

Case No. _____

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; and KIMMARIE SINATRA,

Real Parties in Interest.

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Elizabeth A. Brown
Clerk of Supreme Court

District Court
No. A656710

EMERGENCY PETITION FOR WRIT OF PROHIBITION
(Action Required by Today, May 16, 2018)

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PETITION FOR WRIT OF PROHIBITION

Petitioner Elaine P. Wynn seeks a writ of prohibition to prevent the district court from filing the transcript from a hearing which was sealed and in which Ms. Wynn's confidential information was disclosed. Alternatively, Ms. Wynn seeks a writ of *mandamus* ordering the district court to seal the transcript.

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NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Petitioner ELAINE P. WYNN is an individual.

Petitioner has been represented in this litigation by William R. Urga and David J. Malley of JOLLEY URGA WOODBURY HOLTHUS & ROSE; Mark E. Ferrario and Tami D. Cowden of GREENBERG TRAURIG, LLP; James M. Cole and Scott D. Stein of SIDLEY AUSTIN LLP; Daniel F. Polsenberg, Joel D. Henriod and Abraham G. Smith of LEWIS ROCA ROTHGERBER CHRISTIE LLP; and John B. Quinn, Michael T. Zeller, Susan R. Estrich, Michael L. Fazio and Ian S. Shelton of QUINN EMANUEL URQUHART & SULLIVAN, LLP.

DATED this 16th day of May, 2018.

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ROUTING STATEMENT

Under the emergency circumstances of this petition, the Supreme Court should retain this petition. The principal issue is whether the district court had authority to unseal the transcript from that hearing pending this Court's review of the underlying confidentiality issues. This is a question of statewide importance. NRAP 17(a)(10), (11).

VERIFICATION

STATE OF NEVADA }
COUNTY OF CLARK }

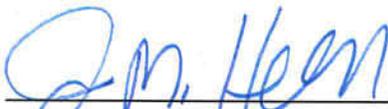
Under penalty of perjury, I declare that I am counsel for the petitioner in the foregoing petition and know the contents thereof; that the pleading is true of my own knowledge, except as to those matters stated on information and belief; and that as to such matters I believe them to be true. I, rather than petitioners, make this verification because the relevant facts are procedural and thus within my knowledge as petitioners' attorney. This verification is made pursuant to NRS 15.010.

Dated this 16th day of May, 2018.

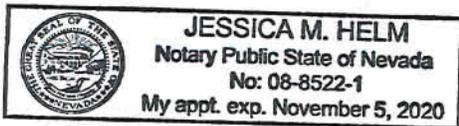


Daniel F. Polsenberg

Subscribed and sworn to before me
this 16th day of May, 2018.



Notary Public



ISSUE PRESENTED

Did the district court have authority—*sua sponte* and without a hearing on the question—to unseal the transcript from a hearing that had originally been sealed and in which the parties discussed confidential information and documents?

POINTS AND AUTHORITIES

Background

Although the parties settled their claims in the underlying litigation on April 16, there are ongoing questions about the scope of the district court’s protective order for designating documents and information confidential (nonpublic) and highly confidential (attorneys’ eyes only). (2 App. 165.) On May 11, 2018, real parties in interest opposed a motion to modify or clarify that protective order and sought, via counter-motion, to de-designate portions of Ms. Wynn’s notes from an event in 2005. Real parties in interest stated that the de-designation was necessary in light of issues arising from before the Wynn Resorts’ annual shareholders meeting, but the motion was not heard until after that meeting. (1 App. 1.)

Ms. Wynn opposed the de-designation of those notes. (1 App. 35.)

But if the court disagreed that the topics discussed in those notes were confidential, Ms. Wynn alternatively suggested that the district court de-designate all of the documents on the those topics for consistency and to make public the entire record. (1 App. 45–47.)

During the hearing on Wynn Resorts’ countermotion, Wynn Resorts’ counsel began discussing information from the notes that Ms. Wynn’s counsel considered confidential under the then-existing designation. Ms. Wynn’s counsel objected, as discussion of this confidential information would become public with the filing of the transcript. The district court accordingly sealed the courtroom, ordered the reporter not to let anyone have access to the “JAVS” recording equipment for this hearing, and ordered bailiff to block courtroom doors. Following this order, Wynn Resorts’ counsel continued to discuss the contents of the confidential notes.

The district court granted countermotion to de-designate these notes and only partially granted Ms. Wynn’s suggestion that certain related documents in the appendix to the opposition—including the deposition transcripts of Wynn Resorts’ directors and others—also be de-designated. The court invited Ms. Wynn to file a supplemental motion

to request the de-designation of other documents on the same topic.

The court then granted a temporary stay to seek appellate review that extends through five days following entry of the written order. The court declined, however, to extend the stay through the resolution of the supplemental motion, thus precluding Ms. Wynn from assessing whether the relief provided will fairly represent the record to the public.

Without further argument, however, the Court reversed course and ordered that the transcript from this hearing be publicly filed.

Without this Court's intervention, the transcript will be filed into the public record immediately upon its preparation.

The Immediate Filing of the Confidential Transcript will Cause Irreparable Harm and Frustrate Ms. Wynn's Right to Review

Ms. Wynn will be seeking review of the district court's order de-designating the highly confidential notes, and of the question whether the information de-designated provides a balanced and fair depiction of events.

But Ms. Wynn's ability to seek any relief would be frustrated by the district court's filing the transcript, which discusses the very information that Ms. Wynn contends ought to remain confidential under the court's protective order. Ms. Wynn cannot pursue those other forms of

relief until the district court enters a written order. In the meantime, this Court should order the district court not to make the transcript public until the district court resolves all of the issues in the supplemental motion and Ms. Wynn has the opportunity to present the issues to this Court. *See* SRCR 4(b), (h).

CONCLUSION

Without this Court's immediate action, the district court will allow the publication of a transcript that discusses Ms. Wynn's highly confidential information. Under these extraordinary circumstances, this Court should issue a writ of prohibition ordering the district court not to publicly file the transcript from this hearing.

Dated this 16th day of May, 2018.

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CERTIFICATE OF SERVICE

I certify that on May 16, 2018, I served the foregoing “Petition for Writ of Prohibition” by United States mail, postage prepaid, to the following:

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