

**COMMISSION ON JUDICIAL SELECTION
APPLICATION
SECOND JUDICIAL DISTRICT COURT
DEPARTMENT 12**

By

Aimee Elizabeth Banales



**SECTION I: PUBLIC INFORMATION
(QUESTIONS 1 THROUGH 47)**

Personal Information

- 1. **Full Name:** Aimee Elizabeth Banales
- 2. **Have you ever used or been known by any other legal name (including a maiden name)? If so, state name and reason for the name change and years used.**

Yes, I used my maiden name, *Woodhall*, until my marriage in 1992 when I took my husband's last name, *Banales*.

- 3. **Work Address:** Second Judicial District Court, Family Division
1 S. Sierra Street
Reno, Nevada 89501

- 4. **How long have you been a continuous resident of Nevada?** 21 years.

- 5. **Age:** 49
(NRS 3.060 states that a district judge must be at least 25 years old.)

Employment History

- 6. **Using the format provided in Attachment "A" please start with your current employment or most recent employment, self-employment, and periods of unemployment for the 20 years immediately preceding the filing of this Application.**

Current Employer: Second Judicial District Court

Phone Number: (775) 328-3157

Address: 75 Court Street, Reno, Nevada 89501

From/To: August 2017- Present

Supervisor's Name: Judge Dixie Grossman

Supervisor's Title: District Judge, Second Judicial District Court, Family Division

Your Title: Master

Specific Duties: As a court Master, I am assigned to the domestic violence division of the family court. My duties include reviewing and ruling on over 2,000 ex parte applications filed each year requesting civil protection orders; conducting hearings on requests for extended protection orders; issuing extended protection orders; establishing child custody and visitation provisions as well as child support and emergency financial support provisions; conducting review hearings; conducting compliance hearings; and ruling on motions filed by parties with active protection orders. I also preside over a weekly child support docket. When needed, I assist with hearing the juvenile and dependency dockets,

and I hear Case Management Conferences, Settlement Conferences, and motions regarding child custody upon request of the Family Court judges.

Previous Employer: Law Offices of Aimee E. Banales (dba Banales & Associates)

Phone Number: (775) 323-3888

Address: 620 Lander Street, Reno, Nevada 89509

From/To: May 2005 - August 2017

Supervisor's Name: None

Supervisor's Title: None

Your Title: Owner

Specific Duties: I provided legal representation to family law clients and handled complex litigation. As the owner of my law firm, I was responsible for all aspects of business management including administrative duties and employee relations.

Reason for Leaving: I accepted a position as a court Master for the Second Judicial District Court.

Previous Employer: Independent Contractor

Phone Number: (775) 324-3888

Address: 190 Huffaker Lane, Suite 401, Reno, Nevada 89509

From/To: 2004-2005

Supervisor's Name: Shannon Bryant

Supervisor's Title: Owner

Your Title: Contract Attorney

Specific Duties: Provided legal research and writing contract services for sole family law practitioner.

Reason for Leaving: I transitioned into opening my own law practice, focusing on family law and estate planning.

Previous Employer: Nevada Attorney General's Office

Phone Number: (775) 684-1100

Address: 100 N. Carson Street, Carson City, Nevada 89701

From/To: April 2000 to August 2003

Supervisor's Name: Jonathan Andrews

Supervisor's Title: Chief Deputy Attorney General

Your Title: Deputy Attorney General

Specific Duties: As a Deputy Attorney General, I was part of the Special Prosecutions Unit of the Criminal Division and defended the State against writs of habeas corpus filed by inmates. I represented the Nevada Division of Environmental Protection, as well as the Secretary of State's Notary Division. I also had the honor of appearing and arguing two cases in front of the Ninth Circuit Court of Appeals in San Francisco.

Reason for Leaving: While I enjoyed working at the Attorney General's Office, I decided to take time off after the birth of my second child.

Previous Employer: Washoe County District Attorney's Office

Phone Number: (775) 789-7100

Address: 1 S. Sierra Street, Reno, Nevada 89501

From/To: January 2000 to April 2000

Supervisor's Name: Susan Hallahan

Supervisor's Title: Chief Deputy District Attorney

Your Title: Deputy District Attorney

Specific Duties: My responsibilities as a Deputy District Attorney included handling a large case load of child support matters, communicating with parties and case workers, and preparing cases for presentation in court at daily child support hearings.

Reason for Leaving: I was contacted by Attorney General Frankie Sue Del Papa and was offered a Deputy Attorney General position that had become available.

Previous Employer: Nevada Attorney General's Office

Phone Number: (775) 684-1100

Address: 100 N. Carson Street, Carson City, Nevada 89701

From/To: April 1999 to January 2000

Supervisor's Name: Jonathan Andrews

Supervisor's Title: Chief Deputy Attorney General

Your Title: Legal Researcher; Special Deputy Attorney General

Specific Duties: Until a designated Deputy Attorney General position became available, I provided legal research support and advice to several divisions within the agency.

Reason for Leaving: I was hired as a legal researcher while awaiting passage of the Nevada Bar Exam. Upon passing the bar, there was not an open position for a Deputy Attorney General, so I was sworn in as a Special Deputy Attorney General. Not knowing when a Deputy Attorney General position would become available, I accepted an offer from the Washoe County District Attorney's Office.

Educational Background

7. **List names and addresses of high schools, colleges and graduate schools (other than law school) attended; dates of attendance; certificates or degrees awarded; reason for leaving.**

Sequoia High School, 1201 Brewster Avenue, Redwood City, California 94062

Attended: 1984-1988

Certificate awarded: High School Diploma

Reason for leaving: Graduated

Pennsylvania State University, 201 Old Main, University Park, Pennsylvania 16802

Attended: Fall 1988 – June 1990

Reason for leaving: Transferred to Westmont College, in part to return to California to be closer to my family, and also to support my husband's career as he had graduated from Penn State and obtained a job in his home town of Santa Barbara.

Westmont College, 955 La Paz Road, Santa Barbara, California 93108

Attended: Fall 1990- June 1992

Degree awarded: Bachelor of Arts, English

Reason for leaving: Graduated

While attending Westmont College, I also took several elective credits at two community colleges to minimize tuition credit costs.

The National Judicial College, MS 358, Reno, Nevada 89557

Attended: 2018 to present

Graduate Student in Master of Judicial Studies Degree program

8. Describe significant high school and college activities including extracurricular activities, positions of leadership, special projects that contributed to the learning experience.

Significant High School Activities

Student Government: During high school, I was actively involved in student government. I was elected to serve as president of my junior class, and I participated in many student government activities throughout all four years of high school. Involvement with student leadership enhanced my education in many ways. I learned at a young age how to work cooperatively and effectively with others, how important organization and time management is, to listen to and respect the concerns and ideas of others, and how to think critically and identify areas of improvement to initiate change. I was also a member of the varsity dance/cheer team all four years of high school and participated in several productions and competitions.

Mexico Work Mission: Every spring break during high school, I participated in a student work project through my church to Mexicali, Mexico. These trips expanded my awareness of the world and developed within me a strong desire to help others. This was my first exposure to the severe circumstances in which many people live, and it put my previously small world into perspective. I also began to understand the deeper issues that arise for people by a lack of access to resources and educational support.

Europe Travel: During the summer leading into my senior year, I travelled through Europe for six weeks with a group of high school students. This further expanded my perspective and world view, and I am an ardent supporter of the value of the education that exists outside of the classroom.

Community Involvement: Because my father was the head football coach and teacher at a rival high school, much of my time was spent supporting his various athletic activities and attending community and school functions. With his position as a coach and teacher, my family was sought out to help people in our community, and it was not surprising to come home to find someone eating at our dinner table or sleeping on our couch. Even today, my family is contacted by past students and athletes who remain appreciative of the attention, lessons, and support they received. Led by the example of my parents, I developed a strong

sense of independence, observed the impact of kindness and generosity, and formed a family and community centered focus.

Significant College Activities

Urban Program: In the fall semester of my junior year, I participated in a school program in which a small group of selected students spent a semester living in San Francisco, taking classes and obtaining an internship. As students, we relied on public transportation to navigate the city and we had to seek out, apply for, and obtain our own internship. I was offered an internship with the San Francisco Public Defender's Office. During this internship, I worked with a senior trial attorney during his handling of a high-profile, divisive murder case that occurred after a Giants baseball game and involved two local young men. Observing the process of this case as it moved to trial (to a not guilty verdict) had a lasting impact on me and my career goals. The trial attorney is now a Superior Court Judge in San Francisco and someone I am fortunate to consider my first mentor. From this experience, I learned how vitally important it is for an individual to have effective legal representation, how complicated and challenging legal issues and competing interests can be, and I learned the importance of mentorship. I still find it remarkable that a senior trial attorney would invest time and attention in an unpaid college intern that could have easily been dismissed. I consider myself very fortunate to have had the opportunity to be involved in such a unique experience.

Theater: During college, to the consternation of my parents, I was a declared theater major. Although I subsequently chose the more stable English Literature major, I thoroughly enjoyed participating in all of the activities and excitement of the theater and performing in several productions.

- 9. List names and addresses of law schools attended; degree and date awarded; your rank in your graduating class; if more than one law school attended, explain reason for change.**

Gonzaga University School of Law, 721 N. Cincinnati Street, Spokane, Washington
99202

Attended: 1994-1995

Reason for change: I transferred to Northwestern School of Law upon learning I was pregnant with my first child. The law school offered an evening program which allowed me to stay home with my daughter during the day and study, and attend classes at night (when my husband would take over her care). I had my daughter two weeks before finals during the first semester of my second year of law school.

Northwestern School of Law, Lewis & Clark College, 10015 S.W. Terwilliger Blvd,
Portland, Oregon 97219

Attended: 1995-1997

Degree: Juris Doctorate

Rank: 101/189

10. Indicate whether you were employed during law school, whether the employment was full-time or part-time, the nature of your employment, the name(s) of your employer(s), and dates of employment.

During my first year of law school, I worked at a law firm, Winston & Cashatt, in Spokane, Washington as a part-time law student intern. After having my child a few months after starting my second year of law school, I attended school full-time, and focused exclusively on studying and caring for my daughter and family.

11. Describe significant law school activities including offices held, other leadership positions, clinics participated in, and extracurricular activities.

As explained above in questions 9 and 10, the demands of being a first-time mother and learning to care for a baby while also pursuing my legal education required sacrifice. I had two goals when faced with the unexpected reality of having a child: first and foremost, raising a healthy, happy, and loved child; and second, to graduate on time. With that focus and the help of my husband and family, I was able to achieve those goals. Although a challenging time, our daughter was (and still is) a constant source of joy and laughter, and she always lent perspective on even the hardest days. Although my untraditional circumstances required more personal sacrifices during law school, I was proud of my achievements both as a new mother and in obtaining my law degree.

Law Practice

12. State the year you were admitted to the Nevada Bar. 1999

13. Name states (other than Nevada) where you are or were admitted to practice law and your year of admission.

I was admitted to the California Bar in 1998. I am still a member of the California Bar, but maintain my license in "inactive" status.

14. Have you ever been suspended, disbarred, or voluntarily resigned from the practice of law in Nevada or any other state? If so, describe the circumstance, dates, and locations. No.

15. Estimate what percentage of your work over the last 5 years has involved litigation matters, distinguishing between trial and appellate courts. For judges, answer questions 16-20 for the 5 years directly preceding your appointment or election to the bench.

As a family law attorney for the twelve years prior to my appointment to the bench, my work was nearly all litigation in trial courts (approx. 90%), with the minority of cases being uncontested matters and/or estate planning (approx. 10%). There were only a small handful of cases that went to appeal.

16. Estimate percentage of time spent on:

- (1) domestic/family and juvenile law matters: 95%**
- (2) civil litigation: 0**
- (3) criminal matters: 0**
- (4) administrative litigation: 0**

17. In the past 5 years, what percentage of your litigation matters involved cases set for jury trials vs. non-jury trials?

Although approximately 90% of cases would begin as contested, litigated family law matters on track for non-jury trials, the majority of those cases would settle prior to trial. I estimate less than 5% of cases went to trial; however, many of the litigation matters would include evidentiary hearings which are similar to trial.

18. Give the approximate number of jury cases tried to a conclusion during the past five years with you as lead counsel. Give the approximate number of non-jury cases tried to a decision in the same period.

Because all of my cases were family law matters, those that were tried to a decision were always bench trials. In the five years before taking the bench, I tried many litigated family law cases to a decision by way of evidentiary hearings. Approximately 5 cases were tried to decision by way of a formal bench trial.

19. List courts and counties in any state where you have practiced in the past 5 years.

I practiced in the following courts:

- Second Judicial District Court, Washoe County, Nevada
- First Judicial District Court, Carson City, Nevada
- Third Judicial District Court, Lyon County, Nevada
- Ninth Judicial District Court, Douglas County, Nevada
- Tenth Judicial District Court, Churchill County, Nevada

20. List by case name and date the five cases of most significance to you (not including cases pending in which you have been involved), and list or describe:

- a. case name and date,**
- b. court and presiding judge and all counsel**
- c. the importance of each case to you and the impact of each case on you,**
- d. your role in the case.**

While serving as a Master in the domestic violence court, I have been impacted more than I could have thought possible in two short years. I have learned a lot about the complex issues involved in families affected by domestic violence; however, as many of these cases are ongoing and can frequently return to court, I will focus here on cases that I had during my family law practice.

1. Leta Ann Jenkins v. Taylor Matthew Jenkins; DV07-02093 (2007)
Second Judicial District Court; Honorable David Hardy
Counsel for Ms. Jenkins: Aimee Banales; Counsel for Mr. Jenkins: Ray Oster

This case involved a contentious custody battle and I was a fairly new family law attorney going against a very experienced opposing counsel. After the parties' divorce, the litigation intensified and each party filed a motion for primary custody of their only child and the case went to trial. The litigation was very active and required regular attention and management. The parties were embroiled in expensive and emotionally tolling litigation with the young child caught up in the middle of the parents' battle. At the conclusion of the trial, neither party received what they wanted. After thousands of dollars spent (and thousands of dollars owed which my client later discharged in bankruptcy), neither party prevailed and they had completely lost sight of what was most important, which was the needs of their only child. In addition to the lessons learned through the extensive litigation process, the matter highlighted the challenges of the litigation model to effectively resolve disputes within a family. It was a challenging trial and one of my first, but I learned a great deal. I learned from the litigation itself, I learned from opposing counsel, and I learned from the presiding Judge. I was very appreciative of a note received from the Judge after the case concluded, encouraging me in my work as a new and valued member of the family bar, and recognizing that although my hard work may not have been financially profitable, the reward was to be found in striving to help people.

2. Kalie Young v. Christopher Islas-Salido; 14-10DC-0515 (2015)
Tenth Judicial District Court; Honorable Thomas Stockard
Counsel for Mr. Islas-Salido: Aimee Banales; Megan Lucey; Abby Moran
Counsel for Ms. Young: David Neidert; David O'Mara

This case is memorable because of its unusual procedural history, the vulnerability of the client, and the unique challenges presented in litigating a case in another jurisdiction. This matter involved a young father who was served with a petition to establish custody of the parties' young child with alternative relief pled for a termination of his parental rights. The mother had legal counsel and active family support, and my client was a young Hispanic man who was not a citizen, held only a green card, had no lawyer, no family support, and minimal funds with which to retain counsel to protect his rights. He was understandably frightened by the appearance of a threat to lose his parental rights, despite it being legally and procedurally improper. The Court ultimately struck the request to terminate parental rights from the custody petition but responding to that claim cost the client a substantial amount, financially and emotionally. The opposing party and her family were uncooperative throughout the proceeding, resulting in increased litigation and court involvement to preserve the client's rights. The case went to trial and our client prevailed, receiving joint physical custody. An associate attorney in my firm took over the litigation in this case but everyone in the law office was invested in the client's case and worked diligently to respond to and address the regular issues that arose. The presiding Judge was also accommodating by allowing telephonic conferences as he recognized the difficulties for our client to be brought into court repeatedly to resolve issues. If Father did not have the benefit of effective legal counsel advocating for him, nor a fair and attentive

judge, the outcome would have been different. This was a case we believed in so strongly, that even when the client could not afford to pay for legal services, we continued representation through trial. I learned the great value in having a passionate, organized, and knowledgeable legal team working together for a common goal.

3. In Re the Marriage of Erick Harpole and Julie Harpole; DV08-00570 (2008)
Second Judicial District Court; Honorable Francis Doherty
Counsel for Ms. Harpole: Aimee Banales
Counsel for Mr. Harpole: Todd Torvinen; Andriea Aiden

Although this case began as an uncontested joint petition for divorce, the family had difficulty escaping the revolving door of the court. I represented Ms. Harpole in the post-decree modification issues, and I remained on the case until I left private practice to join the bench. One issue that arose in the course of litigation was Mr. Harpole's attempt to reduce his child support. Mr. Harpole was self-employed and his financial representations were not clear, which required an opening of discovery and additional litigation. My client appreciated the extensive work that was undertaken to disprove the financial representations, and the effort from the court master and district court judge who carefully examined the evidence presented. Following that litigation, Mr. Harpole then filed a motion to have the two children who resided in Nevada with Ms. Harpole, a teacher, to relocate to his home in Oregon. My client was devastated and fearful at the mere suggestion of her children moving away from her. My client ultimately prevailed and Mr. Harpole then appealed the district court's decision. In the appeal process, the matter was referred to mediation. My client's willingness to negotiate despite having prevailed in the case was remarkable. Ms. Harpole was cooperative in mediation, working through issues for the sake of the children rather than standing her ground on principle. Because of her willingness to enter into mediation in good faith, the case was resolved and the appeal dismissed. This case was memorable as I learned how important dispute resolution is in family law matters, even in the midst of combative circumstances. It also highlighted the benefits of utilizing a strong, trained mediator to resolve family law issues.

4. Ryan Reynolds v. Min Choe; CV01-04583 (2010)
Second Judicial District Court; Honorable Charles McGee; Honorable Linda Gardner
Counsel for Ms. Choe: Aimee Banales
Counsel for Mr. Reynolds: Marilyn York

This matter came before the court on Mr. Reynold's ex parte motion to suspend the joint custody schedule due to Ms Choe's continued, serious alcohol abuse, failed attempts at rehabilitation, and subsequent arrest. I was retained by Ms. Choe's parents and never met my client until she came into court for the emergency hearing. I first met my client when she was brought into court from the holding cell, as she was still in custody facing criminal charges. At the time, my client did not want to talk to me. She was upset, uncooperative, and defiant. I questioned whether I would be able to handle this client and effectively assist her. I made unfair assumptions about my client and doubted whether she could pull her life together. I persisted in representation, focused on being her advocate and prompting her to achieve successful recovery in the hopes of restoring what she had lost. What started

out as a challenging situation turned into a positive experience, as I was able to witness the transformation of my client and our relationship. As my client came to terms with the reality of what had happened and began taking personal responsibility for her actions, she focused on recovery and committed herself to being the mother her child needed and deserved. My client successfully fought to overcome her mistakes and addictions, and realized great success. We developed a close and caring working relationship, and I was proud of her accomplishments. When we returned to court, the Judge also recognized her progress and restored her joint custody rights. I learned from this case to look at everyone as an individual and that no one is a lost cause; that I can be instrumental in facilitating positive change to help restore healthy families by providing support and access to resources.

5. In re the Marriage of: Wayne A. Capurro and Shelly J. Capurro, Joint Petitioners; DV08-02140 (2008)
Second Judicial District Court; Honorable Linda Gardner
Counsel for Ms. Capurro: Aimee Banales
Counsel for Mr. Capurro: Rayna Brachmann

This case is memorable not because of its complexity but rather due to the parties' reasonable and cooperative manner in their divorce proceeding. The parties had two children and were more concerned with the children's well-being than receiving all that they were legally entitled to in the divorce. Mr. Capurro had a good career but wanted to work less so he could be home more with the children and participate in parenting. This impacted the financial support Ms. Capurro would receive, and I initially advised her to refuse a settlement that represented less than that to which she was legally entitled. After many discussions with my client, it was apparent that her focus was on the value of the children having a more present and active Father. She was willing to forego a better financial outcome in order to do what she believed was best for her and the family overall. Since the divorce, I occasionally run into my client and she is remarkably happy, has no anger associated with the divorce, and has in fact, remained close friends with her ex-husband. Their children are thriving as a result of their exceptional ability to co-parent. This case was a lesson to me in listening to my client and considering the specific, unique goals and desires of the client rather than forcing my own beliefs as to what is the right outcome. I learned that there is great value in resolving family law disputes in a civil manner that preserves relationships and centers on mutual compromise to meet each party's respective goals.

- 21. Do you now serve or have you previously served as a mediator, an arbitrator, a part-time or full-time judicial officer, or a quasi-judicial officer? To the extent possible, explain each experience.**

Yes, I was appointed in 2017 to serve as a Master in the Family Division of the Second Judicial District Court. I am assigned to the domestic violence division where I manage and preside over a daily docket of domestic violence cases, many of which also include custody and support issues. I also preside over a child support docket once every week, and I provide coverage to the District Family Court Judges for Case Management

Conferences, Settlement Conferences, and emergency hearings regarding child custody, as needed.

22. Describe any pro bono or public interest work as an attorney.

While in family law practice, I provided pro bono services through Nevada Legal Services and Washoe Legal Services, and participated with Lawyer in the Library. I also provided pro bono and reduced-fee services to many clients in the course of my twelve-year law practice.

23. List all bar associations and professional societies of which you are or have been a member. Give titles and dates of offices held. List chairs or committees in such groups you believe to be of significance. Exclude information regarding your political affiliation.

Nevada Bar Association, Member
 California Bar Association, Member (inactive)
 Washoe County Bar Association, Member
 Women Lawyers of Northern Nevada, Member
 National Council of Juvenile and Family Court Judges, Member
 Nevada Collaborative Divorce Professionals, Former Member
 Nevada Dispute Resolution, Former Member
 National Justice Association, Former Member

24. List all courses, seminars, or institutes you have attended relating to continuing legal education during the past 5 years. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge? Yes, I am in compliance.

- Where Have All the Lawyers Gone? Keys to Effective Judging with Self-Represented Litigants
February 28, 2019
National Judicial College, Webcast
- Managing Challenging Family Law Cases: A Practical Approach
October 8-11, 2018
National Judicial College; Reno, Nevada
- Decision-Making
August 6-9, 2018
National Judicial College; San Diego, California
- Continuing Judicial Skills in Domestic Violence Cases
April 20-21, 2018
National Council of Juvenile and Family Court Judges; Washington, DC
- Enhancing Judicial Skills in Domestic Violence Cases
December 4-6, 2017
National Council of Juvenile and Family Court Judges; Santa Fe, New Mexico

- General Jurisdiction
October 9-19, 2017
National Judicial College; Reno, Nevada
- Evidentiary Issues in Family Court
September 8, 2017
Second Judicial District Court; Reno, Nevada
- Temporary & Extended Protection Orders
June 23, 2017
Second Judicial District Court; Reno, Nevada
- 40 Hour Mediation Training
May 1-5, 2017
Margaret Crowley; Reno, Nevada
- 2017 Family Law Conference
March, 2017
Bishop, Nevada
- Ethical Issues in Making Capacity Decisions
February 14, 2017
Webcast
- Collaborative Law Training
January, 2017
Carmel, California
- Introduction to Collaborative Law
October 9, 2015
Reno, Nevada
- Practicing Family Law: Avoiding Malpractice
September 3, 2015
Reno, Nevada
- 2015 Family Law Conference
March, 2015
Ely, Nevada
- Appellate Ethics & Preserving Issues for Appeal in Nevada State & District Courts
February 30, 2015
Reno, Nevada
- Substance Abuse Disorders: A Primer on Drug Classification, Neurobiology
February 27, 2015
Webcast
- As Family Court Judges See It: Top Mistakes Attorneys Make in Litigation
October 24, 2014
Reno, Nevada

25. Do you have Professional Liability Insurance or do you work for a governmental agency?

I do not have professional liability insurance as I work for the Second Judicial District Court.

Business and Occupational Experience

- 26. Have you ever been engaged in any occupation, business, or profession other than a judicial officer or the practice of law? If yes, please list, including the dates of your involvement with the occupation, business, or profession.**

No.

- 27. Do you currently serve or have you in the past served as a manager, officer, or director of any business enterprise, including a law practice? If so, please provide details as to:**
- a. the nature of the business,**
 - b. the nature of your duties,**
 - c. the extent of your involvement in the administration or management of the business,**
 - d. the terms of your service,**
 - e. the percentage of your ownership.**

Yes, from 2005-2017, I was the sole owner and operator of Banales & Associates, an S Corporation. My duties consisted of providing legal services to clients in the areas of family law and estate planning, while effectively managing all of the obligations and responsibilities that are inherent in small business ownership.

- 28. List experience as an executor, trustee, or in any other fiduciary capacity. Give name, address, position title, nature of your duties, terms of service and, if any, the percentage of your ownership.**

I have not worked in such capacity.

Civic, Professional and Community Involvement

- 29. Have you ever held an elective or appointive public office in this or any other state? Have you been a candidate for such an office? If so, give details, including the offices involved, whether initially appointed or elected, and the length of service. Exclude political affiliation.**

Yes, I was appointed to serve as a Master for the Family Division of the Second Judicial District Court in August, 2017.

- 30. State significant activities in which you have taken part, giving dates and offices or leadership positions.**

National Charity League: I have been an active member of the National Charity League since 2008. This non-profit organization of mother and daughter members is

focused on service, providing exposure to cultural experiences, increasing social awareness, and developing strong young women leaders serving and impacting communities. Both mothers and daughters attend meetings throughout the year and perform the majority of their charitable work hours together. National Charity League partners with many local charities to provide a volunteer work force throughout the year. Through participation with NCL over the past 11 years, I have had the pleasure of engaging in ongoing activities supporting the following organizations:

Special Olympics: Volunteered with assisting disabled athletes in track and field, bowling and swimming events; Assisted with race day set up and organization of Color Me Rad 5K fundraiser race;

Junior Achievement: Participated in annual "JA in a Day" where we go into a classroom for a day, teaching students to think about the value of contributing to their communities, teaching real world basic concepts relating to finances and job creation for communities, and entrepreneurial thinking;

Sierra Association of Foster Families: Organized an annual Christmas party for foster families with games, a visit from Santa, and treats for local children in foster care;

Casa De Vida: Prepared and delivered meals and gathered children's items for donation to home providing temporary housing and support to young pregnant women;

Ronald McDonald House: Prepared and delivered meals for families staying at the Ronald McDonald House with children receiving medical care;

Reno Sparks Gospel Mission: Served meals to the homeless population; collected and distributed hygiene items for the homeless;

Juvenile Diabetes Research Foundation, Nevada Chapter: Volunteered in several activities throughout the year supporting the Nevada Chapter of JDRF, including the JDRF One Walk, the Hunter Derby Horse Race fundraiser, and the annual fundraising gala;

Children's Cabinet: Served as Liaison to the Children's Cabinet for 6 years; Collected and delivered hundreds of backpacks and school supplies for families receiving assistance through the Cabinet; Assisted with tethered balloon rides for children at annual Great Reno Balloon Race;

Lake Tahoe Shakespeare Festival: Volunteered at annual LTSF, assisting with performance day preparations, seating and merchandise.

I am now in my last year of NCL since my youngest daughter is graduating from High School. Participation in NCL provided an avenue for continuous community engagement and service, and to do so alongside my daughters.

Judicial Outreach Week: Since I have been serving as a judicial officer, I have enjoyed participating in Judicial Outreach Week, which is a national event that involves local judges going into the community to talk to students in the classroom about the judiciary, the rule of law, and other important legal concepts.

National High School Mock Trial: I enjoy volunteering each year as a scoring judge for the National High School Mock Trial competition. It is inspiring and impressive to observe the dedication, passion and knowledge of the students participating.

Work Mission to Port Au Prince, Haiti: One of the most significant activities I engaged in was travelling to Haiti in 2016 to work with an orphanage with my two daughters, my nephew and a family friend. We partnered with Child Hope International on facility improvement projects, a pop-up medical clinic for the community, and other projects to help support the children and staff. This experience was profound as I witnessed the daily struggle of people to survive, many of whom had lost the things we hold most precious in life. It was difficult to accept the reality of life for children particularly, living without family support, in such extreme poverty and political unrest, and having little access to essential resources. This experience fundamentally changed each of us, and we continue to support and maintain contact with the organization.

31. Describe any courses taught at law schools or continuing education programs. Describe any lectures delivered at bar association conferences.

The National Judicial College has asked me to teach two domestic violence courses for Nevada judges in 2020. The courses will take place at UNLV and Great Basin College in Elko.

32. List educational, military service, service to your country, charitable, fraternal and church activities you deem significant. Indicate leadership positions.

National Judicial College: I am enrolled as a graduate student at The National Judicial College, in the Master of Judicial Studies Degree program. The caliber of education offered at the Judicial College has surpassed my expectations and has been an invaluable resource since taking the bench.

Church Activities: I have enjoyed participating in various community volunteer projects with several local churches. These include volunteering on improvement projects at Mt. Rose Elementary School through renovation of the teacher's lounge, re-painting of areas of the school building and playground improvements, and participating in school supply drives to assist teachers who are paying out of pocket for many of their student and classroom needs; delivering Thanksgiving meals to local families who could not otherwise afford it; and volunteering with a diaper drive to provide diapers to families who cannot afford that necessary cost.

33. List honors, prizes, awards, or other forms of recognition.

I received an award from Nevada Legal Services for Pro Bono Attorney of the Year.

- 34. Have you at any time in the last 12 months belonged to, or do you currently belong to, any club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion, creed, national origin or sex? If so, detail the name and nature of the club(s) or organization(s), relevant policies and practices, and whether you intend to continue as a member if you are selected for this vacancy.**

No.

- 35. List books, articles, speeches and public statements published, or examples of opinions rendered, with citations and dates.**

I have rendered thousands of decisions and recommendations through my position as a court Master relating to domestic violence cases, and in the form of Interim Orders after Case Management Conference, Orders After Settlement Conference, Decrees of Divorce, Decrees of Custody, and Post-Decree rulings after hearing. Early in my private practice, I was a contributing article writer for Family Life Magazine. While a Deputy Attorney General, I issued written opinions related to issues surrounding interpretation of the Nevada Open Meeting Law.

- 36. During the past 10 years, have you been registered to vote? Have you voted in the general elections held in those years?**

Yes, I have been registered to vote in the past 10 years and I have voted in the general elections for those years.

- 37. List avocational interests and hobbies.**

Both of my children have been involved in competitive ski racing, and I have greatly enjoyed supporting their athletic achievements throughout the years. I enjoy skiing and engaging in outdoor activities with family and friends. I compete on a USTA tennis team, and I enjoy playing the piano, as well as the mental and physical benefits of yoga. I also have a love for travel and interesting cuisine.

Conduct

- 38. Have you read the Nevada Code of Judicial Conduct and are you able to comply if appointed?**

Yes.

- 39. Have you ever been convicted of or formally found to be in violation of federal, state or local law, ordinance or regulation? Provide details of circumstances, charges, and dispositions.**

I have had a few minor traffic violations since obtaining my driver's license at the age of 16.

- 40. Have you ever been sanctioned, disciplined, reprimanded, found to have breached an ethics rule or to have acted unprofessionally by any judicial or bar association discipline commission, other professional organization or administrative body or military tribunal? If yes, explain. If the disciplinary action is confidential, please respond to question 73.**

No.

- 41. Have you ever been dropped, suspended, disqualified, expelled, dismissed from, or placed on probation at any college, university, professional school or law school for any reason including scholastic, criminal, or moral? If yes, explain.**

No.

- 42. Have you ever been refused admission to or been released from any of the armed services for reasons other than honorable discharge? If yes, explain.**

No.

- 43. Has a lien ever been asserted against you or any property of yours that was not discharged within 30 days? If yes, explain.**

No.

- 44. Has any Bankruptcy Court in a case where you are or were the debtor, entered an order providing a creditor automatic relief from the bankruptcy stay (providing in rem relief) in any present or future bankruptcy case, related to property in which you have an interest?**

No.

- 45. Are you aware of anything that may require you to recuse or disqualify yourself from hearing a case if you are appointed to serve as a member of the judiciary? If so, please describe the circumstances where you may be required to recuse or disqualify yourself.**

No.

Other

- 46. If you have previously submitted a questionnaire or Application to this or any other judicial nominating commission, please provide the name of the commission, the approximate date(s) of submission, and the result.**

I have not previously submitted.

- 47. In no more than three pages (double spaced) attached to this Application, provide a statement describing what you believe sets you apart from your peers, and explains what particular education, experience, personality or character traits you possess or have acquired that you feel qualify you as a good district court judge. In so doing, address both the civil (including family law matters) and criminal processes (including criminal sentencing.)**

- 48. Detail any further information relative to your judicial candidacy that you desire to call to the attention of the members of the Commission on Judicial Selection.**

I do not enter into this candidacy lightly but have made this decision after much thought and discussion with family, friends, and colleagues. If I am honored to be chosen as the appointee to Department 12, it will require that I leave my current position as a court master in the domestic violence division, and will require a campaign for reelection. I have begun work on that campaign. I have prepared a growing list of supporters, spoken with potential campaign managers, and outlined a financial plan for the campaign. I am prepared and eager to campaign to either retain or fill the position as Family Court judge in Department 12.

- 49. Attach a sample of no more than 10 pages of your original writing in the form of a decision, "points and authorities," or appellate brief generated within the past 5 years, which demonstrates your ability to write in a logical, cohesive, concise, organized, and persuasive fashion.**

- - INSERT PAGE BREAK HERE TO START SECTION II
(CONFIDENTIAL INFORMATION) ON NEW PAGE

Question 47
Personal Statement

Early in my career, a family law attorney aptly pointed out that you don't choose family law, it chooses you. I found this to be true in my own life. It was only when I began this work fifteen years ago that I found a passion for and calling to family law. Since then, I have dedicated myself and my career to serving families and our community. It is with this same passion and calling that I seek appointment to serve as Family Court Judge in Department 12.

I bring to the bench three important foundational bases that equip me to serve as an effective family court judge: (1) fifteen years of family law experience; (2) twelve years of small business ownership and management; and (3) two years of hands-on judicial experience as a court Master. From these experiences, I have developed strong organizational skills and time management, extensive knowledge of family law, an ever evolving level of patience, and a firm belief in treating people with fairness and compassion.

The skills that I have acquired allow me to immediately begin handling every aspect of a judicial department. I am able to manage a busy docket, efficiently hear, analyze and render decisions, timely prepare orders, coordinate a court calendar, and organize a team to run an effective department. The judicial education provided through the National Judicial College has also significantly improved my skills as a judicial officer. Participating in a 40-Hour Mediation training shortly before taking the bench also played an important role in transitioning from lawyer/advocate to neutral decision maker. This well-rounded experience – representing clients in nearly every area of family law litigation,

managing a small business, standing at counsel table presenting cases to family court judges, and sitting on the bench making difficult decisions that have to be made – has uniquely prepared me to serve as a family court Judge.

In my experience as a judicial officer, I have grown to understand how important it is to have compassion and understanding toward the individuals who appear before me. I have heard thousands of stories while representing family law clients and during my service as a Master, and many of those stories resonate with me as a human being with similar life experiences and struggles. I am mindful to treat each party who appears in front of me with respect, remembering that their families are just as important as my own. It is a profound responsibility to issue decisions every day that impact people's lives. Some decisions are very difficult to make, and often have to be made without the luxury of enough time. Particularly with self-represented litigants, being compassionate and patient is necessary. Despite a full docket, it is important to take time to explain the proceedings, to ask questions to better understand, and to actively listen to what is being said. By doing this, the parties know that they have been heard and I am able to render a decision that is mindful of the specific needs of the family.

My experience both as a lawyer appearing in court and as a Master hearing cases, has made me acutely aware of acting to preserve fairness in the management of my hearings, for the parties and for legal counsel. I have learned that even when litigants do not get the result they wanted in court, if they feel that they were treated with fairness and were heard, they are more likely to comply with orders and conflict may be reduced. They are also more likely to view the court and the justice system, in general, more favorably. This is challenging in practice, particularly when allegations include serious,

abusive behavior. I bring to the bench a unique understanding of the importance of fairness, not as an abstract idea or ideal, but in the real, day-to-day intentional exercise of it in the midst of pressures inherent in family court.

Representing family law clients in nearly every type of family law matter has given me a solid foundation for serving as a Family Court Judge. The responsibilities of operating my law practice honed the skills needed to understand the myriad of responsibilities related to effectively managing a court department. The daily experience of serving on the bench as a Master for two years and the judicial education I have obtained, has equipped me with the knowledge base to be an effective and evolving judge. If chosen for this appointment, I will be honored and humbled to serve the community and the court to the best of my ability, on and off the bench.

Question 49
Writing Sample

COPY

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FILED

1 Case No.: 16 DI 0243

2 Dept. No: II

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3 The undersigned hereby affirms this document
4 does not contain a social security number.

Douglas County
District Court Clerk

BOBBIE R. WILLIAMS
CLERK

D. HECHMOVICH
BY DEPUTY

5 IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
6 IN AND FOR THE COUNTY OF DOUGLAS

8 SANDRA M. [REDACTED]

9 Plaintiff,

10 vs.

11 ROBERT D. [REDACTED]

12 Defendant.

REPLY IN SUPPORT OF MOTION TO
ENFORCE PARTIES' SEPARATION
AGREEMENT DATED JUNE 30, 2013

BANALES & ASSOCIATES
620 Lander Street
Reno, Nevada 89509

13
14 Plaintiff, SANDRA M. [REDACTED] ("Plaintiff"), by and through the undersigned
15 counsel, hereby files her Reply in Support of Motion to Enforce Parties' Separation
16 Agreement previously filed on or about August 12, 2016.

17 This Reply is based upon the following points and authorities, the attached
18 exhibits, and all papers and pleadings on file herein.

19 POINTS AND AUTHORITIES

20 It is clear from Mr. [REDACTED]'s opposition that he is willing to make desperate,
21 reckless, and malicious claims to try to escape being held to his contractual
22 obligations. Whatever his motivations for doing so, Mr. [REDACTED] entered into the
23 legal separation contract knowingly, voluntarily, and with full capacity and intent, and
24 clear of coercion or duress. By his own admission, and consistent with Nevada law,
25

1 marital agreements are enforceable. The fact that Mr. [REDACTED] chose not to obtain
2 legal counsel and proceeded in proper person is not an excuse that so easily releases
3 him from this marital contract.

4 Each and every allegation of Mr. [REDACTED] that attempts to shift the blame and
5 vilify Ms. [REDACTED] for his own behavior, are patently false and intentionally
6 misleading. Mr. [REDACTED] wants to escape responsibility for his own actions and in
7 doing so, attack Ms. [REDACTED] and her credibility. That is unconscionable. Ms.
8 [REDACTED] wanted the legal separation to protect herself and her children from Mr.
9 [REDACTED] destructive and harmful behavior, stemming primarily from his gambling
10 and alcohol addictions. Ms. [REDACTED] estimated at the time of separation that Mr.
11 [REDACTED] had depleted the marital estate and wasted upwards of \$400,000 on
12 gambling. Mr. [REDACTED] had already financially harmed the marital estate from his
13 gambling, and this was not a secret, as it was the source of many discussions and
14 many family pleas made to Mr. [REDACTED] to refrain from such behavior and get help.
15 The parties discussed the terms of settlement at length and agreed upon the terms
16 of the legal separation. Their agreement was then given to Ms. Yturbide to
17 memorialize. Ms. [REDACTED] was a dedicated and loving wife who wanted her marriage
18 to work, and given her strong religious beliefs, she never once threatened divorce.
19 Any representation to the contrary is false. Moreover, simply because the possibility
20 of reconciliation exists, does not void a legally binding contract. There is, in fact,
21 always the possibility of reconciliation if a party is moving for a separation rather than
22 a divorce. Contrary to legal advice from the undersigned counsel, Ms. [REDACTED] still
23 wishes to proceed with a legal separation as opposed to a divorce. According to Mr.
24 [REDACTED]'s theory, if a spouse's motivations in agreeing to a legal separation are to
25 save the marriage, then no legal separation could be enforceable. This is illogical.

1 A separation agreement should be enforced and is not void as against public
2 policy if its provisions are fair and reasonable, the agreement is understandable, and
3 it was not procured through fraud, misrepresentation, or non-disclosure. *Buettner v.*
4 *Buettner*, 89 Nev. 39, 45, 505 P.2d 600, 604 (1973). Separation agreements cannot
5 be unconscionable, or obtained through fraud, misrepresentation, material non-
6 disclosure, or duress. *Braddock v. Braddock*, 91 Nev. 735, 738, 542 P.2d 1060, 1062
7 (1975). None of those components are present in this case. Despite his claims, there
8 is nothing unconscionable about the parties' settlement agreement. Even a cursory
9 review of that agreement clearly reveals that it was a thorough agreement, fair to both
10 parties, and entered into in consideration of avoiding litigation. The Agreement is, in
11 fact, a very well drafted, thorough document which memorialized the parties'
12 agreement which was given the lawyer who prepared the formal documents. While
13 arguing that by virtue of Ms. [REDACTED] receiving the home, the agreement is
14 unconscionable, he ignores the very important fact that he engaged in marital waste
15 throughout the marriage for which Ms. [REDACTED] deserved to be made whole. *Lofgren*
16 *v. Lofgren*, 112 Nev. 1282, 926 P.2d 296 (1996) the Court clearly identified a
17 compelling reason to justify an unequal division of community property as the financial
18 misconduct of one of the parties, such as waste or secretion of community assets.
19 The Court also held in *Putterman v. Putterman*, 113 Nev. 606, 939 P.2d 1047 (1997),
20 that both the husband's financial misconduct provided compelling reasons for an
21 unequal disposition of community property. The court also noted other possible
22 compelling reasons for unequal division to include negligent loss or destruction of
23 community property, unauthorized gifts of community property and even
24 compensation for losses occasioned by marriage and its breakup.

1 Each settlement term in the separation reflects fairness, reasonableness, and
2 is clear evidence of an appropriate resolution of property given the circumstances in
3 this case. The fact that Ms. [REDACTED] received the home does nothing to prove that
4 the agreement was unfair. Mr. [REDACTED] had and continues to have a serious
5 gambling problem, and rather than litigating the terms of their separation and Ms.
6 [REDACTED] pursuing her waste claim against Mr. [REDACTED], the parties reached a fair
7 and equitable settlement, on all counts. It is not harsh nor one-sided. Mr. [REDACTED]
8 thoughtfully entered into this contract and should not be permitted to later disavow
9 his contractual duties. Particularly, as Ms. [REDACTED] also relied on the mutual
10 promises made in that settlement in agreeing to its terms.

11 In addition, Ms. [REDACTED] repeatedly inquired about Mr. [REDACTED] seeking his
12 own counsel. In fact, Mr. [REDACTED] expressly told Ms. [REDACTED] when she asked him
13 to talk to his own lawyer, that he didn't need a lawyer. There was nothing in this
14 agreement that was obtained through fraud, misrepresentation, material
15 nondisclosure or duress. None of those components are present. Mr. [REDACTED] fails
16 to establish the presence of any basis to support his claims.

17 It is unsettling that Mr. [REDACTED] is willing to vilify Ms. [REDACTED], attack her
18 character, and cause further destruction to her and the parties' children by claiming
19 she acted with fraud, misrepresentation, coercion, duress, and undue influence
20 against him. None of those accusations have any basis in truth and are patent
21 misrepresentations perpetrated upon the Court in an attempt to get a better deal.

22 It is revealing that in one statement Mr. [REDACTED] claims he had "no reason to
23 view the parties relationship as adverse" (page 5, lines 9-10) while later stating that
24 "the parties were experiencing marital difficulties" (page 7, lines 4-5). Mr. [REDACTED]
25 purposely misleads the court by stating that the parties were not physically separated.

1 The parties were, in fact, not living together at the time of the separation nor had they
2 been living together since February of that year. Even after Mr. ██████ returned to
3 the home after the legal separation, around November, there were regular periods of
4 separation subsequent to that, with Mr. ██████ living in an attached apartment.
5 There was not a confidential/fiduciary relationship at the time the separation terms
6 were discussed, negotiated, and agreed upon by the parties, and ultimately
7 memorialized by a lawyer in the Separation Agreement. The parties had not been
8 living together since February of that year, and the Agreement was entered in July.
9 The parties kept separate accounts and did not combine their incomes. This untruth
10 of Mr. ██████'s is easily proven. Finally, the parties discussed the terms of the
11 separation regularly and the documents were prepared consistent with their
12 discussions. For Mr. ██████ to claim he did not know what he was signing is an
13 impossibility.

14 Mr. ██████ also had ample opportunity to obtain the advice of independent
15 counsel, he was not coerced into making a rash decision by the circumstances under
16 which the agreement was signed, he has substantial business experience and
17 acumen and is well educated and successful, and he was fully aware of all of the
18 assets and debts of the marital estate. There is no question that he understood what
19 he was doing when he both signed the agreement and the ensuing quit claim deed.
20 How can any legal document, separation or divorce, that is accomplished via joint
21 petition with one party unrepresented stand up to subsequent attack, if such generic
22 accusations are allowed by the court. A party choosing to not obtain their own legal
23 advice when they had full and unfettered opportunity to do so, should not be grounds
24 to escape a binding legal contract. The courts need to uphold both the parties right
25 to freely contract and in doing so, uphold and confirm the validity of those contracts,

1 not allowing one party to escape his/her contractual duties in hopes of obtaining a
2 better deal.

3 Mr. [REDACTED] also cannot prove duress, because it did not exist. There was
4 never any threat made to Mr. [REDACTED] to sign those documents. Ms. [REDACTED] has
5 never made a threat to divorce Mr. [REDACTED] the entirety of their long term marriage,
6 not once. There was not only no threat made to Mr. [REDACTED], he was clear as to
7 why Ms. [REDACTED] wanted the separation, to protect herself and the children from his
8 further dissipation and destruction of the marital estate and to make her whole by
9 what had already been done. This fact was not a secret. It was a very present reality
10 in this family, with Ms. [REDACTED] begging Mr. [REDACTED] to get help, and the children
11 begging him as well. All to no avail. Mr. [REDACTED] does not do anything he does not
12 want to do. That simply is not the pattern of his behavior. Mr. [REDACTED]'s claims are
13 not a truthful recitation of facts.

14 Moreover, to prove duress, Mr. [REDACTED] would also have to prove that a threat
15 was made (which it was not) and that the threat overcame his ability to exercise free
16 will. This was not present. No threat was made, and every prompting and request
17 and advice to seek legal counsel was rebuffed by Mr. [REDACTED]. Was Ms. [REDACTED]
18 then expected to not move forward with the bargained for and agreed upon terms of
19 the parties? Certainly a party cannot tie the hands of the other party by simply
20 refusing to seek legal counsel and leaving the other with no choice, not being able to
21 move forward because of it. That cannot possibly be the intention of the judiciary or
22 the legislature. Setting aside the contract only encourages suits by disaffected parties
23 who no longer wish to honor their agreements. To void it would also be to restrict a
24 couple's freedom to contract. The same reluctance that the courts exercise in varying
25 provisions of a will should extend to the judicial treatment of marital contracts. The

1 same personal freedom to determine the disposition of one's own property is similar
2 with regard to both wills and marital contracts.

3 Mr. ██████'s claims that he has "bestowed tremendous benefit upon Sandra"
4 is nonsense. Contrary to the allegations in the Opposition, there has been absolutely
5 no financial benefit to either party by the other party since the Separation Agreement
6 was entered into. Mr. ██████ makes a completely unsupported claim and provides
7 no proof for such a statement. The fact is that all accounts, assets and debts, have
8 been held separately since the time of separation. All increases in post-separation
9 assets would inure, as appropriate, to the person who was awarded the asset.

10 Mr. ██████ has his own accounts and puts his own earnings into those
11 accounts and neither party has access or control over the other's accounts or funds.
12 Mr. ██████ has likely gambled much of his funds away, but this is precisely why Ms.
13 ██████ sought the legal separation. Mr. ██████ has a serious gambling problem
14 and does not contribute to anyone's needs, neither Ms. ██████ nor their children's.
15 Mr. ██████'s numerous misrepresentations and falsehoods will be made clear to
16 the court if this matter proceeds to a hearing, which should be unnecessary. It bears
17 noting as well, that Ms. ██████ had worked part time for the State and her PERS
18 was, as a result, next to nothing (Ms. ██████ believes that it was not even vested
19 at the time of separation). And Mr. ██████ was well aware of that minimal PERS
20 fund. Since separation, the PERS has of course grown, as has Mr. ██████'s PERS,
21 and rightly so as everything post-separation was not to be frozen, but to continue to
22 grow. This includes Mr. ██████'s PERS, which would be divided by the time rule
23 from the date of marriage to the date of separation. Why else would a separation be
24 entered into if not to separate the assets and debts? To claim that there is more
25 now, so the separation agreement shouldn't be enforced, is illogical.

1 In addition, Ms. [REDACTED]'s motion is most certainly not premature as it is a
2 controlling, valid contract that must be upheld. Everything in that document clearly
3 indicates that the Agreement is to be honored by the Court in the event of separation
4 or divorce, and binding in the event of reconciliation. Equally without merit is the
5 claim that discovery should be conducted first. This is a direct and outright
6 contradiction to the terms of the Agreement. The Agreement was entered into to
7 avoid litigation, so why is Mr. [REDACTED] trying to muddy the waters and argue for things
8 which are contrary to the terms of the parties' Agreement? The only answer is he
9 now wants a better deal for himself. And that is not grounds for setting aside this
10 contract. It is Mr. [REDACTED]'s actions that are unconscionable, not the Separation
11 Agreement. Neither Ms. [REDACTED] nor Ms. Yturbide engaged in any improper
12 conduct, and any claims to the contrary are defamatory and patently false.

13 Mr. [REDACTED] knowingly and voluntarily entered into two legally binding
14 contacts, the separation agreement and the Quit Claim Deed, each of which were
15 executed with full knowledge of its terms, the ensuing consequences (both positive
16 and negative), and with knowledge of the right and ability to obtain independent legal
17 counsel. Mr. [REDACTED] knew full well that he was entitled to obtain his own
18 independent counsel, and it is not unusual for a party to choose not to. That choice,
19 however, does not excuse them from adherence to and compliance with a contract.
20 How does the integrity of the judicial system stand when a party is allowed to not only
21 engage in such behavior, but benefit from it. Even his choice to not seek counsel is
22 revealing. Mr. [REDACTED]'s pattern of behavior reveals that he does not engage in any
23 act that he does not want to engage in. If Mr. [REDACTED] was allegedly motivated by
24 his pure desire to save his marriage, then it begs the question as to why he did not
25 do all of the other things that would have potentially saved his marriage? Why has

1 Mr. ██████ never attended counseling which Ms. ██████, and the children,
2 begged him to do. Why has Mr. ██████ not sought help for nor addressed his
3 gambling addiction which was a major impetus to the parties' fractured relationship?
4 Why didn't Mr. ██████ move from the home that was awarded to Ms. ██████ when
5 asked by Ms. ██████? Make no mistake, Mr. ██████ knows precisely what he is
6 doing, and he is intentional and strategic on all counts.

7 The indisputable facts are that the parties entered into a legally binding
8 contract, their Separation Agreement ("the Agreement"), in July 2013. They did so
9 while they were physically living separate and apart. In that document,
10 representations and promises were made that Ms. ██████ relied upon. Ms.
11 ██████ could have proceeded to court to pursue all of her claims against Mr.
12 ██████ but she didn't, in reliance on the promises made in the settlement context.

13 Both parties acknowledged that the "Agreement was made for the purpose of
14 removing the subject matter thereof from the field of litigation, and that in the event of
15 a legal separation and divorce being granted to either party, this Agreement shall
16 become incorporated as an exhibit to their Joint Petition or Complaint and shall be
17 merged into the Decree of Legal Separation or Divorce and shall be given the same
18 force and effect and legal consequence as though the contract were copied into the
19 decree, or attached thereto." See Agreement, p: 1, Section 1 (D).

20 Both parties initialed all twenty-five (25) pages of the Agreement. They also
21 signed and dated the last page, in front of a notary public. Although the parties signed
22 the Agreement on July 5, 2013, the effective date of the Agreement is June 30, 2013.
23 *Id.* at p. 16, Section 8(1). As further evidence of the parties' agreement, also on July
24 5, 2013, they executed a Quitclaim Deed in front of a notary public regarding the
25 conveyance of the real property located at 1399 Meadow Lane, Gardnerville, to Ms.

1 [REDACTED] as her sole and separate property. The Agreement further provides that the
2 parties shall be declared legally separated and the Decree of Legal Separation shall
3 be entered nunc pro tunc to May 30, 2013. *Id.* at p. 25, Section 8(27).

4 The parties agreed that the Agreement shall be incorporated and merged into
5 a decree of legal separation and/or divorce and that the parties shall be ordered to
6 abide by the terms of the Agreement. *Id.* at p. 16, Section 8(1). In the event of any
7 reconciliation after the parties' entered into the Separation Agreement, they agreed
8 that the Agreement would nevertheless continue in full force and effect until it was
9 modified or abrogated by another written instrument and signed and acknowledged
10 by each of the parties. *Id.*, Section 8(2).

11 Section 1(E) states:

12 "The parties fully acknowledge that they have read this Agreement and
13 fully understand the contents. The parties acknowledge that they each
14 have agreed to be bound by the terms of this Agreement and that
15 mutual consideration has been given one to the other in entering into
16 this Agreement. The parties acknowledge they have had ample
17 opportunity to obtain the advice of separate counsel of independent
18 selection prior to executing this Agreement. The parties represent to
19 the other that there is no reason why they cannot enter into this
20 Agreement, and that they have full capacity to understand the terms set
21 forth herein. Further, the parties acknowledge their consent to the
22 execution of this Agreement has not been obtained by duress, coercion,
23 fraud or undue influence by any person, and no representations of fact
24 have been made by either party to the other except as expressly set
25 forth in this Agreement."

Further, at Section 8(11), the parties agreed:

"This Agreement contains all the covenants and agreements between
the parties relating in any manner to the resolution of any issue
pertaining to their marital rights and duties. No representation,
inducement, understanding or anything of any nature whatsoever,
made, stated, or represented, on behalf of either, whether orally or in
writing, has induced either party to enter into this Agreement except for
the specific terms contained in this agreement."

1 The formalities, disclosures, negotiation, and execution of the parties'
2 Separation Agreement were proper and appropriate when signed and remain so. It
3 should be enforced according to its terms in accordance with NRS 123.070 and NRS
4 123.080 and the Nevada Supreme Court's recent unpublished, but relevant, decision
5 in *Kimberly Jones v. Fletcher Jones, Jr.*, amongst other relevant statutes and case
6 law.

7 As set forth in Ms. [REDACTED]'s motion, NRS 123.070 states as follows:

8 "Husband and wife may make contracts. Either husband or wife may enter
9 into any contract, engagement or transaction with the other, or with any other person
10 respecting property, which either might enter into if unmarried, subject in any contract,
11 engagement or transaction between themselves, to the general rules which control
12 the actions of persons occupying relations of confidence and trust toward each other."

13 NRS 123.080 further provides:

14 Contract altering legal relations: Separation agreement;
15 consideration; introduction in evidence in divorce action.

- 16 1. A husband and wife cannot by any contract with each other alter
17 their legal relations except as to property, and except that they may
18 agree to an immediate separation and may make provision for the
19 support of either of them and of their children during such
20 separation.
- 21 2. The mutual consent of the parties is a sufficient consideration for
22 such an agreement as is mentioned in subsection 1.
- 23 3. In the event that a suit for divorce is pending or immediately
24 contemplated by one of the spouses against the other, the validity
25 of such agreement shall not be affected by a provision therein that
the agreement is made for the purpose of removing the subject
matter thereof from the field of litigation, and that in the event of a
divorce being granted to either party, the agreement shall become
effective and not otherwise.
4. If a contract executed by a husband and wife, or a copy thereof, be
introduced in evidence as an exhibit in any divorce action, and the
court shall by decree or judgment ratify or adopt or approve the
contract by reference thereto, the decree or judgment shall have the
same force and effect and legal consequences as though the
contract were copied into the decree, or attached thereto.

1 In accordance with NRS 123.070 and NRS 123.080 and relevant case law, the
2 terms of the Separation Agreement should be enforced.

3 In addition, the Separation Agreement provides at page 20, Section 8(15), that
4 if there is any legal action pertaining to the validity, enforcement or modification of the
5 Agreement, attorney's fees may be awarded pursuant to Nevada law. It further
6 states, "Should either party to this Agreement be required to seek relief from the Court
7 to enforce or modify any term or condition of this Agreement, reasonable attorney's
8 fees and costs may be awarded pursuant to Nevada law." *Id.*

9 The Nevada Supreme Court has long recognized its "enduring belief" in the
10 finality of judgments. As explained by the United States Supreme Court, "Every
11 inroad on the concept of finality undermines confidence in the integrity of our
12 procedures; and, by increasing the volume of judicial work, inevitably delays and
13 impairs the orderly administration of justice." *Little v. Warden*, 117 Nev. 845, 34 P.3d
14 540 (2001), quoting *United States v. Timmreck*, 441 U.S. 780, 784, 99 S. Ct. 2085,
15 60 L.Ed.2d 634 (1979) (quoting *United States v. Smith*, 440 F.2d 521, 528-29 (7th Cir.
16 1971)). Our judicial system largely depends on the premise that final orders, and
17 indeed stipulations between parties to a proceeding, and the subsequent Decrees
18 will be upheld.

19 Mr. ██████████ has breached the parties' contract, the terms of which they
20 negotiated at length before agreeing to, and now stands before this court with dirty
21 hands asking to be relieved of his contractual obligations.

22 Since Ms. ██████████ was required to bring this Motion due to Mr. ██████████'s
23 breach of the parties' contract, having to seek the entry and enforcement of the
24 parties' Separation Agreement and Mr. ██████████'s compliance therewith, she is
25

1 entitled to a full recovery of her attorney's fees and costs. Mr. [REDACTED]'s poor
2 conduct has now cost Ms. [REDACTED] substantially since 2013. This will never stop if
3 the Court does not uphold the legally binding contract entered into between spouses.
4 Ms. [REDACTED] will not allow Mr. [REDACTED] to bully and manipulate her any longer. The
5 parties need to move on with their lives.

6 Litigating the terms of their separation, when they have a legally binding
7 Separation Agreement resolving all issues, is contrary to their Agreement and an
8 unnecessary toll on their finances and emotions, as well as an unnecessary strain on
9 the resources of the Court. All issues have been resolved, and any assets and debts
10 incurred post-Separation are also addressed by the Agreement and remain the
11 property of the party who obtained the assets and debts. There are no marital assets
12 or debts existing which are not addressed by the terms of the Separation Agreement.
13 That is the very purpose of the Separation Agreement, and it should be entered by
14 this Court and Ms. [REDACTED] awarded a full recovery of attorney's fees and costs.

15 **CONCLUSION**

16 Based upon the foregoing, Ms. [REDACTED] respectfully requests this Court issue
17 an Order granting her motion and entering the parties' Separation Agreement as an
18 Order of the Court, to which both parties are ordered to comply.

19 DATED this 10 day of October, 2016.

20 *Banales & Associates*

21 By: 

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