

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court No.  
District Court Case No. A-18-772761-C

Electronically Filed  
Oct 11 2021 10:42 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

VENETIAN CASINO RESORT, LLC, a Nevada limited liability company,  
LAS VEGAS SANDS, LLC, a Nevada limited liability company,  
Petitioners,

v.

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN  
AND FOR THE COUNTY OF CLARK, AND THE HONORABLE KATHLEEN  
DELANEY in her capacity as District Judge,  
Respondent,  
JOYCE SEKERA, an individual,  
Real Party in Interest

EMERGENCY MOTION UNDER NRAP 27(e)

EMERGENCY MOTION UNDER NRAP 8 STAYING EXECUTION OF  
ORDER DIRECTING PETITIONERS TO DISCLOSE PRIVATE, PROTECTED  
INFORMATION OF GUESTS NOT INVOLVED IN UNDERLYING LAWSUIT

ACTION IS NEEDED BY OCTOBER 14, 2021 BEFORE PETITIONER IS  
REQUIRED TO DISCLOSE THE CONFIDENTIAL INFORMATION  
THIS MOTION IS BEING FILED CONCURRENTLY WITH AN EMERGENCY  
PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION

Michael A. Royal, Esq. (SBN 4370)  
Gregory A. Miles, Esq. (SBN 4336)  
ROYAL & MILES LLP  
1522 W. Warm Springs Rd.  
Henderson, Nevada 89014  
Telephone: (702) 471-6777  
Facsimile: (702) 531-6777  
Email: mroyal@royalmilesllp.com  
gmiles@royalmilesllp.com

**AFFIDAVIT OF MICHAEL A. ROYAL, ESQ. IN SUPPORT OF**  
**PETITIONERS' EMERGENCY MOTION FOR STAY AND**  
**NRAP 27(E) CERTIFICATE**

STATE OF NEVADA     }  
COUNTY OF CLARK    } ss:

1.     I am an attorney licensed to practice in the State of Nevada and am an attorney at the law firm of Royal & Miles LLP, Attorneys for Petitioners VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC, in support of this PETITIONERS' EMERGENCY PETITION FOR WRIT OF MANDAMUS AND/OR WRIT OF PROHIBITION UNDER NRAP RULES 21(a)(6) AND 27(e).

2.     The telephone numbers and office addresses of the attorneys for the Real Party in Interest are listed as follows:

Keith E. Galliher, Jr., Esq.  
THE GALLIHER LAW FIRM  
1850 E. Sahara Avenue, Suite 107  
Las Vegas, NV 89014  
(702) 735-0049

Sean K. Claggett, Esq.  
William T. Sykes, Esq.  
Geordan G. Logan, Esq.  
CLAGGETT & SYKES LAW FIRM  
4101 Meadows Lane, Suite 100  
Las Vegas, NV 89107  
(702) 333-7777  
Attorneys for Real Party in Interest

3.     The facts showing the existence and nature of Petitioners' emergency are as follows: An order was entered on September 7, 2021, directing Petitioners,

Venetian Casino Resort, LLC and Las Vegas Sands, LLC (hereinafter “Venetian”) to produce unredacted reports of other incidents involving Venetian guests without providing requested protection under NRCP 26(c). Venetian’s motion for a stay to the Supreme Court is to allow time for an adjudication of the concurrently filed writ of mandamus and/or writ of prohibition. Immediate action is required to prevent Venetian and its guests from suffering irreparable harm.

4. Counsel for Real Party in Interest was served with Petitioners’ Petition and this Motion via electronic service as identified on the proof of service in this document. Prior to filing this Petition and Motion my office contacted, by telephone, the clerk of the Supreme Court, the Clerk of the Eight Judicial District Court of the State of Nevada, and Real Party in Interest's attorney to notify them that Petitioners were filing the instant Emergency Motion and Petitioners’ Emergency Petition for Writ of Mandamus and/or Writ of Prohibition Under NRAP Rules 21(A)(6) And 27(E).

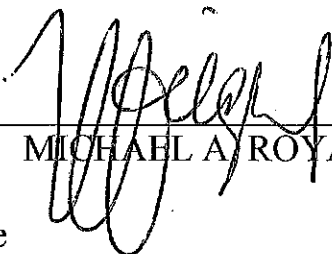
5. Petitioners will be required to divulge confidential information of non-party litigants if this Court does not take action. Concurrently with this Motion, Petitioner is filing an Emergency Petition for Writ of Mandate and/or Prohibition. If this Court grants this motion, then the emergency will be abated and the concurrently filed Petition may be considered on a non-emergency basis.

6. The relief sought in the Writ Petition is not available through the District Court. The District Court granted Petitioners' motion to stay the proceedings. It is nevertheless imperative that this matter be heard at the Court's earliest possible convenience as the private information at issue continues to be published indiscriminately by Sekera.

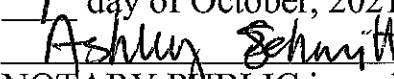
7. I certify that I have read this motion and, to the best of my knowledge, information and belief, this motion complies with the form requirements of Rule 21(d) and is not frivolous or interposed for any improper purpose such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

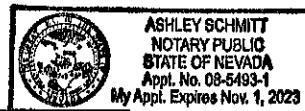
8. I further certify that this brief complies with all Nevada Rules of Appellate Procedure, including the requirements of Rule 28(e) every assertion in the brief regarding matters in the record be supported by a reference to the appendix where the matter relied upon is to be found. I understand I may be subject to sanctions in the event the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Further affiant sayeth naught.

  
MICHAEL A. ROYAL, ESQ.

SUBSCRIBED AND SWORN to before  
me by Michael A. Royal, Esq., on this  
7 day of October, 2021.

  
NOTARY PUBLIC in and for said County and State



## **TABLE OF CONTENTS**

TABLE OF AUTHORITIES.....	ii
MOTION .....	1
MEMORANDUM OF POINTS AND AUTHORITIES .....	3
I. STATEMENT AS TO RELIEF SOUGHT IN DISTRICT COURT.....	3
II. BASIS FOR RELIEF .....	3
III.STATEMENT OF FACTS.....	4
IV. LEGAL ARGUMENT .....	7
A. Sekera Did Not Meet Her Burden of Proof under NRCP 26(b)(1) to Establish the Need for Unredacted Prior Incident Reports.....	7
B. Personal, Private Information of Guests Identified in Prior Incident Reports is entitled to NRCP 26(c) Protection.....	8
C. An Emergency Stay is Necessary to Prevent Irreparable Harm .....	9
V. CONCLUSION .....	10

## **TABLE OF AUTHORITIES**

### **Cases**

<i>Clark Cty. Office of the Coroner v. Las Vegas Review-Journal</i> , 136 Nev. 44, 458 P.3d 1048 (2020) .....	9
<i>Eldorado Club, Inc. v. Graff</i> , 78 Nev. 507, 377 P.2d 174 (1962) .....	4, 7
<i>Schlatter v. Eighth Judicial Dist. Court In and For Clark County</i> , 93 Nev. 189, 561 P.2d 1342 (1977) .....	9
<i>Venetian Casino Resort, LLC v. Eighth Judicial District Court, et al</i> , 136 Nev. Ad. Op. 26, 467 P.3d 1 (2020) .....	4, 5, 9

### **Rules**

NRCP Rule 26(b)(1) .....	3, 5, 7, 8, 9
NRCP Rule 26(c) .....	1, 4, 5, 8

### **Constitution**

Nev. Const. art. 6, § 4 .....	3
-------------------------------	---

## **MOTION**

COMES NOW Petitioners VENETIAN CASINO RESORT, LLC, and LAS VEGAS SANDS, LLC, by and through their counsel of record, ROYAL & MILES LLP, and respectfully petition this Court for the following immediate relief related to Eighth District Court Case A-18-772761-C (“Case A772761”), JOYCE SEKERA (“Sekera”) v. VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC (“Venetian”):

1. That this Court issue an order for the immediate stay of execution on the order of September 7, 2021, directing Venetian to provide Sekera with unredacted copies of prior incident reports related to guests involved in other incidents occurring on the Venetian premises.
2. That this Court issue a stay of all further discovery in this matter until Petitioners’ Petition for Writ of Mandate and/or Prohibition can be heard.

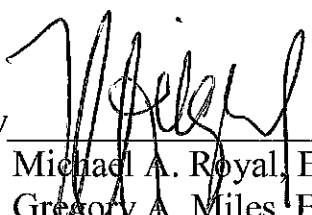
The September 7, 2021 Order issued by the district court is based on Judge Delaney’s incorrect determination that there is no legal basis for granting Venetian’s motion for protective order under NRCP 26(c) to protect the privacy rights of those persons involved in other incidents occurring on Venetian property. The latest order not only allows for Sekera to identify all guests involved in other unrelated incidents on Venetian property but allows for the free distribution of that

information by Sekera to anyone, anywhere, by any means, at any time. Venetian will suffer irreparable harm if a stay is not granted, allowing this Court to review the merits of Venetian's concurrently filed petition for writ of mandamus and/or writ of prohibition. Petitioner is seeking relief in the concurrently filed Petition for Writ of Mandamus and/or Prohibition on an emergency basis. The emergency is the compelled immediate disclosure of confidential private information. If this Court grants this motion for a stay, then the emergency will be abated and the Petition for Writ of Mandate and/or Prohibition may be considered on a non-emergency basis.

This Motion is based on the following Memorandum of Points and Authorities, the Appendix of record and such oral arguments as presented to this Honorable Court.

DATED this 7 day of October 2021.

ROYAL & MILES LLP

By   
Michael A. Royal, Esq. (SBN 4370)  
Gregory A. Miles, Esq. (SBN 4336)  
1522 W. Warm Springs Rd.  
Henderson, NV 89014  
(702) 471-6777  
Counsel for Petitioners



## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. STATEMENT AS TO RELIEF SOUGHT IN DISTRICT COURT**

Petitioners moved for a stay of execution in district court, which was granted; that stay will expire on October 14, 2021. Due to the exigent circumstances, and the potential violation of privacy rights for hundreds of individuals wholly unconnected to the subject litigation, this Emergency Motion is being filed with this Court to extend the stay until this Court rules on the writ petition. It has been brought in good faith. In addition, Petitioners have no other available avenue for relief. Accordingly, once Petitioners comply with the order, there is no reasonable means of repairing the damage.

### **II. BASIS FOR RELIEF**

The District Court failed to fairly consider the privacy rights of individual non-parties to the litigation by ordering that Venetian produce the private personal contact information of hundreds of guests entirely unrelated to the subject incident while recognizing that a limited right to privacy and protection under NRCP 26(b)(1) exists. Venetian's only remedy is a writ of mandamus and/or writ of prohibition.<sup>1</sup>

Petitioners will be irreparably harmed without the issuance of a stay of the order directing Venetian to provide unredacted incident reports to Sekera. In

---

<sup>1</sup> See Nev. Const. art. 6, § 4.

discovery Sekera requested reports of prior slip-and-fall incidents. This issue was previously before the Court of Appeal and was remanded for further review in *Venetian Casino Resort, LLC v. Eighth Judicial District Court, et al*, 136 Nev. Ad. Op. 26, 467 P.3d 1 (2020). Following the remand the District Court entered an order on September 7, 2021, this time acknowledging that Venetian guests have a limited right to privacy and right to NRCP 26(c) protection that does not include their personal contact information. Given the history of this matter the required production will result in effectively unredacted information of Venetian guests being disclosed. The prior incident reports at issue are not remotely relevant considering prevailing Nevada law.<sup>2</sup> Therefore, providing this unredacted information to Sekera without the requested protection under NRCP 26(c) will cause Petitioners and the identified guests irreparable harm. Accordingly, Petitions respectfully request that this Court **grant the emergency motion and issue an immediate order staying the production of unredacted incident reports** until such time as this Court can rule on the writ of mandamus and/or prohibition that is being filed in this case.

### **III. STATEMENT OF FACTS**

This case arises from an alleged slip and fall at the Venetian that occurred on November 4, 2016, involving Joyce Sekera (“Sekera”). More specifically, Sekera

---

<sup>2</sup> *Eldorado Club, Inc. v. Graff*, 78 Nev. 507, 511, 377 P.2d 174, 176 (1962).

alleges that as she was walking through the Grand Lux rotunda area of the Venetian property, she slipped and fell, resulting in bodily injuries.

In the course of discovery, Sekera requested that Petitioners produce incident reports related to slip and falls from November 4, 2013 to the present. Petitioners produced redacted copies of incident reports from November 4, 2013, to November 4, 2016. Sekera objected to the production of redacted reports. This dispute resulted in two orders requiring Petitioner to produce unredacted reports. These orders were the subject of Petitioners' prior writ petitions in this matter. (Nos. 79689-COA and 80816-COA)

On May 14, 2020, the Nevada Court of Appeals published an opinion granting the writ and remanding the case to the District Court with instructions for further proceedings. (*See Venetian Casino Resort, LLC v. Eighth Judicial District Court, et al*, 136 Nev. Ad. Op. 26, 467 P.3d 1.) The higher court generally instructed the District Court to determine whether "good cause" exists for protection under NRCP 26(c) and to demonstrate consideration of both relevance and proportionality under NRCP 26(b)(1). (*Id.*) On June 19, 2020, The Nevada Court of Appeals also granted Venetian's petition regarding the second writ associated with the District Court's order to produce unredacted incident reports from November 4, 2011, to November 4, 2013. (*See APPENDIX, Vol. 14, Tab 77 at VEN 3060-63.*)

On April 30, 2021, Sekera filed Plaintiff's motion to Place on Calendar. (See APPENDIX, Vol. 14, Tab 87 at VEN 3162-89.) The issue of privacy was again considered by the District Court after the parties provided additional briefing. (See APPENDIX, Vols. 14-15, Tabs 87-91 at VEN3162-3498.)

At a June 1, 2021, hearing, the District Court ordered that Petitioners must now produce prior incident reports from November 4, 2011, to November 4, 2016, with contact information for all involved guests. (See APPENDIX, Vols. 15-16, Tab 92-95 at VEN 3499-3572.) The District Court Judge modified her previous order of July 31, 2019 to allow for redaction of protected health information related to any prior claims. (See APPENDIX, Vol. 16, Tab 95 at VEN 3558-72.) Unfortunately, Sekera is already in possession of prior incident reports from November 4, 2013, to November 4, 2016, with unredacted protected health information (redacting only guest contact information). Therefore, unredacting contact information for those reports has the effect of having produced them wholly unredacted. The Court did not address that issue or otherwise offer a solution.

With respect to the November 4, 2011 to November 4, 2013 prior incident reports (which have not yet been produced), releasing guest contact information even with redacted protected health information is an unreasonable invasion of privacy. This is especially the case where Sekera remains able to share the

information freely outside the litigation as she has previously done. Petitioners assert that once this information is produced in unredacted form, it will be abused by Sekera as it has in the past and the harm will be irreparable. Accordingly, circumstances necessitate the filing of Petitioners' writ and the instant motion.

#### IV. LEGAL ARGUMENT

##### A. **Sekera Did Not Meet Her Burden of Proof under NRCP 26(b)(1) to Establish the Need for Unredacted Prior Incident Reports**

The Nevada Supreme Court has held that in slip-and-fall cases involving the temporary presence of debris or foreign substance, such as the instant matter, evidence of prior incidents is not admissible to establish notice. (*Eldorado Club, Inc.*, supra, 78 Nev. at 511, 377 P.2d at 176)

Rule 26(b)(1), Nevada Rules of Civil Procedure, reads as follows:

... Parties may obtain discovery regarding any nonprivileged matter that is **relevant** to any party's claims or defenses and **proportional** to the needs of the case, **considering the importance of the issues at stake** in the action, the **amount in controversy**, the **parties' relative access to relevant information**, the **parties' resources**, the **importance of the discovery** in resolving the issues, and whether the **burden or expense of the proposed discovery outweighs its likely benefit**. ... (Emphasis added.)

Accordingly, Sekera has the burden of establishing that the production of unredacted prior incident reports is both **relevant** to issues surrounding the November 4, 2016, incident and that the production of this discovery is **proportional** to the needs of the case considering the above stated five factors.

Her only argument for the production of the private information of non-parties is to allow her to contact them to protect against any arguments of comparative fault at trial. Private information on non-party individuals who did not witness the accident is clearly not relevant to comparative fault arguments. Sekera also argued she has an unqualified right to share the guests' private information with anyone she desires.

Sekera's argument that there is no law restricting her use of confidential information is an inaccurate analysis of Nevada law. Rule 26(b)(1) places restrictions on her ability to obtain this information. Sekera is required to show this information is relevant and that her need for this information outweighs the guests' need to protect their private information. Sekera failed to make this showing in the District Court below.

**B. Personal, Private Information of Guests Identified in Prior Incident Reports is entitled to NRCP 26(c) Protection**

Pursuant to the September 7, 2021 Order, the District Court recognized that Petitioners have demonstrated “good cause” for a protective order under NRCP 26(c).<sup>3</sup> However, Judge Delaney’s latest order does not offer the desired protection. Certainly, as to the seventy-three (73) prior incident reports in Sekera’s possession, identifying the individuals now ties each person directly to the private

---

<sup>3</sup> See APPENDIX, Vol. 16, Tab 95 at VEN 3558-72.

health information the Court deems worthy of protection. Now that Sekera has the information and has freely shared them with the District Court's prior blessing, it is impossible to put the proverbial genie back in the bottle or to otherwise unring the bell. Production of incident reports from November 4, 2011, to November 4, 2013 (not previously produced to Sekera) with contact information and redacted health information remains an invasion of privacy (and there are still no restrictions upon Sekera related to the sharing of these reports outside the litigation as she has previously done).

The Nevada Supreme Court has recognized that individuals have privacy interests that are protected from disclosure in discovery under NRCP 26(b)(1). *Schlatter v. Eighth Judicial Dist. Court In and For Clark County*, 93 Nev. 189, 192, 561 P.2d 1342, 192-93 (1977); More recently, the Nevada Supreme Court recognized that information found within reports not falling squarely within the HIPPA categories may yet present "a nontrivial privacy interest" related to Venetian guests. (See *Clark Cty. Office of the Coroner v. Las Vegas Review-Journal*, 458 P.3d 1048, 1058-59 (2020)); see also *Venetian Casino Resort, LLC v. Eighth Judicial Dist. Court*, 467 P.3d 1, 7, note 12.)

**C. An Emergency Stay is Necessary to Prevent Irreparable Harm**

As set forth in more detail above, Petitioners have met the requirements of NRAP 8(a) and have set forth the need for an emergency stay under the

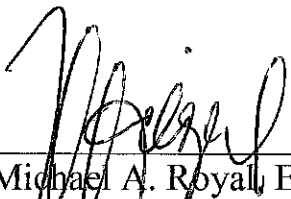
circumstances, having no other speedy and adequate remedy at law other than to seek relief from this Honorable Court.

**V. CONCLUSION**

The order by the District Court to compel Petitioners to provide private information of individuals who are not involved in the underlying action shocks the conscience. In a world where privacy of personal information is placed at a premium, it is difficult to comprehend that Nevada would be unwilling to protect this kind of information in a case where it has no relevance. Therefore, Petitioners hereby move for emergency relief as requested herein so that this Court may consider Petitioners' Writ of Mandamus and/or Prohibition on a non-emergency basis. If the requested relief is not granted on an emergency basis, then innocent third parties will have their privacy rights irreparably damaged.

DATED this 7 day of October 2021.

ROYAL & MILES LLP

By   
Michael A. Royal, Esq. (SBN 4370)  
Gregory A. Miles, Esq. (SBN 4336)  
1522 W. Warm Springs Rd.  
Henderson, NV 89014  
(702) 471-6777  
Counsel for Petitioners



**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of the law firm of Royal & Miles LLP, attorneys for Petitioners, VENETIAN CASINO RESORT, LLC and LAS VEGAS SANDS, LLC, and that on the 7<sup>th</sup> day of October, 2021, I served true and correct copy of the foregoing EMERGENCY MOTION UNDER NRAP 8 STAYING EXECUTION OF ORDER DIRECTING PETITIONERS TO DISCLOSE PRIVATE, PROTECTED INFORMATION OF GUESTS NOT INVOLVED IN UNDERLYING LAWSUIT, by delivering the same via U.S. Mail addressed to the following:

Keith E. Galliher, Jr., Esq.  
THE GALLIHER LAW FIRM  
1850 E. Sahara Avenue, Suite 107  
Las Vegas, NV 89014  
*and*  
Sean K. Claggett, Esq.  
William T. Sykes, Esq.  
Geordan G. Logan, Esq.  
CLAGGETT & SYKES LAW FIRM  
4101 Meadows Lane, Suite 100  
Las Vegas, NV 89107  
*Attorneys for Real Party in Interest*

Honorable Kathleen Delaney  
Eighth Jud. District Court, Dept. 25  
200 Lewis Avenue  
Las Vegas, NV 89155  
*Respondent*

  
An employee of Royal & Miles LLP