

1 ORDR

2

DISTRICT COURT

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CLARK COUNTY, NEVADA

4 T. MATTHEW PHILLIPS, ESQ.,

Case No.: A-22-851472-C

5 Plaintiff,

Dept. No. IX

6 vs.

7 SHANNON R. WILSON, ESQ.,

8 Defendant.

9 **ORDER GRANTING DEFENDANT SHANNON R. WILSON'S MOTION TO**
10 **DISMISS COMPLAINT PURSUANT TO NRCP 4(e)(2) AND OVERRULING**
11 **OBJECTION TO MEDIA REQUEST**

12 This order addresses the motion to dismiss filed by Defendant Shannon R.
13 Wilson on August 26, 2022, as well as the objection filed by Plaintiff T. Matthew
14 Phillips on October 6, 2022, to the media request made by Alex Falconi of Our
15 Nevada Judges to broadcast, record, or televise proceedings in this case. Phillips filed
16 an opposition to the dismissal motion on September 9, 2022, and Wilson filed a reply
17 to the motion on September 23, 2022. The Court heard oral argument on the
18 dismissal motion and objection on October 6, 2022. Dan R. Waite, Esq. of the law
19 firm Lewis Roca Rothgerber Christie LLP appeared on behalf of Wilson. Phillips
20 appeared on behalf of himself, pro per. The Court having reviewed the briefs and all
21 pleadings and papers on file and having heard from the parties, GRANTS the motion
22 and OVERRULES the media objection consistent with the following:

23 The Court addresses the dismissal motion first. NRCP 4(e)(1) is clear: "The
24 summons and complaint must be served upon a defendant no later than 120 days
25 after the complaint is filed, unless the court grants an extension of time under this
26 rule." NRCP 4.2 provides the methods of service within Nevada. It too is clear.
27 NRCP 4.2(a) states that "Unless otherwise provided by these rules, service may be
28 made on an individual (1) by delivering a copy of the summons and complaint to the
individual personally; (2) by leaving a copy of the summons and complaint at the

1 individual's dwelling or usual place of abode with a person of suitable age and
2 discretion who currently resides therein and is not an adverse party to the individual
3 being served; or (3) by delivering a copy of the summons and complaint to an agent
4 authorized by appointment or by law to receive service of process.”

5 Phillips admits that he did not serve Wilson as provided for by NRCP 4.2(a) or
6 as otherwise provided for by any applicable rule or law within the 120-day time limit
7 imposed by NRCP 4. Instead, Phillips argues that he served Wilson through the
8 Tylerhost e-filing and e-service system. Whether Phillips in fact served Wilson
9 through Tylerhost is immaterial because even if he had used Tylerhost to serve
10 Wilson and even if Wilson had obtained the complaint and summons through
11 Tylerhost service, such service is insufficient for purposes of case-originating service
12 demanded by NRCP 4 and 4.2. Accordingly, the Court GRANTS the motion and
13 dismisses this case.

14 Phillips also filed an objection in response to a media request made by Mr.
15 Falconi. Phillips objects to the request, arguing that Mr. Falconi made the request *ex*
16 *parte* and the Court did not provide Phillips with notice of the request prior to
17 granting the request. Phillips cites the 14th Amendment and Rule 2.9(B) of the
18 Nevada Code of Judicial Conduct in support of his due process rights. Phillips asked
19 the Court to delay the hearing so that he might fully brief his objection. The Court
20 does not find any of these arguments persuasive.

21 As an initial matter, Department 4, which previously presided over this case,
22 granted a media request from Mr. Falconi on August 31, 2022. The August 31, 2022,
23 order granting the request specified that “media access remains in effect for each and
24 every hearing in the above-entitled case, at the discretion of the Court, and unless
25 otherwise notified.” Although Mr. Falconi filed another request on October 5, 2022,
26 he did so for purposes of “curing potential issue regarding recusal of judge who prior
27 MROR [the prior media request].” (October 5, 2022, Media Request and Order.) In
28 reviewing the October 5, 2022, media request, the Court found good cause to grant

1 the request on less than 24-hours' notice given that it constituted a mere "belt and
2 suspenders" to the August 31, 2022, request and order. Importantly, Phillips did not
3 object to the August 31, 2022, order, despite over 30 days having passed since that
4 order was entered. Nor has Phillips made any motion to seal or partially seal the
5 proceedings in this case from the media or other outside observer. Therefore,
6 Phillips's argument that the Court has violated his due process rights in connection
7 with granting Mr. Falconi's media request rings hollow.

8 Phillips's argument that Mr. Falconi's media request constituted an
9 impermissible *ex parte* communication is equally baseless. "In its general sense *ex*
10 *parte* means that an application is made by one party to a proceeding in the absence
11 of the other." *Hoff v. Eighth Jud. Dist. Ct. In & For Clark Cnty.*, 79 Nev. 108, 112,
12 378 P.2d 977, 978 (1963). The key word in that definition is "party." As Phillips
13 points out in his written objection, Mr. Falconi and Our Nevada Judges are not
14 parties to this proceeding. They are media. Accordingly, there can be no *ex parte*
15 communication. In any event, their communication in the form of the media request
16 (even if *ex parte*) did not bearing upon the *substance* of this action, which is what
17 Rule 2.9(B) requires before demanding that the judge notify the parties.¹

18 Finally, the Court addresses a matter that Phillips declined to brief in his
19 objection and/or argument—that being whether the media request violated Part IV of
20 the Nevada Supreme Court Rules regarding Electronic Coverage of Court
21 Proceedings, which constitute the rules governing media requests. Neither the media
22 request nor the order granting the request violated these rules. Rule 240 expressly
23 states that "[t]he consent of the participants to coverage is not required." That said,
24 the "judge ... in the exercise of sound discretion[] may prohibit the filming or

25 ¹ Rule 2.9(B) of the Nevada Rules of Judicial Conduct provides: "If a judge
26 inadvertently receives an unauthorized *ex parte* communication bearing upon the
27 substance of a matter, the judge shall make provision promptly to notify the parties
28 of the substance of the communication and provide the parties with an opportunity to
respond."

1 photographing of any participant who does not consent to being filmed or
2 photographed” However, in this Court’s view, its discretion must be exercised
3 with an eye toward the “presumption [recognized by Rule 230] that all courtroom
4 proceedings that are open to the public are subject to electronic coverage.” Indeed,
5 Rule 240 recognizes that the judge’s discretion is exercised “in recognition of the fact
6 that certain proceedings or portions thereof are made confidential by law.” There is
7 nothing confidential about this case, as a general matter, or about the dismissal
8 motion, which, at bottom, is a procedural matter concerning timely service.
9 Accordingly, the Court **OVERRULES** the objection.

10 IT IS SO ORDERED.

11 Dated this 6th day of October, 2022

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14 **B49 9CD C510 8CCF**
15 **Maria Gall**
16 **District Court Judge**

1 **CSERV**

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3 DISTRICT COURT
CLARK COUNTY, NEVADA

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6 T. Phillips, ESQ, Plaintiff(s)

CASE NO: A-22-851472-C

7 vs.

DEPT. NO. Department 9

8 Shannon Wilson, ESQ,
9 Defendant(s)

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11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

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