

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court No. _____
District Court Case No. A-18-772761-C

Electronically Filed
Mar 17 2020 01:48 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

VENETIAN CASINO RESORT, LLC, a Nevada limited liability company,
LAS VEGAS SANDS, LLC, a Nevada limited liability company,
Petitioners,

v.

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN
AND FOR THE COUNTY OF CLARK, AND THE HONORABLE KATHLEEN
DELANEY in her capacity as District Judge,
Respondent,
JOYCE SEKERA, an individual,
Real Party in Interest

EMERGENCY MOTION UNDER NRAP 27(e)

EMERGENCY MOTION UNDER NRAP 8 STAYING EXECUTION OF
ORDER DIRECTING PETITIONERS TO DISCLOSE PRIVATE, PROTECTED
INFORMATION OF GUESTS NOT INVOLVED IN UNDERLYING LAWSUIT

ACTION IS NEEDED BY MARCH 30, 2020 BEFORE PETITIONER IS
REQUIRED TO DISCLOSE THE CONFIDENTIAL INFORMATION

THIS MOTION IS BEING FILED CONCURRENTLY WITH AN EMERGENCY
PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION

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NRAP 27(E) CERTIFICATE

STATE OF NEVADA)
COUNTY OF CLARK) ss:

1. I am an attorney licensed to practice in the State of Nevada and am an attorney at the law firm of Royal & Miles LLP, Attorneys for Petitioners VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC, in support of this EMERGENCY MOTION UNDER NRAP 8 STAYING EXECUTION OF ORDER DIRECTING PETITIONERS TO DISCLOSE PRIVATE, PROTECTED INFORMATION OF GUESTS NOT INVOLVED IN UNDERLYING LAWSUIT.

CONTACT INFORMATION FOR ATTORNEYS FOR THE PARTIES

2. The telephone numbers and office addresses of the attorneys for the Real Party in Interest are listed as follows:

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NOTICE TO THE PARTIES

3. Counsel for Real Party In Interest, Joyce Sekera (hereinafter “Sekera”), was served with this Motion via electronic service as identified on the proof of service in this document. Prior to filing this Motion and the Petition my office contacted, by telephone, the clerk of the Supreme Court, the Clerk of the Eight Judicial District Court of the State of Nevada, and Real Party in Interest's attorney to notify them that Petitioners were filing the instant Emergency Motion and Petitioners’ Emergency Petition for Writ of Mandamus and/or Writ of Prohibition Under NRAP Rules 21(A)(6) And 27(E).

FACTS SHOWING EXISTENCE AND NATURE OF EMERGENCY

4. The facts showing the existence and nature of Petitioners’ emergency are as follows: There is presently a writ pending before the Court of Appeals of the State of Nevada, Case Number 79689-COA, addressing a July 31, 2019 order by the District Court requiring Venetian to produce unredacted prior incident reports from November 4, 2013 to November 4, 2016 to the Plaintiff in the course of discovery without any requested protection under NRCP, Rule 26(c). An Order Directing Answer and Imposing Temporary Stay was filed by the Court of Appeals on October 1, 2019, which stayed the July 31, 2019 discovery order until the issue is adjudicated by the appellate court. An order granting the stay pending review of the petition was filed on October 17, 2019.

5. Following the entry of the above-referenced orders, the District Court considered a new and different motion regarding the same type of records for a different period of time. During a hearing before the District Court on January 21, 2020, District Court Judge Kathleen Delaney ordered that Petitioners must produce unredacted records of prior guest incidents from November 4, 2011 to November 4, 2013, without requested protections under NRCP, Rule 26(c). This order addresses the very same issue presently before the Nevada Court of Appeals on the earlier writ. Given that this was the same issue, Petitioners, in open court, requested the District Court to stay the production pending adjudication by the Nevada Court of Appeals on the prior writ petition. This request was denied.

6. An order was entered on March 13, 2020 directing Venetian to produce unredacted reports of other incidents involving Venetian guests from November 4, 2011 to November 4, 2013 without providing requested protection under NRCP, Rule 26(c). In denying Petitioners' request for a stay, Judge Delaney suggested at the January 21, 2020 hearing that Petitioners may file a second writ of mandamus and/or writ of prohibition and obtain a stay from the appellate court. Therefore, immediate action is required to prevent Venetian and its guests from suffering irreparable harm.

7. Petitioners will be required to divulge confidential information of non-party litigants immediately, if this Court does not take action. Concurrently

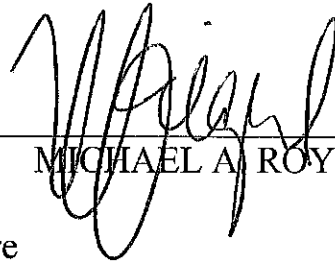
with this Motion, Petitioner is filing an Emergency Petition for Writ of Mandate and/or Prohibition. If this Court grants this motion, then the emergency will be abated and the concurrently filed Petition may be considered on a non-emergency basis.

8. The relief sought in the Writ Petition is not available by the District Court. Petitioners moved to stay the March 13, 2020 order during the January 21, 2020 hearing. The District Court denied the Motion for Stay and indicated that relief would need to be obtained from the appellate court pursuant to NRAP 8. It is imperative this matter be heard at the Court's earliest possible convenience.

9. I certify that I have read this motion and, to the best of my knowledge, information and belief, this motion complies with the form requirements of Rule 21(d) and is not frivolous or interposed for any improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

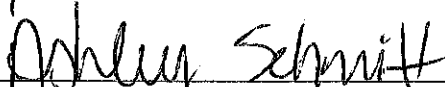
10. I further certify that this brief complies with all Nevada Rules of Appellate Procedure, including the requirements of Rule 28(e) every assertion in the brief regarding matters in the record be supported by a reference to the appendix where the matter relied upon is to be found. I understand I may be subject to sanctions in the event the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Further affiant sayeth naught.



MICHAEL A. ROYAL, ESQ.

SUBSCRIBED AND SWORN to before
me by Michael A. Royal, Esq., on this
17 day of March, 2020.



NOTARY PUBLIC in and for said
County and State

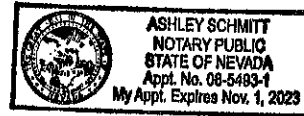


TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
MOTION	1
MEMORANDUM OF POINTS AND AUTHORITIES	2
I. STATEMENT AS TO RELIEF SOUGHT IN DISTRICT COURT	2
II. BASIS FOR RELIEF	3
III. STATEMENT OF FACTS	4
IV. LEGAL ARGUMENT	6
A. Sekera Did Not Meet Her Burden of Proof under NRCP 26(b)(1) to Establish the Need for Unredacted Prior Incident Reports.....	6
B. Personal, Private Information of Guests Identified in Prior Incident Reports is entitled to NRCP 26(c) Protection	8
C. An Emergency Stay is Necessary to Prevent Irreparable Harm.....	9
V. CONCLUSION.....	10

TABLE OF AUTHORITIES

Cases

<i>Eldorado Club, Inc. v. Graff</i> 78 Nev. 507, 377 P.2d 174 (1962).....	4, 6, 8
<i>Izzo v. Wal-Mart Stores, Inc.</i> 2016 U.S. Dist. LEXIS 12210; 2016 WL 409694.....	8, 9
<i>Rowland v. Paris Las Vegas</i> 2015 U.S. Dist. LEXIS 105513; 2015 WL 4742502.....	9
<i>Schlatter v. Eighth Judicial Dist. Court In and For Clark County</i> 93 Nev. 189 561 P.2d 1342 (1977).....	8

Rules

NRAP 8(a)	9
NRCP 26(b)(1)	6, 7, 8, 9
NRCP 26(c)	1, 3, 4, 5, 8

MOTION

COMES NOW Petitioners VENETIAN CASINO RESORT, LLC, and LAS VEGAS SANDS, LLC, by and through their counsel of record, ROYAL & MILES LLP, and respectfully petition this Court issue an order for the immediate stay of execution on a March 13, 2020 order issued by the Eighth District Court directing Venetian to provide Sekera with unredacted copies of prior incident reports related to guests involved in other incidents occurring on the Venetian premises.

The March 13, 2020 order issued by the district court in Sekera v. Venetian Casino Resort, LLC, et al. Case No. A772761 is based on Judge Delaney's incorrect determination that there is no legal basis under NRCP 26(c) to protect the privacy interests of persons involved in other incidents occurring on Venetian property. The order not only allows for Sekera to identify all guests involved in other unrelated incidents on Venetian property, but allows for the free distribution of that information by Sekera to anyone, anywhere at any time. Venetian will suffer irreparable harm if a stay is not granted, allowing this Court time to review the merits of Venetian's petition for writ of mandamus and/or writ of prohibition. Petitioner is seeking relief in the concurrently filed Petition for Writ of Mandamus and/or Prohibition on an emergency basis. The emergency is the compelled immediate disclosure of confidential private information. If this Court grants this

motion for a stay, then the emergency will be abated and the Petition for Writ of Mandate and/or Prohibition may be considered on a non-emergency basis.

This Motion is based on the following Memorandum of Points and Authorities, the Appendix of record and such oral arguments as presented to this Honorable Court.

DATED this 17 day of March, 2020.

ROYAL & MILES LLP

By 

Michael A. Royal, Esq. (SBN 4370)
Gregory A. Miles, Esq. (SBN 4336)
1522 W. Warm Springs Rd.
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(702) 471-6777
Counsel for Petitioners

MEMORANDUM OF POINTS AND AUTHORITIES

I. STATEMENT AS TO RELIEF SOUGHT IN DISTRICT COURT

Petitioners moved for a stay of execution in district court, which was denied. Due to the exigent circumstances, and the potential violation of privacy rights for hundreds of individuals wholly unconnected to the subject litigation, this Emergency Motion is being filed with this Court. It has been brought in good faith. In addition, Petitioners have no other available avenue for relief. This is a matter of great importance to Petitioners not only as to this litigation, but as to all

future litigation, as there are presently no restrictions placed on Sekera regarding what she is allowed to do with the personal information ordered produced.

Accordingly, once Petitioners comply with the order, there is no reasonable means of repairing the damage.

On October 1, 2019, the Nevada Court of Appeals in case no. 79689-COA granted Petitioners a stay of a July 31, 2019 District Court order in this matter addressing the exact evidence and issues pending again here. Following the issuance of that stay the District Court issued another order covering incident reports from a different time period than the July 31, 2019 order. Again, in this March 13, 2020 order the District Court is requiring Petitioners to produce unredacted prior incident reports without protection under NRCP 26(c). At the January 21, 2020 hearing on the discovery motion giving rise to the March 13, 2020 order, petitioners moved for a stay of execution, which was denied.

II. BASIS FOR RELIEF

The District Court failed to fairly consider the privacy rights of individual non-parties to the litigation by ordering the production of unredacted prior incident reports from November 4, 2011 to November 4, 2013, without requested NRCP 26(c) protection. This is especially troubling since the Nevada Court of Appeals previously stayed execution of the July 31, 2019 order which addresses the exact same kind of evidence from November 4, 2013 to November 4, 2016.

Petitioners will be irreparably harmed without the issuance of a stay of the order directing Venetian to provide unredacted incident reports to Sekera. In discovery, Sekera requested reports of prior slip-and-fall incidents. The March 13, 2020 District Court order requires Petitioner to produce these reports without redactions to protect non-parties' private personal information. Under the circumstances of the accident at issue in this matter, these prior incident reports have marginal relevance to the case in light of prevailing Nevada law.¹ Therefore, providing this unredacted information to Sekera without any of the requested protection under NRCP 26(c) will cause Petitioners (and the identified guests) irreparable harm. Accordingly, Petitions respectfully request that this Court **grant the emergency motion and issue an immediate order staying the production of unredacted incident reports** until such time as the Court can rule on the writ of mandamus and/or prohibition that will be filed in this case.

III. STATEMENT OF FACTS

This case arises from an alleged slip and fall at the Venetian that occurred on November 4, 2016, involving JOYCE SEKERA ("Sekera"). More specifically, Sekera alleges that as she was walking through the Grand Lux rotunda area of the Venetian property, she slipped on water and fell, resulting in bodily injuries.

¹ *Eldorado Club, Inc. v. Graff*, 78 Nev. 507, 511, 377 P.2d 174, 176 (1962).

In the course of discovery, Sekera requested that Petitioners produce incident reports related to other slip-and-falls from November 4, 2013 to the present. Petitioners produced redacted copies of incident reports from November 4, 2013 to November 4, 2016. Sekera objected to the production of redacted reports. This dispute ultimately resulted in the July 31, 2019, order requiring Petitioners to produce unredacted incident reports, which included non-party guests' names, addresses, telephone numbers, dates of birth, social security numbers, and driver's license/identification card numbers. On October 17, 2019, the Court of Appeals in Case Number 79689-COA issued an order staying the July 31, 2019 order pending a review of the petition challenging the underlying court order.

Subsequent to the discovery request at issue in case number 79689-COA, Sekera requested that Petitioners produce records of incident reports from 1999 to the present. This led to another dispute that resulted in a January 21, 2020 hearing before Judge Delany.

Judge Delaney issued an order covering many topics in dispute, including that Petitioners produce prior incident reports from November 4, 2011 to November 4, 2013 and that the reports be in unredacted form without requested protections under NRCP, Rule 26(c). Petitioners reminded Judge Delaney that the issue of privacy related to this very kind of production is presently before the

Nevada Court of Appeals and moved the District Court to stay the portion of the order on the production until the issue is resolved by the Nevada Court of Appeals. Judge Delaney denied Petitioners' motion to stay.

Judge Delany's order was entered on March 13, 2020. Pursuant to that order Petitioners will again be required to produce unredacted incident reports involving other Venetian guests, including those guests' names, addresses, telephone numbers, dates of birth, social security numbers, and driver's license/identification card numbers. Under this order, Sekera again has no restrictions whatsoever on how the private information of Venetian guests will be used and shared.

Petitioners once again hereby assert that once this information is produced in unredacted form, it will be immediately shared with others outside the litigation and the harm will be irreparable. Accordingly, circumstances necessitate the filing of this writ and this request for a stay of the March 13, 2020 order.

IV. LEGAL ARGUMENT

A. Sekera Did Not Meet Her Burden of Proof under NRCP 26(b)(1) to Establish the Need for Unredacted Prior Incident Reports

The Nevada Supreme Court has held that in slip-and-fall cases involving the temporary presence of debris or foreign substance, such as the instant matter, evidence of prior incidents is not admissible to establish notice. (*Eldorado Club, Inc., supra*, 78 Nev. at 511, 377 P.2d at 176)

Rule 26(b)(1), Nevada Rules of Civil Procedure, reads as follows:

. . . Parties may obtain discovery regarding any nonprivileged matter that is **relevant** to any party's claims or defenses and **proportional** to the needs of the case, **considering the importance of the issues at stake** in the action, the **amount in controversy**, the **parties' relative access to relevant information**, the **parties' resources**, the **importance of the discovery** in resolving the issues, and whether the **burden or expense of the proposed discovery outweighs its likely benefit**. . . . (Emphasis added.)

Accordingly, Sekera has the burden of establishing that the production of unredacted prior incident reports is both **relevant** to issues surrounding the November 4, 2016 incident and that the production of this discovery is **proportional** to the needs of the case in light of the above stated five factors. Sekera has failed to do so. Her only argument for the production of the private information of non-parties is to protect against any arguments of comparative fault at trial. Private information on non-party individuals who did not witness the accident is clearly not relevant to comparative fault arguments. Sekera also argued she has an unqualified right to share the guests' private information with anyone she desires.

Sekera's argument claiming there is no law restricting her use of confidential information is an inaccurate analysis of Nevada laws. NRCP 26(b)(1) places restrictions on her ability to obtain this information. Sekera is required to show that her need for this information outweighs the guests' need to protect their private information. Sekera failed to make this showing in the District Court.

B. Personal, Private Information of Guests Identified in Prior Incident Reports is entitled to NRCP 26(c) Protection

Pursuant to the March 13, 2020 Order, the District Court has provided Sekera with unfettered access to personal and sensitive information of individuals who are not parties to this action. This private information is not relevant to any claims or defenses in this matter. Pursuant to the earlier discovery, she has already been provided with redacted prior incident reports to establish issues associated with notice. Petitioners are willing to provide the 2011-2013 reports as well, with appropriate redactions to protect private information of other guests.

The Nevada Supreme Court has recognized that individuals have privacy interests that are protected from disclosure in discovery under NRCP 26(b)(1). (*Schlatter v. Eighth Judicial Dist. Court In and For Clark County*, 93 Nev. 189, 192, 561 P.2d 1342, 192-93 (1977)) Moreover, the United States District Court for the District of Nevada applying Nevada law to the federal equivalent of NRCP 26(b)(1) has found that non-party information is subject to privacy protection.

In *Izzo v. Wal-Mart Stores, Inc.*, 2016 U.S. Dist. LEXIS 12210; 2016 WL 409694, a slip-and-fall plaintiff filed a motion to compel the defendant to produce evidence of prior claims and incidents. The court evaluated the claim under Nevada law as set forth in *Eldorado Club, Inc., supra* at 511, 377 P.2d at 176. The federal district court found that the burden on defendant and the privacy interests of the non-litigants outweighed the tangential relevance of the information to the

issues in the lawsuit. (*Id.* at 4, 2016 U.S. Dist LEXIS at *11.) Similarly, in *Rowland v. Paris Las Vegas*, 2015 U.S. Dist. LEXIS 105513; 2015 WL 4742502, the federal district court applying the federal equivalent of NRCP 26(b)(1) found that third parties have a protected privacy interest in their identities, phone numbers and addresses. It explained as follows:

Further, the Court finds that requiring disclosure of the addresses and telephone numbers of prior hotel guests would violate the privacy rights of third parties. ... "When the constitutional right of privacy is involved, 'the party seeking discovery must demonstrate a compelling need for discovery, and that compelling need must be so strong as to outweigh the privacy right when these two competing interests are carefully balanced.'" [Citations omitted].

(*Id.* at *7.)

In the instant matter, Sekera has shown no compelling reason under NRCP 26(b)(1) for the production of non-litigant individual's private information. Accordingly, the District Court's March 13, 2020 order requiring Petitioner to produce unredacted prior incident reports is clearly in error.

C. An Emergency Stay is Necessary to Prevent Irreparable Harm

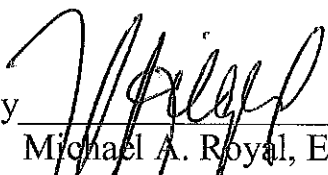
As set forth in more detail above, Petitioners have met the requirements of NRAP 8(a) and have set forth the need for an emergency stay under the circumstances, having no other speedy and adequate remedy at law other than to seek relief from this Honorable Court.

V. **CONCLUSION**

The order by the District Court to compel Petitioners to provide private information of individuals who are not involved in the underlying action shocks the conscience. In a world where privacy of personal information is placed at a premium, it is difficult to comprehend that Nevada would be unwilling to protect this kind of information in a case where it has no relevance. Therefore, Petitioners hereby move for emergency relief as requested herein so that this Court may consider Petitioners' Writ of Mandamus and/or Prohibition on a non-emergency basis. If the requested relief is not granted on an emergency basis then innocent third parties will have their privacy rights irreparably damaged.

DATED this 17 day of March, 2020.

ROYAL & MILES LLP

By 
Michael A. Royal, Esq. (SBN 4370)
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(702) 471-6777
Counsel for Petitioners

PROOF OF SERVICE

The undersigned does hereby declare that I am over the age of eighteen (18) years and not a party to the within entitled action. I am employed by Royal & Miles LLP, 1522 W. Warm Springs Rd., Henderson, NV 89014. I am readily familiar with Royal & Miles LLP's practice for collection and processing of documents for delivery by way of the service indicated below. On March 17, 2020, I served the following document(s): EMERGENCY MOTION UNDER NRAP 8 STAYING EXECUTION OF ORDER DIRECTING PETITIONERS TO DISCLOSE PRIVATE, PROTECTED INFORMATION OF GUESTS NOT INVOLVED IN UNDERLYING LAWSUIT on the interested party in this action as follows:

Keith E. Galliher, Jr., Esq.
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(702) 735-0049

Honorable Kathleen Delaney
Eighth Jud. District Court, Dept. 25
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Attorneys for Real Party in Interest

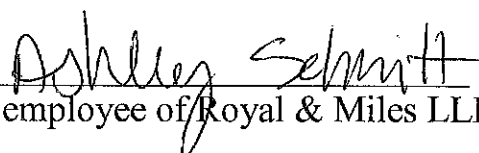
X By Hand Delivery. By placing said document(s) in an envelope or package or collection and hand delivery, addressed to the person(s) at the

address(es) listed above, following our ordinary business practices. I am readily familiar with the firm's Practice for hand delivering and processing of documents.

X By Electronic Mail/Service. Pursuant to Administrative Order 14-2 and Rule 9 of the NEFCR, I caused said documents(s) to be transmitted to the person(s) identified in the E-Service List for this captioned case in Odyssey E-File & Serve of the Eighth Judicial District Court, County of Clark, State of Nevada. The E-Mail transmission confirmation and the e-service transmission report reported service as complete and a copy of the service transmission report will be maintained with the document(s) in this office.

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

Executed on March 7, 2020, at Las Vegas, Nevada.


An employee of Royal & Miles LLP