

IN THE SUPREME COURT OF THE STATE OF NEVADA

DR. JOEL SLADE,

Appellant,

v.

CAESARS ENTERTAINMENT
CORPORATION, PARIS LAS VEGAS
OPERATING COMPANY, LLC, d/b/a
PARIS LAS VEGAS.

Respondents.

Supreme Court Case No. 2016-0012
Electronically Filed
Aug 23 2016 10:52 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

**RESPONDENTS' ANSWERING BRIEF TO
APPELLANT'S PETITION FOR REHEARING**

JAMES E WHITMIRE, ESQ.
Nevada Bar No. 6533
jwhitmire@santoronevada.com
JASON D. SMITH, ESQ.
Nevada Bar No. 9691
jsmith@santoronevada.com
SANTORO WHITMIRE
10100 W. Charleston Blvd., Suite 250
Las Vegas, Nevada 89135
Telephone: 702/948-8771
Facsimile: 702/948-8773

Attorneys for Respondents

TABLE OF CONTENTS

Table of Contents i

Table of Authorities iii

INTRODUCTION1

I. SLADE’S PETITION VIOLATES NRAP 40 BY REARGUING POINTS ALREADY RAISED AND CONSIDERED BY THE COURT AND BY INTRODUCING NEW MATTERS RAISED FOR THE FIRST TIME IN THE PETITION3

 A. Slade’s Petition Is Improper Because It Repeatedly Reargues Points Already Raised and Rejected by a Majority of the Court.5

 B. Slade’s Petition Is Improper Because It Repeatedly Goes Outside of the Record and Makes New Arguments Not Previously Raised.5

 C. Slade’s Petition Also Violates NRAP 40(c).....6

II. SLADE’S PETITION SHOULD BE DENIED BECAUSE THE COURT DID NOT OVERLOOK OR MISAPPREHEND ANY FACTUAL MATTERS IN THE RECORD OR ISSUES OF LAW7

 A. As a Whole, The Court Did Not Overlook any Matter as Evidenced by the Extensive Briefing Supplied by the Parties, the Extensive Oral Argument Where Competing Positions Were Presented and Debated; and, the Subsequent Complete Opinion That Was Rendered by a Majority of the Court in Addition to the Dissenting Opinions Thereto.8

 B. The Court Properly Reviewed, Considered, and Applied Nevada Law Regarding the Definition and Scope of the Gaming Premises; Slade Only Re-Argues His Legal Position.11

 C. The Entire Court Considered Innkeeper Duty Issues.....13

D. The Matter Has Been Duly Considered by the Entire Supreme Court; Re-noticing Oral Argument is thus, Unnecessary.....17

E. Slade Makes Serious Accusations Against the Court to Support his Petition; Yet, his Efforts are Fundamentally Flawed and, thus, Fail.17

CONCLUSION19

CERTIFICATE OF COMPLIANCE PURSUANT TO RULES 40 AND 40A.....20

CERTIFICATE OF SERVICE21

TABLE OF AUTHORITIES

Cases

<i>Armster v. United States Dist. Ct. for Cent. Dist. Of Cal.</i> , 806 F.2d 1347 (9th Cir. 1986)	4
<i>Carter v. Jackson</i> , 2000 Okla. Civ. App. LEXIS 43 (Okla. Ct. Civ. App. 2000)	16
<i>Donohue v. Pioche Mines Co.</i> , 51 Nev. 403, 277 P. 980 (1929).....	4
<i>Duckworth v. State</i> , 114 Nev. 951, 966 P.2d 165 (1998).....	4
<i>Goland v. CIA</i> , 607 F.2d 339 (D.C. Cir. 1979).....	4, 5
<i>Golden Road Motor Inn, Inc. v. Islam</i> , 2016 Nev. LEXIS 640, 132 Nev. Adv. Rep. 49 (2016)	15
<i>Gordon v. District Court</i> , 114 Nev. 744, 961 P.2d 142 (1998).....	4
<i>In re Estate of Aguirre v. Aguirre</i> , 57 Nev. 284, 65 P.2d 685 (1937).....	3, 4
<i>Sereika v. State</i> , 114 Nev. 142, 955 P.2d 175 (1998).....	15

Statutes

NRS 463.0129.....	8, 12, 13
NRS 463.0129(1)(e).....	8, 9
NRS 463.0129(3)(a).....	9
NRS 463.0148.....	12, 14
NRS 463.0153.....	12
NRS 651.070.....	9
NRS Chapter 463	12

Other Authorities

Nevada Gaming Regulations	12
---------------------------------	----

Rules

Fed. R. App. P. 40.....	4
NRAP 40	3, 5
NRAP 40(a)(2).....	7, 8
NRAP 40(c).....	6
NRAP 40(c)(1).....	3

NRAP 40(c)(2).....7
NRCP 40(a)(2).....13

Regulations

Nevada Gaming Regulation 1.145.....11
Nevada Gaming Regulation 28.090.....11

CAESARS ENTERTAINMENT CORP. and PARIS LAS VEGAS OPERATING COMPANY, LLC (“Caesars” or “Respondents”), by and through their undersigned counsel of record, hereby Answer DR. JOEL SLADE’s (“Appellant” or “Slade”) Petition for Rehearing (“Petition”) as follows.

INTRODUCTION

Slade’s Petition is nothing more than a creative ploy to have this Court re-decide the merits of his appeal. This is a text book case where zealous advocacy has occurred, where competing positions have been thoroughly presented both in writing and oral argument, where the Court (en banc) has recognized the importance of the matter, where reasonable minds have considered the matter, and where a majority of the Court reached a decision with dissenting opinions expressed thereto. Unsatisfied with the outcome, Slade now inappropriately attempts to reargue the matter asserting that the Court: (a) misapprehended and misapplied the law; (b) failed to conduct a required analysis; and, (c) “misapplied the depth of analysis required in addressing a split of authority.”¹ Slade’s Petition should be denied on multiple independent grounds.

As a procedural matter, although Slade strategically couches his Petition as

¹ Slade’s statement/suggestion that the Court misapplied “the depth of analysis required” is almost insulting. When one reads the Opinion as a whole, it is obvious that a careful analysis occurred and a decision was thereafter rendered. Dissatisfied with the outcome, Slade now tries to tell the Court that it not only reached the wrong result, but that the “depth of analysis” was inadequate.

though the Court misapplied or overlooked the law, the Petition is an improper mix of (a) rearguing points already raised and rejected by a majority of the Court and (b) raising new points for the first time in a petition for rehearing. Slade's occupancy on both ends of this spectrum is improper.

As a substantive matter, the Petition should likewise be denied. Slade is simply wrong to suggest that the Court misapplied or overlooked the law. The Court considered each of Slade's points (the ones repeated in the Petition), considered the legislative intent of the statute in question (as well as others which Slade suggests to be violated or ignored), and rendered its decision that a right to exclude exists.

Caesars also respectfully contends that Slade's slew of new hypotheticals in his Petition does not warrant rehearing. Slade's burden in his Petition is to show that the Court misapplied the law in rendering its Opinion on the record before it. Instead of squarely addressing his burden, Slade introduces new hypotheticals (that re-argue previously argued points) and fact patterns of other lower court verdicts or complaints (not at issue in this case and never presented to this Court in this appeal). Slade is essentially asking this Court to consider new facts and issues as though they are within the record of this action. Slade's attempt to bootstrap new factual scenarios is improper and does not demonstrate that this Court misapplied

the law in ruling against Slade.²

In sum, Slade's generalized disagreement with the Court's review and rejection of his position in this case does not warrant rehearing.

I.

SLADE'S PETITION VIOLATES NRAP 40 BY REARGUING POINTS ALREADY RAISED AND CONSIDERED BY THE COURT AND BY INTRODUCING NEW MATTERS RAISED FOR THE FIRST TIME IN THE PETITION

NRAP 40(c)(1) sets forth the permissible scope of a petition for rehearing.

In relevant part, the rule states:

Matters presented in the briefs and oral arguments may not be reargued in the petition for rehearing, and no point may be raised for the first time on rehearing.

Case law is consistent with NRAP 40. For example, as stated in *In re Estate of Aguirre v. Aguirre*, 57 Nev. 284, 285, 65 P.2d 685 (1937) (denying a petition for rehearing):

Rehearings are not allowed merely for reargument. There must be shown a reasonable probability that the court reached an erroneous conclusion, or overlooked some important question which was necessary to be discussed

² Slade's limited discussion of the absence of a stated reason for his exclusion from Caesars' properties is no reason for rehearing. Slade, the master of his pleading, failed to make any issue of this during the trial court proceedings, he failed to raise this in his briefing, and is now precluded from suggesting that the absence of a stated reason is a basis for rehearing. While Caesars could explain the actual non-discriminatory reason for Slade's exclusion, it is not doing so in order to stay within the confines of the record. In sum, the Court has properly rendered an Opinion based upon the record presented for its consideration.

in order to arrive at a full and proper understanding of the case.

*Id.*³

Likewise, courts have recognized that no point may be raised for the first time in a petition for rehearing, and items outside of the record are improper for such petition. *See, e.g., Donohue v. Pioche Mines Co.*, 51 Nev. 403, 410, 277 P. 980, 981 (1929) (“Both the petition and the reply thereto discuss much that is not in the record and which cannot be considered.”). As the Ninth Circuit Court of Appeals has recognized:

a party abuses . . . the privilege of making such a petition when it seeks review of a scope greater than the limited confines of Fed. R. App. P. 40. . . Consideration of subsequent factual occurrences is, thus, beyond the scope of a petition for rehearing.

Armster v. United States Dist. Ct. for Cent. Dist. Of Cal., 806 F.2d 1347, 1356 (9th Cir. 1986) (internal quotations omitted). The court in *Goland v. CIA*, 607 F.2d 339 (D.C. Cir. 1979) similarly denied a petition for rehearing stating:

an appellate opinion is based on the record before it, and hence cannot be set aside on the basis of newly-discovered facts outside of the record... An appellate

³ *Accord, Duckworth v. State*, 114 Nev. 951, 953, 966 P.2d 165, 166 (1998) (“[a] petitioner may not reargue an issue already raised or raise a new issue not raised previously”); *Gordon v. District Court*, 114 Nev. 744, 745, 961 P.2d 142, 143 (1998) (Court “cautioning counsel . . . as well as all members of the State Bar of Nevada, of the proper purpose for petitions for rehearing” noting, among other things: “[a] petition for rehearing may not be utilized as a vehicle to reargue matters considered and decided in the court’s initial opinion.”).

court has no fact-finding function. It cannot receive new evidence from the parties, determine where the truth actually lies, and base its decision on that determination.

Id. at 370-71.

A. Slade’s Petition Is Improper Because It Repeatedly Reargues Points Already Raised and Rejected by a Majority of the Court.

Slade’s Petition is improper as it contains numerous arguments previously made during briefing and oral argument. To be sure, Slade’s Petition is cosmetically different than his previous Opening brief and Reply brief. When examined closely, however, a substantial portion of the Petition (not counting the new arguments/facts not previously raised) is nothing more than a re-hash of the arguments previously made and considered by the Court. For example, Slade’s Petition contains extensive discussion regarding “the common law,” innkeeper issues, the proper interpretation of “premises” and other issues that were extensively briefed by the parties. Rather than accepting the fact that a majority of the Court disagreed with his position, Slade reargues the same points over and over in violation of the NRAP 40 and relevant case law.

B. Slade’s Petition Is Improper Because It Repeatedly Goes Outside of the Record and Makes New Arguments Not Previously Raised.

On the other end of the spectrum, Slade’s Petition improperly offers a host of new hypotheticals (couched as “facts” which were purportedly overlooked and, in doing so, attaches new exhibits which are not part of this Court’s record).

Perhaps the best evidence of Slade's improper action are the "Exhibits" attached to his Petition which consist of a map of the Mandalay Bay (not in the record) that has nothing to do with this case; jury instructions from a different case (not in the record); and, a complaint filed by opposing counsel (not in the record) that presents a different fact pattern. Other examples of Slade's violation are the numerous new hypotheticals that permeate his Petition.

C. Slade's Petition Also Violates NRAP 40(c)

Slade's new arguments and presentation of new exhibits to the Court is not only a clear violation of NRAP 40(c)(1), but is also a violation of NRAP 40(a)(2), which states, in relevant part:

Any claim that the court has overlooked or misapprehended a material fact shall be supported by a reference to the page of the transcript, appendix or record where the matter is to be found; any claim that the court has overlooked or misapprehended a material question of law or has overlooked, misapplied or failed to consider controlling authority shall be supported by a reference to the page of the brief where petitioner has raised the issue.

Here, Slade has no cites to the record for the Mandalay Bay map, the jury instructions, the new complaint, his references to "Nevada's only mass-transit rail" being the Las Vegas Monorail and the litany of new hypotheticals. Slade has not cited to the record because his new material is not in the record. The failure to cite to the record and/or reference to new material is not an isolated violation in the Petition. Rather, the issue permeates Slade's Petition. In light of Slade's repeated

violation of Rule 40, it is inaccurate and hypocritical for Slade to boldly claim, at page 6 of the Petition, that “[t]here are a number of facts overlooked or given short-shrift by the Opinion.”⁴ In sum, Slade’s efforts to inject facts or evidence from other cases (not part of this appeal) should be disregarded.

II.

SLADE’S PETITION SHOULD BE DENIED BECAUSE THE COURT DID NOT OVERLOOK OR MISAPPREHEND ANY FACTUAL MATTERS IN THE RECORD OR ISSUES OF LAW

NRAP 40(c)(2) provides that the Court may consider rehearing:

- (A) When the court has overlooked or misapprehended a material fact in the record or a material question of law in the case, or
- (B) When the court has overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case.

In support of any petition for rehearing, the petitioner is to “state briefly and with particularity the points of law or fact that the petitioner believes the court has overlooked or misapprehended.” NRAP 40(a)(2).

⁴ The Court should reject Slade’s attempt to excuse his failure to cite to the record. More particularly, Slade’s footnote 1 suggests that he cannot cite to the record as required by NRAP 40(a)(2) because he accuses the Court of going outside of the briefing and the record to reach its decision. *See* Petition, p. 1, n. 1. The Court did no such thing. Instead of abiding by the rule, Slade improperly attempts to shift blame to the Court.

As discussed below, Slade does not state briefly or with particularity the points of law or fact that Slade believes the court has overlooked or misapprehended. Instead, Slade engages in a lengthy, broad-based argument that repeats prior arguments and/or injects new matters into this case that are outside the record. Not only does Slade violate Rule 40(a)(2), but his Petition is simply wrong in claiming that the Court overlooked or misapprehended any factual matters and/or issues of law.

A. As a Whole, The Court Did Not Overlook any Matter as Evidenced by the Extensive Briefing Supplied by the Parties, the Extensive Oral Argument Where Competing Positions Were Presented and Debated; and, the Subsequent Complete Opinion That Was Rendered by a Majority of the Court in Addition to the Dissenting Opinions Thereto.

When one re-reads the Opinion, it is obvious the Court overlooked nothing. In deciding the matter, a majority of the Court and dissenting Justices thoroughly and carefully considered the issues presented by the parties. The Opinion, in its opening page, correctly summarized that Slade argued “that under the common law and NRS 463.0129(1)(e), Caesars could not exclude him without cause. He further argued that the casino owed him a duty of reasonable access either as a purveyor of a public amusement or as an innkeeper.” Opinion, at 2.

After identifying the issues that were extensively briefed and argued by the parties, the Majority thereafter analyzed the issues and discussed the relevant law. Among other things, the Majority cited well-settled law regarding statutory

interpretation (*Id.*, at 3); the text/language of the pertinent sections of NRS 463.0129 were examined (*Id.*, at 3-4); the parties' arguments regarding the interpretation of the statutory and common law were considered (*Id.*, at 4-8); the Majority considered innkeeper issues (*Id.* 7-8, 9-11); and, policy issues were also noted (*Id.*, 9-11). The Dissenting Opinions likewise make clear that competing positions were considered by the Court.

Ultimately, a majority of the Court concluded and held:

Thus, in harmonizing NRS 463.0129(1)(e) and NRS 463.0129(3)(a), we conclude that casino establishments are to be open to the *general public* but have the common-law right to exclude *any individual* from the premises pursuant to the majority common law position. We emphasize, however, the right to exclude is not without significant and important limitation. We further conclude that NRS 463.0129(3)(a) does not grant gaming establishments an unlimited right to exclude anyone for any reason as that common-law right can be abridged by other statutory provisions.

Opinion, at 7 (emphasis in original).

It is simply inaccurate for Slade to suggest that the entire Court overlooked, for example, innkeeper issues when the Opinion, as its first example, cited to one of Nevada's innkeeper statutes (NRS 651.070). *Id.*, at 7-8. This section of the Opinion closes by clearly stating "[a]ccordingly, we conclude that while gaming establishments generally have the right to exclude any person, the reason for exclusion must not be discriminatory or otherwise unlawful." *Id.*, at 8.

Similarly, Slade cannot credibly argue that the Court -- whether the Majority or the dissenting Justices -- overlooked anything associated with the proper interpretation of “premises” and/or the “common law.” The parties’ briefing extensively discussed these issues. Slade had every opportunity to brief the issues and did so thoroughly. Not only did the parties thoroughly address the issues, so did the entire Court. In fact, the Majority Opinion (as well as the Dissenting Opinion) contains multiple pages specifically addressing Slade’s arguments about the scope and extent of the definition of a gaming establishment’s premises, the common law and the interplay of the innkeeper laws thereto. *See* Opinion, at 9-11.

The Court reviewed, considered, and a Majority of the Justices rejected Slade’s suggestions that because a casino hotel establishment in Nevada includes numerous services --- amenities which include convention space, shopping malls, restaurants, swimming pools, concert and wedding halls, nightclubs, bowling alleys, zoos, spas, and more --- it should be governed by different obligations and duties depending on where the exclusion occurred. *Id.*⁵

In sum, the Court reviewed and considered *all* of the arguments presented by

⁵ The Court also, in great detail, considered, and a Majority of the Court rejected Slade’s proposal that Nevada should adopt the minority position regarding the common law to be applied in this case. *Id.*, p. 6, n. 4 (“Accordingly, we are not persuaded by the argument.”). In his Petition, Slade regurgitates a plethora of his prior arguments in this regard. *See* Petition, pp. 6-12; Opening Brief, pp. 9-15 and 16-25. Caesars herein submits that the Court was correct in its conclusion, based upon the law cited in Caesars’ brief.

the parties, carefully crafted a detailed Opinion and, most importantly, reached the correct result was reached. No law was misapplied, overlooked or misapprehended. Thus, the Petition should be denied.

B. The Court Properly Reviewed, Considered, and Applied Nevada Law Regarding the Definition and Scope of the Gaming Premises; Slade Only Re-Argues His Legal Position.

Caesars asks this Court to summarily reject Slade’s Petition based upon the Court’s review, consideration, and application of Nevada law in reaching the ultimate conclusion as to the definition and extent of a gaming establishment’s premises. The thrust of Slade’s Petition on this topic is that this Court “ignore[d],” “misapprehend[ed],” and “relied upon law and argument extraneous to the briefing” in determining that the gaming establishment’s premises include the entirety of its facilities. Petition, at 1-3. However, the Court did none of the above.

As previously addressed in Caesar’s original briefing, oral argument and the Majority Opinion:

Pursuant to Nevada law, the “premises” are defined as the “land together with all buildings, improvements and personal property located thereon.” *See* Nevada Gaming Regulation 1.145. *See also*, Nevada Gaming Regulation 28.090 (“the area within a licensed gaming establishment ... from which an excluded person is to be excluded is **every** portion of said gaming establishment including but not limited to the casino, rooms, theater, bar, pool, lounge, showroom and all other related facilities of said

gaming establishment. (emphasis added)).⁶

In considering (i.e., not overlooking) and applying these statutory definitions, the Court carefully considered the common law cited by both Slade and Caesars and how the same is directly applied to the definitions provided in NRS Chapter 463 and Nevada Gaming Regulations. *See* Opinion, 9-10.⁷ In the face of Slade’s arguments (as well as considering the respected content of the dissenting opinions), a Majority of the Court stated in detail how the statutory definitions of gaming premises and the Court’s legal conclusion within the Opinion are consistent with (and **not** in violation of or a misapplication of) the Legislature’s intent with respect to NRS 463.0129 (including direct discussion of innkeeper common law rules). *Id.*

Unequivocally, the Court considered the “consequences” of the decision. The Court – both the Majority and the Dissenting Justices -- reviewing the issue of whether different spaces within a gaming establishment should have different rules associated therewith. The Majority ultimately held “[a]rbitrarily limiting a gaming establishment’s premises to the nonhotel portions contradicts NRS 463.0148’s

⁶ This paragraph is directly found at Caesars’ Answering Brief, pp. 9-10, n. 8.

⁷ “The plain meaning of the statutory definition for gaming establishment encompasses the entirety of the ‘premises wherein or wherein any gaming is done.’ NRS 463.0148; NRS 463.0153; see also Premises, Black’s Law Dictionary (10th ed. 2014) (defining ‘premises’ as a ‘building, along with its grounds.’).” Opinion, at 10.

plain meaning.” *Id.*, at 10. This statement by the Court squarely rejects Slade’s contention that the Court overlooked anything, failed to conduct a required analysis, failed to consider unintended consequences and/or that any Justice misapplied the required “depth of analysis.”

Simply put, Slade’s Petition is nothing more than his disagreement with this Court’s conclusions and his re-argument of his prior positions.⁸ Accordingly, there was no error by the Court in reaching its decision regarding the definition and extent of the “premises” of a gaming establishment. As a result, the Petition should be denied.

C. The Entire Court Considered Innkeeper Duty Issues.

Slade dovetails his failed arguments about the definition of a gaming establishment’s premises with his inaccurate claim that the Court failed to conduct an analysis concerning the characterization of the premises as a public amusement/accommodation or innkeeper accommodation. *See* Petition at 6-10. Contrary to Slade’s suggestion, the parties and the Court (both the majority and dissenting opinions) engaged in a lengthy analysis of the competing positions regarding the common law and the interplay between NRS 463.0129 and innkeeper

⁸ Slade attempts to comply with the mandate of NRCP 40(a)(2) by generally referring to one page of the Opinion; however, in doing so, Slade then resorts to new statutory citations and his irrelevant and improper addenda to help bolster his otherwise-failing argument. *See* Petition, p. 1-2.

law.⁹ Thus, the Court overlooked nothing, and any statement by Slade to the contrary is simply wrong.

Equally dead wrong is Slade's argument that the Court failed to comprehend, consider, or apply the principles of innkeeper law within its decision. The Court clearly comprehended the realities and practicalities of the situation. *See* Petition at 6-10. Ultimately, the Majority concluded that "[a]rbitrarily limiting a gaming establishment's premises to the nonhotel portions contradicts NRS 463.0148's plain meaning," and, in addressing the evolution of the original innkeeper law, the Majority noted "access to convention space in a city such as Las Vegas, where practically every large gaming establishment has sizeable meeting areas, resulting in fierce competition, in no way implicates the concerns express in the original innkeeper common-law rule." Opinion, at 10, 11.

Just because Slade does not like the conclusion of the Majority does not mean that the Court overlooked, misapprehended or misapplied the depth of analysis required to reach a decision. Slade's "parade of horrors" presented in his new hypotheticals are not sufficient grounds for rehearing.¹⁰ Slade is simply

⁹ *See, e.g.*, Slade's Opening Brief at pp. 9-16, and 37-44; *see* Caesars' Ans. Brief at pp. 17-21; *see* Slade's Reply Brief at pp. 5-8, and 22-28. For purposes of brevity, Caesars will not re-argue its legal authorities already within this Court's thorough record.

¹⁰ The Court already considered various hypotheticals (including during the oral argument).

arguing matters over and over and asking this Court to simply change its mind and violate principles of judicial restraint.¹¹

It should also be noted that both this Court and other courts have recognized that simple market forces will deter the “parade of horrors” suggested by Slade from occurring. The parties briefed this issue extensively, and the Court cited, at page 5 of the Opinion, the Seventh Circuit decision in *Brooks v. Chicago Downs Assoc.*, 791 F.2d 512 (7th Cir. 1986), which discussed policy considerations regarding the rights of access and exclusion. The court noted that concerns of exclusion were exaggerated given that “market forces would preclude any outrageous excesses such as excluding anyone with blond hair.” *Id.* Slade’s new “parade of horrors” postured in the Petition does nothing to change this concept.¹²

¹¹ See, e.g., *Sereika v. State*, 114 Nev. 142, 955 P.2d 175, 180 (1998) (Court addressed a broad based attack by appellant and concluded that appellant lacked standing to bring an issue before the court based on hypothetical arguments conjured up by appellant who had not experienced that hypothetical situation); *Golden Road Motor Inn, Inc. v. Islam*, 2016 Nev. LEXIS 640 at *15-16, 132 Nev. Adv. Rep. 49 (2016) (noting that “exercise of judicial restraint” is sound public policy as to the issue before the Court).

¹² Slade raises (in a disguised effort to bring improper, new issues before the Court under the heading “fail[ure] to consider unintended consequences”) the Las Vegas Monorail, the floorplan of the Mandalay Bay Hotel & Casino, the hypothetical scenario of a casino ejecting a patron for the express purpose of avoiding a legitimately-won jackpot or payout, or removing a patron from a hotel room. As discussed herein, **any** attempt to somehow inject fact patterns, legal issues, or a combination of the two from these other cases into this Court’s analysis and decision is improper. See, e.g., *Carter v. Jackson*, 2000 Okla. Civ. App. LEXIS 43

Even if one considers Slade's new hypotheticals, a different result and/or rehearing is not warranted. In this case, Slade turns a blind eye toward the Court's careful and thorough distinction that Caesars has the right to exclude *an individual* from its property for any reason that is not unlawful or discriminatory, but remains open to the *general public*. The premise of Slade's Petition is false to the extent that it implies that Caesars would bar *all* members of the public from access to its facilities – an assumption that is false, if not altogether ridiculous.

Equally ridiculous is the notion that this Court “failed to consider” that Caesars would restrict or exclude mass numbers of “tourists” from in connection with the Las Vegas Monorail. Even if such statement is technically true (that the Court did not consider the new Monorail example that Slade failed to raise in his brief and/or oral argument), rehearing is not warranted. There is no basis whatsoever for the Court to assume that Caesars is going to try to restrict or exclude mass numbers for tourists from access, and even if it did, market forces would likely correct the situation.

The Petition reaches the point of endless levels of speculation, reargument and/or raising new points by claiming that the Court's ruling is somehow a vehicle for Caesars to strategically eject patrons to avoid paying a jackpot or other casino

(continued)
at *1-2 (Okla. Ct. Civ. App. 2000) (“It is not the function of a Petition for Rehearing to allow the submission of new or additional evidence in support of a party's appellate position.”).

winnings.¹³ Slade somehow seems to contend that gamblers are now members of a protected class such as race, national origin, etc. Such is not the case, and Slade's arguments to the contrary are a blatant attempt for the Court to violate principles of judicial restraint.

D. The Matter Has Been Duly Considered by the Entire Supreme Court; Re-noticing Oral Argument is thus, Unnecessary.

Slade, in a last-ditch effort to breathe life into his case, asks the Court to re-notice oral argument before the entire Court. However, additional oral argument is unnecessary and assumes that the entire Court did not sufficiently review and consider the issues presented by the parties' briefing and oral argument. Caesars respectfully submits that the panel of Justices who conducted oral argument thoroughly and fairly inquired of the issues properly presented in this appeal. The entire Court clearly understood and debated the issues. Slade offers nothing specific as to what a second oral argument would bring, aside from the implied continuation of his appeal. In sum, rehearing is not necessary or warranted in this case.

E. Slade Makes Serious Accusations Against the Court to Support his Petition; Yet, his Efforts are Fundamentally Flawed and, thus, Fail.

The fundamental premise of Slade's Petition is that this Court abrogated the

¹³ It defies all logic to suggest that casino owners, like Caesars, will use this Court's Opinion to essentially lie in the shadows, waiting for patrons to win slot machine jackpots, only to rush to eject them from the premises before paying the patron his or her winnings.

common law to reach its Opinion. *See, e.g.*, Petition, at 9 and 10. However, this foundation is flawed and, as a result, fails. Slade’s reasoning impliedly ignores the text and analysis in the Opinion, which specifically discussed both Caesars’ and Slade’s assertions of the common law right to exclude. In addition, both parties submitted arguments about the interplay of innkeeper laws, and the characterization of gaming establishments as public amusements/public accommodations.

Slade sternly short-changes the Court’s efforts by suggesting “there is no analysis within the Opinion” as to numerous topics and suggests that the court “severely ignores the entire picture.” *Id.*, at 10. Caesars submits that this Court not only did, in fact, analyze the issues presented in the parties’ briefs and arguments, but did so with full knowledge and understanding that the issues presented in this Opinion have an important impact on a key industry in our State.

Thus, the Court’s ultimate conclusion – that a private property owner has a right to exclude an individual from the premises, if the exclusion is not discriminatory or otherwise unlawful – was done only *after* considering public policies implicated by its ruling, *after* considering whether the ruling could or would be subject to abuse or arbitrary application by private property owners, and *after* careful consideration of both statutory and case law in Nevada and other jurisdictions. Most importantly, the Court reached the correct result and Slade is

simply not satisfied with such result.

CONCLUSION

For the reasons stated herein, Caesars asks this Court to deny the Petition.

DATED this 22nd day of August, 2016.

SANTORO WHITMIRE

/s/ James E. Whitmire

JAMES E. WHITMIRE, ESQ.

Nevada Bar No. 6533

JASON D. SMITH, ESQ.

Nevada Bar No. 9691

10100 W. Charleston Blvd., Suite 250

Las Vegas, Nevada 89135

Attorneys for Respondents

CERTIFICATE OF COMPLIANCE PURSUANT TO RULES 40 AND 40A

1. I hereby certify that this petition for rehearing/reconsideration or answer complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because it has been prepared in a proportionally spaced typeface using Word in 14 point Times New Roman font;

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 40 or 40A because it is proportionately spaced, has a typeface of 14 points or more, and contains 4,593 words.

DATED this 22nd day of August, 2016.

SANTORO WHITMIRE

/s/ James E. Whitmire

JAMES E. WHITMIRE, ESQ.

Nevada Bar No. 6533

JASON D. SMITH, ESQ.

Nevada Bar No. 9691

10100 W. Charleston Blvd., Suite 250

Las Vegas, Nevada 89135

Attorneys for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Santoro Whitmire, and that on the 22nd day of August, 2016, I have caused to be served a true and correct copy of **RESPONDENTS' ANSWERING BRIEF TO APPELLANT'S PETITION FOR REHEARING** via Court's ECF service and by depositing a copy for mailing in the United States Mail, first class postage prepaid, at Las Vegas, Nevada to:

Robert A. Nersesian, Esq.
NERSESIAN & SANKIEWICZ
528 S. Eighth Street
Las Vegas, Nevada 89101
Email: vegaslegal@aol.com

Attorney for Dr. Joel Slade

/s/ Asmeen Olila-Stoilov
An employee of SANTORO WHITMIRE