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IN THE FAMILY DIVISION  
OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
IN AND FOR THE COUNTY OF WASHOE

In re: the Marriage of:

██████████ and ██████████ Case No. DV11-██████████  
██████████,  
Joint Petitioners. Dept. No. 2

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**ORDER RE: MOTION TO CLOSE AND MAKE PRIVATE COURT PROCEEDINGS**

Presently before the Court is a contested Motion to Close and Make Private Court Proceedings. Having reviewed the papers and pleadings on file in this action the Court finds and orders as follows:

In her *Motion to Close and Make Private Court Proceedings* (“Motion to Close”), filed March 29, 2024, ██████████ now known as ██████████ (“Ms. ██████████”) seeks entry of an order closing, making private and excluding members of the public from all court proceedings (presently scheduled and all future proceedings) in this case or, in the alternative, an order closing, making private and excluding members of the public from the evidentiary hearing scheduled in this case for June 25-27, 2024.<sup>1</sup>

██████████ (“Mr. ██████████”) opposed Ms. ██████████ Motion to Close in an opposition consisting of 13 lines of alleged “points and authorities” which fails to cite any applicable legal authority, provides no specific factual assertions, and omits even the most

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<sup>1</sup> Ms. ██████████ also sought entry of an order closing and making private child witness testimony on April 10, 2024. Ms. ██████████ Motion was not fully briefed or submitted prior to the April 10, 2024. The parties proceeded with the April 10, 2024, prior to submission or resolution of the Motion to Close. The issue as to closure of the April 10, 2024, hearing is moot.

1 basic analysis of the issue before the Court. Mr. ██████ opposition is so wholly lacking in  
2 citation to and application of legal authority that it appears to be nothing more than  
3 perfunctory and would generally be treated by this Court as a violation of District Court  
4 Rule (DCR) 13 and Washoe District Court Rule (WDCR) 12 and as cause for granting the  
5 relief requested by Ms. ██████. However, the issue before the Court is a constitutional one  
6 and this Court is required to undertake judicial review and analysis in compliance with  
7 Nevada law despite Mr. ██████ failure to provide competent, skilled, and thorough  
8 argument in opposition to the relief requested. Moreover, this Court is "...required to  
9 consider alternatives to closure even when they are not offered by the parties." *United*  
10 *States v. Yazzie*, 743 F.3d 1278, 1287 (9th Cir. 2014) citing *Presley v. Georgia*, 558 U.S.  
11 209, 214, 130 S.Ct. 721, 175 L.Ed.2d 675 (2010). In compliance with such obligations this  
12 Court considers Ms. ██████ Motion to Close as follows:

### 13 Analysis

14 The Nevada Supreme Court, in *Falconi v. Eighth Judicial Dist. Court in & for Cnty.*  
15 *of Clark*, determined the constitutional right of access applies to civil proceedings, and  
16 specifically family law proceedings, are therefore presumptively open. *Falconi*, 140 Nev.  
17 Adv. Op. 8, 543 P.3d 92, 99 (2024). Recognizing the "critical importance of the public's  
18 access to the courts and the role that thoughtful, reasoned judicial decision-making plays  
19 in identifying the compelling interests at stake and determining; (1) if and when to order  
20 closure in any proceeding, be it family, civil, or criminal in nature; and (2) to what extent  
21 such closure should apply" district courts must apply the four factor *Feazell* test on a case-  
22 by-case basis.<sup>2</sup> *Id.* Specifically, before this Court can close these proceedings "(1) the party  
23 seeking to close the hearing must advance an overriding interest that is likely to be  
24 prejudiced; (2) the closure must be no broader than necessary to protect the overriding

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26 <sup>2</sup> Ms. ██████ asserts closure is determined utilizing a three-prong test outlined in *Press-Enterprise II*. While  
27 the Court specifically cited the three-prong test in *Press-Enterprise II* the Court directed district courts to  
28 address issues of closure on a case-by-case basis using the four prong test in *Feazell* (utilizing the test  
originally promulgated by *Waller v. Georgia*, 467 U.S. 39, 104 S. Ct. 2210, 81 L.Ed.2d 31 (1984)) with the  
Court noting that failure to consider whether to close a proceeding on a case-by-case basis, which is not a  
significantly high burden, falls short of the *Press-Enterprise II* requirement that closure is narrowly tailored  
to serve a compelling interest.

1 interest; (3) the trial court must consider reasonable alternatives to closing the  
2 proceeding; and (4) the trial court must make findings adequate to support the closure.”

3 *Id.*

4 Ms. ██████ urges this Court to find a compelling privacy interest – and cites heavily  
5 the dissent in *Falconi* in support of this argument. Ms. ██████ notes that this case involves  
6 a contested issue of child custody and asserts these matters are private matters and  
7 should remain private. Ms. ██████ contends the interest of public access “...pales in  
8 comparison to Ms. ██████’s interest in freeing herself and ██████ from Mr. ██████  
9 persistent efforts to harm them using any means at his disposal...” Motion to Close, p.  
10 15:13-15. Ms. ██████ also asserts this Court’s central focus and obligation is to the child’s  
11 best interests and that the child’s best interests are not served by custody proceedings  
12 being publicized. This claim, however, was made – and rejected – in *Falconi*. The  
13 majority opinion specifically acknowledged an interest in protecting litigants’ privacy  
14 rights in family law proceedings and admitted that such proceedings apply wholly to the  
15 litigants’ private lives. Nonetheless, the Court held that “a litigant’s privacy interests do  
16 not automatically overcome the press’s and the public’s right to access court  
17 proceedings...” before citing with approval that “...the majority of jurisdictions to consider  
18 this issue have concluded that when there are no extraordinary circumstances present, the  
19 public’s right to access family law proceedings outweighs the litigants’ privacy interests.”

20 *Id.* Indeed, the Court in *Falconi* cited and relied upon:

21 ... *Copeland v. Copeland*, 930 So. 2d 940, 941 (La. 2006)  
22 (explaining that, in light of the presumption of open  
23 proceedings, an action cannot be closed or sealed merely  
24 because it involves the custody of minor children); *France v.*  
25 *France*, 209 N.C.App. 406, 705 S.E.2d 399, 408 (2011)  
26 (providing in a child custody action that “[w]hile a trial court  
27 may close proceedings to protect minors in certain situations ...  
28 we can find no case supporting the closing of an entire  
proceeding merely because some evidence relating to a minor  
child would be admitted

27 *Id.*

1           Although Ms. ██████ accurately notes that (a) both she and the parties' son's  
2 privacy rights are at issue in this action and (b) evidentiary hearing relates solely to child  
3 custody, *Falconi* clearly states that such circumstances do not automatically overcome the  
4 right to access.

5           As noted by the dissent in *Falconi*, “[i]n presuming that custody proceedings be  
6 open, the disposition limits what rules may be enacted to facilitate proceedings to only  
7 what may survive strict scrutiny. This places an obstacle on the court's pursuit of the  
8 child's best interests, by presuming that openness rather than privacy best serves the  
9 child. It also burdens parties who are in a delicate and possibly traumatic situation with  
10 proving that privacy is a narrowly tailored means to attain a compelling state interest. *Id.*  
11 The dissent highlighted that cases such as the one before this Court do not generally  
12 feature an abiding “public character” akin to that of criminal matters that led to the  
13 Supreme Court to find a presumption of openness. *Id.* Nonetheless, the majority's  
14 decision in *Falconi* is binding upon this court and through application of *Feazell* and, by  
15 extension, *Waller v. Georgia*; this Court is required to consider closure of this contested  
16 child custody proceeding involving sensitive issues including allegations including of  
17 domestic violence in accordance with the constitutional right of a criminal defendant to a  
18 public trial under the Sixth Amendment.

19           Review of cases utilizing the *Feazell* or *Waller* test, reveal limited circumstances in  
20 which the right of public access is overcome. Courtrooms have been closed (in full or in  
21 part) to protect a witness against threats, intimidation, reprisals; or, under certain  
22 circumstances, simply to protect a witness' emotional wellbeing.<sup>3</sup> 33 A.L.R.6th 1. In some  
23 circumstances, “[c]losure to reassure a nervous witness and encourage that witness to  
24 testify completely and truthfully may be justified.” *Id.*<sup>4</sup> Closure to protect a victim or a

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26 <sup>3</sup> For instance, when a witness is threatened and/or intimidated and is afraid of the perpetrator of the threats.  
27 In other circumstances, courtrooms have been closed to protect a witness from the possibility of reprisals by  
28 the defendant, the defendant's accomplices, associates and/or family. 33 A.L.R.6th 1. See also *Woods v.*  
*Kuhlmann*, 977 F.2d 74, 76–77 (2d Cir.1992) and *Feazell*. However, in both cases courts utilized a partial  
closure to protect a witness who felt observers posed a threat to her personal safety.

<sup>4</sup> See 33 A.L.R.6th 1 §19 stating in part: “In *State v. Biebinger*, 585 N.W.2d 384 (Minn. 1998), the court  
denied the defendant's petition for a writ of habeas corpus, holding that the trial court had sufficient

1 witness from the emotional trauma of testifying to sordid or embarrassing facts in public  
2 has also been justified in some circumstances. *Id.*

3 Protection of the Parties' Child

4 One of Ms. ██████ central arguments is that closure is necessary to protect the  
5 parties' child. Courts have been more likely to find closure justified during the testimony  
6 of a witness who is a minor in order to protect the witness from emotional trauma  
7 associated with testifying to sordid and embarrassing facts such as cases involving sexual  
8 assault. However, even in such cases, from the limited legal review conducted, this Court  
9 finds no case in which complete closure of the entirety of the proceedings was deemed  
10 permissible. Generally, portions of the proceedings – including even portions of the  
11 proceeding in which the child's victimization were discussed – remain open under  
12 narrowly tailored orders. Considering the language in *Falconi* and cases utilizing the  
13 *Waller* test in the criminal context, closure to protect a child is generally limited to closing  
14 or partially closing proceedings as deemed appropriate and even then are generally  
15 limited to the portion of the proceedings when the child is actively testifying. See general  
16 discussion regarding exclusion of the public outlined at 33 A.L.R.6<sup>th</sup>.

17 In this case the parties' son previously testified by alternative means in accordance  
18 with the Uniform Child Witness Testimony by Alternative Methods Act. See NRS 50.500  
19 to 50.620. The child's testimony was subject to closure by this Court's order made in  
20 accordance with the Act. The minor child will not testify at the evidentiary hearing June  
21 25-27, 2024, by any means. As such the mere fact that this case involves child custody  
22 requiring consideration of the child's best interests in accordance with Nevada law and  
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25 justification in the record for closing the courtroom during the testimony of the minor victim of sexual  
26 assault to protect the witness from psychological harm after a hearing. The court found that in this case the  
27 trial judge closed the courtroom after hearing expert testimony that the victim suffered from posttraumatic  
28 stress disorder and experienced flashbacks, and there was concern that the witness might decompensate and  
forget the experiences if required to testify in open court. After several appeals, this court concluded that the  
trial judge had made findings adequate to support full or partial closure and held further that the record  
demonstrated that alternatives to closure would not have been effective and in fact only two people were  
excluded from the courtroom.”

1 may include reference to the child's prior testimony in this case, does not constitute an  
2 overriding interest warranting closure.

3 Ms. [REDACTED] Public Position

4 Throughout her Motion, Ms. [REDACTED] cites concern that issues related to domestic  
5 violence, if made public, may have a negative impact on her career and on her campaign  
6 for public office. This Court notes the right of public access generally prohibits complete  
7 closure of the entirety of a court proceeding simply because the material may be  
8 embarrassing or private to the litigant or victim involved. Ms. [REDACTED] fails to provide (and  
9 this Court fails to find) any legal authority in support of her claim that her status as a  
10 public official and/or her current campaign coupled with the potential for discussion of  
11 issues related to domestic violence constitutes an overriding interest that is likely to be  
12 prejudiced nor any specific support for an order for complete closure of the entirety of  
13 these proceedings.

14 Ms. [REDACTED] Interests as a Witness Testifying in this Case

15 Ms. [REDACTED] Motion to Close makes clear that she expects to testify as to specific  
16 instances of threats and violence.<sup>5</sup> Some of the alleged testimony identified in the Motion  
17 involves particularly sensitive, violent, and lurid details. Ms. [REDACTED] details how the  
18 circumstances, even years after the fact, continue to cause her great emotional difficulty.  
19 Ms. [REDACTED] also provided Our Family Wizard Messages she expects to use at the  
20 evidentiary hearing, which appear to support Ms. [REDACTED] assertion that Mr. [REDACTED] has  
21 threatened and intimidated her with public dissemination of material. While Mr. [REDACTED]  
22 opposition to the Motion to Close invites the court to review his response in opposition to  
23 the motion to modify custody for his response to allegations against him, Mr. [REDACTED] does  
24 not deny some of the specific accusations against him. Moreover, review of his response  
25 in opposition to the motion to modify custody shows no fact specific affidavit or

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27 <sup>5</sup> Ms. [REDACTED] sworn statement also indicates another witness may testify to sensitive details and claims of  
28 domestic violence as well. This Court, however, has no fact specific affidavit or declaration from any  
potential witness detailing any basis for complete or partial closure during that witnesses' testimony. As such  
this Court declines to consider closure beyond the scope outlined above. This Court, however, reserves  
jurisdiction to address such issues, should they arise, during the evidentiary hearing.

1 declaration in lieu of affidavit in which Mr. ██████ has been shown himself willing to  
2 address and respond to the allegations against him under oath. In addition, supplemental  
3 documentation provided by Ms. ██████ (without objection by Mr. ██████) indicate  
4 weaponization of this child custody case against Ms. ██████ and appear to support Ms.  
5 ██████ assertion (and Our Family Wizard message) regarding threats and intimidation of  
6 Ms. ██████.

7 In this case, documentation and statements under oath provided by Ms. ██████<sup>6</sup>  
8 (which Mr. ██████ has, to date, still not denied under oath in any fact specific affidavit or  
9 declaration) support Ms. ██████ assertion of (a) intimidation by Mr. ██████; (b) threats  
10 by Mr. ██████ to use a public proceeding for purposes of retaliation, harassment and/or  
11 domestic violence; (c) difficulty Ms. ██████ has testifying about domestic violence  
12 committed by Mr. ██████ against Ms. ██████ in a public setting; (d) the need for the  
13 witness to testify completely and truthfully in order for this Court to fully consider the  
14 best interest factors at NRS 125C.0035; and (e) the emotional trauma Ms. ██████  
15 associates with testifying to lurid or embarrassing circumstances in a public setting.

16 Protecting the court process by encouraging a witness to come forward and testify  
17 truthfully is an overriding interest which supports closure. Balancing the right of access  
18 to judicial proceedings against the interests outlined above, this Court next addresses the  
19 extent to which closure is necessary to protect the overriding interest. Given the interests  
20 outlined above, this Court concludes a limited and temporary closure most appropriate.  
21 To this end the courtroom will be closed during Ms. ██████ testimony regarding domestic  
22 violence perpetrated against her by Mr. ██████. In narrowly tailoring this order, this  
23 Court is mindful that the allegations involved will also be addressed by Mr. ██████ who  
24 does not seek closure of the proceedings regarding same. This Court declines to close the  
25 proceedings to all discussion of domestic violence or to close any other portion of the  
26 proceedings concluding a broader closure is not necessary or appropriate given this

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28 <sup>6</sup> Exhibit "1" and "3" to the Motion for Sole Physical Custody.

1 Court's focus on ensuring Ms. ██████ willingness and ability to testify truthfully  
2 regarding these limited issues and the need to limit intimidation of the witness through  
3 public observation while she discusses these topics.

4 This Court finds no reasonable alternative to the limited and temporary closure  
5 outlined herein. Indeed, other alternatives – including Ms. ██████ testifying from another  
6 room via simultaneous audio video means with the video turned off – were considered by  
7 the undersigned judicial officer. This alternative would limit both Mr. ██████ and this  
8 Court's ability to observe the witness while testifying and would likely make difficult Ms.  
9 ██████ use of exhibits and the Court's monitoring of her use of exhibits during this  
10 portion of her testimony. This alternative also fails to adequately address and ameliorate  
11 issues related to intimidation or concerns regarding Ms. ██████ willingness and ability to  
12 testify truthfully and with specificity as to claims of domestic violence in the presence of  
13 the public.

#### 14 **Order**

15 Based upon the foregoing, Ms. ██████ request to close the entirety of the  
16 proceedings is denied. Instead, the evidentiary hearing in this case is subject to a limited  
17 and temporary closure under the following terms and conditions:

18 1. Ms. ██████ shall testify regarding acts of domestic violence perpetrated  
19 against her by Mr. ██████ against her in a closed courtroom. This shall include any direct,  
20 cross and re-direct as well as rebuttal or testimony provided by way of recall regarding  
21 acts of domestic violence perpetrated against her by Mr. ██████. To ensure closure is  
22 limited solely to these issues and does not inadvertently extend to broader portions of the  
23 proceedings, Ms. ██████ shall testify in two segments – once to a closed courtroom  
24 pursuant to the terms above and the other via testimony presented in open court as to all  
25 other issues and claims.

26 2. The remainder of the proceedings except those outlined above shall remain  
27 open to the public (with the exception of any sidebar, bench conference, or other matter  
28 closed to the public as a matter of law).



1           3.       The Court reserves any request for additional orders closing proceedings as  
2 to specific witnesses beyond the two persons specifically identified in Ms. [REDACTED] Motion  
3 to Close (Ms. [REDACTED] and the partis' child) to be addressed at trial at the request of either  
4 party subject to review and consideration in accordance with the legal framework and  
5 authorities noted above.

6           DATED: June 21, 2023.

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9 DIXIE GROSSMAN  
10 DISTRICT JUDGE  
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