

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

2
3 JENNIFER V. ABRAMS; AND THE
4 ABRAMS AND MAYO LAW FIRM

5 Appellants,

6 vs.

7 STEVE W. SANSON; AND
8 VETERANS IN POLITICS
9 INTERNATIONAL, INC.,

 Respondents.

CASE NO.: 73838

DISTRICT COURT CASE NO.:
A-17-749318-C

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10 **PARTIAL OPPOSITION TO NON-PARTY BRANDON PAUL**
11 **SAITER'S MOTION TO CONSOLIDATE APPEAL NOS. 72819,**
12 **73838, AND 72778**

13 Respondents Steven W. Sanson and Veterans In Politics International,
14 Inc., by and through their counsel, hereby submit this partial opposition to
15 non-party Brandon Paul Saiter's motion to consolidate. This partial
16 opposition is supported by the attached memorandum of points and
17 authorities.
18

19 Dated this 17th day of October, 2017.

20
21 /s/ Margaret A. McLetchie
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I. INTRODUCTION

¹ Sanson and VIPI are collectively referred to herein as the “VIPI Defendants.”

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1 no advance notice or opportunity to be heard.

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3 In the *Abrams* case, based on, *inter alia*, the nature of the statements at
4 issue, the VIPI Defendants filed and prevailed on a special anti-SLAPP³
5 motion to dismiss pursuant to NRS 41.650 in the *Abrams* matter, and
6 Appellants appealed. The district court denied the VIPI Defendants anti-
7 SLAPP motion to dismiss the *Willick* case that motion, and the VIPI
8 Defendants appealed. (*See Nev. S. Ct. Case No. 72778.*)
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11 On September 29, 2017, Saiter moved to consolidate his appeal with
12 the *Willick* case and the *Abrams* case. The VIPI Defendants oppose
13 consolidation of this matter with the *Saiter* case because that case should be
14 dismissed. The VIPI Defendants do not oppose consolidation or clustering of
15 the *Willick* and *Abrams* cases for the limited purpose of general background
16 and for legal determination of a legal issue that is at the heart of both appeals:
17 whether criticisms of lawyers' in-court demeanor and litigation practices
18 constitutes an issue "of public concern" under Nevada's anti-SLAPP statutes.
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21 **II. ARGUMENT**

22 **A. Several Factors Weigh Against Consolidation of this Matter with** 23 **the *Saiter* Case.**

24 **1. Standard for Consolidation**

25 Pursuant to Nevada Rule of Appellate Procedure ("NRAP") 3(b)(2),
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27 ³ "SLAPP" is an acronym for "strategic lawsuit against public participation."
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1 this Court may join or consolidate separately filed notices of appeals upon its
2 own motion or upon motion of a party. In general, this Court consolidates
3 appeals in cases when the issues raised are identical. *See, e.g., Schmidt v.*
4 *Washoe County*, 123 Nev. 128, 130, 159 P.3d 1099, 1101 (2007); *O'Guinn v.*
5 *State*, 118 Nev. 849, 850, 59 P.3d 488, 489 (2002). The Court also considers
6 whether the arguments presented below and on appeal are similar and arise
7 from a common set of facts. *Levinson v. Second Judicial District Court*, 103
8 Nev. 404, 406, 742 P.2d 1024, 1025 (1987). Finally, judicial economy is also
9 relevant. *Jackson v. State*, 115 Nev. 21, 22, 973 P.2d 241 (1999).

13 **2. Consolidation with the Saiter Case is Inappropriate Because**
14 **the Challenged Order is Not Appealable.**

15 On October 3, 2017, this Court issued an Order to Show Cause in the
16 *Saiter* case (*Saiter* case, Docket # 17-33450.) Saiter is challenging Family
17 Court Judge Jennifer Elliott's vacation of an order which purported to prohibit
18 the dissemination of case materials by anyone, including by non-parties who
19 had no notice or opportunity to be heard. When Sanson, in his capacity as
20 President of VIPI, disseminated a court video transcript he obtained prior to
21 the issuance of the order. The video showed Abrams engaging in a heated
22 exchange with Judge Elliott. Abrams filed a Motion for an Order to Show
23 Cause to have Sanson incarcerated and sanctioned for contempt. The VIPI
24 Defendants opposed that motion via special appearance.

1 Judge Elliott both denied the order to show cause and vacated the Order
2 Prohibiting Dissemination as unconstitutional and in violation of Nevada law.
3 Judge Elliott also found that there was no actual harm caused by the
4 dissemination of the video which contained no confidential information.
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6 This Court's jurisdiction to review decisions of the district court is
7 limited to appeals authorized by statute or court rule. *See Taylor Constr. Co. v.*
8 *Hilton Hotels Corp.*, 100 Nev. 207, 209, 678 P.2d 1152, 1153 (1984). "NRAP
9 3A(b) designates the judgments and orders from which an appeal may be
10 taken, and where no statutory authority to appeal is granted, no right exists."
11 *Id.* (citing *Kokkos v. Tsalikis*, 91 Nev. 24, 530 P.2d 756 (1975)). Here, neither
12 the district court's refusal to find Sanson in contempt nor its decision to vacate
13 the Order Prohibiting Dissemination are an "appealable determination" under
14 NRAP 3A(b). As this Court noted in its Order to Show Cause, "a contempt
15 order that is ancillary to another proceeding [such as this one which is
16 ancillary to Saiter's divorce] is not appealable." (Order, p. 1) (citation
17 omitted). Given that this Court lacks jurisdiction over Saiter's appeal,
18 consolidation with that matter is inappropriate.
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24 **3. Consolidation is Not Appropriate Because Saiter Failed to**
25 **Perfect His Appeal.**

26 NRAP 3(d) requires appellants to "serve the notice of appeal on all
27 parties to the action in the district court." When service is not performed
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1 properly “the appellate court acquire[s] no jurisdiction.” *Johns-Manville, Inc.*
2 *v. Lander County*, 48 Nev. 244, 229 P. 387 (1924). “[T]o perfect an appeal, the
3 party desiring to do so should first file his notice of appeal, next serve it.”
4 *Brooks v. the Nevada Nickel Syndicate (Limited)*, 24 Nev. 264, 272, 52 P. 575,
5 576 (1898) (quotation omitted). Saiter failed to perfect his appeal because he
6 has never served Sanson or VIPI with a Notice of Appeal or any other relevant
7 appellate documents. Sanson had specially appeared in the *Saiter* case to
8 challenge the constitutionality of the Order Prohibiting Dissemination, and is
9 the only litigant in the case who is incentivized to oppose the appeal,
10 particularly since the Order Prohibiting Dissemination was entered on
11 stipulation of the parties.

12 The appeal of the denial of the motion to incarcerate and financially
13 punish Sanson would necessarily have a substantial effect on Sanson’s most
14 fundamental rights to liberty and property. The sole reason for the appeal is to
15 allow Saiter to again pursue incarceration or sanctions against Sanson for
16 purportedly violating the Order Prohibiting Dissemination. In his opening
17 brief, Saiter asserts that: “the case should be remanded to the trial court for a
18 hearing on sanctions for the violation of the Order Prohibiting Dissemination
19 of Case Material, as it related to these hearing videos and as requested in the
20 Motion for Order to Show Cause.” (*Saiter* Opening Brief, p. 35.) Saiter then
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1 argues for incarceration, sanctions and an injunction against Sanson for
2 purported contempt of the order he is trying to reinstate. (*Id.*, pp. 48-52.)

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4 The Fifth Amendment to the United States Constitution, made
5 applicable to the states through the Fourteenth Amendment, provides that “no
6 person may be deprived of life, liberty, or property, without due process of
7 law.” Article I, Section I of the Nevada constitution describes “life and liberty”
8 as “inalienable right(s).” Nevada’s Due Process clause is co-extensive with the
9 Due Process clause of the United States Constitution. *Wyman v. State*, 125
10 Nev. 592, 600, 217 P.3d 572, 578 (2009). The due process clause guarantees
11 an individual’s fundamental right to be heard. *Browning v. Dixon*, 114 Nev.
12 213, 217, 954 P.2d 741, 743 (1998); accord *Knight Piesold & Co. v. Fourth*
13 *Judicial Dist. Court ex rel. Cty. of Elko*, 126 Nev. 731, 367 P.3d 790 (2010)
14 Notably, the failure to give Sanson notice and an opportunity to be heard in the
15 *Saiter* case was one of the reasons Judge Elliott vacated her order:

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17 Again, the Court FINDS as the Order Prohibiting the
18 Dissemination of Case material failed to give notices to any of
19 the “All persons or entities,” including Sanson, no one was given
20 any means to challenge the validity of the order. Thus, any non-
21 party, without prior notice, could have been dragged into court
22 unconstitutionally, despite lack of any reasonable connection
23 with the case.⁴

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25 Accordingly, the *Saiter* case should be dismissed for failure to perfect and for
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28 ⁴ See Appellant’s Appendix, Vol. 3, p. 523 in *Saiter* case.

1 violation of Sanson's constitutional Due Process rights.

2 **4. Consolidation of This Matter With Saiter's Appeal Does Not**
3 **Promote Judicial Economy.**

4 As noted above, this Court may consolidate appeals in the interest of
5 judicial economy. *Jackson v. State*, 115 Nev. 21, 22, 973 P.2d 241 (1999); *see*
6 *also Gen. Supply & Servs., Inc. v. Burke & Assocs.*, 128 Nev. 898, 381 P.3d
7 615 (2012). Consolidation with the *Saiter* case would not serve this important
8 interest because two appeals do not raise any common issues of law, and share
9 only tangentially related facts. In the *Saiter* matter, the central issue on appeal
10 is the lower court's decision to vacate the Order Prohibiting Dissemination. In
11 this case, the Appellants' claims on appeal primarily pertain to whether the
12 district court erred in granting the VIPI Defendants' anti-SLAPP motion to
13 dismiss. (*See* September 21, 2017 Docketing Statement, pp. 6-7.) Given the
14 lack of commonality between the claims, consolidation would not serve
15 judicial economy.

16 **B. Partial Consolidation with the Willick Appeal is Appropriate**
17 **for the Limited Purpose of Ensuring Uniformity of this**
18 **Court's Anti-SLAPP case law.**

19 As discussed above, both Abrams and Willick are suing the VIPI
20 Defendants for publishing statements about their respective courtroom
21 demeanor and litigation practices. At the heart of both cases is whether
22 criticisms of attorneys were made "in direct connection with an issue of public
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1 interest” as required by NRS 41.635 *et seq.* for anti-SLAPP protection. This
2 appeal can be consolidated with the *Willick* case for the limited purposes of
3 general background and clarification of the relevant law in this area or, in the
4 alternative, clustered based on the overlapping legal issues to ensure they are
5 resolved in a consistent and efficient manner. *See* Supreme Court Internal
6 Operating Procedure 2(c)(2).
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9 The appeals should not, however, be consolidated for purposes of
10 factual analysis. Pursuant to NRS 41.660(3), a defendant seeking anti-SLAPP
11 dismissal bears the initial burden of demonstrating by a preponderance of the
12 evidence that each of the statements at issue were made in good faith
13 regarding an issue of public concern. Assuming the defendant meets this
14 threshold showing, a court must then “determine whether the plaintiff has
15 demonstrated with prima facie evidence a probability of prevailing on the
16 claim.” Nev. Rev. Stat. § 41.660(3)(b).
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20 In the proceedings below, the district court held the VIPI Defendants
21 satisfied their burden under NRS 41.660(3)(a), and that Appellants had failed
22 to demonstrate a probability of success on their claims. Because Appellants
23 have appealed the district court’s findings, the Court must now review each
24 contested statement individually to determine whether the district court abused
25 its discretion in granting the VIPI Defendants’ anti-SLAPP motion to dismiss.
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1 *Shapiro v. Welt*, 133 Nev. Adv. Op. 6, 389 P.3d 262, 266 (2017).

2 **C. THIS COURT SHOULD NOT TAKE JUDICIAL NOTICE OF**
3 **JUDGE DUCKWORTH'S ORDER IN ANOTHER**
4 **UNRELATED DIVORCE CASE.**

5 Finally, Saiter's Motion to Consolidate seeks judicial notice of an order
6 issued by Judge Bryce Duckworth in yet another unrelated divorce case, *Ansell*
7 *v. Ansell*, Eighth Judicial District Court, Family Division, Case No. D-15-
8 521960-D in which Willick represents the plaintiff (the "Duckworth Order").
9 The Duckworth Order, however, is not subject to judicial notice.
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11 NRS 47.130(2) requires that facts subject to judicial notice be "(a)
12 [g]enerally known within the territorial jurisdiction of the trial court; or (b)
13 [c]apable of accurate and ready determination by resort to sources whose
14 accuracy cannot reasonably be questioned, so that the fact is not subject to
15 reasonable dispute." Duckworth's Order contains a myriad of findings that the
16 VIPI Defendants are somehow involved in corruption. Yet, he made the
17 findings (a) knowing he was disqualified and was going to recuse himself from
18 the case, (b) without any adjudication of the facts underlying the findings, (c)
19 in violation of Sanson and VIPI's Due Process and other rights, and (d) outside
20 the jurisdiction of the family court. The VIPI Defendants attempted
21 unsuccessfully to vacate the order in district court and will shortly seek this
22 Court's assistance to do so. Accordingly, the findings and conclusions are not
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1 “generally known” nor “capable of accurate and ready determination” so that
2 such facts are “not subject to reasonable dispute” as required by NRS
3 47.130(2). As with the *Saiter* case, Sanson was not a party in the *Ansell* case,
4 and his motion to vacate the order was denied because of his lack of standing.
5 Accordingly, the facts in the Duckworth Order cannot be relied on. Moreover,
6 appellate courts should not take judicial notice of facts raised for the first time
7 on appeal where, as here, it would be procedurally unfair to do so. *In re Indian*
8 *Palms Assoc.*, 61 F.3d 197, 205 (3d Cir. 1995) (citation omitted).
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12 **III. CONCLUSION**

13 For the reasons stated above, Respondents respectfully request
14 the Court deny the request to consolidate this matter with the *Saiter* appeal.
15 Alternatively, Respondents request that this Court consolidate or cluster the
16 appeals for the limited purpose of ensuring the overlapping legal issues are
17 resolved in a consistent and efficient manner.
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20 Dated this 17th day of October, 2017.

21 /s/ Margaret A. McLetchie
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3 **CERTIFICATE OF SERVICE**
4

5 I hereby certify that the foregoing PARTIAL OPPOSITION TO NON-
6 PARTY BRANDON PAUL SAITER'S MOTION TO CONSOLIDATE
7 APPEAL NOs. 72819, 73838, AND 772778 was filed electronically with the
8 Nevada Supreme Court on the 17th day of October, 2017. Electronic service of
9 the foregoing document shall be made in accordance with the Master Service
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