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DISTRICT COURT

CLARK COUNTY, NEVADA

STEPHEN A. WYNN, an individual, Petitioner, vs. NEVADA GAMING COMMISSION, a political subdivision of the State of Nevada; and NEVADA GAMING CONTROL BOARD, a political subdivision of the State of Nevada, Respondents.	Case No. A-20-809249-J Dept. No. XIV

NEVADA GAMING COMMISSION'S NOTICE OF APPEAL

TO: STEPHEN A. WYNN, Petitioner

TO: DONALD J. CAMPBELL AND J. COLBY WILLIAMS, attorneys for Petitioner

NOTICE IS HEREBY GIVEN that Respondent Nevada Gaming Commission, through its counsel, appeals to the Supreme Court of Nevada the Order Granting

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. . .

. . .

Docket 82263 Document 2020-46511

Case Number: A-20-809249-J

Petitioner's Petition for Judicial Review entered in this action on November 25, 2020, a copy of which is attached here to as Exhibit "A".

DATED this 23rd day of December, 2020.

AARON D. FORD
Attorney General

By: /s/ *Kiel B. Ireland*
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Chief Deputy Attorney General
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Deputy Attorney General
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Nevada Gaming Commission

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court by using the electronic filing system on the 23rd day of December, 2020, and e-served the same on all parties listed on the Court's Master Service List.

/s/ *Traci Plotnick*
Traci Plotnick, an employee of the
Office of the Attorney General

EXHIBIT A

EXHIBIT A

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DISTRICT COURT

CLARK COUNTY, NEVADA

STEPHEN A. WYNN, an individual,

Petitioner,

vs.

NEVADA GAMING COMMISSION, a political subdivision of the State of Nevada; and NEVADA GAMING CONTROL BOARD, a political subdivision of the State of Nevada,

Respondents.

CASE NO.: A-20-809249-J
DEPT. NO.: 14

NOTICE OF ENTRY OF ORDER GRANTING PETITIONER'S PETITION FOR JUDICIAL REVIEW

Please take notice that on the 19th day of November, 2020, an Order Granting Petitioner's Petition for Judicial Review was duly entered in the above-entitled matter, a copy of which is attached hereto and by this reference made part hereof.

DATED this 25th day of November, 2020.

CAMPBELL & WILLIAMS

By:/s/ ***J. Colby Williams***

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Campbell & Williams, and that on this 25th day of November, 2020, I caused the foregoing document entitled **NOTICE OF ENTRY OF ORDER GRANTING PETITIONER'S PETITION FOR JUDICIAL REVIEW** to be served upon those persons designated by the parties in the E-Service Master List for the above-reference matter in the Eight Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

By: /s/ ***Crystal B. Balaoro***
An Employee of Campbell & Williams

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DISTRICT COURT
CLARK COUNTY, NEVADA

STEVEN A. WYNN, an individual, Petitioner, vs. NEVADA GAMING COMMISSION, a political subdivision of the State of Nevada; and NEVADA GAMING CONTROL BOARD, a political subdivision of the State of Nevada, Respondents.	Case No. : A-20-809249-J Dept. No.: XIV (14) **ORDER GRANTING PETITIONER'S PETITION FOR JUDICIAL REVIEW**

Petitioner Steven A. Wynn's Petition for Judicial Review, Alternatively, for Writs of Mandamus and/or Prohibition (Petition), Respondent Nevada Gaming Commission's Opposition to Wynn's Petition and Countermotion to Dismiss, and Respondent Nevada Gaming Control Board's Answering Brief and Countermotion to Dismiss under NRCP 12(b)(5) came on for hearing before Department XIV of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on September 17, 2020, and November 17, 2020, respectively.[1] Attorneys Donald J. Campbell and J. Colby Williams appeared via Blue Jeans on behalf of Petitioner. Attorneys Kiel B. Ireland and Darlene S. Caruso appeared via Blue Jeans on behalf of Respondent Nevada Gaming Commission (Commission). Attorney Steven Shevorski appeared via Blue Jeans on behalf of Respondent Nevada Gaming Control Board (Board). Having considered arguments of counsel, the moving papers, and the Record on Review (ROR) before it, this Court **HEREBY FINDS AND ORDERS AS FOLLOWS**:

FACTUAL AND PROCEDURAL HISTORY

Petitioner is the former Chairman, Chief Executive Officer, and controlling shareholder of Wynn Resorts, Limited (Wynn Resorts). Wynn Resorts, through its

[1]The Commission and Board's Motions were heard together on September 17, 2020.

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subsidiary, Wynn Las Vegas, LLC (Wynn Las Vegas), owns and operates the Wynn Las Vegas and Encore casino-resort properties. In or about March 2005, the Board recommended, and the Commission approved, Wynn Las Vegas for an unrestricted gaming license. As part of the process, Petitioner was found suitable in his various capacities with Wynn Resorts.

On January 26, 2018, the Wall Street Journal published an article regarding Petitioner's alleged sexual indiscretions while he was Chairman and CEO of Wynn Resorts. Soon thereafter, the Board began investigating the allegations.

On February 6, 2018, Petitioner effectively resigned as Chairman and CEO of Wynn Resorts. ROR 87-88. On February 15, 2018, Petitioner entered into a Separation Agreement with Wynn Resorts and Wynn Resorts Holdings, LLC (Wynn Holding Company) setting forth the terms of his separation. ROR 90. Petitioner sold all his stock in Wynn Resorts by March 22, 2018. Petitioner also moved from his residence on the property by April 2018.

The Board's "Location Report" on the Wynn Resorts license reflects the dates it removed Petitioner from his positions as Chairman and CEO of Wynn Resorts and controlling shareholder. ROR 79. Wynn Resorts provided notice to the Board and/or Commission that there had been a change in the relationship between itself and Petitioner. Upon notice, the Board effectuated that change on the "Location Report." The Board removed Petitioner as an officer and director on February 23, 2018 and as a shareholder on March 28, 2018. ROR 79.

Approximately three months later, on or about June 29, 2018, the Board sent Petitioner a letter stating its intent to conduct an investigative hearing in late August 2018 and that Petitioner was required to appear and testify pursuant to NRS 463.140(5). ROR 110. The letter further stated that Petitioner's failure to appear and testify could result in revocation of Petitioner's finding of suitability pursuant to Nevada Gaming Commission Regulations (Commission Regulations) 5.070. ROR 110.

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Petitioner failed to appear and testify at a Board-conducted investigative hearing that was ultimately scheduled for September 7, 2018—approximately six months after Petitioner divested himself from, and sold all ownership in, Wynn Resorts.

On or about January 25, 2019, the Board filed a complaint against Wynn Resorts arising from the Board's investigation. ROR 116-137. However, on February 26, 2019, the Commission accepted a Stipulation for Settlement and Order entered into between the Board and Wynn Resorts that resolved the complaint for a fine of $20,000,000. ROR 139-146.

Approximately a year and a half after the Board began its investigation, on October 14, 2019, the Board filed a complaint (Complaint) against Petitioner seeking the Commission's revocation of Petitioner's findings of suitability on the ground that Petitioner "has repeatedly violated Nevada's gaming statutes and regulations, bringing discredit upon the State of Nevada and its gaming industry" and "is unsuitable to be associated with a gaming enterprise or the gaming industry as whole." ROR 4. The Complaint further alleged that the negative reporting from the publicity of Petitioner's conduct "harmed Nevada's reputation and its gaming industry" and "damaged the public's confidence and trust in an industry that is vitally important to the economy of the State of Nevada and the general welfare of its inhabitants." *Id.*

Five counts comprised the complaint. The first four counts primarily allege that Petitioner engaged in sexual conduct with employees in violation of NRS 463.170, in addition to Gaming Commission Regulations. *See generally* ROR 16-22. The fifth count alleged that Petitioner's failure to appear and testify at the investigative hearing was a violation of Commission Regulation 5.070, which provides that such failure constitutes grounds for the revocation or suspension of any license held by the person summoned. *See* ROR 23-25.

Petitioner moved to dismiss the Board's complaint for lack of subject matter jurisdiction, which the Commission denied. The Commission entered its written Order Denying Respondent's Motion to Dismiss on January 9, 2020.

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On January 27, 2020, Petitioner filed the underlying Petition on the premise that the Board and Commission lack statutory authority or jurisdiction to pursue any action against Petitioner, including the imposition of discipline or fines. Specifically, "the statutes and regulations governing Nevada gaming limit the [Board's] and Commission's regulatory and disciplinary powers only to applicants seeking to enter the gaming industry or those person/entities presently involved therein."

STANDARD OF REVIEW

The Board and Commission are exempt from the requirements of the Administrative Procedure Act. NRS 233B.039(1)(e)-(f). Rather, NRS Chapter 463, which codifies the Nevada Gaming Control Act (Act), governs judicial review of the Commission's decisions and orders.[2]

Specifically, NRS 463.315(1) provides:

> Any person aggrieved by a **final decision or order** of the Commission made after hearing or rehearing by the Commission pursuant to NRS 463.312 to 463.3145, inclusive, and whether or not a petition for rehearing was filed, may obtain a judicial review thereof in the district court of the county in which the petitioner resides or has his, her or its principal place of business.

(emphasis added).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission's order is subject to judicial review by this Court.

In *Resnick v. Nevada Gaming Comm'n*, 104 Nev. 60, 752 P.2d 229 (1988), the Commission determined that Resnick, an employee of the Dunes Hotel and Casino, exercised significant influence over the operation of the hotel and ordered him to apply for a license. Prior to his hearing, Resnick filed a petition with the Commission asking it to compel the Board to provide him with a copy of the investigative report the Board had prepared, or at least provide him with a hearing on the issue of whether he should be granted

[2] *Compare* NRS 233B.135, which sets forth the standard of review for administrative agency decisions under the Nevada Administrative Procedure Act, *with* NRS 463.317(3), which sets forth the standard of review for a Commission decision or order.

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discovery of the report. *Id*. at 61-62, 752 P.2d at 230. After the Commission issued an order denying Resnick's requests for discovery, Resnick filed a petition for judicial review with the district court. *Id*. at 62, 752 P.2d at 230. In holding that the Commission's order denying discovery was not a decision or order which could be appropriately reviewed under NRS 463.315, the court stated:

> The Commission's order to deny discovery was not, under NRS 463.315, a "final decision or order." By using the words "final decision or order," the legislature has indicated that **dispositions** such as disciplinary orders, decisions to suspend or revoke licenses, and resolutions **on the merits** of certain controversies may be reviewed by the courts. The legislature did not intend, by using the words "final decision or order," that an interlocutory Commission determination about the discoverability of certain materials would be immediately subject to judicial scrutiny.

Id. at 62-63, 752 P.2d at 231 (emphasis added).

Here, Petitioner seeks review of the Commission's order denying his motion to dismiss the Board's complaint. This order is not a disposition such as a disciplinary order, decision to suspend or revoke a license, or a resolution on the merits. Thus, based on *Resnick,* the underlying order is not final under NRS 463.315(1).

However, a district court may issue a writ of prohibition where there is not a plain, speedy and adequate remedy in the ordinary course of law. NRS 34.330; Nev. Const. art. 6, §6(1). A writ of prohibition is available to "arrest the proceedings of any tribunal, corporation, board or person exercising judicial functions when such proceedings are without or in excess of the jurisdiction of that tribunal, corporation, board, or person." NRS 34.320.

Because the Commission's order is not final, Petitioner is without a plain, speedy, and adequate remedy in the ordinary course of law—judicial review under NRS 463.315(1). Accordingly, a writ of prohibition is proper since the basis of this Petition is that Respondents' seek to improperly exercise jurisdiction.

And if a writ of prohibition is not applicable in the context of matters before the Board and Commission, this Court has jurisdiction to review Petitioner's Petition.

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A party may proceed directly to judicial review where the underlying proceedings are "vain and futile or when the agency clearly lacks jurisdiction." *Benson v. State Eng'r*, 131 Nev. 772, 777, 358 P.3d 221, 224 (2015) (quoting *Engelmann v. Westergard,* 98 Nev. 348, 353, 647 P.2d 385, 389 (1982)) (quotations omitted).

Ordinarily, under what is known as the Doctrine of Exhaustion, a party must exhaust their administrative remedies before seeking judicial review of an administrative agency decision. *See Benson*, 131 Nev. at 777, 647 P.3d at 224 (explaining that "before availing oneself of district court relief from an agency decision, one must first exhaust available administrative remedies."). However, the Nevada Supreme Court has made clear "that exhaustion is not required when administrative proceedings are vain and futile or when the agency clearly lacks jurisdiction." *Id.* (quotations omitted); *Englemann*, 98 Nev. 348, 353, 647 P.3d 385, 389 ("where resort to administrative procedures would be futile, exhaustion of administrative remedies is not required.").

Because the basis of the Petition is that Board and Commission lack jurisdiction, this Court may exercise its discretion to issue a Writ of Prohibition. Additionally, Petitioner "may [also] proceed directly to judicial review" since the underlying "proceedings would be futile." *Benson*, 131 Nev. at 777, 647 P.3d at 224.[3]

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[3]Under the Administrative Procedure Act, NRS 233B.130 (1) provides that "any party who is…**Aggrieved by a final decision** in a contested case, is entitled to judicial review of the decision." (emphasis added). Similary, NRS 463.315(1) also provides for judicial review of a person "**aggrieved by a final decision**." (emphasis added) Based on the similarity in these statues, case law interpreting the reviewability of agency decisions where jurisdiction is contested is instructive in the context of proceedings by the Board and Commission.

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The Board and Commission lack jurisdiction over Petitioner because Petitioner has no material involvement, directly or indirectly, with a licensed gaming operation or registered holding company.

NRS 463.1405(1) provides:

> The Board shall investigate the qualifications of each applicant under this chapter before any license is issued or any registration, finding of suitability or approval of acts or transactions for which Commission approval is required or permission is granted, and shall continue to observe the conduct of **all licensees and other persons having a material involvement directly or indirectly with a licensed gaming operation or registered holding company** to ensure that licenses are not issued or held by, nor is **there any material involvement directly or indirectly with a licensed gaming operation or registered holding company by unqualified, disqualified or unsuitable persons**, or persons whose operations are conducted in an unsuitable manner or in unsuitable or prohibited places or location.

(emphasis added). Further, under NRS 463.1405(3),

> The Board has full and absolute power and authority to recommend the denial of any application, the limitation, conditioning or restriction of any license, registration, finding of suitability or approval, the suspension or revocation of any license, registration, finding of suitability or approval or the imposition of a fine upon any person licensed, registered, found suitable or approved for any cause deemed reasonable by the Board.

Moreover, "[t]he Commission has full and absolute power and authority to deny any application or limit, condition, restrict, revoke or suspend any license, registration, finding of suitability or approval, or fine any person licensed, registered, found suitable or approved, for any cause deemed reasonable by the Commission." NRS 463.1405(4).

Based on the foregoing, and a close reading of the Act, it is apparent that the Legislature intended the Board and Commission to have unfettered authority to regulate Nevada's Gaming Industry. And the Nevada Supreme Court, on various occasions, has "reiterated that Nevada law requires the Court to play a limited role in gaming license Decisions by the Commission and Board. *Resnick*, 104 Nev. 60, 62, 752 P.2d 229, 230. But whether the Commission has broad authority to revoke a finding of suitability is an issue

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separate and distinct from whether the Commission has jurisdiction over a person that has no involvement in the gaming industry. The latter controls this Court's ruling.

This Court acknowledges that the Board has "full and absolute authority to recommend the…revocation of any…finding of suitability" under NRS 463.1405(3). This Court further acknowledges that the "Commission has full and absolute power and authority to…revoke or suspend any…finding of suitability." NRS 463.1405(4). However, the breadth of Respondents' jurisdiction to do so is severely limited (or restrained) by the plain language of other statutes within the Act and the Commission Regulations.

In interpreting the Act on judicial review to determine whether the Board and Commission have jurisdiction over Petitioner, this Court must look to the plain language of the statutes and must enforce the statute as written if the statute's language is clear and the meaning is plain. *Coleman v. State*, 130 Nev. 190, 194, 321 P.3d 863, 865 (2014).

The plain language of NRS 463.1405(1) gives the Board power to investigate the qualifications, and continue to observe the conduct, of "all licensees and other persons having a **material involvement directly or indirectly** with a licensed gaming operation or registered holding company." *Pub. Employees' Ret. Sys. of Nevada v. Gitter*, 133 Nev. 126, 131, 393 P.3d 673, 679 (2017) (when a statute's language is plain and its meaning clear, courts must apply that plain language). The purpose is "to ensure that licenses are not issued or held by, nor is there any **material involvement directly or indirectly** with a licensed gaming operation or registered holding company by **unqualified, disqualified or unsuitable persons**." NRS 463.1405(1).

NRS 463.1405 makes clear that the person over whom the Board seeks to investigate and observe *must have some kind of involvement or association* with a licensed gaming operation or registered holding company. Even if the Court looks further, this Court cannot add in language that the Board or Commission has jurisdiction over those that have no involvement with a licensed gaming operation or registered holding company. *See* Antonin

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Scalia & Bryan A. Garner. *Reading Law: The Interpretation of Legal Texts* 93 (2012) (discussing the omitted-case cannon).

Moreover, Commission Regulation 4.030(10), titled "Findings of suitability" provides:

> The Nevada Gaming Control Act and regulations thereunder require or permit the Commission to **require that certain persons, directly or indirectly involved with licensees, be found suitable to hold a gaming license so long as that involvement continues.** A finding of suitability relates only to the specified involvement for which it was made. **If the nature of the involvement changes from that for which the applicant is found suitable, the applicant may be required to submit to a determination by the Commission of his or her suitability in the new capacity**.

(emphasis added). The plain language of the Commission's own regulation establishes that persons having involvement with a gaming license in some capacity are subject to the Commission's jurisdiction. What's more, this is true "so long as that involvement continues." *Id.* If the person found suitable changes the nature of his or her involvement with the gaming license such that they remove themselves from any involvement, it is unclear where Respondents find statutory or regulatory authority for jurisdiction.

This conclusion is further supported by public policy. Moreover, in declaring the public policy of the state concerning gaming, NRS 463.0129(1)(c) provides:

> Public confidence and trust can only be maintained by strict regulation of all persons, locations, practices, associations and activities **related to the operation of licensed gaming establishments**, the manufacture, sale or distribution of gaming devices and associated equipment and the operation of inter-casino linked systems

(emphasis added). Again, the plain language of the Act disposes of Respondents' asserted jurisdiction. Specifically, only persons *related* to the operation of a licensed gaming establishment must be strictly regulated to maintain public confidence and trust in the gaming industry.

Petitioner is no longer *related* to the operation of a licensed gaming establishment. Petitioner no longer has any material involvement, directly or indirectly, with a licensed gaming operation or registered holding company. There is no evidence before this Court, and

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no party disputes, that Petitioner is involved with any licensed gaming operation in any capacity, whether directly or indirectly. Petitioner stepped down from his Chairman and CEO positions in February of 2018, divested himself of all ownership in Wynn Resorts in March of 2018, and moved entirely off the property in April of 2018.

Because Petitioner has no material involvement, directly or indirectly, with a licensed gaming operation, this Court finds that Respondents have no jurisdiction to impose discipline or fines against Petitioner.

Respondents' interpretation of the Act was not reasonable or entitled to deference.

The Commission argues that as long as its interpretations of the Act that underpin its decision to deny Petitioner's Motion to Dismiss the Complaint were reasonable, this Court must defer to and uphold that decision. This Court disagrees.

"Deference is given to an administrative agency's interpretations of its governing statutes or regulations only if the interpretation **is within the language of the statute**." *Vill. League to Save Incline Assets, Inc. v. State*, 133 Nev. 1, 11, 388 P.3d 218, 226 (2017) (citations omitted) (emphasis added). But this Court does not defer to an agency's interpretation if the statutes concerning the scope of the agency's jurisdiction lack statutory ambiguity. *City of Arlington, Tex. v. F.C.C.*, 569 U.S. 290, 307 (2013) ("Where [the Legislature] has established a clear line, the agency cannot go beyond it; and where Congress has established an ambiguous line, the agency can go no further than the ambiguity will fairly allow.").

The plain language of the Commission Regulations and statutes within the Act makes clear that the Board and Commission have the power to regulate persons related to, or involved with, a gaming license or registered holding company. The statutory and regulatory authority is not ambiguous. Thus, the Commission's interpretation of jurisdiction over Petitioner is not reasonable, and thus, not entitled to deference.

Respondents' "administrative hold" on Petitioner's findings of suitability is no basis for jurisdiction.

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In addition to the Act and Commission Regulations, the Board's underlying complaint against Petitioner sets forth a second ground for jurisdiction:

> [Petitioner] was previously found suitable by the Gaming Commission as, and was at all times relevant to this Complaint, CEO, Chairman, shareholder, and controlling shareholder of Wynn Resorts, which is registered as a publicly traded company by the Gaming Commission and, through wholly owned intermediaries and holding companies, is the owner of [Wynn Resorts], which holds a nonrestricted gaming license. **Although [Petitioner] *resigned* as CEO and Chairman of Wynn Resorts and *redeemed* his shares in Wynn Resorts, the Gaming Control Board placed an *administrative hold* on [Petitioner's] Findings of Suitability and *retains* jurisdiction over him for purposes that include disciplinary proceedings**.

ROR 6.

Essentially, the Board asserts that due to an administrative hold, it "retains" jurisdiction over Petitioner despite his removal of himself in all capacities from a gaming license and the gaming industry. First, the Board's use of the term "retains," after noting Petitioner's actions to disassociate from Wynn Resorts, is indicative of the Board's knowledge that it no longer has jurisdiction over Petitioner. Regardless, there is no support for an administrative hold in the Act or Commission Regulations as a basis for jurisdiction—especially one that "retains" jurisdiction over a person no longer associated with gaming. The Commission concedes as much.[4]

The Board and Commission's disciplinary history does not support a finding that either has jurisdiction over Petitioner.

Respondents fail to provide any authority supporting their jurisdiction over a person no longer involved in Nevada's Gaming Industry in *any* capacity. Importantly, Respondents fail to support their position that they have jurisdiction over a person with no intent to be involved in Nevada's gaming industry in the future. Why? There is none. In fact, the

[4]At the November 17, 2020, hearing on the matter, the Commission, in acknowledging that the Board drafted the complaint, stated the administrative hold is not the basis for Respondents' asserted jurisdiction over Petitioner. For this reason, the Commission asserted that there was no need to prove the administrative hold is permissible. However, the Commission ignores the clear language of complaint, which as stated above, provides that it retains jurisdiction over Petitioner due the administrative hold.

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Commission conceded that Respondents have never sought to investigate, discipline, or fine a person that has completely divested themselves of the gaming industry with no intent of returning prior to the Board's filing of the underlying complaint.

THE COURT FINDS THAT Respondents lack jurisdiction over Petitioner under the Act and relevant Commission Regulations because Petitioner has no material involvement, directly or indirectly, with a licensed gaming operation or registered holding company.

ORDER

THE COURT ORDERS THAT Petitioner's Petition for Judicial Review is **GRANTED.**

THE COURT FURTHER ORDERS THAT Respondent Commission's Opposition to Wynn's Petition and Countermotion to Dismiss is **DENIED.**

THE COURT FURTHER ORDERS THAT Respondent Board's Answering Brief and Countermotion to Dismiss under NRCP 12(b)(5) is **DENIED.**[5]

Dated this 19th day of November, 2020

THE HONORABLE ADRIANA ESCOBAR
DISTRICT COURT JUDGE

12A 4FC 820C FF36
Adriana Escobar
District Court Judge

[5]The Court notes that in reaching this decision, it did not consider the merits of the underlying proceeding, including Petitioner's alleged acts.

ADRIANA ESCOBAR
DISTRICT JUDGE
DEPARTMENT XIV
LAS VEGAS, NEVADA 89155

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Stephen Wynn, Petitioner(s) vs. Nevada Gaming Commission, Respondent(s)	CASE NO: A-20-809249-J DEPT. NO. Department 14

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order Granting was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

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DISTRICT COURT

CLARK COUNTY, NEVADA

STEPHEN A. WYNN, an individual, Petitioner, vs. NEVADA GAMING COMMISSION, a political subdivision of the State of Nevada; and NEVADA GAMING CONTROL BOARD, a political subdivision of the State of Nevada, Respondents.	Case No. A-20-809249-J Dept. No. XIV

CASE APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:

Nevada Gaming Commission.

2. Identify the judge issuing the decision, judgment, or order appealed from:

The Honorable Adriana Escobar.

3. Identify each appellant and the name and address of counsel for each appellant:

. . .

. . .

. . .

Case Number: A-20-809249-J

Nevada Gaming Commission

Darlene Caruso
Chief Deputy Attorney General
Kiel Ireland
Deputy Attorney General
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, Nevada 89101

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent:

Stephen A. Wynn

Campbell & Williams
Donald J. Campbell
J. Colby Williams
700 S. Seventh St.
Las Vegas, NV 89101

5. Indicate whether any attorney identified above in response to question 3 or 4 is not licensed to practice law in Nevada:

All attorneys indicated above are licensed to practice in Nevada.

6. Indicate whether appellant was represented by appointed or retained counsel in the district court:

State counsel, Office of the Attorney General.

7. Indicate whether appellant is represented by appointed or retained counsel on appeal:

State counsel, Office of the Attorney General.

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave:

Not applicable.

9. Indicate the date the proceedings commenced in the district court:

January 27, 2020.

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court:

The Nevada Gaming Control Board (the "Board") filed a complaint with the Nevada Gaming Commission (the "Commission") alleging that Stephen A. Wynn violated the Nevada Gaming Control Act. Wynn moved to dismiss the complaint for lack of subject-matter jurisdiction. The Commission denied Wynn's motion. Wynn filed a petition for judicial review, alternatively, for writs of mandamus and/or prohibition in the district court challenging the denial of his motion to dismiss. The district court granted Wynn's petition and denied the Commission's countermotion to dismiss the petition. Wynn served notice of entry of the order on November 25, 2020.

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court:

No.

12. Indicate whether this appeal involves child custody or visitation:

No.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement:

Settlement is unlikely. Settlement discussions between the Board and Wynn have been unsuccessful.

DATED thisDecember 23, 2020 23rd day of December, 2020.

AARON D. FORD
Attorney General

By: /s/ *Kiel B. Ireland*
Darlene Caruso (Bar No. 5866)
Chief Deputy Attorney General
Kiel B. Ireland (Bar No. 15368C)
Deputy Attorney General
Attorneys for Respondent
Nevada Gaming Commission

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court by using the electronic filing system on the 23rd day of December, 2020, and e-served the same on all parties listed on the Court's Master Service List.

/s/ *Traci Plotnick*
Traci Plotnick, an employee of the
Office of the Attorney General

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-20-809249-J

Stephen Wynn, Petitioner(s)	§	Location:	**Department 14**
vs.	§	Judicial Officer:	**Escobar, Adriana**
Nevada Gaming Commission, Respondent(s)	§	Filed on:	**01/27/2020**
	§	Cross-Reference Case Number:	**A809249**

CASE INFORMATION

Case Type: **Other Judicial Review/Appeal**

Case Status: **01/27/2020 Open**

DATE — CASE ASSIGNMENT

Current Case Assignment

Case Number	A-20-809249-J
Court	Department 14
Date Assigned	01/27/2020
Judicial Officer	Escobar, Adriana

PARTY INFORMATION

		Lead Attorneys
Petitioner	**Wynn, Stephen A**	**Campbell, Donald J.** *Retained* 7023825222(W)
Respondent	**Nevada Gaming Commission**	**Caruso, Darlene S.** *Retained* 7024863785(W)
	Nevada Gaming Control Board	**Caruso, Darlene S.** *Retained* 7024863785(W)

DATE — EVENTS & ORDERS OF THE COURT — INDEX

EVENTS

01/27/2020 Petition for Judicial Review
Filed by: Petitioner Wynn, Stephen A
Petition For Judicial Review, Alternatively, For Writs of Mandamus and/or Prohibition.

01/27/2020 Initial Appearance Fee Disclosure
Filed By: Petitioner Wynn, Stephen A
Initial Appearance Fee Disclosure

01/28/2020 Summons Electronically Issued - Service Pending
Party: Petitioner Wynn, Stephen A
Summons

01/28/2020 Summons Electronically Issued - Service Pending
Party: Petitioner Wynn, Stephen A
Summons

01/30/2020 Acceptance of Service
Filed By: Petitioner Wynn, Stephen A

Party Served: Respondent Nevada Gaming Control Board
Acceptance of Service (Nevada Gaming Control Board)

01/30/2020 Acceptance of Service
Filed By: Petitioner Wynn, Stephen A
Party Served: Respondent Nevada Gaming Commission
Acceptance of Service (Nevada Gaming Commission)

02/19/2020 Stipulation and Order
Filed by: Petitioner Wynn, Stephen A
Stipulation and Order Regarding Briefing Schedule on Petition for Judicial Review and Related Matters.

02/19/2020 Notice of Entry of Stipulation and Order
Filed By: Petitioner Wynn, Stephen A
Notice of Entry of Stipulation and Order Regarding Briefing Schedule on Petition for Judicial Review and Related Matters.

02/21/2020 Record on Appeal
Record on Review

03/13/2020 Brief
Filed By: Petitioner Wynn, Stephen A
Petitioner Stephen A. Wynn's Opening Brief in Support of Petition for Judicial Review, Alternatively, for Writs of Mandamus and/or Prohibition.

03/31/2020 Stipulation and Order
Stipulation and Order

04/10/2020 Stipulation and Order
Stipulation and Order

04/10/2020 Answering Brief
Filed By: Respondent Nevada Gaming Control Board
Respondent Nevada Gaming Control Board's Answering Brief and Countermotion to Dismiss Under NRCP 12(b)(5)

04/10/2020 Notice of Entry of Stipulation and Order
Filed By: Respondent Nevada Gaming Commission; Respondent Nevada Gaming Control Board
Notice of Entry of Stipulation and Order

04/10/2020 Answering Brief
Filed By: Respondent Nevada Gaming Commission; Respondent Nevada Gaming Control Board
Nevada Gaming Commission's Opposition to Wynn's Petition and Countermotion to Dismiss

04/28/2020 Stipulation and Order
Filed by: Petitioner Wynn, Stephen A
Stipulation and Order

04/28/2020 Notice of Entry of Stipulation and Order
Filed By: Petitioner Wynn, Stephen A
Notice of Entry of Stipulation and Order

05/01/2020 Ex Parte Application
Party: Petitioner Wynn, Stephen A
Petitioner's Ex-Parte Application To Exceed 7,000 Words For His Consolidated Opposition To Respondents' Countermotions To Dismiss And Reply Brief In Support of Petition For Judicial Review, Alternatively, For Writs Of Mandamus And/Or Prohibition.

05/01/2020 Opposition
Filed By: Petitioner Wynn, Stephen A
Petitioner Stephen A. Wynn's Consolidated Opposition To Respondents' Countermotions To Dismiss And Reply Brief In Support Of Petition For Judicial Review, Alternatively, For Writs of Mandamus And/Or Prohibition.

05/19/2020 Stipulation and Order
Filed by: Respondent Nevada Gaming Commission
Stipulation and Order

05/20/2020 Notice of Entry of Order
Filed By: Respondent Nevada Gaming Commission
Notice of Entry of Order

05/22/2020 Reply in Support
Filed By: Respondent Nevada Gaming Control Board
Reply Supporting Respondent Nevada Gaming Control Board's Countermotion to Dismiss Under NRCP 12(b)(5)

05/22/2020 Brief
Filed By: Respondent Nevada Gaming Commission
Nevada Gaming Commission's Reply Brief In Support of Its Countermotion to Dismiss Petition for Judicial Review, Alternatively, for Writs of Mandamus and/or Prohibition

05/29/2020 Motion to Strike
Filed By: Petitioner Wynn, Stephen A
Motion to Strike Section II of the Nevada Gaming Commission's "Reply" in Support of Countermotion to Dismiss

06/01/2020 Clerk's Notice of Hearing
Notice of Hearing

06/11/2020 Opposition to Motion
Filed By: Respondent Nevada Gaming Commission
Nevada Gaming Commission's Opposition to Motion to Strike Section II of the Nevada Gaming Commission's Reply in Support of Countermotion to Dismiss

07/02/2020 Notice of Hearing
Filed By: Respondent Nevada Gaming Commission
Notice of Hearing

07/16/2020 Reply in Support
Reply In Support Of Motion To Strike Section II Of The Nevada Gaming Commission's "Reply" In Support Of Countermotion To Dismiss.

08/18/2020 Order
Filed By: Respondent Nevada Gaming Commission; Respondent Nevada Gaming Control Board
Order On Petitioner's Motion to Stirke Section II of the Nevada Gaming Commission's Reply In Suppor of Countermotion to Dismiss

08/18/2020 Notice of Entry of Order
Filed By: Respondent Nevada Gaming Commission
Notice of Entry of Order

10/13/2020 Notice
Filed By: Petitioner Wynn, Stephen A
Notice of Supplemental Authorities.

11/19/2020 Order Granting
OrderGranting Petitioner's Petition For Judicial Review

11/25/2020 Notice of Entry of Order
Filed By: Petitioner Wynn, Stephen A
Notice of Entry of Order Granting Petitioner's Petition for Judicial Review

12/09/2020 Recorders Transcript of Hearing
Transcript of Proceedings Petition for Judicial Review November 17, 2020

12/23/2020 Notice of Appeal
Filed By: Respondent Nevada Gaming Control Board
Notice of Appeal

12/23/2020 Case Appeal Statement
Filed By: Respondent Nevada Gaming Control Board
Case Appeal Statement

12/23/2020 Notice of Appeal
Filed By: Respondent Nevada Gaming Commission
Nevada Gaming Commission's Notice of Appeal

12/23/2020 Case Appeal Statement
Filed By: Respondent Nevada Gaming Commission
Case Appeal Statement

DISPOSITIONS

11/19/2020 **Order Granting Judicial Review** (Judicial Officer: Escobar, Adriana)
Debtors: Nevada Gaming Commission (Respondent), Nevada Gaming Control Board (Respondent)
Creditors: Stephen A Wynn (Petitioner)
Judgment: 11/19/2020, Docketed: 11/23/2020

HEARINGS

07/23/2020 **Motion to Strike** (9:30 AM) (Judicial Officer: Escobar, Adriana)
Petitioner's Motion to Strike Section II of the Nevada Gaming Commission's "Reply" in Support of Countermotion to Dismiss
Decision Made;
Journal Entry Details:
Following arguments by counsel, COURT ORDERED, a minute order will be issued. FURTHER, at the request of counsel, a motion that will be efiled will be set on the 8/6/20 calendar at 2:00 PM.;

08/04/2020 **Minute Order** (7:00 AM) (Judicial Officer: Escobar, Adriana)
Denied;
Journal Entry Details:

Plaintiff s Motion to Strike Section II of the Nevada Gaming Commission s Reply in Support of Countermotion to Dismiss (Motion), came on for hearing before Department XIV of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on July 23, 2020. Attorneys Darlene Caruso and Kiel Ireland appeared on behalf of Respondents. Attorney Jon Williams appeared on behalf of Petitioner. After considering the moving papers and arguments of the parties, the Court enters the following order: The Eighth Judicial District Court Rules (EDCR) specify the procedure for briefing in matters such as this: (i) the petitioner files a memorandum of points and authorities in support of the Petition; (ii) the respondent serves an opposing memorandum thereto; and (iii) the petitioner files reply points and authorities in support of the petition. (iv) either party may request the matter be set for hearing. EDCR 2.15 (d). Petitioner filed an opening brief for his Petition for Judicial Review, Alternatively, for Writ of Mandamus and/or Prohibition (Petition/Writ). Respondent Commission responded by filing an Opposition and Countermotion to Dismiss Petitioner s Petition for Judicial Review (Countermotion). Petitioner then filed an Opposition to Respondent Commission s Countermotion. Respondent Commission filed a Reply in Support of its Countermotion on the same day Petitioner filed his Reply in Support of his Petition/Writ. Petitioner argues, in part, that since he filed the initial Petition/Writ, he is entitled by law to the last word, being the reply. The Court agrees with that point as it relates to the Petition/Writ. However, the same cannot be said for Respondent Commission s Countermotion. While EDCR 2.15(d) does not explicitly states that a reply in support of a countermotion is part of the briefing, such an approach is easily inferred from the open opportunity for parties to file countermotions. Moreover, no rule or statute cited explicitly prohibits a reply such as that which Respondent Commission filed. Just as a movant receives the last word for his Motion, a counter-movant receives the last word for his countermotion. Thus, Respondent Commission is entitled to the last word on his Countermotion, and Petitioner will receive the last word for the underlying Petition/Writ. Based on the foregoing, the Court DENIES Petitioner s Motion. The Court further sets Respondent Commission s Countermotion to Dismiss Petitioner s Petition for Judicial Review on for hearing on August 13, 2020 at 9:30 am. Should the Court prepare its decision on said Countermotion prior to the hearing date, it will issue a Minute Order and vacate according. The Court further tentatively sets Petitioner s Petition for Judicial Review, Alternatively, for Writ of Mandamus and/or Prohibition on for hearing on August 20, 2020 at 9:30 am. This hearing is contingent upon the Court s decision on Respondent Commission s Countermotion. Counsel for Respondent Commission is directed to prepare a proposed order. All parties must submit their orders electronically, in both PDF version and Word version, until further notice. You may do so by emailing DC14Inbox@clarkcountycourts.us. All orders must have either original signatures from all parties or an email appended as the last page of the proposed order confirming that all parties approved use of their electronic signatures. The subject line of the e-mail should identify the full case number, filing code and case caption. CLERK'S NOTE: This minute order has been electronically served to all registered parties through Odyssey File & Serve. dh 8/4/20;

08/06/2020 *CANCELED* **Motion** (2:00 PM) (Judicial Officer: Escobar, Adriana)
Vacated
From 7/23/2020 Hearing

09/17/2020 **Opposition and Countermotion** (9:30 AM) (Judicial Officer: Escobar, Adriana)
Nevada Gaming Commission's Opposition to Wynn's Petition and CounterMotion to Dismiss
Denied; Nevada Gaming Commission's Opposition to Wynn's Petition and CounterMotion to Dismiss
Journal Entry Details:
Upon the Court's inquiry Mr. Shevorski clarified he represents the Nevada Gaming Control Board and Mr. Ireland represents the Nevada Gaming Commission. Mr. Shevorski argued Judicial Review is not appropriate for review of an interlocutory order, there is no such mandatory duty to compel and Writ of Mandamus is not appropriate. Mr Shevorski asked the Court dismiss the Complaint brought by Mr. Wynn and grant their Motion to Dismiss. Mr. Ireland argued by contrast the rule that Mr. Wynn is asking for would strike at the heart of the legislatures intent and requested the Countermotion to Dismiss be granted and this matter be allowed to proceed before the commission. Further argument by Mr. Williams noting an order can be a subset of a final decision, and when the word "or" is used it is meant to be an alternative. Upon further arguments by counsel, COURT ORDERED, matter TAKEN UNDER ADVISEMENT; minute order will issue.;

11/17/2020 **Petition for Judicial Review** (9:30 AM) (Judicial Officer: Escobar, Adriana)
Granted;

Journal Entry Details:
Mr. Ireland argued the administrative hold was irrelevant and not necessary for them to prove that an administrative hold was permissible for them to retain jurisdiction. Mr. Williams argued the Respondent did not have common law authority, it doesn't exist in the statute and in the regulations. Further arguments by counsel regarding other instances where the Nevada Gaming Commission sought discipline and the location report. COURT ORDERED, an Order will be issued.;

DATE	FINANCIAL INFORMATION	
	Petitioner Wynn, Stephen A	
	Total Charges	270.00
	Total Payments and Credits	270.00
	Balance Due as of 12/23/2020	**0.00**
	Respondent Nevada Gaming Commission	
	Total Charges	24.00
	Total Payments and Credits	24.00
	Balance Due as of 12/23/2020	**0.00**
	Respondent Nevada Gaming Control Board	
	Total Charges	24.00
	Total Payments and Credits	24.00
	Balance Due as of 12/23/2020	**0.00**

DISTRICT COURT CIVIL COVER SHEET

Clark County, Nevada

Case No. _____
(Assigned by Clerk's Office)

CASE NO: A-20-809249-J
Department 14

I. Party Information *(provide both home and mailing addresses if different)*

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
Stephen A .Wynn	Nevada Gaming Commission;
c/o Campbell & Williams	Nevada Gaming Control Board
700 South Seventh Street	
Las Vegas, Nevada 89101; 702-382-5222	
Attorney (name/address/phone):	**Attorney (name/address/phone):**
see above	Aaron D. Ford, Attorney General
	555 East Washington Avenue, Suite 3900
	Las Vegas, Nevada 89101
	702-486-3420

II. Nature of Controversy *(please select the one most applicable filing type below)*

Civil Case Filing Types

Real Property

Landlord/Tenant
- ☐ Unlawful Detainer
- ☐ Other Landlord/Tenant

Title to Property
- ☐ Judicial Foreclosure
- ☐ Other Title to Property

Other Real Property
- ☐ Condemnation/Eminent Domain
- ☐ Other Real Property

Torts

Negligence
- ☐ Auto
- ☐ Premises Liability
- ☐ Other Negligence

Malpractice
- ☐ Medical/Dental
- ☐ Legal
- ☐ Accounting
- ☐ Other Malpractice

Other Torts
- ☐ Product Liability
- ☐ Intentional Misconduct
- ☐ Employment Tort
- ☐ Insurance Tort
- ☐ Other Tort

Probate

Probate *(select case type and estate value)*
- ☐ Summary Administration
- ☐ General Administration
- ☐ Special Administration
- ☐ Set Aside
- ☐ Trust/Conservatorship
- ☐ Other Probate

Estate Value
- ☐ Over $200,000
- ☐ Between $100,000 and $200,000
- ☐ Under $100,000 or Unknown
- ☐ Under $2,500

Construction Defect & Contract

Construction Defect
- ☐ Chapter 40
- ☐ Other Construction Defect

Contract Case
- ☐ Uniform Commercial Code
- ☐ Building and Construction
- ☐ Insurance Carrier
- ☐ Commercial Instrument
- ☐ Collection of Accounts
- ☐ Employment Contract
- ☐ Other Contract

Judicial Review/Appeal

Judicial Review
- ☐ Foreclosure Mediation Case
- ☐ Petition to Seal Records
- ☐ Mental Competency

Nevada State Agency Appeal
- ☐ Department of Motor Vehicle
- ☐ Worker's Compensation
- ☐ Other Nevada State Agency

Appeal Other
- ☐ Appeal from Lower Court
- ■ Other Judicial Review/Appeal

Civil Writ

Civil Writ
- ☐ Writ of Habeas Corpus
- ☐ Writ of Mandamus
- ☐ Writ of Quo Warrant
- ☐ Writ of Prohibition
- ☐ Other Civil Writ

Other Civil Filing

Other Civil Filing
- ☐ Compromise of Minor's Claim
- ☐ Foreign Judgment
- ☐ Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

January 27, 2020
Date

Signature of initiating party or representative

See other side for family-related case filings.

Electronically Filed
11/19/2020 7:49 PM
CLERK OF THE COURT

ORDG

DISTRICT COURT
CLARK COUNTY, NEVADA

STEVEN A. WYNN, an individual, Petitioner, vs. NEVADA GAMING COMMISSION, a political subdivision of the State of Nevada; and NEVADA GAMING CONTROL BOARD, a political subdivision of the State of Nevada, Respondents.	Case No. : A-20-809249-J Dept. No.: XIV (14) **ORDER GRANTING PETITIONER'S PETITION FOR JUDICIAL REVIEW**

Petitioner Steven A. Wynn's Petition for Judicial Review, Alternatively, for Writs of Mandamus and/or Prohibition (Petition), Respondent Nevada Gaming Commission's Opposition to Wynn's Petition and Countermotion to Dismiss, and Respondent Nevada Gaming Control Board's Answering Brief and Countermotion to Dismiss under NRCP 12(b)(5) came on for hearing before Department XIV of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on September 17, 2020, and November 17, 2020, respectively.[1] Attorneys Donald J. Campbell and J. Colby Williams appeared via Blue Jeans on behalf of Petitioner. Attorneys Kiel B. Ireland and Darlene S. Caruso appeared via Blue Jeans on behalf of Respondent Nevada Gaming Commission (Commission). Attorney Steven Shevorski appeared via Blue Jeans on behalf of Respondent Nevada Gaming Control Board (Board). Having considered arguments of counsel, the moving papers, and the Record on Review (ROR) before it, this Court **HEREBY FINDS AND ORDERS AS FOLLOWS**:

FACTUAL AND PROCEDURAL HISTORY

Petitioner is the former Chairman, Chief Executive Officer, and controlling shareholder of Wynn Resorts, Limited (Wynn Resorts). Wynn Resorts, through its

[1]The Commission and Board's Motions were heard together on September 17, 2020.

ADRIANA ESCOBAR
DISTRICT JUDGE
DEPARTMENT XIV
LAS VEGAS, NEVADA 89155

subsidiary, Wynn Las Vegas, LLC (Wynn Las Vegas), owns and operates the Wynn Las Vegas and Encore casino-resort properties. In or about March 2005, the Board recommended, and the Commission approved, Wynn Las Vegas for an unrestricted gaming license. As part of the process, Petitioner was found suitable in his various capacities with Wynn Resorts.

On January 26, 2018, the Wall Street Journal published an article regarding Petitioner's alleged sexual indiscretions while he was Chairman and CEO of Wynn Resorts. Soon thereafter, the Board began investigating the allegations.

On February 6, 2018, Petitioner effectively resigned as Chairman and CEO of Wynn Resorts. ROR 87-88. On February 15, 2018, Petitioner entered into a Separation Agreement with Wynn Resorts and Wynn Resorts Holdings, LLC (Wynn Holding Company) setting forth the terms of his separation. ROR 90. Petitioner sold all his stock in Wynn Resorts by March 22, 2018. Petitioner also moved from his residence on the property by April 2018.

The Board's "Location Report" on the Wynn Resorts license reflects the dates it removed Petitioner from his positions as Chairman and CEO of Wynn Resorts and controlling shareholder. ROR 79. Wynn Resorts provided notice to the Board and/or Commission that there had been a change in the relationship between itself and Petitioner. Upon notice, the Board effectuated that change on the "Location Report." The Board removed Petitioner as an officer and director on February 23, 2018 and as a shareholder on March 28, 2018. ROR 79.

Approximately three months later, on or about June 29, 2018, the Board sent Petitioner a letter stating its intent to conduct an investigative hearing in late August 2018 and that Petitioner was required to appear and testify pursuant to NRS 463.140(5). ROR 110. The letter further stated that Petitioner's failure to appear and testify could result in revocation of Petitioner's finding of suitability pursuant to Nevada Gaming Commission Regulations (Commission Regulations) 5.070. ROR 110.

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ADRIANA ESCOBAR
DISTRICT JUDGE
DEPARTMENT XIV
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Petitioner failed to appear and testify at a Board-conducted investigative hearing that was ultimately scheduled for September 7, 2018—approximately six months after Petitioner divested himself from, and sold all ownership in, Wynn Resorts.

On or about January 25, 2019, the Board filed a complaint against Wynn Resorts arising from the Board's investigation. ROR 116-137. However, on February 26, 2019, the Commission accepted a Stipulation for Settlement and Order entered into between the Board and Wynn Resorts that resolved the complaint for a fine of $20,000,000. ROR 139-146.

Approximately a year and a half after the Board began its investigation, on October 14, 2019, the Board filed a complaint (Complaint) against Petitioner seeking the Commission's revocation of Petitioner's findings of suitability on the ground that Petitioner "has repeatedly violated Nevada's gaming statutes and regulations, bringing discredit upon the State of Nevada and its gaming industry" and "is unsuitable to be associated with a gaming enterprise or the gaming industry as whole." ROR 4. The Complaint further alleged that the negative reporting from the publicity of Petitioner's conduct "harmed Nevada's reputation and its gaming industry" and "damaged the public's confidence and trust in an industry that is vitally important to the economy of the State of Nevada and the general welfare of its inhabitants." *Id.*

Five counts comprised the complaint. The first four counts primarily allege that Petitioner engaged in sexual conduct with employees in violation of NRS 463.170, in addition to Gaming Commission Regulations. *See generally* ROR 16-22. The fifth count alleged that Petitioner's failure to appear and testify at the investigative hearing was a violation of Commission Regulation 5.070, which provides that such failure constitutes grounds for the revocation or suspension of any license held by the person summoned. *See* ROR 23-25.

Petitioner moved to dismiss the Board's complaint for lack of subject matter jurisdiction, which the Commission denied. The Commission entered its written Order Denying Respondent's Motion to Dismiss on January 9, 2020.

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On January 27, 2020, Petitioner filed the underlying Petition on the premise that the Board and Commission lack statutory authority or jurisdiction to pursue any action against Petitioner, including the imposition of discipline or fines. Specifically, "the statutes and regulations governing Nevada gaming limit the [Board's] and Commission's regulatory and disciplinary powers only to applicants seeking to enter the gaming industry or those person/entities presently involved therein."

STANDARD OF REVIEW

The Board and Commission are exempt from the requirements of the Administrative Procedure Act. NRS 233B.039(1)(e)-(f). Rather, NRS Chapter 463, which codifies the Nevada Gaming Control Act (Act), governs judicial review of the Commission's decisions and orders.[2]

Specifically, NRS 463.315(1) provides:

> Any person aggrieved by a **final decision or order** of the Commission made after hearing or rehearing by the Commission pursuant to NRS 463.312 to 463.3145, inclusive, and whether or not a petition for rehearing was filed, may obtain a judicial review thereof in the district court of the county in which the petitioner resides or has his, her or its principal place of business.

(emphasis added).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission's order is subject to judicial review by this Court.

In *Resnick v. Nevada Gaming Comm'n*, 104 Nev. 60, 752 P.2d 229 (1988), the Commission determined that Resnick, an employee of the Dunes Hotel and Casino, exercised significant influence over the operation of the hotel and ordered him to apply for a license. Prior to his hearing, Resnick filed a petition with the Commission asking it to compel the Board to provide him with a copy of the investigative report the Board had prepared, or at least provide him with a hearing on the issue of whether he should be granted

[2] *Compare* NRS 233B.135, which sets forth the standard of review for administrative agency decisions under the Nevada Administrative Procedure Act, *with* NRS 463.317(3), which sets forth the standard of review for a Commission decision or order.

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discovery of the report. *Id*. at 61-62, 752 P.2d at 230. After the Commission issued an order denying Resnick's requests for discovery, Resnick filed a petition for judicial review with the district court. *Id*. at 62, 752 P.2d at 230. In holding that the Commission's order denying discovery was not a decision or order which could be appropriately reviewed under NRS 463.315, the court stated:

> The Commission's order to deny discovery was not, under NRS 463.315, a "final decision or order." By using the words "final decision or order," the legislature has indicated that **dispositions** such as disciplinary orders, decisions to suspend or revoke licenses, and resolutions **on the merits** of certain controversies may be reviewed by the courts. The legislature did not intend, by using the words "final decision or order," that an interlocutory Commission determination about the discoverability of certain materials would be immediately subject to judicial scrutiny.

Id. at 62-63, 752 P.2d at 231 (emphasis added).

Here, Petitioner seeks review of the Commission's order denying his motion to dismiss the Board's complaint. This order is not a disposition such as a disciplinary order, decision to suspend or revoke a license, or a resolution on the merits. Thus, based on *Resnick,* the underlying order is not final under NRS 463.315(1).

However, a district court may issue a writ of prohibition where there is not a plain, speedy and adequate remedy in the ordinary course of law. NRS 34.330; Nev. Const. art. 6, §6(1). A writ of prohibition is available to "arrest the proceedings of any tribunal, corporation, board or person exercising judicial functions when such proceedings are without or in excess of the jurisdiction of that tribunal, corporation, board, or person." NRS 34.320.

Because the Commission's order is not final, Petitioner is without a plain, speedy, and adequate remedy in the ordinary course of law—judicial review under NRS 463.315(1). Accordingly, a writ of prohibition is proper since the basis of this Petition is that Respondents' seek to improperly exercise jurisdiction.

And if a writ of prohibition is not applicable in the context of matters before the Board and Commission, this Court has jurisdiction to review Petitioner's Petition.

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A party may proceed directly to judicial review where the underlying proceedings are "vain and futile or when the agency clearly lacks jurisdiction." *Benson v. State Eng'r*, 131 Nev. 772, 777, 358 P.3d 221, 224 (2015) (quoting *Engelmann v. Westergard*, 98 Nev. 348, 353, 647 P.2d 385, 389 (1982)) (quotations omitted).

Ordinarily, under what is known as the Doctrine of Exhaustion, a party must exhaust their administrative remedies before seeking judicial review of an administrative agency decision. *See Benson*, 131 Nev. at 777, 647 P.3d at 224 (explaining that "before availing oneself of district court relief from an agency decision, one must first exhaust available administrative remedies."). However, the Nevada Supreme Court has made clear "that exhaustion is not required when administrative proceedings are vain and futile or when the agency clearly lacks jurisdiction." *Id.* (quotations omitted); *Englemann*, 98 Nev. 348, 353, 647 P.3d 385, 389 ("where resort to administrative procedures would be futile, exhaustion of administrative remedies is not required.").

Because the basis of the Petition is that Board and Commission lack jurisdiction, this Court may exercise its discretion to issue a Writ of Prohibition. Additionally, Petitioner "may [also] proceed directly to judicial review" since the underlying "proceedings would be futile." *Benson*, 131 Nev. at 777, 647 P.3d at 224.[3]

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[3]Under the Administrative Procedure Act, NRS 233B.130 (1) provides that "any party who is…**Aggrieved by a final decision** in a contested case, is entitled to judicial review of the decision." (emphasis added). Similary, NRS 463.315(1) also provides for judicial review of a person "**aggrieved by a final decision**." (emphasis added) Based on the similarity in these statues, case law interpreting the reviewability of agency decisions where jurisdiction is contested is instructive in the context of proceedings by the Board and Commission.

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DISTRICT JUDGE
DEPARTMENT XIV
LAS VEGAS, NEVADA 89155

The Board and Commission lack jurisdiction over Petitioner because Petitioner has no material involvement, directly or indirectly, with a licensed gaming operation or registered holding company.

NRS 463.1405(1) provides:

> The Board shall investigate the qualifications of each applicant under this chapter before any license is issued or any registration, finding of suitability or approval of acts or transactions for which Commission approval is required or permission is granted, and shall continue to observe the conduct of **all licensees and other persons having a material involvement directly or indirectly with a licensed gaming operation or registered holding company** to ensure that licenses are not issued or held by, nor is **there any material involvement directly or indirectly with a licensed gaming operation or registered holding company by unqualified, disqualified or unsuitable persons**, or persons whose operations are conducted in an unsuitable manner or in unsuitable or prohibited places or location.

(emphasis added). Further, under NRS 463.1405(3),

> The Board has full and absolute power and authority to recommend the denial of any application, the limitation, conditioning or restriction of any license, registration, finding of suitability or approval, the suspension or revocation of any license, registration, finding of suitability or approval or the imposition of a fine upon any person licensed, registered, found suitable or approved for any cause deemed reasonable by the Board.

Moreover, "[t]he Commission has full and absolute power and authority to deny any application or limit, condition, restrict, revoke or suspend any license, registration, finding of suitability or approval, or fine any person licensed, registered, found suitable or approved, for any cause deemed reasonable by the Commission." NRS 463.1405(4).

Based on the foregoing, and a close reading of the Act, it is apparent that the Legislature intended the Board and Commission to have unfettered authority to regulate Nevada's Gaming Industry. And the Nevada Supreme Court, on various occasions, has "reiterated that Nevada law requires the Court to play a limited role in gaming license Decisions by the Commission and Board. *Resnick,* 104 Nev. 60, 62, 752 P.2d 229, 230. But whether the Commission has broad authority to revoke a finding of suitability is an issue

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separate and distinct from whether the Commission has jurisdiction over a person that has no involvement in the gaming industry. The latter controls this Court's ruling.

This Court acknowledges that the Board has "full and absolute authority to recommend the…revocation of any…finding of suitability" under NRS 463.1405(3). This Court further acknowledges that the "Commission has full and absolute power and authority to…revoke or suspend any…finding of suitability." NRS 463.1405(4). However, the breadth of Respondents' jurisdiction to do so is severely limited (or restrained) by the plain language of other statutes within the Act and the Commission Regulations.

In interpreting the Act on judicial review to determine whether the Board and Commission have jurisdiction over Petitioner, this Court must look to the plain language of the statutes and must enforce the statute as written if the statute's language is clear and the meaning is plain. *Coleman v. State,* 130 Nev. 190, 194, 321 P.3d 863, 865 (2014).

The plain language of NRS 463.1405(1) gives the Board power to investigate the qualifications, and continue to observe the conduct, of "all licensees and other persons having a **material involvement directly or indirectly** with a licensed gaming operation or registered holding company." *Pub. Employees' Ret. Sys. of Nevada v. Gitter*, 133 Nev. 126, 131, 393 P.3d 673, 679 (2017) (when a statute's language is plain and its meaning clear, courts must apply that plain language). The purpose is "to ensure that licenses are not issued or held by, nor is there any **material involvement directly or indirectly** with a licensed gaming operation or registered holding company by **unqualified, disqualified or unsuitable persons**." NRS 463.1405(1).

NRS 463.1405 makes clear that the person over whom the Board seeks to investigate and observe *must have some kind of involvement or association* with a licensed gaming operation or registered holding company. Even if the Court looks further, this Court cannot add in language that the Board or Commission has jurisdiction over those that have no involvement with a licensed gaming operation or registered holding company. *See* Antonin

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Scalia & Bryan A. Garner. *Reading Law: The Interpretation of Legal Texts* 93 (2012) (discussing the omitted-case cannon).

Moreover, Commission Regulation 4.030(10), titled "Findings of suitability" provides:

> The Nevada Gaming Control Act and regulations thereunder require or permit the Commission to **require that certain persons, directly or indirectly involved with licensees, be found suitable to hold a gaming license so long as that involvement continues.** A finding of suitability relates only to the specified involvement for which it was made. **If the nature of the involvement changes from that for which the applicant is found suitable, the applicant may be required to submit to a determination by the Commission of his or her suitability in the new capacity**.

(emphasis added). The plain language of the Commission's own regulation establishes that persons having involvement with a gaming license in some capacity are subject to the Commission's jurisdiction. What's more, this is true "so long as that involvement continues." *Id.* If the person found suitable changes the nature of his or her involvement with the gaming license such that they remove themselves from any involvement, it is unclear where Respondents find statutory or regulatory authority for jurisdiction.

This conclusion is further supported by public policy. Moreover, in declaring the public policy of the state concerning gaming, NRS 463.0129(1)(c) provides:

> Public confidence and trust can only be maintained by strict regulation of all persons, locations, practices, associations and activities **related to the operation of licensed gaming establishments**, the manufacture, sale or distribution of gaming devices and associated equipment and the operation of inter-casino linked systems

(emphasis added). Again, the plain language of the Act disposes of Respondents' asserted jurisdiction. Specifically, only persons *related* to the operation of a licensed gaming establishment must be strictly regulated to maintain public confidence and trust in the gaming industry.

Petitioner is no longer *related* to the operation of a licensed gaming establishment. Petitioner no longer has any material involvement, directly or indirectly, with a licensed gaming operation or registered holding company. There is no evidence before this Court, and

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no party disputes, that Petitioner is involved with any licensed gaming operation in any capacity, whether directly or indirectly. Petitioner stepped down from his Chairman and CEO positions in February of 2018, divested himself of all ownership in Wynn Resorts in March of 2018, and moved entirely off the property in April of 2018.

Because Petitioner has no material involvement, directly or indirectly, with a licensed gaming operation, this Court finds that Respondents have no jurisdiction to impose discipline or fines against Petitioner.

Respondents' interpretation of the Act was not reasonable or entitled to deference.

The Commission argues that as long as its interpretations of the Act that underpin its decision to deny Petitioner's Motion to Dismiss the Complaint were reasonable, this Court must defer to and uphold that decision. This Court disagrees.

"Deference is given to an administrative agency's interpretations of its governing statutes or regulations only if the interpretation **is within the language of the statute**." *Vill. League to Save Incline Assets, Inc. v. State*, 133 Nev. 1, 11, 388 P.3d 218, 226 (2017) (citations omitted) (emphasis added). But this Court does not defer to an agency's interpretation if the statutes concerning the scope of the agency's jurisdiction lack statutory ambiguity. *City of Arlington, Tex. v. F.C.C.*, 569 U.S. 290, 307 (2013) ("Where [the Legislature] has established a clear line, the agency cannot go beyond it; and where Congress has established an ambiguous line, the agency can go no further than the ambiguity will fairly allow.").

The plain language of the Commission Regulations and statutes within the Act makes clear that the Board and Commission have the power to regulate persons related to, or involved with, a gaming license or registered holding company. The statutory and regulatory authority is not ambiguous. Thus, the Commission's interpretation of jurisdiction over Petitioner is not reasonable, and thus, not entitled to deference.

Respondents' "administrative hold" on Petitioner's findings of suitability is no basis for jurisdiction.

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In addition to the Act and Commission Regulations, the Board's underlying complaint against Petitioner sets forth a second ground for jurisdiction:

> [Petitioner] was previously found suitable by the Gaming Commission as, and was at all times relevant to this Complaint, CEO, Chairman, shareholder, and controlling shareholder of Wynn Resorts, which is registered as a publicly traded company by the Gaming Commission and, through wholly owned intermediaries and holding companies, is the owner of [Wynn Resorts], which holds a nonrestricted gaming license. **Although [Petitioner] *resigned* as CEO and Chairman of Wynn Resorts and *redeemed* his shares in Wynn Resorts, the Gaming Control Board placed an *administrative hold* on [Petitioner's] Findings of Suitability and *retains* jurisdiction over him for purposes that include disciplinary proceedings**.

ROR 6.

Essentially, the Board asserts that due to an administrative hold, it "retains" jurisdiction over Petitioner despite his removal of himself in all capacities from a gaming license and the gaming industry. First, the Board's use of the term "retains," after noting Petitioner's actions to disassociate from Wynn Resorts, is indicative of the Board's knowledge that it no longer has jurisdiction over Petitioner. Regardless, there is no support for an administrative hold in the Act or Commission Regulations as a basis for jurisdiction—especially one that "retains" jurisdiction over a person no longer associated with gaming. The Commission concedes as much.[4]

The Board and Commission's disciplinary history does not support a finding that either has jurisdiction over Petitioner.

Respondents fail to provide any authority supporting their jurisdiction over a person no longer involved in Nevada's Gaming Industry in *any* capacity. Importantly, Respondents fail to support their position that they have jurisdiction over a person with no intent to be involved in Nevada's gaming industry in the future. Why? There is none. In fact, the

[4]At the November 17, 2020, hearing on the matter, the Commission, in acknowledging that the Board drafted the complaint, stated the administrative hold is not the basis for Respondents' asserted jurisdiction over Petitioner. For this reason, the Commission asserted that there was no need to prove the administrative hold is permissible. However, the Commission ignores the clear language of complaint, which as stated above, provides that it retains jurisdiction over Petitioner due the administrative hold.

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Commission conceded that Respondents have never sought to investigate, discipline, or fine a person that has completely divested themselves of the gaming industry with no intent of returning prior to the Board's filing of the underlying complaint.

THE COURT FINDS THAT Respondents lack jurisdiction over Petitioner under the Act and relevant Commission Regulations because Petitioner has no material involvement, directly or indirectly, with a licensed gaming operation or registered holding company.

ORDER

THE COURT ORDERS THAT Petitioner's Petition for Judicial Review is **GRANTED.**

THE COURT FURTHER ORDERS THAT Respondent Commission's Opposition to Wynn's Petition and Countermotion to Dismiss is **DENIED.**

THE COURT FURTHER ORDERS THAT Respondent Board's Answering Brief and Countermotion to Dismiss under NRCP 12(b)(5) is **DENIED.**[5]

Dated this 19th day of November, 2020

THE HONORABLE ADRIANA ESCOBAR
DISTRICT COURT JUDGE

12A 4FC 820C FF36
Adriana Escobar
District Court Judge

[5]The Court notes that in reaching this decision, it did not consider the merits of the underlying proceeding, including Petitioner's alleged acts.

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Stephen Wynn, Petitioner(s) vs. Nevada Gaming Commission, Respondent(s)	CASE NO: A-20-809249-J DEPT. NO. Department 14

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order Granting was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

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DISTRICT COURT

CLARK COUNTY, NEVADA

STEPHEN A. WYNN, an individual,

Petitioner,

vs.

NEVADA GAMING COMMISSION, a political subdivision of the State of Nevada; and NEVADA GAMING CONTROL BOARD, a political subdivision of the State of Nevada,

Respondents.

CASE NO.: A-20-809249-J
DEPT. NO.: 14

NOTICE OF ENTRY OF ORDER GRANTING PETITIONER'S PETITION FOR JUDICIAL REVIEW

Case Number: A-20-809249-J

Please take notice that on the 19th day of November, 2020, an Order Granting Petitioner's Petition for Judicial Review was duly entered in the above-entitled matter, a copy of which is attached hereto and by this reference made part hereof.

DATED this 25th day of November, 2020.

CAMPBELL & WILLIAMS

By:/s/ ***J. Colby Williams***

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Campbell & Williams, and that on this 25th day of November, 2020, I caused the foregoing document entitled **NOTICE OF ENTRY OF ORDER GRANTING PETITIONER'S PETITION FOR JUDICIAL REVIEW** to be served upon those persons designated by the parties in the E-Service Master List for the above-reference matter in the Eight Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

By: /s/ ***Crystal B. Balaoro***
An Employee of Campbell & Williams

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DISTRICT COURT
CLARK COUNTY, NEVADA

STEVEN A. WYNN, an individual, Petitioner, vs. NEVADA GAMING COMMISSION, a political subdivision of the State of Nevada; and NEVADA GAMING CONTROL BOARD, a political subdivision of the State of Nevada, Respondents.	Case No. : A-20-809249-J Dept. No.: XIV (14) **ORDER GRANTING PETITIONER'S PETITION FOR JUDICIAL REVIEW**

Petitioner Steven A. Wynn's Petition for Judicial Review, Alternatively, for Writs of Mandamus and/or Prohibition (Petition), Respondent Nevada Gaming Commission's Opposition to Wynn's Petition and Countermotion to Dismiss, and Respondent Nevada Gaming Control Board's Answering Brief and Countermotion to Dismiss under NRCP 12(b)(5) came on for hearing before Department XIV of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on September 17, 2020, and November 17, 2020, respectively.[1] Attorneys Donald J. Campbell and J. Colby Williams appeared via Blue Jeans on behalf of Petitioner. Attorneys Kiel B. Ireland and Darlene S. Caruso appeared via Blue Jeans on behalf of Respondent Nevada Gaming Commission (Commission). Attorney Steven Shevorski appeared via Blue Jeans on behalf of Respondent Nevada Gaming Control Board (Board). Having considered arguments of counsel, the moving papers, and the Record on Review (ROR) before it, this Court **HEREBY FINDS AND ORDERS AS FOLLOWS**:

FACTUAL AND PROCEDURAL HISTORY

Petitioner is the former Chairman, Chief Executive Officer, and controlling shareholder of Wynn Resorts, Limited (Wynn Resorts). Wynn Resorts, through its

[1]The Commission and Board's Motions were heard together on September 17, 2020.

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subsidiary, Wynn Las Vegas, LLC (Wynn Las Vegas), owns and operates the Wynn Las Vegas and Encore casino-resort properties. In or about March 2005, the Board recommended, and the Commission approved, Wynn Las Vegas for an unrestricted gaming license. As part of the process, Petitioner was found suitable in his various capacities with Wynn Resorts.

On January 26, 2018, the Wall Street Journal published an article regarding Petitioner's alleged sexual indiscretions while he was Chairman and CEO of Wynn Resorts. Soon thereafter, the Board began investigating the allegations.

On February 6, 2018, Petitioner effectively resigned as Chairman and CEO of Wynn Resorts. ROR 87-88. On February 15, 2018, Petitioner entered into a Separation Agreement with Wynn Resorts and Wynn Resorts Holdings, LLC (Wynn Holding Company) setting forth the terms of his separation. ROR 90. Petitioner sold all his stock in Wynn Resorts by March 22, 2018. Petitioner also moved from his residence on the property by April 2018.

The Board's "Location Report" on the Wynn Resorts license reflects the dates it removed Petitioner from his positions as Chairman and CEO of Wynn Resorts and controlling shareholder. ROR 79. Wynn Resorts provided notice to the Board and/or Commission that there had been a change in the relationship between itself and Petitioner. Upon notice, the Board effectuated that change on the "Location Report." The Board removed Petitioner as an officer and director on February 23, 2018 and as a shareholder on March 28, 2018. ROR 79.

Approximately three months later, on or about June 29, 2018, the Board sent Petitioner a letter stating its intent to conduct an investigative hearing in late August 2018 and that Petitioner was required to appear and testify pursuant to NRS 463.140(5). ROR 110. The letter further stated that Petitioner's failure to appear and testify could result in revocation of Petitioner's finding of suitability pursuant to Nevada Gaming Commission Regulations (Commission Regulations) 5.070. ROR 110.

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Petitioner failed to appear and testify at a Board-conducted investigative hearing that was ultimately scheduled for September 7, 2018—approximately six months after Petitioner divested himself from, and sold all ownership in, Wynn Resorts.

On or about January 25, 2019, the Board filed a complaint against Wynn Resorts arising from the Board's investigation. ROR 116-137. However, on February 26, 2019, the Commission accepted a Stipulation for Settlement and Order entered into between the Board and Wynn Resorts that resolved the complaint for a fine of $20,000,000. ROR 139-146.

Approximately a year and a half after the Board began its investigation, on October 14, 2019, the Board filed a complaint (Complaint) against Petitioner seeking the Commission's revocation of Petitioner's findings of suitability on the ground that Petitioner "has repeatedly violated Nevada's gaming statutes and regulations, bringing discredit upon the State of Nevada and its gaming industry" and "is unsuitable to be associated with a gaming enterprise or the gaming industry as whole." ROR 4. The Complaint further alleged that the negative reporting from the publicity of Petitioner's conduct "harmed Nevada's reputation and its gaming industry" and "damaged the public's confidence and trust in an industry that is vitally important to the economy of the State of Nevada and the general welfare of its inhabitants." *Id.*

Five counts comprised the complaint. The first four counts primarily allege that Petitioner engaged in sexual conduct with employees in violation of NRS 463.170, in addition to Gaming Commission Regulations. *See generally* ROR 16-22. The fifth count alleged that Petitioner's failure to appear and testify at the investigative hearing was a violation of Commission Regulation 5.070, which provides that such failure constitutes grounds for the revocation or suspension of any license held by the person summoned. *See* ROR 23-25.

Petitioner moved to dismiss the Board's complaint for lack of subject matter jurisdiction, which the Commission denied. The Commission entered its written Order Denying Respondent's Motion to Dismiss on January 9, 2020.

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On January 27, 2020, Petitioner filed the underlying Petition on the premise that the Board and Commission lack statutory authority or jurisdiction to pursue any action against Petitioner, including the imposition of discipline or fines. Specifically, "the statutes and regulations governing Nevada gaming limit the [Board's] and Commission's regulatory and disciplinary powers only to applicants seeking to enter the gaming industry or those person/entities presently involved therein."

STANDARD OF REVIEW

The Board and Commission are exempt from the requirements of the Administrative Procedure Act. NRS 233B.039(1)(e)-(f). Rather, NRS Chapter 463, which codifies the Nevada Gaming Control Act (Act), governs judicial review of the Commission's decisions and orders.[2]

Specifically, NRS 463.315(1) provides:

> Any person aggrieved by a **final decision or order** of the Commission made after hearing or rehearing by the Commission pursuant to NRS 463.312 to 463.3145, inclusive, and whether or not a petition for rehearing was filed, may obtain a judicial review thereof in the district court of the county in which the petitioner resides or has his, her or its principal place of business.

(emphasis added).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Commission's order is subject to judicial review by this Court.

In *Resnick v. Nevada Gaming Comm'n*, 104 Nev. 60, 752 P.2d 229 (1988), the Commission determined that Resnick, an employee of the Dunes Hotel and Casino, exercised significant influence over the operation of the hotel and ordered him to apply for a license. Prior to his hearing, Resnick filed a petition with the Commission asking it to compel the Board to provide him with a copy of the investigative report the Board had prepared, or at least provide him with a hearing on the issue of whether he should be granted

[2] *Compare* NRS 233B.135, which sets forth the standard of review for administrative agency decisions under the Nevada Administrative Procedure Act, *with* NRS 463.317(3), which sets forth the standard of review for a Commission decision or order.

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discovery of the report. *Id*. at 61-62, 752 P.2d at 230. After the Commission issued an order denying Resnick's requests for discovery, Resnick filed a petition for judicial review with the district court. *Id*. at 62, 752 P.2d at 230. In holding that the Commission's order denying discovery was not a decision or order which could be appropriately reviewed under NRS 463.315, the court stated:

> The Commission's order to deny discovery was not, under NRS 463.315, a "final decision or order." By using the words "final decision or order," the legislature has indicated that **dispositions** such as disciplinary orders, decisions to suspend or revoke licenses, and resolutions **on the merits** of certain controversies may be reviewed by the courts. The legislature did not intend, by using the words "final decision or order," that an interlocutory Commission determination about the discoverability of certain materials would be immediately subject to judicial scrutiny.

Id. at 62-63, 752 P.2d at 231 (emphasis added).

Here, Petitioner seeks review of the Commission's order denying his motion to dismiss the Board's complaint. This order is not a disposition such as a disciplinary order, decision to suspend or revoke a license, or a resolution on the merits. Thus, based on *Resnick,* the underlying order is not final under NRS 463.315(1).

However, a district court may issue a writ of prohibition where there is not a plain, speedy and adequate remedy in the ordinary course of law. NRS 34.330; Nev. Const. art. 6, §6(1). A writ of prohibition is available to "arrest the proceedings of any tribunal, corporation, board or person exercising judicial functions when such proceedings are without or in excess of the jurisdiction of that tribunal, corporation, board, or person." NRS 34.320.

Because the Commission's order is not final, Petitioner is without a plain, speedy, and adequate remedy in the ordinary course of law—judicial review under NRS 463.315(1). Accordingly, a writ of prohibition is proper since the basis of this Petition is that Respondents' seek to improperly exercise jurisdiction.

And if a writ of prohibition is not applicable in the context of matters before the Board and Commission, this Court has jurisdiction to review Petitioner's Petition.

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A party may proceed directly to judicial review where the underlying proceedings are "vain and futile or when the agency clearly lacks jurisdiction." *Benson v. State Eng'r*, 131 Nev. 772, 777, 358 P.3d 221, 224 (2015) (quoting *Engelmann v. Westergard*, 98 Nev. 348, 353, 647 P.2d 385, 389 (1982)) (quotations omitted).

Ordinarily, under what is known as the Doctrine of Exhaustion, a party must exhaust their administrative remedies before seeking judicial review of an administrative agency decision. *See Benson*, 131 Nev. at 777, 647 P.3d at 224 (explaining that "before availing oneself of district court relief from an agency decision, one must first exhaust available administrative remedies."). However, the Nevada Supreme Court has made clear "that exhaustion is not required when administrative proceedings are vain and futile or when the agency clearly lacks jurisdiction." *Id.* (quotations omitted); *Englemann*, 98 Nev. 348, 353, 647 P.3d 385, 389 ("where resort to administrative procedures would be futile, exhaustion of administrative remedies is not required.").

Because the basis of the Petition is that Board and Commission lack jurisdiction, this Court may exercise its discretion to issue a Writ of Prohibition. Additionally, Petitioner "may [also] proceed directly to judicial review" since the underlying "proceedings would be futile." *Benson*, 131 Nev. at 777, 647 P.3d at 224.[3]

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[3]Under the Administrative Procedure Act, NRS 233B.130 (1) provides that "any party who is…**Aggrieved by a final decision** in a contested case, is entitled to judicial review of the decision." (emphasis added). Similary, NRS 463.315(1) also provides for judicial review of a person "**aggrieved by a final decision**." (emphasis added) Based on the similarity in these statues, case law interpreting the reviewability of agency decisions where jurisdiction is contested is instructive in the context of proceedings by the Board and Commission.

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The Board and Commission lack jurisdiction over Petitioner because Petitioner has no material involvement, directly or indirectly, with a licensed gaming operation or registered holding company.

NRS 463.1405(1) provides:

> The Board shall investigate the qualifications of each applicant under this chapter before any license is issued or any registration, finding of suitability or approval of acts or transactions for which Commission approval is required or permission is granted, and shall continue to observe the conduct of **all licensees and other persons having a material involvement directly or indirectly with a licensed gaming operation or registered holding company** to ensure that licenses are not issued or held by, nor is **there any material involvement directly or indirectly with a licensed gaming operation or registered holding company by unqualified, disqualified or unsuitable persons**, or persons whose operations are conducted in an unsuitable manner or in unsuitable or prohibited places or location.

(emphasis added). Further, under NRS 463.1405(3),

> The Board has full and absolute power and authority to recommend the denial of any application, the limitation, conditioning or restriction of any license, registration, finding of suitability or approval, the suspension or revocation of any license, registration, finding of suitability or approval or the imposition of a fine upon any person licensed, registered, found suitable or approved for any cause deemed reasonable by the Board.

Moreover, "[t]he Commission has full and absolute power and authority to deny any application or limit, condition, restrict, revoke or suspend any license, registration, finding of suitability or approval, or fine any person licensed, registered, found suitable or approved, for any cause deemed reasonable by the Commission." NRS 463.1405(4).

Based on the foregoing, and a close reading of the Act, it is apparent that the Legislature intended the Board and Commission to have unfettered authority to regulate Nevada's Gaming Industry. And the Nevada Supreme Court, on various occasions, has "reiterated that Nevada law requires the Court to play a limited role in gaming license Decisions by the Commission and Board. *Resnick,* 104 Nev. 60, 62, 752 P.2d 229, 230. But whether the Commission has broad authority to revoke a finding of suitability is an issue

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separate and distinct from whether the Commission has jurisdiction over a person that has no involvement in the gaming industry. The latter controls this Court's ruling.

This Court acknowledges that the Board has "full and absolute authority to recommend the…revocation of any…finding of suitability" under NRS 463.1405(3). This Court further acknowledges that the "Commission has full and absolute power and authority to…revoke or suspend any…finding of suitability." NRS 463.1405(4). However, the breadth of Respondents' jurisdiction to do so is severely limited (or restrained) by the plain language of other statutes within the Act and the Commission Regulations.

In interpreting the Act on judicial review to determine whether the Board and Commission have jurisdiction over Petitioner, this Court must look to the plain language of the statutes and must enforce the statute as written if the statute's language is clear and the meaning is plain. *Coleman v. State,* 130 Nev. 190, 194, 321 P.3d 863, 865 (2014).

The plain language of NRS 463.1405(1) gives the Board power to investigate the qualifications, and continue to observe the conduct, of "all licensees and other persons having a **material involvement directly or indirectly** with a licensed gaming operation or registered holding company." *Pub. Employees' Ret. Sys. of Nevada v. Gitter*, 133 Nev. 126, 131, 393 P.3d 673, 679 (2017) (when a statute's language is plain and its meaning clear, courts must apply that plain language). The purpose is "to ensure that licenses are not issued or held by, nor is there any **material involvement directly or indirectly** with a licensed gaming operation or registered holding company by **unqualified, disqualified or unsuitable persons**." NRS 463.1405(1).

NRS 463.1405 makes clear that the person over whom the Board seeks to investigate and observe *must have some kind of involvement or association* with a licensed gaming operation or registered holding company. Even if the Court looks further, this Court cannot add in language that the Board or Commission has jurisdiction over those that have no involvement with a licensed gaming operation or registered holding company. *See* Antonin

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Scalia & Bryan A. Garner. *Reading Law: The Interpretation of Legal Texts* 93 (2012) (discussing the omitted-case cannon).

Moreover, Commission Regulation 4.030(10), titled "Findings of suitability" provides:

> The Nevada Gaming Control Act and regulations thereunder require or permit the Commission to **require that certain persons, directly or indirectly involved with licensees, be found suitable to hold a gaming license so long as that involvement continues.** A finding of suitability relates only to the specified involvement for which it was made. **If the nature of the involvement changes from that for which the applicant is found suitable, the applicant may be required to submit to a determination by the Commission of his or her suitability in the new capacity**.

(emphasis added). The plain language of the Commission's own regulation establishes that persons having involvement with a gaming license in some capacity are subject to the Commission's jurisdiction. What's more, this is true "so long as that involvement continues." *Id.* If the person found suitable changes the nature of his or her involvement with the gaming license such that they remove themselves from any involvement, it is unclear where Respondents find statutory or regulatory authority for jurisdiction.

This conclusion is further supported by public policy. Moreover, in declaring the public policy of the state concerning gaming, NRS 463.0129(1)(c) provides:

> Public confidence and trust can only be maintained by strict regulation of all persons, locations, practices, associations and activities **related to the operation of licensed gaming establishments**, the manufacture, sale or distribution of gaming devices and associated equipment and the operation of inter-casino linked systems

(emphasis added). Again, the plain language of the Act disposes of Respondents' asserted jurisdiction. Specifically, only persons *related* to the operation of a licensed gaming establishment must be strictly regulated to maintain public confidence and trust in the gaming industry.

Petitioner is no longer *related* to the operation of a licensed gaming establishment. Petitioner no longer has any material involvement, directly or indirectly, with a licensed gaming operation or registered holding company. There is no evidence before this Court, and

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no party disputes, that Petitioner is involved with any licensed gaming operation in any capacity, whether directly or indirectly. Petitioner stepped down from his Chairman and CEO positions in February of 2018, divested himself of all ownership in Wynn Resorts in March of 2018, and moved entirely off the property in April of 2018.

Because Petitioner has no material involvement, directly or indirectly, with a licensed gaming operation, this Court finds that Respondents have no jurisdiction to impose discipline or fines against Petitioner.

Respondents' interpretation of the Act was not reasonable or entitled to deference.

The Commission argues that as long as its interpretations of the Act that underpin its decision to deny Petitioner's Motion to Dismiss the Complaint were reasonable, this Court must defer to and uphold that decision. This Court disagrees.

"Deference is given to an administrative agency's interpretations of its governing statutes or regulations only if the interpretation **is within the language of the statute**." *Vill. League to Save Incline Assets, Inc. v. State*, 133 Nev. 1, 11, 388 P.3d 218, 226 (2017) (citations omitted) (emphasis added). But this Court does not defer to an agency's interpretation if the statutes concerning the scope of the agency's jurisdiction lack statutory ambiguity. *City of Arlington, Tex. v. F.C.C.*, 569 U.S. 290, 307 (2013) ("Where [the Legislature] has established a clear line, the agency cannot go beyond it; and where Congress has established an ambiguous line, the agency can go no further than the ambiguity will fairly allow.").

The plain language of the Commission Regulations and statutes within the Act makes clear that the Board and Commission have the power to regulate persons related to, or involved with, a gaming license or registered holding company. The statutory and regulatory authority is not ambiguous. Thus, the Commission's interpretation of jurisdiction over Petitioner is not reasonable, and thus, not entitled to deference.

Respondents' "administrative hold" on Petitioner's findings of suitability is no basis for jurisdiction.

ADRIANA ESCOBAR
DISTRICT JUDGE
DEPARTMENT XIV
LAS VEGAS, NEVADA 89155

In addition to the Act and Commission Regulations, the Board's underlying complaint against Petitioner sets forth a second ground for jurisdiction:

> [Petitioner] was previously found suitable by the Gaming Commission as, and was at all times relevant to this Complaint, CEO, Chairman, shareholder, and controlling shareholder of Wynn Resorts, which is registered as a publicly traded company by the Gaming Commission and, through wholly owned intermediaries and holding companies, is the owner of [Wynn Resorts], which holds a nonrestricted gaming license. **Although [Petitioner] *resigned* as CEO and Chairman of Wynn Resorts and *redeemed* his shares in Wynn Resorts, the Gaming Control Board placed an *administrative hold* on [Petitioner's] Findings of Suitability and *retains* jurisdiction over him for purposes that include disciplinary proceedings**.

ROR 6.

Essentially, the Board asserts that due to an administrative hold, it "retains" jurisdiction over Petitioner despite his removal of himself in all capacities from a gaming license and the gaming industry. First, the Board's use of the term "retains," after noting Petitioner's actions to disassociate from Wynn Resorts, is indicative of the Board's knowledge that it no longer has jurisdiction over Petitioner. Regardless, there is no support for an administrative hold in the Act or Commission Regulations as a basis for jurisdiction—especially one that "retains" jurisdiction over a person no longer associated with gaming. The Commission concedes as much.[4]

The Board and Commission's disciplinary history does not support a finding that either has jurisdiction over Petitioner.

Respondents fail to provide any authority supporting their jurisdiction over a person no longer involved in Nevada's Gaming Industry in *any* capacity. Importantly, Respondents fail to support their position that they have jurisdiction over a person with no intent to be involved in Nevada's gaming industry in the future. Why? There is none. In fact, the

[4]At the November 17, 2020, hearing on the matter, the Commission, in acknowledging that the Board drafted the complaint, stated the administrative hold is not the basis for Respondents' asserted jurisdiction over Petitioner. For this reason, the Commission asserted that there was no need to prove the administrative hold is permissible. However, the Commission ignores the clear language of complaint, which as stated above, provides that it retains jurisdiction over Petitioner due the administrative hold.

ADRIANA ESCOBAR
DISTRICT JUDGE
DEPARTMENT XIV
LAS VEGAS, NEVADA 89155

Commission conceded that Respondents have never sought to investigate, discipline, or fine a person that has completely divested themselves of the gaming industry with no intent of returning prior to the Board's filing of the underlying complaint.

THE COURT FINDS THAT Respondents lack jurisdiction over Petitioner under the Act and relevant Commission Regulations because Petitioner has no material involvement, directly or indirectly, with a licensed gaming operation or registered holding company.

ORDER

THE COURT ORDERS THAT Petitioner's Petition for Judicial Review is **GRANTED.**

THE COURT FURTHER ORDERS THAT Respondent Commission's Opposition to Wynn's Petition and Countermotion to Dismiss is **DENIED.**

THE COURT FURTHER ORDERS THAT Respondent Board's Answering Brief and Countermotion to Dismiss under NRCP 12(b)(5) is **DENIED.**[5]

Dated this 19th day of November, 2020

THE HONORABLE ADRIANA ESCOBAR
DISTRICT COURT JUDGE

12A 4FC 820C FF36
Adriana Escobar
District Court Judge

[5]The Court notes that in reaching this decision, it did not consider the merits of the underlying proceeding, including Petitioner's alleged acts.

ADRIANA ESCOBAR
DISTRICT JUDGE
DEPARTMENT XIV
LAS VEGAS, NEVADA 89155

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Stephen Wynn, Petitioner(s) vs. Nevada Gaming Commission, Respondent(s)	CASE NO: A-20-809249-J DEPT. NO. Department 14

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order Granting was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 11/19/2020

Donald Campbell	djc@cwlawlv.com
Jon Williams	jcw@cwlawlv.com
Samuel Mirkovich	srm@cwlawlv.com
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Angelica Collazo	acollazo@ag.nv.gov

Kiel Ireland kireland@ag.nv.gov

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Judicial Review/Appeal **COURT MINUTES** **July 23, 2020**

A-20-809249-J Stephen Wynn, Petitioner(s)
vs.
Nevada Gaming Commission, Respondent(s)

July 23, 2020 **9:30 AM** **Motion to Strike**

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER: Sandra Anderson

REPORTER:

PARTIES PRESENT:

Caruso, Darlene S.	Attorney
Ireland, Kiel B.	Attorney
Williams, Jon C.	Attorney

JOURNAL ENTRIES

- Following arguments by counsel, COURT ORDERED, a minute order will be issued. FURTHER, at the request of counsel, a motion that will be efiled will be set on the 8/6/20 calendar at 2:00 PM.

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Judicial Review/Appeal **COURT MINUTES** **August 04, 2020**

A-20-809249-J Stephen Wynn, Petitioner(s)
vs.
Nevada Gaming Commission, Respondent(s)

August 04, 2020 **7:00 AM** **Minute Order**

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Denise Husted

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Plaintiff s Motion to Strike Section II of the Nevada Gaming Commission s Reply in Support of Countermotion to Dismiss (Motion), came on for hearing before Department XIV of the Eighth Judicial District Court, the Honorable Adriana Escobar presiding, on July 23, 2020. Attorneys Darlene Caruso and Kiel Ireland appeared on behalf of Respondents. Attorney Jon Williams appeared on behalf of Petitioner. After considering the moving papers and arguments of the parties, the Court enters the following order:

The Eighth Judicial District Court Rules (EDCR) specify the procedure for briefing in matters such as this:

(i) the petitioner files a memorandum of points and authorities in support of the Petition;
(ii) the respondent serves an opposing memorandum thereto; and
(iii) the petitioner files reply points and authorities in support of the petition.
(iv) either party may request the matter be set for hearing.

EDCR 2.15(d).

Petitioner filed an opening brief for his Petition for Judicial Review, Alternatively, for Writ of

Mandamus and/or Prohibition (Petition/Writ). Respondent Commission responded by filing an Opposition and Countermotion to Dismiss Petitioner s Petition for Judicial Review (Countermotion). Petitioner then filed an Opposition to Respondent Commission s Countermotion. Respondent Commission filed a Reply in Support of its Countermotion on the same day Petitioner filed his Reply in Support of his Petition/Writ.

Petitioner argues, in part, that since he filed the initial Petition/Writ, he is entitled by law to the last word, being the reply. The Court agrees with that point as it relates to the Petition/Writ. However, the same cannot be said for Respondent Commission s Countermotion. While EDCR 2.15(d) does not explicitly states that a reply in support of a countermotion is part of the briefing, such an approach is easily inferred from the open opportunity for parties to file countermotions.

Moreover, no rule or statute cited explicitly prohibits a reply such as that which Respondent Commission filed. Just as a movant receives the last word for his Motion, a counter-movant receives the last word for his countermotion. Thus, Respondent Commission is entitled to the last word on his Countermotion, and Petitioner will receive the last word for the underlying Petition/Writ.

Based on the foregoing, the Court DENIES Petitioner s Motion.

The Court further sets Respondent Commission s Countermotion to Dismiss Petitioner s Petition for Judicial Review on for hearing on August 13, 2020 at 9:30 am. Should the Court prepare its decision on said Countermotion prior to the hearing date, it will issue a Minute Order and vacate according.

The Court further tentatively sets Petitioner s Petition for Judicial Review, Alternatively, for Writ of Mandamus and/or Prohibition on for hearing on August 20, 2020 at 9:30 am. This hearing is contingent upon the Court s decision on Respondent Commission s Countermotion.

Counsel for Respondent Commission is directed to prepare a proposed order. All parties must submit their orders electronically, in both PDF version and Word version, until further notice. You may do so by emailing DC14Inbox@clarkcountycourts.us.

All orders must have either original signatures from all parties or an email appended as the last page of the proposed order confirming that all parties approved use of their electronic signatures. The subject line of the e-mail should identify the full case number, filing code and case caption.

CLERK'S NOTE: This minute order has been electronically served to all registered parties through Odyssey File & Serve. dh 8/4/20

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Judicial Review/Appeal **COURT MINUTES** **September 17, 2020**

A-20-809249-J Stephen Wynn, Petitioner(s)
vs.
Nevada Gaming Commission, Respondent(s)

September 17, 2020	**9:30 AM**	**Opposition and Countermotion**	**Nevada Gaming Commission's Opposition to Wynn's Petition and CounterMotion to Dismiss**

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Michelle Jones
Carina Bracamontez-Munguia

RECORDER:

REPORTER:

PARTIES PRESENT:

Campbell, Donald J.	Attorney
Ireland, Kiel B.	Attorney
Shevorski, Steven G.	Attorney
Williams, Jon C.	Attorney

JOURNAL ENTRIES

- Upon the Court's inquiry Mr. Shevorski clarified he represents the Nevada Gaming Control Board and Mr. Ireland represents the Nevada Gaming Commission. Mr. Shevorski argued Judicial Review is not appropriate for review of an interlocutory order, there is no such mandatory duty to compel and Writ of Mandamus is not appropriate. Mr Shevorski asked the Court dismiss the Complaint brought by Mr. Wynn and grant their Motion to Dismiss. Mr. Ireland argued by contrast the rule that Mr. Wynn is asking for would strike at the heart of the legislatures intent and requested the Countermotion to Dismiss be granted and this matter be allowed to proceed before the commission. Further argument by Mr. Williams noting an order can be a subset of a final decision, and when the word "or" is used it is meant to be an alternative.

Upon further arguments by counsel, COURT ORDERED, matter TAKEN UNDER ADVISEMENT; minute order will issue.

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Judicial Review/Appeal **COURT MINUTES** **November 17, 2020**

A-20-809249-J Stephen Wynn, Petitioner(s)
vs.
Nevada Gaming Commission, Respondent(s)

November 17, 2020 9:30 AM Petition for Judicial Review

HEARD BY: Escobar, Adriana **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Grecia Snow

RECORDER:

REPORTER:

PARTIES PRESENT:

Campbell, Donald J.	Attorney
Caruso, Darlene S.	Attorney
Ireland, Kiel B.	Attorney
Shevorski, Steven G.	Attorney
Williams, Jon C.	Attorney

JOURNAL ENTRIES

- Mr. Ireland argued the administrative hold was irrelevant and not necessary for them to prove that an administrative hold was permissible for them to retain jurisdiction. Mr. Williams argued the Respondent did not have common law authority, it doesn't exist in the statute and in the regulations. Further arguments by counsel regarding other instances where the Nevada Gaming Commission sought discipline and the location report. COURT ORDERED, an Order will be issued.

Certification of Copy

State of Nevada
County of Clark } **SS:**

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NEVADA GAMING COMMISSION'S NOTICE OF APPEAL; CASE APPEAL STATEMENT; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER GRANTING PETITIONER'S PETITION FOR JUDICIAL REVIEW; NOTICE OF ENTRY OF ORDER GRANTING PETITIONER'S PETITION FOR JUDICIAL REVIEW; DISTRICT COURT MINUTES

STEPHEN A. WYNN,

Petitioner(s),

vs.

NEVADA GAMING COMMISSION, a political subdivision of the State of Nevada; NEVADA GAMING CONTROL BOARD, a political subdivision of the State of Nevada,

Respondent(s),

Case No: A-20-809249-J

Dept No: XIV

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto Set my hand and Affixed the seal of the Court at my office, Las Vegas, Nevada This 23 day of December 2020.

Steven D. Grierson, Clerk of the Court

Heather Ungermann, Deputy Clerk