IN THE SUPREME COURT OF THE STATE OF NEVADA

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ALEXANDER M. FALCONI,) Case No.: 85195

Petitioner,

vs.

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

Respondents,

and,

TROY A. MINTER, JENNIFER R. EASLER,

Real Parties in Interest.

REAL PARTY IN INTEREST, TROY A. MINTER'S ANSWERING BRIEF

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Docket 85195 Document 2022-32984

NRAP 26.1 DISCLOSURE STATEMENT

The undersigned counsel 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 judges of this court may evaluate possible disqualification or recusal.

Statement identifying all parent corporations and any publicly held company that owns 10% or more of the party's stock: *None*.

The names of all law firms whose partners or associates have appeared for the party or amicus in the case (including proceedings in the district court or an administrative agency) or are expected to appear in this court:

Luke A. Busby, Esq.; Attorney for Petitioner, Alexander M. Falconi;
Rena G. Hughes, Esq.; Attorney for Real Party in Interest, Troy A. Minter;
Joshua Aronson, Esq.; Attorney for Real Party in Interest, Jennifer R. Easler;
Shann Winesett, Esq.; State Bar of Nevada; Family Law Section;
National American Academy of Matrimonial Lawyers;
Legal Aid Center of Southern Nevada;
Nevada Legal Services;
Volunteer Attorneys for Rural Nevadans; and,
Northern Nevada Legal Aid.

DATED Wednesday, October 19, 2022.

Respectfully Submitted,

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SUMMARY OF THE ARGUMENT

Petitioner is not entitled to a Writ of Mandamus or Prohibition in order to access a properly sealed family court case because the district court did not abuse its discretion in the application of constitutionally valid local rules of civil procedure. The local rules withstand constitutional scrutiny in that the Nevada Supreme Court was within its authority to approve the same, and the rules serve a compelling interest of individual rights of privacy.

LEGAL ISSUES

I. Whether Eighth Judicial District Court Rules 5.207 and 5.212, approved by this court on April 11, 2022, are facially unconstitutional such that the district court should be mandated to allow Petitioner access to a properly sealed family court case.

II. Whether Petitioner has a protected first amendment right to access a properly sealed family court case.

III. Whether EDCR 5.207 and 5.212 are in conflict with Supreme Court Rules 220, 230(2)2 and 243.

DISCUSSION

I. Whether Eighth Judicial District Court Rules 5.207 and 5.212, approved by this court on April 11, 2022, are facially unconstitutional such that the district court should be mandated to allow Petitioner access to a properly sealed family court case. Answer: *No*.

The Legislature specifically gave the Nevada Supreme Court the power to regulate original and appellate procedure and practice in the court system. *See*, NRS 2.120(2) and Nev. Const. Article 6. The authority of the court to govern its own procedures is essential to the judicial power and functioning of the court.

The Nevada Supreme Court's power to regulate the court system is independent from and may not be subverted by even the Legislature.

> We have held that the legislature may not enact a procedural statute that conflicts with a ***pre-existing*** procedural rule, without violating the doctrine of separation of powers, and that such a statute is of no effect. Furthermore, where . . . a rule of procedure is promulgated in conflict with a pre-existing procedural statute, the rule supersedes the statute and controls. *State v. Second Judicial Dist. Court, 116 Nev. 953, 11 P.3d 1209, 1213 (2000).* Emphasis added.

A statute that is contradictory to or seeks to limit the judicial powers of the court, violates the separation of powers between the legislature and the judiciary. *See*, *State;* and *Lyft, Inc. v. Eighth Judicial Dist. Ct.*, 137, Nev.Adv.Rep. 86, 501 P.3d 994, 999 (2021).

Here, Petitioner challenges the constitutionality of EDCR 5.207 and 5.212 and seeks a writ of mandamus to compel the district court to allow it to broadcast the Minter child custody trial on its YouTube channel.

"Petitions for extraordinary writs are addressed to the sound discretion of the court and may issue only when there is no plain, speedy and adequate remedy at law." *Parsons v. District Court*, 110 Nev. 1239, 1242, 885 P.2d 1316, 1318 (1994);

NRS 34.170; and NRS 34.330. A writ of mandamus may issue to compel the performance of an act which the law requires as a duty resulting from an office, trust, or station. *See,* NRS 34.160. A writ of prohibition may issue to arrest the proceedings of a district court exercising its judicial functions when such proceedings are in excess of the court's jurisdiction. NRS 34.320.

"Mandamus will not lie to control discretionary action, unless discretion is manifestly abused or is exercised arbitrarily or capriciously." *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981). "Even when mandamus is available as a remedy, we are not compelled to issue the writ because it is purely discretionary." *State ex. rel. Dept. Transp. v. Thompson*, 99 Nev. 358, 361, 662 P.2d 1338, 1340 (1983); and *Davis v. Eighth Judicial Dist. Court*, 129 Nev. 116, 118, 294 P.3d 415, 417 (2013).

> Although [a] writ of mandamus is not a substitute for an appeal (citations omitted) entertaining a petition for advisory mandamus is appropriate when an important issue of law needs clarification and considerations of sound judicial economy and administration militate in favor of granting the petition. *Archon Corp. v. Eighth Judicial Dist. Court,* 133 Nev. 816, 819, 407 P.3d 702, 706 (2017).

"However, we will entertain an advisory mandamus petition only 'to address the rare question that is likely of significant repetition prior to effective review, so that our opinion would assist other jurists, parties, or lawyers.'" *Id*. at 708.

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"Finally, advisory mandamus is appropriate when our intervention will 'clarify a substantial issue of public policy or precedential value.'" *Walker v. Second Judicial Dist. Court*, 136 Nev., Adv. Op. 80, 476 P.3d 1194, 1199 (2020).

"The United States Supreme Court has generally explained that 'a substantive standard is one that creates duties, rights, and obligations, while a procedural standard specifies how those duties, rights, and obligations should be enforced.'" *Azar v. Allina Health Servs.*, 587 U.S. ____ (2019).

The district court's denial of Petitioner's media request was a discretionary act concerning a procedural standard, was authorized by existing court rules and thus not an abuse of discretion. No writ of mandamus or prohibition should issue.

If the Nevada Supreme Court chooses to reconsider the policies and procedures it has duly authorized and approved as part of its judicial powers, it may do so without granting a writ. Should the Court alter the existing court rules regarding the sealing of cases, it should only do so prospectively, such that future litigants are put on notice before they access the courts. However, it is respectfully submitted that the Court issue a decision upholding the rules it authorized.

In 1997, the Nevada Supreme Court enacted the local Eighth Judicial District Court Rules. In 2017, the Nevada Supreme Court approved Section 5 of the rules governing all family law matters in the courts of Clark County, Nevada. These

rules were recently amended and also approved by the Nevada Supreme Court.[1] Petitioner challenges EDCR 5.207 and 5.212 as "facially unconstitutional" and "unconstitutional as applied" solely on the basis that it was denied access to the Minter judicial proceedings after the case was ordered sealed by the district court.

EDCR 5.207 provides:

> Unless otherwise ordered, a case involving a complaint for custody or similar pleading addressing child custody or support between unmarried parties shall be construed as proceeding pursuant to NRS Chapter 126 (Parentage), and the issue of parentage shall be addressed at the first hearing and in a written order in the case.

As there is no case precedent for the standard of reviewing court rules for constitutionality, the Court may, by analogy, apply the same standard of review as in contested statutes. In reviewing statutes subject to a claim of unconstitutionality, the courts have a *de novo* standard of review. "This court reviews a challenge to the constitutionality of a statute *de novo*." *Silvar v. Dist. Ct.*, 122 Nev. 289, 292, 129 P.3d 682, 684 (2006).

A challenger has the burden of proof to show invalidity "clearly." "…[r]easonable construction must be resorted to, in order to save a statute from unconstitutionality." *State v. Castaneda*, 126 Nev. 478, 481, 245 P.3d 550, 552 (2010) (quoting *Hooper v. California*, 155 U.S. 648, 657, 15 S. Ct. 207, 39 L. Ed.

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[1] The Nevada Supreme Court recently approved updated rules under Section 5 of the EDCRs and the most recent version of these rules are referenced. However, the former EDCRs also provided a right to seal family court cases upon demand of a party.

297 (1895)), and; *Virginia and Truckee R.R. Co. v. Henry*, 8 Nev. 165, 174 (1873) ("It requires neither argument nor reference to authorities to show that 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."). Petitioner's sole argument is that the First Amendment *on its face* invalidates the rules allowing sealing of family court cases. Petitioner has not shown the "clear invalidity" of the contested court rules to challenge their constitutionality. The following is an analysis that negates Petitioner's argument and favors the upholding of the duly adopted court rules.

II. Whether Petitioner has a protected first amendment right to access a properly sealed family court case. Answer: *No*.

Petitioner states that "the right to access court proceedings is guaranteed under the First Amendment" citing to *Oregonian*. *See, Oregonian Publ'g Co. v. United States Dist. Court, 920 F.2d 1462, 1465 (9th Cir. 1990).* Yet, each case Petitioner cites can be distinguished as either pertaining strictly to criminal cases, which have their own unique and separate constitutional guarantees, or civil cases which are wholly inapplicable.

The question in *Oregonian* was whether there is a presumed right of access under the First Amendment to examine plea agreements and related documents in criminal cases. The reviewing court specifically based its decision on the two-part

test established by the U.S. Supreme Court in *Press-Enterprise Co. v. Superior Court,* 478 U.S. 1, 8-9, 92 L. Ed. 2d 1, 106 S. Ct. 2735 (1986) which proscribes the following analysis known as the "experience and logic test:"

> 1. Has the type of proceeding at issue traditionally been conducted in an open fashion;
>
> 2. Whether public access to the proceeding would serve as a curb on prosecutorial or judicial misconduct or would further the public's interest in understanding the criminal justice system.
>
> *See* (*Press-Enterprise II*); *Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 605-06, 73 L. Ed. 2d 248, 102 S. Ct. 2613 (1982); and Brooklier, 685 F.2d at 1167, 1170-71.*

Plea agreements have typically been open to the public as criminal trials have been. Exceptions are made in instances of grand jury secrecy and ongoing criminal investigations.

The U.S. Supreme Court has made clear that **criminal proceedings** and documents may be closed to the public without violating the F*irst Amendment* only if three substantive requirements are satisfied: (1) closure serves a compelling interest; (2) there is a substantial probability that, in the absence of closure, this compelling interest would be harmed; and (3) there are no alternatives to closure that would adequately protect the compelling interest. *Press-Enterprise II, 478 U.S. at 13-14*.

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Of course, there is no right of access which attaches to all judicial proceedings, even all criminal proceedings. *See, e.g., Times Mirror Co. v. United States*, 873 F.2d 1210, 1217 (9th Cir. 1989) (no right of access to preindictment warrants).

Although family court cases are civil in nature and not analogous to criminal court cases (which require stricter scrutiny), if the Court reviews its approval of part 5 of the EDCRs under the *Press* 3-part test applicable to criminal cases, it should still affirm the constitutionality of the rules it approved and allow family court cases to be sealed upon the request of a party.

First, it should be presumed that the Nevada Supreme Court acted within its authority in approving the subject court rules and that they exercised their judicial powers prudently to serve the legal interests of the citizens and efficient operation of the courts. Allowing parties to seal their private family law cases serves a "compelling interest."

In *United States v. Broussard*, 767 F. Supp. 1545 (Dist. Ct. Oregon 1991) a media entity similarly challenged a court's ruling against full access to court proceedings (notwithstanding the first amendment presumption) under the Federal Victims' Protection and Rights Act (Act), *18 U.S.C.S. § 3509*, alleging that the confidentiality provisions of the Act infringed upon their *First* and *Sixth Amendment* rights to a public trial. Under the challenged statute, all documents

filed with the court that disclose the "name of or any other information concerning a child" would be filed under seal without court order.

"It is undisputed that the protection of minor witnesses and victims is a compelling governmental interest." See, *Maryland v. Craig*, 497 U.S. 836 (1990) (recognizing significant interest of state regarding protection of child victims throughout court proceedings); *Globe*, 457 U.S. at 608-609 (protection of a witness's well-being is compelling*),* and*; Gilpin v. McCormick*, 921 F.2d 928 (9th Cir. 1990) (protection of minor victims of sex crimes from further trauma through compelled psychiatric examination).

There is a substantial probability that, in the absence of closure, this compelling interest would be harmed. Imagine the harm to parties and their children if the details of their private family law case were open to public inspection. In providing the court with evidence and information to make an informed decision concerning paternity, child custody, visitation, division of assets, liabilities and support, a party often presents sensitive information such as details concerning his sexual history, private activities which take place in the sanctity of the home, financial activities, education and employment history, religious upbringing and practices, parenting decisions, his mental health and that of his children, children's school choice, grades, activities and social environment, to name a few.

Family court proceedings cover all kinds of already protected and private information including health-related issues of children as well as parents, earning histories and sources of income, assets and debts, and business information including information relating to third-party employees, trade secrets, etc. NONE of this information is proper for public consumption. Further, it is outright dangerous to publicize hearings that reveal children's school and activity schedules, days when one parent allegedly is "late" picking the child up from school, or the child's vulnerabilities or particular interests.

Just because an individual now must avail himself to the court system to establish paternity or dissolve a relationship in a public court, he does not leave his right to privacy at the courthouse steps to expose his most intimate life details to public scrutiny and perhaps criticism. It is hard to over-emphasize the chilling effect of free and open public examination of an individual's most private matters. One would give pause before availing himself to the family court if this were the case.

Sealed family court cases under NRS 125.110 allow the public access to the names of the parties and the nature of the action.

> NRS 125.110 What pleadings and papers open to public inspection; written request of party for sealing.
>
> 1. In any action for divorce, the following papers and pleadings in the action shall be open to public inspection in the clerk's office:

> (a) In case the complaint is not answered by the defendant, the summons, with the affidavit or proof of service; the complaint with memorandum endorsed thereon that the default of the defendant in not answering was entered, and the judgment; and in case where service is made by publication, the affidavit for publication of summons and the order directing the publication of summons.
>
> (b) In all other cases, the pleadings, the finding of the court, any order made on motion as provided in Nevada Rules of Civil Procedure, and the judgment.
>
> 2. All other papers, records, proceedings and evidence, including exhibits and transcript of the testimony, shall, upon the written request of either party to the action, filed with the clerk, be sealed and shall not be open to inspection except to the parties or their attorneys, or when required as evidence in another action or proceeding.

In allowing the very basic information concerning the parties' names, the nature of the action and final orders to be accessed by the public, the Court has made accommodations to adequately protect a compelling interest of privacy of the parties, while respecting the First Amendment. This satisfies the guiding principles set forth in *Press.*

False or incorrect allegations in motions, that have not been supported by evidence, should not be open to the public. Orders, however, made by a Court after hearing testimony, reviewing admissible evidence, etc. are open to the public. Judges are not off the hook as to their findings of fact or analysis of the law because their orders are not sealed but the flinging of allegations, sensitive

information in filings and hearings, and embarrassing emotions of the parties should otherwise not be made a public spectacle.

The Nevada Legislature authorized the establishment of a family court in Nevada in response to the needs of its citizens to present their most sensitive issues concerning child rearing and intimate relationships. The family court is a specialized court, consisting of trained jurists and support personnel specifically selected to handle the intimate nature of a person's most private matters.

Most family law matters involve the establishment of a parental relationship and the care, custody, and control of minor children. Parents have a fundamental liberty interest in child rearing, recognized by the Nevada Legislature in NRS 126.036 and the Fourteenth Amendment of the U.S. Constitution.

Conversely, under what authority does a stranger have the right to know what days a parent works, when she is available to care for the child, what activities the child is enrolled in or what school he attends?

There has always been a recognized right of privacy for the individual in matters of a personal nature. The list of personal, private matters of an individual are as limitless as the diversity of the individual holding them. Just within the family law realm, matters of child custody mediation, juvenile delinquency proceedings, adoption and determination of paternity are all private.

EDCR 5.212 allows a party *the choice* to have his family law matter private. This freedom of individual choice is essential to protecting the privacy and freedom of persons over their personal matters; a *right guaranteed* by the Fourteenth Amendment to the U.S. Constitution. Mr. Minter exercised his right to seal his case and protect his right of privacy. His choice should be respected.

The comparison of freedom of speech and media access to criminal proceedings must be read in conjunction with the Sixth Amendment of the U.S. Constitution, which provides an individual the right to a speedy "public" trial. The family court case has not traditionally been open to the public.

The right to a public trial is essential to the public's interest in being informed of matters directly effecting the public, that is, criminal acts against members of the public and how justice is handed down to hopefully protect the general public against further transmission of crimes. From another standpoint, the general public is interested in each defendant receiving justice and that the scales are balanced such that an accused person is not presumed guilty before the state proves its case.

Criminal cases can be distinguished because the prosecution, acting on behalf of the government and therefore citizens, is a governmental actor. The right of the public to examine the actions of the government are important and protected by the first amendment.

"What is at stake here is the societal function of the First Amendment in preserving free public discussion of governmental affairs." *Press* at 517.

However, in a family law case the parties are private citizens, not governmental actors. The choices of private individuals, made not for the public good or detriment, but for themselves or their children, are not of general interest to the public, nor should they be. Individuals have long had the right to make private choices which affect only their person or their children, so long as they do not intrude into the realm of criminal acts.

In keeping with respecting an individual's right to privacy to his most personal matters, the Nevada Legislature and the Nevada Supreme Court have enacted and approved numerous rules to govern the exposure of such details.

For example, under NRS 432B.430 in unfortunate circumstances of abuse or neglect, the best interests of the child determine whether a hearing may be closed to the public. See, NRS 432B.430.

In another example, orders for the protection of a child as similarly sealed. See, NRS 3.2201. Special immigration status orders for juveniles are sealed and only available to the court, the child or an involved party. See, NRS 3.2202.

In yet another example, NRS 127.007 restricts information on adoption orders to only certain persons and then upon permission of the court.

Similarly, other jurisdictions have provided the redaction of information to protect a child.

> It is undisputed that the protection of minor witnesses and victims is a compelling governmental interest. *Maryland v. Craig*, 497 U.S. 836, 111 L. Ed. 2d 666, 110 S. Ct. 3157, 3167 (1990) (recognizing significant interest of state re protection of child victims throughout court proceedings); *Globe*, 457 U.S. at 608-609 (protection of a witness's well-being is compelling*); Gilpin v. McCormick*, 921 F.2d 928 (9th Cir. 1990) (protection of minor victims of sex crimes from further trauma through compelled psychiatric examination). *United States v. Broussard,* 767 F.Supp. 1545, 1547 (Oregon 1991).

There is a compelling and significant interest in protecting *the details* of an individual's private family issues. Historically, Congress and the courts have protected an individual's right to privacy in "personal" matters and have barred governmental disclosure of such information. Information is of a personal nature if "…it reveals intimate or embarrassing details of an individual's private life." *Mager v. Dept. of State Police*, 595 N.W.2d 142, 146 (Mich. 1999) (FOIA request did not allow media access to gun ownership records or violate First Amendment).

Individuals have a fundamental "liberty interest" in raising their children free from governmental controls. Nevada case law has long supported and upheld that the best interest of children is at the heart of family law cases. *See,* generally NRS 125.510, and; *Culbertson v. Culbertson*, 91 Nev. 230, 533 P.2d 768 (1975).

> There are many private interests in a matrimonial case. The most intimate relations of the parties and their finances may be subject to scrutiny. The

> broad spousal privilege (citation omitted) is inapplicable in divorce. Also the court is well aware that one of the problems in open matrimonial proceedings is the effect it would have on children of the marriage. While adult parties in today's media-conscious world may be found to have no valid objection to having their dirty linen aired, the same cannot be said of the children who are the innocent victims of both their parents and the media (citation omitted). Even when custody is not involved in the trial, there are long-lasting scars caused by public humiliation of one or both parents. The court often tries to protect the children in pendente lite orders by precluding the parents from "bad mouthing" each other. The media have no such concerns. The issue of child protection in public divorce battles is one the Legislature should address *(see,* Brandes & Weidman, *Privacy: Whose Right Is It, Anyway?,* NYLJ, Oct. 24, 1995, at 3, col 1).
>
> The best efforts of a well-intentioned Judge cannot adequately protect against devastating revelations oral allegations which may be adduced in the course of rapidly unfolding examination and cross-examination in a hotly contested and acrimonious litigation. It is to be remembered that we deal here not with the children's "privacy," but with the protection and preservation of their health and welfare. As we close courtrooms in criminal trials on a regular basis, even in the face of the constitutional guarantee of a public trial (*US Const 6th Amend*), and even over the objection of one of the parties, in order to protect the health and welfare of an adult police officer (citation omitted), we should not hesitate to do so when those who are to be protected are defenseless children; *P.B. v. C.C.*, 223 A.D.2d 294, 298 (NY App. 1996)

Concerns for exposure of parties' finances, forensic reports, emails, children's personal information and the like weigh against live-streaming or filming parties' divorce cases. See, *C.C. v. D.D.*, 105 N.Y.S.3d 794 (NY 2019).

"The court must balance the access of the public and the press to judicial proceedings against the interest of protecting children from the possible harmful

effects of disclosing private information. The right of public access is not absolute and courts must exercise their discretion to determine whether a compelling reason for closure exists." *Globe Newspaper Co. v. Superior Ct.*, 457 U.S. 596 (1982); and *Anonymous v. Anonymous*, 158 A.D.2d 296 (NY Ct. App. 2000).

There is no First Amendment right to televise a trial. *See*, Courtroom TV Network, LLC v. State, 833 N.E.2d 1197 (NY Ct. App. 2005). Furthermore, televising a family court trial in today's social media environment often serves scandal.

> . . . [It] is clearly within the rule to hold that no one has a right to examine or obtain copies of public records from mere curiosity, or for the purpose of creating public scandal. To publish broadcast [sic] the painful, and sometimes disgusting, details of a divorce case, not only fails to serve any useful purpose in the community, but, on the other hand, directly tends to the demoralization and corruption thereof, by catering to a morbid craving for that which is sensational and impure. The judicial records of the state should always be accessible to the people for all proper purposes, under reasonable restrictions as to the time and mode of examining the same; but they should not be used to gratify private spite or promote public scandal. And, in the absence of any statute regulating this matter, there can be no doubt as to the power of the court to prevent such improper use of its records. *C v. C*, 320 A.2d 717, 723 (Del. 1974).

Recently there has been an explosion of YouTube videos featuring parties' highly contested divorce actions. Some may think there is a tactical advantage to publicizing their matrimonial disputes, but this approach does not take into consideration the impact on the children. In this age of technology, children and their peers have extensive access to social media such as TikTok and YouTube.

Once a video or story is posted on an internet platform, it is there forever. Imagine the humiliation a child would suffer from having his or her school performance, psychological issues or home life plastered all over the internet for years to come. A family court judge could be tasked with examining every case on its merits to determine the extent to which public exposure may take place, and under what circumstances, but can anyone imagine a situation where it *would be* in a child's best interest to allow his parent's custody trial to be broadcast? Children are entitled to be protected to the greatest extent possible.

Courts often enter mutual behavior orders governing parties' conduct during the course of their litigation (and after) limiting disparaging comments on social media for the very purpose of protecting children.

> . . . [It] is clearly within the rule to hold that no one has a right to examine or obtain copies of public records from mere curiosity, or for the purpose of creating public scandal. To publish broadcast [sic] the painful, and sometimes disgusting, details of a divorce ***case***, not only fails to serve any useful purpose in the community, but, on the other hand, directly tends to the demoralization and corruption thereof, by catering to a morbid craving for that which is sensational and impure. The judicial records of the state should always be accessible to the people for all proper purposes, under reasonable restrictions as to the time and mode of examining the same; but they should not be used to gratify private spite or promote public scandal. And, in the absence of any statute regulating this matter, there can be no doubt as to the power of the court to prevent such improper use of its records. *C v. C*, 320 A.2d 717, 725 (Del. 1974).

The real parties in interest here were an unmarried couple who had a child together. They availed themselves to the family court to establish lawful orders of custody, visitation, and support. The Minters acted as responsible citizens, seeking the affirmance of the court of their personal, private relationship and that of their offspring. The Minters are not public officials, celebrities, or social influencers. They, much like millions of others, are seeking only to put order to their inalienable rights as parents. Having established his legal rights nearly 15 years ago, Mr. Minter now seeks to officially modify the original custody orders to meet the needs of his teenage child; a child who now has unique medical, social and psychological needs.

In bringing their child's individualized needs to the court, the Minter parties have engaged in confidential mediation, which unfortunately did not result in an agreement. The details of private mediation have never been open to the public nor should they be.

The Minter parties have also sought medical, psychiatric and psychological treatment for their child and entered those records into the case. The details of a child's treatment is similarly not open to the public because of HIPPA laws.

The parties further stipulated to engage an expert who will testify regarding the child's individual and unique personal relationships with not only his parents,

but other family members, his performance at school, his school attendance, his day-to-day social and psychological functioning, and how his parents may best help him and serve his needs for the remainder of his childhood, if not his life. At no point in this process did the Minter parties seek publicity for their private, family matter. In fact, Troy Minter sought to seal the case from the public to protect his child's right to privacy.

Petitioner challenges these EDCRs as violating their first amendment access to judicial proceedings if family court cases are sealed. Petitioners' first amendment rights do not have priority over the Minters' right of privacy.

At common law, there is no absolute right of a member of the public to inspect judicial records and this remains true barring some constitutional or statutory grant. Furthermore, the press has no greater right to information than any other member of the public. *See, Courier-Journal and Louisville Times Company v. Curtis, 335 S.W.2d 934 (Ky.1960)*; *Grand Forks Herald, Inc. v. Lyons,* 101 N.W.2d 543 (N.D.1960); and *Trimble v. Johnston, 173 F. Supp. 651 (D.Ct.D.C.1959)*.

Until the Matrimonial Causes Act of 1857 (20 & 21 Vict.C. 85), the Ecclesiastical Courts in England exercised sole judicial jurisdiction over matrimonial causes decreeing annulments of marriage and legal separations in

certain cases. Under common law, courts have the power to seal files in many types of cases, other than divorce.

Regarding the constitutional implications of free speech to sealed divorce cases, a Delaware Court stated: "There are special discretionary considerations to be made in divorce cases including 'curbing a certain harmful practice that is sometimes manifest in those persons who are inclined to feed a private and morbid curiosity through the channels of a public right.'" *C v. C*, 320 A.2d at 728.

III. Whether EDCR 5.207 and 5.212 are in conflict with Supreme Court Rules 229, 230(2) and 243. Answer: *No*.

Nev. S.C.R. 229 prohibits the news media from recording or broadcasting a court hearing without the express permission of the presiding judge.

Nev. S.C.R. 230 requires a news reporter to obtain permission to provide electronic coverage of a proceeding in the courtroom.

> 1. News reporters desiring permission to provide electronic coverage of a proceeding in the courtroom shall file a written request with the judge at least 24 hours before the proceeding commences, however, the judge may grant such a request on shorter notice or waive the requirement for a written request. The attorneys of record shall be notified by the court administrator or by the clerk of the court of the filing of any such request by a news reporter. The written order of the judge granting or denying access by a news reporter to a proceeding shall be made a part of the record of the proceedings.
>
> 2. **Under these rules, there is a presumption that all courtroom proceedings that are open to the public are subject to electronic**

> **coverage**. A judge shall make particularized findings on the record when determining whether electronic coverage will be allowed at a proceeding, in whole or in part. Specifically, the judge shall consider the following factors: (a) The impact of coverage upon the right of any party to a fair trial; (b) The impact of coverage upon the right of privacy of any party or witness; (c) The impact of coverage upon the safety and well-being of any party, witness or juror; (d) The likelihood that coverage would distract participants or would detract from the dignity of the proceedings; (e) The adequacy of the physical facilities of the court for coverage; and (f) Any other factor affecting the fair administration of justice. (Emphasis added).

The first hurdle to overcome is that the proceeding must be "open to the public." Family court matters have not been traditionally open to the public. If the Court were to use the "experience and logic" test in *Press*, it would first determine whether the proceeding has traditionally been conducted in an open fashion; the answer is no. The next hurdle would be whether public access serves as a curb on prosecutorial or judicial misconduct or furthers the public's interest in understanding the criminal justice system. *See, Press*. In the instant case, there is no prosecution or relation to the criminal justice system. Thus, it fails the "experience and logic" test.

Nev. S.C.R. 243 governs the appellate process when a news media is denied access, and that involves the Writ process previously addressed in sub-part I.

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Finally, with respect to the mootness argument propounded by Petitioner, the Court has clearly indicated it intends to render an opinion on the matters at hand, which will not only apply to the instant case, but family law cases in general.

DATED Wednesday, October 19, 2022.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

1. I hereby 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:

[x] It has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in font-size 14 of Times New Roman; or

[ ] It has been prepared in a monospaced typeface using Microsoft Word 2010 with 10 ½ characters per inch of Courier New.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

[x] Proportionately spaced, has a typeface of 14 points or more, and contains 7,102 words; or

[ ] Monospaced, has 10.5 or fewer characters per inch, and contains 14,000 words or 1,300 lines of text; or

[ ] Does not exceed 30 pages.

3. Further, I hereby certify that I have read this appellate brief, and to the best of my knowledge, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every

assertion in the Brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying Brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED Wednesday, October 19, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing *Real Party in Interest, Troy A. Minter's Answering Brief* was filed electronically with the Nevada Supreme Court in the above-entitled matter on Wednesday, October 19, 2022. Electronic service of the foregoing document shall be made in accordance with the Master Service List, pursuant to NEFCR 9, as follows:

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Northern Nevada Legal Aid.

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