

IN THE SUPREME COURT OF THE STATE OF NEVADA

KEANDRE VALENTINE,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Electronically Filed
Aug 28 2019 01:29 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
Case No. 74468

MOTION REQUESTING COURT FILE BIOFORM – ATTORNEY’S LIST UNDER SEAL PURSUANT TO AUGUST 14, 2019 ORDER AND MOTION TO RECONSIDER 7 DAY TIME LIMIT.

COMES NOW Appellant, KEANDRE VALENTINE, by and through his attorney, SHARON G. DICKINSON, Chief Deputy Public Defender, and pursuant to the Court’s August 14, 2019 order, asks this Court to accept the confidential “Bioform – Attorney’s List” under seal. Court may review the form if needed to answer questions regarding the appeal. The document is being sent via Fed Ex or mail. This Motion is based upon the following Memorandum and all papers and pleadings on file herein.

DATED this 28 day of August, 2019.

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By /s/ Sharon G. Dickinson
SHARON G. DICKINSON
Deputy Public Defender

MEMORANDUM OF POINTS AND AUTHORITIES

On 07/26/19, Defendant filed a motion asking this Court to direct the District Court Clerk's office to transmit the "Bioform – Attorney's List" to this Court for the Court to use when reaching a decision on the issues in this appeal. Defendant made this request because questions about the form came up during oral argument on 07/19/19. The "Bioform – Attorney's List" for this case was placed in the left side of the district court's file thereby making it confidential. Every page of the form says that it is "Confidential Information."

On 08/14/19, this Court denied Defendant's unopposed motion without prejudice and gave Defendant 7 days to file another motion. *Exhibit A*. In Court's order, Court allowed the Defendant to file a subsequent motion within 7 days to have the document held with this Court under seal. Thus, the motion would have needed to be filed on or before 08/21/19.

Good cause exists for this Court to extend the 7 day time period for filing the motion because Appellant's counsel was out of the country when this Court issued the order. Appellant's attorney left the United States on 08/10/19 and returned on 08/23/19. Counsel's first day back at work was 08/26/19. Counsel found the email containing the order in her messages

today - 08/28/19. Therefore, Defendant asks that the Court consider this motion as timely.

The Court's order appears to indicate the Court understands the confidential nature of the document thereby making a request to seal unnecessary.

However, as to sealing documents in this Court, in *Howard v. State*, 291 P.3d 137 (Nev. 2012), this Court held that there is a presumption in favor of allowing the public access to all documents filed within the Nevada Supreme Court. *Id.* at 142. An exception to this rule occurs when the Court exercises its "inherent authority and grant[s] a motion to file specific documents under seal based on a showing that such action is required by law or an identified significant competing interest." *Id.* at 139.

Here, the district court denied the public access to the "Bioform – Attorney's List" by placing it in the left side of the file thereby making it a sealed confidential document. SRCR Part 7, Rule 7 says: "Court records sealed in the trial court shall be sealed from public access in the Nevada Supreme Court subject to further order of that court." Therefore, this Court may seal the "Bioform – Attorney's List."

It is important to note that the *Howard* decision does not address documents previously sealed. ADKT 0410, SRCR 7, and the federal courts

treat documents already sealed or presumptively confidential differently.¹ *Id.* at 142-43. Also, the *Howard* Court did not recognize that SRCR 7 treats documents presumed confidential or under seal differently from documents never sealed.

Because the Court's order appears to agree to keep the "Bioform – Attorney's List" under seal, Keandre does not need to address the four part test of *Howard*.

Nonetheless, the *Howard* test requires Keandre to:

(1) file a motion and serve it on all parties in the criminal case:

Here it is.

(2) identify the document or information to be sealed:

¹ As to the federal courts, in the first circuit, documents already under seal in the lower court remain under seal when transmitted as part of the appendix. 1st Cir. R. 11.0(c)(1). The third and seventh circuits automatically accept documents already sealed or kept confidential in the lower court but require the party seeking to keep the documents sealed to subsequently file a motion explaining why the document should remain sealed. 3rd Cir. R. 106.1(c); 7th Cir. R. 10 operating procedures. The fourth circuit requires a party to file a certificate of confidentiality for documents under seal in another court. 4th Cir. Local R. 25(c). The Sixth circuit allows documents under seal in the lower court to be filed without a motion and remain under seal unless further order by the court. *See* 6 Cir. R. 11(c); 6 Cir. R. 25(h). Hence, a majority of federal courts do not apply the rules announced in *Howard* to documents previously sealed or deemed confidential.

“Bioform – Attorney’s List” which is being sent to this Court via mail.

(3) explain why sealing is necessary by “identifying the grounds upon which sealing the subject documents is justified” such as required by law or by a significant competing interest and why less restrictive means are inadequate. (Howard at 138, 143-44).

This was explained earlier. Moreover, the district court has already determined that the public would be denied access to the jury form.

(4) “specify the duration of the sealing order” (Howard at 138, 144) :

The “Bioform – Attorney’s List” should remain sealed until completion of the direct appeal and post-conviction. Because it is a copy, the Court may destroy it upon completion of the appellate and habeas process.

The reason Keandre seeks to submit the “Bioform – Attorney’s List” to this Court is because at least one member of the Court had questions about the form during oral argument.

Respectfully submitted,

DARIN F. IMLAY
CLARK COUNTY PUBLIC DEFENDER

By /s/ Sharon G. Dickinson
SHARON G. DICKINSON, #3710
Chief Deputy Public Defender
309 So. Third Street, Suite #226
Las Vegas, Nevada 89155-2610

DECLARATION OF SHARON G. DICKINSON

1. I am an attorney licensed to practice law in the State of Nevada; I am a chief deputy public defender assigned to handle the appeal of this matter; I am familiar with the procedural history of this case.

2. I left the United States on 08/10/19 and returned on 08/23/19. My first day back at work was 08/26/19. I found the email containing the order in my messages today - 08/28/19.

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

EXECUTED on the 28 day of August, 2019.

/s/ Sharon G. Dickinson
SHARON G. DICKINSON

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 28 day of August, 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

AARON D. FORD
STEVEN S. OWENS

SHARON G. DICKINSON
HOWARD S. BROOKS

I further certify that I served a copy of this “Bioform—Attorney’s List” and the motion by Federal Expressing or mailing a true and correct copy thereof, postage pre-paid, addressed to:

SUPREME COURT of NEVADA
OFFICE OF THE CLERK
201 South Carson Street, Suite #201
Carson City, NV 89701-4702

CLARK COUNTY DISTRICT ATTORNEY’S OFFICE
200 SOUTH LEWIS, 3RD
LAS VEGAS, NV 89101

ATTORNEY GENERAL’S OFFICE
State of Nevada, Criminal Justice Division
100 North Carson Street
Carson City, Nevada 89701-4717

BY /s/ Carrie M. Connolly
Employee, Clark County Public
Defender’s Office

EXHIBIT A


IN THE SUPREME COURT OF THE STATE OF NEVADA

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THE STATE OF NEVADA,
Respondent.

No. 74468

FILED

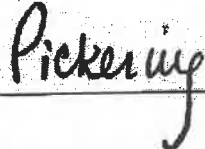
AUG 14 2019

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK

ORDER

Appellant has filed an unopposed motion for the transmission of the sealed "Bioform—Attorney's List" kept on the left side of the district court's file. Appellant does not demonstrate that the Bioform is incapable of reproduction in the appendix or that this court's review of the original document is necessary. NRAP 30(d). Accordingly, the motion to transmit the document is denied without prejudice. If deemed warranted, appellant may provide this court with a copy of the Bioform along with a motion to file the document under seal. The document will be kept confidential pending resolution of the motion to file it under seal. Any such motion must be filed within 7 days of the date of this order.

It is so ORDERED.

 A.C.J.

cc: Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney