

In the Supreme Court of Nevada

ELAINE P. WYNN,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT of the
State of Nevada, in and for the County of Clark;
and THE HONORABLE ELIZABETH GONZALEZ,
District Judge,

Respondents,

and

STEPHEN A. WYNN; WYNN RESORTS, LIMITED;
LINDA CHEN; RUSSELL GOLDSMITH; RAY R. IRANI;
ROBERT J. MILLER; JOHN A. MORAN; MARC D.
SCHORR; ALVIN V. SHOEMAKER; KIMMARIE
SINATRA; D. BOONE WAYSON; and ALLAN ZEMAN,
Real Party in Interest.

District Court
No. A-12-656710-B

**MOTION TO REDACT AND SEAL PORTIONS OF MOTION TO
STRIKE AND TO FILE UNDER SEAL SUPPORTING DECLARATION**

Ms. Wynn moves to redact and file under seal her motion to strike the Wynn parties' appendix to their answer, as well as the declaration attached to her motion. Both the motion and the declaration discuss a deposition transcript that is claimed to be confidential under a protective order. The furtherance of this protective order is an appropriate basis to seal the motion and declaration. *See* SRCR 3(4)(b). Petitioner

therefore moves to file a redacted version of the motion, as proposed in Exhibit A, and to file the unredacted motion and the declaration under seal.

Dated this 13th day of November, 2017.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Daniel F. Polsenberg

JAMES M. COLE (*pro hac vice*)
SIDLEY AUSTIN, LLP
1501 K. Street, N.W.
Washington, D.C. 20005
(202) 736-8246

DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
ABRAHAM G. SMITH (SBN 13,250)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

SCOTT D. STEIN (*pro hac vice*)
SIDLEY AUSTIN, LLP
One South Dearborn Street
Chicago, IL 60603
(312) 853-7520

MARK E. FERRARIO (SBN 1625)
TAMI D. COWDEN (SBN 8994)
GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway, Suite 400
North
Las Vegas, Nevada 89169
(702) 792-3773

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I certify that on November 13, 2017, I submitted the foregoing
“Motion to Redact and Seal Portions of Motion to Strike and to File Under Seal Supporting Declaration” for filing *via* the Court’s eFlex electronic filing system. Electronic notification will be sent to the following:

James J. Pisanelli
Todd L. Bice
Debra L. Spinelli
PISANELLI BICE PLLC
400 South 7th Street,
Suite 300
Las Vegas, NV 89101

Paul K. Rowe
Bradley R. Wilson
WACHTELL, LIPTON,
ROSEN & KATZ
51 West 52nd Street
New York, NY 10019

Robert L. Shaprio
GLASER WEIL FINK
HOWARD AVCHEN &
SHAPIRO LLP
10250 Constellation
Blvd., 19th Floor
Los Angeles, CA 90067

Attorneys for Wynn Resorts, Limited, Linda Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V. Shoemaker, Kim-marie Sinatra, D. Boone Wayson, and Allan Zeman

Donald J. Campbell
J. Colby Williams
CAMPBELL & WILLIAMS
700 South 7th Street
Las Vegas, NV 89101

Attorneys for Stephen A. Wynn

I further certify that a copy of this document will be served by
mail, postage prepaid, at Las Vegas, Nevada, addressed as follows:

Honorable Elizabeth Gonzalez
Department 11
EIGHTH JUDICIAL DISTRICT COURT
200 Lewis Avenue
Las Vegas, Nevada 89155

/s/ Adam Crawford
An Employee of Lewis Roca Rothgerber Christie LLP

EXHIBIT A

EXHIBIT A

Case No. 74184

In the Supreme Court of Nevada

ELAINE P. WYNN,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT of
the State of Nevada, in and for the County
of Clark; and THE HONORABLE ELIZABETH
GONZALEZ, District Judge,

Respondents,

and

STEPHEN A. WYNN; WYNN RESORTS,
LIMITED; LINDA CHEN; RUSSELL GOLDSMITH;
RAY R. IRANI; ROBERT J. MILLER; JOHN A.
MORAN; MARC D. SCHORR; ALVIN V.
SHOEMAKER; KIMMARIE SINATRA; D. BOONE
WAYSON; and ALLAN ZEMAN,

Real Parties in Interest.

District Court
No. A656710

MOTION TO STRIKE APPENDIX
(Filed Under Seal)

Petitioner Elaine P. Wynn moves to strike the Wynn parties' appendix to their answer because its contents are not part of the district-court record. Any portions of the answer that refer to these documents should be stricken, too.

**A. The Appendix should
Contain Just Matters in the
District-Court Record**

1. The Record is Filed Documents

This Court “cannot consider matters not properly appearing in the record on appeal.” *Wynn Resorts, Ltd. v. Eighth Judicial Dist. Court*, 133 Nev., Adv. Op. 52, 399 P.3d 334, 340 n.3 (2017) (quoting *Carson Ready Mix, Inc. v. First Nat’l Bank of Nev.*, 97 Nev. 474, 476, 635 P.2d 276, 277 (1981)). That is why all documents in an appendix “shall bear the file-stamp of the district court clerk, clearly showing the date the document was filed in the proceedings below.” NRAP 30(c)(1). Indeed, “[f]iling an appendix constitutes a representation by counsel that the appendix consists of true and correct copies of the papers in the district court.” NRAP 30(g)(1).

These limits on the contents of the appendix apply equally in writ proceedings. NRAP 21(a)(4); *see also Wynn Resorts, Ltd. v. Eighth Judicial Dist. Court*, 133 Nev., Adv. Op. 52, 399 P.3d 334, 340 n.3 (2017) (applying the concept of the “record on appeal” to a writ petition); *Alper v. Eighth Judicial Dist. Court*, 131 Nev., Adv. Op. 43, 352 P.3d 28, 29

n.2 (2015) (same).¹

2. *Unfiled Documents and References to them Must be Stricken*

An appendix that contains unfiled papers must be stricken. *In re Nev. State Eng’r Ruling No. 5823*, 128 Nev., Adv. Op. 22, 277 P.3d 449, 453 n.4 (2012) (quoting NRAP 30(g)(1)); *accord In re Discipline of Sero-ta*, 129 Nev., Adv. Op. 66, 309 P.3d 1037, 1041 n.5 (2013); *In re Candi-dacy of Hansen*, 118 Nev. 570, 574, 52 P.3d 938, 940 (2002).

3. *The Wynn Parties’ Appendix of Unfiled Transcripts Must be Stricken*

Here, the Wynn parties submitted an appendix that consists en-tirely of unfiled deposition transcripts, one of which is a rough draft. The answer relies extensively on those transcripts. (Answer 4, 13–15, 20, 25–27.)

Ms. Wynn does not seek sanctions under NRAP 30(g)(1) because

¹ The appendix to a writ petition may include “any other original docu-ment that may be essential to understand the matters set forth in the petition,” NRAP 20(a)(4), but where the petition is in the nature of ap-pellate review of a district court’s decision, that decision can be evaluat-ed only against the record in the district court or matters appropriate for judicial notice on appeal. *Cf. Yellow Cab of Reno, Inc. v. Second Ju-dicial Dist. Court*, 127 Nev. 583, 589, 591 n.4, 262 P.3d 699, 702, 703 n.4 (2011) (after an initial decision relying on population statistics that “were not part of the district court record,” the Supreme Court granted rehearing and took the procedurally appropriate step of taking judicial notice of U.S. Census figures).

she assumes that the inclusion of these unfiled transcripts was not “willful or grossly negligent.” NRAP 30(g)(1). Nevertheless, the appendix, plus any portions of the answer that refer to it, must be stricken.

**B. Enforcing the Rule
Removes this Court from the Role
of Factfinder**

This case illustrates the reason for the procedural rule.

As a factual matter, Ms. Wynn [REDACTED]

[REDACTED]. (Ex. A, Elaine Wynn Decl., at ¶¶ 7–

8.) They point to her response to a question about [REDACTED]

[REDACTED]:

Q.

[REDACTED]?

A.

(Wynn App. 37.)

As context shows, however, [REDACTED]

[REDACTED]

[REDACTED]. (See Ex.

B, Elaine Wynn Decl., at ¶¶ 3, 8; 2 App. 369, at ¶¶ 2–5.) But the line of questioning [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

(Wynn App. 36.) Ms. Wynn [REDACTED]

[REDACTED]

[REDACTED]. (Ex. A, Elaine Wynn Decl., at ¶ 7.) Exacerbating the confu-

sion, the Wynn parties' counsel first asks Ms. Wynn about [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. (Wynn App. 36.) [REDACTED],

counsel then surmises [REDACTED]

[REDACTED] (Wynn App. 37.) Ms. Wynn [REDACTED]

[REDACTED]

(Ex. A, Elaine Wynn Decl., at ¶ 7.)

This Court should not weigh in on this factual disagreement. The requirement that an appendix contain only documents that were brought before the district court ensures that this Court does not stumble into the marshes of factfinding. *See Beazer Homes Holding Corp. v.*

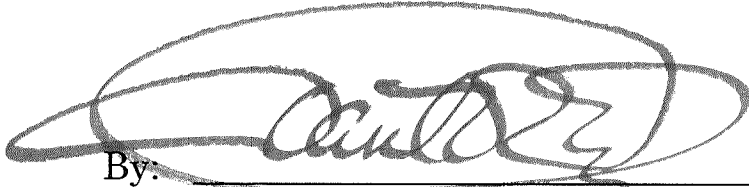
Eighth Judicial Dist. Court, 128 Nev., Adv. Op. 66, 291 P.3d 128, 137 (2012) (leaving issues of fact to the district court); *Yellow Cab of Reno, Inc. v. Second Judicial Dist. Court*, 127 Nev. 583, 593, 262 P.3d 699, 705 (2011) (same).

CONCLUSION

The Wynn parties' appendix consists of documents outside the district-court record. The import and meaning of those documents are the subject of a factual dispute that the district court should resolve in the first instance. These documents, and the references in the answer to them, should be stricken.

Dated this 13th day of November, 2017.

LEWIS ROCA ROTHGERBER CHRISTIE LLP



By: _____

DANIEL F. POLSENBERG (SBN 2376)

JAMES M. COLE (*pro hac vice*)

JOEL D. HENRIOD (SBN 8492)

SIDLEY AUSTIN, LLP

ABRAHAM G. SMITH (SBN 13,250)

1501 K. Street, N.W.

3993 Howard Hughes Parkway, Suite 600

Washington, D.C. 20005

Las Vegas, Nevada 89169

(202) 736-8246

(702) 949-8200

SCOTT D. STEIN (*pro hac vice*)

MARK E. FERRARIO (SBN 1625)

SIDLEY AUSTIN, LLP

TAMI D. COWDEN (SBN 8994)

One South Dearborn Street

GREENBERG TRAURIG, LLP

Chicago, IL 60603

3773 Howard Hughes Parkway, Suite 400

(312) 853-7520

North

Las Vegas, Nevada 89169

(702) 792-3773

Attorneys for Elaine P. Wynn

CERTIFICATE OF SERVICE

I certify that on November 13, 2017, I served the foregoing “Motion to Strike Appendix” by United States mail, postage prepaid, to the following:

James J. Pisanelli
Todd L. Bice
Debra L. Spinelli
PISANELLI BICE PLLC
400 South 7th Street,
Suite 300
Las Vegas, NV 89101

Paul K. Rowe
Bradley R. Wilson
WACHTELL, LIPTON,
ROSEN & KATZ
51 West 52nd Street
New York, NY 10019

Robert L. Shapiro
GLASER WEIL FINK
HOWARD AVCHEN &
SHAPIRO LLP
10250 Constellation
Blvd., 19th Floor
Los Angeles, CA 90067

Attorneys for Wynn Resorts

Donald J. Campbell
J. Colby Williams
Philip R. Erwin
Samuel R. Mirkovich
CAMPBELL & WILLIAMS
700 South 7th Street
Las Vegas, NV 89101

Attorneys for Stephen A. Wynn

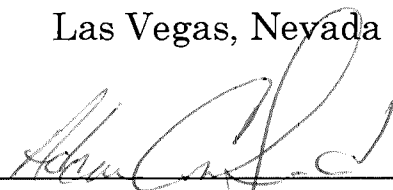
Steve Morris
MORRIS LAW GROUP
411 E. Bonneville
Ave., Suite 360
Las Vegas, NV 89101

J. Stephen Peek
Bryce K. Kunimoto
Robert J. Cassity
HOLLAND & HART LLP
9555 Hillwood Drive,
2nd Floor
Las Vegas, NV 89134

David S. Krakoff
Benjamin B. Klubes
Adam Miller
BUCKLEY SANDLER LLP
1250 24th Street NW,
Suite 700
Washington, DC 20037

Attorneys for Okada Parties

Honorable Elizabeth Gonzalez
Department 11
EIGHTH JUDICIAL DISTRICT COURT
200 Lewis Avenue
Las Vegas, Nevada 89155

A handwritten signature in black ink, appearing to read "Adam Christie", is written over a horizontal line.

An Employee of Lewis Roca Rothgerber Christie LLP

EXHIBIT A

FILED UNDER SEAL

EXHIBIT A

In the Supreme Court of Nevada

ELAINE P. WYNN,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT of the
State of Nevada, in and for the County of Clark;
and THE HONORABLE ELIZABETH GONZALEZ,
District Judge,

Respondents,

and

STEPHEN A. WYNN; WYNN RESORTS, LIMITED;
LINDA CHEN; RUSSELL GOLDSMITH; RAY R. IRANI;
ROBERT J. MILLER; JOHN A. MORAN; MARC D.
SCHORR; ALVIN V. SHOEMAKER; KIMMARIE
SINATRA; D. BOONE WAYSON; and ALLAN ZEMAN,
Real Party in Interest.

Electronically Filed
Nov 13 2017 02:32 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

District Court
No. A-12-656710-B

**MOTION TO REDACT AND SEAL PORTIONS OF MOTION TO
STRIKE AND TO FILE UNDER SEAL SUPPORTING DECLARATION**

Ms. Wynn moves to redact and file under seal her motion to strike the Wynn parties' appendix to their answer, as well as the declaration attached to her motion. Both the motion and the declaration discuss a deposition transcript that is claimed to be confidential under a protective order. The furtherance of this protective order is an appropriate basis to seal the motion and declaration. *See* SRCR 3(4)(b). Petitioner

therefore moves to file a redacted version of the motion, as proposed in Exhibit A, and to file the unredacted motion and the declaration under seal.

Dated this 13th day of November, 2017.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: /s/ Daniel F. Polsenberg

JAMES M. COLE (*pro hac vice*)
SIDLEY AUSTIN, LLP
1501 K. Street, N.W.
Washington, D.C. 20005
(202) 736-8246

DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
ABRAHAM G. SMITH (SBN 13,250)
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
(702) 949-8200

SCOTT D. STEIN (*pro hac vice*)
SIDLEY AUSTIN, LLP
One South Dearborn Street
Chicago, IL 60603
(312) 853-7520

MARK E. FERRARIO (SBN 1625)
TAMI D. COWDEN (SBN 8994)
GREENBERG TRAURIG, LLP
3773 Howard Hughes Parkway, Suite 400
North
Las Vegas, Nevada 89169
(702) 792-3773

Attorneys for Petitioner

CERTIFICATE OF SERVICE

I certify that on November 13, 2017, I submitted the foregoing
“Motion to Redact and Seal Portions of Motion to Strike and to File Under Seal Supporting Declaration” for filing *via* the Court’s eFlex electronic filing system. Electronic notification will be sent to the following:

James J. Pisanelli
Todd L. Bice
Debra L. Spinelli
PISANELLI BICE PLLC
400 South 7th Street,
Suite 300
Las Vegas, NV 89101

Paul K. Rowe
Bradley R. Wilson
WACHTELL, LIPTON,
ROSEN & KATZ
51 West 52nd Street
New York, NY 10019

Robert L. Shaprio
GLASER WEIL FINK
HOWARD AVCHEN &
SHAPIRO LLP
10250 Constellation
Blvd., 19th Floor
Los Angeles, CA 90067

Attorneys for Wynn Resorts, Limited, Linda Chen, Russell Goldsmith, Ray R. Irani, Robert J. Miller, John A. Moran, Marc D. Schorr, Alvin V. Shoemaker, Kim-marie Sinatra, D. Boone Wayson, and Allan Zeman

Donald J. Campbell
J. Colby Williams
CAMPBELL & WILLIAMS
700 South 7th Street
Las Vegas, NV 89101

Attorneys for Stephen A. Wynn

I further certify that a copy of this document will be served by
mail, postage prepaid, at Las Vegas, Nevada, addressed as follows:

Honorable Elizabeth Gonzalez
Department 11
EIGHTH JUDICIAL DISTRICT COURT
200 Lewis Avenue
Las Vegas, Nevada 89155

/s/ Adam Crawford
An Employee of Lewis Roca Rothgerber Christie LLP