

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

SARAH JANEEN ROSE,  
Appellant,  
vs.  
DAVID JOHN ROSE,  
Respondent.

Electronically Filed  
Jul 13 2022 05:25 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court  
CASE NO. 84295  
District Court Case No:  
D547250

**JOINT APPENDIX**

Volume I - (Bates Stamps APPX0001 - APPX0250)  
Volume II - (Bates Stamps APPX0251 - APPX0471)  
Volume III - (Bates Stamps APPX0472 - APPX0670)  
Volume IV - (Bates Stamps APPX0671 - APPX0767)  
Volume V - (Bates Stamps APPX0768 - APPX0941)  
Volume VI - (Bates Stamps APPX0942 - APPX01176)  
Volume VII - (Bates Stamps APPX01177 - APPX01391)  
Volume VIII - (Bates Stamps APPX01392 - APPX01599)  
Volume IX - (Bates Stamps APPX01600 - APPX01842)  
Volume X - (Bates Stamps APPX01843 - APPX01921)

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ATTORNEY FOR RESPONDENT

**LIST OF APPENDIX DOCUMENTS**

<b><u>Title of Document</u></b>	<b><u>Filing Date</u></b>	<b><u>Volume</u></b>	<b><u>Bates Stamp</u></b>
Acceptance of Service	10.05.21	Vol. VI	APPX1170
Affidavit in Support of and Request for Summary Disposition of Decree of Divorce	03.23.18	Vol. I	APPX0120- APPX0122
Affidavit of Resident Witness	03.23.18	Vol. I	APPX0118- APPX0119
Amended Citation Correction to Plaintiff's Reply to Defendant's Opposition to Motion to Enforce Memo- randum of Understanding and For Attorney's Fees and Costs	6.13.19	Vol. II	APPX0344- APPX0346
Amended Order Setting Evidentiary Hearing	4.10.20	Vol. II	APPX0441- APPX0442
Amended Trial Subpoena Nexie Rose	1.26.20	Vol. II	APPX0433
Answer and Counterclaim for Divorce	9.26.17	Vol. I	APPX0007- APPX0014
Appendix to Defendant's Opposition to Plaintiff's Motion to Amend or Add Additional Findings Pursuant to NRCP 52, or Alternatively, Motion for Relief Pursuant to NRCP 60(b)(6) and Counter- motion for Attorney's Fees and Costs	6.18.20	Vol. III	APPX0472- APPX0570
Appendix of Exhibits In Support of Plaintiff's Motion to Set Aside The Paragraph Regarding Survivor Benefits in the Decree of Divorce Based Upon Mistake	04.25.18	Vol. I	APPX0198- APPX0200
...			
...			



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1	Appendix of Exhibits to Defendant's Motion For Judgment Pursuant to NRCP 52( c ) Or In The Alternative For Summary Judgment	2.12.20	Vol. IV	APPX0671-APPX0767
4	Case and Non-Jury Trial Management Order	11.06.18	Vol. II	APPX0269-APPX0272
6	Certificate of Service	04.26.18	Vol. I	APPX0204-APPX0206
7	Certificate of Service	10.10.18	Vol. I	APPX0249-APPX0250
9	Certificate of Service	02.8.22	Vol. VIII	APPX1595-APPX1596
10	Complaint for Divorce	2.22.17	Vol. I	APPX0001-APPX0006
12	Court Minute Decision	10.21.20	Vol. III	APPX0650-APPX0656
13	Court Minutes	8.06.20	Vol. III	APPX0573
14	Defendant's Closing Argument	12.13.21	Vol. VIII	APPX1392-APPX1441
16	Defendant's Ex Parte Motion For Order Shortening Time	1.15.20	Vol. II	APPX0419-APPX0421
19	Defendant's List of Witnesses to Plaintiff	11.21.18	Vol. II	APPX0273-APPX0276
20	Defendant's Motion For Judgment Pursuant to NRCP 52 (c) or in the Alternative For Summary Judgment	2.12.21	Vol. III	APPX0657-APPX0670
23	Defendant's Motion to Alter or Amend Judgment, or in the Alternative For New Trial Pursuant to NRCP 59(a)(7) and For Attorney's Fees and Costs	10.9.18	Vol. I	APPX0234-APPX0247
26	...			
27				

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1	Defendant's Motion to Continue Trial (Defendant's First Request)	1.14.20	Vol. II	APPX0411-APPX0417
2				
3	Defendant's Opposition to Motion to Set Aside The Paragraph Regarding Survivor Benefits in the Decree of Divorce Based on Mistake and Countermotion for Attorney's Fees and Costs	05.10.18	Vol. I	APPX0207-APPX0222
4				
5				
6				
7	Defendant's Opposition to Plaintiff's Motion For Relief Pursuant to Administrative Order 20-17 and For Related Relief and Countermotion for Attorney's Fees and Costs	9.25.20	Vol. III	APPX0639-APPX0649
8				
9				
10				
11	Defendant's Opposition to Plaintiff's Motion In Limine to Preclude The Testimony of Marshall [sic] S. Willick, Esq. and Countermotion for Attorney's Fees and Costs	9.19.19	Vol. II	APPX0383-APPX0394
12				
13				
14				
15	Defendant's Opposition to Plaintiff's Motion to Amend or Add Additional Findings Pursuant to NRCP 52, or Alternatively, Motion For Relief Pursuant to NRCP 60(B)(6) and Countermotion For Attorney's Fees and Costs	6.18.20	Vol. II	APPX0462-APPX0471
16				
17				
18				
19				
20				
21	Defendant's Opposition to Plaintiff's Motion to Enforce Memorandum of Understanding and for Attorney's Fees and Countermotion for Attorney's Fees and Costs	5.22.19	Vol. II	APPX0302-APPX0311
22				
23				
24				
25	Defendant's Pre-Trial Memorandum	6.28.19	Vol. II	APPX0347-APPX0355
26	...			
27				



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1	Defendant's Rebuttal to Plaintiff's Rebuttal	1.10.22	Vol. III	APPX1490- APPX1515
2	Closing Argument			
3	Defendant's Response To Plaintiff's Objection	11.12.21	Vol. VII	APPX1368- APPX1370
4	to Notice of Appearance			
5	By audiovisual Trans- mission Filed on Behalf of Shelly Booth Cooley, Esq.			
6	Emergency Ex Parte	12.16.21	Vol. III	APPX1442- APPX1445
7	Request to Extend			
8	Time to File Responsive Closing Argument			
9	Errata to Plaintiff's	2.15.22	Vol. III	APPX1597- APPX1599
10	Memorandum of Fees and Costs and Brunzell			
11	Affidavit of Shelley Lubritz, Esq.			
12	Ex Parte Application	6.11.20	Vol. II	APPX0457- APPX0459
13	and Declaration in			
14	Support of Request For An Order Shortening Time			
15	Ex Parte Motion for	4.23.21	Vol. VI	APPX1100- APPX1102
16	Certification Pursuant to NRCp 54(b)			
17	Ex Parte Order	1.22.20	Vol. II	APPX0422
18	Shortening Time			
19	Exhibit Appendix In	9.04.20	Vol. III	APPX0608- APPX0618
20	Support of Motion For			
21	Relief Pursuant to Administrative Order 20-17 and Other Related Relief			
22	Exhibit Appendix In	10.10.21	Vol. VII	APPX1259- APPX1263
23	Support of Plaintiff's			
24	Motion to Continue Evidentiary Hearing (First Request)			
25	Final Billing of	4.7.22	Vol. X	APPX1914
26	Transcript			

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1	Financial Disclosure Form - David	3.22.18	Vol. I	APPX0095-APPX0106
2	Financial Disclosure Form - Sarah	3.22.18	Vol. I	APPX0107-APPX0117
3				
4	Finding of Fact, Conclusions of Law and Order	1.31.22	Vol. VIII	APPX1516-APPX1532
5				
6	Minute Order	4.08.20	Vol. II	APPX0439-APPX0440
7	Minute Order	6.26.20	Vol. III	APPX0571-APPX0572
8				
9	Minute Order	5.07.21	Vol. VI	APPX1103-APPX1104
10	Motion for Stay of District Court Orders During Pendency of Appeal	2.25.22	Vol. IX	APPX1644-APPX1651
11				
12				
13	Motion to Enforce Memorandum of Understanding and for Attorney's Fees and Costs	5.08.19	Vol. II	APPX0289-APPX0301
14				
15	Motion to Set Aside the Paragraph Regarding Survivor Benefits in the Decree of Divorce Based Upon Mistake	04.25.18	Vol. I	APPX0188-APPX0197
16				
17				
18	Notice of Appeal	2.15.22	Vol. IX	APPX1600-APPX1643
19				
20	Notice of Appearance By Audiovisual Transmission Equipment	10.8.21	Vol. VI	APPX1173-APPX1176
21				
22	Notice of Appearance By Audiovisual Transmission Equipment	11.9.21	Vol. VII	APPX1275-APPX1278
23				
24	Notice of Entry of August 6, 2020 Minute Order	9.04.20	Vol. III	APPX0584-APPX0589
25				
26	Notice of Entry of Decree	04.11.18	Vol. I	APPX0123-APPX0187
27				



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1	Notice of Entry of Order	1.17.19	Vol. II	APPX0280- APPX0284
2	Notice of Entry of	1.31.22	Vol. III	APPX1497-
3	Order			APPX1514
4	Notice of Entry of Order	4.19.22	Vol. X	APPX1918- APPX1921
5	Notice of Entry of Order	5.21.20	Vol. II	APPX0443-
6	(April 8, 2020 Minute Order)			APPX0446
7	Notice of Entry of	6.30.21	Vol. VI	APPX1125-
8	Order After Hearing			APPX1147
	(April 9, 2021)			
9	Notice of Entry of Order	10.1.18	Vol. I	APPX0227-
10	and Withdrawal of Counsel			APPX0233
11	Notice of Entry of	10.11.21	Vol. VII	APPX1269-
12	Order Continuing			APPX1274
	October 12, 2021			
13	Evidentiary Hearing			
14	Notice of Entry of Order	9.09.19	Vol. II	APPX0378-
	From Hearing June 18,			APPX0382
15	2019			
16	Notice of Entry of Order	1.13.20	Vol. II	APPX0407-
	From Hearing on October			APPX0410
17	23, 2019			
18	Notice of Entry of	8.26.20	Vol. III	APPX0578-
	Order Sealing File			APPX0583
19	Notice of Entry of	5.30.19	Vol. II	APPX0315-
20	Stipulation and Order to			APPX0319
21	Continue Evidentiary			
	Hearings (First Request)			
22	and Other Deadlines			
23	Notice of Hearing	1.15.20	Vol. II	APPX0418
24	Notice of Hearing	6.04.20	Vol. II	APPX0456
25	Notice of Hearing	9.04.20	Vol. III	APPX0619
26	Notice of Hearing	2.17.21	Vol. VI	APPX1073
27	Notice of Hearing	9.27.21	Vol. VI	APPX1162- APPX1163

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1	Notice of Hearing	10.11.21	Vol. VIII	APPX1264- APPX1265
2	Notice of Hearing	3.1.22	Vol. IX	APPX1652- APPX1653
3				
4	Notice of Non-Opposition and Request to Grant Plaintiff's Motion For Relief Pursuant to Administrative Order 20-17 and For Other Related Relief	9.19.20	Vol. III	APPX0628- APPX0630
5				
6				
7	Opposition to Defendant's Motion to Alter or Amend Judgment or in the Alternative for New Trial Pursuant to NRCP 59(a)(7) and For Attorney's Fees and Costs; Countermotion For Attorney's Fees	10.24.18	Vol. II	APPX0252- APPX0260
8				
9				
10				
11				
12	Order	09.25.18	Vol. I	APPX0223- APPX0226
13	Order	1.16.19	Vol. II	APPX0277- APPX0279
14				
15	Order	4.19.22	Vol. X	APPX1915- APPX1917
16	Order After Hearing	6.25.21	Vol. VI	APPX1105- APPX1124
17				
18	Order Continuing October 12, 2021 Evidentiary Hearing	10.11.21	Vol. VII	APPX1266- APPX1268
19				
20	Order From Hearing On June 18, 2019	9.09.19	Vol. II	APPX0375- APPX0377
21	Order From Hearing on October 23, 2019	1.13.20	Vol. II	APPX0405- APPX0406
22				
23	Order Sealing File	8.26.20	Vol. III	APPX0575- APPX0577
24	Order Shortening Time	6.16.20	Vol. II	APPX0460- APPX0461
25				
26	Plaintiff, David John Rose's Pretrial Memorandum	7.01.19	Vol. II	APPX0356- APPX0364
27				



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1	Plaintiff's Civil Trial Memoranda	9.23.21	Vol. VI	APPX1148-APPX1161
2	Plaintiff's Closing Argument	11.30.21	Vol. VII	APPX1375-APPX1391
3				
4	Plaintiff's Declaration in Support of Opposition to Motion in Limine To Preclude Testimony of Marshall Willick, Esq. and To Preclude Admission of Mr. Willick's December 20, 2018 Report and Opposition to Countermotion For Attorney's Fees and Cost	10.22.19	Vol. II	APPX0402-APPX0404
5				
6				
7				
8				
9	Plaintiff's Ex Parte Request to Seal File	8.13.20	Vol. III	APPX0574
10				
11	Plaintiff's Memorandum of Fees and Costs and Brunzell Affidavit of Shelley Lubritz, Esq.	2.7.22	Vol. VIII	APPX1551-APPX1594
12				
13	Plaintiff's Motion For Relief Pursuant to Administrative Order 20-17 and for Other Related Relief	9.04.20	Vol. III	APPX0590-APPX0607
14				
15				
16	Plaintiff's Motion in Limine to Preclude the Testimony of Marshall S. Willick, Esq.	9.05.19	Vol. II	APPX0365-APPX0374
17				
18	Plaintiff's Motion to Amend or Add Additional Findings Pursuant to NRCP or, Alternatively, Motion For Relief Pursuant to 60(B)(6)	6.03.20	Vol. II	APPX0447-APPX0455
19				
20				
21				
22	Plaintiff's Motion to Continue Evidentiary Hearing (First Request)	10.10.21	Vol. VII	APPX1248-APPX1258
23				
24	...			
25	...			
26	...			
27				

1	Plaintiff's Objection to	11.11.21	Vol. VII	APPX1279-
2	Notice of Appearance			APPX1281
3	By Audiovisual			
4	Transmission Filed On			
5	Behalf of Shelly			
6	Booth Cooley, Esq.			
7				
8	Plaintiff's Opposition to	3.03.21	Vol. VI	APPX1074-
9	Defendant's Motion For			APPX1089
10	Judgment Pursuant to NRCP			
11	52(c) or in the Alternative			
12	For Summary Judgment			
13	and Countermotion for			
14	Attorney's Fees and Costs			
15				
16	Plaintiff's Opposition	1.23.20	Vol. II	APPX0424-
17	to Defendant's Motion			APPX0431
18	to Continue Trial and			
19	Countermotion For			
20	Attorney's Fees and			
21	Costs			
22				
23	Plaintiff's Opposition	3.17.22	Vol. IX	APPX1654-
24	to Motion For Stay of			APPX1666
25	District Court Orders			
26	During Pendency of			
27	Appeal and Counter-			
	Motion for Attorney's			
	Fees and Costs			
	Plaintiff's Rebuttal	12.27.21	Vol. VIII	APPX1450-
	Closing Argument			APPX1489
	Plaintiff's Reply to	10.07.19	Vol. II	APPX0395-
	Defendant's Opposition to			APPX0401
	Motion in Limine To			
	Preclude Testimony of			
	Marshall Willick, Esq. and			
	To Preclude Admission of			
	Mr. Willick's December			
	20, 2018 Report and			
	Opposition to Countermotion			
	For Attorney's Fees and Cost			
	Plaintiff's Reply to	6.02.19	Vol. II	APPX0320-
	Opposition to Motion			APPX0339
	Enforce Memorandum			
	of Understanding and			
	Opposition to Counter-			
	motion for Attorney's			
	Fees and Costs			



1	Receipt of Documents and Flash Drive	2.19.20	Vol. II	APPX0435
2	Reply To Counterclaim for Divorce	12.15.17	Vol. I	APPX0028- APPX0031
3				
4	Reply To Defendant's Opposition to Plaintiff's Objection to Notice of Appearance by Audio- Visual Transmission Filed on Behalf of Shelly Booth Cooley, Esq.	11.14.21	Vol. VII	APPX1371- APPX1374
5				
6				
7				
8	Reply to Plaintiff's Opposition to Defendant's Ex Parte Motion For Extension of Time to File Opposition and Opposition to Countermotion For Attorney's Fees and Costs	9.21.20	Vol. III	APPX0631- APPX0638
9				
10				
11				
12	Reply to Plaintiff's Opposition to Defendant's Motion For Stay of Court Orders During Pendency of Appeal and Opposition to Countermotion For Attorney's Fees and Costs	4.5.22	Vol. IX	APPX1667- APPX1673
13				
14				
15				
16				
17	Reply to Plaintiff's Opposition to Defendant's Motion to Alter or Amend Judgment or in the Alternative For New Trial Pursuant to NRCP 59(a)(7) and For Attorney's Fees and Costs and Opposition to Countermotion for Attorney's Fees	10.30.18	Vol. II	APPX0261- APPX0268
18				
19				
20				
21				
22	Reply to Plaintiff's Opposition to Defendant's Motion to for Judgment Pursuant to NRCP 52 (c) or in the Alternative For Summary Judgment and Opposition to Counter- motion for Attorney's Fees and Costs	3.09.21	Vol. VI	APPX1090- APPX1099
23				
24				
25				
26				

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1	Second Amended Trial Subpoena Nexie Rose	1.26.20	Vol. II	APPX0434
2	Statement of Legal Aid Representation (Pursuant to NRS 12.015)	10.09.18	Vol. I	APPX0248
3				
4	Statement of Legal Aid Representation (Pursuant to NRS 12.015)	10.09.18	Vol. II	APPX0251
5				
6	Stipulated Decree of Divorce	04.11.18	Vol. I	APPX0032-APPX0094
7				
8	Stipulated Parenting Agreement	10.30.17	Vol. I	APPX0015-APPX0027
9	Stipulation and Order to Continue Evidentiary Hearing (First Request) and Other Deadlines	5.24.19	Vol. II	APPX0312-APPX0314
10				
11				
12	Stipulation and Order to Extend Time for Plaintiff to File Closing Argument	12.17.21	Vol. VIII	APPX1446-APPX1449
13				
14				
15	Submission of Plaintiff's Declaration	2.27.20	Vol. II	APPX0436-APPX0438
16				
17	Substitution of Attorney	4.28.19	Vol. II	APPX0285-APPX0288
18	Supplemental Points and Authorities to Plaintiff's Opposition to Defendant's Ex Parte Motion for Extension of Time to File Opposition and Countermotion For Attorney's Fees and Costs	9.18.20	Vol. III	APPX0620-APPX0627
19				
20				
21				
22				
23	Transcript - 4.9.21	4.7.22	Vol. IX	APPX1674-APPX1696
24	Transcript - 9.23.21	10.08.21	Vol. VIII	APPX1177-APPX1247
25				
26	Transcript - 9.23.21	4.7.22	Vol. IX	APPX1697-APPX1842
27				



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1	Transcript - 11.15.21	4.7.22	Vol. X	APPX1843- APPX1913
2	Transcript of Proceedings -	2.12.21	Vol. V	APPX0768-
3	Vol. I			APPX0941
4	Transcript of Proceedings -	2.12.21	Vol. VI	APPX0942-
	Vol. II			APPX1072
5	Transcript Re: Non-Jury	11.12.21	Vol. VII	APPX1282-
6	Trial (Excerpt) Thursday,			APPX1367
	September 23, 2021			
7	Trial Subpoena -	1.22.20	Vol. II	APPX0423
8	Regina McConnell, Esq.			
9	Trial Subpoena -	10.05.21	Vol. VI	APPX1171-
	Regina McConnell, Esq.			APPX1172
10	Trial Subpoena -	10.05.21	Vol. VI	APPX1164-
11	Shelly Booth Cooley, Esq.			APPX1169
12	Trial Subpoena -	1.26.20	Vol. II	APPX0432
13	Nexie Rose			
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AFFIRMATION

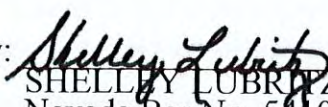
(Pursuant to NRS 239B.030)


The undersigned does hereby affirm that the preceding documents filed in the above-referenced matter does not contain the social security number of any person.

DATED this 13 day of July, 2022.

Law Office of Shelley Lubritz,  
PLLC

Kainen Law Group, PLLC

By:   
SHELLEY LUBRITZ, ESQ.  
Nevada Bar No. 5410  
Attorney for Respondent

By:   
RACHEAL H. MASTEL, ESQ.  
Nevada Bar No. 11646  
Attorney for Appellant

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 13<sup>th</sup> day of July, 2022, I caused to be served the *Joint Appendix* to all interested parties as follows:

\_\_\_ BY MAIL: Pursuant to NRCP 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:


\_\_\_ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

\_\_\_ BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to be transmitted, via facsimile, to the following number(s):

X BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I caused a true copy thereof to be served via electronic mail, via Wiznet, to the following e-mail address(es):

shelley@lubritzlawoffice.com

daverose08@gmail.com

  
An Employee of  
KAINEN LAW GROUP, PLLC

**SOLA**

**RACHEAL H. MASTEL, ESQ.**

Nevada Bar No.: 11646

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*Attorney for the Defendant*

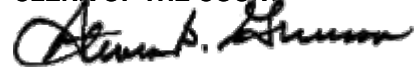
*In conjunction with Legal Aid Center of Southern Nevada Pro Bono Project*

Electronically Filed

10/9/2018 3:03 PM

Steven D. Grierson

CLERK OF THE COURT



**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

DAVID ROSE,

Plaintiff,

vs.

SARAH ROSE,

Defendant.

CASE NO. D-17-547250-D

DEPT. I

**STATEMENT OF LEGAL AID  
REPRESENTATION  
(PURSUANT TO NRS 12.015)**

Party Filing Statement:

☐ Plaintiff/Petitioner

☒ Defendant/Respondent

**STATEMENT**

SARAH ROSE, has qualified and has been accepted for placement as a Pro Bono client or as a direct client of LEGAL AID CENTER OF SOUTHERN NEVADA, a nonprofit organization providing free legal assistance to indigents, and is entitled to pursue or defend this action without costs, including filing fees and fees for service of writ, process, pleading or paper without charge, as set forth in NRS 12.015.

Dated: September 28, 2018.

BARBARA BUCKLEY, ESQ.

Legal Aid Center of Southern Nevada Preparer

Nevada Bar No.: 3918

/s/ Barbara E. Buckley

Signature of Legal Aid Center of Southern Nevada Preparer

Submitted by:

Racheal H. Mastel, Esq.

Kainen Law Group

3303 Novat Street, Suite 200

Las Vegas, Nevada 89129

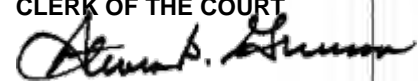
Telephone (702) 823-4900

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Racheal@KainenLawGroup.com

APPX0251





1 **OPP**

2 REGINA M. McCONNELL, ESQ.  
3 Nevada State Bar No. 8029  
4 McCONNELL LAW, LTD.  
5 9017 S. Pecos Road, Suite 4445  
6 Henderson, Nevada 89074  
7 Telephone: (702) 487-3100  
8 E-mail: Regina@MLVegas.com  
9 Attorney for Plaintiff, David Rose

10 **DISTRICT COURT, FAMILY DIVISION**

11 **CLARK COUNTY, NEVADA**

12 DAVID ROSE,

13 Plaintiff,

14 vs.

15 SARAH ROSE,

16 Defendant.

CASE NO: D-17-547250-D

DEPT NO: I

Date of Hearing: November 6, 2018

Time of Hearing: 9:30 a.m.

ORAL ARGUMENT REQUESTED: YES

17 **OPPOSITION TO DEFENDANT'S MOTION TO ALTER OR AMEND JUDGMENT OR IN THE**  
18 **ALTERNATIVE FOR NEW TRIAL PURSUANT TO NRCP 59(a)(7) AND FOR ATTORNEY'S FEES**  
19 **AND COSTS; COUNTERMOTION FOR ATTORNEY'S FEES**

20 COMES NOW, Plaintiff, DAVID ROSE, by and through his attorney of record, REGINA M.  
21 McCONNELL, ESQ., of McCONNELL LAW, LTD., and hereby files his Opposition to Defendant's  
22 Motion to Alter or Amend Judgment, or in the Alternative for New Trial Pursuant to NRCP 59(a)(7)  
23 and for Attorney's Fees and Costs; Plaintiff's Countermotion for Attorney's Fees.  
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APPX0252

1 This Opposition and Countermotion is made and based upon the papers and pleadings on file  
2 herein, the following Points and Authorities, and any oral argument the Court may entertain at the  
3 time of hearing.

4 DATED this 28<sup>th</sup> day of October, 2018.

5 McCONNELL LAW, LTD.

6  
7 

8 REGINA M. McCONNELL, ESQ.  
9 Nevada Bar No. 8029  
10 9017 S. Pecos Road, Suite 4445  
Henderson, Nevada 89074  
Attorneys for Plaintiff

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I. STATEMENT OF FACTS**

13  
14 Plaintiff ("David") and Defendant ("Sarah") attended mediation with Rhonda K. Forsberg,  
15 Esq. on March 23, 2018 and the parties reached an agreement. The parties both actively participated  
16 in the mediation and it and the parties agreed that David's Nevada PERS pension would be divided  
17 per *Gemma*, that David would pay Sarah a lump sum payment from his share of the house proceeds  
18 as taxable alimony and they agreed upon child support arrears. This was their stipulated agreement  
19 that Defendant now wants changed because she wants more. A Memorandum of Understanding  
20 ("Memorandum") was drafted setting forth the full terms of the agreement did not specify that Sarah  
21 would receive any survivor benefits from David's pension because the parties did not agree to any  
22 such term. Further, there was no agreement that David would be solely responsible for the children's  
23 healthcare premiums; however, that was included in the Decree by Defendant's counsel because it  
24 was not stated otherwise in the Memorandum. To this end, the Decree has indicated that David will  
25 be responsible for providing insurance for the children, without giving him the benefit of the cost,  
26 which was not in the Memorandum. Further, the Decree states that David is awarded one-half of the  
27  
28



community portion of his LVMPD pension pursuant to *Gemma v Gemma* and *Fondi v Fondi* and based upon a selection of Option 2 being made at the time of retirement so as to name Plaintiff as the irrevocable survivor beneficiary. This was not included in the Memorandum because it was not agreed upon by the parties. Plaintiff immediately filed a motion to set aside the paragraph regarding the survivor benefit, which was granted and now Defendant is requesting an amended judgment or a new trial.

## II. OPPOSITION

### A. NRCP 59 and NRCP 60

Defendant argues that an amendment of judgment is appropriate in this case because the judgment entered does not comport with the evidence. While there are Decrees wherein the survivor benefit was addressed, in the case at hand the parties came to an agreement which was memorialized in the Memorandum. This specifically set forth their agreement that the parties would split the pension according to *Gemma* but there was no provision for the survivor benefits because the parties did not agree that it would be awarded to Plaintiff. Therefore, the evidence is clear that it was not to be awarded to Plaintiff.

While the survivor benefits are a part of the Nevada PERS, and while Defendant argues that NRS 125.155(3) **permits** a court to order a retirement benefit; it does not **require** the court to order a retirement benefit. Here, the parties came to a stipulated agreement; therefore, it would be against public policy for a court to make an order that was inconsistent with the parties' agreement. Therefore, amending or altering the judgment to award the benefits to the Defendant would be in contradiction of their agreement.

### B. Defendant Should Not be Granted a New Trial

NRCP 59 regarding new trials states in pertinent part:

A new trial may be granted to all or any of the parties and on all or part of the issues for any of the following causes or grounds materially

1 affecting the substantial rights of an aggrieved party: (1) Irregularity in  
2 the proceedings of the court, jury, master, or adverse party, or any order  
3 of the court, or master, or abuse of discretion by which either party was  
4 prevented from having a fair trial; (2) Misconduct of the jury or  
5 prevailing party; (3) Accident or surprise which ordinary prudence could  
6 not have guarded against; (4) Newly discovered evidence material for the  
7 party making the motion which the party could not, with reasonable  
8 diligence, have discovered and produced at the trial; (5) Manifest  
9 disregard by the jury of the instructions of the court; (6) Excessive  
10 damages appearing to have been given under the influence of passion or  
11 prejudice; or, (7) Error in law occurring at the trial and objected to by the  
12 party making the motion.

13 In the case at hand, Defendant has not set forth any valid reasons for requesting a new trial  
14 other than to determine the parties' intent or alternatively because the survivor benefits become an  
15 omitted asset. First, as it relates to the intent of the parties, Defendant should not be granted a new  
16 trial because at mediation, the initial item discussed was the issue of the pension and the survivor  
17 benefits associated with the pension. Plaintiff was not agreeable to awarding Defendant any of the  
18 survivor benefit but he did agree to a lump sum alimony award. The survivor benefits should not  
19 have been awarded to Defendant because they were not included in the Memorandum. The  
20 Memorandum specifically states that the parties desire to memorialize their agreement resolving all  
21 issues in the case and the memorandum addresses the **material terms** of the agreement.

22 Next, Defendant is not entitled to a new trial on the basis of an omitted asset. The benefits is  
23 not an omitted asset – it was not addressed in the Memorandum because the parties did not agree  
24 that it would be awarded to Defendant. Instead, the parties agreed that Defendant would be  
25 awarded her share of the pension pursuant to *Gemma* but it did not address the survivor benefits  
26 because the parties did not agree that it be awarded to Defendant. It cannot be omitted just because it  
27 was not awarded to Defendant or agreed upon that Defendant would receive the benefit – instead it  
28 was an asset that is in Plaintiff's control and it is to remain in his control because the parties did not  
agree that Plaintiff would give any of the benefit to the Defendant.



1 **C. Defendant's Request for Reconsideration should be Denied**

2 While Defendant did not file a motion or request for reconsideration, it appears that she is  
3 seeking such a request as she argues that Plaintiff's motion to set aside should have been denied. She  
4 argues that it should not have been set aside on the grounds of mistake or excusable neglect because it  
5 was not justifiable. As stated in Plaintiff's original filing, counsel read the decree but missed the  
6 selection of the option in the reading of the Decree. Second, counsel did expect the Decree to set forth  
7 the terms as agreed upon especially when it was pointed out that Plaintiff was not receiving any  
8 benefit for maintaining the children on the health insurance to which the reply was "that was not  
9 stated in the Memorandum." Now, Defendant who is not paying for the health insurance for the  
10 children because it was not in the agreement, wants the survivor benefits because it was not in the  
11 agreement.  
12

13 **B. Defendant Should not be Awarded Fees**

14 Defendant knows that the parties came to a final agreement/global settlement of the divorce  
15 and each party gave a little to come to that agreement. Defendant also knows that the parties did not  
16 agree to award her survivor benefits, yet she put it in the Decree knowing that it was not included in  
17 the agreement. She now argues that it was an omitted asset; however, it was the first item discussed  
18 at the mediation and the Plaintiff was not agreeable to giving her any portion of his survivor benefits.  
19 Now Defendant argues that Plaintiff's "underlying motion" was improper and without legal merit,  
20 when in actuality it is Defendant's motion that is without merit and is made in bad faith. As stated  
21 above, she knows that the parties did not agree to give her a survivor benefit option, yet she wants to  
22 argue that she is entitled to fees. Finally, she argues that she was forced to file an opposition to the  
23 underlying motion and is now seeking counsel on a pro bono basis, even though she was given in  
24 excess of Thirty Thousand Dollars following the divorce.  
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28 ///

### III. COUNTERMOTION

#### David Should be Awarded his Attorney's Fees in Having to Oppose this Motion

David respectfully requests an award of attorney's fees for having to oppose Defendant's motion. In *Love v Love*, 114 Nev. 572, 959 P.2d 523 (1998), the court reaffirmed NRS 18.010(2)(b) and NRS 125.150(3), holding that the district court can award fees in a post-judgment motion in a divorce case, citing with approval *Leeming v Leeming*, 87 Nev. 530, 490 P.2d 342 (1971); *Korbel v Korbel*, 101 Nev. 140, 696 P.2d 993 (1985); *Fletcher v Fletcher*, 89 Nev. 540, 516 P.2d 103 (1973).

Under *Brunzell v Golden Gate National Bank*, 85 Nev. 345 (1969), the Court should take into consideration the following factors when determining an award of attorney's fees: (1) the qualities of the advocate, (2) the character and difficulty of the work performed; (3) the work actually performed by the attorney; and (4) the result obtained. The undersigned has been practicing law over fifteen years, with approximately 95% of her practice dedicated to all aspects of family law for over ten years. The character and difficulty of the work performed in this matter is moderate, with the main issues being Defendant's actions in including language in the Decree which was not agreed upon nor included in the Memorandum. To date, the work performed on this matter includes researching the issue of survivor benefits, reviewing e-mails, drafting the underlying Motion and Opposition. Counsel will provide an Affidavit of Fees upon request by the Court, following the hearing.

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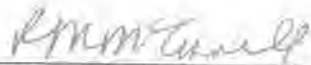
V. CONCLUSION

Based upon the foregoing, Plaintiff requests this Court deny Defendant's motion in its entirety as there is no basis to alter or amend the judgment nor is there any basis for a new trial, as this matter was settled prior to trial.

Wherefore, David requests this Court grant his Countermotion in its' entirety and specifically award him attorney's fees.

DATED this 23<sup>rd</sup> day of October, 2018.

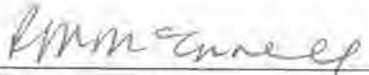
McCONNELL LAW, LTD.

  
REGINA M. McCONNELL, ESQ.  
Nevada Bar No. 8029  
9017 S. Pecos Road, Suite 4445  
Henderson, Nevada 89074  
E-mail: Regina@MLVegas.com  
*Attorneys for Plaintiff*

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on this 24<sup>th</sup> day of October, 2018, service of the foregoing OPPOSITION TO DEFENDANT'S MOTION TO ALTER OR AMEND JUDGMENT OR IN THE ALTERNATIVE FOR NEW TRIAL PURSUANT TO NRCP 59(a)(7) AND FOR ATTORNEY'S FEES AND COSTS; COUNTERMOTION FOR ATTORNEY'S FEES was made via electronic service through the Court's E-filing System pursuant to District Court Administrative Order 14-2 for service of documents identified in Rule 9 of the NEFCR, NRCP 5(b)(2)(D) and EDCR 8.05, and addressed as follows:

Racheal H. Mastel, Esq.  
KAINEN LAW GROUP, PLLC  
E-mail: Service@KainenLawGroup.com  
*Attorneys for Plaintiff*

  
An Employee of  
McCONNELL LAW, LTD.



MOPI

DISTRICT COURT  
FAMILY DIVISION  
CLARK COUNTY, NEVADA

DAVID ROSE  
Plaintiff/Petitioner

vs.

SARAH ROSE  
Defendant/Respondent

Case No. D-17-547250-D

Dept. 1

**MOTION/OPPOSITION  
FEE INFORMATION SHEET**

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

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

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

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

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

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

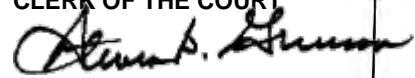
The total filing fee for the motion/opposition I am filing with this form is:

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

Party filing Motion/Opposition: Plaintiff Date October 24, 2018

Signature of Party or Preparer *Amber G. Smith*

APPX0260



1 **RPLY**

2 EDWARD L. KAINEN, ESQ.

3 Nevada Bar No. 5029

4 RACHEAL H. MASTEL, ESQ.

5 Nevada Bar No. 11646

6 KAINEN LAW GROUP, PLLC

7 3303 Novat Street, Suite 200

8 Las Vegas, Nevada 89129

9 (702) 823-4900

10 (702) 823-4488 (Fax)

11 Service@KainenLawGroup.com

12 Attorneys for Defendant

13 *in conjunction with the Legal Aid Center of Southern Nevada*

14  
15 DISTRICT COURT

16 CLARK COUNTY, NEVADA

17 DAVID ROSE,

18 Plaintiff,

19 vs.

20 SARAH ROSE,

21 Defendant.

CASE NO.  
DEPT NO.

D-17-547250-D  
I

Date of Hearing: 11/06/18  
Time of Hearing: 9:30 a.m.

**ORAL ARGUMENT REQUESTED:**

YES: XX NO:     

22 **REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO**  
23 **ALTER OR AMEND JUDGMENT OR IN THE ALTERNATIVE FOR NEW**  
24 **TRIAL PURSUANT TO NRCP 59(a)(7) AND FOR ATTORNEY'S FEES AND**

25 **COSTS**

26 **AND**

27 **OPPOSITION TO COUNTERMOTION FOR ATTORNEY'S FEES**

28 COMES NOW, the Defendant, SARAH ROSE, by and through her  
attorneys, EDWARD KAINEN, ESQ., and RACHEAL H. MASTEL, ESQ., of the law  
firm of KAINEN LAW GROUP, PLLC, submits the following points and authorities in  
Reply to *Plaintiff's Opposition to Defendant's Motion to Alter or Amend Judgment or in*  
*the Alternative for New Trial Pursuant to Nrcp 59(a)(7) and for Attorney's Fees and*  
...

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APPX0261



1 *Costs and Opposition to Countermotion for Attorney's Fees.*

2 DATED this 30 day of October, 2018.

3 KAINEN LAW GROUP, PLLC

4  
5 By: 

6 RACHEAL H. MASTEL, ESQ.  
7 Nevada Bar No. 11646  
8 3303 Novat Street, Suite 200  
9 Las Vegas, Nevada 89129  
10 Attorneys for Defendant

11 **POINTS AND AUTHORITIES AND ARGUMENT**

12 Husband is apparently making an active effort to avoid any personal responsibility,  
13 including any actual analysis under the law, in his effort to avoid abiding by the Decree  
14 of Divorce *that he and his counsel signed*. In effect, what Husband's original Motion, and  
15 what his Opposition state, is: its not fair, I don't want to, so don't make me. The Court  
16 should take note, that Husband has provided *no legal* basis for his claims. He wants the  
17 Court to focus on the Memorandum of Understanding ("MOU") as the only proof of the  
18 parties' agreement, when the best evidence, and the starting point for analysis is not the  
19 MOU, but the **signed** and filed Decree of Divorce.

20 As the Court is aware, the MOU forms the basis for preparing and finalizing  
21 a Decree. However, circumstances often change between a MOU and the final Decree  
22 and once the Decree is signed - that represents the agreement between the parties. That  
23 Decree is *presumed* valid, especially where it has been signed by both parties. ***There is***  
24 ***no default in this case.*** Husband was given an opportunity, as was his counsel, to read  
25 and review the Decree. They *both* signed off on the Decree. It is wholly disingenuous and  
26 unsupportable for Husband to argue for a set aside on the basis of, "I didn't read it closely  
27 enough." Husband does not get a "do over," because he *allegedly* failed at his most basic  
28 responsibility in contract (although the reality is that he has simply changed his mind).

...

...

Further, it is insufficient as a justification for a set aside to say that the MOU does not include each and every term. Frankly, Husband's own words prove why the Court cannot rely on MOU as the basis for setting aside the Decree. First, Husband's Opposition clearly states that there were other terms not recorded in the MOU, but which were in the final Decree, including the payment of health insurance for the minor children. Yet, despite the fact that health insurance was apparently *not* in the MOU, Husband is not seeking to set aside the Decree on the basis of that term. Therefore, how is it possible, that *one* term which was not included in the MOU is uncontested in the Decree, yet another term is somehow "mistakenly" (or allegedly fraudulently) included under the exact same circumstances.

The reality is that it is not. It is simply that Husband has (like many individuals this Court has seen over the years) simply come to regret signing off on the Decree and is seeking any means of setting the term aside.

Despite that fact, due to the Court's prior ruling, the Court must act, under NRCP 59, to modify the present Order. The simple reality is that Husband filed his Motion to Set Aside based upon a "mistake," in his failure to do even basic due diligence. The Court, however, made *no Findings or Orders* based upon the Motion or Opposition (which contained all of the evidence before it). Rather, the Court made legal determinations about the ability to contract regarding survivorship benefits. That issue was not briefed to the Court. No evidence was provided on that issue - and what the Court did not address (and what Husband's Motion conveniently ignores) is that the law very clearly supports the fact that survivorship benefits *can* be Ordered. That statute (and the current case law) is in direct contravention of the Court's Order.

Further, the Court's Order, as it addressed the legality of determining the survivorship benefit, failed to address the Motion before it. Therefore, the Order contains *no* findings regarding Husband's allegations of a "mistake," or whether or not the set aside is appropriate under any portion of NRCP 60(b). The Court's Order very clearly does not comport with the law or the evidence, and amendment of the findings is



1 absolutely necessary.

2 That said, the Court is certainly able to Amend its findings in such a way as  
3 to grant a set aside of the Decree. However, despite Husband's failure to understand (or  
4 admit), setting aside the Decree and/or the provision of the Decree at issue, does not  
5 simply mean the same "goes away." There is a genuine issue of material fact which  
6 remains - was there an agreement regarding the survivorship benefit? Therefore, first the  
7 Court must determine whether or not there was an agreement on the issue.

8 At that point, if there was not an agreement, contrary to Husband's claim,  
9 the survivorship benefit absolutely becomes an omitted asset. While the statute may be  
10 read to indicate that the Court is not *required* to award the same, the Court still must hold  
11 a separate evidentiary proceeding and make a determination regarding it. As Wife has  
12 already stated, both the opinion and the dissent in the most recent Nevada case law  
13 (*Nicholson v. Eighth Judicial Dist. Ct.*, 72657 (Nev. App. April 20, 2018), addressed in  
14 the Motion), recognize the value to the community, and indicate that the same should be  
15 considered (or at least equalization should be addressed) with regard to the benefit.  
16 Unless Husband can provide clearly and convincing evidence that the benefit was  
17 negotiated, it must be addressed by the Court.

18 Therefore, if the Court's findings are amended to grant the Set Aside  
19 (despite the fact that Husband's "mistake" does not qualify him for the same), the Court  
20 must thereafter address the benefit. A determination regarding the benefit is necessary for  
21 the Order for Division, therefore someone must make that determination. Either the  
22 parties negotiate[d] a determination, or the Court must make one. Unless this Court is  
23 provided with sufficient evidence to make a finding that the parties addressed the asset,  
24 and what the outcome of that negotiation was, this Court *must* make a determination  
25 regarding the asset in a separate evidentiary proceeding.

26 To be clear, Wife has not requested reconsideration of Husband's Motion.  
27 The Order from the hearing is clear, Husband's Motion was not considered - no findings  
28 were made based upon the evidence presented. There is *nothing* to reconsider. What Wife

1 is asking this Court to do (appropriately) is to review the evidence previously presented,  
2 consider the law regarding survivorship benefits (which was not previously briefed or  
3 considered) and amend its Findings and Orders to appropriately reflect that law which  
4 exists and the evidence which was provided.

5 With regard to the competing requests for attorney's fees, Husband is not  
6 entitled to his attorney's fees. He was not entitled to fees for the underlying Motion as  
7 there was no genuine basis for granting his Motion to Set Aside - as Wife has previously  
8 stated (and for which Husband has provided *no* competing law), it is not a valid  
9 "mistake," where Husband and his counsel simply failed to do their due diligence and  
10 signed the Decree, apparently without reading it throughly. Husband does not somehow  
11 get to place the blame for his failure to read at the feet of Wife and her counsel. The case  
12 law (uncontroverted) is clear: it is Husband's responsibility to read what he signs, no one  
13 else's.

14 Further, Husband is not entitled to fees for opposing this Motion. The  
15 Court's Order contains does not contain sufficient findings related to Husband's Motion  
16 and the findings which are included are inconsistent with Nevada Law. These are not  
17 points which Husband has rebutted within his Opposition. Rather Husband would prefer  
18 this Court focus on the distinctions between the Memorandum of Understanding and the  
19 Decree, failing to acknowledge that 1) there are other terms which Husband is not  
20 contesting that are in the Decree but were not in the Memorandum; and 2) that the  
21 Memorandum was wholly usurped as the agreement when Husband and his counsel  
22 signed the Decree.

23 Amendment of the Order is not only appropriate, it is necessary. Without  
24 amendment of the Order, Husband's Motion has not been decided pursuant to the record.  
25 Without amendment of the Order, this Court has issued a decision which does not  
26 comport with Nevada law and offers no explanation for its failure to abide by the statutes  
27 and case law.

28 . . .



1 Husband's opposition to the same offers no legal or factual basis for denying  
2 amendment of the Order. Husband offers only unproven conclusions, that he is "right."  
3 Husband's argument is evidently that because "he is right," and he got the result he  
4 wanted, there is no reason to correct the Order - or address the absolute failure of  
5 Husband to meet his burden under the rules. Essentially, Husband is saying, "I won, so  
6 lets not look too closely at how."

7 With regard to Husband's argument that Wife is not entitled to attorney's  
8 fees because she has sufficient assets to hire counsel, there are two issues with the same.  
9 First, the case law is very clear. A party's finite assets are not to be considered the  
10 resource from which counsel *must* be paid, if it would diminish those finite assets. *See*  
11 *Sargeant v. Sargeant*, 495 P.2d 618 (1972). Second, there are guidelines which a party  
12 must meet in order to be approved for *pro bono* legal services. Wife met those guidelines.  
13 Husband does not get to claim Wife is disingenuous in receiving *pro bono* legal services.  
14 She met the guidelines, she was approved. Husband's opinion on that matter is irrelevant  
15 and simply an attempt to bias the Court.

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II.

CONCLUSION

The simple fact is that this Court has obligations under the rules and the law, to decide the Motions before it, based upon the evidence it has. This Court has obligations to apply the rules and the law to the facts, so as to do justice and equity, and to create (as best as possible) consistency in application. The Order currently in place, through no fault of this Court, does not do so. Therefore amendment is appropriate and necessary. Husband's opposition is specious and without merit. Wife requests that the Court grant the relief set forth in her Motion, deny Husband's countermotion *in toto*, and award Wife her attorney's fees in this matter.

DATED this 30 day of October, 2018.

KAINEN LAW GROUP, PLLC

By: 

RACHEAL H. MASTEL, ESQ., #11646  
3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
Attorneys for Defendant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 30<sup>th</sup> day of October, 2018, I caused to be served the *Reply to Plaintiff's Opposition to Defendant's Motion to Alter or Amend Judgement, or in the Alternative for New Trial Pursuant to NRCP 59(a)(7) and For Attorney's Fees and Costs and Opposition to Countermotion for Attorney's Fees* to all interested parties as follows:

\_\_\_ BY MAIL: Pursuant to NRCP 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:

\_\_\_ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

\_\_\_ BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to be transmitted, via facsimile, to the following number(s):

X BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I caused a true copy thereof to be served via electronic mail, via Wiznet, to the following e-mail address(es):

*Attorney for Plaintiff*  
Regina@MLVegas.com

  
An Employee of  
KAINEN LAW GROUP, PLLC



FILED IN OPEN COURT

ORD

11-6-2018

STEVEN D. GRIERSON  
CLERK OF THE COURT

BY Natalie Castro

DISTRICT COURT NATALIE CASTRO DEPUTY  
CLARK COUNTY, NEVADA

David Rose

PLAINTIFF

CASE NUMBER: D-17-547250-D

DEPARTMENT: I

VS.

Sarah Rose

DEFENDANT.

Date of Conference: 11-6-18

Time of Conference: 9:30am

**CASE AND NON-JURY TRIAL MANAGEMENT ORDER**

This order sets forth critical dates and times for the major proceedings in this case. It is the responsibility of the attorneys, or the litigants (when appearing in proper person), to meet the deadlines and to appear for the following required proceedings:

CALENDAR CALL DATE: N/A

NON-JURY TRIAL DATE: (Stack 1) 6-11-19 @ 1:30pm

PRETRIAL MEMORANDUM DUE: 5-10-19

DISCOVERY CLOSES ON: 5-10-19

1                   This matter having come on for a Case Management  
2  
3 Conference, pursuant to NRCP 16.2, in the Family Division, Department  
4 l, of the Eighth Judicial District Court, County of Clark, and Plaintiff,  
5 being represented by Regina McConnell, and Defendant,  
6 being represented by Rachael Mastel, and the Court  
7  
8 being fully advised in the premises, both as to subject matter as well as  
9 the parties thereto, and that jurisdiction is proper in Nevada, and good  
10 cause appearing, the court makes the following findings:  
11

12  
13                   The parties shall participate in the discovery process in good  
14 faith and may utilize all discovery methods, consistent with NRCP 16.2.  
15

16                   Within 15 days of this Order, the parties shall submit a list of names  
17 of individuals who are likely to possess discoverable information  
18 regarding this action, consistent with NRCP 16.2(a)(2)(A) and a list of all  
19 documents provided at or as a result of the Case Management  
20 Conference consistent with NRCP 16.2(a)(2)(B).  
21

22  
23                   The Pre-Trial Memorandum shall substantially comply with the  
24 form attached hereto including the Asset and Debt Schedules. Failure to  
25 submit the Pre-Trial Memorandum on or before this date, absent the  
26  
27  
28

1 Court's approval, will result in the trial date being vacated and the  
2  
3 matter rescheduled in ordinary course and/or sanctions.

4 **Failure to appear at the Calendar Call may result in a**  
5  
6 **default judgment, or other sanctions, consistent with**  
7  
8 **EDCR 2.69.**

9  
10 Counsel or proper person litigants are to provide the following  
11 to opposing counsel/proper person litigant with the following prior to  
12 the calendar call:

- 13  
14 1. List of witnesses  
15  
16 2. List of exhibits  
17  
18 3. Any other discovery items sought to be introduced at trial.

19 **Failure to provide the above foregoing may result in**  
20  
21 **such witnesses, exhibits, or evidence being excluded or**  
22  
23 **other appropriate court-imposed sanctions against**  
24 **counsel or party in proper person.**

25  
26 Any and all Exhibits and Witness Lists (a set of original exhibits  
27 ready for marking by the Clerk with a courtesy copy for the Court), must  
28

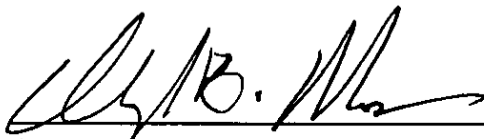


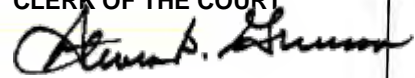
1 be delivered to chambers at least two (2) judicial days prior to trial for  
2  
3 marking.

4 Absent stipulation of the parties (and good cause appearing  
5 therefore), no continuances will be granted to either party unless written  
6 application is made to the Court, served upon opposing counsel, and a  
7 hearing held at least three (3) days prior to the time of trial. If this matter  
8 settles, please advise the Court as soon as possible.  
9  
10

11 IT IS HEREBY ORDERED that the above-stated findings are  
12 hereby adopted and confirmed as an order of this Court.  
13  
14

15 DATED this 6 day of NOVEMBER, 2018.  
16  
17

18   
19 CHERYL B. MOSS  
20 District Court Judge  
21  
22  
23  
24  
25  
26  
27  
28



1 **WITL**  
2 EDWARD L. KAINEN, ESQ.  
3 Nevada Bar No. 5029  
4 RACHEAL H. MASTEL, ESQ.  
5 Nevada Bar No. 11646  
6 KAINEN LAW GROUP, PLLC  
7 3303 Novat Street, Suite 200  
8 Las Vegas, Nevada 89129  
9 (702) 823-4900  
10 (702) 823-4488 (Fax)  
11 Service@KainenLawGroup.com  
12 Attorneys for Defendant  
13 *in conjunction with the Legal Aid Center of Southern Nevada*

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DISTRICT COURT  
CLARK COUNTY, NEVADA

DAVID ROSE,  
  
Plaintiff,  
  
vs.  
  
SARAH ROSE,  
  
Defendant.

CASE NO. D-17-547250-D  
DEPT NO. I

Date of Hearing: 11/06/18  
Time of Hearing: 9:30 a.m.

**DEFENDANT'S LIST OF WITNESSES TO PLAINTIFF**

TO: DAVID ROSE, Plaintiff; and

TO: REGINA M. McCONNELL, ESQ., Attorney for Plaintiff;

COMES NOW DEFENDANT, Sarah Rose, by and through her attorney of record, RACHEAL H. MASTEL, ESQ., of the KAINEN LAW GROUP, PLLC, and hereby provides her Initial List of Witnesses Pursuant to N.R.C.P. 16.2, as follows.

...

...

...

...

APPX0273

**I.**

**LIST OF WITNESSES**

1. Sarah Rose, Defendant  
c/o Kainen Law Group, PLLC  
3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129

Ms. Rose is anticipated to testify regarding the facts and circumstances relating to this case.

2. David Rose, Plaintiff  
c/o McConnell Law, Ltd.  
9017 S. Pecos Road, Suite 4445  
Henderson, Nevada 89074

Mr. Rose is anticipated to testify regarding the facts and circumstances relating to this case.

3. Shelly Booth Cooley, Esq.  
10161 Park Run Drive #150  
Las Vegas, Nevada 89145

Mrs. Cooley is anticipated to testify regarding the facts and circumstances relating to this case.

4. Any and all other witnesses listed by Plaintiff.
5. Rebuttal witnesses as necessary.

6. Defendant reserves the right to supplement this list of witnesses as discovery continues and the specific identities of any other individuals and/or entities having specific knowledge of any facts concerning the litigation and/or claims and/or defenses are revealed.

**II.**

**LIST OF EXPERT WITNESSES**

1. Marshall Willick, Esq.  
3591 E. Bonanza Rd., #200  
Las Vegas, Nevada 89129

Mr. Willick is anticipated to testify regarding the Public Employee Retirement System accounts and aspects relating to division of the same under the law.

2. Any and all other witnesses listed by Plaintiff.




3. Rebuttal witnesses as necessary.

4. Defendant reserves the right to supplement this list of witnesses as discovery continues and the specific identities of any other individuals and/or entities having specific knowledge of any facts concerning the litigation and/or claims and/or defenses are revealed.

DATED this 21 day of November, 2018.

KAINEN LAW GROUP, PLLC

  
By RACHEAL H. MASTEL, ESQ.  
Nevada Bar No. 11646  
3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
*Attorney for Defendant*

KAINEN LAW GROUP, PLLC  
3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
702.823.4900 • Fax 702.823.4488  
www.KainenLawGroup.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21<sup>st</sup> day of November, 2018, I caused to be served the *Defendant's List of Witnesses to Plaintiff Pursuant to N.R.C.P. 16.2* to all interested parties as follows:

\_\_\_ BY MAIL: Pursuant to N.R.C.P. 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:


\_\_\_ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

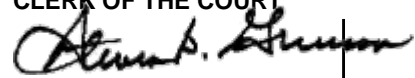
\_\_\_ BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to be transmitted, via facsimile, to the following number(s):

X BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and N.E.F.C.R. Rule 9, I caused a true copy thereof to be served via electronic mail, via Odyssey eFileNV, to the following e-mail address(es), and by electronic mail, via Microsoft Outlook to:

*Attorney for Plaintiff*

Regina@MLVegas.com

  
An Employee at  
KAINEN LAW GROUP, PLLC



**ORDR**

EDWARD L. KAINEN, ESQ.

Nevada Bar No. 5029

RACHEAL H. MASTEL, ESQ.

Nevada Bar No. 11646

KAINEN LAW GROUP, PLLC

3303 Novat Street, Suite 200

Las Vegas, Nevada 89129

(702) 823-4900

(702) 823-4488 (Fax)

Service@KainenLawGroup.com

Attorneys for Defendant

*In conjunction with the Legal Aid Center of Southern Nevada*

DISTRICT COURT - FAMILY DIVISION

CLARK COUNTY, NEVADA

DAVID ROSE,

Plaintiff,

vs.

SARAH ROSE,

Defendant.

CASE NO. D-17-547250-D  
DEPT NO. I

Date of Hearing: 11/6/2018  
Time of Hearing: 9:30 a.m.

**ORDER**

THIS MATTER having come on for hearing this 6<sup>TH</sup> day of November, 2018, before the Honorable Cheryl B. Moss, on Defendant's *Motion*; Defendant, SARAH ROSE ("Mother"), present and represented by and through her attorney, RACHEAL H. MASTEL, ESQ. of the KAINEN LAW GROUP, PLLC, and Plaintiff, DAVID ROSE ("Father"), present and represented by and through his attorney, REGINA MCCONNELL, ESQ. of MCCONNELL LAW, LTD.; the Court having heard oral argument, having read the pleadings and papers on file herein, being fully advised in the premises and good cause appearing, makes the following Findings and Orders:

...

...

...

APPX0277



1 THE COURT HEREBY FINDS that Judge Hardcastle's previous Order is  
2 insufficient.

3 THE COURT FURTHER FINDS that an Evidentiary Hearing is necessary  
4 in order to determine the nuanced legal questions in this matter.

5 THE COURT FURTHER FINDS that the scope of the Evidentiary Hearing  
6 shall be on the intent of the parties, why the survivorship provision was included, and  
7 whether it would be void as a matter of law.

8 Therefore, based on the foregoing,

9 IT IS HEREBY ORDERED that Father's original Motion is pending.

10 IT IS FURTHER ORDERED that Mother's post-decree pleadings are  
11 pending.

12 IT IS FURTHER ORDERED that Judge Hardcastle's Order is set aside for  
13 lack of findings of fact and conclusions of law.

14 IT IS FURTHER ORDERED that Mother shall retain Marshal Willick, Esq.  
15 as her expert on the PERS issues in this matter, specifically related to survivorship  
16 options.

17 IT IS FURTHER ORDERED that Father shall be permitted to retain his own  
18 expert in rebuttal, if he so wishes.

19 IT IS FURTHER ORDERED that Mother's expert shall receive the Decree,  
20 MSA, post-decree pleadings, court minutes, and any videos in the case.

21 IT IS FURTHER ORDERED that a Return Hearing on Marshal Willick,  
22 Esq.'s report shall be set for January 29<sup>TH</sup>, 2019 at 9:00 a.m.

23 IT IS FURTHER ORDERED that Mother's Motion for an Evidentiary  
24 Hearing is hereby granted.

25 ...

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27 ...


28 ...

1 IT IS FURTHER ORDERED that an Evidentiary Hearing shall be set in this  
2 matter for June 11<sup>TH</sup>, 2019 at 1:30 p.m. (Stack #1). The Pre Trial Memorandum shall be  
3 due May 10<sup>TH</sup>, 2019. Discovery shall close on May 10<sup>TH</sup>, 2019.

4 DATED this \_\_\_\_ day of ~~December, 2018.~~

IAN 14 2019


January 2019

  
DISTRICT COURT JUDGE

7 Submitted by:

8 KAINEN LAW GROUP, PLLC


9  
10 By:

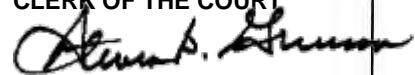
  
11 RACHEAL H. MASTEL, ESQ.  
12 Nevada Bar No. 11646  
13 3303 Novat Street, Suite 200  
14 Las Vegas, Nevada 89129  
15 Attorney for Defendant

16 Approved as to Form and Content:

17 MCCONNELL LAW, LTD.

18 By:

  
19 REGINA MCCONNELL, ESQ.  
20 Nevada Bar No. 8029  
21 9017 S. Pecos Road, Suite 4445  
22 Las Vegas, Nevada 89074  
23 Attorney for Plaintiff  
24  
25  
26  
27  
28



1 **NEOJ**  
2 RACHEAL H. MASTEL, ESQ.  
3 Nevada Bar No. 11646  
4 KAINEN LAW GROUP, PLLC  
5 3303 Novat Street, Suite 200  
6 Las Vegas, Nevada 89129  
7 (702) 823-4900  
8 (702) 823-4488 (Fax)  
9 Service@KainenLawGroup.com  
10 Attorneys for Defendant

11 DISTRICT COURT - FAMILY DIVISION

12 CLARK COUNTY, NEVADA

13 DAVID ROSE,

14 Plaintiff,

15 vs.

16 SARAH ROSE,

17 Defendant.

CASE NO.  
DEPT NO.

D-17-547250-D  
I

Date of Hearing: N/A  
Time of Hearing: N/A

18 **NOTICE OF ENTRY OF ORDER**

19 TO: DAVID ROSE, Plaintiff; and

20 TO: REGINA MCCONNELL, ESQ., Attorney for Plaintiff:

21 PLEASE TAKE NOTICE that on the 16<sup>th</sup> day of January, 2019, the  
22 Honorable Cheryl Moss entered an Order from the hearing on November 6<sup>th</sup>, 2018, a copy  
23 of which is attached hereto.

24 DATED this 17 day of January, 2019.

25 KAINEN LAW GROUP, PLLC

26 By: 

27 RACHEAL H. MASTEL, ESQ.  
28 Nevada Bar No. 11646  
3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
Attorneys for Defendant

KAINEN LAW GROUP, PLLC  
3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
702.823.4900 • Fax 702.823.4488  
www.KainenLawGroup.com

APPX0280



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 17 day of January, 2019, I caused to be served the *Notice of Entry of Order* to all interested parties as follows:

\_\_\_ BY MAIL: Pursuant to NRCP 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:

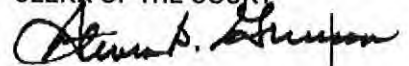
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\_\_\_ BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to be transmitted, via facsimile, to the following number(s):

\_\_\_ BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I caused a true copy thereof to be served via electronic mail, via Wiznet, to the following e-mail address(es):

Regina@MLVegas.com

  
An Employee of  
KAINEN LAW GROUP, PLLC



1 **ORDR**

2 EDWARD L. KAINEN, ESQ.  
3 Nevada Bar No. 5029  
4 RACHEAL H. MASTEL, ESQ.  
5 Nevada Bar No. 11646  
6 KAINEN LAW GROUP, PLLC  
7 3303 Novat Street, Suite 200  
8 Las Vegas, Nevada 89129  
9 (702) 823-4900  
10 (702) 823-4488 (Fax)  
11 Service@KainenLawGroup.com  
12 Attorneys for Defendant

13 *In conjunction with the Legal Aid Center of Southern Nevada*

14 DISTRICT COURT - FAMILY DIVISION

15 CLARK COUNTY, NEVADA

16 DAVID ROSE,

17 Plaintiff,

18 vs.

19 SARAH ROSE,

20 Defendant.

CASE NO. D-17-547250-D  
DEPT NO. I

Date of Hearing: 11/6/2018  
Time of Hearing: 9:30 a.m.

21 **ORDER**

22 THIS MATTER having come on for hearing this 6<sup>TH</sup> day of November,  
23 2018, before the Honorable Cheryl B. Moss, on Defendant's *Motion*; Defendant, SARAH  
24 ROSE ("Mother"), present and represented by and through her attorney, RACHEAL H.  
25 MASTEL, ESQ. of the KAINEN LAW GROUP, PLLC, and Plaintiff, DAVID ROSE  
26 ("Father"), present and represented by and through his attorney, REGINA  
27 MCCONNELL, ESQ. of MCCONNELL LAW, LTD.; the Court having heard oral  
28 argument, having read the pleadings and papers on file herein, being fully advised in the  
premises and good cause appearing, makes the following Findings and Orders:

...

...

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1 THE COURT HEREBY FINDS that Judge Hardcastle's previous Order is  
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23 IT IS FURTHER ORDERED that Mother's Motion for an Evidentiary  
24 Hearing is hereby granted.

25 ...

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KAINEN LAW GROUP, PLLC  
3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
702.823.4900 • Fax 702.823.4488  
www.KainenLawGroup.com

1 IT IS FURTHER ORDERED that an Evidentiary Hearing shall be set in this  
2 matter for June 11<sup>TH</sup>, 2019 at 1:30 p.m. (Stack #1). The Pre Trial Memorandum shall be  
3 due May 10<sup>TH</sup>, 2019. Discovery shall close on May 10<sup>TH</sup>, 2019.

4 DATED this \_\_\_\_ day of ~~December, 2018.~~

5 JAN 14 2019

6 January 2019

7   
DISTRICT COURT JUDGE

8 Submitted by:

9 KAINEN LAW GROUP, PLLC

10 By: 

11 RACHEAL H. MASTEL, ESQ.  
12 Nevada Bar No. 11646  
13 3303 Novat Street, Suite 200  
14 Las Vegas, Nevada 89129  
15 Attorney for Defendant

16 Approved as to Form and Content:

17 MCCONNELL LAW, LTD.

18 By: 

19 REGINA MCCONNELL, ESQ.  
20 Nevada Bar No. 8029  
21 9017 S. Pecos Road, Suite 4445  
22 Las Vegas, Nevada 89074  
23 Attorney for Plaintiff  
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1 SHELLEY LUBRITZ, ESQ. of LEGAL SERVICES ONE, LLC, does hereby agree to be  
2 substituted in the place of Regina M. McConnell, Esq., as Plaintiff's attorney of record in the  
3 above matter.

4 DATED this 26<sup>th</sup> day of April, 2019.

6 LEGAL SERVICES ONE, LLC

7 By: Shelley Lubritz  
8 Shelley Lubritz, Esq.  
9 Nevada Bar No. 5410  
10 375 E. Warm Springs Road Suite 104  
11 Las Vegas, Nevada 89119  
Attorney for Plaintiff  
DAVID ROSE

12 REGINA M. MCCONNELL, ESQ., does hereby agree to the above-referenced  
13 substitution.

14 DATED this 26<sup>th</sup> day of April 2019.

16 MCCONNELL LAW, LTD.

17 Regina M. McConnell  
18 REGINA M. MCCONNELL, ESQ.  
19 Nevada Bar No. 8029  
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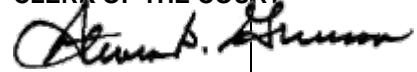
CERTIFICATE OF SERVICE

This Substitution of Counsel was filed on the 28<sup>th</sup> day of April, 2019 through Nevada's 8th Judicial District Court's Odyssey software filing system by the below LEGAL SERVICES ONE, LLC employee.

Shelley Lubritz  
Shelley Lubritz, Esq.







**MENF**

Shelley Lubritz, Esq.  
Nevada Bar No. 5410  
LEGAL SERVICES ONE, LLC  
375 E. Warm Springs Road Suite 104  
Las Vegas, Nevada 89119  
Telephone: (702) 823-3500  
Facsimile: (702) 823-3400  
E-mail: [legalservices1llc@gmail.com](mailto:legalservices1llc@gmail.com)

Attorney for Plaintiff  
DAVID ROSE

CLARK COUNTY DISTRICT COURT, FAMILY DIVISION  
CLARK COUNTY, NEVADA

DAVID JOHN ROSE,  
Plaintiff,

vs.

SARAH JANEEN ROSE,  
Defendant

Case No. D-17-547250-D  
Dept. No. I

Date of Hearing:  
Time of Hearing:

**HEARING REQUESTED**

"NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN TEN (10) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING DATE."

**MOTION TO ENFORCE MEMORANDUM OF UNDERSTANDING AND FOR  
ATTORNEY'S FEES AND COSTS**

COMES NOW, Plaintiff, David Rose, by and through his counsel, Shelley Lubritz, Esq., and submits his *Motion to Enforce Memorandum of Understanding and for Attorney's Fees and Costs*. This Motion is made and based upon the papers and pleadings on file herein, the attached Declaration of David Rose, and the attached

Memorandum of Points and Authorities. Plaintiff respectfully requests that his Motion be granted.

Dated this 8<sup>th</sup> day of May 2019.

LEGAL SERVICES ONE, LLC

/s/ Shelley Lubritz

By: \_\_\_\_\_  
Shelley Lubritz, Esq.  
Nevada Bar No. 5410  
375 E. Warm Springs Road Suite 104  
Las Vegas, Nevada 89119  
Attorney for Plaintiff  
David Rose

## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

#### Statement of Fact

Plaintiff David Rose (hereinafter referred to as "David") and Defendant Sarah Rose (hereafter referred to as "Sarah") were married on or about 17<sup>th</sup> day of June, 2006, in Las Vegas, Nevada. They parties were divorced by Decree on April 11, 2018.

After two years of litigation, it is time for this case to be resolved. The parties need to move forward with their lives, but, cannot fully do so with ongoing litigation. Whether intentionally or not, the focus of this matter was directed away from the real issue, to-wit: is the Memorandum of Understanding negotiated, executed, and acknowledged on the 23rd day of March 2018 a contract that survives the Decree of Divorce?

David, respectfully, asserts that the March 23, 2018, Memorandum of Understanding (hereinafter referred to as the "MOU) is an independent contract as it was

1 not merged into the Decree. As such, the MOU is subject to contract law and non-  
2 modifiable.

3 For the answers, we need not look farther than the MOU itself, starting on line 3 of  
4  
5 Page 1:

6 By this memorandum, the parties desire to memorialize their  
7 agreement resolving all issues in the above referenced case.  
8 The memorandum addresses the material terms of the agreement,  
9 and it is intended to **bind the parties** to those terms. The parties  
10 agree, however, that counsel for Sarah shall draft a final formal  
11 agreement incorporating the terms therein. ***That agreement shall  
be ratified by the Court but shall not merge and shall retain its  
separate nature as a contract.***

12 See PLA 001 – PLA 003, a copy of which is attached hereto as Exhibit “1” and  
13 incorporated herein by this reference.

14 It is long-established Nevada law that a husband and wife may contract between  
15 one another (NRS 123.070) and that a written agreement, subscribed by the party  
16 seeking to modify the same, is a contract (DCR 16). In this case, Sarah and David settled  
17 the non-custodial issues of their marriage and reduced the same into a writing. That  
18 writing was signed by the parties and their respective counsel and acknowledged by all.  
19 The MOU was, specifically, not merged into the Decree; thus, it retained the character of  
20 a contract including non-modifiability. It must be enforced.  
21

22 If granted, this Motion, is dispositive. If this Court finds, consistent with Nevada  
23 legal authority, that the MOU is a contract then it is non-modifiable. The Decree should  
24 be amended to reflect the terms contained therein.  
25

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II.

STATEMENT OF LAW

**Absent Merger Into the Decree of Divorce, a Memorandum of Understanding Remains a Separate Contract**

As set forth above, more fully, the MOU was not incorporated into the Decree of Divorce. By its own words, the MOU shall “retain its separate nature as a contract.” PLA 001.

In *Mizrachi v. Mizrachi*, 385 P.3d 982, 988 (2016), the Nevada Supreme Court held as follows:

In considering agreement-based decrees, the Nevada Supreme Court has indicated in some cases that, once an agreement is merged into a decree, a court's application of contract principles, such as rescission, reformation, and partial performance, is improper to resolve a dispute arising out of the decree. See [Vaile, 128 Nev. at 33 n.7, 268 P.3d at 1276 n.7](#)

Likewise, when an agreement has not been merged into a Decree of Divorce, it retains its nature of a separate and independent contract.

In its 1980 decision, *Renshaw v. Renshaw*, 96 Nev. 541, 542 (1980), the Court stated, in pertinent part, as follows:

The property settlement agreement was neither incorporated in ***nor merged in the judgment and decree*** of the trial court. Therefore, this is clearly a breach of ***contract action***. See *Paine v. Paine*, 71 Nev. 262, 287 P.2d 716 (1955). [Emphasis added].

The Nevada Supreme Court cited *Renshaw* in its holding in *Friedman v. Friedman*, 128 Nev. 897, 898 (2012),

A clear and direct expression of merger in the decree of divorce destroys the independent contractual nature of the marital settlement agreement, and parties may no longer seek to

1 enforce the agreement under contract principles. See Day v. Day,  
2 80 Nev. 386, 389–90, 395 P.2d 321, 322–23 (1964); Renshaw v.  
3 Renshaw, 96 Nev. 541, 543, 611 P.2d 1070, 1071 (1980).

4 In the instant matter, the David and Sarah entered into a written agreement  
5 resolving all issues in their divorce, other than custody. The agreement was signed by  
6 both parties. Their signatures were acknowledged. Pursuant to DCR 16, that agreement  
7 is a contract. Non-merger of the agreement into the Decree of Divorce, means the  
8 Memorandum of Understanding retains its nature as a contract. The Decree of Divorce  
9 cannot modify or change the MOU.  
10

11 Respectfully, David seeks the following relief:

- 12 1. A finding that Defendant is not entitled to the survivorship benefits under David  
13 NV PERS retirement;
- 14 2. A finding that the March 23, 2018, Memorandum of understanding be confirmed  
15 as a contract that survives the Decree of Divorce;
- 16 3. The Decree of Divorce be re-written to accurately reflect the parties' agreement  
17 as written in the Memorandum of Understanding.  
18

### 19 **Attorney's Fees are Warranted**

20 Undersigned counsel does not make a habit of seeking attorney's fees. That  
21 having been said, this case is ripe for such an award. After a marathon mediation session,  
22 the parties reached an agreement that resolved all of the material issues (other than child  
23 custody) in their divorce action. The MOU was signed and acknowledged by the parties.  
24 On its face, the MOU contained language, specifically, stating that it was not merged into  
25 the Decree. Notwithstanding the same, and for reasons that remain unknown, Sarah's  
26  
27

1 former counsel added language awarding Sarah survivorship benefits to David's NV  
2 PERS.

3 This matter has been litigated for more than one (1) year. The issue of non-merger  
4 is not novel nor is it ambiguous. Sarah's counsel, former and present, know the impact  
5 of merging, or not, a settlement agreement into a Decree of Divorce. David has spent  
6 thousands of dollars and months just trying to get what he bargained for in the MOU. He  
7 should be made whole.  
8

9 Should he prevail, David seeks leave this Court to file a Brunzell Affidavit in support  
10 of his request for fees. The Affidavit will detail all fees and costs incurred as a result of  
11 this unnecessary and costly litigation.  
12

13 **III.**

14 **CONCLUSION**

15 WHEREFORE, based upon the foregoing, Plaintiff, David Rose respectfully  
16 requests that:  
17

- 18 1. The instant Motion be granted in its entirety; and
- 19 2. For such other and further relief this Court deems just and proper in the  
20 premises.  
21

22 Dated this 8<sup>th</sup> day of May, 2019.

23 LEGAL SERVICES ONE, LLC

24 /s/ Shelley Lubritz

25 By: \_\_\_\_\_

26 Shelley Lubritz, Esq.  
27 Nevada Bar No. 5410  
375 E. Warm Springs Road Suite 104  
Las Vegas, Nevada 89119  
Attorney for Plaintiff

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/s/ Shelley Lubritz

APPX0295



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**VERIFICATION**

David Rose states, pursuant to NRS 53.045 and the laws of the State of Nevada, and under penalty of perjury: That he is the Plaintiff in the above-entitled matter, and that he has read the foregoing *Motion to Enforce Memorandum of Understanding and for Attorney's Fees* and knows the contents thereof, and that the same is true of his own knowledge except as to those matters stated therein upon information and belief, and as to those matters he believes them to be true.

DATED this 8<sup>th</sup> day of May 2019.

  
\_\_\_\_\_  
DAVID ROSE

# Exhibit “1”

## MEMORANDUM OF UNDERSTANDING

The parties, David Rose ("David") and Sarah Rose ("Sarah"), have met in mediation to resolve certain disputes and entered into an agreement in case Number D-17-547250-D in Dept. I of the Eighth Judicial District Court, Clark County, Nevada, on March 23, 2018. By this memorandum, the parties desire to memorialize their agreement resolving all issues in the above referenced case. The memorandum addresses the material terms of the agreement, and is intended to bind the parties to those terms. The parties agree, however, that counsel for Sarah shall draft a final formal agreement incorporating the terms herein. That agreement shall be ratified by the Court, but shall not merge and shall retain its separate nature as a contract.

1. The parties agree to the following:

SARAH shall receive as her sole and separate property, free of all claims of David, the following:

- (1) 2012 Scion;
- (2) Any and all furniture and furnishings in her possession;
- (3) Her interest in his Nevada PERS pursuant to *Gemma v. Gemma*;
- (4) All bank accounts in her name;

David shall receive as his sole and separate property, free of all claims of Sarah, the following:

- (1) 2015 Dodge Challenger;
- (2) Any and all furniture and furnishings in his possession;
- (3) His interest in his Nevada PERS pursuant to *Gemma v. Gemma*;
- (4) All bank accounts in his name;

2. David shall receive \$5,000 from the approximate \$54,868.45 in proceeds of the marital home and Sarah shall receive the remainder. Of the remainder of the sale proceeds, \$22,434.22 shall be as and for lump sum non-modifiable alimony. The parties agree that the alimony amount shall be tax deductible to David and taxed as income to Sarah.

3. David shall pay \$1,886.00 per month for child support effective April 1, 2018. David Shall also pay \$13,000 in constructive child support arrears. The arrears shall be payable in monthly payments of \$270.00 for 48 months commencing April 1, 2018.

4. The parties dog shall travel with the children between homes once Sarah has her own home. If either party no longer wants the dog there is a "free" right of first refusal to the other party.

5. Each party shall be responsible for their separate debt including the debt on their respective vehicles and any and all credit card debt.

6. The parties shall follow and be subject to Department I's Behavior Order.

7. Sarah is waiving her community waste claim.


8. Each party shall be responsible for their own respective attorney's fees.

9. Each party acknowledges that they have been represented by counsel in the negotiation and preparation of this agreement, and voluntarily enters the agreement with full understanding of its terms. This agreement may be executed in counterparts.

AFFIRMED AND AGREED

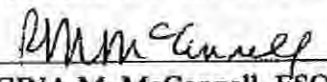
  
DAVID ROSE

Dated: 3-23-18

  
SARAH ROSE

Dated: 03/23/2018

Approved as to Form and Content:

  
REGINA M. McConnell, ESQ.  
Counsel for David Rose

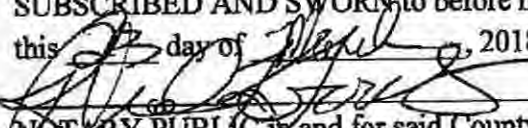
  
SHELLY BOOTH COOLEY, ESQ.  
Counsel for Sarah Rose

STATE OF NEVADA )

) ss:

COUNTY OF CLARK )

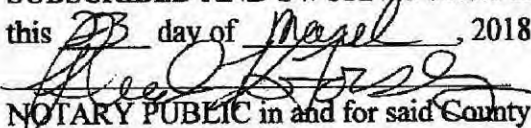
DAVID ROSE did appear before me on the date set forth below, provided appropriate identification, and did sign the foregoing Marital Settlement Agreement as acknowledgement and agreement with its terms.

SUBSCRIBED AND SWORN to before me  
this 23 day of April, 2018  
  
NOTARY PUBLIC in and for said County and State





SARAH ROSE did appear before me on the date set forth below, provided appropriate identification, and did sign the foregoing Marital Settlement Agreement as acknowledgement and agreement with its terms.

SUBSCRIBED AND SWORN to before me  
this 23 day of April, 2018.  
  
NOTARY PUBLIC in and for said County and State



MOFI

DISTRICT COURT  
FAMILY DIVISION  
CLARK COUNTY, NEVADA

DAVID JOHN ROSE

Plaintiff/Petitioner

v.

SARAH JANEEN ROSE

Defendant/Respondent

Case No. D-17-547250-D

Dept. 1

**MOTION/OPPOSITION  
FEE INFORMATION SHEET**

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

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

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

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

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

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

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

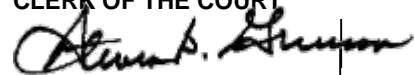
☐ \$0 ☐ \$25 ☐ \$57 ☐ \$82 ☒ \$129 ☐ \$154

Party filing Motion/Opposition: Plaintiff Date 5/8/19

Signature of Party or Preparer



APPX0301



1 **OPP**  
2 EDWARD L. KAINEN, ESQ.  
3 Nevada Bar No. 5029  
4 RACHEAL H. MASTEL, ESQ.  
5 Nevada Bar No. 11646  
6 KAINEN LAW GROUP, PLLC  
7 3303 Novat Street, Suite 200  
8 Las Vegas, Nevada 89129  
9 (702) 823-4900  
10 (702) 823-4488 (Fax)  
11 Service@KainenLawGroup.com  
12 Attorneys for Defendant  
13 *in conjunction with the Legal Aid Center of Southern Nevada*

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA  
10

11 DAVID ROSE,  
12

13 Plaintiff,  
14

15 vs.  
16

17 SARAH ROSE,  
18

19 Defendant.  
20

CASE NO. D-17-547250-D  
DEPT NO. I

Date of Hearing: June 18, 2019  
Time of Hearing: 9:00 a.m.

21 **DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO ENFORCE**  
22 **MEMORANDUM OF UNDERSTANDING AND FOR ATTORNEY'S FEES**  
23 **AND**  
24 **COUNTERMOTION FOR ATTORNEY'S FEES AND COSTS**  
25

26 COMES NOW, Defendant, SARAH ROSE, by and through her attorney,  
27 RACHEAL H. MASTEL, ESQ., of the law firm of KAINEN LAW GROUP, PLLC, and  
28 submits to this Honorable Court her Opposition to *Plaintiff's Motion to Enforce*  
*Memorandum of Understanding and for Attorney's Fees*, and requests this Court award  
her Attorney's Fees and Costs.

...

...

KAINEN LAW GROUP, PLLC  
3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
702.823.4900 • Fax 702.823.4488  
www.KainenLawGroup.com

APPX0302

1 This Opposition and Counter-motion are made and based upon the pleadings  
2 on file herein, the Points and Authorities, the Affidavit and the Exhibits attached to this  
3 Opposition and argument to be adduced at the time of hearing.

4 DATED this 22 day May, 2019.

5 KAINEN LAW GROUP, LLC

6 By: 

7 RACHEAL H. MASTEL, ESQ.

8 Nevada Bar No. 11646

9 3303 Novat Street, Suite 200

10 Las Vegas, Nevada 89129

11 Attorneys for Defendant

12 I.

13 **POINTS AND AUTHORITIES**

14 Plaintiff, DAVID ROSE (hereinafter "Husband"), and Defendant, SARAH  
15 ROSE (hereinafter "Wife"), were married on June 17, 2006, and divorced by a Stipulated  
16 Decree of Divorce filed on April 11, 2018. The Decree was the result of several hours of  
17 negotiation between the parties with the assistance of their counsel and with Rhonda  
18 Forsberg, Esq., acting as mediator. Within the Decree of Divorce, the parties stipulated  
19 that Husband would select Option 2 with regard to his PERS retirement plan. The details  
20 of the division, including the selection of Option 2 (which will provide that Wife will  
21 receive the Survivor Benefit) is spelled out, in detail on Page 21, line 8 - Page 22, line 12  
22 and Page 23, line 24 - Page 24, line 28, of the Decree of Divorce. The Decree was signed  
23 by *both parties and both attorneys*.

24 Thereafter, on April 25, 2018, Husband filed a Motion to Set Aside the  
25 Decree, pursuant to NRCP 60(b), claiming that neither he, nor his counsel, actually  
26 reviewed the Decree, and therefore they did not realize he had agreed to provide Wife  
27 with Survivor Benefits. According to Husband's Motion, the neglect to read the Decree  
28 before signing it constituted a "mistake." The Court ultimately heard the Motion, and



1 determined that an expert report, as to the division of *Option 2*, would be necessary.<sup>1</sup> The  
2 Court also set a return hearing for the expert report, prepared by Marshal Willick, Esq.,  
3 as Wife's retained expert. Husband was permitted to hire a competing expert, but  
4 ultimately chose not to do so.

5 At the Return Hearing, the Court directed the parties to discuss options for  
6 settlement with Mr. Willick, and to thereafter attempt settlement. Ultimately those  
7 discussions failed; Husband retained new counsel, and the parties are preparing for trial.

8 Now, Husband has frivolously attempted to take *yet another* bite at the apple  
9 with regard to this matter. He has filed a Motion, making the same allegations and  
10 arguments, but simply using a different tactic. Husband initially started this post-divorce  
11 litigation by claiming he made a "mistake," by failing to read the Decree, and that the  
12 Decree should be modified to match the Memorandum of Understanding ("MOU").

13 Husband's "new" Motion claims that there is no basis for the trial because  
14 "the MOU is an independent contract which must be enforced and therefore the Option  
15 2 language must be removed so that the Decree matches the MOU." There is quite  
16 literally no difference between Husband's first Motion and the second Motion.

17 That said, Husband's Motion is also simply wrong. Husband tries to contend  
18 that the MOU is an independent final contract which must be enforced without  
19 modification. Husband cites to case law which states that independent, unmerged  
20 agreements (such as Marital Settlement Agreements) survive Decrees as independent  
21 contracts. What Husband fails to understand is that the MOU contains none of the  
22 language which would make it an independent contract. Ironically, the language Husband  
23 tries to cite as providing for the same, specifically sets forth that the MOU is NOT an  
24

25 <sup>1</sup> Initially, Husband's Motion was heard by Senior Judge Kathy Hardcastle, sitting for Judge Cheryl  
26 Moss. Judge Hardcastle decided, without legal support, that the Court had "no authority" to bind  
27 Husband to select any Option and Ordered that the language be removed from the Decree entirely.  
28 On a Motion for Reconsideration filed by Wife, Judge Moss set aside Judge Hardcastle's Order,  
found that she believed that she did have authority to consider the same, requested an expert report  
on the issue, and set a trial (now set for July 31<sup>st</sup>) to determine the factual aspects of the provision  
and the propriety of the inclusion of the request for Option 2.

1 independent contract.

2 The preliminary paragraph of the MOU states in pertinent part:

3 ... The memorandum addresses the **material terms** of the  
4 agreement, and is intended to bind the parties to those terms.  
5 The parties agree, however that counsel for Sarah shall draft a  
**final formal agreement** *incorporating the terms herein. That*  
agreement shall be ratified by the Court but shall not merge...

6 Page 1 of the Memorandum of Understanding. Emphasis added.

7 Wherever possible the Court should give the plain meaning to a contract.

8 It is clear that the MOU is not intended to be a final agreement, nor is it intended to set  
9 forth *all* of the terms. As Wife has mentioned before, there are a number of necessary  
10 terms which were not specifically set forth in the MOU - such as the payment of health  
11 insurance, which is not at all discussed in the MOU. This is not the only such addition,  
12 but it is an easy one to point out and clearly a necessary provision that the Court requires  
13 be addressed in any Decree, which the parties added (just like the Option 2 language), and  
14 which is not challenged.

15 Further, it is clear from the language that Sarah's original counsel (Ms.  
16 Cooley) was expected to draft a *final* agreement, which simply *incorporated* the terms  
17 from the MOU. It was the "final formal agreement," which was intended to remain an  
18 independent contract. **Everything** about the preliminary provision makes it clear that the  
19 MOU was *never* meant to be an independent final contract. It was merely a recitation of  
20 material terms which were to be *included* in the independent contract. Each and every one  
21 of those terms *were* included in the "final formal agreement," prepared by Ms. Cooley  
22 and signed not only by Ms. Cooley and Ms. McConnell, but also by each of the parties.

23 Ironically, even if the Court were to ignore the complete lack of logic in  
24 Husband's arguments, the relief Husband is requesting is impossible. Husband is  
25 requesting that the Decree be rewritten to reflect *only* the terms of the MOU. First, as the  
26 expert report has already addressed - if only the terms of the MOU are allowed in the  
27 Decree - then Wife's interest in Husband's PERS is an incomplete division of community  
28 property, and there is an omitted asset, which would need to be addressed. Second, there

1 are a number of necessary terms included in the Decree which are not in the MOU. Their  
2 exclusion would make the Decree incomplete. For instance, the custody provisions are  
3 (quite obviously) not in the MOU, but they are necessarily in the Decree. The health  
4 insurance coverage for the minor children is not addressed in the MOU, nor is the  
5 payment of unreimbursed expenses. The child care tax deduction would not be addressed.  
6 The direction for drafting the QDRO would not be in the Decree, nor would the need to  
7 refinance the vehicle encumbrances. The fact that community debts were divided was not  
8 addressed in the MOU (the idea of "separate debt," has a definition under the law would  
9 likely not comport with the understanding the parties intended in the Decree). The time  
10 frame for distributing the funds from the sale of the marital residence is not in the MOU.  
11 The name change provision is not in the MOU.

12 It is simply ridiculous for the Decree to be revised to solely match the MOU.  
13 The Decree would be unenforceable, as it would fail to contain essential and necessary  
14 terms, deadlines, and statutory provisions, disclosures, etc. Nothing in Husband's  
15 Motions is logical or appropriate. Husband's Motion is the height of frivolousness. It is  
16 a clear violation of NRCP 11, NRS 7.085 and EDCR 7.60. Wife is entitled and deserving  
17 of fees pursuant to the same as well as NRS 18.010.

18 Although it may be compelling to suggest that since Wife is ably represented  
19 in *pro bono* capacity, no award of fees is necessary. However, the case law does not  
20 support that conclusion. The initial premise of *Miller v. Wilfong*, 121 Nev. 619, 119 P.3d  
21 727 (2005) articulated at page 729 - 730 states:

22 Initially, we conclude that a party is not precluded from  
23 recovering attorney fees solely because his or her counsel  
24 served in a pro bono capacity. While Nevada law has been  
25 silent on this issue, many courts have concluded that an award  
26 of attorney fees is proper, even when a party is represented  
27 without fee by a nonprofit legal services organization. In  
28 addition to the various state courts, the United States Supreme  
Court has concluded that an award of attorney fees to a  
nonprofit legal services organization is to be calculated  
according to the prevailing market rate, stating that "Congress  
did not intend the calculation of fee awards to vary depending  
on whether plaintiff was represented by private counsel or by  
a nonprofit legal services organization." We agree with these



1 courts and conclude that significant public policy rationales  
2 support awarding fees to counsel, regardless of counsel's  
3 service in a pro bono capacity. First, the fact that a government  
4 institution or private charity has provided legal assistance  
5 should not absolve other responsible parties of their financial  
6 obligations. For example, when pro bono counsel assist a parent  
7 in a custody or child support dispute, the wealthier parent  
8 should not be relieved of an obligation to pay attorney fees.  
9 Further, in domestic matters, one partner has often created or  
10 contributed to the other partner's limited financial means by  
11 leaving the household, failing to remit child support, drawing  
12 funds from a shared account, or other similar conduct. In those  
13 cases, if fees are not awarded to pro bono counsel, a wealthier  
14 litigant would benefit from creating conditions that force the  
15 other party to seek legal aid. In addition, pro bono counsel serve  
16 an important role in the legal system's attempt to address the  
17 unmet needs of indigent and low-income litigants within our  
18 state. To impose the burden of the cost of litigation on those  
19 who volunteer their services, when the other party has the  
20 means to pay attorney fees, would be unjust.

21 It is clear from the language in *Miller v. Wilfong*, that it is appropriate to  
22 award a party fees when that party has been represented *Pro Bono*. Although the Court is  
23 also to consider the *Brunzell* factors (which will be addressed below), in *Pro Bono* cases  
24 there are also further equitable considerations, as delineated above, to wit: that *pro bono*  
25 services do not absolve responsible parties of their financial obligations (such as those due  
26 under *Sargeant v. Sargeant*, 88 Nev. 223, 495 P.2d 618 (1972); *Leeming v. Leeming*, 87  
27 Nev. 530, 490 P.2d 342 (1971); *Halbrook v. Halbrook*, 114 Nev. 1455, 971 P.2d 1262  
28 (1998).), that **“when pro bono counsel assist a parent in a custody or child support  
dispute, the wealthier parent should not be relieved of an obligation to pay attorney  
fees;”** and finally, **“to impose the burden of the cost of litigation on those who  
volunteer their services, when the other party has the means to pay attorney’s fees,  
would be unjust.”**

Pursuant to Brunzell v. Golden Gate National Bank, 85 Nev. 455 P.2d 31  
(1969), in the case at bar, the Court should consider the following factors in awarding  
attorney's fees for this Motion:

...

...



1           **1.     Qualities of Wife's Advocate**

2           The qualities of Wife's attorneys are excellent. Racheal Mastel has been  
3 involved with the Las Vegas family law community since 2004, including internships with  
4 Judge William O. Voy, the Juvenile Delinquency Court Judge for the 8<sup>th</sup> Judicial District  
5 Court and the Legal Aid Center of Southern Nevada's Domestic Violence section and a  
6 clerkship in 2009 with the Chief Judge of the District Court, Family Court Department H  
7 Judge T. Arthur Ritchie. She has been appointed by the Nevada Supreme Court to serve  
8 on the Committee to Revise the Nevada Rules of Civil Procedure. She has been engaged  
9 in the exclusive practice of family law for nearly ten years. Ms. Mastel graduated from  
10 Washburn University School of Law with a certification in Family Law and is also a  
11 Nevada Board Certified Family Law Specialist and a partner at Kainen Law Group, PLLC.

12           Clearly, Wife attorneys are experienced, well trained and qualified in relation  
13 to the fees charged for there services in this matter. Ms. Mastel's hourly rate is \$375.  
14 Paralegals were also utilized where possible, at lesser rates.

15           **2.     The Character of the Work Done**

16           In this instance, Wife's counsel is charged with the task of Opposing  
17 Husband's *second* Motion regarding his attempts to get around his obligations under the  
18 Decree. Wife's Opposition shows clearly how frivolous and without merit Husband's  
19 Motion is. Under the circumstances of this case, the character of the work completed  
20 certainly justifies the fees incurred in this matter.

21           **3.     The Work Actually Performed**

22           Wife's attorneys have made every effort to be as efficient as possible in  
23 completing the necessary work to obtain favorable results for her. The amount of fees and  
24 costs accurately reflects the actual work done in this matter. The work was completed in  
25 the most cost efficient manner to minimize the over all fees and costs incurred. A copy of  
26 such redacted billing as reflects the work actually performed can be provided after the  
27 hearing on this matter, if requested by the Court.

28 . . .

1       **4.     The Results**

2             The final factor adopted in Brunzell is whether the attorney was successful  
3 and what benefits were derived. It is anticipated that Wife will be successful at the  
4 hearing on this matter, as Husband's Motion has no justification.

5                             III.

6                             **CONCLUSION**

7             Wife requests that Husband's Motion be denied *in toto* and that Wife be  
8 awarded her attorney's fees for the necessity of opposing the same.

9             DATED this 22 day of May, 2019

10                            Respectfully submitted,

11                            KAINEN LAW GROUP, PLLC

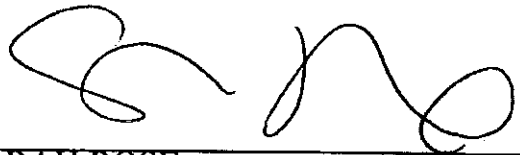
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13                              
14                            By: \_\_\_\_\_

15                            RACHEAL H. MASTEL, ESQ.,  
16                            Nevada Bar No. 11645  
17                            3303 Novat Street, Suite 200  
18                            Las Vegas, Nevada 89129  
19                            Attorneys for Defendant  
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28

**DECLARATION OF SARAH ROSE IN SUPPORT OF OPPOSITION**

I, SARAH ROSE declare under penalty of perjury that I am the Defendant herein and that I have read the foregoing *Defendant's Opposition to Plaintiff's Motion to Enforce Memorandum of Understanding and for Attorney's Fees and Countermotion for Attorney's Fees and Costs* and the same is true and correct of my own knowledge, except for those matters which are therein stated upon information and belief, and as to those matters, I believe them to be true.

EXECUTED this 21 day of May, 2019



SARAH ROSE

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 22<sup>nd</sup> day of May, 2019, I caused to be served the *Defendant's Opposition to Plaintiff's Motion to Enforce Memorandum of Understanding and for Attorney's Fees and Countermotion for Attorney's Fees and Costs* to all interested parties as follows:

\_\_\_ BY MAIL: Pursuant to NRCP 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:

\_\_\_ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

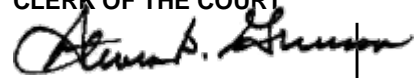
\_\_\_ BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to be transmitted, via facsimile, to the following number(s):

  X   BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I caused a true copy thereof to be served via electronic mail, via Wiznet, to the following e-mail address(es):

  
An Employee of  
KAINEN LAW GROUP, PLLC

KAINEN LAW GROUP, PLLC  
3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
702.823.4900 • Fax 702.823.4488  
www.KainenLawGroup.com





1 **SAO**  
2 EDWARD L. KAINEN, ESQ.  
3 Nevada Bar No. 5029  
4 RACHEAL H. MASTEL, ESQ.  
5 Nevada Bar No. 11646  
6 KAINEN LAW GROUP, PLLC  
7 3303 Novat Street, Suite 200  
8 Las Vegas, Nevada 89129  
9 (702) 823-4900  
10 (702) 823-4488 (Fax)  
11 Service@KainenLawGroup.com  
12 Attorneys for Defendant  
13 *in conjunction with the Legal Aid Center of Southern Nevada*

14  
15 DISTRICT COURT  
16 CLARK COUNTY, NEVADA  
17

18 DAVID ROSE,

19 Plaintiff,

20 vs.

21 SARAH ROSE,

22 Defendant.

CASE NO. D-17-547250-D  
DEPT NO. I

Date of Hearing:  
Time of Hearing:

23 **STIPULATION AND ORDER TO CONTINUE EVIDENTIARY HEARING**  
24 **(FIRST REQUEST) AND OTHER DEADLINES**

25 IT IS HEREBY STIPULATED by and between, Defendant, SARAH ROSE  
26 (hereinafter "Defendant"), by and through her attorney, RACHEAL H. MASTEL, ESQ.,  
27 of the KAINEN LAW GROUP, PLLC, and Plaintiff, DAVID ROSE (hereinafter  
28 "Plaintiff"), by and through his attorney, SHELLEY LUBRITZ, ESQ., of the law firm,  
LEGAL SERVICES ONE, LLC, as follows:

WHEREAS, the parties are currently scheduled for an Evidentiary hearing  
on June 11, 2019, at 1:30 p.m.

WHEREAS, the Court already agreed to reschedule the Evidentiary hearing  
due to Defendant's counsel's scheduling conflict and a new date has not been set.

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3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
702.823.4900 • Fax 702.823.4488  
www.KainenLawGroup.com

APPX0312

1 WHEREAS, Plaintiff retained new counsel, who filed a *Notice of*  
2 *Appearance* on April 28, 2019.

3 WHEREAS, Plaintiff has outstanding discovery responses due to Defendant.

4 WHEREAS, the deadline for the parties' Pre-Trial Memorandum is currently  
5 set for May 10, 2019, and the deadline for exhibits to be delivered to Court is two judicial  
6 days prior to the Trial setting, and both deadlines should be extended along with the  
7 Evidentiary hearing date.

8 Based on the foregoing, the parties agree as follows:

9 IS IT HEREBY STIPULATED that the Evidentiary hearing shall be set on  
10 the Court's first available date after July 31, 2019, and the deadline for the Pre-Trial  
11 Memorandum and Exhibits shall also be extended therewith based upon the new date.

12 IT IS FURTHER STIPULATED that Plaintiff shall have an extension to  
13 respond to *Defendant's First Set of Interrogatories to Plaintiff, Defendant's First Request*  
14 *for Production of Documents to Plaintiff as well as Defendant's First Set of Admissions*  
15 *to Plaintiff*, until May 14, 2019.

16 DATED: 5-7-19

DATED: \_\_\_\_\_

17 KAINEN LAW GROUP, PLLC

LEGAL SERVICES ONE, LLC

18  
19 By: 

By: 

20 RACHEAL H. MASTEL, ESQ.,  
21 Nevada Bar No. 11646  
3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129

SHELLEY LUBRITZ, ESQ.  
Nevada Bar No. 5410  
375 E. Warm Springs Road, Suite 104  
Las Vegas, Nevada 89119



**ORDER**

BASED UPON the foregoing Stipulation of the parties, and good cause appearing,

IT IS HEREBY ORDERED that the deadline for the parties' to submit their PreTrial Memorandums shall be continued to the 28 day of June, 2019.

IT IS FURTHER ORDERED that the deadline for the parties' to submit their Trial Exhibits to Court shall be continued to the 26 day of July, 2019.

IT IS FURTHER ORDERED that the Evidentiary hearing in this matter, shall be set at on the 31 day of July, 2019, at 1:30pm # 1.


DATED this 21 day of May, 2019.

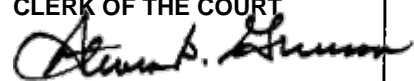
  
DISTRICT COURT JUDGE  
*A' Kw*

Submitted by:

KAINEN LAW GROUP, PLLC

By:

  
RACHEAL H. MASTEL, ESQ.  
Nevada Bar No. 11646  
3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
Attorneys for Defendant



1 **NOE**  
2 EDWARD L. KAINEN, ESQ.  
3 Nevada Bar No. 5029  
4 RACHEAL H. MASTEL, ESQ.  
5 Nevada Bar No. 11646  
6 KAINEN LAW GROUP, PLLC  
7 3303 Novat Street, Suite 200  
8 Las Vegas, Nevada 89129  
9 (702) 823-4900  
10 (702) 823-4488 (Fax)  
11 Service@KainenLawGroup.com  
12 Attorneys for Defendant  
13 in conjunction with the Legal Aid Center of Southern Nevada

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DISTRICT COURT  
CLARK COUNTY, NEVADA

DAVID ROSE,

Plaintiff,

vs.

SARAH ROSE,

Defendant.

CASE NO. D-17-547250-D  
DEPT NO. I

Date of Hearing:  
Time of Hearing:

**NOTICE OF ENTRY OF STIPULATION AND ORDER TO CONTINUE  
EVIDENTIARY HEARINGS (FIRST REQUEST) AND OTHER DEADLINES**

TO: DAVID RICE, Plaintiff:


TO: SHELLY LUBRITZ, ESQ., Attorney for Plaintiff:

PLEASE TAKE NOTICE that on the 24<sup>th</sup> day of May, 2019, the Honorable Charles Hoskin entered a Stipulation and Order to Continue Evidentiary Hearings (First Request) and Other Deadlines, a copy of which is attached hereto.

DATED this 30 day of May, 2019.

KAINEN LAW GROUP, PLLC

By:



RACHEAL H. MASTEL, ESQ.  
Nevada Bar No. 11646  
3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
Attorney for Defendant

APPX0315



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 30<sup>th</sup> day of May, 2019, I caused to be served the *Notice of Entry of Stipulation and Order to Continue Evidentiary Hearings (First Request) and Other Deadlines* to all interested parties as follows:

\_\_\_ BY MAIL: Pursuant to NRCP 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:

\_\_\_ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

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X BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I caused a true copy thereof to be served via electronic mail, via Wiznet, to the following e-mail address(es):

*Attorney for Plaintiff*  
Regina@MLVegas.com

  
An Employee of  
KAINEN LAW GROUP, PLLC

*Steven D. Grierson*

1 **SAO**  
2 EDWARD L. KAINEN, ESQ.  
3 Nevada Bar No. 5029  
4 RACHEAL H. MASTEL, ESQ.  
5 Nevada Bar No. 11646  
6 KAINEN LAW GROUP, PLLC  
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9 (702) 823-4900  
10 (702) 823-4488 (Fax)  
11 Service@KainenLawGroup.com  
12 Attorneys for Defendant  
13 *in conjunction with the Legal Aid Center of Southern Nevada*

14  
15 DISTRICT COURT  
16 CLARK COUNTY, NEVADA  
17

18 DAVID ROSE,

19 Plaintiff,

20 vs.

21 SARAH ROSE,

22 Defendant.

CASE NO. D-17-547250-D  
DEPT NO. I

Date of Hearing:  
Time of Hearing:

23 **STIPULATION AND ORDER TO CONTINUE EVIDENTIARY HEARING**  
24 **(FIRST REQUEST) AND OTHER DEADLINES**

25 IT IS HEREBY STIPULATED by and between, Defendant, SARAH ROSE  
26 (hereinafter "Defendant"), by and through her attorney, RACHEAL H. MASTEL, ESQ.,  
27 of the KAINEN LAW GROUP, PLLC, and Plaintiff, DAVID ROSE (hereinafter  
28 "Plaintiff"), by and through his attorney, SHELLEY LUBRITZ, ESQ., of the law firm,  
LEGAL SERVICES ONE, LLC, as follows:

WHEREAS, the parties are currently scheduled for an Evidentiary hearing  
on June 11, 2019, at 1:30 p.m.

WHEREAS, the Court already agreed to reschedule the Evidentiary hearing  
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1 WHEREAS, Plaintiff retained new counsel, who filed a *Notice of*  
2 *Appearance* on April 28, 2019.

3 WHEREAS, Plaintiff has outstanding discovery responses due to Defendant.

4 WHEREAS, the deadline for the parties' Pre-Trial Memorandum is currently  
5 set for May 10, 2019, and the deadline for exhibits to be delivered to Court is two judicial  
6 days prior to the Trial setting, and both deadlines should be extended along with the  
7 Evidentiary hearing date.

8 Based on the foregoing, the parties agree as follows:

9 IS IT HEREBY STIPULATED that the Evidentiary hearing shall be set on  
10 the Court's first available date after July 31, 2019, and the deadline for the Pre-Trial  
11 Memorandum and Exhibits shall also be extended therewith based upon the new date.

12 IT IS FURTHER STIPULATED that Plaintiff shall have an extension to  
13 respond to *Defendant's First Set of Interrogatories to Plaintiff, Defendant's First Request*  
14 *for Production of Documents to Plaintiff as well as Defendant's First Set of Admissions*  
15 *to Plaintiff*, until May 14, 2019.

16 DATED: 5-7-19

DATED: \_\_\_\_\_

17 KAINEN LAW GROUP, PLLC

LEGAL SERVICES ONE, LLC

18  
19 By: 

By: 

20 RACHEAL H. MASTEL, ESQ.,  
21 Nevada Bar No. 11646  
3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129

SHELLEY LUBRITZ, ESQ.  
Nevada Bar No. 5410  
375 E. Warm Springs Road, Suite 104  
Las Vegas, Nevada 89119

ORDER

BASED UPON the foregoing Stipulation of the parties, and good cause appearing,

IT IS HEREBY ORDERED that the deadline for the parties' to submit their PreTrial Memorandums shall be continued to the 28 day of June, 2019.

IT IS FURTHER ORDERED that the deadline for the parties' to submit their Trial Exhibits to Court shall be continued to the 26 day of July, 2019.

IT IS FURTHER ORDERED that the Evidentiary hearing in this matter, shall be set at on the 31 day of July, 2019, at 1:30pm # 1.

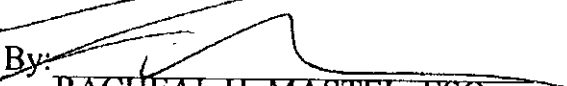
DATED this 21 day of May, 2019.

  
DISTRICT COURT JUDGE  
A.K.W.

Submitted by:

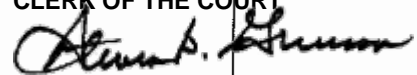
KAINEN LAW GROUP, PLLC

By:

  
RACHEAL H. MASTEL, ESQ.  
Nevada Bar No. 11646  
3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
Attorneys for Defendant

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3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
702.823.4900 • Fax 702.823.4488  
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1 **RPLY**

2 Shelley Lubritz, Esq.  
3 Nevada Bar No. 5410  
4 LEGAL SERVICES ONE, LLC  
5 375 E. Warm Springs Road Suite 104  
6 Las Vegas, Nevada 89119  
7 Telephone: (702) 823-3500  
8 Facsimile: (702) 823-3400  
9 E-mail: [legalservices1llc@gmail.com](mailto:legalservices1llc@gmail.com)

10 Attorney for Plaintiff

11 CLARK COUNTY DISTRICT COURT, FAMILY DIVISION

12 CLARK COUNTY, NEVADA

13 DAVID JOHN ROSE,  
14 Plaintiff,

Case No.: D-17-547250-D  
Dept. No.: I

15 vs.

Hearing Date: June 18, 2019  
Hearing Time: 9:00 a.m.

16 SARAH JANEEN ROSE,  
17 Defendant

18 **PLAINTIFF'S REPLY TO OPPOSITION TO MOTION TO ENFORCE  
19 MEMORANDUM OF UNDERSTANDING**

20 **AND**

21 **OPPOSITION TO COUNTERMOTION FOR ATTORNEY'S  
22 FEES AND COSTS**

23 COMES NOW, Plaintiff, David John Rose, by and through his counsel, Shelley  
24 Lubritz, Esq., and submits his Reply to *Defendant's Opposition to Motion to Enforce*  
25 *Memorandum of Understanding and for Attorney's Fees and Costs and Opposition to*  
26 *Plaintiff's Countermotion for Attorney's Fees*. This Reply and Opposition is made and  
27

1 based upon the papers and pleadings on file herein, the attached Declaration of David  
2 John Rose, and the attached Memorandum of Points and Authorities

3 Plaintiff respectfully requests this honorable Court issue its order and findings as  
4 follows:  
5

- 6 1. That the Court has jurisdiction to hear this matter;
- 7 2. That Defendant cited no caselaw or other legal authority in her opposition to  
8 the Motion to Enforce Memorandum of Understanding and for Attorney's Fees;
- 9 3. That the parties engaged in marathon mediation on March 23, 2018;
- 10 4. That the Hon. Rhonda K. Forsberg presided over the mediation;
- 11 5. That the March 23, 2018 Memorandum of Understanding was drafted, in its  
12 entirety, by the Hon. Rhonda K. Forsberg.
- 13 6. That this Court confirms its finding that the March 23, 2018, Memorandum of  
14 Understanding addressed the material terms of the parties' agreement as to  
15 child support, division of assets and debts, marital waste claims, alimony and  
16 attorneys' fees and costs, and was intended to bind the parties to those terms;
- 17 7. That the March 23, 2018, Memorandum of Understanding is an enforceable  
18 contract;
- 19 8. That the parties agreed Shelly Booth Cooley was to draft a final formal  
20 agreement incorporating the terms of the March 23, 2018, Memorandum of  
21 Understanding;
- 22 9. That Shelly Booth Cooley did not draft a final formal agreement incorporating  
23 the terms of the March 23, 2018 Memorandum of Understanding;
- 24 10. That Shelly Booth Cooley drafted a Decree of Divorce;
- 25
- 26
- 27
- 28

1 11. That the material terms of the March 23, 2018, Memorandum of Understanding  
2 did not include an award to Defendant of any survivorship benefits to Plaintiff's  
3 PERS;  
4

5 12. That the material terms of the March 23, 2018, Memorandum of Understanding  
6 did not include an agreement that Plaintiff would bear the cost of the children's  
7 medical insurance;  
8

9 13. That in drafting the April 11, 2018, Decree of Divorce, Shelly Booth Colley went  
10 outside of the four corners of the March 23, 2018, Memorandum of  
11 Understanding;  
12

13 14. That Shelly Booth Cooley had no authority to go outside of the four corners of  
14 the March 23, 2018, Memorandum of Understanding;  
15

16 15. That the language awarding Defendant survivorship benefits to Plaintiff's PERS  
17 be stricken from the Decree of Divorce;  
18

19 16. That the language ordering Plaintiff to bear the cost of the children's medical  
20 insurance be stricken from the Decree of Divorce;  
21

22 17. That current law does not require Plaintiff to grant survivorship benefits to  
23 Defendant;  
24

25 18. That this Court ratified the March 23, 2018, Memorandum of Understanding  
26 and its terms;  
27

28 19. That the March 23, 2018, Memorandum of Understanding did not merge with  
the April 11, 2018 Decree of Divorce;

20. That the March 23, 2018, Memorandum of Understanding retained its separate  
nature as a contract;

1 21. That Defendant's Opposition violates EDCR 7.60, NRS 7.085, and NRCP 11;

2 22. That Plaintiff is entitled to an award of his reasonable attorney's fees and costs

3 and

4 23. Any other orders this honorable Court deems proper in the premises.

5 Dated this 2nd day of June 2019.

6  
7 LEGAL SERVICES ONE, LLC

8 /s/ Shelley Lubritz

9 By: \_\_\_\_\_

10 Shelley Lubritz, Esq.

11 Nevada Bar No. 5410

12 375 E. Warm Springs Road Suite 104

13 Las Vegas, Nevada 89119

14 Attorney for Plaintiff

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I.**

17 **INTRODUCTION**

18 The history of this case is sufficiently tortured such that the undersigned counsel will not  
19 add to it. The issues before this honorable Court are quite simple and there are only two:

20 1. ***Does the March 23, 2018, Memorandum of Understanding memorialize the parties***  
21 ***agreement as to a division of assets and debts? Yes!***

22 2. ***Does the Memorandum of Understanding bind the parties to its terms? Yes!***

23 For the answers to these questions, we need not look any farther than the Decree of the  
24 Divorce (hereinafter referred to as the "Decree") and the Memorandum of Understanding  
25 (hereinafter referred to as the "MOU." Neither provision requires interpretation as the language in  
26 both documents is clear and unambiguous.



1 Specifically, on Page 4, lines 27 – 28 and Page 5, lines 1 – 4 of the Decree, this  
2 Court made the following Finding of Fact, to-wit:

3 The Court FINDS that the parties' [sic] have resolved all other<sup>1</sup>  
4 issues, including but not limited to, child support, division of  
5 assets and debts, marital waste claims, alimony and  
6 attorneys's [sic] fees as is memorialized by the Memorandum  
7 of Understanding, a copy of which is attached hereto as  
8 Exhibit "B."

9 Unless Sarah is advancing the position that this Court erred in its Findings of Fact  
10 (drafted by her former counsel), it is incontrovertible that the parties memorialized the  
11 material terms of division of assets and debts in the MOU. Dave asserts this Court did  
12 not err.<sup>2</sup> The answer is clear – The MOU memorialized the parties' agreement as to the  
13 material terms of division of assets and debts.

14 In the MOU, drafted by the Hon. Rhonda K. Forsberg, it is written:

15 ***This memorandum addresses the material terms of the***  
16 ***agreement, and is intended to bind the parties to those***  
17 ***terms.***

18 [Emphasis added].

19 Unless Sarah is advancing the position that the Hon. Rhonda K. Forsberg erred in  
20 her drafting of the MOU, drafted an incomplete MOU, left out material terms, or that Judge  
21 Forsberg overlooked what Sarah asserts is an "incomplete division of assets and debts,"  
22 then it is incontrovertible that the parties are bound by the terms set forth in the MOU.  
23 Dave asserts Judge Forsberg did not err.

---

24  
25  
26  
27 <sup>1</sup> For clarity of the record, "all other" refers to the issues resolved in the Stipulated Parenting Plan which is attached  
to the Decree as Exhibit "A."

28 <sup>2</sup> All timelines for Defendant to appeal or otherwise challenge the Court's finding, as set forth above, have expired.

1 There can be no legitimate alternative positions. These parties participated in a  
2 marathon mediation which resulted in the settlement of outstanding issues (those not  
3 stipulated to in the Parenting Agreement). Nothing in the MOU flags the issue of  
4 survivorship benefits related to Dave's PERS. The MOU was silent as to survivor benefits  
5 because David did not agree to grant the benefits to Sarah. Ethically and legally, counsel  
6 cannot go outside of the four corners of the MOU. Certainly, counsel cannot add material  
7 terms to the Decree. The only material terms agreed upon were memorialized in the  
8 MOU and the MOU is binding upon the parties.  
9

10  
11 This discussion should end the parties' dispute and resolve the pending litigation.  
12 It is disappointing that Dave, through counsel, must respond to, and address, the myriad  
13 of misstatements made by Sarah, and her counsel, in opposing the underlying motion.  
14 As it relates, only, to attorney's fees, and other potential sanctions, Dave will establish  
15 Sarah's and her former counsel's pattern and practice of misrepresenting facts and law  
16 in the form of the present Opposition and in her Motion to Set Aside. This portion of the  
17 discussion will be addressed, fully, as a part of Dave's request for attorney's fees and  
18 costs.  
19

## 20 II.

### 21 STATEMENT OF FACT AND LAW

#### 22 Sarah's Opposition Lacks Citation of Any Legal Authority

23  
24 Conspicuously absent from Sarah's opposition, is a single citation in support of her  
25 claims. Sarah cited no caselaw, no statutes, and no other legal authority. Accordingly,  
26 this Court may make an adverse presumption that Sarah's failure to comply with EDCR  
27

1 2.20(e) is an admission that Dave's Motion is meritorious and that Sarah consents to the  
2 Court granting the same. Rule 2.20(e) states, in pertinent part, as follows:

3 (e) Within 10 days after the service of the motion, and 5 days  
4 after service of any joinder to the motion, the opposing party  
5 must serve and file written notice of nonopposition or  
6 opposition thereto, **together with a memorandum of points  
and authorities** and supporting affidavits, if any, stating facts  
7 showing why the motion and/or joinder should be denied.  
8 Failure of the opposing party to serve and file written  
9 opposition **may be construed as an admission that the  
motion and/or joinder is meritorious and a consent to  
granting the same.**

10 [Emphasis added].

11 Rule 2.20(f) of the local rules of practice, gives this Court the authority to decline  
12 consideration of the Opposition. EDCR 2.20(f) states, in pertinent part, as follows:

14 (i) **A memorandum of points and authorities which  
15 consists of bare citations to statutes, rules, or case  
16 authority does not comply with this rule and the court  
17 may decline to consider it.** Supplemental briefs will only be  
18 permitted if filed within the original time limitations of  
19 paragraphs (a), (b), or (d), or by order of the court.

20 [Emphasis added].

21 While Sarah's Opposition contains a section entitled Points and Authorities, it  
22 contains no authorities. (Opposition, p. 2, line 12). Dave requests that this Court decline  
23 to consider it. Sarah's counsel knows the implications of not citing legal authority. If  
24 counsel was less learned, then this defect might be overlooked; however, such is not the  
25 case. Ms. Mastel listed her qualifications, in detail, in the Countermotion requesting fees  
26 and they are quite impressive. She knows the necessity for citing legal authority and her  
27  
28

1 failure to do so in the opposition should be construed as an admission that the underlying  
2 motion is meritorious and should be granted.

3 The presumption should be made that the opposition is not supported in law. Thus,  
4 Dave respectfully asserts that, under these circumstances, any consideration of Sarah's  
5 Opposition must be declined. Sarah may argue that the Court's decision to disregard her  
6 Opposition and Countermotion would be reversible error. The Court's decision to do so  
7 is grounded in established law. Rather, Dave asserts that any appeal on this issue would  
8 be found as nonmeritorious.  
9

10 Assuming, *arguendo*, that this Court does consider Sarah's Opposition, what  
11 follows is the basis for Dave's assertion that Sarah has demonstrated a pattern of  
12 untruthfulness that fatally impacts her credibility. The Opposition is replete with  
13 misstatements. Given the number of inaccuracies, Dave will address each in the order  
14 they were made and, respectfully, requests an award of attorney's fees for having to do  
15 so.  
16

17  
18 **Factual Misstatements:**

- 19 • "The Decree was the result of hours of negotiation by the parties and counsel."  
20 (Opposition, p. 2, lines 15 – 16). It was the MOU and not the Decree of Divorce  
21 that was the subject of the negotiation.  
22
- 23 • In his Motion to Set Aside, Plaintiff "claim[ed] that neither he, nor his counsel,  
24 actually reviewed the Decree, therefore, they did not realize he had agreed to  
25 provide Wife with Survivor Benefits." "According to Husband's Motion, the neglect  
26 to read the Decree before signing it constituted a mistake." (Opposition, p. 2, lines  
27 23 – 27).  
28



1 Such statements were not made by Dave in the Motion to Set Aside. Rather, his  
2 former counsel wrote, "...when reviewing the Decree, counsel inadvertently did not  
3 see that the option for survivorship benefits was listed and awarded to Sarah...and  
4 by mistake, David had missed." (Motion to Set Aside, P. 6, lines 3 – 4).

- 5 • "Husband...claim[ed] he made a 'mistake,' by failing to read the Decree."  
6 (Opposition p. 3, line 10 – 11). No such statement was made by Dave in the Motion  
7 to Set Aside.  
8
- 9 • The underlying Motion is not "yet, *another* bite at the apple" nor does it "mak[e] the  
10 same allegations and arguments but simply using a different tactic." (Opposition,  
11 p. 3, lines 8 – 9). The underlying Motion, Dave asserts, is the most proper vehicle  
12 to address the erroneous inclusion of an award of survivorship benefits to Sarah  
13 and the manufactured order that Dave shall provide the cost of health insurance  
14 for the parties' children.  
15
- 16 • "Husband's 'new' Motion claims that there is no basis for the trial because 'the  
17 MOU is an independent contract which must be enforced and therefore the Option  
18 2 language must be removed so that the Decree matches the MOU.'" (Opposition,  
19 p. 3, lines 13 – 15). Undersigned seeks a citation by Sarah's counsel for this  
20 quotation as no such statement was made in the underlying motion.  
21
- 22 • "There is quite literally no difference between Husband's first Motion and the  
23 second Motion." [emphasis included in original] (Opposition, p. 3, lines 15 – 16).  
24 The Motion to Set Aside was sought, pursuant to NRCP 60(b), and requested an  
25 order to correct a mistake that allowed the survivorship rights language to be  
26 included in the Decree.  
27  
28

1 The underlying Motion is far different, in that, Dave seeks an order enforcing the  
2 MOU. There is no claim for relief under 60(b) nor are there claims made that the  
3 offending language in the Decree was mistakenly included. Quite the contrary,  
4 Dave believes the offending language was knowingly included in the Decree by  
5 Sarah's former counsel.  
6

- 7 • "What Husband fails to understand is that the MOU contains *none of the language*  
8 which would make it an independent contract." [emphasis in original] (Opposition,  
9 p. 3, line 21 – 22). See, case law and other authority cited on Pages 12 and 13.  
10
- 11 • Sarah contends "It is clear that the MOU is not intended...to set forth *all* of the  
12 terms." [emphasis in original]. (Opposition, p. 4, lines 8 – 9).

13 This memorandum addresses the material terms of the  
14 agreement, and is intended to bind the parties to those  
15 terms. (MOU, p.1, para. 1, lines 5 – 6)

- 16 • Sarah uses the fact that payment of health insurance was not included in the MOU,  
17 thereby, rendering it incomplete. Not only is that statement unsupported but, it,  
18 also, is false. Exhibit "A" to the Decree is the Stipulated Parenting Plan. It is the  
19 Parenting Plan that governs all aspects of the parties' rights and obligation to their  
20 children. Thus, if payment of insurance is not addressed, then it is the Parenting  
21 Plan that is incomplete and should be amended not the MOU.  
22
- 23 • Sarah, in reference to the insurance issue, it is "...clearly, a necessary provision  
24 that the Court requires be addressed in any Decree, which the parties added (just  
25 like the Option 2 language), and which is *not* challenged. [emphasis on original]  
26 (Opposition, p. 4, lines 12 – 14). Just as he challenged the survivorship benefits,  
27  
28

1 Dave also challenged the insurance provision. (Motion to Set Aside, p. 3, lines 24  
2 – 27).

- 3 • "Husband is requesting that the Decree be rewritten to reflect *only* the terms of the  
4 MOU." On Page 4, at lines 3 – 4 of his Motion to Set Aside, David requests that  
5 the Option 2 language be removed and not that the entire Decree be re-written.  
6
- 7 • On Page 5 of her Opposition, Sarah names a litany of items that are not included  
8 in the MOU and argues their absence defeats the MOU as an enforceable contract.  
9 One such "omission" is child custody. The MOU was not the vehicle through which  
10 custody was established. That was done in the Parenting Plan, which is attached  
11 to the Decree as Exhibit "A." (Decree, p. 4, lines 15 – 22)  
12

13 ***The Court FINDS that the parties' have resolved***  
14 ***their child custody issues by its entry of the***  
15 ***Stipulated Parenting Agreement*** filed 10/30/2017, a  
16 copy of which is attached hereto as Exhibit "A" the  
17 terms of the Stipulated Parenting Agreement are  
18 ratified, confirmed, and approved by the Court at this  
time, and the same is incorporated into this Decree of  
Divorce as though the same were set forth in this  
Decree in full. [emphasis added].

19 Again, bald assertions are made with no caselaw, or other legal authority, cited. A  
20 settlement agreement, such as the MOU, is a contract and enforcement of the MOU is  
21 governed by normal principles of contract law. *May v. Anderson*, 121 Nev. 668, 672 n.l.  
22 119 P.3d 1254, 1257 (2005), citing *Reichelt v. Urban Inv. & Dev. Co.*, 611 F. Supp. 952,  
23 954 (N.D. Ill., 1985).  
24

25 ***In May v. Anderson, court held that the parties' settlement***  
26 ***agreement was a valid contract, even with a party's***  
27 ***refusal to sign the agreement, because essential terms of***  
28 ***a release, which was material to the agreement, was***

1 *agreed upon in advance.* May v. Anderson, 119 P.3d at  
2 1259. *The court decided that agreeing to the terms of*  
3 *release, which was material to the agreement, was*  
4 *enough to prove that there was a valid contract with the*  
*“meeting of the minds,”* with or without the party’s signature  
of agreement. Id.

5 [Emphasis added].

6 In *Grisham v. Grisham*, 128 Nev. 679, 289 P.3d 230 (2012), the Nevada Supreme  
7 Court held as follows:  
8

9 District Court Rule 16 defines the conditions under which a  
10 court may, on motion, enforce an agreement to settle pending  
11 litigation. Its language is somewhat oblique: No agreement or  
12 stipulation between the parties in a cause or their attorneys,  
13 in respect to proceedings therein, will be regarded unless the  
14 same shall, by consent, be entered in the minutes in the form  
of an order, *or unless the same shall be in writing*  
*subscribed by the party against whom the same shall be*  
*alleged, or by his attorney.*

15 See also EDCR 7.50 (replicating DCR 16 with minor  
16 revisions). Despite its awkward wording, DCR 16’s application  
is straightforward: *An agreement to settle pending*  
17 *litigation can be enforced by motion in the case being*  
18 *settled if the agreement is “either ... reduced to a signed*  
*writing* or ... entered in the court minutes following a  
19 stipulation.” Resnick v. Valente, 97 Nev. 615, 616, 637 P.2d  
20 1205, 1206 (1981) (applying DCR 24, later renumbered DCR  
16).

21 DCR 16 applies to divorce and dissolution disputes equally  
22 with any other kind of civil litigation. See *Grenz v. Grenz*, 78  
23 Nev. 394, 399, 374 P.2d 891, 894 (1962) (interpreting DCR  
16’s predecessor). The rule gives “the court ... an efficient  
24 method for determining genuine settlements and  
enforcing them.” Resnick, 97 Nev. at 616, 637 P.2d at 1206.  
25 It “does not thwart the policy in favor of settling disputes;  
26 instead, it enhances the reliability of actual settlements.”  
Id. at 616–17, 637 P.2d at 1206.

27 *Grisham v. Grisham* at 683.

1                   ***When parties to pending litigation enter into a settlement,***  
2                   ***they enter into a contract.*** Mack v. Estate of Mack, 125 Nev.  
3                   80, 95, 206 P.3d 98, 108 (2009). Such a contract is subject to  
4                   general principles of contract law. Id.3

5                   *Grisham v. Grisham* at 685.

6                   It is long established in Nevada law, that an agreement to settle pending litigation  
7                   is an enforceable contract. As previously found by this Court, the terms of the March 23,  
8                   2018, Memorandum are binding upon the parties. The Court also found that the MOU  
9                   was an enforceable contract that did not merge into the Decree.  
10

11                  In her Opposition, Sarah references Mr. Willick's report which was filed as a  
12                  Supplemental Filing and entered into the record. The filing is rogue and should not have  
13                  been filed in this case. Mr. Willick is Sarah's expert witness. His report, therefore, is  
14                  discovery and has not, yet, been admitted into evidence. If this matter proceeds to trial,  
15                  then a Motion to Strike Defendant's Supplemental Filing will be filed, and attorney's fees  
16                  sought unless Defendant voluntarily withdraws with the same. Further, the Report is  
17                  fatally flawed and should not be relied upon by this Court.  
18

19                  Dave, respectfully, requests that he be awarded fees in this matter. Much time  
20                  was spent by the undersigned correcting the misstatements of Sarah which are prominent  
21                  throughout the entire Opposition. This was necessary for two reasons. First, the  
22                  misstatements did not make for a clear and accurate record. Second, it bears upon  
23                  Sarah's veracity, or, lack thereof.  
24

25                  Save and except boilerplate language for as award of attorneys' fees and costs.  
26                  Sarah's Opposition was filed and served without citation to any legal authority. As set  
27                  forth more, fully, above, pursuant to EDCR 2.20(e) and EDCR 2.20(f), Sarah's opposition  
28



1 does not comply with or local Rules and, therefore, should not be considered by this Court.  
2 Notwithstanding the same, Dave was compelled to respond to the Opposition. Such a  
3 needless increase in the time and cost of litigation should not be countenanced. Sarah's  
4 counsel is well-versed in the local rules and, yet, she filed a factually inaccurate and  
5 legally unsupported Opposition.  
6

7 Dave believes his Motion is factually and legally sound. He attended mediation, in  
8 good faith, with the intention of resolving several outstanding issues – not the least of  
9 which was a division of assets and debts. The Hon. Rhonda K. Forsberg presided over  
10 the mediation. She drafted the MOU which, accurately and completely, memorialized the  
11 parties' agreement. Dave exercised his right to decline selection of any option which  
12 would grant Sarah survivorship benefits to his PERS. Had it been agreed upon then  
13 Judge Forsberg would have included that term in the MOU.  
14

15 Parties enter into settlement negotiations with the understanding that, once  
16 reduced to writing, the agreement will be enforced and unaltered. Denying enforcement  
17 of this agreement will have a chilling effect on many parties who may enter settlement  
18 negotiations. The knowing and willful insertion of the provision granting Sarah  
19 survivorship benefits has the effect of reducing the amount of Dave's monthly pension  
20 upon retirement.  
21

22 There exists significant legal authority to support Dave's request for sanctions and  
23 attorney's fees.  
24

25 Nevada Revised Statute 7.085 states, in pertinent part, as follows:

- 26 1. If a court finds that an attorney has:  
27 (a) Filed, maintained or defended a civil action or proceeding  
28 in any court in this State and such action or defense is not

1 well-grounded in fact or is not warranted by existing law or by  
2 an argument for changing the existing law that is made in  
3 good faith; or

4 (b) Unreasonably and vexatiously extended a civil action or  
5 proceeding before any court in this State, the court shall  
6 require the attorney personally to pay the additional costs,  
7 expenses and attorney's fees reasonably incurred because of  
8 such conduct.

9 2. The court shall liberally construe the provisions of this  
10 section in favor of awarding costs, expenses and attorney's  
11 fees in all appropriate situations. It is the intent of the  
12 Legislature that the court award costs, expenses and  
13 attorney's fees pursuant to this section and impose sanctions  
14 pursuant to Rule 11 of the Nevada Rules of Civil Procedure in  
15 all appropriate situations to punish for and deter frivolous or  
16 vexatious claims and defenses because such claims and  
17 defenses overburden limited judicial resources, hinder the  
18 timely resolution of meritorious claims and increase the costs  
19 of engaging in business and providing professional services  
20 to the public.

21 As a result of Sarah filing an Opposition without a single citation to legal authority,  
22 NRS 7.085(1)(a) is applicable. Accordingly, Dave requests that this Court enter a finding  
23 that Sarah's counsel is in violation of this statute. It is up to counsel to ensure her  
24 opposition is warranted in law. By failing to include any legal citation, violation of NRS  
25 7.085 requires that sanctions be issued against Sarah's counsel.

26 Rule 7.60 of the Eighth Judicial Court Rules states, in pertinent part, as follows.

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

(1) Presents to the court a motion or an opposition to  
a motion which is obviously frivolous, unnecessary or  
unwarranted.

(2) Fails to prepare for a presentation.

1 (3) So multiplies the proceedings in a case as to  
2 increase costs unreasonably and vexatiously.

3 (4) ***Fails or refuses to comply with these rules.***

4 (5) Fails or refuses to comply with any order of a  
5 judge of the court.

6 EDCR 7.60(b)(1) and (4), is clear and unambiguous. Filing an Opposition that is  
7 not warranted by law and "fails or refuses to comply with these rules," is sanctionable.  
8 Dave is entitled to attorney's fees and costs and, respectfully requests, that this Court  
9 order such an award. Sarah's failure to comply with the rules and statutes which govern  
10 these proceedings (see, p. 7, lines 11 – 27) warrant sanctions being ordered.  
11

12 Rule 11 of the NRCP states, in pertinent part, as follows:

13 (b) Representations to the Court. By presenting to the court  
14 a pleading, written motion, or other paper — whether by  
15 signing, filing, submitting, or later advocating it — an attorney  
16 or unrepresented party certifies that to the best of the person's  
17 knowledge, information, and belief, formed after an inquiry  
18 reasonable under the circumstances:

17 (1) it is not being presented for any improper purpose,  
18 such as to harass, cause unnecessary delay, or needlessly  
19 increase the cost of litigation;

19 (2) the claims, defenses, and other legal contentions  
20 are warranted by existing law or by a nonfrivolous argument  
21 for extending, modifying, or reversing existing law or for  
22 establishing new law;

22 (3) the factual contentions have evidentiary support  
23 or, if specifically, so identified, will likely have evidentiary  
24 support after a reasonable opportunity for further investigation  
25 or discovery; and

25 (4) the denials of factual contentions are warranted  
26 on the evidence or, if specifically, so identified, are reasonably  
27 based on belief or a lack of information.  
28

1 The Nevada Supreme Court adopted four factors, which in addition to hourly time  
2 schedules kept by an attorney, are to be considered in determining the reasonable value  
3 of an attorney's services. *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345,349,455 P.2d  
4 31, 33 (1969). The four factors the Court must consider are: "(1) the qualities of the  
5 advocate: his ability, his training, education, experience, professional standing and skill;  
6 (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and  
7 skill required, the responsibility imposed and the prominence and character of the parties  
8 where they affect the importance of the litigation; (3) the work actually performed by the  
9 lawyer: the skill, time and attention given to the work; ( 4) the result: whether the attorney  
10 was successful and what benefits were derived. Should an award of attorney's fees and  
11 costs be awarded to Plaintiff, then the undersigned shall file a formal *Brunzell* Brief, unless  
12 this Court requires it provided on a different timeline.

13  
14  
15 Sarah has not presented the Court with any factual or legal basis as to why the  
16 underlying motion should not be granted or why her Countermotion should be granted.  
17 As set forth, more fully, above, Sarah's Opposition failed to meet the requirements of  
18 EDCR 2.20(e) and 2.20(f). By her failure to submit any legal authority in support of her  
19 position, Sarah has agreed that the underlying Motion should be granted, and she agrees  
20

21 Sarah's Opposition is replete with factual misstatements. Examples of the  
22 misstatements may be found on Pages 8 – 11. The undersigned did not, merely, allege  
23 the inaccuracies; rather, each allegation of a misstatement is supported by the page and  
24 line numbers corroborating the same. Sarah's silence as to legal authority supporting her  
25 position is telling. Were there legal authority to support her arguments, she would have  
26  
27  
28

1 referenced them in the Opposition. Based upon the forgoing, Dave requests that he be  
2 awarded attorney's fees and costs.

3  
4 **III.**

5 **CONCLUSION**

6 WHEREFORE, based upon the foregoing, Plaintiff, David Rose respectfully  
7 requests that:

- 8 1. The instant Motion be granted in its entirety; and  
9 2. For such other and further relief this Court deems just and proper in the  
10 premises.  
11

12 Dated this 2nd June, 2019.

13 LEGAL SERVICES ONE, LLC

14 /s/ Shelley Lubritz

15 By: \_\_\_\_\_  
16 Shelley Lubritz, Esq.  
17 Nevada Bar No. 5410  
18 375 E. Warm Springs Road Suite 104  
19 Las Vegas, Nevada 89119  
20 Attorney for Plaintiff  
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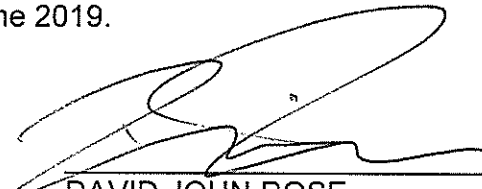


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**DECLARATION**

DAVID JOHN ROSE states, pursuant to NRS 53.045 and the laws of the State of Nevada, and under penalty of perjury: that he is the Plaintiff in the above-entitled matter, and that he has read the foregoing *Defendant's Opposition to Motion to Enforce Memorandum of Understanding and for Attorney's Fees and Costs and Opposition to Plaintiff's Countermotion for Attorney's Fees* and knows the contents thereof, and that the same is true of his own knowledge except as to those matters stated therein upon information and belief, and as to those matters she believes them to be true.

DATED this 2 day of June 2019.

  
\_\_\_\_\_  
DAVID JOHN ROSE

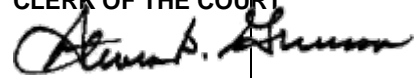
**CERTIFICATE OF SERVICE**

This *Defendant's Opposition to Motion to Enforce Memorandum of Understanding and for Attorney's Fees and Costs and Opposition to Plaintiff's Countermotion for Attorney's Fees* was filed on the 2nd day of June, 2019 through Nevada's 8th Judicial District Court's Odyssey software filing system by the below LEGAL SERVICES ONE LLC employee.

/s/ Shelley Lubritz

---

Shelley Lubritz, Esq.



**MISC**

Shelley Lubritz, Esq.  
Nevada Bar No. 5410  
LEGAL SERVICES ONE, LLC  
375 E. Warm Springs Road Suite 104  
Las Vegas, Nevada 89119  
Telephone: (702) 823-3500  
Facsimile: (702) 823-3400  
E-mail: [legalservices1llc@gmail.com](mailto:legalservices1llc@gmail.com)

Attorney for Plaintiff  
David Rose

CLARK COUNTY DISTRICT COURT, FAMILY DIVISION  
CLARK COUNTY, NEVADA

DAVID ROSE,

Plaintiff,

vs.

SARAH ROSE,

Defendant

Case No. D-17-547250-D  
Dept. No. I

Date of Hearing: June 18, 2019  
Time of Hearing: 9:00 a.m.

**CITATION CORRECTION TO PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION  
TO MOTION TO ENFORCE MEMORANDUM OF UNDERSTANDING AND FOR  
ATTORNEY'S FEES AND COSTS**

**AND**

**OPPOSITION TO DEFENDANT'S COUNTERMOTION FOR ATTORNEYS' FEES**

COMES NOW, Plaintiff, David John Rose, by and through his counsel, Shelley  
Lubritz, Esq., and submits this *Citation Correction to Plaintiff's Reply to Defendant's*

1 *Opposition to his Motion to Enforce Memorandum of Understanding and for Attorney's*  
2 *Fees and Costs and Opposition to Plaintiff's Countermotion for Attorney's Fees.*

3 Dated this 13<sup>th</sup> day of June 2019.

4  
5 LEGAL SERVICES ONE, LLC

6 By: Shelley Lubritz  
7 Shelley Lubritz, Esq.  
8 Nevada Bar No. 5410  
9 375 E. Warm Springs Road Suite 104  
10 Las Vegas, Nevada 89119  
11 Attorney for Plaintiff

12 **CORRECTION OF CITATIONS**

13 EDCR 2.20(c) was inadvertently miscited as EDCR 2.20(e)

14 (c) A party filing a motion must also serve and file with it a  
15 memorandum of points and authorities in support of each  
16 ground thereof. The absence of such memorandum may be  
17 construed as an admission that the motion is not meritorious,  
18 as cause for its denial or as a waiver of all grounds not so  
19 supported.

20 Dated this 13th day of June 2019.

21  
22 LEGAL SERVICES ONE, LLC

23 By: Shelley Lubritz  
24 Shelley Lubritz, Esq.  
25 Nevada Bar No. 5410  
26 375 E. Warm Springs Road Suite 104  
27 Las Vegas, Nevada 89119  
28 Attorney for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 This *Citation Correction to Plaintiff's Reply to Defendant's Opposition to his Motion*  
3 *to Enforce Memorandum of Understanding and for Attorney's Fees and Costs and*  
4 *Opposition to Plaintiff's Countermotion for Attorney's Fees* was filed and served on the  
5 13<sup>th</sup> day of June, 2019 through Nevada's 8th Judicial District Court's Odyssey software  
6 filing system by the below LEGAL SERVICES ONE, LLC employee.  
7

8   
9 Shelley Lubritz, Esq. .  
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27 **CERTIFICATE OF SERVICE**



1 I HEREBY CERTIFY that on the 13<sup>th</sup> day of May, 2019, I caused to be served  
2 Plaintiff's Response to Defendant's First Set of Interrogatories to all interested parties as  
3 follows:

4 \_\_\_\_\_ BY MAIL: Pursuant to NRCP 5(b), I caused a true copy thereof to be  
5 placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon,  
6 addressed as follows:  
7

8 \_\_\_\_\_ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the  
9 U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage  
10 fully paid thereon, addressed as follows:  
11

12 \_\_\_\_\_ BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof  
13 to be transmitted, via facsimile, to the following number(s):  
14

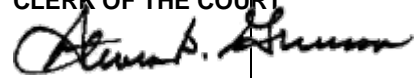
15  X  BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule  
16 9, I caused a true copy thereof to be served via electronic mail, via Wiznet, to the following  
17 e-mail address(es):  
18

*Attorney for Defendant*

*Service@KainenLawGroup.com*

/s/ Shelley Lubritz

\_\_\_\_\_  
Shelley Lubritz, Esq.



**MISC**

Shelley Lubritz, Esq.  
Nevada Bar No. 5410  
LEGAL SERVICES ONE, LLC  
375 E. Warm Springs Road Suite 104  
Las Vegas, Nevada 89119  
Telephone: (702) 823-3500  
Facsimile: (702) 823-3400  
E-mail: [legalservices1llc@gmail.com](mailto:legalservices1llc@gmail.com)

Attorney for Plaintiff  
David Rose

CLARK COUNTY DISTRICT COURT, FAMILY DIVISION  
CLARK COUNTY, NEVADA

DAVID ROSE,  
Plaintiff,

vs.

SARAH ROSE,  
Defendant

Case No. D-17-547250-D  
Dept. No. I

Date of Hearing: June 18, 2019  
Time of Hearing: 9:00 a.m.

**AMENDED CITATION CORRECTION TO PLAINTIFF'S REPLY TO DEFENDANT'S  
OPPOSITION TO MOTION TO ENFORCE MEMORANDUM OF UNDERSTANDING  
AND FOR ATTORNEY'S FEES AND COSTS**

**AND**

**OPPOSITION TO DEFENDANT'S COUNTERMOTION FOR ATTORNEYS' FEES**

COMES NOW, Plaintiff, David John Rose, by and through his counsel, Shelley  
Lubritz, Esq., and submits this *Amended Citation Correction to Plaintiff's Reply to*  
*Defendant's*

1 *Opposition to his Motion to Enforce Memorandum of Understanding and for Attorney's*  
2 *Fees and Costs and Opposition to Plaintiff's Countermotion for Attorney's Fees.*

3 Dated this 13<sup>th</sup> day of June 2019.

4  
5 LEGAL SERVICES ONE, LLC

6 By: Shelley Lubritz  
7 Shelley Lubritz, Esq.  
8 Nevada Bar No. 5410  
9 375 E. Warm Springs Road Suite 104  
10 Las Vegas, Nevada 89119  
11 Attorney for Plaintiff

12 **CORRECTION OF CITATIONS**

13 EDCR 2.20(c) was inadvertently miscited as EDCR 2.20(e)

14 (c) A party filing a motion must also serve and file with it a  
15 memorandum of points and authorities in support of each  
16 ground thereof. The absence of such memorandum may be  
17 construed as an admission that the motion is not meritorious,  
18 as cause for its denial or as a waiver of all grounds not so  
19 supported.

20 Dated this 13th day of June 2019.

21  
22 LEGAL SERVICES ONE, LLC

23 By: Shelley Lubritz  
24 Shelley Lubritz, Esq.  
25 Nevada Bar No. 5410  
26 375 E. Warm Springs Road Suite 104  
27 Las Vegas, Nevada 89119  
28 Attorney for Plaintiff

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 13<sup>th</sup> day of June, 2019, I caused to be served  
*Amended Citation Correction to Plaintiff's Reply to Defendant's Opposition to his Motion*  
*to Enforce Memorandum of Understanding and for Attorney's Fees and Costs and*  
*Opposition to Plaintiff's Countermotion for Attorney's Fees* to all interested parties as  
follows:

\_\_\_\_\_ BY MAIL: Pursuant to NRCP 5(b), I caused a true copy thereof to be  
placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon,  
addressed as follows:

\_\_\_\_\_ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the  
U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage  
fully paid thereon, addressed as follows:

\_\_\_\_\_ BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof  
to be transmitted, via facsimile, to the following number(s):

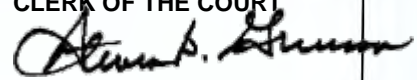
  X   BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule  
9, I caused a true copy thereof to be served via electronic mail, via Wiznet, to the following  
e-mail address(es):

*Attorney for Defendant*

*Service@KainenLawGroup.com*

/s/ Shelley Lubritz

\_\_\_\_\_  
Shelley Lubritz, Esq.



1 **PTM**  
2 EDWARD L. KAINEN, ESQ.  
3 Nevada Bar No. 5029  
4 RACHEAL H. MASTEL, ESQ.  
5 Nevada Bar No. 11646  
6 KAINEN LAW GROUP, PLLC  
7 3303 Novat Street, Suite 200  
8 Las Vegas, Nevada 89129  
9 (702) 823-4900  
10 (702) 823-4488 (Fax)  
11 Service@KainenLawGroup.com  
12 Attorneys for Defendant  
13 *in conjunction with the Legal Aid Center of Southern Nevada*

8 DISTRICT COURT  
9  
10 CLARK COUNTY, NEVADA

11 DAVID ROSE,  
12  
13 Plaintiff,  
14 vs.  
15 SARAH ROSE,  
16 Defendant.

CASE NO. D-17-547250-D  
DEPT NO. I

Date of Hearing: July 31, 2019  
Time of Hearing: 1:30 p.m.

17 **DEFENDANT'S PRE-TRIAL MEMORANDUM**

18 COMES NOW, the Defendant, SARAH ROSE, by and through her attorney,  
19 RACHEAL H. MASTEL, ESQ., of the law firm of KAINEN LAW GROUP, PLLC, and  
20 hereby submits her Pre-Trial Memorandum to this Court.  
21

22 DATED this 28 day of June, 2019

23 KAINEN LAW GROUP, PLLC

24 By: 

25 RACHEAL H. MASTEL, ESQ.  
26 Nevada Bar No. 11646  
27 3303 Novat Street, Suite 200  
28 Las Vegas, Nevada 89129  
Attorneys for Defendant



I.

**STATEMENT OF ESSENTIAL FACTS**

**A. NAMES/AGES OF PARTIES:**

Plaintiff, DAVID ROSE (hereinafter "David"), age thirty-three (33),  
Defendant, SARAH ROSE (hereinafter "Sarah"), age thirty (30).

**B. DATE OF MARRIAGE/ DATE OF DIVORCE:**

The parties were married on June 17, 2006. A Decree of Divorce was filed  
April 11, 2018.

**C. RESOLVED ISSUES, INCLUDING AGREED RESOLUTIONS:**

None.

**D. STATEMENT OF UNRESOLVED ISSUES:**

1) Did the Memorandum of Understanding ("MOU") merge into the  
Decree or does it remain a separate, independent and enforceable contract?

2) If the Memorandum of Understanding ("MOU") is a separate,  
independent and enforceable contract, does the Decree or MOU control?

3) Does PERS or Nevada Law allow (or require) this Court to make a  
ruling on a dispute concerning the election of survivor benefits under the PERS  
retirement system? And if so, what is the proper ruling in this case?;

4) If the provision related to survivor benefits contained in the April 11,  
2018 Decree in this case is set aside, is *Doan v. Wilkerson* applicable?;

5) Attorney's Fees.

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II.

CONTRACT ISSUES

The first two questions/unresolved issues before this Court are contract issues. The first thing the Court will have to determine is whether the MOU is a separate, independent and enforceable contract. If it does not, then the Decree is the sole presumptive contact.

The MOU, at the time that it was drafted and signed, was a separate, independent and enforceable contract between the parties. However, Nevada law is clear that once the Decree was prepared, signed and filed, the MOU (settlement agreement) was superceded by the Decree, it was no longer enforceable as a separate, independent agreement.

There is only one case which expressly identifies Nevada law as to the survival of a underlying settlement agreement as an independent contract. That case is *Day v. Day*, 80 Nev. 386, 395 P.2d 321 (1964). The holding of *Day* is absolutely clear:

... [T]he survival provision of an agreement is ineffective unless the court decree specifically directs survival. ... Absent such a clear and direct expression in the decree we shall presume that the court rejected the contract provision for survival...

*Id* at 323.

As the Decree does not direct the survival of the MOU, it does not survive as an independent contract as a matter of law. Without a specific survival clause, the MOU loses all effect as a separate, independent and enforceable contract between the parties and only the Decree can control. Whether the Decree or the MOU controls in this matter is exclusively an issue of law. Therefore, any arguments that David may bring which are based in fact or equity must fail.

As the evidence will show, not only did the Decree not contain any discussion of survival of the MOU, the MOU itself, does not anticipate its independent survival. Rather, it reflects that there was the express intention of the parties to have a superceding, separate, formal agreement drafted – the Decree.



1           Incidentally, by implication, *Day v. Day* is also illustrative as to which  
2 agreement controls, should the Court find that the MOU remains as a competing contract  
3 in spite of the above. The holding in *Day*, specifically anticipates that the Court can  
4 “reject” provisions of a contract between the parties when entering a divorce decree. By  
5 implication then, the terms of the initial contract (the MOU) can be modified, and that  
6 modification thereafter reflected in a subsequent document (the Decree). That subsequent  
7 document then becomes the controlling document. In simpler words, terms can be  
8 changed between the signing of a “settlement agreement” and the entry of a decree and  
9 the later document will be the document that controls where the terms contradict.

10           Sarah’s position in this litigation, that the Decree controls, is also supported  
11 by contract law. It is well settled case law in Nevada that a subsequent contract, entered  
12 into between the same parties, effects a novation and discharges the parties under the  
13 former agreement. *Williams v. Crusader Discount Corp.* 75 Nev. 67, 70, 334 P.2d 843,  
14 845 (1959). Therefore, by signing the Decree, the MOU is subject to novation, and the  
15 Decree is the superceding contract. In Family Court the holdings of both *Day* and  
16 *Williams* are regularly applied when alimony language contained in a Marital Settlement  
17 Agreement is merged into a decree. With merger, the terms of the decree control and the  
18 Court retains jurisdiction over the issue. If parties do not intend for merger of the terms  
19 of the original agreement into the decree, they either do not merge the original agreement,  
20 or specify which parts of the original decree fail to merge and remain a separate,  
21 independent agreement enforceable and non-modifiable by the Court.

22           For novation to occur, and the subsequent contract to be the controlling  
23 agreement, the new agreement must do more than increase the payment to one party as  
24 a result of the other parties’ failure to perform. For example, if David were to withhold  
25 assets due to Sarah under the Decree, in an effort to force her to modify the terms therein,  
26  
27  
28



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

SARAH JANEEN ROSE,

Appellant,

vs.

DAVID JOHN ROSE,

Respondent.

CASE NO. 84295

District Court Case No:  
D547250

**JOINT APPENDIX**

Volume I - (Bates Stamps APPX0001 - APPX0250)  
Volume II - (Bates Stamps APPX0251 - APPX0471)  
Volume III - (Bates Stamps APPX0472 - APPX0670)  
Volume IV - (Bates Stamps APPX0671 - APPX0767)  
Volume V - (Bates Stamps APPX0768 - APPX0941)  
Volume VI - (Bates Stamps APPX0942 - APPX01176)  
Volume VII - (Bates Stamps APPX01177 - APPX01391)  
Volume VIII - (Bates Stamps APPX01392 - APPX01599)  
Volume IX - (Bates Stamps APPX01600 - APPX01842)  
Volume X - (Bates Stamps APPX01843 - APPX01921)

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ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

**LIST OF APPENDIX DOCUMENTS**

<u>Title of Document</u>	<u>Filing Date</u>	<u>Volume</u>	<u>Bates Stamp</u>
Acceptance of Service	10.05.21	Vol. VI	APPX1170
Affidavit in Support of and Request for Summary Disposition of Decree of Divorce	03.23.18	Vol. I	APPX0120- APPX0122
Affidavit of Resident Witness	03.23.18	Vol. I	APPX0118- APPX0119
Amended Citation Correction to Plaintiff's Reply to Defendant's Opposition to Motion to Enforce Memo- randum of Understanding and For Attorney's Fees and Costs	6.13.19	Vol. II	APPX0344- APPX0346
Amended Order Setting Evidentiary Hearing	4.10.20	Vol. II	APPX0441- APPX0442
Amended Trial Subpoena Nexie Rose	1.26.20	Vol. II	APPX0433
Answer and Counterclaim for Divorce	9.26.17	Vol. I	APPX0007- APPX0014
Appendix to Defendant's Opposition to Plaintiff's Motion to Amend or Add Additional Findings Pursuant to NRCP 52, or Alternatively, Motion for Relief Pursuant to NRCP 60(b)(6) and Counter- motion for Attorney's Fees and Costs	6.18.20	Vol. III	APPX0472- APPX0570
Appendix of Exhibits In Support of Plaintiff's Motion to Set Aside The Paragraph Regarding Survivor Benefits in the Decree of Divorce Based Upon Mistake	04.25.18	Vol. I	APPX0198- APPX0200
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1	Appendix of Exhibits to Defendant's Motion For Judgment Pursuant to NRCP 52( c ) Or In The Alternative For Summary Judgment	2.12.20	Vol. IV	APPX0671-APPX0767
4	Case and Non-Jury Trial Management Order	11.06.18	Vol. II	APPX0269-APPX0272
6	Certificate of Service	04.26.18	Vol. I	APPX0204-APPX0206
7	Certificate of Service	10.10.18	Vol. I	APPX0249-APPX0250
9	Certificate of Service	02.8.22	Vol. VIII	APPX1595-APPX1596
10	Complaint for Divorce	2.22.17	Vol. I	APPX0001-APPX0006
12	Court Minute Decision	10.21.20	Vol. III	APPX0650-APPX0656
13	Court Minutes	8.06.20	Vol. III	APPX0573
14	Defendant's Closing Argument	12.13.21	Vol. VIII	APPX1392-APPX1441
16	Defendant's Ex Parte Motion For Order Shortening Time	1.15.20	Vol. II	APPX0419-APPX0421
19	Defendant's List of Witnesses to Plaintiff	11.21.18	Vol. II	APPX0273-APPX0276
20	Defendant's Motion For Judgment Pursuant to NRCP 52 (c) or in the Alternative For Summary Judgment	2.12.21	Vol. III	APPX0657-APPX0670
23	Defendant's Motion to Alter or Amend Judgment, or in the Alternative For New Trial Pursuant to NRCP 59(a)(7) and For Attorney's Fees and Costs	10.9.18	Vol. I	APPX0234-APPX0247
26	...			
27				

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1	Defendant's Motion to	1.14.20	Vol. II	APPX0411-
2	Continue Trial (Defendant's			APPX0417
3	First Request)			
4	Defendant's Opposition to	05.10.18	Vol. I	APPX0207-
5	Motion to Set Aside The			APPX0222
6	Paragraph Regarding Survivor			
7	Benefits in the Decree of			
8	Divorce Based on Mistake			
9	and Countermotion for			
10	Attorney's Fees and Costs			
11	Defendant's Opposition	9.25.20	Vol. III	APPX0639-
12	to Plaintiff's Motion For			APPX0649
13	Relief Pursuant to			
14	Administrative Order 20-17			
15	and For Related Relief and			
16	Countermotion for Attorney's			
17	Fees and Costs			
18	Defendant's Opposition	9.19.19	Vol. II	APPX0383-
19	to Plaintiff's Motion			APPX0394
20	In Limine to Preclude			
21	The Testimony of			
22	Marshall [sic] S.			
23	Willick, Esq. and			
24	Countermotion for			
25	Attorney's Fees and Costs			
26	Defendant's Opposition	6.18.20	Vol. II	APPX0462-
27	to Plaintiff's Motion to			APPX0471
28	Amend or Add			
29	Additional Findings			
30	Pursuant to NRCP 52, or			
31	Alternatively, Motion			
32	For Relief Pursuant to			
33	NRCP 60(B)(6) and			
34	Countermotion For			
35	Attorney's Fees and Costs			
36	Defendant's Opposition to	5.22.19	Vol. II	APPX0302-
37	Plaintiff's Motion to			APPX0311
38	Enforce Memorandum of			
39	Understanding and for			
40	Attorney's Fees and			
41	Countermotion for Attorney's			
42	Fees and Costs			
43	Defendant's Pre-Trial	6.28.19	Vol. II	APPX0347-
44	Memorandum			APPX0355
45	...			
46				
47				



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1	Defendant's Rebuttal to Plaintiff's Rebuttal Closing Argument	1.10.22	Vol. III	APPX1490- APPX1515
2				
3	Defendant's Response To Plaintiff's Objection to Notice of Appearance	11.12.21	Vol. VII	APPX1368- APPX1370
4	By audiovisual Trans- mission Filed on Behalf of Shelly Booth Cooley, Esq.			
5				
6	Emergency Ex Parte Request to Extend Time to File Responsive Closing Argument	12.16.21	Vol. III	APPX1442- APPX1445
7				
8				
9	Errata to Plaintiff's Memorandum of Fees and Costs and Brunzell Affidavit of Shelley Lubritz, Esq.	2.15.22	Vol. III	APPX1597- APPX1599
10				
11				
12	Ex Parte Application and Declaration in Support of Request For An Order Shortening Time	6.11.20	Vol. II	APPX0457- APPX0459
13				
14				
15	Ex Parte Motion for Certification Pursuant to NRCp 54(b)	4.23.21	Vol. VI	APPX1100- APPX1102
16				
17	Ex Parte Order Shortening Time	1.22.20	Vol. II	APPX0422
18				
19	Exhibit Appendix In Support of Motion For Relief Pursuant to Administrative Order 20-17 and Other Related Relief	9.04.20	Vol. III	APPX0608- APPX0618
20				
21				
22	Exhibit Appendix In Support of Plaintiff's Motion to Continue Evidentiary Hearing (First Request)	10.10.21	Vol. VII	APPX1259- APPX1263
23				
24				
25	Final Billing of Transcript	4.7.22	Vol. X	APPX1914
26				
27				

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1	Financial Disclosure Form - David	3.22.18	Vol. I	APPX0095-APPX0106
2	Financial Disclosure Form - Sarah	3.22.18	Vol. I	APPX0107-APPX0117
3				
4	Finding of Fact, Conclusions of Law and Order	1.31.22	Vol. VIII	APPX1516-APPX1532
5				
6	Minute Order	4.08.20	Vol. II	APPX0439-APPX0440
7	Minute Order	6.26.20	Vol. III	APPX0571-APPX0572
8				
9	Minute Order	5.07.21	Vol. VI	APPX1103-APPX1104
10	Motion for Stay of District Court Orders During Pendency of Appeal	2.25.22	Vol. IX	APPX1644-APPX1651
11				
12				
13	Motion to Enforce Memorandum of Understanding and for Attorney's Fees and Costs	5.08.19	Vol. II	APPX0289-APPX0301
14				
15	Motion to Set Aside the Paragraph Regarding Survivor Benefits in the Decree of Divorce Based Upon Mistake	04.25.18	Vol. I	APPX0188-APPX0197
16				
17				
18	Notice of Appeal	2.15.22	Vol. IX	APPX1600-APPX1643
19				
20	Notice of Appearance By Audiovisual Transmission Equipment	10.8.21	Vol. VI	APPX1173-APPX1176
21				
22	Notice of Appearance By Audiovisual Transmission Equipment	11.9.21	Vol. VII	APPX1275-APPX1278
23				
24	Notice of Entry of August 6, 2020 Minute Order	9.04.20	Vol. III	APPX0584-APPX0589
25				
26	Notice of Entry of Decree	04.11.18	Vol. I	APPX0123-APPX0187
27				



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1	Notice of Entry of Order	1.17.19	Vol. II	APPX0280- APPX0284
2	Notice of Entry of	1.31.22	Vol. III	APPX1497-
3	Order			APPX1514
4	Notice of Entry of Order	4.19.22	Vol. X	APPX1918- APPX1921
5	Notice of Entry of Order	5.21.20	Vol. II	APPX0443-
6	(April 8, 2020 Minute Order)			APPX0446
7	Notice of Entry of	6.30.21	Vol. VI	APPX1125-
8	Order After Hearing			APPX1147
	(April 9, 2021)			
9	Notice of Entry of Order	10.1.18	Vol. I	APPX0227-
10	and Withdrawal of Counsel			APPX0233
11	Notice of Entry of	10.11.21	Vol. VII	APPX1269-
12	Order Continuing			APPX1274
	October 12, 2021			
13	Evidentiary Hearing			
14	Notice of Entry of Order	9.09.19	Vol. II	APPX0378-
	From Hearing June 18,			APPX0382
15	2019			
16	Notice of Entry of Order	1.13.20	Vol. II	APPX0407-
	From Hearing on October			APPX0410
17	23, 2019			
18	Notice of Entry of	8.26.20	Vol. III	APPX0578-
	Order Sealing File			APPX0583
19	Notice of Entry of	5.30.19	Vol. II	APPX0315-
20	Stipulation and Order to			APPX0319
21	Continue Evidentiary			
	Hearings (First Request)			
22	and Other Deadlines			
23	Notice of Hearing	1.15.20	Vol. II	APPX0418
24	Notice of Hearing	6.04.20	Vol. II	APPX0456
25	Notice of Hearing	9.04.20	Vol. III	APPX0619
26	Notice of Hearing	2.17.21	Vol. VI	APPX1073
27	Notice of Hearing	9.27.21	Vol. VI	APPX1162- APPX1163



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1	Notice of Hearing	10.11.21	Vol. VIII	APPX1264- APPX1265
2	Notice of Hearing	3.1.22	Vol. IX	APPX1652- APPX1653
3				
4	Notice of Non-Opposition and Request to Grant Plaintiff's Motion For Relief Pursuant to Administrative Order 20-17 and For Other Related Relief	9.19.20	Vol. III	APPX0628- APPX0630
5				
6				
7	Opposition to Defendant's Motion to Alter or Amend Judgment or in the Alternative for New Trial Pursuant to NRCP 59(a)(7) and For Attorney's Fees and Costs; Countermotion For Attorney's Fees	10.24.18	Vol. II	APPX0252- APPX0260
8				
9				
10				
11				
12	Order	09.25.18	Vol. I	APPX0223- APPX0226
13	Order	1.16.19	Vol. II	APPX0277- APPX0279
14				
15	Order	4.19.22	Vol. X	APPX1915- APPX1917
16	Order After Hearing	6.25.21	Vol. VI	APPX1105- APPX1124
17				
18	Order Continuing October 12, 2021 Evidentiary Hearing	10.11.21	Vol. VII	APPX1266- APPX1268
19				
20	Order From Hearing On June 18, 2019	9.09.19	Vol. II	APPX0375- APPX0377
21	Order From Hearing on October 23, 2019	1.13.20	Vol. II	APPX0405- APPX0406
22				
23	Order Sealing File	8.26.20	Vol. III	APPX0575- APPX0577
24	Order Shortening Time	6.16.20	Vol. II	APPX0460- APPX0461
25				
26	Plaintiff, David John Rose's Pretrial Memorandum	7.01.19	Vol. II	APPX0356- APPX0364
27				

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1	Plaintiff's Civil Trial Memoranda	9.23.21	Vol. VI	APPX1148-APPX1161
2	Plaintiff's Closing Argument	11.30.21	Vol. VII	APPX1375-APPX1391
3				
4	Plaintiff's Declaration in Support of Opposition to Motion in Limine To Preclude Testimony of Marshall Willick, Esq. and To Preclude Admission of Mr. Willick's December 20, 2018 Report and Opposition to Countermotion For Attorney's Fees and Cost	10.22.19	Vol. II	APPX0402-APPX0404
5				
6				
7				
8				
9	Plaintiff's Ex Parte Request to Seal File	8.13.20	Vol. III	APPX0574
10				
11	Plaintiff's Memorandum of Fees and Costs and Brunzell Affidavit of Shelley Lubritz, Esq.	2.7.22	Vol. VIII	APPX1551-APPX1594
12				
13	Plaintiff's Motion For Relief Pursuant to Administrative Order 20-17 and for Other Related Relief	9.04.20	Vol. III	APPX0590-APPX0607
14				
15				
16	Plaintiff's Motion in Limine to Preclude the Testimony of Marshall S. Willick, Esq.	9.05.19	Vol. II	APPX0365-APPX0374
17				
18	Plaintiff's Motion to Amend or Add Additional Findings Pursuant to NRCP or, Alternatively, Motion For Relief Pursuant to 60(B)(6)	6.03.20	Vol. II	APPX0447-APPX0455
19				
20				
21				
22	Plaintiff's Motion to Continue Evidentiary Hearing (First Request)	10.10.21	Vol. VII	APPX1248-APPX1258
23				
24	...			
25	...			
26	...			
27				



1	Plaintiff's Objection to	11.11.21	Vol. VII	APPX1279-
2	Notice of Appearance			APPX1281
3	By Audiovisual			
4	Transmission Filed On			
5	Behalf of Shelly			
6	Booth Cooley, Esq.			
7				
8	Plaintiff's Opposition to	3.03.21	Vol. VI	APPX1074-
9	Defendant's Motion For			APPX1089
10	Judgment Pursuant to NRCP			
11	52(c) or in the Alternative			
12	For Summary Judgment			
13	and Countermotion for			
14	Attorney's Fees and Costs			
15				
16	Plaintiff's Opposition	1.23.20	Vol. II	APPX0424-
17	to Defendant's Motion			APPX0431
18	to Continue Trial and			
19	Countermotion For			
20	Attorney's Fees and			
21	Costs			
22				
23	Plaintiff's Opposition	3.17.22	Vol. IX	APPX1654-
24	to Motion For Stay of			APPX1666
25	District Court Orders			
26	During Pendency of			
27	Appeal and Counter-			
	Motion for Attorney's			
	Fees and Costs			
	Plaintiff's Rebuttal	12.27.21	Vol. VIII	APPX1450-
	Closing Argument			APPX1489
	Plaintiff's Reply to	10.07.19	Vol. II	APPX0395-
	Defendant's Opposition to			APPX0401
	Motion in Limine To			
	Preclude Testimony of			
	Marshall Willick, Esq. and			
	To Preclude Admission of			
	Mr. Willick's December			
	20, 2018 Report and			
	Opposition to Countermotion			
	For Attorney's Fees and Cost			
	Plaintiff's Reply to	6.02.19	Vol. II	APPX0320-
	Opposition to Motion			APPX0339
	Enforce Memorandum			
	of Understanding and			
	Opposition to Counter-			
	motion for Attorney's			
	Fees and Costs			

1	Receipt of Documents and Flash Drive	2.19.20	Vol. II	APPX0435
2	Reply To Counterclaim for Divorce	12.15.17	Vol. I	APPX0028- APPX0031
3				
4	Reply To Defendant's Opposition to Plaintiff's Objection to Notice of Appearance by Audio- Visual Transmission Filed on Behalf of Shelly Booth Cooley, Esq.	11.14.21	Vol. VII	APPX1371- APPX1374
5				
6				
7				
8	Reply to Plaintiff's Opposition to Defendant's Ex Parte Motion For Extension of Time to File Opposition and Opposition to Countermotion For Attorney's Fees and Costs	9.21.20	Vol. III	APPX0631- APPX0638
9				
10				
11				
12	Reply to Plaintiff's Opposition to Defendant's Motion For Stay of Court Orders During Pendency of Appeal and Opposition to Countermotion For Attorney's Fees and Costs	4.5.22	Vol. IX	APPX1667- APPX1673
13				
14				
15				
16				
17	Reply to Plaintiff's Opposition to Defendant's Motion to Alter or Amend Judgment or in the Alternative For New Trial Pursuant to NRCP 59(a)(7) and For Attorney's Fees and Costs and Opposition to Countermotion for Attorney's Fees	10.30.18	Vol. II	APPX0261- APPX0268
18				
19				
20				
21				
22	Reply to Plaintiff's Opposition to Defendant's Motion to for Judgment Pursuant to NRCP 52 (c) or in the Alternative For Summary Judgment and Opposition to Counter- motion for Attorney's Fees and Costs	3.09.21	Vol. VI	APPX1090- APPX1099
23				
24				
25				
26				
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1	Second Amended Trial Subpoena Nexie Rose	1.26.20	Vol. II	APPX0434
2	Statement of Legal Aid Representation (Pursuant to NRS 12.015)	10.09.18	Vol. I	APPX0248
3				
4	Statement of Legal Aid Representation (Pursuant to NRS 12.015)	10.09.18	Vol. II	APPX0251
5				
6	Stipulated Decree of Divorce	04.11.18	Vol. I	APPX0032-APPX0094
7				
8	Stipulated Parenting Agreement	10.30.17	Vol. I	APPX0015-APPX0027
9	Stipulation and Order to Continue Evidentiary Hearing (First Request) and Other Deadlines	5.24.19	Vol. II	APPX0312-APPX0314
10				
11				
12	Stipulation and Order to Extend Time for Plaintiff to File Closing Argument	12.17.21	Vol. VIII	APPX1446-APPX1449
13				
14				
15	Submission of Plaintiff's Declaration	2.27.20	Vol. II	APPX0436-APPX0438
16				
17	Substitution of Attorney	4.28.19	Vol. II	APPX0285-APPX0288
18	Supplemental Points and Authorities to Plaintiff's Opposition to Defendant's Ex Parte Motion for Extension of Time to File Opposition and Countermotion For Attorney's Fees and Costs	9.18.20	Vol. III	APPX0620-APPX0627
19				
20				
21				
22				
23	Transcript - 4.9.21	4.7.22	Vol. IX	APPX1674-APPX1696
24	Transcript - 9.23.21	10.08.21	Vol. VIII	APPX1177-APPX1247
25				
26	Transcript - 9.23.21	4.7.22	Vol. IX	APPX1697-APPX1842
27				



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1	Transcript - 11.15.21	4.7.22	Vol. X	APPX1843- APPX1913
2	Transcript of Proceedings -	2.12.21	Vol. V	APPX0768-
3	Vol. I			APPX0941
4	Transcript of Proceedings -	2.12.21	Vol. VI	APPX0942-
	Vol. II			APPX1072
5	Transcript Re: Non-Jury	11.12.21	Vol. VII	APPX1282-
6	Trial (Excerpt) Thursday,			APPX1367
	September 23, 2021			
7	Trial Subpoena -	1.22.20	Vol. II	APPX0423
8	Regina McConnell, Esq.			
9	Trial Subpoena -	10.05.21	Vol. VI	APPX1171-
	Regina McConnell, Esq.			APPX1172
10	Trial Subpoena -	10.05.21	Vol. VI	APPX1164-
11	Shelly Booth Cooley, Esq.			APPX1169
12	Trial Subpoena -	1.26.20	Vol. II	APPX0432
13	Nexie Rose			
14				
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AFFIRMATION

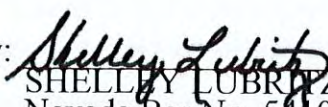
(Pursuant to NRS 239B.030)


The undersigned does hereby affirm that the preceding documents filed in the above-referenced matter does not contain the social security number of any person.

DATED this 13 day of July, 2022.

Law Office of Shelley Lubritz,  
PLLC

Kainen Law Group, PLLC

By:   
SHELLEY LUBRITZ, ESQ.  
Nevada Bar No. 5410  
Attorney for Respondent

By:   
RACHEAL H. MASTEL, ESQ.  
Nevada Bar No. 11646  
Attorney for Appellant

KAINEN LAW GROUP, PLLC  
3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
702.823.4900 • Fax 702.823.4488  
www.KainenLawGroup.com

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 13<sup>th</sup> day of July, 2022, I caused to be served the *Joint Appendix* to all interested parties as follows:

\_\_\_ BY MAIL: Pursuant to NRCP 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:


\_\_\_ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

\_\_\_ BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to be transmitted, via facsimile, to the following number(s):

X BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I caused a true copy thereof to be served via electronic mail, via Wiznet, to the following e-mail address(es):

shelley@lubritzlawoffice.com

daverose08@gmail.com

  
An Employee of  
KAINEN LAW GROUP, PLLC



1 doing so would subject the Decree to the pre-existing duty rule.<sup>1</sup> Where the “material  
2 terms” of the contract were simply changed, or new terms added, as a result of further  
3 discussions without a refusal to enforce existing terms, those terms do effect a novation  
4 and allow the Decree to supercede the MOU. The evidence will undoubtedly support a  
5 finding that novation properly occurred here.

6 Therefore, under either *Day*, or basic Nevada contract law, this Court must  
7 find that the Decree is the only remaining contract, and must be enforced as written and  
8 entered.

9 III.

10 PERS ISSUES

11 No one disputes that Sarah has a community property interest in David’s  
12 PERS benefits. That is undeniable. Survivorship benefits are part and parcel of David’s  
13 PERS, however Sarah was required to address the survivorship interest in the Decree if  
14 she wanted to preserve her community interest in the same. In *Henson v Henson*, 334 P.  
15 3d 933 (1994) the Nevada Supreme Court’s ruling confirms that neither the PERS  
16 employee nor the nonemployee spouse automatically receives a survivor beneficiary  
17 interest in any PERS plan. However, where a divorce decree explicitly provides a  
18 nonemployee spouse with a survivor beneficiary interest, that interest will stand, and the  
19 employee spouse should not be permitted to reduce or remove the same. Sarah preserved  
20 her right to survivor benefits, and the Decree is specific in the award of Option 2 benefits  
21 to Sarah. David cannot now come back and seek to take from Sarah something which the  
22 Decree awards. Therefore this Court should confirm that the Option 2 benefits awarded  
23 to Sarah is the proper award.

24 . . .

25  
26  
27 <sup>1</sup> It is true that Nevada also follows the “pre-existing duty rule,” but the same is not applicable in this  
28 case. The pre-existing duty rule notes that a second contract is invalid if the second agreement exists  
solely because of one parties refusal to perform unless there is greater compensation. *Zhang v. 8<sup>th</sup>*  
*Judicial Dist. Ct.*, 120 Nev. 1037, 103 P.3d 20 (2004).

1 Nevada law requires that the Court review and make a determination  
2 regarding *all* community property. The only exception is for property addressed under  
3 *Doan v. Wilkerson*, 327 P.3d 498 (Nev. 2014) that is: property which was known but  
4 may have not been included in the Decree.

5 *Doan* is inapplicable to this case as the survivor benefits were expressly  
6 addressed by the Decree. In *Doan*, the asset had been known, discussed and simply not  
7 included in the Decree of Divorce. Then *six years later*, the wife attempted to have the  
8 Court revisit that asset. *Doan* and *Henson* are easily reconciled. What could not be  
9 reconciled is any application of *Doan* to this case.

10 In this case, the Court need only reach the question of *Doan* if it sets aside  
11 the Decree. There is no basis to set aside the Decree as the same was not entered into  
12 through mistake, fraud, collusion, accident or some ground of like nature. Instead, this  
13 is a case of simple “buyers remorse” where David, after the fact, did not like what was  
14 agreed to. In cases of buyers remorse, the Court would not be found to have abused its  
15 discretion by refusing to set aside the parties' Decree and finding its terms enforceable.  
16 David was represented by counsel in the settlement negotiations that led to the MOU, he  
17 was represented by counsel who negotiated and reviewed the Decree. He is bound by his  
18 attorney's actions, as his agent. *See Nevada Supreme Court Rule 45 - Authority of*  
19 *attorney. An attorney and counselor shall have authority: 1. To bind his client in*  
20 *procedural matters in any of the steps of an action or proceeding. When Ms. McConnell*  
21 *signed the Decree and permitted entry of the same, David became bound.*<sup>2</sup> If David is  
22 now disappointed, his relief is against his attorney not Sarah.

23 Sarah is content with the terms of the Decree, which both parties signed. If the  
24 Court sets aside the Decree, the result is that the David would have the ability to deprive  
25 Sarah of a divided and agreed upon asset. The Court is not reviving an old case to  
26 suddenly consider a previously addressed (and agreed upon asset). This Court will need  
27 \_\_\_\_\_

28 <sup>2</sup> It should also be noted that David *personally signed* the Decree as well.



1 to address the community property which has been unwound, the entirety of David's  
2 PERS, because a final determination of the same was not made.

3 IV.

4 **ATTORNEY'S FEES**

5 The Court should award Sarah her attorney's fees in this matter. This entire  
6 matter is the result of David's "buyer's remorse" and the position David has taken in this  
7 action has only been compounded by his need to bully Sarah into compliance. Fees  
8 should be awarded under NRS 18.010, EDCR 7.60, NRCP 11, and NRCP 37, due to  
9 David's initial refusal to provide discovery and failure to timely participate in the same,  
10 requiring Sarah to expend additional fees both to hold a 5.602 conference - which  
11 resulted in David's agreement to *partially* respond, and to address the untimely discovery  
12 requested by David, in light of his failure to participate in the approximately six months  
13 he could have done so timely. Sarah will provide evidence at the time of trial regarding  
14 the amount of fees appropriate due to the time expended, and will provide a  
15 Memorandum of Fees and Costs at the Court's request, after the trial, to provide a full  
16 accounting.

17 V.

18 **LIST OF WITNESSES**

- 19 1. Sarah Rose, Defendant  
20 2. David Rose, Plaintiff  
21 3. Shelly Booth Cooley, Esq.  
22 4. Marshall Willick, Esq.  
23 5. Any and all other witnesses listed by Plaintiff.  
24 6. Rebuttal witnesses as necessary.

25 ...

26 ...

27 ...

28 ...



VI.

**LIST OF EXHIBITS**

Due to David's failure to respond to discovery, and the fact that he has not yet requested the discovery he sought permission to request from Sarah, as well as the fact that it will not be known until approximately July 17<sup>th</sup> if David will hire an expert and produce a rebuttal report to Mr. Willick's, it is not yet possible to identify the Exhibits. Sarah will supplement this Memorandum with her list of exhibits as soon as reasonably possible.

VII.

**UNUSUAL LEGAL OR FACTUAL ISSUES PRESENTED**

There may be evidentiary objections, should David seek to admit untimely produced evidence. In addition, the legal issues herein are uncommon and unique. Sarah acknowledges that further legal briefing may be required.

VIII.

**LENGTH OF TRIAL**

Length of trial: One-half day.

Respectfully submitted,

KAINEN LAW GROUP, PLLC

By: 

RACHEAL H. MASTEL, ESQ.  
Nevada Bar No. 11646  
Attorney for Defendant

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 28<sup>th</sup> day of June, 2019, I caused to be served ***Defendant's Pretrial Memorandum*** filed, to all interested parties as follows:

\_\_\_ BY MAIL: Pursuant to NRCP 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:

\_\_\_ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

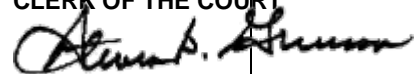
\_\_\_ BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to be transmitted, via facsimile, to the following number(s):

\_\_\_ BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I caused a true copy thereof to be served via electronic mail, via Wiznet, to the following e-mail address(es):

*Attorney for Plaintiff*

Regina@MLVegas.com

  
An Employee of  
KAINEN LAW GROUP, PLLC



**PMEM**

Shelley Lubritz, Esq.  
Nevada Bar No. 5410  
LEGAL SERVICES ONE, LLC  
375 E. Warm Springs Road Suite 104  
Las Vegas, Nevada 89119  
Telephone: (702) 823-3500  
Facsimile: (702) 823-3400  
E-mail: [legalservices1llc@gmail.com](mailto:legalservices1llc@gmail.com)  
Attorney for Plaintiff  
DAVID JOHN ROSE

CLARK COUNTY DISTRICT COURT, FAMILY DIVISION

CLARK COUNTY, NEVADA

DAVID JOHN ROSE,  
Plaintiff,

vs.

SARAH JANEEN ROSE,  
Defendant

Case No.: D-17-547250-D  
Dept. No.: I


Hearing Date: July 31, 2019  
Hearing Time: 1:30 p.m.

**PLAINTIFF, DAVID JOHN ROSE'S PRETRIAL MEMORANDUM**

COMES NOW, Plaintiff, David John Rose, by and through his counsel, Shelley Lubritz, Esq., and submits his Pre-Trial Memorandum to this Court.

Dated this 1<sup>st</sup> day of July 2019.

LEGAL SERVICES ONE, LLC

By:   
Shelley Lubritz, Esq.  
Nevada Bar No. 5410  
375 E. Warm Springs Road Suite 104  
Las Vegas, Nevada 89119  
Attorney for Plaintiff  
David John Rose



I.

**STATEMENT OF ESSENTIAL FACTS**

**A. NAMES AND AGES OF PARTIES:**

Plaintiff, David John Rose, age 33 years and Defendant, Sarah Janeen Rose, age 30 years.

**B. DATE OF MARRIAGE/DATE OF DIVORCE:**

The parties were married on June 17, 2006. They were divorced by Decree filed on April 11, 2018.

**C. RESOLVED ISSUES, INCLUDING AGREED RESOLUTIONS:**

1. The parties agree that the Hon. Forsberg drafted the March 23, 2018, Memorandum of Understanding in accordance with their negotiated terms.
2. The parties, and their counsel, did discuss PERS survivorship benefits during the mediation.
3. During mediation, Defendant stated her reason for wanting the survivorship benefits was for the support of the parties' children.
4. No current caselaw supports the contention that survivorship benefits in PERS are community property.
5. No current caselaw supports the contention that survivorship benefits in PERS are a marital asset.

**D. STATEMENT OF UNRESOLVED ISSUES:**

1. Does the March 23, 2018, Memorandum of Understanding ("MOU") memorialize the parties' agreement as to a division of assets and debts?
2. Does the Memorandum of Understanding bind the parties to its terms?

3. Did the MOU, and its terms, merge into the Decree?
4. If it did not merge, did the MOU remain a separate, independent, and enforceable contract?
5. Did the parties intend for the MOU to not merge into the Decree of Divorce and retain its nature as a sole and separate agreement.
6. Did the parties modify, by stipulation, any terms of the MOU? If so, when?
7. Is the report of Defendant's expert admissible?
8. Attorney's fees and costs.

## II.

### MOU AS CONTRACT

In *May v. Anderson*,<sup>1</sup> the Court confirmed that since a "settlement contract is formed when the parties have agreed to its material terms, ***even though the exact language is finalized later***, a party's refusal to later execute" the document after agreeing upon the essential terms does not render the settlement agreement invalid.<sup>2</sup>

Specifically, in *May v. Anderson*, the defendant's insurance offered to pay \$300,000 to the injured parties in exchange for a release of all claims and a covenant not to sue. Upon sending a letter of the parties' agreement, Plaintiff signed stating that he agreed to the terms. However, upon receiving the document the settlement terms to execute, Plaintiff refused to sign.

The Court stated, "because a settlement agreement is a contract, its construction and enforcement are governed by principles of contract law. Basic contract principles require, for an

---

<sup>1</sup> *May v. Anderson*, 119 P. 3d 1254 (2005).

<sup>2</sup> *Id.* At 1256.

1 enforceable contract, an offer and acceptance, meeting of the minds, and consideration. With  
2 respect to contract formation, preliminary negotiations do not constitute a binding contract unless  
3 the parties have agreed to all material terms. A valid contract cannot exist when material terms are  
4 lacking or are insufficiently certain and definite. A contract can be formed, however, when the  
5 parties have agreed to the material terms, even though the contract's exact language is not  
6 finalized until later. In the case of a settlement agreement, a court cannot compel compliance  
7 when material terms remain uncertain. The Court must be able to ascertain what is required of the  
8 respective parties.”

10  
11 In the current case, MOU is clear that this was a final agreement on all terms. That means  
12 the survivorship was considered and specifically omitted. By their own sworn statements, the  
13 parties agreed it was considered.

14 In *Golden Rd. Motor Inn, Inc. v. Islam*, the Court the Supreme Court of Nevada state that  
15 they have “long refrained from reforming or ‘blue penciling’ private parties’ contracts.” Essentially,  
16 the Supreme Court refused to create new contracts for the parties which, under well settled rules  
17 of construction, the Court has no power to do. ***The Court is not free to modify or vary the terms***  
18 ***of an unambiguous agreement.*** As such, this Court does not have the power to modify certain  
19 sections of the MOU and keep other sections.<sup>3</sup>

21 The MOU was negotiated, reviewed by both parties prior to execution, was corrected, and  
22 is not facially invalid. As there was a clear meeting of the minds, the parties’ MOU is valid and  
23

24  
25  
26  
27 <sup>3</sup> *Golden Rd. Motor Inn, Inc. v. Islam*, 132 Nev. Adv. Op. 49, 376 P.3d 151, 156  
28 (2016).

1 enforceable. As negotiated, and agreed to, the MOU and the terms, thereof, specifically did not  
2 merge into the Decree of Divorce.

3 In *Grisham v. Grisham*, 128 Nev. 679, 289 P.3d 230 (2012), the Nevada Supreme  
4 Court held as follows:

5  
6 District Court Rule 16 defines the conditions under which a  
7 court may, on motion, enforce an agreement to settle pending  
8 litigation. Its language is somewhat oblique: No agreement or  
9 stipulation between the parties in a cause or their attorneys,  
10 in respect to proceedings therein, will be regarded unless the  
11 same shall, by consent, be entered in the minutes in the form  
of an order, ***or unless the same shall be in writing  
subscribed by the party against whom the same shall be  
alleged, or by his attorney.***

12 See also EDCR 7.50 (replicating DCR 16 with minor  
13 revisions). Despite its awkward wording, DCR 16's application  
14 is straightforward: ***An agreement to settle pending  
litigation can be enforced by motion in the case being  
settled if the agreement is "either ... reduced to a signed  
writing or ... entered in the court minutes following a  
15 stipulation."*** Resnick v. Valente, 97 Nev. 615, 616, 637 P.2d  
16 1205, 1206 (1981) (applying DCR 24, later renumbered DCR  
17 16).

18 DCR 16 applies to divorce and dissolution disputes equally  
19 with any other kind of civil litigation. See *Grenz v. Grenz*, 78  
20 Nev. 394, 399, 374 P.2d 891, 894 (1962) (interpreting DCR  
16's predecessor). ***The rule gives "the court ... an efficient  
method for determining genuine settlements and  
21 enforcing them."*** Resnick, 97 Nev. at 616, 637 P.2d at 1206.  
22 ***It "does not thwart the policy in favor of settling disputes;  
instead, it enhances the reliability of actual settlements."***  
23 *Id.* at 616–17, 637 P.2d at 1206.

24 *Grisham v. Grisham* at 683.

25  
26 ***When parties to pending litigation enter into a settlement,  
they enter into a contract.*** Mack v. Estate of Mack, 125 Nev.  
27



80, 95, 206 P.3d 98, 108 (2009). Such a contract is subject to general principles of contract law. Id.3

*Grisham v. Grisham* at 685.

It is long established in Nevada law, that an agreement to settle pending litigation is an enforceable contract. As previously found by this Court, the terms of the March 23, 2018, Memorandum are binding upon the parties. The Court also found that the MOU was an enforceable contract that did not merge into the Decree.

Parties enter into settlement negotiations with the understanding that, once reduced to writing, the agreement will be enforced and unaltered. Denying enforcement of this agreement will have a chilling effect on many parties who may enter settlement negotiations. The knowing and willful insertion of the provision granting Sarah survivorship benefits has the effect of reducing the amount of Dave's monthly pension upon retirement. He did not grant to Sarah, more than which she was entitled.

### III.

#### ATTORNEY'S FEES

There exists significant legal authority to support Dave's request for sanctions and attorney's fees.

Nevada Revised Statute 7.085 states, in pertinent part, as follows:

1. If a court finds that an attorney has:

(a) Filed, maintained or defended a civil action or proceeding in any court in this State and such action or defense is not well-grounded in fact or is not warranted by existing law or by an argument for changing the existing law that is made in good faith; or

(b) Unreasonably and vexatiously extended a civil action or proceeding before any court in this State, the court shall require the attorney personally to pay the additional costs,

1 expenses and attorney's fees reasonably incurred because of  
2 such conduct.

3 2. The court shall liberally construe the provisions of this  
4 section in favor of awarding costs, expenses and attorney's  
5 fees in all appropriate situations. It is the intent of the  
6 Legislature that the court award costs, expenses and  
7 attorney's fees pursuant to this section and impose sanctions  
8 pursuant to Rule 11 of the Nevada Rules of Civil Procedure in  
9 all appropriate situations to punish for and deter frivolous or  
10 vexatious claims and defenses because such claims and  
11 defenses overburden limited judicial resources, hinder the  
12 timely resolution of meritorious claims and increase the costs  
13 of engaging in business and providing professional services  
14 to the public.

15 Rule 7.60 of the Eighth Judicial Court Rules states, in pertinent part, as follows.

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

21 (1) Presents to the court a motion or an opposition to  
22 a motion which is obviously frivolous, unnecessary or  
23 unwarranted.

24 (2) Fails to prepare for a presentation.

25 (3) So multiplies the proceedings in a case as to  
26 increase costs unreasonably and vexatiously.

27 (4) Fails or refuses to comply with these rules.

28 (5) Fails or refuses to comply with any order of a  
judge of the court.

29 The Nevada Supreme Court adopted four factors, which in addition to hourly time,  
30 schedules kept by an attorney, are to be considered in determining the reasonable value  
31 of an attorney's services. *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345,349,455 P.2d  
32 31, 33 (1969). The four factors the Court must consider are: "(l) the qualities of the

1 advocate: his ability, his training, education, experience, professional standing and skill;  
2 (2) the character of the work to be done: its difficulty, its intricacy, its importance, time and  
3 skill required, the responsibility imposed and the prominence and character of the parties  
4 where they affect the importance of the litigation; (3) the work actually performed by the  
5 lawyer: the skill, time and attention given to the work; ( 4) the result: whether the attorney  
6 was successful and what benefits were derived. Should an award of attorney's fees and  
7 costs be awarded to Plaintiff, then the undersigned shall file a formal *Brunzell* Brief, unless  
8 this Court requires it provided on a different timeline.  
9

10  
11 **IV.**

12 **LIST OF WITNESSES**

- 13 1. David John Rose;  
14 2. Sarah Janeen Rose;  
15 3. Regina McConnell;  
16 4. Nexie Joyce Hingpit;  
17 5. Any and all witnesses listed by Defendant; and  
18 6. Previously disclosed rebuttal witnesses as necessary.  
19

20 **V.**

21 **List of Exhibits**

- 22 1. Memorandum of Understanding dated March 23, 2018 (PLA 001 – PLA 003);  
23 2. Any and all pleadings on file herein;  
24 3. Any and all exhibits produced by Defendant; and  
25 4. Recording of the parties dated April 3, 2018.  
26

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V.

UNUSUAL LEGAL OR FACTUAL ISSUES

Issues of nonmerger, Memorandum of Understanding as contract; and fraud.

VI.

LENGTH OF TRIAL

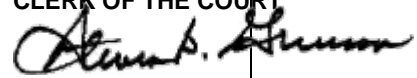
1 to 1 ½ days.

Dated this 1<sup>st</sup> day of July, 2019.

LEGAL SERVICES ONE, LLC

By: Shelley Lubritz  
Shelley Lubritz, Esq.  
Nevada Bar No. 5410  
375 E. Warm Springs Road Suite 104  
Las Vegas, Nevada 89119  
Attorney for Plaintiff





**MLIM**

Shelley Lubritz, Esq.  
Nevada Bar No. 5410  
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375 E. Warm Springs Road Suite 104  
Las Vegas, Nevada 89119  
Telephone: (702) 823-3500  
Facsimile: (702) 823-3400  
E-mail: [legalservices1llc@gmail.com](mailto:legalservices1llc@gmail.com)

Attorney for Plaintiff  
DAVID JOHN ROSE

CLARK COUNTY DISTRICT COURT, FAMILY DIVISION  
CLARK COUNTY, NEVADA

DAVID JOHN ROSE,  
Plaintiff,

vs.

SARAH JANEEN ROSE,  
Defendant

Case No.: D-17-547250-D  
Dept. No.: I

Hearing Date:  
Hearing Time:

ORAL ARGUMENT REQUESTED

"NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN FOURTEEN (14) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN FOURTEEN (14) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING DATE."

**PLAINTIFF'S MOTION IN LIMINE TO PRECLUDE THE TESTIMONY OF  
MARSHALL S. WILICK, ESQ.**

COMES NOW, Plaintiff, David John Rose, by and through his counsel, Shelley Lubritz, Esq., and submits his Motion in Limine to Preclude the Testimony of Marshall S. Willick, Esq. This Motion is made and based upon the papers and pleadings on file herein, the attached Declaration of David John Rose and the attached Memorandum of Points

1 and Authorities. Plaintiff respectfully requests his Motion be granted and that the Court  
2 issue its Order:

- 3 1. Precluding Marshall S. Mr. Willick, Esq. from testifying as an expert at the  
4 evidentiary hearing regarding survivorship benefits; and
- 5 2. Awarding his reasonable attorney's fees and costs associated with this Motion.  
6

7 Dated this 5th day of September 2019.

8 LEGAL SERVICES ONE, LLC

9  
10 By: Shelley Lubritz  
11 Shelley Lubritz, Esq.  
12 Nevada Bar No. 5410  
13 375 E. Warm Springs Road Suite 104  
14 Las Vegas, Nevada 89119  
Attorney for Plaintiff  
David John Rose

15 **MEMORANDUM OF POINTS AND AUTHORITIES**

16 **I. Factual Statement**

17 Plaintiff, David John Rose (hereinafter referred to as "David"), and Defendant  
18 Sarah Janeen Rose (hereafter referred to as "Sarah") were divorced by Decree entered  
19 on April 11, 2018. Since that time, the parties have engaged in significant motion practice  
20 regarding the issue of survivorship benefits to Sarah. This issue was discussed, but not  
21 agreed upon, during the March 23, 2018, mediation; thus, it was not included in the  
22 Memorandum of Understanding. It was, however, included in the Decree of Divorce,  
23 which was prepared and signed, immediately, after the mediation. This honorable Court  
24 ordered that an evidentiary hearing be held before it determines whether Sarah will  
25 receive survivorship benefits from David's PERS in the event he dies prior to retirement.  
26  
27  
28

1 Sarah identified Marshall S. Willick, Esq. as an expert in her Defendant's Witness  
2 List to Plaintiff filed on November 11, 2018. Specifically, Sarah stated,

3 Mr. Willick is anticipated to testify regarding the Public  
4 Employee Retirement System accounts and aspects relating  
5 to division of the same under the law.

6 The use of an expert in the manner described by Sarah is improper. Accordingly,  
7 David seeks an order precluding Mr. Willick from testifying at the evidentiary hearing.

8 **II. Legal Argument**

9 All of Mr. Willick's Purported "Expert Opinions" Involve Interpretation of Law and  
10 Application of Alleged Facts to Law are Wholly Inadmissible

11 Sarah entered Marshall S. Willick's December 8, 2018 opinion letter into the record  
12 as a "Supplemental Filing." The filing has since been stricken as its presence in the record  
13 prejudiced David by allowing this Court, and any other tribunal, to consider Mr. Willick's  
14 opinions without, first, having had him admitted to testify in an evidentiary proceeding.  
15 Such practice is improper.

16 **NRS 50.275 Testimony by experts.**

17 If scientific, technical or other specialized knowledge will  
18 assist the trier of fact to understand the evidence or to  
19 determine a fact in issue, a witness qualified as an expert by  
20 special knowledge, skill, experience, training or education  
21 may testify to matters within the scope of such knowledge.  
[Emphasis added].

22 By definition, an expert witness's testimony, must be offered, only, to assist the  
23 Court's understanding of the evidence, or, to assist the Court in determining a fact at  
24 issue. Mr. Willick's letter does neither. Rather, Mr. Willick's opinions are being offered to  
25 advise the Court about his interpretation of Nevada law and the application of his  
26 interpretation to facts in this matter. As such, his testimony is inadmissible.

1                   **NRS 125.070    Judge to determine questions of law and**  
2                   **fact.**

3                   The judge of the court shall determine all questions of law and  
4                   fact arising in any divorce proceeding under the provisions of  
5                   this chapter.  
6                   [Emphasis added].

7                   Although it does not appear the Nevada Supreme Court has written no opinion on  
8                   the issue, it is well-settled that adjudicating issues of law is within the exclusive province  
9                   of the court. "The rule prohibiting experts from providing their legal opinions or  
10                  conclusions is so well established that it is often deemed a basic premise or assumption  
11                  of evidence law- a kind of axiomatic principle. [Internal citation omitted]. In fact, every  
12                  [federal] circuit has explicitly held that experts may not invade the court's province by  
13                  testifying on issues of law." *In re Initial Public Offering Securities Lit.*, 174 F.Supp.2d 61,  
14                  64 (S.D.N.Y. 2001). "[T]he calling of lawyers as 'expert witnesses' to give opinions as to  
15                  the application of the law to particular facts usurps the duty of the trial court to instruct the  
16                  jury on the law as applicable to the facts, and results in no more than a modern day 'trial  
17                  by oath' in which the side procuring the greater number of lawyers able to opine in their  
18                  favor wins." *Downer v. Bramet*, 199 Cal.Rptr. 830, 833, 152 Cal.App.3d 837, 842 (Cal.  
19                  App. 4th Dist. 1984).

20                               As McCormick on Evidence teaches: Undoubtedly some  
21                               highly opinionated statements by the witness amount to  
22                               nothing more than an expression of his general belief as to  
23                               how the case should be decided or the amount of damages  
24                               which would be just. All courts exclude such extreme  
25                               conclusory expressions. There is no necessity for this kind of  
26                               evidence; its receipt would suggest that the judge and jury  
27                               may shift responsibility for the decision to the witness. In any  
28                               event, the opinion is worthless to the trier of fact. 1 McCormick  
                             on Evidence § 12, at 60 (6 ed. 1999).  
                             [Emphasis added].



1 *Webb v. Omni Block*, 216 Ariz. 349, 354, 166 P.3d 140, 144-45 (Ariz. App. Div. 1 2007)  
2 (emphasis added); see also, *Steffensen v. Smith's Management Corp.*, 862 P.2d 1342,  
3 1347 (Utah. 1993) ("Opinion testimony is not helpful to the fact finder when it is couched  
4 as a legal conclusion. These extreme expressions of the general belief of the expert  
5 witness tend to blur the separate and distinct responsibilities of the judge, jury, and  
6 witness."). [Emphasis added]. In his opinion letter to Sarah's counsel, Mr. Willick did just  
7 that – he offered opinions couched as legal conclusions. Both the letter and his testimony  
8 are, inarguably, inadmissible. Mr. Willick is not the Court's advisor. He is an advocate  
9 for Sarah.  
10

11  
12 In *Klabacka v. Nelson*, 133 Nev.Adv.Op. 24, 394 P.3d 940 (2017), appellant  
13 asserted, on appeal, that the District Court erred in excluding his proposed expert witness,  
14 Layne T. Rushforth, Esq., from testifying on Nevada trust law. Supreme Court Case No.  
15 66772, Appellant's Opening Brief filed Dec. 1, 2015, pgs. 2 and 22. Specifically, in its  
16 Order from July 16, 2016 Hearing, the District Court ordered: "Layne T. Rushforth, Esq.  
17 is excluded from testifying as an expert witness in this matter because the Court does not  
18 see how Mr. Rushforth could assist the Court in deciding a fact at issue in this matter,  
19 and any testimony Mr. Rushforth could offer is regarding the law which invades the  
20 province of the Court." Exhibit B, pg. 2, lines 14-17. [Emphasis added]. The District Court  
21 then struck Mr. Rushforth's report from the motions filed in the case and indicated that it  
22 did not read or consider such report. Exhibit B, pg. 2, line 26 - pg. 3, line 7. In footnote  
23 "9," the Court stated, "We have considered the parties' other arguments and conclude  
24 they are without merit."  
25  
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28

1 Any testimony from Mr. Willick would invade the province of the Court. It is not an  
2 expert's role to explain the law to the Court nor to offer opinions as to the applicability of  
3 the law to the facts. An expert's role is to assist the Court in understanding the evidence  
4 or to determine a fact in issue. As set forth, previously, Mr. Willick's opinion letter does  
5 neither. Rather, it is more accurately described as the work of a consultant to Sarah's  
6 counsel than an expert witness. Mr. Willick should be precluded from testifying in the  
7 upcoming evidentiary proceeding.

8  
9 David is Entitled to an Award of Attorney's Fees and Costs

10 David, respectfully, requests that he be awarded the attorney's fees and costs  
11 associated with this motion. The Nevada Supreme Court adopted four factors, which in  
12 addition to hourly time schedules kept by an attorney, are to be considered in determining  
13 the reasonable value of an attorney's services. *Brunzell v. Golden Gate Nat'l Bank*, 85  
14 Nev. 345,349,455 P.2 31, 33. (1969). The four factors the Court must consider are: "(1)  
15 the qualities of the advocate: his ability, his training, education, experience, professional  
16 standing and skill; 2) the character of the work to be done: its difficulty, its intricacy, its  
17 importance, time and skill required, the responsibility imposed and the prominence and  
18 character of the parties where they affect the importance of the litigation; (3) the work  
19 actually performed by the lawyer: the skill, time and attention given to the work; ( 4) the  
20 result: whether the attorney was successful and what benefits were derived. Should an  
21 award of attorney's fees and costs be awarded to Plaintiff, then the undersigned shall file  
22 a formal *Brunzell* brief, unless this Court requires it be provided on a different timeline.

23  
24  
25  
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27  
28 . . .

WHEREFORE, based upon the foregoing, Plaintiff, David Rose respectfully requests that:

1. The instant Motion be granted in its entirety; and
2. For such other and further relief this Court deems just and proper in the premises.

LEGAL SERVICES ONE, LLC

By: Shelley Lubritz  
Shelley Lubritz, Esq  
Nevada Bar No. 5410  
375 E. Warm Springs Road Suite 104  
Las Vegas, Nevada 89119  
Attorney for Plaintiff

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 5th day of September, 2019, I caused to be  
3 served *Plaintiff's Motion in Limine to Preclude the Testimony of Marshall S. Willick,*  
4 *Esq.* to all interested parties as follows:

5 \_\_\_\_\_ BY MAIL: Pursuant to NRCP 5(b), I caused a true copy thereof to be  
6 placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid  
7 thereon, addressed as follows:  
8

9 \_\_\_\_\_ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S.  
10 Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully  
11 paid thereon, addressed as follows:  
12

13 \_\_\_\_\_ BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to  
14 be transmitted, via facsimile, to the following number(s):

15 X \_\_\_\_\_ BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I  
16 caused a true copy thereof to be served via electronic mail, via Wiznet, to the following  
17 e-mail address(es):  
18

19 Attorney for Defendant

20 Service@KainenLawGroup.com

21   
22 Shelley Lubritz, Esq.  
23  
24  
25  
26  
27  
28





MOFI

DISTRICT COURT  
FAMILY DIVISION  
CLARK COUNTY, NEVADA

DAVID JOHN ROSE

Plaintiff/Petitioner

v.

SARAH JANEEN ROSE

Defendant/Respondent

Case No. D-17-547250-D

Dept. 1

**MOTION/OPPOSITION  
FEE INFORMATION SHEET**

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

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

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

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

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

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

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

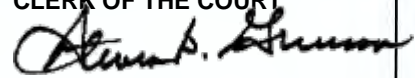
☐ \$0 ☐ \$25 ☐ \$57 ☐ \$82 ☒ \$129 ☐ \$154

Party filing Motion/Opposition: Plaintiff Date 9/5/19

Signature of Party or Preparer

*Shelley Lubitz*

APPX0374



**ORDR**

EDWARD L. KAINEN, ESQ.  
Nevada Bar No. 5029  
RACHEAL H. MASTEL, ESQ.  
Nevada Bar No. 11646  
KAINEN LAW GROUP, PLLC  
3303 Novat Street, Suite 200  
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(702) 823-4900  
(702) 823-4488 (Fax)  
Service@KainenLawGroup.com  
Attorneys for Defendant

*In conjunction with the Legal Aid Center of Southern Nevada*

DISTRICT COURT - FAMILY DIVISION

CLARK COUNTY, NEVADA

DAVID ROSE,

Plaintiff,

vs.

SARAH ROSE,

Defendant.

CASE NO. D-17-547250-D  
DEPT NO. I

Date of Hearing: 6/18/19  
Time of Hearing: 9:00 a.m.

**ORDER FROM HEARING ON JUNE 18, 2019**

THIS MATTER having come on for hearing this 18<sup>th</sup> day of June, 2019, before the Honorable Cheryl B. Moss, on Plaintiff's *Motion*; Defendant, SARAH ROSE ("Defendant"), present and represented by and through her attorney, RACHEAL H. MASTEL, ESQ. of the KAINEN LAW GROUP, PLLC, and Plaintiff, DAVID ROSE ("Plaintiff"), present and represented by and through his attorney, SHELLEY LUBRITZ, ESQ., of LEGAL SERVICES ONE, LLC.; the Court having heard oral argument, having read the pleadings and papers on file herein, being fully advised in the premises and good cause appearing, makes the following Findings and Orders:

...

...

...

APPX0375

1 THE COURT HEREBY FINDS that Defendant's brief in this matter is being  
2 considered a continuation of her previously filed Opposition and Countermotion, wherein  
3 she provided a full legal analysis. (9:54:27 - 9:54:40)

4 THE COURT FURTHER FINDS that both parties have acknowledged that  
5 if there is no merger, the Memorandum of Understanding (hereinafter "MOU") becomes  
6 an independent contract, and the Court would have continuing jurisdiction to enforce, but  
7 not to modify the same. (9:54:54 - 9:55:19)

8 THE COURT FURTHER FINDS that if the MOU is an independent  
9 contract, the Decree must be treated as a second signed contract. This issue is then  
10 governed by *res judicata*, and the Decree might be considered a second signed stipulation  
11 which modifies the MOU. (9:55:35 - 9:56:09)

12 THE COURT FURTHER FINDS that Plaintiff's counsel has represented  
13 that there would be no Motion in Limine filed. (10:22:33 - 10:22:38)

14 Therefore, based on the foregoing,

15 IT IS HEREBY ORDERED that limited discovery shall be reopened, to wit:  
16 Plaintiff may obtain an expert witness, as well as serve five Requests for Admissions and  
17 five Interrogatories on Defendant. (1:03:20 - 10:04:17)

18 IT IS FURTHER ORDERED that Plaintiff's expert shall review Marshal  
19 Willick's report and provide a counter-report on their legal analysis. (10:15:54 -  
20 10:16:06) Plaintiff shall disclose his expert, provide their CV, and provide their rebuttal  
21 expert report to Defendant no later than July 17, 2019. (10:18:50 - 10:19:14)

22 IT IS FURTHER ORDERED that the parties stipulate that the 1/22/19 filing  
23 which contained Marshal Willick's report shall be stricken from the record. (10:19:33 -  
24 10:19:40)

25 ...

26 ...

27 ...

28 ...



1 IT IS FURTHER ORDERED that the issue of attorney's fees shall be  
2 deferred to the time of trial. (10:22:46 - 10:22:52)

3 DATED this 5 day of ~~July~~, 2019.

4 SEPTEMBER

5   
6 DISTRICT COURT JUDGE

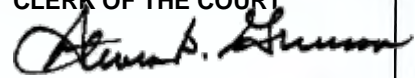
7 Submitted by:

8 KAINEN LAW GROUP, PLLC

9 By:

10 RACHEAL H. MASTEL, ESQ.  
11 Nevada Bar No. 11646  
12 3303 Novat Street, Suite 200  
13 Las Vegas, Nevada 89129  
14 Attorney for Defendant  
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1 **NEOJ**  
2 EDWARD L. KAINEN, ESQ.  
3 Nevada Bar No. 5029  
4 RACHEAL H. MASTEL, ESQ.  
5 Nevada Bar No. 11646  
6 KAINEN LAW GROUP, PLLC  
7 3303 Novat Street, Suite 200  
8 Las Vegas, Nevada 89129  
9 (702) 823-4900  
10 (702) 823-4488 (Fax)  
11 Service@KainenLawGroup.com  
12 Attorneys for Defendant  
13 *in conjunction with the Legal Aid Center of Southern Nevada*

8 DISTRICT COURT  
9 CLARK COUNTY, NEVADA

10 DAVID ROSE,  
11

12 Plaintiff,

13 vs.

14 SARAH ROSE,  
15

16 Defendant.

CASE NO. D-17-547250-D  
DEPT NO. I

Date of Hearing:  
Time of Hearing:

17 **NOTICE OF ENTRY OF ORDER FROM HEARING ON JUNE 18, 2019**

18 TO: DAVID ROSE, Plaintiff; and

19 TO: SHELLY LUBRITZ, ESQ., Attorney for Plaintiff:

20 PLEASE TAKE NOTICE that on the 9<sup>th</sup> day of September, 2019, the  
21 Honorable Cheryl Moss entered an Order from the Hearing on June 18, 2019, a copy of  
22 which is attached hereto.

23 DATED this 9 day of September, 2019.

24 KAINEN LAW GROUP, PLLC

25 By: 

26 RACHEAL H. MASTEL, ESQ.  
27 Nevada Bar No. 11646  
28 3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
Attorney for Defendant

KAINEN LAW GROUP, PLLC  
3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
702.823.4900 • Fax 702.823.4488  
www.KainenLawGroup.com

APPX0378



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 9 day of September, 2019, I caused to be served the *Notice of Entry of Order from Hearing on June 18, 2019* to all interested parties as follows:

\_\_\_ BY MAIL: Pursuant to NRCP 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:

\_\_\_ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

\_\_\_ BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to be transmitted, via facsimile, to the following number(s):

X BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I caused a true copy thereof to be served via electronic mail, via Wiznet, to the following e-mail address(es):

*Attorney for Plaintiff*  
Legalservices1llc@gmail.com  
Daverose08@gmail.com

  
\_\_\_\_\_  
An Employee of  
KAINEN LAW GROUP, PLLC



*Steven D. Grierson*

1 **ORDR**

2 EDWARD L. KAINEN, ESQ.  
3 Nevada Bar No. 5029  
4 RACHEAL H. MASTEL, ESQ.  
5 Nevada Bar No. 11646  
6 KAINEN LAW GROUP, PLLC  
7 3303 Novat Street, Suite 200  
8 Las Vegas, Nevada 89129  
9 (702) 823-4900  
10 (702) 823-4488 (Fax)  
11 Service@KainenLawGroup.com  
12 Attorneys for Defendant

13 *In conjunction with the Legal Aid Center of Southern Nevada*

14 DISTRICT COURT - FAMILY DIVISION

15 CLARK COUNTY, NEVADA

16 DAVID ROSE,

17 Plaintiff,

18 vs.

19 SARAH ROSE,

20 Defendant.

CASE NO. D-17-547250-D  
DEPT NO. I

Date of Hearing: 6/18/19  
Time of Hearing: 9:00 a.m.

21 **ORDER FROM HEARING ON JUNE 18, 2019**

22 THIS MATTER having come on for hearing this 18<sup>th</sup> day of June, 2019,  
23 before the Honorable Cheryl B. Moss, on Plaintiff's *Motion*; Defendant, SARAH ROSE  
24 ("Defendant"), present and represented by and through her attorney, RACHEAL H.  
25 MASTEL, ESQ. of the KAINEN LAW GROUP, PLLC, and Plaintiff, DAVID ROSE  
26 ("Plaintiff"), present and represented by and through his attorney, SHELLEY LUBRITZ,  
27 ESQ., of LEGAL SERVICES ONE, LLC.; the Court having heard oral argument, having  
28 read the pleadings and papers on file herein, being fully advised in the premises and good  
cause appearing, makes the following Findings and Orders:

...

...

...

KAINEN LAW GROUP, PLLC  
3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
702.823.4900 • Fax 702.823.4488  
www.KainenLawGroup.com

1 THE COURT HEREBY FINDS that Defendant's brief in this matter is being  
2 considered a continuation of her previously filed Opposition and Countermotion, wherein  
3 she provided a full legal analysis. (9:54:27 - 9:54:40)

4 THE COURT FURTHER FINDS that both parties have acknowledged that  
5 if there is no merger, the Memorandum of Understanding (hereinafter "MOU") becomes  
6 an independent contract, and the Court would have continuing jurisdiction to enforce, but  
7 not to modify the same. (9:54:54 - 9:55:19)

8 THE COURT FURTHER FINDS that if the MOU is an independent  
9 contract, the Decree must be treated as a second signed contract. This issue is then  
10 governed by *res judicata*, and the Decree might be considered a second signed stipulation  
11 which modifies the MOU. (9:55:35 - 9:56:09)

12 THE COURT FURTHER FINDS that Plaintiff's counsel has represented  
13 that there would be no Motion in Limine filed. (10:22:33 - 10:22:38)

14 Therefore, based on the foregoing,

15 IT IS HEREBY ORDERED that limited discovery shall be reopened, to wit:  
16 Plaintiff may obtain an expert witness, as well as serve five Requests for Admissions and  
17 five Interrogatories on Defendant. (1:03:20 - 10:04:17)

18 IT IS FURTHER ORDERED that Plaintiff's expert shall review Marshal  
19 Willick's report and provide a counter-report on their legal analysis. (10:15:54 -  
20 10:16:06) Plaintiff shall disclose his expert, provide their CV, and provide their rebuttal  
21 expert report to Defendant no later than July 17, 2019. (10:18:50 - 10:19:14)

22 IT IS FURTHER ORDERED that the parties stipulate that the 1/22/19 filing  
23 which contained Marshal Willick's report shall be stricken from the record. (10:19:33 -  
24 10:19:40)

25 ...

26 ...

27 ...

28 ...

1 IT IS FURTHER ORDERED that the issue of attorney's fees shall be  
2 deferred to the time of trial. (10:22:46 - 10:22:52)

3 DATED this 5 day of ~~July~~, 2019.

4 ~~SEPTEMBER~~

5 *[Signature]*  
6 DISTRICT COURT JUDGE

7 Submitted by:

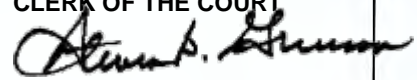
8 KAINEN LAW GROUP, PLLC

9 By:

10 RACHEAL H. MASTEL, ESQ.  
11 Nevada Bar No. 11646  
12 3303 Novat Street, Suite 200  
13 Las Vegas, Nevada 89129  
14 Attorney for Defendant  
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1 **OPPC**  
2 RACHEAL H. MASTEL, ESQ.  
3 Nevada Bar No. 11646  
4 KAINEN LAW GROUP, PLLC  
5 3303 Novat Street, Suite 200  
6 Las Vegas, Nevada 89129  
7 (702) 823-4900  
8 (702) 823-4488 (Fax)  
9 Service@KainenLawGroup.com  
10 Attorneys for Defendant  
11 in conjunction with the Legal Aid Center of Southern Nevada

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DISTRICT COURT  
CLARK COUNTY, NEVADA

10 DAVID ROSE,  
11  
12 Plaintiff,  
13  
14 vs.  
15  
16 SARAH ROSE,  
17  
18 Defendant.

CASE NO. D-17-547250-D  
DEPT NO. I

Date of Hearing: October 22, 2019  
Time of Hearing: 10:00 a.m.

**ORAL ARGUMENT REQUESTED: YES**

18 **DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION IN LIMINE TO**  
19 **PRECLUDE THE TESTIMONY OF MARSHALL [SIC] S. WILICK, ESQ.**  
20 **AND**  
21 **COUNTERMOTION FOR ATTORNEY'S FEES AND COSTS**

22 COMES NOW, Defendant, SARAH ROSE, by and through her attorney,  
23 RACHEAL H. MASTEL, ESQ., of the KAINEN LAW GROUP, PLLC, and submits to  
24 this Honorable Court her Opposition to *Plaintiff's Motion In Limine to Preclude The*  
25 *Testimony of Marshall [sic] S. Willick, Esq.*, and requests this Court award her attorney's  
26 fees and costs.  
27  
28

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APPX0383



1 This Opposition and Countermotion are made and based upon the pleadings  
2 on file herein, the Points and Authorities submitted herewith, the Declaration attached  
3 hereto, and argument to be adduced at the time of hearing.

4 DATED this 17 day of September, 2019.

5 KAINEN LAW GROUP, LLC

6  
7 By:

8 RACHEAL H. MASTEL, ESQ.

9 Nevada Bar No . 11646

10 3303 Novat Street, Suite 200

11 Las Vegas, Nevada 89129

12 Attorneys for Defendant

13 I.

14 **POINTS AND AUTHORITIES**

15 Plaintiff, DAVID ROSE (hereinafter "Husband"), and Defendant, SARAH  
16 ROSE (hereinafter "Wife"), were married on June 17, 2006, and divorced by a Stipulated  
17 Decree of Divorce filed on April 11, 2018. The Decree was the result of several hours of  
18 negotiation between the parties with the assistance of their counsel and with Rhonda  
19 Forsberg, Esq., acting as mediator. Within the Decree of Divorce, the parties stipulated  
20 that Husband would select Option 2 with regard to his PERS retirement plan. The details  
21 of the division, including the selection of Option 2 (which will provide that Wife will  
22 receive the Survivor Benefit) is spelled out in detail on Page 21, line 8 - Page 22, line 12,  
23 and Page 23, line 24 - Page 24, line 28, of the Decree. The Decree was signed by *both*  
24 *parties and both attorneys*.

25 Thereafter, on April 25, 2018, Husband filed a Motion to Set Aside the  
26 Decree, pursuant to NRCP 60(b). Judge Kathy Hardcastle, sitting for this Court, set aside  
27 the provisions related to the retirement accounts, *specifically making the legally*  
28 *erroneous finding that Nevada law did not permit* the assignment of survivorship  
benefits. Because Nevada law does, in fact, permit the assignment of survivor options,  
Wife filed for reconsideration of the Order. This Court set aside Judge Hardcastle's Order



1 and set further proceedings in this matter, specifically to look at 1) what occurred; 2) the  
2 parties' intent; and 3) what Nevada law permitted. See Order filed January 16, 2019. At  
3 that hearing, held November 6, 2018, this Court also **ordered** Wife to hire Marshal  
4 Willick, Esq., to provide his opinion as a "legal expert on PERS." VT 10:14:21-  
5 10:14:26.

6 As this Court likely already recalls, initially this Court directed the parties  
7 to *jointly retain* Mr. Willick, specifically to provide this Court with his opinion as to what  
8 Nevada law permitted this Court to do with regard to survivor benefit options. VT  
9 10:06:42 - 10:07:03. The only reason that Mr. Willick was retained by Wife, was the  
10 result of a disclosure by Wife's counsel that she had sought Mr. Willick's opinion as to  
11 whether or not the issue was appealable. Because Husband objected to Mr. Willick as a  
12 *joint* expert at that time, the Court directed that he would be Wife's expert, so that  
13 Husband could challenge his *conclusions* with competing expert testimony.

14 Thereafter, Husband retained new counsel, who is now challenging the  
15 ability of Mr. Willick to testify to this Court. It should be noted that this, as with  
16 everything in this case since the Decree was entered, has been nothing more or less than  
17 Husband's attempts to get out of the agreement he made.

18 **A. Husband's Motion is Inappropriate**

19 Husband's motion is wholly inappropriate and puts his counsel in an  
20 egregious and precarious position. At the most recent hearing, on June 18, 2019, Ms.  
21 Lubritz specifically stated on the record that she would **NOT** file a Motion in Limine in  
22 this matter. VT 10:22:33 - 10:22:39. The statement was made while the parties, their  
23 counsel and the Court were determining the scope and conditions upon which the trial  
24 continuance would be granted. There were concessions and agreements made by Wife  
25 through her counsel in reliance on that assurance. Despite that fact, Husband apparently  
26 again changed his mind on an agreement made and decided that a Motion in Limine was  
27 appropriate anyway, making a liar out of his counsel. This, despite the fact that the  
28 challenges to Mr. Willick's expertise, reliability, and relevance all could have been made



1 at the time of the trial (a fact also discussed during the hearing on June 18, 2019).  
2 Husband's Motion should be denied on the basis that it is an attempt to create a trial by  
3 ambush, by asking Wife to make concessions in reliance upon the same with regard to  
4 a potential late expert disclosure and permitting Husband to issue late discovery, and then  
5 in bad-faith turn around and renege on his part of those agreements. That said, Husband's  
6 Motion also fails under the law.

7 **B. Mr. Willick's Report and Testimony are Permissible, Appropriate and Proper**

8 Ignoring Husband's willful disregard of the explanation and reason (accepted  
9 by the Court) and provided by Wife's counsel as to the "filing" of Mr. Willick's report  
10 (and the fact that the parties *stipulated* to having the same stricken), Husband's  
11 understanding of the law and standards surrounding expert testimony in Nevada is  
12 willfully ignorant. Perhaps most glaringly, the idea that the "Nevada Supreme Court has  
13 written no opinion on the issue [of experts providing their legal opinions]," is actually  
14 incorrect. Particularly where "the relative inaccessibility of ... law supports the admission  
15 of expert testimony." *In re Matter of Mosley*, 102P.3d 555, 568 (Nev. 2004) (diss.  
16 Gibbons, J).

17 *In re Matter of Mosley*, is particularly instructive in this case. Therein, Judge  
18 Mosley attempted to introduce the expert testimony of a legal scholar, specifically to  
19 offer the opinion that Judge Mosley had not violated the ethical canons. The  
20 Commission did not allow the expert to testify. The majority opinion upheld the  
21 exclusion, noting that the decision is subject to the abuse of discretion standard. It also  
22 noted that "the goal of expert testimony is to provide the trier of fact a resources for  
23 ascertaining the truth in relevant areas outside the ken of ordinary laity." *Id* at 564  
24 (internal quotations omitted, emphasis added). The Court eventually determined that a  
25 1) a legal scholar is not more familiar with the ethical standards or more reliable than the  
26 decision makers; and 2) that the testimony *may* have been cumulative. *Id* at 564 - 565.  
27 The majority opinion left its examination there, simply finding there had been no abuse  
28 of discretion.



Justice Gibbons, in his dissent, however gives substantially further attention and guidance. Specifically, Justice Gibbons noted that the Nevada Courts allow for an expert witness "when the expert's testimony will be helpful to the trier of fact and corroborates the theory of defense." *Id* at 568. He further contends that:

the relative inaccessibility of legal ethics law supports the admission of expert testimony. As more ethics rules are drafted to cover only lawyers in particular practice contexts, it is possible for such rules to be much more accessible to, and readily understood by some lawyers than others. Such inaccessibility may support the admission of expert testimony even where the decision maker is relatively familiar with the rules at issue. This is true because the decision to consider expert testimony, subject to cross-examination, is superior to relying only on the judge's, or a law clerk's, independent research, or on the arguments of non-scholar advocates...

*Id* at 568 (internal quotations omitted).

This is completely analogous to retirement division law, which is so much a sub-specialty that it has been opined that drafting a QDRO without specialized knowledge is potentially malpractice. The number of lawyers in Nevada who are (let alone who believe themselves to be) qualified to even draft the division orders, much less discuss the proper laws related to the same, is minuscule. One of the very, very few, recognized experts in that field in Nevada (and nationally) is Mr. Willick. He is often called in to help Courts wade through the morass of state law, federal law, policy guidelines, and interpretations of each in order to assist attorneys and Courts fashion orders which are lawful and will be implemented and recognized.

Further, Nevada has a fair body of law as to what constitutes "expert" testimony. In fact, Nevada's guidelines for admissibility of expert testimony are clear, well explained, and intentionally liberal. The Nevada Supreme Court has addressed exactly what NRS 50.275 expects. "Nevada trial judges [have] wide discretion, within the parameters of NRS 50.275." *Higgs v. State*, 222 P.3d 648, 658 (2010). "NRS 50.275 provides general guidance and allows the trial judge discretion in deciding what factors are to be considered on a case-by-case basis...the factors enumerated may not be equally applicable in every case." *Id* at 659. There are "three overarching requirements for



1 admissibility of expert witness testimony [are] 1) qualification, 2) assistance, and 3)  
2 limited scope requirements." *Id* at 658. Expert witness testimony is of assistance when  
3 "it is relevant and the product of reliable methodology." *Id* at 660.<sup>1</sup>

4 Contrary to Husband's opinions, there is a body of case law instructive to  
5 this Court. First, nothing in Nevada law suggests that legal expertise, especially in a sub-  
6 specialty of law like pension and retirement division, is inappropriate. Expert testimony  
7 is meant to help the trier of fact in determining facts at issue. As this Court has identified  
8 that a fact at issue is what the Court is permitted to do under Nevada law, expert  
9 testimony regarding the law is wholly appropriate and helpful. The Nevada Supreme  
10 Court has, in fact, indicated that legal expert testimony is often appropriate. Frankly, a  
11 number of district court judges *and* the appellate courts have sought opinions from, and  
12 quoted published works by, Mr. Willick on exactly this topic.

13 Further, this Court has broad discretion in determining whether or not to  
14 permit expert testimony. Simply put, if this Court believes that the expert is qualified and  
15 that the testimony will be of assistance, then this Court is permitted to admit and consider  
16 the testimony of that individual as an expert.

17 It should be noted that Husband's reliance on *Klabacka v. Nelson*, 133 Nev.  
18 Ad. Op. 24, 394 P.3d 940 (2017), is misplaced. The District Court's determination (in its  
19 discretion) that Mr. Rushforth's opinion would not be of assistance to the tribunal is  
20 within the province of that Court and this Court is not bound by that Court's decision. It  
21 is however, more important to note two other distinctions. First, Nevada trust law is not  
22 necessarily so narrow a sub-speciality, as pension division law is. Second, the Supreme  
23 Court's determination is not somehow dispositive as to whether or not the Court *can*  
24 consider expert legal opinions. The Supreme Court concluded (without further  
25

---

26 <sup>1</sup> In *Higgs*, the Court even noted that although an expert opinion may not "meet all the [] factors for  
27 assessing reliability, those factors may be afforded varying weights and may not apply equally in every  
28 case. It is up to the district court judge to make the determination regarding the varying factors as he or  
she is the gatekeeper." *Id* at 660.



1 explanation) that all of Husband's other arguments, including that it was legal error to  
2 exclude Mr. Rushforth, were without merit. Considering the standard for the admissibility  
3 of expert testimony, the Supreme Court's decision is unsurprising. A trial court's decision  
4 as to whether or not to admit testimony is reviewed for abuse of discretion. All the  
5 Supreme Court said was that there was no abuse of discretion, it did not specifically  
6 *affirm* the lower court's rationale.

7 Nevada law is clear, Mr. Willick's report is appropriate so long as this Court  
8 views it to be of assistance, and his testimony is equally appropriate, so long as it is of  
9 assistance to this Court when considering this case.

10 The issue of whether or not it will be of assistance seems to be a foregone  
11 conclusion as Mr. Willick's report was requested by this Court, specifically to discuss the  
12 issues it discusses. It is clearly proper. Husband, after disregarding his own assurances  
13 to this Court, has filed a Motion which disregards Nevada law, and even worse, contends  
14 Nevada law does not exist, in a feeble and fraudulent attempt to craft a specious argument  
15 out of bits and pieces of law from a variety of other states. Husband's Motion is in bad  
16 faith and has no merit under Nevada law. It is a clear violation of NRCP 11, NRS 7.085  
17 and EDCR 7.60. Wife is entitled and deserving of fees pursuant to the same as well as  
18 NRS 18.010.

19 Although it may be compelling to suggest that since Wife is ably represented  
20 in *pro bono* capacity, no award of fees is necessary. However, the case law does not  
21 support that conclusion. The initial premise of *Miller v. Wilfong*, 121 Nev. 619, 119 P.3d  
22 727 (2005) articulated at page 729 - 730 states:

23 Initially, we conclude that a party is not precluded from  
24 recovering attorney fees solely because his or her counsel  
25 served in a pro bono capacity. While Nevada law has been  
26 silent on this issue, many courts have concluded that an award  
27 of attorney fees is proper, even when a party is represented  
28 without fee by a nonprofit legal services organization. In  
addition to the various state courts, the United States Supreme  
Court has concluded that an award of attorney fees to a  
nonprofit legal services organization is to be calculated  
according to the prevailing market rate, stating that "Congress  
did not intend the calculation of fee awards to vary depending



1 on whether plaintiff was represented by private counsel or by  
2 a nonprofit legal services organization." We agree with these  
3 courts and conclude that significant public policy rationales  
4 support awarding fees to counsel, regardless of counsel's  
5 service in a pro bono capacity. First, the fact that a government  
6 institution or private charity has provided legal assistance  
7 should not absolve other responsible parties of their financial  
8 obligations. For example, when pro bono counsel assist a  
9 parent in a custody or child support dispute, the wealthier  
10 parent should not be relieved of an obligation to pay attorney  
11 fees. Further, in domestic matters, one partner has often  
12 created or contributed to the other partner's limited financial  
13 means by leaving the household, failing to remit child support,  
14 drawing funds from a shared account, or other similar conduct.  
15 In those cases, if fees are not awarded to pro bono counsel, a  
16 wealthier litigant would benefit from creating conditions that  
17 force the other party to seek legal aid. In addition, pro bono  
18 counsel serve an important role in the legal system's attempt to  
19 address the unmet needs of indigent and low-income litigants  
20 within our state. To impose the burden of the cost of litigation  
21 on those who volunteer their services, when the other party has  
22 the means to pay attorney fees, would be unjust.

23 It is clear from the language in *Miller v. Wilfong*, that it is appropriate to  
24 award a party fees when that party has been represented *Pro Bono*. Although the Court  
25 is also to consider the *Brunzell* factors (which will be addressed below), in *Pro Bono*  
26 cases there are also further equitable considerations, as delineated above, to wit: that *pro*  
27 *bono* services do not absolve responsible parties of their financial obligations (such as  
28 those due under *Sargeant v. Sargeant*, 88 Nev. 223, 495 P.2d 618 (1972); *Leeming v.*  
*Leeming*, 87 Nev. 530, 490 P.2d 342 (1971); *Halbrook v. Halbrook*, 114 Nev. 1455, 971  
P.2d 1262 (1998).), that **"when pro bono counsel assist a parent in a custody or child  
support dispute, the wealthier parent should not be relieved of an obligation to pay  
attorney fees;"** and finally, **"to impose the burden of the cost of litigation on those  
who volunteer their services, when the other party has the means to pay attorney's  
fees, would be unjust."**

25 ...

26 ...

27 ...

28 ...



1 Pursuant to Brunzell v. Golden Gate National Bank, 85 Nev. 455 P.2d 31  
2 (1969), in the case at bar, the Court should consider the following factors in awarding  
3 attorney's fees for this Motion:

4 **1. Qualities of Wife's Advocate**

5 The qualities of Wife's attorneys are excellent. Racheal Mastel has been  
6 involved with the Las Vegas family law community since 2004, including internships  
7 with Judge William O. Voy, the Juvenile Delinquency Court Judge for the 8<sup>th</sup> Judicial  
8 District Court and the Legal Aid Center of Southern Nevada's Domestic Violence section  
9 and a clerkship in 2009 with the Chief Judge of the District Court, Family Court  
10 Department H Judge T. Arthur Ritchie. She has been appointed by the Nevada Supreme  
11 Court to serve on the Committee to Revise the Nevada Rules of Civil Procedure. She has  
12 been engaged in the exclusive practice of family law for nearly ten years. Ms. Mastel  
13 graduated from Washburn University School of Law with a certification in Family Law  
14 and is also a Nevada Board Certified Family Law Specialist and a partner at Kainen Law  
15 Group, PLLC.

16 Clearly, Wife attorneys are experienced, well trained and qualified in  
17 relation to the fees charged for there services in this matter. Ms. Mastel's hourly rate is  
18 \$375. Paralegals were also utilized where possible, at lesser rates.

19 **2. The Character of the Work Done**

20 In this instance, Wife's counsel is charged with the task of Opposing  
21 Husband's *second* Motion regarding his attempts to get around his obligations under the  
22 Decree. Wife's Opposition shows clearly how frivolous and without merit Husband's  
23 Motion is. Under the circumstances of this case, the character of the work completed  
24 certainly justifies the fees incurred in this matter.

25 **3. The Work Actually Performed**

26 Wife's attorneys have made every effort to be as efficient as possible in  
27 completing the necessary work to obtain favorable results for her. The amount of fees  
28 and costs accurately reflects the actual work done in this matter. The work was



1 completed in the most cost efficient manner to minimize the over all fees and costs  
2 incurred. A copy of such redacted billing reflecting the work actually performed can be  
3 provided after the hearing on this matter, if requested by the Court.

4 **4. The Results**

5 The final factor adopted in Brunzell is whether the attorney was successful  
6 and what benefits were derived. It is anticipated that Wife will be successful at the  
7 hearing on this matter, as Husband's Motion has no justification.

8 **III.**

9 **CONCLUSION**

10 Wife requests that Husband's Motion be denied *in toto* and that Wife be  
11 awarded her attorney's fees for the necessity of opposing the same.

12 Respectfully submitted this 7 day of September, 2019.

13 KAINEN LAW GROUP, PLLC

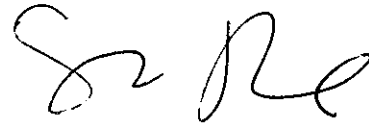
14  
15 By: 

16 RACHEAL H. MASTEL, ESQ.  
17 Nevada Bar No. 11646  
18 3303 Novat Street, Suite 200  
19 Las Vegas, Nevada 89129  
20 Attorneys for Defendant  
21  
22  
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**DECLARATION OF SARAH ROSE IN SUPPORT OF OPPOSITION**

I, SARAH ROSE declare under penalty of perjury that I am the Defendant herein and that I have read the foregoing *Opposition to Plaintiff's Motion in Limine to Preclude the Testimony of Marshall [Sic] S. Willick, Esq., and Countermotion for Attorney's Fees and Costs* and the same is true and correct of my own knowledge, except for those matters which are therein stated upon information and belief, and as to those matters, I believe them to be true.

EXECUTED this 17 day of September, 2019.



SARAH ROSE

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 19<sup>th</sup> day of September, 2019, I caused to be served the *Opposition to Plaintiff's Motion in Limine to Preclude the Testimony of Marshall [Sic] S. Willick, Esq., and Countermotion for Attorney's Fees and Costs* to all interested parties as follows:

\_\_\_ BY MAIL: Pursuant to NRCP 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:

\_\_\_ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

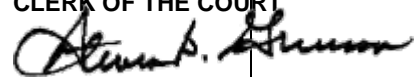
\_\_\_ BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to be transmitted, via facsimile, to the following number(s):

X BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I caused a true copy thereof to be served via electronic mail, via Wiznet, to the following e-mail address(es):

legalservices1llc@gmail.com

daverose08@gmail.com

  
An Employee of  
KAINEN LAW GROUP, PLLC



**RPLY**

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Attorney for Plaintiff  
DAVID JOHN ROSE

CLARK COUNTY DISTRICT COURT, FAMILY DIVISION

CLARK COUNTY, NEVADA

DAVID JOHN ROSE,  
Plaintiff,

vs.

SARAH JANEEN ROSE,  
Defendant

Case No.: D-17-547250-D  
Dept. No.: I

Hearing Date: 10/22/19  
Hearing Time: 10:00 a.m.

**PLAINTIFF'S REPLY TO DEFENDANT'S OPPOSITION TO MOTION IN LIMINE TO  
PRECLUDE TESTIMONY OF MARSHAL WILLOCK, ESQ. AND TO PRECLUDE  
ADMISSION OF MR. WILLOCK'S DECEMBER 20, 2018 REPORT**

**AND**

**OPPOSITION TO COUNTERMOTION FOR ATTORNEY'S FEES AND COSTS**

COMES NOW, Plaintiff, David John Rose, by and through his counsel,  
Shelley Lubritz, Esq., and submits his Reply to Defendant's Opposition to Motion in  
Limine to Preclude Testimony of Marshall S. Willock, Esq. and to Preclude Admission  
of his December 20, 2018 Report and Opposition to Countermotion for Attorney's Fees  
and Costs. This Reply is based upon



1 the papers and pleadings on file herein, the Declaration of David John Rose and the  
2 attached Memorandum of Points and Authorities. Plaintiff respectfully requests his  
3 Motion be granted and that the Court issue its Order:

- 4 1. Precluding Marshal S. Willick, Esq. from testifying as an expert at the upcoming  
5 evidentiary hearing regarding survivorship benefits;
- 6 2. Precluding admission of Marshal S. Willick, Esq.'s December 8, 2018, report,  
7 and  
8
- 9 3. Awarding Plaintiff his reasonable attorney's fees and costs associated with the  
10 underlying Motion.  
11

12 Dated this 6<sup>th</sup> day of October 2019.

13 LEGAL SERVICES ONE, LLC

14  
15 By: Shelley Lubritz  
16 Shelley Lubritz, Esq.  
17 Nevada Bar No. 5410  
18 375 E. Warm Springs Road Suite 104  
19 Las Vegas, Nevada 89119  
20 Attorney for Plaintiff  
21 David John Rose

## 22 **MEMORANDUM OF POINTS AND AUTHORITIES**

23 The parties, Plaintiff, David John Rose, and Defendant, Sarah Janeen Rose, have  
24 had the opportunity to present their factual statements as a part of the significant motion  
25 practice regarding survivorship benefits. Those facts, however, are not relevant to the  
26 instant Motion. The single issue before this Court on October 22, 2019, is whether  
27 Marshal S. Willick, Esq. may testify as an expert witness. Mr. Willick has been precluded  
28 from testifying as an expert in another Nevada matrimonial matter(s).

1 By definition, an expert witness's testimony, must be offered, **only**, to assist the  
2 Court's understanding of the evidence, or, to assist the Court in determining a fact at  
3 issue. Mr. Willick's letter does neither. Rather, Mr. Willick's opinions are being offered to  
4 advise the Court about his interpretation of Nevada law and the application of his  
5 interpretation to facts in this matter. As such, his testimony is inadmissible pursuant the  
6 laws and statutes of the State of Nevada.  
7

8 **NRS 50.275 Testimony by experts.**

9 If scientific, technical or other specialized knowledge will  
10 assist the trier of fact to understand the evidence or to  
11 determine a fact in issue, a witness qualified as an expert by  
12 special knowledge, skill, experience, training or education  
13 may testify to matters within the scope of such knowledge.  
[Emphasis added].

14 **NRS 125.070 Judge to determine questions of law and**  
15 **fact.**

16 The judge of the court shall determine all questions of law and  
17 fact arising in any divorce proceeding under the provisions of  
this chapter. [Emphasis added].

18 "The rule prohibiting experts from providing their legal opinions or conclusions is  
19 so well established that it is often deemed a basic premise or assumption of evidence  
20 law- a kind of axiomatic principle. [Internal citation omitted]. In fact, every [federal] circuit  
21 has explicitly held that experts may not invade the court's province by testifying on issues  
22 of law." In re Initial Public Offering Securities Lit., 174 F.Supp.2d 61, 64 (S.D.N.Y. 2001).  
23 [Emphasis added]. "[T]he calling of lawyers as 'expert witnesses' to give opinions as to  
24 the application of the law to particular facts usurps the duty of the trial court to instruct the  
25 jury on the law as applicable to the facts, and results in no more than a modern day 'trial  
26 by oath' in which the side procuring the greater number of lawyers able to opine in their  
27

1 favor wins." Downer v. Bramet, 199 Cal.Rptr. 830, 833, 152 Cal.App.3d 837, 842 (Cal.  
2 App. 4th Dist. 1984). [Emphasis added]. In this matter, the Judge is the trier of fact and  
3 of law; thus, the impropriety of allowing Mr. Willick to testify as an expert in this matter is  
4 even more far-reaching.

5  
6 As McCormick on Evidence teaches: Undoubtedly some  
7 highly opinionated statements by the witness amount to  
8 nothing more than an expression of his general belief as to  
9 how the case should be decided or the amount of damages  
10 which would be just. All courts exclude such extreme  
11 conclusory expressions. There is no necessity for this kind of  
12 evidence; its receipt would suggest that the judge and jury  
13 may shift responsibility for the decision to the witness. In any  
14 event, the opinion is worthless to the trier of fact. 1 McCormick  
15 on Evidence § 12, at 60 (6 ed. 1999). [Emphasis added].

16 Webb v. Omni Block, 216 Ariz. 349, 354, 166 P.3d 140, 144-45 (Ariz. App. Div. 1 2007)  
17 (emphasis added); see also, Steffensen v. Smith's Management Corp., 862 P.2d 1342,  
18 1347 (Utah. 1993) ("Opinion testimony is not helpful to the fact finder when it is couched  
19 as a legal conclusion. These extreme expressions of the general belief of the expert  
20 witness tend to blur the separate and distinct responsibilities of the judge, jury, and  
21 witness."). [Emphasis added]. In his opinion letter to Sarah's counsel, Mr. Willick did just  
22 that – he offered opinions couched as legal conclusions. Both the letter and his testimony  
23 are, inarguably, inadmissible. Mr. Willick is not the Court's advisor. He is an advocate  
24 for Sarah.

25 In her Opposition, Sarah's counsel cites to *In Re Mosley*, 102P.3d 555, 568 (Nev.  
26 2004) (diss. Gibbons, J). Mosley is easily distinguished from the instant matter. It was  
27 an appeal from a decision by the Nevada Commission on Judicial Discipline. Further, the  
28 citations relied upon by her counsel in the Opposition are from the dissent. They do not

1 represent the holding in that case nor are they good law. The dissent is merely an opinion;  
2 it is not law. As this Court is aware, the Nevada Supreme Court upheld, the Commission's  
3 decision to exclude expert testimony.

4  
5 Any testimony from Mr. Willick would invade the province of the Court. It is not an  
6 expert's role to explain the law to the Court nor to offer opinions as to the applicability of  
7 the law to the facts. An expert's role is to assist the Court in understanding the evidence  
8 or to determine a fact in issue. As set forth, previously, Mr. Willick's opinion letter does  
9 neither. Rather, it is more accurately described as the work of a consultant to Sarah's  
10 counsel than an expert witness. Mr. Willick should be precluded from testifying in the  
11 upcoming evidentiary proceeding.  
12

13 Respectfully, the Motion in Limine should be granted and Defendant's  
14 Countermotion should be denied. David's request for attorney's fees is incorporated  
15 herein by this reference.  
16

### 17 **CONCLUSION**

18 WHEREFORE, based upon the foregoing, Plaintiff, David Rose respectfully  
19 requests that:

- 20 1. The instant Motion be granted in its entirety;
- 21 2. Defendant's Countermotion be denied in its entirety; and

22 . . .

23 . . .

24 . . .

25 . . .

26 . . .

27 . . .



1           3.     For such other and further relief this Court deems just and proper in the  
2 premises.

3           Dated this 6<sup>th</sup> day of October, 2019.  
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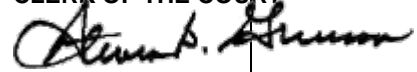
5                               LEGAL SERVICES ONE, LLC

6                               By:   
7 Shelley Lubritz, Esq.  
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9 375 E. Warm Springs Road Suite 104  
10 Las Vegas, Nevada 89119  
11 Attorney for Plaintiff  
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DATED this 6th day of October 2019.

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**MISC**

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Attorney for Plaintiff  
DAVID JOHN ROSE

CLARK COUNTY DISTRICT COURT, FAMILY DIVISION  
CLARK COUNTY, NEVADA

DAVID JOHN ROSE,  
Plaintiff,

vs.

SARAH JANEEN ROSE,  
Defendant

Case No.: D-17-547250-D  
Dept. No.: I

Hearing Date:  
Hearing Time:

**PLAINTIFF'S DECLARATION IN SUPPORT OF OPPOSITION TO MOTION IN  
LIMINE TO PRECLUDE TESTIMONY OF MARSHAL WILLOCK, ESQ. AND TO  
PRECLUDE ADMISSION OF MR. WILLOCK'S DECEMBER 20, 2018 REPORT AND  
OPPOSITION TO COUNTERMOTION FOR ATTORNEY'S FEES AND COSTS**

COMES NOW, Plaintiff, David John Rose, by and through his counsel, Shelley  
Lubritz, Esq., and submits his Declaration in support of his Reply to Opposition to  
Plaintiff's Motion in Limine to Preclude Testimony of Marshall S. Willock, Esq. and to

1 Preclude Admission of his December 20, 2018 Report and Opposition to Countermotion.  
2 For Attorney's Fees and Costs.

3 Dated this 22<sup>nd</sup> day of October 2019.

4  
5 LEGAL SERVICES ONE, LLC

6 By: Shelley Lubritz  
7 Shelley Lubritz, Esq.  
8 Nevada Bar No. 5410  
9 375 E. Warm Springs Road Suite 104  
10 Las Vegas, Nevada 89119  
11 Attorney for Plaintiff  
12 David John Rose  
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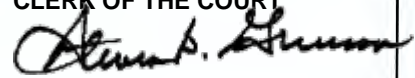
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**VERIFICATION**

DAVID JOHN ROSE states, pursuant to NRS 53.045 under penalty of perjury: that he is the Plaintiff in the above-entitled matter, and that he has read the foregoing Reply to Defendant's Opposition to Motion in Limine to Preclude Testimony of Marshall S. Willick, Esq. and to Preclude Admission of his December 20, 2018 Report and Opposition to Countermotion for Attorney's Fees and Costs and knows the contents thereof, and that the same is true of his own knowledge except as to those matters stated therein upon information and belief, and as to those matters he believes them to be true.

DATED this 18 day of October 2019.

  
\_\_\_\_\_  
DAVID JOHN ROSE



1 **ORDR**

2 EDWARD L. KAINEN, ESQ.  
3 Nevada Bar No. 5029  
4 RACHEAL H. MASTEL, ESQ.  
5 Nevada Bar No. 11646  
6 KAINEN LAW GROUP, PLLC  
7 3303 Novat Street, Suite 200  
8 Las Vegas, Nevada 89129  
9 (702) 823-4900  
10 (702) 823-4488 (Fax)  
11 Service@KainenLawGroup.com  
12 Attorneys for Defendant

13 *In conjunction with the Legal Aid Center of Southern Nevada*

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

16 **DAVID ROSE,**

17 Plaintiff,

18 vs.

19 **SARAH ROSE,**

20 Defendant.

CASE NO. D-17-547250-D  
DEPT NO. I

Date of Hearing: 10/23/19  
Time of Hearing: 1:30 p.m.

21 **ORDER FROM HEARING ON OCTOBER 23, 2019**

22 THIS MATTER having come on for hearing this 23<sup>rd</sup> day of October, 2019,  
23 before the Honorable Cheryl B. Moss, on Plaintiff's *Motion in Limine*; Defendant,  
24 SARAH ROSE ("Defendant"), present and represented by and through her attorney,  
25 RACHEAL H. MASTEL, ESQ. of the KAINEN LAW GROUP, PLLC, and Plaintiff,  
26 DAVID ROSE ("Plaintiff"), present and represented by and through his attorney,  
27 SHELLEY LUBRITZ, ESQ., of LEGAL SERVICES ONE, LLC.; the Court having heard  
28 oral argument, having read the pleadings and papers on file herein, being fully advised  
in the premises and good cause appearing, makes the following Findings and Orders:

The Court notes that Ms. Lubritz's trial exhibits were returned to her in open court. Counsel discussed deadlines for trial exhibits to be delivered to opposing counsel and the Court. Ms. Mastel may provide the rule to Ms. Lubritz, and they will both comply with the same.

KAINEN LAW GROUP, PLLC  
3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
702.823.4900 • Fax 702.823.4488  
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APPX0405



1 THE COURT HEREBY FINDS that Marshal Willick meets the burden  
2 under NRS 50.275 as an expert witness. Mr. Willick has also previously testified as an  
3 expert witness before this Court, and therefore it is within the Court's discretion to allow  
4 his expert testimony.

5 Therefore, based on the foregoing,

6 IT IS HEREBY ORDERED that Plaintiff's Motion is denied in part and  
7 granted in part.

8 IT IS FURTHER ORDERED that Marshal Willick shall be permitted to  
9 testify but will limit his testimony to avoid giving his opinion regarding the merits of the  
10 law. It will be the Court's responsibility to distinguish legal fact from interpretation.

11 IT IS FURTHER ORDERED that the trial shall be continued to January 27,  
12 2019 at 1:30 p.m. The Court shall contact counsel regarding possibly setting a second  
13 date for closing arguments.

14 IT IS FURTHER ORDERED that Ms. Lubritz shall prepare today's Order  
15 for Ms. Mastel's review and signature.

16 DATED this \_\_\_\_ day of JAN 10 2020, 2020.

17  
18   
19 DISTRICT COURT JUDGE

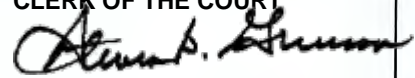
20 Submitted by:

21 KAINEN LAW GROUP, PLLC

22 By: 

23 RACHEAL H. MASTEL, ESQ.  
24 Nevada Bar No. 11646  
25 3303 Novat Street, Suite 200  
26 Las Vegas, Nevada 89129  
27 Attorney for Defendant  
28





1 **NEOJ**  
2 EDWARD L. KAINEN, ESQ.  
3 Nevada Bar No. 5029  
4 RACHEAL H. MASTEL, ESQ.  
5 Nevada Bar No. 11646  
6 KAINEN LAW GROUP, PLLC  
7 3303 Novat Street, Suite 200  
8 Las Vegas, Nevada 89129  
9 (702) 823-4900  
10 (702) 823-4488 (Fax)  
11 Service@KainenLawGroup.com  
12 Attorneys for Defendant  
13 *in conjunction with the Legal Aid Center of Southern Nevada*

14 DISTRICT COURT  
15 CLARK COUNTY, NEVADA

16 DAVID ROSE,

17 Plaintiff,

18 vs.

19 SARAH ROSE,

20 Defendant.

CASE NO. D-17-547250-D  
DEPT NO. I

Date of Hearing: 10/23/2019  
Time of Hearing: 1:30 p.m.

21 **NOTICE OF ENTRY OF ORDER FROM HEARING ON OCTOBER 23, 2019**

22 TO: DAVID ROSE, Plaintiff; and

23 TO: SHELLY LUBRITZ, ESQ., Attorney for Plaintiff:

24 PLEASE TAKE NOTICE that on the 13<sup>th</sup> day of January, 2020, the  
25 Honorable Cheryl Moss entered an Order from the Hearing on October 23, 2019, a copy  
26 of which is attached hereto.

27 DATED this 13<sup>th</sup> day of January, 2020.

28 KAINEN LAW GROUP, PLLC

By: 

RACHEAL H. MASTEL, ESQ. 8147  
Nevada Bar No. 11646  
3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
Attorney for Defendant

KAINEN LAW GROUP, PLLC  
3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
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www.KainenLawGroup.com

APPX0407



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 13 day of January, 2020, I caused to be served the *Notice of Entry of Order from Hearing on October 23, 2019* to all interested parties as follows:

\_\_\_ BY MAIL: Pursuant to NRCP 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:

\_\_\_ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

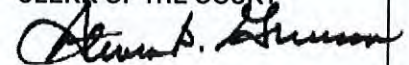
\_\_\_ BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to be transmitted, via facsimile, to the following number(s):

X BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I caused a true copy thereof to be served via electronic mail, via Wiznet, to the following e-mail address(es):

*Attorney for Plaintiff*  
Legalservices1llc@gmail.com  
Daverose08@gmail.com

  
\_\_\_\_\_  
An Employee of  
KAINEN LAW GROUP, PLLC





1 **ORDR**

2 EDWARD L. KAINEN, ESQ.  
3 Nevada Bar No. 5029  
4 RACHEAL H. MASTEL, ESQ.  
5 Nevada Bar No. 11646  
6 KAINEN LAW GROUP, PLLC  
7 3303 Novat Street, Suite 200  
8 Las Vegas, Nevada 89129  
9 (702) 823-4900  
10 (702) 823-4488 (Fax)  
11 Service@KainenLawGroup.com  
12 Attorneys for Defendant

13 *In conjunction with the Legal Aid Center of Southern Nevada*

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

16 **DAVID ROSE,**

17 **Plaintiff,**

18 **vs.**

19 **SARAH ROSE,**

20 **Defendant.**

**CASE NO. D-17-547250-D**  
**DEPT NO. I**

**Date of Hearing: 10/23/19**  
**Time of Hearing: 1:30 p.m.**

21 **ORDER FROM HEARING ON OCTOBER 23, 2019**

22 THIS MATTER having come on for hearing this 23<sup>rd</sup> day of October, 2019,  
23 before the Honorable Cheryl B. Moss, on Plaintiff's *Motion in Limine*; Defendant,  
24 SARAH ROSE ("Defendant"), present and represented by and through her attorney,  
25 RACHEAL H. MASTEL, ESQ. of the KAINEN LAW GROUP, PLLC, and Plaintiff,  
26 DAVID ROSE ("Plaintiff"), present and represented by and through his attorney,  
27 SHELLEY LUBRITZ, ESQ., of LEGAL SERVICES ONE, LLC.; the Court having heard  
28 oral argument, having read the pleadings and papers on file herein, being fully advised  
in the premises and good cause appearing, makes the following Findings and Orders:

The Court notes that Ms. Lubritz's trial exhibits were returned to her in open court. Counsel discussed deadlines for trial exhibits to be delivered to opposing counsel and the Court. Ms. Mastel may provide the rule to Ms. Lubritz, and they will both comply with the same.

**KAINEN LAW GROUP, PLLC**

3303 Novat Street, Suite 200

Las Vegas, Nevada 89129

702.823.4900 • Fax 702.823.4488

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1 THE COURT HEREBY FINDS that Marshal Willick meets the burden  
2 under NRS 50.275 as an expert witness. Mr. Willick has also previously testified as an  
3 expert witness before this Court, and therefore it is within the Court's discretion to allow  
4 his expert testimony.

5 Therefore, based on the foregoing,

6 IT IS HEREBY ORDERED that Plaintiff's Motion is denied in part and  
7 granted in part.

8 IT IS FURTHER ORDERED that Marshal Willick shall be permitted to  
9 testify but will limit his testimony to avoid giving his opinion regarding the merits of the  
10 law. It will be the Court's responsibility to distinguish legal fact from interpretation.

11 IT IS FURTHER ORDERED that the trial shall be continued to January 27,  
12 2019 at 1:30 p.m. The Court shall contact counsel regarding possibly setting a second  
13 date for closing arguments.

14 IT IS FURTHER ORDERED that Ms. Lubritz shall prepare today's Order  
15 for Ms. Mastel's review and signature.

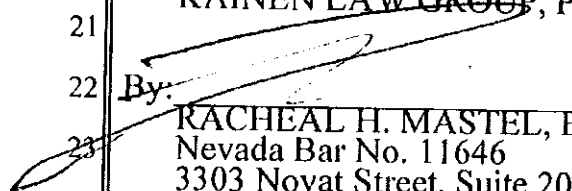
16 DATED this \_\_\_\_ day of JAN 10 2020, 2020.

17  
18   
19 DISTRICT COURT JUDGE  
20

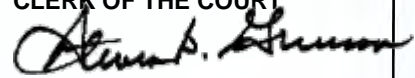
21 Submitted by:

22 KAINEN LAW GROUP, PLLC

23 By:

24   
25 RACHEAL H. MASTEL, ESQ.  
26 Nevada Bar No. 11646  
27 3303 Novat Street, Suite 200  
28 Las Vegas, Nevada 89129  
Attorney for Defendant





**MOT**  
RACHEAL H. MASTEL, ESQ.  
Nevada Bar No. 11646  
KAINEN LAW GROUP, PLLC  
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(702) 823-4488 (Fax)  
Service@KainenLawGroup.com  
Attorneys for Defendant  
*in conjunction with the Legal Aid Center of Southern Nevada*

DISTRICT COURT  
CLARK COUNTY, NEVADA

DAVID ROSE,

Plaintiff,

vs.

SARAH ROSE,

Defendant.

CASE NO. D-17-547250-D  
DEPT NO. I

Date of Hearing:  
Time of Hearing:

ORAL ARGUMENT REQUESTED?  
YES \_\_XX\_\_ NO \_\_\_\_\_

**NOTICE: PURSUANT TO EDCR 5.502(a) YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDER-SIGNED WITH A COPY OF YOUR RESPONSE WITHIN FOURTEEN (14) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN FOURTEEN (14) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING DATE.**

**DEFENDANT'S MOTION TO CONTINUE TRIAL (Defendant's First Request)**

COMES NOW, Defendant, SARAH ROSE, by and through her attorney, RACHEAL H. MASTEL, ESQ., of the KAINEN LAW GROUP, PLLC, and moves this Honorable Court to continue the Trial, currently scheduled for January 27, 2020, for a period of at least 90 days, and for such other and further relief as the Court deems just and proper in the premises.

...

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Las Vegas, Nevada 89129  
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APPX0411



1 This *Motion* is made and based upon the Points and Authorities submitted  
2 herewith, the Affidavit of counsel submitted herewith and oral argument of counsel at the  
3 time of the hearing of this matter.

4 DATED this 14 day of January, 2020.

5 KAINEN LAW GROUP, PLLC

6 By: \_\_\_\_\_

7 RACHEAL H. MASTEL, ESQ.

8 Nevada Bar No. 11646

9 3303 Novat Street, Suite 200

Las Vegas, Nevada 89129

Attorney for Defendant

10 I.

11 POINTS AND AUTHORITIES AND ARGUMENT

12 Defendant, SARAH ROSE (hereinafter "Sarah"), and Plaintiff, DAVID  
13 ROSE (hereinafter "David"), were divorced by a Stipulated Decree of Divorce filed on  
14 April 11, 2018. The Trial in this matter was previously scheduled for October 23, 2019;  
15 however, as a result of David filing a Motion in Limine, which was heard on October 23,  
16 2019, this Trial was continued to the currently-scheduled date of January 27, 2020.

17 At this time, Sarah comes before the Court to continue the Trial for  
18 approximately 90 days as there is a case currently pending in the Nevada Supreme Court  
19 that is set for oral argument on February 10, 2020. The case is entitled *Peterson v.*  
20 *Peterson*, S Ct No. 77478/D-16-535405-D, and specifically pertains to community  
21 property and survivorship interest in Retirement Accounts. The issues being litigated in  
22 this case are the issues of community property and survivorship interest in David's  
23 retirement plan. and the outcome the *Peterson* case will be directly on point to the  
24 Court's decision that it will render in this case.

25 This Court is interested in two issues at the time of trial. First, if there is a  
26 valid contract in the Decree, or if, as David alleges, the Memorandum of Understanding  
27 ("MOU") is the valid agreement, which somehow supercedes the Decree, despite the  
28 Decree being the later contract. If David somehow succeeds with this argument, then the



1 Court must decide what the law requires with regard to the division of the survivor  
2 benefit in his retirement. This Court and the parties have already acknowledged that the  
3 case law in this matter is limited, and that the case of *Henson v. Henson*, 130 Nev. 814,  
4 334 P.3d 933 (2014), and the case of *Wolff v. Wolff*, 112 Nev. 1355, 929 P.2d 916 (1996),  
5 are part of the consideration.

6 The *Peterson* case both attempts to address what it considers to be a factual  
7 and legal error within those cases, as well requesting that the survivor benefits be  
8 partitioned and treated as an omitted asset. If David is able to convince this Court that the  
9 Decree should be set aside, the decision made in *Peterson* will create the precedent under  
10 which this case should be decided, as it is anticipated to definitively answer the second  
11 prong of this Court's analysis.

12 At present, the *Peterson* case is set *En Banc* - indicating that the Court is  
13 very likely to create precedent with its decision. Oral Argument on the matter is set for  
14 February 10, 2020, only a few days after this case is set for trial. At this time, the  
15 Supreme Court is deciding cases within a month or two. Depending on the outcome of  
16 this case and the *Peterson* decision (if issued after), this Court may face yet another  
17 Motion to Set Aside, as NRCP 60(b)(6) would now allow this Court to set aside, even  
18 outside of six months where equity justifies relief.

19 Accordingly, Sarah is requesting that this Court continue the Trial in this  
20 matter for a brief period, so that the Supreme Court can issue its decision on the *Peterson*  
21 case, providing this Court with full knowledge of the state of the law prior to taking  
22 evidence and issuing its decision in this matter.

23 EDCR 2.35 provides that any motion or stipulation to extend time shall  
24 inform the court of any previous extensions grants and state the reasons for the extension  
25 granted. A request for extension made after the expiration of the specified period shall  
26 not be granted unless the moving party, attorney or other person demonstrates that the  
27 failure to act was the result of excusable neglect. Immediately below the title of such  
28 motion or stipulation there shall also be included a statement indicating whether it is the



1 first, second, third etc., requested extension.

2 EDCR 7.30(a) states as follows:

3 (a) Any party may, for good cause, move the court for an  
4 order continuing the day set for trial of any cause. A motion  
5 for continuance of a trial must be supported by affidavit except  
6 where it appears to the court that the moving party did not have  
7 the time to prepare an affidavit, in which case counsel for the  
8 moving party need only be sworn and orally testify to the same  
9 factual matters as required for an affidavit. Counter-affidavits  
10 may be used in opposition to the motion.

11 The Nevada Supreme Court addressed the issue of a continuance of trial in  
12 a divorce action in *Benson v. Benson*, 66 Nev. 94, 204 P.2d 316 (1949). This case, which  
13 is now nearly 70 years old, is the sole Nevada case addressing this issue. In *Benson*, it  
14 was made clear that “granting of a continuance is within the discretion of the court and  
15 that this discretion is subject to review.” *Id.* at 98 and 318. Whether or not to grant a  
16 continuance is a matter of discretion for the trial court, who “is apprised of all the  
17 circumstances concerning the case, and the previous proceedings, and has before it the  
18 parties, from whose conduct and utterance it has opportunity to judge as to whether or not  
19 the motion is made in good faith, or as to whether or not deception and fraud are being  
20 perpetrated on the court with a view to delaying the proceedings.” *Id.* at 99 and 319. In  
21 family court, “a greater degree of liberality should be accorded in matters of continuances  
22 in divorce cases than in any other civil actions; the reason for this being that the public,  
23 as well as the parties to the action, are interested in the result of the suit.” *Id.* at 100 and  
24 319.

25 As the issues to be decided by the Court at the Trial in this matter are  
26 directly on point with the issues being decided by the Supreme Court in the *Peterson*  
27 case, it only makes sense to continue the Trial in this case, so that the Court is fully  
28 informed on *all* case law that pertains to this unique issue. Therefore, Sarah requests that  
the Court continue the Trial in this matter to allow the *Peterson* decision to be issued by  
the Supreme Court.



II.

CONCLUSION

Based on the foregoing, Sarah requests the following:

1. To continue the Trial, currently scheduled for January 27, 2020, for a period of approximately 90 days; and
2. For such other and further relief as the Court deems just in the premises.

DATED this 14 day of January, 2020.

KAINEN LAW GROUP, PLLC

By: 

RACHEAL H. MASTEL, ESQ.

Nevada Bar No. 11646

3303 Novat Street, Suite 200

Las Vegas, Nevada 89129

Attorney for Defendant



**AFFIDAVIT OF RACHEAL MASTEL, ESQ., IN SUPPORT DEFENDANT'S  
MOTION TO TRIAL**

STATE OF NEVADA     }  
COUNTY OF CLARK    } ss:

RACHEAL MASTEL, ESQ., being first duly sworn, deposes and states that I am an attorney duly licensed to practice law in the State of Nevada, and in that capacity, I represent the Defendant, Sarah Rose, in the above-entitled action.


That I have read through the foregoing Motion and the facts contained therein are true to the best of my knowledge except as to those matters stated upon information and belief and as to those matters, I believe them to be true.

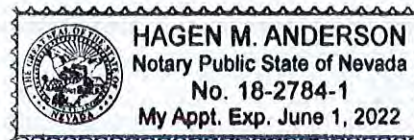
I also certify that I have provided my client with a copy of this Motion and supporting documents, if any. Further, this Motion is not made for any reason or purpose for delay of the trial herein, except as necessary for all parties to be fully prepared for said trial, as set forth in Defendant's Motion.

FURTHER AFFIANT SAYETH NAUGHT.

  
RACHEAL MASTEL, ESQ.

SUBSCRIBED and SWORN to before me  
by Racheal Mastel, Esq., this 14 day  
of January, 2020.

  
NOTARY PUBLIC in and for said  
County and State





**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 14 day of January, 2020, I caused to be served the *Defendant's Motion to Continue Trial (Defendant's First Request)* to all interested parties as follows:

\_\_\_ BY MAIL: Pursuant to NRCP 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:

\_\_\_ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

\_\_\_ BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to be transmitted, via facsimile, to the following number(s):

X BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I caused a true copy thereof to be served via electronic mail, via Wiznet, to the following e-mail address(es):

**legalservices1llc@gmail.com**

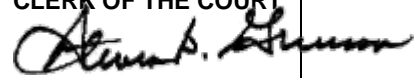
**daverose08@gmail.com**

  
An Employee of  
KAINEN LAW GROUP, PLLC

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*

Electronically Filed  
1/15/2020 7:36 AM  
Steven D. Grierson  
CLERK OF THE COURT



David Rose, Plaintiff  
vs.  
Sarah Rose, Defendant.

Case No.: D-17-547250-D  
Department I

**NOTICE OF HEARING**

Please be advised that the Defendant's Motion to Continue Trial (Defendant's First Request) in the above-entitled matter is set for hearing as follows:

**Date:** March 03, 2020  
**Time:** 10:00 AM  
**Location:** Courtroom 13  
Family Courts and Services Center  
601 N. Pecos Road  
Las Vegas, NV 89101

**NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.**

STEVEN D. GRIERSON, CEO/Clerk of the Court

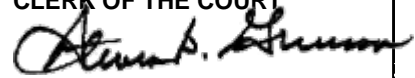
By: /s/ Juanito Nasarro  
Deputy Clerk of the Court

**CERTIFICATE OF SERVICE**

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Juanito Nasarro  
Deputy Clerk of the Court

APPX0418



1 **EXMT**  
2 RACHEAL H. MASTEL, ESQ.  
3 Nevada Bar No. 11646  
4 KAINEN LAW GROUP, PLLC  
5 3303 Novat Street, Suite 200  
6 Las Vegas, Nevada 89129  
7 (702) 823-4900  
8 (702) 823-4488 (Fax)  
9 Service@KainenLawGroup.com  
10 Attorneys for Defendant  
11 *in conjunction with the Legal Aid Center of Southern Nevada*

12 DISTRICT COURT  
13 CLARK COUNTY, NEVADA

14 DAVID ROSE,

15 Plaintiff,

16 vs.

17 SARAH ROSE,

18 Defendant.

CASE NO. D-17-547250-D  
DEPT NO. I

Date of Hearing: N/A  
Time of Hearing: N/A

19 **DEFENDANT'S EX PARTE MOTION FOR ORDER SHORTENING TIME**

20 COMES NOW Defendant, SARAH ROSE, by and through her attorney,  
21 RACHEAL H. MASTEL, ESQ., of the KAINEN LAW GROUP, PLLC, and moves this  
22 Honorable Court for an Order Shortening Time on the hearing on *Defendant's Motion to*  
23 *Continue Trial (Defendant's First Request)*.  
24  
25  
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...

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...

...

KAINEN LAW GROUP, PLLC  
3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
702.823.4900 • Fax 702.823.4488  
www.KainenLawGroup.com

APPX0419



1 This Ex Parte Motion is made and based upon the pleadings and papers on  
2 file herein, the Points and Authorities submitted herewith, and the Affidavit of counsel  
3 attached hereto.

4 DATED this 15 day of January, 2020.

5 KAINEN LAW GROUP, PLLC

6 By: 

7 RACHEAL H. MASTEL, ESQ.

8 Nevada Bar No. 11646

9 3303 Novat Street, Suite 200

Las Vegas, Nevada 89129

Attorneys for Defendant

10 I.

11 **AFFIDAVIT OF RACHEAL H. MASTEL, ESQ.**

12 STATE OF NEVADA }  
13 COUNTY OF CLARK } ss.

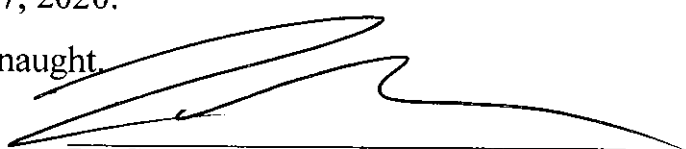
14 RACHEAL H. MASTEL, ESQ., being first duly sworn, deposes and says:

15 That I am an attorney duly licensed and authorized to practice law within the  
16 State of Nevada, and I am an attorney with Kainen Law Group, the attorneys of record  
17 for the Defendant, SARAH ROSE ("Sarah"), in the above-entitled action. I make this  
18 Affidavit pursuant to EDCR 5.513 in support of Sarah's Ex Parte Motion for an Order  
19 Shortening Time on the hearing scheduled on the *Defendant's Motion to Continue Trial*  
20 (*Defendant's First Request*).

21 The above-referenced Motion is currently scheduled to be heard on March  
22 3, 2020, at 10:00 a.m. This matter is set for Trial on January 27, 2020, at 1:30 p.m. --  
23 prior to the hearing on the Motion to Continue Trial. The aforementioned Motion  
24 requests a continuance of the Trial to allow time for the Supreme Court to issue its  
25 decision in the case of *Peterson v. Peterson*, S Ct No. 77478/D-16-535405-D, as the  
26 issues in *Peterson* are directly on point to the issues that are pending in this matter, and  
27 it is Defendant's belief that the *Peterson* decision will assist the Court in making its  
28 decision in this matter.

1 Therefore, given the upcoming Trial, it is necessary that this Motion be  
2 heard as soon as possible, and before the date of the Trial. Therefore, I request that the  
3 Court hear the Motion prior to January 27, 2020.

4 FURTHER, Affiant sayeth naught.

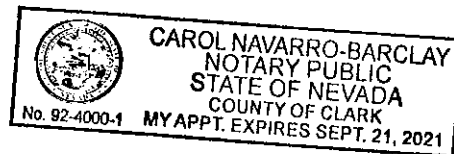
5  
6   
RACHEAL H. MASTEL, ESQ.

7 SUBSCRIBED AND SWORN to before me

8 by RACHEAL H. MASTEL, ESQ.

9 this 15<sup>th</sup> day of January, 2020.

10   
11 NOTARY PUBLIC in and for said  
12 County and State





*Steven D. Grierson*

1 **EXPR**  
2 RACHEAL H. MASTEL, ESQ., #11646  
3 KAINEN LAW GROUP, PLLC  
3303 Novat Street, Suite 200  
4 Las Vegas, Nevada 89129  
(702) 823-4900  
(702) 823-4488 (Fax)  
Service@KainenLawGroup.com  
5 Attorneys for Defendant  
in conjunction with the Legal Aid Center of Southern Nevada

6  
7 DISTRICT COURT  
8 CLARK COUNTY, NEVADA

9 DAVID ROSE,

10 Plaintiff,

11  
12 vs.

13 SARAH ROSE,

14 Defendant.  
15

CASE NO.  
DEPT NO.

D-17-547250-D  
I

Date of Hearing:  
Time of Hearing:

1-27-20  
1:30pm

16 **EX PARTE ORDER SHORTENING TIME**

17 UPON REVIEW of Defendant's Ex Parte Request for Order Shortening  
18 Time, the Court being fully advised in the premises and good cause appearing therefore,

19 IT IS HEREBY ORDERED that the hearing on *Defendant's Motion to*  
20 *Continue Trial* is hereby shortened to Jan 27, 2020, at 1:30 P.m.

21 DATED this 17<sup>th</sup> day of January, 2020.

22  
23 *[Signature]*  
DISTRICT COURT JUDGE

CHERYL B. MOSS *alc*

24 Submitted by:

25 KAINEN LAW GROUP, PLLC

26 *[Signature]*  
RACHEAL H. MASTEL, ESQ.

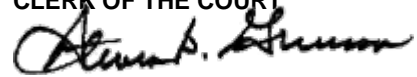
27 Nevada Bar No. 11646  
3303 Novat St., #200  
28 Las Vegas, Nevada 89129  
Attorney for Defendant

KAINEN LAW GROUP, PLLC  
3303 Novat Street, Suite 200  
Las Vegas, Nevada 89129  
702.823.4900 • Fax 702.823.4488  
www.KainenLawGroup.com

APPX0422

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

Electronically Filed  
1/22/2020 3:31 PM  
Steven D. Grierson  
CLERK OF THE COURT



DAVID JOHN ROSE,

Plaintiff,

v.

SARAH JANEEN ROSE,

Defendant.

CASE NO.: D-17-547250-D

DEPT. NO.: I

Date of Hearing: 01/27/19

Deposition Time: 1:30 p.m.

**TRIAL SUBPOENA**

  X   REGULAR          DUCES TECUM


**THE STATE OF NEVADA SENDS GREETINGS TO:**

**REGINA MCCONNELL, ESQ.**

**YOU ARE HEREBY COMMANDED**, that all and singular, business and excuses set aside, you appear and attend on Wednesday, the 27<sup>th</sup> day of December, 2020, at the hour of 1:30 p.m., a trial in the above-styled matter at the Eighth Judicial District Court, Family Court. The address where you are required to appear is 601 North Pecos Road, Las Vegas, Nevada 89101, Department I. You are required to bring with you at the time of your appearance any items set forth on the reverse side of this Subpoena. If you fail to attend, you will be deemed guilty of contempt of Court and liable to pay losses and damages caused by your failure to appear and in addition forfeit One Hundred Dollars (\$100.00).

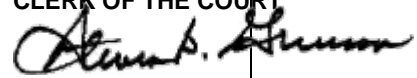
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

LEGAL SERVICES ONE LLC

By:   
SHELLEY LUBRITZ, ESQ.  
Nevada Bar No. 005410  
375 E. Warm Springs, Suite 104  
Las Vegas, NV 89101  
702-380-4008  
Attorney for Plaintiff

APPX0423





**OPPC**

Shelley Lubritz, Esq.  
Nevada Bar No. 005410  
LEGAL SERVICES ONE, LLC  
375 E. Warm Springs Road Suite 104  
Las Vegas, Nevada 89119  
Telephone: (702) 833-1300  
Facsimile: (702) 442-9400  
E-mail: [legalservices1llc@gmail.com](mailto:legalservices1llc@gmail.com)

Attorney for Plaintiff  
DAVID JOHN ROSE

CLARK COUNTY DISTRICT COURT, FAMILY DIVISION

CLARK COUNTY, NEVADA

DAVID JOHN ROSE,  
Plaintiff,

vs.

SARAH JANEEN ROSE,  
Defendant

Case No.: D-17-547250-D  
Dept. No.: I

Hearing Date: 1/23/2020  
Hearing Time: 1:30 p.m.

**PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO CONTINUE TRIAL AND  
COUNTERMOTION FOR ATTORNEY'S FEES AND COSTS**

COMES NOW, Plaintiff, David John Rose, by and through his counsel, Shelley Lubritz, Esq., and submits his *Opposition to Defendant's Motion to Continue Trial and Countermotion for Attorney's Fees and Costs*. This Opposition is made and based upon the papers and pleadings on file herein, the attached Declaration of Shelley Lubritz, Esq., the attached Memorandum of Points and Authorities, and the oral argument of counsel adduced at the hearing of this matter. Plaintiff respectfully requests Defendant's Motion

1 be denied, in its entirety, and that he be awarded his reasonable attorney's fees and costs  
2 associated with the defense of Defendant's Motion and that his Countermotion be granted.  
3 In the event the Court grants Defendant's Motion, David requests that he be awarded the  
4 costs associated with the continuance, including, without limitation, attorney's fees and  
5 costs with preparation for the January 27, 2019, evidentiary hearing.  
6

7 Dated this 23<sup>rd</sup> day of January 2020.

8 LEGAL SERVICES ONE, LLC

9 By:   
10 Shelley Lubritz, Esq.  
11 Nevada Bar No. 5410  
12 375 E. Warm Springs Road Suite 104  
Las Vegas, Nevada 89119

13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I. Factual Statement**

15 Plaintiff, David John Rose (hereinafter referred to as "Dave"), and Defendant Sarah  
16 Janeen Rose (hereafter referred to as "Sarah") were divorced by Decree entered on April  
17 11, 2018. Since that time, the parties have engaged in significant motion practice  
18 regarding the issue of survivorship benefits to Sarah.  
19

20 Before counsel can address the opposition to Defendant's Motion to Continue, she  
21 must address the misrepresentations contained therein. Specifically, in the title, Ms.  
22 Mastel represents that the current request to continue is Defendant's first. That statement  
23 is, simply, untrue. Ms. Mastel goes on to misrepresent that the October 23, 2019,  
24 evidentiary hearing date was continued "as a result of David filing a Motion in Limine,  
25 which was heard on October 23, 2019." *Motion to Continue*, page 2, lines 15 – 16. The  
26  
27  
28

1 Court will recall that this matter was on Stack 2 of the Court's calendar and the Stack 1  
2 case was going forward.

3 **Evidentiary Hearing Dates:**

4 Date 1: June 11, 2019, continued at Ms. Mastel's request due her unavailability.<sup>1</sup>

5 Date 2: July 31, 2019, continued at the undersigned's request due to the  
6 unavailability of a subpoenaed witness.<sup>2</sup>

7 Date 3: October 23, 2019, continued as the Stack 1 case went forward.

8 Date 4: January 27, 2020 which Ms. Mastel now seeks to continue.

9 In total, this evidentiary hearing has been continued three (3) times. Should the  
10 Court grant the instant Motion, it will have been continued four (4) times in almost two (2)  
11 years.<sup>3</sup> Pushing the date out even further is unwarranted and is unduly burdensome to  
12 David and his counsel.

13 The *Peterson* matter, upon which Ms. Mastel based her request to continue this  
14 evidentiary hearing a fourth time, may not be so easily and quickly decided as Ms. Mastel  
15 prophesizes. This decision should be based upon the law as it currently exists and under  
16 which the parties and this Court have operated since the inception of this case and not a  
17 series of "what ifs" and bald assertions.

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<sup>1</sup> The June 11, 2019 date was set by the November 6, 2018 Trial Management Order. Ms. Mastel  
advised of her unavailability at the March 19, 2019, status check.

<sup>2</sup> That witness was Regina McConnell, Esq., David's former counsel who is an essential witness.

<sup>3</sup> The Decree was entered on April 11, 2018, and the Motion to Set Aside was filed on April 25,  
2019.

1 “What if” No. 1: “At present, the Peterson case is set En banc – indicating that the  
2 Court is likely to create precedent with its decision.” Ms. Mastel cites no authority to  
3 support claim.

4 “What if” No. 2: “At this time, the Supreme Court is deciding cases within a month  
5 or two.” Ms. Mastel cites no authority to support this claim either.

6  
7 What if, the Nevada Supreme Court does not issue an immediate decision. How  
8 long should David wait? Ms. Mastel requested a new date 90 days out from January 27,  
9 2020 which would put the evidentiary hearing at or about May 6, 2020, *if*, by her timeline  
10 that the Supreme Court enters its decision within “a month or two.”

11  
12 What if, the decision is appealed? Do we, then, wait until that appeal is decided?

13 The *Peterson* case is being argued by Mr. Willick, Defendant’s expert witness. The  
14 *Notice Scheduling Oral Argument* was issued on December 27, 2019. It is reasonable to  
15 believe that Ms. Mastel was notified prior to January 14, 2020, the date ascribed to the  
16 oral argument; yet, she waited eighteen (18) days to file - just twelve days before trial. As  
17 a foreseeable result thereof, the Order Shortening Time would be set only days before  
18 the trial. In this case, because of her delayed submission, the Motion is being heard on  
19 the day of trial. David and his counsel must prepare and be ready to stand trial on January  
20 27, 2020, regardless of the *Peterson* outcome. The timing of these events would be  
21 markedly different had Ms. Mastel filed her motion in a more timely manner. It may also  
22 be argued that such tactics are analogous to “forum shopping.”

## 23 24 25 **II. Statement of Law**

26 The first legal authority cited by Ms. Mastel in support of the Motion to Continue is  
27 EDCR 2.35 which governs extensions of discovery deadlines and not continuances of  
28



1 trials. Ms. Mastel also cites to *Benson v. Benson*, 66 Nev. 94, 204 P.2d 316 (1949). Yet,  
2 she does so in a manner that “misquote by omission” which could the Court to perceive  
3 an argument that is not accurate.<sup>4</sup> It is true that the Supreme Court in *Benson* held that  
4 “the granting of a continuance is within the discretion of the court and that this discretion  
5 is subject to review.” *Id.* at page 98 and 319. However, the Court went on to on to state,  
6 “[i]t is for these reasons that courts of review generally have taken a position that the  
7 action of the trial court, in granting or denying a motion for continuance, *will not be*  
8 *reversed, except for the most potent reasons.*” *Id.* at page 98 and 319. The decision to  
9 deny or grant Defendant’s Motion to Continue is within the sound discretion of this Court.  
10  
11

12 In the event that this Court grants Defendant’s Motion, David seeks an award of  
13 attorney’s fees pursuant to EDCR 7.30 which states, in pertinent part, as follows:

14 (g) When application is made to a judge, master or  
15 commissioner to postpone a motion, trial or other proceeding,  
16 ***the payment of costs*** (including but not limited to the  
17 expenses incurred by the party) and ***attorney fees may be***  
***imposed as a condition of granting the postponement.***

18 [emphasis added]

19 . . .

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26 <sup>4</sup> Appellant’s Reply Brief, Peterson v. Peterson, Docket No. 77478, page 6.  
27  
28

1 David respectfully requests that the Court deny the Motion to Continue as no  
2 legitimate basis exists to continue this evidentiary hearing for the fourth time in nearly two  
3 years. He is entitled to some sense of finality.  
4

5 Dated this 23<sup>rd</sup> day of January, 2020.

6 LEGAL SERVICES ONE, LLC  
7

8 By:   
9 Shelley Lubritz, Esq.  
10 Nevada Bar No. 5410  
11 375 E. Warm Springs Road Suite 104  
12 Las Vegas, Nevada 89119  
13 Attorney for Plaintiff  
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1 **CERTIFICATE OF SERVICE**

2 \_\_\_\_\_BY MAIL: Pursuant to NRCP S(b), I caused a true copy thereof to be placed  
3 in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed  
4 as follows:  
5

6 \_\_\_\_\_BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S.  
7 Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully  
8 paid thereon, addressed as follows:

9 \_\_\_\_\_BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to  
10 be transmitted, via facsimile, to the following number(s):  
11

12 \_\_\_\_\_BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I  
13 caused a true copy thereof to be served via electronic mail, via Wiznet, to the following  
14 e-mail address(es):

15 *Racheal Mastel, Esq.*

16 *Service@KainenLawGroup.com*

17 By:   
18 Shelley Lubritz, Esq.  
19  
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**DECLARATION OF SHELLEY LUBRITZ, ESQ. IN SUPPORT OF PLAINTIFF'S  
OPPOSITION TO DEFENDANT'S MOTION TO CONTINUE TRIAL**

Shelley Lubritz, Esq. does hereby declare, pursuant to NRS 53.045 and the laws of the State of Nevada, as follows:

I am a duly licensed attorney in the State of Nevada and, in that capacity, I represent Plaintiff, David John Rose, in the above-entitled action. As such, I have personal knowledge of the facts contained herein and I am competent to testify thereto.

I have read the foregoing Motion and the facts contained therein are true and correct to the best of my knowledge except as to those matters stated upon information and belief and as to those matters, I believe them to be true.

Further your declarant sayeth naught.

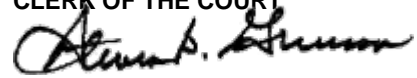
Dated this 23<sup>rd</sup> day of January, 2020.

*Shelley Lubritz*  
Shelley Lubritz, Esq.



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

Electronically Filed  
1/26/2020 8:22 AM  
Steven D. Grierson  
CLERK OF THE COURT



DAVID JOHN ROSE,

Plaintiff,

v.

SARAH JANEEN ROSE,

Defendant.

CASE NO.: D-17-547250-D

DEPT. NO.: I

Date of Hearing: 01/27/19

Deposition Time: 1:30 p.m.

**TRIAL SUBPOENA**

  X   REGULAR           DUCES TECUM

**THE STATE OF NEVADA SENDS GREETINGS TO:**

Nexie Rose  
8493 Insignia Ave. #104  
Las Vegas, Nevada 89178

**YOU ARE HEREBY COMMANDED**, that all and singular, business and excuses set aside, you appear and attend on Wednesday, the 27<sup>th</sup> day of December, 2020, at the hour of 1:30 p.m., a trial in the above-styled matter at the Eighth Judicial District Court, Family Court. The address where you are required to appear is 601 North Pecos Road, Las Vegas, Nevada 89101, Department I. You are required to bring with you at the time of your appearance any items set forth on the reverse side of this Subpoena. If you fail to attend, you will be deemed guilty of contempt of Court and liable to pay losses and damages caused by your failure to appear and in addition forfeit One Hundred Dollars (\$100.00).

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

LEGAL SERVICES ONE LLC

By: 

SHELLEY LUBRITZ, ESQ.

Nevada Bar No. 005410

375 E. Warm Springs, Suite 104

Las Vegas, NV 89101

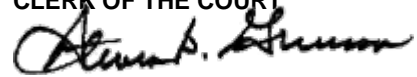
702-380-4008

Attorney for Plaintiff

APPX0432

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

Electronically Filed  
1/26/2020 1:09 PM  
Steven D. Grierson  
CLERK OF THE COURT



DAVID JOHN ROSE,

Plaintiff,

v.

SARAH JANEEN ROSE,

Defendant.

CASE NO.: D-17-547250-D

DEPT. NO.: I

Date of Hearing: 01/27/19

Deposition Time: 1:30 p.m.

**AMENDED TRIAL SUBPOENA**

  X   REGULAR           DUCES TECUM

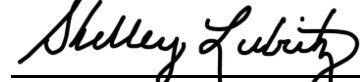
**THE STATE OF NEVADA SENDS GREETINGS TO:**

Nexie Rose  
8493 Insignia Ave. #104  
Las Vegas, Nevada 89178

**YOU ARE HEREBY COMMANDED**, that all and singular, business and excuses set aside, you appear and attend on Monday, the 27<sup>th</sup> day of December, 2020, at the hour of 1:30 p.m., a trial in the above-styled matter at the Eighth Judicial District Court, Family Court. The address where you are required to appear is 601 North Pecos Road, Las Vegas, Nevada 89101, Department I. You are required to bring with you at the time of your appearance any items set forth on the reverse side of this Subpoena. If you fail to attend, you will be deemed guilty of contempt of Court and liable to pay losses and damages caused by your failure to appear and in addition forfeit One Hundred Dollars (\$100.00).

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

LEGAL SERVICES ONE LLC

By: 

SHELLEY LUBRITZ, ESQ.

Nevada Bar No. 005410

375 E. Warm Springs, Suite 104

Las Vegas, NV 89101

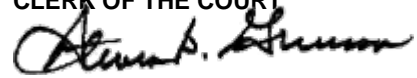
702-380-4008

Attorney for Plaintiff

APPX0433

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

Electronically Filed  
1/26/2020 1:20 PM  
Steven D. Grierson  
CLERK OF THE COURT



DAVID JOHN ROSE,

Plaintiff,

v.

SARAH JANEEN ROSE,

Defendant.

CASE NO.: D-17-547250-D

DEPT. NO.: I

Date of Hearing: 01/27/19

Deposition Time: 1:30 p.m.

**SECOND AMENDED TRIAL SUBPOENA**

  X   REGULAR           DUCES TECUM

**THE STATE OF NEVADA SENDS GREETINGS TO:**

Nexie Rose  
8493 Insignia Ave. #104  
Las Vegas, Nevada 89178

**YOU ARE HEREBY COMMANDED**, that all and singular, business and excuses set aside, you appear and attend on Monday, the 27<sup>th</sup> day of January, 2020, at the hour of 1:30 p.m., a trial in the above-styled matter at the Eighth Judicial District Court, Family Court. The address where you are required to appear is 601 North Pecos Road, Las Vegas, Nevada 89101, Department I. You are required to bring with you at the time of your appearance any items set forth on the reverse side of this Subpoena. If you fail to attend, you will be deemed guilty of contempt of Court and liable to pay losses and damages caused by your failure to appear and in addition forfeit One Hundred Dollars (\$100.00).

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

LEGAL SERVICES ONE LLC

By: 

SHELLEY LUBRITZ, ESQ.

Nevada Bar No. 005410

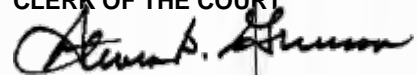
375 E. Warm Springs, Suite 104

Las Vegas, NV 89101

702-380-4008

Attorney for Plaintiff

APPX0434



1 **ROC**

2 Shelley Lubritz, Esq.  
3 Nevada Bar No. 5410  
4 LEGAL SERVICES ONE, LLC  
5 375 E. Warm Springs Road Suite 104  
6 Las Vegas, Nevada 89119  
7 Telephone: (702) 823-3500  
8 Facsimile: (702) 823-3400  
9 E-mail: [legalservices1llc@gmail.com](mailto:legalservices1llc@gmail.com)  
10 Attorney for Plaintiff  
11 David Rose

12  
13 CLARK COUNTY DISTRICT COURT, FAMILY DIVISION  
14 CLARK COUNTY, NEVADA

15 DAVID ROSE,

16 Plaintiff,

17 vs.

18 SARAH ROSE,

19 Defendant

Case No. D-17-547250-D  
Dept. No. I

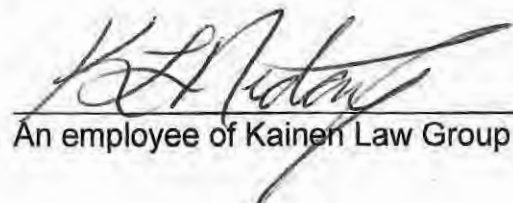
Date of Trial: July 31, 2019  
Time of Trial: 1:30 a.m.

20  
21 **RECEIPT OF DOCUMENTS AND FLASH DRIVE**

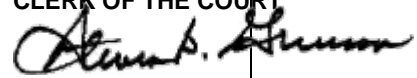
22 Receipt of the following:

- 23 1. Plaintiff's Pretrial Disclosures Pursuant to NRCP 16.1(3)(a) and  
24 2. A flash drive containing a recording of the parties dated April 3, 2019

25 is acknowledged this 24<sup>th</sup> day of June, 2019.

26  
27   
28 An employee of Kainen Law Group





**MISC**

Shelley Lubritz, Esq.  
Nevada Bar No. 5410  
LEGAL SERVICES ONE, LLC  
375 E. Warm Springs Road Suite 104  
Las Vegas, Nevada 89119  
Telephone: (702) 823-3500  
Facsimile: (702) 823-3400  
E-mail: [legalservices1llc@gmail.com](mailto:legalservices1llc@gmail.com)

Attorney for Plaintiff  
DAVID JOHN ROSE

CLARK COUNTY DISTRICT COURT, FAMILY DIVISION

CLARK COUNTY, NEVADA

DAVID JOHN ROSE,  
Plaintiff,

vs.

SARAH JANEEN ROSE,  
Defendant

Case No.: D-17-547250-D  
Dept. No.: I

Hearing Date: 2/27/20  
Hearing Time: 1:30 p.m.

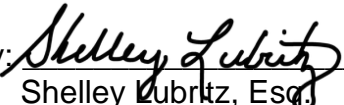
**SUBMISSION OF PLAINTIFF'S DECLARATION**

COMES NOW, Plaintiff, David John Rose, by and through his counsel, Shelley Lubritz, Esq., and submits his Declaration in support of his Reply to Defendant's *Opposition to Plaintiff's Motion to Modify Timeshare Based Upon His Change in Work Schedule, to Require Use of Our Family Wizard, or another Deemed Appropriate by the Court, to Enforce the Parenting Plan, To Enforce the Behavior, to Remove Identifying Photographs of the Minor Children From a Business Website, and for Attorney's Fees and Costs.* This Motion is made and based upon the papers and pleadings on file herein.

1 the attached Declaration of David John Rose and the attached Memorandum of Points  
2 and Authorities and Opposition to Counterclaim for Attorney's Fees and Costs.

3 Dated this 27<sup>th</sup> day of February, 2020.

4  
5 LEGAL SERVICES ONE, LLC

6 By:   
7 Shelley Lubritz, Esq.  
8 Nevada Bar No. 5410  
9 375 E. Warm Springs Road Suite 104  
10 Las Vegas, Nevada 89119  
11 Attorney for Plaintiff  
12 David John Rose  
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DATED this 26th day of February, 2020.

DAVID JOHN ROSE

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Divorce - Complaint****COURT MINUTES**

April 08, 2020

D-17-547250-D      David Rose, Plaintiff  
vs.  
Sarah Rose, Defendant.

**April 08, 2020      7:00 AM      Minute Order**

**HEARD BY:** Moss, Cheryl B.**COURTROOM:** Courtroom 13**COURT CLERK:** Erica Jimenez**PARTIES:**

Carson Rose, Subject Minor, not present  
David Rose, Plaintiff, Counter Defendant, not present      Shelley Lubritz, Attorney, not present  
David Rose, Subject Minor, not present  
Lily Rose, Subject Minor, not present  
Sarah Rose, Defendant, Counter Claimant, not present      Racheal Mastel, Attorney, not present

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

**- MINUTE ORDER**

NRCP 1 and EDCR 1.10 state that the procedures in district court shall be administered to secure efficient, just, and inexpensive determinations in every action and proceeding.

This matter is set for Trial on Tuesday, April 14, 2020 at 1:30pm (Day #1, Stack #1).

At the Settlement Conference on March 27, 2020 at 10am with Counsel only, there was discussion of finishing the Trial on the this date. However, after the Court reviewed the Judicial Administrative Order 20-01, this Trial is deemed nonessential/non-emergency and the Chief Judge advised the Judges that domestic Trials may be continued to July 2020 or thereafter tentatively based on the

PRINT DATE:	04/08/2020	Page 1 of 2	Minutes Date:	April 08, 2020
-------------	------------	-------------	---------------	----------------

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

APPX0439



COVID-19 pandemic.

IT IS ORDERED that the trial on April 14, 2020 is CONTINUED to July 22, 2020 at 130pm (Day #1, Stack #1).

Pursuant to Administrative Order 20-10 re Paper Elimination in response to COVID-19 outbreak, a copy of this minute order shall be served on Counsel electronically.

SO ORDERED.

**INTERIM CONDITIONS:**

**FUTURE HEARINGS:**

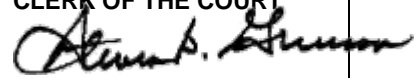
*Canceled: April 14, 2020 1:30 PM Evidentiary Hearing*

July 22, 2020 1:30 PM Evidentiary Hearing  
Moss, Cheryl B.  
Courtroom 13  
Jimenez, Erica

PRINT DATE:	04/08/2020	Page 2 of 2	Minutes Date:	April 08, 2020
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**Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.**

APPX0440



DISTRICT COURT  
FAMILY DIVISION  
CLARK COUNTY, NEVADA

DAVID ROSE,

Plaintiff,

vs.

Case No. D-17-547250-D

Dept. No. I

SARAH ROSE,

Defendant,

**AMENDED ORDER SETTING EVIDENTIARY HEARING**

**NOTICE:** This Order sets forth critical dates and times for  
**important** proceedings in this case. It is the responsibility of the  
attorneys for the litigants or litigants appearing in proper person to meet the  
deadlines and to appear for the following required proceedings:

**EVIDENTIARY HEARING DATES:**

**WEDNESDAY, JULY 22, 2020 at 1:30 p.m.**


**(Day #1)**

*(Evidentiary Hearing rescheduled from April 14, 2020 at 1:30pm)*

1                    **The failure to appear for the Evidentiary Hearing Date may**  
2  
3                    **result in a dismissal of the case, a default judgment against the non-**  
4                    **appearing party, or other appropriate sanctions, consistent with**  
5                    **EDCR 2.69.**

6                    **IT IS FURTHER ORDERED** that both parties shall file updated  
7                    Financial Disclosure forms if there have been any changes to the ones previously  
8                    filed three (3) days prior to the Evidentiary Hearing.

9                    DATED this 10<sup>th</sup> day of April, 2020.

10  
11                      
12                    \_\_\_\_\_  
13                    **CHEYL B. MOSS**  
14                    **District Judge**

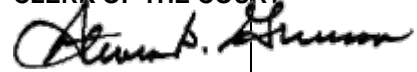
15                    **CERTIFICATE OF SERVICE**

16                    ☒ I hereby certify that on the above file stamped date, a copy of the  
17                    attached **Order Setting Evidentiary Hearing** to be E-SERVED AND EMAILED  
18                    to the following attorneys to:

19                    **SHELLEY LUBRITZ, ESQ.**  
20                    [shelley@lubritzlawoffice.com](mailto:shelley@lubritzlawoffice.com)  
21                    Attorney for Plaintiff

22                    **RACHEAL H. MASTEL, ESQ.**  
23                    [Service@KainenLawGroup.com](mailto:Service@KainenLawGroup.com)  
24                    Attorney for Defendant

25  
26                    **/s/ Suzanna Zavala**  
27                    Suzanna Zavala  
28                    Judicial Executive Assistant



1 **NEO**

2 Shelley Lubritz, Esq.  
3 Nevada Bar No. 5410  
4 LAW OFFICE OF SHELLEY LUBRITZ, PLLC  
5 375 E. Warm Springs Road Suite 104  
6 Las Vegas, Nevada 89119  
7 Telephone: (702) 833-1300  
8 Facsimile: (702) 442-9400  
9 E-mail: [shelley@lubritzlawoffice.com](mailto:shelley@lubritzlawoffice.com)

7 Attorney for Plaintiff  
8 DAVID JOHN ROSE

9 CLARK COUNTY DISTRICT COURT, FAMILY DIVISION  
10 CLARK COUNTY, NEVADA

12 DAVID JOHN ROSE,  
13 Plaintiff,

Case No.: D-17-547250-D  
Dept. No.: I

14 vs.

15 SARAH JANEEN ROSE,  
16 Defendant

18 **NOTICE OF ENTRY OF ORDER**  
19 **(APRIL 8, 2020 MINUTE ORDER)**

20 TO: SARAH JANEEN ROSE, Defendant and

21 TO: RACHEAL MASTEL, ESQ., her attorney:

22 . . .

23 . . .

24 . . .

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26 . . .

27 . . .



1 Please take notice that the April 8, 2020, Minute Order was filed in the above-  
2 entitled matter on the 8<sup>th</sup> day of April, 2020, a copy of which is attached hereto.

3 Dated this 21<sup>st</sup> day of May, 2020.

4 LAW OFFICE OF SHELLEY LUBRITZ, PLLC

5  
6 By: Shelley Lubritz  
7 Shelley Lubritz, Esq.  
8 Nevada Bar No. 005410  
9 375 E. Warm Springs Rd., Suite 104  
10 Las Vegas, Nevada 89119  
11 (702) 833-1300  
12 Attorney for Plaintiff  
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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Divorce - Complaint****COURT MINUTES**

April 08, 2020

D-17-547250-D      David Rose, Plaintiff  
vs.  
Sarah Rose, Defendant.

**April 08, 2020      7:00 AM      Minute Order**

**HEARD BY:** Moss, Cheryl B.**COURTROOM:** Courtroom 13**COURT CLERK:** Erica Jimenez**PARTIES:**

Carson Rose, Subject Minor, not present  
David Rose, Plaintiff, Counter Defendant, not present      Shelley Lubritz, Attorney, not present  
David Rose, Subject Minor, not present  
Lily Rose, Subject Minor, not present  
Sarah Rose, Defendant, Counter Claimant, not present      Racheal Mastel, Attorney, not present

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

**- MINUTE ORDER**

NRCP 1 and EDCR 1.10 state that the procedures in district court shall be administered to secure efficient, just, and inexpensive determinations in every action and proceeding.

This matter is set for Trial on Tuesday, April 14, 2020 at 1:30pm (Day #1, Stack #1).

At the Settlement Conference on March 27, 2020 at 10am with Counsel only, there was discussion of finishing the Trial on the this date. However, after the Court reviewed the Judicial Administrative Order 20-01, this Trial is deemed nonessential/non-emergency and the Chief Judge advised the Judges that domestic Trials may be continued to July 2020 or thereafter tentatively based on the

PRINT DATE:	04/08/2020	Page 1 of 2	Minutes Date:	April 08, 2020
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APPX0445

COVID-19 pandemic.

IT IS ORDERED that the trial on April 14, 2020 is CONTINUED to July 22, 2020 at 130pm (Day #1, Stack #1).

Pursuant to Administrative Order 20-10 re Paper Elimination in response to COVID-19 outbreak, a copy of this minute order shall be served on Counsel electronically.

SO ORDERED.

**INTERIM CONDITIONS:**

**FUTURE HEARINGS:**

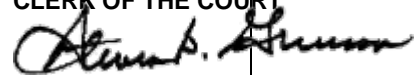
*Canceled: April 14, 2020 1:30 PM Evidentiary Hearing*

July 22, 2020 1:30 PM Evidentiary Hearing  
Moss, Cheryl B.  
Courtroom 13  
Jimenez, Erica

PRINT DATE:	04/08/2020	Page 2 of 2	Minutes Date:	April 08, 2020
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**Notice: Journal entries are prepared by the courtroom clerk and are not the official record of the Court.**

APPX0446



**MOTR**

Shelley Lubritz, Esq.  
Nevada Bar No. 5410  
LAW OFFICE OF SHELLEY LUBRITZ, PLLC  
375 E. Warm Springs Road Suite 104  
Las Vegas, Nevada 89119  
Telephone: (702) 833-1300  
Facsimile: (702) 442-9400  
E-mail: shelley@lubritzlawoffice.com

Attorney for Plaintiff  
DAVID JOHN ROSE

CLARK COUNTY DISTRICT COURT, FAMILY DIVISION

CLARK COUNTY, NEVADA

DAVID JOHN ROSE,  
Plaintiff,

vs.

SARAH JANEEN ROSE,  
Defendant

Case No.: D-17-547250-D  
Dept. No.: I

Hearing Date:  
Hearing Time:

ORAL ARGUMENT REQUESTED

"NOTICE: YOU ARE REQUIRED TO FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND TO PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN FOURTEEN (14) DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN FOURTEEN (14) DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT HEARING PRIOR TO THE SCHEDULED HEARING DATE."

**PLAINTIFF'S MOTION TO AMEND OR ADD ADDITIONAL FINDINGS PURSUANT TO NRCP 52 OR, ALTERNATIVELY, MOTION FOR RELIEF PURSUANT TO 60(B)(6)**

COMES NOW, Plaintiff, David John Rose, by and through his counsel, Shelley Lubritz, Esq., of Law Office of Shelley Lubritz, Esq., and submits his Motion to Amend or Add Additional Findings Pursuant to NRCP 52, or, Alternatively, Motion for Relief Pursuant to NRCP 60(b)(6).



1 This Motion is made and based upon the papers and pleadings on file herein, the  
2 attached Declaration of David John Rose and the attached Memorandum of Points and  
3 Authorities. Plaintiff respectfully requests his Motion be granted and that the Court issue  
4 its Order as follows:  
5

- 6 1. Pursuant to NRCP 52, amend or add additional findings setting the second and  
7 final day of the evidentiary hearing as soon as the Court's calendar allows;
- 8 2. Alternatively, relieve Plaintiff of the Court's April 8, 2020 Minute Order vacating  
9 the second day of the evidentiary hearing set for April 14, 2020, and re-setting  
10 it to the Court's first available date pursuant to NRCP 60(b)(6);
- 11 3. Awarding Plaintiff his reasonable attorney's fees and costs should this Motion  
12 be opposed; and
- 13 4. For any such relief as the Court deems proper in the premises.  
14

15 Dated this 3<sup>rd</sup> day of June, 2020.

16 LAW OFFICE OF SHELLEY LUBRITZ, PLLC  
17

18 By: Shelley Lubritz  
19 Shelley Lubritz, Esq.  
20 Nevada Bar No. 5410  
21 375 E. Warm Springs Road Suite 104  
22 Las Vegas, Nevada 89119  
23 Attorney for Plaintiff  
24 David John Rose  
25  
26  
27  
28

## I. Factual Statement

**Evidentiary Hearing Dates:**

At the conclusion of the January 27, 2020, hearing, this Court scheduled the second day of trial for April 14, 2020. On April 8, 2020, the Court entered a Minute Order continuing the trial date to July 22, 2020. It is this Order that is the subject of the underlying Motion.

1 It has been, and remains, Plaintiff's position that testimony regarding the facts  
2 related to the inclusion of PERS survivor benefits to Sarah in the Decree of Divorce for  
3 must be taken prior to the Supreme Court's decision in *Peterson*. Nearly 25 months after  
4 Ms. McConnell filed the underlying Motion, the issues set forth herein have not been  
5 heard. The Memorandum of Understanding was negotiated and signed under the current  
6 laws. The Decree of Divorce was filed under the current laws. The evidentiary hearing  
7 commenced under the current laws and it should be concluded under the current laws.  
8 Setting the second day of hearing at the end of July increases the potential that the  
9 Nevada Supreme Court may issue its ruling in *Peterson* before the trial is completed. If  
10 the ruling is issued in the middle of the evidentiary hearing, the last two years of litigation  
11 of motion practice, time and money will have been wasted and the Court's decision will,  
12 likely, be appealed by one party.

13 Accordingly, Plaintiff respectfully requests that the Court amend its April 8, 2020  
14 Minute Order or vacate the same and schedule the second day of trial as soon as its  
15 calendar allows.

## 16 **II. Legal Argument**

17 NRCP Rule 52 states, in pertinent part, as follows:

### 18 (a) Findings and Conclusions.

19 (1) In General. In an action tried on the facts without a jury or  
20 with an advisory jury, the court must find the facts specially  
21 and state its conclusions of law separately. The findings and  
22 conclusions may be stated on the record after the close of the  
23 evidence or may appear in an opinion or a memorandum of  
24 decision filed by the court. Judgment must be entered under  
25 Rule 58.

1           **(b) Amended or Additional Findings.** On a party's motion  
2           **filed no later than 28 days after service of written notice**  
3           **of entry of judgment, the court may amend its findings--**  
4           **or make additional findings--and may amend the**  
5           **judgment accordingly.** The time for filing the motion cannot  
6           be extended under Rule 6(b). The motion may accompany a  
7           motion for a new trial under Rule 59.

8           NRCP Rule 60 states, in pertinent part, as follows:

9           **(b) Grounds for Relief From a Final Judgment, Order, or**  
10           **Proceeding.** On motion and just terms, the court may relieve  
11           a party or its legal representative from a final judgment, order,  
12           or proceeding for the following reasons:

13                   **(6) any other reason that justifies relief.**

14           **(c) Timing and Effect of the Motion.**

15                   **(1) Timing.** A motion under Rule 60(b) must be made  
16           within a **reasonable time**--and for reasons (1), (2), and (3) no  
17           more than 6 months after the date of the proceeding or the  
18           date of service of written notice of entry of the judgment or  
19           order, whichever date is later. The time for filing the motion  
20           cannot be extended under Rule 6(b).

21           WHEREFORE, based upon the foregoing, Plaintiff, David Rose respectfully  
22           requests that:


- 23           1. Pursuant to NRCP 52, amend or add additional findings setting the second and  
24           final day of the evidentiary hearing as soon as the Court's calendar allows;
- 25           2. Alternatively, relieve Plaintiff of the Court's April 8, 2020 Minute Order vacating  
26           the second day of the evidentiary hearing set for April 14, 2020, and re-setting  
27           it to the Court's first available date pursuant to NRCP 60(b)(6);
- 28           3. Awarding Plaintiff his reasonable attorney's fees and costs should this Motion  
             be opposed; and



1 4. For any such relief as the Court deems proper in the premises.

2 Dated this 3<sup>rd</sup> day of June, 2020.

3 LAW OFFICE OF SHELLEY LUBRITZ, PLLC

4  
5 By:   
6 Shelley Lubritz, Esq.  
7 Nevada Bar No. 5410  
8 375 E. Warm Springs Road Suite 104  
9 Las Vegas, Nevada 89119  
10 Attorney for Plaintiff  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 3<sup>rd</sup> day of June, 2020, I caused to be served the  
*Motion to Amend or Add Additional Findings Pursuant to NRCP 52, or, Alternatively,*  
*Motion for Relief Pursuant to NRCP 60(b)(6)* to all interested parties as follows:

\_\_\_\_\_BY MAIL: Pursuant to NRCP S(b), I caused a true copy thereof to be placed  
in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed  
as follows:

\_\_\_\_\_BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S.  
Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully  
paid thereon, addressed as follows:

\_\_\_\_\_BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to  
be transmitted, via facsimile, to the following number(s):


  X  BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I  
caused a true copy thereof to be served via electronic mail, via Wiznet, to the following  
e-mail address(es):

Attorney for Defendant

*Service@KainenLawGroup.com*

Dated this 3<sup>rd</sup> day of June, 2020.

LAW OFFICE OF SHELLEY LUBRITZ, PLLC

By:  \_\_\_\_\_  
Shelley Lubritz, Esq.  
Nevada Bar No. 5410  
375 E. Warm Springs Road Suite 104  
Las Vegas, Nevada 89119  
Attorney for Plaintiff

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APPX0454

MOFI

DISTRICT COURT  
FAMILY DIVISION  
CLARK COUNTY, NEVADA

DAVID JOHN ROSE

Plaintiff/Petitioner

v.

SARAH JANEEN ROSE

Defendant/Respondent

Case No. D-17-547250-D

Dept. 1

**MOTION/OPPOSITION  
FEE INFORMATION SHEET**

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

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

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

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

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

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

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

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

Party filing Motion/Opposition: Plaintiff Date 6/3/2020

Signature of Party or Preparer



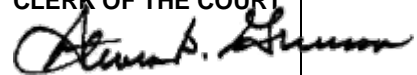
APPX0455



DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*

Electronically Filed  
6/4/2020 7:18 AM  
Steven D. Grierson  
CLERK OF THE COURT



David Rose, Plaintiff  
vs.  
Sarah Rose, Defendant.

Case No.: D-17-547250-D  
Department I

**NOTICE OF HEARING**

Please be advised that the Plaintiff's Motion to Amend or Add Additional Findings Pursuant to NRCP 52 or, Alternatively, Motion for Relief Pursuant to 60(B)(6) in the above-entitled matter is set for hearing as follows:

**Date:** July 13, 2020  
**Time:** 9:00 AM  
**Location:** Courtroom 13  
Family Courts and Services Center  
601 N. Pecos Road  
Las Vegas, NV 89101

**NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.**

STEVEN D. GRIERSON, CEO/Clerk of the Court

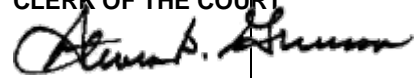
By: /s/ Carmelo Coscolluela  
Deputy Clerk of the Court

**CERTIFICATE OF SERVICE**

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Carmelo Coscolluela  
Deputy Clerk of the Court

APPX0456



**EPAP**

Shelley Lubritz, Esq.  
Nevada Bar No. 5410  
LAW OFFICE OF SHELLEY LUBRITZ, PLLC  
375 E. Warm Springs Road Suite 104  
Las Vegas, Nevada 89119  
Telephone: (702) 833-1300  
Facsimile: (702) 442-9400  
E-mail: [shelley@lubritzlawoffice.com](mailto:shelley@lubritzlawoffice.com)  
Attorney for Respondent

CLARK COUNTY DISTRICT COURT, FAMILY DIVISION  
CLARK COUNTY, NEVADA

DAVID JOHN ROSE,  
  
Plaintiff,

vs.

SARAH JANEEN ROSE,  
  
Defendant

Case No.: D-17-547250-D  
Dept. No. I

**EX PARTE APPLICATION AND  
DECLARATION IN SUPPORT OF  
REQUEST FOR AN ORDER  
SHORTENING TIME**

COMES NOW, Shelley Lubritz, Esq. of the LAW OFFICE OF SHELLEY LUBRITZ, PLLC and hereby moves this Honorable Court for an Ex Parte Order Shortening Time to hear her *Motion to Withdraw as Plaintiff's [sic] Counsel of Record*.

This Application is based upon the pleadings and papers on file herein, as well as the attached Declaration of Shelley Lubritz, Esq.

DATED this 11<sup>th</sup> day of June, 2020.

LEGAL SERVICES ONE, LLC



Shelley Lubritz, Esq.  
Nevada Bar No. 5410  
375 E. Warm Springs Road Suite 104  
Las Vegas, Nevada 89119  
Attorney for Respondent

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1. I am an attorney duly licensed to practice law in the State of Nevada. I am employed by the Law Office of Shelley Lubritz, PLLC, and I am counsel of record for Plaintiff, David John Rose in the above-entitled actions. I have personal knowledge of the facts contained herein and I am competent to testify thereto, except for those matters stated upon information and belief, and as to those matters, I believe them to be true.

3. Nearly **25 months** after Ms. McConnell filed the underlying Motion, the issues set forth herein have not been heard.

4. The Memorandum of Understanding was negotiated and signed under the current laws.

6. The evidentiary hearing commenced under the current laws and it should be concluded under the current laws.

7. Setting the second day of hearing at the end of July increases the potential that the Nevada Supreme Court may issue its ruling in *Peterson* before the trial is completed.

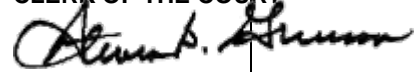
8. If the ruling is issued in the middle of the evidentiary hearing, the last two years of litigation and motion practice, time and money will have been wasted and increase the likelihood that any decision by this Court would be appealed. The parties have been litigating this single issue for more than two years.

9. Equity and justice are best served by concluding the trial as soon as possible. Accordingly, Plaintiff requests that the Court hear this Motion on its first available date.

DATED this 11<sup>th</sup> day of June, 2020.

*Shelley Lubritz*  
SHELLEY LUBRITZ, ESQ.





1 **OST**

2 Shelley Lubritz, Esq.  
3 Nevada Bar No. 5410  
4 LAW OFFICE OF SHELLEY LUBRITZ, PLLC  
5 375 E. Warm Springs Road Suite 104  
6 Las Vegas, Nevada 89119  
7 Telephone: (702) 833-1300  
8 Facsimile: (702) 442-9400  
9 E-mail: [shelley@lubritzlawoffice.com](mailto:shelley@lubritzlawoffice.com)

7 Attorney for Plaintiff  
8 David John Rose

9 CLARK COUNTY DISTRICT COURT, FAMILY DIVISION  
10 CLARK COUNTY, NEVADA  
11

12 DAVID JOHN ROSE,  
13 Plaintiff,

14 vs.

15 SARAH JANEEN ROSE,  
16 Defendant  
17

Case No.: D-17-547250-D  
Dept. No.: I

Date of Hearing: 06/29/2020  
Time of Hearing: 10:00am

18 **ORDER SHORTENING TIME**

19 Upon the request and Declaration of Shelley Lubritz, Esq., and good cause  
20 appearing therefor,  
21

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**IT IS HEREBY ORDERED** that the hearing of *Motion to Amend or Add Additional Findings Pursuant to NRCP 52, or, Alternatively, Motion for Relief Pursuant to NRCP 60(b)(6)* currently set to be heard on July 13, 2020 at 9:00 a.m., be shortened to the 29 day of June, 2020, at 10:00 A.m. (video conference)

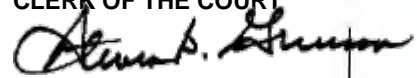
DATED this 16 day of June, 2020.

  
DISTRICT COURT JUDGE

Respectfully submitted,

LAW OFFICE OF SHELLEY LUBRITZ, PLLC

By: Shelley Lubritz  
Shelley Lubritz, Esq.  
Nevada Bar No. 5410  
375 E. Warm Springs Road Suite 104  
Las Vegas, Nevada 89119  
Attorney for Plaintiff  
David John Rose



1 **OPP**

2 EDWARD L. KAINEN, ESQ.

3 Nevada Bar No. 5029

4 RACHEAL H. MASTEL, ESQ.

5 Nevada Bar No. 11646

6 KAINEN LAW GROUP, PLLC

7 3303 Novat Street, Suite 200

8 Las Vegas, Nevada 89129

9 (702) 823-4900

10 (702) 823-4488 (Fax)

11 Service@KainenLawGroup.com

12 Attorneys for Defendant

13 *in conjunction with the Legal Aid Center of Southern Nevada*

14 DISTRICT COURT

15 CLARK COUNTY, NEVADA

16 DAVID ROSE,

17 Plaintiff,

18 vs.

19 SARAH ROSE,

20 Defendant.

CASE NO.

D-17-547250-D

DEPT NO.

I

Date of Hearing:

July 13, 2020

Time of Hearing:

9:00 a.m.

21 **DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO AMEND OR**  
22 **ADD ADDITIONAL FINDINGS PURSUANT TO NRCP 52, OR**  
23 **ALTERNATIVELY, MOTION FOR RELIEF PURSUANT TO NRCP 60(b)(6)**  
24 **AND**  
25 **COUNTERMOTION FOR ATTORNEY'S FEES AND COSTS**

26 COMES NOW, Defendant, SARAH ROSE (hereinafter "Wife"), by and  
27 through her attorney, RACHEAL H. MASTEL, ESQ., of the law firm of KAINEN LAW  
28 GROUP, PLLC, and submits to this Honorable Court her Opposition to *Plaintiff's Motion*  
*to Amend or Add Additional Findings Pursuant to NRCP 52, or Alternatively, Motion for*  
*Relief Pursuant to NRCP 60(b)(6)*, and requests this Court award her Attorney's Fees and  
Costs.

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APPX0462



1 This Opposition and Countermotion are made and based upon the pleadings  
2 on file herein, the Points and Authorities, the Affidavit and the Exhibits attached to this  
3 Opposition and argument to be adduced at the time of hearing.

4 DATED this 17 day June, 2020.

5 KAINEN LAW GROUP, LLC

6 By: 

7 RACHEAL H. MASTEL, ESQ.

8 Nevada Bar No . 11646

9 3303 Novat Street, Suite 200

10 Las Vegas, Nevada 89129

11 Attorneys for Defendant

12 I.

13 **POINTS AND AUTHORITIES**

14 Plaintiff, DAVID ROSE (hereinafter "Husband"), and Defendant, SARAH  
15 ROSE (hereinafter "Wife"), were married on June 17, 2006, and divorced by a Stipulated  
16 Decree of Divorce filed on April 11, 2018. The Decree was the result of several hours of  
17 negotiation between the parties with the assistance of their counsel and with Rhonda  
18 Forsberg, Esq., acting as mediator. Within the Decree of Divorce, the parties stipulated  
19 that Husband would select Option 2 with regard to his PERS retirement plan. The details  
20 of the division, including the selection of Option 2 (which will provide that Wife will  
21 receive the Survivor Benefit) is spelled out, in detail, on Page 21, line 8 - Page 22, line  
22 12 and Page 23, line 24 - Page 24, line 28, of the Decree of Divorce. The Decree was  
23 signed by *both parties and both attorneys*.

24 Thereafter, on April 25, 2018, Husband filed a Motion to Set Aside the  
25 Decree, pursuant to NRCP 60(b), claiming that neither he, nor his counsel, actually  
26 reviewed the Decree, and therefore "they did not realize" the Decree *he signed* provided  
27 Wife with Survivor Benefits, and that "he never agreed" to do, so the Decree should be  
28 set aside.

...



1           There has been ongoing litigation over the issue of the parties' Decree and  
2 Husband's retirement benefits ever since, including one (1) day of trial, conducted on  
3 January 27, 2020. At the conclusion of the January 27, 2020 trial setting, this Court  
4 scheduled a second day of trial for April 14, 2020.

5           On March 12, 2020, the State of Nevada found itself in the midst of the  
6 COVID-19 global pandemic. This unprecedented event resulted in the issuance of a  
7 "Stay-At-Home" directive from Governor Sisolak, the closure of all non-essential  
8 businesses, and subsequent Administrative Orders significantly limiting access to the  
9 Nevada courts. On April 8, 2020, following the directive of the Administrative Orders  
10 issued to that date, this Court issued a Minute Order continuing the April 14, 2020 trial  
11 setting to July 22, 2020.

12           On June 3, 2020, nearly two months *after* the Minute Order was entered,  
13 Husband's counsel filed a Motion seeking for the July 22, 2020 trial setting to be  
14 advanced, so that this case could be heard prior to the Nevada Supreme Court issuing a  
15 decision in *Peterson v. Peterson*, Case No. 77478. Husband's Motion argued that if this  
16 case was not decided before *Peterson*, any decision made in this case would likely result  
17 in someone filing an appeal.<sup>1</sup>

18           Ironically, the decision in *Peterson* was issued on May 22, 2020, ***12 days***  
19 ***prior to the filing of Husband's Motion. See Exhibit "A."*** On this fact alone,  
20 Husband's Motion should be declared moot and this Court should deny Husband's  
21 Motion on the papers, without the need for oral argument or further proceedings. Further,  
22 Wife's counsel should be awarded attorneys fees for having to prepare an Opposition to  
23 a Motion which was moot before it was ever filed.

24 ...

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26  
27 <sup>1</sup> Wife can only surmise that by making this statement, Husband hoped to threaten this Court into  
28 granting him the relief he requested, as there is no other legitimate basis for a threat of appeal mid-  
case.



1 Notably, since the filing of Husband's Motion, and likely because Husband  
2 recognizes his Motion was moot and would not result in his desired outcome, Husband  
3 hired counsel to file a separate, civil action, involving claims related to the Decree at  
4 issue in this case.

5 On May 29, 2020, a Complaint alleging attorney malpractice against  
6 Father's former counsel, Regina McConnell, and alleging civil conspiracy related to  
7 Father's signing the Decree of Divorce at issue in this case *against Wife and Wife's prior*  
8 *counsel (Shelly Booth Cooley)*, was filed. See Exhibit "B." This Complaint lists  
9 attorneys James Edwards and Adam Edwards as Husband's attorneys, but was Husband's  
10 counsel in this case, Ms. Lubritz, who contacted Ms. Cooley to inform her of the filing  
11 and to inquire if Ms. Cooley would accept service of the Complaint in that case. Wife  
12 believes that Husband's claims in the civil action against Wife and Ms. Cooley were  
13 brought solely to harass and intimidate Wife and her attorneys into settling this case as  
14 Father desires.

15 There is also some concern, as Wife, Ms. Cooley and Ms. McConnell are  
16 witnesses in *this* litigation, that the civil complaint may also be an attempt at witness  
17 intimidation.

18 As a result of Husband's decision to file a civil case, Wife now has needed  
19 to locate pro bono counsel to defend her in that action, and Ms. Cooley has had to notify  
20 her malpractice carrier of this suit. The civil case will be vigorously defended. While  
21 proper for this Court to informed of the existence of the civil case, the existence of the  
22 civil case should not have any impact on the resolution of this case at the scheduled July  
23 22, 2020 trial setting - which should be maintained.

24 NRCP 1 and EDCR 1.10 state that the procedure in District Courts shall be  
25 administered to secure speedy, efficient, and inexpensive determinations in every action.  
26 Pursuant to EDCR 2.2(c) and 5.501(b), this Court can consider a motion and issue a  
27 decision on the papers at any time without a hearing. Wife submits that as Husband's  
28 Motion is moot, his Motion should be denied without further proceedings. Further, the



1 existing July 22, 2020 trial setting, which is now just one month away, should stand so  
2 that this case can be completed at that time.

3 Husband's Motion, asking to advance the trial so that it could be completed  
4 prior to the decision in *Peterson* was filed ***nearly two weeks after*** the *Peterson* decision  
5 was filed. Nothing in Husband's Motion is logical or appropriate. Husband's Motion is  
6 the height of frivolousness. It is a clear violation of NRCP 11, NRS 7.085 and EDCR  
7 7.60. Wife is entitled and deserving of fees pursuant to the same as well as NRS 18.010.

8 Although it may be compelling to suggest that since Wife is ably represented  
9 in *pro bono* capacity, no award of fees is necessary, the case law does not support that  
10 conclusion. The initial premise of *Miller v. Wilfong*, 121 Nev. 619, 119 P.3d 727 (2005)  
11 articulated at page 729 - 730 states:

12 Initially, we conclude that a party is not precluded from  
13 recovering attorney fees solely because his or her counsel  
14 served in a pro bono capacity. While Nevada law has been  
15 silent on this issue, many courts have concluded that an award  
16 of attorney fees is proper, even when a party is represented  
17 without fee by a nonprofit legal services organization. In  
18 addition to the various state courts, the United States Supreme  
19 Court has concluded that an award of attorney fees to a  
20 nonprofit legal services organization is to be calculated  
21 according to the prevailing market rate, stating that "Congress  
22 did not intend the calculation of fee awards to vary depending  
23 on whether plaintiff was represented by private counsel or by  
24 a nonprofit legal services organization." We agree with these  
25 courts and conclude that significant public policy rationales  
26 support awarding fees to counsel, regardless of counsel's  
27 service in a pro bono capacity. First, the fact that a government  
28 institution or private charity has provided legal assistance  
should not absolve other responsible parties of their financial  
obligations. For example, when pro bono counsel assist a parent  
in a custody or child support dispute, the wealthier parent  
should not be relieved of an obligation to pay attorney fees.  
Further, in domestic matters, one partner has often created or  
contributed to the other partner's limited financial means by  
leaving the household, failing to remit child support, drawing  
funds from a shared account, or other similar conduct. In those  
cases, if fees are not awarded to pro bono counsel, a wealthier  
litigant would benefit from creating conditions that force the  
other party to seek legal aid. In addition, pro bono counsel serve  
an important role in the legal system's attempt to address the  
unmet needs of indigent and low-income litigants within our  
state. To impose the burden of the cost of litigation on those  
who volunteer their services, when the other party has the  
means to pay attorney fees, would be unjust.



1 It is clear from the language in *Miller v. Wilfong*, that it is appropriate to  
2 award a party fees when that party has been represented *Pro Bono*. Although the Court is  
3 also to consider the *Brunzell* factors (which will be addressed below), in *Pro Bono* cases  
4 there are also further equitable considerations, as delineated above, to wit: that *pro bono*  
5 services do not absolve responsible parties of their financial obligations (such as those due  
6 under *Sargeant v. Sargeant*, 88 Nev. 223, 495 P.2d 618 (1972); *Leeming v. Leeming*, 87  
7 Nev. 530, 490 P.2d 342 (1971); *Halbrook v. Halbrook*, 114 Nev. 1455, 971 P.2d 1262  
8 (1998).), that “when pro bono counsel assist a parent in a custody or child support dispute,  
9 the wealthier parent should not be relieved of an obligation to pay attorney fees;” and  
10 finally, **“to impose the burden of the cost of litigation on those who volunteer their  
11 services, when the other party has the means to pay attorney’s fees, would be unjust.”**

12 Pursuant to Brunzell v. Golden Gate National Bank, 85 Nev. 455 P.2d 31  
13 (1969), in the case at bar, the Court should consider the following factors in awarding  
14 attorney's fees for this Motion:

15 **1. Qualities of Wife's Advocate**

16 The qualities of Wife’s attorneys are excellent. Racheal Mastel is a  
17 partner with *Kainen Law Group, PLLC*. She is a Fellow of the American Academy of  
18 Matrimonial Lawyers, a Nevada Board Certified Specialist in Family Law and has  
19 practiced exclusively in the area of Family Law for approximately 11 years. Ms. Mastel  
20 has been named as a "Rising Star" in Super Lawyers Magazine for the Mountain States  
21 Region, which includes Nevada, Idaho, Montana, Utah and Wyoming on multiple  
22 occasions. Ms. Mastel has written extensive CLE materials on various aspects related to  
23 the practice of family law and was appointed by the Nevada Supreme Court to the Rules  
24 of Civil Procedure Committee, to conduct a major review and overhaul of all of the  
25 Nevada Rules of Civil Procedure as the representative of the Family Law Section on that  
26 Committee.

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1 Clearly, Wife attorneys are experienced, well trained and qualified in relation  
2 to the fees charged for there services in this matter. Ms. Mastel's hourly rate is \$375.  
3 Paralegals were also utilized where possible, at lesser rates.

4 **2. The Character of the Work Done**

5 In this instance, Wife's counsel is charged with the task of opposing a Motion  
6 that was moot before it was even filed. Wife's Opposition shows clearly how frivolous  
7 and without merit Husband's Motion is. Under the circumstances of this case, the  
8 character of the work completed certainly justifies the fees incurred in this matter.

9 **3. The Work Actually Performed**

10 Wife's attorneys have made every effort to be as efficient as possible in  
11 completing the necessary work to obtain favorable results for her. The amount of fees and  
12 costs accurately reflects the actual work done in this matter. The work was completed in  
13 the most cost efficient manner to minimize the over all fees and costs incurred. A copy of  
14 such redacted billing as reflects the work actually performed can be provided after the  
15 hearing on this matter, if requested by the Court.

16 **4. The Results**

17 The final factor adopted in Brunzell is whether the attorney was successful  
18 and what benefits were derived. It is anticipated that Wife will be successful at the  
19 hearing on this matter, as Husband's Motion has no justification.

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III.

CONCLUSION

Wife requests that Husband's Motion be denied *in toto*, without the need for oral argument, and that Wife be awarded her attorney's fees for the necessity of opposing the same.

DATED this 17 day of June, 2020.

Respectfully submitted,

KAINEN LAW GROUP, PLLC

By: 

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**DECLARATION OF SARAH ROSE IN SUPPORT OF OPPOSITION**

I, SARAH ROSE declare under penalty of perjury that I am the Defendant herein and that I have read the foregoing *Defendant's Opposition to Plaintiff's Motion to Amend or Add Additional Findings Pursuant to NRCP 52, or Alternatively, Motion for Relief Pursuant to NRCP 60(b)(6) and Countermotion for Attorney's Fees and Costs* and the same is true and correct of my own knowledge, except for those matters which are therein stated upon information and belief, and as to those matters, I believe them to be true.

EXECUTED this 17 day of June, 2020

  
SARAH ROSE

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 18<sup>th</sup> day of June, 2020, I caused to be served the Opposition to *Defendant's Opposition to Plaintiff's Motion to Amend or Add Additional Findings Pursuant to NRCP52, or Alternatively, Motion for Relief Pursuant to NRCP 60(b)(6) and Countermotion for Attorney's Fees and Costs* to all interested parties as follows:

\_\_\_ BY MAIL: Pursuant to NRCP 5(b), I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, postage fully prepaid thereon, addressed as follows:

\_\_\_ BY CERTIFIED MAIL: I caused a true copy thereof to be placed in the U.S. Mail, enclosed in a sealed envelope, certified mail, return receipt requested, postage fully paid thereon, addressed as follows:

\_\_\_ BY FACSIMILE: Pursuant to EDCR 7.26, I caused a true copy thereof to be transmitted, via facsimile, to the following number(s):

X BY ELECTRONIC MAIL: Pursuant to EDCR 7.26 and NEFCR Rule 9, I caused a true copy thereof to be served via electronic mail, via Wiznet, to the following e-mail address(es):

Shelley@lubritzlawoffice.com

  
An Employee of  
KAINEN LAW GROUP, PLLC