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CLERK OF DISTRICT COURT

C. Parslow

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

12 ANDREW EARL FURER)
13)
14 Plaintiff,)
15 vs.)
16 ELOISA BESADA FURER,)
17 Defendants.)

CASE NO.: FV04-04071
DEPT NO.: 11

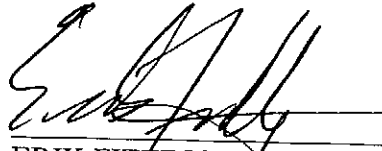
**OBJECTION TO DISTRICT COURT
MASTER CAROL COOKE'S FINDINGS
OF FACT, CONCLUSIONS OF LAW AND
RECOMMENDATION FOR SANCTIONS
ANNOUNCED ORALLY AT HEARING
ON JULY 24, 2008.**

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20 COMES NOW, ERIK FITTING, ESQ. of the law firm ERIK FITTING & ASSOCIATES,
21 LTD., hereby Objects to the District Court Master's finds of fact, conclusions of law and
22 recommendations, and hereby requests that this Court, pursuant to WDFCR 32, to conduct a
23 Review of Master's Decision within the Family Division, and the Adverse Party hereby
24 respectfully requests this Court, the Honorable Judge Chuck Weller presiding, to reject any
25 and all findings of the District Court Master in accordance with NRCP 53(e)(2), or to modify
26 such recommendations as they may directly or indirectly relate to Contempt proceedings, or
27 any Order to Show Cause heard on July 24, 2008.
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1 This Objection is based on the attached Affidavit of ERIK FITTING, ESQ., and the
2 Points and Authorities attached hereto, together with all pleadings and papers on file herein.

3
4 DATED this 27th day of July, 2008.

5
6 ERIK FITTING & ASSOCIATES, LTD.

7
8 

9 ERIK FITTING, ESQ.
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16
17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 On July 24, 2008, an evidentiary hearing was conducted on Applicant's Motion For
19 Order to Show Cause Why Adverse Party Should Not Be Held In Contempt and a Warrant
20 Issued For Her Arrest. The two issues that were to be adjudicated at that time were the Court
21 should extend an Extended Order of Protection ("EPO") entered upon the record during
22 hearing on or about August 04, 2008, and whether the Adverse Party had violated the
23 existing EPO. The District Court Master conducting the hearing was Carol Cooke. The
24 presiding Master was charged by the Court with admitting evidence, receiving and
25 considering oral arguments, making certain findings of fact and conclusions of law on the
26 specific issues before the Court and making a recommendation to the Court to adopt such
27 recommendations into a final Order approved by the presiding judge.
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30 The conduct asserted by the Applicant in support of the Order to Show Cause
involved certain accusations by third parties regarding threats allegedly made telephonically.

1 The Adverse Party made several oral Motions on the record prior to the commencement and
2 presentation of the evidence in the subject hearing. The first oral Motion made on behalf of
3 the Adverse Party was to request a continuance of the entire proceedings, or in the
4 alternative, to continue that portion of the hearing relating to the Order to Show Cause and
5 Contempt proceedings. The preliminary Motions were based on the confusion as to whom
6 was council of record in the above captioned case, or whether the Adverse Party was then
7 unrepresented by council. The District Court Master Denied both Motions, determining that,
8 despite a Substitution of Attorney being filed in open Court, that Erik Fitting, Esquire had
9 been the attorney of record since at least July 8, 2008 when he was present telephonically
10 during deposition testimony.
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14 The hearing proceeded with the Master addressing a Supplemental Pleading filed on
15 behalf of the Adverse Party. Prior to the Master addressing whether such pleading should be
16 admitted as evidence, the Master acknowledged on the record of the Adverse Party's
17 objection to such Master presiding over the July 24, 2008 proceedings because of potential
18 conflicts of interest. The special Master addressed the asserted conflicts of interest, and then
19 stated that she would not recuse herself from the pending proceedings, despite objections by
20 the Adverse Party. At or about the time the Master was making these disclosures and
21 acknowledging the Adverse Party's objection to her authority to adjudicate the matters before
22 the Court, the Master had the Adverse Party forcibly "Excluded" from the hearing.
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26 Following an extended hearing where evidence was admitted over objection by
27 council for the Adverse Party, the Master announced here findings from the hearing and
28 imposed immediate sanctions upon the Adverse Party that, among other things, deprived her
29 of her constitutional right to freedom (liberty). It is of significant consequence that the
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1 Adverse Party was NOT allowed to testify on her own behalf, as she had been removed from
2 the hearing prior to the presentation of any evidence by the Applicant.

3
4 **I. THE DISTRICT COURT MASTER ERRORED WHEN SHE DECLINED**
5 **TO RECUSE HERSELF IN THE CONTEMPT PROCEEDINGS.**

6 During the preliminary proceedings of the July 24, 2008 hearing before this Court, the
7 Master hearing the matter was requested to recuse herself from the proceedings. After
8 acknowledgment and explanation, the Master elected NOT to recuse herself for any portion
9 of the hearing, including the proceedings on the allegations of Contempt.

10 Under Nevada Law, the District Court Master could not legally proceed to hear
11 evidence and make any findings of fact or conclusions of law. The Nevada Revised Statutes
12 provide:

13 **NRS 22.030 Summary punishment of contempt committed in immediate view and presence of court;**
14 **affidavit or statement to be filed when contempt committed outside immediate view and presence of**
15 **court; disqualification of judge.**

16 1. If a contempt is committed in the immediate view and presence of the court or judge at chambers, the
17 contempt may be punished summarily. If the court or judge summarily punishes a person for a contempt
18 pursuant to this subsection, the court or judge shall enter an order that:

19 (a) Recites the facts constituting the contempt in the immediate view and presence of the court or judge;

20 (b) Finds the person guilty of the contempt; and

21 (c) Prescribes the punishment for the contempt.

22 2. If a contempt is not committed in the immediate view and presence of the court or judge at chambers, an
23 affidavit must be presented to the court or judge of the facts constituting the contempt, or a statement of the
24 facts by the masters or arbitrators.

25 3. Except as otherwise provided in this subsection, **if a contempt is not committed in the immediate view**
26 **and presence of the court, the judge of the court in whose contempt the person is alleged to be shall not**
27 **preside at the trial of the contempt over the objection of the person.** The provisions of this subsection do not
28 apply in:

29 (a) Any case where a final judgment or decree of the court is drawn in question and such judgment or decree
30 was entered in such court by a predecessor judge thereof 10 years or more preceding the bringing of contempt
proceedings for the violation of the judgment or decree.

(b) Any proceeding described in subsection 1 of NRS 3.223, whether or not a family court has been
established in the judicial district.

It is uncontraverted that the accusations by the Applicant in his Motion regarding
alleged violations of the August 24, 2007 EPO were based entirely upon events that occurred
outside of the view or presence of the Court. It is also clear from the record in this case that

1 the August 14, 2007 EPO was Ordered by the same Master and the same Court as the subject
2 Contempt hearing was being held. Accordingly, NRS 22.030(3) dictates that, upon ANY
3 objection (with or without cause), the judge of the court in whose contempt the person is
4 alleged to be shall not preside at the trial of the contempt over the objection of the person.
5

6 Following the Adverse Party's objection on the record to the Master hearing the Contempt
7 proceedings, the Master was divested from presiding over the Contempt hearing as a matter
8 of law. This is obviated by the Master declaring that here Recommendation for Sanctions
9 were based upon the strictures of NRS Chapter 22 et seq. Because the Master was legally
10 precluded from presiding over the Contempt proceedings, any finding of facts, conclusions of
11 law and recommendations to the Court should be stricken in their entirety.
12

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14 **II. THE DISTRICT COURT MASTER'S RECOMMENDATIONS FROM**
15 **THE JULY 24, 2008 HEARING SHOULD BE SET ASIDE BY THIS**
16 **COURT AS BEING CLEARLY ERRONEOUS.**
17

18 Although there were no written findings of fact, conclusions of law or recommendations
19 for Sanctions against the Adverse Party, the written findings of fact contained in the July 24,
20 2008 EPO stated that: "Based on the evidence presented, the Court finds that the Adverse
21 Party has a documented history of domestic violence." There was absolutely NO evidence
22 presented at the July 24, 2008 hearing, nor any existing evidence on the record of this case
23 (or indeed ANY case whatsoever involving the Adverse Party) that would support such a
24 finding. Nevada Law defines domestic violence as:
25

26
27 **NRS 33.018 Acts which constitute domestic violence.**

28 1. Domestic violence occurs when a person commits one of the following acts against or upon his spouse,
29 former spouse, any other person to whom he is related by blood or marriage, a person with whom he is or was
30 actually residing, a person with whom he has had or is having a dating relationship, a person with whom he has
a child in common, the minor child of any of those persons, his minor child or any person who has been
appointed the custodian or legal guardian for his minor child:

- (a) A battery.
- (b) An assault.

1 (c) Compelling the other by force or threat of force to perform an act from which he has the right to refrain
2 or to refrain from an act which he has the right to perform.

3 (d) A sexual assault.

4 (e) A knowing, purposeful or reckless course of conduct intended to harass the other. Such conduct may
5 include, but is not limited to:

6 (1) Stalking.

7 (2) Arson.

8 (3) Trespassing.

9 (4) Larceny.

10 (5) Destruction of private property.

11 (6) Carrying a concealed weapon without a permit.

12 (7) Injuring or killing an animal.

13 (f) A false imprisonment.

14 (g) Unlawful entry of the other's residence, or forcible entry against the other's will if there is a reasonably
15 foreseeable risk of harm to the other from the entry.

16 2. As used in this section, "dating relationship" means frequent, intimate associations primarily
17 characterized by the expectation of affectional or sexual involvement. The term does not include a casual
18 relationship or an ordinary association between persons in a business or social context.

19 There have been many vicious accusations made by and between the Applicant and
20 the Adverse Party since the disruption of their marriage in 2004. Some of the accusation have
21 been verified or admitted, but most continue to be unsubstantiated. There have been no
22 documented incidents by law enforcement even indicating that any of the above action may
23 or may not have occurred between the parties. In fact, the record reflects (and the Adverse
24 Party's own pleading states) that the alleged actions giving rise to the Applicant's allegations
25 of Contempt were investigated by not only the Reno Police Department and the Washoe
26 County Sheriff's Office, but by the Federal Bureau of Investigation. Following a thorough and
27 complete investigation, all of these state and federal law enforcement agencies failed to find
28 or report any violation of any law, least of all any action of "domestic violence."

29 Notwithstanding the fact that the subject allegations had been reported and
30 investigated by multiple agencies (all completely absolving the Adverse Party from liability),
the Master in the July 24, 2008 hearing determined that the evidence admitted not only
proved that the Adverse Party was guilty of Contempt for the violations alleged in the
Applicant's Motion, but indeed had a "documented history" of such violence. This finding of

1 fact is Clearly Erroneous, as "Based on the evidence presented. . ." at the hearing, the only
2 incidents alleged or addressed were specific actions that were to have occurred within the
3 span of less than 48 hours.
4

5 The Applicant stated in his affidavit in support of extending the EPO that the Adverse
6 Party made statements to the effect that she "Was in Reno and had a gun." The evidence
7 presented at hearing proved that the Adverse Party NEVER made such a statement. In fact,
8 the deposition testimony presented at the hearing specifically stated that the deponents only
9 "thought" that she "might be in Reno." The actual evidence presented at the hearing showed
10 that not only was the Adverse Party NOT in the Reno area at the time of the alleged actions
11 of Contempt, but that the deponents did not even recall if such a statement was ever even
12 made. The Adverse Party vehemently denies ever identifying, or even implying that she was
13 in Reno during the contested incidents, but was NOT allowed to testify on her own behalf
14 because she was summarily and prematurely "excluded" from the evidentiary phase of the
15 hearing
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19 The Master's written findings in the July 24, 2008 EPO regarding the Adverse
20 Party's access to, or possession of a firearm, are completely unsupported by the evidence
21 presented. The record of the hearing specifically reflects that Ms. Furer had at one time many
22 years earlier purchased a firearm, that a prior Court Order precluded her from possessing or
23 carrying a firearm, and that she complied with the Court Order and deposited her firearm
24 with her then attorney of record (Ms. Mahan) for safekeeping. Although the Applicant
25 insisted that she was violent and that he was in fear for his life, nothing on the record
26 indicates that the Adverse Party ever had any firearm in her custody or control after she was
27 first Ordered by the Court to surrender her firearm. The Master's ruling (inexplicatively
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1 citing NRS 33.030) incorporated an Order for the Adverse Party to “. . .surrender any
2 firearms in her possession or under her custody or control. . . “ to law enforcement.
3
4 Notwithstanding the fact that this portion of the Order required that the Adverse Party
5 surrender any firearm that she “may” have in her custody or control (although the record is
6 completely devoid of any evidence that the Adverse Party had any such firearm in her
7 custody or control), the Order continues to require that “The Adverse Party is further ordered
8 to file law enforcement’s receipts for her firearms. . .,” and “A status hearing is set . . . to
9 address the status of the Adverse Party’s compliance with the surrender of her firearms.”
10
11 This particular part of the EPO (as well as the record of the hearing itself) begs the question
12 of how the Adverse Party is to surrender to law enforcement and received “receipts” for such
13 deposits of firearms that she does not possess. This portion of the Master’s Order is
14 completely unsubstantiated by the overwhelming evidence on the record that none of the
15 deponents, nor the Applicant, nor any of three different law enforcement agencies
16 investigations ever determined that the Adverse Party had custody or control over a firearm
17 during the time in question. To the contrary, this Court should take Judicial Notice that if any
18 credible threats were made by the Adverse Party on the alleged occasions, that at least one
19 agency charged with upholding the laws of Washoe County, the City of Reno or the United
20 States of America itself would have taken appropriate steps to insure that the Adverse Party
21 did not have the means or the intent to use any of the “phantom” firearms. In her finding on
22 the record, the hearing Master herself would not go so far as to attribute custody or control of
23 any firearm to the Adverse Party. Instead, the Master determined that it was irrelevant where
24 the Adverse Party was during the time the Contemptuous conduct allegedly occurred, and it
25 was immaterial as to whether she had the means (had access to a firearm) or the intent to
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1 carry out any of the actions alleged by the Applicant. In light of this determination by the
2 Master, the finding that the Adverse Party had committed an act of domestic violence (much
3 less a “. . .documented history of domestic violence. . .”) is completely unfounded and
4 Clearly Erroneous.
5

6 **III. THIS COURT SHOULD STAY THE IMPOSITION OF ANY**
7 **SANCTION AGAINST ADVERSE PARTY IN ITS STATUTORY DISCRETION**
8 **BECAUSE THE ADVERSE PARTY WAS NOT ALLOWED TO TESTIFY ON HER**
9 **OWN BEHALF**
10

11 The hearing of July 24, 2008 in the above captioned case was held substantially in the
12 absence of the Adverse Party herself. The Adverse Party was not allowed to present her
13 testimony, despite the fact that the only parties to the allegedly Contemptuous actions were
14 between her and third parties not present in the Courtroom. This Court has the inherent
15 authority to stay a Master’s recommendations upon the request of any party or on its own
16 initiative. WDFCR 31(5).
17

18 The pending Recommendations made by the District Court Master at hearing on July
19 20, 2008 would impose harsh and sever sanctions upon the Adverse Party were they to be
20 adopted by this Court. There is nothing on the record in this Court, with any law enforcement
21 agency or in any public or private report or proceeding that supports the Clearly Erroneous
22 findings that the Adverse Party is a threat to her former husband, herself or the public at
23 large. The mere recitations of third parties via deposition testimony do not support the harsh
24 recommendations made by the hearing Master, especially when the Adverse Party does not
25 have the opportunity to testify in person to refute such allegations.
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1 This Honorable Court has complete discretion to determine the manner in which the
2 master's recommendations will be reviewed. WDFCR 32(1)(a). The Adverse Party hereby
3 requests that, in the interest of justice, this Court reject the hearing Master's
4 recommendations in their entirety and grant the Adverse Party a hearing de novo in
5 accordance with WDCFR 32(1)(b). In the alternative, the Adverse Party hereby request that
6 this Honorable Court hold a hearing on the objections stated herein, and stay the imposition
7 of any sanctions recommended or Ordered against the Adverse Party.
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10 CONCLUSION

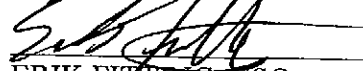
11 The Applicant and the Adverse Party in the case at bar have a long and storied history
12 between them, both in and out of the judicial proceedings. There is no denying the animosity
13 that existed between the parties at any time during the July 24, 2008 hearing, during the
14 alleged Contemptuous incidents that are asserted to have transpired in February of 2008, or
15 the ill will that continues to be harbored in the minds and souls of the parties to this action.
16 Notwithstanding anything to the contrary, during the protracted pendency of the various
17 actions by and between the parties, the Adverse Party has NEVER taken any action that
18 could even remotely be categorized as an act of "domestic violence" against the Applicant.
19 For this Court to deprive the Adverse Party of her freedom on the Clearly Erroneous findings
20 of a District Court Master that did not have the legal authority to preside over the Contempt
21 hearing would cause immediate and irreparable injury to the Adverse Party without even the
22 benefit of due process of law (being able to testify in her own defense).
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28 Because the hearing of July 24, 2008 on the Applicant's Motion to Show Cause
29 should not have been heard before the District Court Master (Carol Cooke), because the
30 findings of the Master were Clearly Erroneous and completely unsupported by the evidence

1 presented or the existing record in the case, and because immediate and irreparable harm
2 would result in the adoption and imposition of the Sanctions recommended by the hearing
3 Master, the Adverse Party hereby respectfully request that the Court entirely disregard the
4 Master's findings and recommendations from the July 24, 2008 hearing, make a finding as a
5 matter of law that the Master did not have the authority to preside at such hearing, Order a
6 hearing de novo, decline to Order any sanctions against the Adverse Party, stay the
7 impositions of sanctions (if any) for a reasonable time to allow for objection and
8 reconsideration, and to make such other findings or rulings that the Court deems just and
9 reasonable.
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14 Respectfully Submitted this 27th day of July, 2008

16 ERIK FITTING & ASSOCIATES, LTD.

17 

18 ERIK FITTING, ESQ.

19 Nevada Bar No. 7336

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21 Las Vegas, NV 89117

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24 Attorney for Eloisa Besada Furer
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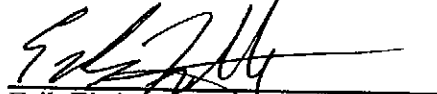
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AFFIDAVIT OF ERIK FITTING. ESQUIRE

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

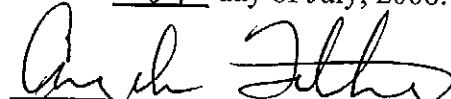
ERIK FITTING, Esquire being first duly sworn, deposes and says:

1. I am an attorney with the law firm of ERIK FITTING & ASSOCIATES, LTD., and licensed to practice law in the State of Nevada;
2. I was retained by the Adverse Party ELOISA BESADA FURER to represent her interest in connection with the above-captioned matter on or about July 24, 2008;
3. I have read this document and the contents are true and correct of my own personal knowledge, except for those stated on information and belief;
4. That this Objection is being made in good faith and not for purpose of delay.


Erik Fitting, Esq.



Subscribed and Sworn to before me this 27 day of July, 2008.


NOTARY PUBLIC

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SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STATE OF NEVADA

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document, _____

Objection to District Court MASTER CAROL COOKE'S
Findings of Fact, Conclusions of Law and Recommendations
(Title of Document)

filed in case number: FV04-04071

Document does not contain the social security number of any person

-OR-

Document contains the social security number of a person as required by:

A specific state or federal law, to wit:

(State specific state or federal law)

-or-

For the administration of a public program


-or-

For an application for a federal or state grant

-or-

Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230 and NRS 125B.055)

Date: July 27, 2008


(Signature)

ERIK FITTING
(Print Name)

Eloisa Besada Furer
(Attorney for)

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

Andrew Earl Furer)
)
)
)
 vs.)
 Eloisa Besada Furer)
)
)
)

FAMILY COURT MOTION/OPPPOSITION NOTICE (REQUIRED)	
CASE NO.	FV04-04071
DEPT. NO.	11

NOTICE: THIS MOTION/OPPPOSITION 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 yes , then continue to Question 2. If no , you do not need to answer any other questions.		X
	2. Is this a motion or an opposition to a motion filed to change a final order? If yes , then continue to Question 3. If no , you do not need to answer any other questions.		
	3. Is this a motion or an opposition to a motion filed only to change the amount of child support?		
	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?		
	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: July 27, 2008

Signature:

[Signature]

Print Name:

ERIK FITTING

Print Address:

9421 Crown Vista Lane, Las Vegas
Nevada 89114

Telephone Number:

702 312 6965