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6 *Appearing in Proper Person*

FILED

NOV 18 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

7 IN THE SUPREME COURT OF THE STATE OF NEVADA

8 ALEXANDER M. FALCONI d.b.a. OUR)
9 NEVADA JUDGES,)
10 Petitioner,)

Case No.:

11 vs.)

12 SIXTH JUDICIAL DISTRICT COURT OF)
13 THE STATE OF NEVADA IN AND FOR THE)
14 COUNTY OF HUMBOLDT; AND THE)
15 HONORABLE MICHAEL MONTERO,)
16 DISTRICT JUDGE;)
17 Respondent,)

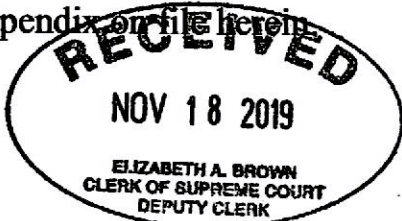
18 NORA ALANIZ, KRISTOPHER DANIEL, and)
19 THE STATE OF NEVADA,)
20 Real-Parties in Interest.)

21 *****EMERGENCY PETITION UNDER NRAP 27(e)*****

22 **PETITION FOR WRIT OF MANDAMUS**

23 ****Relief requested by Tuesday, November 19, 2019, at 1:00 p.m.****

24 COMES NOW, Petitioner, Alexander M. Falconi d.b.a. Our Nevada Judges,
25 appearing in proper person, and hereby files a petition for writ of *mandamus*. This
26 petition is based upon the following memorandum of points and authorities and the
27 appendix on file herein



NRAP 27(e) Certificate Of Emergency

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2 Our Nevada Judges, Petitioner, sought media access in an effort to
3 provide electronic coverage of judicial proceedings in Sixth Jud. Dist. Ct. docket
4 number CV 21,682-1 ('The Child Support Proceedings). Respondent, the
5 Honorable Michael Montero, refused. This petition follows.
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8 Attorneys are The Honorable Michael Montero, 25 West 5th Street, Room
9 202, Winnemucca, Nevada, 89445, (775) 623-6343; and, Kale M. Brock, Esq. 115
10 West 5th Street, Box 7, Winnemucca, Nevada 89445, (775) 623-5000; and, Steve
11 Evenson, Esq., 101 N. Maine Street, Fallon, Nevada 89406, (775) 428-1967; and,
12 Humboldt County District Attorney, 501 S. Bridge St. #1, Winnemucca, Nevada
13 89445, (775) 623-6363.
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16 On October 4, 2019, Our Nevada Judges sought media access to a
17 November 20, 2019 proceeding. On November 14, 2019, Respondent refused. On
18 Friday, November 15, 2019, at 5:00 p.m., Administrator Alexander Falconi was
19 notified by a member of the mining community of the aforementioned order
20 denying. Copies were transmitted via text message. To date, the hard copies of the
21 order denying have not arrived by mail. If a response is not received from this
22 Court by tomorrow, Tuesday, November 19, at 1:00 p.m., Our Nevada Judges will
23 cancel deployment of the camera team.
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1 Glen Baker, Rural Coordinator of Our Nevada Judges, will notify Parties by
2 personally delivering copies of the emergency writ petition. A certificate of service
3 will be filed forthwith.
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5 Relief was available in the District Court, but refused; all grounds advanced
6 in support of the petition were submitted to Respondent.
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8 **Memorandum of Points and Authorities**

9 **I. Summary**

10 Our Nevada Judges, Petitioner, sought media access in an effort to provide
11 electronic coverage of judicial proceedings in Sixth Jud. Dist. Ct. docket number
12 CV 21,682-1 ('The Child Support Proceedings). Respondent, the Honorable
13 Michael Montero, refused. This petition follows.
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16 **II. Routing Statement**

17 This appeal should be retained by the Supreme Court of Nevada.
18 Respondent cites NRS 125.080, an 1865¹ statute allowing parties to a divorce to
19 close a hearing, in the instant case, effectively deeming the hearing "private" and
20 barring electronic coverage. Whether this statute applies in child support actions
21 ancillary to divorce is in question. Additionally, clarification as to the exercise of
22 discretion on when the "dignity" of proceedings is implicated sufficiently enough
23 to deny media access is raised.
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¹ The statute was amended one time in 2007 to further exclude "witnesses".

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III. Relief Requested

Petitioner requests this Court issue a writ of *mandamus* directing Respondent to: vacate its order denying media access and enter an order allowing electronic coverage of The Child Support Proceedings.

IV. Issues Presented

1. Whether NRS 125.080 applies to State involved child support actions ancillary to divorce; and,
2. Whether Respondent abused his discretion in denying media access on the basis of “privacy” and “dignity”.

V. Factual Background

On October 4, 2019, Our Nevada Judges filed *Media Request*. PA-01.

On October 9, 2019, the State of Nevada (‘State’) filed an objection. PA-03.

On October 11, 2019, Our Nevada Judges filed a reply. PA-08.

On October 18, 2019, Nora Alaniz (‘Alaniz’) filed an objection. PA-12.

On October 29, 2019, Our Nevada Judges filed a reply. PA-23.

On November 14, 2019, Respondent summarily denied media access. PA-

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This writ petition follows.

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VI. Legal Analysis

Extraordinary Relief is Appropriate

“A writ of *mandamus* is available to compel the performance of an act that the law requires or to control a manifest abuse of discretion.” *State ex rel. Masto v. Second Judicial Dist. Ct.*, 125 Nev. 37, 199, ___ P. 3d 828, 832 (2009) (citing NRS 34.160; *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981)). “In general, a *writ* may issue only when petitioner has no plain, adequate, and speedy legal remedy, such as an appeal.” *Id* at P. 3d 832 (citing NRS 34.170).

“No direct appellate review of the interpretation or application of [the Rules on Electronic Coverage of Court Proceedings] shall be available to [] news reporters. News reporters [] may, however, seek extraordinary relief by way of writ petition.” SCR 243. PA-9:10.

“The early history of open trials in part reflects the widespread acknowledgement, long before there were behavioral scientists, that public trials had significant community therapeutic value.” *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 570-712, 100 S. Ct. 2814, 2824 (1980). The operation of Nevada’s courtrooms is a matter of great public concern. *Lubin v. Kunin*, 117 Nev. 107, 114, 17 P.3d 422, 427 (2001) (“fair, accurate and impartial’ reporting of judicial proceedings is privileged and nonactionable, thus affirming the policy that Nevada citizens have a right to know what transpires in public and official legal

1 proceedings.”) Our Nevada Judges has a substantial audience, with 117,200 views
2 and 1,374,000 watch-time minutes in a mere 4 months. PA-11:1-2. Chief Justice
3 Mark Gibbons, the Commission on Judicial Discipline; and, District Judges Jerry
4 Wiese, Michelle Leavitt, Ronald Israel, Cristina Silva, Rob Bare; and, Justice of
5 the Peace Joe Bonaventure have allowed Our Nevada Judges to provide electronic
6 coverage of judicial proceedings, all of which has been published with a high-
7 quality, post-production emphasis on education² and information. PA-24:27 - PA-
8 25:3.

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12 ***NRS 125.080 is Not Applicable***

13 In 1865, NRS 125.080 was enacted¹, allowing either party to an “action for
14 divorce” to, upon demand, direct that the “trial” and “issues of fact” therein be
15 “private”. Alaniz and Kristopher Daniel (‘Daniel’) are divorced. PA-28:3-5. While
16 child support issues can arise in an action for divorce involving children, The Child
17 Support Proceedings below are brought by the State. PA-28:7-9. These
18 proceedings constitute a separate action. NRS 125B.040(1). PA-24:3-13.

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22 Our Nevada Judges and Respondent disagree on the applicability of NRS
23 125.080. “[I]ssues of statutory construction [are reviewed] *de novo*”. *Harris*
24 *Assocs. v. Clark County Sch. Dist.*, 119 Nev. 638, 641, 81 P.3d 532, 534 (2003).
25 Respondent argues that the phrase “issues of fact joined therein” allows an
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² This includes informational and legal tidbits, as well as the profiles of each of the judicial officers, attorneys, and witnesses.

1 extension of the application of NRS 125.080 to The Child Support Proceeding.

2 While plausible, it certainly isn't clear. "If [] a statute is subject to more than one
3 reasonable interpretation, it is ambiguous, and the plain meaning rule does not
4 apply." *Savage v. Pierson*, 123 Nev. 86, 89, 157 P.3d 697, 699 (2007).

6 "When a statute is ambiguous" it is construed "consistently with what reason
7 and public policy would indicate the Legislature intended." *Star Ins. Co. v.*
8 *Neighbors*, 122 Nev. 773, 776, 138 P.3d 507, 510 (2006) (quoting *Banegas v. State*
9 *Indus. Ins. Sys.*, 117 Nev. 222, 225, 19 P.3d 245, 247 (2001)). Issues of child
10 support themselves are not as much of a privacy concern as it would seem by a
11 review of Respondent's order; if they were, the legislature would have sought to
12 ensure that NRS 128.080 extended beyond divorced couples, to include unmarried
13 couples as well. Issues of child support touch on more than just the lives of the
14 family, as they implicate social welfare programs³. Our Nevada Judges argues that
15 the legislature could have taken steps to make child support actions private, much
16 as was done with paternity actions, which, analogously, could link to issues of fact
17 raised in a divorce action. Compare NRS 126.211.

23 Furthermore, when a statute is ambiguous [this court] look[s] to its
24 legislative history to ascertain the Legislature's intent." *Potter v. Potter*, 121 Nev.
25 613, 616, 119 P.3d 1246, 1248 (2005). NRS 125.080 was enacted in 1865, shortly
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28 ³ NRS 125B.040(1): the obligation of support imposed on parents of a child creates
"a cause of action [] on behalf [] public agencies furnishing support or defraying
the reasonable expenses thereof."

1 after Nevada was admitted into the union. An amendment occurred in 2007,
2 merely clarifying its language. Child support did not exist until over a century
3 later, and the 2007 legislature could have extended NRS 128.080 to unmarried
4 couples of other issues associated with children, like child support, were intended
5 to fall within its scope.
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8 ***Respondent Abused His Discretion in Refusing, Limiting Coverage***

9 While Respondent has discretion to particulars and extent at which
10 electronic coverage can be permitted, the exercise of discretion is not without
11 limits. Compare *Adamson v. Bowker*, 85 Nev 115, ___, 450 P. 2d 796, 800 (1969)
12 (“outright refusal to grant the leave without any justifying reason appearing for the
13 denial is not an exercise of discretion; it is merely abuse of that discretion and
14 inconsistent with the spirit of the [] Rules”).
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17 Respondent cites SCR 230(d) in support of the cameras “detracting from the
18 dignity of the **proceedings**” (emphasis added). The word “dignity” is defined as “a
19 state or quality of being worthy of honor or respect” or of having been “composed
20 or serious manner or style”. No details are provided explaining how camera
21 coverage will alter the dignity of the proceedings; it is possible embarrassing or
22 controversial issues may arise with regards to the subject-matter or the parties, but
23 this could be said of most subject-matter that goes before the courts. Few Parties
24 find being in court a dignifying or honorable prospect when it comes to their
25 disputes and how they may be perceived by the public.
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1 Respondent cites SCR 230(2)(b) with regards to the privacy of any party or
2 witness, namely, Alaniz, Daniel, and the children. Speculation that sensitive issues
3 may arise should not be sufficient to invoke an exception under SCR 230(2)(b); to
4 allow this would effectively bar coverage of any and all child support actions,
5 under the guise that parties to a case may spontaneously raise an unexpected,
6 sensitive issue, regarding children. This Court has made it clear that overcoming
7 the presumption of electronic coverage requires evidentiary support. *Solid v.*
8 *Eighth Judicial District Court*, 133 Nev. 118, 393 P. 3d 666 (2017) (“Solid did not
9 present evidence showing how MET’s cameras affected the fairness of the trial, the
10 dignity of the proceedings, or the ability of trial counsel to present effective
11 advocacy any differently than the other cameras in the courtroom.”) PA-09:17 –
12 PA-10:2.

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18 Finally, Respondent invokes SCR 240 in prohibiting coverage of witnesses
19 and State’s attorney. Our Nevada Judges can abide by a restriction on coverage of
20 witnesses. It is troubling, however, that Respondent is forbidding coverage of a
21 County employee, especially one that is an attorney. *Piping Rock Partners, Inc. v.*
22 *David Lerner Assocs., Inc.*, 946 F. Supp. 2d 957, 968 (N.D. Cal. 2013) (holding
23 that criticism of a professional’s on-the-job performance is a matter of public
24 interest.)
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1 **Conclusion**

2 The common law right of access is based on the need for courts to “have a
3 measure of accountability and for the public to have confidence in the
4 administration of justice.” *United States v. Amodeo*, 71 F.3d 1044, 1048 (2nd Cir.
5 1995).
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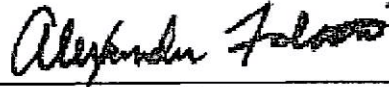
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8 Our Nevada Judges became aware of the interests of members of the mining
9 community in Humboldt County following testimony provided by them to the
10 Child Support Guidelines Committee. Our Nevada Judges would appreciate
11 serving the community by providing coverage of a hot button issue while
12 simultaneously producing educational content for the entirety of the State on child
13 support enforcement proceedings. The engagement and near-daily communication
14 Our Nevada Judges has received from Humboldt County miners on issues of child
15 support is a testament to their desire of coverage and attention on this issue; it
16 should be noted that had Our Nevada Judges not been notified of the denial of
17 media access so quickly, and been provided quick-scans of the order denying, it is
18 unlikely this writ petition would have even been filed in time for review.
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23 **THEREFORE, Petitioner hereby requests:**

- 24
- 25 1. This Court issue a writ of *mandamus* directing Respondent vacate the
26 order denying media access and enter an order allowing electronic
27 coverage of The Child Support Proceedings; and,
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 2. An award of costs; and,

1 3. Such further relief as this Court deems necessary and just.

2 DATED THIS 16 day of November, 2019.

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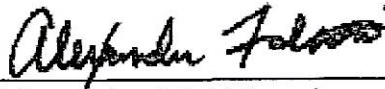
5 Alexander M. Falconi
6 Our Nevada Judges
7 Administrator

8 **Verification**

9 I, Alexander M. Falconi, declare that I am competent to testify to the facts in
10 this *Declaration*. I have read the foregoing *Petition*, and know the content thereof;
11 that the same is true of my own knowledge except for those matters therein stated
12 on information and belief, and as to those matters, I believe them to be true. Those
13 factual averments contained in the referenced filing are incorporated here as if set
14 forth in full.
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17 ***I declare⁴ under penalty of perjury that the foregoing is true and correct.***

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19 EXECUTED THIS 16 day of November, 2019.

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21 Alexander M. Falconi
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27 ⁴ NRS 53.045(1): "Any matter whose existence or truth may be established by an
28 affidavit or other sworn declaration may be established with the same effect by an
unsworn declaration of its existence or truth signed by the declarant under penalty
of perjury, and dated, in substantially the following form: [i]f executed in this State:
I declare under penalty of perjury that the foregoing is true and correct."

NRAP 25(5)(c)(1)(B) Certificate of Service

I, Glen Baker, do hereby declare that I am over the age of 18 and not a party to this action, and that I personally served a true and correct copy of this *Petition* for *Writ of Mandamus* upon:


The Hon. Michael Montero
25 West 5th St., Room 202
Winnemucca, Nevada 89445

Kale M. Brock, Esq.
115 West 5th Street, Box 7
Winnemucca, Nevada 89445

Steve Evenson, Esq.
101 N. Maine Street
Fallon, Nevada 89406

Humboldt County District Attorney
501 S. Bridge St. #1
Winnemucca, Nevada 89445

SERVED THIS 18th day of November, 2019.



Glen Baker
Our Nevada Judges
Rural Coordinator