

IN THE SUPREME COURT OF THE STATE OF NEVADA

FILED

FEB 09 2022

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

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

Case No. 82630

District Court Case No.
GR 18-00187

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

Appellant,

vs.

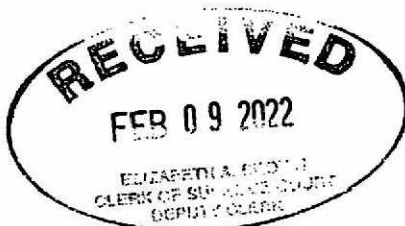
EDWARD FEIN; PEARL FEIN; RANDAL S.
KUCKENMEISTER; AND JP MORGAN
CHASE BANK, N.A.,

Respondents.

**RESPONDENT KUCKENMEISTER'S MOTION TO FILE ANSWERING
BRIEF AND PORTIONS OF RESPONDENT'S APPENDIX
UNDER SEAL**

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RANDAL S. KUCKENMEISTER, CPA
Guardian of the Estate of EDWARD FEIN



22-04389

Respondent Kuckenmeister, the court appointed Guardian of the Estate of Edward Fein, by and through his attorneys, ALLISON MacKENZIE, LTD., hereby moves the Court for an order sealing his Answering Brief in its entirety, as well as those items deemed to be confidential in the Respondents' Appendix filed concurrently herewith. Said request is made under the Nevada Rules of Sealing and Redacting Court Records ("SRCR"), relevant statutory authority, and any argument this Court may wish to entertain. Under SRCR 3(2), said documents are to remain confidential for a reasonable period until the court renders a decision.

I.

BACKGROUND

This matter involves an appeal filed by Dr. Alan S. Levin ("Dr. Levin") from an order in which the District Court denied Dr. Levin's "Motion for Order Appointing the State Guardianship Compliance Office to Complete Performance of Settlement Agreement Dated February 14, 2020" and granted Edward Fein's Motion for Sanctions. At the district court, and now before this Court on appeal, Dr. Levin argues that the terms of the Settlement Agreement require Respondent Kuckenmeister as successor Guardian to perform actions not required under the plain language of the Settlement Agreement itself. In raising such issues, the terms of the Settlement Agreement, the documents in Levin's Appendix, and those documents contained in Respondent's Appendix are at the heart of this appeal.

Although Dr. Levin initially attempted to file such documents under seal, Dr. Levin has now filed such matter for the public's viewing without otherwise attempting to remedy his mistakes before this Court. The same occurred before the district court, which, in part, warranted the Motion for Sanctions and ultimately the award of sanctions he now appeals. Although Dr. Levin's Opening Brief and the Appellant's Appendix are being requested to be sealed by Edward Fein by way of separate request, Respondent Kuckenmeister requests that his Answering Brief and those portions of Respondent's Appendix be filed under seal pursuant to SRCR 3(4)(e).

II.

LEGAL AUTHORITY AND ARGUMENT

Documents filed before the Supreme Court are presumed to be open to the public unless the court permits specific documents to be filed under seal upon a showing that such an action is required by law or an identified competing interest. See *Howard v. State*, 128 Nev. 736, 738, 291 P.3d 137, 138-39 (2012). In relevant part, SRCR 3(4) provides that the court may order the court files and records, or any part thereof, to be sealed or redacted, provided the court makes and enters written findings that the specific sealing or redaction is justified by identified compelling privacy or safety interests that outweigh the public interest in access to the court record. In determining the public interest in privacy or safety interests

that outweigh the public interest in open court records, the court is to consider numerous factors, including whether (a) sealing or redaction is permitted or required by law; (e) the sealing or redaction is of the confidential terms of a settlement agreement of the parties; or (h) the sealing or redaction is justified or required by another identified compelling circumstance. *Id.*

A. Respondent Kuckenmeister's Answering Brief should be sealed.

In responding to the allegations contained in Dr. Levin's Opening Brief, Kuckenmeister is required to disclose and discuss the terms of a Settlement Agreement that the parties agreed would be kept in strict confidence and that all parties would take all measures to protect and not disclose to third parties or the general public. The confidential Settlement Agreement followed a mandatory settlement conference before the district court and was reduced to writing on February 14, 2020. Pertinent to this instant request, all parties agreed that the Settlement Agreement and its terms would be kept in strict confidence. The same was confirmed by the district court on March 24, 2020 in its Order Granting the Joint Petition to Approve Settlement with Levin, former Guardian of the Estate of Edward Fein. Despite Levin's numerous violations of filing the Settlement Agreement for the public's pleasure before the district court and now before this Court, the Settlement Agreement and the documents discussing the Settlement Agreement should be sealed under its plain terms.

Although parties cannot agree for something to be sealed without justification, sealing by this Court is permitted and justified if doing so protects the confidential nature of a settlement agreement under SRCR 3(4)(e). In addition to SRCR 3(4)(e), Kuckenmeister asserts that no public hazard exists and that the requested sealing is the least restrictive means available to protect the interests of the parties. Without the terms of the Settlement Agreement remaining confidential as all parties to the Settlement Agreement intended, it would not be possible for Kuckenmeister to respond to Levin's allegations unless he too were to disclose the terms of the Settlement Agreement which are to be kept confidential. Similarly, the public's interest in the contents of the Settlement Agreement which are necessarily discussed in length in Respondent Kuckenmeister's Answering Brief is minimal compared to the harm that could be caused by its disclosure to the general public. As such, the entirety of Kuckenmeister's Answering Brief should be sealed as it necessarily involves discussion and reference to the terms of the Settlement Agreement which is confidential.

B. Numerous Portions of Respondent's Appendix should be sealed.

In addition to Kuckenmeister's Answering Brief, Kuckenmeister requests that those documents included in Respondent's Appendix which were sealed before the district court be sealed from public view in this Court as well. Although Dr. Levin filed an Appendix of his own, such Appendix did not include the

relevant information necessary for this Court to understand the parties' positions on appeal. As such, Respondent Kuckenmeister prepared the Respondent's Appendix and will file the same with this Court with his Answering Brief.

Of the documents contained in Respondent's Appendix, Kuckenmeister requests that the following documents be sealed from public viewing:

1. Exhibits 5, 9 and 12 to that Petition for Removal of Guardian of the Estate of Edward Fein, Respondent's Appendix ("RA) Vol. 1 at 042 – 043, RA Vol. 1 at 058 – 059 and RA Vol. 1 at 098 - 100. These exhibits were ordered to be sealed by the district court on August 1, 2019. A copy of such order is attached hereto as EXHIBIT 1. Said exhibits were sealed before the district under NRS 49.095, that Common Interested Agreement wherein the parties agreed to share with other parties confidential and privileged information and materials that were not to be disclosed to third parties during the settlement agreement itself, and because disclosure would cause prejudice to a significantly greater degree than any potential prejudice to the public in being sealed.

2. Settlement Agreement and Mutual General Release, RA Vol 1 at 114 - 122. The same was ordered to be sealed by the district court on March 9, 2020. A copy of such order is attached hereto as EXHIBIT 2. Said document, by its terms, requires its terms to remain confidential and should be kept confidential under SRCR 3(4)(e) as the parties intended.

3. Motion for Temporary Restraining Order and to Set Hearing Re: Preliminary Injunction, RA Vol. 2 at 123 - 247. Said Motion was ordered to be sealed by the district court on March 9, 2020. A copy of such order is attached hereto as EXHIBIT 3. Said matter was sealed before the district court because the Motion and its exhibits revealed confidential terms of the Settlement Agreement.

4. Opposition to Motion for Order Appointing State Guardianship Compliance Office, RA Vol. 3 at 266 - RA 272. Said Opposition was ordered to be sealed by the district court on July 9, 2020. A true and correct copy of such order is attached hereto as EXHIBIT 4. Said Opposition was sealed before the district court as its contents referenced and relied on interpretation of that confidential Settlement Agreement.

5. Opposition to Motion for Sanctions, RA Vol. 3 at 275 - 394. Said Opposition was ordered to be sealed by the district court on August 17, 2020 in open Court. Said Opposition was ordered sealed as its contents referenced and relied up the terms of the confidential Settlement Agreement.

6. Reply in Support of Motion for Sanctions, RA Vol. 3 at 395 - 405. Said Reply was ordered to be sealed by the district court on July 29, 2020. A copy of such order is attached hereto as EXHIBIT 5. Said matter was sealed before the district court as its contents relied upon reference to the confidential Settlement Agreement.

Each of the foregoing documents, or portions thereof, of the Respondent's Appendix have previously been ordered to be sealed by the district court on the dates and in the manner set forth herein. Kuckenmeister asserts that such documents are relevant to this Court in deciding Dr. Levin's issues and arguments on appeal, as all such documents or portions thereof rely upon terms of the Settlement Agreement. In delineating those exhibits and pages of Respondent's Appendix to be sealed, said request is the least restrictive means available to protect the interests of the parties while still providing the public access to the remaining, non-protected information contained in the Respondent's Appendix. Similar to Kuckenmeister's Answering Brief, the documents do not conceal a public hazard and the public's interest in viewing such documents is minimal when compared to the harm which would be caused if such information were made public.

III.

CONCLUSION

Upon the foregoing, Kuckenmeister requests that the Court enter an order sealing his Answering Brief from the record, in addition to those exhibits of the Respondent's Appendix delineated herein.

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DATED this 9th day of February, 2022.

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By: /s/ Kyle A. Winter

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Attorneys for Respondent,

RANDAL S. KUCKENMEISTER,

CPA, Guardian of the Estate

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(1)(c), I hereby certify that I am an employee of ALLISON MacKENZIE, LTD., Attorneys at Law, and that on this date, I caused the foregoing document to be served on all parties to this action as follows:

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DATED this 9th day of February, 2022.

/s/ Christine Harper
CHRISTINE HARPER

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