ORIGINAL

In the Supreme Court of the State of Nevada

INDICATE FULL CAPTION:

SIMONE F. RUSSO

Appellant(s),

vs.

TERRY RUSSO

Respondent(s).

Cross-Appellant(s),

vs.

Cross-Respondent(s).

No. 46058

DOCKETING STATEMENT CIVIL APPEALS

FILED

OCT 31 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

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

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See Moran v. Bonneville Square Assocs.*, 117 Nev. 525, 25 P.3d 898 (2001); *KDI Sylvan Pools v. Workman*, 107 Nev. 340, 810 P.2d 1217 (1991). Please use tab dividers to separate any attached documents.

OCT 31 2005

05-21360

1. Judicial District Eighth Department B County Clark
Judge Gloria S. Sanchez District Ct. Docket No. D144600

2. **Attorney filing this docket statement:**

Attorney Bradley J. Hofland, Esq. NV Bar #6343 Telephone (702) 895-6760
Firm HOFLAND MANNING
Address 4495 South Pecos Road Ste. A
Las Vegas, Nevada 89121
Client(s) Simone F. Russo

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

3. **Attorney(s) representing respondent(s):**

Attorney Charles J. Hoskin, Esq. Telephone (702) 240-4447
Firm HOSKIN LAW OFFICE
Address 1336 S. Decatur Blvd.
Las Vegas, Nevada 89102
Client(s) Terry Russo

Attorney Telephone
Firm
Address
Client(s)

(List additional counsel on separate sheet if necessary)

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

- ☒ Judgment after bench trial
- ☐ Judgment after jury verdict
- ☐ Summary judgment
- ☐ Default judgment
- ☐ Dismissal
  - ☐ Lack of jurisdiction
  - ☐ Failure to state a claim
  - ☐ Failure to prosecute
  - ☐ Other (specify)
- ☐ Grant/Denial of NRCP 60(b) relief
- ☐ Grant/Denial of injunction
- ☐ Grant/Denial of declaratory relief
- ☐ Review of agency determination
- ☒ Divorce decree:
  - ☐ Original ☒ Modification
- ☐ Other disposition (specify)

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

- ☐ Child custody
- ☐ Venue
- ☐ Adoption
- ☐ Termination of parental rights
- ☐ Grant/denial of injunction or TRO
- ☐ Juvenile matters

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

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

Russo v. Russo
Eighth Judicial District Court
Case No. D144600
Clark County Nevada

8. **Nature of the action.** Briefly describe the nature of the action, including a list of the causes of action pleaded, and the result below:

Post Divorce Enforcement

9. **Issues on appeal.** State concisely the principal issue(s) in this appeal:

Does a Judgment for Alimony have to be renewed every 6 years?

Does the Court have jurisdiction to Modify the Terms of a Decree 12 years after it is entered?

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

None

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

N/A XX Yes No

If not, explain

12. **Other issues.** Does this appeal involve any of the following issues? N/A

- ☐ Reversal of well-settled Nevada precedent (on an attachment, identify the case(s))
- ☐ An issue arising under the United States and/or Nevada Constitutions
- ☐ A substantial issue of first-impression
- ☐ An issue of public policy
- ☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
- ☐ A ballot question

If so, explain

13. **Trial.** If this action proceeded to trial, how many days did the trial last? Evidentiary Hearing 1 Day

Was it a bench or jury trial? Bench Trial

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

N/A

TIMELINESS OF NOTICE OF APPEAL

15. **Date of entry of written judgment or order appealed from** September 6, 2005 **Attach a copy. If more than one judgment or order is appealed from, attach copies of each judgment or order from which an appeal is taken.**

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

.....

.....

16. **Date written notice of entry of judgment or order served** September 12, 2005 **. Attach a copy, including proof of service, for each order or judgment appealed from.**

(a) Was service by delivery.....or by mail.....(specify).

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

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

N/A

NRCP 50(b).....Date served.....By delivery.....or by mail.....Date of filing.....
NRCP 52(b).....Date served.....By delivery.....or by mail.....Date of filing.....
NRCP 59.....Date served.....By delivery.....or by mail.....Date of filing.....

Attach copies of all post-trial tolling motions.

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration do not toll the time for filing a notice of appeal.

(b) Date of entry of written order resolving tolling motion..... **Attach a copy.**

(c) Date written notice of entry of order resolving motion served..... **Attach a copy, including proof of service.**

(i) Was service by delivery.....or by mail.....(specify).

18. **Date notice of appeal was filed** September 29, 2005 .

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

19. **Specify statute or rule governing the time limit for filing the notice of appeal, *e.g.*, NRAP 4(a), NRS 155.190, or other** NRAP 4(a) .

SUBSTANTIVE APPEALABILITY

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

NRAP 3A(b)(1) XX NRS 155.190 (specify subsection)
NRAP 3A(b)(2) NRS 38.205 (specify subsection)
NRAP 3A(b)(3) NRS 703.376
Other (specify)

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

This is an appeal from a final judgment in an action or proceeding commenced int the court in which judgment is rendered.

21. **List all parties involved in the action in the district court:**

Plaintiff, Simone F. Russo
Attorneys for Plaintiff
Matthew Q. Callister, Esq.
Bradley J. Hofland, Esq.

Defendant, Terry Russo
Attorneys for Defendant
Charles J. Hoskin, Esq.

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

22. **Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims or third-party claims, and the trial court's disposition of each claim, and how each claim was resolved (*i.e.*, order, judgment, stipulation), and the date of disposition of each claim. Attach a copy of each disposition.**

Divorce action. Post Divorce Enforeement of Judgment on Alimony.

23. **Attach copies of the last-filed version of all complaints, counterclaims, and/or cross-claims filed in the district court.**

See Attached.

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

Yes XX No

25. **If you answered "No" to the immediately previous question, complete the following:**

(a) Specify the claims remaining pending below:

N/A

(b) Specify the parties remaining below:

N/A

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

N/A

Yes No **If "Yes," attach a copy of the certification or order, including any notice of entry and proof of service.**

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

N/A

Yes No

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

N/A

VERIFICATION

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

SIMONE F. RUSSO
Name of appellant

BRADLEY J. HOFLAND, ESQ.
Name of counsel of record

October 21, 2005
Date

Signature of counsel of record

Clark County Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 28th day of October, 2005., I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es):
XX

Charles J. Hoskin, Esq.
Hoskin Law Office
1336 S. Decatur Blvd.
Las Vegas, Nevada 89102

Carolyn Worrell
Supreme Court Settlement Judge
4236 Fergerson Rance Rd
Carson City, Nevada
89701

Dated this 28th day of October, 2005

s/Beard
Signature
Employee of Hofland Manning

JOLLEY, URGA, WIRTH & WOODBURY
KATHRYN E. STRYKER, ESQ.
Nevada Bar #428
300 South Fourth Street, #800
Las Vegas, Nevada 89101
(702) 385-5161

Attorneys for Plaintiff

FILED

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DISTRICT COURT

CLERK

CLARK COUNTY, NEVADA

SIMONE RUSSO,

Plaintiff,

vs.

TERRY RUSSO,

Defendant.

Case No. D144600
Dept. No. D

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

DECREE OF DIVORCE

The above matter having come on for trial on April 19 - 23, 1993, before the above-entitled Court; Plaintiff, Simone Russo, appearing in person and with his attorney, Kathryn E. Stryker, Esq., of the law firm of Jolley, Urga, Wirth & Woodbury, and Defendant, Terry Russo, appearing in person and with her attorneys, James J. Jimmerson, Esq. and Charles J. Hoskin, Esq. of the law firm of Jimmerson, Davis & Santoro, P.C.; the Court having heard the evidence of witnesses sworn and examined in open Court, having considered the Exhibits duly submitted at trial, and having considered the arguments of counsel; the matter having been submitted for decision and judgment, the Court being fully advised in the premises and good cause appearing, the Court finds:

That the Court has complete jurisdiction in the premises both as to the subject matter thereof and as to the parties thereto;

that all of the allegations of the Complaint are true; that Plaintiff is now and for a period of more than six weeks immediately preceding the commencement of this action has been an actual, bona fide resident and domiciliary of the County of Clark, State of Nevada, actually and physically residing and being domiciled therein during all of said period of time; that Plaintiff is entitled to an absolute decree of divorce upon the grounds set forth in the Complaint; it is hereby

ORDERED, ADJUDGED and DECREED that the bonds of matrimony heretofore and now existing between Plaintiff and Defendant be, and the same are, hereby wholly dissolved, set aside, and held for naught, and an absolute decree of divorce is hereby granted to Plaintiff, and each of the parties hereto is hereby restored to the status of a single, unmarried person; and it is

FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff and Defendant shall be awarded joint legal custody of the minor children Kristen Russo, born August 15, 1978, and Gina Marie Russo, born February 2, 1982, and that Defendant, Terry Russo, shall have the primary physical custody of the two minor children born the issue of this marriage, subject to Plaintiff's rights of reasonable visitation; and it is

FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff shall pay the sum of $750 per month per child, or $1,500 per month as and for child support. Additionally, Plaintiff shall maintain a reasonable policy of health insurance for the benefit of the minor children at his expense. Plaintiff shall cooperate with Defendant to provide information and claim forms regarding the health care coverage. Plaintiff and Defendant shall equally divide all medical, surgical, dental, orthodontic, and optical costs of the minor children not

covered by a policy of health insurance; and it is

FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff, Simone Russo, shall pay to Defendant, Terry Russo, spousal support in the sum of $2,000 per month for a period of six months commencing May 1, 1993. Thereafter, the sum required to be paid by Plaintiff shall be reduced to $1,700 per month, which sum shall continue to be paid pursuant to NRS 125.510(5). As a condition of receiving continued support beyond the first 18 months, at Plaintiff's request and expense, Defendant shall be subject to examination and evaluation by a reputable rehabilitation program to determine if Defendant is capable of maintaining reasonable employment. If the specialist determines that Defendant is capable of maintaining reasonable employment, Plaintiff may request modification or termination of spousal support based upon the evaluation and examination. Accordingly, and if Plaintiff, Simona Russo, desires to pursue the matter at his expense, Defendant shall be required, as a condition of receiving spousal support beyond 18 months, to submit to evaluation and examination for rehabilitation purposes. If Plaintiff fails to make the request within the 18 month period, Defendant's obligation to submit to such examination and evaluation shall terminate. If Defendant is requested to submit to such examination and Plaintiff makes arrangements for payment of the costs of such examination by a qualified examiner, and Defendant fails to attend the examination or participate as reasonably required, spousal support shall terminate at the end of 18 months. If examination is made, Plaintiff may seek review of the issue of spousal support based on the results; and it is

FURTHER ORDERED, ADJUDGED AND DECREED that for a period not to exceed 36 months commencing May 1, 1993, Plaintiff shall

LLEY, URGA,
M & WOOSLEY
RNEYS AT LAW
FOURTH STREET
NINTH FLOOR

$200,000 to be awarded to Defendant; and it is

FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff shall reimburse all such funds to the Plan as necessary to provide the sum of $200,000 in the Plan to Defendant, said sum to be distributed to Defendant pursuant to the terms of the Profit Sharing Plan. Until these funds are reimbursed to the Keogh, Defendant shall be awarded a judgment in the sum of $200,000 plus interest at the rate provided for judgments from the date of entry of the Decree of Divorce, or May 15, 1993, whichever date first occurs; upon submission of proof by Plaintiff to the Court that the funds have been reimbursed to the Keogh, the court shall enter a satisfaction of judgment; and it is

FURTHER ORDERED, ADJUDGED AND DECREED that until the Keogh is reimbursed, Plaintiff shall not transfer, trade, or in any fashion use the funds in either the Keogh account or the personal Fidelity account without Defendant's written consent or the consent of the Court; and

IT IS FURTHER, ORDERED ADJUDGED AND DECREED that Defendant's interest in the Keogh in the sum of $200,000 may be distributed to Defendant in Defendant's discretion, subject to the terms and provisions of the Plan, and that Defendant shall bear the tax consequences of her election as to how the funds are designated. Plaintiff shall bear the tax consequences of all transfers and trades on both accounts since the separation of the parties and thereafter, excepting only those tax consequences that arise as the result of Defendant's election; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court reserves jurisdiction to enter such orders as are appropriate to enable the parties to effectuate the transfer of the accounts and all sums

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TORNEYS AT LAW
S. FOURTH STREET
EIGHTH FLOOR

maintain any existing policy of health insurance available for Defendant's benefit. Thereafter, Defendant may continue any such policy at her cost and expense; and it is

FURTHER ORDERED, ADJUDGED AND DECREED that Defendant shall be awarded the following as her sole and separate property:

1. Residence located at 2246 Darwin Circle, Henderson, Nevada, together with the mortgage, liens and encumbrances thereon;

2. The 1988 Ford van and 1989 Nissan 300ZX motor vehicles;

3. IRA account in Defendant's name;

4. The 1992 tax refund in the sum of $4,000 presently held in Defendant's attorney's trust account;

5. All furniture, furnishings, household goods, appliances and other tangible personal property in the family residence; and

6. An interest in the Keogh Profit Sharing Plan equal to $200,000, to be distributed in accordance with the terms and provisions of the Profit Sharing Plan; and it is

FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff shall be awarded the following as his sole and separate property:

1. Any and all interest in the medical practice of Simone Russo, M.D., together with all assets and liabilities thereon (including the 1989 Mercedes automobile);

2. The IRA in Plaintiff's name;

3. The furniture and furnishings and personal belongings in Plaintiff's possession;

4. The personal Fidelity account, subject to the provisions set forth below; and

5. All remaining funds held in the Keogh Profit Sharing Plan (hereinafter "the Keogh" or "the Plan") after allowance of

therein in accordance with these Findings of Fact; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the life insurance policy insuring Plaintiff's life with Defendant as beneficiary with a face value of $300,000 shall be awarded to Plaintiff, provided, however, that during the time that Plaintiff is required to pay support, either child support or spousal support, Defendant shall be maintained as beneficiary of the following portions of the policy proceeds:

During the minority of the children:	All proceeds shall be payable to Defendant.
After the minority of the children but until Plaintiff's remarriage:	$150,000 of proceeds shall be payable to Defendant
After the minority of the children but after Plaintiff's remarriage:	$100,000 of proceeds shall be payable to Defendant.

Plaintiff shall have the obligation to maintain the policy at his cost but may invade the cash or cash surrender value to do so. The obligation to maintain the policy is recognized by the Court as an additional support obligation and is designed to insure the continuing support of Defendant and the children during the time that child support or spousal support is payable. In the event that child support and spousal support terminate, the policy shall become Plaintiff's property free of any obligation to maintain Defendant as a beneficiary for any amount; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that except as herein specifically set forth, each party shall be responsible for any debt or obligation incurred by him or her during the parties' separation, respectively; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the sums

SEP-22-2006 09:44 CALLISTER & REYNOLDS 3852899 P.016

presently held in the children's trust accounts shall be deposited into a banking or financial account approved by both Plaintiff and Defendant on or before May 15, 1993. The account shall require the approval of both parties and the signatures of both parties before any withdrawal or investment of the funds in the account is made; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant shall have a judgment against Plaintiff and in favor of Defendant as trustee for the benefit of the children in the sum of $26,000; this sum shall bear interest from May 1, 1993, at the rate provided for judgments in the State of Nevada until repaid. Upon receipt of funds under this judgment by Defendant, Defendant shall place the funds and any interest received into the jointly controlled account for the benefit of the children. If Plaintiff has not restored the funds and all accrued interest by May 1, 1994, attorney's fees in addition to all others herein awarded in the sum of $1,000 shall be awarded to Defendant to assist her in recovery of those trust funds; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Defendant shall have an additional judgment against Plaintiff in the sum of $1,268, which sum shall bear judgment interest as allowed for judgments in the State of Nevada from the date of entry of this Decree until satisfied; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that in addition to the sum herein previously paid by Plaintiff to Defendant's attorneys in the sum of $8,500 as and for attorney's fees, Plaintiff shall pay to Defendant the additional sum of $7,000 as and for attorney's fees and costs. Further, the sum of $5,000 required to be paid as and

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for expert witness fees is confirmed and shall be paid by Plaintiff. These sums shall be reduced to judgment, and judgment interest shall be payable from the date of entry of the Decree of Divorce until satisfied, provided, however, that execution on this judgment shall be stayed for a period of 120 days from the date of entry of the Decree of Divorce to enable Plaintiff to make payment; and

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that except as set forth herein, all temporary and interlocutory Orders of any nature previously entered in this action are expressly superseded by and merged into the Findings of Fact, Conclusions of Law, and Decree of Divorce entered in this matter.

DATED this 1st day of June, 1993.

GERALD W. HARDCASTLE
DISTRICT COURT JUDGE

Submitted by:

JOLLEY, URGA, WIRTH & WOODBURY

By _____
KATHRYN E. STRYKER, ESQ.
Nevada Bar #428
300 So. Fourth Street, #800
Las Vegas, Nevada 89101
Attorneys for Plaintiff

EXHIBIT "2"

NEO
CHARLES J. HOSKIN, ESQ.
Nevada Bar No. 4291
HOSKIN LAW OFFICE
1336 S. Decatur Blvd.
Las Vegas, Nevada 89102
(702) 240-4447

Attorney for Defendant

DISTRICT COURT
CLARK COUNTY, NEVADA

SIMONE F. RUSSO, Plaintiff, vs. TERRY RUSSO, Defendant.	CASE NO. D144600 DEPT. C DATE: JULY 21, 2005 TIME: 1:30 p.m.

NOTICE OF ENTRY OF ORDER

TO: SIMONE F. RUSSO, Plaintiff, and
TO: MATTHEW Q. CALLISTER, ESQ., Attorney for Plaintiff

PLEASE TAKE NOTICE that an **Order and Judgment** was entered in the above-entitled matter on the 6th day of September 2005, a copy of which is attached hereto.

DATED this 9th day of September 2005.

HOSKIN LAW OFFICE

By _____
CHARLES J. HOSKIN, ESQ.
Nevada State Bar #4291
1336 S. Decatur Blvd.
Las Vegas, Nevada 89102
Attorney for Defendant

HOSKIN LAW OFFICE
ATTORNEYS AT LAW
1336 S. Decatur Blvd., Las Vegas, Nevada 89102
Telephone: (702) 240-4447 Facsimile: (702) 258-4746

CERTIFICATE OF MAILING

I hereby certify that I am an employee of HOSKIN LAW OFFICE and that on the 9th day of September 2005, I did deposit in the United States Post Office, at Las Vegas, Nevada, in a sealed envelope with postage fully prepaid thereon, a true and correct copy of the above and foregoing **Notice of Entry of Order**, addressed to:

Matthew Q. Callister, Esq.
823 Las Vegas Blvd. S.
Las Vegas, NV 89101
Attorney for Plaintiff

Donnie R Hughes
An employee of Hoskin Law Office

HOSKIN LAW OFFICE
ATTORNEYS AT LAW
1336 S. Decatur Blvd., Las Vegas, Nevada 89102
Telephone: (702) 240-4447 Facsimile: (702) 258-4740

ORDR
CHARLES J. HOSKIN, ESQ.
Nevada Bar No. 004291
HOSKIN LAW OFFICE
1336 S. Decatur Blvd.
Las Vegas, Nevada 89102
(702) 240-4447
Attorney for Defendant

FILED
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CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

SIMONE F. RUSSO,

Plaintiff,

vs.

TERRY RUSSO,

Defendant.

CASE NO. D144600
DEPT. B

Date of Hearing: July 21, 2005
Time of Hearing: 1:30 p.m.

ORDER AND JUDGMENT

This matter having come on for evidentiary hearing this 21st day of July 2005; Plaintiff being present and represented by his counsel, Matthew Q. Callister, Esq. and Alisa J. Koct, Esq.; Defendant being present and represented by her counsel, Charles J. Hoskin, Esq.; the Court having heard the arguments of counsel and stipulations placed on the record, finds as follows:

That Plaintiff is in violation of Judge Jones' Minute Order from January 17, 2002. Plaintiff did not comply by contributing the $30,000.00 to $35,000.00 annually as ordered into the retirement plan.

HOSKIN LAW OFFICE
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1336 S. Decatur Blvd., Las Vegas, Nevada 89102
Telephone: (702) 240-4447 Facsimile: (702) 258-4740

That the retirement plan has since been depleted without Defendant being paid the $200,000.00 as ordered within the Decree of Divorce.

That the judgment ordered at the time of the Decree of Divorce for $200,000.00 in favor of Defendant, plus interest, is hereby confirmed and reduced to judgment in the amount of $417,865.98; that that amount shall accrue judgment interest at the legal rate until paid in full.

That this judgment shall have no reference or application to Plaintiff's KEOGH plan and shall be a separate judgment as mandated by the Decree of Divorce.

That Plaintiff has not complied with the Court's prior order providing an annual accounting for the retirement plan.

NOW, THEREFORE, IT IS HEREBY ORDERED that the plain language of the Decree of Divorce permits this Court to enter a judgment outside of the KEOGH plan. As a result, the question of whether Plaintiff has reimbursed the KEOGH plan is no longer at issue,and judgment from the Decree of Divorce, plus interest, is hereby COMFIRMED.

IT IS FURTHER ORDERED that the total amount of the original judgment in favor of Defendant, plus interest, through and including July 21, 2005 is $417,865.98.

IT IS FURTHER ORDERED that the prior judgment against Defendant from the June 2002 Order of $7,331.82, plus interest, through and including July 21, 2005, totals $8,810.40.

IT IS FURTHER ORDERED that the judgments shall offset each other with the total being $409,055.58. That amount is hereby reduced to JUDGMENT against Plaintiff, Simon Russo, and in favor of Defendant, Terry Russo. That amount shall bear interest at the legal rate from July 22, 2005 until paid in full.

. . .

ROSKIN LAW OFFICE
ATTORNEYS AT LAW
1336 S. Decatur Blvd., Las Vegas, Nevada 89102
Telephone: (702) 240-4447 Facsimile: (702) 258-4748

IT IS FURTHER ORDERED that, with regard to the medical arrears, a Stipulation and Order, which was entered by this Court on March 7, 1997, indicates that Plaintiff shall be responsible for all unreimbursed medical, dental, optometric expenses. As a result, Plaintiff does not have a claim with regard to those unreimbursed medical expenses against Defendant.

IT IS FURTHER ORDERED that Plaintiff is hereby found to be in contempt of Judge Jones' orders. While Defendant may be in contempt for failing to pay on the judgment with regard to spousal support arrears, given that no payment schedule was set up, the Court cannot find Defendant in contempt.

IT IS FURTHER ORDERED that Plaintiff shall pay, to Mr. Hoskin's Office, attorney's fees in the amount of $2,500.00. That payment shall be paid on or before September 19, 2005.

IT IS FURTHER ORDERED that Plaintiff's counsel shall submit an Affidavit of Witnesses and Exhibits to Defendant's counsel if this matter needs further litigation.

IT IS SO ORDERED this _____ day of ~~August~~ 2005.

SEP 01 2005

GLORIA S. SANCHEZ
DISTRICT COURT JUDGE

Submitted By:

HOSKIN LAW OFFICE

CHARLES J. HOSKIN, ESQ.
Nevada State Bar #4291
1336 S. Decatur Blvd.
Las Vegas, NV 89102
Attorney for Defendant

~~Approved By:~~ Disapprove as to contempt

CALLISTER & REYNOLDS

MATTHEW Q. CALLISTER, ESQ.
Nevada State Bar #1396
823 S. Las Vegas Blvd.
Las Vegas, NV 89101
Attorney for Plaintiff

HOSKIN LAW OFFICE
ATTORNEYS AT LAW
1336 S. Decatur Blvd., Las Vegas, Nevada 89102
Telephone: (702) 240-4447 Facsimile: (702) 258-4746

COPY

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CLERK

NOTC
HOFLAND MANNING
Bradley J. Hofland, Esq.
State Bar of Nevada No. 6343
4495 S. Pecos Rd.
Las Vegas, NV 89121
(702) 895-6760
Attorneys for Plaintiff Dr. Simone F. Russo

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

SIMONE F. RUSSO, Plaintiff, -vs- TERRY RUSSO, Defendant.	Case Number: D144600 Dept No: B NOTICE OF ASSOCIATION OF COUNSEL

Notice is hereby given that Bradley J. Hofland, Esq., located at 4495 South Pecos Road, Suite A, Las Vegas, Nevada 89121, was retained by Plaintiff as his attorney to represent Plaintiff in the above-entitled case, and associated to act as co-counsel with Plaintiff's current attorney, Matthew Q. Callister, Esq.

DATED this 23rd day of September, 2005.

HOFLAND MANNING

By: _____
Bradley J. Hofland, Esq.
Nevada Bar No. 6343
4495 South Pecos Road
Las Vegas, NV 89121
(702) 895-6760
Attorneys for Plaintiff

HOFLAND / MANNING – Attorneys at Law
4495 South Pecos Road, Suite A
Las Vegas NV 89121
PH: (702) 895-6760 ◊ FAX: (702) 731-6910

CERTIFICATE OF SERVICE BY FACSIMILE

The undersigned hereby certifies that she served by placing a true and correct copy of the foregoing Notice of Association of Counsel, in the United States mail at Las Vegas, Nevada, with priority class postage prepaid, on September 23rd, 2005, addressed to the following:

Matthew Q. Callister, Esq.
823 S. Las Vegas Blvd.
Las Vegas, Nevada 89101

Charles J. Hoskin, Esq.
1336 S. Decatur Blvd.
Las Vegas, Nevada 89102

By: _____
Employee of Hofland Manning

FILED

SEP 21 3 45 PM '05

CLERK

MATTHEW Q. CALLISTER, ESQ.
Nevada Bar #1396
ALISA J. KOOT, ESQ.
Nevada Bar #8532
CALLISTER & REYNOLDS
823 Las Vegas Blvd. South
Las Vegas, NV 89101
Telephone No. (702)385-3343
Attorneys for Plaintiff, Simone Russo

DISTRICT COURT, FAMILY DIVISION

CLARK COUNTY, NEVADA

SIMONE F. RUSSO, Plaintiff, vs. TERRY RUSSO, Defendant.	Case No. D144600 Dept. No. B Date: 11-03-05 Time: 10:30 AM

MOTION FOR RECONSIDERATION OF SEPTEMBER 9, 2005 ORDER

Plaintiffs, SIMONE F. RUSSO by and through his counsel, MATTHEW Q. CALLISTER, ESQ., hereby files this Motion for Reconsideration and/or Alter or Amend this Court's Order entered on September 9, 2005.

This Motion is based upon the memorandum of points and authorities below, the papers pleadings on file herein, attached exhibits, and any oral argument allowed by this Honorable Court

. . .

. . .

. . .

MC

Law Offices of
allister & Reynolds
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South
Las Vegas, Nevada
89101
(702) 385-3343

By: _____
MATTHEW Q. CALLISTER, ESQ.
Nevada Bar No. 001396
823 Las Vegas Blvd. South
Las Vegas, NV 89101
(702) 385-3343
Attorneys for Defendant.

NOTICE OF MOTION

To: Parties above named;

To: Attorneys of record.

YOU AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the above Motion on for hearing before the above entitled Court, on th Date: 11-03-05 Time: 10:30 AM 2005, at ____ ___.m. or as soon thereafter as counsel can be heard.

DATED this ____ day of _____, 2005.

CALLISTER & REYNOLDS

By: _____
MATTHEW Q. CALLISTER, ESQ.
Nevada Bar No. 001396

MEMORANDUM OF POINTS AND AUTHORITIES

I.

FACTS

As this Honorable Court will recall, the last hearing in this matter was on July 21, 2005 for a Contempt Motion. At that hearing, this Honorable Court brought to everyone's attention verbiage in the Divorce Decree which provided that if at any time the Keogh account had a balance of less than $200,000 a judgement would issues with interest from May 15, 1993. (Exhibit "1")

Counsel for both parties reviewed the Decree and the language seemed clear, that a judgment

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should have issued on September 1993, when the account first fell below $200,000.

Thereafter, the Order and Judgment were entered. (Exhibit "2")

III.

LEGAL ARGUMENTS IN SUPPORT OF MOTION FOR RECONSIDERATION

A. LEGAL STANDARD FOR A MOTION FOR RECONSIDERATION.

Russo respectfully requests that this Court reconsider and/or alter or amend part of its Order of September 9, 2005 (the Order is attached as **Exhibit 2**). Defendant makes this request, pursuant to EDCR, 2.24, which allows this Court to set a matter for reargument or resubmission and hence, render a new order.

EDCR 2.24 provides in part:

> (b) A party seeking reconsideration of a ruling of the court, other than any order which may be addressed by motion pursuant to NRCP 50(b), 52(b), 59 or 60, must file a motion for such relief within 10 days after service of written notice of the order or judgment unless the time is shortened or enlarged by and heard as is any other motion. A motion for reconsideration does not toll the 30 day period for filing a notice of appeal from a final order or judgment.

Accordingly, Russo may meet the burden for reconsideration by establishing and introducing newly discovered evidence, by showing that there has been a change in the law, or by showing that the prior ruling was clearly erroneous. *See:* Masonry and Title Contractors Assn. of S. Nev. v. Jolley Urga Wirth, Ltd., 113 Nev. 737, 741 941 P.2d 486 (1997). A motion for reconsideration should concisely, and without argument, direct the court's attention to a controlling matter that was overlooked or misapprehended. In re Ross, 99 Nev. 657, 659, 668 P.2d 1089, 1091 (1983).

In the present case, Russo meets this procedural burden by introducing newly discovered evidence, the fact that the Keogh was below $200,000 in September 1993. For this reason, the previous ruling is clearly erroneous, as it is patently inconsistent with the language of the Divorce

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Decree. Substantively, Russo should not be responsible for over $200,000 of interest, which has been accruing since May 1993, because of Terry's failure to request the proper remedy from this Court for 12 years.

B. A REHEARING OF THE MATTER IS WARRANTED BECAUSE RUSSO HAS SUPPLIED THE COURT WITH EVIDENCE THAT THE RECENT ORDER IS INCONSISTENT WITH THE PLAIN LANGUAGE OF THE DIVORCE DECREE, THUS RENDERING A PORTION OF PLAINTIFF'S MOTION FOR JUDGMENT ERRONEOUS.

At the time of the hearing, neither party was prepared for this Honorable Court to refer to specific language in the Divorce Decree. This language specifically stated the proper remedy for a decrease in the Keogh account, should it dip below $200,000. Defendant sought to go forward with an evidentiary hearing regarding Dr. Sam Russo's alleged contempt for failure to comply with this Honorable Court's previous orders. Plaintiff was prepared to defend himself in said hearing, accordingly.

Now that counsel for Dr. Russo has had a chance to review the minutes, the Order and Judgment, the Divorce Decree and the complete file. After review, it appears that Terry Russo willfully, negligently or inadvertently failed to request the proper remedy of this Court for more than 12 years, in order to secure a judgment with 12 years worth of interest.

On September 2, 1993, Russo's counsel at the time, Kathryn Stryker Wirth, wrote a letter to Terry Russo's counsel, Charles J. Hoskin, regarding the balance of the Keogh account. (Exhibit "3") Specifically, in page 3, Wirth wrote:

"Now, the Keogh account with C.D.s is less than $200,000."

Because this Honorable Court brought the language in the Decree to the attention of counsel at the last hearing, counsel was not in possession of this evidence to introduce at that time. Clearly, this letter evidences that Terry Russo knew the Keogh account's balance was less than $200,000 on

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Because this Honorable Court brought the language in the Decree to the attention of counsel at the last hearing, counsel was not in possession of this evidence to introduce at that time. Clearly, this letter evidences that Terry Russo knew the Keogh account's balance was less than $200,000 on September 2, 1993. Accordingly, she and her counsel had a duty to request that a judgment be entered in September 1993, with only five months of interest having accrued, in compliance with the Divorce Decree. Rather than comply with the decree, Defendant negligently chose to drag this process out for 12 years in violation of the decree of divorce, in order to collect more than $200,000 worth of interest.

C. IN THE ALTERNATIVE, AMENDING PLAINTIFF'S SEPTEMBER 9, 2005 ORDER IS WARRANTED BECAUSE IT DOES NOT COMPORT WITH THIS HONORABLE COURT'S DECREE OF JUNE 2, 1993.

Pursuant to NRCP 59:

> (a) 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 affecting the substantial rights of an aggrieved party:
>
> (7), Error in law occurring at the trial and objected to by the party making the motion....the Court may open the judgment if one has been entered, take additional testimony, **amend findings of fact and conclusions of law** or make new findings and conclusions, and **direct the entry of a new judgment.**

Here, Defendant will show how the Order of September 9, 2005 was clearly erroneous, pursuant to the doctrine of laches.

In **Besnilian v. Wilkinson** 117 Nev. 519, 25 P.3d 187 (Nev.,2001), the Nevada Supreme Court stated:

"Laches, an equitable doctrine, may be invoked when delay by one party prejudices the other party such that granting relief to the delaying party would be inequitable."

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"To invoke laches, the party must show that the delay caused ***actual prejudice***."

"Laches" *involves a party delaying enforcement of his rights, to the disadvantage of another.*

Here, a situation exists where Terry Russo and her counsel knew in September 1993 that the Keogh had a balance of less than $200,000. According to the Divorce Decree, Terry was entitled to a judgment for $200,000 plus interest from May 1993 once the balance of the Keogh was less than $200,000. However, at no time during this action over the course of the last 12 years, did Terry request a judgment as was ordered in the June 1993 Divorce Decree. Thus, Terry was entitled to $200,000, plus interest from May 1993 to September 1993. In fact, it was this Honorable Court that pointed out the specific and clear language that provided for a judgment to issue, as well as when the judgment was to issue.

By permitting Terry to secure a judgment more than 12 years after the time when she could and should have secured said judgment with interest from May 1993, clearly is prejudicial to Sam Russo. Terry should not be granted in excess of $200,000 in interest because of her failure to properly request a judgment from this court in a timely manner, over a decade ago. One can only surmise that Terry did not request a judgment be put in place in September 1993 because she was hoping to accrue hundreds of thousands of dollars worth of interest. The doctrine of laches commands that this not be permitted.

Terry should not now be rewarded with 12 years of interest when she should have secured the judgment in September 1993. It is unconscionable that Terry would either intentionally, negligently and/or willfully wait for 12 years to request a previously ordered judgment, and then be awarded more than $200,000 worth of interest.

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The interest awarded to Defendant on the Keogh account resulted solely from the inexcusable misconduct of Terry in her delay of requesting the proper remedy from this Honorable Court when she was on notice for more than 12 years that the Keogh balance was less than $200,000. As such, Sam Russo requests that the order of September 9, 2005 be amended to reflect a judgment of $200,000, with interest for May through September 1993.

IV.

CONCLUSION

In conclusion, Sam Russo has presented this Honorable Court with new evidence which proves that Terry Russo knew the balance of the Keogh account was less than $200,000 more than 12 years ago. For that reason, Terry Russo is barred by the doctrine of laches from now obtaining 12 years worth of interest which she accrued because of her unilateral failure to secure the judgment sooner, in accordance with the decree of divorce.

Accordingly, Sam Russo respectfully requests that this Honorable Court reconsider its September 9, 2005 Order, to permit only the original judgment amount and interest from May, 1993 through September, 1993.

DATED: this 21 day of September, 2005.

CALLISTER & REYNOLDS

MATTHEW Q. CALLISTER, ESQ.
Nevada Bar No. 001396
823 South Sixth Street
Las Vegas, Nevada 89101

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Callister & Reynolds
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South
Las Vegas, Nevada
89101
(702) 385-3343

EXHIBIT "1"

ORDR
CHARLES J. HOSKIN, ESQ.
Nevada Bar No. 004291
HOSKIN LAW OFFICE
1336 S. Decatur Blvd.
Las Vegas, Nevada 89102
(702) 240-4447
Attorney for Defendant

FILED
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CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

SIMONE F. RUSSO,

Plaintiff,

vs.

TERRY RUSSO,

Defendant.

CASE NO. D144600
DEPT. B

Date of Hearing: July 21, 2005
Time of Hearing: 1:30 p.m.

ORDER AND JUDGMENT

This matter having come on for evidentiary hearing this 21st day of July 2005; Plaintiff being present and represented by his counsel, Matthew Q. Callister, Esq. and Alisa J. Koot, Esq.; Defendant being present and represented by her counsel, Charles J. Hoskin, Esq.; the Court having heard the arguments of counsel and stipulations placed on the record, finds as follows:

That Plaintiff is in violation of Judge Jones' Minute Order from January 17, 2002. Plaintiff did not comply by contributing the $30,000.00 to $35,000.00 annually as ordered into the retirement plan.

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That the retirement plan has since been depleted without Defendant being paid the $200,000.00 as ordered within the Decree of Divorce.

That the judgment ordered at the time of the Decree of Divorce for $200,000.00 in favor of Defendant, plus interest, is hereby confirmed and reduced to judgment in the amount of $417,865.98; that that amount shall accrue judgment interest at the legal rate until paid in full.

That this judgment shall have no reference or application to Plaintiff's KEOGH plan and shall be a separate judgment as mandated by the Decree of Divorce.

That Plaintiff has not complied with the Court's prior order providing an annual accounting for the retirement plan.

NOW, THEREFORE, IT IS HEREBY ORDERED that the plain language of the Decree of Divorce permits this Court to enter a judgment outside of the KEOGH plan. As a result, the question of whether Plaintiff has reimbursed the KEOGH plan is no longer at issue,and judgment from the Decree of Divorce, plus interest, is hereby COMFIRMED.

IT IS FURTHER ORDERED that the total amount of the original judgment in favor of Defendant, plus interest, through and including July 21, 2005 is $417,865.98.

IT IS FURTHER ORDERED that the prior judgment against Defendant from the June 2002 Order of $7,331.82, plus interest, through and including July 21, 2005, totals $8,810.40.

IT IS FURTHER ORDERED that the judgments shall offset each other with the total being $409,055.58. That amount is hereby reduced to JUDGMENT against Plaintiff, Simon Russo, and in favor of Defendant, Terry Russo. That amount shall bear interest at the legal rate from July 22, 2005 until paid in full.

. . .

ROSKIN LAW OFFICE
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IT IS FURTHER ORDERED that, with regard to the medical arrears, a Stipulation and Order, which was entered by this Court on March 7, 1997, indicates that Plaintiff shall be responsible for all unreimbursed medical, dental, optometric expenses. As a result, Plaintiff does not have a claim with regard to those unreimbursed medical expenses against Defendant.

IT IS FURTHER ORDERED that Plaintiff is hereby found to be in contempt of Judge Jones' orders. While Defendant may be in contempt for failing to pay on the judgment with regard to spousal support arrears, given that no payment schedule was set up, the Court cannot find Defendant in contempt.

IT IS FURTHER ORDERED that Plaintiff shall pay, to Mr. Hoskin's Office, attorney's fees in the amount of $2,500.00. That payment shall be paid on or before September 19, 2005.

IT IS FURTHER ORDERED that Plaintiff's counsel shall submit an Affidavit of Witnesses and Exhibits to Defendant's counsel if this matter needs further litigation.

IT IS SO ORDERED this _____ day of ~~August~~ 2005.

SEP 01 2005

GLORIA S. SANCHEZ
DISTRICT COURT JUDGE

Submitted By:

HOSKIN LAW OFFICE

CHARLES J. HOSKIN, ESQ.
Nevada State Bar #4291
1336 S. Decatur Blvd.
Las Vegas, NV 89102
Attorney for Defendant

~~Approved~~ By: Disapprove as to content

CALLISTER & REYNOLDS

MATTHEW Q. CALLISTER, ESQ.
Nevada State Bar #1396
823 S. Las Vegas Blvd.
Las Vegas, NV 89101
Attorney for Plaintiff

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Telephone: (702) 240-4447 Facsimile: (702) 258-4748

EXHIBIT "3"

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ATTORNEYS AT LAW
300 SOUTH FOURTH
EIGHTH FLOOR
BANK OF AMERICA PLAZA
LAS VEGAS, NEVADA 89101
TELEPHONE (702) 385-6161
TELECOPIER (702) 382-6611

WILLIAM R. URGA
ROGER A. WIRTH
BRUCE L. WOODBURY
JAY EARL SMITH
STEPHANIE M. SMITH
KATHRYN E. STRYKER
MARK A. JAMES
DONALD E. BROOKHYSER
ALLEN D. EMMEL
TROY E. PEYTON
RENE L. MORGAN
J. DOUGLAS DRIGGS, JR.
BRIAN E. HOLTHUS
KIMBERLY J. BLAS
CRAIG M. MURPHY
KRISTI N. SAYLORS
JOHN T. STEFFEN
KENDALL E. FARR
ELISSA F. CADISH
MARK J. WENKER
GREGORY J. WALCH

BOULDER CITY OFFICE
1000 NEVADA HIGHWAY
SUITE 108
BOULDER CITY, NEVADA
89005
(702) 293-3674

(1)

September 2, 1993

(2)

VIA FAX

Charles J. Hoskin, Esq.
JIMMERSON, DAVIS & SANTORO
701 E. Bridger, #600
Las Vegas, Nevada 89101

They are worried that funds are being depleted

Re: Russo v. Russo

Dear Chuck:

This letter is written in response to your letter of August 27, 1993, regarding my client's recent settlement proposal.

While you may be good a writing lengthy, self-serving letters, you are not very good at reading letters directed to you which explain basic facts of which you should be aware. Your most recent letter leaves me to believe that you and Jim have not bothered to read my numerous letters sent to you regarding the Fidelity account, and that you refuse to recognize that your client is at risk financially by refusing to cooperate. It is also obvious that you do not understand the nature of the Fidelity Keogh account despite countless efforts to explain the same to you.

During the first week of July, 1993, the Keogh account was valued at approximately $170,000. Additionally, Certificates of Deposit in the approximate sum of $70,000 were held by the Keogh. Accordingly, the Decree of Divorce was satisfied as far as Mrs. Russo's interest in the Keogh was concerned. At that point, Dr. Russo attempted to liquidate some of the options which

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had expired, and to take advantage of the increase in value in some of the stocks held in the account. However, his actions in this regard were reversed by Fidelity, based upon a letter which you apparently wrote to Fidelity (but did not copy to me) some time in May.

At that point, Dr. Russo spoke directly with Mrs. Russo, who gave her consent to the release of the freeze by Fidelity. She wrote a note to Jim, as well as one directed "To Whom it May Concern", both dated July 10, 1993, instructing that the freeze be released. Apparently, nothing was done by you in response to this July 10 note, and in fact when I spoke with you on July 15, you had not yet seen the note.

After I brought the note from Mrs. Russo to your attention, you wrote to Elaine Valente at Fidelity, on July 15, instructing that the freeze be released. Amazingly, Fidelity still refused to release the freeze. Unfortunately, you then left on vacation, and I began dealing with Jim, who was not familiar with our previous discussions or with Mrs. Russo's request that the freeze be released, causing additional confusion. Although I cannot be certain, it appears as though Jim convinced Mrs. Russo that she should revoke her request to release the freeze on the Keogh account, and Jim convinced Fidelity of this as well.

While all this transpired, the value of certain stocks held in the Keogh went down, causing significant losses. The account is fluctuating at the present time, however, Dr. Russo has no control over losses or gains as a result of the freeze. The losses are not the result of risky investments, but instead are the result of Dr. Russo's inability to liquidate and trade in the account.

I hope you now understand that because of the terms of the retirement plan itself, a rollover of funds to an account in Mrs. Russo's name simply cannot be accomplished. Instead, Mrs. Russo must wait until Dr. Russo retires to receive her funds, and until then, the funds must remain in the Keogh account, to be administered by the plan administrator, Dr. Russo. However, if Dr. Russo cannot trade in this account, he will never be able to bring the balance up to the necessary level to provide the funds for Mrs. Russo upon retirement.

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At this point, Dr. Russo is seriously contemplating bankruptcy. His debt to Desert Springs remains unpaid, his practice continues to be very slow, and he is unable to meet his monthly financial obligations. He essentially has nothing left as the result of your ongoing actions, and he is very close to losing interest in trying to protect Mrs. Russo from financial loss which results from your uninformed decisions and actions involving the Keogh account. Remember--in early July, the Keogh account with C.D.s exceeded $230,000, leaving Dr. Russo $30,000 which he could trade and/or liquidate as he sough fit, but for Fidelity's refusal to allow him to do so. Now, the Keogh account with C.D.s is less than $200,000. This reduction is your fault, not Dr. Russo's.

In an effort to resolve these matters, I offered a proposal to you last week. This proposal was rejected by letter on August 27, 1993. In response, you offered a "counterproposal" which you indicated was made "in the spirit of negotiation". Your counterproposal, however, was nothing less than a slightly different version of the award of $200,000 from the Keogh account, with no substantial change. You also make reference to "good faith" on your client's part. Obviously, your definition of negotiation and good faith differs from mine. Negotiation, in order to be successful, must involve compromise by both sides, and good faith is defined by Black's Law Dictionary as "an honest belief, the absence of malice and the absence of design to defraud or to seek an unconscionable advantage." Neither you nor your client has attempted, in good faith, to reach a compromise in this matter.

Please understand that I believe that eventually Dr. Russo will prevail regarding this issue, and that as a result, Mrs. Russo will receive her interest in the account upon Dr. Russo's retirement, and no sooner. I also believe that until that time, Mrs. Russo will have no right to roll over the funds into a separate account. Unfortunately, if this litigation continues along the lines that it has progressed since July, there may be nothing to fight over in this regard. That is the reason why we suggested a compromise, and I urge you to seriously consider the present situation as well as the

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potential consequences for Mrs. Russo should you continue to ignore the reality of the situation.

Very truly yours,

JOLLEY, URGA, WIRTH & WOODBURY

Kathryn E. Stryker

KES/et
cc: Dr. Russo

c:\ltrs\hoskin3.ltr\2771.7\kes.et

(1) option
(1) desire
(2) order - Sept 6 order
(3) _____

CALLISTER & REYNOLDS

Attorneys at Law
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Las Vegas, Nevada 89101
Telephone: (702) 385-3343
Facsimile: (702) 385-2899
E-Mail mqc@callister-reynolds.com

Ronald H. Reynolds
Matthew Q. Callister
Jonathan C. Callister
Alisa J. Koot
Robert H. Reynolds
Dale K. Kleven

Facsimile Transmission Cover Sheet

(If you have any questions regarding this transmission, please contact Gina at the above number.)

TO:	DR. SAM RUSSO
COMPANY:	**PERSONAL AND CONFIDENTIAL**
FACSIMILE:	(702) 792-4328
REGARDING:	RUSSO v. RUSSO
COMMENTS:	Please find enclosed copies of Terry's Motion for Order to Show Cause and Our Opposition to their Motion for your review.
FROM:	Nikki Doyle, legal assistant to, MATTHEW Q. CALLSITER, ESQ.
TELEPHONE:	(702) 385-3343
DATE:	September 21, 2005
TIME:	4:35 p.m.

The information contained in this facsimile is Attorney privileged and confidential, intended only for the use of the designated recipient, or the employee or agent responsible to deliver this message to the intended recipient. You are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please destroy it immediately and contact our office.

NUMBER OF PAGES: (6) PAGE - *including this sheet* -

HARD COPY TO FOLLOW: YES NO X

001
CHARLES J. HOSKIN, ESQ.
HOSKIN & ASSOCIATES
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Attorney for Defendant

FILED
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Shirley B. Parraguirre
CLERK

DISTRICT COURT, FAMILY DIVISION

CLARK COUNTY, NEVADA

****

SIMONE F. RUSSO,

Plaintiff,

vs.

TERRY RUSSO,

Defendant.

CASE NO. D144600
DEPT. B

DATE: 2-7-05
TIME: 11AM

MOTION AND ORDER TO SHOW CAUSE WHY PLAINTIFF SHOULD NOT BE HELD IN CONTEMPT FOR FAILURE TO COMPLY WITH COURT ORDERS AND FOR SANCTIONS AND ATTORNEY'S FEES

NOTICE: 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 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.

COMES NOW, Defendant, Terry Russo, by and through her attorney, Charles J. Hoskin, Esq., of Hoskin & Associates, and hereby moves this Honorable Court to enter an Order requiring Plaintiff to appear and show cause why he should not be held in contempt

Calendared for Feb 7, 05
Reply due 12/20/04

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for failure to comply with the Order of this Court, to issue sanctions and award attorney's fees for Defendant's being forced to have Plaintiff held in contempt, and to reduce said fees to judgment. This Motion is made and based upon all the pleadings and papers on file herein, and such oral argument as may be adduced at the time of the hearing of this matter.

DATED this 16th day of November 2004.

HOSKIN & ASSOCIATES

By _____
CHARLES J. HOSKIN, ESQ.
Nevada Bar #004291
1336 S. Decatur Blvd.
Las Vegas, NV 89102
Attorney for Defendant

ORDER TO SHOW CAUSE

TO: SIMONE RUSSO, Plaintiff; and

TO: DAN R. WAITE, ESQ., Attorney for Plaintiff

You are hereby ordered to appear and show cause why you should not be held in contempt for failure to comply with the Court Orders before the above-entitled Court on the 07 day of February, 2005 at 11 a.m. of that said day or soon thereafter as counsel can be heard in Department B

DATED this 6th day of December 2004.

GLORIA S. SANCHEZ
DISTRICT COURT-FAMILY DIVISION

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AFFIDAVIT OF CHARLES J. HOSKIN FOR ORDER TO SHOW CAUSE AND IN COMPLIANCE WITH E.D.C.R. 5.11

STATE OF NEVADA)
)ss
COUNTY OF CLARK)

CHARLES J. HOSKIN, being first duly sworn, deposes and says:

1. That I am an attorney duly licensed to practice law in the state of Nevada, I was retained to represent Defendant in the above-entitled matter, I have personal knowledge of the facts contained herein, and I am competent to testify thereto.

2. That Decree of Divorce was entered in the above-entitled matter on the 2nd day of June 1993, a copy of which is attached hereto *(see attached Exhibit A)* , which awarded Defendant an interest in the Keogh Profit Sharing Plan equal to $200,000.00;

3. That since the entry of that order, Plaintiff, or his representatives, have depleted that Keogh account;

4. As a result of the last Order to Show Cause, and order was entered, on June 8, 2001, *(see attached Exhibit B)* which required Plaintiff to reimburse the Keogh account at the rate of $30,000.00 to $35,000.00 per year and to provide an annual accounting to demonstrate that he is making the necessary contributions;

5. That Plintiff subsequently filed an action in Federal Court, challenging this Court's authority to enter that order. That action was dismissed by the Federal Court. Once the action was dismissed, I requested that Plaintiff comply with that order and provide the annual accounting as ordered. Plaintiff has refused. *(see attached Exhibit C)*

6. That I have complied with the mandates of EDCR 5.11 and the filing of this motion was necessary. Further, based upon Plaintiff's contemptuous acts, he should be ordered to appear and show cause why he should not be held in contempt of court orders.

FURTHER AFFIANT SAYETH NAUGHT.

BY: _____
CHARLES J. HOSKIN, ESQ.

SUBSCRIBED AND SWORN to before me
this 16th day of November 2004.

_____
NOTARY PUBLIC

Bonnie R. Hughes
Notary Public
State of Nevada
My appt. exp. Apr 27, 2006
Certificate No. 94-5158-1

HOSKIN & ASSOCIATES
ATTORNEYS AT LAW
1335 S. Decatur Blvd., Las Vegas, Nevada 89102
Telephone: (702) 240-4447 Facsimile: (702) 258-4740

POINTS AND AUTHORITIES

I.

PRELIMINARY INFORMATION

Plaintiff, SIMONE F. RUSSO (Simone), and Defendant, TERRY RUSSO (Terry) were divorced on June 2, 1993. See Exhibit A. The Decree of Divorce states, in pertinent part: "Defendant shall be awarded the following as her sole and separate property:...6. An interest in the Keogh Profit Sharing Plan equal to $200,000.00, to be distributed in accordance with the terms and provisions of the Profit Sharing Plan." Simone was granted "**All** remaining funds held in the Keogh Profit Sharing Plan." (emphasis added)

The Court also specifically retained jurisdiction regarding this issue. Within the Decree of Divorce, it states: "the Court reserves jurisdiction to enter such orders as are

appropriate to enable the parties to effectuate the transfer of the accounts and all sums therein.". Decree at 5.

Although issues regarding Simone's improper removal of funds from the Keogh plan have been litigated in the past, Terry had ongoing concerns regarding the existence of assets sufficient in the account to permit her to obtain the assets to which she is entitled pursuant to the Decree of Divorce. The court will recall that during the divorce litigation, Simone liquidated the children's trust accounts for his own use. Thus, the Order to Show Cause was filed in 2001.

Within the June 8, 2001 Order, this Court maintained its jurisdiction and entered the following orders:

> IT IS FURTHER ORDERED that **Plaintiff shall provide to the Defendant proof and an annual accounting of contributions to the profit sharing plan** to ensure that the Court is satisfied that the $200,000.00 will be available for disbursement to Defendant as previously ordered in the Decree of Divorce. Plaintiff has represented that he will have the ability to contribute $30,000.00 to $35,000.00 per year so that the $200,000.00 will be available upon retirement
>
> IT IS FURTHER ORDERED that, if the annual accounting provided on an annual basis reveals that the amount contributed is actually less than the amount represented or that the funds in the account continue to be depleted, then **the matter should immediately be placed back on calendar for judicial determination as to what appropriate financial relief should be entered to effectuate the intent of the Court** as expressed in the underlying Decree of Divorce.

(emphasis added).

Terry's attorney attempted to resolve this matter without the filing of this motion. In fact, given the size of Terry's outstanding obligation to her attorney, (based on prior attempts to force Simione to comply with Court orders) it is believed that any other attorney

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would not have filed this motion. However, it is believed that such has been Simone's plan from the beginning. He clearly has the greater ability to pay attorneys and forces Terry to expend legal fees just to get him to comply.

As has been presented to this Court previously, while Terry has been awarded the sum of $200,000.00 from that account, she is also entitled to some assurances that the money will be there when she is entitled to receive it. She should not required to wait until Simone retires to find out that there is no money to satisfy her award. If the money is gone, Terry is entitled to demonstrate that to the Court and obtain substitute relief from Simone while he is still earning an income.

Terry's concerns have been substantiated by the lack of response by Simone in recent requests. Such was the situation in 2001 when this Court required annual accountings. However, that Order is being ignored by Simone as well.

II.

ARGUMENT

A. Plaintiff Should Be Held in Contempt.

NRS 22.010 states, in pertinent part:

> The following acts or admission shall be deemed contempt:
> (3) disobedience or resistance to any lawful writ, order, rule or process issued by the Court or Judge at chambers.

The applicable Orders in this matter were filed the June 2, 1993, January 12, 1994 and finally on June 8, 2001. Since the entry of the Decree of Divorce, Simone has depleted the Keogh account, from its previous balance exceeding two hundred thousand dollars ($200,000.00) to some unknown amount. Terry has attempted to discover when the money was removed and where it went. However, notwithstanding Court order, Simone has refused to provide that information.

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What is clear is that, as a result of Simone's actions, he cannot comply with the terms of the Decree of Divorce. There is no possible way for the Keogh account to have $200,000.00 in it when he retires. As such, Terry must receive her portion of the community buy out in some other way.

Plaintiff received written notification of his contempt in 2001 and a copy of the resulting order. Most recently, Terry's attorney has attempted to induce Simone to comply with court orders. Notwithstanding these attempts to encourage compliance, Simone remains defiant, even refusing to the court ordered accountings.

The Court will recall that Simone has no respect for Court orders. During the pendency of the divorce action, Simone disregarded the Joint Preliminary Injunction and liquidated the accounts earmarked for his children's college education and used the funds for his own benefit. It appears that Simone's patterns continue.

As such, he should be ordered to appear and show cause why he should not be held in contempt for failure to comply with that Order.

B. Substitute Compensation Is Necessary.

NRS 125.150 grants this court continuing jurisdiction over the adjudication of property rights. In 1993 this Court granted Terry $200,000.00 of Simone's Keogh plan. Simone has effectively drained that account to prohibit Terry from receiving her court ordered share of that account.

Simone has taken Terry to Federal Court on more than one occasion based upon the nature of the asset which she was awarded. Each time, Simone has lost his attempt to divest this Court of juristiction over that account. It appears that substitute compensation for Terry is the only way to stop Simone's game playing.

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Based on his contempt, Simone cannot comply with the property division as outlined in the Decree of Divorce. As such, it is necessary that this Court fashion some other way for Terry to receive the asset which she is entitled. If she were to wait until Simone retires to bring this issue to the Court's attention, Simone would have no way to compensate her. However, Simone continues to earn an income and should be required to pay Terry a monthly amount to compensate her for the $200,000.00 plus interest from the entry of the Decree.

The problem is that even if he were ordered to pay Terry $2,000.00 per month, he would need to make those payments for more than eight (8) years, just to pay back the principal. Since it is clear that Simone cannot be trusted, a specific order is required.

C. Defendant Should Be Awarded Attorney's Fees and Sanctions.

Terry is entitled to the property division delineated within the Decree of Divorce. Had she waited until Simone's retirement to again bring this motion, there would be no way to compensate her. Further, this Court's order indicated that "if the annual accounting provided on an annual basis reveals that the amount contributed is actually less than the amount represented or that the funds in the account continue to be depleted, then the matter should immediately be placed back on calendar for judicial determination as to what appropriate financial relief should be entered to effectuate the intent of the Court as expressed in the underlying Decree of Divorce." Thus, her motion needed to be filed now.

Further, it was Simone's ongoing contemptuous actions and defiance to Court orders which necessitated the filing of this motion. But for his withdrawal of funds, which belonged to Terry, for his own use, and refusal to reimburse the account and provide the

accounting, the filing of this motion would have been unnecessary. As such, Terry should be awarded reasonable attorneys' fees and sanctions for having to bring this motion before the Court in the amount of $4,000.00. That amount should be reduced to judgment.

DATED this 16th day of November 2004.

HOSKIN & ASSOCIATES

By _____
CHARLES J. HOSKIN, ESQ.
Nevada Bar #004291
1336 S. Decatur Blvd.
Las Vegas, NV 89102
Attorney for Defendant

HOSKIN & ASSOCIATES
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VERIFICATION

TERRY RUSSO, being first duly sworn, deposes and says:

That she is the Defendant in the above-entitled action; that she has read the above and foregoing **Motion and Order to Show Cause Why Plaintiff Should Not Be Held in Contempt for Failure to Comply with Court Orders and for Sanctions and Attorney's Fees**, know the contents thereof, and that the same is true of her own knowledge, except for those matters therein stating a legal conclusion or stated on information and belief, and as for those matters she believes to be true.

Terry Russo
TERRY RUSSO

State of New York
County of Suffolk
SUBSCRIBED AND SWORN to before me this 1st day of November 2004.

Christy A. Felser
NOTARY PUBLIC

CHRISTY A. FELSER
NOTARY PUBLIC, State of New York
No. 01FE6002345
Qualified in Suffolk County
Commission Expires February 2, 2006

MATTHEW Q. CALLISTER, ESQ.
Nevada Bar #1396
ALISA J. KOOT, ESQ.
Nevada Bar #8532
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823 Las Vegas Blvd. South
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Telephone No. (702)385-3343
Attorneys for Plaintiff, Simone Russo

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DISTRICT COURT, FAMILY DIVISION

CLARK COUNTY, NEVADA

SIMONE F. RUSSO, Plaintiff,	)	Case No. D144600
vs.	)	Dept. No. B
TERRY RUSSO, Defendant.	)	**OPPOSITION TO MOTION TO SHOW CAUSE WHY PLAINTIFF SHOULD NOT BE HELD IN CONTEMPT AND COUNTERMOTION FOR ORDER TO SHOW CAUSE WHY PLAINTIFF SHOULD NOT BE HELD IN CONTEMPT FOR FAILURE TO PAY CHILD SUPPORT ARREARAGES**

COMES NOW, Plaintiff, SIMONE F. RUSSO, by and through MATTHEW Q. CALLISTER, ESQ., of the law firm of CALLISTER & REYNOLDS, and Opposes Defendant's Motion for Order to Show Cause on Defendant's Contempt and countermoves for Contempt for Failure to pay Child Support arrearages as follows:

POINTS AND AUTHORITIES

I. FACTUAL BACKGROUND

As this Honorable Court is aware, Defendant Terry Russo has continually brought Plaintiff Sam Russo before this Court for unfounded contempt motions:

4/11/94 Motion for Order To Show Cause

9/27/95 Defendant's Order to Show Cause

11/03/00 Defendant's Motion to Compel Production of Documents

1/07/00 Defendant's Motion for Reimbursement

04/01/01 Defendant's Motion and OSC regarding contempt

01/07/02 Defendant's Motion for Reimbursement

2/07/05 Defendant's Motion for Order to Show Cause

Defendant Terry Russo has dragged Plaintiff Sam Russo before this Honorable Court seven time since the divorce in 1994 for Contempt. Many of these Order to Show Cause hearings were to receive distribution from the Keough retirement plan for which there is a QDRO in place (Exhibit "1")

Under the plan, Dr. Russo will not be entitled to benefits until he reaches the age of 65. Since Dr. Russo is presently 61 years old, Terry Russo is not entitled to the funds.

Additionally, at the previous hearing before this Honorable Court, Judge Jones found that the matter was not ripe for adjudication. He additionally found that Sam would be obligated to evidence yearly contributions.

II. ARGUMENT

A. SAM is NOT in Contempt of the Court's Order Because He Contributed $30,000 to the Keough.

In regards to acts or omissions which constitute contempt, NRS 22.010(3) states in pertinent part:

NRS 22.010 Acts or omissions constituting contempts.

"3. Disobedience or resistance to any lawful writ, order, rule or process

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issued by the court or judge at chambers."

NRS 22.010(3)

Sam is not in contempt inasmuch as attached as (Exhibit "2") is a page from Sam's 2003 tax return evidencing the $30,000 contribution as ordered by this Honorable Court.

Although this is the Order of this Court, it should be noted that Dr. Russo's income was only $74,000 in 2003 and he cannot continue to make contributions to the Keough at the rate of $30,000 per year.

B. Substitute Compensation is NOT Necessary

As stated above, Sam is not in contempt of this Court's Order and accordingly it should not be determined that Terry will not receive her portion of the Keough as ordered by this Court. Additionally, Terry states to this Honorable Court that Sam has sued Terry in Federal Court to divest this Court of jurisdiction and has lost every time. This is simply not the case. At the last Federal Court hearing, as stated in the Court's order, "Defendant Russo, appearing telephonically and pro se, stated that she has not attempted to enforce immediate payment and is willing to wait until Plaintiff Russo's retirement age to obtain her award." (Exhibit "3")

Clearly, this is direct contravention of Terry's Motion before this Honorable Court. Not only is she requesting immediate distribution under the Keough, she is now requesting substitute compensation to begin immediately.

Terry's testimony to the Federal Court Judge and this Motion for Contempt before this Court shows a clear pattern of game playing on Terry's part. Her only goal is to obtain immediate payment in any manner that she is able.

C. Countermotion for Contempt for Failure to Pay Child Support Arrearages

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In June 26, 2002, this Honorable Court awarded Plaintiff with a Judgment on Child Support Arrearages in the amount of $7,500.00. To date none of these arrearages have been paid to Plaintiff. Despite this Court's last order, Terry Russo did not confer with Sam within thirty days to work out a payment plan of said arrearages. (Exhibit "4")

Accordingly, Plaintiff requests an Order holding Defendant Terry Russo in contempt of this Court's last order.

III. CONCLUSION

In conclusion, Defendant Terry Russo is once again attempting to receive the court ordered Keough funds before possible, i.e. when Sam turns 65 years of age. Additionally, Sam respectfully requests that this Honorable Court issue a contempt order against Terry for past due child support arrearages.

DATED this 4th day of February, 2004.

Respectfully submitted:

CALLISTER & REYNOLDS

MATTHEW Q. CALLISTER, ESQ.
823 Las Vegas Blvd. So.
Las Vegas, NV 89101

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HOFLAND MANNING
Bradley J. Hofland, Esq.
Nevada Bar Number: 006343
John Marriner Eccles, Esq.
Nevada Bar Number: 006630
4495 South Pecos Road, Suite A
Las Vegas NV 89121
(702) 895-6760
Associated counsel for the Plaintiff,
SIMONE RUSSO

EIGHTH JUDICIAL DISTRICT COURT

FAMILY DIVISION

CLARK COUNTY, NEVADA

SIMONE F. RUSSO,

Plaintiff,

vs.

TERRY RUSSO,

Defendant.

Case Number: D 144600
Department: B

Date of Hearing: November 03, 2005
Time of Hearing: 10:30 a.m.

NOTICE OF JOINDER IN MOTION FOR RECONSIDERATION, NOTICE OF MOTION AND MOTION FOR RECONSIDERATION AND/OR REHEARING, AND/OR FOR FURTHER EVIDENTIARY PROCEEDINGS

Bradley J. Hofland, Esq., of Hofland Manning, associated counsel for the Plaintiff, Simone Russo, hereby notices the Court, parties, and their counsel of the following:

1) His joinder in the Motion for Reconsideration of the September 9, 2005 Order in the within litigation filed by Matthew Q. Callister, Esq., counsel for the Plaintiff;

2) Submission of his own Motion seeking Reconsideration and/or Rehearing relative to the same Order; and

3) Submission of his own Motion seeking further Evidentiary Proceedings, pursuant to the September 9, 2005 Order.

This joinder in motion and motion is made and based upon the papers and pleadings on file herein, the Affidavit of Counsel attached hereto, the Points and Authorities incorporated herein, and such argument and evidence as may be adduced at the time of Hearing on the Motions and Joinders filed herein.

Respectfully submitted this 3rd day of September, 2005.

HOFLAND MANNING

John Marriner Eccles, Esq.
Nevada Bar Number: 006630
4495 South Pecos Road, Suite A
Las Vegas, Nevada 89121
(702) 895-6760
Attorney for the Plaintiff,
SIMONE RUSSO

Issues presented

1) Hofland Manning, associate counsel for Simone Russo, joins in the Motion for Reconsideration filed herein by Matthew Q. Callister, Esq., counsel for Simone Russo;

2) Terry's judgment as contained in the Decree of Divorce has expired by operation of law, and is subject to the principles of *res judicata*;

3) Simone requests the Court set this matter for further evidentiary proceedings, pursuant to the September 9, 2005 Order, to present testimony of witnesses refuting the claims he did not pay into the profit sharing plan as directed by Judge Jones.

NOTICE OF MOTION

TO: MATTHEW Q. CALLISTER, ESQ, Counsel for the Plaintiff;

TO: TERRY RUSSO, Defendant; and

TO: CHARLES J. HOSKIN, ESQ., Counsel for the Defendant:

YOU WILL PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing Motion on for hearing before the Court at the courtroom of the above entitled court, located at 601 North Pecos Road, Las Vegas, NV 89101 on the 3rd day of November, 2005, at 10:30 a.m., in the Department B of said court.

Dated this 23rd day of Septmber, 2005.

HOFLAND MANNING

John Marriner Eccles, Esq.
Nevada Bar Number: 006630
4495 South Pecos Road, Suite A
Las Vegas, Nevada 89121
(702) 895-6760
Attorney for the Defendant,
JILL SPLINTER

POINTS AND AUTHORITIES

I.

Relevant Facts

As it relates to the within Joinder and Motion, the following facts are relevant:

On June 2, 1993, Plaintiff, Simone Russo ("Simone") and Defendant, Terry Russo ("Terry") divorced. (*See* Decree of Divorce on file herein, file-stamped June 2, 1993) Therein, Terry received a judgment against Simone in the amount of $200,000.00 plus interest. (*Id.*, page 5, lines 6-9)

Thereafter, proceedings were held on January 7, 2002, during which the Honorable Steven Jones ruled Terry's judgment had expired:

> "IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the judgment rendered in the Decree of Divorce in favor of Defendant has expired pursuant to the statute of limitations set forth in NRS 11.190 and was not timely renewed pursuant to the procedures outlined in NRS 17.214. Further, there have been no circumstances that would merit a tolling of the statute of limitations, nor have any equitable considerations been raised to merit an equitable tolling." (*See* Order from January 7, 2002 Hearing, on file herein, page 2, lines 10-13)

On September 9, 2005, an Order was entered in the within matter wherein the Court concluded Terry's judgment from the Decree of Divorce through the date of the hearing from which the September 9, 2005 Order issued totaled $417,000.00 (*See* Order file-stamped September 9, 2005, page 2, lines 17-18)

In that same Order, the Court reserved the parties' rights to provide additional testimony, if necessary. (*Id.*, page 3, lines 15-16) As to the issues surrounding the payments of between $30,000.00 and $35,000.00 annually, referenced in the Order from the January 7, 2002 Order, Simone has witnesses he wishes to have testify on his behalf as to the deposit and subsequent use of those sums contributed to the profit sharing plan to protect the retirement accounts, which could in turn obviate this Court's determination as to contempt for failing to pay into the profit sharing plan as noted and directed by the Honorable Steven Jones.

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II.

Legal Analysis

EDCR 2.24. *Rehearing of motions*

> (a) No motion once heard and disposed of may be renewed in the same cause, nor may the same matters therein embraced be reheard, unless by leave of the court granted upon motion therefor, after notice of such motion to the adverse parties.
>
> (b) A party seeking reconsideration of a ruling of the court, other than any order which may be addressed by motion pursuant to NRCP 50(b), 52(b), 59 or 60, must file a motion for such relief within 10 days after service of written notice of the order or judgment unless the time is shortened or enlarged by order. A motion for rehearing or reconsideration must be served, noticed, filed and heard as is any other motion. A motion for reconsideration does not toll the 30 day period for filing a notice of appeal from a final order or judgment.
>
> (c) If a motion for rehearing is granted, the court may make a final disposition of the cause without reargument or may reset it for reargument or resubmission or may make such other orders as are deemed appropriate under the circumstances of the particular case.

A. Hofland Manning, associate counsel for Simone Russo, joins in the Motion for Reconsideration filed herein by Matthew Q. Callister, Esq., counsel for Simone Russo

Hofland Manning, as associate counsel, joins in the Motion for Reconsideration filed herein by Matthew Q. Callister, Esq., counsel for Simone Russo. However, Hofland Manning also files its own Motion for Reconsideration and/or Rehearing based upon two (2) additional claims for relief not addressed therein.

B. Rehearing of the Motion filed by Charles Hoskin, Esq., on behalf of Terry Russo, is warranted

In the September 9, 2005 Order, this Honorable Court determined Terry was entitled to judgment on the $200,000.00 she was awarded in the 1993 Decree of Divorce, plus interest. (*See* September 9, 2005 Order, page 2, lines 3-18) However, Judge Jones had determined, as a matter of law, Terry's judgment had expired. (*See* Order from January 7, 2002 Hearing, page 2, lines 10-13) In fact, Judge Jones' Order specifically notes Terry's judgment had expired:

> "IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the judgment rendered in the Decree of Divorce in favor of Defendant has expired pursuant to the statute of limitations set forth in NRS 11.190 and was not timely renewed pursuant to the procedures outlined in NRS 17.214. Further, there have been no

> circumstances that would merit a tolling of the statute of limitations, nor have any equitable considerations been raised to merit an equitable tolling." (*See* Order from January 7, 2002 Hearing, on file herein, page 2, lines 10-13)

Furthermore, Terry did not file a Motion for Reconsideration and/or Rehearing within ten (10) days of the Order being entered. Nor did Terry timely file either a Motion for a New Trial or an Appeal from Judge Jones' Order from the January 7, 2002. As such, the Order from the January 7, 2002 Hearing acts as *res judicata* on the issue of Terry's judgment from the 1993 Decree.

The September 9, 2005 Order, as it relates to the judgment Terry obtained against Simone in the Decree in 1993, is in direct contravention of Judge Jones' Order from the January 7, 2002 hearing. Terry's Motion, from which the September 9, 2005 Order emanates, is, in practical terms, a Motion for Reconsideration and/or Rehearing from Judge Jones' Order from the January 7, 2002 Hearing – brought some three plus years too late.

> **NRS § 11.190**. *Periods of limitation*
>
> Except as otherwise provided in NRS 125B.050 and 217.007, actions other than those for the recovery of real property, unless further limited by specific statute, may only be commenced as follows:
>
> 1. Within 6 years:
>
> (a) An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States, or the renewal thereof.
>
> . . . .

The exception, under NRS 125B.050 is for child support, and is the only exception within the dissolution of marriage statutes.

In *Evans v. Samuels*, 119 Nev. --, 75 P.3d 361 (2003) the Nevada Supreme Court also noted the six-year period for renewal would be rendered meaningless if not enforced.

Although the judgment creditor argued that there was no requirement that a judgment be renewed within six years from the date it was docketed in order to prevent a lien from expiring, subsection 2 of this section plainly provided that a lien would last for six years from the date the judgment was docketed, but expired if the judgment was not renewed within the six-year period;

the six-year period would be rendered meaningless if a lien were continued without renewal. *Evans v. Samuels*, 119 Nev. --, 75 P.3d 361 (2003).

NRS § 17.214. *Filing and contents of affidavit; recording affidavit of renewal; notice to judgment debtor*

1. A judgment creditor or his successor in interest may renew a judgment which has not been paid by:

(a) Filing an affidavit with the clerk of the court where the judgment is entered and docketed, within 90 days before the date the judgment expires by limitation. The affidavit must specify:

(1) The names of the parties and the name of the judgment creditor's successor in interest, if any, and the source and succession of his title;

(2) If the judgment is recorded, the name of the county and the number and the page of the book in which it is recorded;

(3) The date and the amount of the judgment and the number and page of the docket in which it is entered;

(4) Whether there is an outstanding writ of execution for enforcement of the judgment;

(5) The date and amount of any payment on the judgment;

(6) Whether there are any setoffs or counterclaims in favor of the judgment debtor and the amount or, if a setoff or counterclaim is unsettled or undetermined it will be allowed as payment or credit on the judgment;

(7) The exact amount due on the judgment;

(8) If the judgment was docketed by the clerk of the court upon a certified copy from any other court, and an abstract recorded with the county clerk, the name of each county in which the transcript has been docketed and the abstract recorded; and

(9) Any other fact or circumstance necessary to a complete disclosure of the exact condition of the judgment.

All information in the affidavit must be based on the personal knowledge of the affiant, and not upon information and belief.

(b) If the judgment is recorded, recording the affidavit of renewal in the office of the county recorder in which the original judgment is filed within 3 days after the affidavit of renewal is filed pursuant to paragraph (a).

2. The filing of the affidavit renews the judgment to the extent of the amount shown due in the affidavit.

3. The judgment creditor or his successor in interest shall notify the judgment debtor of the renewal of the judgment by sending a copy of the affidavit of renewal by certified mail, return receipt requested, to him at his last known address within 3 days after filing the affidavit.

4. Successive affidavits for renewal may be filed within 90 days before the preceding renewal of the judgment expires by limitation.

In fact, the only exception to *res judicata* provided for by the Nevada Supreme Court in domestic cases is for instances of domestic violence where the Court and/or a party was not fully apprised of the scope and breadth of the domestic violence in custody actions. *See Castle v. Simmons*, 120 Nev. Adv. Rep. 15, 86 P.3d 1042 (2004). As a result of the foregoing, the Order file-stamped September 9, 2005 should be vacated. In fact, if the Court elects not to vacate the September 9, 2005 Order, the Order will be maintained in direct violation of EDCR 2.24, the Nevada Rules of Appellate Procedure, and the principles of *res judicata.*

C. The Court reserved the parties' right to further evidentiary hearings in its September 9, 2005 Order

The Court's September 9, 2005 Order specifically references the possibility there would be additional litigation. Specifically, the Court noted: "IT IS FURTHER ORDERED that Plaintiff's counsel shall submit an Affidavit of Witnesses and Exhibits to Defendant's counsel if this matter needs further litigation." *See* September 9, 2005 Order, page 3, lines 14-16.

Simone will forthwith submit an Affidavit of Witnesses and Exhibits to Defendant's counsel, and therein identify witnesses who he expects will testify, at the requested continued Evidentiary Hearing, as to his deposits into the profit sharing plan, as well as his withdrawal of funds therefrom to protect the retirement accounts. Said Affidavit of Witnesses and Exhibits shall be provided to Mr. Hoskin well in advance of the Hearing scheduled on Simone's Motions for Reconsideration and/or Rehearing, to be heard November 3, 2005 at 10:30 a.m.

As a result of the express reservation, Simone also respectfully requests this Court set the Evidentiary Hearing for additional evidence and testimony to be given in support of his defense to Mr. Hoskin's claim of Contempt of Court.

III.

Conclusion

For the foregoing reasons, the Defendant respectfully requests this Court issue an Order:

1) Granting Reconsideration and/or Rehearing;

2) Determining the judgment as contained in the September 9, 2005 Order void under the principles of res judicata; and

3) Setting an Evidentiary Hearing to permit Simone to present additional evidence and testimony in defense of the claim of contempt made by Mr. Hoskins; and

4) Such other and further relief as the Court may deem appropriate.

DATED this 3rd day of September, 2005.

HOFLAND MANNING

John Marriner Eccles, Esq.
Nevada Bar Number: 006630
~~4495~~ South Pecos Road, Suite A
Las Vegas, Nevada 89121
(702) 895-6760
Attorney for the Plaintiff,
SIMONE RUSSO

AFFIDAVIT OF COUNSEL IN SUPPORT OF NOTICE OF JOINDER IN MOTION FOR RECONSIDERATION, NOTICE OF MOTION AND MOTION FOR RECONSIDERATION AND/OR REHEARING, AND/OR FOR FURTHER EVIDENTIARY PROCEEDINGS

STATE OF NEVADA)
) SS:
COUNTY OF CLARK)

John Marriner Eccles, Esq., being first duly sworn, affirmatively states as follows:

1) I am an attorney with Hofland Manning;

2) Hofland Manning has associated as counsel for the Plaintiff herein;

3) I have read the Motion for Reconsideration filed by Matthew Q. Callister, Esq., on behalf of Simone;

4) Hofland Manning joins in said Motion;

5) Hofland Manning submits a concurrent Motion for Reconsideration and/or Rehearing, and/or for further Evidentiary Proceedings;

6) I have read the foregoing Motion;

7) As to those matters stated therein of which I have personal knowledge, I swear they are true;

8) As to those matters stated therein of which I have no personal knowledge, I believe them to be true, and based upon this belief, affirm them to be true upon information and belief;

9) As it relates to the within Joinder and Motion, the following facts are relevant:

a) On June 2, 1993, Plaintiff, Simone Russo ("Simone") and Defendant, Terry Russo ("Terry") divorced. (*See* Decree of Divorce on file herein, file-stamped June 2, 1993)

b) Therein, Terry received a judgment against Simone in the amount of $200,000.00 plus interest. (*Id.*, page 5, lines 6-9)

c) Thereafter, proceedings were held on January 7, 2002, during which the Honorable Steven Jones ruled Terry's judgment had expired:

"IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the judgment rendered in the Decree of Divorce in favor of Defendant has expired pursuant to the statute of limitations set forth in NRS 11.190 and was not timely renewed pursuant to the procedures outlined in NRS 17.214. Further, there have been no circumstances that would merit a tolling of the statute of limitations, nor have any equitable considerations been raised to merit an equitable tolling." (*See* Order from January 7, 2002 Hearing, on file herein, page 2, lines 10-13)

d) On September 9, 2005, an Order was entered in the within matter wherein the Court concluded Terry's judgment from the Decree of Divorce through the date of the hearing from which the September 9, 2005 Order issued totaled $417,000.00 (*See* Order file-stamped September 9, 2005, page 2, lines 17-18)

e) In that same Order, the Court reserved the parties' rights to provide additional testimony, if necessary. (*Id.*, page 3, lines 15-16)

f) As to the issues surrounding the payments of between $30,000.00 and $35,000.00 annually, referenced in the Order from the January 7, 2002 Order, Simone has witnesses he wishes to have testify on his behalf as to the deposit and subsequent use of those sums contributed to the profit sharing plan to protect the retirement accounts, which could in turn obviate this Court's determination as to contempt for failing to pay into the profit sharing plan as noted and directed by the Honorable Steven Jones.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

John Marriner Eccles, Esq.

SWORN TO and SUBSCRIBED before me

this 23rd day of September, 2005.

NOTARY PUBLIC
JENNIFER JEAN MOSHER
STATE OF NEVADA - COUNTY OF CLARK
MY APPOINTMENT EXP. SEPT. 23, 2008
No: 04-91773-1

NOTARY PUBLIC in and for
said County and State

CERTIFICATE OF SERVICE BY FACSIMILE TRANSMISSION PURSUANT TO EDCR 7.26

The undersigned, an employee of HOFLAND MANNING, hereby certifies that on the 23rd day of September, 2005, she served by facsimile transmission a true and correct copy of the above and foregoing **NOTICE OF JOINDER IN MOTION FOR RECONSIDERATION, NOTICE OF MOTION AND MOTION FOR RECONSIDERATION AND/OR REHEARING, AND/OR FOR FURTHER EVIDENTIARY PROCEEDINGS** pursuant to the amendment to the Eighth Judicial District Court Rule 7.26, to the following:

Matthew Q. Callister, Esq.
Facsimile number: (702) 385-7743
Attorney for Plaintiff

and

Charles J. Hoskin, Esq.
Facsimile number: (702) 258-4740
Attorney for Defendant

By: _____
An employee of Hofland Manning

BRADLEY J. HOFLAND*
MATTHEW D. MANNING (1998-2005)
KARI J. HANRATTY
KEVIN M. HANRATTY
CAROL M. BARNES**
JOHN MARRINER ECCLES
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EMILY M. MCFARLING*
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***ALSO ADMITTED IN NEW JERSEY

DAWN K. CUNNIUS - OFFICE MANAGER

FACSIMILE TRANSMITTAL COVER LETTER

DATE: September 23, 2005

NAME: Charles J. Hoskin, Esq.

ATTENTION:

FROM: Kevin M. Hanratty, Esq.

FACSIMILE: (702) 258-4740

SUBJECT: Russo vs. Russo

If there are any problems with this transmission, please contact our office at (702) 895-6760.

MESSAGE: Motion

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1) HOFLAND/MANNING Attorneys at Law
2)

Date/Time: Sep. 23. 2005 2:34PM

File No.	Mode	Destination	Pg(s)	Result	Page Not Sent
6897	Memory TX	2584740	P. 13	OK	

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DAWN K. CUNNIUS - OFFICE MANAGER

FACSIMILE TRANSMITTAL COVER LETTER

DATE:	September 23, 2005
NAME:	Charles J. Hoskin, Esq.
ATTENTION:	
FROM:	Kevin M. Hanratty, Esq.
FACSIMILE:	(702) 258-4740
SUBJECT:	Russo vs. Russo

If there are any problems with this transmission, please contact our office at (702) 895-6760.

MESSAGE: Motion

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DAWN K. CUNNIUS - OFFICE MANAGER

FACSIMILE TRANSMITTAL COVER LETTER

DATE: September 23, 2005

NAME: Matthew Q. Callister

ATTENTION:

FROM: Kevin M. Hanratty, Esq.

FACSIMILE: (702) 385-7743

SUBJECT: Russo vs. Russo

If there are any problems with this transmission, please contact our office at (702) 895-6760.

MESSAGE: Motion

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DAWN K. CUNNIUS - OFFICE MANAGER

FACSIMILE TRANSMITTAL COVER LETTER

DATE:	September 23, 2005
NAME:	Matthew Q. Callister
ATTENTION:	
FROM:	Kevin M. Hanratty, Esq.
FACSIMILE:	(702) 385-7743
SUBJECT:	Russo vs. Russo

If there are any problems with this transmission, please contact our office at (702) 895-6760.

MESSAGE: Motion

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