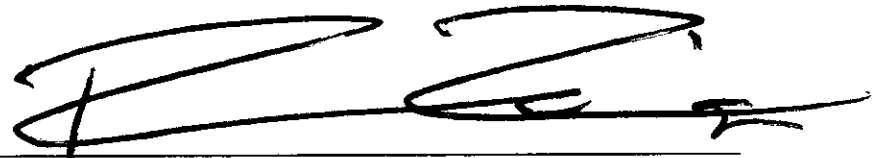
28 ///

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1 Further, it is understood that failure to be reached at the aforementioned telephone number  
2 for the scheduled hearing constitutes the entry of non-appearance by Plaintiff.

3 DATED this 19 day of September, 2016.

4 KELLEHER & KELLEHER, LLC

5 

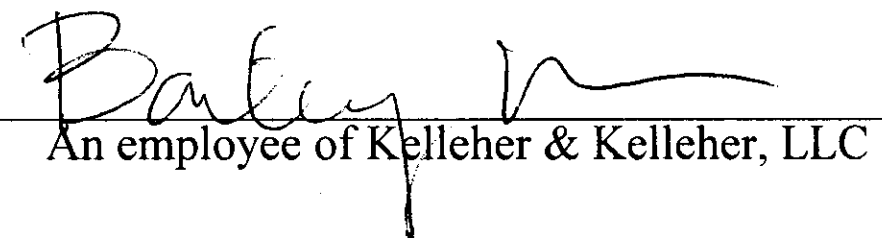
6 JOHN T. KELLEHER, ESQ.  
7 Nevada Bar No. 6012  
8 40 S. Stephanie Street, #201  
9 Henderson, NV 89012  
10 Attorney for Plaintiff

#6794

11 **CERTIFICATE OF MAILING**

12 I hereby certify that on the 20 day of ~~September~~ 2016, I deposited a true and correct  
13 copy of the above and foregoing NOTICE OF INTENT TO APPEAR TELEPHONICALLY in the  
14 United States Mail, postage prepaid and addressed as follows:

15 Michele L. Roberts, Esq.  
16 1810 E. Sahara Ave., #138  
17 Las Vegas, NV 89104  
18 Attorney for Defendant

19   
20 An employee of Kelleher & Kelleher, LLC

60

60

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Divorce - Complaint**

**COURT MINUTES**

September 22, 2016

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D-15-509045-D	Erich M Martin, Plaintiff vs. Raina L Martin, Defendant.
---------------	--

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**September 22, 2016      11:00 AM      Return Hearing**

**HEARD BY:**    Burton, Rebecca L.

**COURTROOM:**    Courtroom 08

**COURT CLERK:**    Jefferyann Rouse

**PARTIES:**

Erich Martin, Plaintiff, Counter Defendant, not present    John Kelleher, Attorney, present

Nathan Martin, Subject Minor, not present

Raina Martin, Defendant, Counter Claimant, present    Michele Roberts, Attorney, present

<b>JOURNAL ENTRIES</b>
------------------------

- RETURN HEARING: RETURN HEARING RE: FMC MEDIATION

The Court placed an outbound call to Plaintiff/Mom who appeared for the hearing telephonically.

The Court noted receiving a letter from Family Mediation Center indicating parties were unable to reach a resolution.

Opening remarks by Attorney Kelleher who advised the court as to issues related to the custodial timeshare. Counsel further stated the Decree indicated Defendant/Mom would pay the unaccompanied minor airline charge. Mr. Kelleher further advised the court as to issues of the Qualified Domestic Relations Order.

PRINT DATE:	10/11/2016	Page 1 of 2	Minutes Date:	September 22, 2016
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**Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.**

RA000419

Attorney Roberts advised the court Plaintiff/Dad has refused to return the Qualified Domestic Relations Order.

Mr. Kelleher advised the court as to Defendant/Mom being in Domestic Partnership.

The Court noted concerns as to the Domestic Partnership.

Discussion by Counsel as to issues at hand.

THE COURT ORDERED,

Counsel shall submit PROPOSALS with SPECIFIC to the Court, regarding MAKE-UP TIME and the UNACCOMPANIED MINOR AIRLINE CHARGE, said PROPOSAL shall include the child's SCHOOL SCHEDULE. PROPOSAL shall be submitted to the court by 9-30-2016.

Plaintiff/Dad shall SIGN and MAIL the QUALIFIED DOMESTIC RELATIONS ORDER (QDRO) by 5:00 pm., on 9-23-2016.

Issues regarding MAKE-UP TIME and the UNACCOMPANIED MINOR AIRLINE CHARGE shall be TAKEN UNDER ADVISEMENT.

**INTERIM CONDITIONS:**

**FUTURE HEARINGS:**

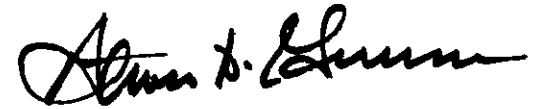
November 23, 2016 9:00 AM Motion  
Courtroom 08  
Burton, Rebecca L.

PRINT DATE:	10/11/2016	Page 2 of 2	Minutes Date:	September 22, 2016
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**Notice:** Journal entries are prepared by the courtroom clerk and are not the official record of the Court.

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CLERK OF THE COURT

1 **NOTC**  
JOHN T. KELLEHER, ESQ.  
2 Nevada State Bar No. 6012  
**KELLEHER & KELLEHER, LLC**  
3 40 S. Stephanie Street, #201  
Henderson, NV 89012  
4 Telephone (702) 384-7494  
Facsimile (702) 384-7545  
5 kelleherjt@aol.com  
Attorney for Plaintiff  
6

7  
8 **DISTRICT COURT - FAMILY DIVISION**  
9 **CLARK COUNTY, NEVADA**

10 ERICH M. MARTIN )

11 Plaintiff, )

12 v. )

13 RAINA L. MARTIN, )

14 Defendant. )

CASE NO.: D-15-509045-D  
DEPT. NO.: C

15 **NOTICE OF INTENT TO APPEAR TELEPHONICALLY**

16 COMES NOW Plaintiff, Erich M. Martin, by and through his attorney of record, John T.  
17 Kelleher, Esq. of Kelleher & Kelleher, LLC, and hereby submits his Notice of Intent to Appear by  
18 Communication Equipment for the hearing which is scheduled for September 22, 2016 at 11:00  
19 a.m.

20 Counsel for Plaintiff, Erich M. Martin, will be present in person in the Courtroom at the  
21 hearing; however, for purposes of this appearance, Plaintiff will be available and can be reached at  
22 (307)275-6343. Plaintiff understands that it is his responsibility to ensure that he can be reached at  
23 this telephone number on the date and at the time of the hearing.  
24

25 ///

26 ///

27 ///

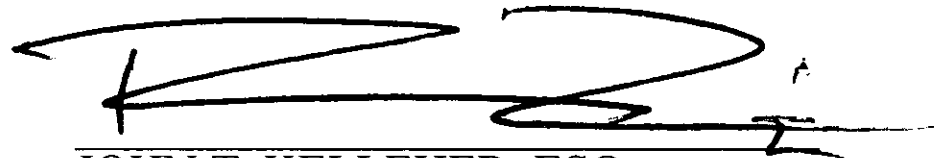
28 ///

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1 Further, it is understood that failure to be reached at the aforementioned telephone number  
2 for the scheduled hearing constitutes the entry of non-appearance by Plaintiff.

3 DATED this 21 day of September, 2016.

4 KELLEHER & KELLEHER, LLC

5 


6 JOHN T. KELLEHER, ESQ.  
7 Nevada Bar No. 6012  
8 40 S. Stephanie Street, #201  
9 Henderson, NV 89012  
10 Attorney for Plaintiff

#6794

11 **CERTIFICATE OF MAILING**

12 I hereby certify that on the 21 day of September 2016, I deposited a true and correct  
13 copy of the above and foregoing NOTICE OF INTENT TO APPEAR TELEPHONICALLY in the  
14 United States Mail, postage prepaid and addressed as follows:

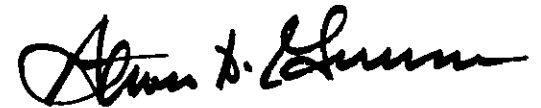
15 Michele L. Roberts, Esq.  
16 1810 E. Sahara Ave., #138  
17 Las Vegas, NV 89104  
18 Attorney for Defendant

19   
20 An employee of Kelleher & Kelleher, LLC  
21  
22  
23  
24  
25  
26  
27  
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CLERK OF THE COURT

**PROP**  
JOHN T. KELLEHER, ESQ.  
Nevada Bar No. 6012  
KELLEHER & KELLEHER, LLC  
40 S. Stephanie Street, Suite #201  
Henderson, Nevada 89012  
Telephone (702) 384-7494  
Facsimile (702) 384-7545  
kelleherjt@aol.com

Attorney for Plaintiff

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ERICH M. MARTIN

Plaintiff,

v.

RAINA L. MARTIN,

Defendant.

CASE NO.: D-15-509045-D  
DEPT. NO.: C

**PLAINTIFF'S PROPOSAL REGARDING MAKE-UP PARENTING TIME, HOLIDAY  
VISITATION, AND TRANSPORTATION PURSUANT TO THE HEARING ON  
SEPTEMBER 22, 2016**

Plaintiff Erich Martin hereby submits his Proposal Regarding Make-Up Parenting Time, Holiday Visitation, and Transportation Pursuant to the Hearing on September 22, 2016 as follows:

**I.**

**STATEMENT OF THE FACTS**

1. **The Parties:** Plaintiff, Erich Martin ("Erich") is 35 and Defendant, Raina L. Martin ("Defendant") is 35.
2. **Date of Marriage:** April 1, 2002
3. **Date of Divorce:** November 5, 2015
4. **Resolved issues:** None.
5. **Statement of unresolved issues:** Make-Up Parenting Time, Holiday Schedule,

and Child's Transportation To and From Visitation.

6. **Existing Court Orders:**

- A. November 5, 2015 Decree of Divorce ("Decree"): The Court granted the parties joint legal custody of their minor child, Nathan L. Martin ("Nathan"), born August 24, 2010. *See* Decree at 2:19-20. In addition, the Court granted Defendant primary physical custody of Nathan, subject to Erich's right of visitation. *Id.* at 3:20-21. Erich's visitation consisted of eight (8) consecutive weeks of summer visitation, monthly visitation each while school was in session, Spring Break each year, and telephonic communication each night. *Id.* at 4:1-3; 4:5-9; 5:3-5, 19-21. Additionally, the court ordered the parties to share equally the costs for Nathan to travel. "Until Nathan is able to fly unaccompanied," the Court ordered, "Erich shall be responsible for one-hundred percent (100%) of any and all chaperone costs associated with Nathan's travels." *Id.* at 7:21-22.
- B. July 12, 2016 Order: The Court referred both parties to mediation, ordered both parties to follow their joint legal custody obligations, and ordered Defendant not to schedule activities during Erich's visitation time. *See* Court Minutes from July 12, 2016 Hearing at 2. The Court also ordered Erich to enroll in Smart Start monitoring at his cost but did not reduce Erich's visitation time. *Id.* Additionally, the Court ordered the parties to communicate through OurFamilyWizard, ordered Erich to sign a Life Insurance Policy, and ordered the parties to provide information to QDRO Masters prior to their preparing a QDRO. *Id.* The parties were to split the fees for preparation of the QDRO. *Id.*

///

///

7. **Other Facts:**

The parties attended mediation pursuant to the Court's July 12, 2016 order but were unable to resolve any issues between them. At a return hearing on September 22, 2016, the Court ordered the parties to file a proposal regarding when Erich's thirteen (13) days of make-up time should occur, what holiday schedule should be put in place, and how the Court should rule on Nathan's flying unaccompanied for visitation. *See* Hearing Tape from September 22, 2016 at 37:55. The Court also requested the parties' provide the Court with school schedule for the 2016-2017 school year. *Id.*

**II.**

**PROPOSAL**

Erich proposes the following:

**A. SHIRLEY AND BILL WALLIN ELEMENTARY SCHOOL SCHEDULE**

Nathan attends Shirley and Bill Wallin Elementary School ("Wallin Elementary"). Wallin Elementary is currently on a year-round schedule. *See* Wallin Elementary Year Round School Student Attendance Calendar, attached as **Exhibit 1**.

Pursuant to the parties' Decree, Erich is entitled to a visit with Nathan each month while school is in session. *See* Decree at 4:5-9. Erich also "has the option to maximize his monthly visitation by taking any and all three (3) day weekends, staff development days, and any other similar non-school days during the school year as his visitation time." *Id.* at 4:13-15. Erich is also entitled to eight (8) consecutive weeks of visitation each summer and every Spring Break. *Id.* at 4:1-3; 5:3-5.

The parties' Decree, however, assumed Nathan would attend a traditional school, rather than a year-round school, and since Nathan's enrollment at Wallin Elementary, his breaks from school are longer and further apart. Wallin Elementary also does not have a traditional summer vacation during which Erich is be able to spend eight (8) consecutive weeks with Nathan.

As a result, Erich's regular visitation should include all breaks from school. This

1 includes all three (3) day weekends and track breaks, with the exception of the holiday visitation  
2 schedule outlined below, which should trump any regular visitation Erich receives.

3 In addition, during months during which Nathan has no break from school or holiday with  
4 Erich, Erich should be able to visit Nathan in Las Vegas one (1) weekend during that month, so  
5 long as Erich provides Defendant one (1) week's written notice. This visit would begin from the  
6 time school lets out on Friday and would end no later than Sunday at 8:00 p.m.

7 Furthermore, telephonic visitation should occur with the non-custodial parent for a  
8 maximum of ten (10) minutes on Tuesday, Thursday, and Sunday nights at 8:00 p.m. Pacific  
9 Time. Telephonic visitation includes conversations over the telephone, through FaceTime or  
10 Skype, or by any other electronic means. Nathan should be provided with complete privacy  
11 during his telephonic visitation and should not be distracted during the visitation as a result of his  
12 location. For example, Nathan should not be speaking with the non-custodial parent while  
13 traveling or while at a restaurant where other conversations are occurring. Both parties should be  
14 flexible with the timing for telephonic visitation. So long as notice is provided to the other party  
15 before 8:00 p.m. Pacific Time, telephonic visitation should be able to occur at a later time if  
16 needed in order to ensure Nathan's privacy and complete attention.

17 **B. HOLIDAY VISITATION SCHEDULE**

18 The parties' holiday visitation schedule should be implemented as outlined below:

- 19 • **Christmas Break:** Christmas Break should be split into two periods, with the first  
20 period running from December 19 at 7:00 p.m. through December 26 at 7:00 p.m.  
21 and the second period running from December 26 at 7:00 p.m. until January 2 at  
22 7:00 p.m. Erich should be granted the first period of Christmas Break on even-  
23 numbered years and the second period of Christmas Break on odd-numbered  
24 years. Defendant should be granted the first period of Christmas Break on odd-  
25 numbered years and the second period of Christmas Break on even-numbered  
26 years. Should Nathan return to a traditional school schedule, the Christmas Break  
27 schedule should remain the same as set forth above but should be divided by  
28 finding the mid-point between the day Nathan recesses from school and the day

Nathan returns from school. The first half should continue to include Christmas Eve and Christmas Day.

- **Thanksgiving:** The Thanksgiving holiday should be defined as the Friday prior to Thanksgiving Day at 7:00 p.m. until the Sunday following Thanksgiving Day at 7:00 p.m. Erich should be granted the Thanksgiving holiday on odd-numbered years and Defendant should be granted the Thanksgiving holiday on even-numbered years. Should Nathan's year-round schedule provide a longer break that includes the Thanksgiving holiday as defined here, Erich should have Nathan during his days out of school, excepting the Thanksgiving holiday on even-numbered years.

- **Spring Break:** Spring Break should be defined as the Friday prior to the commencement of Spring Break at 7:00 p.m. until the Sunday prior to school beginning again at 7:00 p.m. Erich should be granted Spring Break during odd-numbered years and Defendant should be granted Spring Break during even-numbered years. Should Nathan's year-round schedule provide a longer break that includes Spring Break as defined here, Erich should have Nathan during his days out of school, excepting Spring Break on even-numbered years.

- **Summer Vacation:** Summer should be defined as the months of June, July, and August. Erich should be granted visitation with Nathan at any point he is out of school during summer, excepting two (2) consecutive weeks during which Defendant should be granted visitation with Nathan. Defendant should provide one (1) month's written notice to Erich each year letting him know which two (2) weeks she prefers. This schedule should occur whether or not Nathan remains on a year-round school schedule or returns to a traditional school schedule.

- **Father's Day:** The Father's Day holiday should be defined as the Friday prior to Father's Day at 7:00 p.m. until Father's Day at 7:00 p.m. Erich should be granted each and every Father's Day holiday.

///



- \* **Mother's Day:** The Mother's Day holiday should be defined as the Friday prior to Mother's Day at 7:00 p.m. until Mother's Day at 7:00 p.m. Defendant should be granted each and every Mother's Day.

The holiday visitation schedule outlined above should trump any regular visitation Erich may be entitled to receive. In addition, special occasions such as weddings, funerals, and graduations should take precedent over the parties' visitation schedule. Christmas, Thanksgiving, and Spring Break should trump even special occasions, however.

#### **C. MAKE-UP TIME FOR ERICH**

Erich is entitled to make-up time due to Defendant withholding Nathan in the past. To make up this time, Nathan should spend Spring Break of 2018 with Erich.

#### **D. TRANSPORTATION TO AND FROM VISITATION**

Pursuant to the Decree, the parties should continue to "share the costs and responsibility for Nathan's travels." See Decree at 5:9-10. According to the Decree, "Raina shall pay for the costs of Nathan to travel to Erich, and Erich shall pay for the costs of Nathan to return to Raina." *Id.* at 7:20-21.

In addition, Nathan should fly unaccompanied and the parties should equally share the cost of any unaccompanied minor fee required for Nathan to travel. Pursuant to the Decree, "Until Nathan is able to fly unaccompanied, Erich shall be responsible for one-hundred percent (100%) of any and all chaperone costs associated with Nathan's travels." *Id.* at 7:21-23. Nathan is now six (6) years old and does not require a chaperone to accompany him on flights. Accordingly, Nathan should fly unaccompanied and the parties should split the cost of that travel.

Should Defendant desire that Nathan fly accompanied, she should be required to bear the entire cost of travel for Nathan's chaperone. She should also be required to comply with the visitation schedule, ensuring that whoever accompanies Nathan is able to do so without interrupting Erich's parenting time.

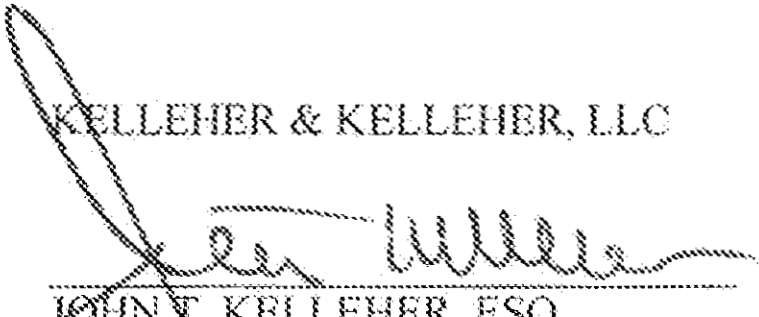
In spite of Defendant's false assertions that having Nathan fly unaccompanied leads to confusion or angst for Nathan or the parties, Nathan has, up to this point, flown unaccompanied a total of three (3) times. Each time, the flights were uneventful, with Nathan loving the flight and

1 the exchanges happening on time.

2 Defendant's fabricated scenarios that Nathan arrived home late on January 26, 2016 and  
3 September 18, 2016 should not influence the Court in its decision regarding transportation to and  
4 from exchanges. On January 26, 2016, Defendant had known for one (1) month prior to  
5 Nathan's scheduled return the date and time of Nathan's arrival in Las Vegas. On September 18,  
6 Nathan arrived home at 7:50 p.m., not at 9:30 p.m. as Defendant mis-represented to the Court at  
7 the most recent hearing. In fact, although scheduled to arrive home the morning of September  
8 19, Defendant insisted Nathan return one (1) day early. Erich complied with Defendant's  
9 unilateral decision and Nathan returned to Las Vegas September 18 safely and on time.

10 This Court should order that Nathan can fly unaccompanied as long as he arrives to his  
11 destination on or before the dates and times to be set forth in the parties' visitation schedule. No  
12 request should be required for visitation. Instead, the party receiving Nathan should expect to  
13 greet Nathan at the airport on the scheduled date and time of his arrival pursuant to the parties'  
14 visitation schedule. If changes need to be made to Nathan's itinerary, a thirty (30) day advance  
15 request should be provided by the requesting party. The receiving party must agree to the change  
16 or no change can be made.

17 KELLEHER & KELLEHER, LLC

18   
19 JOHN T. KELLEHER, ESQ.

20 Nevada Bar No. 6012  
21 40 S. Stephanie Street, Suite #201  
22 Henderson, Nevada 89012  
23 Attorney for Plaintiff  
24  
25  
26  
27  
28



CERTIFICATE OF MAILING

I hereby certify that on the 29 day of Sept., 2016, I deposited a true and correct copy of the above and foregoing PLAINTIFF'S PROPOSAL REGARDING MAKE-UP PARENTING TIME, HOLIDAY VISITATION, AND TRANSPORTATION PURSUANT TO THE HEARING ON SEPTEMBER 22, 2016 in the United States Mail, postage prepaid and addressed as follows:

Michele L. Roberts, Esq.  
1810 E. Sahara Ave., #138  
Las Vegas, NV 89104  
Attorney for Defendant



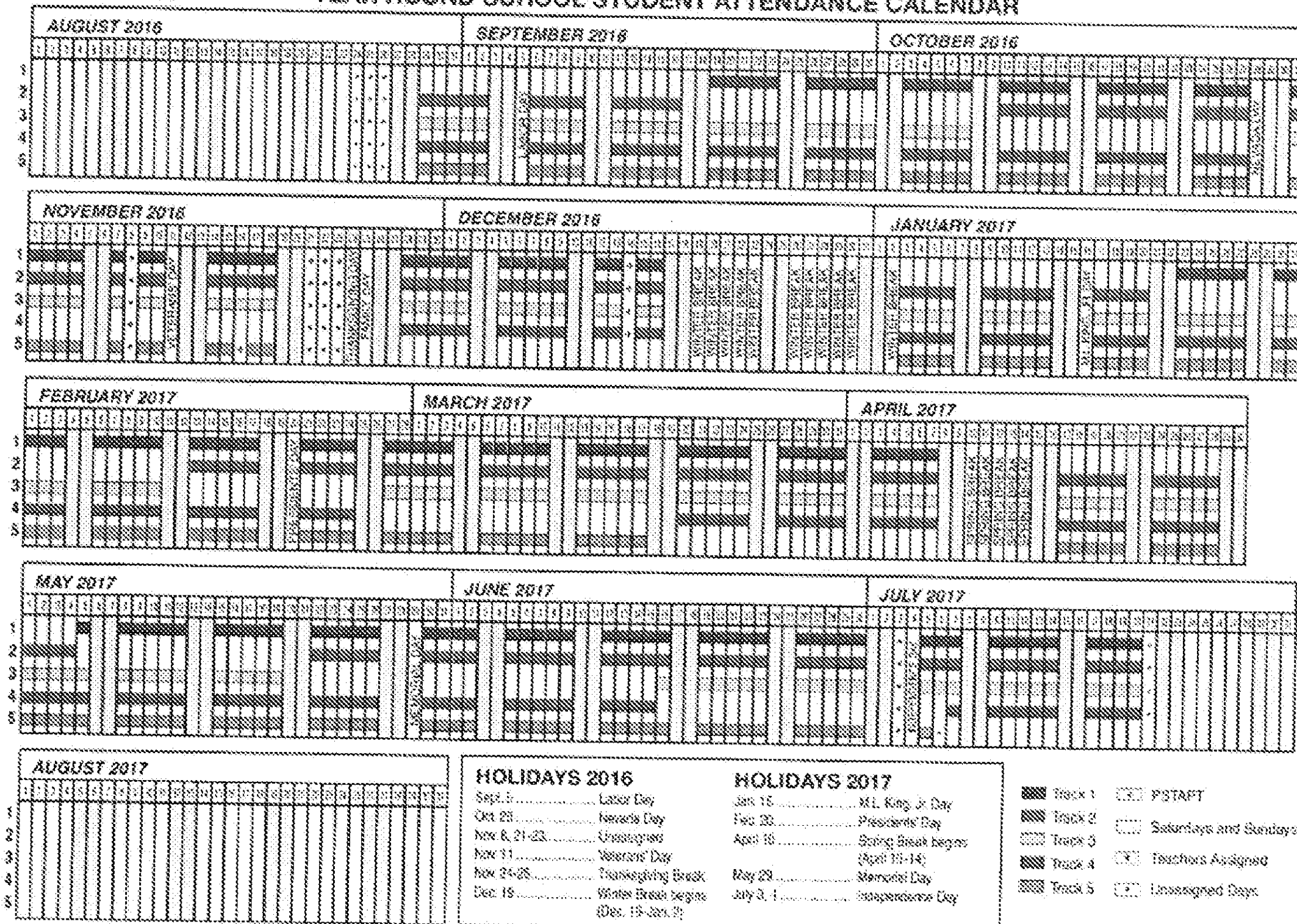
An employee of Kelleher & Kelleher, LLC

LAW OFFICES  
**KELLEHER & KELLEHER LLC**  
49 S. Stephanie Street, Suite #301  
Henderson, Nevada 89012  
(702) 384-7494  
Facsimile (702) 384-7445

2016-2017

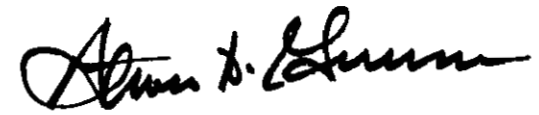
Clark County School District  
YEAR ROUND SCHOOL STUDENT ATTENDANCE CALENDAR

PUB-603  
Rev. 5/15/16  
CCSD



63

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CLERK OF THE COURT

1 SUPP  
The Law Office of Michele L. Roberts  
2 MICHELE L. ROBERTS, ESQ.  
Nevada Bar No. 009168  
3 mlr@michelelrobertslaw.com  
1810 E. Sahara Ave, Ste. 138  
4 Las Vegas, Nevada 89104  
(702) 358-0620  
5 Attorney for Defendant  
RAINA L. MARTIN

6  
7 EIGHTH JUDICIAL DISTRICT COURT  
FAMILY DIVISION  
8 CLARK COUNTY, NEVADA

9 ERICH M. MARTIN,  
10 Plaintiff,

CASE NO. D-15-509045-D  
DEPT. NO. C

11 v.

12 RAINA L. MARTIN,  
13 Defendant.

14  
15 DEFENDANT'S PROPOSED HOLIDAY AND VACATION SCHEDULE

16 COMES NOW Defendant, RAINA L. MARTIN, by and through her counsel of record,  
17 Michele L. Roberts, Esq., of the Law Office of Michele L. Roberts, and respectfully submits  
18 her *Defendant's Proposed Holiday and Vacation Schedule*, as follows:

19 1. **Martin Luther King Jr.'s Birthday:** This holiday shall be defined as beginning  
20 the Friday or Saturday morning before Martin Luther King Jr.'s Birthday (to be determined  
21 by flight and or travel arrangements) at a time designated by travel arrangements and  
22 concluding on the holiday at 6:00 p.m. This holiday shall remain the same on a yearly basis  
23 with the child residing with the Father.

24 2. **President's Day:** This holiday is defined as beginning the Friday or Saturday  
25 morning before President's Day (to be determined by flight and or travel arrangements) at  
26 a time designated by travel arrangements and concluding on the holiday at 6:00 p.m.  
27 Father shall have odd-numbered years with the child beginning in 2017, and Mother shall  
28 have even-numbered years with the child.

1           3.     **Memorial Day:** This holiday is defined as beginning the Friday or Saturday  
2 morning before Memorial Day (to be determined by flight and or travel arrangements) at a  
3 time designated by travel arrangements and concluding on the holiday at 6:00 p.m. Father  
4 shall have odd-numbered years with the child beginning in 2017, and Mother shall have  
5 even-numbered years with the child.

6           4.     **Fourth of July:** Fourth of July shall be defined as beginning July 4 at 9:00  
7 a.m. and concluding July 5 at 9:00 a.m. Should the holiday fall on a Friday or Monday, this  
8 holiday shall be defined as beginning the Friday or Saturday morning on the day of the  
9 holiday (if Friday) or before the holiday (if on a Monday) and determined by flight and or  
10 travel arrangements at a time designated by travel arrangements and concluding at 6:00  
11 p.m. on the Sunday after the holiday (if the holiday is on Friday) or on Monday (if the holiday  
12 is on a Monday). The child shall reside with Mother in odd-numbered years beginning in  
13 2017, and the child shall reside with Father in even-numbered years. The minor child shall  
14 not miss any school before or after For the year 2017, the child shall reside with Mother for  
15 this holiday. The child shall not miss any school for this holiday.

16           5.     **Labor Day:** This holiday is defined as beginning the Friday or Saturday  
17 morning before Labor Day (to be determined by flight and or travel arrangements) at a time  
18 designated by travel arrangements and concluding on the holiday at 6:00 p.m. Father shall  
19 have odd-numbered years with the child beginning in 2017, and Mother shall have even-  
20 numbered years with the child.

21           6.     **Halloween:** For the year 2016, the parents agree that Halloween shall be  
22 divided into two periods. The first period shall begin October 28 at a time designated by  
23 travel arrangements and end October 31 at 5:00 p.m. (Halloween visitation shall take place  
24 in Nevada). The second period shall begin October 31 at 5:00 p.m. and end November 1  
25 at the start of school or 9:00 a.m. if there is not school. The parents agree that for the year  
26 2016: the child shall reside with Father during the first period and with Mother during the  
27 second period. Thereafter, the parents agree to alternate the periods or designate  
28 Halloween by mutual agreement.

1           7.       **Thanksgiving and Winter Break:** As a result of the year round school  
2 schedule, Winter Break will always start before the Thanksgiving holiday. In even-  
3 numbered years, Mother shall have the child for fifteen days from the day after school  
4 recesses for this holiday. Father shall have the child the second half beginning fifteen days  
5 after school recesses for twenty-six (26) days (which includes Christmas).

6           In odd-numbered years, Father shall have the child for twenty-nine (29) days from  
7 the day after school recesses for the holiday at a time designated by travel arrangements  
8 and end twenty-nine (29) days later at 6:00 p.m. Mother shall have the remaining fifteen  
9 (15) days of this Break .

10          8.       **Spring Break:** With the schedule proposed by Mother, Father will be getting  
11 one or two additional weeks than originally ordered in the Decree of Divorce. Therefore,  
12 Mother requests that Spring Break be alternated with Father having odd-numbered years  
13 and Mother having even-numbered years. Spring Break shall be defined as beginning the  
14 Friday or Saturday after recess begins for Spring Break (to be determined by flight and or  
15 travel arrangements) at a time designated by travel arrangements and concluding on the  
16 Sunday at 6:00 p.m. before school resumes.

17          9.       **Summer Break:** Father shall have five weeks during Summer Break. For  
18 2017, Father shall have the child beginning July 15, 2017 at a time designated by travel  
19 arrangements and ending August 20, 2017 at a time designated by travel arrangements.  
20 Thereafter, Father shall have Summer Break each year beginning ten (10) days after school  
21 recesses for Summer Break (to be determined by flight and or travel arrangements) at a  
22 time designated by travel arrangements for a period of five weeks (35 days).

23          10.       Mother is requesting that an Order be entered stating that the minor child's  
24 school schedule remain on Track 5 in order to maintain consistency and avoid any  
25 confusion for future school years. According to the school, if it is a Court Order, the school  
26 will happily abide to same.

27       ///



1  
2 11. Mother is also requesting that the travel for the minor child be taken on  
3 Fridays, Saturdays and Sundays to prevent any more absences from school. My client  
4 received a Notice of Truancy, attached hereto, from the school because of three unexcused  
5 absences as a result of sending the minor child to Colorado from September 14 to  
6 September 19, 2016. Although my client requested that Plaintiff inform the school of the  
7 absences for September 14 and 15, and requested that the minor child be returned Sunday  
8 evening, Plaintiff did not comply with either request.

9 12. With regard to make-up time from Spring Break 2016, which was a total of  
10 nine days, Father already took three days between September 14, 2016 and September 19,  
11 2016. Mother proposes that the additional time be taken from December 1 through  
12 December 4, and December 29 and 30, 2016, which are dates before and after his allotted  
13 Winter Break schedule.

14 13. Transportation costs: Mother shall pay part of the travel costs for when the  
15 child travels to see Father, and Father is obligated to pay the travel costs to return child to  
16 Mother. Father shall also be responsible for any and all chaperone (or related) fees. If  
17 Mother books the chaperone flight, Father shall reimburse Mother for 100% of the  
18 chaperone fee. If Mother is the chaperone, she shall pay her own flight.

19 14. That all other provisions in the Decree of Divorce, not expressly modified  
20 herein, shall remain in full force and effect.

21 DATED this 30<sup>th</sup> day of September 2016

22 Respectfully Submitted By:

23 THE LAW OFFICE OF MICHELE L. ROBERTS

24 By Michele L. Roberts  
MICHELE L. ROBERTS, ESQ.

25 Nevada Bar No. 009168

26 1810 E. Sahara Ave., Ste. 138

Las Vegas, Nevada 89104

27 mlr@michelerobertsllaw.com

(702) 358-0620

28 Attorney for Defendant,

RAINA L. MARTIN

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that I am an employee of THE LAW OFFICE OF MICHELE L. ROBERTS, and that on the 30<sup>th</sup> day September 2016, I served a true and correct copy of the document described herein by the method indicated below, and addressed to the following:


**Document Served:** DEFENDANT'S PROPOSED HOLIDAY AND VACATION SCHEDULE

**Person(s) Served:**

John T. Kelleher, Esq.  
KELLEHER & KELLEHER, LLC  
40 S. Stephanie Street, Suite 201  
Henderson, NV 89012  
Attorney for Plaintiff  
ERICH MARTIN

- ☐ Hand Deliver
- ☒ U.S. Mail
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ E-Mail
- ☒ E-Service

E-mail: kelleherjt@aol.com

  
An Employee of  
THE LAW OFFICE OF MICHELE L. ROBERTS



2016-2017

YEAR ROUND SCHOOL STUDENT ATTENDANCE CALENDAR

Clark County School District

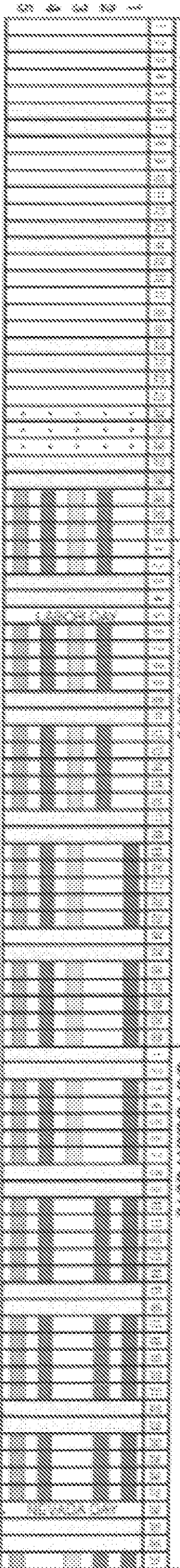
Revised  
Nov. 2016



AUGUST 2016

SEPTEMBER 2016

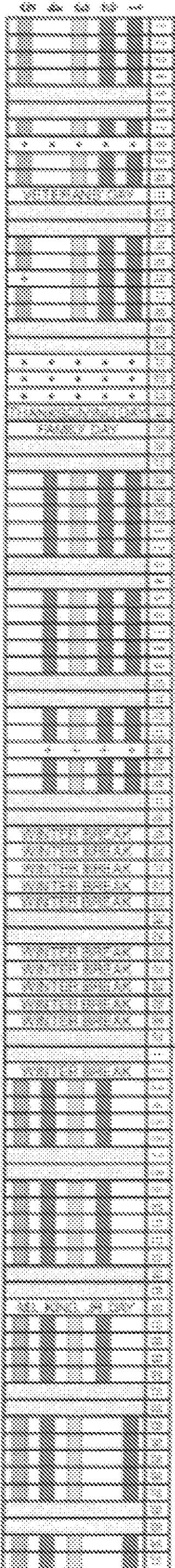
OCTOBER 2016



NOVEMBER 2016

DECEMBER 2016

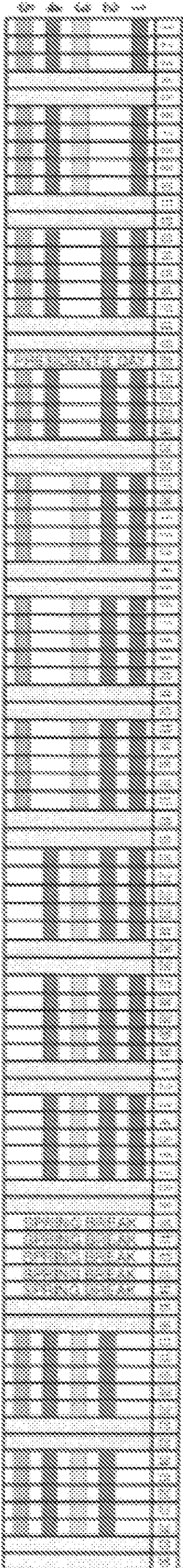
JANUARY 2017



FEBRUARY 2017

MARCH 2017

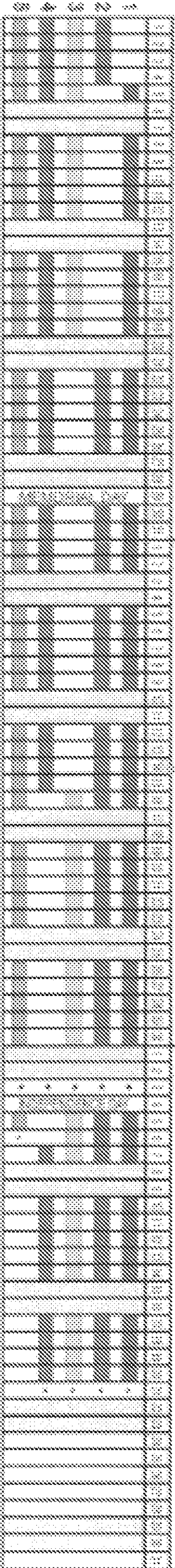
APRIL 2017



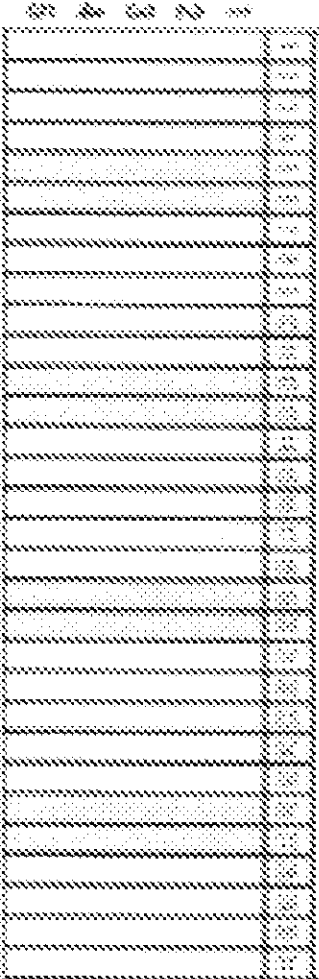
MAY 2017

JUNE 2017

JULY 2017



AUGUST 2017



HOLIDAYS 2016

HOLIDAYS 2017

Sept. 5 Labor Day  
Oct. 26 Halloween Day  
Nov. 8, 21-23 Thanksgiving  
Nov. 11 Veterans' Day  
Nov. 24-26 Thanksgiving Break  
Dec. 10 Winter Break begins  
Dec. 18-Jan. 2

Jan. 16 MLK King J. Day  
Feb. 20 Presidents Day  
April 10 Spring Break begins  
April 10-14 Spring Break  
May 29 Memorial Day  
July 3, 4 Independence Day

- Track 1
- Track 2
- Track 3
- Track 4
- Track 5
- START
- Saturdays and Sundays
- Track Assigned
- Unassigned Days

Martin, Shirey & Bell ES  
2333 Canyon Retreat Dr  
Henderson, NV 89044  
(702)799-5776

Report generated  
09/23/2018

Student #12052099  
Grade 01  
Birthdate: 08/24/2010

Parent/Guardian of Martin, Nathan Lee  
2812 JOSEPHINE DR  
HENDERSON, NV 89044

This is your NOTICE OF TRUANCY for three or more unexcused absences. This letter is to inform you that your child, Nathan Martin, has been absent from school without a valid excuse. Please review the table below for more information.

Terms:

Term 1

Total

Course	Absent	Tardy	Absent	Tardy
018510 Homeroom 1 AM	3	0	3	0
018520 Homeroom 1 PM	3	0	3	0

As provided for by Nevada law, all children between the ages of 7 and 18 years must attend school. Clark County School District Regulations require that within three days after a child's return to school from an absence, a notice from the parent/guardian must be provided to the school explaining why the child was physically or mentally unable to attend or, if an emergency, the nature of the emergency.

Any child who has been declared truant three or more times within one school year must be declared a habitual truant. Nevada law requires that habitual truants be reported to law enforcement. A citation by a law enforcement agency for habitual truancy can result in fines of \$100 or more, required community service, suspension of the child's driver license or future privilege of obtaining a license, referral of the parent to law enforcement, and/or referral of the parent for educational neglect. These penalties cannot be appealed through the school.

Excessive absenteeism and/or truancy may result in failing grades, denial of credit, referral to an alternative education program and/or retention in the current grade. School personnel are willing to work with you to determine the cause of the absence(s) and establish a pattern of regular school attendance for your child.

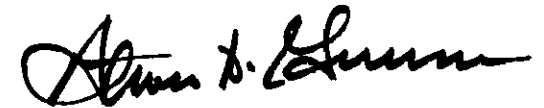
Please call the attendance office at (702)799-5776 if you haven't already scheduled a conference.

Sincerely,

  
Anna M. Hunt  
Principal

64

64



CLERK OF THE COURT

1 **BRIEF**  
2 JOHN T. KELLEHER, ESQ.  
3 Nevada Bar No. 6012  
4 KELLEHER & KELLEHER, LLC  
5 40 South Stephanie Street, Suite 201  
6 Henderson, Nevada 89012  
7 Telephone (702) 384-7494  
8 Facsimile (702) 384-7545  
9 kelleherjt@aol.com

10 Attorney for Plaintiff

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 ERICH M. MARTIN

14 Plaintiff,

15 v.

16 RAINA L. MARTIN,

17 Defendant.

CASE NO.: D-15-509045-D  
DEPT. NO.: C

18 **PLAINTIFF'S BRIEF FOR ATTORNEY FEES**

19 COMES NOW, Plaintiff, Erich Martin, by and through his attorney, John T. Kelleher, Esq.,  
20 of KELLEHER & KELLEHER, LLC, and hereby files his BRIEF on the issue of attorney's fees in this  
21 matter.

22 DATED this 3 day of October, 2016.

23 KELLEHER & KELLEHER, LLC

24 By: 

25 JOHN T. KELLEHER, ESQ.  
26 Nevada Bar No. 6012  
27 40 South Stephanie Street, Suite 201  
28 Henderson, Nevada 89012  
Attorney for Plaintiff

///

///

///

LAW OFFICES  
**KELLEHER & KELLEHER LLC**  
40 South Stephanie Street, 201  
HENDERSON, NEVADA 89012  
(702) 384-7494  
Facsimile (702) 384-7545

I.

REQUEST FOR RELIEF

Plaintiff, Erich Martin ("Erich") requests the Court grant him the full amount of his attorney fees and costs in prosecuting his Motion for Order to Show Cause.

II.

STATEMENT OF THE FACTS

Defendant, Raina L. Martin ("Defendant"), unilaterally violated the provisions of the parties' Decree of Divorce ("Decree") entered on November 5, 2015. Pursuant to that Decree, Defendant was granted primary physical custody of the parties' minor child, Nathan, subject to Erich's right of visitation. *See* Decree at 3:20-21. Erich's visitation consisted of eight (8) consecutive weeks of summer visitation, monthly visitation each while school was in session, Spring Break each year, and telephonic communication each night. *Id.* at 4:1-3; 4:5-9; 5:3-5, 19-21.

Additionally, the court ordered the parties to share equally the costs for Nathan to travel. "Until Nathan is able to fly unaccompanied," the Court ordered, "Erich shall be responsible for one-hundred percent (100%) of any and all chaperone costs associated with Nathan's travels." *Id.* at 7:21-22.

Due, among other things, to a discrepancy between the parties regarding the interpretation of the Decree regarding unaccompanied travel, Defendant wrote Erich on February 4, 2016 informing him that "any further visitations" with Nathan would be ending indefinitely. *See* Email from Raina Martin, attached as **Exhibit 1**. Following through on her threat, Defendant withheld Nathan from Erich for the 2016 Spring Break holiday Erich was entitled to pursuant to the Decree. *Id.* at 4:5-6. Defendant's withholding of Nathan during Spring Break was consistent to form for Defendant, as she also unilaterally withheld Nathan during Erich's scheduled visitation time in December 2015.

As a result of Defendant's actions, Erich was forced to file his Motion for Order to Show Cause on May 27, 2016, requesting the Court award him make-up parent time and attorney's fees for having to litigate as a result of Defendant's outrageous behavior. At a hearing on July 12, 2016, the Court awarded Erich compensatory time for his missed visitation time pursuant to NRS 125C.020 and referred the parties' to mediation to work out when that make-up parent time would occur.



1 Erich asks this court to award him all of his attorney fees and costs incurred in filing his  
2 Motion for Order to Show Cause. Erich's attorney's fees incurred as a result of Defendant's behavior  
3 total \$6,887.58. The amount spent was reasonable under the circumstances.

4 **III.**

5 **LEGAL ARGUMENT**

6 By any measure, Erich was the prevailing party at the July 12, 2016 hearing. A prevailing party  
7 is one that "succeeds on any significant issue in litigation which achieves some of the benefit it sought  
8 in bringing suit." *Valley Elec. Ass'n v. Overfield*, 121 Nev. 7, 10-11, 106 P.3d 1198, 1200 (2005).

9 Erich prevailed entirely because at issue was the unreasonable behavior of Defendant in  
10 withholding visitation time from Erich until he complied with certain demands made by her.  
11 Defendant used visitation time as a weapon to force Erich to submit to her will. The Court ordered  
12 compensatory time for Erich pursuant to NRS 125C.020 and ordered the parties to attend mediation  
13 to ensure the make-up time would be provided.

14 As the prevailing party in this action, Erich is entitled to attorney's fees pursuant to NRS  
15 18.010 (2)(b) and EDCR 7.60(b):

16 NRS 18.010(b): Without regard to the recovery sought, when the court finds  
17 that the claim, counterclaim, cross-claim or third-party complaint or defense  
18 of the opposing party was brought or maintained without reasonable ground  
19 or to harass the prevailing party. The court shall liberally construe the  
20 provisions of this paragraph in favor of awarding attorney's fees in all  
21 appropriate situations. It is the intent of the Legislature that the court award  
22 attorney's fees pursuant to this paragraph and impose sanctions pursuant to  
23 Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations  
24 to punish for and deter frivolous or vexatious claims and defenses because  
25 such claims and defenses overburden limited judicial resources, hinder the  
26 timely resolution of meritorious claims and increase the costs of engaging  
27 in business and providing professional services to the public.

28 EDCR 7.60(b): The court may, after notice and an opportunity to be heard,  
impose upon an attorney or a party any and all sanctions which may, under  
the facts of the case, be reasonable, including the imposition of fines, costs  
or attorney's fees when an attorney or a party without just cause:

- (1) Presents to the court a motion or an opposition to a motion which is obviously frivolous, unnecessary or unwarranted.
- (2) Fails to prepare for a presentation.
- (3) So multiplies the proceedings in a case as to increase costs unreasonably and vexatiously.
- (4) Fails or refuses to comply with these rules.
- (5) Fails or refuses to comply with any order of a judge of the court.

Erich prevailed in the case at bar by having make-up time awarded him.

1 In *Miller v. Wilfong*, 121 Nev. 619, 119 P.3d 727 (2005), the Nevada Supreme Court found  
2 parties seeking attorney fees in family law cases should follow the factors set forth in *Brunzell v. Gold*  
3 *Gate National Bank* 85 Nev. 345, 455 P.2d 31 (1969).

4 The following factors were set forth in *Brunzell*: (1) the qualities of the advocate, his ability,  
5 his training, education, experience, professional standing and skill; (2) the character of the work to be  
6 done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and  
7 the prominence and character of the parties where they affect the importance of the litigation; (3) the  
8 work actually performed by the lawyer, the skill, time and attention given to the work; (4) the result:  
9 whether the attorney was successful and what benefits were derived.

10 With respect to factor number one (1) in the *Brunzell* factors, Erich has been represented by  
11 John T. Kelleher, Esq., who is a member of the American Academy of Matrimonial Lawyers  
12 ("AAML"). This designation requires many years of family law practice as a precursor to an  
13 application. It further requires written recommendations from family court judges and practitioners,  
14 and it requires an examination. Additionally, Mr. Kelleher is an A/V rated, Certified Family Law  
15 Specialist, and has been named as a Super Lawyer. Mr. Kelleher has three (3) attorneys working with  
16 him at Kelleher & Kelleher, LLC: Christine Kelleher Esq., Randy Richards, Esq., and Stephen Oliver,  
17 Esq. who assist Mr. Kelleher with various aspects of the litigation process.

18 With respect to factor number two (2) in the *Brunzell* factors, the character of the work is a  
19 consideration here as it involved correspondence, phone calls, research, client meetings, pleading  
20 writing, and oral arguments at multiple hearings.

21 As to factor number three (3) in the *Brunzell* factors, the work actually performed by the  
22 lawyer, the skill, time and attention given to the work, was considerable. This lead to a favorable  
23 outcome in this matter which is factor number four (4) in the *Brunzell* analysis. Erich attempted to  
24 resolve this matter without litigation but the Court was forced to step in and award Erich make-up time  
25 as a result of Defendant's egregious behavior.

26 Erich's counsel spent many hours working on and preparing for the hearings in this matter. It  
27 is anticipated that additional hours will be incurred in preparing this brief and the Order in this matter.  
28 Accordingly, Erich is requesting attorney fees and costs of 6,887.58. Given the length of this case, and  
the work required throughout the case, this request is very reasonable. Pursuant to *Love v. Love*, 114

1 Nev. 572, 959 P.2d 523 (1998), the party requesting attorney's fees must provide the opposing party  
2 with a copy of the billing statements demonstrating the incurred charges. Therefore, attached hereto  
3 is a copy of Erich's latest billing statement which includes an itemized bill from the beginning of this  
4 case. The bill is itemized and the person performing the work is identified by their initials. A true and  
5 correct copy of the billing statement is attached as Exhibit "1." The billings also contain the costs  
6 required to bring this case to trial including, copy costs, filing fees, subpoena fees, service fees, and  
7 courier fees.

8 **IV.**

9 **TOTAL FEES AND COSTS**

10 Attorney's Fees .....	\$ 7,045.00
11 Filing Fees .....	\$ 7.75
12 Runner Fees .....	\$ 7.50
13 Court Fees .....	\$ 25.00
14 Postage: .....	\$ 1.83
15 Photocopies: .....	\$ 44.00
16 <b>TOTAL .....</b>	<b>\$ 7,131.08</b>


17 **V.**

18 **CONCLUSION**

19 The *Brunzell* factors support an awarding of attorney fees to Erich totaling \$7,131.08.

20 DATED this 3 day of October, 2016.

21 KELLEHER & KELLEHER, LLC

22  
23   
24 JOHN T. KELLEHER, ESQ.  
25 Nevada Bar No. 6012  
26 40 South Stephanie Street, Suite 201  
27 Henderson, Nevada 89012  
28 Attorney for Plaintiff



AFFIDAVIT OF ATTORNEY JOHN T. KELLEHER, ESQ.

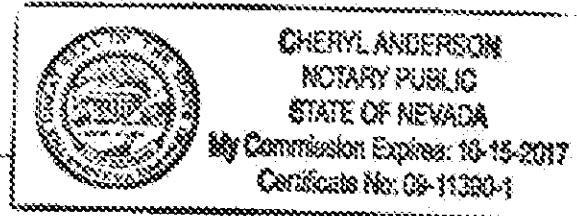
STATE OF NEVADA            )  
  )ss:  
COUNTY OF CLARK         )

JOHN T. KELLEHER, ESQ., being duly sworn, states: that Affiant is an attorney at the law firm of Kelleher & Kelleher, LLC, the attorneys for the Plaintiff and has personal knowledge of the above costs and disbursements expended; that the items contained in the above memorandum are true and correct to the best of this Affiant's knowledge and belief; and that the said disbursements have been necessarily incurred and paid in this action.

  
\_\_\_\_\_  
JOHN T. KELLEHER, ESQ.  
Attorney for Plaintiff

SUBSCRIBED AND SWORN to before me  
on this 3 day of October, 2016.

  
\_\_\_\_\_  
NOTARY PUBLIC  
In and for said County and State



LAW OFFICES  
**KELLEHER & KELLEHER LLC**  
40 South Stephanie Street, 701  
HENDERSON, NEVADA 89012  
(702) 384-7494  
Facsimile (702) 384-7545

CERTIFICATE OF SERVICE

I hereby certify that on the 29 day of October, 2016, a true and correct copy of the document described as PLAINTIFF'S BRIEF FOR ATTORNEY FEES was served electronically via E-Service Master List of Wiznet and addressed as follows:

Michele L. Roberts, Esq.  
Mlr@michelerobertslaw.com  
Attorney for Defendant

  
An employee of KELLEHER & KELLEHER, LLC

# Exhibit 1

FW: FEB 12-15 visit

be denied.

Please continue to only communicate with me via Email unless it is to face time with Nathan.

Erich

---

From: [raina.martin@gmail.com](mailto:raina.martin@gmail.com)  
Subject: Fwd: FEB 12-15 visit  
Date: Thu, 4 Feb 2016 06:45:44 -0800  
CC: [a6941b@gmail.com](mailto:a6941b@gmail.com)  
To: [ghotiboy@hotmail.com](mailto:ghotiboy@hotmail.com)

Erich,

This email was sent to you on February 1. Please do not make comments to our five-year-old child about not receiving any communication from me in regards to his visit. Also, quit ignoring your responsibilities.

-Raina

Begin forwarded message:

From: Raina Martin <[raina.martin@gmail.com](mailto:raina.martin@gmail.com)>  
Date: February 1, 2016 at 12:22:58  
Subject: Re: FEB 12-15 visit

Erich,

There are a few things that need to be completed before we agree to any further visitations as you have not abided by the divorce decree enforced by the courts, on many facets. First, you need to call and pay the \$425.00 you owe for the QDRO: 702-438-4100 which is part of the divorce decree. Second, you need to start paying an additional \$200.00 per month to catch-up on payments not made that pay for the backed child support for Nathan's schooling you have not paid anything towards since August of 2015 - your current balance owed is now \$986.00 which was also part of the decree that you have failed to abide by. Third, you need to send me in writing that YOU will abide by the decree and allow Nathan to talk to me NIGHTLY at 7:00pm (his time) without you and Julie babysitting him and telling him to hang-up-again, per the divorce decree that you have NOT abided by. Fourth, please provide me with his return flight itinerary before I send you any flight information for Nathan- this is because on January 26th, 2016, you put our 5

FW: FEB 12-15 visit

year old son on an airplane before you informed me of his flight number OR the airline. Fifth, please pay the \$100 up front for Nathan's chaperon fee that is per the divorce decree. If you are able to complete all of the items listed, I will be more than happy to abide by the decree and send him to you safely.

Thanks,  
Raina

On Thu, Jan 28, 2016 at 7:24 PM, Raina Martin <[raina.martin@gmail.com](mailto:raina.martin@gmail.com)> wrote:

Begin forwarded message:

From: Erich Martin <[ghotiboy@hotmail.com](mailto:ghotiboy@hotmail.com)>  
Date: January 28, 2016 at 7:14:29 PM PST  
To: [raina.martin@gmail.com](mailto:raina.martin@gmail.com)  
Subject: FEB 12-15 visit

Raina,

I would like to request having Nathan visit over his break on President's Day weekend for FEB16. I would have him Friday through Monday 12-15FEB16 at that time. Thanks.

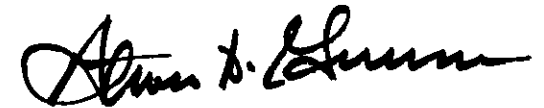
Erich

Sent from my iPhone  
Sent from my iPhone

<Nathan's school payments.png>

65

65



CLERK OF THE COURT

1 **MOT**  
2 JOHN T. KELLEHER, ESQ.  
3 Nevada Bar No. 6012  
4 KELLEHER & KELLEHER, LLC  
5 40 South Stephanie Street, Suite 201  
6 Henderson, Nevada 89012  
7 Telephone (702) 384-7494  
8 Facsimile (702) 384-7545  
9 kelleherjt@aol.com

10 Attorney for Plaintiff

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 ERICH M. MARTIN

14 Plaintiff,

15 v.

16 RAINA L. MARTIN,

17 Defendant.

CASE NO.: D-15-509045-D

DEPT. NO.: C

November 23, 2016

9:00am

18 **MOTION TO TERMINATE ALIMONY AND FOR ATTORNEY'S FEES AND COSTS**

19 NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE  
20 CLERK OF THE COURT AND TO PROVIDE THE UNDER-SIGNED COUNSEL WITH A COPY OF  
21 YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO  
22 FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN (10) DAYS OF YOUR  
23 RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE  
24 COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING DATE.

25 COMES NOW Plaintiff, Erich M. Martin, by and through his attorney, John T. Kelleher,  
26 Esq., of the law firm of KELLEHER & KELLEHER LLC, and hereby files his Motion to  
27 Terminate Alimony and For Attorney's Fees and Costs.  
28

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1 This Motion is made and based upon the pleadings on file herein, the attached affidavit,  
2 and the oral argument of counsel at the time of the hearing.

3 DATED this 5 day of October, 2016.

4 KELLEHER & KELLEHER, LLC

5 By: 

6 JOHN T. KELLEHER, ESQ.  
7 Nevada Bar No. 6012  
8 40 South Stephanie Street, Suite 201  
9 Henderson, Nevada 89012  
10 Attorney for Plaintiff

11 NOTICE OF MOTION

12 TO: RAINA L. MARTIN, Defendant herein;  
13 TO: Michele L. Roberts, Esq., attorney for Defendant

14 PLEASE TAKE NOTICE that the above and foregoing MOTION will come on for  
15 hearing before the above-entitled court on the 23rd day of November, 2016 at the hour  
16 of 9:00 o'clock a.m. before Department "C" of the Family Court Division, 601 North Pecos  
17 Road, Las Vegas, Nevada 89155; or as soon as counsel can be heard.

18 DATED this 5 day of October, 2016.

19 KELLEHER & KELLEHER, LLC

20 By: 

21 JOHN T. KELLEHER, ESQ.  
22 Nevada Bar No. 6012  
23 40 South Stephanie Street, Suite 201  
24 Henderson, Nevada 89012  
25 Attorney for Plaintiff



POINTS AND AUTHORITIES

I.

STATEMENT OF THE FACTS

Plaintiff, Erich M. Martin ("Erich"), and Defendant, Raina L. Martin ("Defendant") were married in Cumberland County, North Carolina on April 1, 2002. As issue of their marriage, the parties have one (1) minor child, Nathan L. Martin ("Nathan"), born August 24, 2010.

On November 5, 2015, the parties divorced pursuant to a Decree of Divorce ("Decree") obligating Erich to pay Defendant "the amount of \$1,000.00 per month for twenty-four (24) months beginning June, 2015." *See* Decree at 15:1-2.

Since June 2015, Erich has remained current on his alimony payments to Defendant, with the exception of September and October 2016, having paid her to date \$15,000.00 in alimony for a period of fifteen (15) months.

On February 29, 2016, however, Defendant entered into a registered domestic partnership in the State of Nevada with her current partner, Anthony Bricker, without informing Erich.<sup>1</sup> Erich, uninformed at first, has continued to pay Defendant alimony each month pursuant to the Decree. Currently, Erich continues to pay alimony in good faith and out of his desire to comply with this Court's orders.

At a return hearing on September 22, 2016, the Court expressed serious doubts as to Defendant's ability to continue collecting alimony, calling Defendant's domestic partnership, "an issue," and stating, "My guess is, a domestic partnership is like a marriage." *See* September 22, 2016 Hearing Tape at 32:08; 32:12. The Court also stated Defendant's domestic partnership is "not cohabitation-- we have somebody who's actually entered into a domestic partnership." *Id.* at

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<sup>1</sup> Pursuant to a phone call on October 4, 2016 with the Nevada Secretary of State's Office: Domestic Partnership Program, although the domestic partnership registry is considered public record, it is not open to public access. As a result, no attachment is included with this filing showing Defendant's domestic partnership registration.

The Secretary of State's Office informed Erich's counsel, however, that Defendant registered for a domestic partnership on February 29, 2016 and that the record number for her registration is 7541.

Additionally, when asked by the Court at the parties' most recent hearing on September 22, 2016 whether or not she was in a domestic partnership, Defendant replied, "Yes ma'am, I am." *See* September 22, 2016 Hearing Tape at 31:41.

31:29. As a result, stated the Court, "It isn't fair for [Defendant] to keep collecting [alimony] if she is, for all intents and purposes, married to somebody else." *Id.* at 33:14.

Although the Court proved willing to hear the issue during the hearing, counsel for Defendant insisted Erich's file a motion instead. *Id.* at 33:53. Erich's counsel expressed his amenability to filing a motion, so long as Erich received "every penny" of his attorney's fees for having to do so, to which the Court replied that it would make such an order. *Id.* at 34:18. Regarding Defendant's domestic partnership and the resulting attorney's fees should Erich prevail on the issue, the Court stated, "The Court does award fees to the prevailing party. So far, my reading is that the spousal support is over. . . . If [Defendant is] wrong, [Erich] would be awarded his attorney's fees." *Id.* at 38:34; 38:55.

As a result of the Court's statements at the hearing, Erich did not pay Defendant alimony for the months of September or October, having ceased paying alimony after the month of August when Erich learned of Defendant's domestic partnership. Instead, due to Defendant's decision to keep her domestic partnership a secret and her insistence that the issue not be heard at the most recent hearing, Erich is now forced to file this Motion.

## II.

### LEGAL ANALYSIS

#### A. ERICH'S ALIMONY PAYMENTS TO DEFENDANT SHOULD CEASE AND ERICH SHOULD BE REIMBURSED FOR ALL ALIMONY PAYMENTS AFTER FEBRUARY 29, 2016

Pursuant to Nevada statute, Erich should no longer be required to pay alimony to Defendant and should be reimbursed for all alimony payments made to Defendant since the registration of her domestic partnership with Anthony Bricker. Upon the remarriage of a spouse "to whom specified periodic payments were to be made, all the payments required by the decree must cease, unless it was otherwise ordered by the court." NRS 125.150(6).

A domestic partnership is the equivalent of a marriage. Pursuant to NRS 122A.200(1)(a), "Domestic partners have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations and duties under law, whether derived from statutes, administrative regulations, court rules, government policies, common law or any other provisions or sources of

1 law, as are granted to and imposed upon spouses.” In fact, to terminate a domestic partnership,  
2 the partners “must follow the procedures set forth in chapter 125 of NRS.”

3 Here, Defendant entered into a registered domestic partnership on February 29, 2016 and,  
4 as a result, is subject to “the same rights, protections and benefits” and “the same responsibilities,  
5 obligations and duties . . . imposed upon spouses.” NRS 122A.200(1)(a). Although Defendant  
6 was entitled to alimony pursuant to the parties’ Decree, her entrance into a registered domestic  
7 partnership subjects her to NRS 125.150(6), effectively ending her alimony. To allow otherwise  
8 would allow Defendant to game the system, taking from the best of both worlds by collecting  
9 alimony each month while at the same time receiving the financial protection offered by a  
10 domestic partnership.

11 The Court acknowledged the injustice in allowing Defendant to continue collecting  
12 alimony after effectively re-marrying at the hearing on September 22, 2016, stating, “It isn’t fair  
13 for [Defendant] to keep collecting [alimony] if she is . . . for all intents and purposes, married to  
14 somebody else.” See September 22, 2016 Hearing Tape at 33:14.

15 Because a subsequent marriage after a divorce ends alimony for a collecting spouse, and  
16 because a domestic partnership is equivalent to a marriage, Defendant is no longer entitled to  
17 alimony and Erich’s payments should cease. In addition, Erich is entitled to reimbursement by  
18 Defendant of all alimony paid to her since February 29, 2016, the date she entered into a domestic  
19 partnership, or, for all intents and purposes, remarried. This reimbursement should include  
20 alimony payments from the months of March, April, May, June, July, and August, 2016 in the  
21 amount of \$6,000.00.

22 This Court should order Erich’s alimony payments to cease pursuant to NRS 125.510(6)  
23 and order Defendant to reimburse Erich in the amount of \$6,000.00, representing Erich’s alimony  
24 payments to Defendant since her February 29, 2016 domestic partnership registration.

25 **B. DEFENDANT SHOULD BE ORDERED TO PAY ERICH’S ATTORNEY’S FEES**

26 Erich is entitled to attorney’s fees for having to bring this action before the Court.  
27 Pursuant to *Halbrook v. Halbrook*, 114 Nev. 1455, 971 P.2d 1262 (1998), the power to award  
28 attorney’s fees in divorce actions remains part of the continuing jurisdiction of the Court in post-

1 judgment motions. In light of the Court's authority, NRS 18.010 states that "the court may make  
2 an allowance of attorney's fees to a prevailing party."

3 In addition, at the hearing on September 22, 2016, the Court stated it would award "every  
4 penny" of attorney's fees should Erich prevail and also stated, "The Court does award fees to the  
5 prevailing party. So far, my reading is that the spousal support is over. . . . If [Defendant is]  
6 wrong, [Erich] would be awarded his attorney's fees" incurred in having to file this Motion. See  
7 September 22, 2016 Hearing Tape at 34:18; 38:34; 38:55.

8 Erich expects to prevail on this issue. As the prevailing party, Erich is entitled to his  
9 attorney's fees and this Court should award Erich \$2,500.00 in attorney's fees incurred in having  
10 to file this Motion with the Court.

11 **III.**

12 **CONCLUSION**

13 Based on the foregoing reasons, Plaintiff Erich Martin requests that the Court grant his  
14 motion in its entirety.

15 DATED this 5 day of October, 2016.

16 KELLEHER & KELLEHER, LLC

17 By: 

18 JOHN T. KELLEHER, ESQ.  
19 Nevada Bar No. 6012  
20 40 South Stephanie Street, Suite 201  
21 Henderson, Nevada 89012  
22 Attorney for Plaintiff  
23  
24  
25  
26  
27  
28

AFFIDAVIT OF ERICH MARTIN

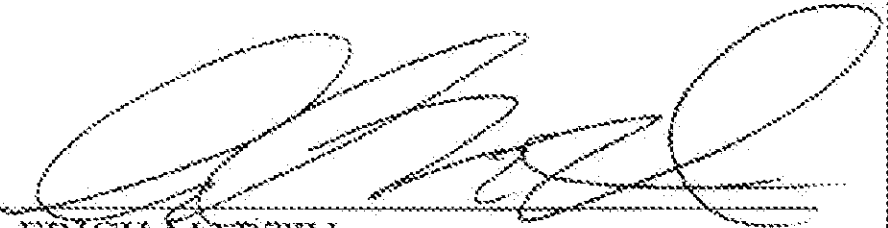
STATE OF Colorado )  
COUNTY OF LARIMER ) ss:

ERICH MARTIN, being first duly sworn, deposes and states:

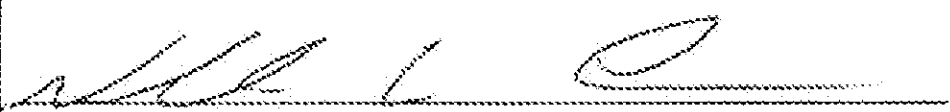
1. That I am a competent witness to testify to the matters contained herein and do so of my own personal knowledge, except as to those items on information and belief, and as to those matters I believe the same to be true.
2. I am the Plaintiff in this action and have read the above and foregoing Motion, and all factual statements set forth therein are true and correct to the best of my knowledge;
3. And that I incorporate all factual statements therein as though restated in their entirety, particularly the section entitled, "Statement of the Facts" in this affidavit pursuant to NRCF 10.

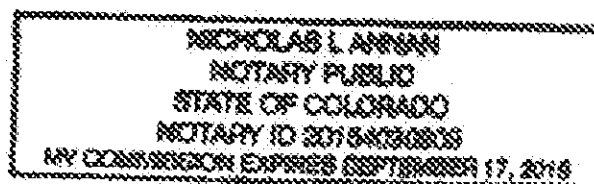
FURTHER AFFIANT SAYETH NAUGHT.

DATED this \_\_\_\_\_ day of October, 2016.

  
ERICH MARTIN

SUBSCRIBED AND SWORN to before me this  
\_\_\_\_ day of October, 2016.

  
NOTARY PUBLIC in and for said County and State



MOFI

DISTRICT COURT  
FAMILY DIVISION  
CLARK COUNTY, NEVADA

Erin M. Martin

Plaintiff/Petitioner

Reina L. Martin

Defendant/Respondent

Case No.

D-15-509045-D

Dept.

C

**MOTION/OPPOSITION  
FEE INFORMATION SHEET**

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

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

- ☒ **\$25** The Motion/Opposition being filed with this form is subject to the \$25 reopen fee.  
-OR-  
☐ **\$0** The Motion/Opposition being filed with this form is not subject to the \$25 reopen fee because:
- ☐ The Motion/Opposition is being filed before a Divorce/Custody Decree has been entered.
  - ☐ The Motion/Opposition is being filed solely to adjust the amount of child support established in a final order.
  - ☐ The Motion/Opposition is for reconsideration or for a new trial, and is being filed within 10 days after a final judgment or decree was entered. The final order was entered on \_\_\_\_\_.
  - ☐ Other Excluded Motion (must specify) \_\_\_\_\_.

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

- ☒ **\$0** The Motion/Opposition being filed with this form is not subject to the \$129 or the \$57 fee because:
- ☒ The Motion/Opposition is being filed in a case that was not initiated by joint petition.
  - ☐ The party filing the Motion/Opposition previously paid a fee of \$129 or \$57.
- OR-  
☐ **\$129** The Motion being filed with this form is subject to the \$129 fee because it is a motion to modify, adjust or enforce a final order.  
-OR-  
☐ **\$57** The Motion/Opposition being filing with this form is subject to the \$57 fee because it is an opposition to a motion to modify, adjust or enforce a final order, or it is a motion and the opposing party has already paid a fee of \$129.

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

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

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

Party filing Motion/Opposition:

Plaintiff

Date

10/16/16

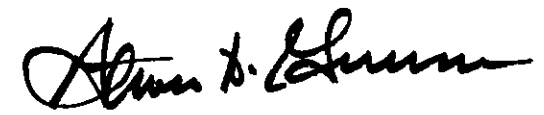
Signature of Party or Preparer

[Signature]

66

66





CLERK OF THE COURT

1 ORDR

2 DISTRICT COURT, FAMILY DIVISION

3 CLARK COUNTY, NEVADA

4 ERICH M. MARTIN, )

5 Plaintiff, )

6 vs. )

7 RAINA L. MARTIN )

8 Defendant. )

CASE NO. D-15-509045-D

DEPT NO. C

Date of Hearing: 09/22/16

Time of Hearing: 11:00 a.m.

9  
10 ORDER UNDER SUBMISSION

11 THIS MATTER having come before the Court September 22, 2016 for further  
12 proceedings in a post-divorce matter regarding parent/child issues; Plaintiff, Erich M.  
13 Martin ("Erich"), present telephonically and represented by Attorney John Kelleher, and  
14 Defendant, Raina L. Martin ("Raina"), present and represented by Attorney Michele  
15 Roberts; the Court having made various rulings, and the parties having agreed that the  
16 Court is to take under submission the following issues: (1) scheduling of 13 days  
17 make-up visitation to Erich; (2) rearranging visitation to accommodate a year round  
18 school schedule; and (3) unaccompanied minor travel; and for good cause appearing  
19 therefor

20 COURT FINDS that on November 5, 2015, a stipulated *Decree of Divorce* was  
21 entered in this matter through which the parties share joint legal custody of their one  
22 minor child, Nathan L. Martin ("Nathan"), born August 24, 2010 (age six). The parties  
23 agreed that Raina is to have primary physical custody of Nathan, and that Erich, who  
24 resides in Colorado, is entitled to visitation with Nathan.



1 COURT FINDS that pursuant to the *Decree of Divorce*, the parties agreed that  
2 Erich is entitled to visitation with Nathan every month during the school months,  
3 alternating between outside Nevada and within Nevada, to include any and all three day  
4 weekends, staff development days, and any other similar non-school days during the  
5 school year which would include but not be limited to Labor Day weekend; Nevada Day  
6 weekend; Veteran's Day weekend; Martin Luther King, Jr. weekend; President's Day  
7 weekend; Memorial Day weekend; plus potential additional time with Nathan to be  
8 exercised in Las Vegas.

9 COURT FINDS that pursuant to the *Decree of Divorce*, the parties agreed that  
10 Erich is entitled to visitation with Nathan over holiday periods which the parties defined  
11 as Thanksgiving in odd years (Wednesday when school recesses until Sunday before  
12 school resumes); first half of Winter Break in even years (Saturday after school recesses  
13 until Sunday eight days later); second half of Winter Break in odd years (second Sunday  
14 after school recesses until third Sunday after school recesses); and every Spring Break  
15 (Saturday after school recesses until day before school resumes).

16 COURT FINDS that pursuant to the *Decree of Divorce*, the parties agreed that  
17 Erich is entitled to visitation with Nathan over summer break consisting of two 3-week  
18 blocks of time in 2017, then one 8-week block of time in 2018 forward.

19 COURT FINDS that it was the parties' intent to gradually increase the duration of  
20 Erich's visitation with Nathan to longer periods over the summer months which  
21 currently is limited to three weeks periods until Summer 2018.

22 COURT FINDS that the parties agreed to share the costs and responsibility for  
23 Nathan's travels for visitation, with Raina to assume the costs of Nathan's travels to  
24 Erich and Erich to assume the costs of Nathan's travels to Raina. "Until Nathan is able to  
25

1 fly unaccompanied, Erich shall be responsible for 100% of any and all chaperone costs  
2 associated with Nathan's travels, unless Raina is the chaperone, wherein she will cover  
3 her own costs of travel."

4 COURT FINDS that it was anticipated by the parties that Nathan would eventually  
5 fly without a chaperone as an "unaccompanied minor" at which time Erich would no  
6 longer be responsible for the extra travel for the chaperone.

7 COURT FINDS that on May 26, 2016, Erich filed a *Motion for an Order to Show*  
8 *Cause* alleging Raina was withholding Erich's visitation with Nathan; on June 28, 2016,  
9 Raina filed an *Opposition and Countermotion to Clarify and/or Modify Certain Child*  
10 *Custody Provisions and for an Order to Show Cause as to Why Plaintiff Should Not be*  
11 *Held in Contempt of Court for his Willful Violations of this Court's Orders, for*  
12 *Sanctions, for Attorney's Fees and for Related Relief* denying Erich's allegations against  
13 her and accusing Erich of inappropriate behavior; on July 6, 2016, Erich filed a *Reply to*  
14 *Raina's Opposition and Countermotion* denying Raina's allegations; and on July 12,  
15 2016, Raina filed a *Supplement to her Opposition and Countermotion*.

16 COURT FINDS that the matter was heard on July 12, 2016 at which time the  
17 Court resolved some of the issues presented by the parties, and referred the parties to  
18 mediation to discuss Nathan's school enrollment; schedule Erich's make-up time which  
19 the parties agreed is 13 days; and mediate a new visitation schedule based upon Nathan's  
20 recent change from a traditional nine-month school schedule to a year round school  
21 schedule. Also, because Nathan had a recent 2<sup>nd</sup> DUI (not on his custodial time), the  
22 Court required Nathan to enroll in Smart Start program and test three to five times per  
23 day.

24 ////

1 COURT FINDS that the matter was heard again on September 22, 2016 for the  
2 results of mediation which was unsuccessful. Parties agreed to submit to the Court  
3 proposal with specifics to the Court regarding: (1) scheduling of 13 days make-up  
4 visitation to Erich; (2) rearranging visitation to accommodate a year round school  
5 schedule; and (3) unaccompanied minor travel. The parties were instructed to include  
6 Nathan's school schedule.

7 COURT FINDS that on September 29, 2016, Erich filed his *Proposal Regarding*  
8 *Make-up Parenting time, Holiday Visitation, and Transportation Pursuant to the*  
9 *Hearing on September 22, 2016*. The Court reviewed and considered Erich's proposal  
10 through which he asked to have all of Nathan's three-day weekends, all of Nathan's Track  
11 Breaks except for two weeks for Raina to enjoy vacation with Nathan, and one weekend  
12 in Nevada during any month that Erich does not have regular or summer visitation.  
13 Although Erich is already entitled to visitation over all three-day holiday weekends,  
14 Erich's proposal significantly increases Erich's visitation because he is asking for 100% of  
15 Nathan's track breaks except for two weeks to Raina (13 weeks total Track Breaks less 2  
16 weeks to Raina = 11 weeks to Erich which is 5 weeks more than the 6 weeks to which  
17 Erich is entitled to have Nathan for Summer Break 2017 and 3 weeks more than the 8  
18 weeks Erich is entitled to have Nathan for Summer Break in 2018). Erich also asks to  
19 add Mother's Day and Father's Day weekends to the schedule. As to make-up, Erich asks  
20 to have Spring Break 2018, but Erich is already entitled under the *Decree of Divorce* to  
21 have Spring Break every year. As to travel, Erich argued that the child is able to fly  
22 without a chaperone and should continue to do so and suggest that exchanges occur at  
23 7:00 p.m. Finally, Erich asks the Court to further define telephone contact with Nathan  
24 which was not one of the enumerated tasks under submission.

1 COURT FINDS that on September 30, 2016, Raina filed her *Proposed Holiday*  
2 *and Vacation Schedule*. The Court reviewed Raina's proposal which was a  
3 comprehensive rearranging of all Erich's visitation by alternating three day holidays and  
4 Spring Break, splitting the first Track Breaks together with the Thanksgiving Break and  
5 Winter Break which all run next to each other in one long period, and reducing Erich's  
6 Summer Break to five weeks. As to make-up, Raina claims that Erich has exercised some  
7 of the make-up and is now entitled to only 9 days, but that was not the agreement placed  
8 on the record. As to travel, Raina suggests that exchanges take place at 6:00 p.m. on a  
9 Friday, Saturday or Sunday, and that she pay for only "part" of Nathan's visitation travel  
10 although she did not explain which "part" she thought she ought to pay or the legal  
11 authority for reducing the obligation to which she agreed. Raina did not make an  
12 argument that Nathan should not fly unaccompanied, but inferred that the Court identify  
13 the airline unaccompanied minor fee as "related" to the chaperone fee and require Erich  
14 to assume that expense.

15 COURT FINDS that each party is asking to modify the parenting agreement, but it  
16 is inappropriate for the Court to do so. *Harrison v. Harrison*, 132 Nev. Adv. Op. No. 56  
17 (July 28, 2016)). Accordingly, the Court identifies its goal to follow as closely as possible  
18 the original agreement reached between the parties as set forth in the *Decree of Divorce*.

19 COURT FINDS that since entry of the *Decree of Divorce*, the Clark County School  
20 District placed Nathan in a year round school schedule. Nathan is enrolled at Shirley  
21 and Bill Wallin Elementary School on Track 5.

22 COURT FINDS that the year round school schedule does not interfere with Erich's  
23 regular visitation as follows including: any and all three day weekends, staff  
24 development days, and any other similar non-school days during the school year as his

1 visitation time which would include but not be limited to Labor Day weekend; Nevada  
2 Day weekend; Veteran's Day weekend; Martin Luther King, Jr. weekend; President's Day  
3 weekend; Memorial Day weekend; Labor Day weekend; and potential additional time  
4 with Nathan in Las Vegas should Erich choose to come to Nevada.

5 COURT FINDS that Track 5 allows Erich to enjoy a four day holiday over  
6 Independence Day to which Erich is entitled under the terms of the *Decree of Divorce*  
7 which awards to Erich "any and all three day weekends, staff development days, and any  
8 other similar non-school days during the school year."

9 COURT FINDS that Track 5 allows Erich to enjoy a five day holiday immediately  
10 prior to Thanksgiving Break to which Erich is entitled under the terms of the *Decree of*  
11 *Divorce* which awards to Erich "any and all three day weekends, staff development days,  
12 and any other similar non-school days during the school year."

13 COURT FINDS that the year round schedule also does not interfere with Erich's  
14 Thanksgiving in odd years (Wednesday when school recesses until Sunday before school  
15 resumes); first half of Winter Break in even years (Saturday after school recesses until  
16 Sunday eight days later); second half of Winter Break in odd years (second Sunday after  
17 school recesses until third Sunday after school recesses); nor every Spring Break  
18 (Saturday after school recesses until day before school resumes).

19 COURT FINDS that any confusion regarding the commencement of Winter Break  
20 or Spring Break is resolved by recognizing that the Winter Break and the Spring Break  
21 each beings the "Saturday immediately before" Winter Break or Spring Break; and any  
22 confusion regarding the commencement of Thanksgiving Break is resolved by  
23 recognizing the Thanksgiving Break to begin "the Wednesday immediately before"  
24 Thanksgiving Day and to end "the Sunday immediately after" Thanksgiving Day.

1 COURT FINDS that the only conflict with the year round school schedule and the  
2 parties' *Decree of Divorce* is that Track 5 of the year round school schedule does not  
3 allow one 8-week Summer Break commencing 2018 forward. Summer Break for Nathan  
4 no longer consists of one 12-1/2 week block.<sup>1</sup> Instead, Nathan has three Track Breaks as  
5 follows:

6 (1) Three weeks which begins immediately after Thanksgiving Break ends and  
7 ends immediately before Winter Break begins, from Monday, November 28, 2016  
8 through Sunday, December 18, 2016;

9 (2) Three weeks immediately before Spring Break from Monday, March 20, 2017  
10 through Sunday, April 9, 2017; and

11 (3) Seven weeks from Thursday, July 7, 2017 through Sunday, August 27, 2017.

12 COURT FINDS that Erich is entitled to the first half of Winter Break 2016  
13 beginning Saturday, December 17, 2016 (the Saturday immediately before Winter Break)  
14 until Sunday, December 25, 2016 (the Sunday eight days later). It would not, however,  
15 be in Nathan's best interests to interrupt his holiday by travel on Christmas Day. When  
16 that occurs, the exchange shall take place on the following day, December 26<sup>th</sup>.

17 COURT FINDS that the first Track Break ends just as Winter Break is beginning  
18 which offers an opportunity to extend Erich's Winter Break (8 days) by adding the make-  
19 up visitation (13 days) immediately before Winter Break during the first Track Break yet  
20 still remaining within the three week length of time currently enjoyed by Erich.

21 COURT FINDS that Erich is employed by the US Army as a Senior Military  
22 Instructor. Erich works 5:00 a.m. to 6:30 p.m. Monday through Friday (Monday  
23 through Saturday during the Fall).

25 <sup>1</sup> Summer Break 2016 began Thursday, June 2, 2016 and ended Sunday, August 28, 2016.

1 COURT FINDS that Raina is occupied as a college student. Raina did not provide  
2 a schedule to the Court to assist in determining when she is available for transportation.  
3 Raina did ask that the exchanges not occur on a school day to avoid Nathan obtaining  
4 unexcused absences. None of the exchanges are, however, scheduled to occur on one of  
5 Nathan's school days.

6 COURT FINDS that despite the discussion in Open Court through which the  
7 Court advised Erich that his vehicle interlock device would not substitute for Smart Start,  
8 the only record Smart Start has with regard to Erich is the vehicle interlock device.

9 NOW, THEREFORE, COURT ORDERS that Erich's visitation shall be conditioned  
10 upon obtaining the Smart Start breathalyzer device and testing three to five times  
11 throughout each day when the child is with him. Each of the parties shall be entitled to  
12 the results.

13 1. MAKE-UP VISITATION: Erich shall be permitted to take make-up  
14 visitation during the first Track Break immediately prior to Erich's Winter Break.  
15 Accordingly, Erich shall have visitation with Nathan commencing Sunday, December 4,  
16 2016, through Monday, December 26, 2016.<sup>2</sup> If Erich, however, agrees that he has  
17 already exercised a few days of his 13 days make-up time, those days shall be eliminated  
18 and this visitation period shall begin a few days later.

19 2. REGULAR VISITATION: Erich shall continue to enjoy all Regular  
20 Visitation as set forth under the *Decree of Divorce* which will now include the four-day  
21 Independence Day weekend, and the five day staff development day weekend  
22 immediately preceding Thanksgiving Break.

23 Page 8 of 12

24  
25 <sup>2</sup> The Court recognizes that the three week limitation has been expanded by the Court by just one day to  
avoid Christmas Day travel which is not in Nathan's best interests.

1           3.       THANKSGIVING BREAK: Erich shall continue to enjoy Thanksgiving as  
2 set forth under the *Decree of Divorce* to begin the Wednesday immediately before  
3 Thanksgiving Day and to end the Sunday immediately after Thanksgiving Day.

4           4.       WINTER BREAK: Erich shall continue to enjoy Winter Break as set forth  
5 under the *Decree of Divorce*. In defining Winter Break, it shall begin the Saturday  
6 immediately before Winter Break (for example in 2016, Winter Break begins Saturday,  
7 December 17, 2016).

8           5.       SPRING BREAK: Erich shall continue to enjoy Spring Break as set forth  
9 under the *Decree of Divorce*. In defining Spring Break, it shall begin the Saturday before  
10 Spring Break (for example in 2017, Spring Break begins Saturday, April 8, 2017).

11          6.       SUMMER BREAK 2017: Erich is entitled to six weeks which shall be  
12 scheduled so that Erich does not have Nathan longer than three weeks at a time.  
13 Accordingly, Erich shall have Nathan for two weeks during the second Track Break  
14 added to his Spring Break (begin Saturday, March 25, 2017 through Saturday, April 15,  
15 2017); and Erich shall have Nathan for one week (begin Saturday, July 8, 2017 through  
16 Saturday, July 15, 2017) and Erich may add this week to the four day Independence Day  
17 weekend; and Erich shall have Nathan for three weeks (begin Saturday, July 29, 2017  
18 through Saturday, August 19, 2016 allowing Raina a full week to get Nathan ready for the  
19 commencement of the next school year).

20          7.       SUMMER BREAK 2018: Erich is entitled to eight weeks which shall be  
21 broken into two blocks. The first block shall consist of the entire second Track Break in  
22 March which shall be added to the beginning of Erich's Spring Break, increasing the total  
23 to four weeks. The second block shall consist of five weeks which shall begin the

24       ////



1 Saturday immediately after school recesses for the third Track Break in July and end on  
2 Saturday five weeks later which will allow Raina one week to get Nathan ready for school.

3 COURT FURTHER ORDERS that the schedule created by the Court is a default  
4 schedule. The parties may modify this schedule by agreement as better suits the parties  
5 but shall evidence any such agreement in writing through Our Family Wizard.

6 COURT FURTHER ORDERS that travel shall be purchased on flights scheduled  
7 to arrive no later than 6:00 p.m.

8 COURT FURTHER ORDERS that until December 31, 2107, the receiving parent  
9 shall be at the gate waiting for Nathan no later than 30 minutes before the flight is  
10 scheduled to arrive, and shall text to the other parent a "selfie" of themselves at the  
11 airport standing in front of the flight information board showing the date and arriving  
12 flight. The parties shall maintain this practice until December 31, 2017 at which time the  
13 practice shall be eliminated if there have been no mishaps in retrieving Nathan.

14 COURT FURTHER ORDERS that as set forth in the *Decree of Divorce*, the parties  
15 shall continue to share the costs of Nathan's travels for his visitation with Erich with  
16 Raina assuming the cost of Nathan's travel to Erich, and Erich assuming the cost of  
17 Nathan's travel to Raina. The cost of Nathan's travel shall include the airline  
18 "unaccompanied minor fee" which shall be paid by the parent having responsibility for  
19 the travel purchased.

20 COURT FURTHER ORDERS that Nathan shall travel unaccompanied. If either  
21 parent desires to accompany Nathan, they shall be permitted to do so but they shall  
22 assume their own travel expenses.

23 COURT FURTHER ORDERS that unless there is a written agreement between the  
24 parties or further Order from this Court, Nathan shall remain on Track 5.

1 COURT FURTHER ORDERS all other provisions of the *Decree of Divorce* and all  
2 subsequently entered *Orders* which are not modified herein shall remain in full force and  
3 effect.

4 COURT FURTHER ORDERS that the parties shall participate in mediation prior  
5 to bringing any further motions before this Court regarding the timeshare.

6 COURT FURTHER ORDERS that the following statutory notices apply to the  
7 parties:

8 NOTICE IS HEREBY GIVEN that pursuant to NRS 125C.0045(6):

9 PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION,  
10 CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS  
11 ORDER IS PUNISHABLE AS A CATEGORY D FELONY AS PROVIDED IN  
12 NRS 193.130. NRS 200.359 provides that every person having a limited  
13 right of custody to a child or any parent having no right of custody to the  
14 child who willfully detains, conceals or removes the child from a parent,  
guardian or other person having lawful custody or a right of visitation of  
the child in violation of an order of this court, or removes the child from  
the jurisdiction of the court without the consent of either the court or all  
persons who have the right to custody or visitation is subject to being  
punished for a category D felony as provided in NRS 193.130.

15 NOTICE IS HEREBY GIVEN that pursuant to NRS 125C.0045(7)(8):

16 The terms of the Hague Convention of October 25, 1980, adopted by the 14th  
17 Session of the Hague Conference on Private International Law, apply if a parent abducts  
18 or wrongfully retains a child in a foreign country as follows:

19 If a parent of the child lives in a foreign country or has significant  
commitments in a foreign country:

20 (a) The parties may agree, and the court shall include in the order  
21 for custody of the child, that the United States is the country of habitual  
22 residence of the child for the purposes of applying the terms of the Hague  
Convention as set forth in subsection 7.

23 (b) Upon motion of one of the parties, the court may order the  
24 parent to post a bond if the court determines that the parent poses an  
imminent risk of wrongfully removing or concealing the child outside the  
country of habitual residence. The bond must be in an amount determined  
by the court and may be used only to pay for the cost of locating the child

1 and returning the child to his or her habitual residence if the child is  
2 wrongfully removed from or concealed outside the country of habitual  
3 residence. The fact that a parent has significant commitments in a foreign  
country does not create a presumption that the parent poses an imminent  
risk of wrongfully removing or concealing the child.

4 NOTICE IS HEREBY GIVEN that, pursuant to NRS 125C.006:

5 1. If PRIMARY PHYSICAL CUSTODY has been established pursuant  
6 to an order, judgment or decree of a court and the custodial parent intends  
7 to relocate his or her residence to a place outside of this State or to a place  
8 within this State that is at such a distance that would substantially impair  
the ability of the other parent to maintain a meaningful relationship with  
the child, and the custodial parent desires to take the child with him or her,  
the custodial parent shall, before relocating:

9 (a) Attempt to obtain the written consent of the noncustodial  
parent to relocate with the child; and

10 (b) If the noncustodial parent refuses to give that consent,  
petition the court for permission to relocate with the child.

11 2. The court may award reasonable attorney's fees and costs to the  
custodial parent if the court finds that the noncustodial parent refused to  
consent to the custodial parent's relocation with the child:

12 (a) Without having reasonable grounds for such refusal; or

13 (b) For the purpose of harassing the custodial parent.

14 3. A parent who relocates with a child pursuant to this section  
without the written consent of the noncustodial parent or the permission of  
the court is subject to the provisions of NRS 200.359.

15 DATED October 31, 2016.

16 

17 REBECCA L. BURTON  
18 DISTRICT COURT JUDGE  
19 DEPARTMENT C  
20  
21  
22  
23  
24  
25

1  
2 **NOTICE OF ENTRY OF ORDER FROM HEARING**

3 **TO: ALL PARTIES AND/OR THEIR ATTORNEYS**


4 Please take note that after a review of the court file, an Order was  
5 prepared by the Court following a scheduled hearing. A copy of the  
6 Order from Hearing is attached hereto. I hereby certify that I caused  
7 on the above file stamped date, a copy of the within **Order from**  
8 **Hearing** to be:

9 Mailed postage prepaid, addressed to the following litigants: 0

10  
11  
12 John T Kelleher, Esq.  
13 40 S Stephanie ST STE 201  
14 Henderson NV 89012

15 Michele L Roberts, Esq.  
16 1810 E Sahara AVE STE 138  
17 Las Vegas NV 89104

18 DATED: This November 01, 2016.

19  
20   
21 Dawna Richert  
22 Judicial Assistant, Department C  
23  
24  
25  
26  
27  
28

67

67



CLERK OF THE COURT

**ORDR**  
RAINA MARTIN  
2812 Josephine Dr.  
Henderson, Nevada 89044  
Defendant in *Proper Person*

**DISTRICT COURT  
FAMILY DIVISION  
CLARK COUNTY, NEVADA**

ERICH M. MARTIN,  
Plaintiff,

vs.

RAINA L. MARTIN,  
Defendant.

CASE NO: D-15-509045-D  
DEPT. NO: C

DATE OF HEARING: N/A  
TIME OF HEARING: N/A

**ORDER INCIDENT TO DECREE OF DIVORCE**

This *Order* is intended to set out terms dividing the military retirement benefits, in sufficient detail to allow the Defense Finance and Accounting Service (DFAS) and the parties to correctly allocate Raina's percentage in accordance with the parties' *Decree of Divorce*. This Court has continuing jurisdiction in accordance with the rules and regulations of the State of Nevada, and the State of Nevada has both personal and subject matter jurisdiction over the parties, and enters this *Order Incident to Decree of Divorce* for the purpose of completing and clarifying the division of benefits contemplated by the *Decree of Divorce*.

**THE COURT FINDS AS FOLLOWS:**

1. It has continuing jurisdiction over the parties and the subject matter of this action.
2. All applicable portions of the Servicemember's Civil Relief Act (SCRA), 50 U.S.C. 3901 et seq. (Dec. 1, 2015), have been complied with by waiver or otherwise.

- 1 3. This Court has determined that Raina is entitled to her time-rule  
2 percentage of Erich's military retirement benefits.
- 3 4. The *Decree of Divorce* entered on November 5, 2015, does not make an  
4 adequate distribution of Raina's interest in Erich's military retirement  
5 benefits or Cost of Living Adjustments. This *Order* is intended to  
6 clarify this Court's intention.
- 7 5. This *Order* is intended to be, and shall constitute an *Order Incident to*  
8 *Decree of Divorce* in accordance with 10 U.S.C. § 1408(a)(2), and is  
9 intended to clarify the *Decree of Divorce*.
- 10 6. The parties were married on April 1, 2002, and divorced as of November  
11 5, 2015.
- 12 7. Erich entered military service on July 13, 1999, and remains on active  
13 duty.
- 14 8. The share that each party is entitled should be determined pursuant to  
15 the "time-rule" formula which designates the number of months of  
16 marriage overlapping military service and dividing it by the total number  
17 of months of active military service. This fraction and equivalent  
18 percentage establishes the community share of the total benefit. The  
19 resulting community share is then divided equally between the parties,  
20 and multiplied by the benefit payable.

21

22 
$$\frac{\text{Number of Months of Marriage Overlapping}}{\text{Creditable Military Service (163.154)}} = \frac{\text{ }}{\text{ }} \% \text{ The Marital}$$

23 
$$\frac{\text{Number of Total Months of Active}}{\text{Service (unknown at this time)}} \text{ Percentage}$$

24

25 
$$\text{Marital Percentage divided by 2} = \frac{\text{ }}{\text{ }} \% \text{ The Spousal Percentage}$$

26 
$$\text{of Benefit}$$

27

28

1 9. Raina is entitled to receive any cost of living adjustments (COLAs) that  
2 are awarded from time to time for military retired pay, based upon the  
3 same percentage outlined above.

4 10. Raina has the right to obtain information relating to Erich's date of first  
5 eligibility to retire, date of first eligibility to receive retirement benefits,  
6 date of retirement, final rank, grade, and pay, present or past retired pay,  
7 or other such information as may be required to enforce the award made  
8 herein, or required to revise this order so as to make it enforceable, per  
9 65 Fed. Reg. 43298 (July 13, 2000).

10  
11 **THE COURT HEREBY ORDERS:**

12 1. This Court has complete jurisdiction in the premises, both as to subject  
13 matter and the parties, under NRS 125 and 10 U.S.C. § 1408 et. seq.,  
14 and the Court has jurisdiction over Erich by reason of his residence at  
15 the time of the filing of the Petition for Divorce and by way of consent  
16 to the jurisdiction of the Court, and all applicable portions of the Service  
17 Members Civil Relief Act of 2003 have been complied with by waiver  
18 or otherwise.

19 2. Raina is awarded her time-rule interest in the military retirement for  
20 which Erich is eligible, plus a like percentage of all cost of living  
21 adjustment increases that accrue to said military retirement hereafter,  
22 computed from the gross sum thereof, as her sole and separate property  
23 share thereof, and the obligation shall not be dischargeable in  
24 bankruptcy or otherwise.



- 1 3. For the purpose of interpreting this Court's intention in making the  
2 division set out in this Order, "military retirement" includes retired pay  
3 paid or to which Erich would be entitled for longevity of active duty  
4 and/or reserve component military service and all payments paid or  
5 payable under the provisions of Title 38 or Chapter 61 of Title 10 of the  
6 United States Code, before any statutory, regulatory, or elective  
7 deductions are applied. It also includes all amounts of retired pay Erich  
8 actually or constructively waives or forfeits in any manner and for any  
9 reason or purpose, including but not limited to any post-divorce waiver  
10 made in order to qualify for Veterans Administration benefits, or  
11 reduction in pay or benefits because of other federal employment, and  
12 any waiver arising from Erich electing not to retire despite being  
13 qualified to retire. It also includes any sum taken by Erich in addition  
14 to or in lieu of retirement benefits, including, but not limited to, REDUX  
15 lump sum payments, exit bonuses, voluntary separation incentive pay,  
16 special separation benefit, or any other form of compensation  
17 attributable to separation from military service instead of or in addition  
18 to payment of the military retirement benefits normally payable to a  
19 retired member. All sums payable to Raina as a portion of military  
20 retirement shall be payable from Erich's disposable retired or retainer pay  
21 to the extent that it is so restricted by law.
- 22 4. The appropriate military pay center shall pay the sums called for above  
23 directly to Raina, to the extent permitted by law, at the same times as  
24 Erich receives his retired or retainer pay, and that this *Order* is intended  
25 to qualify under the *Uniformed Services Former Spouses Protection Act*,  
26 10 U.S.C. § 1408 et seq., with all provisions to be interpreted to make  
27  
28

1 the *Order* qualify.

2 5. The amount called for herein shall not be modifiable by the direct or  
3 indirect action of either party hereto, either by way of increase or  
4 decrease, except as expressly set forth herein. It is contemplated that  
5 future cost of living adjustments will be granted by the United States  
6 government, by means of which the gross military retirement benefits  
7 specified above will increase, thus raising the amount being paid to  
8 Raina.

9 6. If Erich takes any steps to merge his military retirement benefits with  
10 another retirement program of any kind, that retirement system,  
11 program, or plan is directed to honor this court Order to the extent of  
12 Raina's interest as set out above, to the extent that the military  
13 retirement is used as a basis of payments or benefits under such other  
14 retirement system, program, or plan.

15 7. If Erich takes any action that prevents, decreases, or limits the collection  
16 by Raina of the sums to be paid hereunder (by application for or award  
17 of disability compensation, combination of benefits with any other  
18 retired pay, waiver for any reason, including as a result of other federal  
19 service, or in any other way), he shall make payments to Raina directly  
20 in an amount sufficient to neutralize, as to Raina, the effects of the  
21 action taken by Erich. Any sums paid to Erich that this court *Order*  
22 provides are to be paid to Raina shall be held by Erich in constructive  
23 trust until actual payment to Raina.

24 8. If the amount paid by the military pay center to Raina is less than the  
25 amount specified above, Erich shall initiate an allotment to Raina in the  
26 amount of any such difference, to be paid from any federal entitlement  
27

1 due Erich, with said allotment to be initiated by Erich immediately upon  
2 notice of such difference, and making up any arrearages in installments  
3 not less in amount or longer in term than the arrearages accrued.

4 9. The appropriate military pay center shall pay the sums called for herein  
5 directly to Raina, by voluntary allotment, involuntary allotment, wage  
6 withholding, or garnishment of Erich's military retired pay.

7 10. The Court shall retain jurisdiction to enter such further orders as are  
8 necessary to enforce the award to Raina of the military retirement  
9 benefits awarded herein, including the recharacterization thereof as a  
10 division of Civil Service or other retirement benefits, or to make an  
11 award of alimony (in the sum of benefits payable plus future cost of  
12 living adjustments) in the event that Erich fails to comply with the  
13 provisions contained above requiring said payments to Raina, or if  
14 military or government regulations or other restrictions interfere with  
15 payments to Raina as set forth herein.

16 \*\*\*

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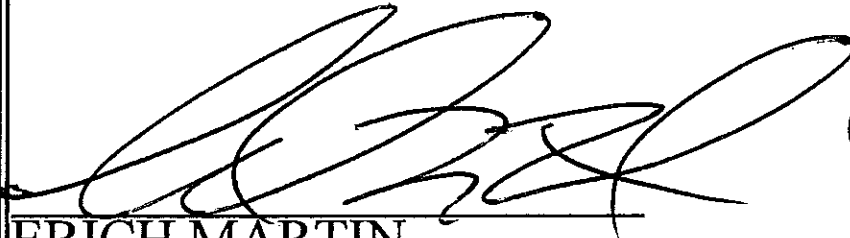
28

1 11. Raina has the right to obtain information relating to Erich's date of first  
2 eligibility to retire, date of first eligibility to receive retirement benefits,  
3 date of retirement, final rank, grade, and pay, present or past retired pay,  
4 or other such information as may be required to enforce the award made  
5 herein, or required to revise this order so as to make it enforceable, per  
6 65 Fed. Reg. 43298 (July 13, 2000).

7 **DATED** this 9 day of Nov, 2016.

8   
9 **DISTRICT COURT JUDGE**

10 Approved as to Form and Content: Respectfully Submitted by:

11 

12  
13 ERICH MARTIN  
14 1012 E. Lyons St.  
15 Larami, WY 82072  
Plaintiff in *Proper Person*

16 

17 RAINA MARTIN  
18 2812 Josephine Dr.  
19 Henderson, Nevada 89044  
20 Defendant in *Proper Person*

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**ACKNOWLEDGMENT**

STATE OF NEVADA }  
COUNTY OF CLARK }

On this 23 day of September, 2016, before me, the undersigned  
Notary Public in and for said County and State, personally appeared ERICH  
MARTIN, known to me to be the person described herein and who executed  
the foregoing instrument, and who acknowledged to me that he did so freely  
and voluntarily and for the uses and purposes therein mentioned.

Witness my hand and official seal.



**NOTARY PUBLIC** in and for said  
County and State

*LARIMER & CO*

THEODORE ALLEN BULIK-HOCUM NOTARY PUBLIC STATE OF COLORADO NOTARY ID 20134021099 MY COMMISSION EXPIRES APRIL 4, 2017
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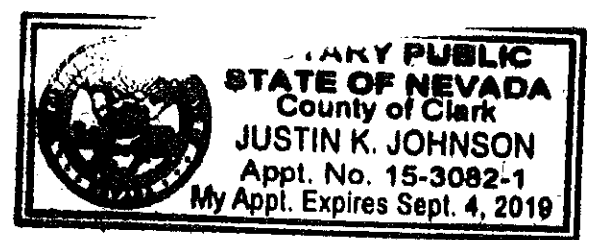
**ACKNOWLEDGMENT**

STATE OF NEVADA    }  
COUNTY OF CLARK   }

On this 3 day of November, 2016, before me, the undersigned  
Notary Public in and for said County and State, personally appeared RAINA  
MARTIN, known to me to be the person described herein and who executed  
the foregoing instrument, and who acknowledged to me that she did so freely  
and voluntarily and for the uses and purposes therein mentioned.

Witness my hand and official seal.

  
**NOTARY PUBLIC** in and for said  
County and State

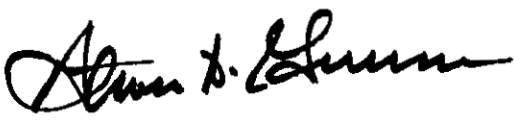


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CLERK OF THE COURT

**ORDR**  
RANDY RICHARDS, ESQ.  
Nevada Bar No. 6794  
JOHN T. KELLEHER, ESQ.  
Nevada State Bar No. 6012  
**KELLEHER & KELLEHER, LLC**  
40 South Stephanie Street, Suite 201  
Henderson, Nevada 89012  
Telephone (702) 384-7494  
Facsimile (702) 384-7545  
kelleherjt@aol.com  
Attorney for Plaintiff

**DISTRICT COURT - FAMILY DIVISION**  
**CLARK COUNTY, NEVADA**

ERICH M. MARTIN

Plaintiff,

v.

RAINA L. MARTIN,

Defendant.

CASE NO.: D-15-509045-D  
DEPT. NO.: C

**ORDER FROM THE JULY 12, 2016 HEARING**

THIS MATTER having come on for hearing on the 12<sup>th</sup> day of July, 2016, on Plaintiff's Motion for an Order to Show Cause; Plaintiff, Erich M. Martin, present and represented by Randy Richards, Esq., of the law firm Kelleher & Kelleher, LLC.; Defendant, Raina L. Martin, present and represented by counsel Michele Roberts, Esq.

The Court having reviewed the papers and pleadings on file herein, having heard the argument of counsel for both parties, and having been fully apprised as to the facts and matters herein, wherefore:

IT IS HEREBY ORDERED that Defendant's request to reduce Plaintiff's summer visitation time is denied. Plaintiff's custodial time shall remain status quo.

IT IS FURTHER ORDERED that the parties are referred to Family Mediation Center (FMC) for Mediation to talk about the minor child's travel and school.

LAW OFFICES  
**KELLEHER & KELLEHER LLC**  
40 S. STEPHANIE STREET, SUITE #201  
LAS VEGAS, NEVADA 89101  
(702) 384-7494



LAW OFFICES  
**KELLEHER & KELLEHER LL**  
40 S. STEPHANIE STREET, SUITE #201  
LAS VEGAS, NEVADA 89101  
(702) 384-7494

1 IT IS FURTHER ORDERED that the Defendant cannot schedule activities without conser.  
2 from Plaintiff.

3 IT IS FURTHER ORDERED that the parties shall follow the Joint Legal Custody provisions.

4 IT IS FURTHER ORDERED that pursuant to the Decree of Divorce, the receiving parent shall  
5 pay the unaccompanied minor child airline fee.

6 IT IS FURTHER ORDERED that the Plaintiff must have his telephone calls with the minor  
7 child for 10 minutes.

8 IT IS FURTHER ORDERED that, per the parties stipulation, the Plaintiff shall receive 13 days  
9 of makeup visitation to be determined by the parties in mediation.

10 IT IS FURTHER ORDERED that Plaintiff shall enroll in Smart Start monitoring at his cost,  
11 with monitoring 3-5 times per day, when the minor child is with him. Court noted Plaintiff has an  
12 interlock on his vehicle due to the DUI.

13 IT IS FURTHER ORDERED that both parties shall sign up for "Our Family Wizard" by 5:00  
14 p.m. Friday, July 15, 2016. Parties will check "Our Family Wizard" every 48 hours. Parties shall be  
15 polite and respectful with information. Parties to send travel information within 24 hours of being  
16 booked. Parties shall also share information on the minor child's schooling and medical information.

17 IT IS FURTHER ORDERED that Defendant shall upload the Life Insurance Policy on "Our  
18 Family Wizard" for Plaintiff to sign.

19 IT IS FURTHER ORDERED that within 10 days, Parties shall provide timely information to  
20 QDRO Masters for the Order Incident to Decree. Plaintiff shall reimburse Defendant for one half( $\frac{1}{2}$ )  
21 of the fees for the preparation of the Order Incident to Decree within 10 days.

22 IT IS FURTHER ORDERED that the Return Hearing regarding FMC Mediation is set for  
23 September 22, 2016 at 11:00 a.m.

24 IT IS FURTHER ORDERED that the parties are hereby put on notice that, pursuant to NRS  
25 125.450, a parent responsible for paying child support is subject to NRS 31A.020 to 31A.240,  
26 inclusive, and Sections 2 and 3 of Chapter 31A of the Nevada Revised Statutes regarding the  
27

1 withholding of wages and commissions for the delinquent payment of child support. These statutes  
2 and provisions require that, if a parent is responsible for paying child support is delinquent in paying  
3 the support of a child that such person has been ordered to pay, then that person's wages or  
4 commissions shall immediately be subject to wage assignment, pursuant to the provisions to the above-  
5 cited statutes.

6 IT IS FURTHER ORDERED that the parties are also put on notice that NRS 125B.145 allows  
7 the court to review a child support order every three years or upon a change in circumstances to  
8 determine whether child support can be modified to align with the statutory formula set out in NRS  
9 125B.070; the parties must request a review, it is not an automatic function of the court.

10 IT IS FURTHER ORDERED that the State of Nevada is the habitual residence of the minor  
11 children. Both parties shall be bound by the provisions of NRS 125C.200, as amended by AB No. 263,  
12 Section 16 which states:

13 1. If primary physical custody has been established pursuant to an order,  
14 judgment, or decree of a court and the custodial parent intends to relocate his  
15 or her residence to a place outside of this state or to a place within this State  
16 that is more than 100 miles from the place of his or her residence at the time the  
17 existing custody arrangement was established, and the custodial parent desires  
18 to take the child with him or her, the custodial parent shall:

19 (a) Attempt to obtain the written consent of the noncustodial parent  
20 to relocate with the child; and

21 (b) If the noncustodial parent refuses to give that consent, petition  
22 the court for permission to relocate with the child.

23 2. A parent who relocates with a child pursuant to this section without the  
24 written consent of the noncustodial parent or the permission of the court is  
25 subject to the provisions of NRS 200.359.

26 IT IS FURTHER ORDERED that the parties are subject to the provisions set forth in NRS  
27 125C.0045(6), which provides as follows:  
28

29 **PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION, CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS ORDER IS PUNISHABLE AS A CATEGORY D FELONY AS PROVIDED IN NRS 193.130. NRS 200.359 provides that every person having a limited right of custody to a child or any parent having no right of custody to the child who willfully detain, conceal or remove the child from a parent, guardian or other person having lawful custody or a right of visitation of the child in violation of an order of this Court, or remove the children from the jurisdiction of the Court without the consent of either the Court or all persons who have the right to custody or visitation is subject to being punished for a category D felony as provided in NRS 193.139.**

LAW OFFICES  
**KELLEHER & KELLEHER, LLC**  
40 S. STEPHANIE STREET, SUITE #201  
LAS VEGAS, NEVADA 89101  
(702) 384-7494

125 C.0045(7) and (8)

1 IT IS FURTHER ORDERED that pursuant to NRS 125.510<sup>a</sup>(7) and (8), the terms of the Hague  
2 Convention of October 25, 1980, adopted by the 14<sup>th</sup> Session of the Hague Conference on Private  
3 International Law, are applicable to the parties as follows:  
4

5 Section 8: If a parent of the child lives in a foreign country or has significant  
6 commitments in a foreign country:

7 (a) The parties may agree, and the Court shall include in the Order for Custody  
8 of the child, that the United States is a country of habitual residence of the child  
9 for the purposes of applying the terms of the Hague Convention as set forth in  
10 Subsection 7.

11 (b) Upon motion of the parties, the Court may order the parent to post a bond  
12 if the Court determines that the parent poses an imminent risk of wrongfully  
13 removing or concealing the child outside the country of habitual residence. The  
14 bond must be in an amount determined by the Court and may be used only to  
15 pay for the cost of locating the child and returning him to his habitual residence  
16 if the child is wrongfully removed from or concealed outside the country of  
17 habitual residence. The fact that a parent has significant commitments in a  
18 foreign country does not create a presumption that the parent poses an  
19 imminent risk of wrongfully removing or concealing the children.

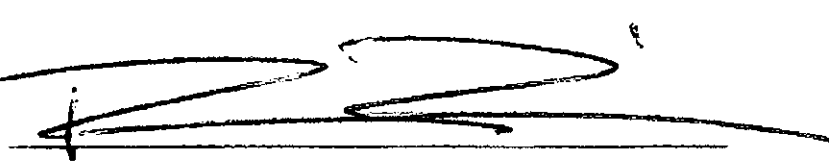
20 IT IS FURTHER ORDERED that Attorney Richards shall prepare the order from today's  
21 hearing, Attorney Roberts to sign as to form and content.

22 IT IS SO ORDERED this 22 day of NOVEMBER, 2016


23   
24 DISTRICT COURT JUDGE <sup>4</sup>

25 Submitted by:

26 KELLEHER & KELLEHER, LLC

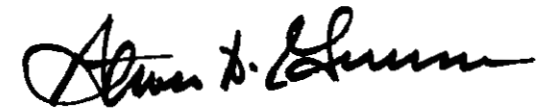
27   
28 RANDY RICHARDS, ESQ.  
Nevada Bar No. 6794  
40 S. Stephanie Street, #201  
Henderson, NV 89012  
Attorney for Plaintiff

Approved as to form and content:

  
MICHELE ROBERTS, ESQ.  
Nevada Bar No. 9168  
1810 E. Sahara Ave., #138  
Las Vegas, Nevada 89104  
Attorney for Defendant

69

69



CLERK OF THE COURT

1 **NEOJ**  
2 JOHN T. KELLEHER, ESQ.  
3 Nevada Bar No. 6012  
4 KELLEHER & KELLEHER, LLC  
5 40 South Stephanie Street, Suite 201  
6 Henderson, Nevada 89012  
7 Telephone (702) 384-7494  
8 Facsimile (702) 384-7545  
9 kelleherjt@aol.com

10 Attorney for Plaintiff

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 ERICH M. MARTIN

14 Plaintiff,

15 v.

16 RAINA L. MARTIN,

17 Defendant.

CASE NO.: D-15-509045-D  
DEPT. NO.: C

18 **NOTICE OF ENTRY OF ORDER**

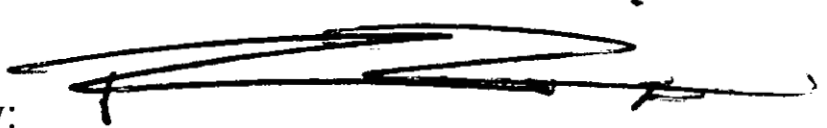
19 TO: Raina L. Martin, Defendant, and to Michele L. Roberts, Esq., her attorney:

20 PLEASE TAKE NOTICE that an Order from the July 12, 2016 hearing was entered in the  
21 above-entitled matter on the 23<sup>rd</sup> day of November, a copy of which is attached hereto.

22 DATED this 28 day of November, 2016.

23 KELLEHER & KELLEHER, LLC

24 By:

25   
26 JOHN T. KELLEHER, ESQ.  
27 Nevada Bar No. 6012 #6794  
28 40 S. Stephanie Street, Suite #201  
Henderson, Nevada 89012  
Attorney for Plaintiff

///

///

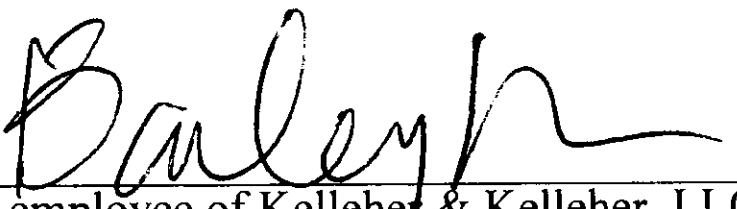
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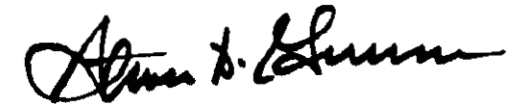
**CERTIFICATE OF SERVICE**

I hereby certify that on the 29 day of November, 2016, a true and correct copy of the above and foregoing NOTICE OF ENTRY OF ORDER was served electronically via E-Service Master List of Wiznet and addressed as follows:

Michele L. Roberts, Esq.  
Mlr@michelerobertslaw.com  
Attorney for Defendant

  
An employee of Kelleher & Kelleher, LLC

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CLERK OF THE COURT

**ORDR**  
RANDY RICHARDS, ESQ.  
Nevada Bar No. 6794  
JOHN T. KELLEHER, ESQ.  
Nevada State Bar No. 6012  
**KELLEHER & KELLEHER, LLC**  
40 South Stephanie Street, Suite 201  
Henderson, Nevada 89012  
Telephone (702) 384-7494  
Facsimile (702) 384-7545  
kelleherjt@aol.com  
Attorney for Plaintiff

**DISTRICT COURT - FAMILY DIVISION**

**CLARK COUNTY, NEVADA**

ERICH M. MARTIN

Plaintiff,

v.

RAINA L. MARTIN,

Defendant.

CASE NO.: D-15-509045-D  
DEPT. NO.: C

**ORDER FROM THE JULY 12, 2016 HEARING**

THIS MATTER having come on for hearing on the 12<sup>th</sup> day of July, 2016, on Plaintiff's Motion for an Order to Show Cause; Plaintiff, Erich M. Martin, present and represented by Randy Richards, Esq., of the law firm Kelleher & Kelleher, LLC.; Defendant, Raina L. Martin, present and represented by counsel Michele Roberts, Esq.

The Court having reviewed the papers and pleadings on file herein, having heard the argument of counsel for both parties, and having been fully apprised as to the facts and matters herein, wherefore:

IT IS HEREBY ORDERED that Defendant's request to reduce Plaintiff's summer visitation time is denied. Plaintiff's custodial time shall remain status quo.

IT IS FURTHER ORDERED that the parties are referred to Family Mediation Center (FMC) for Mediation to talk about the minor child's travel and school.

LAW OFFICES  
**KELLEHER & KELLEHER LLC**  
40 S. STEPHANIE STREET, SUITE #201  
LAS VEGAS, NEVADA 89101  
(702) 384-7494

LAW OFFICES  
**KELLEHER & KELLEHER LL**  
40 S. STEPHANIE STREET, SUITE #201  
LAS VEGAS, NEVADA 89101  
(702) 384-7494

1 IT IS FURTHER ORDERED that the Defendant cannot schedule activities without conser.  
2 from Plaintiff.

3 IT IS FURTHER ORDERED that the parties shall follow the Joint Legal Custody provisions.

4 IT IS FURTHER ORDERED that pursuant to the Decree of Divorce, the receiving parent shall  
5 pay the unaccompanied minor child airline fee.

6 IT IS FURTHER ORDERED that the Plaintiff must have his telephone calls with the minor  
7 child for 10 minutes.

8 IT IS FURTHER ORDERED that, per the parties stipulation, the Plaintiff shall receive 13 days  
9 of makeup visitation to be determined by the parties in mediation.

10 IT IS FURTHER ORDERED that Plaintiff shall enroll in Smart Start monitoring at his cost.  
11 with monitoring 3-5 times per day, when the minor child is with him. Court noted Plaintiff has an  
12 interlock on his vehicle due to the DUI.

13 IT IS FURTHER ORDERED that both parties shall sign up for "Our Family Wizard" by 5:00  
14 p.m. Friday, July 15, 2016. Parties will check "Our Family Wizard" every 48 hours. Parties shall be  
15 polite and respectful with information. Parties to send travel information within 24 hours of being  
16 booked. Parties shall also share information on the minor child's schooling and medical information.

17 IT IS FURTHER ORDERED that Defendant shall upload the Life Insurance Policy on "Our  
18 Family Wizard" for Plaintiff to sign.

19 IT IS FURTHER ORDERED that within 10 days, Parties shall provide timely information to  
20 QDRO Masters for the Order Incident to Decree. Plaintiff shall reimburse Defendant for one half(1/2)  
21 of the fees for the preparation of the Order Incident to Decree within 10 days.

22 IT IS FURTHER ORDERED that the Return Hearing regarding FMC Mediation is set for  
23 September 22, 2016 at 11:00 a.m.

24 IT IS FURTHER ORDERED that the parties are hereby put on notice that, pursuant to NRS  
25 125.450, a parent responsible for paying child support is subject to NRS 31A.020 to 31A.240,  
26 inclusive, and Sections 2 and 3 of Chapter 31A of the Nevada Revised Statutes regarding the  
27



LAW OFFICES  
**KELLEHER & KELLEHER LL**  
40 S. STEPHANIE STREET, SUITE #201  
LAS VEGAS, NEVADA 89101  
(702) 344-7494

1 withholding of wages and commissions for the delinquent payment of child support. These statutes  
2 and provisions require that, if a parent is responsible for paying child support is delinquent in paying  
3 the support of a child that such person has been ordered to pay, then that person's wages or  
4 commissions shall immediately be subject to wage assignment, pursuant to the provisions to the above-  
5 cited statutes.

6 IT IS FURTHER ORDERED that the parties are also put on notice that NRS 125B.145 allows  
7 the court to review a child support order every three years or upon a change in circumstances to  
8 determine whether child support can be modified to align with the statutory formula set out in NRS  
9 125B.070; the parties must request a review, it is not an automatic function of the court.

10 IT IS FURTHER ORDERED that the State of Nevada is the habitual residence of the minor  
11 children. Both parties shall be bound by the provisions of NRS 125C.200, as amended by AB No. 263.  
12 Section 16 which states:

13 1. If primary physical custody has been established pursuant to an order,  
14 judgment, or decree of a court and the custodial parent intends to relocate his  
15 or her residence to a place outside of this state or to a place within this State  
16 that is more than 100 miles from the place of his or her residence at the time the  
17 existing custody arrangement was established, and the custodial parent desires  
18 to take the child with him or her, the custodial parent shall:

19 (a) Attempt to obtain the written consent of the noncustodial parent  
20 to relocate with the child; and

21 (b) If the noncustodial parent refuses to give that consent, petition  
22 the court for permission to relocate with the child.

23 2. A parent who relocates with a child pursuant to this section without the  
24 written consent of the noncustodial parent or the permission of the court is  
25 subject to the provisions of NRS 200.359.

26 IT IS FURTHER ORDERED that the parties are subject to the provisions set forth in NRS  
27 125C.0045(6), which provides as follows:  
28

A  
29 PENALTY FOR VIOLATION OF ORDER: THE ABDUCTION,  
30 CONCEALMENT OR DETENTION OF A CHILD IN VIOLATION OF THIS  
31 ORDER IS PUNISHABLE AS A CATEGORY D FELONY AS PROVIDED  
32 IN NRS 193.130. NRS 200.359 provides that every person having a limited  
33 right of custody to a child or any parent having no right of custody to the child  
34 who willfully detain, conceal or remove the child from a parent, guardian or  
35 other person having lawful custody or a right of visitation of the child in  
36 violation of an order of this Court, or remove the children from the jurisdiction  
37 of the Court without the consent of either the Court or all persons who have the  
38 right to custody or visitation is subject to being punished for a category D  
39 felony as provided in NRS 193.139.

125 C.0045(7) and (8)

1 IT IS FURTHER ORDERED that pursuant to NRS 125.518(7) and (8), the terms of the Hague  
 2 Convention of October 25, 1980, adopted by the 14<sup>th</sup> Session of the Hague Conference on Private  
 3 International Law, are applicable to the parties as follows:

4 Section 8: If a parent of the child lives in a foreign country or has significant  
 5 commitments in a foreign country:

6 (a) The parties may agree, and the Court shall include in the Order for Custody  
 7 of the child, that the United States is a country of habitual residence of the child  
 8 for the purposes of applying the terms of the Hague Convention as set forth in  
 9 Subsection 7.

10 (b) Upon motion of the parties, the Court may order the parent to post a bond  
 11 if the Court determines that the parent poses an imminent risk of wrongfully  
 12 removing or concealing the child outside the country of habitual residence. The  
 13 bond must be in an amount determined by the Court and may be used only to  
 14 pay for the cost of locating the child and returning him to his habitual residence  
 15 if the child is wrongfully removed from or concealed outside the country of  
 16 habitual residence. The fact that a parent has significant commitments in a  
 17 foreign country does not create a presumption that the parent poses an  
 18 imminent risk of wrongfully removing or concealing the children.

19 IT IS FURTHER ORDERED that Attorney Richards shall prepare the order from today's  
 20 hearing, Attorney Roberts to sign as to form and content.

21 IT IS SO ORDERED this 22 day of NOVEMBER, 2016

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 Rebecca Burton  
 DISTRICT COURT JUDGE ↑

Submitted by:

KELLEHER & KELLEHER, LLC

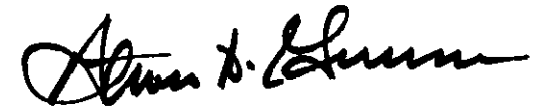
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 RANDY RICHARDS, ESQ.  
 Nevada Bar No. 6794  
 40 S. Stephanie Street, #201  
 Henderson, NV 89012  
 Attorney for Plaintiff

Approved as to form and content:

Michele J. Roberts  
 MICHELE ROBERTS, ESQ.  
 Nevada Bar No. 9168  
 1810 E. Sahara Ave., #138  
 Las Vegas, Nevada 89104  
 Attorney for Defendant

70

70



CLERK OF THE COURT

1 **NOTC**  
JOHN T. KELLEHER, ESQ.  
2 Nevada State Bar No. 6012  
**KELLEHER & KELLEHER, LLC**  
3 40 S. Stephanie Street, #201  
Henderson, NV 89012  
4 Telephone (702) 384-7494  
Facsimile (702) 384-7545  
5 kelleherjt@aol.com  
Attorney for Plaintiff  
6

7  
8 **DISTRICT COURT - FAMILY DIVISION**  
9 **CLARK COUNTY, NEVADA**

10 ERICH M. MARTIN

11 Plaintiff,

12 v.

13 RAINA L. MARTIN,

14 Defendant.

CASE NO.: D-15-509045-D  
DEPT. NO.: C

15 **NOTICE OF INTENT TO APPEAR TELEPHONICALLY**

16 COMES NOW Plaintiff, Erich M. Martin, by and through his attorney of record, John T.  
17 Kelleher, Esq. of Kelleher & Kelleher, LLC, and hereby submits his Notice of Intent to Appear by  
18 Communication Equipment for the hearing which is scheduled for January 12, 2017 at 9:00 a.m.

19 Counsel for Plaintiff, Erich M. Martin, will be present in person in the Courtroom at the  
20 hearing; however, for purposes of this appearance, Plaintiff will be available and can be reached at  
21 (307)275-6343. Plaintiff understands that it is his responsibility to ensure that he can be reached at  
22 this telephone number on the date and at the time of the hearing.  
23

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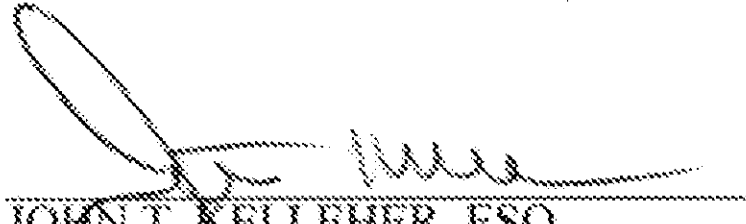
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///

Further, it is understood that failure to be reached at the aforementioned telephone number for the scheduled hearing constitutes the entry of non-appearance by Plaintiff.

DATED this 5 day of December, 2016.

KELLEHER & KELLEHER, LLC

  
JOHN T. KELLEHER, ESQ.  
Nevada Bar No. 6012  
40 S. Stephanie Street, #201  
Henderson, NV 89012  
Attorney for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that on the 7 day of December, 2016, a true and correct copy of the above and foregoing NOTICE OF INTENT TO APPEAR TELEPHONICALLY was served electronically via E-Service Master List of Wiznet and addressed as follows:

Michele L. Roberts, Esq.  
Mlr@michelerobertslaw.com  
Attorney for Defendant

  
An employee of Kelleher & Kelleher, LLC

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71

1 **SUBT**  
2 **SAMIRA C. KNIGHT, ESQ.**  
3 Nevada Bar No. 13167  
4 **TARKANIAN & KNIGHT LAW GROUP, PLLC**  
5 7220 S. Cimarron Road, Suite 110  
6 Las Vegas, NV 89113  
7 Tel: (702) 508-4998  
8 Fax: (702) 940-2792  
9 E-mail: Samira@TKLawGroupNV.com  
10 *Attorney for Defendant*

  
CLERK OF THE COURT

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

\*\*\*

8 ERICH M. MARTIN,  
9  
10 Plaintiff,

Case No.: D-15-509045-D

Dept. No.: C

11 v.

12 RAINA MARTIN,  
13 Defendant.

**SUBSTITUTION OF ATTORNEYS**

14  
15 RAINA MARTIN, the Defendant in the above-referenced matter, hereby substitutes and  
16 appoints SAMIRA C. KNIGHT ESQ., as her attorney in the foregoing matter, and in the place  
17 and stead of MICHELE L. ROBERTS, ESQ., in the above-entitled action.

18 Dated this 8 day of December, 2016.

20  
21   
22 RAINA MARTIN  
23  
24  
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27  
28

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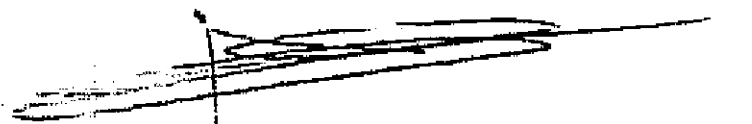
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///

I hereby agree to be substituted in the place and stead of MICHELE L. ROBERTS,  
ESQ. as attorney for the above-named Defendant in this action

Dated this 6<sup>th</sup> day of December, 2016.



SAMIRA C. KNIGHT ESQ.  
Nevada Bar No. 13167

I hereby agree to the substitution of MICHELE L. ROBERTS, ESQ. as attorney for the  
above-named Defendant in this action.

Dated this 9<sup>th</sup> day of December, 2016



MICHELE L. ROBERTS, ESQ.  
Nevada Bar No. 009168



1 I hereby agree to be substituted in the place and stead of MICHELE L. ROBERTS,  
2 ESQ. as attorney for the above-named Defendant in this action.

3 Dated this 9th day of December, 2016.

4  
5 

6 SAMIRA C. KNIGHT ESQ.  
7 Nevada Bar No. 13167

8 I hereby agree to the substitution of MICHELE L. ROBERTS, ESQ. as attorney for the  
9 above-named Defendant in this action.

10 Dated this \_\_\_\_\_ day of December, 2016

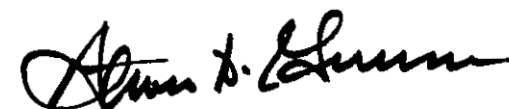
11  
12  
13 MICHELE L. ROBERTS, ESQ.  
14 Nevada Bar No. 009168  
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1 **OPP**  
2 **SAMIRA C. KNIGHT, ESQ.**  
3 Nevada Bar No. 13167  
4 **TARKANIAN & KNIGHT LAW GROUP, PLLC**  
5 7220 S. Cimarron Road, Suite 110  
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9 E-mail: Samira@TKLawGroupNV.com  
10 *Attorney for Defendant*

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CLERK OF THE COURT

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

\*\*\*

8 ERICH M. MARTIN,  
9  
10 Plaintiff,

Case No.: D-15-509045-D

11 v.

Dept. No.: C

12 RAINA MARTIN,  
13 Defendant.

**DEFENDANT'S OPPOSITION AND COUNTERMOTION TO PLAINTIFF'S  
MOTION TO TERMINATE ALIMONY AND FOR ATTORNEY'S FEES AND COST.**

15 COMES NOW the Defendant, RAINA MARTIN, by and through her attorney, SAMIRA  
16 C. KNIGHT, ESQ., and opposes Plaintiff's Motion and Countermoves this Honorable Court for  
17 the following relief:

- 18 1. For an Order Denying Plaintiff's Motion in its entirety;
- 19 2. For an Order Granting Defendant's Countermotion;
- 20 3. For an Order Granting Defendant's Judgement;
- 21 4. For an Order Granting Defendant Attorney's Fees and Costs; and
- 22 5. For such other and further relief as this Court deems necessary and just.

23 ///

24 ///

25 ///

1 This Opposition and Countermotion is made and based upon the papers and pleadings on  
2 file herein, the Affidavit of Defendant, the Points and Authorities submitted herewith, and any  
3 argument, which may have adduced at the time of hearing.

4 DATED this 9<sup>th</sup> day of December, 2016.

5  
6  
7   
8 Samira C. Knight, Esq.  
9 Nevada Bar No. 13167  
10 7220 S. Cimarron, Suite 110  
11 Las Vegas, NV 89113  
12 Tel: (702) 508-4998  
13 Fax: (702) 940-2792  
14 E-mail: Samira@TKLawGroupNV.com  
15 *Attorney for Defendant*

16 **POINTS AND AUTHORITIES.**

17 **I.**

18 **STATEMENT OF FACTS.**

19 Plaintiff, Erich M. Martin ("Plaintiff") and Defendant, Raina L. Martin ("Raina") were  
20 married on April 1, 2002, and were married for thirteen (13) years until their divorce on November  
21 5, 2016. Plaintiff is in the military, which caused the parties to constantly move around the country  
22 throughout their marriage. Raina had a difficult time maintaining employment, since the parties  
23 were always moving.

24 Due to Raina's employment difficulties, in early 2004, while the parties lived in North  
25 Carolina, the parties discussed Raina going to school to become a dental hygienist, which would  
26 offer her the flexibility to move around with Plaintiff and obtain employment. Then in fall of  
27 2008, Raina enrolled into school and began taking her prerequisites required to get into a Dental  
28 Hygiene program, at Pikes Peak Community College, in Colorado. At the time, Raina was going  
to school part-time and volunteering at the Red Cross, until the parties' minor child was born on  
August 24, 2010, Nathan L. Martin ("Nathan"). In September of 2010, a couple of weeks after  
Nathan's birth, Plaintiff took a voluntary deployment to Ukraine. Thus, the parties agreed that

1 Raina solely focus on her education and staying home to raise Nathan. In August of 2012, Raina  
2 was accepted into the limited-entry Dental Hygiene program, where she began to go to school  
3 full-time throughout the parties' marriage. Raina was scheduled to receive her Bachelor's Degree  
4 in Dental Hygiene in May of 2017.

5 Before Raina had completed her education, for a profession she chose to work around the  
6 Plaintiff, Plaintiff filed a Complaint for Divorce on February 2, 2015. The parties were married  
7 for thirteen (13) years, and at the time Raina had not worked for roughly eight (8) years, and still  
8 had about two (2) and a half (1/2) years left for her to get her Bachelor's Degree. Plaintiff's gross  
9 monthly income was roughly \$6,600.00 a month. Throughout the Divorce, it became quite evident  
10 that Raina would be awarded a larger sum of Alimony, then she settled for.

11 The parties attended a settlement conference with a private mediator, and were able to resolve  
12 all issues more specifically the issues of Alimony. During the settlement conference Plaintiff was  
13 represented by Attorney Jason Naimi ("Mr. Naimi"), and Raina was represented by Attorney  
14 Ramir Hernandez. Raina had made it clear to Mr. Naimi and the mediator that she does not want  
15 anything from the Plaintiff, but for him to finish paying off her school, since they chose this  
16 educational path because of Plaintiff and his profession. Thus, requesting him to pay a lump-sum  
17 of \$24,000.00 in twenty four monthly installment of \$1000.00 until she graduates in May of 2017.  
18 Raina previously addressed in her motions to the Court, her constant concern was payment to  
19 finish school. Thus, the parties agreed to lump-sum amount that would be paid in installments,  
20 until Raina's expected graduation date from college in May of 2017.

21 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that Erich shall pay  
22 Raina the amount of \$1,000.00 per month for twenty-four (24) months beginning June,  
23 2015. Alimony payments shall be due on the last day of every month. *See Decree Page*  
*15, line 1-4.*

24 Mr. Naimi addressed his concerns with Raina settling for substantially less than she would be  
25 entitled to at trial; thus, requested that Raina would not be able to increase the support later.  
26 Therefore, Mr. Naimi included the following provision to stop Raina and Plaintiff from modifying  
27 Alimony:  
28

5 Mr. Naimi was the drafter of this Decree. The language above has a clear typo, as the cases  
6 cited *Ballin*, *Renshaw*, and *Rush*, all deal non-modifiable language, and after looking at Mr.  
7 Naimi's previous Decrees they all state "non-modifiable" when citing those cases. SEE  
8 **EXHIBIT A: Jason Naimi Decree Non-Modifiable**. Therefore, it was the party's clear intent that  
9 alimony was not to be modified, and should follow the requirements under *Ballin*, *Renshaw*, and  
10 *Rush*.

Plaintiff has made the argument since Mr. Naimi omitted the termination language, that termination defaults to NRS 125.150. Mr. Naimi is a very reputable family lawyer in Clark County, his previous decrees that he drafted clearly quote the statute when applicable. **SEE EXHIBIT B: Jason Naimi Decree for NRS 125.150.** The parties never intended for Alimony to terminate until May 2017, the date that Raina graduated from Dental Hygiene School.

16 Raina currently lives with her boyfriend, and pays half of all the bills including rent. The  
17 parties have no commingled assets together, they are financially independent, the parties pay taxes  
18 as individuals and more taxes than a married couple, and the only benefit Raina receives from the  
19 Domestic Partnership is health insurance for Nathan. Raina is also fully responsible for all her  
20 own expenses. For example, most recently Raina and her boyfriend went on vacation, and she  
21 paid for one-half (1/2) of all the expenses.

22 In September of 2016, Plaintiff unilaterally stopped paying spousal support although there is  
23 no Court Order relieving him of such responsibility. As of today, Plaintiff is currently four (4)  
24 months behind in spousal support payments, and admitted such in his Motion.

## ARGUMENT

A. ALIMONY IS NON-MODIFIABLE LUMP-SUM PAYMENT THAT  
TERMINATES UPON PLAINTIFF'S FINAL PAYMENT.

1 During the parties' settlement conference, the parties' agreed that Plaintiff will pay for the  
2 remaining two (2) years of Raina's schooling, in exchange for the parties' waiving their ability to  
3 modify, increase, decrease, or extend alimony. More specifically so that Raina could not come  
4 back to Plaintiff and increase her alimony, since she was entitled to more.

5 As established above, Mr. Naimi, Plaintiff's Counsel at the time, was the drafter of the Decree.  
6 The Nevada Supreme Court has recognized that the courts construe a Decree of Divorce against  
7 the drafter, which in this case is Plaintiff and Mr. Naimi. See *Mizrachi v. Mizrachi*, 2016 Nev.  
8 App. LEXIS 306 \* (Nev. Ct. App. 2016), and *Anvui, LLC v. G.L. Dragon, LLC*, 123 Nev. 213,  
9 215-16, 163 P.3d 405, 407 (2007) (providing that ambiguities in a contract are generally construed  
10 against the drafter). Therefore, the Court must construe the language in the Decree in favor of  
11 Raina. The parties included the language in the Decree on *page 14, line 24-28*, intending Alimony  
12 to be non-modifiable, where Mr. Naimi cited three Nevada Supreme Court cases *Ballin*,  
13 *Renshaw*, and *Rush* that all support non-modifiable alimony with regards to the parties' Alimony  
14 provision, which depict that the Court cannot modify Alimony and must interpret it for face value.

15 Under *Renshaw*, the District Court states that the Court has a responsibility to honor the  
16 parties' intentions as plainly written. See *Renshaw v. Renshaw*, 96 Nev. 541, 543, 611 P.2d 1070,  
17 1071 (1980) (explaining that courts must honor party intentions where a contract is clear on its  
18 face) It is further stated that when a contract is clear on its face, it "will be construed from the  
19 written language and enforced as written." The court has no authority to alter the terms of an  
20 unambiguous contract. See *Canfora v. Coast Hotels & Casinos, Inc.*, 121 Nev. 771, 776, 121 P.3d  
21 599, 603 (2005); and See *Renshaw* 96 Nev. 541 at 543. Thus when the terms are clear and  
22 unambiguous on its face, the court must construe it from the language therein. See *Id.* ; *Mohr*  
23 *Park Manor, Inc. v. Mohr*, 83 Nev. 107, 424 P.2d 101 (1967); *Club v. Investment Co.*, 64 Nev.  
24 312, 182 P.2d 1011 (1947)

25 Plaintiff attempting to assert that because the Decree omitted how Alimony payments  
26 would terminate other than after twenty-four (24) months, it is assumed that Plaintiff can  
27 terminate his payments sooner under NRS 125.150(6). However, that is not applicable here.  
28 *Renshaw* specifically states that when it is clear and unambiguous on its face that the Court must



1 construe it from the language therein. *Renshaw*, 96 Nev. 541 at 543. The Decree clearly states the  
2 parties' intentions were that Raina get paid a lump-sum amount of \$24,000.00 in twenty-four (24)  
3 installments of \$1,000.00, which would only terminate upon the last payment due the same month  
4 Raina graduates from college. There was never language regarding early termination because the  
5 parties never intended for the Lump-Sum installment payments to terminate at any other time  
6 other than on May 2017, Raina presumed graduation date. Raina would be finishing school in a  
7 specialized profession that was intended to work with Plaintiff's position in the military. That  
8 became moot after Plaintiff filed for divorce, and Raina still had two (2) years left.

9 In *Renshaw* the Court further stated that the contract was prepared by an experienced  
10 attorney; thus, giving credit to what the parties intended. See *Renshaw*, 96 Nev. 541 at 543. Mr.  
11 Naimi is a very experienced and reputable Family Law Attorney in Nevada. Mr. Naimi  
12 specifically cited in the decree regarding alimony *Ballin*, *Renshaw*, and *Rush*, so that the court  
13 does not include additional language regarding alimony, including early termination of a lump-  
14 sum payment. If the Court looks at Mr. Naimi's prior Decrees, it clearly shows that, when  
15 intending to terminate alimony early, Mr. Naimi will cite the proper statute regarding termination.  
16 **SEE EXHIBIT B.** If the parties' intention was early termination and not a lump-sum payment,  
17 Mr. Naimi would have included such like all his other Decrees.

18 Further, the twenty-four installment payments were an agreed lump-sum payment for  
19 Raina's education, and thus cannot be terminated early. The Nevada Supreme Court has held that  
20 an award of lump sum alimony, whether payable immediately in full or periodically in  
21 installments, is not subject to termination under the provisions of NRS 125.150(4) [Revised  
22 125.150(6)]. See *Kishner v. Kishner*, 93 Nev. 220, 225, 562 P.2d 493, 496 (1977). The Nevada  
23 Supreme Court in *Kishner*, further explained that they concur and adopted Nebraska Supreme  
24 Court interpretation and purpose of lump-sum alimony which stated "the purpose "in providing  
25 for or in accepting a gross allowance of alimony [lump-sum], is to define and fix with finality the  
26 scope of the rights and the obligations of the parties." See *Id.* at 224; and *Ziegenbein*, 292 N.W.  
27 at 923. Further, similar to the case at hand, the Court in *Fenkell v. Fenkell*, 86 Nev. 397, 469 P.2d  
28 701, 1970 Nev. LEXIS 530 (Nev. 1970), a requirement by the district court in making a lump



1 sum alimony award contingent upon her seeking training to improve her hearing ability and to  
2 improve her earning capacity as a beauty operator did not detract from the award. *Fenkell* 86 Nev.  
3 397, 469 P.2d 701, 1970 Nev. LEXIS 530 (Nev. 1970).

4 This is the situation here, Mr. Naimi created a clause that makes alimony non-modifiable  
5 so that Raina does not later attempt to increase support. Raina was awarded \$24,000.00 spread  
6 over twenty-four (24) months to pay for Raina's schooling while she completed her education,  
7 which she already spent six (6) years studying for, with two years remaining. That is way no early  
8 termination language was provided because the parties never intended for early termination, nor  
9 did they intend to allow Raina to come back and modify support. The total alimony amount vested  
10 and accrued at the time of the Decree was finalized. Therefore, NRS 125.150(6) is not applicable.

11 It could be further argued under the Decree where periodic monthly payments are made,  
12 even if construed as alimony, NRS 125.150(6) would not be the authority for the payments to  
13 cease, when such payments were in lieu of property rights arising from the marital relationship  
14 rather than alimony. *Krick v. Krick*, 76 Nev. 52, 348 P.2d 752, 1960 Nev. LEXIS 84 (Nev. 1960).  
15 The payment arrangement was based on Raina's schooling, which is a specialized degree she  
16 obtained so that she can maintain employment with Plaintiff's job in the military. An investment  
17 that became moot, once Plaintiff filed for divorce. Raina was entitled to much more support after  
18 their thirteen (13) year marriage; however, the parties intent was to pay her through school since  
19 she began her degree in Dental Hygiene for Plaintiff. Therefore, NRS 125.150(6) would not be  
20 applicable to this case.

21 **B. MARRIAGE IS NOT A DOMESTIC PARTNERSHIP**

22 Plaintiff attempts to assert that NRS 125.150(6) is applicable to the parties Alimony provision,  
23 and that since Raina entered into a domestic partnership with her boyfriend it is considered  
24 marriage under Nevada law. However, this is grossly incorrect and misinterpret the plain language  
25 of the statute under NRS 125.150(6):

26 "In the event of the death of either party or the subsequent remarriage of the spouse  
27 to whom specified periodic payments were to be made, all the payments required by  
28 the decree must cease, unless it was otherwise ordered by the court."

1 As addressed above, the parties' decree provides for a lump-sum payment for Raina to pay  
2 for her schooling, which NRS 125.150(6) does not apply. That being said, even if Raina's alimony  
3 was not a lump-sum payment and non-modifiable, under NRS 125.150(6) periodic payments do  
4 not terminate as a result of a domestic partnership.  
5

6 Plaintiff cites in his motion statutes within the Domestic Partnership section NRS 125A, to  
7 establish that Domestic Partnership is a marriage. NRS 125.150(6) clearly states that there has to  
8 be a "remarriage," and domestic partnership is not remarriage. First things first, Domestic  
9 Partnership is not Marriage, or it would be called marriage or the courts would have included  
10 Domestic Partnership within the statute. The Nevada Revised Statute does however state that  
11 Domestic Partnership is not marriage under NRS § 122A.510, where it clearly states that a  
12 domestic partnership is not a marriage for the purposes of the Nevada Constitution.

13 In *Sevcik v. Sandoval*, 911 F. Supp. 2d 996, 1001 (D. Nev. 2012), the Court makes a perfect  
14 comparison as to how a Domestic Partnership is not Marriage under Nevada law stating in part  
15 "a person who is already in a domestic partnership could apparently marry a third person in  
16 Nevada, because the anti-bigamy clause under the marriage chapter prevents only married persons  
17 from marrying again and says nothing of persons who are already in domestic partnerships, see  
18 id. at § 122.020(1). Also, Chapter 122A is silent on whether opposite-sex couples may enter into  
19 domestic partnerships; presumably, therefore, they can, though such a union would not constitute  
20 a "marriage" under the Nevada Constitution." *Sevcik*, 911 F. Supp. 2d 996, at 1001 Therefore,  
21 clearly stating that Domestic Partnership is not marriage under Nevada law.

22 Further, Nevada law states that "remarriage" requires solemnization ceremony. See *Watson*  
23 v. *Watson*, 95 Nev. 495 and 496. The Courts in *Shank v. Shank*, 100 Nev. 697, 691 P.2d 872  
24 (1984) even held that "remarriage" means solemnization or ceremony of remarriage for purpose  
25 of cut off. Under NRS 122A.100, to obtain a Domestic Partnership a party is not required to have  
26 a solemnization ceremony, nor did Raina and her boyfriend do so.

27 Raina and her boyfriend are independent and have no comingled assets. Raina is required to  
28 pay her half of all the bills, including rent and her education. She is still obligated to pay more on

1 her taxes, as she is not recognized as married. The only benefit the parties' have obtained was  
2 now the minor child has health insurance. Therefore, for the purposes of NRS 125.150(6) Raina  
3 has not remarried; and therefore, alimony payments are to continue as ordered in the decree of  
4 divorce.

5 **C. PLAINTIFF HAS FAILED TO PAY SPOUSAL SUPPORT SINCE SEPTEMBER**  
6 **2016, AND SUCH AMOUNT SHOULD BE REDUCED TO JUDGEMENT.**

7 NRS § 125.150(8) states that if a decree of divorce is adopted or approved and provides for  
8 alimony payments, the decree is not subject to modification by the court as to accrued payments.  
9 Plaintiff has unilaterally stopped making alimony payments required by the parties Decree of  
10 Divorce since September of 2016, without any court's order to do so. Plaintiff is intentionally in  
11 violation of the Court's order, and has stated so in their Motion. This behavior should not be  
12 tolerated and is also subject to sanctions under EDCR 7.60 and NRS 7.085 for failure to abide by  
13 a Court Order. Raina gets her day in court before a judge determines if Plaintiff must pay or not.  
14 September 2016 to December 2016 months have accrued alimony and cannot be modified;  
15 therefore, Raina requests that the \$4,000.00 be reduced to judgement.

16 **D. DEFENDANT SHOULD BE AWARDED ATTORNEY'S FEES FOR HAVING TO**  
17 **RESPOND AND BRING A COUNTERMOTION.**

18 Defendant should be awarded fees and costs for having to bring this Opposition and  
19 Counter-motion in front of this Court. This Court has jurisdiction to award attorneys' fees under  
20 NRS § 18.010. Defendant's requests the Court reduce the attorney's fees awarded to her to  
21 judgment and that the same be collectible by any and all legal means, in addition to allowing plus  
22 post judgment interest to accrue thereon.

23 Under *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345 (1969), and *Miller v. Wilfong*,  
24 121 Nev. 619, 119 P.3d 727 (2005). when courts determine the appropriate legal fees to award  
25 in civil cases, they must consider the following factors including:

26 1. The qualities of the advocate:

27 Defendant's counsel, Samira C. Knight, Esq., is a Nevada licensed attorney and has  
28 primarily practiced in the area of Family Law. She has been lead counsel in countless cases, and

1 has taken several cases to trial. She has a very good professional standing in the community and  
2 is a strong advocate for his client.

3 2. The character and difficulty of the work performed:

4 There was a lot of time and skill required to get this matter properly before this Court,  
5 including but not limited to researching and preparing the instant Opposition and Countermotion.

6 3. The work actually performed:

7 Many hours have been required to resolve this matter. This Court can clearly see the work  
8 required, Counsel will have earned every billable hour charged in this matter. Counsel charges  
9 \$300/hour, which is very reasonable considering most attorneys in the greater Las Vegas area  
10 charge between \$250 - \$600 per hour. This Court also must consider that Defendant's counsel  
11 has several years experience in Domestic Relations and is an effective litigator.

12 4. The results obtained:

13 Defendant is entitled to the relief that she seeks and her award is justified. For these  
14 reasons, the Court can order the appropriate amount in this matter and Defendant respectfully  
15 requests an order for attorney's fees be granted.

16 **III.**

17 **CONCLUSION**

18 In light of the authority stated above, Defendant respectfully requests the following relief:

- 19 1. For an Order Denying Plaintiff's Motion in its entirety;  
20 2. For an Order Granting Defendant's Countermotion;  
21 3. For an Order Granting Defendant's Judgement;

22 ///

23 ///

24 ///

25 ///

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4. For an Order Granting Defendant Attorney's Fees and Costs; and
5. For such other and further relief as this Court deems necessary and just.

DATED this 28 day of December, 2016.

Respectfully Submitted,

TARKANIAN & KNIGHT LAW GROUP



**Samira C. Knight, Esq.**  
Nevada Bar No. 13167  
7220 S. Cimarron, Suite 110  
Las Vegas, NV 89113  
Tel: (702) 508-4998  
Fax: (702) 940-2792  
E-mail: Samira@TKLawGroupNV.com  
*Attorney for Defendant*

AFFIDAVIT OF RAINA MARTIN

RAINA MARTIN, being first duly sworn, upon oath, deposes and says:

I am the Defendant in the subject case and I am familiar with the facts. I have read the foregoing DEFENDANT'S OPPOSITION AND COUNTERMOTION TO PLAINTIFF'S MOTION TO TERMINATE ALIMONY AND FOR ATTORNEY'S FEES AND COST, and the factual averments contained therein are true and correct to the best of my knowledge, except as to those matters based on information and belief, and as to those matters, I believe them to be true. Those factual averments contained in the preceding are incorporated herein as if set forth in full.

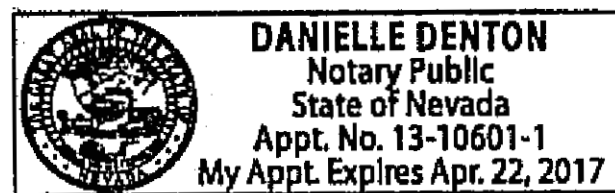
FURTHER YOUR AFFIANT SAYETH NAUGHT.

By: *Raina Martin*  
RAINA MARTIN.

STATE OF NEVADA            )  
  SS:  
COUNTY OF CLARK        )

**SUBSCRIBED** and **SWORN** to before me  
This 27 day of December, 2016,  
by *Raina Martin*.

*[Signature]*  
NOTARY PUBLIC



# EXHIBIT A



ORIGINAL

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*Alvin D. Quinn*

CLERK OF THE COURT

DECD  
STANDISH NAIMI LAW GROUP  
JASON NAIMI, ESQ.  
Nevada State Bar No. 09441  
jason@standishnaimi.com  
FRANCESCA RESCH, ESQ.  
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francesca@standishnaimi.com  
1635 Village Center Circle, Suite 180  
Las Vegas, Nevada 89134  
Telephone: (702) 998-9344  
Facsimile: (702) 998-7460  
Attorneys for Defendant

DISTRICT COURT, FAMILY DIVISION  
CLARK COUNTY, NEVADA

CARLOS CARRILLO,

Plaintiff,

v.

MELANIE CARRILLO,

Defendant.

CASE NO.: D-15-508431-D

DEPT. NO.: F

STIPULATED DECREE OF DIVORCE

Now into Court comes Plaintiff, Carlos Carrillo ("Carlos"), by and through his counsel, Frederick A. Santacroce, Esq. of Santacroce Law Office, Ltd., and Defendant, Melanie Carrillo ("Melanie"), by and through her counsel, Jason Naimi, Esq. of Standish Naimi Law Group; pursuant to the terms of Chapter 125 of the Nevada Revised Statutes and having satisfied all the provisions of NRS 125.181, and submit this matter to the Court for Summary Disposition of Divorce, with both parties having consented to this Court's jurisdiction.

The Court, having considered the affidavits, pleadings, and papers on file herein, the cause having been submitted for decision and judgment, and the Court being fully advised as to the law and the facts of this case, hereby finds as follows:

That, for a period of more than six (6) weeks immediately preceding the filing of this action, the parties have been and now are actual, bona fide residents of the State of Nevada, County of Clark, and have been actually, physically present and domiciled in Nevada for more than six (6) weeks prior to the filing of this action.

Non-Trial Dispositions:  
☐ Other  
☐ Dismissed - Want of Prosecution  
☐ Involuntary (Statutory) Dismissal  
☐ Default Judgment  
☐ Transferred  
☒ Settled/Withdrawn:  
☒ Without Judicial Conf/Hrg  
☐ With Judicial Conf/Hrg  
☐ By ADR  
Trial Dispositions:  
☐ Disposed After Trial Start  
☐ Judgment Reached by Trial

RECEIVED

FEB 12 2016

DEPARTMENT F

RA000507

STANDISH NAIMI LAW GROUP  
1635 Village Center Circle, Suite 180 Las Vegas, NV 89134  
Telephone: (702) 998-9344 Fax: (702) 998-7460



1. The mortgage on the real property located at 4915 Monteleone Ave., Las Vegas, NV.;
2. Any encumbrance on the 2011 Honda Odyssey;
3. Any and all credit cards in her name alone; and
4. Any and all other obligations incurred by Melanie in her name alone, or jointly with any other person.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** Carlos shall be awarded the following debts as his sole and separate property, and Carlos shall indemnify and hold Melanie harmless therefrom:

1. Any encumbrances on the 2005 Acura TL;
2. Any and all credit cards in his name alone; and
5. Any and all other obligations incurred by Carlos in his name alone, or jointly with any other person.

#### ALIMONY

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that in consideration for the terms of this Decree, each party expressly waives any and all claims of alimony from the other. The parties each understand that this waiver is permanent and cannot be re-addressed notwithstanding the provisions of NRS 125.150(5) and (7), which provisions Melanie and Carlos expressly waive. Melanie and Carlos intend that the waiver of the alimony as set forth herein is nonmodifiable within the meaning of Nevada law as articulated in *Ballin v. Ballin*, 78 Nev. 224, 371 P.2d 32 (1962), *Rush v. Rush*, 82 Nev. 59, 410 P.2d 757 (1966) and *Renshaw v. Renshaw*, 96 Nev. 541, 611 P.2d 1070 (1980); that neither party herein nor any Court may modify this waiver of alimony, as same is an integral part of the parties' settlement.)

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that neither party is to be awarded spousal support.

#### TAXES

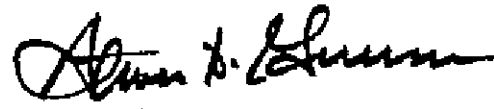
**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the parties shall file separate tax returns starting with the 2016 tax year and each year thereafter. Carlos shall claim Gavin for tax purposes in every year, beginning with the 2016 tax year and each year thereafter. Melanie

ORIGINAL

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03/25/2013 10:14:52 AM

1 **DECR**

2 Jason Naimi, Esq.  
3 Nevada State Bar No. 009441  
4 NAIMI & DILBECK, CHTD.  
5 A Professional Limited Liability Company  
6 5495 S. Rainbow Blvd., Suite 202-C  
7 Las Vegas, NV 89118  
8 Tel: (702) 823-3333  
9 Fax: (702) 823-3300  
10 Email: jason@naimidilbeck.com  
11 *Attorney for Plaintiff*



CLERK OF THE COURT

7 **DISTRICT COURT**

8 **FAMILY DIVISION**

9 **CLARK COUNTY, NEVADA**

10 LEIGHNA FODIL-COLLINS,

11 Plaintiff,

12 v.

13 FELIX FODIL,

14 Defendant.

CASE NO.: D-12-468419-D

DEPT. NO.: N

15 **DECREE OF DIVORCE**

16  
17 NOW INTO COURT comes Plaintiff, LEIGHNA FODIL-COLLINS, by and through her  
18 attorney of record, Jason Naimi, Esq., of Naimi & Dilbeck, Chtd., and Defendant, FELIX  
19 FODIL, by and through his attorney of record, Doris Nehme-Tomalka, Esq., and submit this  
20 matter to the Court for Summary Disposition of Divorce, with both parties having consented to  
21 this Court's jurisdiction.  
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**Non-Trial Dispositions:**  
☐ Other  
☐ Dismissed - Want of Prosecution  
☐ Involuntary (Statutory) Dismissal  
☐ Default Judgment  
☐ Transferred  
☐ Disposed After Trial Start  
**Settled/Withdrawn:**  
☐ Without Judicial Conf/Hrg  
☒ With Judicial Conf/Hrg  
☐ By ADR  
**Trial Dispositions:**  
☐ Judgment Reached by Trial

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MAR 15 2013

FAMILY COURT  
DEPARTMENT N

RA000509

## ALIMONY

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that in consideration for the terms of this Decree, each party expressly waives any and all claims of alimony from the other. The parties each understand that this waiver is permanent and cannot be re-addressed notwithstanding the provisions of NRS 125.150(5) and (7), which provisions Felix and Leighna expressly waive. Felix and Leighna intend that the waiver of the alimony as set forth herein is nonmodifiable within the meaning of Nevada law as articulated in *Ballin v. Ballin*, 78 Nev. 224, 371 P.2d 32 (1962), *Rush v. Rush*, 82 Nev. 59, 410 P.2d 757 (1966) and *Renshaw v. Renshaw*, 96 Nev. 541, 611 P.2d 1070 (1980); that neither party herein nor any Court may modify this waiver of alimony, as same is an integral part of the parties' settlement.)

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that neither party is to be awarded spousal support.

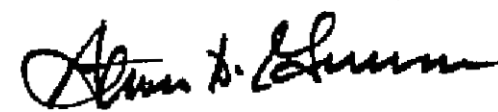
## TAXES

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the parties shall file separate tax returns starting with the 2012 tax year and each year thereafter.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the amounts received by either party pursuant to the section titled "Assets" are considered property division pursuant to a divorce and are not a taxable event.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the parties are placed on notice of the following:

**Circular 230 Disclosure:** To ensure compliance with recently-enacted U.S. Treasury Department Regulations, the parties are advised that, unless otherwise expressly indicated, any federal tax advice that may be in this Decree of Divorce, or which otherwise may pertain to this Decree and/or any issue that may be incident to the parties' divorce or their marriage to each other, including any documents attached to this Decree, is not intended or written to be used, and

  
CLERK OF THE COURT

1 **DECR**  
2 Jason Naimi, Esq.  
3 Nevada State Bar No. 9441  
4 Standish Naimi Law Group  
5 A Professional Limited Liability Company  
6 1635 Village Center Circle, Suite 180  
7 Las Vegas, NV 89134  
8 Tel: (702) 998-9344  
9 Fax: (702) 998-7460  
10 Email: jason@standishnaimi.com  
11 *Attorneys for Plaintiff*

7 **DISTRICT COURT**  
8 **FAMILY DIVISION**  
9 **CLARK COUNTY, NEVADA**

9 **DAVID COTTER,**

10 Plaintiff,

11 v.

12 **LAURA COTTER,**

13 Defendant.

CASE NO.: D 16 529275 P

DEPT. NO.: 7

14  
15 **DECREE OF DIVORCE**

16 NOW INTO COURT comes Plaintiff, DAVID COTTER, by and through his attorney of record, JASON NAIMI, ESQ. of STANDISH NAIMI LAW GROUP, and Defendant, LAURA COTTER, in Proper Person, and submit this matter to the Court for Summary Disposition of Divorce, with both parties having consented to this Court's jurisdiction.

The Court was fully advised as to the law and the facts of the case, and finds that: That Plaintiff, for a period of more than six (6) weeks immediately preceding the commencement of this action, has been and now is an actual, bona fide and actual resident and domiciliary of the State of Nevada, County of Clark, and has been actually physically and corporeally present and domiciled in Nevada for more than six (6) weeks immediately prior to the commencement of this action, and has had and still has the intent to make the State of Nevada his home, residence and domicile for an indefinite period of time; that the parties were married the 28<sup>th</sup> day of May, 1983, in Clark County, Nevada; that there are no minor children of the marriage; that to the best of Plaintiff's knowledge, Defendant is not pregnant at this time; that one child, now an adult, was adopted during this marriage by Plaintiff and Defendant.

STANDISH NAIMI LAW GROUP  
1635 Village Center Circle, Suite 180 Las Vegas, NV 89134  
Telephone: (702) 998-9344 Fax: (702) 998-7460

FAMILY COURT

MAR 11 2016

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☐ Other  
☐ Unpublished  
☐ Voluntary (Statutory) Divorce  
☐ Default Judgment  
☐ Trial  
☐ Summary Judgment  
☐ Judgment Reached by Trial  
☐ Judgment Reached by ADR  
☐ Judgment Reached by Mediation  
☐ Judgment Reached by Arbitration  
☐ Judgment Reached by Conciliation  
☐ Judgment Reached by Other

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that except as specifically set forth herein, each party hereto is released and absolved from any and all obligations and liabilities for future acts and duties of the other, and except as specified herein, each of the parties hereby releases the other from any and all liabilities, debts, or obligations of every kind or character incurred up to this date.

## ALIMONY

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that in consideration for the terms of this Decree, each party expressly waives any and all claims of alimony from the other. The parties each understand that this waiver is permanent and cannot be re-addressed notwithstanding the provisions of NRS 125.150(5) and (7), which provisions David and Laura expressly waive. David and Laura intend that the waiver of the alimony as set forth herein is non-modifiable within the meaning of Nevada law as articulated in *Ballin v. Ballin*, 78 Nev. 224, 371 P.2d 32 (1962), *Rush v. Rush*, 82 Nev. 59, 410 P.2d 757 (1966) and *Renshaw v. Renshaw*, 96 Nev. 541, 611 P.2d 1070 (1980); that neither party herein nor any Court may modify this waiver of alimony, as same is an integral part of the parties' settlement.)

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that neither party is to be awarded spousal support.

## TAXES

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the parties shall file separate tax returns starting with the 2016 tax year and each year thereafter.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the amounts received by either party pursuant to the section titled "Assets" are considered property division pursuant to a divorce and are not a taxable event.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the parties are place on notice of the following:

# **EXHIBIT B**

ORIGINAL

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11/08/2011 04:53:17 PM

*Alan D. Harter*

CLERK OF THE COURT

1 DECR

2 Jason Naimi, Esq.  
3 Nevada State Bar No. 009441  
4 NAIMI & DILBECK, CHTD.  
5 A Professional Limited Liability Company  
6 6053 S. Fort Apache Rd., Suite 120  
7 Las Vegas, NV 89148  
8 Tel: (702) 823-3333  
9 Fax: (702) 823-3300  
10 Email: jason@naimidilbeck.com  
11 Attorney for Defendant

DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

11 CHRISTINA M. POSEY,

12 Plaintiff,

13 v.

14 DAVID G. POSEY,

15 Defendant.

CASE NO.: D-10-434785-D

DEPT. NO.: Q

16 DECREE OF DIVORCE

17  
18 NOW INTO COURT comes Plaintiff, CHRISTINA M POSEY, by and through her  
19 attorney of record, ALAN HARTER, ESQ., and Defendant, DAVID G. POSEY, by and through  
20 his attorney of record, JASON NAIMI, ESQ., of NAIMI & DILBECK, CHTD., and submit this  
21 matter to the Court for Summary Disposition of Divorce, with both parties having consented to  
22 this Court's jurisdiction.

DISPOSITIONS

- 23 ☐ - Converted from Blackstone  
24 ☐ - Involuntary Dismissal  
25 ☐ - Transferred  
26 ☐ - Voluntary Dismissal  
27 ☒ - Decision w/out Trial/Hearing  
28 ☐ - Decision w/ Hearing  
29 ☐ - Decision w/ Trial/Evidentiary Hearing

Guardianship

- 30 ☐ - Death  
31 ☐ - Age of Majority  
32 ☐ - Restoration of Competency  
33 ☐ - Order Terminating Guardianship/ Final Acct.

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NOV 04 2011

FAMILY COURT  
DEPARTMENT Q



IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that if any joint debt, obligation, liability, act or omission creating such liability has been omitted from this Decree and is subsequently discovered, either party may petition the Court for an allocation of that debt, obligation, liability, or liability arising from such act or omission.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the parties each have verified to the other that they have made a full disclosure of all debts known to them.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that except as specifically set forth herein, each party hereto is released and absolved from any and all obligations and liabilities for future acts and duties of the other, and except as specified herein, each of the parties hereby releases the other from any and all liabilities, debts, or obligations of every kind or character incurred up to this date.

## ALIMONY

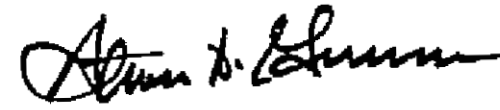
IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that David agrees to pay Christina, as and for spousal support, lump sum alimony in the amount of Eighteen Thousand Dollars (\$18,000.00) payable at the rate of Five Hundred Dollars (\$500.00) per month for the next Thirty Six (36) months on or before the 15<sup>th</sup> of each month, commencing November 15, 2011, with the last payment being made on October 15, 2014. The foregoing alimony payments shall immediately terminate in the event of:

1. David's death;
2. Christina's death; or
3. Christina's remarriage.



**ORIGINAL**

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CLERK OF THE COURT

**DECR**

Jason Naimi, Esq.  
Nevada State Bar No. 009441  
NAIMI & DILBECK, CHTD.  
A Professional Limited Liability Company  
5495 S. Rainbow Blvd., Suite 202C  
Las Vegas, NV 89118  
Tel: (702) 823-3333  
Fax: (702) 823-3300  
Email: jason@naimidilbeck.com  
*Attorney for Plaintiff*

**DISTRICT COURT**

**FAMILY DIVISION**

**CLARK COUNTY, NEVADA**

KIM R. SYMONS,  
Plaintiff,

v.

PEGGY K. SYMONS,  
Defendant.

CASE NO.: D-11-455320-D

DEPT. NO.: L

**DECREE OF DIVORCE**

NOW INTO COURT comes Plaintiff, KIM R. SYMONS, by and through his attorney of record, JASON NAIMI, ESQ., of NAIMI & DILBECK, CHTD., and Defendant, PEGGY K. SYMONS, by and through her attorney of record, VALARIE I. FUJII, ESQ., and submit this matter to the Court for Summary Disposition of Divorce, with both parties having consented to this Court's jurisdiction.

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Non-Trial Dispositions:

<input type="checkbox"/> Other	Settled/Withdrawn:
<input type="checkbox"/> Dismissed - Want of Prosecution	<input type="checkbox"/> Without Judicial Conf/Hrg
<input type="checkbox"/> Involuntary (Statutory) Dismissal	<input checked="" type="checkbox"/> With Judicial Conf/Hrg
<input type="checkbox"/> Default Judgment	<input type="checkbox"/> By ADR
<input type="checkbox"/> Transferred	

Trial Dispositions:

<input type="checkbox"/> Disposed After Trial Start	<input type="checkbox"/> Judgment Reached by Trial
---	--

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that if any joint debt, obligation, liability, act or omission creating such liability has been omitted from this Decree and is subsequently discovered, either party may petition the Court for an allocation of that debt, obligation, liability, or liability arising from such act or omission.

**IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that the parties each have verified to the other that they have made a full disclosure of all debts known to them.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that except as specifically set forth herein, each party hereto is released and absolved from any and all obligations and liabilities for future acts and duties of the other, and except as specified herein, each of the parties hereby releases the other from any and all liabilities, debts, or obligations of every kind or character incurred up to this date.

## ALIMONY

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that in consideration for the terms of this Decree, Kim agrees to pay to Peggy, in and for spousal support, lump sum alimony in the amount of One Hundred and Twenty Thousand Dollars (\$120,000.00) payable at a rate One Thousand Six Hundred Dollars (\$1,600.00) per month for Seventy Five (75) consecutive months, commencing March 1, 2013, with the last payment being made on May 1, 2018. The foregoing alimony payments shall immediately terminate in the event of: (i) Husband's death; (ii) Wife's death; or (iii) Wife's remarriage.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Kim agrees to maintain a life insurance policy for the amount of spousal support owed to Peggy as set forth herein. That insurance policy need only be large enough to cover any outstanding spousal

DISTRICT COURT, FAMILY DIVISION  
CLARK COUNTY, NEVADA

ERICH M. MARTIN,

Plaintiff

vs.

RAINA MARTIN

Defendant

CASE NO. D-15-509045-D

DEPT. NO. C

**FAMILY COURT MOTION/OPPOSITION  
FEE INFORMATION SHEET (NRS 19.0312)**

Party Filing Motion/Opposition: ( ) Plaintiff/Petitioner (X) Defendant/Respondent

Notice

**Motions and Oppositions to  
Motions filed after entry of  
final Decree or Judgment  
(pursuant to NRS 125, 125B  
&125C) are subject to the  
Re-open Filing Fee of \$25.00,  
unless Specifically excluded.  
(See NRS 19.0312)**

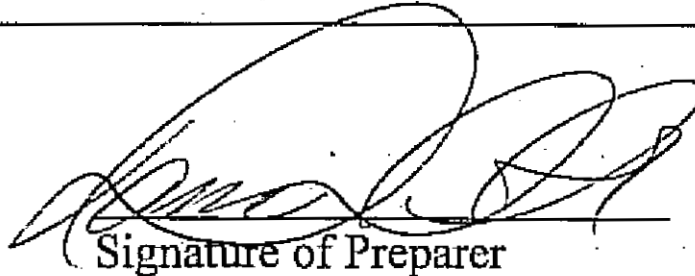
Excluded Motions/Oppositions

- ☐ Motions filed before final Divorce/Custody Decree  
entered  
(Divorce/Custody Decree NOT final)
- ☐ Child Support Modification ONLY
- ☐ Motion/Opposition For Reconsideration (Within 10 days of Decree)  
Date of Last Order \_\_\_\_\_
- ☐ Request for New Trial (Within 10 days of Decree)  
Date of Last Order \_\_\_\_\_
- ☒ Other Excluded Motion  
(Must be prepared to defend exclusion to Judge)

NOTE: If no boxes are checked, filing fee **MUST** be paid.

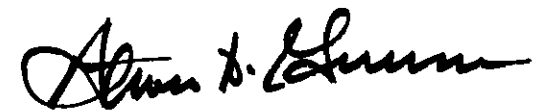
( ) Motion/Opp IS subject to \$25.00 filing fee (X) Motion/Opp IS NOT subject to filing fee

Date: December 27, 2016  
Danielle Denton  
Printed Name of Preparer

  
Signature of Preparer

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CLERK OF THE COURT

**COS**  
**SAMIRA C. KNIGHT, ESQ.**  
Nevada Bar No. 13167  
**TARKANIAN & KNIGHT LAW GROUP, PLLC**  
7220 S. Cimarron Road, Suite 110  
Las Vegas, NV 89113  
Tel: (702) 508-4998  
Fax: (702) 940-2792  
E-mail: Samira@TKLawGroupNV.com  
*Attorney for Defendant*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

\*\*\*

ERICH M. MARTIN,  
Plaintiff,

Case No.: D-15-509045-D

Dept. No.: C

v.

RAINA MARTIN,  
Defendant.

**CERTIFICATE OF SERVICE**

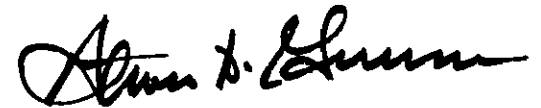
I HEREBY CERTIFY that on this 28<sup>th</sup> day of December 2016, pursuant to NRCP  
5(b), I served the following parties listed below via the Eighth Judicial District Court  
electronic filing system a true and correct copy of the foregoing **DEFENDANT'S**  
**OPPOSITION AND COUNTERMOTION TO PLAINTIFF'S MOTION TO**  
**TERMINATE ALIMONY AND FOR ATTORNEY'S FEES AND COST** to the following  
parties:

**Kelleher & Kelleher, LLC**  
**John T. Kelleher, Esq.**  
**hjuilfs@kelleherand Kelleher.com**

/s/ Danielle Denton  
An Employee of Tarkanian & Knight

74

74



CLERK OF THE COURT

1 **ROPP**  
2 JOHN T. KELLEHER, ESQ.  
3 Nevada Bar No. 6012  
4 KELLEHER & KELLEHER, LLC  
5 40 S. Stephanie Street, Suite #201  
6 Henderson, Nevada 89012  
7 Phone: (702) 384-7494  
8 Fax: (702) 384-7545  
9 Email: kelleherjt@aol.com  
10 Attorney for Plaintiff

7 **DISTRICT COURT**  
8 **CLARK COUNTY, NEVADA**

9 ERICH M. MARTIN

11 Plaintiff,

12 v.

13 RAINA L. MARTIN,

14 Defendant.

CASE NO.: D-15-509045-D  
DEPT. NO.: C

Hearing Date: January 12, 2017  
Hearing Time: 9:00 a.m.

15  
16 **REPLY TO DEFENDANT'S OPPOSITION and OPPOSITION TO DEFENDANT'S**  
17 **COUNTERMOTION TO PLAINTIFF'S MOTION TO TERMINATE ALIMONY AND**  
18 **FOR ATTORNEY'S FEES AND COST [S/C]**

19 COMES NOW Plaintiff, ERICH M. MARTIN, by and through his attorney, John T.  
20 Kelleher, Esq., of the law firm of KELLEHER & KELLEHER, LLC and hereby files this Reply  
21 to Defendant's Opposition and Opposition to Defendant's Countermotion to Plaintiff's Motion to  
22 Terminate Alimony and For Attorney's Fees and Cost [sic].

23 ///

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28 ///

LAW OFFICES  
**KELLEHER & KELLEHER LLC**  
40 S. STEPHANIE STREET, SUITE #201  
HENDERSON, NEVADA 89012  
(702) 384-7494

1 This Reply and Opposition is made and based upon the pleadings on file herein, any  
2 exhibits and affidavit attached hereto, and the oral argument of counsel at the time of said hearing.

3 DATED this 4 day of JANUARY, 2017.

4  
5 KELLEHER & KELLEHER, LLC

6  
7 By: 

8 JOHN T. KELLEHER, ESQ.

9 Nevada Bar No. 6012

10 40 S. Stephanie Street, Suite #201

11 Henderson, Nevada 89012

12 Attorney for Plaintiff

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LAW OFFICES  
KELLEHER & KELLEHER, LLC  
40 S. STEPHANIE STREET, SUITE #201  
HENDERSON, NEVADA 89012  
(702) 384-7494



POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

BRIEF NOTE ON TITLES

As a result of the relatively confusing title of Defendant's Opposition and Countermotion, as well as Defendant's failure to designate any kind of Countermotion within the body of her document, it is important to note here, at the outset, that this filing is a response to Defendant's Opposition and an attempted opposition to any issues believed to be contained in Defendant's enigmatic Countermotion.

INTRODUCTION

Plaintiff Erich M. Martin ("Erich") and Defendant Raina L. Martin ("Defendant") were married in North Carolina on April 1, 2002 and divorced in Nevada on November 5, 2015. During their marriage, the parties had one (1) minor child, Nathan L. Martin, born August 24, 2010.

As part of the divorce process, the parties participated in private mediation where the provisions of their divorce were discussed and agreed upon. Ultimately, Erich was ordered to "pay [Defendant] the amount of \$1,000.00 per month for twenty-four (24) months beginning June, 2015." See Decree of Divorce at 15:1-2.

On February 29, 2016, without informing Erich, Defendant entered into a registered domestic partnership in Nevada with Anthony Bricker, with whom she currently resides.

A DOMESTIC PARTNERSHIP IS "LIKE A MARRIAGE"

At a hearing for the parties on September 22, 2016, the Court stated Defendant's domestic partnership was "like a marriage" and thus, would effectively end Erich's alimony responsibility to Defendant. See September 22, 2016 Hearing Tape at 32:12; 33:14. The Court also stated a domestic partnership is "not cohabitation." *Id.* at 31:29. Additionally, the Court indicated, "It isn't fair for [Defendant] to keep collecting [alimony] if she is, for all intents and purposes, married to somebody else." *Id.* at 33:14.

///

1 In spite of the Court's willingness to hear the issue at the September 22, 2016 hearing,  
2 Defendant stubbornly insisted Erich file a motion to terminate his alimony responsibility. *Id.* at  
3 33:53. The Court promised that should Erich prevail on his Motion, he "would be awarded his  
4 attorney's fees." *Id.* at 38:34; 38:55.

5 **DEFENDANT'S OPPOSITION AND COUNTERMOTION ARE UNTIMELY**

6 Erich filed his Motion to Terminate Alimony on October 6, 2016. Since that time, Erich  
7 has behaved generously with Defendant, granting her *multiple* extensions to file an Opposition  
8 and Countermotion and allowing her time to hire new counsel.

9 In spite of Defendant's Opposition and Countermotion being due October 20, 2016, ten  
10 (10) business days after Erich's Motion was filed, Defendant failed to promptly respond.  
11 Although Erich has remained patient with Defendant throughout the extreme lag-time in her  
12 response, it is important for the Court to note that Defendant did not even substitute attorneys in  
13 preparation for the continued litigation until December 12, 2016-- approximately thirty-four (34)  
14 business days after her Opposition and Countermotion were due.

15 Once Defendant had hired a new attorney, she continued to delay filing her Opposition and  
16 Countermotion. Not until December 28, 2016 did Defendant *finally* file the Opposition and  
17 Countermotion-- a full forty-five (45) days late, two (2) days before a holiday weekend, and only  
18 ten (10) business days before the parties' scheduled hearing on the Motion.

19 **II.**

20 **LEGAL ANALYSIS**

21 **A. DEFENDANT'S OPPOSITION AND COUNTERMOTION SHOULD BE**  
22 **STRICKEN FOR TIMELINESS**

23 Defendant's Opposition and Countermotion are extremely untimely and should be stricken  
24 as a result. Pursuant to EDCR 2.20(e), "Within 10 days after the service of the motion . . . , the  
25 opposing party must serve and file written notice of . . . opposition thereto . . . ."

26 Although Erich has patiently granted Defendant ample time to file her Opposition and  
27 Countermotion, Defendant has abused the judicial system and thumbed her nose at his patience,  
28 waiting to file her Opposition and Countermotion until a holiday weekend, effectively reducing  
Erich's time for response. Additionally, Defendant's filing came *months* after Erich's initial

1 Motion was filed. While Erich did agree to certain extensions of time, in no way did Erich imply  
2 Defendant could have from October 6, 2016 to December 28, 2016 to file any kind of opposition.  
3 Defendant chose to interpret Erich's charity as a carte blanche invitation to ignore all sense of  
4 judicial urgency or legal etiquette and this Court should strike her Opposition and Countermotion  
5 as a result.

6 **B. ERICH'S ALIMONY PAYMENTS TO DEFENDANT SHOULD CEASE AND**  
7 **ERICH SHOULD BE REIMBURSED FOR ALL ALIMONY PAYMENTS AFTER**  
8 **FEBRUARY 29, 2016**

9 Erich's alimony payments to Defendant should cease and Erich should be reimbursed for  
10 all alimony payments after February 29, 2016, the day Defendant registered her domestic  
11 partnership. According to Defendant, Nevada statute does not equivocate a domestic partnership  
12 and a marriage. Defendant also claims the parties' Decree of Divorce does not allow for the  
13 termination of alimony payments. Defendant's analysis is replete with inaccuracies, however, and  
14 the Court should grant Erich's request to cease alimony payment.

15 *i. Domestic partners are equivalent to spouses and alimony should terminate as a*  
16 *result.*

17 A domestic partnership is the equivalent of a marriage. NRS 122A.200 states as follows:

18 1. Except as otherwise provided in NRS 122A.210:

19 (a) Domestic partners have the same rights, protections and benefits, and are  
20 subject to the same responsibilities, obligations and duties under law, whether  
21 derived from statutes, administrative regulations, court rules, government  
22 policies, common law or any other provisions or sources of law, as are granted  
23 to and imposed upon spouses.

24 (b) Former domestic partners have the same rights, protections and benefits, and  
25 are subject to the same responsibilities, obligations and duties under law, whether  
26 derived from statutes, administrative regulations, court rules, government policies,  
27 common law or any other provisions or sources of law, as are granted to and  
28 imposed upon former spouses.

(c) A surviving domestic partner, following the death of the other partner, has the  
same rights, protections and benefits, and is subject to the same responsibilities,  
obligations and duties under law, whether derived from statutes, administrative  
regulations, court rules, government policies, common law or any other provisions  
or sources of law, as are granted to and imposed upon a widow or a widower.

(d) The rights and obligations of domestic partners with respect to a child of either  
of them are the same as those of spouses. The rights and obligations of former or  
surviving domestic partners with respect to a child of either of them are the same  
as those of former or surviving spouses.

(e) To the extent that provisions of Nevada law adopt, refer to or rely upon  
provisions of federal law in a way that otherwise would cause domestic partners to  
be treated differently from spouses, domestic partners must be treated by Nevada  
law as if federal law recognized a domestic partnership in the same manner as  
Nevada law.

(f) Domestic partners have the same right to nondiscriminatory treatment as that provided to spouses.

(g) A public agency in this State shall not discriminate against any person or couple on the basis or ground that the person is a domestic partner rather than a spouse or that the couple are domestic partners rather than spouses.

(h) The provisions of this chapter do not preclude a public agency from exercising its regulatory authority to carry out laws providing rights to, or imposing responsibilities upon, domestic partners.

(i) Where necessary to protect the rights of domestic partners pursuant to this chapter, gender-specific terms referring to spouses must be construed to include domestic partners.

(j) For the purposes of the statutes, administrative regulations, court rules, government policies, common law and any other provision or source of law governing the rights, protections and benefits, and the responsibilities, obligations and duties of domestic partners in this State, as effectuated by the provisions of this chapter, with respect to:

(1) Community property;

(2) Mutual responsibility for debts to third parties;

(3) The right in particular circumstances of either partner to seek financial support from the other following the dissolution of the partnership; and

(4) Other rights and duties as between the partners concerning ownership of property

**any reference to the date of a marriage shall be deemed to refer to the date of registration of the domestic partnership.**

2. As used in this section, "public agency" means an agency, bureau, board, commission, department or division of the State of Nevada or a political subdivision of the State of Nevada.

(Emphasis added.)

Furthermore, upon the remarriage of a spouse "to whom specified periodic payments were to be made, all the payments required by the decree must cease, unless it was otherwise ordered by the court." NRS 125.150(6).

Here, the statute is clear and unambiguous-- *domestic partners are subject to identical rights and obligations as spouses are subject to*. Because NRS 125.150(6) requires alimony to cease upon entrance into marriage as a spouse, it must follow that the same statute requires alimony to cease upon entrance into a domestic partnership as a partner. To interpret the statute in any other way would allow Defendant to receive alimony, the benefit of one relationship, while receiving the financial and economic protection of another relationship, effectively double-dipping.

Several other problems exist with Defendant's refusal to acknowledge Nevada statute. Defendant cites *Sevcik v. Sandoval*, 911 F.Supp.2d 996, 1001 (D. Nev. 2012), for example, in asserting Nevada case law "makes a perfect comparison as to how a Domestic Partnership is not

1 Marriage [*sic*] under Nevada law.” See Opposition and Countermotion at 8:12-13. *Sevcik* was  
2 reversed and remanded by the United States Ninth Circuit Court of Appeals, however, in 2014. In  
3 its decision, the Ninth Circuit stated Nevada’s domestic partnership law affords domestic partners  
4 “rights identical to those of married couples.” *Latta v. Otter*, 771 F.3d 456, 474 (9<sup>th</sup> Cir. Ct. App.  
5 2014).

6 Defendant also claims that because a domestic partnership is not a “remarriage,” NRS  
7 125.150(6) cannot be applied in this case. Pursuant to NRS 122A.200(1)(j), however, “any  
8 reference to the date of a marriage shall be deemed to refer to the date of registration of the  
9 domestic partnership.” Here, for all intents and purposes, Defendant’s registration on February  
10 29, 2016 as a domestic partner should be deemed equivalent to remarriage for purposes of NRS  
11 125.150(6).<sup>1</sup>

12 Finally, Defendant asserts that NRS 125.150(6) should not be applied because “the courts  
13 would have included Domestic Partnership within the statute” if they wished it to apply and  
14 because NRS 122A.510 “clearly states that a domestic partnership is not a marriage for the  
15 purposes of the Nevada Constitution.” See Opposition and Countermotion at 8:8-9; 10-11. Yet  
16 again, Defendant’s interpretation of the law is amateur at best. Although Defendant wishes to  
17 ignore the fact, the plain, clear, and unambiguous language of NRS 122A.200 directly references  
18 NRS 125.150(6) by placing on domestic partners the “same” obligations as those placed on  
19 spouses. One of these obligations is to relinquish any right to alimony upon entrance into a  
20 subsequent domestic relation. Although NRS 122A.510 states domestic partnerships are not  
21 marriages “for the purposes of Section 21 of Article 1 of the Nevada Constitution,” this does not  
22 signify they are not the equivalent of marriages in all other instances. In fact, because the Nevada  
23

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24 <sup>1</sup> Defendant’s citation to *Watson v. Watson*, 95 Nev. 495; 596 P.2d 507 (1979) to claim a domestic  
25 partnership cannot be treated as a remarriage is ludicrous and a further misapplication of Nevada  
26 law. *Watson* addresses common law marriage, stating, “Consent alone will not constitute a  
27 marriage; it must be followed by solemnization . . .” *Id.* at 497; 508 nn 1. A domestic  
28 partnership is not the equivalent of a common law marriage. Nevada law recognizes the validity of  
domestic partnerships and does not recognize the validity of common law marriages. The very fact  
that Nevada law provides for domestic partnerships provides any solemnizing necessary to make a  
domestic partnership legal and effective. In fact, NRS 122A.110 specifically states, “The  
provisions of this chapter do not require the performance of any solemnization ceremony to enter  
into a binding domestic partnership contract.”

1 legislature chose to narrowly define the only specific instance in which a domestic partnership is  
2 not a marriage, it follows that in every other instance, a domestic partnership should be considered  
3 a marriage.

4 Domestic partnerships are equivalent to marriage and domestic partners are treated as  
5 spouses. This Court should apply NRS 125.510(6) and order Erich's alimony payments to  
6 Defendant to cease. This Court should also order Defendant to reimburse Erich for every alimony  
7 payment made after February 29, 2016.

8 *ii. The parties' Decree of Divorce allows for the termination of alimony payments.*

9 The parties' Decree of Divorce does not prohibit alimony payments to Defendant from  
10 being stopped. In fact, the Decree of Divorce unequivocally grants the Court the power to order  
11 alimony payments to cease and the provision of alimony in the Decree is not a lump sum payment  
12 in any way.

13 *a. The Decree of Divorce specifically allows the Court to modify alimony.*

14 According to Defendant's own admission, "when the terms are clear and unambiguous on  
15 its [sic] face, the court must construe it from the language therein." See Opposition and  
16 Countermotion at 5:21-22. Although the referent in Defendant's sentence construction is unclear,  
17 it is obvious Defendant requests the Court to interpret the parties' Decree of Divorce based on the  
18 plain language of the document.

19 The parties' Decree of Divorce instructs:

20 **IT IS FURTHER ORDERED, ADJUDGED, AND DECREED** that alimony as set forth  
21 herein *is modifiable* within the meaning of Nevada law as articulated in *Ballin v. Ballin*, 78  
22 Nev. 224, 371 P.2d 32 (1962), *Rush v. Rush*, 82 Nev. 59, 410 P.2d 757 (1966), and  
23 *Renshaw v. Renshaw*, 96 Nev. 541, 611 P.2d 1070 (1980).

24 See Decree of Divorce at 14:24-28. (Emphasis added.)

25 Here, Defendant argues that because previous counsel for Erich included in the parties'  
26 Decree of Divorce Nevada case law allegedly suggesting alimony is non-modifiable, the case law  
27 governs rather than the plain language of the document. Again, however, Defendant's argument  
28 falls flat.

///

///



Each case referenced in the parties' Decree of Divorce-- *Ballin*, *Rush*, and *Renshaw*-- deals specifically with whether or not prior agreements by litigants were merged into the divorce decree or not. When an agreement is merged into a divorce decree, a Court is able to modify alimony provisions in the agreement or decree. *See Ballin*, 78 Nev. 224, 232; 371 P.2d 32, 36; *See Rush*, 82 Nev. 59, 60; 410 P.2d 757, 757-758; *See Renshaw*, 96 Nev. 541, 543; 611 P.2d 1070, 1071. If an agreement is not merged into a divorce decree, however, the agreement survives as an independent contract and is not modifiable. *Id.*

In this instance, no agreement between the parties exists. In fact, the parties' Decree of Divorce clearly states "that each party acknowledges . . . that there has been no promise, agreement or understanding of either of the parties to the other except as set forth herein." *See* Decree of Divorce at 16:17-18, 20-21. As a result, the Decree of Divorce is the *only* document that governs in this case. Pursuant to *Ballin*, *Rush*, and *Renshaw*, this Court has complete and total authority to modify the alimony provisions of the Decree of Divorce and the document's stipulation that the alimony award is modifiable is entirely consistent with the case law cited.

In fact, NRS 125.150(8) specifically grants this Court authority to modify alimony provisions of a Decree of Divorce "upon a showing of changed circumstances, whether or not the court has expressly retained jurisdiction for the modification."

Defendant's assertion that previous counsel for Erich failed to draft a Decree of Divorce consistent with Nevada law, or that he somehow meant to include the word "non-modifiable" rather than "modifiable" is to accuse him of legal malpractice, as well as to accuse Defendant's own previous counsel of legal malpractice in signing the Decree without catching the alleged mistake. Yet again misapplying the law, Defendant's legal arguments serve only to accuse two (2) competent and experienced attorneys of malpractice without providing the Court any justification for the baseless accusation.

The plain language of the parties' Decree of Divorce, Nevada case law, and Nevada statute grant this Court authority to terminate Erich's alimony payments to Defendant and this Court should grant Erich's request.

///

1                   b.     Defendant receives periodic payments of alimony, not lump-sum  
2                   alimony.

3                   Lump-sum payment alimony is not provided for in the parties' Decree of Divorce and her  
4                   periodic payments are entirely modifiable. According to Defendant:

5                   "The Decree clearly states the parties' intentions were that [Defendant] get paid a lump-  
6                   sum amount of \$24,000.00 in twenty-four (24) installments of \$1,000.00, which would  
7                   only terminate upon the last payment due the same month [Defendant] graduates from  
8                   college."

9                   See Opposition and Countermotion at 6:1-4.

10                  Defendant does not provide any citation to the Decree of Divorce supporting this brash  
11                  and false statement. In fact, no such citation exists. Instead, Defendant unfortunately discusses  
12                  alleged statements made in mediation to support her claim that lump-sum alimony payment was  
13                  ordered. Pursuant to NRS 48.109, mediation sessions "must be regarded as settlement  
14                  negotiations, and no admission, representation or statement made during the session . . . is  
15                  admissible as evidence or subject to discovery."

16                  In spite of the almost sacrosanct confidentiality of mediation sessions and statements made  
17                  in mediation, Defendant references alleged settlement negotiations *four (4)* times in her  
18                  Opposition and Countermotion. See Opposition and Countermotion at 3:14-17; 5:1-4; 6:18-19;  
19                  7:15-20. Erich vehemently denies that any statements regarding Defendant's schooling or lump-  
20                  sum alimony payments were made during mediation. More importantly, the Court should ignore  
21                  any assertion from Defendant regarding settlement negotiations and rely solely on the plain  
22                  language of the parties' Decree of Divorce when granting or denying Erich's request.

23                  The parties' Decree of Divorce grants Defendant alimony of \$1,000.00 per month a period  
24                  of twenty-four (24) months. See Decree of Divorce at 15:1-3. No mention of a lump-sum  
25                  alimony payment was made. In fact, the \$24,000.00 amount referenced by Defendant is not  
26                  specifically contained in the Decree of Divorce.

27                  Pursuant to the provisions of NRS 125.150(8), Defendant's alimony is subject to  
28                  termination as the award consists of monthly periodic payments and not a lump-sum payment.  
Any assertion otherwise misconstrues the plain meaning of the Decree of Divorce and this Court  
should grant Erich's request to terminate his alimony obligation.



1 **C. DEFENDANT'S REQUEST TO REDUCE ALIMONY TO JUDGMENT SHOULD**  
2 **BE DENIED**

3 Any alimony Erich has failed to pay since September 2016 should not be reduced to  
4 judgment against him. Pursuant to NRS 125.150(6), upon the remarriage of a spouse "to whom  
5 specified periodic payments were to be made, all the payments required by the decree must cease,  
6 unless it was otherwise ordered by the court."

7 Here, Defendant entered into a domestic partnership on February 29, 2016 without  
8 informing Erich. As a result, any future alimony payments owed by Erich to Defendant should  
9 have ceased pursuant to Nevada statute. Erich is not in violation of a Court order, has done  
10 nothing to warrant sanctions, and should not have any outstanding alimony reduced to judgment.

11 Defendant's behavior, on the other hand, is less than honest. Knowing full well that an  
12 online registry does not exist to track the formation of domestic partnerships, Defendant entered  
13 into a domestic partnership without informing Erich expecting to financially double-dip, gaming  
14 the legal system and taking advantage of the benefits of both a marriage and a domestic  
15 partnership. According to this Court at a hearing on September 22, 2016, "It isn't fair for  
16 [Defendant] to keep collecting [alimony] if she is, for all intents and purposes, married to  
17 somebody else." See September 22, 2016 Hearing Tape at 33:14.

18 This Court should comply with Nevada statute deeming Erich's alimony obligations  
19 obsolete as of February 29, 2016 and deny Defendant's request to reduce any alimony payments to  
20 judgment.

21 **D. ERICH, NOT DEFENDANT, IS ENTITLED TO ATTORNEY'S FEES**

22 Erich is entitled to attorney's fees for having to bring this action before the Court and  
23 Defendant's request for attorney's fees should be denied. Pursuant to *Halbrook v. Halbrook*, 114  
24 Nev. 1455, 971 P.2d 1262 (1998), the power to award attorney's fees in divorce actions remains  
25 part of the continuing jurisdiction of the Court in post-judgment motions. In light of the Court's  
26 authority, NRS 18.010(2) states that "the court may make an allowance of attorney's fees to a  
27 prevailing party." Additionally, NRS 18.010(2)(b) provides for attorney's fees when the  
28 "counterclaim . . . of the opposing party was brought or maintained without reasonable ground."

///

1 Here, the Court stated on September 22, 2016 that it would award "every penny" of  
2 attorney's fees should Erich prevail and also stated, "The Court does award fees to the prevailing  
3 party. So far, my reading is that the spousal support is over. . . . If [Defendant is] wrong, [Erich]  
4 would be awarded his attorney's fees" incurred in having to file this Motion. See September 22,  
5 2016 Hearing Tape at 34:18; 38:34; 38:55. Erich expects to prevail on his Motion and the Court  
6 should award attorney's fees in compliance with Nevada statute and consistent with its own  
7 previous statements.

8 In addition, the Court should award attorney's fees based on the unreasonable, vexatious,  
9 and unwarranted Countermotion by Defendant. In spite of the Court being willing to hear this  
10 issue the date of the September 22, 2016 hearing, Defendant unreasonably insisted Erich file a  
11 Motion. In opposing Erich's Motion, Defendant referenced alleged settlement negotiations as a  
12 basis for relief and misapplied Nevada case law and statute myriad times. Furthermore,  
13 Defendant's secretive behavior in the first place of entering into a domestic partnership without  
14 informing Erich was untruthful and vexatious in nature. As a result of Defendant's dishonesty,  
15 obstinance, and attempts to violate the confidentiality of mediation, Erich has incurred several  
16 thousands of dollars in attorney's fees to file a Motion and reply to Defendant's Opposition and  
17 Countermotion.

18 Erich is entitled to his attorney's fees on this issue and the Court should award "every  
19 penny" of attorney's fees, which now approach \$3,500.00.

20 ///

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28 ///

LAW OFFICES  
**KELLEHER & KELLEHER LLC**  
40 S. STEPHANIE STREET, SUITE #201  
HENDERSON, NEVADA 89012  
(702) 584-7494

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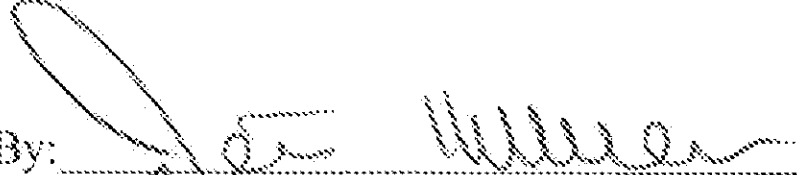
III.

CONCLUSION

Based on the foregoing, Plaintiff, Erich M. Martin, respectfully requests this Court grant his Motion in its entirety and deny Defendant's Countermotion in its entirety.

DATED this 4<sup>th</sup> day of January, 2017.

KELLEHER & KELLEHER, LLC


By: 

JOHN T. KELLEHER, ESQ.  
Nevada Bar No. 6012  
40 S. Stephanie Street, Suite #201  
Henderson, Nevada 89012  
Attorney for Plaintiff

CERTIFICATE OF SERVICE

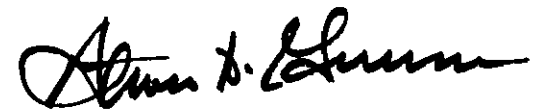
I HEREBY CERTIFY that on the 4 day of January, 2017, a true and correct copy of the document described as REPLY TO DEFENDANT'S OPPOSITION and OPPOSITION TO DEFENDANT'S COUNTERMOTION TO PLAINTIFF'S MOTION TO TERMINATE ALIMONY AND FOR ATTORNEY'S FEES AND COST [S/C] was served electronically via E-Service Master List of Wiznet and addressed as follows:

Samira C. Knight, Esq.  
TARKANIAN & KNIGHT LAW GROUP, PLLC  
Samira@TKLawGroupNV.com  
Attorney for Defendant

  
An employee of KELLEHER & KELLEHER, LLC

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CLERK OF THE COURT

**SUPPL**  
JOHN T. KELLEHER, ESQ.  
Nevada Bar No. 6012  
KELLEHER & KELLEHER, LLC  
40 S. Stephanie Street, Suite #201  
Henderson, Nevada 89012  
Telephone (702) 384-7494  
Facsimile (702) 384-7545  
kelleherjt@aol.com

Attorney for Plaintiff

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

ERICH M. MARTIN

Plaintiff,

v.

RAINA L. MARTIN,

Defendant.

CASE NO.: D-15-509045-D  
DEPT. NO.: C

**PLAINTIFF'S FIRST SUPPLEMENT**

COMES NOW, Plaintiff, Erich M. Martin, by and through his attorney, John T. Kelleher, Esq., of the law firm of KELLEHER & KELLEHER, LLC and hereby supplements his Reply to Defendant's Opposition and Opposition to Defendant's Countermotion to Plaintiff's Motion to Terminate Alimony and for Attoreney's Fees and Cost [sic] with the following exhibit:

1. Affidavit of Erich M. Martin.

DATED this 5 day of January, 2017.

KELLEHER & KELLEHER, LLC

By: 

JOHN T. KELLEHER, ESQ.  
Nevada Bar No. 6012  
40 S. Stephanie Street, Suite #201  
Henderson, Nevada 89012  
Attorney for Plaintiff

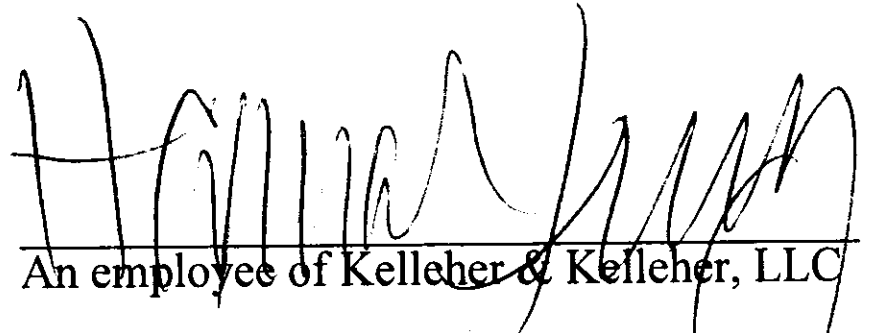
LAW OFFICES  
**KELLEHER & KELLEHER LLC**  
40 S. STEPHANIE STREET, SUITE #201  
HENDERSON, NEVADA 89012  
(702) 384-7494

**CERTIFICATE OF SERVICE**

I hereby certify that on the 4 day of January, 2017, a true and correct copy of the  
above and foregoing PLAINTIFF'S FIRST SUPPLEMENT was served electronically via E-Service

Master List of Wiznet and addressed as follows:

Samira C. Knight, Esq.  
TARKANIAN & KNIGHT LAW GROUP, PLLC  
Samira@TKLawGroupNV.com  
Attorney for Defendant

  
An employee of Kelleher & Kelleher, LLC

AFFIDAVIT OF ERICH M. MARTIN

STATE OF CO )  
COUNTY OF Larimer ) ss.

ERICH M. MARTIN, being first duly sworn, deposes and states:

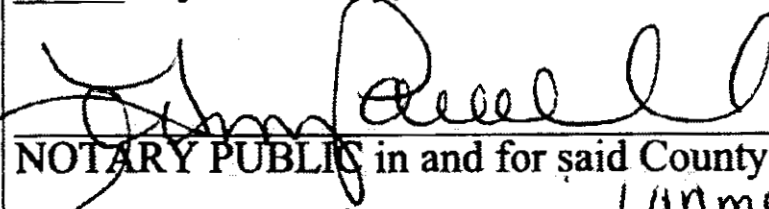
1. That I am a competent witness to testify to the matters contained herein and do so of my own personal knowledge, except as to those items on information and belief, and as to those matters I believe the same to be true.
2. I am the Plaintiff in this action and have read the above and foregoing Reply and Opposition, and all factual statements set forth therein are true and correct to the best of my knowledge.
3. That I incorporate all factual statements herein as though restated in their entirety, particularly the section entitled, "Statement of the Facts" in this affidavit pursuant to NRCP 10.

FURTHER AFFIANT SAYETH NAUGHT.

DATED this 5<sup>th</sup> day of January, 2017

  
ERICH M. MARTIN

SUBSCRIBED AND SWORN to before me this  
5<sup>th</sup> day of January, 2017

  
NOTARY PUBLIC in and for said County and State  
Larimer, Colorado

TRACY M POWELL  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20134001011  
MY COMMISSION EXPIRES JANUARY 14, 2017

LAW OFFICES  
KELLEHER & KELLEHER LLC  
40 S. STEPHANIE STREET, SUITE #201  
HENDERSON, NEVADA 89012  
(702) 384-7494



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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

## Divorce - Complaint

# COURT MINUTES

January 12, 2017

D-15-509045-D                      Erich M Martin, Plaintiff  
vs.  
Raina L Martin, Defendant.

**January 12, 2017      9:00 AM      All Pending Motions**

**HEARD BY:** Burton, Rebecca L.

**COURTROOM:** Courtroom 08

**COURT CLERK:** Diane Ford

**PARTIES:**

Erich Martin, Plaintiff, Counter Defendant, present	John Kelleher, Attorney, not present
Nathan Martin, Subject Minor, not present	
Raina Martin, Defendant, Counter Claimant, present	Samira Knight, Attorney, present

## JOURNAL ENTRIES

PLAINTIFF'S MOTION TO TERMINATE ALIMONY AND FOR ATTORNEY'S FEES AND COSTS...DEFENDANT'S OPPOSITION AND COUNTERMOTION TO PLAINTIFF'S MOTION TO TERMINATE ALIMONY AND FOR ATTORNEY'S FEES AND COSTS

Attorney Randy Richards, Bar No. 6794, present for Attorney John T. Keller, Bar No. 6012, on behalf of the Plaintiff.

Plaintiff appeared telephonically.

Attorney Knight stated she had not been served with a copy of the Reply; however, she had reviewed it.

Attorney Knight argued the wording of the Decree of Divorce.

PRINT DATE:	01/13/2017	Page 1 of 2	Minutes Date:	January 12, 2017
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**Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.**

RA000537

Court stated FINDINGS and ORDERED the following:

1. Plaintiff's Motion to Terminate Alimony effective February 29, 2016 is GRANTED.
2. Plaintiff's request for \$6,000.00 in ALIMONY reimbursement is GRANTED and REDUCED TO JUDGMENT. However, JUDGMENT STAYED upon a payment agreement. If a payment agreement is not reached, JUDGMENT is collectable by any and all legal means.
3. Plaintiff's request for ATTORNEY'S FEES AND COSTS is GRANTED.
4. No later than ten days after the Notice Entry of Order is filed, Attorney Richards is to provide a Memorandum of Fees and Costs with the Brunzell Affidavit together with the billing statements, and Defendant shall have ten days thereafter to file a response.

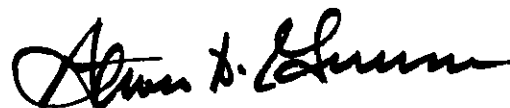
Attorney Richards shall prepare the Order from today's hearing, and Attorney Knight shall sign as to form and content.

PRINT DATE:	01/13/2017	Page 2 of 2	Minutes Date:	January 12, 2017
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**Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.**

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CLERK OF THE COURT

MEMO  
JOHN T. KELLEHER, ESQ.  
Nevada State Bar No. 6012  
KELLEHER & KELLEHER, LLC  
40 S. Stephanie Street, Suite #201  
Henderson, Nevada 89012  
Telephone: (702) 384-7494  
Facsimile: (702) 384-7545  
kelleherjt@aol.com  
Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

ERICH M. MARTIN

Plaintiff,

v.

RAINA L. MARTIN,

Defendant.

CASE NO.: D-15-509045-D  
DEPT. NO.: C

PLAINTIFF'S MEMORANDUM OF FEES AND COSTS

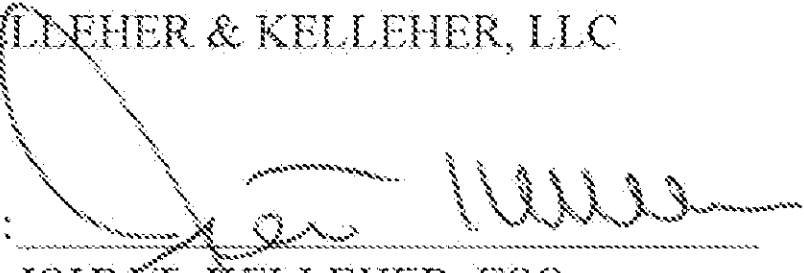
COMES NOW, Plaintiff, Erich Martin, by and through his attorney, John T. Kelleher, Esq., of KELLEHER & KELLEHER, LLC, and hereby files his MEMORANDUM OF FEES AND COSTS in this matter.

This Memorandum is filed as directed by the Court at the hearing held in this matter on January 12, 2017.

DATED this 23 day of January, 2017.

KELLEHER & KELLEHER, LLC

By:



JOHN T. KELLEHER, ESQ.  
Nevada Bar No. 6012  
40 S. Stephanie Street, Suite #201  
Henderson, Nevada 89012  
Attorney for Plaintiff

LAW OFFICES  
KELLEHER & KELLEHER, LLC  
40 S. STEPHANIE STREET, SUITE #201  
HENDERSON, NEVADA 89012  
(702) 384-7494

I.

ISSUE

Plaintiff is entitled to an award of attorney's fees and costs of \$5,662.59.

II.

LEGAL ARGUMENT

A hearing was held in this matter on January 12, 2017. At the hearing, the Court directed Plaintiff's counsel to file this brief pursuant to *Miller v. Wilfong*, 121 Nev. 619, 119 P.3d 727 (2005), wherein the Nevada Supreme Court held that when deciding whether to award attorney fees in family law cases, the following factors should be considered:

1. Counsel must cite a statute or rule as a legal basis for attorney's fees;
2. The Court must follow the four (4) factors set forth in *Brunzell v. Gold Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969); i.e., (1) the qualities of the advocate, his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer, the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived;
3. The Court must consider the disparity in income of the parties pursuant to *Wright v. Osburn*, 114 Nev. 1367, 970 P.2d 1071 (1998);
4. The request must be supported by affidavits or other evidence that meets the factors in *Brunzell* and *Wright*.

**1. THE COURT HAS A LEGAL BASIS TO AWARD ATTORNEY'S FEES**

NRS 18.010 Award of attorney's fees.

1. The compensation of an attorney and counselor for his or her services is governed by agreement, express or implied, which is not restrained by law.
2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:
  - (a) When the prevailing party has not recovered more than \$20,000; or
  - (b) Without regard to the recovery sought, when the court finds that the claim,

1 counterclaim, cross-claim or third-party complaint or defense of the opposing party  
2 was brought or maintained without reasonable ground or to harass the prevailing  
3 party. The court shall liberally construe the provisions of this paragraph in favor of  
4 awarding attorney's fees in all appropriate situations. It is the intent of the Legislature  
5 that the court award attorney's fees pursuant to this paragraph and impose sanctions  
6 pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate  
7 situations to punish for and deter frivolous or vexatious claims and defenses because  
8 such claims and defenses overburden limited judicial resources, hinder the timely  
9 resolution of meritorious claims and increase the costs of engaging in business and  
10 providing professional services to the public.

3. In awarding attorney's fees, the court may pronounce its decision on the fees  
at the conclusion of the trial or special proceeding without written motion and with  
or without presentation of additional evidence.

4. Subsections 2 and 3 do not apply to any action arising out of a written  
instrument or agreement which entitles the prevailing party to an award of reasonable  
attorney's fees.

\*\*\*\*

11 In the case at hand, Plaintiff was ordered by the Decree of Divorce to pay alimony to  
12 Defendant of \$1,000.00 per month for 24 months. Plaintiff then learned that Defendant had entered  
13 into a domestic partnership on February 29, 2016. Plaintiff was forced to file a Motion to Terminate  
14 his alimony obligation. The Court granted Plaintiff's Motion. Therefore, as the prevailing party,  
15 Plaintiff should be awarded attorney's fees.

## 2. **BRUNZELL FACTORS**

(1) **The qualities of the advocate, his ability, his training, education, experience,  
professional standing and skill.**

18 With respect to factor number one (1) in the *Brunzell* factors, Mr. Martin has been  
19 represented by John T. Kelleher, Esq., Mr. Kelleher is A/V rated by Martindale-Hubble, has been  
20 Certified as a Family Law Specialist through the State Bar of Nevada, and is a member of the  
21 American Academy of Matrimonial Lawyers. He has been practicing law for 21 years, and is an  
22 honors graduate of the J. Reuben Clark Law School at Brigham Young University. Mr. Kelleher has  
23 three additional associate attorneys working with him at Kelleher & Kelleher, LLC: Randy Richards,  
24 Esq., Ryan Davis, Esq. and Saira Haseebullah, Esq, who assist Mr. Kelleher with various aspects of  
25 the litigation process.

(2) **The character of the work to be done: its difficulty, its intricacy, its importance,  
time and skill required, the responsibility imposed and the prominence and character  
of the parties where they affect the importance of the litigation**

1 With respect to factor number two (2) in the *Brunzell* factors, the work performed included  
2 drafting of pleadings, legal research, preparation and attendance at several court hearings and oral  
3 arguments, as well as correspondence, phone calls, research, and meetings with client regarding the  
4 issues surrounding the motion.

5 While this litigation was not particularly intricate or complex, Defendant complicated matters  
6 by insisting the Plaintiff file a Motion despite the overwhelming weight of the law favoring the  
7 position that alimony should rightfully be terminated in this instance. This matter was discussed  
8 at the September 22, 2016 hearing and the parties were encouraged by the Court to reach a  
9 resolution. However, Defendant doggedly insisted Plaintiff file his motion and refused to reach a  
10 settlement. As a result, an additional court hearing had to be conducted regarding the issue. It was  
11 unfortunate that Plaintiff was forced to incur thousands of dollars in attorney's fees to defend a case  
12 that had so little chance of success for the Defendant.

13 **(3) The work actually performed by the lawyer, the skill, time and attention given to**  
14 **the work**

15 The work performed in response to factor three (3) is spelled out in the attached billing  
16 statements. (A copy of the attached billing statements is attached as **Exhibit 1.**) Accordingly,  
17 Plaintiff is requesting attorney fees and costs of \$5,662.59.

18 **(4) The result: whether the attorney was successful and what benefits were derived**

19 The outcome for Plaintiff was successful. The Plaintiff's alimony obligation was terminated  
20 and his overpayment of alimony was reimbursed as requested. The outcome was consistent with  
21 what Plaintiff had been requesting from the outset.

22 **3. THE DISPARITY OF THE PARTIES' INCOMES**

23 Per the Financial Disclosure Forms filed by the parties, Defendant earns \$2,500.00 per month  
24 and Plaintiff earns \$6,600.00.

25 **4. SUPPORTING AFFIDAVITS OR OTHER EVIDENCE**

26 See Affidavit of John T. Kelleher, Esq. attached hereto.  
27  
28



III.

TOTAL FEES AND COSTS

Attorney's Fees ..... \$5,595.00  
Costs (Filing Fees, Runner Service, Postage, Copies @ \$0.25, Facsimiles @ \$0.50 ) .... \$67.59  
  
TOTAL ..... \$5,662.59

IV.


CONCLUSION

Based on the above analysis, Plaintiff requests an award of attorney fees and costs totaling \$5,662.59.

///

DATED this 23 day of January, 2017.

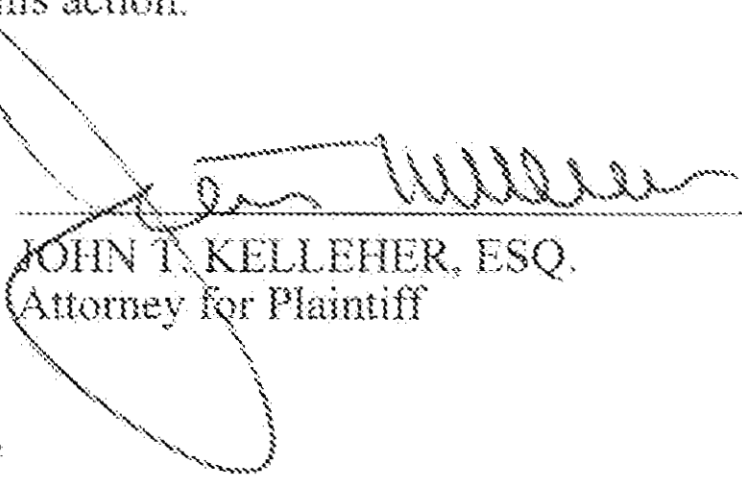
KELLEHER & KELLEHER, LLC

  
JOHN T. KELLEHER, ESQ.  
Nevada Bar No. 6012  
40 S. Stephanie Street, Suite #201  
Henderson, Nevada 89012  
Attorney for Plaintiff

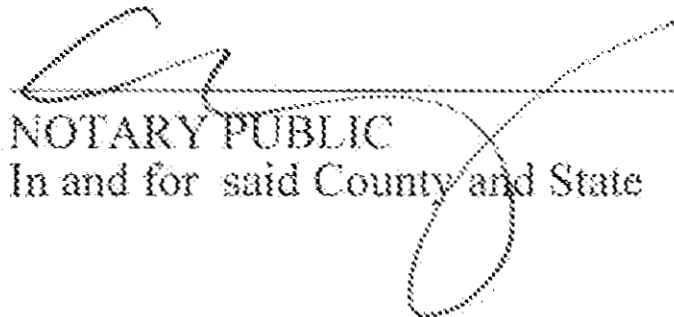
AFFIDAVIT OF ATTORNEY JOHN T. KELLEHER, ESQ.

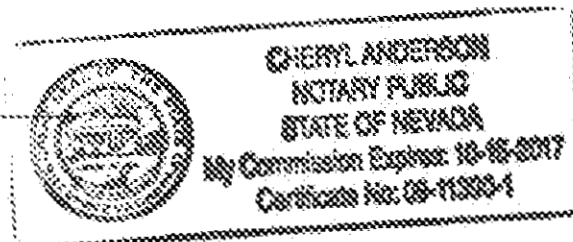
STATE OF NEVADA        )  
                                  )ss:  
COUNTY OF CLARK        )

JOHN T. KELLEHER, ESQ., being duly sworn, states: that Affiant is an attorney at the law firm of Kelleher & Kelleher, LLC, the attorneys for the Plaintiff and has personal knowledge of the above costs and disbursements expended; that the items contained in the above memorandum are true and correct to the best of this Affiant's knowledge and belief; and that the said disbursements have been necessarily incurred and paid in this action.

  
JOHN T. KELLEHER, ESQ.  
Attorney for Plaintiff

SUBSCRIBED AND SWORN to before me  
on this 23 day of January, 2017.

  
NOTARY PUBLIC  
In and for said County and State



LAW OFFICES  
**KELLEHER & KELLEHER LLC**  
40 S. STEPHANIE STREET, SUITE 200  
HENDERSON, NEVADA 89012  
(702) 584-7494

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CERTIFICATE OF SERVICE

I hereby certify that on the 23 day of January, 2017, a true and correct copy of the foregoing Plaintiff's Memorandum of Fees and Costs was served electronically via E-Service Master List of Wiznet and addressed as follows:

Samira C. Knight  
Tarkanian & Knight Law Group, PLLC  
[info@tklawgroupnv.com](mailto:info@tklawgroupnv.com)  
[Danielle@tklawgroupnv.com](mailto:Danielle@tklawgroupnv.com)  
[Samira@tklawgroupnv.com](mailto:Samira@tklawgroupnv.com)  
Attorney for Defendant

  
An Employee of Kelleher & Kelleher, LLC

# EXHIBIT 1

Erich Martin

KELLEHER & KELLEHER, LLC  
Attorneys at Law  
40 S. Stephanie Street, Suite #201  
Henderson, NV 89012  
(702) 384-7494 Tax ID: 88-0467184

Invoice submitted to:  
Erich Martin  
erich.n.jules@gmail.com

January 19, 2017

Invoice #22087

Professional Services

			<u>Hrs/Rate</u>	<u>Tax#</u>	<u>Amount</u>
9/8/2016	- RD	Legal research: does a domestic partnership terminate alimony?	0.40 200.00/hr		80.00
	- RR	Emails with Erich regarding domestic partnership issue and filing a motion; review of statutes; conference with Ryan regarding same	0.30 300.00/hr		90.00
9/23/2016	- RR	Call from Erich regarding strategy going forward; call from Julie regarding issues to include in the brief	0.50 300.00/hr		150.00
9/26/2016	- JTK	Research cases on Westlaw similar to domestic partnership case	1.00 400.00/hr		400.00

Erich Martin

			<u>Hrs/Rate</u>	<u>Tax#</u>	<u>Amount</u>
9/30/2016	- RD	Conf. w/ R R re: Motion to Terminate Alimony	0.10 200.00/hr		20.00
	- RD	Respond to Client Email	0.10 200.00/hr		20.00
10/4/2016	- RD	View hearing tape for cites to attorney's fees and Court's opinion on domestic partnerships	0.50 200.00/hr		100.00
	- RD	Legal research re: Domestic Partnerships; Marriage Statutes; Any case law on domestic partnerships?	0.50 200.00/hr		100.00
	- RD	Review Client file in preparation for drafting Motion to Terminate Alimony	0.30 200.00/hr		60.00
	- RD	Draft Motion to Terminate Alimony and for Attorney's Fees	1.50 200.00/hr		300.00
	- RD	Email to Client	0.10 200.00/hr	NO CHARGE	
	- RD	Phone Conversation w/ Nevada Secretary of State's Office re: date and record number for OP's registered domestic partnership	0.20 200.00/hr		40.00

Erich Martin

			<u>Hrs/Rate</u>	<u>Tax#</u>	<u>Amount</u>
10/4/2016	- RD	Review Client email; conf. w/ R R; edit Motion to Terminate Alimony; email to Client	0.20 200.00/hr		40.00
10/5/2016	- RR	Review of Motion to Terminate Alimony	0.20 300.00/hr		60.00
	- RD	Conf. w/ R R	0.10 200.00/hr		20.00
	- RD	Reveiw email from Client; phone conversation w/ Client; Email to Client	0.20 200.00/hr		40.00
10/6/2016	- RD	Review email from Client	0.10 200.00/hr	NO CHARGE	
	- HJ	Prepare Family Court Fee Sheet required for filing Motion to Terminate Alimony	0.10 150.00/hr		15.00
11/2/2016	- RR	Email from Erich regarding status of case; review of Court order and email to Erich regarding same	0.30 300.00/hr		90.00
11/10/2016	- JTK	Conference with opposing counsel about the case and alimony.	0.10 400.00/hr		40.00
11/14/2016	- RR	Conference with JTK and email to Erich regarding status of case	0.10 300.00/hr		30.00
11/18/2016	- RR	Calls with Attorney Roberts and conference with JTK regarding status of hearing and with Bailey regarding telephonic notice - we will continue hearing to 12/14	0.20 300.00/hr		60.00
11/28/2016	- BN	Prepare Order from the July 12, 2016 hearing	0.20 150.00/hr		30.00
12/19/2016	- RR	Call from Attorney Knight, new opposing counsel, to discuss case; regarding deadline for Opposition - gave final extension to 12/23 but nothing beyond that	0.20 300.00/hr		60.00
12/22/2016	- RR	Call from Attorney Knight's office regarding Opposition	0.10 300.00/hr		30.00
12/29/2016	- JTK	Conference with client re the motion that was filed	0.20 400.00/hr		80.00
	- JTK	Review the motion, alimony was modifiable and no restrictions made	1.00 400.00/hr		400.00

Erich Martin

			<u>Hrs/Rate</u>	<u>Tax#</u>	<u>Amount</u>
1/3/2017	- RD	Review Client file in preparation for drafting Reply and Opposition	1.00 300.00/hr		300.00
	- RD	Review OC Opposition and Countermotion	0.50 300.00/hr		150.00
	- RD	Legal Research re: terminating alimony; domestic partnerships; review of case law	1.00 300.00/hr		300.00
	- RD	Begin drafting Reply and Opposition	1.50 300.00/hr		450.00
1/4/2017	- RD	Legal Research re: Ballin and Rush; NV case law dealing w/ lump sum alimony payments	0.50 300.00/hr		150.00
	- RD	Finish Drafting Reply and Opposition; Email to Client	1.50 300.00/hr		450.00
	- SH	Review pleadings, hearing tape	0.40 300.00/hr		120.00
	- RR	Conferences with Saira and Ryan regarding status of Reply and Opposition	0.10 300.00/hr	NO CHARGE	
1/5/2017	- HJ	Prepare Supplement to Reply and Opposition	0.20 150.00/hr		30.00
	- RR	Receipt and review of email from Erich, review of court orders and responded to Erich's email on visitation issue	0.20 300.00/hr		60.00
1/11/2017	- RR	Preparation for hearing - review of all pleadings on alimony issue; conference with Ryan to discuss the case; call with Eric to discuss	0.80 300.00/hr		240.00
	- RD	Conf. w/ R R re: arguments for termination of alimony at upcoming hearing	0.20 300.00/hr		60.00
1/12/2017	- RR	Preparation and court appearance, travel to and from court - our Motion was granted; drafted Order from 1/12 hearing with findings of fact and conclusions of law; drafted Memo of fees and costs and Order for attorney's fees as ordered by the Court.	2.70 300.00/hr		810.00
1/18/2017	- BN	Prepare and Redact history bill for the court	0.20 150.00/hr		30.00
	- RR	Emails with Erich regarding status of case; review of billing statements in preparation for Memo of Fees and Costs for request for Attorney's Fees	0.20 300.00/hr		60.00



Erich Martin

Page

<u>Hrs/Rate</u>	<u>Tax#</u>	<u>Amount</u>
0.10		30.00
300.00/hr		

1/18/2017 - RD Review Billing History for Brunzell Brief

For professional services rendered

19.9	\$5,595.00
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Additional Charges :

Qty/Price

9/8/2016 - CA	Runner fee to deliver Order to Judge for signature	1 7.50	7.50
9/20/2016 - CJ	Postage	1 0.47	0.47
9/21/2016 - CJ	Postage	1 0.47	0.47
9/29/2016 - CJ	Postage	1 0.68	0.68
9/30/2016 - BN	Filing fee- Plaintiffs Proposal	1 3.50	3.50
10/10/2016 - BN	Court fee- Motion to Terminate	1 25.00	25.00
10/31/2016 - CJ	Copies October 2016	14 0.25	3.50
11/2/2016 - CA	Runner fee to deliver Order to Judge for signature	1 7.50	7.50
11/18/2016 - CJ	Postage	1 0.47	0.47

RA000551

Erich Martin

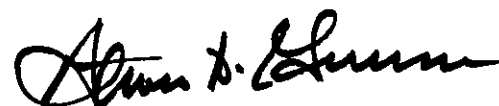
			<u>Qty/Price</u>	<u>Tax#</u>	<u>Amount</u>
11/22/2016 -	CA	Runner fee to deliver stipulation and order to court for signature	1 7.50		7.50
11/23/2016 -	CA	Runner fee to deliver Order to Judge for signature	1 7.50		7.50
1/4/2017 -	HJ	Wiznet filing fee for Reply to Opposition	1 3.50		3.50

Total costs

\$67.50

78

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CLERK OF THE COURT

1 **OPP**  
2 **SAMIRA C. KNIGHT, ESQ.**  
3 Nevada Bar No. 13167  
4 **TARKANIAN & KNIGHT LAW GROUP, PLLC**  
5 7220 S. Cimarron Road, Suite 110  
6 Las Vegas, NV 89113  
7 Tel: (702) 508-4998  
8 Fax: (702) 940-2792  
9 E-mail: Samira@TKLawGroupNV.com  
10 *Attorney for Defendant*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

\*\*\*

8 ERICH M. MARTIN,  
9  
10 Plaintiff,

Case No.: D-15-509045-D

Dept. No.: C

v.

11 RAINA MARTIN,  
12  
13 Defendant.

**DEFENDANT'S OPPOSITION TO PLAINTIFF'S MEMORANDUM OF FEES  
AND COST.**

15 COMES NOW the Defendant, RAINA MARTIN, by and through her attorney, SAMIRA  
16 C. KNIGHT, ESQ., and opposes Plaintiff's Memorandum of Fees and Costs.

17 This Opposition is made and based upon the papers and pleadings on file herein, the Points  
18 and Authorities submitted herewith, and any argument, which may have adduced at the time of  
19 hearing.

20 DATED this 9<sup>th</sup> day of February, 2017.



21 **Samira C. Knight, Esq.**  
22 Nevada Bar No. 13167  
23 7220 S. Cimarron, Suite 110  
24 Las Vegas, NV 89113  
25 Tel: (702) 508-4998  
26 Fax: (702) 940-2792  
27 E-mail: Samira@TKLawGroupNV.com  
28 *Attorney for Defendant*

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**POINTS AND AUTHORITIES**

Several entries in Plaintiff’s memorandum of fees and costs are excessive and should be stricken.

There are entries on November 2, 2016, and November 28, 2016, in the matrix below, both of which pertain to the Court order regarding custody. This had no connection to the Court’s order granting attorney’s fees for the alimony issue. These entries should be stricken.

Date	Initials	Entry	Rate	Amount
11/2/16	RR	Email from Erich regarding status of case, review of Court order and email to Erich regarding same	0.30 300.00/hr	90.00
11/28/16	BN	Prepare Order from the July 12, 2016 hearing	0.20 150.00/hr	30.00
01/05/17	RR	Receipt and review of email from Erich review of court orders and responded to email of Erich’s email on visitation issues	0.20 300.00/hr	60.00
		<b>TOTAL</b>		<b>180.00</b>

On November 29, 2016, there is an entry for “Review the motion, alimony was modifiable and no restrictions made” for \$400.00. There is absolutely no justifiable reason for anyone within Plaintiff’s office to have to review a document that was written by Plaintiff’s counsel. Furthermore, the Motion at issue is only six (6) pages long. The six pages includes the caption and notice of motion, and no citing of case law. All in all, there are less than four full pages of double spaced text to the Motion. An hour to review four double spaced pages of text, which was drafted by the Plaintiff’s counsel’s office is extremely excessive. The Court should strike this entry.

Date	Initials	Entry	Rate	Amount
12/29/16	JTK	Review the motion, alimony was modifiable and no restrictions made	1.00 400.00/hr	400.00

		<b>TOTAL</b>		<b>400.00</b>
--	--	--------------	--	---------------

There are numerous entries on January 3, 2017, contained in the matrix below, which amount to \$1,830.00 regarding the Reply brief which should be stricken. These cannot fairly be charged to Defendant as the Reply Brief was never served on Defendant, which they falsely certify in their Reply. See **Exhibit A: E-File Service Confirmation**. It was address and confirmed before this Court. There is no argument that can be made that a document which is never served can be said to be in the client's interest. As such, these entries should be stricken in their entirety.

Furthermore, after the hearing, the reply brief was later obtained and is remarkably short, about nine pages of double spaced text with long quoted passages of statute. Even if the Court is inclined to permit these entries to stand, despite the fact that the Reply Brief was never served, the entries for preparation of the brief are excessive when compared to the actual document produced. In total, Plaintiff's counsel spent six hours on the Reply which was never served or filed timely. This time includes an hour to familiarize "RD" with the file to file a Reply. This amount of time to review a client file, in a straightforward single issue Alimony Family Law case is absurd. Plaintiff's counsel spent three (3) hours drafting a document that is approximately nine (9) pages of double spaced text and which contains long quoted passages of statute. This is clearly excessive and the Court should strike these entries.

The exact entries which should be stricken are detailed in the matrix below:

Date	Initials	Entry	Rate	Amount
1/3/17	RD	Review Client file in preparation for drafting Reply and Opposition	1.00 300.00/hr	300.00
01/03/17	RD	Review OC Opposition and Countermotion	0.50 300.00/hr	150.00

01/03/17	RD	Legal Research re: terminating alimony, domestic partnerships, review of case law	1.00 300.00/hr	300.00
01/03/17	RD	Begin drafting Reply and Opposition	1.50 300.00/hr	450.00
01/04/17	RD	Legal Research re: Ballin and Rush; NV Case law dealing w/lump sum alimony payments	0.50 300.00/hr	150.00
01/04/17	RD	Finish drafting Reply and Opposition, Email to client	1.50 300.00/hr	450.00
01/04/07	RR	Conferences with Saira and Ryan regarding status of Reply and Opposition	0.10 300.00/hr	NO CHARGE
01/05/17	HJ	Prepare Supplement to Reply and Opposition	0.20 150.00/hr	30.00
<b>TOTAL</b>				<b>1,830.00</b>

In summary, a minimum of \$3,000.00 of Plaintiff's bill for this issue is excessive and should be stricken, and what this court deems necessary.

### III.

#### CONCLUSION

Nearly half of Plaintiff's attorney's fees are excessive and should be stricken for the reasons stated above. In the alternative, if the Court finds that the entries are appropriate, Defendant requests that the amount charged for the entries be reduced to reasonable amounts where appropriate.

DATED this 17 day of February, 2017

TARKANIAN & KNIGHT LAW GROUP

  
Samira C. Knight, Esq.

Nevada Bar No. 13167

7220 S. Cimarron, Suite 110

Las Vegas, NV 89113

Tel: (702) 508-4998

Fax: (702) 940-2792

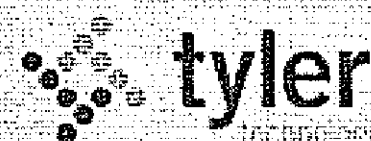
E-mail: Samira@TKLawGroupNV.com

Attorney for Defendant

# Exhibit A



# Welcome to Tyler Support Chat



Please do not refresh your browser during this chat session. This will cause your session to end.

Samira Knight: Thank you. 3:15:51 PM  
Melissa: Do you know the date of the filing in question 3:16:03 PM  
Samira Knight: Jan 4th 3:16:35 PM  
they said the e-served and e-filed that day 3:16:42 PM  
We never got anything 3:16:48 PM  
Melissa: Thank you. I am pulling that filing up. One moment while I look at the filing details 3:17:40 PM  
Samira Knight: Thank you. 3:17:59 PM  
Still there? 3:24:10 PM  
Melissa: I do not show your email or any email addresses with the domain @tklawgroupnv.com being eserved from our system, regarding that specific filing. That is not to say that they did not serve you because we are only able to see eservices done through our website. Maybe they served you a different way but that will be something that they will have to clarify with you. 3:24:12 PM  
Samira Knight: OK. They said the e-severed us on the certificate. so nothing with our domain. 3:25:15 PM  
Ok. Thank you! 3:25:20 PM

Extend

Email Transcript

End Chat

Version: 6.2.284.34

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DISTRICT COURT  
CLARK COUNTY, NEVAD

  
CLERK OF THE COURT

Erich M. Martin,

Plaintiff,

v.

Raina L. Martin,

Defendant.

Case No. D-15-509045-D


Dept. No. "C"

**ORDER TO SHOW CAUSE RE: Order from January 12, 2017**

It appears to the Court that Counsel John Kelleher and Samira Knight were to prepare, review and sign off on the Order from January 12, 2017 hearing. Despite requests from the Court, they have failed to do so.

**IT IS HEREBY ORDERED** that John Kelleher and Samira Knight are directed to appear before the Court on **April 6, 2017 at the hour of 10:00 A.M. in Department C** to show cause, if any they have, why the Order has not been presented, or any objection set forth. Counsel's FAILURE TO APPEAR MAY RESULT IN SANCTIONS BEING IMPOSED. **BOTH COUNSEL MUST APPEAR.** Your appearance is **mandatory.** Your appearance shall, however, be excused and the Order to Show Cause vacated if a **filed** Order has been entered.

DATED this 10 day of March, 2017.

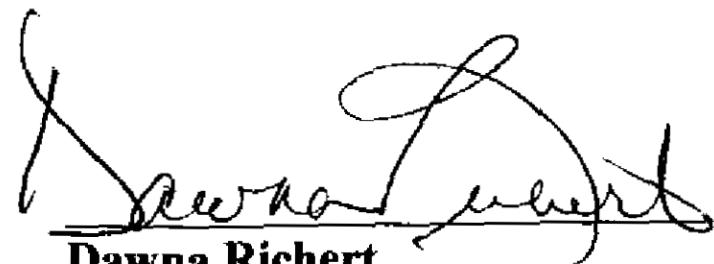
  
**REBECCA L. BURTON**  
DISTRICT COURT JUDGE  
FAMILY DIVISION-DEPT. C

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3  
4 **CERTIFICATE OF MAILING**  
5

6 E SERVICE was made to all registered parties on Wiznet (if applicable)  
7 on this day and I hereby certify that on this 10 day of March, 2017,  
8 I caused to be delivered by depositing same in the United States Mail,  
9 a copy of the **ORDER TO SHOW CAUSE** upon which postage  
10 was fully prepaid and addressed to:

11 John T. Kelleher, Esq.  
12 40 S. Stephanie St. #201  
Henderson, NV 89012

13 Samira Knight, Esq.  
14 7220 S. Cimarron Rd. #110  
Las Vegas, Nevada 89113

15  
16  
17 

18 **Dawna Richert**  
19 Judicial Executive Assistant to the  
20 Honorable Rebecca L. Burton  
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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

## Divorce - Complaint

## COURT MINUTES

April 06, 2017

D-15-509045-D      Erich M Martin, Plaintiff  
vs.  
Raina L Martin, Defendant.

**April 06, 2017      10:00 AM      Order to Show Cause**

**HEARD BY:** Burton, Rebecca L.

**COURTROOM:** Courtroom 08

**COURT CLERK:** Valerie Riggs

**PARTIES:**

Erich Martin, Plaintiff, Counter Defendant, not present	John Kelleher, Attorney, not present
Nathan Martin, Subject Minor, not present	
Raina Martin, Defendant, Counter Claimant, not present	Samira Knight, Attorney, not present

## JOURNAL ENTRIES

- ORDER TO SHOW CAUSE: FOR 1/12 ORDER

Atty Randy Richards, Bar #6794, present for Plaintiff.

Atty Jennifer Foley, Bar #9017, present for Defendant.

Atty Richards provided the 1/12/17 Order signed by both Counsel, IN OPEN COURT.

Court reviewed the Order, SIGNED IT IN OPEN COURT, and returned the Order to Atty Richards for filing.

PRINT DATE:	04/06/2017	Page 1 of 2	Minutes Date:	April 06, 2017
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**Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.**

RA000561

**INTERIM CONDITIONS:**

**FUTURE HEARINGS:**

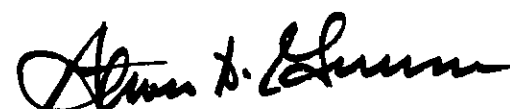
PRINT DATE:	04/06/2017	Page 2 of 2	Minutes Date:	April 06, 2017
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CLERK OF THE COURT

1 **ORDR**  
 2 **RANDY RICHARDS, ESQ.**  
 Nevada Bar No. 6794  
 3 **JOHN T. KELLEHER, ESQ.**  
 Nevada State Bar No. 6012  
**KELLEHER & KELLEHER, LLC**  
 4 40 South Stephanie Street, Suite 201  
 Henderson, Nevada 89012  
 5 Telephone (702) 384-7494  
 Facsimile (702) 384-7545  
 6 kelleherjt@aol.com  
 Attorney for Plaintiff

**DISTRICT COURT - FAMILY DIVISION****CLARK COUNTY, NEVADA**

ERICH M. MARTIN )

Plaintiff, )

v. )

RAINA L. MARTIN, )

Defendant. )

CASE NO.: D-15-509045-D  
DEPT. NO.: C**ORDER FROM THE JANUARY 12, 2017 HEARING**

17 THIS MATTER having come on for hearing on the 12<sup>th</sup> day of January, 2017, on Plaintiff's  
 18 Motion to Terminate Alimony and Defendant's Countermotion; Plaintiff, Erich M. Martin, present  
 19 telephonically and represented by Randy Richards, Esq., of the law firm Kelleher & Kelleher, LLC.;  
 20 Defendant, Raina L. Martin, present and represented by counsel Samira Knight, Esq., of Tarkanian &  
 21 Knight Law Group, PLLC.

22 The Court having reviewed the papers and pleadings on file herein, having heard the argument  
 23 of counsel for both parties, and having been fully apprised as to the facts and matters herein,  
 24 wherefore: the court NOTED:

25 1. That Attorney Knight stated that she was not properly served with a copy of the Reply to  
 26 Opposition but had reviewed it. (08:57:47-08:58:42)

27 2. The Court has reviewed all documents and paperwork and I don't think there's a reason to  
 28

1 argue because I don't think there is anything you're going to tell me that I haven't read in the  
2 paperwork; it's pretty straightforward. (08:59:05-08:59:12). Wherefore:

3 THE COURT HEREBY FINDS the Court has subject matter jurisdiction over the case and  
4 personal jurisdiction over the parties and child custody subject matter jurisdiction over the child.  
5 (08:58:52-08:59:03)

6 THE COURT FURTHER FINDS the Court agrees with Plaintiff that domestic partnerships  
7 are equivalent to a marriage. Domestic partners are treated as spouses undeniably with regard at least  
8 to spousal support, which is clear in the domestic partnership law. Domestic partnership was a means  
9 of getting around the constitutional prohibition against same sex marriage. (08:59:17 - 08:59:34)

10 THE COURT FURTHER FINDS that the court recognizes that NRS 122A.510 states that  
11 "domestic partnership is not a marriage for the purposes of Section 21 of Article 1 of the Nevada  
12 Constitution," which limits marriage to a union between a male and a female, as you go through the  
13 actual partnership statutes though with regard to spousal support it is identical. (08:59:14-08:59:58).

14 THE COURT FURTHER FINDS that NRS 122A.200 Rights and Duties of domestic partners  
15 Subsection A states: "except as otherwise provided in NRS 122A.210," and that has to do with  
16 whether employers are required or prohibited from providing health insurance, and, in fact, in this case  
17 Defendant is actually getting health insurance through her domestic partner. Under subsection A:  
18 "[d]omestic partners have the same rights, protections, and benefits and are subject to the same  
19 responsibilities, obligations, and duties under the law, whether derived from statute, administrative  
20 regulations, court rules, government policies, common law or any other provisions or sources of law  
21 is granted to or imposed upon spouses." (9:00:00-9:00:44)

22 THE COURT FURTHER FINDS that Subsection J says, "[f]or the purposes of the statutes  
23 administrative regulations, court rules, government policies, common law and any other provision or  
24 source of law governing the rights, protections and benefits, and the responsibilities, obligations and  
25 duties of domestic partners in this State, as effectuated by the provisions of this chapter with respect  
26 to: Subsection 3 expressly states "the right in particular circumstances of either partner to seek  
27 financial support from the other following the dissolution of the partnership." (9:00:46-9:01:18)  
28

1 THE COURT FURTHER FINDS that the case that was cited by Defendant, *Sevcik v. Sandoval*,  
2 911 F.Supp.2d 996, 1001 (D. Nev. 2012), was reversed by *Latta v. Otter*, 771 F.3d 456, 474 (9<sup>th</sup> Cir.  
3 Ct. App. 2014). (9:01:20-9:01:29).

4 THE COURT FURTHER FINDS that when you terminate a domestic partnership  
5 NRS122A.300 reads almost exactly like the summary divorce including notably Subsection 1:  
6 "[e]xcept as otherwise provided in subsection 2 domestic partners who wish to terminate a domestic  
7 partnership registered pursuant to NRS122A.100 must follow the procedures set forth in chapter 125  
8 of the NRS. Subsection 3 says, "[f]or a domestic partnership to qualify for the simplified termination  
9 proceedings set forth in subsection 2, all of the following conditions must exist at the time of filing  
10 pursuant to that subsection" and it states that subsection D "[t]he parties waive any rights to support  
11 or the parties have executed an agreement setting forth the amount and manner of support." (09:01:33-  
12 09:02:35)

13 THE COURT FURTHER FINDS that because a domestic partnership clearly has the ability  
14 to obtain spousal support, if one was able to claim spousal support from both a former marriage as well  
15 as a domestic partnership, that would be double dipping. (09:02:37-09:02:55).

16 ~~THE COURT FURTHER FINDS that the domestic partnership with regard to spousal support~~  
17 ~~is the same and it would be double dipping. (09:02:56-09:03:14).~~ (RLO)

18 THE COURT FURTHER FINDS that the plain language of the Decree of Divorce provides  
19 that alimony is modifiable in this case. There is no separate marital settlement agreement or property  
20 settlement agreement or contract that independently survives the decree. The only document is the  
21 Decree of Divorce and the Decree of Divorce is an order that may be modified pursuant to  
22 NRS125.150 subsection 8. (09:03:16-09:03:47).

23 THE COURT FURTHER FINDS that the cases of *Ballin*, *Renshaw*, and *Rush* cited in the  
24 Parties' Decree of Divorce are all consistent with the interpretation there was a separate agreement and  
25 it was not merged into the Decree of Divorce so that agreement could not be modified. (09:03:48-  
26 09:04:07)

27 THE COURT FURTHER FINDS that the Court is not convinced there was language that  
28

1 constituted an expressed lump sum provision in the Decree. The language did not say "lump sum"  
2 anywhere which is typical if alimony is not to last a life time. (09:04:25-09:04:59)

3 THE COURT FURTHER FINDS that the Court needs to go off the "four corners" of the  
4 Parties' Decree of Divorce, and it does not state the alimony is for education. (09:07:05-09:07:13)

5 IT IS HEREBY ORDERED that Plaintiff's Motion to Terminate Alimony effective February  
6 29, 2016 is granted.

7 IT IS FURTHER ORDERED that Plaintiff's request for \$6,000.00 in alimony reimbursement  
8 for the months March 2016 through August 2016 is granted and reduced to judgment. The parties agree  
9 the Plaintiff stopped making alimony payments after August 2016.

10 IT IS FURTHER ORDERED that the judgment is stayed upon the parties agreeing to a  
11 payment agreement. If Plaintiff and Defendant do not agree on a payment agreement, judgment in  
12 favor of Plaintiff shall be enforceable and collectable by all legal means.

13 IT IS FURTHER ORDERED that Plaintiffs request for Attorney's Fees and Costs is granted.

14 IT IS FURTHER ORDERED that no later than ten days after the Notice of Entry of Order is  
15 filed, Attorney Richards is to provide a Memorandum of Fees and Costs with the *Brunzell* Affidavit  
16 together with the billing statements, and Defendant shall have ten (10) days thereafter to file a  
17 response.

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27 ///

28 ///

1 IT IS FURTHER ORDERED that Attorney Richards shall prepare the Order from today's  
2 hearing, and Attorney Knight shall sign as to form and content.

3 IT IS SO ORDERED this 4 day of April, 2017.

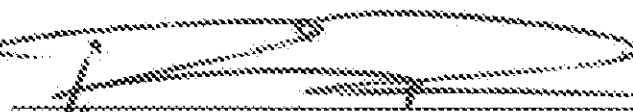
4  
5   
6 ~~DISSENTING JUDGE~~  
7 ~~REBECCA BURTON~~

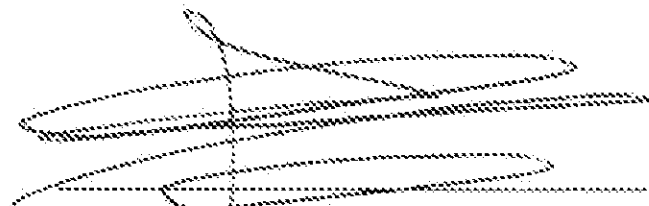
8 Submitted by:

9 KELLEHER & KELLEHER, LLC

Approved as to form and content:

TARKANIAN & KNIGHT LAW GROUP

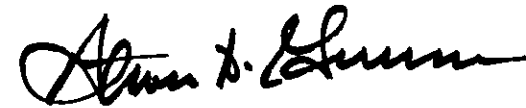
10  
11   
12 RANDY RICHARDS, ESQ.  
13 Nevada Bar No. 6794  
14 40 S. Stephanie Street, #201  
15 Henderson, NV 89012  
16 Attorney for Plaintiff

17  
18   
19 SAMIRA C. KNIGHT, ESQ.  
20 Nevada Bar No. 13167  
21 7220 S. Cimarron Rd., Suite 110  
22 Las Vegas, Nevada 89113  
23 Attorney for Defendant

LAW OFFICES  
KELLEHER & KELLEHER, LLC  
40 S. STEPHANIE STREET, SUITE 201  
LAS VEGAS, NEVADA 89011  
(702) 364-7494

82

82



CLERK OF THE COURT

1 **NEOJ**  
2 JOHN T. KELLEHER, ESQ.  
3 Nevada Bar No. 6012  
4 KELLEHER & KELLEHER, LLC  
5 40 South Stephanie Street, Suite 201  
6 Henderson, Nevada 89012  
7 Telephone (702) 384-7494  
8 Facsimile (702) 384-7545  
9 kelleherjt@aol.com

10 Attorney for Plaintiff

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 ERICH M. MARTIN

14 Plaintiff,

15 v.

16 RAINA L. MARTIN,

17 Defendant.

CASE NO.: D-15-509045-D  
DEPT. NO.: C

18 **NOTICE OF ENTRY OF ORDER**

19 TO: Raina L. Martin, Defendant, and to Samira Knight, Esq., her attorney:

20 PLEASE TAKE NOTICE that an Order from the January 12, 2017 hearing was entered in  
21 the above-entitled matter on the 6<sup>th</sup> day of April, a copy of which is attached hereto.

22 DATED this 7 day of April, 2017.

23 KELLEHER & KELLEHER, LLC

24 By: 

25 JOHN T. KELLEHER, ESQ.  
26 Nevada Bar No. 6012  
27 40 S. Stephanie Street, Suite #201  
28 Henderson, Nevada 89012  
Attorney for Plaintiff

///

///

///

///

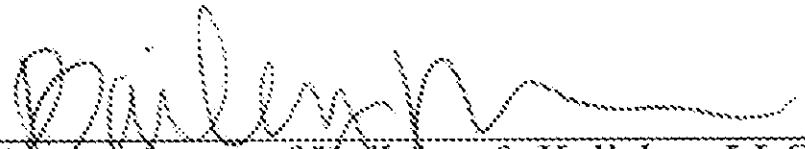
LAW OFFICES  
**KELLEHER & KELLEHER, LLC**  
40 S. STEPHANIE STREET, SUITE #201  
HENDERSON, NEVADA 89012  
(702) 384-7494  
Facsimile (702) 384-7545

**CERTIFICATE OF SERVICE**

I hereby certify that on the 7 day of April, 2017, a true and correct copy of the above and foregoing NOTICE OF ENTRY OF ORDER was served electronically via E-Service Master

List of Wiznet and addressed as follows:

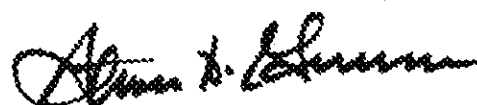
Samira C. Knight, Esq.  
TARKANIAN & KNIGHT LAW GROUP, PLLC  
Samira@TKLawGroupNV.com  
Attorney for Defendant

  
An employee of Kelleher & Kelleher, LLC



ORIGINAL

Electronically Filed  
04/06/2017 12:19:40 PM



CLERK OF THE COURT

1 **ORDER**

2 **RANDY RICHARDS, ESQ.**  
3 Nevada Bar No. 6794  
4 **JOHN T. KELLEHER, ESQ.**  
5 Nevada State Bar No. 6012  
6 **KELLEHER & KELLEHER, LLC**  
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11 kelleherjt@aol.com  
12 Attorney for Plaintiff

13 **DISTRICT COURT - FAMILY DIVISION**

14 **CLARK COUNTY, NEVADA**

15 **ERICH M. MARTIN**

16 Plaintiff,

17 v.

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19 Defendant.

CASE NO.: D-15-509045-D  
DEPT. NO.: C

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17 response.

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1 IT IS FURTHER ORDERED that Attorney Richards shall prepare the Order from today's  
2 hearing, and Attorney Knight shall sign as to form and content.

3 IT IS SO ORDERED this 14 day of April, 2017.

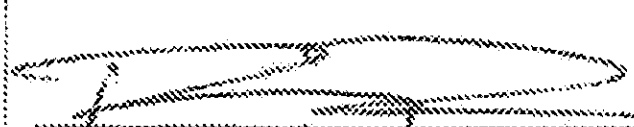
4  
5   
6 ~~DEBORAH BURTON~~ DIRECTOR OF COURT CLERK

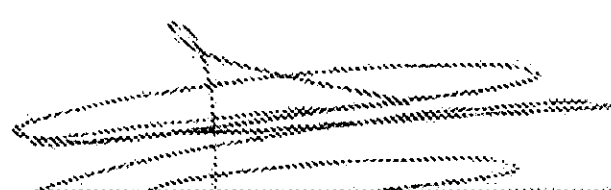
7 Submitted by:

8 KELLEHER & KELLEHER, LLC

9 Approved as to form and content:

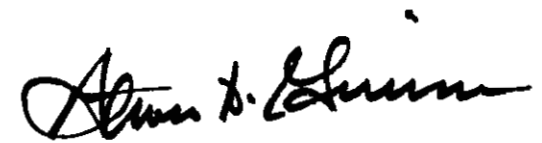
10 TARKANIAN & KNIGHT LAW GROUP

11   
12 RANDY RICHARDS, ESQ.  
13 Nevada Bar No. 6794  
14 40 S. Stephanie Street, #201  
15 Henderson, NV 89012  
16 Attorney for Plaintiff

17   
18 SAMIRA C. KNIGHT, ESQ.  
19 Nevada Bar No. 13167  
20 7220 S. Cimarron Rd., Suite 110  
21 Las Vegas, Nevada 89113  
22 Attorney for Defendant

83

83



CLERK OF THE COURT

MEMO

JOHN T. KELLEHER, ESQ.  
Nevada State Bar No. 6012  
KELLEHER & KELLEHER, LLC  
40 S. Stephanie Street, Suite #201  
Henderson, Nevada 89012  
Telephone: (702) 384-7494  
Facsimile: (702) 384-7545  
kelleherjt@aol.com  
Attorney for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

ERICH M. MARTIN

Plaintiff,

v.

RAINA L. MARTIN,

Defendant.

CASE NO.: D-15-509045-D  
DEPT. NO.: C

PLAINTIFF'S MEMORANDUM OF FEES AND COSTS

COMES NOW, Plaintiff, Erich Martin, by and through his attorney, John T. Kelleher, Esq., of KELLEHER & KELLEHER, LLC, and hereby files his MEMORANDUM OF FEES AND COSTS in this matter.

This Memorandum is filed as directed by the Court at the hearing held in this matter on January 12, 2017.

DATED this 7 day of April, 2017.

KELLEHER & KELLEHER, LLC

By: 

JOHN T. KELLEHER, ESQ.  
Nevada Bar No. 6012  
40 S. Stephanie Street, Suite #201  
Henderson, Nevada 89012  
Attorney for Plaintiff

LAW OFFICES  
KELLEHER & KELLEHER, LLC  
40 S. STEPHANIE STREET, SUITE #201  
HENDERSON, NEVADA 89012  
(702) 384-7494

I.

ISSUE

Plaintiff is entitled to an award of attorney's fees and costs of \$7,482.48.

II.

LEGAL ARGUMENT

A hearing was held in this matter on January 12, 2017. At the hearing, the Court directed Plaintiff's counsel to file this brief pursuant to *Miller v. Wilfong*, 121 Nev. 619, 119 P.3d 727 (2005), wherein the Nevada Supreme Court held that when deciding whether to award attorney fees in family law cases, the following factors should be considered:

1. Counsel must cite a statute or rule as a legal basis for attorney's fees;
2. The Court must follow the four (4) factors set forth in *Brunzell v. Gold Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969); i.e., (1) the qualities of the advocate, his ability, his training, education, experience, professional standing and skill; (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and skill required, the responsibility imposed and the prominence and character of the parties where they affect the importance of the litigation; (3) the work actually performed by the lawyer, the skill, time and attention given to the work; (4) the result: whether the attorney was successful and what benefits were derived;
3. The Court must consider the disparity in income of the parties pursuant to *Wright v. Osburn*, 114 Nev. 1367, 970 P.2d 1071 (1998);
4. The request must be supported by affidavits or other evidence that meets the factors in *Brunzell* and *Wright*.

**1. THE COURT HAS A LEGAL BASIS TO AWARD ATTORNEY'S FEES**

NRS 18.010 Award of attorney's fees.

1. The compensation of an attorney and counselor for his or her services is governed by agreement, express or implied, which is not restrained by law.
2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:
  - (a) When the prevailing party has not recovered more than \$20,000; or
  - (b) Without regard to the recovery sought, when the court finds that the claim,



1 counterclaim, cross-claim or third-party complaint or defense of the opposing party  
2 was brought or maintained without reasonable ground or to harass the prevailing  
3 party. The court shall liberally construe the provisions of this paragraph in favor of  
4 awarding attorney's fees in all appropriate situations. It is the intent of the Legislature  
5 that the court award attorney's fees pursuant to this paragraph and impose sanctions  
6 pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate  
7 situations to punish for and deter frivolous or vexatious claims and defenses because  
8 such claims and defenses overburden limited judicial resources, hinder the timely  
9 resolution of meritorious claims and increase the costs of engaging in business and  
10 providing professional services to the public.

3. In awarding attorney's fees, the court may pronounce its decision on the fees  
at the conclusion of the trial or special proceeding without written motion and with  
or without presentation of additional evidence.

4. Subsections 2 and 3 do not apply to any action arising out of a written  
instrument or agreement which entitles the prevailing party to an award of reasonable  
attorney's fees.

\*\*\*\*\*

11 In the case at hand, Plaintiff was ordered by the Decree of Divorce to pay alimony to  
12 Defendant of \$1,000.00 per month for 24 months. Plaintiff then learned that Defendant had entered  
13 into a domestic partnership on February 29, 2016. Plaintiff was forced to file a Motion to Terminate  
14 his alimony obligation. The Court granted Plaintiff's Motion. Therefore, as the prevailing party,  
15 Plaintiff should be awarded attorney's fees.

## 2. **BRUNZELL FACTORS**

(1) **The qualities of the advocate, his ability, his training, education, experience,  
professional standing and skill.**

18 With respect to factor number one (1) in the *Brunzell* factors, Mr. Martin has been  
19 represented by John T. Kelleher, Esq., Mr. Kelleher is A/V rated by Martindale-Hubbe, has been  
20 Certified as a Family Law Specialist through the State Bar of Nevada, and is a member of the  
21 American Academy of Matrimonial Lawyers. He has been practicing law for 21 years, and is an  
22 honors graduate of the J. Reuben Clark Law School at Brigham Young University. Mr. Kelleher has  
23 three additional associate attorneys working with him at Kelleher & Kelleher, LLC: Randy Richards,  
24 Esq., Ryan Davis, Esq. and Saira Haseebullah, Esq, who assist Mr. Kelleher with various aspects of  
25 the litigation process.

(2) **The character of the work to be done: its difficulty, its intricacy, its importance,  
time and skill required, the responsibility imposed and the prominence and character  
of the parties where they affect the importance of the litigation**

1 With respect to factor number two (2) in the *Brunzell* factors, the work performed included  
2 drafting of pleadings, legal research, preparation and attendance at several court hearings and oral  
3 arguments, as well as correspondence, phone calls, research, and meetings with client regarding the  
4 issues surrounding the motion.

5 While this litigation was not particularly intricate or complex, Defendant complicated matters  
6 by insisting the Plaintiff file a Motion despite the overwhelming weight of the law favoring the  
7 position that alimony should rightfully be terminated in this instance. This matter was discussed  
8 at the September 22, 2016 hearing and the parties were encouraged by the Court to reach a  
9 resolution. However, Defendant doggedly insisted Plaintiff file his motion and refused to reach a  
10 settlement. As a result, an additional court hearing had to be conducted regarding the issue.

11 Thereafter, a significant amount of time was spent finalizing the Order from the January 12,  
12 2017 hearing because Defendant's counsel insisted on numerous revisions. This required several  
13 reviews of the court video from the hearing and numerous correspondence and communications  
14 between the attorneys. It was unfortunate that Plaintiff was forced to incur thousands of dollars in  
15 attorney's fees to defend a case that had so little chance of success for the Defendant.

16 **(3) The work actually performed by the lawyer, the skill, time and attention given to**  
17 **the work**

18 The work performed in response to factor three (3) is spelled out in the attached billing  
19 statements. (A copy of the attached billing statements is attached as **Exhibit 1.**) Accordingly,  
20 Plaintiff is requesting attorney fees and costs of **\$7,482.48.**

21 **(4) The result: whether the attorney was successful and what benefits were derived**

22 The outcome for Plaintiff was successful. The Plaintiff's alimony obligation was terminated  
23 and his overpayment of alimony was reimbursed as requested. The outcome was consistent with  
24 what Plaintiff had been requesting from the outset.

25 **3. THE DISPARITY OF THE PARTIES' INCOMES**

26 Per the Financial Disclosure Forms filed by the parties, Defendant earns \$2,500.00 per month  
27 and Plaintiff earns \$6,600.00.

28 ///

4. **SUPPORTING AFFIDAVITS OR OTHER EVIDENCE**

See Affidavit of John T. Kelleher, Esq. attached hereto.

**III.**

**TOTAL FEES AND COSTS**

Attorney's Fees .....	\$7,295.00
Costs (Filing Fees, Runner Service, Postage, Copies @ \$0.25, Facsimiles @ \$0.50 ) ...	\$187.48
<b>TOTAL .....</b>	<b>\$7,482.48</b>

**IV.**


**CONCLUSION**

Based on the above analysis, Plaintiff requests an award of attorney fees and costs totaling  
**\$7,482.48.**

///

DATED this 7 day of April, 2017.


KELLEHER & KELLEHER, LLC

  
\_\_\_\_\_  
JOHN T. KELLEHER, ESQ.  
Nevada Bar No. 6012  
40 S. Stephanie Street, Suite #201  
Henderson, Nevada 89012  
Attorney for Plaintiff

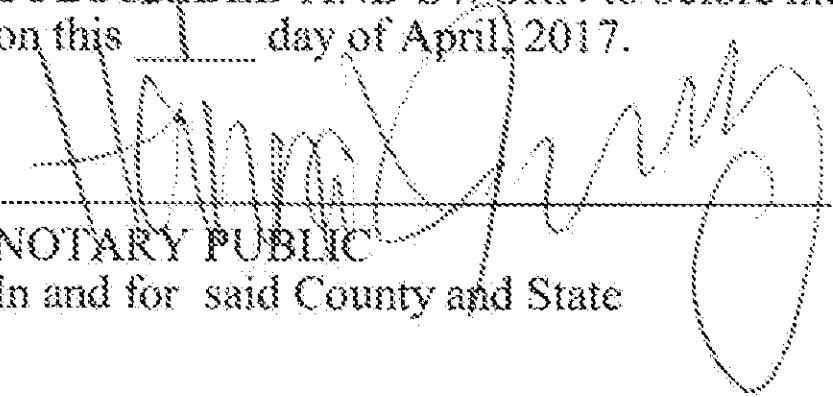
AFFIDAVIT OF ATTORNEY JOHN T. KELLEHER, ESQ.

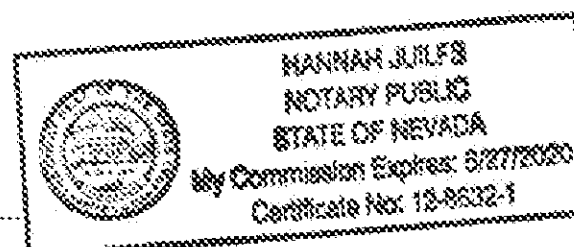
STATE OF NEVADA       )  
                                  )ss:  
COUNTY OF CLARK     )

JOHN T. KELLEHER, ESQ., being duly sworn, states: that Affiant is an attorney at the law firm of Kelleher & Kelleher, LLC, the attorneys for the Plaintiff and has personal knowledge of the above costs and disbursements expended; that the items contained in the above memorandum are true and correct to the best of this Affiant's knowledge and belief; and that the said disbursements have been necessarily incurred and paid in this action.

  
JOHN T. KELLEHER, ESQ.  
Attorney for Plaintiff

SUBSCRIBED AND SWORN to before me  
on this 1 day of April, 2017.

  
NOTARY PUBLIC  
In and for said County and State



CERTIFICATE OF SERVICE

I hereby certify that on the 7 day of April, 2017, a true and correct copy of the foregoing Plaintiff's Memorandum of Fees and Costs was served electronically via E-Service Master

List of Wiznet and addressed as follows:

Samira C. Knight  
Tarkanian & Knight Law Group, PLLC  
info@tklawgroupnv.com  
Danielle@tklawgroupnv.com  
Samira@tklawgroupnv.com  
Attorney for Defendant

  
An Employee of Kelleher & Kelleher, LLC

# EXHIBIT 1

			<u>Hrs/Rate</u>	<u>Tax#</u>	<u>Amount</u>
9/8/2016	- RD	Legal research; does a domestic partnership terminate alimony?	0.40 200.00/hr		80.00
	- RR	Emails with Erich regarding domestic partnership issue and filing a motion; review of statutes; conference with Ryan regarding same	0.30 300.00/hr		90.00
9/23/2016	- RR	Call from Erich regarding strategy going forward; call from Julie regarding issues to include in the brief	0.50 300.00/hr		150.00
9/26/2016	- JTK	Research cases on Westlaw similar to domestic partnership case	1.00 400.00/hr		400.00

			<u>Hrs/Rate</u>	<u>Tax#</u>	<u>Amount</u>
9/30/2016	- RD	Conf. w/ R R re: Motion to Terminate Alimony	0.10 200.00/hr		20.00
	- RD	Respond to Client Email	0.10 200.00/hr		20.00
10/4/2016	- RD	View hearing tape for cites to attorney's fees and Court's opinion on domestic partnerships	0.50 200.00/hr		100.00
	- RD	Legal research re: Domestic Partnerships; Marriage Statutes; Any case law on domestic partnerships?	0.50 200.00/hr		100.00
	- RD	Review Client file in preparation for drafting Motion to Terminate Alimony	0.30 200.00/hr		60.00
	- RD	Draft Motion to Terminate Alimony and for Attorney's Fees	1.50 200.00/hr		300.00
	- RD	Email to Client	0.10 200.00/hr	NO CHARGE	
	- RD	Phone Conversation w/ Nevada Secretary of State's Office re: date and record number for OP's registered domestic partnership	0.20 200.00/hr		40.00
	- RD	Review Client email; conf. w/ R R; edit Motion to Terminate Alimony; email to Client	0.20 200.00/hr		40.00
10/5/2016	- RR	Review of Motion to Terminate Alimony	0.20 300.00/hr		60.00



			<u>Hrs/Rate</u>	<u>Tax#</u>	<u>Amount</u>
10/5/2016	- RD	Conf. w/ R R	0.10 200.00/hr		20.00
	- RD	Reveiw email from Client; phone conversation w/ Client; Email to Client	0.20 200.00/hr		40.00
10/6/2016	- RD	Review email from Client	0.10 200.00/hr	NO CHARGE	
	- HJ	Prepare Family Court Fee Sheet required for filing Motion to Terminate Alimony	0.10 150.00/hr		15.00
11/2/2016	- RR	Email from Erich regarding status of case; review of Court order and email to Erich regarding same	0.30 300.00/hr		90.00
11/10/2016	- JTK	Conference with opposing counsel about the case and alimony.	0.10 400.00/hr		40.00
11/14/2016	- RR	Conference with JTK and email to Erich regarding status of case	0.10 300.00/hr		30.00
11/18/2016	- RR	Calls with Attorney Roberts and conference with JTK regarding status of hearing and with Bailey regarding telephonic notice - we will continue hearing to 12/14	0.20 300.00/hr		60.00
11/28/2016	- BN	Prepare Order from the July 12, 2016 hearing	0.20 150.00/hr		30.00
12/19/2016	- RR	Call from Attorney Knight, new opposing counsel, to discuss case; regarding deadline for Opposition - gave final extension to 12/23 but nothing beyond that	0.20 300.00/hr		60.00
12/22/2016	- RR	Call from Attorney Knight's office regarding Opposition	0.10 300.00/hr		30.00
12/29/2016	- JTK	Conference with client re the motion that was filed	0.20 400.00/hr		80.00
	- JTK	Review the motion, alimony was modifiable and no restrictions made	1.00 400.00/hr		400.00
1/3/2017	- RD	Review Client file in preparation for drafting Reply and Opposition	1.00 300.00/hr		300.00
	- RD	Review OC Opposition and Counter-motion	0.50 300.00/hr		150.00
	- RD	Legal Research re: terminating alimony; domestic partnerships; review of case law	1.00 300.00/hr		300.00

			<u>Hrs/Rate</u>	<u>Tax#</u>	<u>Amount</u>
1/3/2017	- RD	Begin drafting Reply and Opposition	1.50 300.00/hr		450.00
1/4/2017	- RD	Legal Research re: Ballin and Rush; NV case law dealing w/ lump sum alimony payments	0.50 300.00/hr		150.00
	- RD	Finish Drafting Reply and Opposition; Email to Client	1.50 300.00/hr		450.00
	- SH	Review pleadings, hearing tape	0.40 300.00/hr		120.00
	- RR	Conferences with Saira and Ryan regarding status of Reply and Opposition	0.10 300.00/hr	NO CHARGE	
1/5/2017	- HJ	Prepare Supplement to Reply and Opposition	0.20 150.00/hr		30.00
	- RR	Receipt and review of email from Erich, review of court orders and responded to Erich's email on visitation issue	0.20 300.00/hr		60.00
1/11/2017	- RR	Preparation for hearing - review of all pleadings on alimony issue; conference with Ryan to discuss the case; call with Eric to discuss	0.80 300.00/hr		240.00
	- RD	Conf. w/ R R re: arguments for termination of alimony at upcoming hearing	0.20 350.00/hr	NO CHARGE	
1/12/2017	- RR	Preparation and court appearance, travel to and from court - our Motion was granted; drafted Order from 1/12 hearing with findings of fact and conclusions of law; drafted Memo of fees and costs and Order for attorney's fees as ordered by the Court.	2.70 300.00/hr		810.00
1/18/2017	- BN	Prepare and Redact history bill for the court	0.20 150.00/hr		30.00
	- RR	Emails with Erich regarding status of case; review of billing statements in preparation for Memo of Fees and Costs for request for Attorney's Fees	0.20 300.00/hr		60.00
	- RD	Review Billing History for Brunzell Brief	0.10		35.00

			<u>Hrs/Rate</u>	<u>Tax#</u>	<u>Amount</u>
2/7/2017	- RR	Review of letter and proposed order from opposing counsel	0.30 350.00/hr		105.00
2/10/2017	- RR	Receipt and response of email with Erich regarding status of Order	0.20 350.00/hr		70.00
2/23/2017	- RR	Emails with Erich and conference with Bailey regarding order	0.10 350.00/hr		35.00
	- BN	Prepare Order from the last hearing by the Court tape	1.00 150.00/hr		150.00
2/24/2017	- RR	Review and revisions to Order from 1/12 hearing; review of statutory language quoted by Court and conference with Bailey; email from and to Erich regarding status; extensive revisions to Order	1.20 350.00/hr		420.00
	- BN	Prepare letter to submit new proposed order to OC	0.10 150.00/hr		15.00
3/6/2017	- RR	Call with Samira Knight's office re: Order; subsequent call with Attorney Knight - email to Atty Knight with letter from 2/28 attached and latest version of the order	0.30 350.00/hr		105.00
3/21/2017	- BN	Prepare letter to submit order to Judge	0.10 150.00/hr		15.00
3/28/2017	- RR	Emails with Erich and call and email to opposing counsel regarding order	0.20 350.00/hr		70.00
3/29/2017	- RR	Receipt and review of email from Attorney Knight with requested revisions; review of revisions; call to Attorney Knight's office - spoke with Jamison and walked through the issues drafted letter to court submitting our proposed Order; call with Erich to discuss Order and also child support issue	0.70 350.00/hr		245.00
4/5/2017	- RR	Review of emails from Samira Knight; review of video and revisions and made revisions to same; numerous emails and calls between counsel and her office; email and call to Court regarding Order	0.80 350.00/hr		280.00
4/6/2017	- RR	Court appearance regarding Order, travel to and from court; review of memo of fees and billing statements	0.70 350.00/hr		245.00
For professional services rendered			25.80		\$7,295.00

## Additional Charges :

			<u>Qty/Price</u>	<u>Tax#</u>	<u>Amount</u>
5/27/2016 - BN	Filing Fee- Motion for an Order to Show Cause		1 4.25		4.25
- BN	Court Fee- Motion for order to show cause		1 25.00		25.00
6/30/2016 - CJ	Copies June 2016		160 0.25		40.00
7/6/2016 - CJ	Postage		1 0.89		0.89
7/30/2016 - CJ	Copies July 2016		16 0.25		4.00
9/8/2016 - CA	Runner fee to deliver Order to Judge for signature		1 7.50		7.50
9/20/2016 - CJ	Postage		1 0.47		0.47
9/21/2016 - CJ	Postage		1 0.47		0.47
9/29/2016 - CJ	Postage		1 0.68		0.68
9/30/2016 - BN	Filing fee- Plaintiffs Proposal		1 3.50		3.50
10/10/2016 - BN	Court fee- Motion to Terminate		1 25.00		25.00
10/31/2016 - CJ	Copies October 2016		14 0.25		3.50
11/2/2016 - CA	Runner fee to deliver Order to Judge for signature		1 7.50		7.50
11/18/2016 - CJ	Postage		1 0.47		0.47
11/22/2016 - CA	Runner fee to deliver stipulation and order to court for signature		1 7.50		7.50
11/23/2016 - CA	Runner fee to deliver Order to Judge for signature		1 7.50		7.50
1/4/2017 - HJ	Wiznet filing fee for Reply to Opposition		1 3.50		3.50

			<u>Qty/Price</u>	<u>Tax#</u>	<u>Amount</u>
1/24/2017 -	CA	Runner fee to deliver order for attorneys fees to Judge for signature	1 7.50		7.50
1/31/2017 -	CJ	Copies January 2017	75 0.25		18.75
2/1/2017 -	CA	Runner fee to deliver Order to Judge for signature	1 7.50		7.50
2/2/2017 -	CA	Runner fee to deliver Order to Judge for signature	1 7.50		7.50
2/6/2017 -	CJ	Incoming Faxes	6 0.50		3.00
2/28/2017 -	CJ	Copies February 2017	6 0.25		1.50

Total costs

\$187.48
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*Steven D. Grierson*

1    ORDR

2                                    DISTRICT COURT, FAMILY DIVISION

3                                    CLARK COUNTY, NEVADA

4    ERICH M. MARTIN,                                    )

5                    Plaintiff,                                    )

6    vs.                                    )

CASE NO. D-15-509045-D

DEPT NO. C

7    RAINA L. MARTIN,                                    )

8                    Defendant.                                    )

UNDER SUBMISSION

9  
10                                    ORDER AWARDING ATTORNEY FEES AND COSTS

11            THIS MATTER having come before the Court on January 12, 2017 for  
12 Plaintiff, Erich M. Martin ("Erich")'s *Motion to Terminate Alimony and for*  
13 *Attorney's Fees and Costs*, and on Defendant, Raina L. Martin ("Raina")'s  
14 *Opposition and Countermotion*; Erich appearing telephonically with  
15 Attorney Randy Richards of the law firm of Kelleher & Kelleher, LLC, and  
16 Raina appearing with Attorney Samira Knight of Tarkanian & Knight Law  
17 Group, PLLC; the Court having reviewed the pleadings and papers on file  
18 herein, having heard the argument of the parties, and good cause appearing  
19 therefor

20    ////

21                                    Page 1 of 5

Non-Trial Dispositions:

<input checked="" type="checkbox"/> Other	<input type="checkbox"/> Settled/Withdrawn:
<input type="checkbox"/> Dismissed - Want of Prosecution	<input type="checkbox"/> Without Judicial Conf/Hrg
<input type="checkbox"/> Involuntary (Statutory) Dismissal	<input checked="" type="checkbox"/> With Judicial Conf/Hrg
<input type="checkbox"/> Default Judgment	<input type="checkbox"/> By ADR
<input type="checkbox"/> Transferred	<u>Trial Dispositions:</u>
<input type="checkbox"/> Disposed After Trial Start	<input type="checkbox"/> Judgment Reached by Trial

1 THE COURT HEREBY FINDS that on October 6, 2016, Erich filed a  
2 *Motion to Terminate Alimony and for Attorney's Fees and Costs*; on  
3 December 28, 2016, Raina filed her *Opposition and Countermotion*; and on  
4 January 12, 2017, the matter was heard. The basis for the relief requested  
5 by Erich was that Raina had registered a domestic partnership which, like a  
6 marriage, created a potential entitlement to Raina for support from Raina's  
7 domestic partner. Erich argued that the domestic partnership was  
8 equivalent to a marriage for the purpose of ending his alimony obligation to  
9 Raina. This Court agreed.

10 THE COURT HEREBY FINDS that Erich's request for attorney fees  
11 was raised in his *Motion*, satisfying NRCP 54(d)(2)(A).

12 COURT FURTHER FINDS that pursuant to NRCP 54(d)(2)(B),  
13 Erich's request for attorney fees raised by way of his *Motion* was timely;  
14 Erich cited *Halbrook v. Halbrook*, 114 Nev. 1455 (1998) (the court has  
15 continuing jurisdiction in a divorce matter over attorney fees in a post-  
16 divorce proceeding) and NRS 18.010 (prevailing party) as authority for the  
17 award of attorney fees; and Erich estimated his attorney fees and costs to be  
18 \$2,500.

19 COURT FURTHER FINDS that Raina was warned at a prior hearing  
20 where the issue came up but was not formally before the Court that the



1 Court was likely to find a domestic partnership was the same as a marriage  
2 for the purposes of terminating alimony, and Erich would be awarded all of  
3 his fees if he were forced unnecessarily to file a motion. Accordingly, Erich  
4 is also entitled to attorney fees pursuant to EDCR 7.6o(b)(1).

5 COURT FURTHER FINDS that, as the prevailing party, Erich was  
6 directed by the Court to file a *Memorandum of Fees and Costs* no later than  
7 10 days after *Notice of Entry* of the Court's underlying *Order* and Raina was  
8 permitted 10 days thereafter to respond. The underlying *Order* was entered  
9 April 6, 2017 and *Notice of Entry of Order* was filed and mailed to Raina on  
10 April 7, 2017. Thus, Erich's *Memorandum of Fees and Costs*, filed and  
11 mailed to Raina the same day on April 7, 2017 was timely.

12 COURT FURTHER FINDS that pursuant to NRCP 54(d)(2), Erich's  
13 *Memorandum of Fees and Costs* was supported by counsel's affidavit  
14 swearing that the fees were actually and necessarily incurred and explained  
15 why the attorney fees were somewhat high for a relatively uncomplicated  
16 matter; billing statements concerning the amount of fees claimed was  
17 attached; and points and authorities addressing appropriate factors to be  
18 considered by the Court in deciding the motion was included.

19 ////

20 ////

1 THE COURT FURTHER FINDS that pursuant to EDCR 5.32,<sup>1</sup> on  
2 February 25, 2015, Raina filed a *General Financial Disclosure Form*  
3 reflecting a gross monthly income of \$2,500 per month (\$1,500 child  
4 support and \$1,000 alimony) and on March 25, 2015, Erich filed a *General*  
5 *Financial Disclosure Form* reflecting an income of \$6,600 per month. The  
6 Court notes that by these proceedings, Raina is losing her \$1,000 per month  
7 alimony award, but she had failed to update her *General Financial*  
8 *Disclosure Form* with information relevant to her domestic partnership.

9 THE COURT FURTHER FINDS that pursuant to NRCP 54(d)(2) and  
10 *Miller v. Wilfong*, 121 Nev. 619 (2005), Erich's *Memorandum of Fees and*  
11 *Costs* supported the request with the factors required by *Brunzell v. Golden*  
12 *Gate National Bank*, 85 Nev. 345, 349 (1969) to include the qualities of the  
13 advocate, the character and difficulty of the work performed, the work  
14 actually performed by the attorney, and the result obtained, and this  
15 information was reviewed and considered by the Court together with the  
16 redacted billing statements. The Court notes that support staff was utilized  
17 to reduce fees. The Court has, however, eliminated from the request  
18 charges for discussions between staff.

19 ////

20 Page 4 of 5

21  

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<sup>1</sup> Now EDCR 5.506.

1 THE COURT FURTHER FINDS that pursuant to *Love v. Love*, 114  
2 Nev. 572 (1998), Raina was provided the opportunity to review and dispute  
3 the billing statements and fees requested. Raina chose not to avail herself of  
4 this opportunity.

5 NOW, THEREFORE, IT IS HEREBY ORDERED that Erich is hereby  
6 awarded the sum of \$7,262.48 as and for attorney's fees and costs against  
7 Raina, which sum is hereby reduced to judgment which may be collected by  
8 any and all legal means.

9 DATED May 22, 2017.

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12 REBECCA L. BURTON  
13 DISTRICT COURT JUDGE  
14 DEPARTMENT C  
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Please take note that after a review of the court file, an Order was prepared by the Court following a scheduled hearing. A copy of the Order from Hearing is attached hereto. I hereby certify that I caused on the above file stamped date, a copy of the within **Order** to be:

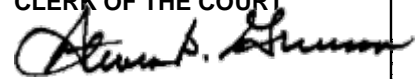
John T Kelleher ESQ  
40 S Stephanie ST STE 201  
Henderson NV 89012

DATED: This May 22, 2017.

  
Dawna Richert  
Judicial Assistant, Department C

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WOA  
JOHN T. KELLEHER, ESQ.  
Nevada Bar No. 6012  
KELLEHER & KELLEHER, LLC  
40 S. Stephanie Street #201  
Henderson, NV 89012  
(702) 384-7494

Attorney for Erich Martin

DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \* \* \*

ERICH M. MARTIN

Plaintiff,

v.

RAINA L. MARTIN,

Defendant.

CASE NO.: D-15-509045-D  
DEPT. NO.: C

**NOTICE OF WITHDRAWAL OF ATTORNEY OF RECORD**

PLEASE TAKE NOTICE that this matter having reached final determination, the undersigned does hereby withdraw as attorney of record for Plaintiff, Erich Martin, in the above-entitled matter pursuant to Supreme Court Rule 46. Plaintiff's last known address is: 3815 Little Dipper Drive Fort Collins, CO 80528

DATED this 13 day of June, 2017.

KELLEHER & KELLEHER, LLC

By: 

JOHN T. KELLEHER, ESQ.  
Nevada Bar No. 6012  
40 S. Stephanie Street #201  
Henderson, NV 89012  
Attorney for Plaintiff

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**CERTIFICATE OF MAILING**

I hereby certify that on the 13 day of June 2017, I deposited a true and correct copy of the foregoing NOTICE OF WITHDRAWAL OF ATTORNEY OF RECORD in the United States Mail, postage prepaid and addressed as follows:

Erich Martin  
3815 Little Dipper Drive  
Fort Collins, CO 80528

Samira C. Knight, Esq.  
TARKANIAN & KNIGHT LAW GROUP, PLLC  
Samira@TKLawGroupNV.com  
Attorney for Defendant

  
An employee of Kelleher & Kelleher, LLC