

7/16/04

1 Code 1670
2 **BONNIE G. MAHAN, ESQ., of**
3 **BONNIE G. MAHAN, ESQ., LTD.**
4 Nevada Bar # 7433
5 421 Court Street
6 Reno, Nevada 89501
7 (775) 323-2000
8 Attorney for Mrs. Furer

FILED
JUL 15 2004
BY _____
PG 077

9
10 **IN THE FAMILY DIVISION**
11 **OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
12 **IN AND FOR THE COUNTY OF WASHOE**


13 IN THE MATTER OF THE DIVORCE OF,
14 **ANDREW FURER,**
15 and
16 **ELOISA B. FURER**
17 **Joint Petitioners.**

Case No. DV04-01626
Dept. No. 5

18 **EX PARTE MOTION TO DISMISS**
19 **JOINT PETITION**

20 COMES NOW ELOISA FURER, by and through her attorney of record, BONNIE
21 MAHAN, ESQ., of BONNIE G. MAHAN, ESQ., LTD., and requests that this Court dismiss the
22 VERIFIED PETITION FOR JOINT SUMMARY DIVORCE filed herein on July 12, 2004.
23 This motion is based upon the attached Points & Authorities, and the Affidavit of Mrs. Furer.

24 DATED this 16 day of July, 2004.

25 
26 **BONNIE G. MAHAN, ESQ., of**
27 **BONNIE G. MAHAN, ESQ., LTD.**
28 421 Court Street
Reno, Nevada 89501
(775) 323-2000
Attorney for Eloisa B. Furer

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APPLICABLE LAW

NRS 125.510(1)(a) and (b) states as follows:

- (1) In determining custody of a minor child in an action brought under this chapter, the Court may:
- (a) During the pendency of the action, . . . , make such an order for the custody, care, education, maintenance and support of the minor children as appears in their best interest; and
 - (b) . . . The court may make such an order upon the application of one of the parties or the legal guardian of the minor.

WCDCR 43 Ex parte orders within the family division

- (1) Reasonable notice.
- (a) Except as set forth below, the party requesting an ex parte order shall give reasonable notice to the opposing party, or his or her counsel.
 - (b) Reasonable notice includes the date, time and place the request will be made.
 - (c) Reasonable notice must afford the opposing party 24 hours within which the application may be opposed.
- (2) Notice exceptions.
- (a) A party is excused from giving such notice where notice would frustrate the very purpose of the order or cause the party or child to suffer immediate and irreparable injury.
 - (b) Ex parte orders may be obtained without notice in the following circumstances:
 - (4) Where a child's health and safety is in danger; or
 - (5) Where such other circumstances exist as the court may find to warrant the issuance of an order without notice.
- (3) Automatic hearing.
- (a) No hearing shall be held on an ex parte order entered under subsections 2(b)(1), (2) and (3) herein above.
 - (b) All other ex parte orders shall be heard within 10 days of their entry.
 - (c) The hearing date shall be stated in the ex parte order.
 - (d) This rule shall not apply to temporary orders for protection against domestic violence.

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POINTS & AUTHORITIES

This has been submitted on an ex parte basis because it is believed that at any time, the Court may sign a decree divorcing the parties and that is what this motion seeks to avoid. Opposing counsel has been informed that this motion is being filed and has been faxed a copy of the same.

1. The parties herein, by and through their respective counsel and prior counsel, prepared uncontested divorce filings to be submitted herein. It was understood between the parties that the filing would occur on July 12, 2004.

2. Mrs. Furer had already signed her portion the prior week, and the papers were awaiting Mr. Furer's signature and were to be filed thereafter by Mr. Furer's counsel.

3. On July 10, 2004, Mrs. Furer, while packing her property in preparation for moving out of the marital home, located evidence of assets that she believes were never disclosed by Mr. Furer. After contacting the parties' money manager in an attempt to determine whether or not she had awareness of these marital assets, Mrs. Furer remained concerned that the assets were never disclosed. The parties herein are wealthy and the assets at issue are believed to total approximately Twelve Million Dollars, (\$12,000,000.00).

4. Thereafter early on the morning of July 12, 2004, via voice mail and several telephone conversations thereafter, counsel for Mrs. Furer conveyed Mrs. Furer's concerns to Randy Drake, Esq.; (acting counsel for Mr. Furer), and informed him that Mrs. Furer was not willing to have the Joint Petition submitted until she could further investigate the nature of the possibly undisclosed assets. However, knowing that both parties desired to divorce quickly, counsel for Mrs. Furer prepared an Addendum to the parties' Marital Settlement Agreement,

1 (MSA), that gave a mutual warranty of full disclosure and offered Mr. Furer's counsel the option
2 of attaching the same to the end of the MSA prior to filing.
3

4 5. Attached hereto as Exhibit A and incorporated by reference as though fully set
5 forth herein are copies of correspondence between the attorneys verifying the events recounted
6 above. These documents will show that Randy Drake, Esq., was specifically informed that if
7 Mr. Furer refused to sign the Addendum that Mrs. Furer had signed and provided to his counsel,
8 Eloisa Furer wished to withdraw her verification and that if he submitted the same against her
9 will he would be submitting an invalid verification. At that time Mr. Drake was also informed
10 that Ms. Mahan was leaving town the afternoon of July 12 and would not be returning until late
11 in the day on July 15, 2004.
12
13

14 6. By submitting the parties' papers on July 12, 2004, without attaching the signed
15 addendum to the MSA, Mr. Furer's attorneys have, for all intents and purposes, perpetrated a
16 fraud upon the Court and upon Mrs. Furer. Once Mr. Drake was informed that Mrs. Furer was
17 no longer willing to proceed in an uncontested manner, and that he no longer had permission to
18 file the VERIFIED PETITION FOR JOINT SUMMARY DIVORCE, he knew that presenting
19 the documents for filing without informing the Court of Mrs. Furer's unwillingness to proceed
20 would be creating a false impression that both Mr. and Mrs. Furer wished to proceed with the
21 Joint Petition. Yet that is exactly what Mr. Drake did. Mr. Furer's attorneys should be
22 sanctioned for this conduct which was wholly unethical and unprofessional.
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AFFIDAVIT OF ELOISA FURER

STATE OF NEVADA)
)ss.
COUNTY OF WASHOE)

I, ELOISA FURER, do hereby swear and affirm under the penalty of perjury, that each and every assertion contained within this Affidavit is true and:

- 1. That I am the unwilling joint petitioner in the above-entitled action;
- 2. That I have read the foregoing EX PARTE MOTION TO DISMISS

JOINT PETITION and know the contents thereof; and,

- 3. That the same is true of my knowledge except as to those matters therein stated on information and belief, and as to those matters I believe them to be true.

FURTHER YOUR AFFLIANT SAYETH NAUGHT.

DATED this _____ day of _____, 2004.

ELOISA B. FURER

STATE OF NEVADA)
)ss.
COUNTY OF WASHOE)

On this _____ day of _____, 2004, personally appeared before me, a Notary Public, ELOISA FURER, who acknowledged to me that she executed the above instrument freely and voluntarily and for the uses and purposes therein mentioned.

NOTARY PUBLIC

Pursuant to Rule 11, I hereby certify that the foregoing was read to Eloisa Furer via telephone + that she affirmed the same to be true to the best of her knowledge + belief.

Ronnie Mahan
Ronnie Mahan, Esq.,

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CERTIFICATE OF SERVICE

Pursuant to FRCP 5 (b), I certify that I am an employee of BONNIE G. MAHAN, ESQ., LTD., 421 Court Street, Reno, Nevada 89501, and that on this date, I served, via facsimile and hand delivery by High Sierra Filing Service & Document Delivery a true and correct copy of the attached EX PARTE MOTION TO DISMISS JOINT PETITION upon:

SHAWN MEADOR, ESQ., &
RANDY DRAKE, ESQ., of
WOODBURN & WEDGE
5100 NEIL ROAD, SUITE 500
RENO, NV 89511

Dated: 7/16/04


EARLENE GORZELL

EXHIBIT A

BMG
BONNIE G. MAHAN, ESQ., LTD.

421 Court Street • Reno, Nevada 89501
Tel (775) 323-2000 • Fax (775) 323-2002

FACSIMILE
COVER SHEET

FAXED
7/12/04
2:11 PM
approx.

DATE: 7/12/04 ORIGINAL TO FOLLOW BY MAIL? N

TO: Randy Drake RE: Furer

FROM: **BONNIE MAHAN, ESQ., of BONNIE MAHAN, ESQ., LTD.**

FAX NUMBER: 688-3088 # OF PGS INCLUDING COVER 1

COMMENTS: This will confirm our conversation
at 8:10 this morning in the Furer case
at this moment the joint petition is on
hold as our client is undecided about the
same. Please do not file the joint petition.
Thx.

NOTICE OF CONFIDENTIALITY: This message is intended only for the use of the individual or entity to which it is addressed and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If the reader of this message is not the intended recipient, the employee or the agent responsible for delivering the 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 notify us immediately by telephone and return the original message to us at Bonnie G. Mahan, Esq., Ltd., 421 Court Street, Reno, NV 89501. Phone 775-323-2000 Fax 775-323-2002.

WOODBURN and WEDGE

Attorneys and Counselors at Law
Fifth Floor
Sierra Plaza
6100 Neil Road, Ste. 500
P.O. Box 2311
Reno, Nevada 89511
(775) 688-3000
FACSIMILE: (775) 688-3088

FACSIMILE TRANSMITTAL

DATE: July 12, 2004

Client Code:

TO: Bonnie Mahan

FAX No. 323-2002

FROM: Randy A. Drake

NUMBER OF PAGES: 2 (including this cover sheet)

Original to follow by U.S. Mail: No

The following pages are confidential and may be privileged attorney-client communication and intended only for the person(s) named above. Examination, use, copying or dissemination of these materials by any person other than the intended recipient(s) is strictly prohibited. If you have received this transmission in error, please contact this office immediately by telephone and return the original message to us by mail. We will gladly reimburse all telephone and postage expenses.
THANK YOU,

If you do not receive all pages of this transmission, please call Denise at (775) 688-3000.

MESSAGE:

RICHARD G. KWAPIL
GORDON H. DEPAOLI
SUFFREN FUSTON
JOHN P. FOWLER
JOHN F. MURTHA
STEPHEN S. KENT
W. CHRIS WICKER
SHAWN B. MEADOR
LYNNE K. SIMONS
R. ELAIN ANDRUS
DON L. ROSS
DREGG A. BARNARD
DALE E. FERGUSON
RANDY A. DRAKE

WOODBURN AND WEDGE
ATTORNEYS AND COUNSELORS AT LAW
600 NEIL ROAD
SUITE 500
RENO, NEVADA 89501
P.O. BOX 2311, RENO, NV 89509
775 688-3000
FACSIMILE 775 688-3088

SHAWN G. PEARSON
DANE W. ANDERSON
MICHAEL W. KEANE
JOHN F. KUSCHER
KEVIN A. DAREY
SHARON M. PARKER
JESSICA H. NEUGBAUER
WILLIAM E. WOODBURN 775-3990
VINGEL M. WEDGE 775-3008
CASSY W. VAUGHN 775-3001
OF COUNSEL
JAMES J. MALLEY

July 12, 2004

VIA FACSIMILE

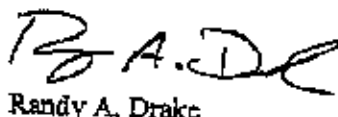
Bonnie G. Mahan, Esq.
421 Court Street
Reno, Nevada 89501

Re: Furer v. Furer

Dear Bonnie:

I am in receipt of your facsimile dated July 12, 2004, wherein you state that the "Joint Petition is on hold as our client is undecided about the same". You then ask that I not file the Joint Petition. That is not my understanding of our conversations this morning. I still intend to file the Joint Petition this morning, as all of the pleadings have been executed by counsel and parties.

Sincerely,



Randy A. Drake

RAD/di

cc: Andrew Furer

BMG

BONNIE G. MAHAN, ESQ., LTD.

421 Court Street • Reno, Nevada 89501
Tel (775) 323-2000 • Fax (775) 323-2002

July 12, 2004

Randy Drake, Esq.
Woodburn & Wedge
6100 Neil Road, Suite 500
Reno, NV 89511

Re: Furer Divorce

Dear Randy:

Attached is the original addendum to the MSA. As you know, I will be leaving town this afternoon and will return Thursday afternoon. Please accept this letter as formal notification that unless the Addendum is executed by Mr. Furer and attached to the MSA before the Joint Petition is filed, my client will no longer agree to file the Joint Petition as is. Accordingly, her verification attached thereto will be invalid and filing the case will be against her will. If your firm choose to pursue filing the Joint Petition with this knowledge, I will have no choice but to file a motion to stay submission with attached documentation supporting your firm's awareness that the document being filed was no longer valid.

As you know, the attached addendum protects both our clients. If Mr. Furer has indeed provided full disclosure, he should have no difficulty in executing the same. Your continuing courtesy and cooperation are much appreciated — please feel free to call with any additional questions or concerns.

Sincerely,


BONNIE G. MAHAN, ESQ., of
BONNIE G. MAHAN, ESQ., LTD.

1 ADDENDUM TO MARITAL SETTLEMENT AGREEMENT

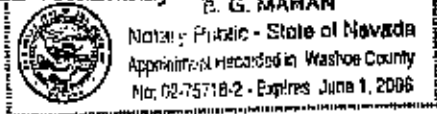
2 DISCLOSURE

3 Andrew E. Furer and Eloisa B. Furer each warrant and represent to the other that he or she is
4 not now in possession or control of any property subject to distribution other than that specifically
5 mentioned in this Marital Settlement Agreement and the Post Nuptial Agreement incorporated by
6 reference therein. Accordingly, both Andrew E. Furer and Eloisa B. Furer acknowledge that each has
7 respectively made full disclosure of all property owned by each and all obligations which either may
8 owe or assume by virtue hereof. Each represents and warrants to the other that there is no material
9 item of marital property in existence which has not been mentioned in this Agreement and should any
10 such item of real and/or personal property be discovered in the future and be established to be marital
11 property, it shall be divided as agreed between the parties, or, if no agreement, equally between the
12 parties. It is the parties' intent that this Addendum be fully incorporated into the foregoing Marital
13 Settlement Agreement.

14 STATE OF NEVADA }
15 COUNTY OF WASHOE } ss.

Eloisa B. Furer

16 On this 11 day of July, 2004, personally appeared before me, a Notary
17 Public, ELOISA B. FURER, who acknowledged to me that she executed the above Addendum freely
18 and voluntarily and for the use and purposes therein mentioned.



19
20 *[Signature]*
21 NOTARY PUBLIC

22 STATE OF NEVADA }
23 COUNTY OF WASHOE } ss.

24 On this ___ day of _____, 2004, personally appeared before me, a Notary
25 Public, ANDREW E. FURER, who acknowledged to me that he executed the above Addendum
26 freely and voluntarily and for the use and purposes therein mentioned.

27
28 NOTARY PUBLIC

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

Furer, Andrea

vs.

Furer, Eliza

FAMILY COURT
MOTION/OPOSITION NOTICE
(REQUIRED)

CASE NO. DV04 01626

DEPT. NO. 5

NOTICE: THIS MOTION/OPOSITION NOTICE MUST BE ATTACHED AS THE LAST PAGE to every motion or other paper filed pursuant to chapter 125, 125B or 125C of NRS and to any answer or response to such a motion or other paper.

A.	Mark the CORRECT ANSWER with an X.	YES	NO
	1. Has a final decree or custody order been entered in this case? If <u>yes</u> , then continue to Question 2. If <u>no</u> , you do not need to answer any other questions.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	2. Is this a motion or an opposition to a motion filed to change a final order? If <u>yes</u> , then continue to Question 3. If <u>no</u> , you do not need to answer any other questions.	<input type="checkbox"/>	<input type="checkbox"/>
	3. Is this a motion or an opposition to a motion filed only to change the amount of child support?	<input type="checkbox"/>	<input type="checkbox"/>
	4. Is this a motion or an opposition to a motion for reconsideration or a new trial <u>and</u> the motion was filed within 10 days of the Judge's Order?	<input type="checkbox"/>	<input type="checkbox"/>
	IF the answer to Question 4 is YES, write in the <u>filing date</u> found on the front page of the Judge's Order.	Date	
B.	If you answered NO to either Question 1 or 2 or YES to Question 3 or 4, you are <u>exempt</u> from the \$25.00 filing fee. However, if the Court later determines you should have paid the filing fee, your motion will <u>not</u> be decided until the \$25.00 fee is paid.		

I affirm that the answers provided on this Notice are true.

Date: 7/16, 04

Signature:



Print Name:

Bonnie G. Mahan, Esq., of

Print Address:

Bonnie G. Mahan, Esq., Ltd.

Telephone Number:

421 Court Street, Reno, NV 89501

775-323-2000 Fax 775-323-2002

High Sierra Filing Service & Document Delivery

(775) 843-6727

DELIVERY SHEET

FIRM NAME: Bonnie Mahan		DATE: 7/12/2004	ATTORNEY: Bonnie Mahan
Address: 421 Court Street Reno 89501		Phone #: 323-2000	
File Name: Furer		Administrative Assistant: Earlene Denieite	
File #: Letter revoking verification + copy of Addendum			

Special Instructions

<input type="checkbox"/>	Please File + Return
<input type="checkbox"/>	Please P/U @ Family Court Window Dept. _____, File if Necessary, & Return.
<input type="checkbox"/>	Please Submit
<input checked="" type="checkbox"/>	Deliver to: Randy Drake, 6150 Neil #500, Reno 89511

Court Filing

BANKRUPTCY Court	JUSTICE			Federal Building	Supreme Court	MUNICIPAL			Secretary State	District Court	RECORDER (County)
	Reno	Sparks	Carson			Reno	Sparks	Carson			
				Federal						Civil	
				Probation						Family	
				US District						Criminal	

Court Address:	Floor:	Room:
----------------	--------	-------

<input type="checkbox"/> Signature Required on Documents	<input type="checkbox"/> Returned Conformed Copy	<input type="checkbox"/> Return Original(s)	<input checked="" type="checkbox"/> Acknowledgment needed
--	--	---	---

RECEIVED BY: <i>[Signature]</i>	DATE:	MESSENGER:
------------------------------------	-------	------------

It is EXTREMELY IMPORTANT THAT YOU CHECK THIS FORM AND MAKE SURE THAT YOU HAVE FILLED IN ALL THE APPROPRIATE BOXES.

HSFS&DD Employees will assume no liability for any error that may occur as a result of incorrectly filled out delivery sheets.