

No. 84118

IN THE SUPREME COURT OF THE STATE OF NEVADA

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CANDICE SHAFFER AND TRAVIS HEINRICH,

*Petitioners,*

*v.*

THE EIGHTH JUDICIAL DISTRICT COURT, IN AND FOR THE COUNTY OF CLARK,  
STATE OF NEVADA, AND THE HONORABLE NADIA KRALL,

*Respondents,*

*and*

MARK SHAFFER AND MYVEGAS MAGAZINE,

*Real parties in interest.*

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From the Eighth Judicial District Court, County of Clark, Dept. IV  
Dist. Court Case No. A-18-781276-C

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**MOTION TO WITHDRAW ALTERNATIVE REQUEST FOR WRIT OF  
PROHIBITION**

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*In Proper Person*

## INTRODUCTION

Because the district court vacated the February 7, 2022, trial date and ordered the parties to file a joint case conference report or individual case conference report, Petitioner Candice Shaffer moves to withdraw only the portion of the Petition for Writ of Mandamus or, in the alternative, Writ of Prohibition (the “Petition”) about the *alternative request* for a Writ of Prohibition.

## RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs Mark Shaffer and his magazine MYVEGAS Magazine (“Plaintiffs”) sued his daughter Candice Shaffer (“C. Shaffer”), Travis Heinrich (“Heinrich,” and with C. Shaffer, “Petitioners”), and Cassandra Youssef (“Youssef”) alleging defamation, conspiracy, breach of contract, and various business torts. Plaintiffs failed to hold a timely early case conference (“ECC”), failed to timely circulate a proposed JCCR, and concede they never filed a case conference report prior to filing the Petition.

Contrary to EDCR 2.60(a), which *mandates* that a scheduling order be entered before a trial date may be set, the district court entered an *Amended* [sic] Order Setting Civil Bench Trial and Calendar Call on October 7, 2021, before a case conference report was filed and a

scheduling order entered.<sup>1</sup> Because no scheduling order has been entered nor a prior order setting trial been entered, the order setting trial was improper under EDCR 2.60(a).

Because Plaintiffs failed to file a case conference report as required by NRCP 16.1 (e)(2), Defendant C. Shaffer filed and served a Motion to Dismiss on November 8, 2021.<sup>2</sup> Heinrich's timely Joinder was filed on November 12, 2021.<sup>3</sup> Plaintiffs' Opposition was due by November 22, 2021. EDCR 2.20(e). Plaintiffs' Opposition was untimely filed on November 29, 2021—a week after it was due.<sup>4</sup> C. Shaffer's reply brief was timely filed on December 15, 2021.<sup>5</sup>

The district court issued a minute order dated January 5, 2022, denying Petitioners' motion to dismiss and alternative motion to continue

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<sup>1</sup> PA 102-104.

<sup>2</sup> PA 1-105.

<sup>3</sup> PA 107-117.

<sup>4</sup> PA 118-129.

<sup>5</sup> PA 161-208.

trial.<sup>6</sup> A final order was entered on January 11, 2022, with Notice of Entry of Order served and filed on January 12, 2022.<sup>7</sup>

Defendants C. Shaffer and T. Heinrich filed their Petition on January 24, 2022, with the Supreme Court, and a Motion to Stay Trial Pending Writ Review on an Order Shortening Time with the district court. An order shortening time was not granted and the matter was set for hearing on March 22, 2022 — one month after the trial was scheduled to begin.

The Calendar Call occurred on January 25, 2022, and was attended by counsel for all parties. During the Calendar Call, the district court noted that it saw Defendant C. Shaffer’s Motion to Stay Trial Pending Writ Review and could not sign it with a day’s notice. But, upon the district court’s inquiry as to whether defendants had participated in discovery, C. Shaffer’s counsel advised the court defendants could not because no case conference had been filed. After listening to arguments, the district court stated that a case conference had to be filed, scheduled a status check, and *vacated* the trial.

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<sup>6</sup> PA 192-193.

<sup>7</sup> PA 194-204.

## ARGUMENT

### **I. Because the District Court Vacated the Trial Date *After Receiving* the Petition, the *alternative* petition for Writ of Prohibition is Moot.**

As an alternative to a writ of mandamus, Petitioners sought a writ of prohibition to prevent the trial from proceeding before a case conference was filed and scheduling order entered in violation of EDCR 2.60(a). Because the district court vacated the trial dated *after* being served with the Petition, Petitioner's need for a writ of prohibition is moot. However, the petition for writ of mandamus is not.

### **II. The Court Should Still Hear the Petition for Writ of Mandamus.**

The Petition for Mandamus raises important questions about (1) the dismissal of a case under NRCp 16.1(e)(2) when a plaintiff *failed* to hold a timely case conference, *failed* to circulate a timely draft or file Joint Case Conference Report ("JCCR"), and *never filed* a JCCR or independent case conference report ("ICCR") before the Petition. was filed

An appellate court may consider writ petitions challenging interlocutory district court orders denying motions to dismiss if "an important issue of law needs clarification and considerations of sound

judicial economy and administration militate in favor of granting the petition." *Int'l Game Tech., Inc.* at 197, 179 P.3d at 559. Because NRCP 16.1 is relevant in nearly all civil cases, its construction and application involve important legal issues needing clarification, *Dornbach v. Tenth Judicial Dist. Court of Nev.*, 130 Nev. 305, 308, 324 P.3d 369, 371 (2014), consideration of this petition promotes judicial economy and administration because questions about the early case conference, case conference reports, scheduling orders, and enforcement of the Eighth Judicial District Court Rules arise early in the proceedings, affect the remainder of the case, and cannot be adequately addressed on appeal after a case has proceeded through the full extent of litigation. *Dornbach v. Tenth Judicial Dist. Court of Nev.*, 130 Nev. at 308, 324 P.3d at 371. "Where the circumstances establish urgency or strong necessity, or an important issue of law requires clarification and public policy is served by this court's exercise of its original jurisdiction, this court may exercise its discretion to consider a petition for extraordinary relief." *Schuster v. Eighth Judicial Dist. Court*, 123 Nev. 187, 190, 160 P.3d 873, 875 (2007).

This Court has been willing to consider petitions denying motions to dismiss when either (1) no factual dispute exists and the district court must dismiss an action under clear authority under a statute or rule, or (2) an important issue of law needs clarification and considerations of sound judicial economy and administration militate in favor of granting the petition. *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197-98, 179 P.3d 556, 559 (2008)

Here, an appeal is not an adequate and speedy legal remedy, given the early stages of litigation and policies of judicial administration. *Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 198, 179 P.3d 556, 559 (2008)(citation omitted). Because this Court has not published an opinion providing guidance to district courts when a case should be dismissed under NRCP 16.1(e)(2) when a plaintiff produced no evidence supporting a decision not to dismiss a case for failure to hold a timely case conference or file a case conference report throughout the litigation leading to filing this writ petition, the petition for writ of mandamus raises an important legal issue needing clarification, involving public policy, of which this court's review would promote sound judicial economy and administration. *Id.* Accordingly, this Court should

exercise its discretion and consider this petition to address the following question of rule construction: is it an abuse of discretion to not dismiss a case when plaintiff failed to file a case conference report or provide good cause for not doing so under the *Arnold* factors articulated in *Arnold v. Kip*, 123 Nev. 410, 415-16, 168 P.3d 1050, 1053(2007) prior to the filing of the Petition.

### **CONCLUSION**

The Court should grant the motion to withdraw only the alternative petition for writ of prohibition and continue to hear the writ of mandamus directing the district court to grant Petitioners motion to dismiss.

DATED: February 25, 2022

/s/ Michael Stein

Michael Stein (Nevada Bar #4760)

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Las Vegas, Nevada 89169

*Attorney for Petitioner Candace Shaffer*



## CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On February 25, 2022, I caused to be served a true and correct copy of the foregoing **Motion to Withdraw Alternative Request for Writ of Prohibition** by the method indicated:

- ☒ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, as priority mail, in the United States mail at Las Vegas, Nevada addressed as set forth below.

Sagar Raich, Esq.  
6785 S. Eastern Ave., Suite 5  
Las Vegas, NV 89119  
*Attorney for Real Party in Interest Mark Shaffer and MyVegas Magazine*

Travis Heinrich  
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*Petitioner in proper person*

- ☒ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

Sagar Raich, Esq.  
Email: [sraich@raichattorneys.com](mailto:sraich@raichattorneys.com)

*Attorney for Real Party in Interest*

/s/ Michael Stein  
Michael Stein