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6 Appearing in Proper Person

EIGHTH JUDICIAL DISTRICT
CLARK COUNTY, NEVADA

7 T. MATTHEW PHILLIPS,
8 Plaintiff,

Case No.: A-21-829038-C
Dept. No.: 16

9 vs.

OPPOSITION TO MOTION TO STRIKE

10 JENNIFER V ABRAMS,
11 THE ABRAMS LAW FIRM, L.L.C.,
12 MARK DICIERO,
13 DAVE SCHOEN,
14 DOES I-X,
15 Defendants.

* NO HEARING REQUESTED *

16 COMES NOW, Alexander M. Falconi d.b.a. Our Nevada Judges¹, appearing in proper
17 person, and hereby files opposition to Plaintiff's motion to strike filed April 2, 2021. This
18 opposition is based upon the following memorandum of points and authorities and all pleadings
19 on file herein.

DATED THIS 5th day of April, 2021.



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22 Alexander M. Falconi
23 Our Nevada Judges
24 Administrator
25 *Appearing in Proper Person*

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¹ Alexander M. Falconi owns, operates, and controls Our Nevada Judges.

1 **Memorandum of Points and Authorities**

2 **I. Summary**

3 At issue are pure questions of law. Plaintiff, Todd Matthew Phillips, opposes electronic
4 coverage of these proceedings and argues Administrator, Alexander Falconi ('Falconi'), of Our
5 Nevada Judges cannot file response to his motion seeking reconsideration without counsel.
6 Plaintiff's interpretation is inconsistent with principles of statutory construction. His motion
7 should be denied.
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9 **II. Electronic Coverage Should Continue Pending Briefing**

10 Plaintiff's arguments asserted in his motion to strike would be more properly considered
11 on reply to opposition. EDCR 2.20(g). DCR 13(4). "[T]his court has repeatedly condemned the
12 practice of a motion to strike a motion[.]" *Gull v. Hoalst*². Had he done so, the issues would be
13 fully briefed and submitted prior to our upcoming coverage on April 13, 2021. Alternatively,
14 Plaintiff could have filed *ex parte* motion for order shortening time. EDCR 2.26. Any delay in
15 briefing should not delay electronic coverage; allowing coverage to proceed pending full briefing
16 and taking of evidence (if deemed necessary) is consistent with established precedent. Compare
17 *Solid v. Eighth Jud. Dist. Ct.*³ (allowing electronic coverage to proceed and considering the issue
18 on writ review after invoking the mootness exception.)
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20 **III. Statutory Construction**

21 "Rules of statutory construction apply to court rules." *Weddell v. Stewart*⁴. Plaintiff argues
22 NRCP 11(a) does not allow an unrepresented non-party to file a pleading or other paper. Our
23 Nevada Judges is an unrepresented non-party news reporter. SCR 229(1)(c). Plaintiff's
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² *Gull v. Hoalst*, 77 Nev. 54, 57, 359 P. 2d 383, 384 (1961).

28 ³ *Solid v. Eighth Jud. Dist. Ct.*, 133 Nev. 118, 120, 393 P. 3d 666, 670 (2017).

⁴ *Weddell v. Stewart*, 127 Nev. 645, 651, 261 P.3d 1080, 1084 (2011).

1 interpretation contradicts SCR 44(1) and renders SCR 230(1) nugatory, violating well established
2 principles of statutory construction.

3 “[I]t is the duty of this court, when possible, to interpret provisions within a common
4 statutory scheme harmoniously with one another in accordance with the general purpose of those
5 statutes and to avoid unreasonable or absurd results, thereby giving effect to the Legislature’s
6 intent.” *Torrealba v. Kesmetis*⁵. The district courts, in promulgating the NRCP, did not consider
7 the issue of electronic coverage; rather, the Supreme Court promulgated a second set of rules, the
8 SCR, which contemplated the issue of electronic coverage and expressly required the news
9 reporter to file a written request with the Court. SCR 230(1). Under the rule, a news reporter would
10 have the authority to file the request and preserve permission to provide electronic coverage as
11 consistent with his or her approved request. This interpretation is bolstered by construing both
12 rules harmoniously with SCR 44(1), which expressly forbids any court “except the supreme court”
13 from interfering with a person’s right to appear on his own behalf. See also *Guerin v Guerin*⁶ (“an
14 individual is entitled to represent himself or herself in the district court”, citing SCR 44).
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17 Plaintiff’s interpretation is also absurd for several reasons. Firstly, an unrepresented news
18 reporter, as a non-party, would not even be able to file the media request itself as it would fall
19 within the definition of an “other paper”. See NRCP 7(b). Contrast NRCP 7(a) (defining
20 “pleadings”). See also *Elliot v. Resnick*⁷ (that which is “not a pleading” “is a motion or other
21 paper”). Secondly, an unrepresented non-party intervenor would not be able to file a motion to
22 intervene. Compare NRCP 24(c). Thirdly, an unrepresented non-party subjected to subpoena
23 would not be able to file a motion to quash. Compare NRCP (c)(3)(A). Fourthly, the appellate
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27 ⁵ *Torrealba v. Kesmetis*, 124 Nev. 95, 101, 178 P. 3d 716, 721 (2008).

28 ⁶ *Guerin v Guerin*, 116 Nev. 210, 214, 993 P. 2d 1256, 1258 (2000).

⁷ *Elliot v. Resnick*, 114 Nev. 25, 30, 952 P. 2d 961, 964 (1998).

1 process would be frustrated in different ways depending upon whether waiver would trigger⁸ or
2 not⁹.

3 “When two statutory provisions conflict, this court employs the rules of statutory
4 construction, and attempts to harmonize conflicting provisions so that the act as a whole is given
5 effect. Statutes are interpreted so that each part has meaning. [W]hen a scheme contains a general
6 prohibition contradicted by a specific provision, the specific provision is construed as an exception
7 to the general one.” *State v. Eighth Jud. Dist. Ct. (Logan D.)*¹⁰ (citations omitted.) Under these
8 rules, NRCP 11(a), “general[ly]” disallows non-attorney non-party filings. But, other rules, such
9 as NRCP 24(c), NRCP (c)(3)(A), SCR 230(1), and importantly, SCR 44(1), serve to create
10 “exception[s]” to the rule in a series of “specific” circumstances. It is also not unprecedented, albeit
11 rare, for court rules to be utterly stricken. *Lippis v. Peters*¹¹ (conceding the Supreme Court “ill-
12 advisedly approved the issuance of [JCRCP 106]”, but discarding the rule as “violative of the
13 Nevada Constitution[.]”) Reading the rules harmoniously, Our Nevada Judges is within its right to
14 file, without counsel, a news reporter’s request to provide electronic coverage, as well as any other
15 papers consistent with the limited purpose of preserving the news reporter’s right to provide
16 electronic coverage under SCR 230(1).
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19 **IV. Judicial Estoppel**

20 Plaintiff’s argument that NRCP 11 forbids Our Nevada Judges’ filing yet simultaneously
21 allows the imposition of sanctions against Our Nevada Judges is an attempt at doublespeak that
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24 ⁸⁸*Old Aztec Mine, Inc., v. Brown*, 97 Nev. 49, 52, 623 P. 2d 981, 983 (1981) (“A point not urged
25 in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and
26 will not be considered on appeal.”)

27 ⁹ Were waiver not to trigger, the appellate courts would be required to consider issues for the first
28 time raised on appeal even though the district court, if given the opportunity, would make the
correct decision on proper briefing.

¹⁰ *State v. Eighth Jud. Dist. Ct. (Logan D.)*, 129 Nev. 492, 508, 306 P. 3d 369, 381 (2013).

¹¹ *Lippis v. Peters*, 112 Nev., 1008, 1010, 921 P. 2d 1248, 1249 (1996).

1 makes a mockery of the judicial system. Plaintiff's interpretation, if deemed correct and
2 controlling, would necessarily exclude Our Nevada Judges from the scope of the same rule as to
3 who may be sanctioned. See NRCP 11(c)(1). "The primary purpose of judicial estoppel is to
4 protect the judiciary's integrity[.]" *Nolm, LLC vs. County of Clark*¹². Pursuant to *Déjà vu Showgirls*
5 *v. State, Dept. of Tax*¹³:

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7 [j]udicial estoppel may apply when (1) the same party has taken two
8 positions; (2) the positions were taken in judicial or quasi-judicial
9 administrative proceedings; (3) the party was successful in asserting the first
10 position ...; (4) the two positions are totally inconsistent; and (5) the first
11 position was not taken as a result of ignorance, fraud, or mistake.

12 Plaintiff takes the position NRCP 11(a) prohibits unrepresented non-party filings yet allows
13 imposition of sanctions against unrepresented non-parties, in this judicial proceeding, *in arguendo*
14 successfully, where both positions are "totally inconsistent", of which neither are taken
15 inadvertently; effectively, satisfying all 5 elements of judicial estoppel thusly precluding Plaintiff
16 from any relief under the rule.

17 **V. Attorney Fees Prohibited**

18 Plaintiff, a self-represented California attorney, cannot recover attorney fees when
19 appearing in a Nevada court in proper person. *Sellers v. Dist. Ct.*¹⁴.

20 **VI. Argumentative Assertions Disregarded**

21 Our Nevada Judges disregards a variety of argumentative assertions that are not relevant,
22 were already addressed in the *Opposition to Motion for Reconsideration of Order Allowing*
23 *Camera Access to Court Proceedings* filed March 30, 2021, or would be more appropriately raised
24 on reply to opposition to same.

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26 ¹² *Nolm, LLC vs. County of Clark*, 120 Nev. 736, 743, 100 P. 3d 658, 663 (2004).

27 ¹³ *Déjà vu Showgirls v. State, Dept. of Tax*, 130 Nev. 711, 717, 334 P. 3d 387, 391 (2014).

28 ¹⁴ *Sellers v. Dist. Ct.*, 119 Nev. 256, 71 P. 3d 495 (2003) ("We join those states that decline to have one rule for attorneys who successfully represent themselves in court and a different rule for non-attorneys who do the same.")

1 **VII. Conclusion**

2 For the several reasons outlined in this opposition, Plaintiff’s motion to strike should be
3 summarily denied.

4 **AFFIRMATION:** This document does not contain a social security number of any person.

5 DATED THIS 5th day of April, 2021.

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9 Alexander M. Falconi
10 Our Nevada Judges
11 Administrator
12 *Appearing in Proper Person*

13 **DECLARATION OF ALEXANDER FALCONI**

14 I, Alexander M. Falconi, state that I have read this *Opposition* and that the contents are true
15 and correct of my own personal knowledge, except for those matters I have stated that are not of
16 my own personal knowledge, but that I only believe them to be true, and as for those matters, I do
17 believe they are true.

18 ***I declare¹⁵ under penalty of perjury that the foregoing is true and correct.***

19 EXECUTED this 5 day of April, 2021.

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21 Alexander M. Falconi

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¹⁵ NRS 53.045 (declaration in lieu of affidavit).