

In the Supreme Court of Nevada

SCOTT CANARELLI, beneficiary of the
SCOTT LYLE GRAVES IRREVOCABLE TRUST
dated February 24, 1998,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, in and for the
County of Clark; and the HONORABLE
LINDA MARIE BELL,
Respondents,

and

LAWRENCE D. CANARELLI; HEIDI CANA-
RELLI; and FRANK MARTIN, special admin-
istrator for the ESTATE OF EDWARD C.
LUBBERS, former trustees,
Real Parties in Interest.

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Elizabeth A. Brown
Clerk of Supreme Court

**PETITIONER’S NOTICE OF POSITION
REGARDING REQUEST FOR *IN CAMERA* REVIEW**

This Court correctly denied real parties in interest’s “Request for Determination of Pending Motion Prior to Oral Argument Set for September 10, 2021.” (See Doc. Nos. 21-24353, 21-24092.)

To be clear, petitioner also opposes the underlying invitation for this Court to review the purportedly privileged notes *in camera*.¹ Alternatively, however, if the Court seeks to decide this petition by reviewing

¹ As set forth below, petitioner included in his reply substantive points

the notes, appellate counsel for petitioner must be given equal opportunity.

A. *In Camera* Review Is Unnecessary or, According to Real Parties in Interest's Standard, Disqualifying

First, this Court does not need the proposed *in camera* review to decide the purely legal questions at issue in the writ petition. Under the correct legal standard set forth by this Court in *Kirksey v. State*, 112 Nev. 980, 1007, 923 P.2d 1102, 1119 (1996), the nature of the documents is irrelevant. The only question is whether, after reviewing the documents, Judge Sturman displayed “a deep-seated favoritism or antagonism that would make fair judgment impossible.” Petitioner explained that argument throughout his writ petition and incorporated this opposition to the motion in his reply brief. (*See Pet., passim*; Reply at 4, 10-20.)

Second, as petitioner’s reply makes clear, under the erroneous legal standard proposed by real parties in interest, this Court’s *in camera* review would necessitate disqualification of this Court’s members, just

in opposition to the request for this Court’s *in camera* review. As necessary, however, petitioner asks for leave under NRAP 26(b) for the Court to consider these points in opposition now.

as Judge Sturman's *in camera* review purportedly necessitated her disqualification. (See Reply at 3.)

**B. As a Matter of Fairness, Appellate Counsel
Should Be Given Equal Access to the Material
on Which this Court Bases Its Decision**

Finally, if this Court were to order a review of the documents in its consideration of the writ petition, petitioner asks that his appellate counsel be allowed to review the same documents, on an attorney's-eyes-only basis, in order to respond adequately. Appellate counsel, unlike real parties in interest and their counsel, has not seen the notes or learned about their contents. And it would be prejudicial for the writ petition to be decided on the basis of information withheld from counsel and to which counsel cannot respond. In *Al Haramain Islamic Found., Inc. v. U.S. Dep't of Treasury*, for example, the Ninth Circuit suggested a similar remedy in the context of giving a suspected terrorist organization its due-process right to know the nature of classified materials being used to support its designation: as an alternative to declassification or summary of classified information, the government must permit the organization's counsel to view classified information under a protective order, so as to provide adequate notice and opportunity to respond. 686

F.3d 965, 982-86 (9th Cir. 2012) (citing *KindHearts for Charitable Humanitarian Dev., Inc. v. Geithner*, 710 F. Supp. 2d 637, 657-60 (N.D. Ohio 2009)).

So, too, here. If only an *in camera* review will enable this Court to address the issues in the petition, then fairness dictates that undersigned appellate counsel for petitioner must be given the same opportunity to review the materials.

Dated this 7th day of September, 2021.

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CERTIFICATE OF SERVICE

I certify that on September 7, 2021, I submitted the foregoing “Petitioner’s Notice of Position Regarding Request for *in Camera* Review” for filing *via* the Court’s eFlex electronic filing system. Electronic notification will be sent to the following:

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