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**DISTRICT COURT
CLARK COUNTY, NEVADA
FAMILY DIVISION**

<p>8 [REDACTED]</p> <p>9 Plaintiff,</p> <p>10 vs.</p> <p>11 [REDACTED]</p> <p>12 Defendant.</p> <p>13 _____/</p>	<p>CASE NO: D-21-[REDACTED]-D</p> <p>DEPT NO: Q</p> <p><u>MOTION FOR LEAVE TO FILE REPLY TO OPPOSITION TO COUNTERMOTION TO UNSEAL AND INTERVENE</u></p> <p>NO HEARING REQUESTED</p>
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14 COMES NOW, Our Nevada Judges, Inc., a Nevada non-profit corporation, by
15 and through the undersigned counsel, and hereby files the following *Motion for*
16 *Leave* to file the following reply to Plaintiff’s opposition to countermotion to unseal
17 and intervene.
18

19 This reply is based upon the following memorandum of points and authorities,
20 and the exhibits attached hereto.

MEMORANDUM OF POINTS AND AUTHORITIES

1. Request for Leave to File Reply to Opposition to Countermotion

24 Generally, sur-replies, and in this case, an EDCR 5.502(f) reply, are disfavored.
25 Leave is appropriate, however, when new issues are raised that, absent briefing,
26 may induce the Court into committing reversible legal error - i.e. striking a paper or
27 awarding attorney’s fees *sua sponte* without any opportunity to respond.
28

1 The cause of the confusion is Plaintiff's mislabeling of papers she is filing with
2 the court, i.e. calling a motion a request and embedding derivative motion and
3 opposition arguments into her papers. For example, moving to strike an opposition
4 and including a request for attorney fees in that paper.
5

6 In this case, Plaintiff requests that the Court not only strike briefs, but also
7 award attorney's fees. For this reason specifically, ONJ requests leave of the Court
8 to consider the reply that follows. EDCR 5.502(f).
9

10 **2. Reply to Opposition to Countermotion**

11 On February 6, 2025, Our Nevada Judges, Inc. ('ONJ') filed its opposition and
12 countermotion to Plaintiff's February 5, 2025 Ex Parte Request for an Order
13 Shortening Time, which is in reality, not simply a request, but a new motion or
14 motion for reconsideration of media access, which prompted ONJ's opposition to
15 same and countermotion to unseal and to intervene. ONJ clearly has an interest in a
16 motion to reconsider the granting of media access, and simply mislabeling that
17 motion a request does not negate that interest.
18

19 In Plaintiff's "Ex Parte Request," she advanced arguments following the
20 issuance of *Nester v. Eighth Judicial Dist. Court*, 141 Nev. Advance Opinion 4 (Jan.
21 30, 2025). In one¹ of those very filings, Plaintiff, verbatim, "incorporates by reference
22 her factual and legal arguments set forth in her *Motion for Closed Hearing* filed
23 March 14, 2024", those very same filings she laments are filed "nearly one year ago".
24 Thus, Plaintiff's filing is a motion, with argument, to which ONJ is entitled to
25 respond, not just a benign "request".
26
27

28 ¹ *Motion to Continue* filed February 5, 2025 at 9:17 p.m., at 11:19-21.

1 Accordingly, there is nothing procedurally improper concerning ONJ's
2 participation in filing a responsive brief with the Court, given that Plaintiff advances
3 new and novel arguments, which ONJ believes misconstrue the holding in *Nester*.

4 ONJ is expressly authorized by SRCR 4(2) to file motions to unseal.
5

6 ONJ is expressly authorized by SCR 230(1) to undertake efforts to secure
7 camera access.

8 EDCR 5.503(a) expressly allows the filing of countermotions. The only
9 non-party participation ONJ would have been precluded from partaking in is on the
10 issue of physical access, which ONJ identified, and, consistent with the law, sought
11 intervention on. *Stephens Media, LLC. v. Eighth Judicial District Court*, 125 Nev.
12 849, 221 P. 3d 1240 (2009) (allowing the press to seek limited intervention on access
13 issues in criminal cases). See also *Falconi v. Eighth Judicial Dist. Court*, 140 Nev.
14 Adv. Rep. 8, 543 P.3d 92 (Nev. 2024) (broadly expanding the scope of *Stephens*
15 *Media* from criminal proceedings to all civil proceedings, including family court).
16 Compare NRCP 24 and NRS 65.030.
17
18

19 To the extent Plaintiff asserts some literal interpretation of existing statutes and
20 court rules² forbids ONJ participation, this Court need look no further than the
21 harmonious construction³ principles articulated by the Supreme Court.
22
23
24

25 ² *Weddell v. Stewart*, 127 Nev. 645, ___, 261 P. 3d 1080, 1084 (2011) (“[R]ules of
26 statutory construction apply to court rules.”)

27 ³ *Simmons Self-Storage vs Rib Roof, Inc.*, 130 Nev. 540, 546, 331 P. 3d 850, 854 (2014)
28 (“[T]his court interprets `provisions within a common statutory scheme harmoniously with
one another in accordance with the general purpose of those statutes' to avoid
unreasonable or absurd results and give effect to the Legislature's intent.”)

1 It is troubling that Plaintiff cannot understand the importance⁴ of press and
2 public participation on the issues of courtroom access to such an extent that she
3 requests attorney fees.

4
5 ONJ filed its counter-motion because Plaintiff embedded arguments implicating
6 the *Nester Court's* opinion, but there is no rule or law preventing ONJ from having
7 simply filed its briefs in independent motions to unseal and intervene consistent with
8 SRCR 4(2) and the *Stephens Media Court's* holdings, respectively. SRCR 3(4) and
9 the *Falconi Court* have made it clear that Parties' voices alone, even in agreement,
10 are not a sufficient basis to seal filings or close courtrooms. For these several
11 reasons, ONJ should prevail on the issues of unsealing and intervention⁵, which
12 necessarily requires a denial of attorney fees under NRS 18.010(2)(b) because she
13 would not be able to obtain prevailing party status.
14

15
16 Even if, *in arguendo*, Plaintiff were to prevail on the issues of physical access
17 and unsealing, no attorney fee award would be warranted under any law. *Rivero v.*
18 *Rivero*, 125 Nev. 410, 216 P. 3d 213 (2009) (in interpreting NRS 18.010(2)(b) and
19 NRCP 11, recognizing that “[a]lthough Ms. Rivero did not prevail on the motion, and
20 it may have been without merit, that alone is insufficient for a determination that the
21 motion was frivolous, warranting sanctions.” See also *Bergmann v Boyce*, 109 Nev.
22 670, 856 P. 2d 560 (1993) (even where fees are to be awarded, the Court must
23 distinguish between “grounded and groundless claims”).
24
25

26 ⁴ The Supreme Court, *en banc*, is scheduling oral arguments, in *Gamble v. Nester*,
27 docket no. 88678. At issue is, *inter alia*, the potential strike down of NRS 125.010.

28 ⁵ Intervention would confer the standing necessary to participate in securing physical
access. SRCR 4(2) already confers standing on the issue of unsealing, whether or not it
is done by motion or counter-motion.

1 **3. Conclusion**

2 For these several reasons, ONJ’s counter motions to unseal and intervene
3 should be granted, to the extent necessary to secure access to the proceedings.

4 **NRS 239B.030(4) AFFIRMATION**

5 Pursuant to NRS 239B.030 the undersigned hereby affirms that this document
6 does not contain the social security number of any person.

7 **DATED** this Feb 13, 2025

8
9 By: /s/ Luke Busby _____
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CERTIFICATE OF SERVICE

I certify that on the date shown below, I caused service to be completed of a true and correct copy of the foregoing document by:

_____ personally delivering;

_____ delivery via Reno/Carson Messenger Service;

_____ sending via Federal Express (or other overnight delivery service);

_____ depositing for mailing in the U.S. mail, with sufficient postage affixed thereto;

or,

delivery via electronic means (fax, eflex, NEF, etc.) to:

Cody Gamble

Shannon Wilson, Esq.

Michael Burton, Esq.

DATED this Feb 13, 2025

By: /s/ Luke Busby