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Elizabeth A. Brown
Clerk of Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEVADA

OUR NEVADA JUDGES, INC.,
a Nevada Non-Profit Corporation,
Petitioner,

Vs.

Case No.

EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND
FOR THE COUNTY OF CLARK; AND
THE HONORABLE CHARLES HOSKIN,
DISTRICT COURT JUDGE

D. Ct. Case: D-08-402901-C

Respondent.

_____/

TROY MINTER and JENNIFER EASLER,
Real Parties In Interest.

_____ /

PETITION FOR WRIT OF MANDAMUS

COMES NOW, Our Nevada Judges, Inc., a Nevada Non-Profit Corporation (hereinafter "ONJ") by and through the undersigned counsel, and hereby files a petition for writ of mandamus. The petition is based on the following memorandum of points and authorities and on the petitioner's appendix (hereinafter 'PA') on file.

I. Routing Statement

This matter should be diverted to the Court of Appeals under Nevada Rules of Appellate Procedure (“NRAP”) 17(b) because it is not retained by the Supreme Court under NRAP 17(a) and it involves interpretation of established precedent, statutes, and court rules.

II. NRAP 26.1 Disclosure

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the Justices of this Court may evaluate possible disqualification and recusal.

Petitioner does not have a parent corporation.

The undersigned attorney is the only attorney appearing on behalf of Petitioner in this matter.

EXECUTED this Apr 4, 2024

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III. Summary

ONJ filed a request to provide electronic coverage of a child custody proceeding in Eighth Judicial District Court Case No. D-08-402901-C. Respondent summarily barred media access and denied the request. ONJ filed a writ petition with this Court and prevailed. Docket No. 85195. Respondent vacated its order denying media access.

After issuance of the Writ of Mandate, ONJ filed a limited motion to unseal. Real Parties in Interest did not oppose. Respondent nevertheless refused to unseal. This writ petition follows.

IV. Parties

Petitioner is Our Nevada Judges, a Nevada Non-Profit Corporation recognized by the IRS as a Section 501(c)(3) organization.

Respondents are the Eighth Judicial District Court and the Honorable Charles Hoskin.

Real Parties in Interest (hereinafter 'The Parents') are Jennifer Easler and Troy Minter.

V. Jurisdiction & Standing

This Court has original jurisdiction. Article 6, Section 4 of the Nevada Constitution. See also NRS 34.330.

VI. Relief Requested

Petitioner requests this Court issue a writ of mandamus directing Respondent to grant the unopposed motion to unseal.

VII. Issues Presented

Whether the District Court abused its discretion in denying ONJ's unopposed motion to unseal.

VIII. Facts

On February 15, 2024, this Court mandated an exercise of judicial discretion required by the First Amendment of the United States Constitution before a civil proceeding can be closed to the public and press. *Falconi v. Eighth Judicial District Court*, 140 Nev. Advance Opinion 8 (2024).

On April 3, 2024, Respondent summarily denied an unopposed¹ motion to unseal. PA-01. PA-11. Respondent's ruling undermines this Court's decision in *Falconi v. Eighth Judicial District Court* because ONJ cannot reasonably be expected to request and obtain access to hearings if ONJ is not permitted to know when those hearings are occurring.

Respondent ruled that the Petitioner's citation of Nevada Rules for Sealing and Redacting Court Records ("SRCR") 3 to support their request for sealing or redacting court records is not applicable because SRCR 1(4) specifies that these rules do not apply to sealing or redacting court records governed by specific statutes, such as NRS Chapters 125 and 126. PA-12:1-9. Additionally, the Respondent ruled that the petitioner's mention of seeking review for potential coverage under SCR 230(1) is

¹ Problematically, the denial of an unopposed motion leaves this matter with a nominally briefed record. Included in this brief are arguments ONJ would have made on reply had The Parents argued Respondent's points on opposition.

invalid because the case in question has been closed with no pending actions, rendering electronic coverage inapplicable. PA-12:10-15.

IX. Reasons Why the Writ Should Issue

a. Mandamus is the only available remedy

Alexander Falconi was recognized by the *Falconi* Court as running² the “press organization,” which is now incorporated as a Nevada Non-Profit Corporation, ONJ.

This Court has further ruled that participant conduct in proceedings are a matter of public interest. *Abrams v. Sanson*, 136 Nev. 83, 87, 458 P.3d 1062, 1067 (2020). Likewise, “[t]he operations of the courts and the judicial conduct of judges are matters of utmost public concern.” *Del Papa v. Steffen*, 112 Nev. 369, 374, 915 P.2d 245, 249 (1996). “[S]ecret judicial proceedings pose [a threat] to public confidence in this court and the judiciary.” *Id.* at 915 P.2d 248. “[O]pen court proceedings assure that proceedings are conducted fairly and discourage perjury, misconduct by participants, and biased decision making.” *Id.* at 915 P.2d 245. “Openness promotes public understanding, confidence, and acceptance of judicial processes and results, while secrecy encourages misunderstanding, distrust, and disrespect for the courts.” *Id.*

² ONJ has been recognized as a news reporter by Districts 1, 2, 5, 6, 7, 8, 9, and 10; and, the Court of Appeals and Supreme Court; and, the Commission on Judicial Discipline; and, the North Las Vegas, Las Vegas, Reno, Beatty, Pahrump, Dayton, Sparks, Goodsprings, Sparks, and Virginia Justice Courts; and, the Reno, Las Vegas, and Henderson Municipal Courts. ONJ has recorded and published over 600 hearings.

A writ of mandamus may be issued “to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station; or to compel the admission of a party to the use and enjoyment of a right or office to which the party is entitled and from which the party is unlawfully precluded by such inferior tribunal, corporation, board or person,” when there is no plain, speedy, and adequate remedy. NRS 34.160; NRS 34.170. “[T]he scope of the press's and public's access to courts is an important issue of law, as well as a substantial issue of public policy, warranting [] extraordinary consideration [because] direct appellate review is often not available to the press, and thus, writs for extraordinary relief may be necessary to challenge a denial of access.” *Falconi v Eighth Jud. Dist. Ct., Id.*

b. The SRCR Are Generally Applicable

SRCR 1(4) provides the scope of the rules on sealing and redaction. A list of NRS Chapters is provided, but the list is not exclusive³ and actually manifests the harmonious construction⁴ principle of statutory construction with the additional caveat that the court rules⁵ give way to any “specific” statute governing sealing and redaction. In other words, the

³ SRCR 1(4): “These rules do not apply to the sealing or redacting of court records under **specific** statutes, **such as...**” (emphasis added).

⁴ *Simmons Self-Storage vs Rib Roof, Inc.*, 130 Nev. 540, 546, 331 P. 3d 850, 854 (2014) (“[T]his court interprets `provisions within a common statutory scheme harmoniously with one another in accordance with the general purpose of those statutes' to avoid unreasonable or absurd results and give effect to the Legislature's intent.”)

⁵ *Weddell v. Stewart*, 127 Nev. 645, 650, 261 P.3d 1080, 1084 (2011) (“[R]ules of statutory construction apply to court rules.”)

SRCR doesn't automatically prohibit the sealing or unsealing of actions filed under NRS Chapter 126. Instead, it yields to certain specific statutes like NRS 126.211 and NRS 125.110.

The underlying domestic relations matter is not a divorce, nor was paternity ever in question. If this Court agrees that neither statute applies, the disposition of this matter will be swift. ONJ will infer, *in arguendo*, that Respondent means to rely upon NRS 126.211 as a basis for the extensive sealing of the underlying matter. Under that law, “[a]ll papers and records, other than the final judgment” are automatically and generally sealed. The statute provides, however, that “in exceptional cases [unsealing may occur] upon an order of the court for good cause shown.”

At issue here is the definition of “papers and records,” that which might constitute an “exceptional case[]” supported by “good cause shown,” as well as the information ONJ is requesting access to, namely, the case numbers, docket codes, docket numbers, and date that the action was commenced; and, the names of the parties, counsel of record, and the assigned judge; the case type and cause(s) of action; and, sealing orders (hereinafter ‘Court Access Information’). By following the mandate of SRCR 3(5)(c) and making the ‘court indices’ publicly accessible, most of the requested information is efficiently disclosed.

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c. First Amendment Implications in Accessing Fundamental Court Records

“A court's authority to limit or preclude public access to judicial records⁶ and documents stems from three sources: constitutional law, statutory law, and common law.” *Howard v. State*, 128 Nev. 736, 291 P. 3d 137 (2012). The *Howard* Court pointed out at the time that the common law generally favors public access but gives way to statutes and court rules. While there were no constitutional issues relevant to the *Howard* Court’s analysis, the *Falconi* Court recently clarified that a First Amendment right of access to the underlying proceedings exists.

The *Falconi* Court broadly expanded the scope of the ruling in *Stephens Media, LLC. v. Eighth Judicial District Court*, 125 Nev. 849, 221 P. 3d 1240 (2009) from criminal proceedings to all civil proceedings, including family law proceedings. Importantly, the *Stephens Media* Court recognized a powerful distinction left untouched by the *Howard* Court; namely, that there was a distinction between oral proceedings and documentation that “merely facilitate[s] and expedite[s]” one of those oral proceedings, specifically, jury questionnaires and *voir dire*. Specifically, the *Stephens Media* Court recognized that the purpose of the jury questionnaires was their direct connection to and facilitation of *voir dire* proceedings such that they constituted access to the proceedings themselves and thus implicated First Amendment concerns. In this same

⁶ SRCR 2(2) defines, *inter alia*, court records.

manner, the court indices⁷ and Court Access Information ONJ seeks now go beyond mere court records and are preliminarily required for monitoring and accessing any court file⁸.

Even if this Court came to the conclusion that the court indices and Court Access Information fell within NRS 126.211's definition of "records and papers," access to them still requires the First Amendment analysis contemplated by the *Falconi* Court and the exception in the statute allowing unsealing only "in exceptional cases" "for good cause shown" provides an avenue by which this Court must invoke the analysis. Compare *Falconi v. Sec'y of Nev.*, 129 Nev. 260, 299 P.3d 378 (2013)(relying upon NRS 217.464(2)(b) to shoehorn in the constitutional principles necessary to save the statutory scheme.) When the language of a statute admits of two constructions, one of which would render it constitutional and valid and the other unconstitutional and void, that construction should be adopted which will save the statute. *State v. Castaneda*, 126 Nev. 478, 481, 245 P.3d 550, 553 (2010).

d. The Law of the Case

ONJ has no ability whatsoever to monitor the operation of the Court. PA-14 and PA-15. ONJ has already prevailed on the issue of access to the underlying matter, and the law of the case⁹ dictates access must be

⁷ <https://www.clarkcountycourts.us/Anonymous/default.aspx> and <https://www.clarkcountycourts.us/portal>.

⁸ SRCR 2(1): court file defined.

⁹ *Hall v. State*, 91 Nev. 314, 535 P. 2d 797 (1975)("The law of a first appeal is the law of the case on all subsequent appeals in which the facts are...

allowed consistent with the *Falconi* court's decision. Respondent has, in defiance of the First Amendment, constructively¹⁰ barred media access. ONJ exists to provide a public service that provides for the coverage of the entire judiciary, not merely judges who are willing to allow it. The underlying case presents to this Court a judge who, despite The Parents non-opposition, continues to resist any and all forms of media coverage.

XI. Conclusion

NRS 126.211 and NRS 125.110 should be interpreted to protect the confidentiality of court records and papers without undermining the First Amendment right of access to civil proceedings - but an interpretation of NRS 126.211 that provides for secrecy of court indices and the Court Access Information goes too far. Such an interpretation interferes with public and press access to the proceedings by hiding the very existence of the proceedings themselves.

WHEREFORE, Petitioner, asks for the following relief:

1. A writ of mandamus ordering Judge Hoskin to vacate his order denying the limited motion to unseal with instructions to grant the motion.

DATED this Apr 4, 2024

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...substantially the same.")

¹⁰ Compare *Las Vegas Oriental v. Sabella's of Nev.*, 97 Nev. 311, ___, 630 P. 2d 255, 256 (1981).

VERIFICATION OF ALEXANDER FALCONI

I, Alexander M. Falconi, state that I am the Founding Director of Our Nevada Judges, Inc., and that I have read this *Petition* and that the contents are true and correct of my own personal knowledge, except for those matters I have stated that are not of my own personal knowledge, but that I only believe them to be true, and as for those matters, I do believe they are true.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this Apr 4, 2024



Alexander M. Falconi
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CERTIFICATE OF COMPLIANCE

I, Luke Busby, declare and certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Google Docs in 14-point Helvetica. I further certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points or more and contains 2279 words.

EXECUTED this Apr 4, 2024

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NRAP 25(5)(c)(1)(B) Certificate of Service

I, Luke Busby, do hereby declare that I served a true and correct copy of this *Petition* by placing it into a sealed envelope and mailing it, postage prepaid, *via* United States Postal Service, addressed as follows:

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SERVED this Apr 4, 2024

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