

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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4 **Electronically Filed**
5 **Apr 22 2013 09:43 a.m.**
6 **Tracie K. Lindeman**
7 **Clerk of Supreme Court**

8 DIPAK KANTILAL DESAI,

9 Petitioner,

10 vs

11 THE EIGHTH JUDICIAL DISTRICT
12 COURT OF THE STATE OF NEVADA,
13 COUNTY OF CLARK, DEPARTMENT 21,

14 Respondent,

15 and

16 THE STATE OF NEVADA,
17 Real Party In Interest.

18 No. 63046

19 District Court No.
20 10C265107

21 **MOTION FOR LEAVE TO SEEK TO FILE SEALED DOCUMENT**


22 COMES NOW, the Petitioner, DIPAK KANTILAL DESAI, by and through
23 his attorney, Richard A. Wright and Margaret M. Stanish, WRIGHT STANISH &
24 WINCKLER, respectfully moves this Honorable Court, for permission to allow the
25 filing of a sealed document as exhibits to the Petition for Writ of Mandamus to
26 Compel Determination Or, Alternatively, An Evidentiary Hearing on the Existence
27 of Doubt as to Competency, which is filed simultaneously with this motion.

28 Petitioner seeks to file under seal report prepared by the court-appointed
 medical evaluator, David Palestrant, M.D., as Exhibit 3 to the petition for writ of
 mandamus. The district court has not made this document public at this time.

1 This motion is based on the attached affidavit of counsel and following points and
2 authorities.

3 DATED: April 19, 2013

4 **WRIGHT STANISH & WINCKLER**

5
6 BY 
7 Richard A. Wright, Esq.
8 Nevada Bar No. 886
9 Margaret M. Stanish
10 Nevada Bar No. 4057
11 300 South Fourth Street, Suite 701
12 Las Vegas, NV 89101
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16 Attorneys for Petitioner Dipak K. Desai
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POINTS AND AUTHORITIES

Petitioner suffered a stroke on February 24, 2013. Counsel informed the district court of the stroke and his doubt as to Petitioner's present competency to proceed to trial on April 22, 2013. By order dated March 9, 2013, the district court appointed David Palestrant, M.D., as an independent medical evaluator ("IME") to review Petitioner's past and recent medical records with the primary objective to determine the nature and extent of any changes to the Petitioner's brain from the date of his release from Lake's Crossing in October 2011, to the date upon which he was released from the hospital on March 1, 2013.

At the calender call on April 16, 2013, the district court ruled that, based on its review of the IME report, it denied the request to stay the trial for competency proceedings. The district court did not make the IME report a matter of public record at this juncture. Since the document contained private health care information, it was appropriate for the district court to maintain the confidentiality of the document. The IME report should remain confidential until such time that the district court decides to review the matter. *See, Howard v. State*, 128 Nev. Adv. Op. 67, 291 P.3d 137 (2012).

Based on the foregoing, Petitioner request that the confidentiality of the IME report remain intact.

DATED: April 22, 2013

WRIGHT STANISH & WINCKLER

BY 
Richard A. Wright, Esq.
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Attorneys for Petitioner Dipak K. Desai

[illegible]

STATE OF NEVADA }
COUNTY OF CLARK } ss:

I, Margaret M. Stanish, being first duly sworn, deposes and says:

1. I am an attorney licensed to practice law in the State of Nevada. My law partner, Richard A. Wright, and I are retained to represent Petitioner Dipak Desai in State v. Dipak Kantilal Desai, Case No. 10C265107 (8th Jud. Dist. Ct., Clark Cty. Nev.). I have personal knowledge of the proceeding and facts herein. I attest that the following is true and accurate to the best of my knowledge.

2. Our client, Dipak Desai suffered an acute stroke in July 2008. In March 2011, Desai was sent to Lake's Crossing following the determination of two court-appointed competency evaluators who deemed him to be incompetent. He was released from Lake's Crossing in October 2011, with a finding that he was then competent.

3. On February 24, 2013, Desai suffered multiple small strokes and was hospitalized until March 1, 2013. On this date, Mr. Wright informed the district court of the stroke and his doubt as to Petitioner's present competency to proceed to trial on April 22, 2013. By order dated March 9, 2013, the district court appointed David Palestrant, M.D., as an independent medical evaluator ("IME") to review Petitioner's past and recent medical records with the primary objective to determine the nature and extent of any changes to the Petitioner's brain from the date of his release from Lake's Crossing in October 2011, to the date upon which he was released from the hospital on March 1, 2013.

4. Late in the afternoon of April 15, 2013, the parties received a copy of the IME report and the undersigned is familiar with its context. At the calendar call on April 16, 2013, the district court ruled that, based on its review of the IME

1 report, the request to stay the trial for competency proceedings was denied. The
2 district court concluded that the stroke was minor and accommodations could be
3 made for Desai's speech difficulties. The district court did not make the IME report
4 a matter of public record at this juncture. Since the document contained private
5 health care information and no competency evaluation was ordered, it was
6 appropriate for the district court to maintain the confidentiality of the document.
7 The IME report should remain confidential until such time that the district court
8 decides to further review the matter. *See, Howard v. State*, 128 Nev. Adv. Op. 67,
9 291 P.3d 137 (2012).

10 5. Based on the foregoing, Petitioner request that the Court authorize the
11 filing of the IME report under seal. It is attached as Exhibit 3 to the Petition for
12 Writ of Mandamus to Compel Determination Or, Alternatively, An Evidentiary
13 Hearing on the Existence of Doubt as to Competency, which is filed simultaneously
14 with this motion

15 I declare under penalty of perjury that the foregoing is true and correct. (NRS
16 53.045).

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18 MARGARET M. STANISH
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20 SUBSCRIBED and SWORN to before me on
21 this 22d day of April 2013 in said State and County.

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23 NOTARY PUBLIC
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DECLARATION OF SERVICE

DEBBIE CAROSELLI, an employee with WRIGHT STANISH &

1 WINCKLER, hereby declares that she is, and was when the herein described service
2 took place, a citizen of the United States, over 21 years of age, and not a party to,
3 nor interested in, the within action, that on the 22d day of April, 2013, declarant
4 caused a copy of the MOTION FOR LEAVE TO FILE SEALED DOCUMENT to
5 be enclosed in a sealed envelope upon which first class postage was fully prepaid,
6 hand-delivered, or e-filed addressed to:

7
8 Honorable Valerie Adair
District Court Judge
9 Eighth Judicial District Court
Department 21
10 200 Lewis Ave.
Las Vegas, NV 89155
11 (702) 671-0850

Michael V. Staudaher / Pamela Weckerly
Chief Deputy District Attorney
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12 Catherine Cortez Masto
Attorney General
13 100 North Carson Street
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14 (775) 684-1100

Frederick Santacroce
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Las Vegas, NV 89146
(702) 218-3360
Counsel for Ronald Lakeman

15 That there is a regular communication by mail between the place of mailing and the
16 place so addressed.

17
18 I declare under penalty of perjury that the foregoing is true and correct.

19 EXECUTED on the 22d day of April 2013.

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21 
22 DEBBIE CAROSELLI
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