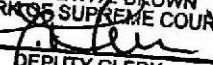


FILED

FEB 09 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY: 
DEPUTY CLERK

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE
GUARDIANSHIP OF THE ESTATE
OF EDWARD FEIN, A PROTECTED
PERSON.

Supreme Court No. 82630

District Court Case No. GR1800187

ALAN S. LEVIN, M.D., J.D.,
Appellant,

vs.

EDWARD FEIN; PEARL FEIN;
RANDAL S. KUCKENMEISTER;
AND JP MORGAN CHASE BANK,
N.A.,
Respondents.

**RESPONDENT EDWARD FEIN'S
MOTION TO FILE UNDER SEAL
HIS ANSWERING BRIEF,
APPELLANT'S OPENING BRIEF,
AND PORTIONS OF
APPELLANT'S APPENDIX**

Concerning the District Court,
Department 6 (Hon. Lynne K.
Simons), Second Judicial District

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EDWARD FEIN


FEB 09 2022

22-04391

Respondent Edward Fein (“Mr. Fein”), a protected person, through his counsel of record, Gustave J. Rossi and Enrique R. Schaerer of MAUPIN, COX & LeGOY and Adam F. Streisand and Golnaz Yazdchi of SHEPPARD, MULLIN, RICHTER, & HAMPTON LLP, admitted *pro hac vice* below, hereby moves the Court for an order under the Nevada Rules of Sealing and Redacting Court Records (“SRCR”) sealing his concurrently filed Answering Brief in its entirety, as well as those items deemed to be confidential in Appellant’s Appendix refile on January 11, 2021.¹ Under SRCR 3(2), said documents should remain confidential and otherwise protected from examination by the public and unauthorized court personnel until the Court rules on this Motion.

I. BACKGROUND

Mr. Fein moves for an order to seal his concurrently filed Answering Brief, Dr. Levin’s Opening Brief, and portions of Appellant’s Appendix since they contain and discuss the strictly confidential terms of a settlement agreement among the parties to this appeal (“Parties”). SRCR 3(4)(e) (providing the Court may seal portions of the record that contain confidential terms of a settlement agreement of the parties).

¹ Alan Levin’s (“Dr. Levin”) attempted filing on December 17, 2021 was returned.

On February 13–14, 2020, the Parties participated in a mandatory settlement conference, where they reached a confidential settlement. They jointly filed a petition for court approval of the settlement agreement (the “Settlement Petition”). On March 2, 2020, Mr. Fein filed a Motion for Temporary Restraining Order (the “TRO Motion”) because Alan Levin (“Dr. Levin”), the former guardian of Mr. Fein’s estate, had violated the settlement agreement for the reasons set forth in the TRO Motion. On March 9, 2020, the district court granted a motion to file the TRO and its exhibits under seal. On March 24, 2020, the district court granted the Settlement Petition, as well as the TRO Motion, and issued orders regarding the same, including a no-contact order. Dr. Levin violated the order granting the Settlement Petition, as well as the terms of the settlement agreement. Mr. Fein moved for sanctions, which the district court granted by way of an order entered on February 10, 2021.

Dr. Levin has appealed this order and, after first trying to file his Opening Brief and Appellant’s Appendix under seal but failing to do so properly, filed those documents publicly, without any effort to seal them pursuant to the settlement agreement, once he received this Court’s order denying his motion to seal, which failed to set out the legal or

factual grounds for sealing. Since the Answering Brief contains and discusses the strictly confidential contents of the parties' settlement agreement, Mr. Fein respectfully requests that his Answering Brief be filed under seal pursuant to SRCR 3(4)(e).

II. LEGAL AUTHORITY AND ARGUMENT

A. Sealing the Answering Brief is necessary and proper.

SRCR 3(4) sets forth grounds to seal and when written findings supporting an order to seal are required, and provides in relevant part:

The court may order the court files and records, or any part thereof, in a civil action to be sealed or redacted, provided the court makes and enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety interests that outweigh the public interest in access to the court record. The parties' agreement alone does not constitute a sufficient basis for the court to seal or redact court records. The public interest in privacy or safety interests that outweigh the public interest in open court records include findings that:

(a) The sealing or redaction is permitted or required by federal or state law; . . . or

(e) The sealing or redaction is of the confidential terms of a settlement agreement of the parties.

SRCR 3(4).

By way of the Answering Brief, Mr. Fein seeks to defend against Dr. Levin's frivolous appeal and to hold Dr. Levin accountable for his continued violations of the order granting the Settlement Petition, as

well as the settlement agreement. If Dr. Levin is not stopped and held accountable, he will simply persist. Mr. Fein has been and will continue to be irreparably harmed. The Parties have agreed to keep, and the Court has respected their binding agreement to keep, the settlement agreement confidential.

To further the confidentiality term of the settlement agreement, Mr. Fein seeks an order sealing his Answering Brief, which discusses the settlement agreement in detail. Sealing is permitted and justified to protect the confidentiality of the settlement agreement. SRCR 3(4)(a) & (e). The settlement agreement requires each party to take measures to protect the confidential nature of the agreement and not to disclose its strictly confidential terms.

In furtherance of his obligations under the settlement agreement, Mr. Fein seeks an order sealing his Answering Brief.

B. The scope of the requested sealing order comports with law.

The Court cannot seal the entire record, cannot conceal a public hazard, and must use the least restrictive means in sealing a record. SRCR 3(5) & (6). No public hazard exists in this case, and the requested sealing is the least restrictive means available to protect the interests of

the parties sufficiently and still to provide the public access to the relevant, non-privileged information in this case. Mr. Fein therefore respectfully requests that the Court seal from the record his Answering Brief, which reveals confidential settlement terms. Thus, the Answering Brief, which is not expected to be subject to disclosure to third parties at any point in the future, should be sealed.

C. For similar reasons, Dr. Levin's Opening Brief and several portions of Appellant's Appendix should be sealed.

In addition to his request to file under seal his Answering Brief, Mr. Fein requests that Dr. Levin's Opening Brief and several documents included in Appellant's Appendix be sealed from public view. In particular, the following documents were sealed below and should be sealed on appeal:

1. "Motion for Order Appointing the State Guardianship Compliance Office to Complete Performance of Settlement Agreement Dated February 14, 2020," which appears at pages 74–77 of Appellant's Appendix and is subject to a sealing order, a copy of which is attached as Exhibit "1" to this Motion;

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2. “Motion for Sanctions – originally filed under seal,” which appears at pages 78–106 of Appellant’s Appendix and is subject to a sealing order, a copy of which is attached as Exhibit “2” to this Motion; and

3. “Transcript of [Sealed] Proceedings Hearing on Appointment of Interim Guardian, Tuesday, September 3rd, 2019,” which appears at 1–64 of Appellant’s Appendix and is a record of a sealed proceeding that should itself remain sealed.

Each of the foregoing documents, or portions thereof, of Appellant’s Appendix have previously been ordered to be sealed below and should be sealed from public view on appeal for the reasons set forth above in this Motion. As with Mr. Fein’s Answering Brief, Dr. Levin’s Opening Brief and the documents in Appellant’s Appendix that should be sealed do no conceal a public hazard and the public’s interest in viewing such documents is minimal when compared to the harm that would be caused if such information were made public.

III. CONCLUSION

Based on the foregoing, Mr. Fein respectfully requests that the Court enter an order sealing from the record his Answering Brief, Dr.

Levin's Opening Brief, and pages 1–64, 74–77, and 78–106 of Appellant's Appendix.

Respectfully submitted this February 9, 2022.

/s/ Enrique R. Schaerer

Gustave J. Rossi (State Bar No. 1961)

Enrique R. Schaerer (State Bar No. 11706)

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CERTIFICATE OF SERVICE

I hereby certify that, on February 9, 2022, for Maupin, Cox & LeGoy, I electronically filed the foregoing **Respondent Edward Fein's Answering Brief**, with the Clerk of the Nevada Supreme Court via the Court's e-Flex system. Service will be made by e-Flex on registered participants and on non-e-Flex participants by U.S. mail, as noted.

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DATED: February 9, 2022.

/s/ Janyce Rossall
Janyce Rossall

EXHIBIT 1

EXHIBIT 1

EXHIBIT 1

3215

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

In the Matter of the Guardianship of
the Estate of:

Case No. GR18-00187

Dept. No. 6

EDWARD FEIN,

A Protected Person

^{LKS}
~~Proposed~~ ORDER GRANTING MOTION TO SEAL "MOTION FOR ORDER APPOINTING
THE STATE GUARDIANSHIP COMPLIANCE OFFICE TO COMPLETE PERFORMANCE
OF SETTLEMENT AGREEMENT DATED FEBRUARY 14, 2020, AND MOTION TO FILE
OPPOSITION THERETO UNDER SEAL

THIS COURT, having considered the Motion to Seal "Motion for Order Appointing
The State Guardianship Compliance Office to Complete Performance of Settlement Agreement Dated
February 14, 2020" and Motion to File Opposition Thereto Under Seal, filed herein by RANDAL S.
KUCKENMEISTER, CPA, the Court appointed Guardian of the Estate of EDWARD FEIN, an adult
protected person, and no objection being provided thereto, and good cause appearing therefor, the
Court hereby finds and Orders as follows:

1. This Court entered an Order Granting Joint Motion to Seal Confidential Settlement
Agreement on March 9, 2020 and sealed the Confidential Settlement Agreement attached as EXHIBIT
1 to that Joint petition to Approve Settlement with Alan Levin.

2. On March 24, 2020, this Court entered an order approving the confidential settlement
with Levin confirming the terms of the Confidential Settlement Agreement and Levin's resignation as
guardian of the estate.

1 3. On June 25, 2020, Levin, the former guardian of the estate, filed a "Motion for Order
2 Appointing the State Guardianship Compliance Office to Complete Performance of Settlement
3 Agreement Dated February 14, 2020. Upon review of the same, Levin quoted portions of that
4 Confidential Settlement Agreement even though the terms of such agreement were to remain
5 confidential and even though this Court entered an Order sealing the same from public view. As such,
6 Kuckenmeister requested that Levin's Motion filed June 25, 2020 be sealed from public view.

7 4. Prior to responding to such Motion and filing the Opposition thereto, Kuckenmeister
8 requested that he be permitted to file his Opposition under seal as such Opposition necessarily includes
9 reverence to Levin's Motion and to the Confidential Settlement Agreement itself.

10 5. The terms of the Confidential Settlement Agreement have already been sealed by this
11 Court, and any reference thereto shall also be sealed. Allowing such terms to be made known to the
12 public, would be detrimental to the Protected Person and his family.

13 6. Sealing Levin's Motion and Kuckenmeister's Opposition thereto is of high importance
14 as such Motion and Opposition contain the terms of the Confidential Settlement Agreement which has
15 already been sealed by this Court.

16 7. Given the privacy considerations that were violated by Levin by citing to the
17 Confidential Settlement Agreement in his Motion, and due to the fact that Kuckenmeister must
18 respond to such Motion by the filing of an Opposition, the Motion filed on June 25, 2020, together
19 with any Opposition filed thereto, shall be sealed and not made available to the general public.

20 8. The limited sealing of such records is justified by identified and compelling interests
21 that outweigh the public interest in access to these portions of the Court record, as has already been
22 determined in sealing the Confidential Settlement Agreement itself.

23 **NOW, THEREFORE, IT IS HEREBY ORDERED:**

24 1. The Motion to Seal is GRANTED in its entirety.

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1 2 The Clerk of this Court shall: (A) seal the Motion filed herein by Levin on June 25,
2 2020; (B) seal the Opposition to be filed by Kuckenmeister in response thereto; and (C) take all actions
3 set forth in SRCR 3 as are necessary to carry out this Order and ensure that members of the general
4 public do not have access to such records.

5 **IT IS SO ORDERED.**

6 DATED this 9th day of July, 2020.

7
8 
9 _____
 DISTRICT JUDGE

10 Respectfully Submitted:

11 ALLISON MacKENZIE, LTD.

12
13 By: /s/ KYLE A. WINTER, Esq.
14 Nevada State Bar No. 13282
15 Attorneys for Guardian of the Estate
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24 4844-5939-3985, v. 1
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EXHIBIT 2

EXHIBIT 2

EXHIBIT 2

Code 3215

IN THE FAMILY DIVISION

OF THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

Case No. GR18-00187

In the Matter of the Guardianship of
the estate of

Dept. No. 6

Edward Fein, an adult,
Fka Edward Feinstein
DOB: May 8, 1936,

A Protected Person. /

~~PROPOSED~~ ^{LKS} ORDER GRANTING MOTION TO FILE
MOTION FOR SANCTIONS, AND ITS EXHIBITS, UNDER SEAL

Having considered Petitioner/Protected Person Edward Fein's ("Ed") Motion to Seal the Motion for Sanctions (the "**Sanctions Motion**"), and Its Exhibits, under Seal (the "**Motion to Seal**"), the associated papers filed herein, and with good cause appearing, the Court orders:

The Court finds that the parties to the above-captioned case have entered into a settlement agreement, which contains confidential terms, and that the Sanctions Motion and its exhibits reveal the confidential terms of the settlement. SCRC 3(4)(a) & (e). The Court specifically recognizes that the agreement, standing alone, is not a sufficient basis for the Court to seal the requested portions of the Court record.

The Court further finds that the limited sealing of the record in this instance is justified by identified and compelling interests that outweigh the public interest in access

1 to these portions of the Court record. SRCR 3(4)(h). Specifically, the Court finds that
2 disclosure of these confidential settlement terms would prejudice the parties and
3 discourage confidential settlement agreements to a significantly greater degree than any
4 potential prejudice to the public. Now, therefore,

5 IT IS HEREBY ORDERED the Motion to Seal is GRANTED.

6 IT IS FURTHER ORDERED that the court clerk shall seal the record in this case,
7 as specified below:

8 The Motion for Sanctions and its exhibits, filed by Ed Fein on July 8, 2020, and
9 Exhibits 1 to 3 attached to the Sanctions Motion;

10 IT IS FURTHER ORDERED that the court clerk shall take such actions set forth
11 in SRCR 3 as necessary to carry out this Order.

12 Dated this 9th day of July, 2020.

13
14 
15 DISTRICT JUDGE

16 Respectfully submitted,

17 Maupin, Cox & LeGoy

18 By /s/ Enrique R. Schaerer

19 Michael E. Malloy

20 Kim G. Rowe

Gustave J. Rossi

Enrique R. Schaerer

21 Sheppard Mullin Richter & Hampton LLP

22 By /s/ Adam F. Streisand

23 Adam F. Streisand, CA Bar # 155662

Golnaz Yazdchi, CA Bar # 279160

(Admitted Pro Hac Vice)

24 Attorneys for Edward Fein
25
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