



1 LUKE A. BUSBY, ESQ.
2 SBN 10319
3 316 California Ave.
4 Reno, Nevada 89509
5 775-453-0112
6 luke@lukeandrewbusbyltd.com
7 Attorney for Our Nevada Judges, Inc.

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**DISTRICT COURT
CLARK COUNTY, NEVADA
FAMILY DIVISION**

<p>██████████ Petitioner, vs. ██████████ Respondent.</p>	<p>CASE NO: D-20-██████████-C DEPT NO: J NO HEARING REQUESTED</p>
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NOTICE: YOU MAY FILE A WRITTEN RESPONSE TO THIS MOTION WITH THE CLERK OF THE COURT AND PROVIDE THE UNDERSIGNED WITH A COPY OF YOUR RESPONSE WITHIN 14 DAYS OF YOUR RECEIPT OF THIS MOTION. FAILURE TO FILE A WRITTEN RESPONSE WITH THE CLERK OF THE COURT WITHIN 14 DAYS OF YOUR RECEIPT OF THIS MOTION MAY RESULT IN THE REQUESTED RELIEF BEING GRANTED BY THE COURT WITHOUT A HEARING PRIOR TO THE SCHEDULED HEARING DATE.

LIMITED MOTION TO UNSEAL

COMES NOW, Our Nevada Judges, Inc., a Nevada non-profit corporation, by and through the undersigned counsel, and hereby files a limited motion to unseal.

This motion is based upon the following memorandum of points and authorities, and the exhibits attached hereto.

MEMORANDUM OF POINTS AND AUTHORITIES

An SCR 229(1)(c) non-party news reporter may file a motion to unseal. SRGR 4(2).

1 This case is under a comprehensive electronic coverage order. SCR 230(1).
2 *Order For Camera Access to Court Proceedings* filed February 20, 2024. Our
3 Nevada Judges, Inc. (hereinafter 'ONJ') is in communication with the Parties and is
4 understanding of the Parties' desire to control the redaction and unsealing of
5 specific filings on their own timeline. But, ONJ needs to independently request that
6 this Court bring the case file into compliance with SRCR 3(5)(c)¹ so that ONJ can
7 independently monitor it.
8

9 Sealing the entire file interferes with an SCR 229(1)(c) news reporter's ability to
10 monitor a case. The Clerk should be directed to restore access to the court indices²,
11 which would most efficiently reveal the case numbers, docket codes, docket
12 numbers, and date that the action was commenced; and, the names of the parties,
13 counsel of record, and the assigned judge; the case type and cause(s) of action;
14 and, sealing orders (hereinafter 'Court Access Information'). The extensive seal
15 imposed in these cases allows a clerk to refuse to disclose not only the hearing
16 dates and times, but also the existence of the case entirely, which unconstitutionally
17 interferes with press access to the courtroom. See *Falconi v. Eighth Jud. Dist. Ct.*,
18 140 Nev., Advance Op. 8 (2024).
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21 SRCR 1(4) provides the scope of the rules on sealing and redaction. A list of
22 NRS Chapters is provided, but the list is not exclusive³ and actually manifests the
23 harmonious construction⁴ principle of statutory construction with the additional
24

25 ¹ SRCR 3(5)(c): "Under no circumstances shall the court seal an entire court file."

26 ² <https://www.clarkcountycourts.us/Anonymous/default.aspx> and
27 <https://www.clarkcountycourts.us/portal>

28 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)

1 caveat that the court rules⁵ give way to any “specific” statute governing sealing
2 and redaction. In other words, SRCR 1(4) is not categorically inapplicable to the
3 unsealing of actions filed under NRS Chapters 125 or 126, but rather, yields to
4 certain “specific” statutes like NRS 126.211 and NRS 125.110.

5 The underlying domestic relations matter is not a divorce, nor was paternity
6 ever in question. If this Court agrees that neither statute applies, the disposition of
7 this motion will be swift. Should Parties or the Court assert otherwise, ONJ
8 proceeds *in arguendo*. “A court's authority to limit or preclude public access to
9 judicial records and documents stems from three sources: constitutional law,
10 statutory law, and common law.” *Howard v. State*, 128 Nev. 736, 291 P. 3d 137
11 (2012). The *Howard* Court pointed out at the time that the common law generally
12 favors public access but gives way to statutes and court rules. While there were no
13 constitutional issues relevant to the *Howard* Court’s analysis at the time, the
14 *Falconi* Court later clarified that a First Amendment right of access to the
15 underlying proceedings exists.

16 The *Falconi* Court broadly expanded the scope of the ruling in *Stephens*
17 *Media, LLC. v. Eighth Judicial District Court*, 125 Nev. 849, 221 P. 3d 1240 (2009)
18 from criminal proceedings to all civil proceedings, including family law
19 proceedings. Importantly, the *Stephens Media* Court recognized a powerful
20 distinction left untouched by the *Howard* Court; namely, that there was a
21 distinction between oral proceedings and documentation that “merely facilitate[s]
22 and expedite[s]” one of those oral proceedings, specifically, jury questionnaires
23 and *voir dire*. The *Stephens Media* Court recognized that the purpose of the jury
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26 (“[T]his court interprets `provisions within a common statutory scheme harmoniously with
27 one another in accordance with the general purpose of those statutes' to avoid
28 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.”)

1 questionnaires was their direct connection to and facilitation of *voir dire*
2 proceedings such that they constituted access to the proceedings themselves and
3 thus implicated First Amendment concerns. Analogously, the court indices and
4 Court Access Information ONJ seeks now go beyond mere court records and are
5 preliminarily required for monitoring and accessing any court file.

6 Even if this Court came to the conclusion that certain interpretations of law
7 could allow Court Access Information to be hidden from the press, this Court must
8 adopt the interpretation that is constitutional. This is because "when the language
9 of a statute admits of two constructions, one of which would render it
10 constitutional and valid and the other unconstitutional and void, that construction
11 should be adopted which will save the statute." *State v. Castaneda*, 126 Nev. 478,
12 481, 245 P.3d 550, 553 (2010).

13 "People in an open society do not demand infallibility from their institutions,
14 but it is difficult for them to accept what they are prohibited from observing."
15 *Richmond Newspapers*, 448 U. S., at 572.

16 **NRS 239B.030(4) AFFIRMATION**

17 Pursuant to NRS 239B.030 the undersigned hereby affirms that this document
18 does not contain the social security number of any person.

19 **DATED** this Apr 8, 2024

20
21 By: /s/ Luke Busby
22 LUKE A. BUSBY, ESQ.
23 Nevada Bar No. 10319
24 316 California Ave.
25 Reno, Nevada 89509
26 775-453-0112
27 luke@lukeandrewbusbyltd.com
28 *Attorney for the Our Nevada Judges*

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DECLARATION OF ALEXANDER FALCONI

I, Alexander M. Falconi, declare that I have read the forgoing *Motion* 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 8, 2024



Alexander M. Falconi
205 N. Stephanie St.
Suite D#170
Henderson, NV 89074
Our Nevada Judges
admin@ournevadajudges.com