

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

PIERRE A. HASCHEFF

Appellant/Cross-Respondent,

vs.

LYNDA L. HASCHEFF,

Respondent/Cross-Appellant.

No. 82626

Electronically Filed
Apr 08 2021 03:54 p.m.

DOCKETING Elizabeth A. Brown
CIVIL APPEALS Clerk of Supreme Court

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Second Judicial Department 12
County Washoe Judge Sandra A. Unsworth
District Ct. Case No. DV13-00656

2. Attorney filing this docketing statement:

Attorney Debbie Leonard Telephone (775) 964-4656
Firm Leonard Law, PC
Address 955 S. Virginia Street, Suite 220
Reno, NV 89502

Client(s) Lynda L. Hascheff

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Stephen S. Kent Telephone (775) 324-9800
Firm Kent Law, PLLC
Address 201 W. Liberty Street, Ste. 320
Reno, NV 89501

Client(s) Pierre A. Hascheff

Attorney _____ Telephone _____

Firm _____

Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|--|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input checked="" type="checkbox"/> Other disposition (specify): <u>Denial of fees/costs</u> |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

N/A

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

Pierre A. Hascheff v. Lynda L. Hascheff, Second Judicial District Court, Family Division, Case No. DV13-00656, Dept. 12: Divorce Decree entered November 15, 2013.

8. Nature of the action. Briefly describe the nature of the action and the result below:

On June 16, 2020, Defendant Lynda Hascheff filed a Motion for Clarification or Declaratory Relief regarding Terms of the Marital Settlement Agreement ("MSA") and Decree. In her Motion, Ms. Hascheff requested declaratory relief related to an indemnification provision in the MSA. Ms. Hascheff further requested that Plaintiff Pierre Hascheff pay the costs and fees she incurred in connection with her attempts to obtain information, respond to his demands and engage in the motion practice to establish her rights and obligations. Mr. Hascheff filed a Motion for Order to Show Cause, or in the Alternative, to Enforce the Court's Orders, seeking to have Ms. Hascheff held in contempt of court for allegedly violating the MSA ("OSC Motion"). Following a hearing, the district court issued its Order Granting Motion for Clarification or Declaratory Relief; Order Denying Motion for Order to Enforce and/or for an Order to Show Cause; Order Denying Request for Attorney's Fees and Costs on February 1, 2021. Respondent/Cross-Appellant appeals from the February 1, 2021 Order.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

The principal issue in the cross appeal is:

Did the district court err by denying Ms. Hascheff's request for attorney's fees and costs after granting her motion for declaratory relief and denying Mr. Hascheff's OSC motion where the MSA provided that the party who prevails in a proceeding to enforce the MSA is entitled to reasonable fees and costs?

Ms. Hascheff reserves the right to raise additional issues in the briefing.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

N/A

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: N/A

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is presumptively assigned to the Court of Appeals pursuant to NRAP 17(b)(7) and NRAP 17(b)(10) because it is a post-judgment matter in a divorce case that does not involve termination of parental rights.

14. Trial. If this action proceeded to trial, how many days did the trial last? _____

Was it a bench or jury trial? N/A

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
N/A

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from February 1, 2021

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

N/A

17. Date written notice of entry of judgment or order was served February 10, 2021

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing N/A

☐ NRCP 52(b) Date of filing N/A

☐ NRCP 59 Date of filing N/A

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion N/A

(c) Date written notice of entry of order resolving tolling motion was served N/A

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed March 16, 2021

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

March 10, 2021 - Notice of Appeal filed by Appellant/Cross-Respondent Pierre A. Hascheff

March 16, 2021 - Notice of Appeal filed by Respondent/Cross-Appellant Lynda L. Hascheff

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)(2)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|--|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input checked="" type="checkbox"/> Other (specify) <u>NRAP 3A(b)(8)</u> | |
-

(b) Explain how each authority provides a basis for appeal from the judgment or order:

The February 1, 2021 Order Granting Motion for Clarification or Declaratory Relief; Order Denying Motion for Order to Enforce and/or for an Order to Show Cause; Order Denying Request for Attorney's Fees and Costs is a special order entered after final judgment.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Pierre A. Hascheff

Lynda L. Hascheff

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

N/A

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

The original divorce complaint was filed in 2013. The decree of divorce was filed on November 15, 2013.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Lynda L. Hascheff
Name of appellant

Debbie Leonard, Leonard Law, PC
Name of counsel of record

April 8, 2021
Date

/s/ Debbie Leonard
Signature of counsel of record

Washoe County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 8th day of April, 2021, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

X Eflex Electronic Service

Counsel for Appellant/Cross-Respondent and the Settlement Judge listed below are registered Eflex users and were served through the Court's Eflex system upon filing.

Stephen S. Kent
Kent Law, PLLC
201 W. Liberty Street, Ste. 320
Reno, NV 89501

Melissa Mangiaracina
P.O. Box 3630
Incline Village, NV 89450

Dated this 8th day of April, 2021

/s/ Tricia Trevino
Signature

LIST OF DOCKETING STATEMENT ATTACHMENTS

Hascheff v. Hascheff, Case No. 82626

Attachment 1: Verified Complaint for Divorce – No Property No Children
(filed April 15, 2013)

Attachment 2: Order Granting Motion for Clarification or Declaratory Relief;
Order Denying Motion for Order to Enforce and/or for an Order to Show Cause;
Order Denying Request for Attorney's Fees and Costs (filed February 1, 2021)

Attachment 3: Notice of Entry of Order (filed February 10, 2021)

ATTACHMENT 1

Verified Complaint for Divorce –
No Property No Children
(filed April 15, 2013)

ORIGINAL

CODE: 1435
Todd L. Torvinen, Esq.
Nevada Bar No: 3175
232 Court Street
Reno, NV 89501
(775) 825-6066
Attorney for Plaintiff

FILED
2013 APR 15 PM 2:44
JOEY OROURA HASTINGS
CLERK OF THE COURT
BY: *[Signature]*
DEPUTY

IN THE FAMILY DIVISION OF
THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

Pierre A. Hascheff,

Plaintiff,

-vs-

Lynda L. Hascheff,

Defendant.

Case No:

Dept No: 18

0113 0005R

VERIFIED COMPLAINT FOR DIVORCE-NO PROPERTY NO CHILDREN
COMES NOW the Plaintiff, Pierre A. Hascheff, and for his cause of action
against the Defendant, states:

I.

JURISDICTION

That Plaintiff is now, and for a period of more than six (6) weeks preceding the
commencement of this action has been an actual, bona fide resident of the State of
Nevada, and has been for said period of time, physically and corporeally present in said
State.

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1 **WHEREFORE**, Plaintiff prays for Judgment against the Defendant as follows:

2 1. That he be granted a Decree of Divorce, dissolving the bonds of matrimony,
3 now and heretofore existing between Plaintiff and the said Defendant, and restoring
4 each of said parties to the status of unmarried persons.

5 2. That community property and debts be distributed pursuant to Nevada Law;
6 and separate property be confirmed.

7 3. That each party bears his or her attorney fees and costs.

8 4. For an award related to marital waste as proved at trial.

9 5. For an award of spousal support to Defendant.

10 6. For such other and further relief as this Court deems just and proper.

11 **AFFIRMATION PURSUANT TO NRS 239B.030.** The undersigned does hereby
12 affirm that the preceding document does not contain the social security number of any
13 person.

14 DATED THIS 15 day of April, 2013.

15
16 The Law Office of
17 Todd L. Torvinen, Chtd.

18 
19 Todd L. Torvinen, Esq.

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VERIFICATION

STATE OF NEVADA)
: ss.
COUNTY OF WASHOE)

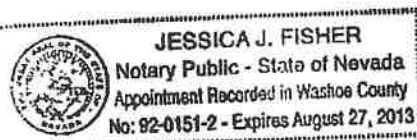
Plaintiff, being first duly sworn, under penalty of perjury, deposes and states:

That he is the Plaintiff in the above-entitled action; that he has read the foregoing Complaint and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated upon information and belief, and as to those matters he believes it to be true.


Pierre A. Hascheff

SUBSCRIBED AND SWORN to before me
this 12th day of April, 2013.


NOTARY PUBLIC



AFFIRMATION PURSUANT TO NRS 239B.030. The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

ATTACHMENT 2

Order Granting Motion for
Clarification or Declaratory Relief;
Order Denying Motion for Order to
Enforce and/or for an Order to Show
Cause; Order Denying Request for
Attorney's Fees and Costs
(filed February 1, 2021)

IN THE FAMILY DIVISION
OF THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

PIERRE A. HASCHEFF,

Plaintiff,

vs.

LYNDA HASCHEFF,

Defendant.

Case No. DV13-00656

Dept. No. 12

**ORDER GRANTING MOTION FOR CLARIFICATION OR DECLARATORY RELIEF;
ORDER DENYING MOTION FOR
ORDER TO ENFORCE AND/OR FOR AN ORDER TO SHOW CAUSE;
ORDER DENYING REQUEST FOR ATTORNEYS' FEES AND COSTS**

The Court considers two motions for purposes of this Order.

First, before this Court is Defendant Lynda Hascheff's ("Ms. Hascheff") Motion for Clarification or Declaratory Relief Regarding Terms of MSA and Decree ("MSA Motion") filed on June 16, 2020. Plaintiff Pierre A. Hascheff filed an Opposition to Motion for Clarification or Declaratory Relief Regarding Terms of MSA and Decree ("Opposition to MSA Motion") on July 6, 2020. Ms. Hascheff then filed a Reply in Support of Motion for Clarification or Declaratory Relief Regarding Terms of MSA and Decree ("Reply to MSA Motion") on July 13, 2020, and the matter was submitted thereafter.

Second, before this Court is Judge Hascheff's ("Judge Hascheff") Motion for Order to Show Cause, or in the Alternative, to Enforce the Court's Orders ("OSC Motion") filed on July 8, 2020. Ms. Hascheff filed an Opposition to Motion for Order to Show Cause, or in the Alternative, to Enforce the Court's Orders ("Opposition to OSC Motion") filed on July 17, 2020. Judge Hascheff

1 then filed a Reply to Opposition to Motion for Order to Show Cause, or in the Alternative, to
2 Enforce the Court's Orders ("Reply to OSC Motion"), and the matter was submitted thereafter. On
3 December 21, 2020, the Court heard argument from the parties regarding the MSA Motion and
4 OSC Motion.

5 On September 30, 2013, Ms. Hascheff and Judge Hascheff entered into a Marital Settlement
6 Agreement ("MSA") that was approved, adopted, merged and incorporated into the Decree of
7 Divorce ("Decree") on November 15, 2013. Specifically, the MSA contains an indemnification
8 clause in the event of a malpractice claim against Judge Hascheff ("MSA § 40").

9 **A. Motion for Clarification or Declaratory Relief Regarding Terms of MSA and Decree**

10 In her MSA Motion, Ms. Hascheff asks this Court to enter an Order clarifying MSA § 40
11 that she is only responsible for fees incurred in a malpractice action against Judge Hascheff, and
12 that she is not responsible for the fees or costs he chose to incur to have personal counsel protect his
13 interests in connection with his role as a percipient witness in a collateral trust action. Moreover,
14 Ms. Hascheff asks that Judge Hascheff be obligated to pay the fees and costs Ms. Hascheff incurred
15 in connection with her attempts to obtain information, respond to his demands and engage in
16 motion practice to establish her rights and obligations.

17 Ms. Hascheff contends on January 15, 2020, Judge Hascheff sent her an undated letter
18 demanding that she indemnify him for legal fees and costs incurred in connection with him being
19 sued by a client in an on-going malpractice action. Judge Hascheff warned Ms. Hascheff that he
20 would be sending additional invoices he received. Upon investigation Ms. Hascheff learned that in
21 January 2020, the malpractice action had been stayed and that Judge Hascheff incurred limited fees
22 related to the malpractice action. Judge Hascheff sought indemnification from Ms. Hascheff for
23 fees and costs incurred in his role as a percipient witness in a collateral trust action to which he was
24 not a named party. Ms. Hascheff asserts the language in MSA § 40, by its clear, express, and
25 unambiguous terms, does not require Ms. Hascheff to indemnify Judge Hascheff's legal fees and
26 costs he elected to incur as a percipient witness. Ms. Hascheff contends Judge Hascheff did not
27 have the right to make the decision to protect his interests as a percipient witness, and then demand
28 that she finance his decision, without fully advising her of the circumstances and gaining her
agreement and consent in advance.

1 Ms. Hascheff alleges on December 26, 2018, Judge Hascheff was sued for malpractice by
2 his former client, Todd Jaksick, individually and as trustee of two trusts. Ms. Hascheff claims
3 Judge Hascheff made the deliberate decision not to notify her despite the potential financial risk to
4 her pursuant to MSA § 40, but rather waited for over a year, until January 15, 2020, to inform her of
5 this suit. Ms. Hascheff asserts Judge Hascheff and his former client eventually entered an
6 agreement to stay the malpractice action until the collateral trust action was resolved.

7 Ms. Hascheff posits MSA § 40 does not require her to finance Judge Hascheff's
8 litigation choices to become a percipient witness in a lawsuit to which he was not a
9 party. Ms. Hascheff states if Judge Hascheff believed it would be "helpful" or "prudent"
10 for him to have counsel to assist him as a percipient witness, he had an obligation to
11 consult with her before incurring the expenses and to advise her of the underlying facts
12 of the collateral trust action, along with the litigation risks and why retention of counsel
13 would be appropriate so that she could make an informed decision about whether to
14 share in the costs .

15 In his Opposition to MSA Motion, Judge Hascheff highlights MSA § 40 must be read in
16 conjunction with the entire section, and MSA § 40 unambiguously indicates that if any claim,
17 action, or proceeding, whether or not well-founded shall later be brought seeking to hold one party
18 liable on account of any alleged debt, liability, act, or omission the other party at his or her sole
19 expense must defend the other against said claim, action or proceeding. Judge Hascheff asserts
20 MSA § 40 requires a party must also indemnify the other and hold him or her harmless against any
21 loss or liability that he or she may incur as a result of the claim, action or proceeding including
22 attorney's fees, costs and expenses incurred in defending or responding to such action. Judge
23 Hascheff also notes as a subset and part of that all-encompassing language providing a full defense
24 and complete unconditional indemnification a provision was added that in the event said claim,
25 action or proceeding, involved a malpractice action whether or not well-founded, it obligated the
26 other party to pay only one-half the defense costs and indemnify only one-half of any judgment if
27 any, entered against said party.

28 Judge Hascheff maintains MSA § 40 does not include a notice provision. Judge Hascheff
maintains it was critical to defend the claims in the collateral trust action as these claims would

1 likely become res judicata and collateral estoppel defenses in the malpractice action and his efforts
2 in the collateral trust action could eliminate Ms. Hascheff being required to pay one-half of the
3 likely much higher defense costs and the judgment in the malpractice action. Judge Hascheff claims
4 he needed to engage counsel early to address and cut off any possible claims arising out of or
5 determined in the collateral trust litigation. Judge Hascheff contends his decision should not be
6 subject to question by Ms. Hascheff under the circumstances. Judge Hascheff alleges he did not
7 keep the potential for a malpractice claim secret from Ms. Hascheff. Yet, he did not notify her of
8 the malpractice filing as he believed that the collateral trust action would be resolved, and the
9 malpractice action filed in December 2018 would eventually be dismissed.

10 Judge Hascheff contends the fact that Allied World insurance company picked up the
11 defense and paid defense fees of \$2,500 in the collateral trust action, although not required under
12 his insurance policy, conclusively shows that Judge Hascheff's involvement in the collateral trust
13 action primarily involved potential malpractice claims.

14 Judge Hascheff asserts it is not uncommon for an indemnitee to remain involved for several
15 years in the underlying trust litigation and then once litigation is concluded and the damages are
16 ascertained; then and only then will the indemnitee notify the indemnitor of the obligation to pay
17 said damages. Therefore, Judge Hascheff claims he did not breach his fiduciary duty, if any, by
18 waiting to inform Ms. Hascheff of the malpractice action until after the jury decided the legal
19 claims in the underlying trust litigation.

20 Judge Hascheff also argues Ms. Hascheff has violated Section 35 ("MSA § 35") which
21 clearly provides that any party intending to bring an action or proceeding to enforce the MSA shall
22 not be entitled to recover attorney's fees and costs unless she first gives the other party at least 10
23 days written notice before filing the action or proceeding.

24 In her Reply to MSA Motion, Ms. Hascheff emphasizes a strict interpretation of MSA § 40
25 does not cover Judge Hascheff's incurred legal expenses. Ms. Hascheff states the indemnity
26 language could have been written to say that she will indemnify Judge Hascheff for any fees and
27 costs that he, in his sole and unilateral discretion, believe are reasonable, necessary, and related in
28 any way to any potential malpractice action, but that is not the language his lawyer drafted, nor is it
the agreement the parties signed. As a result, Ms. Hascheff states she contractually agreed to pay

1 half the costs of defense of the malpractice action, which in this case was immediately stayed with
2 no fees incurred.

3 Ms. Hascheff asserts had Judge Hascheff given her the common courtesy of promptly
4 informing her of the circumstances, sharing with her the underlying facts and risks they faced, and
5 consulting with her about the most appropriate way for them to jointly approach the problem, they
6 may have been able to reach agreement to avoid this dispute and all of these fees.

7 **B. Motion for Order to Show Cause, or in the Alternative, to Enforce the Court's Orders**

8 In his OSC Motion, Judge Hascheff moves this Court: (1) To issue an order for Ms.
9 Hascheff to show cause as to why she intentionally disobeyed the Decree; (2) To enforce the terms
10 of the parties' incorporated MSA, and order the payment of the indemnification; and, (3) Order Ms.
11 Hascheff pay Judge Hascheff's attorney fees and costs whether this matter proceeds as contempt, or
12 as an order for enforcement upon affidavit from counsel.

13 Judge Hascheff asserts Ms. Hascheff chooses to willfully disobey the Decree and MSA by
14 making "ill-advised and even nonsensical arguments" in her MSA Motion as a course of conduct to
15 "gain leverage and delay payment."

16 Judge Hascheff states in the event the Court determines Ms. Hascheff's actions do not rise
17 to the level of contempt, the Court should enforce its orders by requiring Ms. Hascheff to pay the
18 required one half indemnification amount to Judge Hascheff in the sum of \$4,924.05 (plus a
19 percentage of any later accrued and accruing fees and costs) pursuant to MSA § 40. Judge Hascheff
20 further seeks an award of attorney's fees for this contempt motion pursuant to MSA § 35.

21 In her Opposition to OSC Motion, Ms. Hascheff contends there are no clear and
22 unambiguous Orders of this Court that she has allegedly refused to honor. Ms. Hascheff
23 emphasizes the dispute is whether the simple and unambiguous language of the parties' MSA and
24 Decree requires Ms. Hascheff to pay the fees Judge Hascheff demands.

25 Ms. Hascheff asserts since the Decree does not clearly and unambiguously require her to
26 pay those fees, Ms. Hascheff could not be held in contempt as a matter of law. Ms. Hascheff
27 asserts if interpretation is required to obtain the result Judge Hascheff seeks, the language on which
28 he relies cannot be so clear and unambiguous as to support a contempt motion - no matter how
reasonable the requested interpretation. Ms. Hascheff claims since there is a dispute about the

1 meaning of their contract and the parties' respective rights and obligations, Ms. Hascheff, in good
2 faith, sought clarification through her MSA Motion so that she would know exactly what her legal
3 obligations are.

4 In his Reply to OSC Motion, Judge Hascheff maintains rather than resolving a dispute of
5 approximately \$5,000, Ms. Hascheff has embarked on an unfortunate litigation track where she
6 undoubtedly already incurred fees in excess of \$5,000, and likely will incur attorney's fees. Judge
7 Hascheff contends Ms. Hascheff also unnecessarily caused him to incur substantial legal fees even
8 though he had offered to accept minimal payments on his indemnification claim without interest
9 and without incurring any legal fees.

10 Judge Hascheff posits Ms. Hascheff fails to cite any case where a court would distinguish
11 between a contractual indemnity in an MSA from any other indemnity obligation, and a settlement
12 agreement is construed as any other contract and governed by the principles of contract law. Judge
13 Hascheff maintains Ms. Hascheff's assertion that she has no obligation to pay half the defense costs
14 and/or indemnify until her conditions are met are not expressed in the MSA, and Ms. Hascheff's
15 position that she has some "implied" right or "conditions precedent" to her obligation to pay is
entirely inconsistent with the MSA or existing caselaw.

16 Law

17 **A. Declaratory Relief Standard**

18 A party must meet four elements before declaratory relief can be granted:

- 19 1) there must exist a justiciable controversy; that is to say, a
20 controversy in which a claim of right is asserted against one who
21 has an interest in contesting it; (2) the controversy must be
22 between persons whose interests are adverse; (3) the party seeking
23 declaratory relief must have a legal interest in the controversy,
that is to say, a legally protectable interest; and (4) the issue
involved in the controversy must be ripe for judicial
determination.

24 *MB Am., Inc. v. Alaska Pac. Leasing*, 132 Nev. Adv. Op. 8, 367 P.3d 1286, 1291 (2016).
25 Moreover, any person whose rights, status, or other legal relations "are affected by a statute . . . may
26 have determined any question of construction" of that statute. NRS 30.040(1); *Prudential Ins. Co.*
27 *of Am. v. Ins. Comm'r*, 82 Nev. 1, 5, 409 P.2d 248, 250 (1966) (declaratory relief is available when
28

1 a controversy concerning the meaning of a statute arises). "Whether a determination is proper in an
2 action for declaratory relief is a matter within the trial judge's discretion that will not be disturbed
3 on appeal unless abused." *El Capitan Club v. Fireman's Fund Ins. Co.*, 89 Nev. 65, 68, 506 P.2d
4 426, 428 (1973).

5 **B. Interpretation of MSA Standard.**

6 A settlement agreement, which is a contract, is governed by principles of contract law.
7 *Mack v. Estate of Mack*, 125 Nev. 80, 95, 206 P.3d 98, 108 (2009). As such, a settlement
8 agreement will not be an enforceable contract unless there is "an offer and acceptance, meeting of
9 the minds, and consideration." *Id.* Generally, when a contract is clear on its face, it 'will be
10 construed from the written language and enforced as written.'" *Buzz Stew, LLC v. City of N. Las*
11 *Vegas*, 131 Nev. 1, 7, 341 P.3d 646, 650 (2015) (citing *Canfora v. Coast Hotels & Casinos, Inc.*,
12 121 Nev. 771, 776, 121 P.3d 599, 603 (2005)). The court has no authority to alter the terms of an
13 unambiguous contract. *Canfora*, 121 Nev. at 776, 121 P.3d at 603.

14 Whether a contract is ambiguous likewise presents a question of law. *Galardi v. Naples*
15 *Polaris, LLC*, 129 Nev. 306, 309, 301 P.3d 364, 366 (2013) (citing *Margrave v. Dermody Props.*,
16 110 Nev. 824, 827, 878 P.2d 291, 293 (1994)). A contract is ambiguous if its terms may reasonably
17 be interpreted in more than one way, but ambiguity does not arise simply because the parties
18 disagree on how to interpret their contract. *Id.* (citing *Anvui, L.L.C. v. G.L. Dragon, L.L.C.*, 123
19 Nev. 212, 215, 163 P.3d 405, 407 (2007); *Parman v. Petricciani*, 70 Nev. 427, 430–32, 272 P.2d
20 492, 493–94 (1954)).

21 Marital agreements are "enforceable unless unconscionable, obtained through fraud,
22 misrepresentation, material nondisclosure or duress." *Furer v. Furer*, 126 Nev. 712, 367 P.3d 770
23 (2010) (citing *Sogg v. Nevada State Bank*, 108 Nev. 308, 312, 832 P.2d 781, 783–84 (1992)).

24 After merger, the district court may enforce the provisions of the divorce decree by using its
25 contempt power. *Friedman v. Friedman*, 128 Nev. 897, 381 P.3d 613 (2012) (citing *Hildahl v.*
26 *Hildahl*, 95 Nev. 657, 662–63, 601 P.2d 58, 61–62 (1979)). The district court may interpret the
27 language of the divorce decree in order to resolve ambiguity. *Id.* (citing *Kishner v. Kishner*, 93 Nev.
28 220, 225, 562 P.2d 493, 496 (1977)).

//

//

C. Interpretation of Indemnification Standard.

The scope of a contractual indemnity clause is determined by the contract and is generally interpreted like any contract. *George L. Brown Ins. v. Star Ins. Co.*, 126 Nev. 316, 323, 237 P.3d 92, 96 (2010).

Contractual indemnity is where, pursuant to a contractual provision, two parties agree one party will reimburse the other party for liability resulting from the former's work. *United Rentals Hwy. Techs. v. Wells Cargo*, 128 Nev. 666, 673, 289 P.3d 221, 226 (2012). Contracts purporting to indemnify a party against its own negligence will only be enforced if they clearly express such an intent, and a general provision indemnifying the indemnitee against "any and all claims" standing alone, is not sufficient. *Reyburn Lawn & Landscape Designers, Inc. v. Plaster Dev. Co., Inc.*, 127 Nev. 331, 339, 255 P.3d 268, 274 (2011).

When the duty to indemnify arises from contractual language, it generally is not subject to equitable considerations; rather, it is enforced in accordance with the terms of the contracting parties' agreement. *United Rentals Hwy. Techs. v. Wells Cargo*, 128 Nev. 666, 673, 289 P.3d 221, 226 (2012).

An indemnity clause imposing a duty to defend is construed under the same rules that govern other contracts. *United Rentals Hwy. Techs. v. Wells Cargo*, 128 Nev. 666, 676, 289 P.3d 221, 228 (2012). The duty to defend is broader than the duty to indemnify because it covers not just claims under which the indemnitor is liable, but also claims under which the indemnitor could be found liable. *Id.* Generally, a contractual promise to defend another against specified claims clearly connotes an obligation of active responsibility, from the outset, for the promisee's defense against such claims. *Id.* While the duty to defend is broad, it is not limitless. *Id.*

An indemnitee's duty, if any, to provide notice to an indemnitor arises from the express and unambiguous language of the indemnity agreement. *Fontenot v. Mesa Petroleum Co.*, 791 F.2d 1207, 1221 (5th Cir. 1986) (holding where an indemnity agreement does not require notice courts will not infer or insert a notice requirement as a condition precedent to a right to recover on the indemnitee contract); *Premier Corp. v. Economic Research and Analysts, Inc.*, 578 F. 2d 551, 554 (4th Cir. 1978) (holding notice is unnecessary unless the indemnity contract requires it).

1
2 **D. Laches Standard.**

3 Laches, an equitable doctrine, may be invoked when delay by one party prejudices the other
4 party such that granting relief to the delaying party would be inequitable. *Besnilian v. Wilkinson*,
5 117 Nev. 519, 522, 25 P.3d 187, 189 (2001). However, to invoke laches, the party must show that
6 the delay caused actual prejudice. *Id.*

7 Laches is more than mere delay in seeking to enforce one's rights; it is delay that works a
8 disadvantage to another. *Home Sav. Ass'n v. Bigelow*, 105 Nev. 494, 496, 779 P.2d 85, 86 (1989).
9 The condition of party asserting laches must become so changed that the party cannot be restored to
10 their former state. *Id.* The applicability of the doctrine of laches turns upon peculiar facts of each
11 case. *Id.*

12 If the elements of a laches defense are met, a court may dismiss an entire case, dismiss
13 certain claims, or restrict the damages available to the plaintiff. *Morgan Hill Concerned Parents*
14 *Ass'n v. California Dep't of Educ.*, 258 F. Supp. 3d 1114, 1132–33 (E.D. Cal. 2017) (citing
15 *E.E.O.C. v. Timeless Investments, Inc.*, 734 F.Supp.2d 1035, 1067 (E.D. Cal. 2010)).

16 The Ninth Circuit has implicitly recognized a court's ability to raise the doctrine of laches
17 *sua sponte*. *Id.* (citing *Sw. Voter Registration Educ. Project v. Shelley*, 344 F.3d 914 (9th Cir. 2003)
18 (en banc)). A limitation on the *sua sponte* application of laches is in circumstances in which parties
19 lack notice about an issue and are not given an opportunity to address it. *Morgan Hill Concerned*
20 *Parents Ass'n*, 258 F. Supp. 3d at 1133.

21 **E. Order to Show Cause for Contempt of Court Standard.**

22 Pursuant to NRS 22.030(2), if a contempt is not committed in the immediate view and
23 presence of the court or judge at chambers, an affidavit must be presented to the court or judge of
24 the facts constituting the contempt, or a statement of the facts by the masters or arbitrators. The
25 requirement of an affidavit is confirmed by case law, specifically requiring an affidavit must state
26 facts specific enough to allow the Court to proceed to be submitted at the Contempt proceeding,
27 which is necessary to give the court subject matter jurisdiction. *See Awad v. Wright*, 106 Nev. 407,
28 794 P.2d 713 (1990) (overruled on other grounds); *Philips v. Welch*, 12 Nev. 158 (1887); *Strait v.*
Williams, 18 Nev. 430 (1884). Contempt statutes are to be strictly construed based upon the

1 criminal nature of a contempt proceeding. *Ex Parte Sweeney*, 18 Nev. 71 (1883).

2 The penalties for contempt include a monetary fine, not to exceed \$500.00, or
3 imprisonment, not to exceed 25 days, or both. *See* NRS 22.100(2). In addition to the penalties set
4 forth above the Court may require the person to pay to the party seeking to enforce the writ, order,
5 rule or process the reasonable expenses incurred by the party as a result of the contempt. *See* NRS
6 22.100(3).

7 The moving party must make a *prima facie* showing that the non-moving had the ability to
8 comply with the Court order and that the violation of the order was willful. *Rodriguez v. District*
9 *Court*, 120 Nev. 798, 809, 102 P.3d 41, 49 (2004). In order for contempt to be found, the Court
10 order “must be clear and unambiguous, and must spell out the details of compliance in clear,
11 specific, and unambiguous terms so that the person will readily know exactly what duties or
12 obligations are imposed on him.” *Cunningham v. District Court*, 102 Nev. 551, 559-60, 729 P.2d
13 1328, 1333-34 (1986).

14 **F. Attorneys’ Fees & Costs Award Standard.**

15 NRS 18.010(2)(b) and NRCP 11 authorize the district court to grant an award of attorney
16 fees as sanctions against a party who pursues a claim without reasonable ground. We have
17 consistently recognized that “[t]he decision to award attorney fees is within the [district court’s]
18 sound discretion ... and will not be overturned absent a ‘manifest abuse of discretion.’” *Edwards v.*
Emperor’s Garden Rest., 122 Nev. 317, 330, 130 P.3d 1280, 1288 (2006).

19 NRS 18.010 also governs the instances in which attorney fees are awarded, and states the
20 following:

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

NRS. 18.010(2)(b); *Capanna v. Orth*, 134 Nev. 888, 895, 432 P.3d 726, 734 (2018).

1 In making an award of fees, the Court also examines the reasonableness of attorneys' fees
2 under the factors set forth in *Brunzell*:

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

85 Nev. at 349, 455 P.2d at 33. Each of these factors must be given consideration. *Id.* 85 Nev. at
350, 455 P.2d at 33.

The district court's decision to award attorney fees is within its discretion and will not be
disturbed on appeal absent a manifest abuse of discretion. *Capanna*, 134 Nev. at 895, 432 P.3d at
734 (2018).

NRS 18.020(3) provides costs must be allowed to a prevailing party against any adverse
party against whom judgment is rendered in an action for the recovery of money or damages, where
the plaintiff seeks to recover more than \$2,500.

Order

The Court **GRANTS** Ms. Hascheff's MSA Motion. The Court is satisfied the legal fees
incurred by Judge Hascheff as a witness in the collateral trust action and the stayed malpractice
lawsuit where he is sued individually are encompassed by MSA § 40. The Court finds, as a matter
of law, MSA § 40 does not contain express and unambiguous language requiring Judge Hascheff to
have provided immediate notice of either the collateral trust action or the malpractice action to Ms.
Hascheff. *Fontenot*, 791 F.2d at 1221; *Premier Corp.*, 578 F. 2d at 554. Furthermore, this Court is
barred from undertaking equitable considerations regarding MSA § 40's contractual language.
United Rentals Hwy. Techs., 128 Nev. at 673, 289 P.3d at 226.

However, Judge Hascheff was not transparent about his request for indemnification. In
January 2020, Judge Hascheff notified Ms. Hascheff he had been sued by a client for malpractice.
He stated that the malpractice action was on-going and he inferred that he had incurred all of fees
and costs he was requesting from Ms. Hascheff directly related to this malpractice suit. He was not
transparent that he was seeking indemnification for fees and costs related to a collateral trust action.

1 When asked for an accounting of the fees and costs, Judge Hascheff failed to provide a
2 complete and transparent accounting. In his email of March 1, 2020, Judge Hascheff changed
3 the sum he was asking Ms. Hascheff to pay from \$5,200.90, as previously demanded, to
4 \$4,675.90. *Compare MSA Motion, Ex. 1 with MSA Motion, Ex. 4.* This Court further notes
5 Judge Hascheff's malpractice insurance company reimbursed only up to \$2,500 indicating not
6 all the expenses demanded by Judge Hascheff are related to the defense of the stayed
7 malpractice action. Judge Hascheff and his counsel also noted on the record they unilaterally
8 imposed redactions on the billing statements provided by Judge Hascheff's attorneys, thereby
9 obfuscating the true amount owed by Ms. Hascheff.¹ Ms. Hascheff was told that these
10 redactions, which resulted in fees in the amount \$3,300, were privileged.

11 Judge Hascheff presumably authorized his counsel to attend portions of the collateral
12 trust trial at times when he was not on the witness stand. Significant time was billed to prepare
13 for meetings with attorneys in the collateral trust action, but efforts by Ms. Hascheff's counsel
14 to communicate with counsel for the parties in the collateral trust action were ignored.

15 The only reference to the malpractice action are found in a billing statement dated
16 December 10, 2019 and reflect that on July 1, 2019 Judge Hascheff was billed one tenth of an
17 hour related to the review/analysis of correspondence regarding the state of action against
18 Judge Hascheff. And on September 25, 2019, Judge Hascheff was billed three tenths of an
19 hour for the review/analysis of a draft joint motion and stipulation to stay the malpractice
20 proceedings. *Confidential Exhibit I.* As a result, this Court cannot in good conscience require
21 Ms. Hascheff to pay the full amount demanded by Judge Hascheff based on Judge Hascheff's
22 inconsistent and secretive criteria.

23 Most troubling to this Court is Judge Hascheff's response to this Court's question as to
24 why he waited over a year to notify Ms. Hascheff of the potential malpractice claims against
25 him. Judge Hascheff testified he had not notified Ms. Hascheff of the malpractice action or the

26 ¹ Further issues of transparency revolve around the sum of money Judge Hascheff for his fees and costs as compared to
27 what his malpractice carrier paid. The Court notes that the malpractice policy held by Judge Hascheff had a \$10,000
28 deductible, yet in this case Judge Hascheff demanded that Ms. Hascheff pay a sum of less than one-half of the
deductible. If Judge Hascheff's claim is correct that the malpractice carrier felt that defense of claims in the collateral
trust action was actually defense of the malpractice action, why was his share of the defense a figure other than
\$10,000, the amount of the deductible?

1 collateral trust action as he planned on being solely responsible for the legal fees and costs
2 associated therewith, without indemnification from Ms. Hascheff, until the fees and costs
3 became too great.

4 The Court finds Judge Hascheff's conscious disregard and selective enforcement of MSA §
5 40 is comparable to a claim for laches. *Besnilian*, 117 Nev. 519, at 522, 25 P.3d at 189; *Bigelow*,
6 105 Nev. at 496, 779 P.2d at 86. This Court cautiously raises the doctrine of laches *sua sponte* as
7 this Court provided notice to the parties it intended to inquire into the timeliness of Judge
8 Hascheff's claims as one of the specific areas the Court wanted addressed at the hearing. *See*
9 *Morgan Hill Concerned Parents Ass'n*, 258 F. Supp. 3d 1114, 1132–33.

10 Based on Judge Hascheff's testimony, the Court finds Ms. Hascheff has been prejudiced by
11 Judge Hascheff's actions due to his deliberate delay in invoking his rights under MSA § 40.
12 Although immediate notice is not explicitly required in MSA § 40, Judge Hascheff's delay
13 prejudiced Ms. Hascheff. Ms. Hascheff was given no say in the fees and costs expended by Judge
14 Hascheff in the collateral trust action. She was led to believe that the fee demand from Judge
15 Hascheff was related solely to the malpractice claim and only after expending fees and costs for her
16 own counsel did she learn that the lion's share of the demand was related to a collateral trust action.
17 She was thwarted in her efforts to receive a complete bill for the services provided and at the
18 hearing the Court learned that it was Judge Hascheff and his divorce counsel who decided the
19 redacted portions of the bill statement she was provided. As such it is clear that Ms. Hascheff has
20 been prejudiced by Judge Hascheff's actions to the point where granting Judge Hascheff's
21 requested relief would be inequitable. *See Besnilian*, 117 Nev. 519, at 522, 25 P.3d at 189; *see also*
22 *Bigelow*, 105 Nev. at 496, 779 P.2d at 86. The Court is convinced had Judge Hascheff exercised
23 his rights and obligations under the MSA in a timely fashion and without obfuscation, Ms. Hascheff
24 would not have been prejudiced and she would have been liable for her share of the fees and costs
incurred for both the malpractice action and the collateral trust action.

25 This Court **DENIES** Judge Hascheff's OSC Motion. This Court finds Judge Hascheff was
26 unable to make a *prima facie* showing Ms. Hascheff had the ability to comply with the parties'
27 MSA, yet willfully violated her obligations. As discussed *supra*, Ms. Hascheff was not provided a
28 clear accounting of her indemnification obligations, and Judge Hascheff chose to arbitrarily enforce

1 his rights under the MSA, thereby having his claims limited by laches. As a result, this Court
2 denies the OSC Motion.

3 The Court **DENIES** the parties' respective requests for attorneys' fees and costs associated
4 with the MSA Motion and OSC Motion. The Court notes MSA § 35 addresses the payment of
5 future attorneys' fees and costs to a prevailing party upon providing, *inter alia*, at least 10-day
6 written notice before filing an action or proceeding. This Court is assured both parties have
7 satisfied their obligations under MSA § 35. *See MSA Motion*, Ex. 4-8. For example, counsel for
8 Judge Hascheff and Ms. Hascheff undisputedly provided their MSA § 35 notices on May 29, 2020
9 and June 2, 2020, more than 10-days prior to the filing of the MSA Motion and OSC Motion. *MSA*
10 *Motion*, Ex. 7-8. Further, the Court finds there was a reasonable basis for litigating the arguments
11 presented by both parties in their respective motions. Therefore, the Court declines to award
12 attorneys' fees and costs.

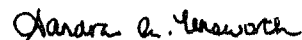
13 **GOOD CAUSE APPEARING, IT IS SO ORDERED**

14 **The MSA Motion is GRANTED.**

15 **The OSC Motion is DENIED.**

16 **IT IS FURTHER ORDERED an award for attorneys' fees and costs are DENIED.**

17 DATED this 1st day of February, 2021.

18 

19 _____
20 Sandra A. Unsworth
21 District Judge

22 DV13-00656
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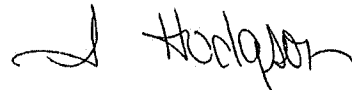
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court in and for the County of Washoe, and that on February 1, 2021, I deposited in the county mailing system for postage and mailing with the United States Postal Service in Reno, Nevada, or via e-filing, a true copy of the foregoing document addressed as follows:

ELECTRONIC FILING:

**SHAWN MEADOR, ESQ., for LYNDAS HASCHEFF
TODD TORVINEN, ESQ., for PIERRE HASCHEFF**



Judicial Assistant

ATTACHMENT 3

Notice of Entry of Order
(filed February 10, 2021)

1 SHAWN B MEADOR
2 NEVADA BAR NO. 338
3 WOODBURN AND WEDGE
4 6100 Neil Road, Suite 500
5 Post Office Box 2311
6 Reno, Nevada 89505
Telephone: (775) 688-3000
Facsimile: (775) 688-3088
smeador@woodburnandwedge.com

7 IN THE FAMILY DIVISION
8 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
9 IN AND FOR THE COUNTY OF WASHOE
10

11 PIERRE A. HASCHEFF ,

12 Plaintiff,

13 v.

14 LYNDAL L. HASCHEFF ,

15 Defendant .

CASE NO . DV13-00656

DEPT. NO . 12

16
17 **NOTICE OF ENTRY OF ORDER**

18 PLEASE TAKE NOTICE that on February 1, 2021, an Order Granting Motion for
19 Clarification or Declaratory Relief; Order Denying Motion for Order to Enforce and/or For
20 an Order to Show Cause; Order Denying Request for Attorneys' Fees and Costs entered in
21 the above-entitled matter, a copy of which is attached hereto as **Exhibit 1**.
22

23 **Affirmation Pursuant to NRS 239B.030**

24 The undersigned affirms that this document does not contain the personal information
25 of any party.

26 DATED this 10th day of February, 2021.

27 WOODBURN AND WEDGE

28 By /s/ *Shawn B Meador*
Shawn B. Meador, Esq.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Woodburn and Wedge, 6100 Neil Rd., Suite 500, Reno, Nevada 89511, that I am over the age of 18 years, and that I served the foregoing document(s) described as:

Notice of Entry of Order

on the party set forth below by:

_____ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

_____ Personal delivery.

 X Second Judicial E flex

_____ Federal Express or other overnight delivery.

addressed as follows:

X Todd L. Torvinen, Esq.
232 Court Street
Reno, NV 89501

The undersigned affirms that this document contains no social security numbers

Dated this 10 day of February, 2021.



Kelly Albright

EXHIBIT LIST

<u>Exhibit #</u>	<u>Description</u>	<u>No. of Pages</u>
1	Order	16

FILED
Electronically
DV13-00656
2021-02-10 03:29:32 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 8290110

EXHIBIT 1

IN THE FAMILY DIVISION
OF THE SECOND JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

PIERRE A. HASCHEFF,

Plaintiff,

vs.

LYNDA HASCHEFF,

Defendant.

Case No. DV13-00656

Dept. No. 12

**ORDER GRANTING MOTION FOR CLARIFICATION OR DECLARATORY RELIEF;
ORDER DENYING MOTION FOR
ORDER TO ENFORCE AND/OR FOR AN ORDER TO SHOW CAUSE;
ORDER DENYING REQUEST FOR ATTORNEYS' FEES AND COSTS**

The Court considers two motions for purposes of this Order.

First, before this Court is Defendant Lynda Hascheff's ("Ms. Hascheff") Motion for Clarification or Declaratory Relief Regarding Terms of MSA and Decree ("MSA Motion") filed on June 16, 2020. Plaintiff Pierre A. Hascheff filed an Opposition to Motion for Clarification or Declaratory Relief Regarding Terms of MSA and Decree ("Opposition to MSA Motion") on July 6, 2020. Ms. Hascheff then filed a Reply in Support of Motion for Clarification or Declaratory Relief Regarding Terms of MSA and Decree ("Reply to MSA Motion") on July 13, 2020, and the matter was submitted thereafter.

Second, before this Court is Judge Hascheff's ("Judge Hascheff") Motion for Order to Show Cause, or in the Alternative, to Enforce the Court's Orders ("OSC Motion") filed on July 8, 2020. Ms. Hascheff filed an Opposition to Motion for Order to Show Cause, or in the Alternative, to Enforce the Court's Orders ("Opposition to OSC Motion") filed on July 17, 2020. Judge Hascheff

1 then filed a Reply to Opposition to Motion for Order to Show Cause, or in the Alternative, to
2 Enforce the Court's Orders ("Reply to OSC Motion"), and the matter was submitted thereafter. On
3 December 21, 2020, the Court heard argument from the parties regarding the MSA Motion and
4 OSC Motion.

5 On September 30, 2013, Ms. Hascheff and Judge Hascheff entered into a Marital Settlement
6 Agreement ("MSA") that was approved, adopted, merged and incorporated into the Decree of
7 Divorce ("Decree") on November 15, 2013. Specifically, the MSA contains an indemnification
8 clause in the event of a malpractice claim against Judge Hascheff ("MSA § 40").

9 **A. Motion for Clarification or Declaratory Relief Regarding Terms of MSA and Decree**

10 In her MSA Motion, Ms. Hascheff asks this Court to enter an Order clarifying MSA § 40
11 that she is only responsible for fees incurred in a malpractice action against Judge Hascheff, and
12 that she is not responsible for the fees or costs he chose to incur to have personal counsel protect his
13 interests in connection with his role as a percipient witness in a collateral trust action. Moreover,
14 Ms. Hascheff asks that Judge Hascheff be obligated to pay the fees and costs Ms. Hascheff incurred
15 in connection with her attempts to obtain information, respond to his demands and engage in
16 motion practice to establish her rights and obligations.

17 Ms. Hascheff contends on January 15, 2020, Judge Hascheff sent her an undated letter
18 demanding that she indemnify him for legal fees and costs incurred in connection with him being
19 sued by a client in an on-going malpractice action. Judge Hascheff warned Ms. Hascheff that he
20 would be sending additional invoices he received. Upon investigation Ms. Hascheff learned that in
21 January 2020, the malpractice action had been stayed and that Judge Hascheff incurred limited fees
22 related to the malpractice action. Judge Hascheff sought indemnification from Ms. Hascheff for
23 fees and costs incurred in his role as a percipient witness in a collateral trust action to which he was
24 not a named party. Ms. Hascheff asserts the language in MSA § 40, by its clear, express, and
25 unambiguous terms, does not require Ms. Hascheff to indemnify Judge Hascheff's legal fees and
26 costs he elected to incur as a percipient witness. Ms. Hascheff contends Judge Hascheff did not
27 have the right to make the decision to protect his interests as a percipient witness, and then demand
28 that she finance his decision, without fully advising her of the circumstances and gaining her
agreement and consent in advance.

1 Ms. Hascheff alleges on December 26, 2018, Judge Hascheff was sued for malpractice by
2 his former client, Todd Jaksick, individually and as trustee of two trusts. Ms. Hascheff claims
3 Judge Hascheff made the deliberate decision not to notify her despite the potential financial risk to
4 her pursuant to MSA § 40, but rather waited for over a year, until January 15, 2020, to inform her of
5 this suit. Ms. Hascheff asserts Judge Hascheff and his former client eventually entered an
6 agreement to stay the malpractice action until the collateral trust action was resolved.

7 Ms. Hascheff posits MSA § 40 does not require her to finance Judge Hascheff's
8 litigation choices to become a percipient witness in a lawsuit to which he was not a
9 party. Ms. Hascheff states if Judge Hascheff believed it would be "helpful" or "prudent"
10 for him to have counsel to assist him as a percipient witness, he had an obligation to
11 consult with her before incurring the expenses and to advise her of the underlying facts
12 of the collateral trust action, along with the litigation risks and why retention of counsel
13 would be appropriate so that she could make an informed decision about whether to
14 share in the costs .

15 In his Opposition to MSA Motion, Judge Hascheff highlights MSA § 40 must be read in
16 conjunction with the entire section, and MSA § 40 unambiguously indicates that if any claim,
17 action, or proceeding, whether or not well-founded shall later be brought seeking to hold one party
18 liable on account of any alleged debt, liability, act, or omission the other party at his or her sole
19 expense must defend the other against said claim, action or proceeding. Judge Hascheff asserts
20 MSA § 40 requires a party must also indemnify the other and hold him or her harmless against any
21 loss or liability that he or she may incur as a result of the claim, action or proceeding including
22 attorney's fees, costs and expenses incurred in defending or responding to such action. Judge
23 Hascheff also notes as a subset and part of that all-encompassing language providing a full defense
24 and complete unconditional indemnification a provision was added that in the event said claim,
25 action or proceeding, involved a malpractice action whether or not well-founded, it obligated the
26 other party to pay only one-half the defense costs and indemnify only one-half of any judgment if
27 any, entered against said party.

28 Judge Hascheff maintains MSA § 40 does not include a notice provision. Judge Hascheff
maintains it was critical to defend the claims in the collateral trust action as these claims would

1 likely become res judicata and collateral estoppel defenses in the malpractice action and his efforts
2 in the collateral trust action could eliminate Ms. Hascheff being required to pay one-half of the
3 likely much higher defense costs and the judgment in the malpractice action. Judge Hascheff claims
4 he needed to engage counsel early to address and cut off any possible claims arising out of or
5 determined in the collateral trust litigation. Judge Hascheff contends his decision should not be
6 subject to question by Ms. Hascheff under the circumstances. Judge Hascheff alleges he did not
7 keep the potential for a malpractice claim secret from Ms. Hascheff. Yet, he did not notify her of
8 the malpractice filing as he believed that the collateral trust action would be resolved, and the
9 malpractice action filed in December 2018 would eventually be dismissed.

10 Judge Hascheff contends the fact that Allied World insurance company picked up the
11 defense and paid defense fees of \$2,500 in the collateral trust action, although not required under
12 his insurance policy, conclusively shows that Judge Hascheff's involvement in the collateral trust
13 action primarily involved potential malpractice claims.

14 Judge Hascheff asserts it is not uncommon for an indemnitee to remain involved for several
15 years in the underlying trust litigation and then once litigation is concluded and the damages are
16 ascertained; then and only then will the indemnitee notify the indemnitor of the obligation to pay
17 said damages. Therefore, Judge Hascheff claims he did not breach his fiduciary duty, if any, by
18 waiting to inform Ms. Hascheff of the malpractice action until after the jury decided the legal
19 claims in the underlying trust litigation.

20 Judge Hascheff also argues Ms. Hascheff has violated Section 35 ("MSA § 35") which
21 clearly provides that any party intending to bring an action or proceeding to enforce the MSA shall
22 not be entitled to recover attorney's fees and costs unless she first gives the other party at least 10
23 days written notice before filing the action or proceeding.

24 In her Reply to MSA Motion, Ms. Hascheff emphasizes a strict interpretation of MSA § 40
25 does not cover Judge Hascheff's incurred legal expenses. Ms. Hascheff states the indemnity
26 language could have been written to say that she will indemnify Judge Hascheff for any fees and
27 costs that he, in his sole and unilateral discretion, believe are reasonable, necessary, and related in
28 any way to any potential malpractice action, but that is not the language his lawyer drafted, nor is it
the agreement the parties signed. As a result, Ms. Hascheff states she contractually agreed to pay

1 half the costs of defense of the malpractice action, which in this case was immediately stayed with
2 no fees incurred.

3 Ms. Hascheff asserts had Judge Hascheff given her the common courtesy of promptly
4 informing her of the circumstances, sharing with her the underlying facts and risks they faced, and
5 consulting with her about the most appropriate way for them to jointly approach the problem, they
6 may have been able to reach agreement to avoid this dispute and all of these fees.

7 **B. Motion for Order to Show Cause, or in the Alternative, to Enforce the Court's Orders**

8 In his OSC Motion, Judge Hascheff moves this Court: (1) To issue an order for Ms.
9 Hascheff to show cause as to why she intentionally disobeyed the Decree; (2) To enforce the terms
10 of the parties' incorporated MSA, and order the payment of the indemnification; and, (3) Order Ms.
11 Hascheff pay Judge Hascheff's attorney fees and costs whether this matter proceeds as contempt, or
12 as an order for enforcement upon affidavit from counsel.

13 Judge Hascheff asserts Ms. Hascheff chooses to willfully disobey the Decree and MSA by
14 making "ill-advised and even nonsensical arguments" in her MSA Motion as a course of conduct to
15 "gain leverage and delay payment."

16 Judge Hascheff states in the event the Court determines Ms. Hascheff's actions do not rise
17 to the level of contempt, the Court should enforce its orders by requiring Ms. Hascheff to pay the
18 required one half indemnification amount to Judge Hascheff in the sum of \$4,924.05 (plus a
19 percentage of any later accrued and accruing fees and costs) pursuant to MSA § 40. Judge Hascheff
20 further seeks an award of attorney's fees for this contempt motion pursuant to MSA § 35.

21 In her Opposition to OSC Motion, Ms. Hascheff contends there are no clear and
22 unambiguous Orders of this Court that she has allegedly refused to honor. Ms. Hascheff
23 emphasizes the dispute is whether the simple and unambiguous language of the parties' MSA and
24 Decree requires Ms. Hascheff to pay the fees Judge Hascheff demands.

25 Ms. Hascheff asserts since the Decree does not clearly and unambiguously require her to
26 pay those fees, Ms. Hascheff could not be held in contempt as a matter of law. Ms. Hascheff
27 asserts if interpretation is required to obtain the result Judge Hascheff seeks, the language on which
28 he relies cannot be so clear and unambiguous as to support a contempt motion - no matter how
reasonable the requested interpretation. Ms. Hascheff claims since there is a dispute about the

1 meaning of their contract and the parties' respective rights and obligations, Ms. Hascheff, in good
2 faith, sought clarification through her MSA Motion so that she would know exactly what her legal
3 obligations are.

4 In his Reply to OSC Motion, Judge Hascheff maintains rather than resolving a dispute of
5 approximately \$5,000, Ms. Hascheff has embarked on an unfortunate litigation track where she
6 undoubtedly already incurred fees in excess of \$5,000, and likely will incur attorney's fees. Judge
7 Hascheff contends Ms. Hascheff also unnecessarily caused him to incur substantial legal fees even
8 though he had offered to accept minimal payments on his indemnification claim without interest
9 and without incurring any legal fees.

10 Judge Hascheff posits Ms. Hascheff fails to cite any case where a court would distinguish
11 between a contractual indemnity in an MSA from any other indemnity obligation, and a settlement
12 agreement is construed as any other contract and governed by the principles of contract law. Judge
13 Hascheff maintains Ms. Hascheff's assertion that she has no obligation to pay half the defense costs
14 and/or indemnify until her conditions are met are not expressed in the MSA, and Ms. Hascheff's
15 position that she has some "implied" right or "conditions precedent" to her obligation to pay is
entirely inconsistent with the MSA or existing caselaw.

16 Law

17 **A. Declaratory Relief Standard**

18 A party must meet four elements before declaratory relief can be granted:

- 19 1) there must exist a justiciable controversy; that is to say, a
20 controversy in which a claim of right is asserted against one who
21 has an interest in contesting it; (2) the controversy must be
22 between persons whose interests are adverse; (3) the party seeking
23 declaratory relief must have a legal interest in the controversy,
that is to say, a legally protectable interest; and (4) the issue
involved in the controversy must be ripe for judicial
determination.

24 *MB Am., Inc. v. Alaska Pac. Leasing*, 132 Nev. Adv. Op. 8, 367 P.3d 1286, 1291 (2016).
25 Moreover, any person whose rights, status, or other legal relations "are affected by a statute . . . may
26 have determined any question of construction" of that statute. NRS 30.040(1); *Prudential Ins. Co.*
27 *of Am. v. Ins. Comm'r*, 82 Nev. 1, 5, 409 P.2d 248, 250 (1966) (declaratory relief is available when
28

1 a controversy concerning the meaning of a statute arises). "Whether a determination is proper in an
2 action for declaratory relief is a matter within the trial judge's discretion that will not be disturbed
3 on appeal unless abused." *El Capitan Club v. Fireman's Fund Ins. Co.*, 89 Nev. 65, 68, 506 P.2d
4 426, 428 (1973).

5 **B. Interpretation of MSA Standard.**

6 A settlement agreement, which is a contract, is governed by principles of contract law.
7 *Mack v. Estate of Mack*, 125 Nev. 80, 95, 206 P.3d 98, 108 (2009). As such, a settlement
8 agreement will not be an enforceable contract unless there is "an offer and acceptance, meeting of
9 the minds, and consideration." *Id.* Generally, when a contract is clear on its face, it 'will be
10 construed from the written language and enforced as written.'" *Buzz Stew, LLC v. City of N. Las*
11 *Vegas*, 131 Nev. 1, 7, 341 P.3d 646, 650 (2015) (citing *Canfora v. Coast Hotels & Casinos, Inc.*,
12 121 Nev. 771, 776, 121 P.3d 599, 603 (2005)). The court has no authority to alter the terms of an
13 unambiguous contract. *Canfora*, 121 Nev. at 776, 121 P.3d at 603.

14 Whether a contract is ambiguous likewise presents a question of law. *Galardi v. Naples*
15 *Polaris, LLC*, 129 Nev. 306, 309, 301 P.3d 364, 366 (2013) (citing *Margrave v. Dermody Props.*,
16 110 Nev. 824, 827, 878 P.2d 291, 293 (1994)). A contract is ambiguous if its terms may reasonably
17 be interpreted in more than one way, but ambiguity does not arise simply because the parties
18 disagree on how to interpret their contract. *Id.* (citing *Anvui, L.L.C. v. G.L. Dragon, L.L.C.*, 123
19 Nev. 212, 215, 163 P.3d 405, 407 (2007); *Parman v. Petricciani*, 70 Nev. 427, 430–32, 272 P.2d
20 492, 493–94 (1954)).

21 Marital agreements are "enforceable unless unconscionable, obtained through fraud,
22 misrepresentation, material nondisclosure or duress." *Furer v. Furer*, 126 Nev. 712, 367 P.3d 770
23 (2010) (citing *Sogg v. Nevada State Bank*, 108 Nev. 308, 312, 832 P.2d 781, 783–84 (1992)).

24 After merger, the district court may enforce the provisions of the divorce decree by using its
25 contempt power. *Friedman v. Friedman*, 128 Nev. 897, 381 P.3d 613 (2012) (citing *Hildahl v.*
26 *Hildahl*, 95 Nev. 657, 662–63, 601 P.2d 58, 61–62 (1979)). The district court may interpret the
27 language of the divorce decree in order to resolve ambiguity. *Id.* (citing *Kishner v. Kishner*, 93 Nev.
28 220, 225, 562 P.2d 493, 496 (1977)).

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C. Interpretation of Indemnification Standard.

The scope of a contractual indemnity clause is determined by the contract and is generally interpreted like any contract. *George L. Brown Ins. v. Star Ins. Co.*, 126 Nev. 316, 323, 237 P.3d 92, 96 (2010).

Contractual indemnity is where, pursuant to a contractual provision, two parties agree one party will reimburse the other party for liability resulting from the former's work. *United Rentals Hwy. Techs. v. Wells Cargo*, 128 Nev. 666, 673, 289 P.3d 221, 226 (2012). Contracts purporting to indemnify a party against its own negligence will only be enforced if they clearly express such an intent, and a general provision indemnifying the indemnitee against "any and all claims" standing alone, is not sufficient. *Reyburn Lawn & Landscape Designers, Inc. v. Plaster Dev. Co., Inc.*, 127 Nev. 331, 339, 255 P.3d 268, 274 (2011).

When the duty to indemnify arises from contractual language, it generally is not subject to equitable considerations; rather, it is enforced in accordance with the terms of the contracting parties' agreement. *United Rentals Hwy. Techs. v. Wells Cargo*, 128 Nev. 666, 673, 289 P.3d 221, 226 (2012).

An indemnity clause imposing a duty to defend is construed under the same rules that govern other contracts. *United Rentals Hwy. Techs. v. Wells Cargo*, 128 Nev. 666, 676, 289 P.3d 221, 228 (2012). The duty to defend is broader than the duty to indemnify because it covers not just claims under which the indemnitor is liable, but also claims under which the indemnitor could be found liable. *Id.* Generally, a contractual promise to defend another against specified claims clearly connotes an obligation of active responsibility, from the outset, for the promisee's defense against such claims. *Id.* While the duty to defend is broad, it is not limitless. *Id.*

An indemnitee's duty, if any, to provide notice to an indemnitor arises from the express and unambiguous language of the indemnity agreement. *Fontenot v. Mesa Petroleum Co.*, 791 F.2d 1207, 1221 (5th Cir. 1986) (holding where an indemnity agreement does not require notice courts will not infer or insert a notice requirement as a condition precedent to a right to recover on the indemnitee contract); *Premier Corp. v. Economic Research and Analysts, Inc.*, 578 F. 2d 551, 554 (4th Cir. 1978) (holding notice is unnecessary unless the indemnity contract requires it).

1
2 **D. Laches Standard.**

3 Laches, an equitable doctrine, may be invoked when delay by one party prejudices the other
4 party such that granting relief to the delaying party would be inequitable. *Besnilian v. Wilkinson*,
5 117 Nev. 519, 522, 25 P.3d 187, 189 (2001). However, to invoke laches, the party must show that
6 the delay caused actual prejudice. *Id.*

7 Laches is more than mere delay in seeking to enforce one's rights; it is delay that works a
8 disadvantage to another. *Home Sav. Ass'n v. Bigelow*, 105 Nev. 494, 496, 779 P.2d 85, 86 (1989).
9 The condition of party asserting laches must become so changed that the party cannot be restored to
10 their former state. *Id.* The applicability of the doctrine of laches turns upon peculiar facts of each
11 case. *Id.*

12 If the elements of a laches defense are met, a court may dismiss an entire case, dismiss
13 certain claims, or restrict the damages available to the plaintiff. *Morgan Hill Concerned Parents*
14 *Ass'n v. California Dep't of Educ.*, 258 F. Supp. 3d 1114, 1132–33 (E.D. Cal. 2017) (citing
15 *E.E.O.C. v. Timeless Investments, Inc.*, 734 F.Supp.2d 1035, 1067 (E.D. Cal. 2010)).

16 The Ninth Circuit has implicitly recognized a court's ability to raise the doctrine of laches
17 *sua sponte*. *Id.* (citing *Sw. Voter Registration Educ. Project v. Shelley*, 344 F.3d 914 (9th Cir. 2003)
18 (en banc)). A limitation on the *sua sponte* application of laches is in circumstances in which parties
19 lack notice about an issue and are not given an opportunity to address it. *Morgan Hill Concerned*
20 *Parents Ass'n*, 258 F. Supp. 3d at 1133.

21 **E. Order to Show Cause for Contempt of Court Standard.**

22 Pursuant to NRS 22.030(2), if a contempt is not committed in the immediate view and
23 presence of the court or judge at chambers, an affidavit must be presented to the court or judge of
24 the facts constituting the contempt, or a statement of the facts by the masters or arbitrators. The
25 requirement of an affidavit is confirmed by case law, specifically requiring an affidavit must state
26 facts specific enough to allow the Court to proceed to be submitted at the Contempt proceeding,
27 which is necessary to give the court subject matter jurisdiction. *See Awad v. Wright*, 106 Nev. 407,
28 794 P.2d 713 (1990) (overruled on other grounds); *Philips v. Welch*, 12 Nev. 158 (1887); *Strait v.*
Williams, 18 Nev. 430 (1884). Contempt statutes are to be strictly construed based upon the

1 criminal nature of a contempt proceeding. *Ex Parte Sweeney*, 18 Nev. 71 (1883).

2 The penalties for contempt include a monetary fine, not to exceed \$500.00, or
3 imprisonment, not to exceed 25 days, or both. *See* NRS 22.100(2). In addition to the penalties set
4 forth above the Court may require the person to pay to the party seeking to enforce the writ, order,
5 rule or process the reasonable expenses incurred by the party as a result of the contempt. *See* NRS
6 22.100(3).

7 The moving party must make a *prima facie* showing that the non-moving had the ability to
8 comply with the Court order and that the violation of the order was willful. *Rodriguez v. District*
9 *Court*, 120 Nev. 798, 809, 102 P.3d 41, 49 (2004). In order for contempt to be found, the Court
10 order “must be clear and unambiguous, and must spell out the details of compliance in clear,
11 specific, and unambiguous terms so that the person will readily know exactly what duties or
12 obligations are imposed on him.” *Cunningham v. District Court*, 102 Nev. 551, 559-60, 729 P.2d
13 1328, 1333-34 (1986).

14 **F. Attorneys’ Fees & Costs Award Standard.**

15 NRS 18.010(2)(b) and NRCP 11 authorize the district court to grant an award of attorney
16 fees as sanctions against a party who pursues a claim without reasonable ground. We have
17 consistently recognized that “[t]he decision to award attorney fees is within the [district court’s]
18 sound discretion ... and will not be overturned absent a ‘manifest abuse of discretion.’” *Edwards v.*
Emperor’s Garden Rest., 122 Nev. 317, 330, 130 P.3d 1280, 1288 (2006).

19 NRS 18.010 also governs the instances in which attorney fees are awarded, and states the
20 following:

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

NRS. 18.010(2)(b); *Capanna v. Orth*, 134 Nev. 888, 895, 432 P.3d 726, 734 (2018).

1 In making an award of fees, the Court also examines the reasonableness of attorneys' fees
2 under the factors set forth in *Brunzell*:

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

85 Nev. at 349, 455 P.2d at 33. Each of these factors must be given consideration. *Id.* 85 Nev. at
350, 455 P.2d at 33.

The district court's decision to award attorney fees is within its discretion and will not be
disturbed on appeal absent a manifest abuse of discretion. *Capanna*, 134 Nev. at 895, 432 P.3d at
734 (2018).

NRS 18.020(3) provides costs must be allowed to a prevailing party against any adverse
party against whom judgment is rendered in an action for the recovery of money or damages, where
the plaintiff seeks to recover more than \$2,500.

Order

The Court **GRANTS** Ms. Hascheff's MSA Motion. The Court is satisfied the legal fees
incurred by Judge Hascheff as a witness in the collateral trust action and the stayed malpractice
lawsuit where he is sued individually are encompassed by MSA § 40. The Court finds, as a matter
of law, MSA § 40 does not contain express and unambiguous language requiring Judge Hascheff to
have provided immediate notice of either the collateral trust action or the malpractice action to Ms.
Hascheff. *Fontenot*, 791 F.2d at 1221; *Premier Corp.*, 578 F. 2d at 554. Furthermore, this Court is
barred from undertaking equitable considerations regarding MSA § 40's contractual language.
United Rentals Hwy. Techs., 128 Nev. at 673, 289 P.3d at 226.

However, Judge Hascheff was not transparent about his request for indemnification. In
January 2020, Judge Hascheff notified Ms. Hascheff he had been sued by a client for malpractice.
He stated that the malpractice action was on-going and he inferred that he had incurred all of fees
and costs he was requesting from Ms. Hascheff directly related to this malpractice suit. He was not
transparent that he was seeking indemnification for fees and costs related to a collateral trust action.

1 When asked for an accounting of the fees and costs, Judge Hascheff failed to provide a
2 complete and transparent accounting. In his email of March 1, 2020, Judge Hascheff changed
3 the sum he was asking Ms. Hascheff to pay from \$5,200.90, as previously demanded, to
4 \$4,675.90. *Compare MSA Motion, Ex. 1 with MSA Motion, Ex. 4.* This Court further notes
5 Judge Hascheff's malpractice insurance company reimbursed only up to \$2,500 indicating not
6 all the expenses demanded by Judge Hascheff are related to the defense of the stayed
7 malpractice action. Judge Hascheff and his counsel also noted on the record they unilaterally
8 imposed redactions on the billing statements provided by Judge Hascheff's attorneys, thereby
9 obfuscating the true amount owed by Ms. Hascheff.¹ Ms. Hascheff was told that these
10 redactions, which resulted in fees in the amount \$3,300, were privileged.

11 Judge Hascheff presumably authorized his counsel to attend portions of the collateral
12 trust trial at times when he was not on the witness stand. Significant time was billed to prepare
13 for meetings with attorneys in the collateral trust action, but efforts by Ms. Hascheff's counsel
14 to communicate with counsel for the parties in the collateral trust action were ignored.

15 The only reference to the malpractice action are found in a billing statement dated
16 December 10, 2019 and reflect that on July 1, 2019 Judge Hascheff was billed one tenth of an
17 hour related to the review/analysis of correspondence regarding the state of action against
18 Judge Hascheff. And on September 25, 2019, Judge Hascheff was billed three tenths of an
19 hour for the review/analysis of a draft joint motion and stipulation to stay the malpractice
20 proceedings. *Confidential Exhibit I.* As a result, this Court cannot in good conscience require
21 Ms. Hascheff to pay the full amount demanded by Judge Hascheff based on Judge Hascheff's
22 inconsistent and secretive criteria.

23 Most troubling to this Court is Judge Hascheff's response to this Court's question as to
24 why he waited over a year to notify Ms. Hascheff of the potential malpractice claims against
25 him. Judge Hascheff testified he had not notified Ms. Hascheff of the malpractice action or the

26 ¹ Further issues of transparency revolve around the sum of money Judge Hascheff for his fees and costs as compared to
27 what his malpractice carrier paid. The Court notes that the malpractice policy held by Judge Hascheff had a \$10,000
28 deductible, yet in this case Judge Hascheff demanded that Ms. Hascheff pay a sum of less than one-half of the
deductible. If Judge Hascheff's claim is correct that the malpractice carrier felt that defense of claims in the collateral
trust action was actually defense of the malpractice action, why was his share of the defense a figure other than
\$10,000, the amount of the deductible?

1 collateral trust action as he planned on being solely responsible for the legal fees and costs
2 associated therewith, without indemnification from Ms. Hascheff, until the fees and costs
3 became too great.

4 The Court finds Judge Hascheff's conscious disregard and selective enforcement of MSA §
5 40 is comparable to a claim for laches. *Besnilian*, 117 Nev. 519, at 522, 25 P.3d at 189; *Bigelow*,
6 105 Nev. at 496, 779 P.2d at 86. This Court cautiously raises the doctrine of laches *sua sponte* as
7 this Court provided notice to the parties it intended to inquire into the timeliness of Judge
8 Hascheff's claims as one of the specific areas the Court wanted addressed at the hearing. *See*
9 *Morgan Hill Concerned Parents Ass'n*, 258 F. Supp. 3d 1114, 1132–33.

10 Based on Judge Hascheff's testimony, the Court finds Ms. Hascheff has been prejudiced by
11 Judge Hascheff's actions due to his deliberate delay in invoking his rights under MSA § 40.
12 Although immediate notice is not explicitly required in MSA § 40, Judge Hascheff's delay
13 prejudiced Ms. Hascheff. Ms. Hascheff was given no say in the fees and costs expended by Judge
14 Hascheff in the collateral trust action. She was led to believe that the fee demand from Judge
15 Hascheff was related solely to the malpractice claim and only after expending fees and costs for her
16 own counsel did she learn that the lion's share of the demand was related to a collateral trust action.
17 She was thwarted in her efforts to receive a complete bill for the services provided and at the
18 hearing the Court learned that it was Judge Hascheff and his divorce counsel who decided the
19 redacted portions of the bill statement she was provided. As such it is clear that Ms. Hascheff has
20 been prejudiced by Judge Hascheff's actions to the point where granting Judge Hascheff's
21 requested relief would be inequitable. *See Besnilian*, 117 Nev. 519, at 522, 25 P.3d at 189; *see also*
22 *Bigelow*, 105 Nev. at 496, 779 P.2d at 86. The Court is convinced had Judge Hascheff exercised
23 his rights and obligations under the MSA in a timely fashion and without obfuscation, Ms. Hascheff
24 would not have been prejudiced and she would have been liable for her share of the fees and costs
incurred for both the malpractice action and the collateral trust action.

25 This Court **DENIES** Judge Hascheff's OSC Motion. This Court finds Judge Hascheff was
26 unable to make a *prima facie* showing Ms. Hascheff had the ability to comply with the parties'
27 MSA, yet willfully violated her obligations. As discussed *supra*, Ms. Hascheff was not provided a
28 clear accounting of her indemnification obligations, and Judge Hascheff chose to arbitrarily enforce

1 his rights under the MSA, thereby having his claims limited by laches. As a result, this Court
2 denies the OSC Motion.

3 The Court **DENIES** the parties' respective requests for attorneys' fees and costs associated
4 with the MSA Motion and OSC Motion. The Court notes MSA § 35 addresses the payment of
5 future attorneys' fees and costs to a prevailing party upon providing, *inter alia*, at least 10-day
6 written notice before filing an action or proceeding. This Court is assured both parties have
7 satisfied their obligations under MSA § 35. *See MSA Motion*, Ex. 4-8. For example, counsel for
8 Judge Hascheff and Ms. Hascheff undisputedly provided their MSA § 35 notices on May 29, 2020
9 and June 2, 2020, more than 10-days prior to the filing of the MSA Motion and OSC Motion. *MSA*
10 *Motion*, Ex. 7-8. Further, the Court finds there was a reasonable basis for litigating the arguments
11 presented by both parties in their respective motions. Therefore, the Court declines to award
12 attorneys' fees and costs.

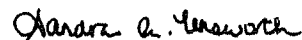
13 **GOOD CAUSE APPEARING, IT IS SO ORDERED**

14 **The MSA Motion is GRANTED.**

15 **The OSC Motion is DENIED.**

16 **IT IS FURTHER ORDERED an award for attorneys' fees and costs are DENIED.**

17 DATED this 1st day of February, 2021.

18 

19 _____
20 Sandra A. Unsworth
21 District Judge

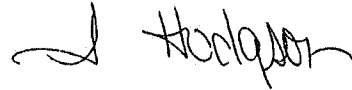
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court
3 in and for the County of Washoe, and that on February 1, 2021, I deposited in the county mailing
4 system for postage and mailing with the United States Postal Service in Reno, Nevada, or via e-
5 filing, a true copy of the foregoing document addressed as follows:

6 **ELECTRONIC FILING:**

7
8 **SHAWN MEADOR, ESQ., for LYNDAS HASCHEFF**
9 **TODD TORVINEN, ESQ., for PIERRE HASCHEFF**

10
11 

12
13 _____
14 Judicial Assistant