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Elizabeth A. Brown
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State of Nevada ex rel. The Nevada Gaming Control Board

DISTRICT COURT

CLARK COUNTY, NEVADA

STEPHEN A. WYNN, an individual,

Petitioner,

Case No. A-20-809249-J
Dept. No. XIV

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.

NOTICE OF APPEAL

Notice is hereby given that the Nevada Gaming Control Board, Respondent above-named, hereby appeals to the Supreme Court of Nevada from the Order Granting Petitioner's Petition for Judicial Review and Writ of Prohibition entered in this action on the 25th day of November, 2020, a copy of which is attached hereto as Exhibit "A".

Respectfully submitted December 23, 2020.

AARON D. FORD
Attorney General

By: /s/ Steve Shevorski
Steve Shevorski (Bar No. 8256)
Chief Litigation Counsel
Attorneys for Respondent
State of Nevada ex rel. The Gaming
Control Board

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

EXHIBIT A

EXHIBIT A

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Attorneys for Petitioner
Stephen A. Wynn

DISTRICT COURT
CLARK COUNTY, NEVADA

STEPHEN A. WYNN, an individual,

Petitioner,

vs.

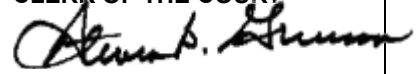
NEVADA GAMING COMMISSION, a
political subdivision of the State of Nevada;
and NEVADA GAMING CONTROL
BOARD, a political subdivision of the State
of Nevada,

Respondents.

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

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

Electronically Filed
11/25/2020 10:27 AM
Steven D. Grierson
CLERK OF THE COURT



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

4 DATED this 25th day of November, 2020.

5
6 CAMPBELL & WILLIAMS

7 By: /s/ J. Colby Williams

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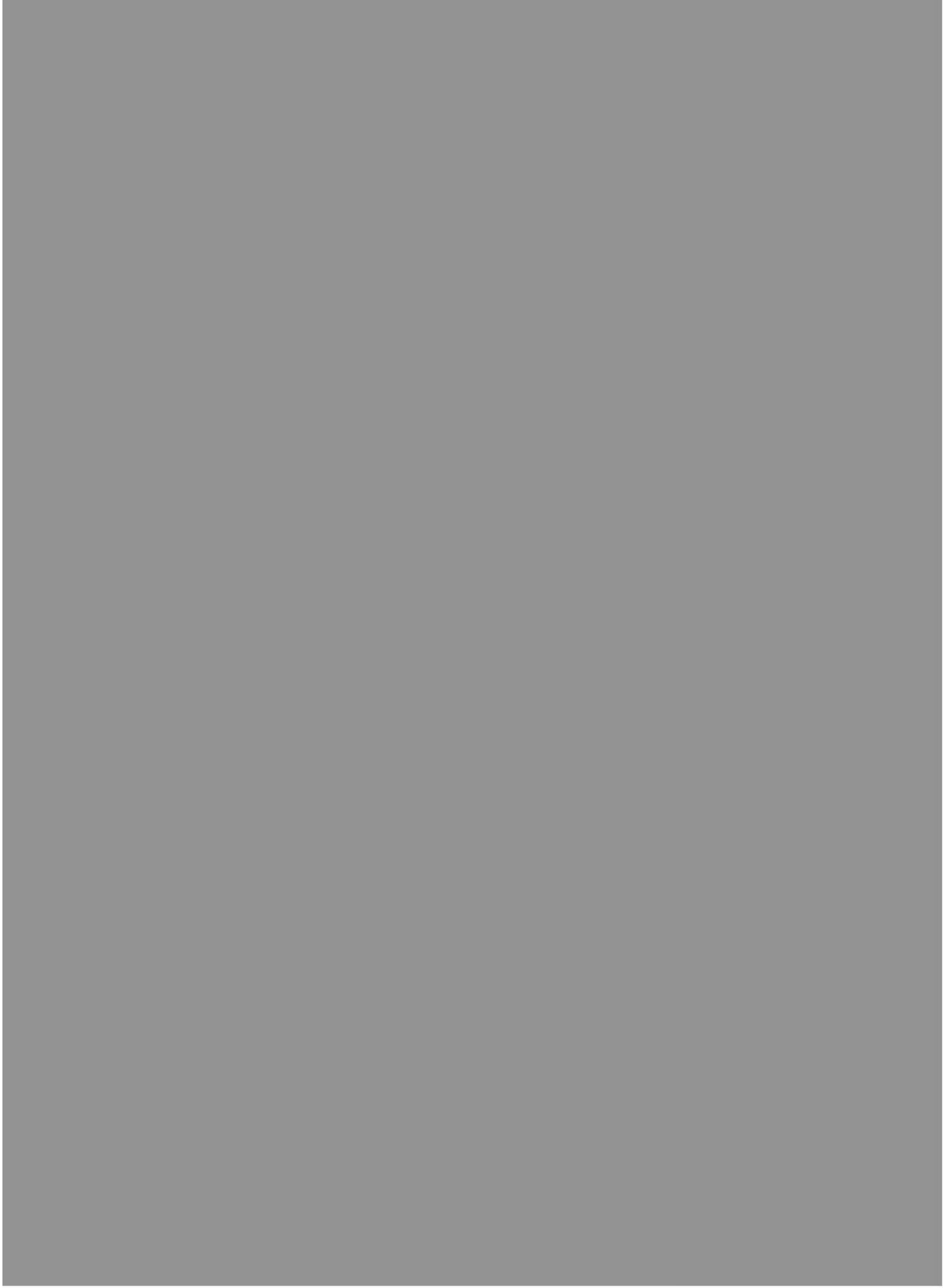
16 *Attorneys for Petitioner*

17 *Stephen A. Wynn*

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



1 **ORDG**

2 **DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

4 STEVEN A. WYNN, an individual,
5
6 Petitioner,

Case No. : A-20-809249-J
Dept. No.: XIV (14)

7 vs.

8 NEVADA GAMING COMMISSION, a
9 political subdivision of the State of Nevada;
10 and NEVADA GAMING CONTROL
11 BOARD, a political subdivision of the State
12 of Nevada,

**ORDER GRANTING PETITIONER'S
PETITION FOR JUDICIAL REVIEW**

13 Respondents.

14
15 Petitioner Steven A. Wynn's Petition for Judicial Review, Alternatively, for Writs of
16 Mandamus and/or Prohibition (Petition), Respondent Nevada Gaming Commission's
17 Opposition to Wynn's Petition and Countermotion to Dismiss, and Respondent Nevada
18 Gaming Control Board's Answering Brief and Countermotion to Dismiss under NRCP
19 12(b)(5) came on for hearing before Department XIV of the Eighth Judicial District Court, the
20 Honorable Adriana Escobar presiding, on September 17, 2020, and November 17, 2020,
21 respectively.¹ Attorneys Donald J. Campbell and J. Colby Williams appeared via Blue Jeans
22 on behalf of Petitioner. Attorneys Kiel B. Ireland and Darlene S. Caruso appeared via Blue
23 Jeans on behalf of Respondent Nevada Gaming Commission (Commission). Attorney Steven
24 Shevorski appeared via Blue Jeans on behalf of Respondent Nevada Gaming Control Board
25 (Board). Having considered arguments of counsel, the moving papers, and the Record on
26 Review (ROR) before it, this Court **HEREBY FINDS AND ORDERS AS FOLLOWS:**

27 **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

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

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

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

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

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

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

26 ///

27 ///

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

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

8 Approximately a year and a half after the Board began its investigation, on October
9 14, 2019, the Board filed a complaint (Complaint) against Petitioner seeking the
10 Commission’s revocation of Petitioner’s findings of suitability on the ground that Petitioner
11 “has repeatedly violated Nevada’s gaming statutes and regulations, bringing discredit upon
12 the State of Nevada and its gaming industry” and “is unsuitable to be associated with a
13 gaming enterprise or the gaming industry as whole.” ROR 4. The Complaint further alleged
14 that the negative reporting from the publicity of Petitioner’s conduct “harmed Nevada’s
15 reputation and its gaming industry” and “damaged the public’s confidence and trust in an
16 industry that is vitally important to the economy of the State of Nevada and the general
17 welfare of its inhabitants.” *Id.*

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

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

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

7 STANDARD OF REVIEW

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

12 Specifically, NRS 463.315(1) provides:

13 Any person aggrieved by a **final decision or order** of the Commission made
14 after hearing or rehearing by the Commission pursuant to NRS 463.312 to
15 463.3145, 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.

16 (emphasis added).

17 FINDINGS OF FACT AND CONCLUSIONS OF LAW

18 *The Commission’s order is subject to judicial review by this Court.*

19 In *Resnick v. Nevada Gaming Comm’n*, 104 Nev. 60, 752 P.2d 229 (1988), the
20 Commission determined that Resnick, an employee of the Dunes Hotel and Casino,
21 exercised significant influence over the operation of the hotel and ordered him to apply for a
22 license. Prior to his hearing, Resnick filed a petition with the Commission asking it to
23 compel the Board to provide him with a copy of the investigative report the Board had
24 prepared, or at least provide him with a hearing on the issue of whether he should be granted
25

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

1 discovery of the report. *Id.* at 61-62, 752 P.2d at 230. After the Commission issued an order
2 denying Resnick’s requests for discovery, Resnick filed a petition for judicial review with
3 the district court. *Id.* at 62, 752 P.2d at 230. In holding that the Commission’s order denying
4 discovery was not a decision or order which could be appropriately reviewed under NRS
5 463.315, the court stated:

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

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

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

19 However, a district court may issue a writ of prohibition where there is not a plain,
20 speedy and adequate remedy in the ordinary course of law. NRS 34.330; Nev. Const. art. 6,
21 §6(1). A writ of prohibition is available to “arrest the proceedings of any tribunal,
22 corporation, board or person exercising judicial functions when such proceedings are
23 without or in excess of the jurisdiction of that tribunal, corporation, board, or person.” NRS
24 34.320.

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

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

1 A party may proceed directly to judicial review where the underlying proceedings are
2 “vain and futile or when the agency clearly lacks jurisdiction.” *Benson v. State Eng’r*, 131
3 Nev. 772, 777, 358 P.3d 221, 224 (2015) (quoting *Engelmann v. Westergard*, 98 Nev. 348,
4 353, 647 P.2d 385, 389 (1982)) (quotations omitted).

5 Ordinarily, under what is known as the Doctrine of Exhaustion, a party must exhaust
6 their administrative remedies before seeking judicial review of an administrative agency
7 decision. *See Benson*, 131 Nev. at 777, 647 P.3d at 224 (explaining that “before availing
8 oneself of district court relief from an agency decision, one must first exhaust available
9 administrative remedies.”). However, the Nevada Supreme Court has made clear “that
10 exhaustion is not required when administrative proceedings are vain and futile or when the
11 agency clearly lacks jurisdiction.” *Id.* (quotations omitted); *Englemann*, 98 Nev. 348, 353,
12 647 P.3d 385, 389 (“where resort to administrative procedures would be futile, exhaustion of
13 administrative remedies is not required.”).

14 Because the basis of the Petition is that Board and Commission lack jurisdiction, this
15 Court may exercise its discretion to issue a Writ of Prohibition. Additionally, Petitioner
16 “may [also] proceed directly to judicial review” since the underlying “proceedings would be
17 futile.” *Benson*, 131 Nev. at 777, 647 P.3d at 224.³

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25 ³Under the Administrative Procedure Act, NRS 233B.130 (1) provides that “any party who
26 is...**Aggrieved by a final decision** in a contested case, is entitled to judicial review of the decision.” (emphasis
27 added). Similarly, 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 statutes, case law interpreting the reviewability of agency decisions where jurisdiction is contested is instructive in the context of proceedings by the Board and Commission.

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

4
5 NRS 463.1405(1) provides:

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

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

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

24 Moreover, “[t]he Commission has full and absolute power and authority to deny any
25 application or limit, condition, restrict, revoke or suspend any license, registration, finding of
26 suitability or approval, or fine any person licensed, registered, found suitable or approved,
27 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

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

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

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

13 The plain language of NRS 463.1405(1) gives the Board power to investigate the
14 qualifications, and continue to observe the conduct, of “all licensees and other persons
15 having a **material involvement directly or indirectly** with a licensed gaming operation or
16 registered holding company.” *Pub. Employees’ Ret. Sys. of Nevada v. Gitter*, 133 Nev. 126,
17 131, 393 P.3d 673, 679 (2017) (when a statute’s language is plain and its meaning clear,
18 courts must apply that plain language). The purpose is “to ensure that licenses are not issued
19 or held by, nor is there any **material involvement directly or indirectly** with a licensed
20 gaming operation or registered holding company by **unqualified, disqualified or**
21 **unsuitable persons.**” NRS 463.1405(1).

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

27

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

3 Moreover, Commission Regulation 4.030(10), titled “Findings of suitability”
4 provides:

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

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

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

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

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

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

1 no party disputes, that Petitioner is involved with any licensed gaming operation in any
2 capacity, whether directly or indirectly. Petitioner stepped down from his Chairman and CEO
3 positions in February of 2018, divested himself of all ownership in Wynn Resorts in March of
4 2018, and moved entirely off the property in April of 2018.

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

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

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

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

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

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

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

3 [Petitioner] was previously found suitable by the Gaming Commission as, and
4 was at all times relevant to this Complaint, CEO, Chairman, shareholder, and
5 controlling shareholder of Wynn Resorts, which is registered as a publicly
6 traded company by the Gaming Commission and, through wholly owned
7 intermediaries and holding companies, is the owner of [Wynn Resorts], which
8 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.**

9 ROR 6.

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

18 *The Board and Commission’s disciplinary history does not support a finding that either has*
19 *jurisdiction over Petitioner.*

20 Respondents fail to provide any authority supporting their jurisdiction over a person
21 no longer involved in Nevada’s Gaming Industry in *any* capacity. Importantly, Respondents
22 fail to support their position that they have jurisdiction over a person with no intent to be
23 involved in Nevada’s gaming industry in the future. Why? There is none. In fact, the
24

25 _____
26 ⁴At the November 17, 2020, hearing on the matter, the Commission, in acknowledging that the Board
27 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.

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

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

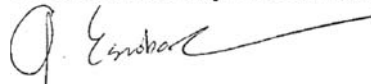
7 **ORDER**

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

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

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

14
15 Dated this 19th day of November, 2020

16 

17 THE HONORABLE ADRIANA ESCOBAR
18 DISTRICT COURT JUDGE

19 12A 4FC 820C FF36
20 Adriana Escobar
21 District Court Judge

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

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Stephen Wynn, Petitioner(s)

CASE NO: A-20-809249-J

7 vs.

DEPT. NO. Department 14

8 Nevada Gaming Commission,
9 Respondent(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 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:

14 Service Date: 11/19/2020

15 Donald Campbell djc@cwlawlv.com

16 Jon Williams jcw@cwlawlv.com

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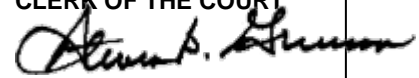
25 Angelica Collazo acollazo@ag.nv.gov

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Kiel Ireland

kieland@ag.nv.gov



AARON D. FORD
Attorney General
Steve Shevorski (Bar No. 8256)
Chief Litigation Counsel
Office of the Attorney General
555 E. Washington Ave., Ste. 3900
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(702) 486-3420 (phone)
(702) 486-3768 (fax)
Attorneys for Respondent
State of Nevada ex rel. The Nevada Gaming Control Board

DISTRICT COURT

CLARK COUNTY, NEVADA

STEPHEN A. WYNN, an individual,

Petitioner,

Case No. A-20-809249-J
Dept. No. XIV

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 APPEAL STATEMENT

1. Name of appellant filing this case appeal statement:

Nevada Gaming Control Board.

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

Eighth Judicial District Court, Adriana Escobar.

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

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

...

...

Nevada Gaming Control Board
Steve Shevorski
Chief Litigation Counsel
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101

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

Stephen A. Wynn, Respondent
Donald J. Campbell
J. Colby Williams
Campbell & 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 and, if so, whether the district court granted that attorney permission to appear under SCR 42: None.

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

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

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: Appellant was not granted leave to proceed in forma pauperis.

9. Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment, information, or petition was filed): The Petition for Judicial Review was filed on 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 (**NGCB**) filed a disciplinary action against Mr. Stephen A. Wynn (**Wynn**) before the Nevada Gaming Commission (**NGC**). Wynn moved to dismiss on lack of subject matter jurisdiction before the NGC. The NGC in a written order denied Wynn's motion to dismiss. Wynn filed a civil action in the Eighth

Judicial District Court asserting causes of action for writ of mandamus/prohibition and petition for judicial review. Wynn alleged that the NGCB lacked subject matter jurisdiction to institute disciplinary proceedings against him and the NGC lacked subject matter jurisdiction to consider the NGCB's complaint. Wynn argued that he stripped the NGCB and NGC of subject matter jurisdiction when he quit his employment with his employer, Wynn Resorts, Ltd., and sold his shares in that entity. The NGCB and NGC moved to dismiss. The district court denied the motions to dismiss and granted Wynn's petition for judicial review and writ of prohibition on November 19, 2020. Notice of entry of that order was entered on November 25, 2020. NGCB appeals from the November 25, 2020 Order.

11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and the Supreme Court docket number of the prior proceeding: Not applicable.

12. Indicate whether this appeal involves child custody or visitation: Not applicable.

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement: No possibility of settlement.

Respectfully submitted December 23, 2020.

AARON D. FORD
Attorney General

By: /s/ Steve Shevorski
Steve Shevorski (Bar No. 8256)
Chief Litigation Counsel
Attorneys for Respondent
State of Nevada ex rel. The Nevada
Gaming Control Board

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

CASE SUMMARY

CASE NO. A-20-809249-J

Stephen Wynn, Petitioner(s)
vs.
Nevada Gaming Commission, Respondent(s)

§
§
§
§
§

Location: **Department 14**
Judicial Officer: **Escobar, Adriana**
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






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

DATE

EVENTS & ORDERS OF THE COURT

INDEX

EVENTS

01/27/2020	 Petition for Judicial Review Filed by: Petitioner Wynn, Stephen A <i>Petition For Judicial Review, Alternatively, For Writs of Mandamus and/or Prohibition.</i>
01/27/2020	 Initial Appearance Fee Disclosure Filed By: Petitioner Wynn, Stephen A <i>Initial Appearance Fee Disclosure</i>
01/28/2020	 Summons Electronically Issued - Service Pending Party: Petitioner Wynn, Stephen A <i>Summons</i>
01/28/2020	 Summons Electronically Issued - Service Pending Party: Petitioner Wynn, Stephen A <i>Summons</i>
01/30/2020	 Acceptance of Service Filed By: Petitioner Wynn, Stephen A

CASE SUMMARY

CASE NO. A-20-809249-J

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

CASE SUMMARY

CASE NO. A-20-809249-J

05/01/2020	 Ex Parte Application Party: Petitioner Wynn, Stephen A <i>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.</i>
05/01/2020	 Opposition Filed By: Petitioner Wynn, Stephen A <i>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.</i>
05/19/2020	 Stipulation and Order Filed by: Respondent Nevada Gaming Commission <i>Stipulation and Order</i>
05/20/2020	 Notice of Entry of Order Filed By: Respondent Nevada Gaming Commission <i>Notice of Entry of Order</i>
05/22/2020	 Reply in Support Filed By: Respondent Nevada Gaming Control Board <i>Reply Supporting Respondent Nevada Gaming Control Board's Countermotion to Dismiss Under NRCP 12(b)(5)</i>
05/22/2020	 Brief Filed By: Respondent Nevada Gaming Commission <i>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</i>
05/29/2020	 Motion to Strike Filed By: Petitioner Wynn, Stephen A <i>Motion to Strike Section II of the Nevada Gaming Commission's "Reply" in Support of Countermotion to Dismiss</i>
06/01/2020	 Clerk's Notice of Hearing <i>Notice of Hearing</i>
06/11/2020	 Opposition to Motion Filed By: Respondent Nevada Gaming Commission <i>Nevada Gaming Commission's Opposition to Motion to Strike Section II of the Nevada Gaming Commission's Reply in Support of Countermotion to Dismiss</i>
07/02/2020	 Notice of Hearing Filed By: Respondent Nevada Gaming Commission <i>Notice of Hearing</i>
07/16/2020	 Reply in Support <i>Reply In Support Of Motion To Strike Section II Of The Nevada Gaming Commission's "Reply" In Support Of Countermotion To Dismiss.</i>
08/18/2020	 Order Filed By: Respondent Nevada Gaming Commission; Respondent Nevada Gaming Control Board <i>Order On Petitioner's Motion to Strike Section II of the Nevada Gaming Commission's Reply In Support of Countermotion to Dismiss</i>

CASE SUMMARY
CASE NO. A-20-809249-J

08/18/2020	 Notice of Entry of Order Filed By: Respondent Nevada Gaming Commission <i>Notice of Entry of Order</i>
10/13/2020	 Notice Filed By: Petitioner Wynn, Stephen A <i>Notice of Supplemental Authorities.</i>
11/19/2020	 Order Granting <i>OrderGranting Petitioner's Petition For Judicial Review</i>
11/25/2020	 Notice of Entry of Order Filed By: Petitioner Wynn, Stephen A <i>Notice of Entry of Order Granting Petitioner's Petition for Judicial Review</i>
12/09/2020	 Recorders Transcript of Hearing <i>Transcript of Proceedings Petition for Judicial Review November 17, 2020</i>
12/23/2020	 Notice of Appeal Filed By: Respondent Nevada Gaming Control Board <i>Notice of Appeal</i>
12/23/2020	 Case Appeal Statement Filed By: Respondent Nevada Gaming Control Board <i>Case Appeal Statement</i>
12/23/2020	 Notice of Appeal Filed By: Respondent Nevada Gaming Commission <i>Nevada Gaming Commission's Notice of Appeal</i>
12/23/2020	 Case Appeal Statement Filed By: Respondent Nevada Gaming Commission <i>Case Appeal Statement</i>
<u>DISPOSITIONS</u>	
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
<u>HEARINGS</u>	
07/23/2020	 Motion to Strike (9:30 AM) (Judicial Officer: Escobar, Adriana) <i>Petitioner's Motion to Strike Section II of the Nevada Gaming Commission's "Reply" in Support of Countermotion to Dismiss</i> Decision Made; Journal Entry Details: <i>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.;</i>
08/04/2020	 Minute Order (7:00 AM) (Judicial Officer: Escobar, Adriana) Denied; Journal Entry Details:

CASE SUMMARY**CASE NO. A-20-809249-J**

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 state 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;

CASE SUMMARY**CASE NO. A-20-809249-J**

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

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

Civil Case Filing Types

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate <i>(select case type and estate value)</i> <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input checked="" type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> 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.

1 **ORDG**

2 **DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

4 STEVEN A. WYNN, an individual,
5
6 Petitioner,
7
8 vs.

Case No. : A-20-809249-J
Dept. No.: XIV (14)

7 NEVADA GAMING COMMISSION, a
8 political subdivision of the State of Nevada;
9 and NEVADA GAMING CONTROL
10 BOARD, a political subdivision of the State
11 of Nevada,

**ORDER GRANTING PETITIONER'S
PETITION FOR JUDICIAL REVIEW**

10 Respondents.

11 Petitioner Steven A. Wynn's Petition for Judicial Review, Alternatively, for Writs of
12 Mandamus and/or Prohibition (Petition), Respondent Nevada Gaming Commission's
13 Opposition to Wynn's Petition and Countermotion to Dismiss, and Respondent Nevada
14 Gaming Control Board's Answering Brief and Countermotion to Dismiss under NRCP
15 12(b)(5) came on for hearing before Department XIV of the Eighth Judicial District Court, the
16 Honorable Adriana Escobar presiding, on September 17, 2020, and November 17, 2020,
17 respectively.¹ Attorneys Donald J. Campbell and J. Colby Williams appeared via Blue Jeans
18 on behalf of Petitioner. Attorneys Kiel B. Ireland and Darlene S. Caruso appeared via Blue
19 Jeans on behalf of Respondent Nevada Gaming Commission (Commission). Attorney Steven
20 Shevorski appeared via Blue Jeans on behalf of Respondent Nevada Gaming Control Board
21 (Board). Having considered arguments of counsel, the moving papers, and the Record on
22 Review (ROR) before it, this Court **HEREBY FINDS AND ORDERS AS FOLLOWS:**

23 **FACTUAL AND PROCEDURAL HISTORY**

24 Petitioner is the former Chairman, Chief Executive Officer, and controlling
25 shareholder of Wynn Resorts, Limited (Wynn Resorts). Wynn Resorts, through its
26

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

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

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

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

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

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

26 ///

27 ///

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

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

8 Approximately a year and a half after the Board began its investigation, on October
9 14, 2019, the Board filed a complaint (Complaint) against Petitioner seeking the
10 Commission’s revocation of Petitioner’s findings of suitability on the ground that Petitioner
11 “has repeatedly violated Nevada’s gaming statutes and regulations, bringing discredit upon
12 the State of Nevada and its gaming industry” and “is unsuitable to be associated with a
13 gaming enterprise or the gaming industry as whole.” ROR 4. The Complaint further alleged
14 that the negative reporting from the publicity of Petitioner’s conduct “harmed Nevada’s
15 reputation and its gaming industry” and “damaged the public’s confidence and trust in an
16 industry that is vitally important to the economy of the State of Nevada and the general
17 welfare of its inhabitants.” *Id.*

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

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

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

7 STANDARD OF REVIEW

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

12 Specifically, NRS 463.315(1) provides:

13 Any person aggrieved by a **final decision or order** of the Commission made
14 after hearing or rehearing by the Commission pursuant to NRS 463.312 to
15 463.3145, 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.

16 (emphasis added).

17 FINDINGS OF FACT AND CONCLUSIONS OF LAW

18 *The Commission’s order is subject to judicial review by this Court.*

19 In *Resnick v. Nevada Gaming Comm’n*, 104 Nev. 60, 752 P.2d 229 (1988), the
20 Commission determined that Resnick, an employee of the Dunes Hotel and Casino,
21 exercised significant influence over the operation of the hotel and ordered him to apply for a
22 license. Prior to his hearing, Resnick filed a petition with the Commission asking it to
23 compel the Board to provide him with a copy of the investigative report the Board had
24 prepared, or at least provide him with a hearing on the issue of whether he should be granted
25

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

1 discovery of the report. *Id.* at 61-62, 752 P.2d at 230. After the Commission issued an order
2 denying Resnick’s requests for discovery, Resnick filed a petition for judicial review with
3 the district court. *Id.* at 62, 752 P.2d at 230. In holding that the Commission’s order denying
4 discovery was not a decision or order which could be appropriately reviewed under NRS
5 463.315, the court stated:

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

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

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

19 However, a district court may issue a writ of prohibition where there is not a plain,
20 speedy and adequate remedy in the ordinary course of law. NRS 34.330; Nev. Const. art. 6,
21 §6(1). A writ of prohibition is available to “arrest the proceedings of any tribunal,
22 corporation, board or person exercising judicial functions when such proceedings are
23 without or in excess of the jurisdiction of that tribunal, corporation, board, or person.” NRS
24 34.320.

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

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

1 A party may proceed directly to judicial review where the underlying proceedings are
2 “vain and futile or when the agency clearly lacks jurisdiction.” *Benson v. State Eng’r*, 131
3 Nev. 772, 777, 358 P.3d 221, 224 (2015) (quoting *Engelmann v. Westergard*, 98 Nev. 348,
4 353, 647 P.2d 385, 389 (1982)) (quotations omitted).

5 Ordinarily, under what is known as the Doctrine of Exhaustion, a party must exhaust
6 their administrative remedies before seeking judicial review of an administrative agency
7 decision. *See Benson*, 131 Nev. at 777, 647 P.3d at 224 (explaining that “before availing
8 oneself of district court relief from an agency decision, one must first exhaust available
9 administrative remedies.”). However, the Nevada Supreme Court has made clear “that
10 exhaustion is not required when administrative proceedings are vain and futile or when the
11 agency clearly lacks jurisdiction.” *Id.* (quotations omitted); *Englemann*, 98 Nev. 348, 353,
12 647 P.3d 385, 389 (“where resort to administrative procedures would be futile, exhaustion of
13 administrative remedies is not required.”).

14 Because the basis of the Petition is that Board and Commission lack jurisdiction, this
15 Court may exercise its discretion to issue a Writ of Prohibition. Additionally, Petitioner
16 “may [also] proceed directly to judicial review” since the underlying “proceedings would be
17 futile.” *Benson*, 131 Nev. at 777, 647 P.3d at 224.³

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25 ³Under the Administrative Procedure Act, NRS 233B.130 (1) provides that “any party who
26 is...**Aggrieved by a final decision** in a contested case, is entitled to judicial review of the decision.” (emphasis
27 added). Similarly, 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 statutes, case law interpreting the reviewability of agency decisions where jurisdiction is contested is instructive in the context of proceedings by the Board and Commission.

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

4
5 NRS 463.1405(1) provides:

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

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

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

24 Moreover, “[t]he Commission has full and absolute power and authority to deny any
25 application or limit, condition, restrict, revoke or suspend any license, registration, finding of
26 suitability or approval, or fine any person licensed, registered, found suitable or approved,
27 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

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

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

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

13 The plain language of NRS 463.1405(1) gives the Board power to investigate the
14 qualifications, and continue to observe the conduct, of “all licensees and other persons
15 having a **material involvement directly or indirectly** with a licensed gaming operation or
16 registered holding company.” *Pub. Employees’ Ret. Sys. of Nevada v. Gitter*, 133 Nev. 126,
17 131, 393 P.3d 673, 679 (2017) (when a statute’s language is plain and its meaning clear,
18 courts must apply that plain language). The purpose is “to ensure that licenses are not issued
19 or held by, nor is there any **material involvement directly or indirectly** with a licensed
20 gaming operation or registered holding company by **unqualified, disqualified or**
21 **unsuitable persons.**” NRS 463.1405(1).

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

27

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

3 Moreover, Commission Regulation 4.030(10), titled “Findings of suitability”
4 provides:

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

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

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

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

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

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

1 no party disputes, that Petitioner is involved with any licensed gaming operation in any
2 capacity, whether directly or indirectly. Petitioner stepped down from his Chairman and CEO
3 positions in February of 2018, divested himself of all ownership in Wynn Resorts in March of
4 2018, and moved entirely off the property in April of 2018.

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

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

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

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

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

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

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

3 [Petitioner] was previously found suitable by the Gaming Commission as, and
4 was at all times relevant to this Complaint, CEO, Chairman, shareholder, and
5 controlling shareholder of Wynn Resorts, which is registered as a publicly
6 traded company by the Gaming Commission and, through wholly owned
7 intermediaries and holding companies, is the owner of [Wynn Resorts], which
8 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.**

9 ROR 6.

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

18 *The Board and Commission’s disciplinary history does not support a finding that either has*
19 *jurisdiction over Petitioner.*

20 Respondents fail to provide any authority supporting their jurisdiction over a person
21 no longer involved in Nevada’s Gaming Industry in *any* capacity. Importantly, Respondents
22 fail to support their position that they have jurisdiction over a person with no intent to be
23 involved in Nevada’s gaming industry in the future. Why? There is none. In fact, the
24

25 _____
26 ⁴At the November 17, 2020, hearing on the matter, the Commission, in acknowledging that the Board
27 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.

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

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

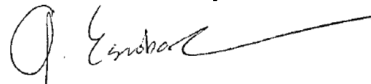
7 **ORDER**

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

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

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

14
15 Dated this 19th day of November, 2020

16 

17 THE HONORABLE ADRIANA ESCOBAR
18 DISTRICT COURT JUDGE

19 12A 4FC 820C FF36
20 Adriana Escobar
21 District Court Judge

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

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Stephen Wynn, Petitioner(s)

CASE NO: A-20-809249-J

7 vs.

DEPT. NO. Department 14

8 Nevada Gaming Commission,
9 Respondent(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 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:

14 Service Date: 11/19/2020

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16 Jon Williams	jcw@cwlawlv.com
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Attorneys for Petitioner
Stephen A. Wynn

DISTRICT COURT
CLARK COUNTY, NEVADA

STEPHEN A. WYNN, an individual,

Petitioner,

vs.

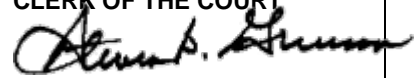
NEVADA GAMING COMMISSION, a
political subdivision of the State of Nevada;
and NEVADA GAMING CONTROL
BOARD, a political subdivision of the State
of Nevada,

Respondents.

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

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

Electronically Filed
11/25/2020 10:27 AM
Steven D. Grierson
CLERK OF THE COURT



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

4 DATED this 25th day of November, 2020.

5
6 CAMPBELL & WILLIAMS

7 By: /s/ J. Colby Williams

8 DONALD J. CAMPBELL, ESQ. (1216)

9 djc@cwlawlv.com

10 J. COLBY WILLIAMS, ESQ. (5549)

11 jcw@cwlawlv.com

12 700 South Seventh Street

13 Las Vegas, Nevada 89101

14 Telephone: (702) 382-5222

15 Facsimile: (702) 382-0540

16 *Attorneys for Petitioner*

17 *Stephen A. Wynn*

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

1 **ORDG**

2 **DISTRICT COURT**
3 **CLARK COUNTY, NEVADA**

4 STEVEN A. WYNN, an individual,
5
6 Petitioner,

Case No. : A-20-809249-J
Dept. No.: XIV (14)

7 vs.

8 NEVADA GAMING COMMISSION, a
9 political subdivision of the State of Nevada;
10 and NEVADA GAMING CONTROL
11 BOARD, a political subdivision of the State
12 of Nevada,

**ORDER GRANTING PETITIONER'S
PETITION FOR JUDICIAL REVIEW**

13 Respondents.

14
15 Petitioner Steven A. Wynn's Petition for Judicial Review, Alternatively, for Writs of
16 Mandamus and/or Prohibition (Petition), Respondent Nevada Gaming Commission's
17 Opposition to Wynn's Petition and Countermotion to Dismiss, and Respondent Nevada
18 Gaming Control Board's Answering Brief and Countermotion to Dismiss under NRCP
19 12(b)(5) came on for hearing before Department XIV of the Eighth Judicial District Court, the
20 Honorable Adriana Escobar presiding, on September 17, 2020, and November 17, 2020,
21 respectively.¹ Attorneys Donald J. Campbell and J. Colby Williams appeared via Blue Jeans
22 on behalf of Petitioner. Attorneys Kiel B. Ireland and Darlene S. Caruso appeared via Blue
23 Jeans on behalf of Respondent Nevada Gaming Commission (Commission). Attorney Steven
24 Shevorski appeared via Blue Jeans on behalf of Respondent Nevada Gaming Control Board
25 (Board). Having considered arguments of counsel, the moving papers, and the Record on
26 Review (ROR) before it, this Court **HEREBY FINDS AND ORDERS AS FOLLOWS:**

27 **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

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

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

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

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

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

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

26 ///

27 ///

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

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

8 Approximately a year and a half after the Board began its investigation, on October
9 14, 2019, the Board filed a complaint (Complaint) against Petitioner seeking the
10 Commission’s revocation of Petitioner’s findings of suitability on the ground that Petitioner
11 “has repeatedly violated Nevada’s gaming statutes and regulations, bringing discredit upon
12 the State of Nevada and its gaming industry” and “is unsuitable to be associated with a
13 gaming enterprise or the gaming industry as whole.” ROR 4. The Complaint further alleged
14 that the negative reporting from the publicity of Petitioner’s conduct “harmed Nevada’s
15 reputation and its gaming industry” and “damaged the public’s confidence and trust in an
16 industry that is vitally important to the economy of the State of Nevada and the general
17 welfare of its inhabitants.” *Id.*

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

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

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

7 STANDARD OF REVIEW

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

12 Specifically, NRS 463.315(1) provides:

13 Any person aggrieved by a **final decision or order** of the Commission made
14 after hearing or rehearing by the Commission pursuant to NRS 463.312 to
15 463.3145, 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.

16 (emphasis added).

17 FINDINGS OF FACT AND CONCLUSIONS OF LAW

18 *The Commission’s order is subject to judicial review by this Court.*

19 In *Resnick v. Nevada Gaming Comm’n*, 104 Nev. 60, 752 P.2d 229 (1988), the
20 Commission determined that Resnick, an employee of the Dunes Hotel and Casino,
21 exercised significant influence over the operation of the hotel and ordered him to apply for a
22 license. Prior to his hearing, Resnick filed a petition with the Commission asking it to
23 compel the Board to provide him with a copy of the investigative report the Board had
24 prepared, or at least provide him with a hearing on the issue of whether he should be granted
25

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

1 discovery of the report. *Id.* at 61-62, 752 P.2d at 230. After the Commission issued an order
2 denying Resnick’s requests for discovery, Resnick filed a petition for judicial review with
3 the district court. *Id.* at 62, 752 P.2d at 230. In holding that the Commission’s order denying
4 discovery was not a decision or order which could be appropriately reviewed under NRS
5 463.315, the court stated:

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

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

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

19 However, a district court may issue a writ of prohibition where there is not a plain,
20 speedy and adequate remedy in the ordinary course of law. NRS 34.330; Nev. Const. art. 6,
21 §6(1). A writ of prohibition is available to “arrest the proceedings of any tribunal,
22 corporation, board or person exercising judicial functions when such proceedings are
23 without or in excess of the jurisdiction of that tribunal, corporation, board, or person.” NRS
24 34.320.

25 Because the Commission’s order is not final, Petitioner is without a plain, speedy,
26 and adequate remedy in the ordinary course of law—judicial review under NRS 463.315(1).
27 Accordingly, a writ of prohibition is proper since the basis of this Petition is that
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29 And if a writ of prohibition is not applicable in the context of matters before the
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14 Because the basis of the Petition is that Board and Commission lack jurisdiction, this
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25 ³Under the Administrative Procedure Act, NRS 233B.130 (1) provides that “any party who
26 is...**Aggrieved by a final decision** in a contested case, is entitled to judicial review of the decision.” (emphasis
27 added). Similarly, 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 statutes, case law interpreting the reviewability of agency decisions where jurisdiction is contested is instructive in the context of proceedings by the Board and Commission.

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

4
5 NRS 463.1405(1) provides:

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

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

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

24 Moreover, “[t]he Commission has full and absolute power and authority to deny any
25 application or limit, condition, restrict, revoke or suspend any license, registration, finding of
26 suitability or approval, or fine any person licensed, registered, found suitable or approved,
27 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

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

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

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

13 The plain language of NRS 463.1405(1) gives the Board power to investigate the
14 qualifications, and continue to observe the conduct, of “all licensees and other persons
15 having a **material involvement directly or indirectly** with a licensed gaming operation or
16 registered holding company.” *Pub. Employees’ Ret. Sys. of Nevada v. Gitter*, 133 Nev. 126,
17 131, 393 P.3d 673, 679 (2017) (when a statute’s language is plain and its meaning clear,
18 courts must apply that plain language). The purpose is “to ensure that licenses are not issued
19 or held by, nor is there any **material involvement directly or indirectly** with a licensed
20 gaming operation or registered holding company by **unqualified, disqualified or**
21 **unsuitable persons.**” NRS 463.1405(1).

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

27

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

3 Moreover, Commission Regulation 4.030(10), titled “Findings of suitability”
4 provides:

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

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

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

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

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

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

1 no party disputes, that Petitioner is involved with any licensed gaming operation in any
2 capacity, whether directly or indirectly. Petitioner stepped down from his Chairman and CEO
3 positions in February of 2018, divested himself of all ownership in Wynn Resorts in March of
4 2018, and moved entirely off the property in April of 2018.

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

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

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

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

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

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

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

3 [Petitioner] was previously found suitable by the Gaming Commission as, and
4 was at all times relevant to this Complaint, CEO, Chairman, shareholder, and
5 controlling shareholder of Wynn Resorts, which is registered as a publicly
6 traded company by the Gaming Commission and, through wholly owned
7 intermediaries and holding companies, is the owner of [Wynn Resorts], which
8 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.**

9 ROR 6.

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

18 *The Board and Commission’s disciplinary history does not support a finding that either has*
19 *jurisdiction over Petitioner.*

20 Respondents fail to provide any authority supporting their jurisdiction over a person
21 no longer involved in Nevada’s Gaming Industry in *any* capacity. Importantly, Respondents
22 fail to support their position that they have jurisdiction over a person with no intent to be
23 involved in Nevada’s gaming industry in the future. Why? There is none. In fact, the
24

25 _____
26 ⁴At the November 17, 2020, hearing on the matter, the Commission, in acknowledging that the Board
27 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.

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

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

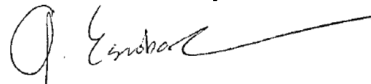
7 **ORDER**

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

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

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

14
15 Dated this 19th day of November, 2020

16 

17 THE HONORABLE ADRIANA ESCOBAR
18 DISTRICT COURT JUDGE

19 12A 4FC 820C FF36
20 Adriana Escobar
21 District Court Judge

22
23
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26
27 ⁵The Court notes that in reaching this decision, it did not consider the merits of the underlying proceeding, including Petitioner's alleged acts.

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Stephen Wynn, Petitioner(s)

CASE NO: A-20-809249-J

7 vs.

DEPT. NO. Department 14

8 Nevada Gaming Commission,
9 Respondent(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 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:

14 Service Date: 11/19/2020

15 Donald Campbell	djc@cwlawlv.com
16 Jon Williams	jcw@cwlawlv.com
17 Samuel Mirkovich	srm@cwlawlv.com
18 Matthew Wagner	maw@cwlawlv.com
19 John Chong	jyc@cwlawlv.com
20 Garrett Logan	gbl@cwlawlv.com
21 Traci Plotnick	tplotnick@ag.nv.gov
22 Steven Shevorski	sshevorski@ag.nv.gov
23 Mary Pizzariello	mpizzariello@ag.nv.gov
24 Darlene Caruso	dcaruso@ag.nv.gov
25 Angelica Collazo	acollazo@ag.nv.gov

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Kiel Ireland

kieland@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
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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
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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):

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),

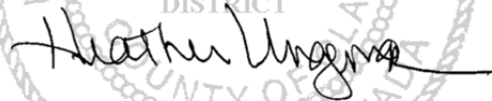
Case No: A-20-809249-J

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