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July 30, 2008

**VIA FACSIMILE AND REGULAR MAIL**

Eric Fitting, Esq.  
9421 Crown Vista Lane  
Las Vegas, NV 89117

Re: Furer v. Furer

Dear Mr. Fitting:

As we have discussed on several occasions, Mr. Furer has become completely frustrated and fed up with lawyers who represent Mrs. Furer but who, in doing so, ignore, flaunt and violate their legal and ethical obligations as well as Court Rules and Orders. My co-counsel, Kent Robison, and I have been forced to communicate with you regularly regarding your failure to follow Court Rules and statutes as well as your violation of ethical rules under the Nevada Code of Professional Responsibility. I have spoken with you several times about these issues in an attempt to warn you that if your improper conduct on Eloisa Furer's behalf continued unabated and uncorrected Mr. Furer will insist upon the filing a bar complaint and a motion for sanctions under Rule 11. I have made it clear to you that I do not want to see that happen. You know that I have not acted out of malice toward you but have tried to give you thoughtful advice to avoid allowing Eloisa Furer's demands to lead you to engage in conduct that would sully your name and reputation. Unfortunately, rather than heeding this advice, you continue to compound the problems.

As you know Rule 11 of the Nevada Rules of Civil Procedure sets forth the basic and fundamental rules with which you must comply in filing motions, pleadings and other documents on behalf of your client. When you sign such a court filing, you certify that: 1) the document is not being filed for any improper purpose; 2) the claims, defenses and other legal contentions are warranted by the law or a good faith request for extension or modification of the law; and 3) the allegations of fact referenced in the document have evidentiary support. You have repeatedly violated this Rule. I will summarize some of your violations below.

NRCP Rule 12(f) makes it clear that it is inappropriate to offer redundant, immaterial, impertinent, or scandalous matter. You have repeatedly assisted Eloisa Furer in allowing her to make highly inflammatory and inappropriate allegations against Mr. Furer, Judge Weller, me and others.

A motion once heard and disposed of shall not be renewed or reheard without first obtaining court approval. DCR 13(7). Eloisa Furer has a long history of violating this Rule. As noted by Judge Weller in Finding Number 16, "Mrs. Furer insisted upon returning to issues already resolved with a single mindedness that was unreasonable and contemptuous." You have violated this rule in a brazen and egregious manner by allowing her to continue to seek to reargue matters that have already been litigated and decided against her.

Your ethical duties are governed by the Nevada Rules of Professional Conduct. Under Rule 1.1 you are required to represent your client competently. Rule 3.1 precludes you from bringing or defending an action or making any assertion unless there is a basis in law and fact for such claims. Rule 3.2 imposes a duty on you to expedite the litigation. Rule 3.3 states that a lawyer shall not make a false statement of fact or law. In any ex parte motion you must inform the court of all material facts that would enable the court to make an informed decision. It also requires you to affirmatively correct false statements you have made to the court. Rule 3.4 precludes you from making assertions of your own personal knowledge as opposed to arguments based on admissible evidence. I believe that you have violated each of these ethical rules.

Your breaches of your legal and ethical duties and your failure to follow Court Rules include among others:

- Your initial appearance in this case was the improper filing of a motion to associate out of state counsel. You were not counsel of record when you filed the document, and therefore, there was no legal basis for you to file the motion. Furthermore, your association as a Nevada lawyer should have been accomplished in accordance with Local Rule 23 not by way of a motion to associate out of state counsel. After you received our Opposition, which set forth the procedural defects and outlined the governing Rules, rather than correcting your defects you filed a reply as if there were merit to your improper motion and the matter was submitted.

- You then obtained and filed a substitution of counsel consistent with Local Rule 23. You did not, however, withdraw your improper motion to associate out of state counsel. Rather, you now tell me that out of state counsel elected not to become involved in the case. You did not make any effort to advise the Court of this change. Your improper motion to associate was then properly stricken as a result of the problems noted above that you should have known before filing but certainly knew after you received the

opposition. Mr. Furer incurred substantial attorneys' fees as a result of your improper conduct and failure to follow very simple and direct rules.

- You did not make a proper appearance of record in the domestic violence action until the date of the hearing even though you appeared – by your own statement – on Eloisa Furer's behalf at the depositions which were taken over two weeks earlier. You then compounded the problem by improperly seeking a continuance on the basis that there was some confusion about who represented Eloisa Furer. See, WDCR 23. There should have been no confusion about who represented Eloisa Furer. Counsel of record is a matter of public record. Any confusion was created by Eloisa Furer and her counsel – including you. Mr. Furer certainly did not cause your confusion. Mr. Furer incurred substantial fees and was faced with possible continuance based on your failure to handle your appearance properly.

- In your Opposition to Mr. Furer's Motion to Amend the Order of December 23, 2005, regarding his possession of a weapon, you claimed that he had committed domestic violence against Eloisa Furer. As you know, the criminal charges were dismissed against Mr. Furer with prejudice. The record was sealed. Under Nevada law, NRS §179.255, as a result of the sealing the alleged events are deemed to have never occurred. While it is possible that you did not make an effort to find out whether the charges were dismissed and the case sealed before you made the allegations – itself arguably a violation of Rule 11, my co-counsel, Kent Robison wrote you specifically outlining this concern and demanding that you retract your claims. Thus, you had actual knowledge of the impropriety of the opposition you filed with the Court. And yet, you chose not to withdraw the claim or correct the record. As noted below, rather than fixing this problem you allowed Eloisa Furer to improperly raise it again.

- In your docketing statement you attached documents which are not part of the record below. I notified you in writing and then spoke with you about this problem. You told me that you had not even reviewed the documents that Eloisa Furer attached to the docketing statement. Furthermore, the document in question was a copy of emails between my client and me that was protected by the attorney client privilege. I specifically asked you how you or your client came into possession of confidential communications between my client and me and further asked you if she was in possession of any other confidential communications. You have failed to respond to my inquiries in any way.

- In our various communications you advised me that California counsel, who had not been admitted in the case, drafted the pleadings that you filed about which we have complained. Clearly, as Eloisa' Furer's Nevada counsel it was your obligation to assure that pleadings bearing your name while you are counsel of record comport with Nevada Rules and law.

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- On July 22<sup>nd</sup> you filed a Request for Submission and Motion to Supplement [sic] Opposition to Complainant's [sic] Motion to Show Cause. You told me, in effect, that you did not draft or edit Eloisa Furer's affidavit – as if that in some way relieves you of your ethical obligations. It does not. You filed the affidavit over your signature as an attachment to the document you filed with the Court. You are the lawyer, not Eloisa Furer. It was your obligation to assure that Eloisa Furer's affidavit was appropriate and consistent with Rule 11 and other Court Rules and laws. To compound this problem, you told me that you had not reviewed and did not even know what documents Eloisa Furer had attached as Exhibits to her affidavit. Astoundingly, you stated on the record in Court on the 24<sup>th</sup> that you had no clue what records you filed with the Court. How can you possibly make the Rule 11 certification if you didn't even take the time to review the documents you were filing with the Court? You did, however, acknowledge that you read Eloisa Furer's affidavit. Thus, unless you were being untruthful about having read her affidavit, you had actual knowledge of the improper claims, statements and allegations contained in her affidavit.

- However, the problem is not just Eloisa Furer's improper affidavit and improper exhibits. You personally made false statements in your Motion to Supplement [sic]. You specifically relied on NRCP Rule 15(d) as the legal support for the Motion. I have serious reservations about whether Rule 15 is the appropriate procedural vehicle. More importantly, however, you stated unequivocally that: "In accordant [sic] with NRCP Rule 15(d), Adverse Party hereby requests this Honorable Court leave to supplement certain documents, affidavits and affirmations **that have been received or discovered subsequent to Adverse Party's previously filed Opposition to Complainant's [sic] pending Motion.**" (Emphasis added). You have acknowledged that you did not make any effort to determine what documents Eloisa Furer attached as exhibits. You could not, therefore, certify that those documents constitute newly discovered evidence. I have reviewed the claims and scurrilous allegations contained in Eloisa Furer's affidavit as well as the exhibits she attempted to submit. **THERE IS NOT ONE SINGLE CLAIM OR ALLEGATION IN HER AFFIDAVIT AND EXHIBITS THAT WAS DISCOVERED AFTER ELOISA FURER FILED HER OPPOSITION.** Rather, these are the same claims she has repeated over and over again since the beginning of this case. How can you possibly claim this is new information? Do you feel no obligation to be honest and candid with the Court?

- My review of the claims and allegations contained in Eloisa Furer's affidavit and in the exhibits she sought to introduce reveals that they do not contain any legal defense to the contempt charge. Even if every single thing she said was true – which is not the case – it would still not be a defense to the contempt charges. She was ordered not to make threats. She chose to make threats. I don't care how justified she believes she was in making the threats, she had no legal right to do so.

You clearly did not comply with your ethical obligation to assure that there is a legal and factual basis for such claims. Furthermore, Eloisa Furer has raised and re-raised these very claims over and over again. They have been adjudicated. You have not obtained court order permitting you to raise and litigate them again. For example, you allowed your client to attempt to re-litigate the issues related to the parties' estate planning which have already been heard and resolved even though her story changes every time she repeats it.

- There are numerous false claims and allegations contained in the affidavit of Eloisa Furer which you claim you read and which you chose to file with the Court. The affidavit claims that: "the accusations are ruthless conduct towards Eloisa with unsupported supported [sic] rumors and innuendo concocted by Andrew seeking imprisonment by civil contempt of Eloisa." At the time you filed this document you had participated in the depositions of Mr. Simonini, Ms. Baran and Mr. Lueck. You know that the death threats were not based on rumors or innuendo but on sworn testimony of three individuals who have no apparent or known reason to lie. You cannot offer or cite the Court to any evidence whatsoever which suggests or implies that Mr. Furer "concocted" these threats or that the accusations are based on rumor or innuendo. That is simply not true.

- You allowed your client to make numerous false claims and allegations without any evidentiary support. For example, the affidavit claims that Eloisa Furer's share of WAMU dividends and interest was over \$6 million. You allowed her to assert that the court wrongfully failed to rule on her Motion for Reconsideration even though she never submitted her motion so there was nothing to rule on. You allowed your client to attack the integrity of the Court but failed to follow appropriate rules and failed to cite any authority for your position. You also failed to explain how your client came into possession of knowledge about a friendship between two persons who are not parties to this action.

- You once again allowed your client to raise her claim that Mr. Furer battered her notwithstanding your actual knowledge that the criminal charges were dismissed with prejudice and the record was sealed. You allowed this after you received Mr. Robison's letter advising you of the dismissal, the sealing and the statute which governs sealing. This is an extraordinary violation of Rule 11 given Kent's earlier letter.

- You allowed your client to make numerous scandalous and impertinent allegations against the Judge and others. For example, the affidavit claims that Judge Weller imposed "illegal sanctions" against her in excess of \$2 million. There is no basis in law or fact for that allegation. You allowed her to suggest that the Court system has failed her because she is a Filipino with no money – in other words, all judicial officers involved in this case are racists. There is no evidentiary support for this offensive claim.

You allowed your client to state that: "Plaintiff is the ruthless cold blooded criminal, who should not be allowed by the court to get away with one more crime." There is no legal or factual basis for this outrageous comment. You allowed your client to claim that "Judge Weller has just endangered the life of Mrs. Furer." You also allowed her to claim that Judge Weller has engaged in a "criminal and malicious maneuver" against her. You also allowed her to claim that Judge Weller engaged in "illegal rewriting" of his own decisions. What facts and evidence support these outrageous claims? If you read her affidavit as you were required to do and which you claim you did you clearly knew or should have known that her unedited allegations were entirely inappropriate. You are not permitted under ethical rules to allow your client to simply say whatever hateful, angry, mean-spirited and wrongful things she wants to say.

At some point one of Eloisa Furer's lawyers will have to have the strength and ability to convince her that it is her own wrongful conduct and bizarre decision making process that has landed her in the position that she is in and that the more she continues to engage in such behavior the worse it will get for her. One would think that someone could get her to understand that when the manner in which you are handling your affairs continues to have results you are unhappy with you should, perhaps, listen to thoughtful counsel and change your approach. Similarly, when a client has entirely unreasonable expectations about what can be achieved through the legal process it is counsel's duty to help the client appreciate what can, and cannot, be accomplished. Eloisa Furer's approach historically, however, has been to get rid of any lawyer who didn't do exactly what she wanted them to do or who did not achieve the result she wants regardless of how unreasonable her expectation. If you continue to allow her to manipulate you your reputation in the community will be jeopardized.

- You allowed your client to state that the Order granting Mr. Furer exclusive possession of the marital residence was done without hearing or notice to Eloisa Furer. The record clearly reflects that not only did Eloisa Furer receive actual notice, her attorney of record, Gary Silverman (one of the most highly respected and experienced Family Law lawyers in the state), filed a response to the motion on her behalf conceding its propriety and consenting to its entry.

- You allowed your client to suggest that Dawn Throne did not represent her properly at trial – and yet that issue has already been litigated and resolved in Ms. Thrones' favor. As you are fully aware of the appeal of this judgment you know that Eloisa Furer's remedy lies on appeal not trying to re-litigate the issue at the contempt hearing.

- The certificate of service attached to your Motion to Supplement [sic] states that you certify that you served "the foregoing MOTION TO WITHDRAW AS ATTORNEY OF RECORD" on July 15, 2008. And, you dated the motion itself July 15,

2008. And yet that cannot possibly be true. Eloisa Furer did not even sign her bogus affidavit until July 21, 2008, and the document was filed with the Court on the 22<sup>nd</sup>. You did not serve either Mr. Robison or me on the 15<sup>th</sup> as your certificate suggests. There have been other incidents where your certificate of service contained errors.

- On July 28 you filed an Objection to District Court Master Carol Cooke's Findings ("Objection"). A simple reading of the Rule you cited in support of this Objection demonstrates that it was premature as no written findings have been entered. Master Cooke made that clear in our conference call yesterday. Clearly your ethical obligation to represent your client competently includes an obligation to read and follow governing Court Rules.

- In your Objection you sought a continuance based on change of counsel contrary to Local Rule 23. You state that the Master acknowledged Eloisa's objection to the Master presiding at the July 24<sup>th</sup> hearing because of potential conflicts of interest. That necessarily is not true since you never filed any motion seeking the disqualification of the Master. Rather, the Master noted that Eloisa Furer had expressed concern about the Master's involvement, the Master assured you that there is no conflict and the Master agreed with Mr. Robison that you had not filed a proper objection to her handling the case.

- You claim that the Master had Eloisa Furer forcibly "Excluded" from the hearing. You failed to note why the Master was forced to do so. And this is certainly not the first time your client has been removed from the court room. You also failed to note that your client left the courthouse without permission and then refused to return when instructed to do so. You were clearly aware of these vital facts since you spoke with your client from the courtroom by cell phone while we were on the record!

- Your claim that Eloisa Furer was not allowed to testify is demonstrably false. She was removed from the court room until she could contain her behavior. You never sought to have her allowed back in the courtroom to testify. You never sought to call her as a witness. You couldn't do so because she had wrongfully left the building and refused to return. You didn't make any offer of proof as to what admissible testimony Eloisa Furer would offer if she had not wrongfully left the court house. It is outrageous that you would blame your client's wrongful conduct, your inability to control her and your failure to make an offer of proof on the Master and then present an argument that so blatantly misrepresents the facts and leaves such a false impression.

- In your Opposition you claim that under NRS 22.030(3) "ANY objection" to the Master warrants her disqualification. You did not object to the Master's participation based upon NRS 22.030(3). Your failure to object constitutes a waiver of any such objection. You have not cited, nor can you cite, any authority that Eloisa

Furer's whining that the Master's sister is a friend of Mr. Furer's wife is an objection under 22.030(3). Nor have you cited any authority that the claimed friendship constitutes a disqualifying conflict. Furthermore, you failed to note that while Master Cooke made the initial recommendation, the Extended Order for Protection at issue was actually entered by Judge Doherty, not Master Cooke.

- You falsely and outrageously claim that there is absolutely NO evidence that Eloisa Furer has ever engaged in any act of domestic violence. AND YET two different Extended Orders for Protection Against Domestic Violence have been entered against Eloisa Furer by two different judges after two different evidentiary hearings. By what right can you simply lie to the Court like this?

- In your Opposition you falsely state that "The actual evidence presented at the hearing showed that not only was the Adverse Party NOT in the Reno area . . . ." The only evidence in the record was that based upon Eloisa Furer's own statements (which themselves could have been lies) Mr. Simonini and Ms. Baran believed she was in Reno. Clearly Eloisa Furer wanted them to believe she was in Reno to make the threat even more threatening. The truth, of course, is that while you claimed she had not been in Reno, your claim is not evidence. There is, in fact, no evidence in the record that she was not in Reno. My sources tell me that she had been in Reno for the Mack hearing shortly before the day of the threats. That, however, is irrelevant. It is your false claim that there is evidence in the regard regarding her whereabouts that troubles me most.

- You claim that the EPO's terms regarding handguns is completely unsupported by the evidence. Your claim is absolutely untrue. Eloisa Furer claimed that she had a gun. Again, it is possible that she lied to make her threat more threatening. That, however, is not a defense to the contempt charge. Her prior threat to obtain a handgun and the fact that she then did obtain a handgun demonstrates that she knows how to acquire a gun if she wants to. And, in her prior rage incident she made actual attempts to wrongfully obtain her handgun from her former counsel. Aggressive advocacy is permissible. Lying to the court is unacceptable.

- In your sworn affidavit in support of the Opposition you falsely claim that you were retained on or about July 24, 2008. While that is the day you filed the formal substitution, it is certainly not the day you were retained. You appeared on her behalf at the depositions on the 8<sup>th</sup>. You filed the Supplemental pleading on the 22<sup>nd</sup>. I do not understand why you would misrepresent the facts when the facts of your earlier appearances cannot be disputed.

- You have repeatedly filed Request for Submissions prematurely. Your procedural failures are so pronounced that yesterday Master Cooke was forced to admonish you to actually read the local rules and comply. Mr. Furer's fees and costs, of

course, have been driven up by your failure to comply with your ethical obligation to represent your client competently.

- On the 27<sup>th</sup> you filed an Ex Parte motion. There was no lawful basis for filing an ex parte motion. Furthermore, you did not follow the Court Rules regarding filing of ex parte motions. You then wrongfully submitted the ex parte motion.

- In your Ex parte motion you again falsely claim that you made a proper objection to Master Cooke handling the hearing and again falsely claim that Eloisa Furer has never engaged in acts of domestic violence. And, once again, you claim in your affidavit that you were retained on July 24<sup>th</sup> which as noted above, is demonstrably false.

- In terms of your courtroom demeanor, it is the custom and practice, if not hard and fast rule, that you stand when you address the court; you do not interrupt the judicial officer when he or she is speaking. It is also common practice and simple professionalism for you to spell check your documents and make reasonable efforts to correct typos. Some typos always get through. Your documents have consistently contained numerous such errors.

- As an officer of the Court it is your obligation to know and follow Court Rules, such as the rules regarding substitution of counsel and submission of motions. Your ethical duty to competently represent your client requires you to know and follow the rules. My client has incurred substantial fees dealing with your failure to know, understand and comply with the rules.

I am loathe to file Rule 11 motions and bar complaints. I do not want to do so here if we can find a way to avoid doing so. I would be very interested in hearing your thoughts on how you can effectively address the issues outlined above and what assurances you can give us that this behavior will come to a screeching halt, and instead, that you will conduct yourself thoughtfully, honestly and in compliance with your legal and ethical duties. Among other things, Rule 11 requires you to withdraw the offending documents and to correct your errors on the record. Certainly, Mr. Furer should be reimbursed for the additional legal fees he has incurred as a result of these ethical lapses. I look forward to hearing your proposal with respect to how you will address these problems consistent with Rule 11 of the Nevada Rules of Civil Procedure.

Sincerely yours,

  
Shawn Meador

Cc: A. Furer  
K. Robison, Esq.