

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

KIMBERLY D. TAYLOR, AN  
INDIVIDUAL,

Appellant,

v.

KEITH BRILL, M.D., FACOG, FACS,  
AN INDIVIDUAL; AND WOMEN'S  
HEALTH ASSOCIATES OF  
SOUTHERN NEVADA-MARTIN,  
PLLC, A NEVADA PROFESSIONAL  
LIABILITY COMPANY,

Respondents.

Electronically Filed  
Jul 15 2022 09:56 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

SUPREME COURT CASE NO. 84421

Dist. Court Case No. A-18-773472-C

**APPELLANT'S RESPONSE TO ORDER TO SHOW CAUSE**

Appellant, KIMBERLY TAYLOR, by and through her counsel of record hereby submits this Response to the Order to Show Cause issued by this Court on June 15, 2022, pertaining to whether the order appealed from is a special order after final judgment.

**I. Introduction**

This appeal raises a procedural issue as to whether an order denying a motion to disqualify opposing counsel filed *after* final judgment in the District Court but during the pendency of an appeal is a “special order after final judgment” which is appealable under NRAP 3A(8). If it is, then Taylor’s appeal may continue. If it is not, her remedy would be to re-file an extraordinary writ. The outcome of this issue depends on interpretation of decades of case law which has struggled to find a bright-

line rule to the question of what exactly qualifies as a special order after final judgment, leaving the issue open to some unclear interpretation.

## **II. Background and Procedural History**

Appellant Taylor filed a medical malpractice action against Respondents Dr. Brill and his clinic Women's Health Associates of Southern Nevada. The trial resulted in a defense verdict entered on November 19, 2021. (Ex. 1). Taylor appealed that verdict. That separate appeal is fully briefed and remains pending before the Supreme Court.<sup>1</sup>

Following trial and post-verdict, Defense counsel hired away the paralegal working on the Taylor case from the law firm of Plaintiff's counsel. This paralegal had extensive knowledge of all confidential communications between Taylor and her counsel, including all trial, post-trial and appellate strategy. Taylor then filed a motion on November 18, 2021 (Ex. 2) in the District Court for imputed disqualification of the Defense law firm based on that firm now having an employee with extensive knowledge of all attorney-client communication between Plaintiff's counsel and his client, Taylor, including all appellate strategy and evaluations. An evidentiary hearing was held on January 7, 2022 (Ex. 3) and the motion for imputed disqualification was denied by way of an Order entered on February 16, 2022 (Ex. 4). Taylor then filed a Notice of Appeal of that decision on March 17, 2022.

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<sup>1</sup> Taylor v. Brill, Case No. 83847 (appeal for a new trial).

(Ex. 5).

In response to Taylor’s docketing statement, on June 15, 2022 the Supreme Court issued an Order to Show Cause instructing Taylor to brief why the order appealed from constitutes a special order after final judgment under NRAP 3A(8). The outcome of this procedural question will determine whether Taylor can proceed with an appeal or whether she must re-submit her legal position as a writ petition. This Response by Taylor followed.

### **Law and Argument**

The Nevada Supreme Court “may only consider appeals authorized by statute or court rule.” *Brown v. MHC Stagecoach, LLC*, 129 Nev. 343, 345, 301 P. 3d 850, 851 (2013). The primary court rule setting forth orders from which an appeal may be taken is NRAP 3A(b). When this appeal was filed, Taylor indicated she believed the order denying her motion to disqualify opposing counsel fell under NRAP 3A(8) as a “special order entered after final judgment.”

The Supreme Court clarified what qualifies as a special order in *Gumm v. Mainor*, 118 Nev. 912, 59 P.3d 1220 (2002). In *Gumm*, the issue was whether a post-judgment order to interplead funds by plaintiff’s attorney which was treated as a motion to adjudicate liens was an appealable special order after final judgment. Because the post-judgment order did not affect the rights of both “parties” due to the defendant having no stake in the outcome, traditionally the order would not have

qualified as an appealable order. However, the Supreme Court adopted a broader approach in *Gumm* and instead explained that “[a] special order made after final judgment, to be appealable under NRAP 3A(b)(2), must be an order affecting the rights of some party to the action, growing out of the judgment previously entered. It must be an order affecting rights incorporated in the judgment.” While this shines some light on the issue, this definition is still open to interpretation and the procedural history of this case is unique.

By way of example, the Supreme Court has, on other occasions, opined on what constitutes a special order after final judgment. In *Wilkinson v. Wilkinson*, 73 Nev. 143, 311 P.2d 735 (1957) the court held that an order providing “preliminary counsel fees” to the wife in a divorce action to defend against a post-decree motion was not a special order after final judgment. Although the opinion is brief and contains little analysis, it noted that it was an order in an “proceedings which remain pending” and was “interlocutory” in nature. *Id.* As another example of what is not a special order after final judgment, a motion granting a new trial is not a special order after final judgment because the original judgment is no longer in effect, ergo there is no longer any final judgment. *TRP Int’l, Inc. v. Proimtu MMI Ltd. Liab. Co.*, 133 Nev. 84, 84, 391 P.3d 763, 763 (2017). In fact, the vast majority of appeals the Supreme Court denies under *Gumm* appear to be appeals of interlocutory orders lacking a final judgment in the underlying case. *E.g., Estate of Adams v. Fallini*,

132 Nev. 814, 386 P.3d 621 (2016) (order granting relief after judgment under NRCP 60(b) for fraud on the Court was not an appealable special order as there was no longer a final judgment); *Stockmeier v. Green*, 133 Nev. 1079, 398 P.3d 295 (2017) (unpublished) (appeal from order denying a motion to comply with a previous order and motion to substitute a party).

In contrast, in *Davidson v. Davidson*, 132 Nev. 709, 713, 382 P.3d 880 (2016), the Court found that an order denying a post-decree motion to enforce the property rights set forth in the decree was an appealable special order. And the quintessential example of a special order after final judgment is an order granting or denying a motion for attorney's fees. *Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000).

For what it may be worth to the Court, the federal courts clearly recognize an order regarding disqualification as a collateral order which is immediately appealable. *Gough v. Perkowski*, 694 F.2d 1140, 1141 (9th Cir. 1982) ("An order disqualifying counsel in a civil case is immediately appealable under 28 U.S.C.S. § 1291.") Under this legal analysis, a collateral order "must conclusively determine the disputed question, resolve an important issue completely separate from the merits of the action, and be effectively unreviewable on appeal from a final judgment." *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 57 L. Ed. 2d 351, 98 S. Ct. 2454 (1978); see *Cohen v. Beneficial Indust. Loan Corp.*, 337 U.S. 541, 69 S. Ct. 1221,

93 L. Ed. 1528 (1949) (adopting the collateral order exception to the final judgment rule). The Nevada Supreme Court declined to adopt or consider the collateral order exception for Nevada in *Asi Mktg. Grp., Ltd. Liab. Co. v. Tobias*, 133 Nev. 980, 404 P.3d 411 (2017) (unpublished). Maybe the Court ought to reconsider how the United States Supreme Court addresses this issue given that traditionally Nevada has looked to the federal counterpart to Nevada rules to assist in interpretation.

Frankly, in preparing this Response Taylor’s counsel did not find the Nevada Supreme Court’s jurisprudence on this topic to be a model of consistency. Indeed, the Nevada Supreme Court commented on the “lack of clarity” as to the special order rule in the *Gumm* case and tried to fashion a test that was “simple and clear” yet it is difficult to anticipate all orders that may arise. *Gumm*, 118 Nev. at 919. As occasionally happens with the law, when cases span decades earlier cases can start to look wrongly decided under later authority and vice versa. As one example, the Supreme Court recently found in *Houston v. Mandalay Bay Corp*, No. 84417, 2022 Nev. Unpub. LEXIS 420 (June 6, 2022) (unpublished) that a post-judgment motion to interplead funds was not an appealable special order, but the facts of *Houston* were essentially the same fact pattern the Court held did present an appealable special order in *Gumm* itself (a post-judgment motion by plaintiff’s counsel to interplead settlement funds and adjudicate liens). As sometimes happens in the law, it is simply difficult to announce a bright-line rule on a legal issue even when the

Court may try. This seems to be the case with what constitutes a special order made after final judgment.

Turning now to Taylor's case, Taylor was unable to locate any Nevada case addressing this particular legal procedural issue. Admittedly, two of this Court's cases on the topic of disqualification were heard by the Supreme Court as extraordinary writs, as opposed to appeals, based on disqualification issues that were identified post-judgment. *E.g.*, *Ryan's Express Transp. Servs. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 279 P.3d 166 (2012) and *Leibowitz v. Eighth Judicial Dist. Court of Nev.*, 119 Nev. 523 (2003) (both adjudicating disqualification issues arising post-judgment as writ proceedings). However, neither of those cases contain any analysis as to whether they procedurally they should have been filed as appeals. As a litigant, guessing that writ relief is the proper relief is a dangerous game because if you guess wrong and file a writ as opposed to filing an appeal because if it is later ruled you should have filed an appeal you have missed the jurisdictional time to file it. Moreover, since even hearing a writ petition is entirely discretionary by the Supreme Court, see *Renown Reg'l Med. Ctr. v. Second Judicial Dist. Court*, 130 Nev. 824, 827, 335 P.3d 199, 201 (2014), it would be detrimental to an affected party such as Taylor to assume she can only file a writ.

If we apply the *Gumm* factors to this particular case, it is clear that (1) the order arose after final judgment, (2) the order affects the rights of both parties since

it affects the right to counsel for both parties, and (3) the issues have arisen out of the final judgment. Here, Taylor notes that the special order will not affect the amount of money she personally will or will not receive, but *Gumm* made clear this was not necessary to constitute a final order after judgment (the defense paid the same amount of money regardless of the outcome in that matter). The order appealed from is a final order on the issue of disqualification, there are no additional hearings or rulings to be made on that issue. There are also no additional post-judgment issues pending in the District Court, a final judgment based on a trial result occurred. However, there is a still-pending appeal for a new trial<sup>2</sup> based on asserted errors by the District Court as well as separate appeals of other post-judgment attorney fee<sup>3</sup> and costs<sup>4</sup> issues. Therefore, the disqualification issue clearly affects both parties in ongoing appellate litigation. Indeed, part of what Taylor's counsel tried to stress at the evidentiary hearing held before the District Court<sup>5</sup> was that Defense counsel now has a paralegal working for them that reviewed, read and worked on letters from Plaintiff's counsel explaining all appellate strategy and evaluation of merits. (Ex. 3

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<sup>2</sup> Taylor v. Brill, Case No. 83847 (appeal for a new trial).

<sup>3</sup> Brill v. Taylor, Case No. 84881 (appeal over denial of attorney's fees).

<sup>4</sup> Brill v. Taylor, Case No. 84492 (appeal over denial of certain costs).

<sup>5</sup> Taylor's counsel would like to note that he has filed no motions to disqualify in the appeals themselves based on this Court's statement in *Ryan's Express Transp. Servs. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012) that such fact-finding hearings are to occur in the District Court, not the Supreme Court.

pg. 7, 25-27, 50-52). While the disqualification issue does not affect money to be awarded per se, it has a potentially large impact on the parties' abilities to effectively litigate their appeals and any new trial that may be ordered. Thus, the order should qualify as a special order entered post-judgment for purposes of appeal. *Gumm* seems to have adopted a broad reading of what a special order after entry of judgment is. While *Gumm* is often used by the Court to dispose of improperly-filed appeals of what are simply interlocutory orders, the order in this case is anything but interlocutory and plainly did not enter under after a final judgment. The Supreme Court may also wish to consider procedurally whether issues of this kind should be presented as appeals or writ petitions. If treated as an appeal, there is a finite time to present the issue and the litigant is guaranteed adjudication on the merits of the issue. If writ relief is the only relief available, the issue can linger as there is no finite time to present a writ petition and there is no guarantee of an adjudication on the merits since even hearing a writ petition on the merits is discretionary.

### **Closing**

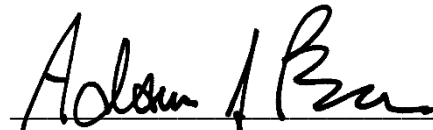
In closing, Taylor's case was fully adjudicated by the District Court. After a final order on the merits of her case was entered, a post-judgment disqualification issue arose. Taylor filed this and litigated it in the District Court per the Supreme Court's opinion in *Ryan's Express Transp. Servs. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 299, 279 P.3d 166, 172 (2012) (disqualification fact-finding hearings are

to occur in the District Court, not the Supreme Court). She now contests the outcome of that hearing and believes an appeal is the proper procedural remedy. All District Court proceedings have ended, a final judgment on the merits of her case has been entered and the order appealed from completely adjudicates the collateral issue of imputed disqualification of defense counsel. If this doesn't describe a "special order entered after final judgment" it would be hard to describe what does satisfy that term. The disqualification issue plainly affects both parties and their ability to litigate the three other pending appeals regarding the case pending with this Court and potentially re-trial of this action.

Respectfully, Taylor believes she has appealed a special order entered after final judgment, she believes her remedy is an appeal and that this court's jurisdiction has been property invoked.

Respectfully submitted this 15th day of July, 2022.

**BREEDEN & ASSOCIATES, PLLC**

A handwritten signature in black ink, appearing to read "Adam J. Breeden", is written over a horizontal line.

**ADAM J. BREEDEN, ESQ.**

Nevada Bar No. 008768

376 E. Warm Springs Road, Ste. 120

Las Vegas, Nevada 89119

Phone: (702) 819-7770

adam@breedenandassociates.com

*Attorney for Appellant*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 15th day of July, 2022, I served a copy of the foregoing legal document entitled **RESPONSE TO ORDER TO SHOW CAUSE** via the method indicated below:

X	Pursuant to NRCP 5 and NEFCR 9, by electronically serving all counsel and e-mails registered to this matter on the Court's official service, Wiznet system.
	<p>Pursuant to NRCP 5, by placing a copy in the US mail, postage pre-paid to the following counsel of record or parties in proper person:</p> <p style="text-align: center;">Robert McBride, Esq. Heather S. Hall, Esq. McBRIDE HALL 8329 W. Sunset Road, Suite 260 Las Vegas, Nevada 89113 <i>Attorneys for Defendants Keith Brill, M.D. and Women's Health Associates</i></p>
	Via receipt of copy (proof of service to follow)

An Attorney or Employee of the firm:

/s/ Adam J. Breeden  
**BREEDEN & ASSOCIATES PLLC**

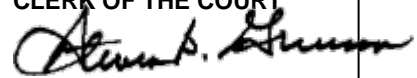
## **INDEX OF EXHIBITS**

1.	Notice of Entry of Judgment
2.	Motion to Disqualify
3.	Transcript of Disqualification Evidentiary Hearing
4.	Order Denying Motion to Disqualify
5.	Notice of Appeal

**EXHIBIT 1**

**EXHIBIT 1**

**EXHIBIT 1**



NEO  
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HEATHER S. HALL, ESQ.  
Nevada Bar No. 10608  
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Attorneys for Defendants,  
*Keith Brill, M.D., FACOG and*  
*Women's Health Associates of Southern Nevada –*  
MARTIN, PLLC

DISTRICT COURT

CLARK COUNTY, NEVADA

KIMBERLY D. TAYLOR, an Individual,  
  
Plaintiff,

vs.

KEITH BRILL, MD, FACOG, FACS, an  
Individual; WOMEN'S HEALTH  
ASSOCIATES OF SOUTHERN NEVADA –  
MARTIN, PLLC, a Nevada Professional  
Limited Liability Company,  
  
Defendants.

**CASE NO.: A-18-773472-C**  
**DEPT: III**

**NOTICE OF ENTRY OF JUDGMENT ON  
JURY VERDICT**

PLEASE TAKE NOTICE that a JUDGMENT ON JURY VERDICT was entered and filed  
on the 19<sup>th</sup> day of November 2021, a copy of which is attached hereto.

DATED this 19<sup>th</sup> day of November 2021. McBRIDE HALL

*/s/Heather S. Hall*

ROBERT C. McBRIDE, ESQ.  
Nevada Bar No.: 7082  
HEATHER S. HALL, ESQ.  
Nevada Bar No.: 10608  
8329 W. Sunset Road, Suite 260  
Las Vegas, Nevada 89113  
Attorneys For Defendants

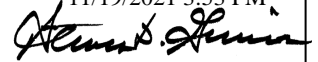
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☒ **VIA ELECTRONIC SERVICE:** By mandatory electronic service (e-service), proof of e-service attached to any copy filed with the Court; or

☐ **VIA U.S. MAIL:** By placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as indicated on the service list below in the United States mail at Las Vegas, Nevada

☐ **VIA FACSIMILE:** By causing a true copy thereof to be telecopied to the number indicated on the service list below.

/s/ Candace Cullina  
An Employee of McBRIDE HALL

  
CLERK OF THE COURT

**JUDG**

ROBERT C. McBRIDE, ESQ.

Nevada Bar No. 7082

HEATHER S. HALL, ESQ.

Nevada Bar No. 10608

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Attorneys for Defendants,

*Keith Brill, M.D., FACOG and*

*Women's Health Associates of Southern Nevada –*

*MARTIN, PLLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

KIMBERLY D. TAYLOR, an Individual,

Plaintiff,

vs.

KEITH BRILL, MD, FACOG, FACS, an

Individual; WOMEN'S HEALTH

ASSOCIATES OF SOUTHERN NEVADA –

MARTIN, PLLC, a Nevada Professional

Limited Liability Company,

Defendants.

**CASE NO.: A-18-773472-C**

**DEPT: III**

**JUDGMENT ON JURY VERDICT**

This action came on for trial before the Honorable Monica Trujillo, and a jury on October 11, 2021. Plaintiff and Defendants appeared by and through counsel, and the Court having submitted the case to the jury and the jury having entered a verdict on October 19, 2021, and in accordance with the verdict of the jury,

///

///

**IT IS HEREY ORDERED, ADJUDGED AND DECREED** that judgment is entered in favor of Defendants Keith Brill, M.D., FACOG and Women’s Health Associates of Southern Nevada – MARTIN, PLLC and against Plaintiff Kimberly D. Taylor.

**Dated this 19th day of November, 2021**

Carri Kung

**1B9 9FE 7850 3814**  
**Carli Kierny**  
**District Court Judge**

*Respectfully submitted by:*

DATED this 8<sup>th</sup> day of November, 2021.

McBRIDE HALL

/s/Heather S. Hall

Heather S. Hall, Esq.  
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8329 W. Sunset Road, Suite 260  
Las Vegas, Nevada 89113  
Attorneys for Defendants  
*Keith Brill, M.D., FACOG, FACS and  
Women's Health Associates of Southern  
Nevada – Martin, PLLC*

*Agreed as to form and content:*

DATED this 8<sup>th</sup> day of November 2021.

BREEDEN &amp; ASSOCIATES, PLLC

/s/Adam J. Breeden

Adam J. Breeden, Esq.  
Nevada Bar No.: 008768  
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Las Vegas, Nevada 89119  
Attorneys for Plaintiff

1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Kimberly Taylor, Plaintiff(s)

CASE NO: A-18-773472-C

7 vs.

DEPT. NO. Department 3

8 Keith Brill, M.D., Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Judgment on Jury Verdict was served via the court's electronic eFile  
13 system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 11/19/2021

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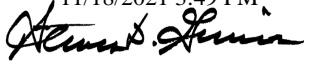
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**EXHIBIT 2**

**EXHIBIT 2**

**EXHIBIT 2**

  
CLERK OF THE COURT

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**ADAM J. BREEDEN, ESQ.**  
Nevada Bar No. 008768  
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Adam@Breedendandassociates.com  
*Attorneys for Plaintiff*

**EIGHTH JUDICIAL DISTRICT COURT**

**CLARK COUNTY, NEVADA**

KIMBERLY TAYLOR, an individual,  
  
Plaintiff,

CASE NO.: A-18-773472-C

DEPT NO.: III

v.

KEITH BRILL, M.D., FACOG, FACS, an  
individual; WOMEN'S HEALTH  
ASSOCIATES OF SOUTHERN NEVADA –  
MARTIN, PLLC, a Nevada Professional  
Limited Liability Company; BRUCE  
HUTCHINS, RN, an individual;  
HENDERSON HOSPITAL and/or VALLEY  
HEALTH SYSTEMS, LLC, a Foreign LLC  
d/b/a HENDERSON HOSPITAL, a subsidiary  
of UNITED HEALTH SERVICES, a Foreign  
LLC; TODD W. CHRISTENSEN, M.D., an  
individual; DIGNITY HEALTH d/b/a ST.  
ROSE DOMINICAN HOSPITAL; DOES I  
through XXX, inclusive; and ROE  
CORPORATIONS I through XXX, inclusive,

**ERRATA TO OR AMENDED  
PLAINTIFF'S MOTION TO  
DISQUALIFY THE MCBRIDE HALL  
LAW FIRM ON AN EX PARTE MOTION  
FOR ORDER SHORTENING TIME**

**HEARING REQUESTED:  
YES**

Defendants.

Plaintiff, KIMBERLY TAYLOR, by and through her attorney of record Adam J. Breeden,  
Esq. of BREEDEN AND ASSOCIATES, PLLC, hereby submits the following Motion to Disqualify  
the Law Firm of McBride Hall. This Motion is made and based on the following Points and  
Authorities, the pleadings and papers on file herein, the Declaration of Adam J. Breeden, Esq.,

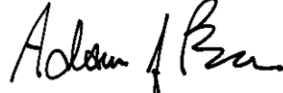
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1 and any oral argument allowed by the Court at the time of hearing on this matter.

2 DATED this 18<sup>th</sup> day of November, 2021.

3 BREEDEN & ASSOCIATES, PLLC

4 

5 ADAM J. BREEDEN, ESQ.

6 Nevada Bar No. 008768

Attorneys for Plaintiff Taylor

7  
8 **DECLARATION OF ADAM J. BREEDEN, ESQ. IN SUPPORT OF EX PARTE**  
9 **APPLICATION FOR ORDER SHORTENING TIME**

10 STATE OF NEVADA )  
11 ) ss:  
12 COUNTY OF CLARK: )

13 I, ADAM J. BREEDEN, ESQ., being first duly sworn, deposes, and says:

14 1. I am Adam J. Breeden, Esq. and am counsel for Plaintiff Kimberly Taylor in the  
15 instant litigation and make this affidavit in support of this motion.

16 2. This Motion seeks to disqualify the law firm of McBride Hall as defense counsel  
17 after they hired paralegal Kristy Johnson from my law firm. Ms. Johnson worked extensively on  
18 Ms. Taylor's case—including attending all days of the recent trial—and is aware of the most  
19 sensitive, confidential and privileged information regarding this case. Ms. Johnson's first day at  
20 McBride Hall was November 8, 2021.

21 3. Nevada law contains a *rebuttable presumption of disqualification* under these  
22 circumstances. If McBride Hall wishes to avoid disqualification the burden is on them after an  
23 evidentiary hearing to show that screening is a reasonable method to cure any imputed  
24 disqualification issue given all factors.

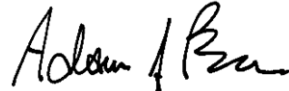
25 4. Post-trial motions and an appeal will proceed shortly in this case. To preserve all  
26 attorney-client privileged information, an expedited hearing on this motion should be held.

27 5. I am scheduled to be out of the country from November 25 through December 1,  
28 2021 and request the Motion not be set for hearing on those days.

6. I declare under penalty of perjury under the laws of the State of Nevada that the

1 foregoing is true and correct.

2 DATED this 18th day of November, 2021.

3 

4 ADAM J. BREEDEN, ESQ.

5 **ORDER SHORTENING TIME**

6 IT IS HEREBY ORDERED that a hearing on the PLAINTIFF KIMBERLY TAYLOR'S  
7 MOTION TO DISQUALIFY THE McBRIDE HALL LAW FIRM FROM REPRESENTING  
8 DEFENDANTS DR. BRILL AND WHASN ON AN ORDER SHORTENING TIME, be expedited  
9 and heard on the 7 day of December, 2021, at the hour of 9:00 am/~~pm~~, or  
10 as soon thereafter as counsel can be heard. <sup>Plaintiff must serve this Motion to opposing counsel by 11/19/21 5 p.m.</sup>

11 Oppositions shall be due on 11/26/21.

12 ~~Replies shall be due on \_\_\_\_\_.~~ No written replies allowed.

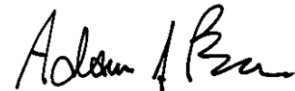
13  
14 Dated this 18th day of November, 2021

15 

16 42B 62C A32F 526A  
17 Carli Kierny  
District Court Judge

17 Submitted by:

18 **BREEDEN & ASSOCIATES, PLLC**

19 

20 ADAM J. BREEDEN, ESQ.

21 Nevada Bar No. 008768  
22 376 E. Warm Springs Road, Suite 120  
23 Las Vegas, Nevada 89119  
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25 Fax: (702) 819-7771  
26 Adam@Breedendassociates.com  
27 Attorneys for Plaintiff Taylor  
28

1 **MEMORANDUM IN SUPPORT OF MOTION**

2 **I. INTRODUCTION**

3 Recently, the McBride Hall law firm (defense counsel for Dr. Brill and WHASN) hired away  
4 a paralegal, Kristy Johnson, from the law firm of Breeden & Associates, PLLC (plaintiff Taylor's  
5 counsel). Because Ms. Johnson worked extensively on the Taylor file at her previous employment  
6 with plaintiff's counsel and has the most sensitive confidential and privileged information regarding  
7 case assessment and strategy, the McBride Hall law firm is subject to a rebuttable presumption that  
8 it is disqualified from further representation in this case pursuant to *Leibowitz v. Eighth Judicial*  
9 *Dist. Court of Nev.*, 119 Nev. 523 (2003). If it wishes to overcome this rebuttable presumption, it  
10 bears the burden of proof at an evidentiary hearing to establish that effective screening can overcome  
11 the disqualification presumption given all available factors. However, it strongly appears that  
12 McBride Hall would not be able to overcome that presumption given the facts of this case.

13 **II. CASE BACKGROUND**

14 The Court will likely recall that this medical malpractice matter proceeded to trial on October  
15 12-19 and resulted in a defense verdict. Taylor will be appealing and requesting a new trial. This  
16 motion concerns disqualification of defense counsel after defense counsel hired the paralegal of  
17 plaintiff's counsel working on this case. The applicable facts are set forth as follows in Declaration  
18 form from Plaintiff's counsel, Adam J. Breeden, Esq.:

19 I, ADAM J. BREEDEN, ESQ., declare the following under penalty of perjury:

- 20 1. I am Adam J. Breeden, Esq. and am counsel for Plaintiff, Kimberly Taylor, in this  
21 matter.
- 22 2. I am a licensed attorney in the state of Nevada. I am the managing member of  
23 Breeden & Associates, PLLC. I know the following facts to be true of my own knowledge and, if  
24 called to testify, I could competently do so.
- 25 3. I have a small/solo law practice. While I have two other attorneys who work with my  
26 firm occasionally as of-counsel and several other attorneys and paralegals who do occasional  
27 piecework for my law firm, for the most part I alone manage litigation and represent the clients.
- 28 4. Until recently, I had one full-time paralegal and assistant, Kristy Johnson.

1 Ms. Johnson had worked for me since October of 2017. She worked 40 hours a week. Ms. Johnson  
2 worked very closely with me while she was employed. I saw her, worked with her and assigned her  
3 work daily. She is involved in every case I have at my office. She independently manages some  
4 aspects of litigation at my firm as well, including preparing discovery supplements and other filings  
5 and notices. I shared all of my mental impressions and evaluations of every case at my office with  
6 Ms. Johnson.

7 5. Specifically as to the Kimberly Taylor case, I would testify to the following:

- 8 a. Ms. Johnson had worked on the Taylor file at my office since its inception at my  
9 firm in January 2021, from sign up through discovery and trial.
- 10 b. Ms. Johnson had worked on all or substantially all pleadings and filings in the  
11 case, including all motions, status reports and emails to the client and trial. In  
12 fact, Ms. Johnson was personally present during every day of trial.
- 13 c. As a matter of course, I copied Ms. Johnson on virtually every case and client  
14 email I send at my firm, including Ms. Taylor's case. As a result, she is likely  
15 copied on a hundred emails in this case and perhaps two dozen emails directly to  
16 the client Ms. Taylor, which detail legal advice, case evaluations and other  
17 confidential information.
- 18 d. Ms. Johnson has met the client, Ms. Taylor, personally many times and spoke to  
19 her many times by phone. She literally sat next to Ms. Taylor during trial of this  
20 matter. Ms. Johnson has sat through all or part of client meetings between me  
21 and Ms. Taylor and well as privileged courthouse discussions with the client and  
22 co-counsel Anna Albertson.
- 23 e. There is no confidential communication between my law firm and the client  
24 Ms. Taylor of which Ms. Johnson was not privy to and actually worked on.  
25 Perhaps most specifically, she worked on and sent comprehensive status letters  
26 to the client, *the most recent of which was on October 20 and 25, 2021 which*  
27 *outlines to the client all of my mental impressions of the case, judicial officer,*  
28 *opposing counsel, trial impressions, appellate and settlement strategy.* Notably,

1 Ms. Johnson was also present for both jury focus groups in this matter and was  
2 present during post-trial jury interviews for this case.

3 f. Ms. Johnson has the same knowledge of this case as if I turned over my entire  
4 file to opposing counsel, except that it is ever worse since she has knowledge of  
5 even unwritten conversations and strategy with co-counsel and Ms. Taylor.

6 6. On October 12-19, 2021, on behalf of the Plaintiff Taylor I took this matter to trial  
7 against the McBride Hall law firm called *Taylor v. Brill, MD*. During that trial, Ms. Johnson  
8 appeared every day and operated trial presentation software. Apparently, Ms. Johnson made an  
9 impression on someone at the McBride Hall law firm during that time and they made a job offer to  
10 her, reportedly after conclusion of the trial.

11 7. On Monday, October 25, 2021 Ms. Johnson advised me that “over the weekend” she  
12 discussed a job position at McBride Hall and had accepted an offer. I contacted the principals of  
13 the McBride Hall law firm to see if they intended to withdraw from matters Ms. Johnson worked on  
14 and they indicated they would not and they believed screening would cure any imputed  
15 disqualification. There were two clients involved, Jane Nelson and Kimberly Taylor.

16 8. I explained this situation to my client, Kimberly Taylor, who has instructed me that  
17 she feels uncomfortable with this situation and directed me to file a motion to disqualify the McBride  
18 Hall law firm.

19 9. It’s hard to imagine a case fraught with more risk of disclosure of confidential  
20 information to the adversary. I do not wish to accuse McBride Hall or Ms. Johnson of any unethical  
21 behavior but the mere circumstances and risk of disclosure warrant imputed disqualification in this  
22 matter in my opinion. Given the level of information Ms. Johnson, I do not feel that screening will  
23 cure this issue and mere screening is unacceptable to Ms. Taylor and me personally.

24 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing  
25 is true and correct.

26 DATED this 16th day of November, 2021.

27   
28 ADAM J. BREEDEN, ESQ.

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### III. LAW AND ARGUMENT

#### A. Imputed Disqualification of a Law Firm upon Employment of Legal Staff with Confidential Information about an Opposing Party

The legal issue in this case is when the hiring of legal staff by an opposing law firm results in disqualification of the hiring law firm. The controlling Nevada Supreme Court precedent on this issue is *Leibowitz v. Eighth Judicial Dist. Court of Nev.*, 119 Nev. 523 (2003). However, a short primer of Nevada law on this issue is necessary.

The Nevada Supreme Court first addressed imputed disqualification of a law firm due to hiring nonlawyer legal staff from opposing counsel in the case of *Ciaffone v. Eighth Judicial Dist. Court*, 113 Nev. 1165, 945 P.2d 950 (1997). In *Ciaffone*, a secretary word processor had worked on a wrongful death case at one firm as a temporary employee but was later hired by the opposing law firm. The first law firm requested imputed disqualification of the hiring or second law firm. The Supreme Court found that “[w]hen SCR 187 [non-lawyers held to same standards as lawyers supervising them] is read in conjunction with SCR 160(2) [imputed disqualification], nonlawyer employees become subject to the same rules governing imputed disqualification. To hold otherwise would grant less protection to the confidential and privileged information obtained by a nonlawyer than that obtained by a lawyer.” *Id.* at 1169. The Nevada Supreme Court *rejected* screening of non-lawyer staff as an effective method of curing imputed disqualification, explaining both that “[a]ttorney disqualification of counsel is part of a court's duty to safeguard the sacrosanct privacy of the attorney-client relationship which is necessary to maintain public confidences in the legal profession and to protect the integrity of the judicial process” *Panduit Corp. v. All States Plastic Mfg. Co.*, 744 F.2d 1564, 1576 (D.C. Cir. 1984), and that “a client must be secure in the knowledge that any information he reveals to counsel will remain confidential.” *United States v. Schell*, 775 F.2d 559, 565 (4th Cir. 1985). Therefore, *Ciaffone* set forth a bright-line, per se rule of disqualification without any inquiry into the level of confidential information the nonlawyer obtained or the ability to screen the employee at the second law firm.

*Ciaffone* clearly states that “the policy of protecting the attorney-client privilege must be

1 preserved through imputed disqualification when a nonlawyer employee, in possession of privileged  
2 information, accepts employment with a firm who represents a client with materially adverse  
3 interests.” *Id.* at 1168. While *Ciaffone* set forth a bright-line rule of imputed disqualification that  
4 was easy to apply, it was a bit harsh and came under criticism that it unfairly restricted employment  
5 opportunities of nonlawyer legal staff, particularly those who had little to no confidential  
6 information. In *Ciaffone*, the staff member involved did not have much involvement with the  
7 underlying case. The staff member had been a temporary secretarial employee at the first firm and  
8 did word processing only. She was not regularly assigned to the underlying case and was not  
9 assigned to the attorney handling the underlying case, but did some limited work on the case in an  
10 “overflow” capacity. *Id.* at 1166-1167. Regardless, the Nevada Supreme Court found the second  
11 firm should be disqualified. The Court barred screening as a means to avoid disqualification of the  
12 hiring firm and noted the inherent difficulties allowing screening presented, including (a) the  
13 effectiveness of the screen, (b) the monetary incentive involved in breaching the screen, (c) the fear  
14 of disclosing privileged information in the course of proving an effective screen, and (d) the  
15 possibility of accidental disclosures.

16         Several years later, the Nevada Supreme Court revisited *Ciaffone* and the issue of screening  
17 of nonlawyer legal staff in *Leibowitz v. Eighth Judicial Dist. Court of Nev.*, 119 Nev. 523 (2003).  
18 In *Leibowitz* the underlying case concerned a contested divorce which was on appeal when  
19 disqualification issues arose. It was discovered that the husband’s law firm had hired two different  
20 employees that had both previously worked for the wife’s law firm. One employee, Magalianes was  
21 a legal assistant newly hired by the husband’s law firm. However, Maglianens had previously worked  
22 on the divorce case for roughly a month while working for the wife’s law firm. The evidence was  
23 that she took the initial intake call from the wife, prepared a memo for the attorney on the case, may  
24 have drafted certain legal documents and may have been present at meetings between the wife and  
25 her attorneys. *Id.* at 527-528. The husband’s law firm said they would screen Magalianes off the  
26 file and prohibit her from discussing the matter at her new law firm to avoid disqualification  
27 (although this was not allowed at the time under *Ciaffone*). The second employee, Baker, was also  
28 a legal assistant. While there was disputed evidence, the court found that Baker had worked at the

1 wife's law firm for only a short period of time and had access to, but did not actually work on, the  
2 divorce case at issue. Thus, the type of exposure between the two employees was different.  
3 Maglianes had actually worked on the case but perhaps obtained only minimal confidential or  
4 privileged information. Baker did not even seem to have worked on the case at all. The district court  
5 found that under *Ciaffone*, mere access to the file even without a showing of knowledge of  
6 confidential material was sufficient by itself to disqualify the second law firm that hired the legal  
7 staff and ordered the same.

8 In reviewing the District Court's decision, the Supreme Court revisited and modified  
9 *Ciaffone*. The Court explained that in *Ciaffone* the nonlawyer's involvement was in a "secretarial,  
10 word processor capacity" and the opinion did not consider whether the employee had "exposure  
11 related to privileged or confidential information," which was error. *Id.* at 530. The court therefore  
12 found that instead of a per se rule of imputed disqualification, "the imputed disqualification  
13 standards of SCR 160(2) do not apply simply because a nonlawyer employee was exposed, or had  
14 access to, a former client's file. **The rule only applies when the nonlawyer employee acquires**  
15 **privileged, confidential information.**"

16 The Court then continued its analysis and stated that even if the former employee had  
17 confidential information, there is a sort of sliding scale as to how much and whether disqualification  
18 is warranted. The Court then stated that in **some (but not all) cases**, the screening of nonlawyer  
19 employees at a new firm to cure imputed disqualification was acceptable, explaining as follows:

20 When a law firm hires a nonlawyer employee, the firm has an affirmative duty to  
21 determine whether the employee previously had access to adversarial client files. If  
22 the hiring law firm determines that the employee had such access, the hiring law  
23 firm has an absolute duty to screen the nonlawyer employee from the adversarial  
cases irrespective of the nonlawyer employee's actual knowledge of privileged or  
confidential information.

24 Although we decline to mandate an exhaustive list of screening requirements, the  
following provides an instructive minimum:

25 1. "The newly hired nonlawyer [employee] must be cautioned not to disclose any  
26 information relating to the representation of a client of the former employer."

27 2. "The nonlawyer [employee] must be instructed not to work on any matter on  
28 which [he or] she worked during the prior employment, or regarding which [he or]  
she has information relating to the former employer's representation."

1 3. "The new firm should take...reasonable steps to ensure that the nonlawyer  
2 [employee] does not work in connection with matters on which [he or] she worked  
3 during the prior employment, absent client consent [i.e., unconditional waiver] after  
consultation."

4 In addition, the hiring law firm must inform the adversarial party, or their counsel,  
5 regarding the hiring of the nonlawyer employee and the screening mechanisms  
6 utilized. The adversarial party may then: (1) make a conditional waiver (i.e., agree  
to the screening mechanisms); (2) make an unconditional waiver (eliminate the  
screening mechanisms); or (3) file a motion to disqualify counsel.

7 However, even if the new employer uses a screening process, disqualification will  
8 always be required-absent unconditional waiver by the affected client-under the  
following circumstances :

9 1. "When information relating to the representation of an adverse client has in fact  
10 been disclosed [to the new employer]"; or, in the absence of disclosure to the new  
employer,

11 2. "When screening would be ineffective or the nonlawyer [employee] necessarily  
12 would be required to work on the other side of a matter that is the same as or  
substantially related to a matter on which the nonlawyer [employee] has previously  
worked."

13 *Id.* at 533. The Supreme Court continued to explain how the district court should weigh all factors,  
14 stating the following:

15 Once a district court determines that a nonlawyer employee acquired confidential  
16 information about a former client, the district court should grant a motion for  
17 disqualification unless the district court determines that the screening is sufficient  
18 to safeguard the former client from disclosure of the confidential information. The  
district court is faced with the delicate task of balancing competing interests,  
19 including: (1) "the individual right to be represented by counsel of one's choice,"  
(2) "each party's right to be free from the risk of even inadvertent disclosure of  
20 confidential information," (3) "the public's interest in the scrupulous administration  
of justice," and (4) "the prejudices that will inure to the parties as a result of the  
[district court's] decision."

21 To determine whether screening has been or may be effective, the district court  
22 should consider: (1) "the substantiality of the relationship between the former and  
23 current matters," (2) "the time elapsed between the matters," (3) "the size of the  
firm," (4) "the number of individuals presumed to have confidential information,"  
24 (5) "the nature of their involvement in the former matter," (6) "the timing and  
features of any measures taken to reduce the danger of disclosure," and (7) whether  
25 the "old firm and the new firm represent adverse parties in the same proceeding,  
rather than in different proceedings" because inadvertent disclosure by the  
26 nonlawyer employee is more likely in the former situation.

27 *Id.* at 533-534. Based on this new standard, the husband's firm in *Leibowitz* was clearly not  
28

1 disqualified due to Baker's hiring because Baker had not worked on the actual case while at the  
2 wife's law firm and acquired no confidential or privileged information. The issue was closer for  
3 Magalianes. Ultimately, imputed disqualification was not ordered as to Magalianes either but only  
4 because her involvement with the wife's case at her former law firm had been "brief" (about a month)  
5 and affidavits did not "clearly establish that Magalianes was privy to any confidential information"  
6 about the wife's case. Therefore, the situation as to Magalianes is quite different factually as to the  
7 paralegal involved in this case who knows all confidential information ever sent to the client.

8 Subsequent case law regarding the application of *Leibowitz* has been sparse. In *Ryan's*  
9 *Express Transp. Servs. v. Amador Stage Lines, Inc.*, 128 Nev. 289, 298-99, 279 P.3d 166, 172 (2012)  
10 the Supreme Court further explained that when faced with a screening and disqualification issue for  
11 a lawyer<sup>1</sup> changing employment, the District Court must set an evidentiary hearing and consider the  
12 following:

13 When presented with a dispute over whether a lawyer has been properly screened,  
14 Nevada courts should conduct an evidentiary hearing to determine the adequacy  
15 and timeliness of the screening measures on a case-by-case basis. The burden of  
16 proof is upon the party seeking to cure an imputed disqualification with screening  
to demonstrate that the use of screening is appropriate for the situation and that the  
disqualified attorney is timely and properly screened.

17 When considering whether the screening measures implemented are adequate,  
courts are to be guided by the following nonexhaustive list of factors:

- 18 (1) instructions given to ban the exchange of information between the disqualified  
19 attorney and other members of the firm;  
20 (2) restricted access to files and other information about the case;  
21 (3) the size of the law firm and its structural divisions;  
22 (4) the likelihood of contact between the quarantined lawyer and other members  
of the firm; and  
23 (5) the timing of the screening.

24 As with motions to disqualify, the consideration of the adequacy of screening is  
25 within the sound discretion of the district court, *LaSalle*, 703 F.2d at 256; however,  
the district court must justify its determination as to the adequacy of the screening  
in a written order with specific findings of fact and conclusions of law.

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27 <sup>1</sup> Presumably, since this is the rule required for screening lawyers, it would also apply to the  
28 screening of non-lawyers who possess confidential client information.

1        ***In summary, the law regarding imputed disqualification of a law firm due to the hiring of***  
2 ***nonlawyer staff previously working for the opposing party is the following:*** Because of concerns  
3 over preservation of confidential information of a client, nonlawyer staff is held to the same  
4 confidentiality and loyalty standards as lawyers as well as the same imputed disqualification  
5 standards. Thus, where a nonlawyer such as a paralegal is hired by an opposing law firm, the court  
6 must first inquire as to the degree or level of confidential information the paralegal has about the  
7 client or case. Where the paralegal has knowledge of highly confidential information, there is a  
8 presumption that the hiring law firm is disqualified. The court must consider (1) the individual right  
9 to be represented by counsel of one's choice, (2) each party's right to be free from the risk of even  
10 inadvertent disclosure of confidential information, (3) the public's interest in the scrupulous  
11 administration of justice, and (4) the prejudices that will inure to the parties as a result of the [district  
12 court's] decision. The hiring law firm may try to overcome the imputed disqualification by  
13 establishing a screening process. However, the hiring law firm bears the burden of establishing that  
14 the screening will be sufficient. To establish this, an evidentiary hearing must be held and findings  
15 of fact must be made as to (1) the substantiality of the relationship between the former and current  
16 matters, (2) the time elapsed between the matters, (3) the size of the firm, (4) the number of  
17 individuals presumed to have confidential information, (5) the nature of their involvement in the  
18 former matter, (6) the timing and features of any measures taken to reduce the danger of disclosure,  
19 and (7) whether the old firm and the new firm represent adverse parties in the same proceeding,  
20 rather than in different proceedings because inadvertent disclosure by the nonlawyer employee is  
21 more likely in the former situation.

22 **B. An Evidentiary Hearing should be Ordered and Imputed Disqualification should be Found**

23        Under *Ryan's Express Transp. Servs.* an evidentiary hearing must be held on the  
24 disqualification and screening issues. McBride Hall is presumptively disqualified and bears the  
25 burden of refuting that at the evidentiary hearing. However, Taylor will brief the *Ryan's Express*  
26 *Transp. Servs.* case in the hopes that McBride Hall may just decide that disqualification is proper  
27 and withdraw voluntarily.

28 //

1 (1) The substantiality of the relationship between the former and current matters

2       The matter concerned here, *Taylor v. Brill*, is identical, open, active and the two clients are  
3 in direct conflict with each other. The paralegal will be moving from plaintiff's law firm to Dr. Brill  
4 and WAHSN's law firm. This is not a case where we are talking about a former matter or a former  
5 client or an unrelated matter. This factor favors imputed disqualification.

6 (2) The time elapsed between the matters

7       No time has elapsed at all. In fact, we aren't even talking about related matters in this case,  
8 we are talking about the exact same matter. Ms. Johnson is literally working at plaintiff's law firm  
9 on a Friday and working for the defendant's law firm on the following Monday. The matter is still  
10 active and Taylor intends to appeal. This factor favors imputed disqualification.

11 (3) The size of the firm

12       It is unclear how this factor is to be considered by the court. However, it can be offered that  
13 being disqualified from this case will not be a substantial burden to the law firm of McBride Hall.  
14 They are a firm of six attorneys and no doubt have hundreds of active files. This issue affects only  
15 two pending cases between the law firms (Nelson and Taylor). At the same time, McBride Hall is  
16 not so large that there is no risk of inadvertent disclosure or Ms. Johnson being in contact with other  
17 attorneys or staff at McBride Hall working on the Taylor file. McBride Hall is not a large, multistate  
18 law firm. Ms. Johnson will be working in the same office as Mr. McBride and Ms. Hall, the attorneys  
19 handling this matter at McBride Hall. In fact, those attorneys are her new employers. This factor  
20 favors imputed disqualification.

21 (4) The number of individuals presumed to have confidential information

22       It is again unclear how this factor is to be applied. However, several members of McBride  
23 Hall are known to have worked on this file defending it, including Mr. McBride and Ms. Hall as the  
24 lawyer and other staff. This factor favors imputed disqualification.

25 (5) The nature of their involvement in the former matter

26       As previously explained by Declaration, Ms. Johnson has worked on the Taylor matter since  
27 its inception at Breeden & Associates, PLLC in January 2021. She has reviewed every pleading. She  
28 has reviewed every status report and email to the client detailing litigation, expert and settlement

1 strategy, both for trial and appeal. She has personally spoken to the client, Ms. Taylor, on numerous  
2 occasions and been part of some attorney-client meetings. She sat at Plaintiff's table next to the  
3 Plaintiff during trial. She was copied on virtually every email and letter correspondence in the case.  
4 It is not possible for nonlawyer staff to have more confidential, privileged information regarding the  
5 Taylor case than Ms. Johnson has. This factor favors imputed disqualification.

6 (6) The timing and features of any measures taken to reduce the danger of disclosure

7 The extent of screening measures is unknown at present, although upon inquiry McBride  
8 Hall did indicate they would employ some screening measures.

9 (7) Whether the old firm and the new firm represent adverse parties in the same proceeding, rather  
10 than in different proceedings because inadvertent disclosure by the nonlawyer employee is more  
11 likely in the former situation.

12 Here the prior firm, Breeden & Associates, PLLC, represents Taylor in the same proceeding,  
13 an active civil matter soon to be on an appeal where a new trial will be requested. The risk of  
14 disclosure of confidential information, intentional or inadvertent, is at its maximum. Indeed, it is  
15 hard to imagine facts more convincing for disqualification than this one.

16 In summary, this case presents the strongest possible facts for imputed disqualification.

17 **III. CLOSING**

18 In closing, the law of the state of Nevada presumes that the McBride Hall law firm must be  
19 disqualified because they now employ a paralegal with knowledge of all confidential  
20 communications between Taylor and her attorney. If McBride Hall wishes to overcome the  
21 presumption, they must seek an evidentiary hearing as to their screening efforts and the court must  
22 make specific findings of fact and conclusions of law as to why the presumption is overcome.  
23 However, the facts of this case are so enormously strong in favor of disqualification the District  
24 Court may deny even that hearing. Screening was a process invented to allow legal staff with  
25 minimal confidential knowledge to change positions. Screening was never intended to allow a legal  
26 professional with thorough, intimate knowledge of the case to switch sides while the case is still  
27 pending.

28 The legal system is honorable, but must concern itself with realities that even the appearance

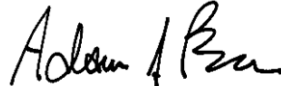
1 of impropriety must be avoided to maintain the public's confidence. The legal system must concern  
2 itself with both intentional and inadvertent disclosures. And the legal system must recognize that  
3 there are bad actors in the industry and when the nonlawyer employee has the most sensitive of  
4 confidential information one cannot merely trust one's adversary and hope no "shenanigans" are  
5 going on.

6 Several members of the Nevada Supreme Court dissented from the decision to allow  
7 screening of nonlawyer employees with access to confidential information from the prior law firm.  
8 Surely, those dissenters had this case in mind. It is a foolishly Pollyanna<sup>2</sup> attitude that puts absolute  
9 trust in one's adversary that they will follow the rules strictly and not use or try to use confidential  
10 information to their advantage. Indeed, the Court should ask itself "If I were the client, Taylor, in  
11 this matter, would I reasonably be concerned that a paralegal working on this case knowing all  
12 confidential evaluation of it by my attorney is now working for the defense?" Surely the answer is  
13 "yes," it is reasonable to be concerned. The legal system has a duty to make certain that the system  
14 appears fair and the appearance of impropriety is removed.

15 Respectfully, the McBride Hall law firm must be disqualified from further representation in  
16 this case.

17 DATED this 18<sup>th</sup> day of November, 2021.

18 **BREEDEN & ASSOCIATES, PLLC**

19 

20 **ADAM J. BREEDEN, ESQ.**

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Adam@Breedendassociates.com

*Attorneys for Plaintiff*

26 \_\_\_\_\_  
27 <sup>2</sup> The character of Pollyanna is from a book and 1960 Disney film of the same name and has come  
28 to stand for a person characterized by irrepressible optimism and a tendency to find good in  
everything but ignore the harsher realities of the situation at hand.



1 **CSERV**

2  
3 DISTRICT COURT  
CLARK COUNTY, NEVADA

4  
5  
6 Kimberly Taylor, Plaintiff(s)

CASE NO: A-18-773472-C

7 vs.

DEPT. NO. Department 3

8 Keith Brill, M.D., Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Motion was served via the court's electronic eFile system to all  
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 11/18/2021

15 Adam Breeden

adam@breedenandassociates.com

16 E-File Admin

efile@hpslaw.com

17 Heather Hall

hshall@mcbridehall.com

18 Jody Foote

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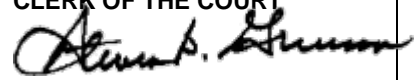
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**EXHIBIT 3**

**EXHIBIT 3**

**EXHIBIT 3**



RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

\* \* \* \* \*

KIMBERLY D. TAYLOR,	)	
	)	CASE NO. A-18-773472-C
Plaintiff,	)	
	)	
vs.	)	DEPT. NO. III
	)	
KEITH BRILL, M.D., WOMEN'S	)	
HEALTH ASSOCIATES OF SOUTHERN	)	<b>Transcript of Proceedings</b>
NEVADA - MARTIN PLLC, UNITED	)	
HEALTH SERVICES,	)	
	)	
Defendants.	)	

BEFORE THE HONORABLE DAVID BARKER, DISTRICT COURT JUDGE  
**PLAINTIFF'S MOTION TO DISQUALIFY THE MCBRIDE HALL LAW FIRM  
ON EX PARTE MOTION FOR ORDER SHORTENING TIME; EVIDENTIARY  
HEARING**

FRIDAY, JANUARY 7, 2022

APPEARANCES:

For the Plaintiff: ADAM J. BREEDEN, ESQ.

For the Defendants: ROBERT C. MCBRIDE, ESQ.  
[Via BlueJeans]  
HEATHER S. HALL, ESQ.

RECORDED BY: REBECA GOMEZ, DISTRICT COURT  
TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording; transcript  
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FRIDAY, JANUARY 7, 2022, AT 8:58 A.M.

THE COURT: We're on the record in A773472, *Kimberly Taylor versus Keith Brill, M.D.* Can I have counsel for plaintiffs state appearance for the record, please?

MR. BREEDEN: Good morning, Your Honor. This is attorney Adam Breeden, bar number 8768, on behalf of the plaintiff, Ms. Taylor, who is present today, I believe, by BlueJeans.

THE COURT: Thank you.  
Can I have counsel for defendants state appearances, please?

MR. MCBRIDE: Yes, Your Honor. Robert McBride, counsel for Dr. Brill, as well as Heather Hall and Kristy Johnson from my office.

THE COURT: Thank you very much.  
I am Judge Barker. I'm sitting for Judge Trujillo in this effort. I have been through the register of actions. I understand the nature of the issues today. I'm -- on behalf of the courts, I want to apologize. It seems like it's been kind of convoluted for all of you to have a different trial judge, a different hearing judge. I know you've listened to Judge Becker, had Judge Becker, now you have me. But I can assure you I've reviewed everything I

1 think is relevant. I'm sure the lawyers will bring me up  
2 to speed and what they think is important to bring out  
3 further in this evidentiary hearing.

4 Who wants to start?

5 MR. BREEDEN: Your Honor, if I could just give  
6 some introduction here about how I foresee this hearing  
7 moving today.

8 THE COURT: Okay.

9 MR. BREEDEN: So, today's hearing is an  
10 evidentiary hearing on all the facts for my client's Motion  
11 to Disqualify or Apply Imputed Disqualification to the  
12 McBride Hall Law Firm for defendants Brill and WHASN. I  
13 anticipate calling my client, Ms. Taylor. I will call Ms.  
14 Johnson to testify to some facts and background.

15 THE COURT: Okay.

16 MR. BREEDEN: I will testify myself regarding Ms.  
17 Johnson's involvement with this file. And, then, those are  
18 the witnesses I intend to call. I think that we can  
19 probably conclude this in roughly an hour.

20 THE COURT: Time -- it takes what it takes.

21 MR. BREEDEN: I understand and I appreciate that  
22 the Court made time to set this evidentiary hearing.

23 THE COURT: Okay.

24 MR. BREEDEN: I would just say, Your Honor, that  
25 before we start calling witnesses, just to frame today's

1 hearing, --

2 THE COURT: Okay.

3 MR. BREEDEN: -- understand there is no difference  
4 in the standard for imputed disqualification, regardless of  
5 whether you were talking about an attorney or a non-  
6 attorney, like a paralegal in this case. The legal  
7 standard is the same. Imputed disqualification is presumed  
8 in this matter, given the level of confidential attorney-  
9 client information that Ms. Johnson has about my client's  
10 case.

11 THE COURT: Frankly, Mr. Breeden, that's why I  
12 paused the beginning because it seems like, from my review  
13 of the law and the brief, the burden lies with the defense  
14 to offer explanation why there shouldn't be --

15 MR. BREEDEN: Yes. And --

16 THE COURT: -- disqualification, but I've -- I'm  
17 comfortable with the process, as you've outlined it,  
18 assuming Mr. McBride is.

19 MR. BREEDEN: Well, yes. And I will just note,  
20 again, it is McBride Hall's burden in this proceeding to  
21 show why screening would be effective. Screening is not  
22 required to be accepted in all cases and there are  
23 considerations that go beyond actual leaking or sharing of  
24 confidential information, including the possibility for  
25 inadvertent disclosures, disclosures in the future, but,

1 also, the public's trust in the legal process, and the  
2 ability of a client and an attorney to freely communicate  
3 and not have that worry that that's going to wind up in the  
4 hands of an adversary. So, that's why we're here today  
5 doing this evidentiary.

6 THE COURT: Fair. Now, before we get into the  
7 actual evidentiary portion of this effort, you indicated  
8 you anticipated calling your client. In my review and  
9 understanding of the brief, it appears that nobody is  
10 contesting the fact that the paralegal, Johnson, worked the  
11 file from your side. Is that fair?

12 MR. BREEDEN: Yes.

13 THE COURT: And, as a consequence, was  
14 communicating with your client about whatever information  
15 the client felt was relevant, including, as you assert,  
16 privileged information.

17 MR. BREEDEN: I agree. I don't think McBride Hall  
18 is going to dispute a lot of the background here.

19 THE COURT: Okay.

20 MR. BREEDEN: But I think it's important to create  
21 a record at this evidentiary hearing of the extreme extent  
22 of the contact between Ms. Johnson and the client, Ms.  
23 Taylor, and the confidential information that Ms. Johnson  
24 has.

25 THE COURT: All right. Do you believe that --

1 frankly, lawyers -- you're pretty far along in this  
2 litigation. I mean, you're in post-trial effort. You're  
3 in appeal -- on appeal on the verdict. Does that -- is  
4 that relevant?

5 MR. BREEDEN: You know what? It isn't, Your  
6 Honor. And let me tell you a couple of reasons why.

7 First of all, the fact that this matter already  
8 went to trial and is on appeal, that is the same factual  
9 background that was presented in the *Leibowitz* case, which  
10 is the leading case in this field. And that fact was of no  
11 relevance at all to the Court in *Leibowitz*.

12 THE COURT: Okay.

13 MR. BREEDEN: All right. It was not cited as any  
14 factor.

15 But, beyond that, Your Honor, I will say we are  
16 trying to get this verdict reversed and to get a new trial.  
17 But, also, as will be explained more fully in the  
18 evidentiary hearing, there was a period of time that is  
19 very sensitive in this case between when Ms. Johnson was  
20 applying for a job at McBride Hall and when I was advised  
21 that she would be leaving. And, during that time frame,  
22 everything regarding appellate strategy, my assessment of  
23 chances of appeal, grounds for appeal, what settlement  
24 offers might be made and how those might be handled, Ms.  
25 Johnson was exposed to all of that.

1 THE COURT: Okay.

2 MR. BREEDEN: So, she's aware of all of the  
3 appellate strategy and assessments of my office as well.

4 THE COURT: All right. Well, unless I hear  
5 differently from defense counsel or defense counsel wishes  
6 to address the comments already made by Mr. Breeden, we can  
7 move into evidentiary hearing.

8 Mr. McBride, are you ready to move into evidence?

9 MR. MCBRIDE: No, Your Honor. I would like to  
10 make a couple of comments, if I could. And, first of all,  
11 --

12 THE COURT: Okay.

13 MR. MCBRIDE: -- I wanted to apologize that I'm  
14 not there in person, but, unfortunately, I just found out  
15 this morning that I tested positive for Covid.

16 THE COURT: Okay.

17 MR. MCBRIDE: So, I am at home, but prepared to  
18 really primarily direct the questioning of the witnesses.

19 My partner, Heather Hall, is there and in court,  
20 as you know. And, frankly, I think since Ms. Hall argued -  
21 - she briefed the matter, she argued the matter in front of  
22 Justice Becker, I think it's important too that a couple of  
23 points may be raised on the issues, the legality, and the  
24 legal rulings previous made by Justice Becker.

25 And the fact that the purpose of this hearing

1 really is solely to determine whether or not there was an  
2 adequate or sufficient screening in place. Justice Becker,  
3 as Your Honor has already read the minutes, I'm sure, and  
4 read all the papers. Her reason for ordering this was  
5 simply because plaintiff had requested it and she felt that  
6 she had to give plaintiff an opportunity to at least ask  
7 questions about whether appropriate screening methods were  
8 in place.

9           The Court has already brought up the fact that the  
10 issues about -- there's no factual dispute as to whether or  
11 not confidential information may have been shared with Ms.  
12 Johnson by Ms. Taylor and by Mr. Breeden. That's not the  
13 issue that we're here for today and I would say that, in  
14 terms of the -- well, Ms. Taylor certainly has every right  
15 to be here today as a party in this case, to be here as a  
16 witness and to hear the matter, to have her testify to  
17 those specific background issues or what confidential  
18 information may have been disclosed, that's irrelevant to  
19 the issues that are here today. It's whether or not the  
20 screening methods by McBride and Hall were in place.

21           Ms. Hall may be able to address more specifically  
22 some of those legal arguments that were raised. And,  
23 contrary to Mr. Breeden's comments, it -- in fact, the law  
24 is very clear that the *Leibowitz* case is -- its strict  
25 disqualification does not apply to paralegals. And that's

1 the point that is very important to make clear in this, and  
2 they can be screened off, and they can -- if there's  
3 adequate screening measures in place. And, again, Justice  
4 Becker had essentially acknowledged that she felt that  
5 there was sufficient screening in place. She also said  
6 that Mr. Breeden's concerns about accidental disclosure,  
7 whether that could, you know, be an issue, that's not a  
8 grounds for disqualifying our firm.

9           As Your Honor also pointed out, the case is very  
10 far along. I can assure you in my 30 years of being an  
11 attorney, and the past 20-plus years practicing here in  
12 Nevada, that under no circumstance -- I'm very well aware,  
13 as is Ms. Hall, as are other members of our firm, of the  
14 importance of screening any individuals who might  
15 potentially come to our firm who have confidential  
16 information. This is a very small community. There are  
17 paralegals that we have hired from other law firms and  
18 secretaries that, for reasons that we know, even though  
19 there may not be a request by a firm that they came from,  
20 to screen them off. We've taken those affirmative measures  
21 to make sure those individuals are screened off by putting  
22 places -- putting measures in place.

23           So, -- and, again, under no circumstances would  
24 that ever occur, and it hasn't occurred with Ms. Johnson's  
25 case. But I just -- if there's any specific issues that

1 the Court needs further clarification from the caselaw  
2 existing on the issue of disqualification, I think Ms.  
3 Hall, even though she is going to be called as a witness by  
4 Mr. Breeden, I think she may be able to address more  
5 specifically anything that I'm missing.

6 THE COURT: All right. I -- if I'm coming around  
7 to understand what we're about to try to accomplish here,  
8 gonna work on, because Ms. Hall, present in the room, is  
9 going to be called as a witness, I have Mr. McBride ready  
10 to take an examination on a -- take you on cross, as  
11 circumstances might require. Right?

12 MS. HALL: That is correct, Your Honor.

13 THE COURT: And other than that, you're going to  
14 be carrying the responsibility for the evidentiary hearing  
15 on the other witnesses. Is that fair?

16 MS. HALL: No. I think, Your Honor, Mr. McBride  
17 is going to handle the witnesses. I think that his point  
18 is that since I am here, that the last hearing with Judge  
19 Becker, --

20 THE COURT: Okay.

21 MS. HALL: -- and we did address the *Leibowitz*  
22 case, which I think she was involved in, and we discussed  
23 that, you know, the whole issue of imputed  
24 disqualification, I think that that may be what he's  
25 referring to, just the caselaw --

1 THE COURT: Okay. Fair enough.

2 MS. HALL: -- aspect.

3 MR. MCBRIDE: Yes.

4 THE COURT: All right. Let's move into the  
5 evidence then. Mr. Breeden, call your witness.

6 MR. BREEDEN: Yeah. Plaintiff would call Kimberly  
7 Taylor.

8 Kimberly is with us on BlueJeans.

9 THE WITNESS: Yes. I am here. Can you hear me?

10 MR. BREEDEN: Yes. We can hear you. I think the  
11 Court Clerk is going to swear you in now.

12 THE CLERK: Please raise your right hand.

13 THE WITNESS: Thank you.

14 **KIMBERLY TAYLOR**

15 [having been first duly sworn via video conference,  
16 testifies as follows:]

17 THE CLERK: Please state and spell your name for  
18 the record.

19 THE WITNESS: Kimberly Taylor, K-I-M-B-E-R-L-Y T-  
20 A-Y-L-O-R.

21 THE COURT: Mr. Breeden, your witness.

22 **DIRECT EXAMINATION OF KIMBERLY TAYLOR**

23 BY MR. BREEDEN:

24 Q Good morning, Kimberly, and thanks for joining us  
25 today. And, just for the record, Ms. Taylor had a health

1 issue as well and that's why we're kind of having her  
2 testify remotely.

3 THE COURT: I have become very comfortable in this  
4 process with the realities that we all live with.

5 MR. BREEDEN: Fantastic. I appreciate that, Your  
6 Honor.

7 BY MR. BREEDEN:

8 Q Kimberly, are you the plaintiff in this matter?

9 A Yes.

10 Q And you've sought to have the opposing law firm,  
11 McBride Hall, disqualified because they've hired Kristy  
12 Johnson. Is that true?

13 A That is correct.

14 Q By way of background, when did my law firm,  
15 Breeden and Associates, first begin representing you in  
16 your case?

17 A January of 2021.

18 Q While my law firm represented you, did you get to  
19 know Kristy Johnson?

20 A I did.

21 Q And what was your understanding of what Kristy's  
22 job position and job duties were at the firm of Breeden and  
23 Associates?

24 A I knew she was a paralegal, acting -- working  
25 directly with you and I would speak with her directly on a

1 lot of the conversations that had to do with my case.

2 Q Okay. During the time that Kristy worked at  
3 Breeden and Associates, how many times would you estimate  
4 that she was included on attorney-client e-mails between  
5 you and I?

6 A Probably about 99.9 percent of all of the e-mails  
7 that were sent from you to me, she was CC'd on them. She  
8 was involved in every step of the way, the process.

9 Q During the time Kristy worked at my law firm, how  
10 many times would you estimate you spoke to Kristy either by  
11 phone or met with her personally?

12 A More than a dozen times. When I would come into  
13 your office, she was the person that would be at the meet  
14 and greet door.

15 Q And this case went to trial several months ago.  
16 During trial, did you see Kristy?

17 A Every day.

18 Q Where did you sit during trial in relation to  
19 Kristy?

20 A I sat on the lefthand side, Kristy was on the  
21 righthand side of me. Any questions I had for you, I would  
22 direct them to her and she would answer them on your behalf  
23 if she knew the answer. If she didn't, she would write it  
24 down and pass it over to you.

25 Q Okay. And would you and I also have meetings in

1 the hall during trial where we would discuss confidential  
2 information, that Ms. Johnson would be present?

3 A Yes.

4 Q Okay.

5 A Yes. She was present.

6 Q Okay. And just to be clear, in all of these  
7 meetings and e-mails that we've discussed, you would  
8 discuss confidential case information with Kristy that you  
9 would not want disclosed to the McBride Hall Law Firm. Is  
10 that correct?

11 A One hundred percent.

12 Q Do you have any way of knowing for certain whether  
13 any confidential information has been shared with the  
14 McBride Hall Law Firm?

15 A I do not. I don't -- I would never know that.  
16 They wouldn't share that information with me voluntarily  
17 that they are talking amongst themselves regarding my case.  
18 I'm assuming that that would all be kept private behind the  
19 scenes with them.

20 Q And would allowing Kristy to switch sides to the  
21 McBride Hall Law Firm cause you to be concerned in this  
22 case that there would either be an intentional or an  
23 accidental disclosure of confidential information about  
24 your case to McBride Hall?

25 A I believe so. Yes. Again, reiterating that I

1 have no way of knowing what conversations that they would  
2 have about my case behind the scenes. I want to have good  
3 faith in this judicial process and with her going over to  
4 the other side, with as much knowledge as she has in  
5 regards to my case, does not give me good faith in the  
6 judicial process. I don't believe that that is fair to me.

7 Q Okay. So, it would cause you to trust the legal  
8 system and the legal process for your case less if the  
9 McBride Hall Law Firm were allowed to stay on the case?

10 A Absolutely.

11 MR. BREEDEN: Okay. Those are all the questions I  
12 have for you. Thank you.

13 THE COURT: Cross-examination.

14 THE WITNESS: Thank you.

15 MR. MCBRIDE: Thank you, Your Honor. I just have  
16 a few questions.

17 **CROSS-EXAMINATION OF KIMBERLY TAYLOR**

18 BY MR. MCBRIDE:

19 Q Ms. Taylor, good morning. How are you?

20 A Better, thank you.

21 Q Good. I know how you feel. Trust me.

22 But in terms of the testimony that you were just  
23 providing a second ago, you remember the trial in this  
24 matter that I was present, together with Ms. Hall, on  
25 behalf of Dr. Brill in the *Taylor* case? Do you remember

1 that?

2 A Yes.

3 Q At any point in time, did you observe either me or  
4 Ms. Hall engage in any in-depth conversations with your --  
5 with the paralegal, Kristy Johnson, who was employed with  
6 Mr. Breeden at that time?

7 A It was not done in front of me, no.

8 Q Okay. Did you ever observe any interactions that  
9 caused you to believe that perhaps -- or concern that there  
10 was sharing of confidential information by Ms. Johnson  
11 during the trial?

12 A Not directly in front of me, no.

13 Q Okay. And, well, subsequently, and up until  
14 today, do you have any facts in which in any way would  
15 support, other than your belief or concern that that might  
16 occur, do you have any facts to support that Ms. Johnson  
17 has shared confidential information with anyone at my firm?

18 A The only fact that I know is she's now with your  
19 firm and what she's sharing with you behind the scenes I do  
20 not know.

21 Q Ma'am, my question is very simple. Do you have  
22 any facts to support that Ms. Johnson has shared  
23 confidential information with anyone at my firm?

24 MR. BREEDEN: I would object --

25 THE WITNESS: The only fact that I --

1 MR. BREEDEN: -- as asked and answered.

2 THE WITNESS: -- know --

3 THE COURT: Overruled at this point. I'll let her  
4 -- one more time.

5 BY MR. MCBRIDE:

6 Q It's a yes or a no.

7 A The only --

8 Q It's a yes or no, ma'am.

9 A I don't -- I can't answer that. The only fact  
10 that I know is that she's now with your firm, sir.

11 Q I understand that.

12 A I don't know anything other than that.

13 Q Okay. So, it's fair to say you have no facts to  
14 support any information has been shared by Ms. Johnson of a  
15 confidential nature with our firm?

16 A Not directly to me, no.

17 Q Okay. Or directly to anyone for that matter,  
18 true?

19 A You've hired her now. Only you know what you're  
20 sharing wither. I don't know that, sir.

21 Q Exactly. Ma'am, you understand you're under  
22 penalty of perjury. You're testifying under oath here  
23 today, correct?

24 A I do.

25 Q You understand that Ms. Johnson will be a witness

1 on the stand, as called by your attorney, and she will be  
2 testifying under the penalty of perjury, the same one  
3 you're doing. Correct?

4 A Correct.

5 Q You understand that Ms. Hall, an attorney in my  
6 office, is also going to be answering questions. She's an  
7 Officer of the Court. She's a member in good standing of  
8 the Bar. You understand that she's also going to be  
9 answering questions under oath here today. Correct?

10 A I do.

11 MR. MCBRIDE: Okay. That's all the questions I  
12 have. Thank you.

13 THE COURT: Redirect?

14 THE WITNESS: Thank you.

15 MR. BREEDEN: Nothing further, Your Honor.

16 THE COURT: Thanks for your testimony, Ms. Taylor.  
17 Call your next witness.

18 MR. BREEDEN: I would call Kristy Johnson, Your  
19 Honor.

20 You don't mind if I stay seated, do you, Your  
21 Honor?

22 THE COURT: That's fine.

23 THE MARSHAL: Thank you, ma'am. Please turn and  
24 face the Clerk. Riase your right hand.

25 **KRISTY JOHNSON**

1 [having been first duly sworn, testifies as follows:]

2 THE CLERK: Thank you. Please be seated. Please  
3 state and spell your name for the record.

4 THE WITNESS: Kristy Johnson, K-R-I-S-T-Y J-O-H-N-  
5 S-O-N.

6 THE COURT: Counsel, your witness.

7 **DIRECT EXAMINATION OF KRISTY JOHNSON**

8 BY MR. BREEDEN:

9 Q All right. Good morning, Kristy. I'd like to  
10 start with just some background facts from you. First of  
11 all, are you a paralegal?

12 A Yes.

13 Q How long have you been a paralegal?

14 A Over 20 years.

15 Q Okay. Do you have an undergraduate degree?

16 A I do.

17 Q And when did you receive that and from what  
18 institution?

19 A I received my certification from Duke University,  
20 roughly 2015. And, then, I received my bachelor's degree  
21 from Grand Canyon University in 2020.

22 Q Okay. So, you have both an undergraduate degree  
23 and a certificate in paralegal studies or a paralegal  
24 program.

25 A Yes.

1 Q Correct?

2 A Yes.

3 Q Okay. Does the state of Nevada require paralegals  
4 to be certified or licensed?

5 A No.

6 Q Okay. So were you working as a paralegal even  
7 before you obtained that certificate?

8 A Yes.

9 Q Okay. The word paralegal can be very broad  
10 sometimes. Would you agree?

11 A Yes.

12 Q All right. Go ahead and describe a little more,  
13 generally, your training and experience as a paralegal,  
14 including other firms where you've worked.

15 A Okay. I guess -- so you want like job duties?

16 Q Yeah. So, you've been in the industry 20 years.  
17 Why don't you jus sort of summarize different positions  
18 you've held.

19 A Sure. I've gone in law firms, I've done  
20 everything from answer the phones, to legal assistant work,  
21 to drafting pleadings, to attending court hearings, being  
22 part of depositions, clerical work, stuff like that.

23 Q Okay. And what -- I -- you've worked for my law  
24 firm, obviously. What other law firms have you worked for?

25 A I worked for Kenneth Frizzell, criminal law. I've

1 worked for Lionel Sawyer and Collins, and Brian Berman.

2 Q Okay. And when did you first start working at my  
3 law firm, Breeden and Associates?

4 A October of 2017.

5 Q When was your last day?

6 A October -- I can't remember the exact day.

7 Q Well, let me help you out a little bit. I believe  
8 it was November 5<sup>th</sup> of 2021.

9 A Oh, November 5<sup>th</sup>. My apologies. Yes.

10 Q Did -- and so you would agree with that?

11 A Yes.

12 Q So, roughly four years?

13 A Yes.

14 Q All right. During the time that you worked at  
15 Breeden and Associates, who was your supervisor?

16 A You.

17 Q Okay. And did you work with me every day?

18 A Yes.

19 Q Just, generally speaking, did you work at every  
20 case at my law firm?

21 A Yes.

22 Q And, again, just broadly, when you worked at my  
23 law firm, what were some of your day-to-day duties and  
24 assignments?

25 A Answering incoming calls, potential new clients,

1 drafting of discovery responses, handling  
2 letters/correspondence to counsel, to the Court, to  
3 clients, handling the medical records.

4 Q Okay. During your employment, was it common for  
5 me to copy you on attorney-client communications with the  
6 client?

7 A Yes.

8 Q And was it also common for clients to copy you on  
9 communications back?

10 A Yes.

11 Q And, during your employment, was it common for me  
12 to discuss confidential information about cases with you?

13 A Yes.

14 Q And do you agree that the work product at the  
15 firm, which includes a confidential status and evaluations  
16 to clients, that those would be read by you during the  
17 course of your employment?

18 A Yes. You would have name proof those.

19 Q Okay. And, so, virtually, any communication in a  
20 case at my law firm, if it was a letter to the client, you  
21 would review and proof those. Correct?

22 A Letters, yes.

23 Q Yes. And, then, e-mails you would be copied on?

24 A Yes.

25 Q Okay. And nothing is different between how things

1 generally work in Ms. Taylor's case. Correct?

2 A Correct.

3 Q And you agree that during the time you worked at  
4 my law firm, very confidential information about my  
5 evaluation and assessment of Ms. Taylor's case was reviewed  
6 by you.

7 A Yes.

8 Q Would you agree with that?

9 A Mm-hmm.

10 Q Where do you currently work?

11 A McBride Hall.

12 Q When was your first day of work at McBride Hall?

13 A The 11<sup>th</sup>, November 11<sup>th</sup>.

14 Q Okay. So, November 5<sup>th</sup> was --

15 A Oh, I'm sorry. So then it would have been  
16 November 8<sup>th</sup>. November 5<sup>th</sup> was my last day with you, then  
17 November 8<sup>th</sup>.

18 Q Okay. November 5<sup>th</sup>, 2021 was a Friday?

19 A Yes.

20 Q And, then, you began work on Monday, November the  
21 8<sup>th</sup>?

22 A Yes.

23 Q At McBride Hall. Correct?

24 A Yes.

25 Q And when you worked at Breeden and Associates, you

1 were assigned to the *Kimberly Taylor* file. Correct?

2 A Yes.

3 Q I want to ask you or note -- and I'll testify a  
4 little bit about these communications. Obviously, given  
5 their nature, I'm not going to show the witness them or  
6 introduce them into evidence.

7 THE COURT: Okay.

8 BY MR. BREEDEN:

9 Q But, I have in my hand here, an April 20<sup>th</sup>, 2021  
10 correspondence between my office and Kimberly Taylor. It  
11 is a lengthy letter to Ms. Taylor about an upcoming  
12 settlement conference. Would you have reviewed that  
13 letter?

14 A Yes.

15 Q Now, the Kimberly Taylor trial ended on October  
16 19<sup>th</sup> of 2021. When did you first arrange an employment  
17 interview with the McBride Hall Law Firm?

18 A Around 9 p.m. that night.

19 Q Okay. So, court probably concluded around 5 p.m.  
20 and within hours you were arranging an interview with the  
21 firm?

22 A Yeah. I think the verdict was read shortly before  
23 5 p.m. and then that evening was when I first spoke with  
24 them.

25 Q Okay. You did not immediately tell me of this,

1 did you?

2 A No.

3 Q When did you actually tell me that you intended to  
4 accept another employment offer and leave the firm?

5 A That same weekend.

6 Q Okay. Do you remember the actual date?

7 A I believe it was that Sunday, so the 24<sup>th</sup> possibly.

8 Q Okay. So, --

9 A Without looking at a calendar.

10 Q Okay. So, just to refresh your memory, do you  
11 recall sending me an e-mail to notify me of that?

12 A Yes.

13 Q Okay. And do you recall whether that was before  
14 you began work on Monday, the 25<sup>th</sup>?

15 A It was.

16 Q Okay. So you just testified that you thought  
17 maybe it was the 24<sup>th</sup>. Hearing that, does it sort of  
18 refresh your memory that it was October 25<sup>th</sup>?

19 A I believe the e-mail was the Sunday before I  
20 started work with you that following Monday morning. I  
21 believe I sent it to you that Sunday evening.

22 Q So, in between October 19<sup>th</sup> and October 24<sup>th</sup> or  
23 25<sup>th</sup>, whichever the date is, you continued to work on the  
24 *Taylor* case at my office, despite contemplating leaving my  
25 firm and joining McBride Hall?

1           A     I recall that the work on the *Taylor* case during  
2 those couple of days was actually quite minimal. The  
3 discussions that you were having with Ms. Taylor was how to  
4 proceed forward at that moment. So there had been no  
5 communications or actual decisions made on how to proceed  
6 forward.

7           Q     Okay. Do you remember working on an October 20<sup>th</sup>  
8 correspondence to Ms. Taylor that was sent by my office?

9           A     It's possible. I don't recall if it was.

10          Q     Okay. Do you remember working on a second October  
11 20<sup>th</sup> correspondence regarding juror interviews that was sent  
12 to Ms. Taylor?

13          A     I recall juror interviewing being discussed, yes.

14          Q     In fact, you were the one from my office, along  
15 with attorney Anna Albertson, who actually took place in  
16 the post-verdict juror interviews. Correct?

17          A     Yes. Yes. Sitting along -- McBride Hall was also  
18 there.

19          Q     Do you remember being copied on a October 21<sup>st</sup>  
20 correspondence outlining possible grounds for appeal and  
21 assessing them to Ms. Taylor?

22          A     I do.

23          Q     And do you recall on October 24<sup>th</sup>, which was a  
24 Sunday, being assigned to work on a comprehensive status  
25 letter to Ms. Taylor about settlement offers made by the

1 McBride Law Firm?

2 A I don't recall that, but I would -- if you have  
3 it, I would testify to that. Yes.

4 Q Let's talk about your employment at McBride Hall.  
5 How many attorneys work at that firm?

6 A Six.

7 Q How many paralegals or people who do jobs similar  
8 to yours?

9 A Three, including me.

10 Q Okay. Who are the other two paralegals?

11 A Kristine Herpin and Priscilla Santos [phonetic].

12 Q And how many other non-attorney staff then? So,  
13 excluding attorneys and paralegals, how many other people?

14 A There's four legal assistants. There is a human  
15 resources/accounting person, and then there's also a person  
16 who handles invoices and such coming from the insurance  
17 carriers.

18 Q Okay. How many office locations does McBride Hall  
19 have?

20 A One.

21 Q Okay. And, so, I assume you physically work at  
22 that one location?

23 A Yes.

24 Q What's the office address?

25 A I believe it's 8350 West Sunset [sic], but off the

1 top of my head. I'm not exactly sure still.

2 Q All right.

3 MR. MCBRIDE: For the 8329.

4 MR. BREEDEN: I'll cross-examine you later, Mr.  
5 McBride.

6 BY MR. BREEDEN:

7 Q The attorneys assigned to the *Taylor* case at the  
8 McBride Hall Law Firm, to your knowledge, who are those  
9 attorneys?

10 A Heather Hall and Robert McBride.

11 Q okay. Those are currently your direct  
12 supervisors, aren't they?

13 A I have a couple. Yes.

14 Q Okay. So, Mr. McBride and Ms. Hall, what's your  
15 understanding of their position at that law firm?

16 A The owners and partners of the firm, two of the  
17 partners.

18 Q Okay. And how often do you see them while you're  
19 employed there?

20 A I stay in my office a lot. So, not very often.  
21 And they're gone quite a bit to court and such. But I  
22 would say during the week, you know, quite often, but not -  
23 - it's not even every day.

24 Q Okay. But they work out of the exact same office  
25 you do?

1           A     Yes.  Yes.

2           Q     And are you assigned any other cases where Mr.  
3 McBride and Ms. Hall are the assigned attorneys?

4           A     Yes.

5           Q     Okay.  So, you work with Mr. McBride and Ms. Hall,  
6 just not on the *Taylor* case, which, at their firm, is  
7 probably known as the *Dr. Brill* case?

8           A     Yes.  I don't work on that one.  No.

9           Q     Okay.  Now, to your knowledge, who is the  
10 paralegal at the McBride Hall Law Firm assigned to the  
11 *Taylor versus Brill* case?

12          A     Kristine Herpin.

13          Q     Okay.  How often do you see Ms. Herpin at your  
14 employment?

15          A     About the same.  Like I said, we stick basically  
16 to our offices a lot.  So, I see her roughly maybe twice a  
17 day.

18          Q     Okay.  So, is it fair to say that Mr. McBride, Ms.  
19 Hall, and Ms. Herpin, these are all people that you now  
20 work with at the same office and you interact with them  
21 nearly daily?

22          A     Yes.

23               MR. BREEDEN:  I have no further questions of this  
24 witness.

25               THE COURT:  Cross-examination?

1 MR. MCBRIDE: Yes. Thank you, Your Honor.

2 **CROSS-EXAMINATION OF KRISTY JOHNSON**

3 BY MR. MCBRIDE:

4 Q Good morning, Kristy. I -- there you go. I know  
5 you're there.

6 Kristy, what's your current title at McBride Hall?

7 A Paralegal.

8 Q And you indicated there's two other paralegals,  
9 Priscilla Santos and Kristine Herpin that also work there.  
10 Correct?

11 A Yes.

12 Q Since you have come on board, are you aware how  
13 our office utilizes paralegals?

14 A I do now, yes.

15 Q Okay. And, in terms of the role that you have  
16 with Mr. Breeden's office, would you agree that the role  
17 that you have where you were involved in potentially  
18 strategy and conversations directly with the client, that  
19 differs quite a bit from what your current role is as a  
20 paralegal. Correct?

21 A Yeah. I am not included in strategy or direct  
22 communications with the client at all at McBride Hall.

23 Q Okay. And, in your previous employment with Mr.  
24 Breeden, how long were you there?

25 A Four years.

1           Q     Was that from October 2017 through November 5 of  
2 2021?

3           A     Yes.

4           Q     Okay. And you also indicated that you have worked  
5 at other law firms as a paralegal prior to Mr. Breeden.  
6 Correct?

7           A     Yes.

8           Q     At any point in time during your employment at  
9 those other firms, before Mr. Breeden, did you ever share  
10 any confidential information with any person outside of  
11 that law firm with -- regarding any of the cases that you  
12 were working on?

13          A     Not at all.

14          Q     Okay. And, similarly, up until today, at any  
15 point in time during the four years that you worked with  
16 Mr. Breeden, have you ever shared any confidential  
17 information with any individual at any other law firm or  
18 any location that you're aware of?

19          A     No.

20          Q     Okay. Why not?

21          A     Because I take my job seriously. I pride myself  
22 on my character and the job that I do. I have no reason to  
23 disclose information regarding any case to anybody. I am  
24 there to do my job and that is it.

25          Q     And, at any point in time, when you were employed

1 by Mr. Breeden, did you ever share any confidential  
2 information about the *Taylor* matter or any confidential  
3 communications with Ms. Taylor or Mr. Breeden with me or  
4 any member of our law firm?

5 A No. I did not and I would not.

6 Q Okay. Then, in terms of the first time that you  
7 were contacted regarding a potential interview, that was  
8 the evening after -- the evening of the verdict. Is that  
9 correct?

10 A Yes.

11 Q And how did that occur? Was that by way of a text  
12 with Ms. Hall?

13 A Yes. It was.

14 Q Okay. And, then, you subsequently came to our  
15 office for an interview on October 21. Is that correct?

16 A Yes.

17 Q At any point in time during that communication --  
18 well, let me back up and I'll ask you the same question.  
19 At any point in time during the actual trial of the *Taylor*  
20 case, did you ever share any confidential communication  
21 with either me, or Ms. Hall, or any member of my law firm  
22 while that trial was ongoing?

23 A No, sir.

24 Q Okay. And did you eventually come to our office  
25 for an interview on October 21?

1           A     I did.

2           Q     During that interview, were potential professional  
3 conflicts discussed in terms of other potential cases that  
4 Mr. Breeden had with our office?

5           A     Yes. It was discussed.

6           Q     Okay. In fact, do you remember in addition to  
7 this matter, the *Taylor versus Brill* matter, was there  
8 another case that potentially posed a conflict that you  
9 were aware of, *Nelson versus Pioneer*?

10          A     Yes.

11          Q     Okay. And, are you aware, as you sit here, --  
12 and, at any point in time, did you share any confidential  
13 information regarding the *Nelson versus Pioneer* matter with  
14 me, or Ms. Hall, or anyone in our firm?

15          A     No.

16          Q     In fact, are you aware that Mr. Breeden had also  
17 filed a Motion to Disqualify our firm from the *Nelson*  
18 *versus Pioneer* matter at or around the same time he filed  
19 the Motion to Disqualify us in this case?

20          A     I suspected so, but no one had discussed it with  
21 me.

22          Q     Okay. And, so, you were not privy to the fact  
23 that Judge Johnson, on that matter, had denied Plaintiff's  
24 Motion --

25               MR. BREEDEN: Well, Judge, I'll object. She just

1 says she has no knowledge, but we can discuss this in  
2 closing statements.

3 THE COURT: I'm going to sustain the objection on  
4 relevance.

5 MR. MCBRIDE: Thank you, Your Honor.

6 BY MR. MCBRIDE:

7 Q Moving on, in terms of, again, just to clarify on  
8 the *Nelson versus Pioneer* matter, you have not had any --  
9 have you had any contact or allowed access to any aspect of  
10 that file?

11 A No. Not at all.

12 Q While you were at our office?

13 A No.

14 Q Okay. Going back to the interview, and the  
15 conflicts that were discussed, was it made very clear to  
16 you that screening measures were going to be put in place  
17 that you could not access any portions of the file from our  
18 office and any confidential communications with Dr. Brill  
19 and, likewise, you were not to share any confidential  
20 communications with us regarding Ms. Taylor's case?

21 A Yes. You both detailed very much exactly what was  
22 going to be put in place to basically not allow me to have  
23 any access to the file, as well as to not be able to speak  
24 with any other employee at McBride Hall about any  
25 information in the case.

1           Q     And did you understand that as an express  
2 condition of your employment with our office that you were  
3 prohibited from discussing the *Taylor* matter, other than  
4 for purposes of the hearing here today, or accessing any  
5 portion of that file at any point in time? Do you  
6 understand that was an express condition that you were  
7 prohibited from doing that of your employment?

8           A     Yes. I was made very aware of that.

9           Q     Were you also prohibited from any access of the  
10 paper or electronic file for this matter or even for the  
11 *Nelson* matter?

12          A     Yes. It's my understanding that our IT person or  
13 company made it to where I cannot access that -- those  
14 files.

15          Q     And, at any point in time, have you made any  
16 attempt to access any portion of the computer file or the  
17 paper file for either one of those matters?

18          A     Not at all because I value my employment.

19          Q     And have you -- likewise, you have been prohibited  
20 from having any discussions with anyone at our office,  
21 including the other paralegals who were assigned to this  
22 case, or the other *Nelson* matter, that would be Ms. Herpin  
23 and Ms. Santos. Correct?

24          A     Correct.

25          Q     And did you agree to those conditions when you

1 accepted the job?

2 A Yes. I did.

3 Q At any point in time, have you ever violated those  
4 conditions?

5 A No. I have not.

6 Q Do you understand the importance of you continuing  
7 to strictly adhere to those conditions for the remainder of  
8 your career as a paralegal with McBride Hall?

9 A Very much so.

10 Q From the time of the first contact regarding a  
11 potential interview, up until the time that you left Mr.  
12 Breeden's law firm, did you ever share any confidential  
13 communication on matters regarding *Taylor versus Brill* with  
14 any member of our firm?

15 A No.

16 Q And since you've started employment with our  
17 office, have you also been, to your knowledge, screened  
18 from both of those matters, the *Nelson* matter and this one?

19 A Yes. I have.

20 Q Do you recall, with regard to the *Nelson* matter,  
21 actually signing an Affidavit under penalty of perjury  
22 indicating that you have not and would not ever disclose  
23 confidential information regarding that matter due to the  
24 prohibitions against that confidential disclosure?

25 A Yes.

1           Q     And did you also do the same and sign an Affidavit  
2 under penalty of perjury for this matter, the *Taylor*  
3 matter, attesting to those same facts?

4           A     Yes.

5           Q     And, Ms. Johnson, you understand in your position  
6 as a paralegal for many years the importance of testifying  
7 truthfully, honestly, under penalty of perjury?

8           A     Yes. I do.

9           Q     Have you done so in both of those Affidavits and  
10 here today on the stand? You testified under penalty of  
11 perjury that the matters that you have -- are attesting to  
12 are true and correct?

13          A     Yes. I have.

14          Q     Finally, can you assure this Court, Mr. Breeden,  
15 and Ms. Taylor that you will not disclose, under any  
16 circumstances, any confidential communications that you may  
17 have learned of with -- during your employment with Mr.  
18 Breeden with any member of the McBride Hall Firm?

19          A     I can absolutely assure that.

20               MR. MCBRIDE: That's all the questions I have.  
21 Thank you.

22               THE COURT: Redirect?

23               MR. BREEDEN: Yeah. I have very brief questions.

24                       **REDIRECT EXAMINATION OF KRISTY JOHNSON**

25 BY MR. BREEDEN:

1 Q When you interviewed with McBride Hall on October  
2 21<sup>st</sup> of 2021, who did you interview with?

3 A Both Heather Hall and Mr. McBride.

4 Q Okay. What time of day was that?

5 A Late in the evening, about 5 or 5:30.

6 MR. BREEDEN: Okay. Thank you.

7 THE COURT: Any redirect -- or, excuse me,  
8 recross?

9 MR. MCBRIDE: No questions, Your Honor.

10 THE COURT: Thank you for your testimony. Please  
11 step down.

12 Call your next witness.

13 MR. BREEDEN: Your Honor, I would like to testify  
14 about this matter.

15 THE COURT: Let's put you under oath.

16 **ADAM BREEDEN**

17 [having been first duly sworn, testifies as follows:]

18 THE CLERK: Please state your name for the record.

19 MR. BREEDEN: Adam Breedon, A-D-A-M, last name is  
20 B-R-E-E-D-E-N.

21 THE COURT: Mr. Breedon, you may proceed.

22 **DIRECT TESTIMONY OF ADAM BREEDEN**

23 MR. BREEDEN: Absolutely. Thank you, Your Honor,  
24 for allowing us to create a record for this issue here  
25 today. It's an important one for me and my office, and my

1 clients, frankly.

2 I am an attorney, licensed in the state of Nevada.  
3 Been licensed in Nevada since 2004. I've also been  
4 licensed in the states of Arizona, Florida, and Ohio.

5 Since -- well, during my career as an attorney  
6 here in Clark County, Nevada, I've always been a personal  
7 injury litigator. I started at a firm that did a mix of  
8 plaintiff and defense work. Then, for several years, I  
9 worked for a law firm and did primarily defense work. But,  
10 since 2015, I've had my own law firm, Breeden and  
11 Associates. That firm primarily consists of me, my  
12 assistant, whoever that is at the time, and two attorneys  
13 who work with my firm on an of-counsel, or part-time, or  
14 as-needed basis.

15 However, for the most part, it is a solo type  
16 operation. It's me and my assistant. And, as previously  
17 testified here, I hired Kristy Johnson, a paralegal, as my  
18 assistant in 2017. If I recall correctly, when I first  
19 hired her she didn't actually -- she had been working as a  
20 paralegal for many years, but she didn't actually have a  
21 paralegal certificate. Of course, you don't need that, but  
22 I think during her course of her employment she obtained  
23 that through a program at Duke University.

24 Her position at my firm over those four years  
25 entailed a little bit of everything. There are some things

1 that I would call administrative in nature, like, for  
2 example, maybe she's just arranging for carpet cleaners at  
3 the firm or doing some administrative task like dealing  
4 with the shredding company that comes in and securely  
5 shreds our documents. But she also does quite a bit on  
6 each case that is at my law firm, including drafting,  
7 assisting with the filings, and discussing things,  
8 specifically with clients.

9           At my law firm, I discuss all aspects of every  
10 case with Kristy. She works on every case that I have at  
11 my office. My policy is to copy her on all substantive e-  
12 mails, including all confidential attorney-client e-mails.  
13 And I do this because she works extensively on each file in  
14 my office. So, she needs to be up to the speed and up to  
15 the minute on what's going on in every file.

16           She also proofs all confidential letters that go  
17 out. In other words, if I write a long status letter to  
18 the client, it will go by e-mail to Kristy, that says:  
19 Hey, here's this status letter to the client. You need to  
20 review the entire letter. You need to proof it for  
21 typographical errors. Every once in a while she'll come to  
22 me with something substantive as well and say: Hey, boss,  
23 this really doesn't make sense. You know, I didn't  
24 understand this, you know, maybe you need to adjust this  
25 letter. It's not comprehensible to the client.

1           So, she's very involved in that sense and she  
2 also, essentially, independently, would handle some aspects  
3 of litigation, particularly with discovery supplements, and  
4 obtaining medical records, and making sure that proper  
5 witnesses are disclosed. And I'll give you an example, and  
6 this is exactly what she would do, for example, in the  
7 *Taylor* case. Medical records or other documents would come  
8 in, she would review them and find appropriate doctors that  
9 needed to be disclosed, along with the records. She would  
10 prepare the disclosure statement, whether it's the initial  
11 disclosures or, as in the *Taylor*, supplemental disclosures.  
12 And she would prepare that all on her own and it would be  
13 submitted to me for review and approval. Most of her work,  
14 over the course of our four years of working together, got  
15 to need very little editing or updating by me.

16           So, this is -- she would also do tasks -- like,  
17 for example, everything in the *Taylor* case, like a Notice  
18 of Deposition, or something of that nature, that was all  
19 prepared by Ms. Johnson. She would prepare that from  
20 scratch and then I would simply review and approve it. So,  
21 this is not an employee that had minimal information or  
22 work on this case. She had the highest level of  
23 involvement possible with Ms. Taylor's case.

24           And, you know, if you look back at the filings in  
25 this case, you know, dozens of notices and filings she has

1 prepared, and/or reviewed, and proofed all of them.

2 I want to speak a little more specifically about  
3 Kristy's involvement in the *Taylor* file at my office. I  
4 recall that I took over this file from another attorney,  
5 James Kent, in January of 2021. At that point in time, it  
6 was probably roughly halfway through the discovery phase  
7 and I advised Kristy that we would be taking on this case.  
8 I explained to her some of the basic facts. I have made  
9 numerous comments to Kristy, you know, during the nine  
10 months that we worked together on the case about strengths  
11 and weaknesses of the case and the type of case that it  
12 was.

13 Kristy has extensively met and spoken with Ms.  
14 Taylor. It is a case that went all the way to trial and  
15 there was a huge amount of attorney-client interaction.  
16 Numerous times Ms. Taylor would come to the office or call  
17 and Ms. Johnson or Kristy is the first person who she would  
18 interact with, typically.

19 Kristy has been copied on every e-mail to the  
20 client. Now, if you ask me to go through and look at the  
21 probably 100 e-mails that I've sent to the client, maybe  
22 there's one or two that she wasn't copied on. But that's  
23 my standard practice, is that every confidential attorney-  
24 client e-mail is copied to Kristy because Kristy needs to  
25 know what is going on with the file. She's running parts

1 of it. Okay? Particularly with discovery productions.

2 Kristy did sit through, monitor, and assist for  
3 two different focus groups that were run on this case prior  
4 to trial. So, she has all of that confidential information  
5 from the focus groups, what different mock jurors thought  
6 about the case, the value of the case the different jurors  
7 assigned, and how those results were reported to Ms.  
8 Taylor.

9 Kristy attended and assisted with jury selection -  
10 -

11 MR. MCBRIDE: Your Honor, I'm sorry.

12 THE COURT: yeah.

13 MR. MCBRIDE: I don't mean to interrupt. I just  
14 want to interject an objection as to relevance. I've -- on  
15 the grounds, again, there is no factual dispute that Ms.  
16 Johnson possesses confidential communication and was privy  
17 to confidential communication regarding this matter. It --  
18 this whole -- and I have allowed Mr. Breeden to go on quite  
19 a bit on -- to explaining this, but it's really not  
20 relevant as to the issues as to whether or not proper  
21 screening measures were in place and that's the purpose of  
22 this hearing. I just wanted to make my record --

23 THE COURT: And I'm going to let --

24 MR. MCBRIDE: -- and --

25 THE COURT: And I'm going to let Mr. -- I

1 appreciate that. I think all I've heard for the last 45  
2 minutes is that Ms. Johnson was intimately involved with  
3 this case. Everybody agrees. Ms. Johnson agrees. Mr.  
4 Breeden's asserting --

5 MR. MCBRIDE: Right.

6 THE COURT: Ms. Taylor expressed her views on  
7 that. Everybody agrees. So, in terms of building his  
8 record, I'm going to let Mr. Breeden do -- continue this  
9 direction. So, I'm overruling an objection but it --

10 MR. MCBRIDE: Thank you, Your Honor.

11 THE COURT: I mean, nobody's arguing that --  
12 arguing this point.

13 MR. BREEDEN: Thank you, Your Honor. And  
14 understand why I want to lay a very lengthy foundation.

15 THE COURT: Sure.

16 MR. BREEDEN: Kristy attended trial and would  
17 assist with the jury selection. Of course, jury selection  
18 is primarily the attorney's responsibility, but I want to  
19 note that Kristy has an important role in jury selection.  
20 You know, she will tell me things that you can't pick up as  
21 an attorney, like, this juror looks like they're sleeping.  
22 Or this juror when you asked this question to another  
23 potential juror was nodding their head up and down. So,  
24 doing some substantive things for jury selection.

25 During trial, Kristy attended all days. She would

1 operate all PowerPoints and trial director to display  
2 exhibits. So, she had access to all of my notes for the  
3 case and my outlines for different witnesses. She did sit  
4 immediately next to the client, Ms. Taylor, during the  
5 entire trial.

6 Post-trial, Kristy helped conduct or sit through  
7 jury interviews and reported to me information that was  
8 passed along to Ms. Taylor.

9 From my point of view, moving on now to Kristy's  
10 departure from my firm, I had no idea Kristy was having any  
11 interviews or discussions with employment with the McBride  
12 Law Firm until she e-mailed me on the morning of October  
13 25<sup>th</sup>, which was a Monday. And, just to put that in  
14 perspective, the trial ended on Tuesday, October the 19<sup>th</sup>.  
15 And, she contacted me, first, by e-mail. And she wrote a  
16 very polite e-mail and she said that, you know, she was a  
17 little troubled by, you know, her departure because she did  
18 enjoy working at my firm and she wanted to talk to me about  
19 things, but she wanted to e-mail me first. So, she sent me  
20 a very nice e-mail that said, quote:

21 Over the weekend, end quote, she had made a  
22 decision to leave my firm and join the McBride Law  
23 Firm.

24 I sent her a very polite e-mail back that  
25 essentially said, you know, you have to do what's best for

1 you and your family, but, you know, we'll talk about it  
2 more when I get in the office. I kind of mention this  
3 because, you know, this is an example that I don't accuse  
4 Kristy of falsifying anything, but when she notified me on  
5 October 24<sup>th</sup>, that's incorrect. It was an e-mail. I  
6 actually remember because I was laying in bed still. It  
7 was like at 7:30 maybe in the morning and she sent an e-  
8 mail. And I said: Well, that's odd that something came in  
9 from Kristy this early. You know, maybe she's ill or can't  
10 come into work today. And it was about her decision to  
11 leave.

12           It was not until the Opposition to this  
13 disqualification motion and this case was filed that I  
14 found out that, in fact, these discussions between Kristy  
15 and the McBride Hall Law Firm had started on Tuesday, the  
16 19<sup>th</sup>, the very evening after the verdict. And the testimony  
17 you hear from Ms. Johnson matches my recollection that, you  
18 know, the jury verdict was probably around 5 p.m. And,  
19 then, it appears that within four hours, you know, she's  
20 having discussions. I find out today that it was with Ms.  
21 Hall personally. I didn't know that until her testimony  
22 earlier today. And I didn't know when she actually  
23 interviewed until that Opposition to the Motion to  
24 Disqualify was filed.

25           And, so, I want to speak in particularly about

1 some highly confidential information that Ms. Johnson has.  
2 I'm going to start with one letter that was earlier, but  
3 then I wanted to tell you about some very specific concerns  
4 that I have about this time frame of, you know, roughly a  
5 week where she is interviewing with the defense law firm  
6 and she is continuing to work on highly sensitive client  
7 information at that -- my law firm.

8           The first thing I do want to mention is Ms.  
9 Johnson did work on, review, and send to Ms. Taylor a  
10 comprehensive letter of -- it looks like seven pages, that  
11 was sent to Ms. Taylor -- actually e-mailed to her by Ms.  
12 Johnson, after Ms. Johnson reviewed and proofed the letter,  
13 dated April 20<sup>th</sup> of 2021. And this is a very long letter  
14 that details my entire assessment of her case, you know,  
15 probable verdicts, probable things that could happen at the  
16 settlement conferences, you know, ranges of offers that  
17 might be acceptable, and what our demand strategy would be.

18           Turning to the more crucial time that this hearing  
19 involves, I want to talk to you about that time frame  
20 between October 19<sup>th</sup> and October 25<sup>th</sup>, when I had no  
21 knowledge that Ms. Johnson was interviewing with the  
22 defense law firm and considering changing.

23           So, the first thing is the day after the trial  
24 verdict -- so, trial verdict is on the 19<sup>th</sup> at 5. Ms.  
25 Johnson, unbeknown to me, is setting up an interview that

1 evening. And, then, the next morning, on October 20<sup>th</sup>, she  
2 comes to work and she is assigned to work on an October  
3 20<sup>th</sup>, 2021, formal letter that was then e-mailed to the  
4 client. This letter gives my assessment of the trial  
5 results, probable post-trial motions and filings that would  
6 be made, the possibility of appeal, and the potential  
7 merits of an appeal, potential strategy to -- when  
8 discussing defense settlement offers that may come in, and  
9 -- well, trial case costs that had been incurred. And this  
10 -- along with this letter, and obviously given the  
11 confidential information of it I can't admit it or have it  
12 be part of the record, but it -- this -- I mean, I can show  
13 you that this is the e-mail transmitting this letter and  
14 this is from Ms. Johnson to Ms. Taylor.

15           The next thing she worked on that day -- or, I'm  
16 sorry, the next correspondence that was sent was later in  
17 that day, I had had a conversation specifically with my co-  
18 counsel, Anna Albertson, as well as Ms. Johnson, about  
19 post-trial or post-verdict juror interviews, what juror  
20 impressions were of counsel, of the case, things they  
21 liked, things they didn't like. Ms. Johnson prepared some  
22 handwritten notes on that. I did not personally go to the  
23 post-verdict interviews because Ms. Taylor was distraught  
24 about losing the case and I wanted to be with her and  
25 support her. So, I left it to Ms. Johnson and my co-

1 counsel to handle those.

2           So, Ms. Johnson, again, after -- or during a time  
3 when she's setting up an interview with the defense law  
4 firm, is discussing this information with me. I am putting  
5 it with my assessment in an e-mail to the client, Ms.  
6 Taylor. And I sent that to Ms. Taylor on October 20<sup>th</sup> at  
7 3:30 p.m. It was copied to Anna Albertson, my co-counsel,  
8 and Kristy Johnson.

9           The next thing, chronologically, is that on  
10 Thursday, October the 21<sup>st</sup> at 9:02 a.m., I sent another e-  
11 mail to Ms. Taylor, and I copied Ms. Albertson and Ms.  
12 Johnson on this. This is the day, unbeknownst to me, that  
13 Ms. Johnson's interview with McBride Hall occurred. And,  
14 apparently, it occurred later that day or after her regular  
15 work hours. It indicates numerous bullet points with  
16 potential grounds for appeal, assessment of how an appeal  
17 might work out, assessment of juror opinions on the case,  
18 and a great deal of confidential information regarding what  
19 I thought of a potential appeal here and what the best  
20 grounds for an appeal were, as well as different comments  
21 on things that could have or might have happened  
22 differently during the trial, and essentially why the trial  
23 result was not what we wanted.

24           The next thing, chronologically, that happens is  
25 that on the evening of Sunday, October the 24<sup>th</sup>, at 9:26

1 p.m., I had prepared a letter of two pages that was to go  
2 to Ms. Taylor and this letter details a settlement offer  
3 that had come in from the McBride Law Firm that day. It  
4 was a Sunday, but there was still some activity in the  
5 case. So, this letter relayed that settlement offer to Ms.  
6 Taylor. It contains my assessment of the settlement offer  
7 versus appeal, potential results of post-verdict motions,  
8 and Ms. Johnson was assigned to review, proof, and send  
9 this letter to Ms. Taylor. I do not know whether she saw  
10 this letter before it went out, Ms. Johnson that is,  
11 because that was on Sunday October 24<sup>th</sup> at 9:26 p.m. As I  
12 previously testified, very early the following Monday,  
13 maybe in response to seeing this e-mail that I had assigned  
14 her additional work in the *Taylor* case, she e-mailed me  
15 that she was going to accept an employment offer at the  
16 other firm.

17           So, when you look at what occurred here during  
18 that time frame, it very much concerns me that I had an  
19 employee who was clearly contemplating going to work for  
20 the other law firm and I am sharing with that employee, or  
21 continuing to share, highly sensitive information about --  
22 not only what I thought about the appeal, but going forward  
23 -- I'm sorry. Not only what I thought about the trial and  
24 the trial results, but going forward what my client's  
25 settlement strategy should be and what her basis of appeal

1 would be and sort of the merits of appeal or strategy  
2 dealing with the appeal.

3           And, so, I'm asked or I would hypothetically ask  
4 myself a question, you know, Ms. Johnson got up on the  
5 stand and she said: Oh, I -- you know, I would not share  
6 any confidential information. So, the question is: Do I  
7 trust Kristy? Do I trust Ms. Johnson? I can only answer  
8 that by saying, Judge, I've been doing this for 18, 19  
9 years. I don't trust anybody with stuff like this. I just  
10 don't. I have seen attorney after attorney come to court  
11 and flat-out lie to judges about --

12           MR. MCBRIDE: Objection, Your Honor. Objection,  
13 Your Honor. This is irrelevant. She's a paralegal, not an  
14 attorney.

15           THE COURT: Sustained.

16           MR. BREEDEN: Well, and what I'm saying is if an  
17 attorney can give false information, you know, certainly a  
18 paralegal could. And I'm not accusing Kristy of sharing  
19 any confidential information because I don't have that  
20 information, however if something improper is going on, I'd  
21 have no way of knowing about that. And that's why for  
22 generations screening was absolutely abolished because of  
23 those concerns. We have --

24           MR. MCBRIDE: Again, Your Honor, --

25           THE COURT: You're getting into argument now.

1 MR. BREEDEN: Sure. Sure. So, I'll move on.

2 MR. MCBRIDE: I would object.

3 MR. BREEDEN: McBride Hall, I contacted Ms. Hall.  
4 I believe the same day, on the 25<sup>th</sup>, possibly it was the  
5 26<sup>th</sup>, after I looked at what the legal standard here was for  
6 imputed disqualification. I asked them to explain what  
7 they had done. They indicated to me that they had advised  
8 Ms. Johnson, you know, not to discuss the file with any of  
9 them and that they had advised their other employees not to  
10 discuss the file with Kristy. They also indicated that  
11 they had locked their own computer system up and locked  
12 their own physical file in an area that Kristy would not  
13 have access to it, but that was not acceptable to me  
14 because that protects their attorney-client communications.  
15 That does nothing to protect my client's confidential  
16 information.

17 You know, that's what they're doing and I think  
18 it's telling that when it came to their own attorney-client  
19 communications, they didn't have absolute trust of their  
20 staff either. You know, they took steps to --

21 MR. MCBRIDE: Objection, Your Honor. Objection,  
22 Your Honor. This is argumentative, it calls for  
23 speculation. Talking about our staff --

24 THE COURT: Sustained.

25 MR. MCBRIDE: It's --

1 THE COURT: Mr. McBride, --

2 MR. MCBRIDE: Thank you.

3 THE COURT: -- I'm sustaining it. I'm letting Mr.  
4 Breeden testify, but this is moving into argument. So, --

5 MR. BREEDEN: I also asked Ms. Hall, I said:  
6 Look, let's put the two firms on equal standing.

7 THE COURT: Okay.

8 MR. BREEDEN: Why don't you copy your entire file  
9 with all of your confidential information, send it over to  
10 my office, I'll store it somewhere in my office, I promise  
11 you I will not look at it, I will not use it to my client's  
12 advantage, and then that way each firm is sort of on equal  
13 footing.

14 Now, you can know or you can guess that that was a  
15 bit of a facetious request but it was a request made to  
16 make an important point that this is a business that we don't  
17 trust people like that, that the confidentiality concerns  
18 of attorney-client communications are more than this  
19 scout's honor system. And, so, of course Ms. Hall  
20 indicated to me that that would not be an acceptable  
21 resolution to this and it was more my way of making a  
22 point.

23 The last thing that I want to testify about,  
24 because this is some of the factors, you know, do I think  
25 not allowing screening in this case would diminish public

1 trust and confidence in the judicial system? I could tell  
2 you that for my client, Ms. Taylor, it absolutely does. I  
3 had another client, Ms. Nelson, and it absolutely reduced  
4 her trust and confidence and she requested that I file a  
5 similar motion.

6 I want to talk about me personally. I have seen  
7 everything in the world in this business and, to be honest  
8 with you, Judge, I think a lot of things in this business  
9 are pretty darn crooked. But you ask me if allowing  
10 McBride Hall to stay on this file would reduce my  
11 confidence in the judicial process, for me, personally,  
12 absolutely. It continues to lower my impression of a fair  
13 judicial process.

14 The only other subject that I would like to  
15 testify regarding is what happened with the other client,  
16 the *Nelson* case. I'll just do this under oath. Filed a  
17 very similar Motion to Disqualify in the *Nelson* case. That  
18 matter is in mid-litigation. It is roughly halfway through  
19 discovery. It had not yet gone to trial. That matter is  
20 before Judge Johnson.

21 Judge Johnson believed that because we had not  
22 established that there was an actual exchange of  
23 confidential information that she was going to flatly deny  
24 the Motion and deny an evidentiary hearing. I filed a Writ  
25 on January 3<sup>rd</sup> over that denial. So, it is still being

1 contested. Unfortunately, Judge Johnson did not even feel  
2 that my client and myself should get our day in court to  
3 even testify in that matter to the full facts. And I think  
4 that was a procedural error by her, but I also believe she  
5 substantively erred because she held us to a standard that  
6 we had to prove an actual leak of confidential information.  
7 And that's clearly not the standard. The standard is that  
8 McBride Hall is presumed to be disqualified --

9 MR. MCBRIDE: Objection, Your Honor. This is  
10 argument.

11 MR. BREEDEN: -- [indiscernible] --

12 THE COURT: It's hard to --

13 MR. BREEDEN: So, that's --

14 THE COURT: Sustained.

15 MR. BREEDEN: -- all that I have to say.

16 THE COURT: All right. Now, we're moving to  
17 cross-examination of the witness. Mr. McBride?

18 MR. MCBRIDE: Thank you, Your Honor. I just have  
19 a few questions.

20 **CROSS-EXAMINATION OF ADAM BREEDEN**

21 BY MR. MCBRIDE:

22 Q Mr. Breedon, you had been an attorney since 2004.  
23 Is that correct?

24 A In Nevada, yes. I was licensed in Ohio in 2003.

25 Q Okay. So, since 2003, you -- as part of your

1 position as a member of the Bar in good standing to the  
2 state of Nevada, you understand you had to take a  
3 professional responsibility exam and pass that exam.  
4 Correct?

5 A Yes. I think I've passed three or four of those.

6 Q Okay. So, you're well aware of what the  
7 responsibilities are of attorneys, in general, with regard  
8 to confidential communications and any potential disclosure  
9 of that information against the rules. Correct?

10 A Yes.

11 Q Okay. Now, you told the Court, and you testified  
12 that on -- the first time that you became aware that Kristy  
13 had accepted a position, or at least had interviewed and  
14 accepted a position with McBride Hall was -- correct me if  
15 I'm wrong, was in the evening or early morning of October  
16 25?

17 A It was very early in the morning of Monday,  
18 October 25<sup>th</sup>, at approximately 7:30 to 8:30 a.m.

19 Q Okay. And you advised the Court about the e-mail  
20 that you had sent to both myself and Ms. Hall where I'll  
21 just read a portion of it and just ask you if you recall  
22 this. It says:

23 Heather and Robert, my paralegal, Kristy Johnson,  
24 gave me notice today that she will be leaving to join  
25 your law firm. I am sad to see Kristy leave, but wish

1 her the best and you are getting an outstanding  
2 paralegal.

3 That -- do you remember that comment at the  
4 offset?

5 A Absolutely. I agree with all that. I -- Kristy's  
6 work product was excellent.

7 Q Okay. And during the time she was employed by  
8 you, for the four years that she was an employee of yours,  
9 you trusted her with confidential communications without  
10 question on all of the files that she worked on. True?

11 A True.

12 Q You -- did you ever advise her during that four-  
13 year employment that she, under no circumstances, could  
14 ever disclose confidential communication regarding any of  
15 your cases, not just the *Taylor* matter, with any individual  
16 outside of your firm?

17 A Annually, I would review this with Kristy and have  
18 her sign an agreement explaining the confidentiality rules  
19 of attorneys and law firms.

20 Q And attorneys, but I also understand that  
21 agreement extends to paralegals?

22 A I'm sorry. Did I -- I may have -- well, I see.  
23 You're confused by my phrasing.

24 So, the form explains the duty of confidentiality  
25 and preservation of attorney-client information for

1 attorneys and law firms and how it's applicable to everyone  
2 at the firm, including Ms. Johnson.

3 Q Okay. And did she, at any point in time during  
4 your employment, ever indicate that she was confused by  
5 that -- those -- that agreement or that she did not  
6 understand any aspect of that agreement?

7 A No.

8 Q Okay. Up front -- so, from October 25 until Ms.  
9 Johnson joined our firm, she was employed with you from  
10 October 25 and continued that employment from October 25  
11 through November 5<sup>th</sup>. Correct?

12 A That's correct.

13 Q Did you specifically advise Ms. Johnson after she  
14 gave notice of coming to McBride and Hall that she could  
15 not disclose any information with regard to any  
16 confidential communication met -- confidential  
17 communications on any matters, including the *Nelson versus*  
18 *Pioneer* matter and the *Taylor versus Brill* case?

19 A Well, on my end, what I did for Ms. Johnson, and I  
20 considered including the severity of what happened, just  
21 simply letting her go that day. But Ms. Johnson and I -- I  
22 would consider her to be a close friend and she had worked  
23 with me for many years. So, I allowed her to work an  
24 additional two weeks. That's the notice she indicated  
25 she's like to give.

1 Q And on --

2 A Yeah. And I'm getting to answer your question.

3 On my part, I immediately took steps to prevent  
4 any further disclosure of confidential information about  
5 the file. I removed her access, electronically, to the  
6 file at my law firm. I advised both clients that they were  
7 not to communicate with Kristy in any manner regarding the  
8 matter and I indicated to her that she was not to work on  
9 either matter at all.

10 Q But my question is more specific. Did you ever  
11 tell her before she -- or during that week, during the time  
12 she was still employed by you, that she could not disclose  
13 or discuss any aspect of the *Taylor versus Brill* matter  
14 with any member of McBride Hall, or that *Nelson* matter as  
15 well?

16 A I can't recall specifically advising her of that,  
17 but I think that was well understood.

18 Q And you believed that was well understood because  
19 of the prior actions that you had taken by having her sign  
20 agreements understanding what the nature of confidential  
21 communications and the significance of those. True?

22 A Well, yes. And that she's been in the industry  
23 for 20 years. You know, she's aware of the ethical duties  
24 of attorneys and non-lawyer staff.

25 Q Did you ever ask before Ms. -- during the time she

1 was still employed with you, during that week,  
2 approximately, did you -- or approximately two weeks. Did  
3 you ever specific ask that she sign a different agreement,  
4 a specific nondisclosure agreement, with regard to  
5 confidential communications she may have learned about on  
6 either *Taylor* or the *Nelson* matter?

7 A I don't believe I asked her to sign anything  
8 specific. No.

9 Q Okay. And, Mr. Breeden, you have also worked in  
10 other firms in the past. Correct?

11 A Correct.

12 Q And you're familiar with the issues with regard to  
13 screening measures that have been put in place for other  
14 employees on those cases?

15 A Yes. I've never had a situation as concerning as  
16 Ms. Johnson's but I am aware of some other measures that  
17 have been taken.

18 Q Okay. Well, you indicated that you had every  
19 reason to trust Ms. Johnson with confidential  
20 communications the entire time and that she was an  
21 outstanding paralegal with your firm. You had no reason  
22 not to trust her to not disclose information at any point  
23 with her employment with you. Correct?

24 A There was nothing prior to these events that led  
25 me to believe Ms. Johnson was making improper disclosures

1 of confidential client communications outside the law firm.

2 Q Okay. And let me ask this very directly. Do you  
3 have any facts, direct facts or knowledge, that Ms. Johnson  
4 has in any way disclosed any confidential communication  
5 regarding the *Taylor* matter or the *Nelson* matter with any  
6 member of the McBride Hall Firm? And it's a yes or no  
7 answer.

8 A Well, the answer is no.

9 Q Thank you. The --

10 A Well, I'm -- okay. I'll explain later.

11 Q You have been told by Ms. Hall in subsequent e-  
12 mail communications what measures have been put in place to  
13 ensure that Ms. Johnson did not have access to any  
14 confidential communication regarding the *Taylor versus*  
15 *Brill* matter from our office. True?

16 A I have been advised things from your office.

17 Q Okay. And you have been advised of the screening  
18 measures that have been put in place -- you've been advised  
19 of that by virtue of not only prior e-mails with our  
20 office, but also through the pleadings on file and the two  
21 Motions that you filed to disqualify our office. True?

22 A I would say that is the source of my scope of  
23 knowledge on that issue.

24 Q Okay. Did you ever tell Ms. -- at the time, while  
25 she was still an employee with you, did you ever tell Ms.

1 Johnson that you were going to file Motions to Disqualify  
2 our firm because of your concerns about her sharing  
3 confidential communications?

4 A I advised Ms. Johnson to the effect that this  
5 created disqualification issues, that I was going to  
6 discuss it with the McBride Law Firm, and it was possible,  
7 depending on what the clients wanted, that I would have to  
8 file Motions for Disqualification.

9 Q Did you advise Ms. Johnson in those conversations  
10 that you trusted Ms. Johnson, but that you were under  
11 direction to file the Motions because of your clients?

12 A No. I don't -- I wouldn't -- I don't specifically  
13 recall words to that effect.

14 Q Okay.

15 A At that point, I wanted to have as little  
16 conversation with Ms. Johnson as possible regarding those  
17 files.

18 Q Okay. But during the time, the two weeks you were  
19 there with Ms. Johnson, was she there every day in the  
20 office?

21 A Yeah. I believe so. I don't think there was any  
22 time that she missed during those two weeks.

23 Q Okay. Was there any indication that she was not  
24 fulfilling her duties as a paralegal during those two weeks  
25 that -- those last two weeks with you?

1           A     Well, on other matters she was.

2           Q     Okay. Did -- and not the *Taylor* and *Nelson*  
3 matter. Is that correct?

4           A     Correct.

5           Q     Because you had effectively screened her on your  
6 end from those matters. Correct?

7           A     I do believe I had effectively blocked her  
8 continued access to the file in the sense that I don't  
9 believe she would have been able to, for example, log onto  
10 the computer system and download files. But, I mean, she  
11 already knew everything about all my cases, especially the  
12 *Taylor* case since it was so close to trial and it was sort  
13 of the hottest case at the time in my office.

14          Q     And, at any point in time, has Ms. Johnson, during  
15 the two weeks that she was still with you or up until  
16 today, has she ever disclosed to you that she obtained  
17 confidential communications or information regarding our  
18 file on behalf of Dr. Brill? Has she ever disclosed any  
19 confidential communications to you?

20          A     The answer no. I've had no communications with  
21 Ms. Johnson since.

22          Q     Okay.

23          A     Maybe some sort of Facebook congratulations.

24               MR. MCBRIDE: Okay. That's all the questions I  
25 have. Thanks.

1 THE COURT: Any redirect from your side?

2 **REDIRECT TESTIMONY OF ADAM BREEDEN**

3 MR. BREEDEN: Yeah. The only thing that I would  
4 say, Your Honor, is, you know, one of the first things that  
5 did happen is the McBride Hall Law Firm opposed the Motions  
6 to Disqualify in both cases. And, both cases, the first  
7 thing they did when this arose is they went to Ms. Johnson  
8 and they had Ms. Johnson complete and sign an Affidavit  
9 against both clients' interests in the Motion. So, sort of  
10 the first difficulty that arose, they go to their employee.  
11 I get that, you know, maybe it's factual information and  
12 maybe Ms. Johnson feels compelled that she has to cooperate  
13 with her new firm against my clients, her former clients,  
14 but that's what was done. And, again, you have Affidavits  
15 being made against my clients' interests.

16 THE COURT: Any recross regarding that last  
17 statement, Mr. McBride?

18 MR. MCBRIDE: Just very briefly, Your Honor.

19 **RECROSS-EXAMINATION OF ADAM BREEDEN**

20 BY MR. MCBRIDE:

21 Q Mr. Breeden, in either of those Affidavits that  
22 were submitted by Ms. Johnson under the penalty of perjury,  
23 did she ever disclose any confidential communications  
24 whatsoever regarding the *Nelson* or the *Taylor* matter?

25 A I don't believe so.

1 MR. MCBRIDE: Okay. That's all I have. Thank  
2 you, Your Honor.

3 THE COURT: Thank you. Call your next witness.

4 MR. BREEDEN: Nothing further from plaintiff.

5 THE COURT: All right. Mr. McBride, do you wish  
6 to call a witness? And I'm looking at your partner.

7 MS. HALL: Yes.

8 MR. MCBRIDE: I guess so. This is going to be her  
9 moment on the stand. Yes. Or, actually, where she's  
10 sitting, I guess. Right?

11 THE COURT: Please raise your right hand.

12 MS. HALL: Yes, Your Honor.

13 **HEATHER HALL**

14 [having been first duly sworn, testifies as follows:]

15 THE CLERK: Thank you. Please be seated. Please  
16 state and spell your name for the record.

17 MS. HALL: My name is Heather S. Hall, H-E-A-T-H-  
18 E-R, last name is Hall, H-A-L-L.

19 THE COURT: Counsel, your witness.

20 MR. MCBRIDE: Thank you, Your Honor.

21 **DIRECT EXAMINATION OF HEATHER HALL**

22 BY MR. MCBRIDE:

23 Q Ms. Hall, what is your profession?

24 A I am an attorney.

25 Q Where did you go to law school?

1           A     I went to law school at Brandeis in Louisville,  
2 Kentucky.

3           Q     And where -- when did you pass the Nevada Bar?

4           A     I sat for and passed the Nevada Bar -- I actually  
5 got my results in October of 2007.

6           Q     Okay. And what's your title currently at the law  
7 firm, McBride and Hall?

8           A     I'm an owner and partner, 50/50 partner of the law  
9 firm.

10          Q     And did you co-try the *Taylor versus Brill* matter  
11 together with myself back in October of 2021?

12          A     Yes. I did.

13          Q     Okay. What was your involvement in that case as  
14 co-counsel?

15          A     Essentially, I was involved in that case as early  
16 pre-litigation, and I did the majority of the work on the  
17 matter leading up to trial. And I would say during the  
18 trial, Mr. McBride and I shared 50/50 of the  
19 responsibilities of, you know, trial prep, and trial  
20 presentation.

21          Q     During the trial of that matter, did you see Ms.  
22 Johnson on the other side every day in court with Mr.  
23 Breeden?

24          A     I did. Every single day, I saw her here in the  
25 morning setting up for Mr. Breeden.

1           Q     At any point in time did you engage in any  
2 conversations which -- where you attempted to obtain any  
3 confidential communication with her regarding the *Taylor*  
4 *versus Brill* matter?

5           A     Never.

6           Q     At any point int time during that trial did you  
7 have any conversations with Ms. Johnson regarding obtaining  
8 a position or being offered a position with McBride Hall?

9           A     I did not ever speak with Ms. Johnson about an  
10 employment position with my office. I had heard -- we had  
11 a vacancy for a paralegal position and I had heard from my  
12 paralegal, Kristine, that Ms. Johnson might be interested  
13 in leaving her current firm. My advice and instruction to  
14 Ms. Herpin was you are not to even discuss a position with  
15 Ms. Johnson and I will not speak with her until this matter  
16 is concluded.

17                     So, the first time that I actually had any  
18 communication with Ms. Johnson about potential interview  
19 was the night that the verdict came in. And I think it was  
20 around 8:30 or 9 o'clock that night. I sent a text message  
21 to her and said: At the risk of being overeager, would you  
22 be interested in coming in and interviewing at my law firm  
23 for a paralegal positon? And, subsequently, we had the  
24 interview.

25           Q     Okay. What -- and, so, is that the first

1 communication with Ms. Johnson about a position at McBride  
2 Hall?

3 A Yes. At no time --

4 Q Was that --

5 A -- during the trial did she and I ever communicate  
6 either verbally or in writing about anything at all related  
7 to an employment position.

8 Q And when was she interviewed --

9 A She --

10 Q -- at our office?

11 A She was interviewed that Thursday, the 21<sup>st</sup>, and I  
12 think it was late in the evening, like 5 o'clock.

13 Q All right. And during the interview, was I also  
14 there?

15 A You were.

16 Q Okay. And can you briefly tell the Court what was  
17 discussed with Ms. Johnson and myself regarding potential  
18 conflicts if she were to accept a paralegal position with  
19 our office?

20 A Yes. Having been a member of the Bar here for  
21 many years, as well as having served on the Honor Council  
22 in law school, I am very concerned, probably overly  
23 concerned with conflicts and issues that could potentially  
24 create ethical violations and issues.

25 So, one of the very big points discussed during

1 Ms. Johnson's interview was the fact that I know of two  
2 cases, the *Nelson* matter and the *Taylor* matter, for obvious  
3 reasons because we had just completed the trial. And I  
4 asked her if she was aware of any other files. I had  
5 looked at my list and found no others. Had she found any  
6 or was she aware of any. And we discussed that for any  
7 matters that she had ever worked on at the Breeden Law Firm  
8 that she could not work on those at my office, she could  
9 not access those matters. And, just as significantly, she  
10 could not talk about those cases or be in the vicinity of  
11 anybody in my office who was talking about them.

12           So, that was a big -- I would say the interview  
13 maybe lasted an hour and that was at least 20 to 30 minutes  
14 of the interview process.

15           Q     And during that -- the interview process, at any  
16 point intime did Ms. Johnson voluntarily disclose or  
17 involuntarily disclose any confidential communications or  
18 discussions regarding the *Taylor versus Brill* matter or the  
19 *Nelson* matter?

20           A     She did not. And, in fact, we didn't have any  
21 discussion of either of those matters outside of the fact  
22 that there could be a conflict issue and these measures  
23 that need to be in place, if she accepted a position.

24           Q     And did -- based on that interview, did you have  
25 an understanding that Ms. Johnson agreed, and understood,

1 and agreed to comply with our request to not disclose any  
2 confidential information?

3 A Yes. She had verbally indicated that and also  
4 indicated that, having been a paralegal for a number of  
5 years, she understood the significance of that.

6 Q When Mr. Breeden advised you by way of e-mail  
7 about the -- his intent to potentially request that our  
8 firm be disqualified, did you respond to that e-mail?

9 A I did. And if I could address that e-mail for a  
10 brief moment, Mr. McBride?

11 The e-mail that I received from Mr. Breeden was at  
12 9:24 in the morning of October the 25<sup>th</sup>. And, in that e-  
13 mail, I was told the introductory remark that Mr. McBride  
14 questioned Mr. Breeden about earlier. But I was also told  
15 that my firm was -- had imputed disqualification applying  
16 to it, and that I needed to withdraw ,and my law firm  
17 needed to withdraw for both of those matters. And that I  
18 needed to advise him of my decision and whether I intended  
19 to withdraw or he would file a Motion to Disqualify.

20 So, that day, I did look at the *Leibowitz* case, as  
21 well as some other caselaw, and that day I responded to Mr.  
22 Breeden in a letter and informed him of all of the things  
23 that I have put in place. And there were several things,  
24 but one is, of course, the discussion that I had with Ms.  
25 Johnson before she even accepted a position, in terms of

1 there being a serious issue and the need for her to  
2 strictly maintain confidentiality on both sides. Because,  
3 just as Mr. Breeden and Ms. Taylor have concerns, of  
4 course, I have concerns, as Dr. Brill has concerns. He  
5 wants confidentiality maintained, and so do I, on both  
6 sides.

7           So, I had my IT provided, which is Network Heroes,  
8 the day that Ms. Johnson accepted a position, I didn't have  
9 her e-mail set up, but long before she started on November  
10 the 8<sup>th</sup>, I had them block access to her desk so her computer  
11 cannot access either the *Taylor* matter or the *Nelson*  
12 matter. So, that's the first thing that I did.

13           The second thing that I did is I took both of  
14 those paper files and I put them in a giant locked file  
15 cabinet. There's one key to that file cabinet and my law  
16 partner, Sean Kelly, has the only copy of that key.

17           And the third thing that I did is I have my office  
18 administrator, with input from me, draft an office memo on  
19 this issue and the fact that these two matters, Ms. Johnson  
20 is conflicted off, she cannot have any access to these  
21 matters, she cannot have any discussions with anyone or in  
22 the vicinity of anyone discussing these matters for fear of  
23 there being any potential inadvertent disclosure. And that  
24 memo was circulated to every single member of my law firm,  
25 including my receptionist.

1           And, then, finally, I also outlined all of these  
2 measures in that letter that I sent to Mr. Breeden and  
3 assured him that I would be responsible for ensuring that  
4 nothing ever was violated and that these protocols were  
5 followed.

6           Q     One question I have there just to follow-up. With  
7 regard to the conversations and communications with Network  
8 Heroes, the IT Department, to lock Ms. Johnson out of  
9 access, in our office, does -- do each of the computer  
10 monitors and computers in the -- for the paralegals,  
11 attorneys, and secretaries, do they require access be  
12 obtained through a actual code or a -- an access code  
13 before you can even open those computers?

14          A     Do you mean like password or credentials?

15          Q     Password. Yes. That's the word I was looking  
16 for.

17          A     So, yes. Essentially, every member of our law  
18 firm has their own computer in their workspace. That  
19 computer has a user ID and password that only that user can  
20 access. And, for instance, I can't -- even as the  
21 owner/partner, I can't go and log in to my receptionist's  
22 computer. My credentials don't work on her computer. So,  
23 she has to log in with her name and password and that's the  
24 only way that any individual at my firm can access our  
25 electronic server.

1           Q     So, in other words, is there any way for Ms.  
2 Johnson to access computer files on any other computer in  
3 the office other than her own?

4           A     Absolutely not. Every single computer in my  
5 office has that security feature.

6           Q     So, and does Ms. Johnson have, or has she ever had  
7 access to, the electronic files for the *Nelson* or the  
8 *Taylor* matter?

9           A     No. Never.

10          Q     And how do you know that?

11          A     Because I, personally, was responsible for putting  
12 these things in place and I got confirmation in writing  
13 from my IT provider, Network Heroes, that she has no  
14 access.

15          Q     Ms. Hall, did you -- every time with regard to Ms.  
16 Johnson's employment and with regard to this case, have you  
17 complied with the Nevada Rules of Professional Conduct 1. -  
18 - in particular, 1.10, paragraph E?

19          A     I have.

20          Q     Okay. The -- with regard to the -- have you ever  
21 had any discussions with Ms. Johnson about any of these  
22 matters, the *Taylor* matter or the *Nelson* matter, of any  
23 confidential communication?

24          A     I have not, nor to my knowledge has there been any  
25 communication by Ms. Johnson to any other member of my law

1 firm.

2 Q Do you understand the importance -- again, I think  
3 you indicated that you do, but the importance of not  
4 disclosing confidential communication or obtaining access  
5 to confidential communication inadvertently disclosed in a  
6 matter by any other party?

7 A Absolutely.

8 Q Okay. In your experience as an attorney for the  
9 past approximate 16 or 17 years, as a member in good  
10 standing in the state of Nevada, do you take those ethical  
11 obligations seriously?

12 A I do.

13 Q And explain to the Court why.

14 A Because I feel that I -- sometimes I see conflicts  
15 when none exist and I think I go above and beyond what the  
16 normal requirement is in ensuring even -- [indiscernible],  
17 accepting new matters, and things of that nature. I've  
18 always been very concerned with those kinds of issues and I  
19 think -- not just myself, I think each attorney with my  
20 office is well aware of those important ethical duties and  
21 we all adhere to a very stringent standard.

22 MR. MCBRIDE: That's all the questions I have.  
23 Thank you, Your Honor.

24 THE COURT: Cross?

25 **CROSS-EXAMINATION OF HEATHER HALL**

1 BY MR. BREEDEN:

2 Q Yeah. Ms. Hall, let's talk about the screening  
3 measures that were implemented. One screening measure was  
4 that you advised Kristy that she was not to disclose any  
5 confidential information of Ms. Taylor's. Is that true?

6 A That's not exactly true.

7 Q Okay. Tell me how you would rephrase that.

8 A It was even broader than that. My -- I did  
9 mention that she could not discuss anything confidential,  
10 but even broader than that, I also told her she could not  
11 discuss those cases, period.

12 Q And the next step that you took was that you  
13 advised other attorneys and employees of your firm not to  
14 discuss these cases with Ms. Johnson as well. Is that  
15 true?

16 A I don't think that's the exact order, but that is  
17 one of the steps.

18 Q Okay. And, then, you have testified that you took  
19 steps to electronically shut Ms. Johnson out of the file at  
20 your firm?

21 A I, personally, didn't manually do the limitation  
22 of the electronic file access. I don't even know how to do  
23 that. That's why I retained Network Heroes to handle all  
24 of my computer needs and they did.

25 Q Okay.

1           A     Network Heroes did.

2           Q     So, you had your tech people do it?

3           A     Correct.

4           Q     And, then, at McBride Hall, for the *Taylor versus*  
5 *Brill* file, do you also have a physical file for that?

6           A     As I testified earlier, I also have a paper file,  
7 which is in a locked file cabinet that Mr. Kelly has the  
8 key to.

9           Q     Okay. So, in terms of electronically shutting Ms.  
10 Johnson out of the file at your law firm, that is not a  
11 step to protect my client. That's a step to protect Dr.  
12 Brill's confidential information. Right?

13          A     No. I don't agree with that.

14          Q     What confidential --

15          A     I don't agree with that.

16          Q     -- information of my client, Ms. Taylor, would be  
17 in your electronic file then?

18          A     Well, I don't agree with the premise of your  
19 question because more -- it's not just about what's in my  
20 electronic file. The blocking of that file also prevents  
21 any -- to use your, I guess, insinuation earlier, that she  
22 might give information to my firm that she obtained during  
23 your employment, I'm equally concerned with her accessing  
24 my file. And I think that is equally important to both  
25 sides. I don't think that's just protecting the defendants

1 in this case. Her not being able to access my file should,  
2 in my belief, give you some assurance that she's not  
3 working on that matter. Kristine Herpin is and she's not  
4 providing any information to my firm that she might have  
5 obtained during your employment.

6 Q And, so, let's talk about this. The other measure  
7 you took was to make sure that Kristy could not access the  
8 physical file at your law firm by putting it in another  
9 attorney's office and locking it up.

10 A It's not in Mr. Kelly's office.

11 Q Okay.

12 A It's in a locked filing cabinet that Mr. Kelly has  
13 the key to.

14 Q Okay. And, again, none of Ms. Taylor's  
15 confidential information is in your physical file. Is it?

16 A No. But I don't agree that that means it's not to  
17 both parties' benefit.

18 Q Okay. So, those two steps, in terms of  
19 electronically shutting Ms. Johnson out and locking up the  
20 physical file, the -- those are not steps to protect Ms.  
21 Taylor's confidential information. They're steps to  
22 protect Dr. Brill's confidential information?

23 A I don't agree with that.

24 Q Okay. You took those steps because even your own  
25 office did not have 100 percent trust in Ms. Johnson that

1 confidential information might be improperly accessed or  
2 used. Right?

3 A No. I took those steps because I have an ethical  
4 duty to take those steps and ensure that they are followed  
5 by anyone I hire at my office.

6 Q So, why do you think you have an ethical duty to  
7 screen off Dr. Brill's file from Ms. Johnson?

8 A Again, I think my ethical duty is to ensure that  
9 confidential information is not disclosed either way on  
10 those two matters. So, I think and I know that that's  
11 what's required of me as a member of the Bar of the state  
12 of Nevada.

13 Q If you absolutely trusted Ms. Johnson, couldn't  
14 you just tell Ms. Johnson, hey, we have Dr. Brill's file in  
15 our computer system, please never access it?

16 A Well, Mr. Breeden, I don't believe that following  
17 what is required of me by the rules of professional  
18 responsibility indicates mistrust. I believe those are  
19 distinct issues. So, I don't believe following the rules,  
20 as I'm required to do, indicates that Ms. Johnson is an  
21 untrustworthy person.

22 Q Okay. So, you can indicate that you believe Ms.  
23 Johnson has none of Dr. Brill's confidential information  
24 from your firm. Right?

25 A Well, and I certainly take you at your word that

1 you trust her and believe her to be a person of good  
2 character.

3 Q Okay. But that's not my question. And I  
4 appreciate how you turned that around, like a good  
5 attorney. But the question that I had asked was --

6 A Could you repeat your question?

7 Q Yes.

8 You took steps to ensure that Ms. Johnson did not  
9 obtain any confidential information of Dr. Brill from your  
10 firm's files?

11 A As I said, I believe the steps that I took are to  
12 both parties' benefit.

13 Q Okay. And you've talked about, you know, the  
14 professional rules, etcetera, etcetera. But the  
15 professional rules don't set forth exactly what the  
16 attorney is supposed to do. They're just broad that client  
17 confidences have to be preserved. Correct?

18 A Well, I think that is the caselaw that interprets  
19 it requires what I did.

20 Q Yeah. And we'll give some closing arguments about  
21 the caselaw here in a minute.

22 Would you agree with me that this entire situation  
23 could have been avoided if you just simply chose not to  
24 hire Ms. Johnson?

25 A Theoretically, I would agree with that.

1 Q Okay. And did you discuss hiring Ms. Johnson with  
2 your own client, Dr. Brill, before you hired her?

3 A No.

4 MR. BREEDEN: Those are all the questions that I  
5 have.

6 THE COURT: Redirect?

7 MR. MCBRIDE: Your Honor, very briefly.

8 **REDIRECT EXAMINATION OF HEATHER HALL**

9 BY MR. MCBRIDE:

10 Q Ms. Hall, at any point int time, did Mr. Breedon,  
11 either by way of e-mail or telephone communication, ever  
12 advise you that he had concerns that Ms. Johnson would  
13 still access Ms. Taylor's file, either electronically or  
14 paper file, that he maintained at his office?

15 A No. Never.

16 Q Did he ever advise you that he had not taken and  
17 he was concerned that she would access -- Ms. Johnson could  
18 access any portion of that file and inadvertently or  
19 purposefully disclose that information to our office?

20 A No.

21 Q The -- with regard to the measures that were put  
22 in place by our office, could you just explain very briefly  
23 why you believe that the measures that you took were  
24 adequate to ensure that Ms. Johnson did not have access?  
25 And, also, likewise, could not share confidential

1 information regarding the *Taylor* matter with anyone from  
2 our office?

3       A     So, in terms of those formal steps, I think that's  
4 what the caselaw and the rules require. But, more  
5 importantly, to me, as someone who is so concerned with,  
6 you know, just all of the issues that this involves, I --  
7 we do have a small office and it's a small space. You  
8 know, it's only maybe seven -- maybe 20,000 square feet.  
9 It's not a big office. And I was more -- even more  
10 concerned about verbal -- you know, just in passing, if  
11 someone says something. And that's kind of, you know, why  
12 I went, I think, above and beyond and sent that memo and  
13 sent it with an e-mail telling everyone how important it  
14 was in our office to not discuss this case in any general  
15 areas where Ms. Johnson could be present after she starts  
16 on November the 8<sup>th</sup>.

17               And the paralegal who has worked on this case  
18 since the beginning is still with my office. I use  
19 paralegals in a very different way and that's one of the  
20 reasons why these measures, I think, are more than  
21 sufficient. My paralegals are never involved in an appeal.  
22 The trial record is what it is. I mean, the trial has  
23 occurred and there's nothing -- I don't believe there's  
24 anything I could ever obtain from an employee that would  
25 change you know, the appeal. But that's not the analysis.

1           I believe that strict confidentiality has to be  
2 maintained, regardless of whether the information disclosed  
3 could have an impact. And what I've put in place, I think,  
4 is very sufficient. In particular, advising all of the  
5 members that they can't talk about it as well. Because,  
6 it's not, to me, just about the written documents or what  
7 she could possibly have viewed had I not put those measures  
8 in place. It's the verbal, you know, could someone  
9 disclose something or vice versa.

10           THE COURT: Well, *Leibowitz* talks about that, but  
11 we're in evidence right now.

12           MR. BREEDEN: Right.

13           THE COURT: All right.

14           MR. MCBRIDE: And that's all the questions I have,  
15 Your Honor.

16           THE COURT: Any recross?

17           MR. BREEDEN: Nothing further, Your Honor.

18           THE COURT: All right. Any additional witnesses  
19 from the defense? Mr. McBride?

20           MR. MCBRIDE: No, Your Honor.

21           THE COURT: All right. So, that concludes the  
22 evidence portion. Let's move into -- actually, let's take  
23 a 15-minute recess, so my staff can stretch their legs and  
24 then we'll come back for argument.

25           MR. BREEDEN: Thank you. And, again, I would just

1 like a brief argument.

2 THE COURT: Sure.

3 [Recess taken at 10:47 a.m.]

4 [Hearing resumed at 10:56 a.m.]

5 THE COURT: The record should -- the minutes  
6 should reflect we've concluded the evidentiary portion of  
7 this hearing. We're moving into argument. Mr. Breeden,  
8 this is your effort. You have the floor.

9 MR. BREEDEN: Again, do you mind if I sit, Your  
10 Honor?

11 THE COURT: No. Be comfortable.

12 MR. BREEDEN: Thank you.

13 MR. MCBRIDE: Your Honor, I'm muted. I cannot  
14 hear --

15 THE COURT RECORDER: I apologize, Your Honor.

16 MR. MCBRIDE: The Court is muted, rather. Sorry.

17 THE COURT: Do you have me now?

18 MR. MCBRIDE: Yeah. I can hear you now.

19 THE COURT: All right. Good. All I did was put  
20 us on the record. Mr. Breeden is heading into argument.  
21 He's going to -- I told him to be comfortable and I want to  
22 hear his words.

23 MR. BREEDEN: Okay. Thank you, Your Honor.

24 Just, again, to recap some things that I said at  
25 the beginning, and I don't mean to sound like a broken

1 record, but this is an important legal issue, especially to  
2 my office, it's a small office. We try to work very  
3 closely with all of my clients and I have two clients that  
4 are very concerned about what's happened here.

5           There's no difference in the legal standard of  
6 imputed disqualification between attorneys and non-  
7 attorneys. And that's because both of them are held by the  
8 same standards of confidentiality towards clients. Imputed  
9 disqualification is presumed in this case. I realize that  
10 I went first, as if I was the plaintiff, and have the  
11 burden of proof. But the amount of confidential  
12 information that Ms. Johnson has, as has been noted, is not  
13 even disputed. It's McBride Hall's burden of proof in this  
14 evidentiary hearing to establish to you that screening is  
15 proper.

16           I would say that the inquiry that people say,  
17 well, you have no evidence that actual breach of  
18 confidentiality has occurred. That is not a cure-all. And  
19 the applicable cases clearly establish that some cases are  
20 just not meant for screening. It does not have to be  
21 accepted in all cases and it isn't a cure-all to imputed  
22 disqualification. There are other considerations, such as  
23 the potential for inadvertent disclosure and the effect  
24 that -- you know, possible distrust in the legal process  
25 that people, particularly clients, think: Oh my goodness,

1 the other side has an employee now who knows all of my  
2 confidential information.

3 THE COURT: Well, let's stop there for a second,  
4 Mr. Breeden. What -- we -- you are very far along in this  
5 litigation from the perspective of the trial. Right? The  
6 record on appeal is what it is. Is -- does that make a  
7 difference here? I mean, I -- frankly, it's more  
8 compelling in your other -- your *Nelson* case, to the extent  
9 that we're discussing it, when you're halfway through  
10 litigation because parallel -- or paralegals, as you know  
11 better than I, but I know well enough, are critical in that  
12 process. They're developing your theory. How do you --  
13 what are your thoughts on that?

14 MR. BREEDEN: Well, it may be that *Nelson* is even  
15 more compelling than this case, but I think both are  
16 compelling cases.

17 THE COURT: Okay.

18 MR. BREEDEN: And, again we discussed this briefly  
19 at the outset in that, essentially, the case being on  
20 appeal, is the same factual scenario that was presented --

21 THE COURT: But the record is what it is. You  
22 draw from that record, the issues that you believe are  
23 grounds for reversal.

24 MR. BREEDEN: Well, I mean, if we weren't  
25 appealing and the entire appellate strategy and, you know,

1 what I advised the client about, you know, should you take  
2 this settlement offer, here's what might happen, you know,  
3 here's what our grounds for appeal potentially are, --

4 THE COURT: Okay.

5 MR. BREEDEN: -- here's where I think the  
6 weaknesses and strengths are in the grounds for appeal.

7 THE COURT: That third [indiscernible] you were  
8 discussing.

9 MR. BREEDEN: If none of that had been exchanged,  
10 then perhaps that would be a compelling argument. I'm not  
11 here because these cases involve past or former clients  
12 with cases that have concluded. I'm not here because of  
13 that. I'm here because both of these cases involve ongoing  
14 legal matters.

15 And when you talk about -- and I'm going to talk  
16 about the actual factors that come from the cases here in  
17 just a minute or two. But --

18 THE COURT: You said you were going to be brief.

19 MR. BREEDEN: You know lawyers don't mean it when  
20 they say that.

21 THE COURT: I told staff to load their glasses  
22 because whenever I hear those words --

23 MR. BREEDEN: So, by brief, I mean less than an  
24 hour, how about that?

25 So, I find it funny, Judge, and this is argument,

1 but, you know, when you went to law school, if this had  
2 been on your law school exam, shown these facts and imputed  
3 disqualification apply, you would have failed that exam if  
4 you would have said: No problem here, no imputed  
5 disqualification.

6 Now, the standard has changed a little bit, but we  
7 didn't completely reverse what that old standard was, for  
8 these reasons, you always have to be concerned about what's  
9 going to happen in the future, whether that's intentional  
10 or inadvertent, and you have to concern yourself with  
11 public perception.

12 THE COURT: Should I be -- you've been stressing,  
13 as a good litigator will, the effects on your client, Ms.  
14 Taylor, moving forward. What about the caselaw talking to  
15 me about balancing the effect on Dr. Brill and the -- his  
16 rights to be represented by counsel of his choosing?

17 MR. BREEDEN: But both clients should have that  
18 right. So, when we look at --

19 THE COURT: Okay.

20 MR. BREEDEN: -- what happened in this case, which  
21 party could have avoided the problem? And, so, if one  
22 party is going to bear the burdens or the consequence of  
23 what happened, surely that should be Dr. Brill, whose  
24 attorneys created this imputed disqualification issue. If  
25 there -- you certainly can't blame Ms. Taylor for any of

1 the procedural history of how we got here.

2 THE COURT: I think that would be -- everybody  
3 would have to agree on that.

4 MR. BREEDEN: Yes. She's just litigating her  
5 case. So if we're to balance that factor and say, you  
6 know, which party -- I don't want to say which party is at  
7 fault here, but which party could have avoided this  
8 situation? It clearly would be Dr. Brill.

9 And, by the way, all the caselaw says, if it's a  
10 close issue, you err in favor of disqualification. Okay?

11 We heard about some of the screening efforts that  
12 took place. Look, all of the screening efforts boil down  
13 to they told Ms. Johnson: Please don't discuss either of  
14 these cases with anyone else at our firm. And they sent a  
15 memo around to everyone at their firm saying: Please don't  
16 discuss these cases, you know, in public areas or with Ms.  
17 Johnson, specifically. Okay. Every other screening  
18 measure that they took protects their client, not Ms.  
19 Taylor's secret.

20 You know, and I think it's telling that when it  
21 came to protect their client's confidences, Dr. Brill's  
22 confidences, they're able to go and pay some tech person to  
23 lock Ms. Johnson out of the file, they're able to take  
24 their physical file and put it behind lock and key because  
25 they don't implicitly trust that no shenanigans or anything

1 like that is going to go on, or even accidental disclosure  
2 of that. My client, Ms. Taylor, doesn't have that  
3 privilege. Okay? Ms. Johnson already knows all the  
4 confidential information about her client.

5           So, when McBride Hall goes on and on about, oh,  
6 look, we've blocked her out eccentrically, we have the  
7 physical file under lock and key, none of that addresses  
8 the concerns in this case, which are Ms. Taylor's  
9 confidential information, which Ms. Johnson already has and  
10 has had for some time.

11           And we hear a lot of talk from McBride and Hall  
12 about, yeah, they -- they're highly concerned about this as  
13 well. You know, they wanted to lock up their file and they  
14 wanted to make sure that even their employees maybe weren't  
15 -- there wasn't an accidental disclosure. And, you know,  
16 maybe somebody a couple of cubicles over is talking about  
17 one of these files and Ms. Johnson overhears it. But  
18 that's the exact type of thing that is inherently  
19 impossible for them to avoid under the facts of this case.

20           Let me tell you when screening works extremely  
21 well and why screening came about. It came about, and  
22 maybe this is my opinion or argument, but it came about  
23 with the advent of these large, multi-state law firms and  
24 some office in Phoenix hires a paralegal that would have a  
25 technical conflict with some client whose matter is being

1 handling out of a Las Vegas office. Given normal  
2 circumstances, that paralegal would never see or have  
3 access to the file, or any involvement with those clients.  
4 And, so, it seemed unfair to absolutely, strictly apply  
5 imputed disqualification to situations like that.

6 But look at what's going on in this case. Okay?  
7 Ms. Johnson has the most extreme level of confidential  
8 information possible. She interacts daily, or near daily,  
9 with everyone at that law firm who is assigned to Ms.  
10 Taylor's case. Okay? She even has to work with those  
11 other folks on other matters, including her direct  
12 supervisors and the owners of the firm, Mr. McBride and Ms.  
13 Hall, who are the attorneys handling Dr. Brill's matter  
14 opposing Ms. Taylor's case.

15 The caselaw says: Look, the smaller the firm, the  
16 more likely it's going to be that imputed disqualification  
17 is going to apply. And that general rule has its origin in  
18 a situation like this.

19 And I'm going to tell you that when I read this  
20 *Leibowitz* case, let me honest with you, if I had been on  
21 the Supreme Court, I don't think I would have signed off on  
22 that opinion. It was not a unanimous opinion. There were  
23 two Supreme Court justices that dissented and basically  
24 what they said was: Well, you know, these past cases,  
25 they're very sympathetic because, you know, one of them

1 just involved a typist, a temporary employee typist who had  
2 very little actual involvement with the case. In fact,  
3 mere access is later what they said. Not even proof that  
4 the typist actually had confidential information. Those  
5 are cases very sympathetic to screening and allowing non-  
6 lawyer staff to change jobs.

7           Sometimes, extreme facts, or bad facts, make for  
8 bad law. And, so, here we have a case where two Nevada  
9 Supreme Court Justices warned us in the *Leibowitz* case:  
10 Maybe this is going a bit too far, and maybe we ought to  
11 look at, you know, keeping this imputed disqualification.

12           Now, -- pardon me. The *Leibowitz* case actually  
13 does that. It says: Hey there's all these factors and  
14 there's big sliding scales here. And there's even some  
15 categories of cases, and I allege this is one of those,  
16 where you can just even never use screening. Right?

17           The first big sliding scale is the level of  
18 confidential information the employee actually has. Okay?  
19 And that's undisputed in this case, that it's extreme, that  
20 Ms. Johnson has an extreme level of confidential  
21 information and it would be highly damaging to Ms. Taylor  
22 if it was shared with the other side.

23           So, look at what some of these other factors are.  
24 I mean, these come from *Leibowitz*. So, we talked about the  
25 individual right to be represented by counsel of one's

1 choice and my point is Ms. Taylor and Dr. Brill have that  
2 right. If you were going to balance that one way or  
3 another, you would say: Well, you know, it's Dr. Brill or  
4 Dr. Brill's attorneys that had the ability to avoid this  
5 situation. So, if there's going to be some consequences,  
6 it probably ought to fall on them.

7           Second is each party's right to be free from the  
8 risk of even inadvertent disclosure of confidential  
9 information. Well, surely that weighs in favor of  
10 disqualification here because that risk is only borne by  
11 Ms. Taylor in this situation. It's not borne by Dr. Brill.  
12 They made sure to lock Kris -- Ms. Johnson out of Dr.  
13 Brill's files, so she could never access that.

14           The third factor is the public's interest in  
15 scrupulous administration of justice. And I think when  
16 they use the word scrupulous there, I think they're talking  
17 here about public trust of people in the process, that it  
18 will be fair, and people will respect the decision, and not  
19 think that something unusual was occurring. And, surely,  
20 that factor weighs in favor of Ms. Taylor.

21           The next factor is the prejudices that will inure  
22 to the parties as a result of the District Court's  
23 decision. You know, I guess if you were McBride and Hall,  
24 you might say: Well, I think it prejudices my client that  
25 he has to go and get new counsel at this point. As has

1 been noted, this matter is on appeal. There are many fine  
2 appellate attorneys. The appellate record is what it is,  
3 at this point. Many law firms actually separate. You  
4 know, we have appellate attorneys specialists. And, so, I  
5 don't see a great deal of prejudice to Dr. Brill at this  
6 point if he were told, you know, you have to get another  
7 attorney now to handle this appeal.

8           And, by the way, the opening brief on the appeal  
9 is not even filed yet. It probably won't be filed for  
10 another 60 days. And, certainly, if imputed  
11 disqualification were granted, I would work with new  
12 counsel to ensure that they had adequate time to get up to  
13 speed and prepared.

14           Now, the next part of *Leibowitz* sort of talks  
15 about these screening factors, okay, as to whether  
16 screening has been or may be effective, is what it says.  
17 One is the substantiality of the relationship between the  
18 former and current matters. Notice the language there,  
19 they're really assuming that you're talking about different  
20 matters for the same client or a closed matter. There  
21 aren't -- there isn't a former and current matter. It's  
22 the same matter.

23           Number two, the time elapsed between the matters.  
24 Well, there's no time, but if you were to look at this as  
25 well, you talk about, you know, this isn't a case where Ms.

1 Johnson worked on this file three years ago, she left my  
2 firm, and then three years later she just happens to show  
3 up at McBride Hall. Literally working at my firm until a  
4 Friday and then joining McBride Hall on a Monday. And I  
5 did what I could, reasonably, to lock her out of the file,  
6 so, you know, the confidential information that she had  
7 stopped, but I could only do so much. I can't hypnotize  
8 her and remove the information.

9           Three, the size of the firm. And, again, here,  
10 we're talking about: Is this a big, multi-state firm, and  
11 the affected employee is going to be in a totally different  
12 office and never have to deal with the attorneys assigned  
13 to the case? Or is it a situation, which this matter  
14 presents, where it's a very small firm and Ms. Johnson is  
15 going to be working very closely on other matters with the  
16 attorneys assigned to this case? And, so, surely that  
17 factor favors Ms. Taylor against screening.

18           Number four is the number of individuals presumed  
19 to have confidential information. I don't know that that's  
20 highly relevant to this particular case.

21           Number five is the nature of their involvement in  
22 the former matter. And, so, that's why I spent so much  
23 time establishing the extreme level of confidential  
24 communication that Ms. Johnson has because it's one of the  
25 factors here that weighs heavily against allowing

1 screening.

2           Number six is the timing and features of any  
3 measures taken to reduce the danger of disclosure. Well,  
4 to McBride Hall's credit, they recognize the issue early.  
5 It's a serious issue and they sent some office memos and  
6 they advised Ms. Johnson about it, but they did that  
7 because they recognize it's a problem and it's a serious  
8 issue.

9           Number seven, whether the old firm and the new  
10 firm represent adverse parties in the same proceeding  
11 rather than in different proceedings because inadvertent  
12 disclosure by the non-lawyer employee is more likely in the  
13 former situation. Of course, we have the case here where  
14 it's the same client, same active case. We just have a  
15 paralegal working for the plaintiff firm one week and the  
16 defense firm the next week.

17           I will comment that some of the caselaw on  
18 screening, it's outside of Nevada, but some of it says you  
19 can't screen if it's the exact same case and it's ongoing  
20 at both firms. Screening is not even allowed under those  
21 circumstances.

22           I want to move on because those are the factors  
23 set forth in *Leibowitz*. We actually have some additional  
24 factors set forth in the *Ryan's Express* case as well that  
25 talk about screening. And the fact -- and I'm going to

1 start with the factor number two here, restricted access --  
2 these are just factors that are to be considered on a case-  
3 by-case basis to assess whether screening is a proper, and  
4 appropriate, and acceptable in the given case.

5         Second factor is restricted access to files and  
6 other information about the case. McBride Hall can protect  
7 Dr. Brill's files, but they can't erase the if that Ms.  
8 Johnson already has about Ms. Taylor's files, and that's  
9 what we're concerned with here. My client, Ms. Taylor,  
10 isn't concerned about Dr. Brill's confidences. And Ms.  
11 Hall has said: Hey, look, I have a concern because Ms.  
12 Johnson is a personal friend of Mr. Breeden and she worked  
13 for him for four years. You know, I have some concerns.  
14 Maybe she would get into Dr. Brill's files and leak  
15 something to Mr. Breeden. And I think that shows that it's  
16 just the nature of the business that you can't have 100  
17 percent trust in everybody 100 percent of the time.

18         The third factor here from *Ryan's Express* is the  
19 size of the law firm and its structural divisions. Again,  
20 we have a small law firm here. The McBride Hall, one  
21 office location. The affected employee is going to see the  
22 McBride Hall personnel on this file probably every day and  
23 work with them closely on other files, direct supervisor.

24         Four is the likelihood of contact between the  
25 quarantined lawyer or other members of the firm. Now this

1 says lawyer because it was a lawyer involved in *Ryan's*  
2 *Express* case, but the same standard applies to non-lawyers.  
3 Okay? Like paralegals or legal assistant. And, so, the  
4 likelihood of contact here is undisputed. It's extremely  
5 high and it's going to occur nearly every day.

6           Number five is the timing of the screening and  
7 McBride Hall did recognize that this was an issue. And, in  
8 the end, though, all they can really do is verbally advise  
9 people: Hey, don't do this. They don't have any other  
10 failsafe method of controlling it, like a physical file  
11 that you can lock in a drawer, which is what they did with  
12 Dr. Brill's file.

13           I will indicate here that when you talk about the  
14 timing of the screening, and I think what truly does  
15 distinguish this case from maybe the facts of some others,  
16 is you have this period of five or six days when Ms.  
17 Johnson is actively seeking employment and interviews at  
18 the McBride Hall Firm and she's continuing to work on the  
19 *Taylor* case at the Breeden Firm and she's getting some of  
20 the most confidential, sensitive information about post-  
21 trial motions, post-trial strategy, settlement strategy,  
22 appellate strategy, all of that information.

23           And I realize Ms. Johnson was in a tough place.  
24 She hadn't been hired, yet. Right? So you don't want to  
25 go around telling your employer: Hey, I'm thinking about

1 getting out of here, so -- or you don't even want to subtly  
2 say there's a reason why I shouldn't be working on this  
3 case. So, I get why she did it, but it happened. And  
4 that's a big problem in this case and I think that's where  
5 this case distinguishes itself from maybe some others, you  
6 know, certainly because of the level of confidentiality  
7 that Ms. Johnson had.

8 But, Your Honor, I do just want to note in closing  
9 here that, you know, it's frustrating and I realize they  
10 have a Motion to Defend, but, again, the first thing that  
11 came along when these Motions for Disqualification were  
12 filed was they went to Ms. Johnson and they obviously must  
13 have discussed the Motions with her. And they had her do  
14 Affidavits to support their Opposition, and so that is a  
15 former employee of mine who is assisting the defense in  
16 defeating my clients' Motions. And I think that shows the  
17 problematic nature of imputed disqualification and what  
18 occurred here.

19 So, in closing, I think there are -- there's a  
20 presumption that they are disqualified, McBride Hall,  
21 imputed disqualification. There is caselaw that states if  
22 the matter is kind of a close issue, you have to err on the  
23 side of imputed disqualification. McBride Hall is the law  
24 firm that created this situation. So, if there's  
25 consequences, they should be the firm to bear those. And

1 Ms. Johnson just has an extreme level of very sensitive  
2 confidential information and we would ask that you apply  
3 imputed disqualification.

4 THE COURT: Thank you.

5 Mr. McBride, your response?

6 MR. MCBRIDE: Thank you, Your Honor. I'll be very  
7 brief.

8 And, Your Honor, I just want to remind the Court  
9 the reason why we're here -- we were in front of Justice  
10 Becker who heard the arguments on the Motion from both  
11 plaintiff and defense at great length. This is not -- her  
12 ruling was to allow an evidentiary hearing for the sole  
13 purpose of determining whether there was adequate screening  
14 measures in place. In her preliminary opinion, comments  
15 from the Court, she felt sufficient screening was in place.  
16 She also said, however, that plaintiff would be entitled to  
17 an evidentiary hearing and it was probably wise to set one  
18 for that purpose.

19 There's no argument, as Your Honor heard at length  
20 -- so, I guess my point in closing is that this is not an -  
21 - this evidentiary hearing should not be used as an  
22 opportunity to reargue the merits of the Motion, but rather  
23 present the evidence, the burden that McBride Hall was to  
24 present sufficient evidence that adequate screening  
25 measures were in place under the *Leibowitz* matter.

1           Now, I understand that Mr. Breeden -- if he was on  
2 that *Leibowitz* Court, he would have ruled the opposite way.  
3 Clearly, we know that from his argument here today and  
4 previously. However, Justice Becker, who was on that  
5 Supreme Court, had intimate knowledge for the reasoning and  
6 the basis for that ruling. Basically, had told us that she  
7 felt that there was sufficient screening in place. We have  
8 shown today, by way of this evidentiary hearing, that those  
9 sufficient screening measures were in place.

10           And I'll just remind the Court and remind Mr.  
11 Breeden, a lot was made of the fact that our firm put  
12 screening measures on our end in place. I'll quote to the  
13 *Leibowitz* case where it says:

14           When a law firm hires a non-lawyer employee, the  
15 firm has an affirmative duty to determine whether the  
16 employee previously had access to an adversarial file.  
17 If the hiring law firm determines that the employee had  
18 such access, the hiring law firm, the hiring law firm,  
19 has an absolute duty to screen the non-lawyer employee  
20 from the adversarial cases, irrespective of the non-  
21 lawyer employee's actual knowledge of the privileged or  
22 confidential information.

23           That's the why. That -- and Mr. Breeden, I'm  
24 sure, knows that's the reason we took the measures that we  
25 did, to screen Ms. Johnson, and certainly he's testified as

1 to what measures he put in place to screen Ms. Johnson from  
2 obtaining any information -- confidential information.

3 Now, and it's noteworthy that rather than even  
4 though he contemplated them, Mr. Breeden chose not to  
5 terminate Ms. Johnson immediately. He determined it was  
6 not necessary to have her sign a specific nondisclosure  
7 agreement, should she go to any firm, or should she go to  
8 our firm and decide to take that job. She -- he had the  
9 opportunity to terminate her at that time if he so chose.  
10 He didn't.

11 So, the Court is -- the caselaw does not require  
12 that we erase Ms. Johnson's memory and everything she may  
13 have learned from other cases, not including this *Taylor*  
14 case. It simply requires us to put proper security  
15 measures in place and we have done that. We have gone over  
16 and above the requirements of the *Leibowitz* case and our  
17 ethical obligations as attorneys and Officers of this  
18 Court.

19 Again, Your Honor, as an attorney in good standing  
20 in this Court, as well as an attorney in California for  
21 years before, I take this job very seriously and I think  
22 you can understand that both Ms. Johnson, as a paralegal,  
23 who has done her job for many years at various well-  
24 respected law firms, including the Lionel Sawyer Collins  
25 Firm, one of the largest law firms and oldest law firms in

1 the state for a long time, that she understands those  
2 obligations. And, again, there's no way we can ever erase  
3 her memory of what may have -- information she may have  
4 obtained, but that's not what is required by the law.

5 And, so, with respect to the request to do an  
6 Affidavit, Your Honor, this is -- it's something that is --  
7 we're in a catch-22. We feel as it's important as Officers  
8 of the Court in order to provide an adequate factual basis,  
9 the factual basis and issues surrounding the  
10 confidentiality in our office, as well as Ms. Johnson's  
11 knowledge, and what, you know, she was aware of, and what  
12 screening measures were in place, we had to do those  
13 Affidavits. And, if we had not presented those Affidavits,  
14 counsel would have made the argument that we have presented  
15 no evidence from her that we didn't exercise or conduct  
16 those measures to prevent her from accessing it.

17 So, again, Mr. Breeden has already indicated in  
18 testimony that he trusts Ms. Johnson. He trusted her for  
19 the entire time that she was employed with him. He  
20 believes her to be an outstanding paralegal, wishes her the  
21 best. This is not -- Your Honor, this is not about whether  
22 or not there is a legitimate concern of disclosure of  
23 confidential information because, as Your Honor pointed  
24 out, the *Taylor* matter has already been concluded. It's on  
25 appeal now. The issues are a matter of public record. So,

1 to the extent there are any potential concerns about this  
2 case, and that's the only one we're here today on is the  
3 *Taylor* matter. The -- those issues are moot and non --  
4 they are not important to the issues and irrelevant to the  
5 issues here today.

6           This is a matter of Mr. -- frankly, Your Honor,  
7 it's a matter of Mr. Breeden feeling he can use this, and  
8 Ms. Johnson's employment with our office, as a strategic  
9 advantage to disqualify our office to get another law firm  
10 on the case to handle the appeal. Your Honor, our office  
11 handles these appeals of these matters. Ms. Hall and other  
12 members, Ms. [indiscernible], another partner of mine,  
13 handles these appeals very well. There's no reason, under  
14 the circumstance, because of the adequate measures taken,  
15 and because of the representations made by Ms. Johnson, Ms.  
16 Hall, and myself, that no disclosures will have or have  
17 ever occurred.

18           So, to put it very succinctly, Your Honor, this --  
19 we have fulfilled our obligations. I think we've gone over  
20 and above and met our obligations for the purposes of this  
21 evidentiary hearing of demonstrating that we have  
22 established sufficient safeguards in place. And, with  
23 that, Your Honor, I would submit.

24           THE COURT: Thank you very much.

25           Ladies and gentlemen, I've listened patiently to

1 the evidence that's been presented. I believe the decision  
2 I'm about to enter is consistent with the *Leibowitz*  
3 decision. As it's articulated in that opinion, this Court  
4 is faced with the delicate task of balancing competing  
5 interests. There is no dispute that Ms. Johnson was privy  
6 to privileged information as a consequence of her previous  
7 employer, but I believe that the McBride Firm, the new  
8 hire, has done adequate and met their necessary  
9 obligations.

10 I note in the decision that the Supreme Court  
11 talks about that an employee must be cautioned not to  
12 disclose any information relating to the representation of  
13 a client of a former employer. That's been more than  
14 adequately, in this Court's opinion, addressed as a  
15 consequence of this evidentiary hearing. As is the second  
16 prong, as I read, must be instructed not to work on any  
17 matter which he or she has done -- worked on during prior  
18 employment. Again, stressed significantly both with the  
19 direct testimony of Ms. Johnson and her direct partner, Ms.  
20 Hall.

21 And I believe the firm has taken reasonable steps  
22 to make sure the non-lawyer employee does not work in  
23 connection with the matters for which she worked during her  
24 prior employment, absent consent -- client consent, which  
25 is obviously not part of this case.

1           Based upon those factors, and the fact that the  
2 decision talks about: We balance the interest of the  
3 identified client for -- or Dr. Brill. We talked about the  
4 decision talks at length about this being -- or discusses  
5 that the imputed disqualification should be considered a  
6 harsh remedy and should only be invoked if the Court is  
7 satisfied that real harm is likely to result. I find it  
8 important to note that the action is substantially complete  
9 on appeal and I think that is a factor that ultimately  
10 leads me to the conclusion of denial.

11           So, Mr. McBride, I'd direct you to make -- prepare  
12 the Order, consistent with that decision, and submit it for  
13 review. All right?

14           MR. MCBRIDE: Thank you.

15           MR. BREEDEN: Your Honor, I just want to make sure  
16 it's formal findings of fact and conclusions of law.

17           THE COURT: Formal findings of facts and  
18 conclusions of law.

19           MR. MCBRIDE: Thank you, Your Honor. We will

20           THE COURT: All right. Thank you very much.  
21 Anything else?

22           MS. HALL: No. Thank you, Your Honor.

23

24           PROCEEDING CONCLUDED AT 11:29 A.M.

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\* \* \* \* \*

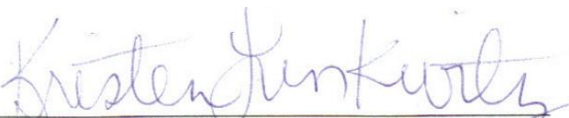
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**CERTIFICATION**

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

**AFFIRMATION**

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.

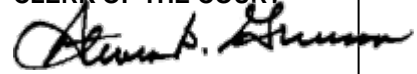


KRISTEN LUNKWITZ  
INDEPENDENT TRANSCRIBER

**EXHIBIT 4**

**EXHIBIT 4**

**EXHIBIT 4**



NEO  
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DISTRICT COURT  
CLARK COUNTY, NEVADA

KIMBERLY D. TAYLOR, an Individual,  
Plaintiff,

vs.

KEITH BRILL, MD, FACOG, FACS, an  
Individual; WOMEN'S HEALTH  
ASSOCIATES OF SOUTHERN NEVADA –  
MARTIN, PLLC, a Nevada Professional  
Limited Liability Company,  
Defendants.

CASE NO.: A-18-773472-C  
DEPT: III

**NOTICE OF ENTRY OF ORDER  
DENYING PLAINTIFF'S MOTION TO  
DISQUALIFY THE McBRIDE LAW  
FIRM ON AN EX PARTE MOTION FOR  
ORDER SHORTENING TIME**

PLEASE TAKE NOTICE that an ORDER DENYING PLAINTIFF'S MOTION TO  
DISQUALIFY THE McBRIDE LAW FIRM ON AN EX PARTE MOTION FOR ORDER  
SHORTENING TIME was entered and filed on the 16<sup>th</sup> day of February 2022, a copy of which is

///

///

///

1 attached hereto.

2  
3 DATED this 16<sup>th</sup> day of February 2022.

McBRIDE HALL

4

5 /s/ Heather S. Hall

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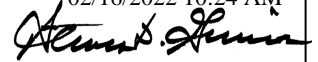
1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 16<sup>th</sup> day of February 2022, I served a true and correct  
3 copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING PLAINTIFF'S**  
4 **MOTION TO DISQUALIFY THE McBRIDE LAW FIRM ON AN EX PARTE MOTION**  
5 **FOR ORDER SHORTENING TIME** addressed to the following counsel of record at the  
6 following address(es):  
7

- 8 ☒ **VIA ELECTRONIC SERVICE:** By mandatory electronic service (e-service), proof of e-  
9 service attached to any copy filed with the Court; or  
10 ☐ **VIA U.S. MAIL:** By placing a true copy thereof enclosed in a sealed envelope with  
11 postage thereon fully prepaid, addressed as indicated on the service list below in the United  
12 States mail at Las Vegas, Nevada  
13 ☐ **VIA FACSIMILE:** By causing a true copy thereof to be telecopied to the number  
14 indicated on the service list below.

15 Adam J. Breeden, Esq.  
16 BREEDEN & ASSOCIATES, PLLC  
17 376 E. Warm Springs Road, Suite 120  
18 Las Vegas, Nevada 89119  
19 *Attorneys for Plaintiff*  
20  
21  
22

23 /s/ Natalie A. Jones  
24 An Employee of *McBRIDE HALL*  
25  
26  
27  
28

  
CLERK OF THE COURT

**ORDR**

ROBERT C. McBRIDE, ESQ.

Nevada Bar No.: 7082

HEATHER S. HALL, ESQ.

Nevada Bar No.: 10608

McBRIDE HALL

8329 W. Sunset Road, Suite 260

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E-mail: [hshall@mcbridehall.com](mailto:hshall@mcbridehall.com)

Attorneys for Defendants,

*Keith Brill, M.D., FACOG and*

*Women's Health Associates of Southern Nevada –*

*MARTIN, PLLC*

DISTRICT COURT

CLARK COUNTY, NEVADA

KIMBERLY D. TAYLOR, an Individual,

Plaintiff,

vs.

KEITH BRILL, MD, FACOG, FACS, an

Individual; WOMEN'S HEALTH

ASSOCIATES OF SOUTHERN NEVADA –

MARTIN, PLLC, a Nevada Professional

Limited Liability Company; TODD W.

CHRISTENSEN, MD, an Individual; DOES I

through XXX, inclusive; and ROE

CORPORATIONS I through XXX, inclusive;

Defendants.

**CASE NO.: A-18-773472-C**

**DEPT: III**

**ORDER DENYING PLAINTIFF'S  
MOTION TO DISQUALIFY THE  
McBRIDE HALL LAW FIRM ON AN EX  
PARTE MOTION FOR ORDER  
SHORTENING TIME**

**DATE OF HEARING: 1/7/2022**

**TIME OF HEARING: 9:00 A.M.**

Plaintiff Kimberly Taylor's Motion to Disqualify the McBride Hall Law Firm on an Ex Parte Motion for Order Shortening Time came on for hearing on December 7, 2021. An evidentiary hearing was conducted on January 7, 2022. Plaintiff Kimberly Taylor appeared by and through her attorney of record ADAM BREEDEN, ESQ. of the law firm of BREEDEN & ASSOCIATES. Defendants, Keith Brill, M.D., FACOG and Women's Health Associates of

Southern Nevada – Martin, PLLC appeared by and through their attorneys of record ROBERT C. McBRIDE, ESQ. and HEATHER S. HALL, ESQ. of the law firm of McBRIDE HALL. The Court, having reviewed all pleadings and papers on file herein, having considered the written and oral argument of counsel, as well as the testimony of Kimberly Taylor, Kristy Johnson, Adam Breeden, and Heather Hall, and good cause appearing therefor, the Court makes the following Findings of Fact and Conclusions of Law:

**I.**

**FINDINGS OF FACT**

1. The current litigation went to jury trial on October 11, 2021 with trial concluding on October 19, 2021, when the jury found in favor of Defendants.

2. Judgment was entered on November 19, 2021. Thus, the case is concluded except for any appeal Plaintiff pursues.

3. Ms. Kristine Herpin was and is the paralegal which McBride Hall has assigned to work on this case.

4. Ms. Kristy Johnson worked as a paralegal at the law firm of Breeden & Associates, PLLC from October 2017 until November 5, 2021.

5. Following the jury verdict, Ms. Johnson was interviewed for a paralegal position with the McBride Hall law firm on October 21, 2021.

6. During her interview, it was discussed that she would need to be screened off of any active files between the law firms of Breeden & Associates, PLLC and McBride Hall and could not discuss the litigation between the two law firms, including the cases *Jane Nelson v. Muhammad Saeed Sabir, M.D., et al.* (Case No. A-20-823285-C) and *Kimberly Taylor v. Keith Brill, M.D., et al.* (Case No. A-18-773472-C).

7. Subsequently, Ms. Johnson accepted a paralegal position at McBride Hall and began working there on November 8, 2021.

8. Prior to beginning her employment with McBride Hall on November 8, 2021, Ms. Johnson was informed by Heather S. Hall, Esq. that she could not discuss either matter with anyone

1 who is employed with McBride Hall. Ms. Johnson agreed that she would not discuss either the  
2 *Jane Nelson* or *Kimberly Taylor* matters with anyone employed with the McBride Hall law firm.

3 9. Ms. Johnson continued her employment with Breeden & Associates, PLLC until  
4 November 5, 2021.

5 10. On October 25, 2021, Adam J. Breeden, Esq. sent correspondence to McBride Hall  
6 regarding his position that there was imputed disqualification for this matter.

7 11. That same day, October 25, 2021, Ms. Hall sent a responsive letter to Mr. Breeden  
8 outlining the screening measures that were put in place for this matter.

9 12. Prior to Ms. Johnson's start date of November 8, 2021, McBride Hall's paper file  
10 for *Kimberly Taylor v. Keith Brill, M.D., et al.* (Case No. A-18-773472-C) was locked in a filing  
11 cabinet that only Sean M. Kelly, Esq. has a key to open.

12 13. Prior to Ms. Johnson beginning her employment at McBride Hall, the IT provider  
13 for the law firm locked her out of access to the electronic file for *Kimberly Taylor v. Keith Brill,*  
14 *M.D., et al.* (Case No. A-18-773472-C).

15 14. Prior to Ms. Johnson starting her position at the McBride Hall law firm, Ms. Hall  
16 prepared and distributed a memorandum to members of the entire firm advising all of the screening  
17 of Ms. Johnson for *Kimberly Taylor v. Keith Brill, M.D., et al.* (Case No. A-18-773472-C).

18 15. Ms. Johnson began her employment at McBride Hall on November 8, 2021.

19 16. On November 17, 2021, Plaintiff's Motion to Disqualify the McBride Hall Law  
20 Firm on an Exparte Motion for Order Shortening Time was filed.

21 17. On November 24, 2021, Defendants' Opposition Plaintiff's Motion to Disqualify  
22 the McBride Hall Law Firm on an Exparte Motion for Order Shortening Time was filed.

23 18. On December 7, 2021, Plaintiff Kimberly Taylor's Motion to Disqualify the  
24 McBride Hall Law Firm on an Ex Parte Motion for Order Shortening Time came on for hearing  
25 on December 7, 2021 and an evidentiary hearing was set for January 7, 2022.

26 19. On January 7, 2022, this Court conducted an evidentiary hearing on the issues  
27 raised and whether or not McBride Hall should be disqualified.  
28

20. During the evidentiary hearing, the Court heard testimony from Plaintiff Kimberly Taylor, Kristy Johnson, Adam J. Breeden, Esq., and Heather S. Hall, Esq.

21. The testimony of Ms. Taylor and Mr. Breeden addressed concerns that confidential information Ms. Johnson obtained during her employment with Breeden & Associates may be exchanged to her new employer, McBride Hall.

22. The testimony of Ms. Johnson and Ms. Hall addressed that no confidential and/or privileged information has been discussed with Ms. Johnson by anyone at McBride Hall, the numerous screening mechanisms in place to ensure that confidential information regarding this case is never exchanged, and represented to this Court that these screening measure will continue throughout the litigation of this matter through its conclusion.

## II.

### CONCLUSIONS OF LAW

1. Because “[i]mputed disqualification is a harsh remedy that ‘should be invoked only if the court is satisfied that real harm is likely to result from failing to invoke it,’” the Nevada Supreme Court permits screening mechanisms. *Leibowitz v. Eighth Jud. Dist. Court*, 119 Nev.523, 532, 78 P.3d 515, 521 (Nev. 2003).

2. The Nevada Supreme Court recognizes that nonlawyer, firm employees may be screened to maintain employment and representation of clients with potentially adverse interests. *Leibowitz v. Eighth Jud. Dist. Court*, 119 Nev.523, 526, 78 P.3d 515, 517 (Nev. 2003).

3. Sufficient screening mechanism are enough to avoid disqualification because of a “client’s right to counsel of the client’s choosing and likelihood of prejudice and economic harm to the client when severance of the attorney-client relationship is ordered.” *Id.* at 532, 521.

4. To determine if such mechanisms are appropriate, the Nevada Supreme Court evaluates several factors including: (1) the substantiality of the relationship between the former and current matters; (2) the time elapsed between the matters; (3) the size of the firm; (4) the number of individuals presumed to have confidential information; (5) the nature of their involvement in the former matter; (6) the timing and features of any measure taken to reduce the danger of disclosure; and (7) whether the old firm and new firm represent adverse parties in the

1 same proceeding rather than in different proceedings. *Id.* at 534, 522.

2 5. Further, the Nevada Supreme Court has set forth a non-exhaustive list of screening  
3 requirements, which are as follows:

4 (1) “The newly hired nonlawyer [employee] must be cautioned not to disclose any  
5 information relating to the representation of a client of the former employer.”

6 (2) “The nonlawyer [employee] must be instructed not to work on any matter on which  
7 [he or] she worked during the prior employment, or regarding which [he or] she has  
information relating to the former employer’s representation.”

8 (3) “The new firm should take ... reasonable steps to ensure that the nonlawyer  
9 [employee] does not work in connection with matters on which [he or] she worked  
10 during the prior employment, absent client consent [i.e. unconditional waiver] after  
consultation.”

11 *See Leibowitz v. Eighth Jud. Dist. Court*, 119 Nev. 523, 532 - 533 (Nev. 2003).

12 6. As articulated in *Leibowitz*, this Court is faced with the delicate task of balancing  
13 competing interests, including: (1) “the individual right to be represented by counsel of one’s  
14 choice,” (2) “each party’s right to be free from the risk of even inadvertent disclosure of  
15 confidential information,” (3) “the public’s interest in the scrupulous administration of justice,”  
16 and (4) “the prejudices that will inure to the parties as a result of the [district court's] decision.” *Id.*  
17 at 534, 522.

18 7. During the evidentiary hearing, no evidence was presented that Ms. Johnson has  
19 exchanged confidential information. There is no dispute that Ms. Johnson was privy to privileged  
20 information as a consequence of her previous employer, Breeden & Associates.

21 8. However, McBride Hall law firm has met its obligations and taken more than  
22 adequate steps to appropriately screen Ms. Johnson, such that disqualification is not warranted.

23 9. Ms. Johnson has been cautioned by McBride Hall not to disclose any information  
24 relating to the representation of her former’ employer, Breeden & Associates’ representation of  
25 Kimberly Taylor.

26 10. Ms. Johnson has been instructed by McBride Hall not to work on any matter on  
27 which she worked during her prior employment with Breeden & Associates, or regarding which  
28 Ms. Johnson has information relating to her former employer’s representation.

11. Based upon the documentation submitted and the testimony at the evidentiary hearing, this Court finds that McBride Hall has taken reasonable steps to ensure that paralegal Ms. Johnson does not work in connection with matters on which she worked during her prior employment with Breeden & Associates.

12. Balancing the competing interests and in light of this matter being substantially complete pending the appeal, this Court is satisfied that Ms. Johnson has been sufficiently screened from *Kimberly Taylor v. Keith Brill, M.D., et al.* (Case No. A-18-773472-C) and disqualification of McBride Hall is not warranted.

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Plaintiff's Motion to Disqualify the McBride Hall Law Firm on an Ex Parte Motion for Order Shortening Time is **DENIED**.

**IT IS SO ORDERED.**

\_\_\_\_\_  
Dated this 16th day of February, 2022

  
\_\_\_\_\_

**B0A 977 1EC6 A91F**  
**J. Charles Thompson**  
**District Court Judge**

Respectfully Submitted by:

DATED this 8<sup>th</sup> day of February, 2022.

McBRIDE HALL

/s/ Heather S. Hall

\_\_\_\_\_  
Heather S. Hall, Esq.  
Nevada Bar No. 10608  
8329 W. Sunset Road, Suite 260  
Las Vegas, Nevada 89113  
Attorneys for Defendants  
*Keith Brill, M.D., FACOG, FACS and*  
*Women's Health Associates of Southern*  
*Nevada – Martin, PLLC*

Approved as to Form and Content by:

DATED this 14<sup>th</sup> day of February 2022.

BREEDEN & ASSOCIATES, PLLC

/s/ Adam J. Breeden

\_\_\_\_\_  
Adam J. Breeden, Esq.  
Nevada Bar No.: 008768  
376 E. Warm Springs Road, Suite 120  
Las Vegas, Nevada 89119  
Attorneys for Plaintiff

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Kimberly Taylor, Plaintiff(s)

CASE NO: A-18-773472-C

7 vs.

DEPT. NO. Department 3

8 Keith Brill, M.D., Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Order Denying Motion was served via the court's electronic eFile  
13 system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 2/16/2022

15 Adam Breeden

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16 E-File Admin

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17 Heather Hall

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18 Jody Foote

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19 Jessica Pincombe

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20 Robert McBride

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21 Kristine Herpin

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22 John Cotton

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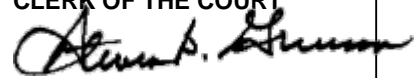
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**EXHIBIT 5**

**EXHIBIT 5**

**EXHIBIT 5**



1 **NOAS**  
2 **ADAM J. BREEDEN, ESQ.**  
3 Nevada Bar No. 008768  
4 **BREEDEN & ASSOCIATES, PLLC**  
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7 Phone: (702) 819-7770  
8 Fax: (702) 819-7771  
9 Adam@Breedendandassociates.com  
10 *Attorneys for Plaintiff*

11 **EIGHTH JUDICIAL DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 KIMBERLY TAYLOR, an individual,  
14 Plaintiff,

CASE NO.: A-18-773472-C

DEPT NO.: III

15 v.

16 KEITH BRILL, M.D., FACOG, FACS, an  
17 individual; WOMEN'S HEALTH  
18 ASSOCIATES OF SOUTHERN NEVADA –  
19 MARTIN, PLLC, a Nevada Professional  
20 Limited Liability Company,  
21 Defendants.

**NOTICE OF APPEAL**

22 Notice is hereby given that Plaintiff, KIMBERLY TAYLOR, hereby appeals to the Supreme  
23 Court of Nevada from the Order Denying Plaintiff's Motion to Disqualify the McBride Hall Law  
24 Firm entered in this case on February 16, 2022 with Notice of Entry being filed February 16, 2022.

25 DATED this 17th day of March, 2022.

26 **BREEDEN & ASSOCIATES, PLLC**

27   
28 **ADAM J. BREEDEN, ESQ.**

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adam@breedenandassociates.com  
*Attorneys for Plaintiff*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on the 17th day of March, 2022, I served a copy of the foregoing legal  
3 document **NOTICE OF APPEAL** via the method indicated below:

4

5 X	Pursuant to NRCP 5 and NEFCR 9, by electronically serving all counsel and e-mails registered to this matter on the Court's official service, Wiznet system.
6	Pursuant to NRCP 5, by placing a copy in the US mail, postage pre-paid to the following counsel of record or parties in proper person: 7 8 Robert McBride, Esq. Heather S. Hall, Esq. 9 McBRIDE HALL 8329 W. Sunset Road, Suite 260 10 Las Vegas, Nevada 89113 11 <i>Attorneys for Defendants Keith Brill, M.D. and Women's Health Associates</i>
12	Via receipt of copy (proof of service to follow)

13 An Attorney or Employee of the following firm:

14 /s/ Sarah Daniels

15 **BREEDEN & ASSOCIATES, PLLC**

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