IN THE SUPREME COURT OF THE STATE OF NEVADA

Alexander M. Falconi,
Petitioner,

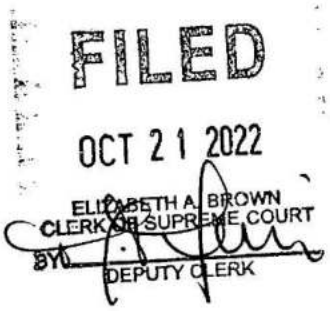
vs.
Clark County Eighth Judicial District Court; and the Honorable Charles J. Hoskin, District Judge

Respondents.
and,

Troy A. Minter; and Jennifer R. Easler,

Real Parties in Interest

Supreme Court Case No. **85195**



BRIEF OF AMICUS CURIAE FAMILY LAW SECTION OF NEVADA STATE BAR

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I.
STATEMENT OF IDENTITY, INTEREST, AND AUTHORITY PURSUANT TO NRAP 29(d)(3).

The Family Law Section of the State Bar of Nevada ("FLS") is a voluntary association of Nevada attorneys interested in the field of family law, forming a Section of the State Bar of Nevada with the purpose of furthering the knowledge of its members, the Bar, and the Judiciary in all aspects of family law, administering CLE, distributing family law publications, and assisting the Board of Governors in the implementation of programs, policies, standardization and guidelines in the field.

By its *Order Directing Supplement and Answer and Inviting Amici Curiae Participation* on August 23, 2022, this court determined that a brief from FLS may assist this court in resolving the issues presented in this writ petition. FLS has consented to participate as amicus curiae because the resolution of this matter will have significant, wide-ranging impact upon the family court system as well as the public at large. The position in this brief is taken on behalf of FLS only. This position should not be construed as representing the position of the Board of Governors or the general membership of the State Bar of Nevada. The FLS is a voluntary section composed of lawyers practicing in family law.

II.
SUMMARY OF ANALYSIS

Petitioner Alexander Falconi's *Petition for Writ of Mandamus* (the "Petition") questions the constitutionality of the newly enacted EDCR 5.207 and 5.212 which,

taken together, restrict the public's access to proceedings in the Eighth Judicial District Court, Family Division. At the core of this Petition, therefore, lies the inherent tension between the public's right of access to court records and family court litigants' fundamental right to privacy in the resolution of disputes arising from their intimate relationships.

The FLS submits that there is no conflict between the EDCR 5.207 and 5.212 and other laws of this state providing that court room proceedings are presumptively open to the public. The FLS further submits that family court proceedings are fundamentally different from criminal and general civil proceedings and that family court proceedings should be and, under Nevada law are, presumptively closed to the public.

III.
NEVADA'S HISTORICAL POLICY FAVORING PRIVACY IN DOMESTIC RELATIONS MATTERS

Nevada has historically recognized the need for privacy in domestic relations matters. Over a 150 years ago, at the inception of Nevada's statehood, the State's laws provided that divorce trials could be private. Nevada Revised Statute 125.080, first enacted in 1865 (and amended in 1931), provides, in its current form, that "[i]n any action for divorce, the court shall, upon demand of either party, direct that the trial ... or issues of fact joined therein be private." NRS 125.080(2) further provides for the exclusion of the public from divorce trials. Again, recognizing the need for

privacy in domestic relations cases, the Nevada legislature in 1931 statutorily limited the public right to inspect court records in divorce proceedings.[5]

The centuries-old policy of protecting privacy in domestic relations matters remains current Nevada law in the form of NRS 125.110 which permits divorcing parties to prevent the public from inspecting all records to the proceeding save and except for "pleadings,[6] the finding of the court, any order made on motion ... and the judgment."[7] All other "papers, records, proceedings and evidence, including exhibits and transcript of the testimony" shall be sealed upon request.[8]

Nevada has adopted a similar policy of confidentiality in other areas of domestic relations law. *See*, for example, NRS 127.140 providing for confidentiality of hearings, files and records in adoption proceedings; NRS 126.211 providing for confidentiality of hearings and records in paternity actions; NRS 425.405 providing for the protection of privacy in child support proceedings; NRS 432B.430

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[5] In 1946, this court itself noted that, while the common law entitled every person to inspect public records, "*provided he had an interest in the matters to which such records related,*" the Nevada had specifically limited the public's access to records in actions for divorce. *Mulford v. Davey*, 64 Nev. 506, 509, 186 P.2d 360, 361 (1947).

[6] In Nevada, "pleadings" are narrowly defined as "complaints, answers and replies." *Johanson v. Eighth Jud. Dist. Ct.*, 124 Nev. 245, 250, 182 P.3d 94, 97, footnote 16 (2008)

[7] NRS 125.110(2).

[8] *Id.*

providing for the closing of hearings in certain dependency proceedings; and NRS 62H.025 providing for the confidentiality of juvenile justice records.

Notably Petitioner does not contest the constitutionality of any of the Nevada Revised statutes which provide for confidentiality in various other domestic relations matters specifically including NRS 125.080 or 125.110 providing for private trials and the sealing of court records in divorce cases. Petitioner only contests the constitutionality of two local court rules whose text largely mirrors these two Nevada statutes as well as the privacy policies the statutes were intended to foster.

IV.
THE ADOPTION OF RULES IN THE FAMILY DIVISION TO PROMOTE PRIVACY AND EUQAL APPLICATION OF THE LAW

As will be discussed below, domestic relations litigation is fundamentally different from other areas of law. Acknowledging this fundamental difference, the legislature enacted NRS 3.0105 in 1991 which establishes a family court division in each judicial district that includes a county whose population exceeds 100,000. The Family Division has original, exclusive jurisdiction in any proceeding involving domestic relations, including but not limited to divorce, parentage, adoption and other matters involving the best interest of children.[9]

[9] NRS 3.223.

Since the establishment of the Family Division thirty years ago, this court, through the authority the legislature delegated to it in NRS 2.120, has adopted specialized rules regulating the practice and procedure for adjudicating family law matters. The Petitioner contests two of those rules which this court amended or adopted on April 11, 2022.

Specifically, Petitioner contests EDCR 5.207 which provides that "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)." Petitioner further contests EDCR 5.212 which, consistent with NRS 125.080, provides that the family court "shall, upon the demand of either party, direct that the hearing or trial be private."[10]

Rule 5.212(c) also provides that "[t]he court may, upon oral or written motion of either party or on its own motion, exclude the parents, guardians, or siblings of either party, or witnesses for either party, from the court or chambers wherein the hearing or trial is conducted." Most significant to this Petition, Rule 5.212(e), mirroring the requirements of NRS 125.110(2), permits the Family Division to "retain supervisory power over its own records and files" and provides that:

> Unless otherwise ordered or required by rule or statute regarding the public's right of access to court records, the record of a private hearing, or record of a hearing in a sealed case, shall be treated as confidential and not open to public inspection.

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[10] EDCR 5.212(a)

Although the Petitioner does not seek relief specifically as to NRS 125.080 and 125.110, (the statutes upon which EDCR 5.207 and 5.212 were largely based) the Petitioner nonetheless has expressed his disfavor of those rules insofar as it has prevented him from including divorce matters in his media coverage. Petitioner does argue, however, that, because Rule 5.212 extends privacy protection to all custody matters, the Rule is overbroad and, therefore, unconstitutional. The FLS disagrees.

The net effect of the newly revised EDCR 5.201 and 5.212 ensures that the Family Division treats similarly situated people equally. Under the revised rules, unmarried litigants in the Family Division are now entitled to as much confidentiality and privacy as married litigants. More importantly, children born out of wedlock and orphans now receive as much confidentiality in the Family Division as children born to married parents. As will be discussed, Nevada law favors providing all family court litigants the same level of privacy as married litigants.

V.
FAMILY LAW MATTERS ARE FUNDAMENTALY DIFFERENT FROM OTHER FIELDS OF LITIGATION

In creating the Family Division, the Nevada legislature determined that domestic relations matters are fundamentally different from general civil litigation. Indeed, as this court has noted, Family Division judges "required to have special

training, education, and expertise in family matters."[11] Recognizing the sensitive and personal matters which the family courts would be required to adjudicate, the legislature also instructed the family courts to "encourage the resolution of disputes before the court through non-adversarial methods or other alternatives to traditional methods of resolution of disputes."[12]

1. Family Law is Unlike Criminal Law.

Family law differs from criminal law which is inherently public in nature. Although the victims of crimes are often private persons, the crime itself is a public act in violation of laws providing for public safety and social order. As the Supreme Court has noted, "[c]riminal acts, especially violent crimes, often provoke public concern, even outrage and hostility" which in turn generates a "desire to have justice done."[13]

> When the public is aware that the law is being enforced and the criminal justice system is functioning, an outlet is provided for these understandable reactions and emotions. Proceedings held in secret would deny this outlet and frustrate the broad public interest.[14]

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[11] *Landreth v. Malik*, 127 Nev. 175, 181, 251 P.3d 163, 167 (2011).

[12] NRS 3.225(1).

[13] *Press-Enter. Co. v. Superior Ct. of California, Riverside Cnty.*, 464 U.S. 501, 508–09 (1984).

[14] *Id.*

The public's "need to know" in criminal matters finds no similar counterpart in the family or child custody setting. Whereas the violation of a criminal statute is also a crime against the community which necessarily involves governmental agencies to investigate and ultimately prosecute the offense, the circumstances giving rise to most domestic relations proceedings, involve disputes among or between individual family members in the privacy of their homes.

The text of the U.S. Constitution itself treats criminal proceedings differently than other proceedings. The 6th Amendment for instance states that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury."[15] The text of the 6th Amendment does not extend the right a public trial to divorce and custody matters, and the Nevada Territorial Legislature abolished the concept of jury trials in divorce cases in 1861 even before Nevada became a State.[16] Litigants to divorce and custody matters likewise have no right to the assistance of counsel.

2. Family Law is Unlike General Civil Law.

Family law cases also differ from general civil cases. Civil litigation typically arises from a person's public interaction. The typical personal injury action occurs

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[15] U.S. Const. Am. 1.

[16] *See* NRS 125.070 added by Laws 1861, c. 33, § 29. Amended by Laws 1939, p. 18; NRS amended by Laws 1963, p. 543.

between third parties engaging in public activities such as driving on public roadways (auto accidents), frequenting public establishments (premises liability) and consuming goods and services (products liability). The vast majority of contract disputes also arise from so-called "arms-length transactions" wherein the only connection between the parties is the agreement they reached with someone unrelated and even previously unknown to them. While such cases may sometimes involve confidential matters such as trade secrets and financial information, domestic relations cases almost always do.[17]

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[17] It is fair to note that Part 5 of the EDCR as well as NRCP 16.2 and 16.205 require the production and exchange of a significant amount of private financial information in domestic relations matter without a formal request. Every party to a family court proceeding is required to file with the family court a Financial Disclosure Form which, at a glance, requires the disclosure of, among other things: a party's date of birth, education, employer, work schedule, disability rating, pay rate, income from all sources, all deductions from pay, all business income and expenses, all personal expenses, financial contributions of all members in the household. And if the parties are going through a divorce, all of their assets and debts and the values of those debts must be identified. Furthermore, the NRCP 16.2 requires a party to a family law action not involving unmarried persons to provide, without formal request, bank and investment statements, credit card and debt statements, deeds, deeds of trust, purchase agreements, escrow documents, settlement sheets, all monthly or periodic statements and documents showing the debt balances, loan applications, promissory notes, deposits, receivables, retirement statements, insurance statements, insurance policies, documents showing value of assets, tax returns, proof of income, list of personalty exceeding $200. Similarly, NRCP 16.205 requires unmarried parties involved in paternity and custody actions to produce, without formal request, evidence of income and earnings, bank investment and other periodic statements, insurance policies, tax returns, and proof of income.

Of course, one of the greatest responsibilities which the legislature entrusted to the Family Division and which is the subject of the present Petition is the determination of child custody disputes. By statute and this court's decisional law, a custody order must tie the child's best interest, as informed by specific, relevant findings respecting factors enumerated in NRS 125C.0035 and any other relevant factors, to the custody determination made.[18] As such, in making a custody order, the family court ***must*** consider among other things: the wishes of the child, the level of conflict between the parents; the ability of the parents to cooperate; the mental and physical health of the parents; the nature of the relationship of the child with each parent; the physical, developmental and emotional needs of the child; and any history of parental abuse, neglect abduction or domestic violence.[19]

These best interest factors make parties' shortcomings, failures and other misdeeds relevant in custody proceedings. In litigating the issue of a party's mental health, ability to cooperate and relationship with the children, the courtroom often, and sadly, devolves into an arena of indiscriminate familial warfare. While the issue of adultery is ever present in the Family Division, custody battles invoke all manner of accusations from sexual fetishism and pornography addiction to criminal conduct

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[18] *Davis v. Ewalefo*, 131 Nev. 445, 451, 352 P.3d 1139, 1143 (2015)

[19] *See generally* NRS 125C.0035(4).

and drug abuse. Some of the most severe allegations are sometimes made without proof or corroboration and, even if proven false, can be career-ending and life-altering when publicly disclosed.

Because the physical, mental and emotional needs of the children are also at issue in custody proceedings, personal and private details of the children are also subject to disclosure. Children's poor grades and school performance are common subjects of family court trials along with their mental health issues such as drug use, self-harm, underaged sexual activity.

The harm that the disclosure of court records and proceedings of this nature can cause the parties ***and their children*** in the digital age is palpably real. As one commentator has noted:

> The potential, and actual, harm to children, who at least see their parent's private and most embarrassing topics plastered on the internet, and often their own personal, private, and confidential information (schedules, grades, medical, psychological, and other information) shown to the world, is hard to overstate. This is especially so because, once posted, it is hard to ever actually purge such information from the internet. Several judges, in several cases, have made detailed findings of the psychological, emotional, and other harm suffered by children – and their parents – from such postings.[20]

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[20] Willick, M. "Closed Hearings Sealed Files," https://www.willicklawgroup.com/vol-73-closed-hearings-sealed-files-privacy-and-public-access-why-the-rules-are-the-way-they-are-and-what-they-should-be-going-forward.

Because proceedings in the Family Division are so fundamentally different from the proceedings in the criminal and general civil courts, it is appropriate to treat the public's access to those proceedings differently as well.

VI.
THE DISSAPPEARANCE OF PRACTICAL OBSCURITY IN THE DIGITAL AGE

In her 2019 article in the Journal of American Matrimonial Lawyers, Laura W. Morgan addresses the concept of "practical obscurity" in court filings.[21] Morgan writes:

> While courts of this country recognize a general right to inspect and copy public records and documents including judicial records and documents, the effort to retrieve such documents by the average person made these judicial records "practically obscure."[22]

In a system where paper records were kept by the clerk of court, the difficulty in accessing the court records provided a practical protection to the litigant's privacy interests.[23] As Morgan points out, the U.S. Supreme Court, in *U.S. Dept. of Justice v. Reporters Comm. For Freedom of the Press*,[24] "reaffirmed 'a private citizen's

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[21] Laura W. Morgan, *Preserving Practical Obscurity in Divorce Records in the Age of E-Filing and Online Access,* 31 J.Am. Acad. Matrim. Law 405 (2019).

[22] *Id.*

[23] *General Discussion on Privacy and Public Access to Court Files*, 79 Fordham L. Rev. 1, 8 (2010).

[24] 489 U.S. 749, 589, 597 (1989).

right to be secure in his personal affairs which have no bearing or effect on the general public' and thus recognized an individual's interest in retaining the "practical obscurity" of private information that may be publicly available but difficult to obtain."[25]

The digital age has all but erased practical obscurity in the court system. Allowing unfettered access to family court records and the video transcripts of hearings and trials will expose family court litigants to data mining of their cases and the indiscriminate publication of confidential, private information. Easy public access to such online, digitized records can "provide a rich new source of data on private individuals as new technologies are able to amass private data in ways that can be associated with each other in a way that makes it economically advantageous to the compiler of information."[26] In other words, internet technology allows web aggregators (which do not necessarily produce their own original content) to easily collect content from court records and "aggregate" this obscure otherwise private material into one easy-to-find location where it is then monetized.

The loss of practical obscurity coupled with the financial interest in making private matters public on the internet increases the already frought relationship

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[25] Morgan, *Preserving Practical Obscurity, supra.*, at 406.

[26] Laura W. Morgan, *Strengthening the Lock on the Bedroom Door: The Case Against Access to Divorce Records Online*, 17 J.Am. Acad. Matrim. Law 45, 61 (2001).

between the public's common-law right to access and the privacy rights of family court litigants.

VII.
PUBLIC ACCESS TO COURT PROCEEDINGS MUST BOW TO THE RIGHT TO PRIVACY IN FAMILY LAW MATTERS

The FLS fully acknowledges that there is a presumed, qualified public right of access to court proceedings. In *Richmond Newspapers, Inc. v. Virginia,*[27] the Supreme Court held that absent overriding interest articulated in findings, trial of criminal case must be open to the public:

> "The right of access to places traditionally open to the public, as criminal trials have long been, may be seen as assured by the amalgam of the First Amendment guarantees of speech and press; and their affinity to the right of assembly is not without relevance.[28]

Notably, the decision in *Richmond Newspapers* dealt with public access to criminal proceedings and not family court proceedings.

In this regard the Supreme Court's opinion in *Firestone*[29] is instructive. The *Firestone* case involved an action against *Time* magazine which reported that Russell Firestone, a wealthy industrialist, had obtained a divorce on the grounds of "extreme cruelty and adultery." When publishers refused to retract this false

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[27] 448 U.S. 555, 577 (1980)

[28] *Id.* at 577.

[29] 424 U.S. 448 (1976)

characterization of the divorce judgment, Mary Alice Firestone brought a libel action against the magazine. The case eventually made its way to the Supreme Court.

In reversing the lower court decision, the Supreme Court noted that "dissolution of marriage through judicial proceedings is not the sort of 'public controversy' which would require heightened First Amendment protection 'even though the marital difficulties of extremely wealthy individuals may be of interest to some portion of the reading public.'"[30] The Supreme Court further noted that Ms. Firestone did not "freely choose to publicize issues as to the propriety of her married life. She was compelled to go to court by the State in order to obtain legal release from the bonds of matrimony."[31] Finally, the Supreme Court made clear that not all judicial proceedings, particularly those arising in the family courts, have constitutional or public significance:

> It may be that all reports of judicial proceedings contain some informational value implicating the First Amendment, but recognizing this is little different from labeling all judicial proceedings matters of "public or general interest.[32]

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[30] *Id.* at 454.

[31] *Id.*

[32] *Id.*

A couple of years after *Firestone*, the Supreme Court had the opportunity to address public access to court records in *Nixon v. Warner Communications, Inc.*[33] where the court rejected an argument by news broadcasters that the Sixth Amendment entitled them to obtain complete copies of audiotapes made by the Nixon White House. Even though the tape recordings had been used as evidence in the prosecutions of high-level administration officials, the Supreme Court denied the press's request for the tapes noting that public access to court records is not absolute. The Supreme Court, in fact, confirmed that "every court has supervisory power over its own records" and can deny public access where its files might "become a vehicle for improper purposes."[34]

> For example, the common-law right of inspection has bowed before the power of a court to ensure that its records are not "used to gratify private spite or promote public scandal" through the publication of "the painful and sometimes disgusting details of a divorce case. (citations omitted). Similarly, courts have refused to permit their files to serve as reservoirs of libelous statements for press consumption."[35]

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[33] 435 U.S. 589 (1978).

[34] *Id.* at 598.

[35] *Id.* at 598. The Supreme Court has also confirmed "zones of privacy" which impose limits upon government power. The matters detailed as being within these private zones are "matters relating to marriage, procreation, contraception, family relationships, and child rearing and education." *Paul v. Davis*, 424 U.S. 693, 712–13 (1976).

Other courts have likewise protected the privacy of family court records. The Supreme Court of Rhode Island, refused to permit a local newspaper to obtain the court record of a divorce proceeding in *In re Caswell*.[36] While acknowledging that the judicial records of the state should be accessible to the public, the court also recognized that no one has a right to examine or obtain copies for mere curiosity, or for the purposes of creating public scandal:

> To publish broadcast 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.[37]

If the Rhode Island Supreme Court over a century ago wisely recognized the public's morbid craving for the sensational and impure, what would it say about the ability to pipe divorce and custody hearings into the home of anyone desiring to watch them? What would it say about the digital imprint and virtual permanence of these records and the ease of the public to access them?

Other courts have reached similar conclusions. *See Holcombe v. State ex rel. Chandler*,[38] holding that the public does not have the right to examination of public records where the purpose is "purely speculative or from idle curiosity" nor does a

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[36] 29 A. 259 (R.I. 1893)

[37] *In re Caswell's Request*, 29 A. 259, 259 (R.I. 1893).

[38] 200 So. 739, 747 (Ala. 1941).

newspaper's right to acquire material extend to the records of a divorce case; *see also C. v. C.*[39] holding that restricting access to court file in divorce action did not deny a newspaper publisher's right to freedom of press. Further, the mere fact that a divorce litigant was a public official does not, in itself, justify public disclosure of intimate details of his marital history contained in court files; *see also In re Gault*[40] where the Supreme Court held there is no reason why, consistent with due process, a state cannot continue, if it deems appropriate, to provide and to improve provision for confidentially of records of police contacts and court actions relation to juveniles; *see also Whitney v. Whitney*[41] holding that, in a divorce action, the closing of the hearing to the public was not an abuse of discretion where it was done for the good of the child of the parties.

As noted above, Nevada, since its inception, has favored a policy of keeping family court matters private. Petitioner has cited no binding authority which would cause this Court to abandon this centuries-old public policy.[42] In fact, this court's previous application of NRS 125.110 would suggest the contrary. When addressing

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[39] 320 A.2d 717, 728–29 (Del. 1974).

[40] 387 U.S. 1, 25 (1967).

[41] 330 P.2d 947 (Cal. App. 1958)

[42] Even the Federal Ninth Circuit Court of Appeals admits that the U.S. Supreme Court has yet to explicitly rule on whether the First Amendment right of access to information reaches civil judicial proceedings and records. *Courthouse News Serv. v. Planet*, 947 F.3d 581, 590 (9th Cir. 2020)

the parameters of that statute in *Johanson v. Eighth Jud. Dist. Ct.*,[43] this court, at no time, questioned its constitutionality. *Johanson* involved a post-decree alimony proceeding involving a Robert Lueck, a former judge who was running for another district court judgeship. During the hearing on his motion to reduce his alimony obligation, Lueck stated that he did not want the arrears order used against him during his campaign. Following the hearing, the district court sua sponte entered an order sealing the entire case file.

This court reversed the district court's order sealing the entire case file because the order failed to comport with the requirements of NRS 125.110. This court acknowledged that, upon the request of a party, NRS 125.110 generally allowed for sealing certain records in a divorce matter, but because the plain language of NRS 125.110(2) "allows the court to seal only certain documents in a divorce proceeding, and only upon a party's written request, the court's order sealing the entire case file, including all orders, judgments and decrees, when no written request was made, was a manifest abuse of discretion."[44] This court left open the notion that the district court might have the inherent authority to seal the entire record in divorce cases[45] but noted that "Lueck [had] failed to demonstrate that the

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[43] Johanson, supra, at 249, 182 P.3d at 97.

[44] *Id.*

[45] On the issue of the district court's inherent authority to seal records, footnote 18 of this court's opinion in *Johanson* is of particular import. Recognizing that the public

district court's order sealing the entire case file was a necessary exercise of that power to protect his or any other person's rights or to otherwise administer justice."[46]

Rules 5.207 and 5.212 were promulgated to fulfill the policy considerations which underpin NRS 125.080 and 125.110. In this regard, the FLS supports the position that matters in the Family Division should remain presumptively private under the applicable Nevada Revised Statutes and local rules. Before a family court litigant's constitutional right to privacy is breached in favor of the public's right of access, persons seeking to unseal or publicize family court proceedings should be required to show cause as to why the private matter should be made public. Further, and as stated in the cases above, mere curiosity or the thirst for scandal, even if of the famous or wealthy, does not in itself establish a substantial public interest under

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and press at times have been precluded from court proceedings when circumstances dictate, this court provided the following string cite: "See, e.g., *Nixon v. Warner Communications, Inc.*, [*supra.*] (noting that "[e]very court has supervisory power over its own records and files," and the decision to allow access to court records is best left to the sound discretion of the trial court); *Whitney v. Whitney*, 164 Cal.App.2d 577, 330 P.2d 947, 951 (1958) (providing that alimony proceeding can be closed for the welfare of a child); *State v. Grimes*, 29 Nev. 50, 81, 84 P. 1061, 1071 (1906) (stating that there are stronger reasons to deny public access to judicial records concerning private matters when public access "could only serve to satiate a thirst for scandal" Katz v. Katz, 356 Pa. Super. 461, 514 A.2d 1374, 1379 (1986) (recognizing that "no legitimate purpose can be served by broadcasting the intimate details of a soured marital relationship," however, good cause must be shown before a proceeding can be closed).

[46] 124 Nev. 245, 250, 182 P.3d 94, 98 (2008).

the First Amendment which would justifying overriding the privacy interests inherently at stake in family law cases.

VIII.
CONCLUSION

All save one case cited in the Petition pertain to criminal or general civil litigation proceedings and not to the subset and niche of family law proceedings, which, while technically falling under the broader category of civil proceedings, entail their own set of unique considerations and rules under EDCR Part 5. Given the intimate, personal and private nature of family law proceedings, cases in the Family Division rarely have a significant bearing on the public interest the way that criminal cases (prosecuted by the state) and civil cases (involving substantial concerns of public safety and welfare) might. The personal and private nature of family law actions relates not only to the parties' private finances but also to the intimate details of their personal lives and, of course, the best interests of minor

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children which the state has a duty to protect. The FLS submits that, in the digital age, the public's common-law right to peek must bow to a family's right to shut the curtains.

DATED this 20th day of October, 2022.

/s/ Shann Winesett

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