

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 OUR NEVADA JUDGES, INC, A
4 NEVADA NON-PROFIT CORPORATION,

5 Petitioner,

6
7 vs.

8 THE FIRST, SECOND, AND EIGHTH
9 JUDICIAL DISTRICT COURTS OF THE
10 STATE OF NEVADA, IN AND FOR THE
11 COUNTIES OF CARSON CITY, WASHOE
12 AND CLARK AND CLARK,
13 RESPECTIVELY; THE HONORABLE
14 DAVID A. HARDY AND GREGORY G.
15 GORDON, DISTRICT JUDGES; AND
16 THE HONORABLE EDMUND GORMAN,
17 PROBATE COMMISSIONER,

18 Respondents,

19 and

20 THE DOE 1 TRUST; DOES 1 THROUGH
21 9; STEVE EGGLESTON; CANDACE
22 MCDONALD; MICHAEL MCDONALD;
23 AND DEPARTMENT OF FAMILY
24 SERVICES, CHILD SUPPORT
25 SERVICES, CLARK COUNTY, NEVADA,

26 Real Parties in Interest.

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No. 89600

27 **RESPONDENT THE HONORABLE GREGORY G. GORDON'S**
28 **ANSWER TO AMENDED PETITION FOR**
 WRIT OF MANDAMUS

1 Having received from the district court what was requested, ONJ
2 cannot reasonably assert there is any basis for extraordinary relief.
3

4 **BACKGROUND**

5 The underlying matter, *In the Matter of the Parental Rights of*
6 *Michael McDonald*, Case No. 23-661332-R, concerns a petition to
7 terminate parental rights filed pursuant to NRS Chapter 128.
8

9 Petitioner Candace McDonald filed the petition on January 19,
10 2023.
11

12 On March 6, 2023, ONJ filed a request for media access to court
13 proceedings scheduled for the following day. PA 033. Candace objected
14 to the media request, citing NRS 128.090(5) and the case's "sensitive
15 facts that are directly related to two minor children." PA 035.
16

17 Senior Judge Cheryl Moss, a seasoned jurist who also presided
18 over the divorce proceedings involving the same parties and children,
19 denied ONJ's media request, stating that "holding an open hearing
20 would potentially be detrimental to the children in this case." PA 042.
21

22 On February 15, 2024, nearly 18 months ago, this court issued an
23 *Order Finding Nevada An Inconvenient Forum And Releasing Subject*
24 *Matter Jurisdiction to Oregon* and closed the case. PA 049-50.
25

26 There has been no further activity in the case other than by ONJ.
27
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1 On March 4, 2024, approximately two weeks after the district
2 court relinquished subject matter jurisdiction over the children and
3 closed the matter, ONJ filed a *Limited Motion to Unseal*, asking the
4 Court to grant ONJ “access to the docket index so that ONJ can
5 independently monitor upcoming hearing dates and times.” PA 045.
6

7
8 ONJ stated in the motion: “All filings may remain sealed except
9 any sealing orders. The clerk should be directed to restore access to the
10 docket index so that ONJ can independently monitor upcoming hearing
11 dates and times.” PA 045 (citations and footnotes omitted) (emphasis
12 added).
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14
15 Pursuant to an Order filed April 4, 2024, the district court granted
16 ONJ’s request stating: “To the extent that ONJ’s motion requests only
17 the unsealing of a ‘docket index’ or ‘docket summary’ revealing
18 upcoming hearing dates and times, the Court sees no harm or prejudice
19 to the parties or minor children in releasing such information.” PA 052.
20

21 **ARGUMENT**

22 **I. The District Court Did Not Abuse Its Discretion.**

23 **A. The District Court Granted What ONJ** 24 **Requested: Access to the Docket Index.** 25

26 Mandamus is properly requested to compel the district court to
27 perform a legally required act or to correct a manifest abuse or arbitrary
28

1 or capricious exercise of discretion. *NRS 34.160; State v. Eighth*
2 *Judicial Dist. Court (Armstrong), 127 Nev. 927, 931, 267 P.3d 777, 779*
3 *(2011)*. An abuse of discretion occurs when a “decision is arbitrary or
4 capricious or if it exceeds the bounds of law or reason.” *Coleman v.*
5 *State, 130 Nev. 229, 239, 321 P.3d 901, 908 (2014)*.
6
7

8 The district court did not abuse its discretion in granting ONJ
9 what it requested. ONJ filed a “limited motion to unseal” citing Rule
10 4(2) of Nevada Rules for Sealing and Redacting Court Records (SRCR).
11 In its motion, ONJ agreed “all filings may remain sealed except any
12 sealing orders.” PA 045 (emphasis added).
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15 ONJ requested only the following relief: “The clerk should be
16 directed to restore access to the docket index so that ONJ can
17 independently monitor upcoming hearing dates and times.” PA 045.
18

19 The district court granted the request, stating: “To the extent that
20 ONJ’s motion requests only the unsealing of a ‘docket index’ or ‘docket
21 summary’ revealing upcoming hearing dates and times, the Court sees
22 no harm or prejudice to the parties or minor children in releasing such
23 information to ONJ.” PA 052.
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B. The Writ Request is Moot as the Matter is Now Closed and Jurisdiction Lost.

This matter was closed approximately 18 months ago and subject matter child custody jurisdiction over these children relinquished to another state before ONJ filed its motion to unseal the docket index. PA 49-50.

There will be no further activity in this case for ONJ to monitor. As such, the matter is moot, and this Court should deny the request for writ relief. *See, e.g. Personhood Nev. v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010) (stating that this court’s duty is “to resolve actual controversies by an enforceable judgment” and “not to render advisory opinions”).

C. The District Court Did Not Order the Case Sealed; and SRCR is Not Applicable.

ONJ is asking for a writ to issue directing the district court “to restore SRCR 3(5)(c) access” to the case docket. *See Amended Petition for Writ of Mandamus*, at pg. 25.

The district court never ordered a seal of this termination of parental rights case. There is nothing for this district court to restore. The case is presumptively sealed pursuant to legislative action. *NRS 128.090(7)*.

1 ONJ cites SRCR 4(2) as authority for its limited motion to unseal.
2
3 However, Nevada’s rules governing the sealing and redacting of court
4 records do not apply to Chapter 128 proceedings. *See* SRCR 1(4).

5 ONJ did not reference NRS 128.090(7) in its motion or challenge
6 the law’s constitutionality. That issue was not presented below.
7

8 **D. The District Court is Bound by Law of the Case.**

9 On March 6, 2023, Senior District Court Judge Cheryl Moss
10 denied ONJ’s request for media access to a hearing scheduled the next
11 day. PA 041. Judge Moss presided over related divorce proceedings
12 involving these same parties and their minor children. PA 041.
13

14 In denying ONJ’s prior request for media access to the TPR
15 proceeding, Judge Moss found: “Upon consideration of the history of
16 the divorce case, which is highly related to the instant TPR case, the
17 Court finds that holding an open hearing would potentially be
18 detrimental to the children in this case.” PA 041.
19

20 In reaching her decision, Judge Moss expressly acknowledged the
21 public nature of most family court proceedings and the policy reasons
22 behind transparency. PA 041. She recognized ONJ’s stated mission of
23 behind transparency. PA 041. She recognized ONJ’s stated mission of
24 behind transparency. PA 041. She recognized ONJ’s stated mission of
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26 behind transparency. PA 041. She recognized ONJ’s stated mission of
27 behind transparency. PA 041. She recognized ONJ’s stated mission of
28 behind transparency. PA 041. She recognized ONJ’s stated mission of

1 educating the public and ability to safeguard privacy rights through
2 appropriate redactions.¹

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4 Notwithstanding, based upon her familiarity with the parties and
5 the minor children at issue including the nature of the underlying
6 circumstances, Judge Moss denied ONJ's request for media access to the
7 courtroom, citing the best interests of the children. PA 041.

8
9 When a case is transferred to a different or successor judge, the
10 law-of-the-case doctrine prescribes that, while not absolutely barred
11 from reconsidering a predecessor judge's order, a successor judge should
12 not do so merely because the later judge disagrees with the first.
13 *See Litchfield v. Tucson Ridge Homeowners*, 140 Nev. Adv. Op. 57, 555
14 P.3d 267 (2024); *Pit River Home & Agric. Coop. Ass'n v. United*
15 *States*, 30 F.3d 1088, 1097 (9th Cir. 1994) (rejecting the argument that
16 the law of the case doctrine does not apply to interlocutory orders which
17 are not immediately appealable).

18
19 In the interests of judicial consistency, finality, and the protection
20 of the court's integrity (also a stated objective of ONJ), a judge should be
21 reticent to depart from the rulings of a predecessor judge.

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¹ While ONJ redacts sensitive information, acknowledging certain
27 details are never appropriate to broadcast, other media outlets may not
28 ascribe to the same policy once a case is unsealed.

1 The district court did not seal this case. ONJ asked the district
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3 court for access to a “docket index” so that it could “monitor upcoming
4 hearing dates and times” and the district court granted the relief despite
5 law of the case that public media coverage of these proceedings would be
6 potentially detrimental to the best interests of the children.
7

8 **II. ONJ Did Not Challenge the Constitutionality**
9 **of NRS 128.090.**

10 ONJ did not challenge below the constitutionality of NRS 128.090,
11 nor make reference to the statute. And, because the district court
12 believed it was granting what ONJ requested, access to the docket index
13 for monitoring purposes, the district court had no reason to address the
14 statute’s constitutionality. *State v. Colosimo*, 122 Nev. 950, 954, 142
15 P.3d 352, 355 (2006) (“Statutes are presumptively valid and the burden
16 is on those attacking them to show their unconstitutionality”).
17
18

19 The Nevada Supreme Court found in *Falconi* that all civil
20 proceedings are presumptively open, including family law proceedings.
21 The Court, however, acknowledged that “the closure of various family
22 law proceedings can and will be warranted in various instances.”
23 *Falconi*, 140 Nev. at *14. The Court went on to state: “What we
24 recognize today is the critical importance of the public’s access to the
25 courts and the role that thoughtful, reasoned judicial decision-making
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1 plays is identifying the compelling interests at stake” *Id.*; see also
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3 *Nestor v. Gamble*, 141 Nev. Adv. Op. 41 *6 (January 30, 2025)
4 (recognizing “the district court’s discretion to weigh when a closure is
5 warranted and when the public’s right of access warrants keeping the
6 proceedings open”).
7

8 Here, because ONJ requested only a docket index, and nothing
9 more, the District Court was never required to conduct the “thoughtful,
10 reasoned judicial decision-making” that *Falconi* directs.
11

12 While *Falconi* recognized in the context of divorce and child
13 custody proceedings that a litigant’s right of privacy does not
14 automatically overcome the public’s right to access to the courtroom, not
15 all family court proceedings are alike.
16

17 There are other important policy considerations at stake in family
18 court beyond the right of privacy, including the state’s interests in
19 protecting children from abuse; encouraging victims and witnesses of
20 child abuse to testify; the prevention and correction of dependency and
21 delinquency among juveniles; and promoting permanence for children
22 including the termination of parental rights and establishing those same
23 rights in others through adoption.
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1 All too often dependency cases become termination proceedings,
2 which may contain sensitive information, such as mental health
3 evaluations and diagnoses (or misdiagnoses), over which a minor child is
4 powerless to protect and once made public may follow that child into
5 adulthood. What about children who must face peers in the classroom
6 or on the playground and risk revelation of embarrassing circumstances
7 beyond their control? What if physical, psychological, or sexual abuse of
8 a child is alleged? Can there be any set of circumstances where a court
9 could conclude that publicizing at large details surrounding a child's
10 victimization serves their best interests? *See William Wesley Patton,*
11 *"Yes, Abused Children Are At Risk in Open Dependency Courts: A*
12 *Rebuttal to Witkin"*, 51 *Am. J.L. & Medicine* 2025 (arguing that open
13 dependency proceedings has not led to increased public funding or
14 better outcomes for children but rather places children at greater risk of
15 harm); *see also Nestor v. Gamble*, 141 *Nev. Adv. Op.* 41 *6 (January 30,
16 2025) (citing U.S. Supreme Court precedent recognizing a compelling
17 interest in "safeguarding the psychological well-being of minors" as well
18 as "protecting minor victims from further trauma" or
19 "embarrassment").²

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28 ² The district court was not asked to rule upon the constitutionality of

1 NRS 128.090 provides for the presumptive closure of all TPR
2 cases. The presumption of closure does not equate with a mandatory
3 rule. *See In re J.B.*, 576 A.2d at 269 (cited with approval by the *Falconi*
4 majority). NRS 128.090 permits the public, including members of the
5 press such as ONJ, to make application to attend and report on the
6 proceedings as well as obtain case records. Indeed, ONJ had that very
7 right in this case to seek greater access pursuant to NRS 128.090.
8

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11 This district court judge fully endorses the prophylactic and
12 educative benefits of openness, which also serves to promote fairness as
13 well as the appearance of fairness and accountability.
14

15 If ONJ had requested something beyond the docket index, the
16 court would have conducted the “thoughtful, reasoned judicial decision-
17 making” contemplated by *Falconi* to balance the public’s right to access
18 against the state’s varied interests related to the welfare of children
19 enumerated above.
20
21

22 NRS 128.090. If so, it would have found *N.J. Div. of Youth and Fam.*
23 *Servs. v. J.B.*, 120 N.J. 112, 576 A.2d 261, 269 (N.J. 1990) and *Nat.*
24 *Parents of J.B. v. Fla. Dep’t of Child. & Fam. Servs.*, 780 So. 2d 6, 10-11
25 (Fla. 2001) instructive. Both cited with approval by factions of the
26 divided *Falconi* court. *See also San Bernardino County Dept. of Public*
27 *Social Services v. Superior Court*, 232 Cal.App.3d 188, 283 Cal.Rptr.
28 332 (Cal. Ct. App. 1991) (finding no tradition of public access in juvenile
dependency proceedings).

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CONCLUSION

The district court did not abuse its discretion in granting ONJ's limited motion to unseal the docket index in this closed case over which Nevada has relinquished jurisdiction to another state. ONJ did not challenge the constitutionality of NRS 128.090, and the district court committed no error warranting extraordinary relief.

For these reasons, the Court should deny ONJ's writ petition.

Dated this 25th day of July, 2025,

RESPECTFULLY SUBMITTED

By: /s Gregory G. Gordon
HON. GREGORY G. GORDON
District Court Judge
Eighth Judicial District Court

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CERTIFICATE OF COMPLIANCE

I hereby certify that this answer complies with the formatting requirements of the court as:

This answer has been prepared in a proportionally spaced typeface using Georgia in 14 pt. font and is no more than 15 pages in length;

I further certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose; and complies with all applicable Nevada Rules of Appellate Procedure.

RESPECTFULLY SUBMITTED

By: /s/ Gregory G. Gordon
HON. GREGORY G. GORDON
District Court Judge
Eighth Judicial District Court

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court by using the electronic filing system on the 25th day of July, 2025, and e-served the same on all parties listed on the Court's Master Service List.

I also served a copy by U.S. Mail, postage prepaid, addressed as follows:

Michael McDonald
8272 Chino Drive
White Hills, AZ 86445

/s/ Nicole Hutcherson
Nicole Hutcherson, Judicial Executive Assistant
to the Honorable Gregory G. Gordon