IN THE SUPREME COURT OF THE STATE OF NEVADA

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VALLEY HEALTH SYSTEMS, LLC, A NEVADA LIMITED LIABILITY COMPANY, D/B/A CENTENNIAL HILLS HOSPITAL MEDICAL CENTER; AND UNIVERSAL HEALTH SERVICES, INC., A DELAWARE CORPORATION, Appellants, v. ESTATE OF JANE DOE, BY AND THROUGH ITS SPECIAL ADMINISTRATOR, MISTY PETERSON, Respondents.	Case No. 70083
HALL PRANGLE & SCHOONVELD, LLC, MICHAEL PRANGLE, ESQ., KENNETH M. WEBSTER, ESQ. AND JOHN F. BEMIS, ESQ., Petitioners, v. EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, HONORABLE JUDGE RICHARD SCOTTI, Respondent, and MISTY PETERSON, AS SPECIAL ADMINISTRATOR OF THE ESTATE OF JANE DOE Real party in interest.	Case No. 71045

Docket 71045 Document 2016-34038

ANSWER TO PETITION FOR EXTRAORDINARY WRIT RELIEF

ADAM PAUL LAXALT
Attorney General
Ketan D. Bhirud (Bar. No. 10515)
General Counsel
Gregory L. Zunino (Bar. No. 4805)
Bureau Chief of Business and State Services
State of Nevada
Office of the Attorney General
555 E. Washington Ave., Suite 3900
Las Vegas, NV 89101
(702) 486-3420 (phone)
(702) 486-3768 (fax)
kbhirud@ag.nv.gov

Attorneys for the Honorable Richard Scotti

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INTRODUCTION

Hall Prangle is upset that an order sanctioning its client, Centennial, mentions that Hall Prangle itself violated Nevada Rule of Professional Conduct 3.3.

Preliminarily, Hall Prangle's annoyance with the order does not present a justiciable controversy. The District Court did not sanction Hall Prangle. As a result, the Petition is not and cannot be a challenge to a sanction that was never imposed. Instead, it appears that Hall Prangle has submitted a poorly disguised request for an advisory opinion seeking a second bite at the apple by asking this Court to replace the District Court's judgment with its own.

More importantly, this Court's decision in *Young v. Johnny Ribeiro Building, Inc.*, 106 Nev. 88, 787 P.2d 777 (1990), required the District Court to analyze and determine whether sanctions would unfairly penalize Centennial for the misconduct of Hall Prangle, its attorneys. As a result, the District Court had a duty to consider Hall Prangle's conduct. Therefore, it is not error for the District Court to explain that both Centennial *and* Hall Prangle concealed evidence when they failed to disclose at least three witnesses and their documented statements.

ISSUES PRESENTED FOR REVIEW

1. Has Hall Prangle identified a justiciable controversy? If not, how does the Petition meet the standard for invoking the Court's jurisdiction to grant extraordinary relief?

2. Did Hall Prangle have notice that its own misconduct was at issue given (1) the Nevada Supreme Court's 1990 decision in *Young v. Johnny Ribeiro Building, Inc.*, 106 Nev. 88, 787 P.2d 777 (1990) requires the District Court to consider whether the sanctions unfairly operate to penalize a party for the misconduct of its attorney; and (2) Hall Prangle was notified at least three times by Plaintiff's counsel that sanctions were being sought against Hall Prangle—not just Centennial?

3. If Hall Prangle were required to receive more notice than was given, did Hall Prangle's motion for reconsideration cure any deficiencies?

4. Did the District Court even sanction Hall Prangle?

5. Did Hall Prangle make a false statement of fact when—knowing of at least five prior acts of Farmer (which it hid from the District Court) that could potentially put Centennial on notice that

Farmer might assault a patient—it told the District Court that "there were absolutely no known prior acts by Mr. Farmer that could potentially put Centennial on notice that Mr. Farmer would assault a patient"?

STATEMENT OF THE CASE

The underlying action involved the sexual assault of a patient by a Centennial hospital nurse. During its investigations, Centennial and its counsel, Hall Prangle, learned of evidence that the nurse had issues with female patients. Centennial and Hall Prangle concealed that evidence from the Plaintiff and the District Court for over five years. In its order sanctioning Centennial for that abuse, the District Court made two statements about Hall Prangle's conduct. After all parties settled the matter, Hall Prangle filed this Petition asking the Supreme Court to order the District Court to remove those two statements from the order.

STATEMENT OF FACTS

On May 14, 2008, Steven Farmer sexually assaulted Plaintiff while she was a patient at Centennial Hills.[1] The following day, Farmer

[1] Petitioners' Appendix (PA), Vol. VII, Tab 23, at 1316.

sexually assaulted a different patient, Roxanne Cagnina.

Following the Cagnina assault, Centennial hired Hall Prangle. Hall Prangle immediately began an investigation of Farmer's conduct, including interviewing nurses Wolfe, Murray, and Sumera between June and August of 2008. Wolfe and Murray were also interviewed by LVMPD on May 30, 2008, and June 13, 2008.

During those interviews, Nurse Wolfe explained that she had a conversation with Nurse Sumera who, before the assault on Jane Doe, (1) expressed concern that Farmer was overly attentive to female patients and anxious to connect them to heart monitor leads; and (2) had asked Nurse Wolfe to keep an eye on Farmer.[2] Nurse Murray explained that Farmer (1) would always ask if he could help with heart leads (where female breasts would be exposed and possibly touched); (2) was more attentive and helpful to female patients than male patients; and (3) had an incident where a woman in his care was heard yelling: "Get outta here! I don't want you by me."[3]

Accordingly, when Plaintiff initiated suit in the middle of 2009, Hall Prangle (by virtue of interviewing Wolfe, Murray, and Sumera)

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[2] PA, Vol. VIII, Tab 65, at 2821-34.
[3] PA, Vol. VIII, Tab 65, at 2805-20.

already knew of acts by Farmer that could potentially put Centennial on notice that Farmer would assault a patient. Plaintiff had two substantive claims regarding the assault: (1) negligent failure to maintain the premises in a safe manner; and (2) respondeat superior liability for Farmer's actions. Liability on both claims turned on whether it was reasonably foreseeable to Centennial that Farmer would commit a sexual assault—i.e., whether Centennial knew of acts by Farmer that could potentially put it on notice that Farmer would assault a patient.

Hall Prangle, however, did not disclose that information or the existence of the police statements for over five and a half years—and not until after it had opposed a motion for summary judgment by falsely arguing that it did not know of acts by Farmer that could potentially put Centennial on notice that Farmer would assault a patient.[4] Importantly, at the time that opposition was filed, neither the District Court nor Plaintiff knew about the concerns of nurses Wolfe, Murray,

[4] Although it is unclear precisely when Hall Prangle received Nurse Wolfe's and Nurse Murray's LVMPD statements, it appears they knew of their existence in 2008 and admit they received them no later than May 6, 2013. PA, Vol. VIII, Tab 25, at 1394-96.

and Sumera regarding Farmer's past acts. Only Hall Prangle knew—and they weren't telling anyone.

After Plaintiff's motion for summary judgment was denied, Plaintiff resumed discovery. During the course of discovery, Plaintiff learned that Centennial and Hall Prangle had known since 2008 about the concerns nurses Wolfe, Murray, and Sumera had regarding Farmer's past acts. As a result, Plaintiff sought Rule 37 sanctions against Centennial and Hall Prangle. In its Motion for Rule 37 Sanctions, Plaintiff explained that Hall Prangle's conduct needed to be considered before sanctions could be imposed.[5]

Plaintiff elaborated in its Reply that Hall Prangle needed to be sanctioned because it "put forth false and misleading statements to the Court" when it "argued time and again that they knew nothing bad about Farmer and had no reason to think he may assault a patient."[6]

The Discovery Commissioner granted the Motion for Rule 37 Sanctions, but referred the matter to the District Court to determine whether (1) case terminating sanctions were warranted based on the failure to disclose witnesses; (2) there was intent to thwart the

[5] PA, Vol. III, Tab 12, at 420.
[6] PA, Vol. III, Tab 12, at 491, 497.

discovery process and hinder Plaintiff from discovering facts; and (3) whether Centennial misled the District Court.[7]

In its evidentiary brief filed prior to the hearing, Plaintiff accused Hall Prangle of violating Nevada Rule of Professional Conduct 3.3 by stating "there were absolutely no known prior acts by Mr. Farmer that could potentially put Centennial on notice that Mr. Farmer would assault a patient."[8]

On November 04, 2015, after an evidentiary hearing, the District Court sanctioned Centennial—not Hall Prangle—by striking Centennial's Answer but allowing Centennial to defend on damages.[9] As required by *Young v. Johnny Ribeiro Building, Inc.,* the District Court considered "whether sanctions unfairly operate to penalize a party for the misconduct of his or her own attorney."[10] The District Court included two sentences explaining that Hall Prangle violated Nevada Rule of Professional Conduct 3.3 by stating "there were absolutely no

[7] PA, Vol. IV, Tab 19, at 608.
[8] PA, Vol. V, Tab 21, at 737, 744.
[9] PA, Vol. VII, Tab 23, at 1345.
[10] 106 Nev. at 93, 787 P.2d at 780.

known prior acts by Mr. Farmer that could potentially put Centennial on notice that Mr. Farmer would assault a patient."[11]

After Centennial filed a motion for reconsideration, the District Court clarified that although it "addressed instances of professional misconduct in its findings, the sanctions imposed upon Defendant Centennial are for Centennial's own actions."[12]

SUMMARY OF ARGUMENT

Hall Prangle challenges the portion of the order considering its conduct, arguing (1) it did not have notice that the District Court might consider its conduct in issuing sanctions against Centennial; and (2) it did not make a false statement to the court.

As a preliminary matter, Hall Prangle has failed to demonstrate that its Petition meets the standard for invoking the Court's jurisdiction to grant extraordinary relief. Hall Prangle has failed to identify a justiciable controversy, much less a controversy that warrants the Court's intervention by way of mandamus proceedings.

As to the merits of its claims, Hall Prangle is wrong for five reasons. **First**, Hall Prangle had notice that its own misconduct was at

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[11] PA, Vol. VII, Tab 23, at 1333-34.
[12] PA, Vol. X, Tab 29, at 1840.

issue because the Nevada Supreme Court's 1990 decision in *Young v. Johnny Ribeiro Building, Inc.*, 106 Nev. 88, 787 P.2d 777 (1990) requires the District Court to consider whether the sanctions unfairly operate to penalize a party for the misconduct of its attorney. **Second**, Hall Prangle was notified at least three times by Plaintiff's counsel that sanctions were being sought against Hall Prangle—not just Centennial. **Third**, even if Hall Prangle were required to receive notice (and did not), its motion for reconsideration cured any deficiencies because it afforded Hall Prangle an opportunity to be heard and present evidence. **Fourth**, the District Court did not actually sanction Hall Prangle—it simply discussed Hall Prangle's misconduct in its decision to sanction Centennial. **Finally**, Hall Prangle made a false statement of fact when it told the District Court that "there were absolutely no known prior acts by Mr. Farmer that could potentially put Centennial on notice that Mr. Farmer would assault a patient."[13] When Hall Prangle made that false statement, it knew of at least five prior acts of Farmer that could potentially put Centennial on notice—and Hall Prangle hid those facts from the District Court.

[13] PA, Vol. V, Tab 21, at 737, 744.

STANDARD OF REVIEW

Hall Prangle seeks a writ of mandamus that would essentially force the District Court to retract its statement concerning Hall Prangle's professional conduct. "Whether to consider a petition for mandamus is entirely with the discretion of this court."[14] Since Hall Prangle has failed to identify a justiciable controversy, namely a dispute with a legal consequence as it relates to Hall Prangle, the Court should exercise its discretion to deny the Petition without reaching the merits of Hall Prangle's arguments.

Indeed, the District Court did not sanction Hall Prangle. Moreover, the District Court's statement is not reasonably characterized as attorney discipline despite Hall Prangle's argument to the contrary. If the Court is inclined to reach the Petition on its merits, the standard of review should be that for challenging a sanction for professional conduct.

District courts have broad discretion to impose sanctions for professional misconduct because sanctions for professional misconduct

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[14] *State v. Second Judicial Dist. Court ex rel. County of Washoe*, 118 Nev. 609, 614, 55 P.3d 420, 423 (2002).

are best considered in the first instance by the district court.[15] The Nevada Supreme Court reviews decisions involving sanctions for an abuse of discretion.[16]

ARGUMENT

I. Hall Prangle Has Not Identified a Justiciable Controversy

"The duty of every judicial tribunal is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles of law which cannot affect the matter in issue before it."[17] Stated in legal parlance, a petition or complaint must identify a justiciable controversy as a predicate to judicial review.[18] Here, Hall Prangle presents an abstract question for the Court's review, specifically whether it has violated Nevada Rule of Professional Conduct 3.3. In framing the procedural and jurisdictional issues in this case, Hall Prangle conflates professional discipline and attorney sanctions, suggesting that they are synonymous. To the contrary, the imposition of

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[15] *Lioce v. Cohen*, 124 Nev. 1, 26, 174 P.3d 970, 986 (2008).

[16] *Emerson v. Eighth Judicial Dist. Court of State, ex rel. Cty. of Clark*, 127 Nev. 672, 680, 263 P.3d 224, 229 (2011).

[17] *University and Community College System of Nevada v. Nevadans for Sound Government*, 120 Nev. 712, 720, 100 P.3d 179, 186 (2004).

[18] *Personhood Nevada v. Bristol*, 126 Nev. 599, 602, 245 P.3d 572, 574 (2010).

professional discipline, a public reprimand for example, is governed by the Nevada Supreme Court Rules, while the imposition of sanctions is governed by the Nevada Rules of Civil Procedure. Since the District Court imposed neither discipline nor a sanction, the Petition is a request for an advisory opinion disguised as challenge to the discipline or sanction allegedly imposed.

Although Hall Prangle argues that the District Court's statement about its professional conduct was the equivalent of a public reprimand, a form of professional discipline, it admits that that the District Court imposed no monetary sanctions.[19] In support of its foundational premise, that the District Court's statement was the equivalent of a public reprimand and therefore a sanction, Hall Prangle cites to *U.S. v. Talao*, 22 F.3d 1133 (9th Cir. 2000). *Talao* is not authoritative, however, because it addressed a federal district court's findings in a federal criminal proceeding.[20] As does Hall Prangle in this case, the *Talao* court conflated professional discipline and sanctions.

In *Talao*, the federal prosecutor was alleged to have violated the California Rules of Professional Conduct, and the question presented was whether the judge's finding of prosecutorial misconduct afforded grounds for

[19] Petition at 20:18, 21:1.
[20] *Id.* at 1136-37.

an interlocutory appeal by the federal government to the U.S. Court of Appeals for the Ninth Circuit.[21]

Given the context in which it was decided, *Talao* articulates a principle of federal appellate procedure for use in the Ninth Circuit. Whether the District Court issued a public reprimand in this case is a question of Nevada state law. This Court, through Supreme Court Rules (SCR) 99 to 215, has adopted extensive rules governing the imposition of attorney discipline, including public reprimands. With respect to the persons who may impose discipline in Nevada, SCR 99 states that attorneys admitted to the practice of law in Nevada are "subject to the *exclusive jurisdiction* of the supreme court and the disciplinary boards and hearing panels created by these rules." (Emphasis added). Because they are not among the authorities with jurisdiction to impose discipline pursuant to the Nevada Supreme Court Rules, Nevada's district court judges have no authority to issue public reprimands. Accordingly, a statement made by a district court judge is not the legal equivalent of a public reprimand, nor is the specific statement at issue in this case the factual equivalent of a sanction.[22]

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[21] *Id.* at 1137-38.

[22] The factual record concerning the alleged sanction is discussed in Section IV.

In summary, the District Court's statement has no legal consequence for Hall Prangle as would a public reprimand. Likewise, it has no tangible factual consequence for Hall Prangle as would a sanction. Therefore, the Petition presents an abstract question about Hall Prangle's professional conduct that is essentially a request for an advisory opinion. In other words, as it pertains to the subject of professional discipline, the answer to the question is irrelevant because there has been no discipline. Insofar as there is no factual record of a sanction against Hall Prangle, the Petition fails to present an actual case or controversy.

To the extent that Hall Prangle alleges damage to its reputation, Hall Prangle has mischaracterized this case as one involving attorney discipline or sanctions as opposed to alleged defamation of character. In short, Hall Prangle takes issue with the factual basis for the District Court's statement, not its operative legal effect or its direct monetary impact upon Hall Prangle. In short, Hall Prangle alleges an abstract injury for which there is no remedy at law. As this Court has repeatedly recognized, it is well established that alleged defamation is not actionable when it occurs within the context of judicial or quasi-judicial proceedings.[23] Although the Petition purports to raise

[23] *See Marvin v. Fitch*, 126 Nev. 168, 174, 232 P.3d 425, 429 (2010).

equitable considerations, those considerations do not warrant the Court's intervention through mandamus proceedings. As noted above, the decision whether to even entertain the Petition is entirely discretionary.[24] If the Court were to recognize that the District Court's statement represents a sanction or possibly some form of professional discipline, the Court's decision would be without precedent and would likely require the Court to review increasingly abstract conflicts between judges and lawyers.

II. Hall Prangle Had Notice That Its Own Misconduct Was At Issue

A. In Considering Dismissal with Prejudice as a Discovery Sanction, a Court Is Required to Consider the Conduct of the Party's Attorney

Hall Prangle knew that its own conduct would be considered by the District Court at the evidentiary hearing because the Nevada Supreme Court told them so in *Young v. Johnny Ribeiro Building, Inc.,* and Plaintiff included the entirety of the relevant language from *Young* in its Motion for Rule 37 Sanctions.[25]

In *Young*, the lower court found that Bill Young willfully fabricated evidence by altering his personal business diaries after

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[24] *Second Judicial District Court ex rel. County of Washoe*, 118 Nev. at 614, 55 P.3d at 423.

[25] PA, Vol. III, Tab 12, at 420 (quoting *Young.,* 106 Nev. at 93, 787 P.2d at 780).

discovery had begun and then claiming the alterations were made years prior. Based on that finding, the lower court sanctioned Young by, among other things, dismissing his complaint. Young appealed that sanction. In affirming the lower court's decision, the Nevada Supreme Court explained that when considering a sanction as severe as dismissal, the lower court's order must "be supported by an express, careful, and preferably written explanation of the pertinent factors."[26] Those factors include "whether sanctions unfairly operate to penalize a party for the misconduct of his or her own attorney."[27]

Because Plaintiff requested case terminating sanctions, the District Court was required to address Hall Prangle's conduct in its explanation of the pertinent factors.

B. Hall Prangle Was Repeatedly Notified by Plaintiff's Counsel That Sanctions Were Being Sought Against Hall Prangle—Not Just Centennial

In addition to the notice provided by the Nevada Supreme Court in *Young*, Hall Prangle received **at least three** separate notices that its conduct was at issue.

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[26] *Id.*
[27] *Id.*

First, in its Motion for Sanctions, Plaintiff explained that *Young v. Johnny Ribeiro Building, Inc.,* requires a district court to consider the conduct of counsel.[28] **Second**, Plaintiff elaborated in its Reply that Hall Prangle's "conduct (on behalf of Centennial and for the benefit of Centennial) cries out for sanctions"[29] and that the "Court needs to sanction [Hall Prangle]"[30] as it "put forth false and misleading statements to the Court" when it "argued time and again that they knew nothing bad about Farmer and had no reason to think he may assault a patient."[31] **Third**, in its Evidentiary Hearing Brief, Plaintiff (1) directly stated "we are not just talking about Centennial as a party and what they did; it's also about what Hall Prangle—their legal counsel has done. . ." and (2) explained that Hall Prangle violated Nevada Rule of Professional Conduct 3.3 by stating "there were absolutely no known prior acts by Mr. Farmer that could potentially put Centennial on notice that Mr. Farmer would assault a patient."[32]

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[28] PA, Vol. III, Tab 12, at 420.
[29] PA, Vol. III, Tab 12, at 491.
[30] PA, Vol. III, Tab 12, at 498.
[31] PA, Vol. III, Tab 12, at 492.
[32] PA, Vol. V, Tab 21, at 737, 744.

III. Even If Hall Prangle Was Required to Receive Notice—and the Three Notices Were Insufficient—the Motion for Reconsideration Cured Any Deficiencies

Because Hall Prangle was not sanctioned, it did not need to receive notice. Moreover, Hall Prangle was given at least three separate notices that it might be sanctioned. However, even if for some reason Hall Prangle were entitled to additional notice, the motion for reconsideration was "'sufficient to cure the defect, if any, in the process [a sanctioned attorney] previously received' in connection with the initial imposition of the sanctions."[33]

In *Sun River Energy, Inc. v. Nelson*, 800 F.3d 1219, 1231 (10th Cir. 2015), Sun River failed to disclose a relevant insurance policy in its initial disclosures. The policy was not disclosed until the defendants' counsel filed a motion to compel its production. By that time, coverage under the "claims made" policy had lapsed. The defendants then moved for an order sanctioning Sun River for failing to timely disclose the insurance policy. The lower court imposed monetary sanctions against

[33] *Sun River Energy, Inc. v. Nelson*, 800 F.3d 1219, 1231 (10th Cir. 2015) (quoting *G.J.B. & Assocs., Inc. v. Singleton*, 913 F.2d 824, 832 (10th Cir. 1990)).

Sun River's attorney. Sun River's attorney then moved for reconsideration, which was denied.

On appeal, Sun River's attorney argued that the order was procedurally defective because he did not have notice that he might be sanctioned because the initial motion for sanctions only sought sanctions against Sun River. In affirming the district court's opinion, the Tenth Circuit Court of Appeals stated that "although the initial order imposing the sanction on [Sun River's attorney] was procedurally defective, the subsequent proceedings on counsel's motion for reconsideration cured the deficiency" because (1) "[a]n opportunity to be heard does not require an oral or evidentiary hearing on the issue" and (2) Sun River's counsel "had been afforded the occasion to testify and present evidence relating to the circumstances surrounding the nondisclosure underlying the sanction" in his briefing on the motion for reconsideration.[34]

Here, Hall Prangle filed a motion for reconsideration and could have presented any evidence or made any argument that it wanted about the sanctions—which it did. Indeed, Hall Prangle does not

[34] *Sun River Energy*, 800 F.3d at 1230-31.

identify any evidence that it wanted, but was unable, to offer. As a result, Hall Prangle received any due process that might have been required.

IV. The District Court Did Not Sanction Hall Prangle

The District Court's findings that Hall Prangle violated Nevada Rule of Professional Conduct 3.3 are not sanctions. The District Court's interlocutory order specifically directs any sanction against Centennial only—not Hall Prangle:

> **"The Court sanctions Defendant Centennial pursuant to NRCP 37 by striking its Answer in this action such that liability is hereby established on Plaintiff Jane Doe's claims against Defendant Centennial for negligence and respondeat superior; but Centennial shall still be entitled to defend on the question of the nature and quantum of damages for which it is liable."** (Emphasis in original).

The District Court considered, but decided against, imposing any direct sanctions against Hall Prangle. The District Court decided not to impose any monetary sanction. The District Court decided not to disqualify Hall Prangle and remove it from representing Centennial. The District Court decided not to report Hall Prangle to the State Bar of Nevada.

Instead, as required by *Young v. Johnny Ribeiro Building, Inc.*, the District Court simply explained its reasoning for the sanction against Centennial when it noted that Hall Prangle had violated Nevada Rule of Professional Conduct 3.3.[35] Given that the District Court was required to consider and articulate its reasoning, doing so cannot be a sanction.

V. Hall Prangle Made a False Statement of Fact to the District Court

Nevada Rule of Professional Conduct 3.3(a)(1) provides that a "lawyer shall not knowingly make a false statement of fact . . . to a tribunal."

In Centennial's opposition to Plaintiff's motion for summary judgment, Hall Prangle stated "there were absolutely no known prior acts by Mr. Farmer that could potentially put Centennial on notice that Mr. Farmer would assault a patient."[36] That statement is false.

When making that statement, Hall Prangle knew that there was evidence that Farmer (1) was overly attentive to female patients and anxious to connect them to heart monitor leads; (2) being monitored for improper conduct with patients by Nurse Wolfe and Nurse Sumera;

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[35] 106 Nev. at 93, 787 P.2d at 780.
[36] PA, Vol. V, Tab 21, at 737, 744.

(3) asked to help with tasks where female breasts would be exposed and possibly touched; (4) was more attentive and helpful to female patients than male patients; and (5) had an incident where a woman in his care was heard yelling: "Get outta here! I don't want you by me."[37]

It would have been one thing for Hall Prangle to identify these facts and then argue that none of them could have even **potentially** put Centennial on notice that Farmer might assault a patient. It is another thing entirely for Hall Prangle to hide those facts and then claim there were no facts that could potentially trigger notice.

CONCLUSION

Hall Prangle made a false statement to the District Court and had ample notice that the District Court might reference that false statement when it considered case terminating sanctions against Centennial. The Petition fails to identify a justiciable controversy, but is instead an improper attempt to attack a statement made by the District Court during the course of a judicial proceeding. Hall Prangle's Petition should be denied.

[37] PA, Vol. VIII, Tab 65, at 2805-20; *id.* at 2821-34.

Dated: October 31, 2016.

ADAM PAUL LAXALT
Attorney General

By: /s/ Ketan D. Bhirud
Ketan D. Bhirud (Bar. No. 10515)
General Counsel
Gregory L. Zunino (Bar. No. 4805)
Bureau Chief

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing in accordance with this Court's electronic filing system and consistent with NEFCR 9 on October 31, 2016.

Participants in the case who are registered with this Court's electronic filing system will receive notice that the document has been filed and is available on the court's electronic filing system.

I further certify that some of the participants in the case are not registered as electronic users. I have mailed the foregoing document by First-Class Mail, postage prepaid, to the following participants:

/s/ Gina Long
Gina Long, an employee of the Office of the Attorney General

Hall Prangle & Schoonveld, LLC
Michael Prangle
1160 North Town Center Dr.
Suite 200
Las Vegas NV 89144

Robert E. Murdock, Esq.
Eckley M. Keach, Esq.
KEACH MURDOCK, LTD.
521 South Third Street
Ls Vegas NV 89101

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief 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 this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 14 point Century Schoolbook type style.

I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more and contains 4,228 words.

Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated: October 31, 2016.

ADAM PAUL LAXALT
Attorney General

By: /s/ Ketan D. Bhirud
Ketan D. Bhirud (Bar. No. 10515)
General Counsel
Gregory L. Zunino (Bar. No. 4805)
Bureau Chief