

IN THE SUPREME COURT OF THE STATE OF NEVADA

DR. VINCENT M. MALFITANO, AN
INDIVIDUAL; VIRGINIA CITY
GAMING, LLC, A NEVADA
LIMITED LIABILITY COMPANY;
AND DELTA SALOON, INC., A
NEVADA CORPORATION,

Appellants,

v.

COUNTY OF STOREY, ACTING BY
AND THROUGH THE STOREY
COUNTY BOARD OF COUNTY
COMMISSIONERS; AND STOREY
COUNTY LIQUOR BOARD,

Respondents.

Supreme Court No. 70055

Electronically Filed
Aug 18 2016 01:21 p.m.
District Court Case No. 15-0008008 JE
Tracie K. Lindeman
Clerk of Supreme Court

APPEAL FROM THE FIRST JUDICIAL DISTRICT COURT,
STATE OF NEVADA, STOREY COUNTY
HONORABLE JAMES E. WILSON, JR.

**APPELLANTS' MOTION FOR LEAVE TO FILE PORTION
OF THE JOINT APPENDIX UNDER SEAL**

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Appellants Dr. Vincent M. Malfitano, Virginia City Gaming, LLC and Delta Saloon, Inc. (collectively, the “Appellants”), by and through their attorneys of record, Holland & Hart LLP, hereby move this Court for an order granting it leave to seal a portion of the Joint Appendix under Rule 3 of the Rules Governing Sealing and Redacting Court Records (“SRCR”). Pursuant to SRCR 3(2) and upon the filing of this Motion, Volume 3, JA 607 through Volume 5, JA 717 of the Joint Appendix shall be placed under seal and remain sealed until the Court rules on the Motion. Appellants have filed the Joint Appendix concurrently with this Motion.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

By this Motion, Appellants seek an order to seal the Declaration of Cyndy L. Arnold Regarding Petitioners’ Brief in Support of Verified Petition for a Writ of Mandamus and Answering Brief (“Arnold Declaration”), which is located at Volume 3, JA 607 through Volume 5, JA 717 of the Joint Appendix.¹ The documents at issue (*see* III JA 607 – V JA 717) consist of background checks performed by the Storey County Sheriff’s Office of applicants for liquor licenses in Storey County. These background checks contain non-public, confidential, and personal information of these applicants, all of whom are non-parties to this action. Additionally, the Arnold Declaration was previously sealed by the District Court. Because III JA 607 – V JA 717 contain documents designated as confidential and sealed by the District Court, they should remain non-public for

¹ “JA” refers to the Joint Appendix. All subsequent citations to the Joint Appendix will refer to the volume number of the Joint Appendix and the precise page number(s) referenced. For example, “II JA 42-43” refers to Volume II of the Joint Appendix at pages 42-43.

1 the duration of the appeal, and the Court should allow that portion of the Joint
2 Appendix to be sealed.

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4 **II.**

5 **LEGAL ANALYSIS**

6 SRCR requires records sealed pursuant to a District Court order to be
7 provided to the Nevada Supreme Court in the event of an appeal. *See* SRCR 7
8 (“A civil court record or any portion of it that was sealed in the trial court shall be
9 made available to the Nevada Supreme Court in the event of an appeal.”).
10 Critically, the sealed records from the District Court shall remain sealed at the
11 Nevada Supreme Court. *See id.* (“Court records sealed in the trial court shall be
12 sealed from public access in the Nevada Supreme Court subject to further order
13 of that court.”). However, because Appellants are now submitting III JA 607 – V
14 JA 717 with this Court via the Joint Appendix, Appellants seek to maintain III JA
15 607 – V JA 717 as sealed documents by this Motion.

16 Court records that are sealed may be examined by the public only after
17 entry of a court order allowing access to the record in accordance with the SRCR.
18 *See* SRCR 4(1). Moreover, SRCR 3 sets forth the grounds upon which the Court
19 may seal or redact documents or exhibits filed with the Court. In this case, the
20 documents at issue (*see* III JA 607 – V JA 717) consist of background checks
21 performed by the Storey County Sheriff’s Office of applicants for liquor licenses
22 in Storey County. This information includes non-public, confidential, and
23 personal information of these applicants. None of these applicants are a party to
24 this matter, and the applicants’ privacy and safety interests concerning these
25 documents and information within them outweighs the public’s interest. This is
26 especially true when these same documents have already been sealed by the
27 District Court.

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1 will file with the Court and provide to all parties a full, non-public version of the
2 Joint Appendix, which includes III JA 607 – V JA 717.

3 Respectfully submitted this August 18, 2016.

4 HOLLAND & HART LLP

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1 **CERTIFICATE OF SERVICE**

2 Pursuant to SCR 5(B), I certify as follows:

3 I am employed in the City of Reno, County of Washoe, State of Nevada by
4 the law offices of Holland & Hart LLP. My business address is 5441 Kietzke
5 Lane, Second Floor, Reno, Nevada 89511. I am over the age of 18 years and not
6 a party to this action.

7 On August 18, 2016, I electronically filed the foregoing **APPELLANTS'**
8 **MOTION TO SEAL PORTION OF JOINT APPENDIX**, with the Clerk of
9 the Nevada Supreme Court via the Court's e-Flex system. Service will be made
10 by e-Flex on all registered participants. In addition, I have served a copy of the
11 above-named document via dropbox or similar program.

12 Anne Langer
13 Storey County District Attorney
14 Keith Loomis
15 Deputy District Attorney
16 P.O. Box 496 201 South C Street
17 Virginia City, NV 89440

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/s/ Marcia Filipas

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