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IN THE SUPREME COURT OF THE STATE OF NEVADA

DESIRE EVANS-WAIAU, individually;
GUADALUPE PARRA-MENDEZ, individually;

Appellants,

v.

BABYLYN TATE, individually;

Respondent.

Docket No. 79424

REPLY IN SUPPORT OF MOTION TO INTERVENE

AND

REPLY IN SUPPORT OF MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REHEARING

Doctors refer patients for medical care; attorneys do not. *See, e.g.*, *Referral*, MedicineNet, https://www.medicinenet.com/referral/definition.htm ("The recommendation of a medical or paramedical professional."). The misguided "attorney-driven care" arguments commonly made by the defense in personal injury cases, like this one, are intended to smudge that distinction before the jury, hoping to paint plaintiffs and plaintiff attorneys as frauds.

Indeed, much of the underlying trial concerned that distinction. Although the evidence demonstrated that appellants' medical referrals were made by medical professionals, the advance opinion flatly states that Paul Powell, of The Powell Law Firm (TPLF), made medical referrals to various doctors—in other words,

directed appellants' medical care. But because "[w]ords [of the opinion] are to be given the meaning that proper grammar and usage would assign them," *see* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Text* 140 (2012), TPLF moves to intervene and allow 30 additional days to seek rehearing to correct that language. TPLF's motions are timely and proper, so the Court should grant them.

A. THE MOTION IS TIMELY.

First, TPLF's motion is timely, irrespective of the case's current late-stage procedural state. Indeed, "the mere fact that judgment already has been entered should not by itself require a motion for intervention to be denied." 7C C. Wright & A. Miller, *Fed. Prac. & Proc. Civ.* § 1916 (3d ed.). Thus, intervention has been allowed even after judgment "in a significant number of cases." *Id.* Importantly, "[t]he court must weigh the lapse of time in the light of all the circumstances of the case." *Id.* Most commonly, intervention is allowed, "but participation by the intervenor has been limited to certain issues." *Id.* § 1922.

Here, the unique circumstances of the case militate toward allowing TPLF to intervene. TPLF is not a party to the case yet suffered reputational harm by the advance opinion resolving the case. And TPLF had no reason to intervene at any prior point, because TPLF's reason for intervention was the advance opinion itself. TPLF seeks intervention on one, limited issue—an issue that does not change the

ultimate outcome of the advance opinion—which further demonstrates the propriety of the intervention. Therefore, TPLF's motion is timely.

B. TPLF HAS AN INTEREST IN THE LITIGATION.

Next, TPLF has an interest in the litigation because the advance opinion's misstatements of fact cause reputational harm to the firm. The advance opinion, as written, tacitly lends support to the "misconception that most personal injury cases are unfounded and brought in bad faith by unscrupulous lawyers." *Lioce v. Cohen*, 124 Nev. 1, 6, 174 P.3d 970, 983 (2008); *see also Barajas v. Mercedes Benz USA, LLC*, 2020 WL 10431812, at *1 (C.D. Cal. Oct. 15, 2020) ("[G]iven the often-negative public sentiment towards plaintiffs' lawyers, [arguments insinuating attorney-driven litigation] may prejudice the jury unfairly and could become a time-consuming sideshow").

This is especially harmful where, as here, arguments regarding purposed attorney-driven care are belied by the record. Indeed, the evidence showed that TPLF did not refer Evans-Waiau to a chiropractor, but that TPLF provided a list of chiropractors and Evans-Waiau chose the chiropractor closest to her home. 6 AA (Appellants' Appendix) 1333. From there, the chiropractor referred Evans-Waiau to Dr. Rosler. 4 AA 760-61. Evans-Waiau was then referred to Dr. Khavkin by Dr. Rosler. 4 AA 843, 5 AA 1175. Finally, the evidence showed that Dr. Rosler referred Evans-Waiau to Dr. Garber for a second opinion. 4 AA 851; 5 AA 1094-

95. Thus, although Powell did not—indeed, cannot—make medical referrals, the advance opinion nonetheless states that he did so, which constitutes reputational harm that provides standing for TPLF to intervene. *See, e.g.*, *Valley Health Sys., LLC v. Estate of Doe*, 134 Nev. 634, 638 n.1, 427 P.3d 1021, 1026 n.1 (2018) (reputational harm renders an issue justiciable).

C. ANY PREJUDICE TO THE NONMOVING PARTIES IS MINIMAL.

Although the continuing reputational harm to TPLF is substantial, any minimal prejudice to the nonmoving parties will be short-lived. *Am. Home Assur. Co. v. Eighth Judicial Dist. Court*, 122 Nev. 1229, 1244, 147 P.3d 1120, 1130 (2006) (Court to weigh prejudice); *see also Grubbs v. Norris*, 870 F.2d 343, 346 (6th Cir. 1989) (prejudice analysis weighed in favor of intervention when, as here, "[i]t was precisely the [court's] remedy . . . that triggered [the prospective intervenor's] clear interest in the action."). TPLF only seeks a limited re-write of minor portions of the advance opinion. Any potential briefing and rehearing on the topic are unlikely to substantially prolong this litigation or cause other parties to expend substantial resources. Thus, the Court should grant TPLF's motion.

D. TPLF's INTERESTS ARE NOT ADEQUATELY PROTECTED BY THE EXISTING PARTIES.

Finally, no party represents or protects the interest of TPLF, so TPLF easily meets the minimal burden required of this factor. *Mille Lacs Band of Chippewa Indians v. State of Minn.*, 989 F.2d 994, 999-1000 (8th Cir. 1993). Therefore, TPLF has standing for mandatory intervention under NRCP 24(a)(2). TPLF should be permitted to intervene and petition for rehearing.

E. GOOD CAUSE EXISTS TO EXTEND THE TIME FOR TPLF TO FILE A PETITION FOR REHEARING.

Because the TPLF should be permitted to intervene, the Court should likewise permit TPLF a 30-day extension to file its petition for rehearing. Pursuant to NRAP 26(1)(a), good cause exists to allow that 30-day extension of time to file a petition for rehearing. And, because Tate failed to substantively oppose the extension, she has consented to its granting. *See, e.g.*, *Bates v. Chronister*, 100 Nev. 675, 682, 691 P.2d 865, 870 (1984).

Dated August 12, 2022.

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CERTIFICATE OF SERVICE

Pursuant to Nevada Rule of Civil Procedure 5(b) and Nevada Rule of Appellate Procedure 25(c)(1)(E), I hereby certify that on August 12, 2022, this document was served via electronic service to all parties requiring notice.

/s/ Tom W. Stewart
Tom W. Stewart