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IN THE SUPREME COURT OF THE STATE OF NEVADA

Edgardo P. Yusi; Keolis Transit Services, LLC,
Supreme Ct. No.: 82625

Dist. Ct. Case No.: A-18-781000-C

Petitioner,

vs.

The Eighth Judicial District Court of the
State of Nevada and the Honorable
Nancy Allf, Judge,

**Edgardo Yusi & Keolis Transit
Services, LLC's Reply re Motion to
Stay**

Respondents.

and

Heather Felsner,

Real Party in Interest.

A stay is appropriate as to the underlying case so as to preserve the status quo. A stay also moots Mrs. Felsner's concern about the five year rule.

1 DATED this 9th day of November, 2021.



4 /s/ Michael P. Lowry
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8 **Memorandum of Points & Authorities**

9 **I. The initial expert disclosure deadline was extended only as to Mr. Yusi.**

10 Mrs. Felsner correctly states Mr. Yusi disclosed the information required to
11 designate a retained medical expert, except a report. Mr. Yusi has not yet been
12 able to obtain a report because he has not yet been able to obtain the
13 neuropsychological examination that he requested and that is the topic of this writ
14 petition. The district court ordered that the new January 31, 2022 expert disclosure
15 deadline applies only to Mr. Yusi and for the purpose of disclosing a report from a
16 neuropsychologist. The parties agree the district court stated no further extensions
17 will be granted.

18 **II. A stay is necessary to preserve the status quo.**

19 The parties agree Mr. Yusi complied with the procedural requirement to first
20 ask the district court for a stay and that the district court denied that request.

1 The parties disagree whether NRAP 8(c)'s factors are satisfied here, but
2 Mrs. Felsner does not contest that a Rule 35 examination in this case would be
3 subject to the initial expert disclosure deadline. Mrs. Felsner instead argues it is
4 ethically possible for a neuropsychological examination to occur in the presence of
5 an observer. First, this argument skips past Mr. Yusi's primary point in this
6 petition: the requirements the district court imposed were based upon NRS 52.380,
7 which is an unconstitutional statute. If the statute is inapplicable, then the debate
8 about an observer is moot.

9 Second, Mrs. Felsner's argument expressly conflicts with the affidavit she
10 submitted from Dr. Axelrod. In it he relied upon ethical standards from the
11 Michigan Psychological Association, the National Academy of Neuropsychology,
12 and the American Board of Professional Neuropsychology. Dr. Axelrod's affidavit
13 expressly stated "[i]t is unethical for a ... neuropsychologist to allow a Third Party
14 Observer to be present during the face-to-face evaluation and formal testing of the
15 individual..."¹ He also noted "[t]he presence of an interpreter in an evaluation is
16 different from a Third Party Observer, as the interpreter is independent and has no
17 interest or relationship to the outcome of the evaluation."² Dr. Axelrod's position

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19
20 ¹ Appendix Vol. 1 at App0098.

² *Id.* at App0099. Mrs. Felsner's opposition to this motion is the first time she has asserted a language barrier might exist.

1 is supported by the literature Mr. Yusi supplied in support of his arguments, as
2 well as the American Board of Professional Neuropsychology's amicus brief.

3 The conditions the district court imposed per NRS 52.380 upon the
4 neuropsychological examination block Mr. Yusi from obtaining a
5 neuropsychological examination of Mrs. Felsner. If those conditions are upheld,
6 then Mr. Yusi will need to reevaluate his options. If those conditions are
7 unconstitutional, then Mr. Yusi will need time to schedule the examination and
8 disclose a report. Either way, the district court has stated it will not extend the
9 initial expert disclosure deadline past January 31, 2022. If a stay is not granted,
10 then Mr. Yusi's ability to obtain an examination under any conditions will be lost
11 forever.

12 As to the second factor, Mrs. Felsner asserts there will be no irreparable
13 harm if the stay is denied. However, absent a stay Mr. Yusi will be forced to
14 forego the neuropsychological examination that is the subject of this petition. That
15 harm is irreparable absent further relief from this court. Mrs. Felsner does not
16 assert she will suffer any irreparable harm if a stay is granted.

17 As to the final factor, Mrs. Felsner seems to argue that Mr. Yusi must
18 accurately predict how an appellate court will rule to qualify for a stay. This is
19 inaccurate. The question instead is whether Mr. Yusi is likely to prevail on the
20 merits of his petition. She also asserts that statutes are presumed valid, which is an

1 accurate statement of law. However she discounts the constitutional arguments
2 raised in multiple petitions pending with this court on the same topic that Mr. Yusi
3 raises. She also discounts the fact that a stay was already granted in the only other
4 petition that requested one.

5 **III. A stay is appropriate.**

6 Without a stay, Mr. Yusi is unable to obtain a neuropsychological
7 examination and is blocked from obtaining the information Rule 35 permits.
8 Granting a stay until this petition is decided merely preserves the status quo and
9 eliminates Mrs. Felsner's concern about the five year rule.

10 DATED this 9th day of November, 2021.



12
13 /s/ Michael P. Lowry
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Certificate of Service

Per NRAP 21(a) and 25(c), I certify that I am an employee of Wilson Elser Moskowitz Edelman & Dicker LLP, and that on November 9, 2021, **Edgardo Yusi & Keolis Transit Services, LLC's Reply re Motion to Stay** was served via electronic means by operation of the Court's electronic filing system.

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BY: /s/ Amanda Hill
An Employee of

