

IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,

Petitioner,

vs.

THE SECOND JUDICIAL
DISTRICT COURT OF THE
STATE OF NEVADA, IN AND
FOR THE COUNTY OF WASHOE;
and THE HONORABLE
KATHLEEN M. DRAKULICH,
DISTRICT JUDGE,

Respondents.

Electronically Filed
Jan 27 2020 04:47 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 79792
(Consolidated with 80008
and 80009)

RESPONDENTS' APPENDIX

AARON D. FORD
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DATE	DOCUMENT DESCRIPTION	VOLUME	PAGE NOS.
01/17/19	Memorandum from Assistant District Attorney Bruce Hahn to Second Judicial District Court, Dept. 9	I	1
12/16/19	State's Response and Notice of Waiver <i>In re Application of Dorworth</i> , CV19-01796	I	10-15
12/20/19	State's Response and Notice of Waiver in <i>In re Application of Ferguson</i> , CV19-01126	I	2-5
12/16/19	State's Response in <i>In re Application of Dorworth</i> , CV19-01796	I	6-9
01/08/20	State's Waiver of Appearance in <i>In re Application of McCall-Fisher</i> , CV19-02457	I	16-18

RESPECTFULLY SUBMITTED this 27th day of January, 2020.

AARON D. FORD
Attorney General

By: /s/ Peter P. Handy
PETER P. HANDY
Deputy Attorney General

CERTIFICATE OF SERVICE

I certify that I am an employee of the Office of the Attorney General and that on this 27th day of January, 2020, I served a copy of the foregoing APPENDIX, by the Nevada Supreme Court's EFlex Electronic Filing System to:

JENNNIFER P. NOBLE
Chief Appellate Deputy
Washoe County District Attorney's Office

/s/ Dorene A. Wright



One South Sierra Street
Reno, Nevada 89501

775.328.3200
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Christopher J. Hicks
District Attorney

M E M O R A N D U M

TO: Second Judicial District Court, Department 9

From: Bruce C. Hahn
Assistant District Attorney

Re: WCDA Practice Change on Records Sealing Requests

DATE: January 17, 2019

The Washoe County District Attorney's Office (WCDA) will move toward a more uniform internal procedure concerning Record Sealing practices pursuant to NRS 179.245. This move will be effective February 4.

The WCDA Criminal Division will not follow a practice of stipulating to records sealing, nor will the WCDA be routinely filing any pleadings in support of or against sealing. The Petitioner will be working directly with the court for the rebuttable presumption process to follow its statutorily-defined course. The WCDA will appear at court-noticed hearings as a statutorily-interested entity in matters only where it intends to offer evidence or testimony in opposition to the civil Petition to Seal.

1 CODE No. 3880
CHRISTOPHER J. HICKS
2 #7747
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3 Reno, Nevada 89501
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4 Attorney for Respondent

5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE.

8 * * *

9 In the Matter of the Application
of ROBERT MICHAEL FERGUSON,
10 for an Order to Seal Records.

Case No. CV19-01126

11 Dept. No. D09

12 _____/
13 STATE'S RESPONSE AND NOTICE OF WAIVER PURSUANT TO NRS 179.245

14 COMES NOW, the State of Nevada, by PEG SAMPLES, Deputy District
15 Attorney, and notifies this Court of its intent to waive
16 participation in the above-referenced sealing proceedings. This
17 waiver is based upon the following points and authorities.

18 **POINTS AND AUTHORITIES**

19 Petitioner has filed a Petition to Seal Criminal Records. The
20 Second Judicial District Court has complied with its obligation
21 pursuant to NRS 179.245(3) by notifying the Washoe County District
22 Attorney (hereafter "WCDA") regarding the petition.

23 In 2017, the Nevada Legislature made clear that Nevada favors
24 the sealing of criminal convictions, and established a rebuttable
25 presumption in favor of sealing convictions. The Legislature also
26 enacted a series of statutes giving prosecutors, and anyone with

1 relevant evidence regarding a petition for sealing, the option to
2 participate in any hearing on the petition.

3 The WCDA respectfully hereby notifies this Court that it waives
4 its statutory right to participate in any sealing proceeding
5 associated with the above-entitled petition. The WCDA does not oppose
6 the petition, and it does not stipulate to the petition. Instead, the
7 WCDA waives any right to appear, argue or present evidence at the
8 sealing proceedings.

9 Although NRS 179.245 permits the prosecuting attorney to
10 participate in sealing proceedings, the permissive language of the
11 statute makes clear that such participation is not mandatory. The
12 option of participation in the sealing proceedings is afforded to the
13 prosecuting attorney and any person having relevant evidence:

14 3. Upon receiving a petition pursuant to this section, the
15 court shall notify the law enforcement agency that arrested
16 the petitioner for the crime and the prosecuting attorney,
17 including, without limitation, the Attorney General, who
18 prosecuted the petitioner for the crime. The prosecuting
19 attorney and any person having relevant evidence may
20 testify and present evidence at any hearing on the
21 petition.

22 4. If the prosecuting attorney who prosecuted the
23 petitioner for the crime stipulates to the sealing of the
24 records after receiving notification pursuant to subsection
25 3 and the court makes the findings set forth in subsection
26 5, the court may order the sealing of the records in
accordance with subsection 5 without a hearing. If the
prosecuting attorney does not stipulate to the sealing of
the records, a hearing on the petition must be conducted.

NRS 179.245(3) (emphasis added).

24 The language of NRS 179.245 (3) is clearly permissive. It makes
25 clear that a prosecuting agency may participate in a proceeding
26 regarding a petition for sealing, but it does not require the

1 prosecutor to participate. This statutorily-created option of
2 participation in the proceeding does not transform a prosecuting
3 agency that secured a petitioner's conviction into a party to the
4 sealing proceeding. Instead, the Legislature has merely granted the
5 prosecuting agency the ability to participate. This same option of
6 participation is afforded to "any person having relevant evidence."
7 NRS 179.245 (3). Such persons could include the victim, employers,
8 and other members of the community.

9 The very fact that the Legislature believed a special provision
10 was required to authorize the prosecutor to "testify" or offer
11 evidence at a hearing on the petition highlights the WCDA's non-party
12 status. If the prosecutor was a party to the action, these things
13 would be a matter of right, and standing to participate in the
14 proceedings would not need to be specially and separately conferred.

15 Because the WCDA waives its statutory right to appear at the
16 upcoming proceedings, it respectfully requests that it not be
17 required to appear at any sealing proceeding in the above-entitled
18 matter.

19 AFFIRMATION PURSUANT TO NRS 239B.030

20 The undersigned does hereby affirm that the preceding
21 document does not contain the social security number of any person.

22 Dated this 20th day of December, 2019.

23 CHRISTOPHER J. HICKS
24 District Attorney
Washoe County, Nevada

25 By /s/ Peg samples
26 PEG SAMPLES
10214
Deputy District Attorney

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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

9 In the Matter of the Application
of LOUIS CRAWFORD DORWORTH,
10 for an Order to Seal Records.

Case No. CV19-01796

11 Dept. No. 9

12 _____/
STATE'S RESPONSE

13 COMES NOW, the State of Nevada, by and through NICHOLAS L.
14 ZICARI, Deputy District Attorney, and JENNIFER P. NOBLE, Chief
15 Deputy District Attorney, and responds to this Court's Order
16 Setting Hearing issued December 11, 2019. This Response is
17 based on the following points and authorities.

18 **POINTS AND AUTHORITIES**

19 On September 13, 2019, Louis Crawford Dorworth, hereafter
20 "Dorworth," filed a Petition to Seal Criminal Records. On
21 September 30, 2019, the Second Judicial District Court complied
22 with its obligation pursuant to NRS 179.245 (3) by notifying the
23 Division of Parole and Probation, Michael Kovac (a district
24

1 attorney in Las Vegas), the Nevada Highway Patrol, , the Washoe
2 County Sheriff, and the Washoe County District Attorney that
3 Dorworth had filed a petition to seal criminal records. On
4 December 11, 2019, this Court ordered the Washoe County District
5 Attorney (hereafter "WCDA") to physically appear and present
6 oral argument on Dorworth's petition on January 13, 2019, at
7 9:30a.m.

8 Although NRS 179.245 permits the prosecuting attorney to
9 participate in sealing proceedings, the permissive language of
10 the statute makes clear that such participation is not
11 mandatory. The option of participation in the sealing
12 proceedings is afforded to the prosecuting attorney and any
13 person having relevant evidence:

14 3. Upon receiving a petition pursuant to this
15 section, the court *shall* notify the law enforcement
16 agency that arrested the petitioner for the crime and
17 the prosecuting attorney, including, without
18 limitation, the Attorney General, who prosecuted the
19 petitioner for the crime. The prosecuting attorney and
20 any person having relevant evidence *may* testify and
21 present evidence at any hearing on the petition.

22 4. If the prosecuting attorney who prosecuted the
23 petitioner for the crime stipulates to the sealing of
24 the records after receiving notification pursuant to
subsection 3 and the court makes the findings set
forth in subsection 5, the court may order the sealing
of the records in accordance with subsection 5 without
a hearing. If the prosecuting attorney does not
stipulate to the sealing of the records, a hearing on
the petition must be conducted.

NRS 179.245 (3) (*emphasis added*).

1 **CERTIFICATE OF MAILING**

2 Pursuant to NRCP 5(b), I hereby certify that I am an
3 employee of the Washoe County District Attorney's Office and
4 that, on December 16, 2019, I deposited for mailing through the
5 U.S. Mail Service at Reno, Washoe County, Nevada, postage
6 prepaid, a true copy of the foregoing document, addressed to:

7
8 Louis Crawford Dorworth
9 2320 NW Victoria Ct.
10 McMinnville, OR 97128

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/s/ Terri Norris
TERRI NORRIS

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One South Sierra Street
3 Reno, Nevada 89501
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4 Attorney for Respondent

5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

9 In the Matter of the Application
of LOUIS CRAWFORD DORWORTH,
10 for an Order to Seal Records.

Case No. CV19-01796

11 Dept. No. 9

12 _____/
13 **STATE'S RESPONSE AND NOTICE OF WAIVER**
PURSUANT TO NRS 179.245

14 COMES NOW, the State of Nevada, by and through NICHOLAS L.
15 ZICARI, Deputy District Attorney, and responds to this Court's
16 Order Setting Hearing issued December 11, 2019. This purpose of
17 this Response and Notice of Waiver is to advise the Court that
18 the State is exercising its statutory right to waive
19 participation in the above proceeding, and is based on the
20 following points and authorities.

21 **POINTS AND AUTHORITIES**

22 **I. PROCEDURAL HISTORY**

23 On September 13, 2019, Louis Crawford Dorworth, hereafter
24 "Dorworth," filed a Petition to Seal Criminal Records. On

1 September 30, 2019, the Second Judicial District Court complied
2 with its obligation pursuant to NRS 179.245 (3) by notifying the
3 Division of Parole and Probation, Michael Kovac (a district
4 attorney in Las Vegas), the Nevada Highway Patrol, the Washoe
5 County Sheriff, and the Washoe County District Attorney
6 (hereafter "WCDA") that Dorworth had filed a petition to seal
7 criminal records. The State did not file an opposition or
8 stipulation to the petition. On December 11, 2019, this Court
9 set a hearing and ordered the WCDA to physically appear before
10 Department 9 in the Second Judicial District Court and present
11 oral argument on Dorworth's petition on January 13, 2019, at
12 9:30a.m.

13 **II. WAIVER AND SUPPORTING AUTHORITY**

14 In 2017, the Nevada Legislature made clear that Nevada
15 favors the sealing of criminal convictions, and established a
16 rebuttable presumption in favor of sealing convictions. The
17 Legislature also enacted a series of statutes giving
18 prosecutors, and anyone with relevant evidence regarding a
19 petition for sealing, the option to participate in any hearing
20 on the petition.

21 This Court has ordered the WCDA to present oral argument
22 regarding the merits of the petition. The WCDA respectfully
23 hereby notifies this Court that it waives its statutory right to
24 participate in the proceeding and therefore has no oral argument

1 to offer. The WCDA does not oppose the petition, and it does not
2 stipulate to the petition. Instead, the WCDA waives any right
3 to argue or present evidence at the upcoming hearing.

4 Although NRS 179.245 permits the prosecuting attorney to
5 participate in sealing proceedings, the permissive language of
6 the statute makes clear that such participation is not
7 mandatory. The option of participation in the sealing
8 proceedings is afforded to the prosecuting attorney and any
9 person having relevant evidence:

10 3. Upon receiving a petition pursuant to this
11 section, the court *shall* notify the law enforcement
12 agency that arrested the petitioner for the crime and
13 the prosecuting attorney, including, without
14 limitation, the Attorney General, who prosecuted the
petitioner for the crime. The prosecuting attorney and
any person having relevant evidence *may* testify and
present evidence at any hearing on the petition.

15 4. If the prosecuting attorney who prosecuted the
16 petitioner for the crime stipulates to the sealing of
17 the records after receiving notification pursuant to
18 subsection 3 and the court makes the findings set
19 forth in subsection 5, the court may order the sealing
of the records in accordance with subsection 5 without
a hearing. If the prosecuting attorney does not
stipulate to the sealing of the records, a hearing on
the petition must be conducted.

20 NRS 179.245 (3) (*emphasis added*).

21 The language of NRS 179.245 (3) is clearly permissive. It
22 makes clear that a prosecuting agency may participate in a
23 proceeding regarding a petition for sealing, but it does not
24 require the prosecutor to participate. This statutorily-created

1 option of participation in the proceeding does not transform a
2 prosecuting agency that secured a petitioner's conviction into a
3 party to the sealing proceeding. Instead, the Legislature has
4 merely granted the prosecuting agency the ability to
5 participate. This same option of participation is afforded to
6 "any person having relevant evidence." NRS 179.245 (3). Such
7 persons could include the victim, employers, and other members
8 of the community.

9 The very fact that the Legislature believed a special
10 provision was required to authorize the prosecutor to "testify"
11 or offer evidence at a hearing on the petition highlights the
12 WCDA's non-party status. If the prosecutor was a party to the
13 action, these things would be a matter of right, and standing to
14 participate in the proceedings would not need to be specially
15 and separately conferred.

16 Because the WCDA waives its statutory right to appear at
17 the upcoming proceedings, it respectfully requests that this
18 Court issue an order indicating that the WCDA is not required to
19 appear at the January 13, 2019, sealing proceeding.

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1 **CERTIFICATE OF MAILING**

2 Pursuant to NRCP 5(b), I hereby certify that I am an
3 employee of the Washoe County District Attorney's Office and
4 that, on December 16, 2019, I deposited for mailing through the
5 U.S. Mail Service at Reno, Washoe County, Nevada, postage
6 prepaid, a true copy of the foregoing document, addressed to:

7
8 Louis Crawford Dorworth
9 2320 NW Victoria Ct.
10 McMinnville, OR 97128

11 /s/ Terri Norris
12 TERRI NORRIS
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5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

9 In the Matter of the Application Case No. CV19-02457
10 of AMANDA LEIGH MCCALL-FISHER
also known as
11 AMANDA LEIGH MCCALL, Dept. No. 8

12 For an Order to Seal Records.

13 _____/
14 **STATE'S WAIVER OF APPEARANCE PURSUANT TO NRS 179.245**

15 COMES NOW, the State of Nevada, by JENNIFER P. NOBLE, Chief
16 Deputy District Attorney, and notifies this Court of its intent
17 to waive participation and appearance in the above-referenced
18 sealing proceedings. This waiver is based upon the following
19 points and authorities.

20 **POINTS AND AUTHORITIES**

21 Petitioner has filed a Petition to Seal Criminal
22 Records. The Second Judicial District Court has complied with
23 its obligation pursuant to NRS 179.245(3) by notifying the

24 ///

1 Washoe County District Attorney (hereafter "WCDA") regarding the
2 petition.

3 The WCDA respectfully notified this Court that it waives
4 its statutory right to participate in any sealing proceeding
5 associated with the above-entitled petition in its Response
6 filed December 31, 2019. On January 8, 2020, this Court issued
7 its Order Setting Hearing. The Order acknowledged the State's
8 intent to waive participation in the proceedings.

9 Because the WCDA waives its statutory right to appear at
10 the upcoming proceedings, it respectfully requests an Order from
11 this Court indicating that counsel for the State need not appear
12 at the sealing proceeding scheduled for February 13, 2020.

13 AFFIRMATION PURSUANT TO NRS 239B.030

14 The undersigned does hereby affirm that the preceding
15 document does not contain the social security number of any
16 person.

17 DATED: January 8, 2020.

18 CHRISTOPHER J. HICKS
19 District Attorney

20 By /s/ JENNIFER P. NOBLE
21 JENNIFER P. NOBLE
22 CHIEF DEPUTY
23 DISTRICT ATTORNEY
24

