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

ERICH M. MARTIN,

Appellant,

vs.

RAINA L. MARTIN,

Respondent.

Case No. 81810

Appeal from the Eighth Judicial District  
Court, the Honorable Rebecca L. Burton  
Presiding

ERICH M. MARTIN,

Appellant,

vs.

RAINA L. MARTIN,

Respondent.

Case No. 82517

Appeal from the Eighth Judicial District  
Court, the Honorable Rebecca L. Burton  
Presiding

**MOTION FOR STAY OF REMITTITUR PENDING**  
**PETITION FOR WRIT OF CERTIORARI**

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## **I. INTRODUCTION**

Appellant Erich Martin (“Erich”) moves this Court for a stay of issuance of remittitur in Nevada Supreme Court Case No. 81810 / No. 82517 pursuant to NRAP 41(b)(3) for a period of 120 days pending Erich’s writ of certiorari to the Supreme Court of the United States. Remittitur is set to issue in this case on May 12, 2023; yet, pursuant to United States Supreme Court Rule 13, Erich has until July 16, 2023 to file his petition for writ of certiorari. Keeping in mind that the U.S. Supreme Court has recently opinioned on the divisibility of military disability benefits in *Howell v. Howell*, 581 U.S. \_\_\_, 137 S. Ct. 1400 (2017), a stay of issuance of remittitur is entirely proper.

## **II. LEGAL ARGUMENT**

### **A. LEGAL STANDARD.**

A court may stay the issuance of a remittitur pending application to the Supreme Court of the United States for a writ of certiorari. NEV. R. APP. P. 41(b).

Nevada Rule of Appellate Procedure 41(b)(3) states,

(A) A party may file a motion to stay the remittitur pending application to the Supreme Court of the United States for a writ of certiorari. The motion must be served on all parties.

(B) The stay shall not exceed 120 days, unless the period is extended for cause shown. If during the period of the stay there is filed with the clerk of the Supreme Court of Nevada a notice from the clerk of the Supreme Court of the United States that the party who has obtained the stay has filed a petition for the writ in that court, the stay

shall continue until final disposition by the Supreme Court of the United States.

(C) The court may require a bond or other security as a condition to granting or continuing a stay of the remittitur.

(D) The clerk of the Supreme Court shall issue the remittitur immediately when a copy of a United States Supreme Court order denying the petition for writ of certiorari is filed.

**B. GOOD CAUSE EXISTS TO STAY THE ISSUANCE OF THE REMITTITUR PENDING ERICH'S SUPREME COURT PETITION FOR A WRIT OF CERIORARI.**

As this Court is aware, on April 17, 2023 Erich's Petition for Rehearing was denied. Therefore, pursuant to NRAP 41(a)(1), remittitur is set to issue in the normal course on May 12, 2023. As Erich intends to appeal the case to the U.S. Supreme Court, and has until July 16, 2023 to do so, he seeks to stay the issuance of remittitur for 120 days as allowed under NRAP 41(b)(3).

This Court's denial of the petition for rehearing constitutes a final, appealable order ripe for consideration by the U.S. Supreme Court pursuant to 28 U.S.C. § 1257. Indeed, this Court has issued a final judgment that Erich intends to argue via his forthcoming petition for writ of certiorari implicates the validity of a federal statute, namely the Uniformed Services Former Spouses Protection Act (USFSPA), 10 U.S.C. § 1408. That statute governs, among other things, the divisibility of military disability benefits. As this Court is well aware, and as set forth in prior briefing, Erich contends that this statute preempts a Nevada state

court from dividing his disability benefits between himself and his former spouse. Given the federal-state preemption issues at play, it is unsurprising that the U.S. Supreme Court has recently opined on the divisibility of military disability benefits in the *Howell* case.

In light of the foregoing, this Court would be on solid legal footing to stay the issuance of remittitur. The U.S. Supreme Court should be afforded the opportunity to clarify its decision in *Howell* in light of this Court's determination that a state court can enforce a contractual indemnification provision without implicating preemption under the USFSPA.

### **III. CONCLUSION**

For the foregoing reasons, Erich moves this Court to stay issuance of remittitur in Nevada Supreme Court Case No. 81810 / No. 82517 for 120 days pending Erich's forthcoming writ of certiorari to the Supreme Court of the United States.

Dated this 12th day of May, 2023.

MARQUIS AURBACH

By /s/ Chad F. Clement  
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**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing **MOTION FOR STAY OF REMITTITUR PENDING PETITION FOR WRIT OF CERTIORARI** was filed electronically with the Nevada Supreme Court on the 12th day of May, 2023. Electronic Service of the foregoing document shall be made in accordance with the Master Service List.

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, addressed to:

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/s/ Leah Dell  
\_\_\_\_\_  
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