

Case No. 85590

Supreme Court of Nevada

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Elizabeth A. Brown
Clerk of Supreme Court

Elvin Fred,

Petitioner,

vs.

First Judicial District Court of
Nevada, in and for the County of
Carson City and the Honorable
Judge James Wilson

Respondent,

State of Nevada *ex rel.*
Investigation Division of the
Department of Public Safety of the
State of Nevada (Tri-Net Narcotics
Task Force),

Real Party in Interest.

**Motion for Leave to File
Amicus Curiae Brief**

COMES NOW, Amicus Curiae, Nevada Attorneys for Criminal
Justice (NACJ), by and through undersigned counsel of record, and
hereby file this motion for leave to file a Brief of Amicus Curiae, in
support of Petitioner Elvin Fred and urging this Court to grant Mr.

Fred's Petition for Writ of Prohibition and Writ of Mandamus. This motion is based upon the following Points and Authorities, Declaration of Counsel, and all pleadings and papers on file herein in.

Dated this 9th Day of November, 2022

Respectfully submitted,

/s/ *Randolph M. Fiedler*
Randolph M. Fiedler, Esq.
Chair of Amicus
Nevada Attorneys for Criminal Justice

Points and Authorities

Amicus Curiae, Nevada Attorneys for Criminal Justice (NACJ), hereby requests leave to appear and submit a brief as amicus curiae in this matter. *See* NRAP 29(a). Attorneys for Elvin Fred consent to this request. Attorneys for Respondents were informed about the amicus brief, indicated they lacked authorization from their client to consent in advance to the filing of NACJ's proposed amicus brief. *See* Declaration of Counsel (Attached). The proposed brief of amicus curiae is timely and submitted along with this motion. *See* NRAP 29(f).

I. Interests of Amicus Curiae

Mr. Fred has filed a Petition for Writ of Prohibition and Writ of Mandamus seeking to vindicate numerous rights of criminal procedure under the Nevada Constitution's prohibition against double jeopardy. Specifically, Mr. Fred asserts that Respondents' civil forfeiture action has placed Mr. Fred twice in jeopardy, and thus violates his rights.

Nevada Attorneys for Criminal Justice is a Nevada domestic non-profit organization comprised of approximately 250 criminal defense attorneys who practice in both the public and private sectors of Nevada. NACJ Members represent defendants in criminal cases at all stages of

litigation, often including civil forfeiture proceedings. NACJ has a material interest in the outcome of this litigation because nearly all of the clients that NACJ's members represent in court face the prospect of civil forfeiture proceedings; these proceedings materially affect their civil rights, however these proceedings also occur without the protection of the right to counsel under the Sixth Amendment of the U.S. Constitution or under the Section 8 of Article 1 of the Nevada Constitution. *See e.g., United States v. \$292,888.04 in U.S. Currency*, 54 F.3d 564, 569 (9th Cir. 1995).

II. Desirability of Amici Curiae Participation

As described above, Mr. Fred asks this Court to find that the Nevada Constitution's double jeopardy clause prohibits these civil forfeiture proceedings because the second proceedings are punitive in nature, and the State of Nevada has already subjected Mr. Fred to criminal sanction.

Participation of NACJ as amicus curiae is proper because NACJ has a degree of experience and expertise on these matters. NACJ's members include members of the private defense bar who represent

clients in civil forfeiture matters. Additionally, members of NACJ have provided legislative testimony with regard to civil forfeiture reform.¹

Additionally, the amicus brief submitted to this Court provides a unique and comprehensive perspective on how this Court’s decision will affect the criminal justice system more broadly. Specifically, this brief offers historical perspective on the origins of civil forfeiture in American law, information about how law enforcement agencies use civil forfeiture for profit at the expense of indigent defendants, and how the interaction between civil and criminal proceedings should be reconciled.

The issue presented in this case is of general public interest and amicus curiae NACJ has an interest in the outcome because of the large number of individuals that NACJ’s members represent who could potentially face successive criminal/civil-forfeiture proceedings. The “classic role of amicus curiae” is to assist in a case of “general public interest, supplementing the effort of counsel, and drawing attention to law that escaped consideration.” *Miller-Wohl Co. v. Com’n of Labor and Industry*, 694 F.2d 203, 204 (9th Cir. 1992). An amicus brief should be

¹ See Minutes, Assemb. Comm. on Judiciary, Page 6–7 (Nev. 81st Session Apr. 5, 2021).

allowed “when the amicus has an interest in some other case that may be affected by the decision in the present case . . . or when the amicus has unique information or perspective that can help the court beyond the role that the lawyers for the parties are able to provide. *Ryan v. Commodity Futures Trading Com’n*, 125 F.3d 1062, 1063 (7th Cir. 1997) (Posner, J., in chambers) (citations omitted).

The brief meets these purposes: the issues will have an impact on any criminal conviction where civil assets could be forfeited and NACJ is in a unique position because of the large number of individuals NACJ’s member represent and because of NACJ’s prior experience providing information to the legislature about civil asset forfeiture.

III. Conclusion

For the reasons stated above, Amicus Curiae NACJ requests leave to file the attached amicus brief in support of petitioner.

Dated this 9th day of November, 2022.

Respectfully submitted,

/s/ Randolph M. Fiedler
Randolph M. Fiedler, Esq.
Chair of Amicus
Nevada Attorneys for Criminal Justice

Declaration of Counsel

1. My name is Randolph M. Fiedler, I am an attorney, barred to practice before this Court. I am counsel for amicus curiae Nevada Attorneys for Criminal Justice.

2. I have conferred with counsel for Petitioner Elvin Fred, John Fortin, via email and he consents to the filing of this amicus brief.

3. On November 3, 2022, Mr. Fortin cc'd me on an email asking counsel for Respondents, Jason Woodbury and Benjamin Johnson if they consented to the filing of this amicus brief. On November 8, 2022, Mr. Fortin sent a follow-up to Mr. Woodbury and Mr. Johnson, again cc'ing me, and again asking if Respondents would consent to the filing of this amicus brief. Mr. Woodbury responded that he did not have authorization from his client to provide consent in advance.

I declare under penalty of perjury that the factual representations set forth in the foregoing declaration are true and correct.

Dated this 9th day of November, 2022.

/s/ Randolph M. Fiedler
Randolph M. Fiedler, Esq.
Chair of Amicus
Nevada Attorneys for Criminal Justice

CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2022, I electronically filed the foregoing document with the Nevada Supreme Court by using the appellate electronic filing system. The following participants in the case will be served by the electronic filing system:

The Honorable Judge James Wilson
First Judicial District Court
Department 2
885 East Musser Street
Carson City, Nevada 89701
Respondent

Jason D. Woodbury, Esq.
Ben R. Johnson, Esq.
Carson City District Attorney
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Attorneys for Real Party in Interest

Aaron Ford
Nevada Attorney General
100 North Carson Street
Carson City, Nevada 89701

/s/ Kaitlyn O'Hearn
An Employee of the
Federal Public Defender