

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

DAVID G. MARTINEZ and CHILLY  
WILLY'S HANDYMAN SERVICES,  
LLC

Petitioners,

EIGHTH JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA IN AND  
FOR THE COUNTY OF CLARK; THE  
HONORABLE RONALD J. ISRAEL,  
DISTRICT JUDGE,

and

TAYLOR MILES CAPE, and individual,

Respondents.

Supreme Ct. Case No. 83911  
Electronically Filed  
Mar 29 2022 11:56 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Dist. Ct. Case No.:

A-20-818569-C

**EMERGENCY MOTION UNDER NRAP 27(E)**

Petitioners DAVID G. MARTINEZ and CHILLY WILLY'S HANDYMAN SERVICES, LLC ("Petitioners"), by and through their attorneys of record, request the Court consider their Motion to Stay Proceedings before April 7, 2021, which is the initial expert disclosure deadline pursuant to NRCP 16.1(a)(2).

**I. NRAP 27(E) CERTIFICATE**

The names, addresses and telephone numbers of the parties' counsel:

**A. Information of the Parties**

Ryan A. Loosvelt, Esq.  
Nevada Bar No. 8550  
GGRM Law Firm  
2770 S. Maryland Parkway, Suite 100  
Las Vegas, Nevada 89109  
Telephone: (702) 384-1616  
Attorneys for Taylor Miles Cape

Ryan L. Dennett Esq.  
Nevada Bar No. 005617  
Brent D. Quist, Esq.  
Nevada Bar No. 009157  
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Attorneys for Chilly Willy's  
Handyman Services, LLC

John T. Keatings, Esq.  
Nevada Bar No. 006373  
Keating Law Group  
9130 W. Russell Road, Suite 200  
Las Vegas, Nevada 89148  
Attorneys for David G. Martinez

**B. Existence and Nature of the Emergency**

This action arises out of an automobile accident. On 7/27/21, the parties submitted and the district court signed a Stipulation and Order to Extend Discovery (First Request) and Trial (First Request), which established an initial expert disclosure deadline of 1/7/22 and set trial for 6/27/22.<sup>1</sup>

On 12/14/21, Petitioners filed their Writ of Mandamus as to the district court's order regarding Dr. Lewis Etcoff, Petitioners' expert. On 12/14/21, Petitioners filed their Motion to Stay with the district court. Respondent filed his Opposition on 12/21/21, and the Reply was filed on 12/23/21. The Motion to Stay was set for

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<sup>1</sup> Exhibit A, Quist Declaration at ¶3.

chambers calendar. On 1/14/22, the district court denied the motion.<sup>2</sup>

On 1/3/21, the district court signed a Stipulation and Order to Extend Discovery and Continue Trial (Second Request) that extended the initial expert disclosure deadline to 4/7/22 and reset trial to 11/14/22.<sup>3</sup>

On February 8, 2022, the Petitioners filed a Motion to Stay Proceedings with this Court.<sup>4</sup>

On March 28, 2022, Petitioners conferred with Respondent Cape, and informed him that Petitioners sought an additional 60-day continuance of the discovery deadlines to provide this Court additional time to consider the Motion to Stay or Petitioner's Writ of Mandamus, and that if Respondent Cape would not stipulate to the additional discovery stay, that Petitioners would be forced to file an Emergency Motion requesting this Court consider the Petitioners' Motion to Stay. Respondent Cape has indicated he will not agree to an additional discovery continuance. He has been informed of this Emergency Motion.<sup>5</sup>

Respondent Cape asserts severe injuries from an automobile accident. He has disclosed a Life Care Plan totaling nearly \$6 million. This Life Care Plan is based, in part, on a neuropsychological exam which the Respondent underwent with his

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<sup>2</sup> Quist Declaration, at ¶4.

<sup>3</sup> Quist Declaration, at ¶5.

<sup>4</sup> Quist Declaration, at ¶6.

<sup>5</sup> Quist Declaration, at ¶¶7-9.

treating neuropsychologist.<sup>6</sup>

Petitioners have requested Respondent undergo a Rule 35 neuropsychological exam with their expert, Dr. Lewis Etcoff. Mr. Cape only agreed to that exam if there was a third-party observer and recording of the same. Dr. Etcoff has maintained that he is professional and ethically prohibited from conducting the exam under those conditions.<sup>7</sup>

Petitioners filed a motion to compel the Rule 35 neuropsychological exam. The discovery commissioner granted in part and denied in part the motion and held the good cause for requiring the presence of an observer and recording of the exam was the Governor and Legislature having passed NRS 52.380 into law.<sup>8</sup> The district court upheld the discovery commissioner report and recommendations over the objection filed by the Petitioners. Petitioners filed a Motion to Stay with this Court back on February 8, 2022. This Court has not yet ruled on that Motion.<sup>9</sup>

The nature of the emergency is the district court has denied the Petitioners' Motion to Stay. Respondeat will not agree to another continuance of the discovery deadline. The deadline to serve initial expert disclosures is April 7, 2022. Petitioners are unable to proceed with a Rule 35 neuropsychological exam of Mr. Cape until

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<sup>6</sup> Quist Declaration, at ¶10.

<sup>7</sup> Quist Declaration, at ¶11.

<sup>8</sup> Quist Declaration, at ¶12.

<sup>9</sup> Quist Declaration, at ¶¶13-14.

this Court considers and rules on their Writ of Mandamus because, currently, Petitioners are required to have a Rule 35 neuropsychological exam conducted—per the district court order—with an observer and recording of the same. However, Dr. Etcoff will not perform the exam under those conditions. Moreover, no Nevada-licensed neuropsychologist will conduct the neuropsychological exam under those conditions.<sup>10</sup>

Thus, there is a high likelihood if the Court does not consider the Petitioners' Motion to Stay on an emergency basis the deadline to serve initial expert disclosures per Rule 16.1(a)(2) will run/expire before Petitioners are able to have a Rule 35 neuropsychological exam performed and before Dr. Etcoff is able to produce a Rule 35 report based on his exam.<sup>11</sup>

If that were to occur, Petitioners would suffer irreparable harm because they would not have a means to challenge the neuropsychological exam and report prepared by Respondent Cape's treating neuropsychologist, upon which his Life Care Plan is based.<sup>12</sup> They would not have a means to rebut a major part of the Life Care Plan.

Petitioners believe there is a good faith basis for the Court to grant the Motion to Stay, for the reasons set forth in that Motion, including that the Court has recently

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<sup>10</sup> Quist Declaration, at ¶¶15-16.

<sup>11</sup> Quist Declaration, at ¶17.

<sup>12</sup> Quist Declaration, at ¶18.

held NRS 52.380 is unconstitutional because it violates Nevada's Separation of Powers Doctrine. *See Lyft, Inc. v. Eighth Judicial District Court*, 137 Nev. Adv. Op. 86 (2021); *Yusi v. Eighth Judicial District Court*, 502 P.3d. 1088 (Nev. 2022) (unpublished decision). Here, the reason the discovery commissioner mandated the presence of an observer and recording of the neuropsychological exam was because NRS 52.380 had been passed into law. The district court adopted this logic.<sup>13</sup>

Thus, Petitioners request the Court consider their Motion to Stay prior to April 7, 2022.<sup>14</sup>

C. How Notification was Provided to the Other Parties.

Respondent's attorney was notified Petitioners intended to file this Motion via e-mails sent to Respondent Cape's counsel on March 28, 2022. Through his response to those e-mails, it is understood he received notice of the intent to file this Emergency Motion.

## II. DISTRICT COURT DENIED MOTION TO STAY

The Petitioners first sought a stay from the district court, and filed their Motion to Stay with this Court after the district court denied their Motion to Stay. The grounds advanced in support of the Motion to Stay with this Court were submitted to the district court.<sup>15</sup>

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<sup>13</sup> Quist Declaration, at ¶19.

<sup>14</sup> Quist Declaration, at ¶20.

<sup>15</sup> Quist Declaration, at ¶21.

### **III. CONCLUSION**

For the foregoing reasons, this Court should consider Petitioners' Motion for Stay before April 7, 2022.

DATED: 03/29/22

**DENNETT WINSPEAR, LLP**

By: /s/ Brent D. Quist  
RYAN L. DENNETT, ESQ.  
Nevada Bar No. 005617  
BRENT D. QUIST, ESQ.  
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3301 N. Buffalo Drive, Suite 195  
Las Vegas, Nevada 89129  
Attorneys for Defendant,  
Chilly Willy's Handyman Service, LLC.

DATED: 03/29/22

**KEATING LAW GROUP**

By: /s/ John T. Keating  
JOHN T. KEATING, ESQ.  
Nevada Bar No. 6373  
9130 W. Russell Road, Suite 200  
Las Vegas, Nevada 89148  
Attorneys for Defendant,  
David G. Martinez

### **CERTIFICATE OF SERVICE**

Per NRAP 21(a) and 25 (c), I certify that I am an employee of Dennett Winspear, LLP, and that on the 29<sup>th</sup> day of March, 2022, service of **EMERGENCY MOTION UNDER NRAP 27(E)** was served via electronic means by operation of the Court's electronic filing system to:

<b>NAME</b>	<b>TEL., FAX &amp; EMAILS</b>	<b>PARTY REPRESENTING</b>
Ryan A. Loosvelt, Esq. Nevada Bar No. 8550 <b>GGRM LAW FIRM</b> 2770 S. Maryland Parkway Suite 100 Las Vegas, Nevada 89109	Telephone: (702) 384-1616 Facsimile: (702) 384-2990 Email: rloosvelt@ggrmlawfirm.com	<i>Plaintiff Taylor Miles Cape</i>
John T. Keating, Esq. Nevada Bar No. 6373 <b>KEATING LAW GROUP</b> 9130 W. Russell Road Suite 200 Las Vegas, Nevada 89148	Telephone: (702) 228-6800 Facsimile: (702) 228-0443 Email: jkeating@keatinglg.com	<i>Defendant David G. Martinez</i>
Aaron D. Ford, Esq. Nevada Bar No. 7704 <b>NEVADA OFFICE OF ATTORNEY GENERAL</b> 555 E. Washington Avenue #3900 Las Vegas, Nevada 89101	Telephone: (702) 486-3768 Facsimile: (702) 486-3420	
Honorable Judge Ronald J. Israel Department 28 <b>REGIONAL JUSTICE CENTER</b> 200 Lewis Avenue Las Vegas, Nevada 89155	Telephone: (702) 366-1407	<i>Respondent Court</i>

/s/ Theresa Amendola  
An Employee of DENNETT WINSPEAR, LLP



**DECLARATION IN SUPPORT OF EMERGENCY MOTION UNDER NRAP  
27(E)**

I, BRENT D. QUIST, ESQ., declare under penalty of perjury:

1. I am an attorney licensed in the State of Nevada and represent Petitioner Chilly Willy's Handyman Service in the matter of *Cape v. Martinez, et al*, District Court Case No. A-20-818569-C (Supreme Court Case No. 83911).

2. I have personal knowledge regarding the matters set forth herein. To the extent statements are made upon information and belief and to the best of my knowledge, it is set forth herein.

3. On July 27, 2021, the parties submitted and the district court signed a Stipulation and Order to Extend Discovery (First Request) and Trial (First Request), which established an initial expert disclosure deadline of January 7, 2022 and set trial for June 27, 2022.

4. On December 14, 2021, Petitioners filed their Writ of Mandamus as to the district court's order regarding Dr. Lewis Etcoff, Petitioners' expert. On December 14, 2021, Petitioners filed their Motion to Stay with the district court. Respondent filed his Opposition on December 21, 2021, and the Reply was filed on December 23, 2021. The Motion to Stay was set for chambers calendar. On January 14, 2022, the district court denied the motion.

5. On January 3, 2021, the district court signed a Stipulation and Order to Extend Discovery and Continue Trial (Second Request) that extended the initial expert disclosure deadline to April 7, 2022 and reset trial to November 14, 2022.

6. On February 8, 2022, the Petitioners filed a Motion to Stay Proceedings with this Court.

7. On March 28, 2022, I called counsel for Respondent Cape, attorney Ryan Loosevelt, Esq., and left him a voice message.

8. On March 28, 2022, I sent Mr. Loosevelt two e-mails. In the first e-mail I asked him to stipulate to a 60-day continuance of the current discovery

1 deadlines. I informed him if he would not agree to the continuance, I would need to  
2 file the Emergency Motion.

3 9. In the second e-mail, sent March 28, 2022, I sent him a draft  
4 Stipulation and Order to Continue Discovery (Third Request). He said he did not  
5 have authority from his client to agree to the discovery continuance. I e-mailed him  
6 back, and informed him I would proceed with the Emergency Motion.

7 10. Respondent Cape claims severe injuries from an automobile accident.  
8 He has disclosed a Life Care Plan totaling nearly \$6 million. This Life Care Plan is  
9 based, in part, on a neuropsychological exam which the Respondent underwent with  
10 his treating neuropsychologist.

11 11. Petitioners have sought Respondent to undergo a Rule 35  
12 neuropsychological exam with their expert, Dr. Lewis Etcoff. Respondent only  
13 agreed to that exam if there was a third-party observer and recording of the same,  
14 and if Dr. Etcoff's raw test data was shared with non-psychologists. Dr. Etcoff has  
15 maintained that he is professional and ethically prohibited from conducting the  
16 exam under those conditions.

17 12. Petitioners filed a motion to compel the Rule 35 neuropsychological  
18 exam. The Discovery Commissioner granted in part and denied in part the motion  
19 and held the good cause for requiring the presence of an observer and recording of  
20 the exam was the Governor and Legislature had passed NRS 52.380 into law.

21 13. The district court upheld the Discovery Commissioner Report and  
22 Recommendations over the objection filed by the Petitioners.

23 14. Petitioners filed a Motion to Stay back on February 8, 2022. The Court  
24 has not yet ruled on that Motion.

25 15. The **nature of the emergency** is that the district court has already  
26 denied the Petitioners' Motion to Stay. Respondent will not agree to another  
27 continuance of the discovery deadline.

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1           16. The deadline to serve initial expert disclosures is April 7, 2022.  
2           Petitioners are unable to proceed with a Rule 35 neuropsychological exam of the  
3           Plaintiff until this Court considers and rules on their Writ of Mandamus because,  
4           currently, Petitioners are required to have a Rule 35 neuropsychological exam  
5           conducted—per the District Court Order—with an observer and recording of the  
6           same. However, Dr. Etcoff will not perform the exam under those conditions.  
7           Moreover, upon information and belief and to the best of my knowledge, no  
8           Nevada-licensed neuropsychologist will conduct the neuropsychological exam  
9           under those conditions.

10           17. Thus, there is a high likelihood if the Court does not consider the  
11           Petitioners’ Motion to Stay on an emergency basis the deadline to serve initial  
12           expert disclosures per Rule 16.1(a)(2) will run/expire before Petitioners are able to  
13           have a Rule 35 neuropsychological exam performed and before Dr. Etcoff is able to  
14           produce a Rule 35 report based on his exam.

15           18. If that were to occur, Petitioners would suffer irreparable harm because  
16           they would not have a means to challenge the neuropsychological exam and report  
17           prepared by Respondent Cape’s treating neuropsychologist, upon which his Life  
18           Care Plan is based.

19           19. I believe there is a good faith basis for the Court to grant the Motion to  
20           Stay, for the reasons set forth in that Motion, including that the Court has recently  
21           held NRS 52.380 is unconstitutional because it violates Nevada’s Separation of  
22           Powers Doctrine. The reason the Discovery Commissioner mandated the presence  
23           of an observer and recording of the neuropsychological exam was because NRS  
24           52.380 had been passed into law. The district court adopted this logic.

25           20. Thus, Petitioners request the Court consider their Motion to Stay **prior**  
26           **to April 7, 2022.**

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/s/ Brent D. Quist  
BRENT D. QUIST, ESQ