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1	IN THE SUPREME COURT OF THE STATE OF NEVADA	
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4	JAQUEZ DEJUAN BARBER, ) Electronically Filed ) Oct 31 2013 09:43 a.r	n.
5	Appellant, ) Tracie K. Lindeman Case No Clears 40 f Supreme Cou	
6	ys. )	111
7	)	
8	THE STATE OF NEVADA,	
9	Respondent. )	
10	))	
11	APPELLANT'S OPPOSITION TO STATE'S MOTION TO STRIKE	
12	PORTIONS OF APPELLANT'S MOTION TO RECONSIDER DENIAL OF	
13	<u>MOTION TO FILE JUVENILE COURT DOCUMENTS</u> <u>UNDER SEAL IN HIS APPENDIX.</u>	
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15	Comes Now Appellant JAQUEZ DEJUAN BARBER, by and	
16	through Deputy Public Defender SHARON G. DICKINSON, and files this	
17	Opposition to the State's Motion to Strike filed on October 30, 2013.	i
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19	DATED this 30 <sup>th</sup> day of October, 2013.	
20	PHILIP J. KOHN	
21	CLARK COUNTY PUBLIC DEFENDER	
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24	SHARON G. DICKINSON, #3710	
25	Deputy Public Defender	
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	Docket 62649 Document 2013-32719	ı

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1	POINTS AND AUTHORITIES
2	The State's Motion to Strike asks this Court to strike the unpublished
3 4	opinion of Daron W. v. Eighth Jud. Dist. Ct., Case No. 57807 (5/10/11) from
5	Barber's Motion to Reconsider the Denial of his Motion to Seal Juvenile Court
6	Records within his appendix, on page 3, lines 25-17 of his motion.
7 8	Nevada Supreme Court Rule 123 states:
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10	An unpublished opinion or order of the Nevada Supreme Court shall not be regarded as precedent and shall not be cited as legal
11 12	authority except when the opinion or order is (1) relevant under the doctrines of law of the case, res judicata or collateral estoppel; (2)
-1-3	relevant to a criminal or disciplinary proceeding because it affects the same defendant or respondent in another such proceeding; or (3)
14	relevant to an analysis of whether recommended discipline is consistent with previous discipline orders appearing in the state bar
15	publication. (Emphasis Added).
16 17	The State asks this Court to strike from the brief any reference to the Court's prior
18	order of Daron W. v. Eighth Jud. Dist. Ct., Case No. 57807 (5/10/11) because it is
19 20	unpublished.
20 21	Defense Counsel clearly identified Daron W. v. Eighth Jud. Dist. Ct., Case
22	
23	No. 57807 $(5/10/11)$ as an unpublished opinion within the motion and did not cite
24 25	the case as precedent or as controlling legal authority. The case was not in italics
26	as are the published opinions within the motion. Therefore, because it was clearly
27	identified as being unpublished and not controlling legal precedent, the inclusion
28	of this case does not violate the spirit or the wording of Rule 123.

In Daron W. v. Eighth Jud. Dist. Ct., Case No. 57807 (5/10/11), the Court 1 based its holding that once juvenile records are sealed they will not be reopened on 3 NRS 62H.170. Thus, Daron W. v. Eighth Jud. Dist. Ct., Case No. 57807 (5/10/11) 5 explains how this Court viewed the sealing of juvenile court records in that 6 particular case. That is the reason it was included. 7

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Moreover, the unpublished decision of Daron W. v. Eighth Jud. Dist. Ct., 8 9 Case No. 57807 (5/10/11) seems contrary to the Court's Order. Because of this, 10 the case is relevant to show how the Court handled issues involving the sealing of 11 juvenile court records in the past and to maintain uniformity in the Court's 12 -1-3decisions. Moreover, it is relevant because it is the type of opinion practitioners 14 rely on when requesting that juvenile court records be sealed. 15

16 This Court routinely relies on unpublished opinions from other courts. In 17 Schuck v. Signature Flight Support of Nevada, 126 Nev. Adv. Op. No. 42, 245 18 19 P.3d 542 (2010), this Court addressed unpublished opinions in a footnote, saying: 20 "This ban does not extend to federal district court dispositions, which may be cited 21 for their persuasive, if nonbinding, precedential value. See Fed. R. App. P. 32.1 22 23 (permitting citation of unpublished federal judicial dispositions issued on or after 24 January 1, 2007). . . " Id. n, 2. Also, this Court has issued published opinions 25 referencing unpublished opinions from another state (Borger v. Eighth Jud. Dist 26 27 Ct. ex rel, County of Clark, 120 Nev. 1021 (2004)) and from the United States 28

Supreme Court (*Naovarath v. State*, 105 Nev. 525, 529 and n. 4. (1989). Therefore, it only seems reasonable that the court should review its own past unpublished decisions even though the order is not legal precedent and not controlling authority.

Although the caption of the State's Motion to Strike only asks this Court to 7 strike Daron W. v. Eighth Jud. Dist. Ct., Case No. 57807 (5/10/11), footnote 1 8 9 lays out a much different argument. In Footnote 1, the State argues that the 10 Defense failed to cite to any authority allowing the Court to decide a Motion to 11 12 Reconsider. If the State is suggesting that the omission of NRAP 27 is grounds for -1-3a reason to strike the Motion to Reconsider than Defense Counsel asks the Court to 14 allow the refilling of the Motion with the citation to NRAP 27 in the caption. 15 16 Better yet, Defense Counsel will file an Amended Motion.

In the footnote, the State also seems to argue that Motions for 18 19 Reconsideration are not favored citing to Whitehead v. Nevada Com'n. on Judicial 20 Discipline, 110 Nev. 380 (1994). However, the State neglects to note that the 21 22 Whitehead Court considered the request for reconsideration. Instead, the State 23 suggests that successive requests for reconsideration prolong litigation. Here, we 24 are dealing with documents being sealed, an issue that does not prolong the 25 26 litigation.

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In the footnote, the State then seems to argue that because there is no specific rule pertaining to motions to reconsider other motions, Barber is barred from asking this Court for reconsideration because NRAP 27, 40, and 40A do not allow for such a motion.

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In the footnote, the prosecutor discusses NRAP 27. NRAP 27 states: "An 8 application for an order or other relief is made by motion unless these Rules 9 prescribe another form." But, the prosecutor does not acknowledge that NRAP 27 10allows for any kind of motion seeking relief. Instead, he concludes that a motion 11 12 to reconsider can not be based on NRAP 27 because that is the general rule for -1-3motions. 14

15 The prosecutor then discusses NRAP 40 and concludes NRAP 40A could 16 not possibly apply. Then he picks NRAP 40. And, because he does not have to 17 respond to any motions based on NRAP 40 unless ordered to do so by this Court, 18 19 he concludes that he will not be responding the Barber's Motion to Reconsider.

NRAP 40 involves a petition for rehearing of a judgment of the case on 21 22 appeal. The motion filed is not entitled a Petition for Rehearing and the Court has 23 not issued a judgment. 24

25 The prosecutor is simply playing games. He knows the case of Daron W. v. 26 Eighth Jud. Dist. Ct., Case No. 57807 (5/10/11) is contrary to this Court's ruling. 27

1	Nonetheless, because the prosecutor seems so confused, Barber is filing an
2	amended motion to cite to NRAP 27. The Amended Motion will be alternatively
3	titled "Second Motion seeking to file Juvenile Court Documents contained within
4 5	
6	the Appendix based on NRS 62H.030, NRS 62H.140, NRS 62H.170, and NRS
7	230.010.
8	DATED this 30th day of October, 2013.
9	PHILIP J. KOHN
10	CLARK COUNTY PUBLIC DEFENDER
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<u>13</u> 14	By <u>XMaa []WCousp</u> SHARON G. DICKINSON, #3710
14	Deputy Public Defender
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1	CERTIFICATE OF SERVICE
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3	I hereby certify that this document was filed electronically with the
4	Nevada Supreme Court on the 30th day of October, 2013. Electronic Service of
5	the foregoing document shall be made in accordance with the Master Service List
6	as follows:
7	
8 9	CATHERINE CORTEZ MASTOSHARON G. DICKINSONSTEVEN S. OWENSHOWARD S. BROOKS
10	I further certify that I served a copy of this document by mailing a
11 12	true and correct copy thereof, postage pre-paid, addressed to: JAQUEZ DEJUAN
13	BARBER, NDOC No: 1039024, c/o High Desert State Prison, P.O. Box 650,
14	Indian Springs, NV 89070.
15	BY /s/ Carrie M. Connolly
16	Employee, Clark County Public
17	Defender's Office
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