IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH S. GILBERT, ESQ.

Petitioner,

vs.

STATE BAR OF NEVADA,

Respondent.

Supreme Court Case No. 84113

OBC21-0136

Electronically Filed
Mar 18 2022 04:45 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

STATE BAR OF NEVADA'S MOTION TO SEAL PARTS OF THE RECORD

The State Bar of Nevada, by and through Assistant Bar Counsel R. Kait Flocchini hereby moves for an Order immediately redacting the last name of the Grievant in all documents publicly available in this matter.

This Motion is made and based upon the following Points and Authorities, the record in this matter, and any oral argument requested by the Court.

POINTS AND AUTHORITIES

Although they are publicly available, most disciplinary matters receive little publicity. The drive behind Petitioner Joseph Gilbert's ("Gilbert") request for Writ of Mandamus is that the media has expressed an interest in the disciplinary proceeding because Gilbert is a candidate in the Republican Gubernatorial primary.

The Grievant's full name is collateral to the issue before this Court and not necessary to fully analyze the subject of the Writ. However, continued publication of the Grievant's full name may jeopardize his, and his family's, safety. Absent redaction of the Grievant's full name, he is faced with the awful choice of endangering his family or accepting sub-par legal representation. This is not the goal, or intention, of disciplinary matters. In fact, exposing the Grievant to harm through this process may deter others from bringing matters to the State Bar's attention in the future.

Legal Authority

"Any person may request that the court seal or redact court records for a case . . . by filing a written motion . . .." SRCR 3(1). "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." SRCR 3(4).

> The public interest in privacy or safety interests that outweigh the public interest in open court records include findings that:
>
> . . .
>
> (d) [t]he redaction includes only restricted personal information contained in the court record;
>
> . . .

> (f) [t]he sealing or redaction includes medical, mental health, or tax records;
>
> . . . or
>
> (h) [t]he sealing or redaction is justified by another compelling circumstance.

SRCR 3(4).

Once a motion to seal or redact is pending, "the information to be sealed or redacted remains confidential for reasonable period of time until the court rules on the motion." SRCR 3(2).

In *Clark Cty. Sch. Dist. V. Las Vegas Review-Journal*, 134 Nev. 700, 429 P.3d 313 (2018) this Court adopted a two-part balancing test to evaluate requests to seal or redact information in public records. In that matter, the Review-Journal newspaper requested disclosure of numerous documents related to Clark County School District's ("CCSD") investigation of, and response to, allegations of harassment by an elected school board trustee. The request was made pursuant to the Nevada Public Records Act ("NPRA"). Initially, CCSD sought to protect numerous investigative documents to protect the complaining parties, teachers, and administrative staff involved. The district court ordered disclosure of the documents with redaction of only victims, students, and support staff names. CCSD appealed the decision, arguing that the documents were covered by an exception to the NPRA and/or that privacy interests warranted additional redactions. *See Clark Cty. Schl. Dist.*, 134 Nev. at 707-708.

In analyzing the privacy interest argument, this Court applied a two-part balancing test from *Cameranesi v. U.S. Dep't of Defense*, 856 F.3d 626, 637 (9th Cir. 2017). The test requires (1) the government "establish a personal privacy interest at stake to ensure that disclosure implicated a personal privacy interest that is nontrivial or more than *de minimus*" and, thereafter, (2) "the requester must show that the public interest sought to be advanced is a significant one and that the information sought is likely to advance that interest." *See Clark Cty. Schl. Dist.*, 134 Nev. at 707-708 (citations omitted). This Court found the *Cameranesi* test was consistent with Nevada's established protection of personal privacy interests. *Id.* at 708.

In a unanimous decision, the district court was ordered to apply the *Cameranesi* test and consider the privacy interests of "teachers or witnesses who may face stigma or backlash for coming forward or being part of the investigation" before ordering disclosure of their names or other identifying information. *Id.*

In *Las Vegas Metro. Police Dep't. v. Las Vegas Review-Journal*, 136 Nev. Adv. Rep. 86, 478 P.3d 383, 385 (Nev. 2020), this Court opined that the *Cameranesi* test applied "whenever the government asserts a nontrivial privacy interest." In that matter, this Court found that 'nontrivial' privacy interests must be more than *de minimus* but need not be 'substantial.' *Id.* at 388. It also recognized ""[t]he avoidance of harassment is a cognizable

privacy interest." *Id.* In that matter, this Court found that the officers had a privacy interest in having certain information, although not all their information, withheld from disclosure.

Argument

The Grievant is concerned for his and his family's safety if his full name, or image, is published in any story related to Respondent's disciplinary matter. *See* Declaration of James C, a true and correct copy of which is attached hereto as **Exhibit A**.

The Grievant sought Gilbert's representation in trying to pro-actively address a prior conviction. Gilbert's short representation of Grievant did not include any appearances or other indicia of the attorney-client relationship. Thus, absent Grievant feeling compelled to file a grievance with the State Bar and the subsequent disciplinary proceedings, he would never have been exposed to the risk of his name being published.

Grievant understood that there was a potential for his name to be part of the public disciplinary record, but prior to the media's report of Respondent's pending disciplinary matter, he did not understand the potential breadth of that publication. *Id.* This is in no small part because Gilbert had not publicly declared his intent to run for public office when Grievant submitted the grievance to the State Bar in January 2021. Grievant's fear of identification has increased, and he now feels that he must

choose between publicity that would negatively affect his life or participating in this proceeding. Grievant's fear is very real and reasonable in this era of 'doxing.' This is substantially similar to the privacy interest recognized in *Clark Cty. Sch. Dist. V. Las Vegas Review-Journal*. Moreover, the requested redaction of only Grievant's last name is consistent with this Court's direction in *Clark Cty. Schl. Dist*. Grievant has a personal privacy interest in keeping his plight out of the national news. His interest is nontrivial and more than *de minimus*.

Admittedly, the Bar included the Grievant's name in the initial documents. At the time, the undersigned also did not know of Gilbert's intent to run for election or consider the potential publicity related to Gilbert (nor the potential effect on the Grievant from issued discipline). The Bar's miscalculation should not be used to penalize the Grievant.

The Grievant's name has not heretofore been disseminated to anyone outside the disciplinary proceeding. *See* Declaration of Louise Watson, a true and correct copy of which is attached hereto as **Exhibit B.** Grievant's name was not included in any of the media articles about Respondent that were published in or about December 2021. *See e.g. This is Reno* article, a true and correct copy of which is attached hereto as **Exhibit C** (This is believed to be the original article on which, it appears, all other articles were based.) Thus,

Grievant has not yet been harmed and any potential harm to, or harassment of, Grievant can still be avoided.

For these reasons, an order sealing Grievant's full name and redacting it from the publicly available documents in this matter would protect Grievant from the potential harm.

Further, the redaction of Grievant's last name does not hinder the fair and thorough examination of the allegations and defenses in this matter. The Grievant's identity is irrelevant to whether he received fair and ethical representation. The Grievant's identity is certainly collateral to Gilbert's allegation that the State Bar has violated its confidentiality obligations.

Conclusion

The State Bar's request to redact Grievant's last name[1] is narrowly tailored to protect that person's privacy interest and safety without hindering Respondent's due process or the clarity of this proceeding. Therefore, the State Bar respectfully requests that Grievant's last name be redacted from all

[1] This request includes the last name of Grievant's spouse, which is the same as Grievant.

documents subject to public disclosure, including without limitation, the pleadings, the appendices, and any transcript of proceedings created.

DATED this 18th day of March 2022.

STATE BAR OF NEVADA
DANIEL M. HOOGE, Bar Counsel

By: 

R. Kait Flocchini, Assistant Bar Counsel
Nevada Bar No. 9861
9456 Double R Boulevard
Reno, Nevada 89521
(775) 329-4100

Exhibit A

Exhibit A

DECLARATION OF JAMES C.

I, JAMES C., under penalty of perjury in the State of Nevada that the following is true and correct:

1. I was convicted of a crime for which I have reporting requirements.

2. I am very cautious about who I disclose this information to because regardless of how long, or how well, the person has known me, the reaction is always negative.

3. My wife convinced me to meet with Carlos Salmoran of the Joey Gilbert Law Firm in early September 2020 to discuss trying to reduce my reporting requirements, as I believe the law allows. I was extremely reticent to meet with Gilbert Law because I was concerned that I would have to experience all the hurt that comes with exposing this painful part of my past for no good reason.

4. I met with Salmoran on September 11, 2020 and signed a contract for representation with Gilbert Law. No attorney was present at the meeting. No attorney appeared for the meeting by telephone.

5. My wife and I assisted Gilbert Law in obtaining the underlying criminal conviction documents.

6. I went through the painful process of asking family and friends for letters in support of the petition Gilbert Law was supposed to be preparing for me. Those letters were provided to Gilbert Law.

7. After months of promising that the petition would be, and was filed, we were told that Gilbert Law had not filed a petition and was terminating the representation.

8. My wife and I felt frustration, worry, and anxiety over our treatment by the Joey Gilbert Law Firm.

9. We filed a State Bar grievance regarding Joey Gilbert because it seemed unfair to us that we were told a petition would be, and was, filed but then months later were told that nothing had been done. I did not want that to happen to another client.

10. I understood that the grievance was not private, but I did not understand until recently that media could attend the evidentiary hearing in this case.

11. I never anticipated that my grievance would receive media attention and I fear that the media will mention my name.

12. I know that my name and status is publicly available, but this is different than media calling attention to me in conjunction with someone running for office in Nevada.

13. I want to be able to tell what happened when I tried to get good legal advice and didn't, but I fear that if my name is mentioned by the media, then I, and my family, will be harassed or unsafe.

Dated this _____ day of March 2022.

JAMES C.

Exhibit B

Exhibit B

DECLARATION OF LOUISE WATSON
CUSTODIAN OF RECORDS

LOUISE WATSON, under penalty of perjury of the laws of the state of Nevada, being first duly sworn, deposes and says as follows:

1. I am employed as the Legal Administrator for the Office of Bar Counsel of the State Bar of Nevada;

2. One of the tasks for which I am responsible is responding to requests for discipline documents from the public.

3. The Office of Bar Counsel has received no requests for documents related to the grievance filed by James C. regarding attorney Joseph Gilbert, identified by case number OBC21-0136.

FURTHER YOUR DECLARANT SAYETH NOT.

Dated this 18th day of March, 2022.

Louise Watson, Legal Administrator
Office of Bar Counsel

Exhibit C

Exhibit C

POLITICS

Governor candidate Joey Gilbert fights Nev

ThisIsReno

A billboard advertises legal services for Joey Gilbert, an attorney and former professional boxer, who is running for governor of Nevada in Reno, Nev., on Thursday, Dec. 16, 2021. A disciplinary panel sent Republican Joey Gilbert a draft letter of reprimand alleging he had harmed a client by not supervising a law student assigned to his case. The draft reprimand comes as Gilbert tours the state for his campaign and makes headlines for high-profile work challenging vaccine mandates and election procedures. (AP Photo/Sam Metz)

Listen to this story.

By SAM METZ AP / Report for America

CARSON CITY, Nev. (AP) — On billboards throughout northern Nevada, Republican gubernatorial candidate Joey Gilbert can be seen with clenched fists and a promise: "Joey (Law, Fighting for Nevada."

Now, Gilbert is fighting efforts to reprimand him by the State Bar of Nevada. Gilbert has ye disciplined, but a screening panel that reviewed his work sent him a draft letter of reprimar August alleging he harmed a client and violated the bar's rules of professional conduct.

"Your misconduct actually injured your client, albeit not substantially because he had no fo deadline for filing the petition. Your misconduct actually injured the integrity of the profess well," Richard Williamson, the chair of a disciplinary panel convened by the bar, wrote in tl 27 letter to Gilbert.

Gilbert is an attorney and former professional boxer who in the last year has become one of Nevada's most prominent voices calling into question the 2020 election result and decrying coronavirus vaccines. He was present in Washington, D.C., during the Jan. 6 insurrection b said he did not enter the Capitol. Gilbert is running in a crowded primary field of Republica hoping to unseat Democratic Gov. Steve Sisolak in 2022.

The letter obtained by The Associated Press was confirmed as authentic by the State Bar of Nevada.

The Nevada Bar appoints three-member panels to evaluate grievances lodged by clients cla harm against its attorneys. After deliberation, panels can impose sanctions, reprimand an attorney or dismiss the allegations. If the panel chooses sanctions or a reprimand, it must p the attorney an opportunity to review the allegations and file an objection within 14 days.

Gilbert filed a motion to dismiss the letter, which the disciplinary panel denied on Dec. 1, according to filings provided by his attorney, Dominic Gentile.

Gentile said Gilbert denied all the allegations in the letter and planned to continue to fight t over its process and conclusions. He said the draft letter was not a public record and the Sta should not have commented on it at this stage.

"There is no final determination as to the validity of any grievance against Mr. Gilbert. A law entitled to a live hearing at which witnesses must be called to testify and be subject to cross examination," he said.

Bar counsel Daniel Hooge said the letter was unofficial and Gilbert would not be formally disciplined until the panel holds another hearing.

"While the Supreme Court of Nevada retains ultimate authority to regulate the legal profess the Office of the Bar Counsel serves as the Court's arm to investigate and prosecute claims t lawyer has violated the Rules of Professional Conduct. Our primary goal is to protect the pu Hooge said.

The panel's consideration comes as Gilbert campaigns throughout Nevada ahead of the Republican gubernatorial primary next June and files headline-grabbing lawsuits challengi vaccine and mask mandates.

To voters, Gilbert cites his legal work as evidence that he's the best choice to be Nevada's ne governor and committed to fighting for the state.

In stump speeches he's made across the state and shared on his Facebook page, he says the work he's done throughout the pandemic prove his willingness to be "in the trenches, fighti referencing cases such as Calvary Chapel Lone Mountain's ongoing challenges to Nevada's coronavirus-related capacity cap on religious gatherings.

Gilbert is part of the legal team representing that church in Las Vegas, which along with an in rural Nevada, won an appeal challenging a statewide capacity cap on religious gathering 9th U.S. Circuit of Appeals ruled in favor of the church after the governor had rolled back tl restrictions in question.

The State Bar letter claims Gilbert's firm allowed employees who weren't licensed attorney handle a case without supervision — a violation of professional standards and bar requirem alleges that a law student, who was supposed to be under Gilbert's supervision per bar rule falsely implied to a client that a petition had been filed in court when it had not.

Though Gilbert's client had paid a $3,500 retainer four months prior, the firm later droppe as a client. The draft letter also reprimands Gilbert for violating a "diligence" rule by not pr alerting the client that he did not want to represent him.

Gentile said Gilbert denied the allegations.

After speaking to employees mentioned in the letter, Gentile said he believes the disciplina panel hadn't sufficiently investigated the incident. He said he was confident the reprimand be dismissed.

"What Joey Gilbert is doing here is he's standing up for his integrity," Gentile said.

Delicious foods

Op

Dukes Seafood

The State Bar of Nevada said it has about 9,000 active members and prosecutes roughly 20 300 grievances annually. In 2021, it issued 24 reprimands, nine stayed suspensions and 15 suspensions. One attorney was disbarred.

Associated Press writer Scott Sonner contributed reporting from Reno. Metz is a corps mer for the Associated Press/Report for America Statehouse News Initiative. Report for Americ nonprofit national service program that places journalists in local newsrooms to report on undercovered issues.