IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS SANDS CORP., a Nevada corporation; SANDS CHINA LTD., a Cayman Islands corporation; SHELDON G. ADELSON, in his individual and representative capacity; VENETIAN MACAU, LTD., a Macau corporation, DOES I-X; and ROE CORPORATIONS I-X,

Petitioners,

vs.

CLARK COUNTY DISTRICT COURT, THE HONORABLE DAVID BARKER, DISTRICT JUDGE, DEPT. 18,

Respondents,

and

STEVEN C. JACOBS,

Real Party in Interest.

Electronically Filed
Feb 23 2016 09:28 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

Case Number:

District Court Case Number
A627691-B

APPENDIX TO PETITION FOR WRIT OF PROHIBITION OR MANDAMUS RE ORDERS DENYING MOTION TO DISQUALIFY JUDGE ELIZABETH GONZALEZ WITHOUT A HEARING

VOLUME X of XIII
(PA2205-2447)

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of MORRIS LAW GROUP; that, in accordance therewith, I caused a copy of the **APPENDIX TO PETITION FOR WRIT OF PROHIBITION OR MANDAMUS RE ORDERS DENYING MOTION TO DISQUALIFY JUDGE ELIZABETH GONZALEZ WITHOUT A HEARING – VOLUME X OF XIII (PA2205-2447)** to be served as indicated below, on the date and to the addressee(s) shown below:

VIA HAND DELIVERY (CD)
Chief Judge David Barker
Eighth Judicial District Court of
Clark County, Nevada
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155

Respondent

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Attorneys for Steven C. Jacobs, Real Party in Interest

DATED this 22nd day of February, 2016.

By: /s/ Fiona Ingalls

APPENDIX TO PETITION FOR WRIT OF PROHIBITION OR MANDAMUS RE ORDERS DENYING MOTION TO DISQUALIFY JUDGE ELIZABETH GONZALEZ WITHOUT A HEARING

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Attorneys for Non-Party
Patrick Dumont

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS, Plaintiff, vs. LAS VEGAS SANDS CORP., a Nevada Corporation; SANDS CHINA, LTD., a Cayman Islands Corporation; SHELDON G. ADELSON, in his individual and representative capacity; DOE individuals I-X; ROE Corporations I-X, Defendants.	Case No.: A-10-627691-B Dept. No.: XI **ERRATA TO NON PARTY DUMONT'S MOTION FOR TRANSFER OF ISSUE**
AND ALL RELATED MATTERS	

Non Party Patrick Dumont, by and through his undersigned counsel, hereby submits this Errata to his Motion for Transfer of Issue, filed herein on January 13, 2016.

Exhibit G, attached hereto, was inadvertently not attached to Non Party Patrick Dumont's Motion for Transfer of Issue when it was electronically filed on January 12, 2016.

///

Accordingly, Exhibit G should be considered part of Non Party Patrick Dumont's Motion for Transfer of Issue.

DATED: January 14, 2016

DUANE MORRIS LLP

By: */s/ Dominica C. Anderson*
Dominica C. Anderson (SBN 2988)
Daniel B. Heidtke (SBN 12975)

Hersh Kozlov (*Admitted Pro Hac Vice*)
Paul P. Josephson (*Admitted Pro Hac Vice*)

Attorneys for Non-Party
Patrick Dumont

CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2016 a true and correct copy of **ERRATA TO NON PARTY DUMONT'S MOTION FOR TRANSFER OF ISSUE** was served by electronic filing via the Wiznet Electronic Service system with the Clerk of the Court, and serving the following parties with an email address on record at that time, pursuant to Administrative Order 14-2 and Rule 9 of the Nevada Electronic Filing and Conversion Rules:

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/s/ Jana Dailey
Jana Dailey, an employee of Duane Morris LLP

EXHIBIT "G"

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

STEVEN JACOBS Plaintiff vs. LAS VEGAS SANDS CORP., et al. Defendants	CASE NO. A-627691 DEPT. NO. XI **Transcript of Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON DEFENDANTS' MOTION FOR PROTECTIVE ORDER AND SCHEDULING CONFERENCE

THURSDAY, DECEMBER 24, 2015

APPEARANCES:

FOR THE PLAINTIFF:	JAMES J. PISANELLI, ESQ. TODD BICE, ESQ.
FOR THE DEFENDANTS:	J. STEPHEN PEEK, ESQ. JON RANDALL JONES, ESQ. STEVE L. MORRIS, ESQ.
COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS District Court	FLORENCE HOYT Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

this Court issues with respect to scope of each of these depositions.

THE COURT: I'm not going to stop you from filing any motions.

So here's the question. Of the witnesses who are scheduled for the first week of December [sic] are there any of them who can go?

MR. RANDALL JONES: You mean January, Your Honor.

THE COURT: That's what I meant, the first week of January. Sorry. Are there any of them who can go?

MR. PEEK: I think there is time, Your Honor, to prepare for at least some of -- some of -- well, I know that Mr. Dumont is out of the country until the 2nd of January, which means he's not available to me and others until the 4th of January. I don't know -- I believe Mr. Solomon I think is here. Potentially Mr. Solomon. And again, I need to -- I'm just talking here, I'm not committing. And I need to talk to both Steve and Randall, but potentially Mr. Solomon could go sometime -- and I don't have to be at that settlement conference. I think it's important that I be there, but I don't have to be there, because Ms. Akridge will be there. I think he's scheduled already for the 11th. I don't know about Mr. Dumont, because I know, as we said in our papers, that he is very active with the company to close out the end of the year, whether he can go that week. But I think Mr. Solomon

could probably go.

THE COURT: I read in the paper he was busy on other things.

MR. PEEK: That's what I said, Your Honor. He's busy on other things. Well, I understand that, you know, Counsel thinks that this is funny. We don't think this is funny.

THE COURT: Well, but what I'm trying to tell you is being busy on other business ventures doesn't mean to get to say, I'm not showing up for a depo.

MR. PEEK: No, I get that, Your Honor. And I'm familiar with that concept. I'm putting it out there in terms of trying to be able to meet due process here and get people adequately prepared and have the opportunity, fair opportunity to present them.

THE COURT: So let me tell you what I heard from you, because I learned a long time ago that sometimes communication doesn't go as well as others. So if I can tell you what I think I heard, and if I'm wrong, tell me.

None of the four depos can go the first week in January.

MR. PEEK: I didn't say that. I said I thought Mr. Solomon might possibly be able to go.

THE COURT: Mr. Solomon isn't one of the depos noticed, is he?

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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN JACOBS, Plaintiff(s), vs LAS VEGAS SANDS CORP, ET AL, Defendants.	**Case No.** 10 A 627691 **Dept. No.** XI Hearing Date: 02/18/16 (Barker)

DECLARATION OF ELIZABETH G. GONZALEZ

I, Elizabeth G. Gonzalez, declare as follows:

1. Your declarant is Elizabeth Gonzalez, District Court Judge, Department XI of the Eighth Judicial District Court, and has personal knowledge of all matters stated herein; and is competent to testify to the matters set forth herein.

2. I am aware of Las Vegas Sands Corp.'s ("LVSC") Motion for Disqualification (the "Motion") that was filed in the case entitled Steven C. Jacobs v. Las Vegas Sands Corp., et al., case number A627691, and seeks to disqualify me from hearing the case alleging my lack of impartiality and bias toward LVSC.

3. I am careful about documenting the record in my cases and have a high level of concern ("paranoia") about the digital audio video recording system being on and documents referred to during hearings being marked as court exhibits.

4. The Jacobs case was randomly assigned to me on December 29, 2010 following the filing of a request to transfer to business court.

5. My practice in business court cases is to handle all discovery disputes rather than having a discovery commissioner or special master handle those disputes.

6. In this case, after continuances requested by counsel, a Rule 16 conference was held on April 22, 2011 and discovery was opened.

7. Numerous discovery disputes have occurred in this matter during the jurisdictional phase of this case and now in the merits discovery phase.

8. I am aware of news coverage related to a Las Vegas Review Journal ("RJ") reporter attending each session of my court proceedings during mid-November 2015.

9. While it is not unusual for media to be present in my courtroom covering cases, the cases on calendar during that period did not appear to be the type usually the subject of media coverage. Upon inquiry, I was informed that direction had been made to watch my proceedings as well as those of other judges. I invited the reporter to attend our civil judges meeting held that week to provide him an additional sense of the regular activities of judges. He was kind enough to join us. I hoped the pro bono issues discussed at the meeting were something that would garner some media coverage to assist those in need.

10. I do not believe there was anything unusual in the attendance of this or any other reporter in my courtroom as it is open to the public and everything that transpires is recorded on a digital audio video recording system.

11. In mid-December 2015, I saw an article in the RJ that the Adelson family and Mr. Dumont had been involved in the purchase of the RJ.

12. I have responded to two media contacts about my position on media in my courtroom -- one from the RJ and one from Time.

13. On or about December 18, 2015, I was contacted by a reporter named James DeHaven from the RJ regarding the presence of reporters in my courtroom. Since this did not deal with a case specific issue, I returned his call and told him I could not discuss any litigant or case. I responded to his questions about the particular observation in November 2015, the public nature of proceedings and the long history of reporters from the RJ being present in my courtroom, including Tim O'Reiley while the City Center case was pending. During the telephonic interview, my judicial executive assistant, Dan Kutinac, and my law clerk, Laura Rose, were present. When Mr. DeHaven asked questions about Mr. Adelson, I advised him I could not answer and discontinued the interview.

14. The article, which appeared in the RJ on December 18, 2015 correctly reflects that I did not discuss a particular litigant or case but only the participation of the media in my courtroom. Exhibit A.

15. On January 6, 2016, I received a request from Josh Sanburn from Time for information on my background.

16. Since this did not deal with a case specific issue, I returned his call, told him I could not discuss any litigant or case, and answered his questions about my background, my view of the public nature of proceedings and the long history of reporters from the RJ being present in my courtroom. During the telephonic interview, my judicial executive assistant, Dan Kutinac, the court public information officer, Mary Ann Price, and court staff counsel, Andres Moses, were present. When Mr. Sanburn asked questions about Mr. Adelson, I advised him I could not answer and discontinued the interview.

17. The article which appeared in an on line version of Time on January 7, 2016, correctly reflects that I did not discuss a particular litigant or case but only my background and the participation of the media in my courtroom. Exhibit B.

18. Although I am generally aware of the local media coverage, I have not seen most of the articles referenced in the LVSC Motion nor have I read the articles ostensibly authored by Mr. Clarkin in the Connecticut papers that apparently relate to this coverage.

19. As a defamation claim is at issue in this case, discovery related to media contacts by the litigants and their representatives has been ongoing. Most recently, on January 5, 2016, Mr. Adelson sought to compel Mr. Jacobs response to Interrogatory No. 11 related to media contacts. This request was granted.

20. After receiving the email from Mr. Jacob's counsel through my law clerk on the evening of January 11, 2016, I reviewed those portions of the deposition of Mr. Dumont beginning at about page 110 in preparation for the issue being raised by counsel at the status conference scheduled for the next morning at 8:00 a.m. Exhibit C.[1]

21. During the hearing on January 12, 2016, I addressed the contents of the January 11, 2016, email with counsel. At no time did counsel request that the transcript be treated as confidential. When I marked the transcript as Court Exhibit 2 at the conclusion of my motion calendar, my law clerk reviewed the transcript and sealed those pages that contained arguably personal information. Those pages are sealed as Court Exhibit 3.

22. For discovery purposes, there is a distinction between statements made by a witness or litigant related to a party or an issue to third parties *and* statements made by a witness or litigant criticizing the court or the judicial process made to third parties. As Mr. Bice has

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[1] The exhibit attached does not include the attachment.

asked both types of questions at the Dumont deposition, those issues will need to be addressed if he chooses to pursue those questions.

23. In anticipation of further disputes on this subject in the Dumont deposition, I have set a different process for resolution of issues that are discovery disputes where a question involves the litigation as opposed to Jacobs or another potential witness. This separate resolution process was structured because although I feel that I am unbiased in resolving discovery disputes on the questions posed to Mr. Dumont related to his communications with third parties about the litigation, I recognize that others may have a differing opinion.

24. Since neither Commissioner Bulla nor Judge Togliatti were present for the 8:00 a.m. January 12, 2016 status conference, I sent an email to Commissioner Bulla with a copy to Judge Togliatti outlining the structure for the resolution of the limited issue related to Mr. Dumont's deposition that I had established during the hearing. The text of the email states:

> This morning after meeting with counsel and dealing with an improper instruction not to answer by out of state counsel, I referred issues related to questions during the deposition on the narrow subject of:
>
> Dumont's communication with third parties (including the media) about the litigation.
>
> If they can't get a hold of you or disagree with you, Judge Togliatti has agreed to be back up.
>
> I will continue to deal with issues on all other areas including Dumont's communication with third parties (including the media) about Jacobs and other witnesses (Including DOJ and SEC).

This email was marked as Court Exhibit 1 and forwarded by my law clerk to counsel.

25. On June 12, 2015, I issued a trial setting order in this matter. Given my experience in jury selection in the City Center case, I added provisions for a jury questionnaire as a result of the historic media coverage and parties in this case.

26. During the January 5, 2016 hearing on this matter, I mentioned to counsel that given the recent press coverage in the RJ we were going to need to utilize a questionnaire. Unfortunately, my experience in jury selection during City Center leads me to believe that this may create challenges for the schedule I have attempted to establish with counsel related to completion of discovery, pretrial motions, venue, and the commencement of the scheduled jury trial.

27. I do not have a bias toward or prejudice against LVSC or any of its officers, directors, or employees.

28. I have been and will continue to be fair and impartial toward all parties in this case.

29. I have not discussed any part of the subject case with any representatives of the media.

30. I have not discussed any of the litigants or attorneys in this case with any representatives of the media.

31. Other than to the extent it will make it difficult to select a fair and impartial jury in Clark County, I do not have a direct, certain or immediate interest in media coverage of this lawsuit or the issues related to the acquisition of the RJ by the Adelson family.

32. Any rulings I have made in A627691 have been the result of critical legal and factual analysis based upon extensive evidentiary proceedings, motion practice, and the written and oral comments of counsel, and not the result of partiality or personal bias in favor of any party.

. . .

. . .

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

Dated this 15th day of January 2016.

ELIZABETH G. GONZALEZ

Certificate of Service

I hereby certify, that on the date filed, this Order was served on the parties identified on Wiznet's e-service list.

J. Stephen Peek, Esq. (Holland & Hart)

Randall Jones (Kemp Jones Coulthard)

Steve Morris (Morris Law)

Todd Bice (Pisanelli Bice)

Dominica Anderson (Duane Morris)

Dan Kutinac

EXHIBIT A

reviewjournal.com
http://www.reviewjournal.com/news/las-vegas/judge-adelson-lawsuit-subject-unusual-scrutiny-amid-review-journal-sale

Judge in Adelson lawsuit subject to unusual scrutiny amid Review-Journal sale

By James DeHaven, Jennifer Robison and Eric Hartley © 2015 Las Vegas Review-Journal December 18, 2015 - 1:01pm

Just over a month before Sheldon Adelson's family was revealed as the new owner of the Las Vegas Review-Journal, three reporters at the newspaper received an unusual assignment passed down from the newspaper's corporate management: Drop everything and spend two weeks monitoring all activity of three Clark County judges.

The reason for the assignment and its unprecedented nature was never explained.

One of the three judges observed was District Judge Elizabeth Gonzalez, whose current caseload includes Jacobs v. Sands, a long-running wrongful termination lawsuit filed against Adelson and his company, Las Vegas Sands Corp., by Steven Jacobs, who ran Sands' operations in Macau.

The case has attracted global media attention because of Jacobs' contention in court filings that he was fired for trying to break the company's links to Chinese organized crime triads, and allegations that Adelson turned a blind eye to prostitution and other illegal activities in his resorts there.

In May the billionaire and the judge clashed when Adelson took the witness stand but refused to answer a routine question.

"Sir, you need to answer the question," Gonzalez told him.

When Adelson argued, Gonzalez told him, "Sir, you don't get to argue with me. You understand that?"

It was not the first contentious exchange between Adelson's team and the judge. Gonzalez fined Sands and its Chinese subsidiary $25,000 in 2012 after finding their attorneys had tried to deceive the court, and this year she fined Sands China $250,000 for withholding documents.

Last year, attorney Michael D. Davidson told the Review-Journal an Adelson representative offered to "significantly and financially" support a campaign to unseat Gonzalez. An Adelson spokesman declined comment at the time. Davidson said he declined the offer.

How the judges, and Gonzalez in particular, came under scrutiny this year just as GateHouse Media was quietly finalizing the newspaper's sale and an ongoing management contract with Adelson's family remains unclear.

None of the 15,000 words the reporters wrote about their time sitting in courtrooms was ever published by the Review-Journal, but days later a long article blasting Gonzalez's rulings in the Sands case appeared in a small Connecticut newspaper with a connection to Adelson that became known only last week.

Unusual demands

The monitoring effort began in Las Vegas on Nov. 6 with a call from a top GateHouse Media executive to Review-Journal Publisher Jason Taylor.

Taylor and other Review-Journal executives have said GateHouse did not specify Gonzalez as one of the three judges. She was selected at the RJ — though not within the newsroom — because she specializes in business lawsuits and is handling unrelated high-profile cases involving Adelson and fellow casino mogul Steve Wynn.

Family Court Judge Mathew Harter and Las Vegas Justice of the Peace Joseph Sciscento were selected by the reporters assigned to the effort.

An internal memo outlining the court initiative notes that each reporter was to "observe how engaged the judge is in the case, whether they're prepared or not, if they favor one lawyer over another, whether they're over- or under-worked — even whether they show up for work on time, or not."

The memo, authored by Review-Journal Deputy Editor James G. Wright, notes the initiative was undertaken without explanation from GateHouse and over the objection of the newspaper's management, and there was no expectation that anything would be published.

"We've simply been told we must do it, and it must start on Tuesday," Wright wrote.

Diaries kept by the reporters were submitted in mid-November to Taylor and the newspaper's attorney. Taylor said the diaries were never sent to GateHouse headquarters, nor did GateHouse corporate officials ever ask for them.

"When the request was handed down, it seemed like little more than a waste of time and resources," Review-Journal Editor Michael Hengel said. "I still think it was a waste of time, but now I wonder what really was behind it."

Review-Journal editors learned only Friday, after a version of this article was published online, that GateHouse management had attempted to get reporters from a Florida newspaper to investigate Las Vegas judges before forcing the assignment on the RJ.

Bill Church, executive editor of the GateHouse-owned Sarasota Herald-Tribune, said he received a call in early November about "a potentially big story regarding the court system and potential ethics violations."

The call was from David Arkin, GateHouse's vice president of content and audience. Church said that the call was brief and that Arkin did not name any specific judges, but did say the possible story involved campaign finances and how judges were ruling on certain cases.

After talking to his staff, Church told Arkin they could not immediately help.

"Given what I knew at the time, I said no, we just didn't have the resources, and there were too many questions that still needed to get resolved," Church said.

One major concern, Church said, was why the Sarasota newspaper would be asked to help when GateHouse also owned the Review-Journal, a larger newspaper in Las Vegas. Church said he would not have allowed his reporters to work on a Las Vegas story without Hengel's blessing.

Church said Arkin never called him about the matter again. He said he was "stunned" when he read an online version of this article on Friday, but did not know what to conclude.

Hengel said Friday that he knew nothing of GateHouse Media's attempt to involve the Florida newspaper.

"I've never talked to Arkin or anyone else outside of this newspaper regarding this project," Hengel said. "And the fact these discussions were going on with the Florida paper about Las Vegas without anyone in the newsroom having any knowledge of it is, to me, very troubling."

Reached by telephone Friday, Arkin said he was getting on a plane and would have to call back. Hours later, Arkin emailed a prepared statement defending the company's request for the Sarasota paper's help as well as GateHouse Media's newsroom ethics to Hengel, Wright and reporter Eric Hartley.

GateHouse was "engaged to tackle an investigative story in Las Vegas with no knowledge of the prospective new buyer. Because Las Vegas was relatively new to the company, we decided to approach our newsroom in Sarasota, Florida, a team that is known for tackling big investigative journalism," the statement reads in part.

"On the face of the situation, we had what appeared to be a great story we were capable of investigating, and I wanted our team to show its talent. From my point of view, it was nothing more."

Unusual connections

On Nov. 30, the New Britain Herald, a tiny Connecticut newspaper not affiliated with GateHouse, published an article critical of the performance of courts that specialize in business disputes. It singled out Judge Gonzalez with scathing criticism of her "inconsistent and even contradictory" handling of the Adelson case and another lawsuit involving Wynn Resorts Ltd.

The article suggests Gonzalez's rulings in those cases were unfair, and her work "undermines the rationale for the creation of such (business) courts in the first place — which was to provide reliable consistency, even predictability in the resolution of frequently recurring issues."

The article also says 24 percent of Nevada lawyers rated Gonzalez as "less than adequate" in the Review-Journal's regular "Judging the Judges" survey, but incorrectly presents that as an overall rating, rather than a ranking on one category regarding bias toward lawyers or litigants appearing before her.

The Adelson and Wynn cases were the only specific examples cited at length in the story. Two other judges were mentioned, but the critique of Gonzalez's courtroom proceedings consumed more than a quarter of the 1,900-word article.

The article's author was identified as Edward Clarkin, whose byline is found only one other time in the archives of the Connecticut newspaper, on a review of a Polish restaurant.

Attempts to locate Clarkin have been unsuccessful. Herald executives did not respond to requests for information, but a newspaper staffer said no one by that name works there. A nationwide search turned up no writer by that name, though laudatory reviews from Edward Clarkin, identified as being from the New Britain Herald and a sister paper, the Bristol Press, appear on the website of Tennessee mystery writer Keith Donnelly.

Donnelly did not respond to multiple requests for comment.

On Dec. 10, GateHouse announced the sale of the Review-Journal to News + Media LLC, a company organized in Delaware in September. At an RJ staff meeting, Michael Schroeder was introduced as the manager of the company, and said he would not identify its owners.

Schroeder owns Central Connecticut Communications, which operates the New Britain Herald and three other papers.

Reached at his Connecticut newspaper office Friday, Schroeder declined to say how the article came about or discuss Clarkin's role at the papers.

"I'm not going to talk about our newsgathering," he said, later adding, "I don't talk about our reporters, either — or our freelancers or anyone else."

Asked how a Review-Journal reporter might be able to reach Clarkin, Schroeder replied: "I have no idea."

When contacted for comment Thursday, Gonzalez said only that she didn't mind reporters or anyone else sitting in her courtroom, which is open to the public, but declined to comment further because the issue involves pending cases.

A District Court official who declined to be identified for fear of retribution suggested the issue may be of interest to federal authorities.

"I almost think your question is a federal question because ... when there's a question at a District Court that could involve a conflict, that's not a question we can investigate," the official said. "It seems to me you might want to talk to the (Justice Department) or someone else."

Linkage unclear

Whether there was a link between the GateHouse-ordered court monitoring assignment, the critical article in New Britain and the sale of the RJ to the Adelson family remains unclear.

Michael Reed, CEO of New Media Investment Corp., the parent company of GateHouse Media, declined to comment when asked whether Adelson was involved in the court monitoring directive. He said the effort was part of a "multistate, multinewsroom" investigative effort initiated by GateHouse, but said he did not know who started it or how it was approved.

"I don't know why you're trying to create a story where there isn't one," Reed told an RJ reporter on Wednesday. "I would be focusing on the positive, not the negative."

In a later interview with The Associated Press, Reed rejected the notion that the Review-Journal's integrity had been challenged by the secrecy surrounding its sale. He said the public didn't care about the buyer and that reporters pushed the story with the intention of creating controversy.

"I just wish reporters had better hearts and better intentions than just trying to slam media companies trying to do good," he said.

Taylor has said he has been assured by the Adelsons that they won't meddle in the editorial content of the newspaper.

In an interview with Reuters in Macau on Friday ahead of the formal opening of his new St. Regis hotel, Adelson said his family bought the RJ as a financial investment, dismissing speculation the deal was aimed at controlling media in the United States.

"The Review-Journal is already on my side of the political spectrum," Adelson said of the paper's Libertarian-leaning opinion pages.

"This newspaper has been making money... we left the (everyday) operation in the hands of the owner from who we bought it," Adelson said. "We are not going to hire an editor, we left it up to them (current management), period. We may take some of the positive characteristics of our Israeli newspaper and add them to there, but that's all just suggestions."

Las Vegas Review-Journal reporter Howard Stutz and Database Editor Adelaide Chen contributed to this report. Contact James DeHaven at jdehaven@reviewjournal.com or 702-477-3839. Find him on Twitter: @JamesDeHaven. Contact Jennifer Robison at jrobison@reviewjournal.com or 702-380-4512. Find her on Twitter: @J_Robison1. Contact Eric Hartley at ehartley@reviewjournal.com or 702-550-9229. Find him on Twitter: @ethartley.

EXHIBIT B

Meet the Judge at the Center of Sheldon Adelson's Strange Deal to Buy a Newspaper

SHARE

David Becker—Getty ImagesJudge Elizabeth Gonzalez presides during a court hearing at the Clark County Regional Justice Center on Aug. 1, 2012 in Las Vegas, Nevada.

Elizabeth Gonzalez has emerged as a key figure in the casino magnate's surprising purchase

<img src="https://timedotcom.files.wordpress.com/2015/12/sheldon-adelson.jpeg?quality=75&strip=color&w=560&h=374&crop=1" alt="Sheldon Adelson" title="Sheldon Adelson, chairman and chief executive officer of the Las Vegas Sands Corporation, attends the forum featuring Nobel Peace laureate Elie Wiesel and Sen. Ted Cruz on guarding against a nuclear Iran on Monday, March 2, 2015, in the Dirksen Senate Office Building.">

MORE

Report: Sheldon Adelson Was Indeed Mystery Buyer of Las Vegas Newspaper

Republican Governors Vie for Adelson Support

Correction appended: Jan. 7, 2016

Nevada District Judge Elizabeth Gonzalez is used to seeing journalists in her courtroom. A wrongful termination case brought against casino magnate and billionaire political donor Sheldon Adelson currently on her docket has been one of the city's most-watched cases for years. Yet the judge thought it surprising when she spotted a reporter from the Las Vegas *Review-Journal* in attendance at a decidedly mundane court proceeding in November. So she approached him.

"He seemed upset because he was sitting through this very boring hearing," Gonzalez told TIME. "But he told me, 'The boss said I had to be here.'"

Why the reporter was sent to keep tabs Gonzalez's courtroom has become one of the biggest questions in the strange saga of the recent sale of the *Review-Journal*, the largest newspaper in the state. On Dec. 10, the paper was acquired by a shell company backed by Adelson and his family for $140 million, far above what analysts considered its market value. For nearly a week after the sale was confirmed, Adelson resisted acknowledging the purchase, and the only name publicly connected to the shell company was Michael Schroeder, a publisher of small papers in Connecticut.

Read more: The One-Man Las Vegas Presidential Primary

As journalists and political observers try to make sense of Adelson's motivation for the deal and lack of transparency in announcing it, Gonzalez and the case she's presiding over have emerged as one potential motivation. On Dec. 1, a story on business court judges that was critical of Gonzalez's rulings appeared in two of Schroeder's papers, which usually keep to local issues. And while Adelson was reportedly in negotiations to buy the *Review-Journal*, several of the paper's journalists were ordered to monitor Gonzalez and two other Clark County judges.

Gonzalez has been a matter of concern for Adelson since at least 2010, when the former head of Macau operations for Sands Corp., Adelson's gambling empire, sued the company and Adelson over his firing. During a May appearance as a witness in the case, Adelson refused to answer a question presented to him by one of the attorneys, and Gonzalez admonished him.

"Sir, you need to answer the question," Gonzalez said, according to the *Review-Journal*. Adelson refused and described the question—concerning whether an email sent by Adelson's secretary was sent with his knowledge—as disrespectful.

"Sir, you don't get to argue with me," Gonzalez said. "You understand that?"

Attorneys who have been inside Gonzalez's courtroom describe her as a fair jurist who doesn't try to curry favor with those who hold sway in America's gambling capital. They describe her as courteous and considerate, noting her habit of keeping M&M's on hand for nervous witnesses. She received the support of 81% of lawyers in a biennial survey of judges conducted by the *Review-Journal*, and most recently has been on the district's business court circuit, which routinely includes complex commercial cases.

"That's usually the assignment that goes to people who are capable of handling it," says Jeff Stempel, a professor of law at the University of Nevada, Las Vegas.

Read more: Report: Sheldon Adelson Was Indeed Buyer of Las Vegas Newspaper

After law school at the University of Florida, Gonzalez moved to Nevada when her then-husband got a job in the state. She gained prominence in Las Vegas legal circles for her successful defense of Southwest Gas in the PEPCON rocket plant explosion in 1988, which killed two people and injured almost 400 when it blew up 10 miles outside of the city. PEPCON sued Southwest Gas for $30 million and initially blamed the company for the blast.

"She was a very well-respected litigator with a strong personality, and yet she was very good at balancing all the other different personalities that were at the firm," says Nevada District Court Judge Patrick Flanagan, who worked with Gonzalez at a local law firm in the early 1990s. "She was a very effective leader."

Since being appointed to fill a vacancy on the Clark County bench in 2004, Gonzalez has presided over cases involving shootings on the Las Vegas strip, construction boondoggles and child pornography charges. She even locked up some of Michael Jackson's belongings and memorabilia at the Las Vegas courthouse while she was trying to determine their rightful owners. But the case involving Adelson has become the most significant of her tenure.

In 2010, Steven Jacobs, the former chief executive of Sands' operation in Macau, sued the company over his firing and later added Adelson as a defendant. Jacobs claims he was terminated for refusing to do business with people who may have had ties to Chinese organized crime and that Adelson asked him to secretly investigate Macau government officials.

In 2012, Gonzalez fined Sands and Sands China $25,000 for an "intention to deceive" the court for failing to hand over e-mails to Jacobs and his lawyers. In early 2015, she fined Sands China $250,000 for similar violations.

"Judge Gonzalez is not afraid to make unpopular decisions," says Louis Schneider, a Las Vegas defense attorney who has brought cases before Gonzalez. Schneider says in a recent case involving charges of child pornography against a police officer, for example, Gonzalez told him she wouldn't try to score political points by giving the officer a harsher sentence than was justified. "A judge that worries about re-election, they would come down hard on that case," he says.

Gonzalez says she can't discuss Adelson or the sale of the *Review-Journal* because of the ongoing case. But she says she does try to put witnesses at ease in her courtroom, pointing to regular breaks she offers witnesses and supply of M&M's. Asked whether Adelson had any candy on the stand, Gonzalez says, "I can't answer that question."

Read more: House Introduces Online Gambling Bill Backed by Sheldon Adelson

A representative for the Adelson family declined to comment on Gonzalez. In a statement issued after confirming their ownership of the *Review-Journal*, the Adelson family pledged to "publish a newspaper that is fair, unbiased and accurate."

"Adelson may feel aggrieved by some of her rulings," says UNLV's Stempel. "But is that enough for someone to take over a newspaper? Presumably there is also a larger Adelson agenda to be more politically active."

At the *Review-Journal*, the staff is now tasked with covering a high-profile legal case with great consequence for its new owner. This week, the newspaper compiled new guidelines on when to disclose its new ownership in its stories, according to a series of tweets by Stephanie Grimes, a features editor there. And Schroeder, the publisher first

connected to the mysterious sale, has since acknowledged that the story about business courts involving Gonzalez was written under a fake byline and relied on articles previously published elsewhere. By the first week of January, Schroeder had been removed from any management role with the *Review-Journal* or the shell company used to purchase it.

Meanwhile, the wrongful termination suit against Adelson and his gambling empire continues. Adelson's legal team had attempted to get Gonzalez removed from the case altogether, alleging that she showed bias in her pretrial decisions. But in November, the Nevada Supreme Court ruled that the defense did not file the required documents, and that Gonzalez would stay on the case.

Correction: *The original version of this story incorrectly identified which entities were fined related to this case. In 2012, Gonzalez fined Sands and Sands China $25,000. In 2015, Gonzalez fined Sands China $250,000.*

EXHIBIT C

Kutinac, Daniel

From: Jordan T. Smith <JTS@pisanellibice.com>
Sent: Monday, January 11, 2016 6:34 PM
To: Rose, Laura; Kutinac, Daniel
Cc: Steve Peek (SPeek@hollandhart.com) (SPeek@hollandhart.com); sm@morrislawgroup.com; Ryan M. Lower (rml@morrislawgroup.com); Mark Jones (m.jones@kempjones.com); r.jones@kempjones.com; hkozlov@duanemorris.com; dbheidtke@duanemorris.com; ppjosephson@duanemorris.com; Todd Bice; James Pisanelli; Debra Spinelli; Paul Garcia
Subject: Jacobs v. Las Vegas Sands Corp.
Attachments: 01-11-16 Dumont, Patrick - Jacobs vs Sands.pdf

Laura and Dan,

I have attached the rough deposition transcript from Patrick Dumont's first day of examination. Amongst other issues, Jacobs disputes certain instructions not to answer that he would like the Court to address tomorrow morning before the deposition resumes. The relevant portion of the transcript begins on page 110 of the PDF.

Thanks,
Jordan

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DISTRICT COURT
CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

LAS VEGAS SANDS CORP., a Nevada corporation; SANDS CHINA LTD., a Cayman Islands corporation; SHELDON G. ADELSON, in his individual and representative capacity; DOES I-X; and ROE CORPORATIONS I-X,

Defendants.

AND ALL RELATED MATTERS.

CASE NO.: A627691-B
DEPT NO.: XI

MOTION TO COMPEL PLAINTIFF TO SIGN CONSENT TO TRANSFER PERSONAL DATA OTHERWISE PROTECTED BY THE MACAU PERSONAL DATA PROTECTION ACT

Defendant Sands China, Ltd. ("SCL") moves under NRCP 37(a) and EDCR 2.34 for an order compelling Plaintiff Steven Jacobs ("Jacobs") to execute a release authorizing SCL to transfer personal data, attached hereto as Exhibit A. As required under EDCR 2.34 and detailed

in the declaration below, the parties have conferred on the subject and could not resolve the issue by mutual agreement.

PROCEDURAL NOTE: NRS 1.235(5) provides that a judge "against whom an affidavit alleging bias or prejudice is filed shall proceed no further with the matter . . . ." Consistent with that provision, this Court, through its Judicial Executive Assistant, has informed SCL that it would not entertain any requests or applications for orders shortening time while LVSC's Motion for Disqualification was pending. Also consistent with NRS 1.235(5), on January 15, 2016, the Court entered a minute order vacating the hearing on Defendant Sands China, Ltd.'s Motion for Order to Show Cause, which was set for January 19, 2016.

Given the short time left for discovery in this case, the instant motion would be filed with a request for an order shortening time. However, given the Court's interpretation of NRS 1.235(5), the motion is now being filed in the ordinary course without any waiver of the right to request an expedited hearing before the judicial officer to whom the case remains, or is, assigned to once the disqualification issue is resolved. This motion is not and should not be construed as a request for the Court to take action prior to the resolution of LVSC's Motion for Disqualification.

DATED this 19th day of January, 2016.

/s/ J. Randall Jones
J. Randall Jones, Esq.
Mark M. Jones, Esq.
Kemp, Jones & Coulthard, LLP
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DECLARATION OF J. RANDALL JONES, ESQ. IN SUPPORT OF MOTION TO COMPEL

1. I am a partner with Kemp, Jones & Coulthard, LLP and represent Sands China, Ltd. I have personal knowledge of the facts stated in this declaration, and I am competent to testify to them.

2. This motion is brought for the purpose of resolving a discovery dispute regarding SCL's request that Jacobs execute the MPDPA consent form attached hereto as Exhibit A.

3. On October 1, 2014, my partner, Mark Jones sent an email to Todd Bice, Esq., counsel for Jacobs, requesting that Jacobs sign a form consenting to the transfer of certain personal identifying information outside of Macau for use in this litigation. *See* email attached hereto as Exhibit B.

4. On October 8, 2014, Mr. Bice responded to this email denying the request for consent using the flawed reasoning that doing so would violate the Court's previous rulings. *See* letter attached hereto as Exhibit C.

5. On October 5, 2015, I sent an email to Mr. Bice, requesting that Jacobs sign an MPDPA consent. *See* email attached hereto as Exhibit D. Mr. Bice responded via telephone and indicated that he would like certain terms of the consent form rephrased.

6. In spite of multiple requests for him to do so, Mr. Bice never presented any proposed alterations, revisions, or comments to the draft MPDPA consent form.

7. Based on the foregoing, it is clear that Jacobs does not intend to voluntarily consent to have his name unredacted from documents produced in this case by signing the MPDPA consent form.

8. I certify that this motion is brought for a proper purpose.

/ / /

/ / /

/ / /

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9. I declare under penalties of perjury of the laws of the State of Nevada that the foregoing is true and correct.

Dated this 13th day of January, 2016.

/s/ J. Randall Jones
J. RANDALL JONES, ESQ.

NOTICE OF MOTION

PLEASE TAKE NOTICE that DEFENDANTS SAND CHINA, LTD. will bring their **MOTION TO COMPEL PLAINTIFF TO SIGN CONSENT TO TRANSFER PERSONAL DATA OTHERWISE PROTECTED BY THE MACAU PERSONAL DATA PROTECTION ACT** on for hearing before the above-entitled Court on the 19 day of February, 2016, at the hour of In Chambers a.m./p.m. in Department XI of the Eighth Judicial District Court.

DATED this 19th day of January, 2016.

/s/ J. Randall Jones
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I.

INTRODUCTION AND BACKGROUND

In spite of SCL's numerous requests that Jacobs sign an MPDPA consent, he has refused to do so and failed to justify his refusal with any credible or logical reasoning. Based on the lack of support for his conduct, it is clear that Jacobs' true motivation in refusing consent is to promote his agenda of procedural gamesmanship and posturing. Jacobs clearly intends to prosecute his case by manufacturing imagined discovery torts instead of focusing on the merits of his allegations (or lack thereof).

The Macau Personal Data Protection Act (the "MPDPA") has been at issue frequently enough in this litigation that a lengthy recitation of its requirements and applicability in this case is unnecessary. However, a few key facts regarding the MPDPA are particularly relevant to the instant motion. First, the Court's prior sanction prohibiting SCL from redacting any documents pursuant to the MPDPA expired when merits discovery commenced. *See* September 14, 2012 Decision and Order, on file herein, at 8:20-23. As a result, SCL is permitted to redact certain information from documents in its possession before producing the documents consistent with the June 23, 2011 Stipulation and Order Regarding ESI Discovery. *See* June 23, 2011 Stipulation and Order, on file herein. Second, contrary to Plaintiff's repeated claims to the contrary, the MPDPA is not a pretext that SCL uses to conveniently deprive him from discoverable information. In fact, Plaintiff's own law firm, Pisanelli Bice, has redacted information from its documents pursuant to the MPDPA in a related case, *Wynn Resorts v. Okada*, A-12-656710-B. And the substantive merits of SCL's MPDPA objections are legitimized by the fact that SCL has already been sanctioned by the Macau Office of Personal Data Protection ("OPDP"). The MPDPA is a stringent foreign privacy law that carries significant consequences for its violation.

In spite of these challenges, SCL has consistently attempted to minimize any impact of its MPDPA redactions to Plaintiff. For example, SCL created a 163-page redaction log, which identified the entities that employed the individuals whose personal data was redacted. SCL also coordinated with LVSC to locate duplicate or near-duplicate documents in custody of Co-

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Defendant, Las Vegas Sands Corp. ("LVSC") (which were not subject to the MPDPA), and produce those documents. Finally, SCL also obtained consents from key employees and personnel, authorizing SCL to unredact information for individuals.

Prior to commencement of merits discovery, SCL requested that Jacobs consent to unredact his name from SCL's documents. In October of 2014, SCL requested that Jacobs sign an MPDPA authorization and Jacobs objected on the facially nonsensical reasoning that this Court's prior rulings prohibited him from doing so. *See* Exs. B and C. The reality is that Jacobs' self-serving discovery tactics, not this Court's rulings, prohibited him from doing so. More recently, in October of 2015, SCL again reiterated its request that Jacobs sign an MPDPA consent. This time, in spite of initially agreeing to sign some form of an MPDPA consent, Jacobs has dragged his feet and largely ignored SCL's request.

As argued more fully below, Jacobs' refusal to sign an MPDPA consent prejudices SCL's ability to defend against his claims. There can be no doubt that correspondence, documents, and other written evidence prepared by or transmitted to or from Jacobs is relevant to this matter. By failing to consent to permit SCL to unredact his name from these documents, Jacobs deprives SCL of the ability to use this relevant evidence at trial. Jacobs has affirmatively placed this information at issue by bringing suit against SCL. As a plaintiff with affirmative claims, he cannot be permitted to continue to deprive SCL of this relevant information.

II.

ARGUMENT

A. Jacobs Must be Compelled to Authorize SCL to Unredact his Name From Relevant Evidence in its Possession.

NRCP 37(a)(2)(A) authorizes a party to request an order to compel discovery that is discoverable pursuant to NRCP 16.1(a). Relevant evidence includes any evidence which tends to make the existence of any fact of consequence to the determination of the action more or less probable than it would be without the evidence. *See* NRS 48.015.

It is hornbook law that when a party places a particular set of facts at issue in litigation, the party must be compelled to produce important evidence he or she possesses on that topic in

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spite of any privacy interest that might otherwise attach to the evidence. *See, e.g., Schlatter v. Eighth Jud. Dist. Ct. In and For Clark County*, 561 P.2d 1342, 1343 (Nev. 1977); *Ambac Assur. Corp. v. DLJ Mortg. Capital, Inc.*, 939 N.Y.S.2d 333, 335 (N.Y. App. Div. 1st Dept. 2012). For example, Nevada courts have long held that a party that places his or her mental health or physical health at issue must be compelled to make normally confidential and private medical records discoverable to other parties. *See Schlatter*, 561 P.2d at 1343 ("Where . . . a litigant's physical condition is in issue, a court may order discovery of medical records . . . related thereto); *Potter v. W. Side Transp., Inc.*, 188 F.R.D. 362, 365 (D. Nev. 1999) ("Plaintiffs have placed their emotional and mental health in issue in this case. Examination and treatment by any psychotherapist for emotional or mental related conditions . . . is relevant and not protected by privilege."). *Accord Eisendrath v. Super. Ct.*, 134 Cal. Rptr. 2d 716, 724 (Cal. App. 2d Dist. 2003); *Mattison v. Poulen*, 353 A.2d 327, 329 (Vt. 1976).

It states the obvious to observe that documents and evidence in SCL's possession that were sent and/or received by Jacobs are relevant to Jacobs' claims in this action. These documents are just as relevant to this action as medical records are to an action involving physical or emotional injury damages. However, due to the restrictions of the MPDPA, SCL has been forced to redact Jacobs' name and other personal information from these documents to avoid criminal or civil prosecution. This restriction can be avoided by Jacobs consenting to unredact his name from SCL's documents. Jacobs' steadfast refusal to authorize SCL to disclose this information outside of Macau is no different from a personal injury plaintiff refusing to authorize release of medical records. Jacobs' conduct deprives SCL of the ability to present relevant relating to Jacobs' claims.

SCL has attempted to obtain Jacobs' consent to disclose his information and unredact his name from relevant documents in its possession numerous times. In response, Jacobs has failed to provide a logical or rational justification for his failure to do so. For example, in October of 2014, prior to the second sanctions hearing against SCL, Jacobs sought to defend his refusal to consent by claiming that this Court's prior orders somehow precluded SCL from seeking consents. SCL argued then and now repeats that Jacobs' reasoning is nonsense. Nothing

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in this Court's orders precluded SCL from attempting to comply with both this Court's order to produce documents in unredacted form and Macau's data privacy laws by securing appropriate consents. More recently, Jacobs has not provided any reasoning justifying his refusal to consent to the disclosure. He has agreed to provide a proposed form that he would be willing to sign, but has never presented a proposed form and ignored requests to sign SCL's proposed consent form (the same form SCL has used for consents from other SCL employees or officers).

It is clear that Jacobs cannot justify his lack of cooperation on this issue. The documents for which SCL seeks to unredact Jacobs' information do not contain sensitive personal information.[1] Jacobs has no personal privacy or confidentiality interest in the documents. The MPDPA is the only reason that SCL cannot unredact Jacobs' name from documents, emails, and other evidence for which he is a sender or recipient.

Given that (a) Jacobs has never articulated a credible (or even half-plausible) reason for withholding his consent, and (b) that Jacobs does not possess any personal or privacy interest in keeping his name redacted in SCL's documents, it is clear that Jacobs' true motivation in refusing consent is, again, one of procedural gamesmanship and posturing. Jacobs clearly intends to prosecute his case by manufacturing imagined discovery torts instead of proving the merits of his allegations.

III.

CONCLUSION

The true result of Jacobs' conduct is that SCL is denied use of relevant evidence in the case. SCL respectfully requests that the Court enter an order compelling Jacobs to execute and

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[1] Even if the redacted personally identifying information was private or confidential, the terms of the parties' Stipulated Confidentiality Agreement and Protective Order prohibit Jacobs from disclosing information solely on that basis.

return the attached MPDPA consent form.

DATED this 19th day of January, 2016.

/s/ J. Randall Jones
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3800 Howard Hughes Pkwy., 17th Floor
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Attorneys for Sands China, Ltd.

J. Stephen Peek, Esq.
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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of January, 2016, the foregoing **MOTION TO COMPEL PLAINTIFF TO SIGN CONSENT TO TRANSFER PERSONAL DATA OTHERWISE PROTECTED BY THE MACAU PERSONAL DATA PROTECTION ACT** was served on the following parties through the Court's electronic filing system:

James J. Pisanelli, Esq.
Todd L. Bice, Esq.
Debra L. Spinelli, Esq.
Jordan T. Smith, Esq.
Pisanelli Bice PLLC
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101
Attorneys for Plaintiff Steven C. Jacobs

Steve Morris, Esq.
Rosa Solis-Rainey, Esq.
Morris Law Group
900 Bank of America Plaza
300 South Fourth Street
Las Vegas, NV 89101\

J. Stephen Peek, Esq.
Robert J. Cassity, Esq.
Holland & Hart
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

James Ferguson, Esq.
Mayer Brown
71 S. Wacker Drive
Chicago, IL 60606

/s/ Erica M. Bennett
An employee of Kemp, Jones & Coulthard, LLP

EXHIBIT A

CONSENT FOR TRANSFER OF PERSONAL DATA

I hereby authorize Venetian Macau Limited ("VML") to process, disclose and transfer my personal data under its control or custody, namely my name, professional contact information, such as email address and telephone number, emails related with VML or any of its Affiliates[1], to Las Vegas Sands Corp. ("LVSC").

I hereby also acknowledge and consent to the communication of the above information to: (1) Plaintiff Steven C. Jacobs and his counsel and any additional personnel working at their direction; (2) Defendants Las Vegas Sands Corp., Sands China Ltd. and Sheldon G. Adelson and their counsel and any additional personnel working at their direction; and (3) the Nevada Court in the United States of America (the "Data Recipients") in connection with the matter of *Steven C. Jacobs v. Las Vegas Sands Corp., et al.*, Case No. A-10-627691-B (Clark Co., Nev.), which is currently pending in the Nevada District Court if determined to be required by law.

At any time, I have the right to view my personal data, request additional information about its storage and processing, require any necessary amendments or refuse or withdraw the consent herein, in any case without cost.

Notwithstanding my consent, the disclosure and communication of the above mentioned records and emails to Las Vegas Sands Corp. and the Data Recipients shall at all times be subject to the laws of Macau.

I declare that I have been given the opportunity to make due enquiry as to my rights under Macau law.

_____

Signature:

_____

Name:

_____

Place and date:

[1] Affiliates being any person or entity directly or indirectly controlling, controlled or under direct or indirect common control of VML.

EXHIBIT B

From: Mark Jones
Sent: Wednesday, October 01, 2014 6:30 PM
To: 'tlb@pisanellibice.com'
Cc: Debra Spinelli (dls@pisanellibice.com); Jordan T. Smith (JTS@pisanellibice.com); Steve Peek Esq. (speek@hollandhart.com); Steve Morris (sm@morrislawgroup.com); Michael Lackey Esq. (mlackey@mayerbrown.com); Randall Jones
Subject: Jacobs matter: Consent for transfer of personal data

Todd,

As you know, we have previously suggested that if you would identify the redacted documents that you believe are relevant to your current jurisdictional theory, we would then seek to obtain consents under the MPDPA from the relevant U.S. parties so that we could "unredact" their names from the documents you identified.

Having received no response from you, we have now decided to proceed on our own by getting consents from the relevant U.S. parties who are willing to provide them. To that end, I attach a consent for your client, Steven Jacobs, to sign.

We plan to begin soon the process of unredacting the relevant documents in Macau. Accordingly, if we do not hear from you by October 6, 2014, we will conclude that your client has declined to execute the consent.

Regards,

Mark M. Jones, Esq.

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CONSENT FOR TRANSFER OF PERSONAL DATA

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I hereby also acknowledge and consent to the communication of the above information to: (1) Plaintiff Steven C. Jacobs and his counsel and any additional personnel working at their direction; (2) Defendants Las Vegas Sands Corp., Sands China Ltd. and Sheldon G. Adelson and their counsel and any additional personnel working at their direction; and (3) the Nevada Court in the United States of America (the "Data Recipients") in connection with the matter of *Steven C. Jacobs v. Las Vegas Sands Corp., et al.*, Case No. A-10-627691-B (Clark Co., Nev.), which is currently pending in the Nevada District Court if determined to be required by law.

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I declare that I have been given the opportunity to make due enquiry as to my rights under Macau law.

_____

Signature:

_____

Name:

_____

Place and date:

[1] Affiliates being any person or entity directly or indirectly controlling, controlled or under direct or indirect common control of VML.

EXHIBIT C

PB | PISANELLI BICE

TODD L. BICE
ATTORNEY AT LAW
TLB@PISANELLIBICE.COM

October 8, 2014

VIA E-MAIL

Mark M. Jones, Esq.
J. Randall Jones, Esq.
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Michael E. Lackey, Jr., Esq.
MAYER BROWN LLP
1999 K Street, N.W.
Washington, DC 20006
mlackey@mayerbrown.com

RE: ***Steven C. Jacobs v. Las Vegas Sands Corp., et al.***
Eighth Judicial District Court, Case No. A627691-B

Dear Mark,

I write in response to your October 1, 2014 email regarding Mr. Jacobs' "Consent for Transfer of Personal Data."

The issues raised by your email have already been litigated and decided by the Court's September 14, 2012 Decision and Order regarding sanctions and the Court's March 27, 2013 Order Regarding Plaintiff Steven C. Jacobs' Renewed Motion for NRCP 37 Sanctions on Order Shortening Time.

The Court has repeatedly ruled that Sands China, Ltd. ("Sands China") is not permitted to rely upon the MPDPA as a basis for not responding to discovery (*i.e.*, as an "objection"), regardless of any "consent" from the parties to the documents. Your attempt to require Mr. Jacobs, or any other person, to provide a "consent" contravenes the Court's Orders imposing sanctions and will not be condoned.

Sincerely,

Todd L. Bice

TLB/JTS

EXHIBIT D

Mark Jones

From:	Randall Jones
Sent:	Monday, October 05, 2015 10:01 AM
To:	tlb@pisanellibice.com; JTS@pisanellibice.com; dls@pisanellibice.com; jjp@pisanellibice.com
Cc:	Mark Jones; SM@morrislawgroup.com; speek@hollandhart.com; James Ferguson (JFerguson@mayerbrown.com); Rosa Solis-Rainey
Subject:	Jacobs matter - request for Mr. Jacobs' execution of an MPDPA consent
Attachments:	CONSENT FOR TRANSFER OF PERSONAL DATA.PDF

> Todd:
>
> As the jurisdictional hearing has been completed we are again requesting that Mr. Jacobs sign a consent to allow Sands China to unredact his name from documents produced from Macau. Please let me know by Tuesday, October 6, 2015, whether or not Mr. Jacobs is willing to sign a consent. Attached hereto is a form of consent in the event that Mr. Jacobs is willing to execute it.
>
> If Mr. Jacobs continues to refuse to sign a consent we will seek intervention of the court to compel his doing so.
>
> Regards,
>
> Randall
>

CONSENT FOR TRANSFER OF PERSONAL DATA

I hereby authorize Venetian Macau Limited ("VML") to process, disclose and transfer my personal data under its control or custody, namely my name, professional contact information, such as email address and telephone number, emails related with VML or any of its Affiliates[1], to Las Vegas Sands Corp. ("LVSC").

I hereby also acknowledge and consent to the communication of the above information to: (1) Plaintiff Steven C. Jacobs and his counsel and any additional personnel working at their direction; (2) Defendants Las Vegas Sands Corp., Sands China Ltd. and Sheldon G. Adelson and their counsel and any additional personnel working at their direction; and (3) the Nevada Court in the United States of America (the "Data Recipients") in connection with the matter of *Steven C. Jacobs v. Las Vegas Sands Corp., et al.*, Case No. A-10-627691-B (Clark Co., Nev.), which is currently pending in the Nevada District Court if determined to be required by law.

At any time, I have the right to view my personal data, request additional information about its storage and processing, require any necessary amendments or refuse or withdraw the consent herein, in any case without cost.

Notwithstanding my consent, the disclosure and communication of the above mentioned records and emails to Las Vegas Sands Corp. and the Data Recipients shall at all times be subject to the laws of Macau.

I declare that I have been given the opportunity to make due enquiry as to my rights under Macau law.

_____

Signature:

_____

Name:

_____

Place and date:

[1] Affiliates being any person or entity directly or indirectly controlling, controlled or under direct or indirect common control of VML.

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CLERK OF THE COURT

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Telephone: (702) 214-2100
Facsimile: (702) 214-2101

Attorneys for Plaintiff Steven C. Jacobs

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

LAS VEGAS SANDS CORP., a Nevada corporation; SANDS CHINA LTD., a Cayman Islands corporation; SHELDON G. ADELSON, an individual; DOES I through X; and ROE CORPORATIONS I through X,

Defendants.

AND RELATED CLAIMS

Case No.: A-10-627691
Dept. No.: XI

PLAINTIFF STEVEN C. JACOBS' EMERGENCY MOTION TO STRIKE UNTIMELY AFFIDAVIT FOR CAUSE UNDER NRS 1.235(1); ON ORDER SHORTENING TIME

Hearing Date:

Hearing Time:

Pursuant to the Nevada Supreme Court's holding in *Towbin Dodge, LLC v. Eighth Judicial District Court*, 121 Nev. 251, 112 P.3d 1063 (2005), this Court retains jurisdiction to address the timeliness of any affidavit to disqualify under NRS 1.235. In *Towbin Dodge*, Nevada Supreme Court held that an affidavit under NRS 1.235(1) to disqualify a district court judge is improper if the district court has ruled upon any pretrial motions. That is the law even if the purported grounds for disqualification supposedly arose after the time period allowed for filing such an affidavit under NRS 1.235. The Nevada Supreme Court holds that the only basis for challenging a judge for cause after he or she has ruled upon pretrial matters is NCJC Cannon 3E.

The difference between these procedures is significant and forms the basis for Plaintiff Steven C. Jacobs ("Jacobs") requests for emergency relief and an order shortening time. Forever seeking to stall Jacobs' rights, the Defendants claim that the untimely and illegitimate affidavit of counsel for Las Vegas Sands Corp. ("LVSC") magically divests this Court of jurisdiction to consider prior, pending or forthcoming matters. For this proposition, their sole authority purports to be NRS 1.235(5) claiming that the filing of an affidavit alleging bias or prejudice precludes the assigned Court from proceeding further with the matter. The Nevada Supreme Court expressly rejected that dilatory tactic in *Towbin Dodge*.

Because these Defendants once again seek to derail Jacobs' rights through improper and unlawful maneuvering, he requests that this Court strike the untimely affidavit purportedly filed under NRS 1.235. This Court retains jurisdiction to strike the untimely declaration and to proceed with the timely handling of all past, present and future matters in this case. If LVSC seeks to proceed with a motion to disqualify pursuant to Cannon 3E, then Jacobs will timely address that matter and seek the relief to which he is entitled in the face of such improper conduct by litigants and their counsel. But any such motion does not constitute a stay of the action or deprive this Court of its obligation to proceed expeditiously. Accordingly, Jacobs requests that this motion be considered on an order shortening time as set forth in the accompanying declaration of counsel.

DATED this 15th day of January, 2016.

PISANELLI BICE PLLC

By: _____

James J. Pisanelli, Esq., Bar No. 4027
Todd L. Bice, Esq., Bar No. 4534
Debra L. Spinelli, Esq., Bar No. 9695
Jordan T. Smith, Esq., Bar No. 12097
400 South 7th Street, Suite 300
Las Vegas, Nevada 89101

Attorneys for Plaintiff Steven C. Jacobs

PISANELLI BICE PLLC
400 SOUTH 7TH STREET, SUITE 300
LAS VEGAS, NEVADA 89101

DECLARATION OF TODD L. BICE, ESQ. IN SUPPORT OF PLAINTIFF STEVEN C. JACOBS' EMERGENCY MOTION TO STRIKE UNTIMELY AFFIDAVIT FOR CAUSE UNDER NRS 1.235(1); ON ORDER SHORTENING TIME

I, Todd L. Bice, Esq., declare as follows:

1. I am one of the attorneys representing Plaintiff Steven C. Jacobs ("Jacobs") in the above-captioned matter. I have personal knowledge of the facts stated herein.

2. If and when Las Vegas Sands Corp. ("LVSC") and its counsel (or any of the other Defendants and their counsel) bring an actual motion to disqualify pursuant to Nevada Code of Judicial Conduct Cannon 3E – which is the only proper means of seeking disqualification after the District Court has entered pretrial rulings – I will set forth in detail the frivolous and improper nature of any such motion, including the fact that the Nevada Supreme Court has denied on ***three*** occasions the Defendants' request for reassignment of this case. The Defendants are engaged in forum shopping because of their repeated misconduct in these proceedings.

3. On January 13, 2016, I received the present motion to disqualify the Honorable Elizabeth Gonzalez ("Judge Gonzalez") based upon the affidavit of LVSC's counsel, Stephen Peek ("Peek"). Peek's affidavit purports to be based upon NRS 1.235(1). (Peek Aff. at ¶ 5.)

4. LVSC and Peek also claim that Judge Gonzalez has been deprived of the ability to hear or address any matters in this case because of Peek's affidavit under NRS 1.235(1).

5. LVSC's position is in direct contravention of Nevada Supreme Court precedent, including *Towbin Dodge, LLC v. Eighth Judicial District Court*, 121 Nev. 251, 112 P.3d 1063 (2005) and *City of Sparks v. Second Judicial District Court*, 112 Nev. 952, 920 P.2d 1014 (1996).

6. As those cases hold, no affidavit under NRS 1.235(1) may be filed after a judge has ruled upon any pretrial matter. Here, Judge Gonzalez has heard dozens and dozens of pretrial motions and entered rulings on them.

7. Accordingly, Peek's affidavit under NRS 1.235 is in direct violation of Nevada law and was filed for the improper purpose of procuring delay and to engage in forum shopping. The Defendants in this action have repeatedly sought to delay this case and have made clear they will do anything, no matter how lacking in legal support, to try and sabotage Jacobs' rights to trial.

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8. Because the District Court has numerous pretrial proceedings to address, including supervising discovery and related matters, it is imperative that LVSC's attempt to stall this case with its untimely and improper affidavit under NRS 1.235 be stricken immediately. The Defendants are attempting to use that improper and untimely filing to assert that the trial judge has been divested of authority to proceed with the case.

9. That filing in and of itself constitutes lawyer misconduct for which Jacobs will pursue his remedies. But in the meantime, this Court must immediately strike Peek's improper and untimely affidavit and allow Jacobs to proceed with his rights.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct and that I signed this Declaration on January 15, 2016.

TODD L. BICE

PISANELLI BICE PLLC
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ORDER SHORTENING TIME

Good cause appearing, it is hereby ordered that the foregoing **PLAINTIFF STEVEN C. JACOBS' EMERGENCY MOTION TO STRIKE UNTIMELY AFFIDAVIT FOR CAUSE UNDER NRS 1.235(1); ON ORDER SHORTENING TIME** shall be heard on shortened time on the 4th day of February, 2016, at the hour of 3:00 (Chambers Calendar) o'clock a .m. in front of Dept. 18 of the Eighth Judicial District Court.

DATED this 20th day of January, 2016.

DISTRICT COURT JUDGE

Respectfully submitted:
PISANELLI BICE PLLC

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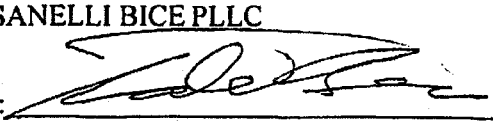
MEMORANDUM OF POINTS AND AUTHORITIES

As set forth in the accompanying declaration of counsel, the Defendants are once again engaged in an abuse of process. Their latest improper maneuver is an untimely declaration of counsel under NRS 1.235(1). The Nevada Supreme Court in *Towbin Dodge* has expressly rejected the procedural misconduct that is afoot here. That affidavit is untimely and was filed for the purpose of procuring delay of Jacobs' rights, a fact which the Defendants have confirmed by their improper attempted enlistment of NRS 1.235(5) to claim that the District Court cannot proceed. This Court retains authority to address the timeliness of any affidavit under NRS 1.235 and under the law, it must strike Peek's untimely and improper affidavit. *Towbin Dodge*, 121 Nev. at 1067, 112 P.3d at 256.

DATED this 15th day of January, 2016.

PISANELLI BICE PLLC

By: 

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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

LAS VEGAS SANDS CORP., a Nevada corporation; SANDS CHINA LTD., a Cayman Islands corporation; SHELDON G. ADELSON, in his individual and representative capacity; VENETIAN MACAU LTD., a Macau corporation; DOES I-X; and ROE CORPORATIONS I-X,

Defendants.

AND ALL RELATED MATTERS.

CASE NO.: A627691-B
DEPT NO.: XVIII

OPPOSITION TO JACOBS' EMERGENCY MOTION TO STRIKE

Date: February 4, 2016

Time: In Chambers Hearing

HOLLAND & HART LLP
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Defendant LAS VEGAS SANDS CORP. ("LVSC") submits the following Opposition to Plaintiff's Emergency Motion to Strike ("Motion" or "Mot."), filed on January 20, 2016.

I. INTRODUCTION

LVSC properly and timely submitted a motion for disqualification of the district court judge in accordance with the Nevada Code of Judicial Conduct ("NCJC"), Canons 1 and 2, including Canon 2, Rule 2.11. Jacobs' Motion is premised upon the false construct that merely because the affidavit of LVSC's counsel accompanying the Motion for Disqualification references NRS 1.235, LVSC's entire Motion is based *solely* on NRS 1.235. In the construction

of this false premise, Jacobs relies upon the case of *Towbin Dodge, LLC v. Eighth Judicial Dist. Court*, 121 Nev. 251, 112 P.3d 1063 (2005) to argue that the affidavit of LVSC's counsel is untimely. But as discussed below, both the premise and the interpretation of *Towbin Dodge* Jacobs advances are wrong. The mere citation to NRS 1.235 does not render LVSC's Motion for Disqualification under the NCJC Canons 1 and 2, including Canon 2, Rule 2.11, untimely, as one can see discussed in *Towbin Dodge*. For the reasons set forth herein, Jacobs' Motion should be denied.

II. LEGAL ANALYSIS

The Nevada Supreme Court has "repeatedly condemned the practice of a motion to strike a motion." *See Gull v. Hoalst*, 77 Nev. 54, 57, 359 P.2d 383, 384 (1961) ("No notice of the motion to strike the motion to dismiss (and this court has repeatedly condemned the practice of a motion to strike a motion) was ever given and, as noted, no ruling was ever made on said defendant's motion to dismiss the complaint.").

Plaintiff argues that under *Towbin Dodge, LLC v. Eighth Judicial Dist. Court*, the Nevada Supreme Court held that "an affidavit under NRS 1.235(1) to disqualify a district court judge is improper if the district court has ruled upon any pretrial motions," which is incorrect. *See* Mot. at 1 (on file). The Plaintiff points out that under *Towbin Dodge*, the Supreme Court concluded that the only basis for challenging a judge for cause after ruling upon pretrial matters is NCJC Canon 3E. *Id.*

Plaintiff misses the point of LVSC's motion and *Towbin Dodge*. In that case, the Nevada Supreme Court merely found that NRS 1.235(1) does not provide a remedy when grounds for disqualification are discovered only *after* the time periods in subsection 1 have passed. *Id.* at 256.[1] However, the Court stated that the NCJC may thereafter provide a "substantive basis for

[1] While there is no question that LVSC filed its motion after the judge had ruled on some pretrial motions as Plaintiff argues, that fact is not dispositive under *Towbin Dodge*. Plaintiff ignores the remainder of the *Towbin Dodge* opinion, which, as discussed *infra*, provides that a motion for disqualification based on the appropriate NCJC Canon (as LVSC has done here) is the appropriate procedure by which to seek the disqualification of a district court judge when the time periods in NRS 1.235(1) have passed.

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judicial disqualification." *Id.* at 257. The Nevada Supreme Court pointed to NCJC Canon 3E, which at that time addressed the standard for disqualification as follows:

> E. Disqualification.
> (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned...

Towbin, 121 Nev. at 257. After reviewing federal law and procedure about disqualification of a judge, the Court concluded:

> Thus, if new grounds for a judge's disqualification are discovered after the time limits in NRS 1.235(1) have passed, ***then a party may file a motion to disqualify based on Canon 3E as soon as possible after becoming aware of the new information***. The motion must set forth facts and reasons sufficient to cause a reasonable person to question the judge's impartiality, and the challenged judge may contradict the motion's allegations. We deviate from federal practice in one respect, however. While the federal procedure permits the challenged judge to hear the motion, we share the concerns identified by some federal courts when the challenged judge decides the motion. Thus, the ***motion must be referred to another judge***.

Id. at 260 (emphasis added).

In his Emergency Motion to Strike, Plaintiff mistakenly argues that LVSC's "sole authority" for LVSC's affidavit "purports to be NRS 1.235(5) claiming that the filing of an affidavit alleging bias or prejudice precludes the assigned Court from proceeding further with this matter." Mot., at 2.[2] Although the declaration of counsel makes reference to NRS 1.235, the declaration describes the substantive grounds for disqualification of the district court judge as set forth in NCJC Canon 2, Rule 2.11. Because the declaration otherwise supports LVSC's request for disqualification under the NCJC, Jacobs' Motion is without merit and should be denied.

Moreover, Plaintiff's analysis is incomplete. After *Towbin Dodge* was decided in 2005, the Nevada Supreme Court revised the NCJC. In its final report on April 2, 2009, the Court's Commission on the Amendment to the [NCJC] recommended that the NCJC be "replaced with a

[2] Plaintiff also erroneously suggests that in *Towbin Dodge*, the Nevada Supreme Court "rejected" the submitted affidavit as a "dilatory tactic." Mot., at 2. The Court did not discuss the affidavit in terms of "delay" or "dilatory tactics." The Nevada Supreme Court's concern was to "clarify the procedure to be followed when a party seeks to disqualify a district judge..." 121 Nev. at 259. Instead of acknowledging the Court's concern, Plaintiff self-servingly couches the opinion's language in misleading terms.

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Revised Code of Judicial Conduct." *See* ORDER In the Matter of the Amendment of the Nevada Code of Judicial Conduct, ADKT 427, *available at* http://www.leg.state.nv.us/courtrules/scr_cjc.html (last visited Jan. 18, 2016) (hereinafter "NCJC Order") (attached as **Exhibit A**). The Court ordered that the Revised NCJC become effective January 19, 2010. NCJC Order. As a result of that revision, the disqualification rules were moved to Canon 2. *See* Canon 2 (stating that a judge "shall perform the duties of judicial office impartially, competently, and diligently," as amended, effective Jan. 19, 2010). The rule discussing a judge's impartiality is Rule 2.11 – the same one LVSC cited in its Motion for Disqualification.

LVSC's Motion for Disqualification properly addresses the *Towbin Dodge* requirements when seeking to disqualify a district court judge when, as here, grounds for the disqualification were discovered after the time period in NRS 1.235(1) has passed. LVSC's Motion is based, at the outset, on both NCJC Canons 1 and 2, including Canon 2, Rule 2.11, regarding the same disqualification rule discussed in *Towbin Dodge*. And the Motion discusses the appropriate authorities. *Compare* LVSC's Motion for Disqualification, at 13 ("NCJC Rule 2.11 requires that a judge disqualify him or herself "in any proceeding in which the judge's impartiality might reasonably be questioned[.]") *with Towbin Dodge*, 121 Nev. at 257 ("E. Disqualification. (1) A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned..."). In fact, LVSC's Motion is entirely consistent with the Nevada Supreme Court's recent order discussing the same issue. *See* Order Granting in Part and Denying in Part Petition for Writ Relief (Docket No. 68265), Granting Petition for Writ Relief (Docket No. 68275), and Denying Petition for Writ Relief (Docket No. 68309) (Nov. 4, 2015), at 7 (holding that SCL's previous request for reassignment to a different district court judge was procedurally improper because SCL "did not submit in district court an affidavit and a certificate of counsel under NRS 1.235 or file a motion pursuant to NCJC Canon 2, Rule 2.11.").

LVSC's Motion also sets forth "facts and reasons sufficient to cause a reasonable person to question the judge's impartiality." *Towbin*, 121 Nev. at 260. These facts and reasons include, among others, that after almost five years of not responding to or contributing to the extensive

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media coverage of this case, the Court voluntarily and purposefully contributed to the coverage *twice* within the last month. *See* LVSC's Motion for Disqualification, at 13; Exhibit 13 to LVSC's Motion for Disqualification (on file). Perhaps as a result of the Court's contribution to the media, the Court created a procedure by which someone ***other than the Court*** should resolve questions related to Mr. Dumont's alleged communications to media about this case, which reasonably appears to acknowledge that an impartial observer could reasonably question the Court's impartiality to resolve disputes involving Mr. Dumont's alleged communications. *See* LVSC's Motion for Disqualification, at 17. Accordingly, LVSC's Motion for Disqualification is procedurally and substantively appropriate, and the request for striking the declaration should be denied.

Under NRS 1.235(5), a "judge against whom an affidavit alleging bias or prejudice is filed shall proceed no further with the matter" and instead, will immediately transfer the case or file a written answer to the affidavit to be heard by another judge. *See* NRS 1.235(5). The *Towbin Dodge* decision suggests that the spirit, if not the letter of NRS 1.235(5), still applies if a party seeks to disqualify a judge pursuant to the *Towbin Dodge* opinion instead of an affidavit under NRS 1.235(1). The Nevada Supreme Court held that the challenged judged may contradict the motion's allegations. *Id.* at 260 ("the challenged judge may contradict the motion's allegations"). The Court also held that a motion for disqualification must be referred to another judge. *Id.* ("While the federal procedure permits the challenged judge to hear the motion, we share the concerns identified by some federal courts when the challenged judge decides the motion. Thus, the motion must be referred to another judge.").

Here, Judge Gonzalez has responded to the motion to disqualify (following assignment of it to Chief Judge David Barker) on new grounds arising after the time for filing a statutory affidavit had expired. Consistent with the procedure set out in NRS 1.235(5), on January 15, 2016, Department 11 entered a minute order vacating the hearing on Defendant Sands China Ltd.'s Motion for Order to Show Cause, stating that the hearing is to be reset "after the Honorable David Barker makes a decision on the pending Motion to Disqualify." Minute Order Vacating Hearing (Jan. 15, 2016) (on file). Accordingly, LVSC has invoked the correct

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procedure set forth in *Towbin Dodge* for filing its Motion for Disqualification. The Motion is supported by a declaration of counsel, alleging the Nevada Code of Judicial Conduct as authority for disqualifying the District Court, which *Towbin Dodge* supports: "But when new grounds for disqualification are discovered after the statutory time has passed [referring to NRS 1.235] ***the Nevada Code of Judicial Conduct provides an additional, independent basis for seeking disqualification through a motion under the governing court rules.***" 121 Nev. at 253, 112 P.3d at 1065 (emphasis added).

The Court should deny Plaintiff's unmeritorious Emergency Motion.

III. CONCLUSION

For the foregoing reasons, LVSC respectfully requests that Plaintiff's Emergency Motion to Strike be denied.

DATED January 22, 2016.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that on January 22, 2016, I served a true and correct copy of the foregoing **OPPOSITION TO JACOBS' EMERGENCY MOTION TO STRIKE** via e-mail and by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

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Valerie Larsen

An Employee of Holland & Hart LLP

EXHIBIT A

EXHIBIT A

[Rev. 2/16/2015 3:52:24 PM--2014R2]

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF THE AMENDMENT OF THE NEVADA CODE OF JUDICIAL CONDUCT.

ADKT 427

ORDER

WHEREAS, this court previously created the Commission on the Amendment to the Nevada Code of Judicial Conduct in order to consider the revised Model Code of Judicial Conduct adopted by the American Bar Association; and

WHEREAS, the Commission met numerous times, filed its final report on April 2, 2009, and filed a supplemental report on June 17, 2009; and

WHEREAS, in its final report, the Commission recommended that the current Code of Judicial Conduct be replaced with a Revised Code of Judicial Conduct; and

WHEREAS, this court solicited and considered public comment on the Commission's recommendation, including holding two public hearings on the issue; and

WHEREAS, this court has concluded that replacement of the Nevada Code of Judicial Conduct is warranted;

IT IS HEREBY ORDERED that the Nevada Code of Judicial Conduct shall be repealed and that the Revised Nevada Code of Judicial Conduct, as set forth in Exhibit A, shall be adopted in its place.

IT IS FURTHER ORDERED that the Revised Nevada Code of Judicial Conduct shall become effective January 19, 2010. The clerk of this court shall cause a notice of entry of this order to be published in the official publication of the State Bar of Nevada. Publication of this order shall be accomplished by the clerk disseminating copies of this order to all subscribers of the advance sheets of the Nevada Reports and all persons and agencies listed in NRS 2.345, and to the executive director of the State Bar of Nevada. The certificate of the clerk of this court as to the accomplishment of the above-described publication of notice of entry and dissemination of this order shall be conclusive evidence of the adoption and publication of the foregoing amended rules.

Dated this 17th day of December, 2009.

BY THE COURT

JAMES W. HARDESTY, *Chief Justice*

RON D. PARRAGUIRRE
Associate Justice

MICHAEL L. DOUGLAS
Associate Justice

MICHAEL A. CHERRY
Associate Justice

NANCY M. SAITTA
Associate Justice

MARK GIBBONS
Associate Justice

KRISTINA PICKERING
Associate Justice

PART VI. REVISED NEVADA CODE OF JUDICIAL CONDUCT

PREAMBLE

[1] An independent, fair and impartial judiciary is indispensable to our system of justice. The United States legal system is based upon the principle that an independent, impartial, and competent judiciary, composed of men and women of integrity, will interpret and apply the law that governs our society. Thus, the judiciary plays a central role in preserving the principles of justice and the rule of law. Inherent in all the Rules contained in this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to maintain and enhance confidence in the legal system.

[2] Judges should maintain the dignity of judicial office at all times, and avoid both impropriety and the appearance of impropriety in their professional and personal lives. They should aspire at all times to conduct that ensures the greatest possible public confidence in their independence, impartiality, integrity, and competence.

[3] The Code of Judicial Conduct establishes standards for the ethical conduct of judges and judicial candidates. It is not intended as an exhaustive guide for the conduct of judges and judicial candidates, who are governed in their judicial and personal conduct by general ethical standards as well as by the Code. The Code is intended, however, to provide guidance and assist judges in maintaining the highest standards of judicial and personal conduct, and to provide a basis for regulating

their conduct through disciplinary agencies.

SCOPE

[1] The Code of Judicial Conduct consists of four Canons, numbered Rules under each Canon, and Comments that generally follow and explain each Rule. Scope and Terminology sections provide additional guidance in interpreting and applying the Code. An Application section establishes when the various Rules apply to a judge or judicial candidate.

[2] The Canons state overarching principles of judicial ethics that all judges must observe. Although a judge may be disciplined only for violating a Rule, the Canons provide important guidance in interpreting the Rules. Where a Rule contains a permissive term, such as "may" or "should," the conduct being addressed is committed to the personal and professional discretion of the judge or candidate in question, and no disciplinary action should be taken for action or inaction within the bounds of such discretion.

[3] The Comments that accompany the Rules serve two functions. First, they provide guidance regarding the purpose, meaning, and proper application of the Rules. They contain explanatory material and, in some instances, provide examples of permitted or prohibited conduct. Comments neither add to nor subtract from the binding obligations set forth in the Rules. Therefore, when a Comment contains the term "must," it does not mean that the Comment itself is binding or enforceable; it signifies that the Rule in question, properly understood, is obligatory as to the conduct at issue.

[4] Second, the Comments identify aspirational goals for judges. To implement fully the principles of this Code as articulated in the Canons, judges should strive to exceed the standards of conduct established by the Rules, holding themselves to the highest ethical standards and seeking to achieve those aspirational goals, thereby enhancing the dignity of the judicial office.

[5] The Rules of the Code of Judicial Conduct are rules of reason that should be applied consistent with constitutional requirements, statutes, other court rules, and decisional law, and with due regard for all relevant circumstances. The Rules should not be interpreted to impinge upon the essential independence of judges in making judicial decisions.

[6] Although the black letter of the Rules is binding and enforceable, it is not contemplated that every transgression will result in the imposition of discipline. Whether discipline should be imposed should be determined through a reasonable and reasoned application of the Rules, and should depend upon factors such as the seriousness of the transgression, the facts and circumstances that existed at the time of the transgression, the extent of any pattern of improper activity, whether there have been previous violations, and the effect of the improper activity upon the judicial system or others. Ordinarily, judicial discipline will not be premised upon appearance of impropriety alone but must also involve the violation of another portion of the Code as well.

[7] The Code is not designed or intended as a basis for civil or criminal liability. Neither is it intended to be the basis for litigants to seek collateral remedies against each other or to obtain tactical advantages in proceedings before a court.

TERMINOLOGY

"Appropriate authority" means the authority having responsibility for initiation of disciplinary process in connection with the violation to be reported. See Rules 2.14 and 2.15.

"Contribution" as used in this Code has the meaning ascribed to it in NRS 294A.007. See Rules 3.7, 4.1, 4.2, and 4.4 and Comment [1].

"De minimis," in the context of interests pertaining to disqualification of a judge, means an insignificant interest that could not raise a reasonable question regarding the judge's impartiality. See Rule 2.11.

"Domestic partner" means a person with whom another person maintains a household and an intimate relationship, other than a person to whom he or she is legally married. See Rules 2.11, 2.13, 3.13, and 3.14.

"Economic interest" means ownership of more than a de minimis legal or equitable interest. Except for situations in which the judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

(1) an interest in the individual holdings within a mutual or common investment fund;

(2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, an officer, an advisor, or other participant;

(3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or

(4) an interest in the issuer of government securities held by the judge. See Rules 1.3 and 2.11.

"Fiduciary" includes relationships such as executor, administrator, trustee, or guardian. See Rules 2.11, 3.2, and 3.8.

"Impartial," "impartiality," and "impartially" mean absence of bias or prejudice in favor of, or against, particular parties or classes of parties, as well as maintenance of an open mind in considering issues that may come before a judge. See Canons 1, 2, and 4, and Rules 1.2, 2.2, 2.10, 2.11, 2.13, 3.1, 3.12, 3.13, 4.1, and 4.2.

"Impending matter" is a matter that is imminent or expected to occur in the near future. See Rules 2.9, 2.10, 3.13, and 4.1.

"Impropriety" includes conduct that violates the law, court rules, or provisions of this Code, and conduct that undermines a judge's independence, integrity, or impartiality. See Canon 1 and Rule 1.2.

"Independence" means a judge's freedom from influence or controls other than those established by law. See Canons 1 and 4, and Rules 1.2, 3.1, 3.12, 3.13, and 4.2.

"Integrity" means probity, fairness, honesty, uprightness, and soundness of character. See Canon 1 and Rule 1.2.

"Judicial candidate" means any person, including a sitting judge, who is seeking selection for or retention in judicial office by election. A person becomes a candidate for judicial office as soon as he or she makes a public announcement of candidacy, declares or files as a candidate with the election or appointment authority, authorizes or, where permitted, engages in solicitation or acceptance of contributions or support, or is nominated for election to office. See Rules 2.11, 4.1, 4.2, and 4.4.

"Knowingly," "knowledge," "known," and "knows" mean actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances. See Rules 2.11, 2.13, 2.15, 2.16, 3.6, and 4.1.

"Law" encompasses court rules as well as statutes, constitutional provisions, and decisional law. See Rules 1.1, 2.1, 2.2, 2.6, 2.7, 2.9, 3.1, 3.4, 3.9, 3.12, 3.13, 3.14, 3.15, 4.1, 4.2, 4.4, and 4.5.

"Member of the candidate's family" means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the candidate maintains a close familial relationship.

"Member of the judge's family" means a spouse, domestic partner, child, grandchild, parent, grandparent, or other relative or person with whom the judge maintains a close familial relationship. See Rules 3.7, 3.8, 3.10, and 3.11.

"Member of a judge's family residing in the judge's household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household. See Rules 2.11 and 3.13.

"Nonpublic information" means information that is not available to the public. Nonpublic information may include, but is not limited to, information that is sealed by statute or court order or impounded or communicated in camera, and information offered in grand jury proceedings, presentencing reports, dependency cases, or psychiatric reports. See Rule 3.5.

"Pending matter" is a matter that has commenced. A matter continues to be pending through any appellate process until final disposition. See Rules 2.9, 2.10, 3.13, and 4.1.

"Personally solicit" means a direct request made by a judge or a judicial candidate for financial support or in-kind services, whether made by letter, telephone, or any other means of communication. See Rules 3.7 and 4.1.

"Political organization" means a political party or other group sponsored by or affiliated with a political party or candidate, the principal purpose of which is to further the election or appointment of candidates for political office. For purposes of this Code, the term does not include a judicial candidate's campaign committee created as authorized by Rule 4.4. See Rules 4.1 and 4.2.

"Public election" includes primary and general elections, partisan elections, nonpartisan elections, and retention elections. See Rules 4.2 and 4.4.

"Third degree of relationship" includes the following persons: great-grandparent, grandparent, parent, uncle, aunt, brother, sister, child, grandchild, great-grandchild, nephew, and niece. See Rule 2.11.

COMMENT

[1] NRS 294A.007 defines contribution as follows:

1. "Contribution" means a gift, loan, conveyance, deposit, payment, transfer or distribution of money or of anything of value other than the services of a volunteer, and includes:

(a) The payment by any person, other than a candidate, of compensation for the personal services of another person which are rendered to a:

(1) Candidate;

(2) Person who is not under the direction or control of a candidate or group of candidates or of any person involved in the campaign of the candidate or group who makes an expenditure on behalf of the candidate or group which is not solicited or approved by the candidate or group;

(3) Committee for political action, political party, committee sponsored by a political party or business entity which makes an expenditure on behalf of a candidate or group of candidates; or

(4) Person or group of persons organized formally or informally, including a business entity, who advocates the passage or defeat of a question or group of questions on the ballot, without charge to the candidate, person, committee or political party.

(b) The value of services provided in kind for which money would have otherwise been paid, such as paid polling and resulting data, paid direct mail, paid solicitation by telephone, any paid paraphernalia that was printed or otherwise produced to promote a campaign and the use of paid personnel to assist in a campaign.

2. As used in this section, "volunteer" means a person who does not receive compensation of any kind, directly or indirectly, for the services he provides to a campaign.

APPLICATION

The Application section establishes when the various Rules apply to a judge or judicial candidate.

I. APPLICABILITY OF THIS CODE

(A) The provisions of the Code apply to all judges except as provided in Parts II through IV of this section with respect to three distinct categories of part-time judges. The three categories of judicial service in other than a full-time capacity are necessarily defined in general terms because of the widely varying forms of judicial service. Canon 4 applies to judicial candidates.

(B) A judge, within the meaning of this Code, is anyone who is authorized to perform judicial functions, including an officer such as a magistrate, court commissioner, special master, or referee. Administrative law judges and hearing officers of state agencies are not judges within the meaning of this Code.

COMMENT

[1] The Rules in this Code have been formulated to address the ethical obligations of any person who serves a judicial function and are premised upon the supposition that a uniform system of ethical principles should apply to all those authorized to perform judicial functions.

[2] The determination of which category and, accordingly, which specific Rules apply to an individual judicial officer, depends upon the facts of the particular judicial service.

II. RETIRED JUDGE SUBJECT TO RECALL

A retired judge subject to recall for service, who by law is not permitted to practice law, is not required to comply at any time with Rule 3.8 (Appointments to Fiduciary Positions), Rule 3.9 (Service as Arbitrator or Mediator), and Rule 3.15(A)(1) (Reporting Requirements).

COMMENT

[1] For the purposes of this section, as long as a retired judge is subject to being recalled for service, the judge is considered to "perform judicial functions."

III. CONTINUING PART-TIME JUDGE

(A) A continuing part-time judge is a judge who serves repeatedly on a part-time basis by election or under a continuing appointment, including a retired judge subject to recall for service who is permitted to practice law.

(B) A continuing part-time judge is not required to comply:

(1) except while serving as a judge, with Rules 2.10(A), 2.10(B), and 2.10(C) (Judicial Statements on Pending and Impending Cases);

(2) except while serving as a judge or when a judicial candidate with Rules 4.1(A)(6), 4.1(A)(7), 4.1(A)(11), 4.1(A)(12), 4.1(A)(13), and 4.1(B) (Political and Campaign Activities of Judges and Judicial Candidates in General); or

(3) at any time with:

(a) Rule 3.4 (Appointments to Governmental Positions);
(b) Rule 3.8 (Appointments to Fiduciary Positions);
(c) Rule 3.9 (Service as Arbitrator or Mediator);
(d) Rule 3.10 (Practice of Law);
(e) Rule 3.11(B) (Financial, Business, or Remunerative Activities);
(f) Rule 3.15(A)(1) (Reporting Requirements); and
(g) Rule 4.1(A)(1) to (4) (Political and Campaign Activities of Judges and Judicial Candidates in General).

(C) A continuing part-time judge shall not practice law in the court on which the judge serves or in any court subject to the appellate jurisdiction of the court on which the judge serves, and shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto.

COMMENT

[1] When a person who has been a continuing part-time judge is no longer a continuing part-time judge, including a retired judge no longer subject to recall for service, that person may act as a lawyer in a proceeding in which he or she has served as a judge or in any other proceeding related thereto only with the informed consent of all parties and pursuant to Rule 1.12(a) of the Nevada Rules of Professional Conduct.

IV. PRO TEMPORE PART-TIME JUDGE

(A) A pro tempore part-time judge is a judge who serves or expects to serve sporadically on a part-time basis under a separate appointment for each period of service or for each case heard.

(B) A pro tempore part-time judge is not required to comply:

(1) except while serving as a judge, with:

(a) Rules 2.10(A), 2.10(B), and 2.10(C) (Judicial Statements on Pending and Impending Cases);
(b) Rule 2.14 (Disability and Impairment);
(c) Rule 2.15 (Responding to Judicial and Lawyer Misconduct); and
(d) Rule 3.3 (Testifying as a Character Witness);

(2) except while serving as a judge or when a judicial candidate with Rules 4.1(A)(6), 4.1(A)(7), 4.1(A)(11), 4.1(A)(12), 4.1(A)(13), and 4.1(B) (Political and Campaign Activities of Judges and Judicial Candidates in General); or

(3) at any time with:

(a) Rules 3.1(B) and 3.1(D) (Extrajudicial Activities in General);
(b) Rule 3.2 (Appearances Before Governmental Bodies and Consultation With Government Officials);
(c) Rule 3.4 (Appointments to Governmental Positions);
(d) Rule 3.7(A) (Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities);
(e) Rule 3.8 (Appointments to Fiduciary Positions);
(f) Rule 3.9 (Service as Arbitrator or Mediator);
(g) Rule 3.10 (Practice of Law);
(h) Rules 3.11(B), 3.11(C)(2), and 3.11(C)(3) (Financial, Business, or Remunerative Activities);
(i) Rule 3.13 (Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value);
(j) Rule 3.14(C) (Reimbursement of Expenses and Waivers of Fees or Charges);
(k) Rule 3.15 (Reporting Requirements);
(l) Rules 4.1(A)(1) to (4) (Political and Campaign Activities of Judges and Judicial Candidates in General); and
(m) Rule 4.5(A) (Activities of Judges Who Become Candidates for Nonjudicial Office).

(C) A person who has been a pro tempore part-time judge shall not act as a lawyer in a proceeding in which the judge has served as a judge or in any other proceeding related thereto, except as otherwise permitted by Rule 1.12(a) of the Nevada Rules of Professional Conduct.

V. TIME FOR COMPLIANCE

A person to whom this Code becomes applicable shall comply immediately with its provisions, except that those judges to whom Rules 3.8 (Appointments to Fiduciary Positions) and 3.11 (Financial, Business, or Remunerative Activities) apply shall comply with those Rules as soon as reasonably possible, but in no event later than one year after the Code becomes applicable to the judge.

COMMENT

[1] If serving as a fiduciary when selected as judge, a new judge may, notwithstanding the prohibitions in Rule 3.8, continue to serve as fiduciary, but only for that period of time necessary to avoid serious adverse consequences to the beneficiaries of the fiduciary relationship and in no event longer than one year. Similarly, if engaged at the time of judicial selection in a business activity, a new judge may, notwithstanding the prohibitions in Rule 3.11, continue in that activity for a reasonable period, but in no event longer than one year.

VI. CONFLICT WITH LEGISLATION

In the event of conflict between the provisions of this Code and any statutes covering the same subject matter, activities, or reports, the terms of this Code shall prevail.

COMMENT

[1] Part VI specifically applies to A.B. 190, 1991 Nev. Stat., ch. 517, at 517, amending NRS Chapter 281 as it applies to ethics in government, which amendments shall have no application to the judicial branch of government, and S.B. 166 §§ 2, 3, and 4, 1991 Nev. Stat., ch. 585, at 1922-24, amending NRS Chapter 294A, which shall also have no application to the judiciary. This provision of the Code recognizes and reaffirms the principles provided by the Nevada Constitution (Art. 3, § 1) and various case decisions, including *Halverson v. Hardcastle*, 123 Nev. 245, 163 P.3d 428 (2007), and *Dunphy v. Sheehan*, 92 Nev. 259, 549 P.2d 332 (1976), wherein the Nevada Supreme Court declared:

> The doctrine of separation of powers is fundamental to our system of government. *Galloway v. Truesdell*, 83 Nev. 13, 422 P.2d 237 (1967). The judicial department may not invade the legislative and executive province. *State v. District Court*, 85 Nev. 485, 457 P.2d 217 (1969). Neither may the legislative and executive branches of government exercise powers properly belonging to the judicial department. *Groves v. State*, 82 Nev. 137, 413 P.2d 503 (1966). Out of deference to the doctrine of separation of powers, the Legislature specifically excluded members of the judiciary from the Ethics in Government Law. Such exclusion was constitutionally mandated. *In re Kading*, 235 N.W.2d 409 (Wis. 1975).
>
> The function of the judicial department is the administration of justice. The judiciary, as a coequal branch of government, possesses the inherent power to protect itself and to administer its affairs. *Sun Realty v. District Court*, 91 Nev. 774, 542 P.2d 1072 (1975). The promulgation of a Code of Judicial Ethics is a measure essential to the due administration of justice and within the inherent power of the judicial department of this State. *In re Kading*, *supra*.

Id. at 265-66, 549 P.2d at 336-37. It is noted, however, that the judicial branch of government is under strong constraints to maintain the highest level of ethical conduct. In that regard, it is emphasized that this Code incorporates higher and more stringent standards of conduct than the referenced legislation would have imposed if it had been deemed applicable to the judiciary. Although violations of the areas addressed by the referenced legislation and superseded as to the judiciary by this Code are not criminal misdemeanors under the Code, as they are in the statutes, violations of this Code are cognizable by the constitutionally empowered Commission on Judicial Discipline. The Commission on Judicial Discipline has the power to censure, retire, or remove all sitting judges, including senior or part-time judges.

CANON 1

A judge shall uphold and promote the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.

Rule 1.1. Compliance With the Law. A judge shall comply with the law, including the Code of Judicial Conduct.

Rule 1.2. Promoting Confidence in the Judiciary. A judge shall act at all times in a manner that promotes public confidence in the independence, integrity, and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety.

COMMENT

[1] Public confidence in the judiciary is eroded by improper conduct and conduct that creates the appearance of impropriety. This principle applies to both the professional and personal conduct of a judge.

[2] A judge should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens and must accept the restrictions imposed by the Code.

[3] Conduct that compromises or appears to compromise the independence, integrity, and impartiality of a judge undermines public confidence in the judiciary. Because it is not practicable to list all such conduct, the Rule is necessarily

cast in general terms.

[4] Judges should participate in activities that promote ethical conduct among judges and lawyers, support professionalism within the judiciary and the legal profession, and promote access to justice for all.

[5] Actual improprieties include violations of law, court rules, or provisions of this Code. The test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge. Ordinarily, judicial discipline will not be premised upon appearance of impropriety alone, but must also involve the violation of another portion of the Code as well.

[6] A judge should initiate and participate in community outreach activities for the purpose of promoting public understanding of and confidence in the administration of justice. In conducting such activities, the judge must act in a manner consistent with this Code.

Rule 1.3. Avoiding Abuse of the Prestige of Judicial Office. A judge shall not abuse the prestige of judicial office to advance the personal or economic interests of the judge or others, or allow others to do so.

COMMENT

[1] It is improper for a judge to use or attempt to use his or her position to gain personal advantage or deferential treatment of any kind. For example, it would be improper for a judge to allude to his or her judicial status to gain favorable treatment in encounters with traffic officials. Similarly, a judge must not use judicial letterhead to gain an advantage in conducting his or her personal business.

[2] A judge may provide a reference or recommendation for an individual based upon the judge's personal knowledge. The judge may use official letterhead if the judge indicates that the reference is personal and if there is no likelihood that the use of the letterhead would reasonably be perceived as an attempt to exert pressure by reason of the judicial office.

[3] Judges may participate in the process of judicial selection by cooperating with appointing authorities and screening committees, and by responding to inquiries from such entities concerning the professional qualifications of a person being considered for judicial office or by submitting on official letterhead letters to such entities endorsing or opposing the person.

[4] Special considerations arise when judges write or contribute to publications of for-profit entities, whether related or unrelated to the law. A judge should not permit anyone associated with the publication of such materials to exploit the judge's office in a manner that violates this Rule or other applicable law. In contracts for publication of a judge's writing, the judge should retain sufficient control over the advertising to avoid such exploitation.

[Added; effective January 19, 2010.]

CANON 2

A judge shall perform the duties of judicial office impartially, competently, and diligently.

Rule 2.1. Giving Precedence to the Duties of Judicial Office. The duties of judicial office, as prescribed by law, shall take precedence over all of a judge's personal and extrajudicial activities.

COMMENT

[1] To ensure that judges are available to fulfill their judicial duties, judges must conduct their personal and extrajudicial activities to minimize the risk of conflicts that would result in frequent disqualification. See Canon 3.

[2] Although it is not a duty of judicial office unless prescribed by law, judges are encouraged to participate in activities that promote public understanding of and confidence in the justice system.

Rule 2.2. Impartiality and Fairness. A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

COMMENT

[1] To ensure impartiality and fairness to all parties, a judge must be objective and open-minded.

[2] Although each judge comes to the bench with a unique background and personal philosophy, a judge must interpret and apply the law without regard to whether the judge approves or disapproves of the law in question.

[3] When applying and interpreting the law, a judge sometimes may make good-faith errors of fact or law. Errors of this kind do not violate this Rule.

[4] It is not a violation of this Rule for a judge to make reasonable accommodations to ensure self-represented litigants the opportunity to have their matters fairly heard.

Rule 2.3. Bias, Prejudice, and Harassment.

(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or others subject to the judge's direction and control to do so.

(C) A judge shall require lawyers in proceedings before the court to refrain from manifesting bias or prejudice, or engaging in harassment, based upon attributes including, but not limited to, race, sex, gender, religion, national origin,

ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, against parties, witnesses, lawyers, or others.

(D) The restrictions of paragraphs (B) and (C) do not preclude judges or lawyers from making legitimate reference to the listed factors, or similar factors, when they are relevant to an issue in a proceeding.

COMMENT

[1] A judge who manifests bias or prejudice in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute.

[2] Examples of manifestations of bias or prejudice include but are not limited to epithets; slurs; demeaning nicknames; negative stereotyping; attempted humor based upon stereotypes; threatening, intimidating, or hostile acts; suggestions of connections between race, ethnicity, or nationality and crime; and irrelevant references to personal characteristics. Even facial expressions and body language can convey to parties and lawyers in the proceeding, jurors, the media, and others an appearance of bias or prejudice. A judge must avoid conduct that may reasonably be perceived as prejudiced or biased.

[3] Harassment, as referred to in paragraphs (B) and (C), is verbal or physical conduct that denigrates or shows hostility or aversion toward a person on bases such as race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation.

[4] Sexual harassment includes but is not limited to sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that is unwelcome.

Rule 2.4. External Influences on Judicial Conduct.

(A) A judge shall not be swayed by public clamor or fear of criticism.

(B) A judge shall not permit family, social, political, financial, or other interests or relationships to influence the judge's judicial conduct or judgment.

(C) A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge.

COMMENT

[1] An independent judiciary requires that judges decide cases according to the law and facts, without regard to whether particular laws or litigants are popular or unpopular with the public, the media, government officials, or the judge's friends or family. Confidence in the judiciary is eroded if judicial decision making is perceived to be subject to inappropriate outside influences.

Rule 2.5. Competence, Diligence, and Cooperation.

(A) A judge shall perform judicial and administrative duties competently and diligently.

(B) A judge shall cooperate with other judges and court officials in the administration of court business.

COMMENT

[1] Competence in the performance of judicial duties requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary to perform a judge's responsibilities of judicial office.

[2] A judge should seek the necessary docket time, court staff, expertise, and resources to discharge all adjudicative and administrative responsibilities.

[3] Prompt disposition of the court's business requires a judge to devote adequate time to judicial duties, to be punctual in attending court and expeditious in determining matters under submission, and to take reasonable measures to ensure that court officials, litigants, and their lawyers cooperate with the judge to that end.

[4] In disposing of matters promptly and efficiently, a judge must demonstrate due regard for the rights of parties to be heard and to have issues resolved without unnecessary cost or delay. A judge should monitor and supervise cases in ways that reduce or eliminate dilatory practices, avoidable delays, and unnecessary costs.

Rule 2.6. Ensuring the Right to Be Heard.

(A) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law.

(B) A judge may encourage parties to a proceeding and their lawyers to settle matters in dispute but shall not act in a manner that coerces any party into settlement.

COMMENT

[1] The right to be heard is an essential component of a fair and impartial system of justice. Substantive rights of litigants can be protected only if procedures protecting the right to be heard are observed.

[2] The judge plays an important role in overseeing the settlement of disputes, but should be careful that efforts to further settlement do not undermine any party's right to be heard according to law. The judge should keep in mind the effect that the judge's participation in settlement discussions may have, not only on the judge's own views of the case, but also on the perceptions of the lawyers and the parties if the case remains with the judge after settlement efforts are unsuccessful. Among the factors that a judge should consider when deciding upon an appropriate settlement practice for a case are whether: (1) the parties have requested or voluntarily consented to a certain level of participation by the judge in settlement discussions, (2) the parties and their counsel are relatively sophisticated in legal matters, (3) the case will be tried by the judge or a jury, (4) the parties participate with their counsel in settlement discussions, (5) any parties are unrepresented by counsel, and (6) the matter is civil or criminal.

[3] Judges must be mindful of the effect settlement discussions can have, not only on their objectivity and impartiality, but also on the appearance of their objectivity and impartiality. Despite a judge's best efforts, there may be instances when information obtained during settlement discussions could influence a judge's decision making during trial, and, in such instances, the judge should consider whether disqualification may be appropriate. See Rule 2.11(A)(1).

Rule 2.7. Responsibility to Decide. A judge shall hear and decide matters assigned to the judge, except when disqualification is required by Rule 2.11 or other law.

COMMENT

[1] Judges must be available to decide the matters that come before the court. Although there are times when disqualification is necessary to protect the rights of litigants and preserve public confidence in the independence, integrity, and impartiality of the judiciary, judges must be available to decide matters that come before the courts. Unwarranted disqualification may bring public disfavor to the court and to the judge personally. The dignity of the court, the judge's respect for fulfillment of judicial duties, and a proper concern for the burdens that may be imposed upon the judge's colleagues require that a judge not use disqualification to avoid cases that present difficult, controversial, or unpopular issues or involve difficult, controversial, or unpopular parties or lawyers.

Rule 2.8. Decorum, Demeanor, and Communication With Jurors.

(A) A judge shall require order and decorum in proceedings before the court.

(B) A judge shall be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, court staff, court officials, and others with whom the judge deals in an official capacity and shall require similar conduct of lawyers, court staff, court officials, and others subject to the judge's direction and control.

(C) A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding.

COMMENT

[1] The duty to hear all proceedings with patience and courtesy is not inconsistent with the duty imposed in Rule 2.5 to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

[2] Commending or criticizing jurors for their verdict may imply a judicial expectation in future cases and may impair a juror's ability to be fair and impartial in a subsequent case.

[3] A judge who is not otherwise prohibited by law from doing so may meet with jurors who choose to remain after trial but should be careful not to discuss the merits of the case.

Rule 2.9. Ex Parte Communications.

(A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or impending matter, except as follows:

(1) When circumstances require it, ex parte communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(b) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and gives the parties an opportunity to respond.

(2) A judge may obtain the written advice of a disinterested expert on the law applicable to a proceeding before the judge, if the judge gives advance notice to the parties of the person to be consulted and the subject matter of the advice to be solicited, and affords the parties a reasonable opportunity to object and respond to the notice and to the advice received.

(3) A judge may consult with court staff and court officials whose functions are to aid the judge in carrying out the judge's adjudicative responsibilities, or with other judges, provided the judge makes reasonable efforts to avoid receiving factual information that is not part of the record, and does not abrogate the responsibility personally to decide the matter.

(4) A judge may, with the consent of the parties, confer separately with the parties and their lawyers in an effort to settle matters pending before the judge.

(5) A judge may initiate, permit, or consider any ex parte communication when authorized by law to do so.

(B) If a judge inadvertently receives an unauthorized ex parte communication bearing upon the substance of a matter, the judge shall make provision promptly to notify the parties of the substance of the communication and provide the parties with an opportunity to respond.

(C) A judge shall not investigate facts in a matter independently, and shall consider only the evidence presented and any facts that may properly be judicially noticed.

(D) A judge shall make reasonable efforts, including providing appropriate supervision, to ensure that this Rule is not violated by court staff, court officials, and others subject to the judge's direction and control.

COMMENT

[1] To the extent reasonably possible, all parties or their lawyers shall be included in communications with a judge.

[2] Whenever the presence of a party or notice to a party is required by this Rule, it is the party's lawyer, or if the party is unrepresented, the party, who is to be present or to whom notice is to be given.

[3] The proscription against communications concerning a proceeding includes communications with lawyers, law teachers, and other persons who are not participants in the proceeding, except to the limited extent permitted by this Rule.

[4] A judge may initiate, permit, or consider ex parte communications authorized by law, such as when serving on therapeutic or problem-solving courts, mental health courts, or drug courts. In this capacity, judges may assume a more interactive role with parties, treatment providers, probation officers, social workers, and others.

[5] A judge may consult with other judges on pending matters but must avoid ex parte discussions of a case with judges who have previously been disqualified from hearing the matter, and with judges who have appellate jurisdiction over the matter.

[6] The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic.

[7] A judge may consult ethics advisory committees, outside counsel, or legal experts concerning the judge's compliance with this Code. Such consultations are not subject to the restrictions of paragraph (A)(2).

Rule 2.10. Judicial Statements on Pending and Impending Cases.

(A) A judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing.

(B) A judge shall not, in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

(C) A judge shall require court staff, court officials, and others subject to the judge's direction and control to refrain from making statements that the judge would be prohibited from making by paragraphs (A) and (B).

(D) Notwithstanding the restrictions in paragraph (A), a judge may make public statements in the course of official duties, may explain court procedures, and may comment on any proceeding in which the judge is a litigant in a personal capacity.

(E) Subject to the requirements of paragraph (A), a judge may respond directly or through a third party to allegations in the media or elsewhere concerning the judge's conduct in a matter.

COMMENT

[1] This Rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary.

[2] This Rule does not prohibit a judge from commenting on proceedings in which the judge is a litigant in a personal capacity. In cases in which the judge is a litigant in an official capacity, such as a writ of mandamus, the judge must not comment publicly.

[3] Depending upon the circumstances, the judge should consider whether it may be preferable for a third party, rather than the judge, to respond or issue statements in connection with allegations concerning the judge's conduct in a matter.

Rule 2.11. Disqualification.

(A) A judge shall disqualify himself or herself in any proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to the following circumstances:

(1) The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of facts that are in dispute in the proceeding.

(2) The judge knows that the judge, the judge's spouse or domestic partner, or a person within the third degree of relationship to either of them, or the spouse or domestic partner of such a person is:

(a) a party to the proceeding or an officer, director, general partner, managing member, or trustee of a party;

(b) acting as a lawyer in the proceeding;

(c) a person who has more than a de minimis interest that could be substantially affected by the proceeding; or

(d) likely to be a material witness in the proceeding.

(3) The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, domestic partner, parent, or child, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or in a party to the proceeding.

(4) [Reserved.]

(5) The judge, while a judge or a judicial candidate, has made a public statement, other than in a court proceeding, judicial decision, or opinion, that commits or appears to commit the judge to reach a particular result or rule in a particular way in the proceeding or controversy.

(6) The judge:

(a) served as a lawyer in the matter in controversy or was associated with a lawyer who participated substantially as a lawyer in the matter during such association;

(b) served in governmental employment and in such capacity participated personally and substantially as a lawyer or public official concerning the proceeding, or has publicly expressed in such capacity an opinion concerning the merits of the particular matter in controversy;

(c) was a material witness concerning the matter; or

(d) previously presided as a judge over the matter in another court.

(B) A judge shall keep informed about the judge's personal and fiduciary economic interests and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or domestic partner and minor children residing in the judge's household.

(C) A judge subject to disqualification under this Rule, other than for bias or prejudice under paragraph (A)(1), may disclose on the record the basis of the judge's disqualification and may ask the parties and their lawyers to consider, outside the presence of the judge and court staff, court officials and others subject to the judge's direction and control, whether to waive disqualification. If, following the disclosure, the parties and lawyers agree, without participation by the judge or court staff, court officials and others subject to the judge's direction and control, that the judge should not be disqualified, the judge may participate in the proceeding. The agreement shall be incorporated into the record of the proceeding.

COMMENT

[1] Under this Rule, a judge is disqualified whenever the judge's impartiality might reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1) through (6) apply. For example, if a judge were in the process of negotiating for employment with a law firm, the judge would be disqualified from any matters in which that law firm appeared, unless the disqualification was waived by the parties after disclosure by the judge.

[2] A judge's obligation not to hear or decide matters in which disqualification is required applies regardless of whether a motion to disqualify is filed.

[3] The rule of necessity may override the rule of disqualification. For example, a judge might be required to participate in judicial review of a judicial salary statute, or might be the only judge available in a matter requiring immediate judicial action, such as a hearing on probable cause or a temporary restraining order. In matters that require immediate action, the judge must disclose on the record the basis for possible disqualification and make reasonable efforts to transfer the matter to another judge as soon as practicable.

[4] The fact that a lawyer in a proceeding is affiliated with a law firm with which a relative of the judge is affiliated does not itself disqualify the judge. If, however, the judge's impartiality might reasonably be questioned under paragraph (A), or the relative is known by the judge to have an interest in the law firm that could be substantially affected by the proceeding under paragraph (A)(2)(c), the judge's disqualification is required.

[4A] The filing of a judicial discipline complaint during the pendency of a matter does not of itself require disqualification of the judge from presiding over the litigation. The judge's decision to recuse in such circumstances must be resolved on a case-by-case basis.

[5] A judge should disclose on the record information that the judge believes the parties or their lawyers might reasonably consider relevant to a possible motion for disqualification, even if the judge believes there is no basis for disqualification. A judge making such a disclosure should, where practicable, follow the procedure set forth in Rule 2.11(C).

[6] "Economic interest," as set forth in the Terminology section, means ownership of more than a de minimis legal or equitable interest. Except for situations in which a judge participates in the management of such a legal or equitable interest, or the interest could be substantially affected by the outcome of a proceeding before a judge, it does not include:

(1) an interest in the individual holdings within a mutual or common investment fund;

(2) an interest in securities held by an educational, religious, charitable, fraternal, or civic organization in which the judge or the judge's spouse, domestic partner, parent, or child serves as a director, officer, advisor, or other participant;

(3) a deposit in a financial institution or deposits or proprietary interests the judge may maintain as a member of a mutual savings association or credit union, or similar proprietary interests; or

(4) an interest in the issuer of government securities held by the judge.

Rule 2.12. Supervisory Duties.

(A) A judge shall require court staff, court officials, and others subject to the judge's direction and control to act in a manner consistent with the judge's obligations under this Code.

(B) A judge with supervisory authority for the performance of other judges shall take reasonable measures to ensure that those judges properly discharge their judicial responsibilities, including the prompt disposition of matters before them.

COMMENT

[1] A judge is responsible for his or her own conduct and for the conduct of others, such as staff, when those persons are acting at the judge's direction or control. A judge may not direct court staff, court officials, and others subject to the judge's direction and control to engage in conduct on the judge's behalf or as the judge's representative when such conduct would violate the Code if undertaken by the judge.

[2] Public confidence in the judicial system depends upon timely justice. To promote the efficient administration of justice, a judge with supervisory authority must take the steps needed to ensure that judges under his or her supervision administer their workloads promptly.

Rule 2.13. Administrative Appointments.

(A) In making administrative appointments, a judge:

(1) shall exercise the power of appointment impartially and on the basis of merit; and

(2) shall avoid nepotism, favoritism, and unnecessary appointments.

(B) [Reserved.]

(C) A judge shall not approve compensation of appointees beyond the fair value of services rendered.

COMMENT

[1] Appointees of a judge include assigned counsel, officials such as referees, commissioners, special masters, receivers, and guardians. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by paragraph (A).

[2] Unless otherwise defined by law, nepotism is the appointment or hiring of any relative within the third degree of relationship of either the judge or the judge's spouse or domestic partner, or the spouse or domestic partner of such relative.

Rule 2.14. Disability and Impairment. A judge having a reasonable belief that the performance of a lawyer or another judge is impaired by drugs or alcohol, or by a mental, emotional, or physical condition, shall take appropriate action, which may include a confidential referral to a lawyer or judicial assistance program.

COMMENT

[1] "Appropriate action" means action intended and reasonably likely to help the judge or lawyer in question address the problem and prevent harm to the justice system. Depending upon the circumstances, appropriate action may include but is

not limited to speaking directly to the impaired person, notifying an individual with supervisory responsibility over the impaired person, or making a referral to an assistance program.

[2] Taking or initiating corrective action by way of referral to an assistance program may satisfy a judge's responsibility under this Rule. Assistance programs have many approaches for offering help to impaired judges and lawyers, such as intervention, counseling, or referral to appropriate health care professionals. Depending upon the gravity of the conduct that has come to the judge's attention, however, the judge may be required to take other action, such as reporting the impaired judge or lawyer to the appropriate authority, agency, or body. See Rule 2.15.

Rule 2.15. Responding to Judicial and Lawyer Misconduct.

(A) A judge having knowledge that another judge has committed a violation of this Code that raises a substantial question regarding the judge's honesty, trustworthiness, or fitness as a judge in other respects shall inform the appropriate authority.

(B) A judge having knowledge that a lawyer has committed a violation of the Nevada Rules of Professional Conduct that raises a substantial question regarding the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall inform the appropriate authority.

(C) A judge who receives information indicating a substantial likelihood that another judge has committed a violation of this Code shall take appropriate action.

(D) A judge who receives information indicating a substantial likelihood that a lawyer has committed a violation of the Nevada Rules of Professional Conduct shall take appropriate action.

COMMENT

[1] Taking action to address known misconduct is a judge's obligation. Paragraphs (A) and (B) impose an obligation on the judge to report to the appropriate disciplinary authority the known misconduct of another judge or a lawyer that raises a substantial question regarding the honesty, trustworthiness, or fitness of that judge or lawyer. Ignoring or denying known misconduct among one's judicial colleagues or members of the legal profession undermines a judge's responsibility to participate in efforts to ensure public respect for the justice system. This Rule limits the reporting obligation to those offenses that an independent judiciary must vigorously endeavor to prevent.

[2] A judge who does not have actual knowledge that another judge or a lawyer may have committed misconduct but receives information indicating a substantial likelihood of such misconduct, is required to take appropriate action under paragraphs (C) and (D). Appropriate action may include, but is not limited to, communicating directly with the judge who may have violated this Code, communicating with a supervising judge, or reporting the suspected violation to the appropriate authority or other agency or body. Similarly, actions to be taken in response to information indicating that a lawyer has committed a violation of the Nevada Rules of Professional Conduct may include but are not limited to communicating directly with the lawyer who may have committed the violation or reporting the suspected violation to the appropriate authority or other agency or body.

Rule 2.16. Cooperation With Disciplinary Authorities.

(A) A judge shall cooperate and be candid and honest with judicial and lawyer disciplinary agencies.

(B) A judge shall not retaliate, directly or indirectly, against a person known or suspected to have assisted or cooperated with an investigation of a judge or a lawyer.

COMMENT

[1] Cooperation with investigations and proceedings of judicial and lawyer discipline agencies, as required in paragraph (A), instills confidence in judges' commitment to the integrity of the judicial system and the protection of the public.

[Added; effective January 19, 2010.]

CANON 3

A judge shall conduct the judge's personal and extrajudicial activities to minimize the risk of conflict with the obligations of judicial office.

Rule 3.1. Extrajudicial Activities in General. A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not:

(A) participate in activities that will interfere with the proper performance of the judge's judicial duties;

(B) participate in activities that will lead to frequent disqualification of the judge;

(C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality;

(D) engage in conduct that would appear to a reasonable person to be coercive; or

(E) make use of court premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.

COMMENT

[1] To the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities. Judges are uniquely qualified to engage in extrajudicial

activities that concern the law, the legal system, and the administration of justice, such as by speaking, writing, teaching, or participating in scholarly research projects. In addition, judges are permitted and encouraged to engage in educational, religious, charitable, fraternal, or civic extrajudicial activities not conducted for profit, even when the activities do not involve the law. See Rule 3.7.

[2] Participation in both law-related and other extrajudicial activities helps integrate judges into their communities and furthers public understanding of and respect for courts and the judicial system.

[3] Discriminatory actions and expressions of bias or prejudice by a judge, even outside the judge's official or judicial actions, are likely to appear to a reasonable person to call into question the judge's integrity and impartiality. Examples include jokes or other remarks that demean individuals based upon their race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, or socioeconomic status. For the same reason, a judge's extrajudicial activities must not be conducted in connection or affiliation with an organization that practices invidious discrimination. See Rule 3.6.

[4] While engaged in permitted extrajudicial activities, judges must not coerce others or take action that would reasonably be perceived as coercive. For example, depending upon the circumstances, a judge's solicitation of contributions or memberships for an organization, even as permitted by Rule 3.7(A), might create the risk that the person solicited would feel obligated to respond favorably or would do so to curry favor with the judge.

Rule 3.2. Appearances Before Governmental Bodies and Consultation With Government Officials. A judge shall not appear voluntarily at a public hearing before, or otherwise consult with, an executive or a legislative body or official, except:

(A) in connection with matters concerning the law, the legal system, or the administration of justice;

(B) in connection with matters about which the judge acquired knowledge or expertise in the course of the judge's judicial duties; or

(C) when the judge is acting pro se in a matter involving the judge's legal or economic interests, or when the judge is acting in a fiduciary capacity.

COMMENT

[1] Judges possess special expertise in matters of law, the legal system, and the administration of justice and may properly share that expertise with governmental bodies and executive or legislative branch officials. A judge may actively support public agencies or interests or testify on public matters concerning the law, the legal system, the provision of legal services, and the administration of justice.

[2] In appearing before governmental bodies or consulting with government officials, judges must be mindful that they remain subject to other provisions of this Code, such as Rule 1.3, prohibiting judges from using the prestige of office to advance their own or others' interests, Rule 2.10, governing public comment on pending and impending matters, and Rule 3.1(C), prohibiting judges from engaging in extrajudicial activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

[3] In general, it would be an unnecessary and unfair burden to prohibit judges from appearing before governmental bodies or consulting with government officials on matters that are likely to affect them as private citizens, such as zoning proposals affecting their real property. In engaging in such activities, however, judges must not refer to their judicial positions, and must otherwise exercise caution to avoid using the prestige of judicial office.

Rule 3.3. Testifying as a Character Witness. A judge shall not testify as a character witness in a judicial, administrative, or other adjudicatory proceeding or otherwise vouch for the character of a person in a legal proceeding, except when duly summoned.

COMMENT

[1] A judge who, without being subpoenaed, testifies as a character witness abuses the prestige of judicial office to advance the interests of another. See Rule 1.3. Except in unusual circumstances where the demands of justice require, a judge should discourage a party from requiring the judge to testify as a character witness.

[2] This rule does not apply to bar admissions proceedings or attorney or judicial discipline proceedings. A judge may voluntarily appear and testify as to the character of the bar applicant, attorney, or judge who is the focus of those proceedings.

Rule 3.4. Appointments to Governmental Positions. A judge shall not accept appointment to a governmental committee, board, commission, or other governmental position, unless it is one that concerns the law, the legal system, or the administration of justice.

COMMENT

[1] Rule 3.4 implicitly acknowledges the value of judges accepting appointments to entities that concern the law, the legal system, or the administration of justice. Even in such instances, however, a judge should assess the appropriateness of accepting an appointment, paying particular attention to the subject matter of the appointment and the availability and allocation of judicial resources, including the judge's time commitments, and giving due regard to the requirements of the independence and impartiality of the judiciary.

[2] A judge may represent his or her country, state, or locality on ceremonial occasions or in connection with historical, educational, or cultural activities. Such representation does not constitute acceptance of a government position.

Rule 3.5. Use of Nonpublic Information. A judge shall not intentionally disclose or use nonpublic information acquired in a judicial capacity for any purpose unrelated to the judge's judicial duties.

COMMENT

[1] In the course of performing judicial duties, a judge may acquire information of commercial or other value that is unavailable to the public. The judge must not reveal or use such information for personal gain or for any purpose unrelated to his or her judicial duties.

[2] This rule is not intended, however, to affect a judge's ability to act on information as necessary to protect the health or safety of the judge or a member of a judge's family, court personnel, or other judicial officers if consistent with other provisions of this Code.

Rule 3.6. Affiliation With Discriminatory Organizations.

(A) A judge shall not hold membership in any organization that practices invidious discrimination on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation.

(B) A judge shall not use the benefits or facilities of an organization if the judge knows or should know that the organization practices invidious discrimination on one or more of the bases identified in paragraph (A). A judge's attendance at an event in a facility of an organization that the judge is not permitted to join is not a violation of this Rule when the judge's attendance is an isolated event that could not reasonably be perceived as an endorsement of the organization's practices.

COMMENT

[1] A judge's public manifestation of approval of invidious discrimination on any basis gives rise to the appearance of impropriety and diminishes public confidence in the integrity and impartiality of the judiciary. A judge's membership in an organization that practices invidious discrimination creates the perception that the judge's impartiality is impaired.

[2] An organization is generally said to discriminate invidiously if it arbitrarily excludes from membership on the basis of race, sex, gender, religion, national origin, ethnicity, or sexual orientation persons who would otherwise be eligible for admission. Whether an organization practices invidious discrimination is a complex question to which judges should be attentive. The answer cannot be determined from a mere examination of an organization's current membership rolls, but rather, depends upon how the organization selects members, as well as other relevant factors, such as whether the organization is dedicated to the preservation of religious, ethnic, or cultural values of legitimate common interest to its members or whether it is an intimate, purely private organization whose membership limitations could not constitutionally be prohibited.

[3] When a judge learns that an organization to which the judge belongs engages in invidious discrimination, the judge must resign immediately from the organization.

[4] A judge's membership in a religious organization as a lawful exercise of the freedom of religion is not a violation of this Rule.

[5] This Rule does not apply to national or state military service.

Rule 3.7. Participation in Educational, Religious, Charitable, Fraternal, or Civic Organizations and Activities.

(A) Subject to the requirements of Rule 3.1, a judge may participate in activities sponsored by organizations or governmental entities concerned with the law, the legal system, or the administration of justice and those sponsored by or on behalf of educational, religious, charitable, fraternal, or civic organizations not conducted for profit, including but not limited to the following activities:

(1) assisting such an organization or entity in planning related to fund-raising, and participating in the management and investment of the organization's or entity's funds, and assisting in fund-raising, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice, and the judge does not personally solicit funds other than as permitted by Rule 3.7(A)(2);

(2) soliciting contributions for such an organization or entity, but only from members of the judge's family, or from judges over whom the judge does not exercise supervisory or appellate authority;

(3) soliciting membership for such an organization or entity, even though the membership dues or fees generated may be used to support the objectives of the organization or entity, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice;

(4) appearing or speaking at, receiving an award or other recognition at, being featured on the program of, and permitting his or her title to be used in connection with an event of such an organization or entity, but if the event serves a fund-raising purpose, the judge may participate only if his or her activities would not appear to a reasonable person to be coercive or an abuse of the prestige of judicial office. If the event does not concern the law, the legal system, or the administration of justice, the judge must also be a member of the organization or have had a close association with the organization or the event being celebrated;

(5) making recommendations to such a public or private fund-granting organization or entity in connection with its programs and activities, but only if the organization or entity is concerned with the law, the legal system, or the administration of justice; and

(6) serving as an officer, director, trustee, or nonlegal advisor of such an organization or entity, unless it is likely that the organization or entity:

(a) will be engaged in proceedings that would ordinarily come before the judge; or

(b) will frequently be engaged in adversary proceedings in the court of which the judge is a member, or in any court subject to the appellate jurisdiction of the court of which the judge is a member.

(B) A judge may encourage lawyers to provide pro bono publico legal services.

COMMENT

[1] The activities permitted by paragraph (A) generally include those sponsored by or undertaken on behalf of public or

private not-for-profit educational institutions and other not-for-profit organizations, including law-related, charitable, and other organizations.

[2] Even for law-related organizations, a judge should consider whether the membership and purposes of the organization, or the nature of the judge's participation in or association with the organization, would conflict with the judge's obligation to refrain from activities that reflect adversely upon a judge's independence, integrity, and impartiality.

[3] Mere attendance at an event, whether or not the event serves a fund-raising purpose, does not constitute a violation of paragraph (A)(4). But before participating in other activities, a judge should analyze the overall event and evaluate whether the judge's activities may be viewed as coercive or an abuse of the prestige of judicial office.

[3A] For law-related organizations only, a judge may be listed as a host or member of an honorary dinner committee for an organization or entity's fund-raising or member solicitation event, and also may be a speaker or guest of honor at such an event. Otherwise, a judge may not be a speaker or guest of honor at an event that is primarily for fund-raising or serve on an honorary dinner committee for an organization's fund-raising event, unless the judge is a member of the organization or has had a close association with the organization or the event being celebrated, or is a close friend of the person being honored. The judge, however, should not use his or her title when serving on any such committee, unless comparable designations are listed for other persons. Paragraph (A)(3) precludes a judge from soliciting membership for any organization or entity except those concerned with the law, the legal system, or the administration of justice.

[3] Identification of a judge's position in educational, religious, charitable, fraternal, or civic organizations on letterhead used for fund-raising or membership solicitation does not violate this Rule. The letterhead may list the judge's title or judicial office if comparable designations are used for other persons. In addition, a judge must also make reasonable efforts to ensure that the judge's staff, court officials, and others subject to the judge's direction and control do not solicit funds on the judge's behalf for any purpose, law-related or otherwise.

[5] In addition to appointing lawyers to serve as counsel for indigent parties in individual cases, a judge may promote broader access to justice by encouraging lawyers to participate in pro bono publico legal services, if in doing so the judge does not employ coercion, or abuse the prestige of judicial office. Such encouragement may take many forms, including providing lists of available programs, training lawyers to do pro bono publico legal work, and participating in events recognizing lawyers who have done pro bono publico work.

[6] Recruitment of lawyers or law firms to provide pro bono legal services pursuant to Supreme Court Rule 191 is not membership solicitation. A judge may assist an organization in recruiting attorneys so long as the recruitment effort cannot reasonably be perceived as coercive. A judge may provide an organization with general endorsement or solicitation material for use in the organization's recruitment materials. Similarly, this Rule does not preclude a judge from requesting an attorney to accept pro bono representation of a party in a proceeding pending before the judge.

Rule 3.8. Appointments to Fiduciary Positions.

(A) A judge shall not accept appointment to serve in a fiduciary position, such as executor, administrator, trustee, guardian, attorney in fact, or other personal representative, except for the estate, trust, or person of a member of the judge's family, and then only if such service will not interfere with the proper performance of judicial duties.

(B) A judge shall not serve in a fiduciary position if the judge as fiduciary will likely be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust, or ward becomes involved in adversary proceedings in the court on which the judge serves, or one under its appellate jurisdiction.

(C) A judge acting in a fiduciary capacity shall be subject to the same restrictions on engaging in financial activities that apply to a judge personally.

(D) If a person who is serving in a fiduciary position becomes a judge, he or she must comply with this Rule as soon as reasonably practicable, but in no event later than one year after becoming a judge.

COMMENT

[1] A judge should recognize that other restrictions imposed by this Code may conflict with a judge's obligations as a fiduciary; in such circumstances, a judge should resign as fiduciary. For example, serving as a fiduciary might require frequent disqualification of a judge under Rule 2.11 because a judge is deemed to have an economic interest in shares of stock held by a trust if the amount of stock held is more than de minimis.

Rule 3.9. Service as Arbitrator or Mediator. A judge shall not act as an arbitrator or a mediator or perform other judicial functions apart from the judge's official duties unless expressly authorized by law.

COMMENT

[1] This Rule does not prohibit a judge from participating in arbitration, mediation, or settlement conferences performed as part of assigned judicial duties. Rendering dispute resolution services apart from those duties, whether or not for economic gain, is prohibited unless it is expressly authorized by law.

Rule 3.10. Practice of Law. Unless otherwise permitted by law, a judge shall not practice law. A judge may act pro se and may, without compensation, give legal advice to and draft or review documents for a member of the judge's family but is prohibited from serving as the family member's lawyer in any forum.

COMMENT

[1] A judge may act pro se in all legal matters, including matters involving litigation and matters involving appearances before or other dealings with governmental bodies. A judge must not use the prestige of office to advance the judge's personal or family interests. See Rule 1.3.

Rule 3.11. Financial, Business, or Remunerative Activities.

(A) A judge may hold and manage investments of the judge and members of the judge's family.

(B) A judge shall not serve as an officer, director, manager, general partner, advisor, or employee of any business entity except that a judge may manage or participate in:

(1) a business closely held by the judge or members of the judge's family; or

(2) a business entity primarily engaged in investment of the financial resources of the judge or members of the judge's family.

(C) A judge shall not engage in financial activities permitted under paragraphs (A) and (B) if they will:

(1) interfere with the proper performance of judicial duties;

(2) lead to frequent disqualification of the judge;

(3) involve the judge in frequent transactions or continuing business relationships with lawyers or other persons likely to come before the court on which the judge serves; or

(4) result in violation of other provisions of this Code.

COMMENT

[1] Judges are generally permitted to engage in financial activities, including managing real estate and other investments for themselves or for members of their families. Participation in these activities, like participation in other extrajudicial activities, is subject to the requirements of this Code. For example, it would be improper for a judge to spend so much time on business activities that it interferes with the performance of judicial duties. See Rule 2.1. Similarly, it would be improper for a judge to use his or her official title or appear in judicial robes in business advertising, or to conduct his or her business or financial affairs in such a way that disqualification is frequently required. See Rules 1.3 and 2.11.

[2] As soon as practicable without serious financial detriment, the judge must divest himself or herself of investments and other financial interests that might require frequent disqualification or otherwise violate this Rule.

Rule 3.12. Compensation for Extrajudicial Activities. A judge may accept reasonable compensation for extrajudicial activities permitted by this Code or other law unless such acceptance would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

COMMENT

[1] A judge is permitted to accept compensation for extrajudicial activities, provided the compensation is reasonable and commensurate with the task performed and the acceptance of the compensation does not violate NRS 281A.510 prohibiting honoraria. A judge may, however, accept reimbursement for expenses incurred in connection with speaking engagements as provided in Rule 3.14. The judge should be mindful, however, that judicial duties must take precedence over other activities. See Rule 2.1.

[1A] Retired judges subject to recall, continuing part-time judges, and pro tempore part-time judges may accept a reasonable honorarium for supplemental employment such as teaching, lecturing, and speaking.

[2] Compensation derived from extrajudicial activities may be subject to public reporting. See Rule 3.15.

Rule 3.13. Acceptance and Reporting of Gifts, Loans, Bequests, Benefits, or Other Things of Value.

(A) A judge shall not accept any gifts, loans, bequests, benefits, or other things of value, if acceptance is prohibited by law or would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality.

(B) Unless otherwise prohibited by law, or by paragraph (A), a judge may accept the following without publicly reporting such acceptance:

(1) items with little intrinsic value, such as plaques, certificates, trophies, and greeting cards;

(2) gifts, loans, bequests, benefits, or other things of value from friends, relatives, or other persons, including lawyers, whose appearance or interest in a proceeding pending or impending before the judge would in any event require disqualification of the judge under Rule 2.11;

(3) ordinary social hospitality;

(4) commercial or financial opportunities and benefits, including special pricing and discounts, and loans from lending institutions in their regular course of business, if the same opportunities and benefits or loans are made available on the same terms to similarly situated persons who are not judges;

(5) rewards and prizes given to competitors or participants in random drawings, contests, or other events that are open to persons who are not judges;

(6) scholarships, fellowships, and similar benefits or awards, if they are available to similarly situated persons who are not judges, based upon the same terms and criteria;

(7) books, magazines, journals, audiovisual materials, and other resource materials supplied by publishers on a complimentary basis for official use; or

(8) gifts, awards, or benefits associated with the business, profession, or other separate activity of a spouse, domestic partner, or other family member of a judge residing in the judge's household, but that incidentally benefit the judge.

(C) Unless otherwise prohibited by law or by paragraph (A), a judge may accept the following items, and must report such acceptance to the extent required by Rule 3.15:

(1) gifts incident to a public testimonial;

(2) invitations to the judge and the judge's spouse, domestic partner, or guest to attend without charge:

(a) an event associated with a bar-related function or other activity relating to the law, the legal system, or the administration of justice; or

(b) an event associated with any of the judge's educational, religious, charitable, fraternal, or civic activities permitted by this Code, if the same invitation is offered to nonjudges who are engaged in similar ways in the activity as is the judge; and

(3) gifts, loans, bequests, benefits, or other things of value, if the source is a party or other person, including a lawyer, who has come or is likely to come before the judge, or whose interests have come or are likely to come before the judge.

COMMENT

[1] Whenever a judge accepts a gift or other thing of value without paying fair market value, there is a risk that the benefit might be viewed as intended to influence the judge's decision in a case. Rule 3.13 imposes restrictions upon the acceptance of such benefits, according to the magnitude of the risk. Paragraph (B) identifies circumstances in which the risk that the acceptance would appear to undermine the judge's independence, integrity, or impartiality is low and explicitly provides that such items need not be publicly reported. As the value of the benefit or the likelihood that the source of the benefit will appear before the judge increases, the judge is either prohibited under paragraph (A) from accepting the gift or required under paragraph (C) to publicly report it.

[2] Gift-giving between friends and relatives is a common occurrence and ordinarily does not create an appearance of impropriety or cause reasonable persons to believe that the judge's independence, integrity, or impartiality has been compromised. In addition, when the appearance of friends or relatives in a case would require the judge's disqualification under Rule 2.11, there would be no opportunity for a gift to influence the judge's decision making. Paragraph (B)(2) places no restrictions upon the ability of a judge to accept gifts or other things of value from friends or relatives under these circumstances and does not require public reporting.

[3] Businesses and financial institutions frequently make available special pricing, discounts, and other benefits, either in connection with a temporary promotion or for preferred customers, based upon longevity of the relationship, volume of business transacted, and other factors. A judge may freely accept such benefits if they are available to the general public or if the judge qualifies for the special price or discount according to the same criteria as are applied to persons who are not judges. As an example, loans provided at generally prevailing interest rates are not gifts, but a judge could not accept a loan from a financial institution at below-market interest rates unless the same rate was being made available to the general public for a certain period of time or only to borrowers with specified qualifications that the judge also possesses.

[4] Rule 3.13 applies only to acceptance of gifts or other things of value by a judge. Nonetheless, if a gift or other benefit is given to the judge's spouse, domestic partner, or member of the judge's family residing in the judge's household, it may be viewed as an attempt to evade Rule 3.13 and influence the judge indirectly. Where the gift or benefit is being made primarily to such other persons, and the judge is merely an incidental beneficiary, this concern is reduced. A judge should, however, remind family and household members of the restrictions imposed upon judges and urge them to take these restrictions into account when making decisions about accepting such gifts or benefits.

[5] Rule 3.13 does not apply to contributions to a judge's campaign for judicial office. Such contributions are governed by other Rules of this Code, including Rules 4.3 and 4.4.

Rule 3.14. Reimbursement of Expenses and Waivers of Fees or Charges.

(A) Unless otherwise prohibited by Rules 3.1 and 3.13(A) or other law, a judge may accept reimbursement of necessary and reasonable expenses for travel, food, lodging, or other incidental expenses, or a waiver or partial waiver of fees or charges for registration, tuition, and similar items, from sources other than the judge's employing entity, if the expenses or charges are associated with the judge's participation in extrajudicial activities permitted by this Code.

(B) Reimbursement of expenses for necessary travel, food, lodging, or other incidental expenses shall be limited to the actual costs reasonably incurred by the judge and, when appropriate to the occasion, by the judge's spouse, domestic partner, or guest.

(C) A judge who accepts reimbursement of expenses or waivers or partial waivers of fees or charges on behalf of the judge or the judge's spouse, domestic partner, or guest shall publicly report such acceptance as required by Rule 3.15.

COMMENT

[1] Educational, civic, religious, fraternal, and charitable organizations often sponsor meetings, seminars, symposia, dinners, awards ceremonies, and similar events. Judges are encouraged to attend educational programs, as both teachers and participants, in law-related and academic disciplines, in furtherance of their duty to remain competent in the law. Participation in a variety of other extrajudicial activity is also permitted and encouraged by this Code.

[2] Not infrequently, sponsoring organizations invite certain judges to attend seminars or other events on a fee-waived or partial-fee-waived basis, and sometimes include reimbursement for necessary travel, food, lodging, or other incidental expenses. A judge's decision whether to accept reimbursement of expenses or a waiver or partial waiver of fees or charges in connection with these or other extrajudicial activities must be based upon an assessment of all the circumstances. The judge must undertake a reasonable inquiry to obtain the information necessary to make an informed judgment about whether acceptance would be consistent with the requirements of this Code.

[3] A judge must assure himself or herself that acceptance of reimbursement or fee waivers would not appear to a reasonable person to undermine the judge's independence, integrity, or impartiality. The factors that a judge should consider when deciding whether to accept reimbursement or a fee waiver for attendance at a particular activity include:

(1) whether the sponsor is an accredited educational institution or bar association rather than a trade association or a for-profit entity;

(2) whether the funding comes largely from numerous contributors rather than from a single entity and is earmarked for programs with specific content;

(3) whether the content is related or unrelated to the subject matter of litigation pending or impending before the judge, or to matters that are likely to come before the judge;

(4) whether the activity is primarily educational rather than recreational, and whether the costs of the event are reasonable and comparable to those associated with similar events sponsored by the judiciary, bar associations, or similar groups;

(5) whether information concerning the activity and its funding sources is available upon inquiry;

(6) whether the sponsor or source of funding is generally associated with particular parties or interests currently appearing or likely to appear in the judge's court, thus possibly requiring disqualification of the judge under Rule 2.11;

(7) whether differing viewpoints are presented; and

(8) whether a broad range of judicial and nonjudicial participants are invited, whether a large number of participants are invited, and whether the program is designed specifically for judges.

Rule 3.15. Reporting Requirements.

(A) A judge shall publicly report the amount or value of:

(1) compensation received for extrajudicial activities as permitted by Rule 3.12;

(2) gifts and other things of value as permitted by Rule 3.13(C), unless the value of such items, alone or in the aggregate with other items received from the same source in the same calendar year, does not exceed $200; and

(3) reimbursement of expenses and waiver of fees or charges permitted by Rule 3.14(A), unless the amount of reimbursement or waiver, alone or in the aggregate with other reimbursements or waivers received from the same source in the same calendar year, does not exceed $200.

(B) When public reporting is required by paragraph (A), a judge shall report the date, place, and nature of the activity for which the judge received any compensation; the description of any gift, loan, bequest, benefit, or other thing of value accepted; and the source of reimbursement of expenses or waiver or partial waiver of fees or charges.

(C) The public report required by paragraph (A) shall be made at least annually.

(D) Reports made in compliance with this Rule shall be filed as public documents.

[Added; effective January 19, 2010.]

CANON 4

A judge or candidate for judicial office shall not engage in political or campaign activity that is inconsistent with the independence, integrity, or impartiality of the judiciary.

Rule 4.1. Political and Campaign Activities of Judges and Judicial Candidates in General.

(A) Except as permitted by law, or by Rules 4.2, 4.3, and 4.4, a judge or a judicial candidate shall not:

(1) act as a leader in, or hold an office in, a political organization;

(2) make speeches on behalf of a political organization;

(3) publicly endorse or oppose a candidate for any public office;

(4) solicit funds for a political organization or a candidate for public office;

(5) [Reserved];

(6) publicly identify himself or herself as a candidate of a political organization;

(7) seek, accept, or use endorsements or publicly stated support from a political organization;

(8) [Reserved];

(9) use or permit the use of campaign contributions for the private benefit of the judge, the candidate, or others;

(10) use court staff, facilities, or other court resources in a campaign for judicial office;

(11) knowingly, or with reckless disregard for the truth, make any false or misleading statement;

(12) make any statement that would reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court; or

(13) in connection with cases, controversies, or issues that are likely to come before the court, make pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

(B) A judge or judicial candidate shall take reasonable measures to ensure that other persons do not undertake, on behalf of the judge or judicial candidate, any activities prohibited under paragraph (A).

(C) Except as prohibited by law, a judge or judicial candidate subject to public election may at any time:

(1) attend political gatherings or attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office;

(2) upon request, identify himself or herself as a member of a political party;

(3) be a member of or pay an assessment to or make a contribution to a political organization or make a contribution to a candidate for public office;

(4) make a public declaration of candidacy;

(5) make a public speech or appearance or speak to gatherings on his or her own behalf; and

(6) appear in newspaper, television, or other media.

COMMENT

General Considerations

[1] Even when subject to public election, a judge plays a role different from that of a legislator or executive branch official. Rather than making decisions based upon the expressed views or preferences of the electorate, a judge makes decisions based upon the law and the facts of every case. Therefore, in furtherance of this interest, judges and judicial candidates must, to the greatest extent possible, be free and appear to be free from political influence and political pressure. This Canon imposes narrowly tailored restrictions upon the political and campaign activities of all judges and judicial candidates.

[2] Canon 4 applies to all incumbent judges and judicial candidates. A successful candidate, whether or not an incumbent, is subject to judicial discipline for his or her campaign conduct; an unsuccessful candidate who is a lawyer is subject to lawyer discipline for his or her campaign conduct. A lawyer who is a candidate for judicial office is subject to

Rule 8.2 of the Nevada Rules of Professional Conduct. A nonlawyer who is an unsuccessful candidate for judicial office is subject to the applicable provisions of the Nevada Revised Statutes, including those referred to in Part VI of the Application section as being inapplicable to the judicial branch of government.

PARTICIPATION IN POLITICAL ACTIVITIES

[3] Public confidence in the independence and impartiality of the judiciary is eroded if judges or judicial candidates are perceived to be subject to political influence. A judge or candidate for judicial office retains the right to participate in the political process as a voter, be a member of a political organization, and contribute personal funds to a candidate or political organization. Although judges and judicial candidates may register to vote as members of a political party, they are prohibited by paragraph (A)(1) from assuming leadership roles in political organizations.

[4] Paragraphs (A)(2) and (A)(3) prohibit judges and judicial candidates from making speeches on behalf of political organizations or publicly endorsing or opposing candidates for public office, respectively, to prevent them from abusing the prestige of judicial office to advance the interests of others. See Rule 1.3. These Rules do not prohibit candidates from campaigning on their own behalf, or from endorsing or opposing candidates for the same judicial office for which they are running. See Rules 4.2(B)(2) and 4.2(B)(3). A judge or judicial candidate's donation to a candidate or political organization that is otherwise permitted by state or federal law is not considered a public endorsement of a candidate for public office. Nothing in this Rule prohibits a judge or candidate from speaking to a political organization.

[5] Although members of the families of judges and judicial candidates are free to engage in their own political activity, including running for public office, there is no "family exception" to the prohibition in paragraph (A)(3) against a judge or candidate publicly endorsing candidates for public office. A judge or judicial candidate must not become involved in, or publicly associated with, a family member's political activity or campaign for public office. To avoid public misunderstanding, judges and judicial candidates should take, and should urge members of their families to take, reasonable steps to avoid any implication that they endorse any family member's candidacy or other political activity.

[6] Judges and judicial candidates retain the right to participate in the political process as voters in both primary and general elections. For purposes of this Canon, participation in a caucus-type election procedure does not constitute public support for or endorsement of a political organization or candidate and is not prohibited by paragraphs (A)(2) or (A)(3).

[6A] Paragraph (C) permits judges or judicial candidates to be involved in limited political activity at any time and also allows them to make a public declaration of candidacy and to make public speeches and appearances at any time. Even though judges in Nevada are chosen by means of nonpartisan elections, judges and candidates for judicial office are occasionally asked at candidates' forums to identify their political party affiliations. Rule 4.1(C)(2) permits a judge or candidate to identify his or her political party membership upon request. While judges and candidates may properly respond to questions regarding their party affiliation, it is impermissible in campaign materials for them to align themselves with a political party or to affiliate themselves with a political party. Nonetheless, judges and candidates may place their campaign materials on a table designated for the distribution of literature at any gathering regardless of whether the table is sponsored by a particular political party.

[6B] Paragraph (A)(10) does not prohibit use of court facilities or resources for limited purposes such as filming campaign commercials, so long as the use does not interfere with the performance of judicial duties.

STATEMENTS AND COMMENTS MADE DURING A CAMPAIGN FOR JUDICIAL OFFICE

[7] Judicial candidates must be scrupulously fair and accurate in all statements made by them and by their campaign committees. Paragraph (A)(11) obligates candidates and their committees to refrain from making statements that are false or misleading, or that omit facts necessary to make the communication considered as a whole not materially misleading.

[8] Judicial candidates are sometimes the subject of false, misleading, or unfair allegations made by opposing candidates, third parties, or the media. For example, false or misleading statements might be made regarding the identity, present position, experience, qualifications, or judicial rulings of a candidate. In other situations, false or misleading allegations may be made that bear upon a candidate's integrity or fitness for judicial office. As long as the candidate does not violate paragraphs (A)(11), (A)(12), or (A)(13), the candidate may make a factually accurate public response. In addition, when an independent third party has made unwarranted attacks on a candidate's opponent, the candidate may disavow the attacks, and request the third party to cease and desist.

[9] Subject to paragraph (A)(12), a judicial candidate is permitted to respond directly to false, misleading, or unfair allegations made against him or her during a campaign, although it is preferable for someone else to respond if the allegations relate to a pending case.

[10] Paragraph (A)(12) prohibits judicial candidates from making comments that might impair the fairness of pending or impending judicial proceedings. This provision does not restrict arguments or statements to the court or jury by a lawyer who is a judicial candidate, or rulings, statements, or instructions by a judge that may appropriately affect the outcome of a matter.

PLEDGES, PROMISES, OR COMMITMENTS INCONSISTENT WITH IMPARTIAL PERFORMANCE OF THE ADJUDICATIVE DUTIES OF JUDICIAL OFFICE

[11] The role of a judge is different from that of a legislator or executive branch official, even when the judge is subject to public election. Campaigns for judicial office must be conducted differently from campaigns for other offices. The narrowly drafted restrictions upon political and campaign activities of judicial candidates provided in Canon 4 allow candidates to conduct campaigns that provide voters with sufficient information to permit them to distinguish between candidates and make informed electoral choices.

[12] Paragraph (A)(13) makes applicable to both judges and judicial candidates the prohibition that applies to judges in Rule 2.10(B), relating to pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of judicial office.

[13] The making of a pledge, promise, or commitment is not dependent upon, or limited to, the use of any specific words or phrases; instead, the totality of the statement must be examined to determine if a reasonable person would believe that the

candidate for judicial office has specifically undertaken to reach a particular result. Pledges, promises, or commitments must be contrasted with statements or announcements of personal views on legal, political, or other issues, which are not prohibited. When making such statements, a judge should acknowledge the overarching judicial obligation to apply and uphold the law, without regard to his or her personal views.

[14] A judicial candidate may make campaign promises related to judicial organization, administration, and court management, such as a promise to dispose of a backlog of cases, start court sessions on time, or avoid favoritism in appointments and hiring. A candidate may also pledge to take action outside the courtroom, such as working toward an improved jury selection system, or advocating for more funds to improve the physical plant and amenities of the courthouse.

[15] Judicial candidates may receive questionnaires or requests for interviews from the media and from issue advocacy or other community organizations that seek to learn their views on disputed or controversial legal or political issues. Paragraph (A)(13) does not specifically address judicial responses to such inquiries. Depending upon the wording and format of such questionnaires, candidates' responses might be viewed as pledges, promises, or commitments to perform the adjudicative duties of office other than in an impartial way. To avoid violating paragraph (A)(13), therefore, candidates who respond to media and other inquiries should also give assurances that they will keep an open mind and will carry out their adjudicative duties faithfully and impartially if elected. Candidates who do not respond may state their reasons for not responding, such as the danger that answering might be perceived by a reasonable person as undermining a successful candidate's independence or impartiality, or that it might lead to frequent disqualification. See Rule 2.11.

Rule 4.2. Political and Campaign Activities of Judicial Candidates in Public Elections.

(A) A judicial candidate in a public election shall:

(1) act at all times in a manner consistent with the independence, integrity, and impartiality of the judiciary;

(2) comply with all applicable election, election campaign, and election campaign fund-raising laws and regulations of this jurisdiction;

(3) review and approve the content of all campaign statements and materials produced by the candidate or his or her campaign committee, as authorized by Rule 4.4, before their dissemination; and

(4) take reasonable measures to ensure that other persons do not undertake on behalf of the candidate activities that the candidate is prohibited from doing by Rule 4.1.

(5) report contributions received and campaign expenses in accordance with NRS Chapter 294A.

(6) if elected to judicial office, a candidate who received contributions that were not spent or committed for expenditure as a result of the campaign may dispose of the money in any combination as provided in subsections (a)-(d). Any other disposition of the money is prohibited.

(a) return the unspent money to contributors;

(b) donate the money to the general fund of the state, county or city relating to the judge's office;

(c) use the money in the judge's next election or for the payment of other expenses related to the judge's public office or the judge's previous campaigns for judicial office;

(d) donate the money to any tax-exempt nonprofit entity, including a nonprofit state or local bar association, the Administrative Office of the Courts or any foundation entrusted with the distribution of interest on Lawyer's Trust Accounts (IOLTA) funds.

(7) unless a candidate for other judicial office, a judge who does not run for reelection shall, not later than the 15th day of the second month after the expiration of the judge's term of office, dispose of those contributions in the manner provided in Rule 4.2(A)(6).

(B) A candidate for elective judicial office may, unless prohibited by law:

(1) establish a campaign committee pursuant to the provisions of Rule 4.4;

(2) speak on behalf of his or her candidacy through any medium, including but not limited to advertisements, websites, or other campaign literature;

(3) publicly oppose candidates for the same judicial office for which he or she is running;

(4) in accordance with Rules 4.2(C), 4.2(D) and other applicable law, solicit and accept campaign contributions, either personally or through a campaign committee.

(5) seek, accept, or use endorsements from any person or organization other than a partisan political organization.

(C) A candidate who is not opposed in an election must not solicit or accept contributions for the candidate's campaign, either personally or through a candidate's committee, at any time.

(1) A candidate becomes opposed in an election when, at the close of filing, another candidate has filed a declaration of candidacy or acceptance of candidacy for the same judicial office.

(2) If a candidate's opponent files a withdrawal of candidacy, the candidate is deemed unopposed as of the effective date of the withdrawal of candidacy and must not solicit or accept campaign contributions after that date.

(3) A candidate who is opposed and/or the candidate's committees may solicit or accept contributions for the candidate's campaign no earlier than 5:00 p.m. on the last day for filing a declaration of candidacy for judicial office and no later than 90 days after the last election in which the candidate participates during the election year.

(D) Candidates running exclusively for municipal court, however, may solicit or accept contributions for the candidate's campaign no earlier than 120 days before the primary election and no later than 90 days after the last election in which the candidate participates during the election year. If, at the close of filing for judicial office in a municipal court election a candidate is unopposed, the candidate must not solicit or accept campaign contributions after the close of filing.

COMMENT

[1] Paragraphs (B), (C), and (D) permit judicial candidates in public elections to engage in some political and campaign activities otherwise prohibited by Rule 4.1. Solicitation and acceptance of campaign contributions by unopposed candidates or their committees are prohibited at any time, except as provided in paragraph (D) for candidates running exclusively for municipal court.

[2] Despite paragraphs (B), (C), and (D), judicial candidates for public election remain subject to many of the provisions

of Rule 4.1. For example, a candidate continues to be prohibited from soliciting funds for a political organization, knowingly making false or misleading statements during a campaign, or making certain promises, pledges, or commitments related to future adjudicative duties. See Rule 4.1(A), paragraphs (4), (11), and (13).

[3] Based upon the statutory changes enacted by the Nevada Legislature in 2007, and approved by the Governor, the filing date for a candidate for supreme court, district court, and justice of the peace has been advanced from May to January. Therefore, candidates involved in a contested election should have sufficient time to raise campaign contributions before the August primary date. Due to the divergent filing deadlines and election dates in municipal elections, special time limitations on fundraising are required for those elections.

In the event the candidate is not opposed in an election, under paragraphs (C) and (D) the candidate may not solicit contributions. One of the reasons for this restriction is that unopposed candidates for all judicial offices only need one vote to win their election. The only judicial candidates who have a "none of the above" category on the ballot are statewide candidates for the Nevada Supreme Court.

However, the Nevada Legislature approved Senate Joint Resolution 2 in 2007, which would amend the Nevada Constitution and change judicial selection for supreme court justices and district court judges from an election to an appointment process with a retention election. In the event this resolution is approved by the Nevada Legislature in 2009 and approved by the voters in the subsequent general election, this Rule may be amended to change the procedures regarding the solicitation of campaign contributions.

[4] This Rule permits a candidate to seek, accept, or use endorsements or publicly stated support from any source except partisan political organizations.

[5] Paragraph (A)(6) provides a variety of methods for handling excess campaign funds. Although it is entirely ethical to use or dispose of such funds in accordance with the provisions of Rule 4.2(A)(6), candidates are encouraged to be responsive to the desires of the contributors concerning the disposition of such funds within the available options, to the extent such desires are known to the candidate or the candidate's campaign committees.

The 2007 amendments to former Section 5C(4) conform the Code more closely to NRS 294A.160(2). However, this Canon is more restrictive than the provisions of NRS 294A.160(2). Candidates for judicial office are subject to the reporting requirements of NRS 294A.200 relating to campaign contributions, together with all other applicable state campaign reporting and contribution laws.

Candidates who are not elected to or holding judicial office are subject to the requirements of NRS 294A.160(3) governing the disposition of unspent campaign funds.

[6] For purposes of paragraph (B)(3), candidates are considered to be running for the same judicial office if they are competing for a single judgeship or if several judgeships on the same court are to be filled as a result of the election. In opposing another candidate for a position on the same court, a judicial candidate must abide by the same rules governing campaign conduct and speech as apply to the candidate's own campaign.

[7] Although judicial candidates in nonpartisan public elections are prohibited from running on a ticket or slate associated with a political organization, they may group themselves into slates or other alliances to conduct their campaigns more effectively. Candidates who have grouped themselves together are considered to be running for the same judicial office if they satisfy the conditions described in Comment [6].

Rule 4.3. Activities of Applicants for Appointive Judicial Office. An applicant for appointment to judicial office may:

(A) communicate with the appointing authority, including any selection, screening, or nominating commission or similar agency; and

(B) seek endorsements for the appointment from any person or organization other than a partisan political organization.

COMMENT

[1] When seeking support or endorsement, or when communicating directly with an appointing authority, an applicant for appointive judicial office must not make any pledges, promises, or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office. See Rule 4.1(A)(13).

[2] An applicant for appointment to judicial office must not solicit or accept funds, personally or through a committee or otherwise, to support his or her application. And such applicants may not establish campaign committees under Rule 4.4. A nonjudge applicant for appointment to judicial office may also retain an office in a political organization.

Rule 4.4. Campaign Committees.

(A) A judicial candidate subject to public election may establish a campaign committee to manage and conduct a campaign for the candidate, subject to the provisions of this Code. The candidate is responsible for ensuring that his or her campaign committee complies with applicable provisions of this Code and other applicable law.

(B) A judicial candidate subject to public election shall direct his or her campaign committee:

(1) to solicit and accept only such campaign contributions as are reasonable under the circumstances and in an amount permitted by law; and

(2) not to solicit or accept contributions for a candidate's current campaign except in accordance with Rules 4.2(C) and 4.2(D).

COMMENT

[1] A candidate may personally solicit or accept campaign contributions in accordance with the law or personally solicit publicly stated support. A candidate may use committees to solicit and accept such lawful contributions and conduct campaigns for the candidate through media advertisements, brochures, mailings, candidate forums, and other means not prohibited by law. This Rule recognizes that judicial candidates must raise campaign funds to support their candidacies and permits candidates, other than applicants for appointive judicial office, to establish campaign committees to solicit and

accept reasonable financial contributions or in-kind contributions.

[2] Campaign committees may solicit and accept campaign contributions, manage the expenditure of campaign funds, and generally conduct campaigns. Candidates are responsible for compliance with the requirements of election law and other applicable law, and for the activities of their campaign committees.

[3] A candidate must instruct the campaign committee to solicit or accept only such contributions as are reasonable in amount, appropriate under the circumstances, and in conformity with applicable law. A candidate and members of the candidate's campaign committees must exercise a high degree of ethical behavior in the solicitation and acceptance of campaign contributions, and must especially take great care in avoiding coercion or the appearance of coercion in the solicitation and acceptance of such contributions. Although lawyers and others who might appear before a successful candidate for judicial office are permitted to make campaign contributions, the candidate should instruct his or her campaign committee to be especially cautious in connection with such contributions, so they do not create grounds for disqualification if the candidate is elected to judicial office. See Rule 2.11.

Rule 4.5. Activities of Judges Who Become Candidates for Nonjudicial Office.

(A) Upon becoming a candidate for a nonjudicial elective office, a judge shall resign from judicial office, unless permitted by law to continue to hold judicial office.

(B) Upon becoming a candidate for a nonjudicial appointive office, a judge is not required to resign from judicial office, provided that the judge complies with the other provisions of this Code.

COMMENT

[1] In campaigns for nonjudicial elective public office, candidates may make pledges, promises, or commitments related to positions they would take and ways they would act if elected to office. Although appropriate in nonjudicial campaigns, this manner of campaigning is inconsistent with the role of a judge, who must remain fair and impartial to all who come before him or her. The potential for misuse of the judicial office and the political promises that the judge would be compelled to make in the course of campaigning for nonjudicial elective office, together dictate that a judge who wishes to run for such an office must resign upon becoming a candidate.

[2] The "resign to run" rule set forth in paragraph (A) ensures that a judge cannot use the judicial office to promote his or her candidacy and prevents post-campaign retaliation from the judge in the event the judge is defeated in the election. When a judge is seeking appointive nonjudicial office, however, the dangers are not sufficient to warrant imposing the "resign to run" rule.

[Added; effective January 19, 2010.]

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A-10-627691-B

DISTRICT COURT
CLARK COUNTY, NEVADA

Business Court	**COURT MINUTES**	**January 29, 2016**

A-10-627691-B Steven Jacobs, Plaintiff(s)
vs.
Las Vegas Sands Corp, Defendant(s)

January 29, 2016 **1:30 PM** **Minute Order Resetting Matters Taken Off Calendar**

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Dulce Romea

PARTIES PRESENT: None. Minute order only - no hearing held.

JOURNAL ENTRIES

- Given the order denying the motion for disqualification, these matters that were previously taken off calendar are RESET on the following dates.

2-4-16 8:30 AM STATUS CONFERENCE...DEFENDANT SANDS CHINA, LTD.'S MOTION FOR ORDER TO SHOW CAUSE WHY PLAINTIFF STEVEN C. JACOBS SHOULD NOT BE HELD IN CONTEMPT OF COURT AND TO COMPEL EXECUTION OF MEDICAL RECORDS RELEASE AUTHORIZATION AND PRODUCTION OF TAX RETURNS ON ORDER SHORTENING TIME

2-5-16 CHAMBERS STATUS CHECK: MEDICAL RECORDS FOR IN CAMERA REVIEW

CLERK'S NOTE: A copy of the above minute order was distributed via the E-Service Master List. / dr 1-29-16

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CLERK OF THE COURT

ORDR

DISTRICT COURT
CLARK COUNTY, NEVADA

STEVEN JACOBS,

Plaintiff,

vs.

CASE NO. A-10-627691
DEPT NO. XI

LAS VEGAS SANDS CORP., a Nevada corporation; ET AL.,

Defendants.

/

ORDER DENYING DEFENDANT LAS VEGAS SANDS CORP.'S MOTION FOR DISQUALIFICATION

This Court, having reviewed Defendant Las Vegas Sands Corp.'s Motion for Disqualification filed on January 13, 2016, and all related pleadings, finds the matter is appropriately decided on the pleadings and without oral argument pursuant to EDCR 2.23.

Defendant acknowledges the timing requirements for motions to disqualify under NRS 1.235 and recognizes Judge Gonzalez has already ruled on contested pretrial matters.[1] This motion is brought pursuant to *Towbin Dodge, LLC v. Dist. Ct.*, with Defendant claiming the motion is necessary because of events occurring in January of 2016 involving: (1) Judge Gonzalez's interest in the media coverage and contribution to it; and (2) the procedure she created involving alternate judicial officers for certain deposition matters.[2]

[1] Las Vegas Sands Corp.'s Mot. for Disqualification 18:n.6 (Jan. 13, 2016).
[2] *Id.* at 18:n.6, 12:4-9.

DAVID BARKER
CHIEF DISTRICT JUDGE
DEPARTMENT 18

Judge Gonzalez has a duty to preside to the conclusion of all proceedings in the absence of some statute, rule of court, ethical standard, or compelling reason otherwise.[3] She is presumed to be unbiased, and "the burden is on the party asserting the challenge to establish sufficient factual grounds warranting disqualification."[4] The Nevada Supreme Court has stated that "rulings and actions of a judge during the course of official judicial proceedings do not establish legally cognizable grounds for disqualification," and "[d]isqualification must be based on facts, rather than mere speculation."[5, 6]

Media Coverage and Contact

As an initial matter, Defendant references statements made by Judge Gonzales during official judicial proceedings apparently to support its position she has an interest in the media coverage of this case. This Court finds that her acknowledgement of media coverage of the case during official proceedings does not demonstrate an "interest" for purposes of an implied bias analysis. Defendant presents no evidence Judge Gonzalez has actual bias or implied bias either in favor of or against any party to this action. This Court finds no disqualifying bias pursuant to NRS 1.230.[7]

Defendant claims Judge Gonzalez should have voluntarily recused under Revised Nevada Code of Judicial Conduct ("NCJC") Rule 1.2, Promoting Confidence in the Judiciary, after making comments to the media. Additionally, Defendant claims disqualification is appropriate under NCJC Rule 2.11, Disqualification, because Judge Gonzalez's impartiality might reasonably be

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[3] *Las Vegas Downtown Redevelopment Agency v. Dist. Ct.*, 116 Nev. 640, 643 (2000) (quoting *Ham v. Dist. Ct.*, 93 Nev. 409, 415 (1977)).
[4] *In re Pet. to Recall Dunleavy*, 104 Nev. 784, 788 (1988).
[5] *Id.* at 789.
[6] *Rippo v. State*, 113 Nev. 1239, 1248 (1997).
[7] The Court makes this finding for purposes of completeness. References are made at 18:10-15 in Defendant's motion regarding disqualification under NRS 1.230(1) for actual bias and NRS 1.230(2)(a) for implied bias (when the judge is a party to or interested in an action or proceeding). However, Defendant does not appear to make an actual or implied bias statutory analysis the focus of the motion.

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questioned.[8] "Stated another way, the Court's conduct reasonably creates a perception that the Judge has engaged in conduct that suggests the Court cannot be impartial."[9] The test for whether Judge Gonzalez's impartiality might reasonably be questioned is objective and this Court must decide whether a reasonable person knowing all the facts would harbor reasonable doubts about her impartiality.[10]

Defendant objects to Judge Gonzalez having spoken with the *Time* reporter and relaying her experience of having spoken to a reporter from the *Review-Journal* about being in her courtroom last November.[11] In the *Time* magazine article it is reported "Gonzalez says she can't discuss Adelson or the sale of the *Review-Journal* because of the ongoing case."[12] The article refers to a general comment Judge Gonzalez made about trying to put witnesses at ease in her courtroom, pointing to regular breaks she offers witnesses and a supply of M&M's, and the article continues with "[a]sked whether Adelson had any candy on the stand, Gonzalez says, 'I can't answer that question.'"[13] It is clear from these passages in the *Time* article Judge Gonzalez refused to discuss the pending case and Defendant presents no evidence to the contrary.

According to Judge Gonzalez, the cases on calendar during the mid-November period when a *Review-Journal* reporter was present did not appear to be the type usually subject to media coverage, and upon inquiry she was informed that direction had been made to watch her proceedings as well as those of other judges.[14] Judge Gonzalez states that she invited the reporter to attend the civil judges meeting to provide him with an additional sense of the regular activities of judges, and that she had hoped the pro bono issues discussed at the meeting would garner media

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[8] Las Vegas Sands Corp.'s Mot. for Disqualification at 12:14-13:27.
[9] *Id.* at 13:27-14:1.
[10] *Ybarra v. State*, 247 P.3d 269, 272 (Nev. 2011) (quoting *PETA v. Bobby Berosini, Ltd.*, 111 Nev. 431, 436, 438 (1995), *overruled on other grounds by Towbin Dodge, LLC v. Dist. Ct.*, 121 Nev. 251 (2005)).
[11] Las Vegas Sands Corp.'s Mot. for Disqualification at 16:1-12.
[12] *Id.* at ex. 3.
[13] *Id.*
[14] Decl. of Elizabeth G. Gonzalez 2:13-16 (Jan. 15, 2016).

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coverage to assist those in need.[15] Judge Gonzalez also acknowledges having responded to two media contacts about her position on media in her courtroom (one from the *Review-Journal* and one from *Time*).[16] She responded to questions about the particular observation in November 2015, the public nature of proceedings, and the long history of reporters from the *Review-Journal* being present in her courtroom, and advised that she could not discuss any litigant or case or answer questions about Mr. Adelson.[17]

The NCJC has a rule that specifically addresses judicial statements on pending and impending cases, NCJC 2.10. Pursuant to NCJC 2.10, "[a] judge shall not make any public statement that might reasonably be expected to affect the outcome or impair the fairness of a matter pending or impending in any court, or make any nonpublic statement that might substantially interfere with a fair trial or hearing."[18] Comment 1 to the Rule notes that "[t]his Rule's restrictions on judicial speech are essential to the maintenance of the independence, integrity, and impartiality of the judiciary." Defendant's omission of any reference to disqualification under NCJC 2.10 serves as its acknowledgment that Judge Gonzalez's media comments are not judicial statements on this pending case. Defendant fails to reference Nevada case law or specific rules under the NCJC that proscribe judicial contact with the media on non-case matters. Defendant presents no evidence to support its conclusion that "[t]hese recent statements by the Court to reporters reasonably give rise to the perception that the Judge has engaged in conduct that reflects adversely on its impartiality."[19]

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[15] *Id.* at 2:16-20.
[16] *Id.* at 3:1-2.
[17] *Id.* at 3:3-28.
[18] NCJC Canon 2, Rule 2.10(A).
[19] Las Vegas Sands Corp.'s Mot. for Disqualification at 16:20-21.

Dumont Deposition Procedure

An additional basis for disqualification in Defendant's motion is that Judge Gonzalez implicitly acknowledged reasonable concerns about her impartiality to resolve questions raised during the deposition of non-party Patrick Dumont, Las Vegas Sands Corp. ("LVSC") Senior Vice President of Finance and Strategy, when she established a procedure for disputes related to questions on the litigation to be directed to Discovery Commissioner Bulla and Judge Togliatti.[20]

As with the media contact issue discussed above, Defendant similarly fails here to present factual evidence, Nevada case law, or specific rules under the NCJC which require recusal or disqualification due to Judge Gonzalez having implemented the procedure involving Discovery Commissioner Bulla and Judge Togliatti. The dispute resolution procedure utilizing Commissioner Bulla and Judge Togliatti would handle deposition disputes involving questions on Mr. Dumont's communications with third parties (including the media) *about the litigation*, with Judge Gonzalez continuing to handle disputes involving questions on Mr. Dumont's communications with third parties (including the media) *about the Plaintiff* (and other witnesses). The dispute resolution procedure appears to address and resolve the concerns raised by Mr. Dumont's counsel at the hearing on January 12, 2016, with respect to news articles and Judge Gonzalez.[21] Judge Gonzalez states it is her practice to handle discovery disputes in business court cases rather than having a discovery commissioner or special master handle those disputes, and Defendant presents no legal authority that precludes the limited handling of discovery matters by a different judicial officer under the circumstances.[22] Defendant's argument that there are reasonable concerns about Judge Gonzalez's impartiality is unpersuasive.

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[20] *Id.* at 16:23-17:2. *See also* Tr. of Proc. for Hrg. on Mot., Jan. 12, 2016, 33:19-34:4 (Jan. 13, 2016).
[21] Tr. of Proc. for Hrg. on Mot., Jan. 12, 2016, at 30:22-54:3.
[22] Decl. of Elizabeth G. Gonzalez at 2:3-4.

DAVID BARKER
CHIEF DISTRICT JUDGE
DEPARTMENT 18

Judge Gonzalez asserts she does not have a bias or prejudice against LVSC or any of its officers, directors, or employees, and states that she has been and will continue to be fair and impartial toward all parties in this case and has not discussed any part of this case, the litigants, or attorneys with any representatives of the media.[23] Judge Gonzalez also states that "[o]ther than to the extent it will make it difficult to select a fair and impartial jury in Clark County, I do not have a direct, certain, or immediate interest in media coverage of this lawsuit or the issues related to the acquisition of the RJ by the Adelson family."[24] When a judge determines not to voluntarily disqualify herself, as is the situation here, the decision should be given substantial weight and should not be overturned in the absence of a clear abuse of discretion.[25]

Defendant fails to establish sufficient factual grounds warranting disqualification. This Court finds that a reasonable person knowing all the facts would not harbor reasonable doubts about Judge Gonzalez's impartiality with respect to any issues raised in Defendant's motion.

Now, therefore, it is hereby ORDERED that Defendant Las Vegas Sands Corp.'s Motion for Disqualification is DENIED. It is further ORDERED that Plaintiff Steven C. Jacobs' Emergency Motion to Strike Untimely Affidavit for Cause Under NRS 1.235(1) is DENIED as MOOT.

DATED this 29th day of January, 2016.

DAVID BARKER
CHIEF DISTRICT COURT JUDGE

I hereby certify that on the date filed, a copy of this Order was electronically served through the Eighth Judicial District Court EFS system, hand delivered, or was placed in the attorney folder for:
James J. Pisanelli, Esq. J. Randall Jones, Esq.
J. Stephen Peek, Esq. The Honorable Judge Gonzalez

Cheryl Carpenter
Cheryl Carpenter, Judicial Assistant

[23] *Id.* at 6:8-17.
[24] *Id.* at 6:18-20.
[25] *In re Pet. to Recall Dunleavy*, 104 Nev. at 788.

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CLERK OF THE COURT

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Attorneys for Plaintiff Steven C. Jacobs

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

LAS VEGAS SANDS CORP., a Nevada corporation; SANDS CHINA LTD., a Cayman Islands corporation; SHELDON G. ADELSON, an individual; DOES I through X; and ROE CORPORATIONS I through X,

Defendants.

AND RELATED CLAIMS

Case No.: A-10-627691
Dept. No.: XI

PLAINTIFF STEVEN C. JACOBS' OPPOSITION TO MOTION FOR TRANSFER OF ISSUE

Hearing Date: February 19, 2016
Hearing Time: In Chambers

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I. INTRODUCTION

Non-Party Patrick Dumont's ("Dumont") Motion to Transfer Issue is both lacking in substantive merit and moot. After this Court noted the impropriety of the instructions not to answer at the first installment of Dumont's deposition, it went forward without incident upon resumption. This only confirmed the propriety of this Court's ruling as to the conduct at depositions. Dumont testified as to his contacts with Michael Schroeder a/k/a Edward Clarkin, as well as his involvement in news coverage about this case. Moreover, Chief Judge Barker's Order denying Defendant Las Vegas Sands Corp.'s ("LVSC") Motion to Disqualify confirms the propriety of the transfer procedure that this Court previously adopted.

The real purpose of Dumont's Motion is the same as the improper attempts to obstruct his deposition — seeking to conceal his involvement as well as that of others, including LVSC's General Counsel, in communications with Schroeder/Clarkin in order to generate media spin to try and undermine Jacobs' claims. Contrary to the wishful thinking of Dumont, as well as Defendants Sands China Ltd.'s ("Sands China"), Sheldon G. Adelson's ("Adelson"), and LVSC, their continuing smear campaign against Jacobs and his claims is both relevant and discoverable.

II. STATEMENT OF FACTS

Dumont largely regurgitates the erroneous premise of LVSC's Motion to Disqualify, which Chief Judge Barker has now rejected. Like LVSC, Dumont repeats the false premise that somehow Jacobs was prying into the "transaction" surrounding the purchase of the Las Vegas Review-Journal. (Mot. at 2.) Hardly. What Jacobs south discovery on, and what is relevant to this action, is the Defendants' long-standing media campaign to undermine Jacobs and his claims. The fact that Dumont has been an active participant in that smear, as both an officer of LVSC and as Adelson's son-in-law, is a problem of his own making.

And the reasons that Dumont improperly refused to answer questions about his relationship with Schroeder/Clarkin during the first installment of his deposition became readily apparent after this Court halted that improper conduct. Adelson's relationship with [redacted] goes back more than a decade. (Forman Dep., 76:8-78:16, filed under seal concurrently herewith as Ex. 1.) [1] According to Adelson's longtime confidant, attorney, and LVSC Board Member, Charles Forman ("Forman"), Schroeder served as [redacted]. *Id.* According to Dumont, he has not known Schroeder/Clarkin near that long and only met him [redacted] (Dumont Dep. 7:7-8, Jan. 12, 2016, filed under seal concurrently herewith as Ex. 2.) Dumont claims to only have met Schroeder [redacted]. (*Id.* at 10:12-25.) Gatehouse Media's Kirk Davis [redacted] (*Id.* at 11:1-3; 12:13-17.)

[1] Only the rough transcripts are available at this time. All page references refer to the corresponding PDF page number.

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Conveniently, Dumont claims to not remember whether [redacted]. (*Id.* at 11:23-12:6.) But Dumont claims to remember that [redacted]. (*Id.* at 15:11-18; 15:24-16:2.)

Dumont knew in advance [redacted]. (*Id.* at 28:5-15.) Schroeder asked Dumont [redacted] (*Id.* at 28:16-24.) Dumont alerted Raphaelson that [redacted] (*Id.* at 30:1-4.) Raphaelson and Dumont had approximately ten conversations [redacted] (*Id.* at 31:13-24.) Dumont claimed to not know [redacted]. (*Id.* at 37:21-25.)

But Dumont admitted that [redacted]. (*Id.* at 16:16-17:6; 21:25-22:5.) Dumont simply claims that he could not remember what he did with it. (*Id.* at 17:3-4.) Nor could Dumont "recall" forwarding the draft to Raphaelson upon receipt. (*Id.* at 29:17-20.) Dumont claims he did not know why Schroeder [redacted] (*Id.* at 17:19-23.) But he was not surprised to receive a draft of it. (*See id.* at 27: 18-19:4.) Dumont claims to have not known what happened [redacted]. (*Id.* at 19:20-22:25.)

Confirming the propriety of this Court's ruling – that counsel cannot obstruct the deposition process by telling a witness not to answer questions they do not like – Dumont's deposition continued on January 12, 2016 without the necessity of invoking the Court's procedure to contact the Discovery Commissioner or Judge Togliatti. It is noteworthy how things can actually be accomplished if the Defendants simply follow the rules.

III. ARGUMENT

Because Dumont largely recycled the now-rejected arguments of LVSC's failed Motion to Disqualify, Jacobs will not waste the resources or the Court's time addressing each erroneously point. Chief Judge Barker's decision already suffices. But as Jacobs does note in his Emergency Motion to Strike Untimely Affidavit for Cause under NRS 1.235(1) on Order Shortening Time filed

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January 20, 2015, the use of that statute to delay a case is improper. And Dumont's attempt to delay Jacobs' rights is just as improper.

As articulated in *Rippo v. State*, the standard for recusal is objective, and must be based on more than self-serving speculation:

> A judge is presumed to be impartial, and the party asserting the challenge carries the burden of establishing sufficient factual grounds warranting disqualification. *Hogan v. Warden,* 112 Nev. 553, 559-60, 916 P.2d 805, 809, *cert. denied,* 519 U.S. 944 (1996) (citing *Goldman v. Bryan*, 104 Nev. 644, 649, 764 P.2d 1296, 1299 (1988)). Disqualification must be based on facts, rather than mere speculation. *PETA v. Bobby Berosini*, 111 Nev. 431, 437, 894 P.2d 337, 341 (1995); *see also United States v. Cooley,* 1 F.3d 985, 993 (10th Cir. 1993) ("Rumor, speculation, beliefs, conclusions, innuendo, suspicion, opinion, and similar non-factual matters" do not ordinarily satisfy the requirements for disqualification.), *cert. denied,* 515 U.S. 1104 (1995).

113 Nev. 1239, 1248, 946 P.2d 1017, 1023 (1997).

"[R]ecusal on demand would put too large a club in the hands of litigants and lawyers, enabling them to veto the assignment of judges for no good reason." *In re U.S.*, 158 F.3d 26, 30 (1st Cir. 1998). The concern is more acute for recusal requests based on information found in press articles. "[I]t is well settled that prior written attacks upon a judge are legally insufficient to support a charge of bias or prejudice on the part of the judge toward the author of such a statement." *United States v. Bray*, 546 F.2d 851, 858 (10th Cir. 1976). "[A] judge considering whether to disqualify [her]self must ignore rumors, innuendos, and erroneous information published as fact in the newspapers . . . . To find otherwise would allow an irresponsible, vindicative or self-interested press information and/or an irresponsible, misinformed or careless reporter to control the choice of judge." *United States v. Greenough*, 782 F.2d 1556, 1558 (11th Cir. 1986) (quotation omitted).

Indeed, parties with access to the media should not be able to manufacture bias in order to "judge-shop." *See In re Aguinda*, 241 F.3d 194, 206 (2d Cir. 2001). Otherwise, "parties who are sophisticated in their dealings with the press might then be able to engineer a judge's recusal for their own strategic reasons." *United States v. Bayless*, 201 F.3d 116, 129 (2d Cir. 2000).

Indeed, the cases are legion that even public remarks by a trial judge concerning the factual or procedural aspects of a case that are based on what the judge had observed in the courtroom

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during the course of the litigation, provide no basis for recusal. *Ex Parte Monsanto Co.*, 862 So. 2d. 595, 631-32 (Ala. 2003) (Cataloging more than a dozen decisions from federal and state appellate courts on the point.)

Dumont was improperly instructed not to answer questions because they would confirm his and Adelson's relationship to Schroeder and the ongoing campaign to smear Jacobs and undermine his claims. The fact that they have been caught is no basis for a judge's recusal. If it were, then every wealthy litigant with access to media sources – in this case the ownership of one – could engage in forum shopping whenever their misconduct comes to light. The law is otherwise and for good reason.

IV. CONCLUSION

Dumont's Motion is both procedurally and substantively without substance. This Court has set up a procedure which Chief Judge Barker has validated. Dumont's Motion should be denied.

DATED this 1st day of February, 2016.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 1st day of February, 2016, I caused to be served via the Court's E-Filing system, true and correct copies of the above and foregoing **PLAINTIFF STEVEN C. JACOBS' OPPOSITION TO MOTION FOR TRANSFER OF ISSUE** properly addressed to the following:

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/s/ Shannon Thomas
An employee of PISANELLI BICE PLLC

EXHIBIT 1

(To be filed Under Seal)

EXHIBIT 2

(To be filed Under Seal)

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A-10-627691-B

DISTRICT COURT
CLARK COUNTY, NEVADA

Business Court | **COURT MINUTES** | **February 04, 2016**

A-10-627691-B Steven Jacobs, Plaintiff(s)
vs.
Las Vegas Sands Corp, Defendant(s)

February 04, 2016 **2:30 PM** **Minute Order: In Camera Review of Medical Records**

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 14C

COURT CLERK: Dulce Romea

PARTIES PRESENT: None. Minute order only – no hearing held.

JOURNAL ENTRIES

- Court reviewed medical records identified as SJACOBS_MED_0001-70 and the declaration of Dr. Alex Richter. Based upon the Court's review none of the records appear to fall within the scope of the ordered production. Documents MARKED as Court's Exhibit 1 and the information reviewed by the Court is SEALED as it contains confidential health information.

Status check on the medical records set tomorrow, February 5, 2016 in Chambers is VACATED..

CLERK'S NOTE: Minute order corrected to reflect the correct Bates number range. A copy of the above minute order was distributed to parties via the E-Service Master List. / dr 2-4-16

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

LAS VEGAS SANDS CORP., a Nevada corporation; SANDS CHINA LTD., a Cayman Islands corporation; SHELDON G. ADELSON, an individual; DOES I through X; and ROE CORPORATIONS I through X,

Defendants.

AND RELATED CLAIMS

Case No.: A-10-627691
Dept. No.: XI

PLAINTIFF STEVEN C. JACOBS' NOTICE OF SUBMISSION OF MEDICAL RECORDS FOR IN CAMERA REVIEW AND DECLARATION OF DR. ALEX RIKHTER

Plaintiff Steven C. Jacobs hereby gives notice that he has submitted documents Bates numbered SJACOBS_MED_0001 to SJACOBS_MED_0070 to the Court in accordance with the Court's Order Granting in Part Motion to Compel Plaintiff to Execute Medical Release Authorization and Request for Copy of Tax Returns, Order Granting in Part Jacobs' Motion to Reconsider and Amend or, Alternatively, to Stay Order Granting in Part Motion to Compel Plaintiff to Execute Medical Release Authorization on Order Shortening Time, and the Court's January 29, 2016 Minute Order Resetting Matters Taken Off Calendar. These documents have been designated as "Court's Eyes Only."

Additionally, Jacobs attaches hereto as Exhibit 1 the Declaration of Dr. Alex Rikhter to accompany the submission of Jacobs' medical records.

DATED this 3rd day of February, 2016.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 3rd day of February, 2016, I caused to be served via the Court's E-Filing system, true and correct copies of the above and foregoing **PLAINTIFF STEVEN C. JACOBS' NOTICE OF SUBMISSION OF MEDICAL RECORDS FOR IN CAMERA REVIEW AND DECLARATION OF DR. ALEX RIKHTER** properly addressed to the following:

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An employee of PISANELLI BICE PLLC

EXHIBIT 1

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DECLARATION OF DR. ALEX RIKHTER

I, ALEX RIKHTER, being first duly sworn, hereby declare as follows:

1. I am a medical doctor, board certified in internal medicine since 1993. I operate two clinics in Atlanta, Georgia.

2. I have served as the primary care physician for Steven C. Jacobs since May 6, 2003. I have seen Mr. Jacobs personally as his primary care physician at our offices on all occasions, except perhaps once or twice, where he was seen by another person in my medical practice. I am familiar with and knowledgeable of all medical treatment that Mr. Jacobs has received in the past ten years from my practice.

3. I understand the Court has requested that Mr. Jacobs provide medical information solely related to "mental health, psychiatric and psychological counseling, and any neurological conditions, sleep disorders or disruption or brain injury that may affect [his] mental health," including all medical records related to such treatment "including intake and history forms, hospital records, progress notes, office charts, nurses' notes, discharge reports, emergency room records, surgical reports, lab results, radiographic films, radiographic film reports, test reports and results, narrative summaries, telephone logs, billing statements, and other documents and information related to the diagnosis, treatment, hospitalization or prognosis," of any past, present or future medical condition for which he has sought, obtained or is in need of treatment.

4. As Mr. Jacobs' treating physician, there are no records concerning any such treatment, because none exist. As Mr. Jacobs' treating physician, there are no past, present or future mental health conditions.

5. I have provided a copy of Mr. Jacobs' medical records maintained by my practice to his counsel. I understand that those medical records will be provided to the Court in camera and under seal to confirm lack of any such treatment.

I declare under penalties of perjury of the laws of the United States of America and the State of Georgia that the foregoing is true and correct.

DR. ALEX RIKHTER

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

LAS VEGAS SANDS CORP., a Nevada corporation; SANDS CHINA LTD., a Cayman Islands corporation; SHELDON G. ADELSON, an individual; DOES I through X; and ROE CORPORATIONS I through X,

Defendants.

AND RELATED CLAIMS

Case No.: A-10-627691
Dept. No.: XI

PLAINTIFF STEVEN C. JACOBS' OPPOSITION TO MOTION TO COMPEL PLAINTIFF TO SIGN CONSENT TO TRANSFER PERSONAL DATA OTHERWISE PROTECTED BY THE MACAU PERSONAL DATA PROTECTION ACT

Hearing Date: February 18, 2016

Hearing Time: 8:30 a.m.

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I. INTRODUCTION

The Nevada Supreme Court has already held that a party cannot use a foreign blocking statute so as to avoid its discovery obligation under Nevada law. Irrespective of any consents, the Nevada Rules of Civil Procedure obligate Sands China Ltd. ("Sands China") to produce all relevant and discoverable data, including so-called personal data. Sands China cannot avoid its obligations by asserting that Plaintiff Steven C. Jacobs ("Jacobs") is obligated to consent that Macau law applies, that the Macau Personal Data Privacy Act ("MPDPA") is applicable here, or consent to the jurisdiction and law of another country simply because Sands China wants to avoid its discovery obligations.

There is no law that requires Jacobs to execute a consent form which requires him to agree that Venetian Macau Limited ("VML") is the party in rightful possession of his data, would ratify any past transfers of Jacobs' data to third parties (such the United States Government or O'Melveny & Myers), or subject himself to the laws of Macau. Sands China's attempt to force Jacobs to agree to Macanese law is particularly offensive when ***Sands China has taken active steps to get Jacobs criminally prosecuted in Macau with false charges.*** There is no law anywhere – and none is cited by Sands China – that compels a United States citizen to execute any such document, let alone for a party that has demonstrated their intent to misuse foreign law.

II. STATEMENT OF FACTS

A. Jacobs Was Not Required to Execute a MPDPA Consent as a Result of the Court's Sanctions Orders.

Sands China's abuse of the MPDPA has been well documented and does not need to be repeated at length here. It suffices to note that, as a result of unprecedented deceit, this Court entered a sanctions order in 2012 precluding LVSC and Sands China "from raising the MPDPA as an objection or as a defense to admission, disclosure or production of any documents" for the duration of jurisdictional discovery and the jurisdictional hearing. (Decision and Order at p. 8(a), Sept. 14, 2012, on file.) Unfortunately, this sanctions order to not persuade Defendants to alter their conduct.

As a consequence of Sands China's continued noncompliance, another sanctions order was entered in 2013 reiterating "as previously ordered, LVSC and Sands China are precluded from redacting or withholding documents based upon the MPDPA." (Order Regarding Pl.'s Renewed Mot. for NRCP 37 Sanctions on OST, March 27, 2013, p. 3, on file.)

Pretending as though the Court's sanctions orders did not exist, Sands China implored Jacobs to execute a consent under the very foreign blocking statute that this Court precluded it from invoking. (Def.'s Exs, B & D.) Jacobs explained that he was not required to execute an MPDPA

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consent as Sands China was not permitted to invoke that law pursuant to the Court's sanctions orders. (Def.'s Ex. C.) Sands China's apparent inability to understand this concept is baffling.[1]

B. Sands China attempts to Get Jacobs Prosecuted in Macau.

Sands China's desire to get Jacobs to voluntary submit himself to the laws of Macau is transparent. Sands China's NRCP 30(b)(6) witness, Brian Nagel, testified that Sands China wrote a letter to the Macanese prosecutor in an attempt to get Jacobs criminally prosecuted for filing this lawsuit in Nevada. Producing the letter to the Macanese prosecutor for the first time at the deposition, Nagel testified

Q. [redacted]

A. [redacted]

Q. [redacted]

A. [redacted]

...

Q. [redacted]

[objections omitted]

A. [redacted]

(Nagel Dep., 802: - 807:23, Oct. 13, 2015, Ex. 1; Ex. 2.) The letter was submitted to the prosecutor, in part, to show the impact of Jacobs' allegations in the press toward Adelson. (Ex. 1 at 813:10-21.) Nagel was unable to testify if Defendants have had other communications with Macanese officials to get Jacobs prosecuted. (Ex. 1 at 815:7-13.) He didn't think to ask any follow up

[1] Sands China's obliviousness is accentuated by its rhetoric. (*See, e.g.*, Mot. at 5:20-21 ("facially nonsensical reasoning that this Court's prior ruling prohibited him from doing so."); *id.* at 7:14 ("SCL argued then and now repeats that Jacobs' reasoning is nonsense.").

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questions to educate himself as the 30(b)(6) witness. (*Id.* at 815:7-816:17.) And tellingly, despite alleged MPDPA prohibitions, the letter to the Macanese prosecutor made its way to the United States without redactions. (Ex. 1 at 810:3-13; Ex. 2.) In other words, Sands China has no problem producing documents from Macau in an un-redacted form that it thinks are beneficial to it. It simply seeks to use the MPDPA as a strategic tool to rationalize its own discovery misconduct.

III. ARGUMENT

A. A U.S. Citizen Has No Obligation to Consent to Foreign Law for Purposes of Obtaining Discovery.

As the Nevada Supreme Court explained when Sands China challenged the second sanctions order, "the mere existence of an applicable foreign international privacy statute does not itself preclude Nevada district courts from ordering foreign parties to comply with Nevada discovery rules. Thus, civil litigants may not utilize foreign international privacy statutes as a shield to excuse their compliance with discovery obligations in Nevada courts." *Las Vegas Sands v. Eighth Jud. Dist. Ct.*, 130 Nev. Adv. Op. 61, 331 P.3d 876, 877 (2014). A foreign privacy statute "is *only* relevant to the imposition of sanctions for a party's disobedience, and not in evaluating whether to issue the discovery order." *Id.* at 879 (adopting the test of the Tenth Circuit Court of Appeals).

Accordingly, the burden rests on Sands China to produce documents and data in compliance with the Nevada Rules of Civil Procedure. Sands China cannot blame Jacobs for its own failure to produce documents because the MPDPA does not serve as an excuse for not producing information. Sands China has an obligation to produce all of the responsive information within its possession and the MPDPA is *only* relevant to added sanctions for Sands China's failure to produce documents without redactions.

Furthermore, it is widely recognized that Rules of Civil Procedure do not "expressly authorize a court to order a party to sign a release concerning any kind of record." *Bouchard v. Whetstone*, No. 09-CV-01884REBBNB, 2010 WL 1435484, at *1 (D. Colo. Apr. 9, 2010) (collecting cases). "'However, even courts that compel authorizations from the plaintiff typically require the defendant first to seek the documents directly from the third party who has custody of the documents....'" *Id.* (quoting *Morris v. City of Colorado Springs*, 2009 WL 4927618 *2 (D. Colo.

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2009)). In this case, Sands China itself has access to Jacobs' un-redacted personal data and there is no legal basis to claim that Jacobs must sign a consent of any sort, let alone one designed to subject him to inapplicable foreign laws by a litigant that has made clear its intent to misuse those laws. It is not physically impossible for Sands China to produce the documents, it is choosing not to produce the documents.

Sands China's false cries of prejudice based upon its own noncompliance fall on deaf ears. (Mot. at 5:26:6-4.) Sands China has access to the redacted information—Jacobs does not. Sands China cannot legitimately claim that Jacobs' refusal to agree that foreign law applies, that it is otherwise a legitimate excuse for Sands China's misconduct, or that he is somehow subject to those laws has hurt its ability to defend against Jacobs' claims. On the contrary, Sands China's improper use of the MPDPA has hampered Jacobs' prosecution of his claims. Once again, Jacobs has been deprived of access to relevant and discoverable information and will be entitled to seek relief for Sands China's continuing noncompliance.

IV. CONCLUSION

Defendants have an obligation to produce all discoverable documents. Tellingly, Sands China can cite no law from anywhere that a United States Court can compel a United States citizen to "agree" that foreign law applies, that they must waive their rights under United States law, and that they are subject to foreign law for discovery in a United States Court. Jacobs' counsel informed Sands China months ago that he would sign no document consenting to Macau law or jurisdiction in Macau, particularly in light of the incredible abuse of process in attempting to institute criminal proceedings in Macau. Sands China's abuses just continue to roll along.

DATED this 5th day of February, 2016.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 5th day of February, 2016, I caused to be served via the Court's E-Filing system, true and correct copies of the above and foregoing **PLAINTIFF STEVEN C. JACOBS' OPPOSITION TO MOTION TO COMPEL PLAINTIFF TO SIGN CONSENT TO TRANSFER PERSONAL DATA OTHERWISE PROTECTED BY THE MACAU PERSONAL DATA PROTECTION ACT** properly addressed to the following:

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/s/ Shannon Thomas
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EXHIBIT 1

(To be filed Under Seal)

EXHIBIT 2

(To be filed Under Seal)

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

LAS VEGAS SANDS CORP., a Nevada corporation; SANDS CHINA LTD., a Cayman Islands corporation; SHELDON G. ADELSON, in his individual and representative capacity; VENETIAN MACAU LTD., a Macau corporation; DOES I-X; and ROE CORPORATIONS I-X,

Defendants.

AND ALL RELATED MATTERS.

CASE NO.: A627691-B
DEPT NO.: XI

DEPT NO.: XVIII (This Motion)

LAS VEGAS SANDS CORP.'S MOTION FOR WITHDRAWAL AND RECONSIDERATION OF ORDER PREMATURELY DENYING ITS MOTION TO DISQUALIFY JUDGE

ON ORDER SHORTENING TIME

Date: _____

Time: _____

Defendant Las Vegas Sands Corp. ("LVSC"), respectfully requests withdrawal and reconsideration of this Court's order denying disqualification of Judge Gonzalez. The Court's order denying the motion was both procedurally flawed in that it was premature and substantively wrong. By denying the motion prematurely, this Court denied LVSC its statutory right to a hearing where it could present the substantial evidence outlined herein that demonstrates the complete absence of Judge Gonzalez's neutrality, as well as the conflict of interest she ignored in insisting on ruling on the scope of deposition issues before her, prompting

the instant motion. In the event the Court (Dept. No. 18) elects not to hear this matter on shortened time or denies reconsideration, LVSC moves the Court to stay its order of January 29, 2016, to permit LVSC sufficient time to seek appellate review in the Nevada Supreme Court.

Had it been afforded the opportunity to present the evidence outlined in the memorandum of support, this Court would have seen the evidence of disparate treatment of the parties, disparate treatment of issues, and outright hostility to the Defendants in this case requiring disqualification. This course of conduct now enters its fifth year, seemingly starting with an August 2011 Nevada Supreme Court ruling on the first of what we believe to be an unprecedented series of nine writs[1] in one lawsuit. In that decision, the Nevada Supreme Court reversed the District Court's conclusory, unsupported finding of personal jurisdiction over co-Defendant Sands China Ltd. ("SCL" or "Sands China") and remanded the case for an evidentiary hearing. Aug. 26, 2011 Nev. Sup. Ct. Order. Thereafter, the District Court embarked on a campaign to justify its earlier ruling by imposing staggering discovery burdens on the Defendants without regard to U.S. Supreme Court and other precedents or to the relevance of the material being sought by Jacobs and the difficulty and expense of producing it. Rejecting the jurisdictional discovery limitations that should have resulted from the U.S. Supreme Court's decision in *Daimler A.G. v. Bauman*, 134 S. Ct. 746 (2014), the District Court said:

> ***"But the Nevada Supreme Court is the boss of me [and]***
>
> . . . .
>
> ***You know, the Nevada Supreme Court doesn't do what the Federal Courts say they should do . . . and so I am very aware that frequently it doesn't matter what they say in the Ninth Circuit, the U.S. Supreme Court; I've got to go with what the Nevada Supreme Court says because they will send it back and tell me to do it over again."***
>
> July 29, 2014 Hr'g Tr. at 44: 11; 44:22 – 45:3.

[1] *See Exhibit A, List of Nevada Supreme Court Writ Proceedings in Jacobs Case*, listing the resolved and pending writs, a majority of which were resolved in Defendants' favor further demonstrating a history of prejudice in the case.

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Thereafter, Defendants spent millions of dollars and suffered two sets of sanctions hearings in the process of meeting the unreasonable and irrelevant discovery burdens imposed on them. Rather than put the Plaintiff to his burden of showing personal jurisdiction over Sands China as the Nevada Supreme Court had mandated in August 2011, this Macau-based Defendant was ordered to produce witnesses in a lengthy "show trial" at which it was forbidden from producing any evidence at all. The predictable result of this "show trial" was a finding of general jurisdiction that flew in the face of binding U.S. and Nevada Supreme Court precedent, rooted in the District Court's mistaken belief that the intermittent local presence of two Sands China Board members and a corporate shareholder was sufficient to establish general jurisdiction in Nevada over this foreign corporation doing business exclusively in Asia that had ***no presence*** in Nevada.

The Nevada Supreme Court promptly ***reversed*** the District Court for a ***second*** time, recognizing as *Daimler* required – that a corporation must be "at home" in Nevada before it can be subjected to general jurisdiction here. Although the Nevada Supreme Court sustained the District Court's finding of specific jurisdiction initially, the following three critical facts demonstrate why the course of conduct between the first and second jurisdictional mandates from our Supreme Court further establish the District Court's lack of judicial neutrality:

(1) The finding of specific jurisdiction was based on a libel claim which was NOT part of the case during the bulk of the jurisdictional discovery.

(2) Nothing about the libel claim established Sands China as being at home in Nevada for purposes of the remaining counts, as the Nevada Supreme Court apparently recognized when it elected to entertain Sands China's petition for rehearing that is pending. Nev. Sup. Ct. Case No. 68265, Nov. 24, 2015 Pet. for Rehr'g.

(3) At no time during the jurisdictional hearing process was the District Court willing to accept either (a) the Nevada Supreme Court's mandate that she put the plaintiff to his burden of establishing jurisdiction, as he pleaded in the show trial; or (b) limiting discovery to jurisdictionally relevant materials in light of the binding U.S. and Nevada Supreme Court precedent.

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This aberrant judicial conduct does not comport with the canons of judicial conduct or with due process of law. If the District Court's bias and prejudice toward the Defendants were not as obvious as it is from the series of intervening rulings that the Nevada Supreme Court has overturned, it was manifest in the rulings that prompted this disqualification motion. The District Court's conduct while operating under a conflict of interest inherent in the Court's insistence on ruling on the scope of Patrick Dumont's deposition drives the point home.

Dumont was subpoenaed as a witness purportedly because he accompanied LVSC President Michael Leven on a trip to Macau in July 2010 when Leven terminated Jacobs. *See* Jan. 5, 2016 Hr'g Tr. at 43:8-45:4 (discussing need to depose Mr. Dumont about his involvement with Jacobs' termination). Rather than limit himself to questions about the termination which was the basis for the case in the first place, Jacobs's counsel instead pursued a line of questioning aimed at determining Mr. Dumont's role in dealing with an Adelson family purchase of a newspaper. Dumont's counsel objected, and Jacobs's counsel brought the matter before Judge Gonzalez. Rather than concede her personal interest and conflict in wanting the answers to Jacobs's counsel's questions about the newspaper for personal reasons wholly unrelated to this out-of-control, wrongful-termination suit, the District Court promptly confirmed her personal interest in knowing Dumont's role in publicity involving her handling of the case and her interest in favorable media coverage. This personal interest and the biased order compelling answers to the completely irrelevant questions being propounded to Mr. Dumont about the purchase of the *Review Journal* by the Adelson family requires Judge Gonzalez's disqualification.

LVSC made every effort to avoid filing the motion to disqualify and did so only reluctantly, after Judge Gonzalez elected not to recuse herself from ruling on the propriety of her inquiry into otherwise irrelevant media-sponsored issues that were of interest to her, and in which she had interjected herself as a participant. This Court gave credence to her sworn declaration that she does *"not have a bias toward or prejudice against LVSC or any of its officers, directors, or employees,"* ¶ 27, and her statement that *"I do not have a direct, certain, or immediate interest in media coverage of this lawsuit or the issues related to acquisition of the RJ by the Adelson family,"* ¶ 31, without allowing LVSC to challenge these sworn assertions or even

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to respond to her declaration by prematurely ruling on the pending motion before the deadline set by the Court's own rules for LVSC to reply – and without a hearing that is mandated by statute, NRS 1.235.5.

Because this Court's January 29, 2016 order confirms Judge Gonzalez as the trial judge whose impartiality LVSC has ample good reason to question, and because Judge Gonzalez has reset and already heard matters held in abeyance while she was challenged, starting on February 4, 2016, LVSC respectfully asks this Court to hear this motion for withdrawal and reconsideration on shortened time. As shown in the declaration of counsel that follows, LVSC has good cause for an order shortening time under EDCR 2.26. If withdrawal and reconsideration cannot be entertained on shortened time, or if the Court declines to reconsider and hold a hearing, LVSC asks that the January 29, 2016 order be stayed for 10 days to permit LVSC to seek appellate review of this writ-worthy issue of judicial disqualification.

This motion is based on EDCR 2.24, 2.26, and NRS 1.235, the papers and pleadings on file, the memorandum of points and authorities that follows, and the declaration and exhibits attached hereto, and any oral argument a Court may entertain at the time of the hearing of this matter.

DATED February 9, 2016.

J. Stephen Peck

J. Stephen Peck, Esq.
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EX PARTE APPLICATION FOR ORDER SHORTENING TIME

Pursuant to EDCR 2.26, Defendant Las Vegas Sands Corp. respectfully requests that the Court hear this Motion for Reconsideration of its Order Denying Disqualification on shortened time. LVSC seeks withdrawal and reconsideration of the Court's order declining to disqualify Judge Gonzalez. The order, filed on January 29, 2016, prompted Judge Gonzalez to reset hearings starting on February 4, 2016, at which time she continued to make one-sided rulings that favor Jacobs. Given the issues LVSC has raised regarding the Judge's lack of impartiality and her interest in favorable media coverage, and LVSC's hope that reconsideration of this motion will enable it to have these issues decided by a disinterested, impartial judge, good cause supports Defendants' request for an order shortening time.

DATED February 9, 2016.

/s/ J. Stephen Peek

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DECLARATION OF STEPHEN PEEK IN SUPPORT OF REQUEST FOR ORDER SHORTENING TIME

1. I am a partner in Holland & Hart, LLP, and represent Las Vegas Sands Corp ("LVSC") in the above-mentioned litigation.

2. I have personal knowledge of the facts stated in this declaration, and I am competent to testify to them.

3. I am familiar with the facts and legal points addressed in this Motion.

4. I know the contents herein and know them to be true, except those matters stated on information and belief, and as to those matters, I believe them to be true.

5. I submit this declaration in support of LVSC's Motion to Withdraw and Reconsider the Court's Premature Order Denying its Motion to Disqualify, filed on January 29, 2016.

6. LVSC believes the Court's January 29, 2016 order denying reconsideration was premature and contrary to law, for the reasons set forth in this motion.

7. Immediately after the January 29, 2016 order was filed and before LVSC received it, Judge Gonzalez issued a minute order to reset matters previously vacated.

8. Judge Gonzalez has set hearings as early as February 4, 2016, and if prior history is any indication, will schedule hearings on other pending matters on shortened time.

9. Because LVSC is by law and Nevada Judicial Canons entitled to a neutral forum, it would prefer to have the issue of Judge Gonzalez's partiality decided on full record and after LVSC has been accorded a fair opportunity to respond to her declaration of impartiality and challenge the accuracy of the sworn statements she elected to present.

10. I believe the foregoing constitutes good cause to have this matter considered on shortened time.

11. If the Court elects not to reconsider, good cause also exists to grant a 10 – business-day stay of the January 29, 2016 order, to permit LVSC sufficient time to seek appellate review from the Nevada Supreme Court before it is subjected to the jurisdiction of a district court judge it believes is biased against LVSC and its co-defendants.

12. This declaration is submitted in good faith, for a proper purpose, and not for the purpose of delay.

13. I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on February 9, 2016.

J. Stephen Peek

J. Stephen Peek, Esq.

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ORDER SHORTENING TIME

Having considered the Ex Parte Application for Order Shortening Time filed by Defendant Las Vegas Sands Corp. ("LVSC"), and good cause appearing,

IT IS HEREBY ORDERED that Motion to Withdraw and Reconsider the Court's Order Denying LVSC's Motion to Disqualify shall come ~~for hearing~~ before Department XVIII on the 17th day of February 2016 Chamber Calendar ~~at the hour of ____ a.m./p.m.~~

DATED this 9th day of February, 2016.

DISTRICT COURT JUDGE

Respectfully submitted by:

J. Stephen Peek

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This motion seeks the withdrawal and reconsideration of this Court's prematurely-issued order that denied LVSC the statutory opportunity to reply and challenge the sworn opposition to its motion to disqualify Judge Elizabeth Gonzalez, pending receipt of LVSC's reply and a hearing before the Court or another neutral judge to challenge Judge Gonzalez's assertions of impartiality in her sworn declaration opposing her disqualification. The premature ruling also denied LVSC and the other defendants the constitutional right to a neutral judge. The motion to disqualify was filed *after* the Judge interjected herself into the recent intense and ongoing media coverage of the acquisition of the Las Vegas *Review Journal,* a subject that is wholly irrelevant to the litigation spawned by the alleged wrongful termination of Plaintiff Steven Jacobs ("Jacobs") in Macau.

Judge Gonzalez could have declined to join in the media frenzy occasioned by the Adelson family's purchase of the *Review Journal by* recusing herself in response to the objections, by counsel for Mr. Dumont, to her ruling on any part of the scope of discovery objections placed before her by the Plaintiff. Her personal conflict of interest mandated recusal because her personal interest in knowing the answers to questions otherwise irrelevant to the employment case before her precluded her continued role. Her interest in this topic and her election to participate in the media's coverage of this event, with her history of treating the defendants in this case significantly different than parties in other commercial litigation before her involving similar issues, and her disproportionate, unrelenting rulings adverse to the Defendants warrants careful examination and a full hearing before an impartial judicial officer that the Court's January 29 order does not provide.

This Court's order was clearly premature and procedurally irregular. Moreover, the Court erred in accepting Judge Gonzalez's declaration as true without affording LVSC an opportunity to show that her untested, unexamined sworn statement does not overcome the Defendants' point that a reasonable observer of these proceedings could (and this Court should) reasonably conclude that the District Court is biased against LVSC and its co-defendants, especially where,

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as here, the Court insisted on ruling against scope of discovery limitations that were sought to preclude inquiry of Patrick Dumont about irrelevant media issues in which she had a present, conflicting personal interest in having him questioned without regard to the relevance of those issues to the underlying case that has nothing to do with media coverage.

II. LEGAL STANDARD FOR THIS MOTION

Reconsideration is appropriate where the Court has misapprehended or overlooked important facts when making its decision, *Matter of Ross*, 99 Nev. 657, 659, 668 P.2d 1089, 1091 (1983), when new evidence is presented, or when the decision is "clearly erroneous." *Masonry and Tile Contractors Ass'n of Southern Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). Here, the Court has overlooked and/or erred in failing to allow LVSC the reply permitted under EDCR 2.20 (h) and the hearing required under NRS 1.235.5(b) on whether Judge Gonzalez should be disqualified for bias.

This motion was filed under NRS 1.235 which ***requires "[t]he question of the judge's disqualification to be heard and determined by another judge agreed on by the parties or, if they are unable to agree, by a judge appointed (1) by the presiding judge...."*** NRS 1.235.5(b). Here, the Court completely disregarded that statutory requirement when it decided LVSC's motion to disqualify without the required hearing.

The Court also misapprehended or erroneously relied on EDCR 2.23 as a basis for deciding the motion before briefing closed. The motion to disqualify was filed and served on January 13, 2016, and was set for hearing in chambers on February 18, 2016. Under EDCR 2.20(e), the opposing party must file a written opposition to the motion within 10 days, or file a notice of non-opposition. The moving party then has until "5 days before the matter is set for hearing" to file a reply memorandum, which this Court's January 29 order disregards. EDCR 2.20(h). Although EDCR 2.23 permits unopposed motions to be submitted and decided without oral argument, an opposed motion to disqualify is not such a motion. EDCR 2.23, therefore, does not support its premature consideration and denial of a hearing required by statute. LVSC was entitled to close the briefing on its opposed motion with a reply, where it intended to address the requirement of a hearing, the history of uneven treatment under which the motion for

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disqualification must be considered, and its right to challenge the sworn assertions Judge Gonzalez elected to submit rather than file the answer contemplated in NRS 1.235.

This is a very substantial and important motion that presents a serious question of judicial and public significance. The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 242, 100 S. Ct. 1610, 1613 (1980) (emphasis added). An impartial and disinterested forum "helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted conception of the facts or the law," while at the same time "it preserves both the appearance and reality of fairness, 'generating the feeling, so important to a popular government, that justice has been done.'" *Id.* (quoting *Anti-Fascist Committee v. McGrath*, 341 U.S. 123, 172 (1951) (Frankfurter, J., concurring)).

LVSC should be given the fair hearing required by statute to respond to Judge Gonzalez's sworn assertions of impartiality and the opportunity to challenge her assertions on that issue. By ruling before giving LVSC its right to reply and its statutory right to a hearing, the Court, in its haste, deprived LVSC of *both* of its right to a neutral forum and the right to present evidence and challenge Judge Gonzalez's assertions *after* she chose to oppose her disqualification with a sworn declaration she was not required to submit under NRS 1.235. Her sworn opposition puts her declarations of "neutrality" in issue, for which a hearing is required under the statute to resolve.

III. LEGAL ARGUMENT

A. The Court's Premature Order is Procedurally Wrong and Must be Withdrawn.

LVSC's motion for disqualification of Judge Gonzalez should have been heard under NRS 1.235, notwithstanding the order under the local rules scheduling it for consideration in chambers on February 18, 2016, which LVSC intended to point out in its reply that now has been precluded by this Court's January 29 Order. (Under the Court's own rules, EDCR 2.20(h), LVSC had until February 10 to file its reply, which it also intended to do.)

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B. The Order is Substantively Wrong.

Under the Nevada Code of Judicial Conduct ("NCJC") Rule 1.2, Nevada judges have an obligation to "act all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety." A Nevada judge "should expect to be the subject of public scrutiny that might be viewed as burdensome if applied to other citizens and must accept the restrictions imposed by the Code." NCJC Rule 1.2, at Comment 2. The rule is "necessarily cast in general terms," NCJC Rule 1.2, at Comment 3, because the "test for appearance of impropriety is whether the conduct would create in reasonable minds a perception that the judge violated this Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge." NCJC Rule 1.2, at Comment 5; *see also, Edelstein v. Wilentz*, 812 F.2d 128, 131 (3d Cir. 1987) (the objective standard examines whether a "reasonable man knowing all the circumstances would harbor doubts concerning the judge's impartiality"). NCJC Rule 2.11 ***requires*** that a judge disqualify him or herself "in any proceeding in which the judge's impartiality might reasonably be questioned[.]"

In her declaration, Judge Gonzalez comments that she approached an unidentified journalist from the *Review Journal* in her courtroom – when she had no reason to do so because, as she has acknowledged, courtrooms are public forums, meaning that members of the public are presumably free to come and go without being questioned by the presiding judge to learn the observer's purpose in attending court proceedings. She recounts this incident involving the *Review Journal* as having occurred in mid-November, *before* she claims to have learned about media reports concerning the sale of the Las Vegas *Review Journal*. When later interviewed by *Time* magazine about what she says was for "background"— an interview she accepted *after* she learned that the Adelson family was alleged to be involved in the purchase of the *Review Journal* — she chose to categorize her mid-November exchange with the *Review Journal* reporter in terms that would add fuel to the ongoing media frenzy surrounding the purchase of the newspaper. She described the journalist as "seem[ing] upset," when she asked him why he was "sitting in this [unidentified] very boring proceeding," and he replied, because "The boss said I

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had to be here." Ex. B, Decl. of E. Gonzalez, at page following cover (pages not numbered). Although "the boss" is not identified, at the time the statement was made and thereafter in speaking to *Time*, a reasonable person familiar with these proceedings would reasonably equate "the boss" with Sheldon Adelson, one of the Defendants before the Court.

This incident involving the national and local press reasonably supports an inference that Judge Gonzalez believed a party was somehow attempting to intrude into her judicial proceedings and influence her decision-making. Her election to go public with this information demonstrates her acute interest in media coverage of these proceedings and her wish to join in and influence that coverage: why else would she sit for an interview by *Time* magazine, entitled **"Meet the Judge at the Center of Sheldon Adelson's Strange Deal to Buy a Newspaper,"** subtitled, **"Elizabeth Gonzalez has emerged as a key figure in the casino magnate's surprising purchase."** (Emphasis added.) *See* NRS 1.230(2) (judicial disqualification is appropriate "[w]hen the judge is a party to or interested in the action or proceeding."); *see also In re Boston's Children First*, 244 F.3d 164 (1st Cir. 2001) (granting writ of mandamus after finding a judge's public comments on a pending matter created the appearance of partiality); *United States v. South Florida Water Mgmt. Dist.*, 290 F. Supp. 2d 1356 (S.D. Fla. 2003) (finding judge's comments in newspaper articles would cause an objective observer to reasonably doubt the judge's continued impartiality).

C. Narrative Summary of Evidence of Bias that the Reply Would Present to Impeach the District Court's Declaration Professing Her Impartiality

The District Court's recent decision to feed the media frenzy at the expense of the Defendants in this very active case must be examined in the context of her long history of one-sided, erroneous and erratic rulings in the case. Taken together and considered as a whole, this history of uneven and Plaintiff-partial management of this case reasonably supports disqualification of Judge Gonzalez for actual bias against the Defendants. Consider that the District Court:

1. ordered one-sided, burdensome, and irrelevant jurisdictional discovery over an almost four year period contrary to US Supreme Court and other precedent;

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2. required Defendants but not Jacobs (or seemingly other parties) to comply with oral discovery orders;

3. imposed one-sided sanctions -- declining to impose sanctions where Jacobs misrepresented the volume of electronic data taken from Defendants but twice sanctioned the Defendants;

4. changed sanctions theories in September 2012 at the conclusion of her hearing to find *"the client"* had *"deceived"* her notwithstanding the absence of any evidence to support it;

5. sanctioned Defendant SCL for purported failure to violate the privacy law of its home jurisdiction under her oral discovery order, issued at the same time the record confirms she confirmed she would allow redactions;

6. seemingly made diametrically opposed rulings on behalf of Jacobs's lawyers at the same time they were lawyers for a defendant client of theirs in another matter being decided in same timeframe;

7. found jurisdiction over a foreign defendant on legal theories specifically precluded by binding US and Nevada Supreme Court precedent;

8. failed to enforce its own rulings on highly confidential and confidential information of Defendants allowing the information to be made public by her staff or the Plaintiff;

9. made disparaging remarks about Defendants;

10. used coarse language indicating bias in referring to Defendants' responses on work product;

11. helped shape the litigation strategy of the Plaintiff; and

12. insisted on ruling on the propriety of questions that were of personal interest to her but otherwise irrelevant to the proceedings.

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1. District Court manifested bias in ordering one-sided, burdensome, and irrelevant jurisdictional discovery over an almost four year period, contrary to US Supreme Court and other precedent.

The massive jurisdictional discovery allowed Plaintiff to pursue general jurisdictional and agency theories of jurisdiction did not have a basis in law, as the Nevada Supreme Court pointed out in its November 4, 2015, Order vacating the District Court's May 28, 2015, order "finding" jurisdiction over Sands China on those theories.

Discovery during the four-year run-up to the April 2015 evidentiary hearing was largely one-sided and favored Jacobs. Leading up to, and during the jurisdictional hearing, the Court ordered depositions and hearing testimony from 14 of Defendants' senior executives, management, and company lawyers for more than 133 hours (and on more than one occasion for 4 of them) while Defendants were not permitted to call any witnesses at the hearings or permitted access to Jacobs for deposition until just before the jurisdictional hearing under circumstances that made it impractical to review his 200,000+ page document dump or depose him at the same time as final preparation for the hearing had to be completed per the Court's order.

For almost 5 ¼ years, Jacobs has enjoyed access to information he stole from SCL and access to massive discovery ordered against the Defendants while they have been repeatedly limited in access to information routinely afforded defendants in discovery. By way of brief comparison consider the number of witnesses and approximate number of hours of testimony, including the jurisdictional hearing, that Jacobs has enjoyed thus far under the District Court's rulings favorable to him:

Defense	Plaintiff
20 witnesses	1[2]
Deposition Hours - 134+	0
Hearing Hours – 84+	0
Total Hours 200+	0

[2] On behalf of his solely-owned consulting company, Vagus, LLC, Jacobs produced a designee that knew virtually nothing about his company.

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Mr. Adelson total so far:	Jacobs so far:
Over 33 Hours	0

Consider also:

Document Production

a. Court ordered defense to produce approximately 42,000 documents (almost 300,000 pages) in jurisdictional discovery.

b. Court denied defense access to Jacobs's documents for almost five years, until shortly before the jurisdictional hearing, for which Court allowed Jacobs to produce documents almost exclusively stolen from the defense prior to his termination on July 23, 2010.

Access to corporate representatives

c. In addition to ordering access to company executives and lawyers, the Court ordered access to a corporate representative witness to respond to more than 60 subjects over multiple days.

d. Court has thus far allowed Jacobs to refuse to produce a knowledgeable corporate representative from his consulting company for deposition, as requested by the Defendants while allowing Jacobs to resist Defendants' requests for access to him for deposition for more than a day.

The Defendants went to the evidentiary hearing, but Judge Gonzalez prohibited them from calling any witnesses, ***including Jacobs***, under the Court's sanction order. Since then Jacobs has obtained more than 85 hours of additional substantive testimony from the Defendants' executives and 30(b)(6) designees. **In sum, Plaintiff has obtained more than 200 hours of sworn testimony from the Defendants in comparison to a mere several hours of third-party custodial depositions that Jacobs has sought to frustrate and/or delay and a 30(b)(6) deposition of his solely-owned company, Vagus, LLC, at which he tendered a designee who knew virtually nothing about the topics on which he had been designated.** And, in the meantime, Jacobs has successfully resisted his own deposition by insisting on "parity" of time for his initial deposition and yet another deposition of Sheldon Adelson, in addition to the 33+ hours of sworn testimony already provided by Mr. Adelson on every aspect of this case. Yet all of this discovery occurred notwithstanding the fact that the Nevada Supreme Court's mandate

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was to hold a hearing and both the U.S. and Nevada Supreme Court's had foreclosed the general jurisdictional theories the District Court allowed the Plaintiff to pursue. *See* Part C7 *infra.*

The Nevada Supreme Court issued a writ to the District Court rejecting her *"judicially created class of persons exception"* that would have allowed Jacobs to view the documents he stole in Macau and use them in the prosecution of his alleged claims and to rebut Defendants' affirmative defenses. But, the District Court has nevertheless allowed Jacobs to *"use"* the same documents in an effort to force a waiver of the attorney-client privilege held by the Defendants. Thus, the Court has allowed Jacobs to ***evade discovery*** responses by claiming his counsel would have to review the stolen documents and that review would disqualify them, thereby depriving him of counsel.

The District Court has made markedly different decision on relevancy objections based on the party raising them – another example of her biased and punitive rulings. She has freely allowed Jacobs irrelevant discovery. *See, e.g.*, Jan. 7, 2016 Hr'g Tr. at 35:19 – 21 (refusing Defendants' request for a protective order from Jacobs to depose an employee hired 2 1/2 years after Jacobs's termination, "[w]hile the [irrelevant testimony] may be subject to appropriate -- for a motion in limine, they are not appropriate at this time on a discovery motion"); Mar. 27, 27, 2013 Order (permitting Jacobs discovery on his entire list of merit custodians despite discovery being limited to *jurisdictional* discovery); Aug. 23, 2012 at 23:5 – 7 (referencing Court's decision to permit discovery she had acknowledged was irrelevant). *Compare* her *reconsideration* of her order requiring Jacobs to sign a medical release for medical records she acknowledged were relevant, discussed *infra*, p 20 - 21. Another example is her harsh rebuke of Mr. Dumont's lawyer for instructing him not to answer on relevancy grounds. Jan. 12, 2016 Hr'g Tr. at 34:5-10 ("To the extent you attempt to instruct a witness, sir, not to answer a question [on relevancy grounds] it is inappropriate under Nevada law. And regardless of whether you are appearing for a party or not, you may be subject to sanctions which may include the withdrawal of your permission to appear pro hac. Do you understand that?" Compare that to her inaction in the *Okada* Case, where she did nothing about the lawyer instructing the witness that he not answer "irrelevant" questions. Ex. B, Dec. 17, 2015 Hr'g Tr. at 25:10 - 16 (accepting defense's

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relevancy objections in *Okada*, and declining to sanction, because "[there was a good faith basis for the objections. ***My determination of scope is one that is made on a case-by-case basis***" (emphasis added) which apparently means based on the party before her).

Another example of her disparate treatment of the Defendants is provided by the request for Jacobs's medical records to inquire into whether he is delusional -- an essential element of the statement Jacobs alleges as the basis for his libel claim. Although the Court ruled he was required to execute a release for his medical records, she later disagreed with the language of the medical release Defendants prepared to obtain that discovery. She then ***reconsidered*** her prior order requiring Jacobs to sign a medical release and replaced it with a secret in-camera review process to protect him from the discovery she had already ruled ***was relevant***:

> *"THE COURT: Okay, the motion [to reconsider] is granted in part. Because of the issues related to the breadth of the release that was provided, I am going to do an in-camera review after being provided with records that Mr. Jacobs will obtain . . .*
>
> . . . .
>
> *THE COURT: And if I have questions related to a medical diagnosis issue* ***that appears to me not to relate to the delusion*** *. . .*
>
> . . . .
>
> *MR. RANDALL JONES: So, in other words, Your Honor, we will also receive those records . . .*
>
> *THE COURT: No,* ***you will not receive those records until I have made a review and determination*** *as to whether those records should be provided . . .*
>
> . . . .
>
> *MR. RANDALL JONES:* ***There's a less harsh remedy*** *than [judge taking over the discovery], Your Honor.*
>
> *THE COURT: What's that, Mr. Jones?*
>
> *MR. RANDALL JONES: That is to go back through the consent [that Jacobs refused to discuss or suggest should be modified], as I offered to do and as you ordered . . .*
>
> *THE COURT:* ***Sometimes when you overreach it causes things to go the other way.***"

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Dec. 17, 2015 Hr'g Tr. on Mot. for Reconsideration at 16:20 - 25:7; *see also* Feb. 4, 2016 Min. Order (announcing her decision that the limited medical records submitted to her by Jacobs under claim of privilege but without a privilege log, are not relevant and therefore Defendants cannot review them or even know what subjects they cover).

In addition to the obvious disparate treatment concerning production of a privilege log in the first instance, the District Court exhibited bias by suggesting it was overreaching for Defendants to seek mental health records in good faith where the Plaintiff put that mental health at issue in his complaint. Even more to the point, how can a rule of law be neutrally imposed where it can arbitrarily *"go the other way?"*

As a result of the Court's biased and erratic rulings on discovery favoring Jacobs, he has produced little discovery beyond the documents he stole from Defendants in Macau. *See, e.g.*, Mar. 19, 2015 Hr'g Tr. at 64:17-91:15; Mar. 17, 2015 Pl.'s Expedited Mot. for Clarification & Ltd. Added Juris. Discovery at 1 – 3 (granting Plaintiff's motion to take additional jurisdictional discovery on events occurring through 2014, even though the filing date for Plaintiff's complaint is October 2010, based on events that occurred prior to that time); Mar. 27, 2013 Order (*sua sponte* expanding the custodians for jurisdictional discovery to the entire list of Plaintiff's *merits* custodians).

2. The District Court showed an absence of neutrality by imposing one-sided sanctions -- declining to impose sanctions where Jacobs misrepresented the volume of electronic data from Defendants while twice sanctioning the Defendants.

The District Court has sanctioned the defense twice – once for attempting to comply with Macau Data Privacy laws and once for the alleged failure of its **lawyers to disclose the existence of some documents from Macau in the US (prior to any production deadline).** In marked contrast, the District Court rejected defense requests for sanction against Jacobs who lied to the Court about the volume of data he had stolen from the defendants (40 gigabytes vs 11 **gigabytes according to his pleadings).**

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3. The District Court showed an absence of neutrality by requiring Defendants but not Jacobs (or seemingly other parties) to comply with oral discovery orders.

On December 18, 2012, with Christmas and New Year's holidays approaching, the District Court required SCL to comply without a formal "order" for extensive document production over the holidays and *weeks* before a written order was even circulated, much less filed – notwithstanding the fact that the District Court's practice in the ordinary course, consistent with local practice, would require compliance after entry of a written order. Compounding the prejudice, the District Court later sanctioned SCL for purportedly failing to follow the oral order as she interpreted it, notwithstanding her specifically allowing redactions in that same hearing. *Id.*; *cf.* Jan. 16, 2013 Order (requiring compliance by January 4, 2013). This was also in marked contrast to her practice as applied to Jacobs in this case, and in the *Okada* case being handled by Jacobs's lawyers on the defense side, which was to require compliance only with written discovery orders.

Compare how Sands China was required to spend $2.4 million to carry out a two-week fire drill based on the Court's oral ruling over the Christmas and New Year holidays *with* the Court's ready and uncritical acceptance of Jacobs's contention that he was not obligated to produce signed medical and tax releases order under an oral ruling of the Court, but only in response to a written order. *See* Dec. 14, 2015 Pl.'s Opp'n to Defs.'s Mot to Hold Jacobs in Contempt at 2 (*"Contempt requires proof of a knowing violation of a written order. Awaiting the entry of a written order so that Jacobs could raise his challenges to it . . . is hardly contempt"*); *see also* Dec. 15, 2015 Hr'g Tr. at 16:20 – 17:1 (not only declining to hold Jacobs in contempt, but *"reconsidering"* her order that he was required to produce medical and tax releases because the medical release proposed by Defendants [which Jacobs made no effort to discuss or modify] was allegedly *"too broad"* [although the Court also said that *"No, it's not too broad. It's not what I ordered."* Dec. 15, 2015 Hr'g Tr. at 11:13-14]).

In other words, neither Jacobs nor the District Court considered the lack of a written order articulating her December 18, 2012 oral rulings – or the absence of a prohibition against redactions in her September 12, 2012 sanctions order – as an impediment to holding LVSC and

Sands China in contempt and imposing substantial fines on them for redacting personal data in the documents produced from Macau over the holidays in compliance with the MDPA. This is another example of the Court's partiality to Jacobs and her bias against the Defendants. Thus, the Court *rewards* Jacobs for his refusal to sign medical records and tax returns releases without a written order but *sanctions* the Defendants for *obeying* her December 18 oral orders *and* the laws of Macau under the most exigent of circumstances.

4. The District Court showed prejudice when she changed sanctions theories in September 2012 at the conclusion of her hearing to find *"the client"* had *"deceived"* her notwithstanding the absence of any evidence to support deception of any nature.

Following LVSC's voluntary disclosure in June 2012 that two of its in-house attorneys had brought data from Macau into the United States without understanding or compliance with the restrictions of the Macau Data Privacy Act ("MDPA"), which at that time was new to the gaming industry, Judge Gonzalez *sua sponte* convened an evidentiary hearing in which she ordered in-house and outside lawyers for the company to testify. Because the lawyers were currently representing the company in active litigation before the Court, she acknowledged that privilege issues would arise, and they did -- in abundance. Although the Court in its order sanctioning LVSC for *"concealing evidence"* said it did not draw any negative inferences from Defendants' assertion of privilege, Sept. 14, 2012 Decision and Order at 2 n.1, the Court's remarks leading up to the hearing and findings and remarks at the hearing and after establish otherwise.

In fact, there was *no evidence* submitted to the Court that the *"client"* concealed or directed the Defendants' lawyers to conceal evidence. In point of fact, the lawyers for LVSC voluntarily disclosed to the Court that LVSC had data from Macau that it should not have because of the MDPA. The sanctions hearing was convened to determine what action the Court would take as a result of what the outside lawyers said and didn't say to the Court. Nevertheless, without notice or opportunity to address a post-hearing shift in theory, the Court convinced itself, without objective evidence to support her conviction, that LVSC, through its management, had *"deceived"* the Court. *See, e.g.,* Sept. 14, 2012 Decision and Order, ¶¶ 29, 30, 32. The Court's

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belief that *the client* decided to *"conceal evidence"* and *"abuse"* discovery is one that she formed in September 2012 and has applied since then to punish the Defendants at every opportunity.

Her personal view that the *"client"* had made efforts to mislead her could only have been reached by drawing unlawful negative inferences from the lawful invocation of privilege during the sanctions hearing.[3] This, alone, confirms that the court cannot serve as a "neutral, impartial administrator of justice" in this case. *United States v. Torkington*, 874 F.2d 1441, 1447 (11th Cir.1989).

5. The District Court demonstrated bias when it sanctioned Defendant SCL for purported failure to violate the privacy law of its home jurisdiction under an oral discovery order issued at the same time the record confirms she orally confirmed she would allow redactions.

Despite the unreasonableness of her oral rulings, Sands China did its best to comply, made its production on January 4, 2013, and provided the Court with a written report of its compliance on January 8, 2013 (all before the Court's written order had been entered). In its report of compliance, Sands China outlined the difficulties it faced to comply over the holidays due to Macanese law that required hiring Macanese lawyers to examine and redact the documents during the holidays. There were fewer than 250 licensed lawyers in Macau to approach for this tedious work, and fewer available because of the holidays and conflicts. Jan 8, 2013 SCL's Rept. on its Compliance with the Court's ruling of Dec. 18, 2012 at 3 – 4.

Between the Court's December 18, 2012 oral ruling, and the January 4, 2013 production deadline she imposed, Sands China had only 9 work days (there were five public holidays in Macau during this period, and two weekends) to recruit and hire 22 Macanese lawyers, hire a vendor to go to Macau and there set up a data center (because documents could not leave the country for the examination and redacting required by Macanese authorities), identify and execute searches to locate the documents responsive to the requests, have personal data redacted

[3] Which is contrary to Nevada law, which provides that no adverse inferences can be drawn from a party's decision not to waive the privileges and work product protection afforded by Nevada law, under NRS 49.095 and NRCP 26(b)(3); *see, e.g., Nabisco, Inc. v. PF Brands, Inc.*, 191 F.3d 208, 226 (2d Cir. 1999).

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by Macanese lawyers before the Sands China's lawyers could review the documents for confidentiality and privilege, and thereafter prepare the production orally ordered by the Court on December 18. *Id.* at 2 – 8.

Notwithstanding Sands China's successful efforts to comply with the District Court's oral rulings, the Court welcomed Jacobs's renewed motion for sanctions that she had solicited, which he filed on February 7.[4] Then on March 27, 2013, she issued another sanctions order declaring that SCL's redactions of personal data to comply with Macanese privacy law violated her September 14, 2012 Order (which said nothing about redactions or the production of documents on January 4). This sanctions order in March 2013 also disregarded the *fact* that **during the December 18, 2012 hearing, the District Court *agreed* that Defendants *could make* redactions!** Dec. 18, 2012 Hr'g Tr. at 27:10–21.

The Court went on to order *sua sponte double* the number of custodians for whom documents in Macau had to be searched (without any finding that the additional custodians had anything to do with the limited question of jurisdiction over Sands China then before the Court). She also ordered Sands China to create an unprecedented and useless 37,000+-page "relevancy" log of all documents retrieved through the additional searches she compelled and scheduled yet another hearing to determine what sanctions should issue for the alleged violation of her September 14, 2012 Order. Mar. 27, 2013 Order.[5]

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[4] When recently presented with another timing issue that was impacted by the constraints in accessing employees in Macau because of the Christmas/New Year holidays in Macau, she denigrated SCL: COUNSEL: *"You know as well as I do that I can't prepare a 30(b)(6) witness over the holidays when Macau shuts down."* *THE COURT: "I don't know that"* (in an angry tone). Dec. 24, 2015 Hr'g Tr. at 55. Again, Defendants are unaware of circumstances where the district court so casually and baselessly dismisses the representation of counsel and neutrality is seemingly presumed.

[5] LVSC and Sands China sought writ relief on the March 27, 2013 Order, which was denied as premature on August 7, 2013.

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6. District Court favored counsel for Jacobs in another case seemingly making diametrically opposed rulings on behalf of those same lawyers on behalf of a defendant client of theirs in another matter being decided in same timeframe.

The Court's treatment of LVSC and SCL in this case is noticeably inconsistent with how she has treated Jacobs's counsel and their corporate client when they appear before her as counsel for Wynn Resorts in the Okada case, which also involves corporate parties and *"balancing"* Macanese data privacy law to comply with discovery requests. From *Wynn Resorts, Ltd. v. Kazuo Okada*, (Case No. A-12-656710-B), these four examples illustrate the uneven and biased treatment of the Defendants in this case:

(1) She apparently has deferred to Wynn's assertion that the Macau Data Privacy Act is a bar to production of documents from Macau, while here, she has not only ORDERED Defendants to produce documents in violation of Macau law, but she has ***sanctioned*** these Defendants for redacting the documents to comply with the same data privacy act that applies to Wynn Resorts in Macau.

(2) She agreed to delay Wynn's document production, first in June 2015, later in September 2015 when she finally ordered them to produce she gave Wynn 45 days to accommodate the Christmas and New Year holidays, while allowing SCL and LVSC only nine business days over the same holidays to comply with her oral ruling. (Recall that, contrary to her accommodation of Wynn's document production because of the difficulty of getting business done in Macau over these year-end holidays, that she quarreled with defense counsel in this case on the same point and said: *"I don't know that!"* Dec. 24, 2015 Hr'g Tr. at 55.).

(3) She agreed to treat Wynn's board minutes as highly confidential, whereas in this case, she denied confidential (or highly confidential) treatment to numerous defense records (over defense objection).

(4) She *refused* to sanction Wynn's counsel for instructing a witness not to answer questions on grounds of relevance, while recently rebuking and threatening sanctions (including revocation of his pro hac vice admission) against counsel for

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non-party Patrick Dumont (who is also a LVSC executive). *Cf* Jan 12, 2016 Hr'g Tr in Jacobs v. LVSC, et al.. at 34:5-10 with Dec. 17, 2015 Hr'g Tr in Wynn v. Okada, et al.

7. The District Court demonstrated an absence of neutrality by erroneously finding jurisdiction over SCL, a foreign defendant, for a second time on legal theories specifically precluded by binding US and Nevada Supreme Court precedent.

In August 2011, the Supreme Court vacated the District Court's order that Sands China is subject to jurisdiction in her Las Vegas courtroom. Nearly four years later, after unfair, one-sided discovery and an order prohibiting SCL from presenting witnesses or evidence, the District Court again "found" jurisdiction over this foreign Defendant. And promptly thereafter, the Supreme Court decided she erred in doing so because binding U.S. Supreme Court and Nevada precedent which she declined to follow, compelled the conclusion that SCL is not subject to general or transient jurisdiction in Nevada that was the unarticulated basis of her original erroneous ruling in 2011.

8. The District Court demonstrated an absence of neutrality when it failed to enforce her own rulings on highly confidential and confidential information of Defendants, allowing it to be made public by Court Staff and/or the Plaintiff.

Confidential information of the defense has been released twice through the District Court's failure to abide by its own orders and procedures. This has resulted in media access to documents that are not for public consumption, and extensive one-sided publicity, to the detriment of the defense. In the first instance, massive amounts of Defendants' documents stolen by Jacobs were properly ordered sealed as irrelevant to the jurisdictional hearing but placed by the Court in a publicly accessible vault – in error according to the District Court *after* the material appeared in the hands of media that had been specifically denied access to it. *See* July 22, 2015 Hr'g Tr. at 3 - 14.

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9. The District Court's bias is shown by disparaging remarks she made about the Defendants.

The District Court has consistently demonstrated its bias by making comments critical of the Defendants:

> *"That's not the issue. The issue is not you, or your firm's credibility or Mr. Lackey or Mr. Peek* ***or any of the attorneys at this point.*** *The issue is a -- what appears* ***to be an approach by the client*** *to avoid discovery obligations that I have had in place since before the stay"* [referring to the Supreme Court's August 2011 stay of merits discovery]. Dec. 18, 2012 Hr'g Tr., at 7:13-17.
>
> *"I believe I covered the issue related to misconduct of management in making the decision to mislead the Court, what I believed was a decision to mislead the Court"* Dec. 6, 2012 Hr'g Tr., at 51:11-14.

Judge Gonzalez's continuing disparaging remarks directed at the Defendants and her inconsistent rulings show that she has consistently prejudged issues, adversely to the Defendants. The Supreme Court's August 7, 2013 Order denied the relief sought by Defendants because the district court had not yet held the hearing to determine *"what sanctions, if any, are appropriate"* (***emphasis added***) (Nev. Sup. Ct. Aug. 7, 2013 Order at 10) (recognizing that the District Court's acknowledgement that she would *"balance"* the requirements of foreign law in *"determining whether sanctions are warranted," id.* at 11, which she did not do). On remand, however, the District Court immediately made clear that she ***had already decided to impose sanctions;*** she would not "balance" the proceeding. She acknowledged she would conduct a hearing merely to determine the specific sanctions to impose on Sands China when she said:

> *"There's going to be a sanction because I already had a hearing, and I made a determination that there is a sanction."*

Aug. 14, 2014 Hr'g Tr., at 29:10-13.

The Court clearly knows what to say to protect her rulings but, as her later statement on August 14 shows, she had her mind made up that there would be sanctions. *Compare* Feb. 28, 2013 Hr'g Tr. at 53:1-10:

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*"So I'm going to have a hearing. And at my evidentiary hearing I'm going to make a couple determinations. I'm going to make a determination as to the degree of willfulness. I'm going to make a determination as to whether there has been prejudice, and, if there has been prejudice, the impact of the prejudice. **And if I make a determination that there has been prejudice**, then I'm going to talk about an appropriate sanction"* **[emphasis added]**

with Aug. 14, 2014 Hr'g Tr., at 29:10-13:

"There's going to be a sanction because I already had a hearing, and I made a determination that there is a sanction."

Another example of bias: the District Court refused to entertain Defendants' oral arguments in order to "protect her record." *See* exchange on Mar. 14, 2013 Hr'g Tr. at 14:23-15:13:

"THE COURT: "Because I want the playing field to be well defined for purposes of the appellate review.

MR. PEEK: Yes. So do we, Your Honor, want to --

THE COURT: Which is why we're not going to have oral argument, because you guys are really good and creative and sometimes create new issues during argument. . . .

*THE COURT: But **it makes my job as a judge who's being reviewed on a regular basis by the appellate court difficult." [emphasis added]***

Other examples of the Court pre-judging issues and her bias against the Defendants include:

(1) her statement in the middle of closing arguments at the second sanctions hearing: *"I'm trying to get information so that I can make a better decision [about sanctions], rather than a worse decision, because none of them are going to be good."* Mar. 3, 2015 Hr'g Tr. at 139:5-8.

(2) referring to expert testimony, the Court said she had not prejudged the evidence, but her explanatory statement strongly suggests otherwise

"THE COURT: But I did read the conclusion, and based on the conclusion, which I read into the record, it doesn't seem particularly helpful to the evidentiary hearing that I have to

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conduct on jurisdictional issues." Mar. 14, 2013 Hr'g Tr. at 11:5-17.

(3) pre-judging Sands China's motion to dismiss Jacobs's 7th Claim, which had not been heard. Feb. 26, 2015 Hr'g Tr. at 56 7-12; Mar. 27, 2015 Order at 2, ¶ 5.

(4) discussing strategy with *Jacobs's counsel*:

> *"THE COURT: Don't you think the efforts of Las Vegas Sands in trying to protect that information is something that I should consider for purposes of the evidentiary hearing as opposed for the waiver? Because we have the same similar argument about: Okay,* ***so we have Las Vegas Sands still pulling all the strings here,*** *which has been your argument throughout.*
>
> *MR. PISANELLI: Sure.*
>
> *THE COURT: That's* ***why I have additional evidence by what's happened in my courtroom." [emphasis added]*** Oct. 9, 2014 Hr'g Tr. at 28:5-22.

(5) declaring that:

> *"I've invited a motion on this issue related to the MDPA for about two years and I can't get anybody to take me up on it because nobody wants to lose the issue. Because I,* ***after doing the research I've done related to it, have certain feelings about it,*** *but I need to have the briefing put before me by counsel."* **[emphasis added]** Sept. 11, 2012 Hr'g Tr. (First Sanctions Hearing) at 59:25-60:5.

(6) based on her extra-judicial fact checking, taking issue with the Defendants for not having obtained employee consents in Macau to email production by a means that Macanese authorities have indicated would be deemed unlawful coercion. *See* Dec. 2, 2014 Hr'g Tr. at 10:25 -11:8:

> ***"You have the ability to get their consent.*** *You can certainly put a little screen on their email every time they sign in that says, I understand that by using the email system I am consenting that my emails are going to not be protected by the Macau Data Privacy Act.* ***You haven't done that.*** *There are lots of ways that your client can deal with this issue from a business perspective. You haven't decided to do it, and that's okay."*

Put directly, the District Court simply made up this supposed proposition of law out of whole cloth. And this notwithstanding evidence that the Macanese authorities who enforced the data

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privacy regime precluded employers from compelling consents. *See* Mar. 2, 2015 Hr'g. Ex. 333, Aug. 8, 2012 Ltr. from OPDP at 11. In contrast, she has made no such comment or acted on any such principle in *Okada* where she seemingly allows counsel for Jacobs to rely on the same Data Privacy regime to excuse document production by their defendant-client in that case – at the same time as she applies the opposite tack with Defendants in this case.

(7) adopting plaintiff's characterization of evidence that she admittedly has not reviewed. Apr. 11, 2013 Hr'g Tr. at 4:4-8:

> *"THE COURT: but the redactions were everything but the date, basically, Mr. Jones, on most of the documents.*
>
> *MR. RANDALL JONES: Everything but the date?*
>
> *THE COURT: Yeah.*
>
> *MR. RANDALL JONES: Well, I would respectfully disagree. . .*
>
> *THE COURT: I think on many of the documents there were so many redactions it made the documents impossible to review.* ***But, you know, we didn't go through them all in court, because I didn't have them all with me." [emphasis added]***

(8) creating new forms of personal service of process at a gated residence to accommodate Plaintiff, contrary to the civil rules and NRS 14.090. *See* Feb. 6, 2016 Reply ISO Em. Mot. to Quash at 3 and n.4 (deeming service effective when process server was permitted access to gate and left papers with security, even though server was not denied access to try the residence for the executive who was then out of the state); Feb. 9, 2015 Bench Br. re Service Issues (disputing court's newly created *"substitute service"* and the misuse of NRS 14.090).

The Court's personal bias is also evidenced by this exchange at the December 18 hearing:

"MR. PISANELLI: ... I want to make this one point, because you've made a statement that they [the Defendants] have not yet violated an order, and that's of concern to me.

THE COURT: ***Well, they've violated numerous orders. They haven't violated an order that actually requires them to produce information."*** December 18, 2012 Hr'g Tr. At 28:12-19.

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Additional examples of the Court's animus against the Defendants are found in her oral rulings during the December 18, 2012 hearing where she:

(1) acknowledged she had not previously ordered Sands China to provide the documents Jacobs sought to compel the company to produce. Dec. 18, 2012 Hr'g Tr. at 28:24 – 29:1;

(2) rejected Sands China's motion for a protective order against being compelled to violate Macanese law and produce documents available *only* in Macau in unredacted form. *Id.* at 10:24 – 11:2; 24:12 – 18;

(3) invited Jacobs to renew his motion for sanctions if he did not receive production of documents by January 4, 2013. *Id.* at 24:23 – 24;

10. The District Court showed an absence of judicial demeanor and bias in using coarse language in referring to Defendants' responses or work product.

The Court's intemperate and inappropriate comments, which standing alone, are contrary to the Code of Judicial Conduct, have been solely directed at the Defendants. *See* Jan. 6, 2015 Hr'g Tr. at 94:9-19 declaring:

"This is bullshit"

in response to Sands China's inability to provide an earlier date on which she could set the evidentiary hearing on sanctions without risking the Defendants' ability to prepare for the hearing); and seemingly irritated with the review the Supreme Court ordered her to do, twice categorizing LVSC's privilege log in derogatory terms:

> *"THE COURT: **The really crappy privilege log that I had to spend days and weeks reviewing** because spending time with the documents and crashing the -- what was the name of the system, the Advance Discovery system.*
>
> *MR. LOWER: Yes, Your Honor.*
>
> *THE COURT: **The really crappy privilege log**. Okay."*

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Jan. 5, 2016 Hr'g Tr. at 17. And inviting chuckles by declaring in front of Jacobs and his counsel, but outside of Defendants' presence, that:

> *"It's always better to stay on record **because shit happens!**"*

Jan. 12, 2016 Video Record at 07:58:38 (emphasis in original).

11. The District Court showed an absence of neutrality when she helped shape the litigation strategy of the Plaintiff.

More egregious than the Court's intemperate remarks directed to the Defendants is the fact that the Court appears intent on being part of, if not the director of, Plaintiff's litigation strategy, as demonstrated by these excerpts from various transcripts:[6]

(1) *"THE COURT: Does anybody want to do any further briefing on the issue of whether there has been a waiver by the delay in Ms. Glaser asserting the privilege?*

MR. BICE: Yes. We are filing a motion on that."

Sept. 2, 2014 Hr'g Tr. at 26:1-4.

(2) *"THE COURT: However, I've already made factual determinations related to the document, but I understand they may not arguably be covered under the scope of this particular motion. So **I'm directing Mr. Bice to file a motion that deals specifically with these particular documents**, and then I can enter an appropriate order after I have an opportunity to hear anything else you have to say related to it."*

Dec. 11, 2014 Hr'g Tr. at 6:1-7 (emphasis added).

(3) *"THE COURT: There may be different issues [speaking to Jacobs's counsel] when you file your Rule 37 motion for sanctions that you're going to file someday."*

Sept. 10, 2012 Hr'g Tr. (First Sanctions Hearing) at 103:4-6.

[6] Since the Court elected to offer a declaration proclaiming her impartiality, Defendants should have been afforded the opportunity to challenge the sworn assertions Judge Gonzalez elected to present, some of which lack the specificity as to the participants and therefore cannot be addressed here. The timing alone calls into question the accuracy of her recitation of facts in paragraphs 13 and 14.

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(4) "THE COURT: I am assuming that prior to your evidentiary hearing on your Rule 37 motion [speaking to Jacobs's counsel] I might have some briefing related to some of these privilege issues so I can rule on them in a more detailed and thoughtful manner."

MR. BICE: Understood, Your Honor. *Id.* at 155:10-15. The Court again invited briefing on privilege issues during the 2015 sanctions hearing."

Feb. 12, 2015 Hr'g Tr. at 108.

(5) "MR. BICE: . . . There seems to be sort of selective waivers going on.

THE COURT: I've noticed that you're going to file briefs on that.

MR. BICE: I am.

THE COURT: That's why I told you."

Sept. 11, 2012 Hr'g Tr. (First Sanction Hearing) at 54:13-20.

(6) Angrily questioning why a non-party witness, Patrick Dumont (who serves as a LVSC executive) *"decid[ed] to hire counsel at this late date,"* when his deposition notice was unilaterally issued late on Dec. 18th and he retained counsel early the following week. *See* Jan. 5, 2016 Hr'g Tr. at 25:18 – 27:4.

12. The District Court has demonstrated a consistent absence of neutrality culminating in its insistence on ruling on the propriety of questions that were of personal interest to her but otherwise irrelevant to the proceedings.

It is the January 12, 2016 hearing, after she had decided to interject herself into the media coverage, where it appears that the *"paranoia"* about being on the record that Judge Gonzalez refers to in paragraph 3 of her declaration first kicked in. *See* J. Gonzalez Decl. at ¶3; Jan. 12, 2016 Hrg. Tr. at 2:8-9 (*"we're on the record, because I have a high level of paranoia."*). But the records provided to Defendants demonstrate the audio-video recording is not continuously "on" as she suggests. During prior proceedings, for example, the Court conducted off-record conferences with counsel in the hallway. See SCR CJC Canon 2.2 (impartiality); see also SCR CJC Canon 2.3, Comment 2 (judge shall not exhibit bias by epithets, slurs, etc). Again, Defendants are unaware of a case where a judge allows media in the courtroom, privately confers with them, claims *"paranoia"* about the matter and yet, fails to fully record the proceedings.

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This case filed by Jacobs for alleged wrongful termination of his employment in Macau has already involved *nine* writ petitions to the Nevada Supreme Court, a number that is likely unprecedented in a single case. Contrary to Jacobs's refrain that this extraordinary appellate record amounts to delay tactics by Defendants, the Supreme Court has considered every writ, and granted five of seven writs in whole or in part. (One writ was denied as premature and one was denied as moot.)[7] Many of these writs addressed the expansive scope of discovery ordered by the District Court judge in furtherance of the jurisdictional theory she was determined to pursue – contrary to law.

Having twice been overturned on the jurisdictional finding, the District Court crossed the line of personal conflict of interest on January 12, 2016 by insisting on ruling on the scope of a deposition in which it had an obvious and disqualifying personal interest.

While the foregoing record amply demonstrates actual bias, the District Court's long history of rulings, inappropriate comments, and questionable findings, confirmed by her recent decision to participate in the media coverage of this case that portrays Defendants in a negative light, considered as a whole, plainly create an *"objectively reasonable basis for questioning"* the court's impartiality, and its ability to effectively manage this litigation with due regard for the Defendants' rights. *In re IBM*, 45 F.3d 641, 644 (2d Cir. 1995); *see, e.g., FCH LLC v. Rodriguez*, 335 P.3d 183, 190 (2014). The conflict of interest that was called to the district court's attention in a timely manner and gratuitously ignored by the district court only reinforces the need for disqualification.

The Nevada Supreme Court has reassigned cases on remand in litigation that do not have the extraordinary procedural history of biased rulings, sarcastic remarks, and the epithets directed against the Defendants that suffuse the record in this case. *Compare Echeverria v. State*, 119 Nev. 41, 44, 62 P.3d 743, 745-46 (2003); and *Boulder City, Nev. v. Cinnamon Hill Assocs.*, 110 Nev. 238, 250, 871 P.2d 320, 327 (1994). This case, with much more compelling facts and for

[7] *See* Exhibit A, List of Nevada Supreme Court Writ Proceedings in Jacobs Case.

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good legal reasons supported by case law and judicial canons, should be presided over by another but impartial judge.

IV. IF THE COURT IS NOT INCLINED TO RECONSIDER, LVSC SEEKS A 10-BUSINESS-DAY STAY TO SEEK WRIT REVIEW FROM THE NEVADA SUPREME COURT.

A. Legal Standard for a Stay

In determining whether a stay is appropriate pending the Nevada Supreme Court's review of a writ petition, the District Court should consider the following factors: (1) whether the object of the writ petition will be defeated if the stay is denied; (2) whether petitioner will suffer irreparable or serious injury if the stay is denied; (3) whether the real party in interest will suffer irreparable or serious injury if the stay is granted; and (4) whether the petitioner is likely to prevail on the merits of the writ petition. *Hansen v. Dist. Ct.*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000) (the factors set forth in NRAP 8(a) apply to writ petitions when the petitioner "seeks to challenge" a decision "issued by the district court"). Each of these factors weighs in favor of the stay requested here.

B. The Object of the Writ Petition Would Be Defeated and Defendants Will Suffer Serious Harm if the January 29, 2016 Order is Not Stayed.

The primary purpose of LVSC's writ petition would be to obtain Supreme Court review of this Court's ruling that the district court to whom proceedings are presently assigned is not biased, as LVSC believes she is, notwithstanding her untested declaration of impartiality and the absence of a reply to her opposition. If she proceeds with the case and is later found to be biased, her rulings in the meantime will seriously and adversely affect the ability of the defendants to undo the draconian and burdensome discovery obligations and exorbitant expense imposed on the Defendants to attempt compliance with the rulings. Notwithstanding LVSC's request to have serious discovery matters that implicate foreign countries and law considered on a schedule that would permit fulsome briefing and discussion, the trial Court has expressed its intent to move aggressively and without due regard to relevance and burden on the defendants in this case.

///

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C. No Reasonable Harm Can Come to Plaintiff from a Short 10-Business-Day Delay.

Unlike Defendants, who would be harmed if a stay is denied and they are required to proceed before a judge whose impartiality they have good reason to question, Plaintiff has not and cannot show prejudice by a brief delay while LVSC seeks appellate review of the Court's erroneous order denying its motion to disqualify.

The parties are presently engaged in discovery, some of which is hotly contested and involves information that is irrelevant and stunningly burdensome and expensive to produce. LVSC is entitled to have these important matters decided by a judicial officer whose partiality is not at issue.

D. LVSC Has Raised a Substantial Legal Question That Should Be Resolved on Evidence at a Hearing Before LVSC is Obligated to Continue Before a Biased Judge.

LVSC recognizes that this Court has made a decision that rejects disqualification of Judge Gonzalez, but the company and its co-defendants respectfully submit that the Court acted prematurely, before briefing closed and without granting LVSC and its co-defendants an opportunity to be fully heard, ***as NRS 1.235.5 requires***. A district court judge considering whether to disqualify a fellow judge should not self-exempt himself from following the precise forms and rules for dealing with disqualification matters that NRS 1.235 provides and that others are obligated to follow. Otherwise, this Court would establish a double standard, one for judges and another for everyone else. That would create an appearance of injustice and disregard the Legislature's intent that the statute makes plain.

We therefore ask this Court to consider this motion for reconsideration on shortened time. If it cannot or does not wish to do so, we ask the Court to withdraw and stay its January 29, 2016 Order denying disqualification for 10 judicial days so that LVSC can seek appellate relief from the Nevada Supreme Court. In *Hansen*, our Supreme Court recognized that "when moving for a stay pending an appeal or writ proceedings, a movant does not always have to show a probability of success on the merits, [but] the movant must 'present a substantial case on the merits when a

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serious legal question is involved and show that the balance of equities weighs heavily in favor of granting the stay.'" 116 Nev. at 659, 6 P.3d at 987 (internal citation omitted). LVSC has made such a showing here.

IV. CONCLUSION

For the foregoing reasons, LVSC respectfully requests that the Court withdraw and reconsider its January 29, 2016 order denying disqualification. If the Court is not inclined to do so, LVSC asks that the Court stay its order for 10 days to permit LVSC to seek appellate review.

DATED February 9, 2016.

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CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b), I certify that on February 9, 2016, I served a true and correct copy of the foregoing **LAS VEGAS SANDS CORP.'S MOTION FOR WITHDRAWAL AND RECONSIDERATION OF ORDER PREMATURELY DENYING ITS MOTION TO DISQUALIFY JUDGE ON ORDER SHORTENING TIME** via e-mail and by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

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/s/ Valerie Larsen
An Employee of Holland & Hart LLP

EXHIBIT A

EXHIBIT A

LIST OF NEVADA SUPREME COURT WRIT PROCEEDINGS IN JACOBS CASE

Case No.	Filed	Nature of Proceeding	Disposition
58294	05/11	SCLWrit Petition re Jurisdiction	Writ Granted
62489	01/13	LVSC & SCL Writ Petition re Privileged Documents Reviewed by Defendants' Counsel	Writ Granted
62944	04/13	LVSC & SCL Writ Petition re Hearing Set to Consider Sanctions for Redacting Documents in Accord with Macanese Law	Writ Denied as premature
63444	06/13	LVSC & SCL Writ Petition re Former Executive being in "Sphere" of Persons Permitted to Use Privileged Documents	Writ Granted – ordered document review
67576	03/15	SCL Writ Petition re March 6, 2015 Order of Sanctions for Redactions Required by Macanese Law	Writ Denied – adjusted manner in which District Court's allocated financial sanctions.
68265	06/15	SCL Writ Petition re Jurisdiction	Writ Granted in Part – as to General Jurisdiction SCL Petition for Rehearing on Specific Jurisdiction Pending
68275	06/15	SCL Writ Petition re Turnbull Deposition in Hawaii	Writ Granted – Jacobs' Petition for Rehearing Pending
68309	06/15	LVSC, SCL, & SGA's Writ Petition re Trial Setting	Writ Moot Due to Requested Relief Granted in Interim Order from Nevada Supreme Court
69090	11/15	VML's Writ Petition re Peremptory Challenge	Pending

EXHIBIT A

EXHIBIT B

EXHIBIT B

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DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

WYNN RESORTS LIMITED Plaintiff vs. KAZUO OKADA, et al. Defendants	CASE NO. A-656710 DEPT. NO. XI **Transcript of Proceedings**

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON ARUZE PARTIES' MOTION TO COMPEL FURTHER DEPOSITION OF JAMES STERN AND PRODUCTION OF DOCUMENTS

THURSDAY, DECEMBER 17, 2015

COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS District Court	FLORENCE HOYT Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

that we're not working on it or that we don't intend to. Defendants will be the first to tell us, since we waited a year for theirs, that this is a ton of work. And so I don't have an exact date for you, but I can get you one.

THE COURT: Okay. Mr. Peek, it's your motion.

MR. PEEK: Thank you, Your Honor.

As you know, Your Honor, most, if not all, of the materials submitted with the motion are protected under the protective order, so I'm limited in what I can say during this hearing. And I know that the Court has certainly copies of the protected documents and so has had the opportunity --

THE COURT: And I went through it yesterday, except I didn't watch the videos.

MR. PEEK: I would certainly encourage you to watch the videos. But certainly what's within the body of the text is -- or the deposition is certainly -- gives a clear understanding, as well. And, Your Honor, I may go over the 10 minutes. I hope not to. I would ask the Court's indulgence.

Wynn Resorts acknowledges in its opposition that Mr. Stern needs to return for another day of testimony because of their failure to produce certain documents, specifically documents Mr. Stern received from our former employees, as well as Mr. Stern's notes, his phone records, and records evidencing meetings. Wynn Resorts also recognizes that we need to question him on those documents, as well as on his

passport information.

The issues today are, one, whether the two days we have requested are needed to fairly examine the witness; and, two whether you should compel Mr. Stern to answer questions regarding his communications with the government, communications that are essential to this litigation. The answer to each of these questions is yes. We do need the two more days, and we need to be able to question Mr. Stern about his own actions related to advancing the government's investigation of the Aruze parties.

First and foremost, Mr. Wynn's counsel instructed Mr. Stern 38 times not to answer fundamental questions, including about the substance of documents that Wynn Resorts and the Freeh Group has already produced in this case to us. They gave us the documents of the communications with the government, but then Mr. Wynn's attorney says we can't ask Mr. Stern about them. And his only objections, Your Honor, were not on privilege, but they were on relevancy, which is a clear violation of NRCP Rule 30. Mr. Wynn's objections are based on relevance only, and now they do not dispute that in their opposition.

But, as we all know, especially Mr. Campbell, instructions not to answer on questions of relevance are not allowed under Luangisa versus Interface Operations. But that is exactly what happened. Not only are these topics relevant

Justice to him. But for any disclosures he made on behalf of Wynn Resorts to the FBI or the Department of Justice he will answer those questions.

Relevance is not appropriate here where the criminal allegations are integrally intertwined with the issues in this pending civil case and I have issues related to pretext and suitability that were reported by Wynn to the federal authorities.

How much longer do you really think you need, Mr. Krakoff?

MR. PEEK: Your Honor, the problem is Mr. Krakoff apparently dropped off.

THE COURT: So I'm giving you two days.

Mr. Pisanelli, when am I going to get the privilege log?

MS. SPINELLI: Next week, Your Honor.

THE COURT: That's fine. Thank you, Ms. Spinelli.

Mr. Pisanelli's voice changed.

MR. PEEK: I didn't hear that. I'm sorry, Debra.

MS. SPINELLI: Next week.

MR. PEEK: Thank you.

THE COURT: Anything else?

MR. PEEK: Sanctions, Your Honor.

THE COURT: Denied. Have a lovely day. 'Bye.

MR. PISANELLI: Thank you, Your Honor.

MR. URGA: Your Honor, this is our discovery time for [inaudible], so I just want to put it on the record so it's clear. Ms. Spinelli and I have a slight disagreement on some documents, and we may be coming in with an order shortening time. I understand we followed the rule that you talked about in the earlier case, so I'm just letting you know we may have that issue after we talk to her.

THE COURT: Okay.

MR. PEEK: Your Honor --

THE COURT: There was a good-faith basis for the objections. My determination of scope is one that is made on a case-by-case basis, and Mr. Campbell allowed the witness to answer on a question-by-question basis, rather than asserting an entire block to your request. So I am --

MR. PEEK: We're also dealing with speaking --

THE COURT: -- not sanctioning --

MR. PEEK: -- speaking objections, Your Honor.

THE COURT: You both make speaking objections in all your cases. And if I had to sit through them, I would probably be tearing my hair out. But I'm not sitting through them. Someday the culture will change and we will move away from speaking objections. But right now I can only control it in the courtroom. So anything else?

MR. PISANELLI: Thank you, Your Honor.

THE PROCEEDINGS CONCLUDED AT 9:26 A.M.

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.

FLORENCE HOYT
Las Vegas, Nevada 89146

FLORENCE M. HOYT, TRANSCRIBER

12/17/15

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DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN C. JACOBS, Plaintiff, vs. LAS VEGAS SANDS CORP., a Nevada Corporation; SANDS CHINA, LTD., a Cayman Islands Corporation; SHELDON G. ADELSON, in his individual and representative capacity; DOE individuals I-X; ROE Corporations I-X, Defendants. AND ALL RELATED MATTERS	Case No.: A-10-627691-B Dept. No.: XI **REPLY IN SUPPORT OF MOTION TO TRANSFER ISSUE** **Date of Hearing: February 18, 2016** **Time of Hearing: 8:30 a.m.**

Non-party Patrick Dumont files this Reply in support of his Motion requesting that Honorable Judge Elizabeth Gonzalez (the "District Court") transfer certain media related issues to another judge. This Motion is necessary because of Plaintiff Steven C. Jacobs' ("Jacobs") recent unwarranted introduction of media coverage issues and issues regarding the purchase of the *Las Vegas Review-Journal*, issues occurring five years after Plaintiff's alleged wrongful termination.

Jacobs' decision to pursue issues related to the media coverage and the purchase of the *Las Vegas Review-Journal* (issues wholly unrelated to the subject matter of Jacobs' dispute with the named Defendants), and the District Court's decision to willingly insert itself into such media coverage, warrants transfer of the issue of the appropriateness of certain instructions to not answer questions dealing with the media coverage issues during Mr. Dumont's deposition.

A reasonable person would harbor doubts about the ability for any judge to remain impartial when considering issues such as the background behind media coverage into which the District Court willingly inserted itself. Accordingly, the District Court's personal interest in answers to questions regarding that media eliminates the District Court's ability for neutral oversight in deciding and balancing the relevancy of the questions. Thus, transfer of the issue of whether Mr. Dumont should be compelled to answer such questions related to such media coverage is appropriate. Mr. Dumont, by and through his attorneys, respectfully requests the District Court transfer any and all issues relating to the media coverage of this matter and Mr. Dumont's personal involvement therein. The transfer of such issues is necessitated by the duty to uphold and protect the public's confidence in the judiciary.

DATED: February 10, 2016

DUANE MORRIS LLP

By: _____
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Attorneys for Non-Party *Patrick Dumont*

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On January 11, 2016, non-party, Mr. Patrick Dumont sat for his deposition in this matter. Mr. Dumont's deposition was noticed by Plaintiff Steven C. Jacobs ("Jacobs" or "Plaintiff") through Mr. Dumont's employer, Las Vegas Sands Corporation ("LVSC"), and he appeared without the issuance of a subpoena. During Mr. Dumont's deposition, counsel for Jacobs's questions became harassing by straying far afield from the core allegations of his Fifth Amended Complaint, i.e., that Jacobs was wrongfully terminated in 2010, and instead inquiring into Mr. Dumont's involvement in media coverage of this litigation. These questions were objected to, and ultimately Mr. Dumont's counsel instructed him not to answer advising that Mr. Dumont would seek protection from the Court in the morning.

That next morning this issue was brought before the Honorable Judge Elizabeth Gonzalez ("District Court") with Mr. Dumont's counsel requesting the District Court recuse itself from ruling on the appropriateness of the instructions to not answer questions on the media issues for the reasons set forth in the Mr. Dumont's Motion to Transfer Issue. As further documented in Mr. Dumont's Motion, the basis for this request is the District Court's decision to both actively monitor and insert itself into the subject matter about which the instructions were concerned, i.e., the extensive media coverage of this matter and Mr. Dumont's role in such coverage, if any. As further detailed in the Mr. Dumont's Motion, the *Time* magazine and *Las Vegas Review-Journal* articles demonstrate both how the District Court has inserted itself in the media coverage and has actively sought out a *Las Vegas Review-Journal* journalist present in its courtroom. (*See, e.g.,* Mot., at 9:13 – 26; *see, also,* Mot., at 16:8 – 20 ("Yet the judge thought it surprising when she spotted a reporter from the Las Vegas Review-Journal in attendance at a decidedly mundane court proceeding in November. ***So she approached him.***"); *see, also Judge in Adelson Lawsuit Subject to Unusual Scrutiny Amid Review-Journal Sale, Las Vegas Review-Journal*, December 18, 2015, attached as Exhibit "B" to Motion for Transfer). The District Court denied the request for recusal on the issue, and substantively ruled on the issue by overruling counsel's instructions to not answer questions about the media coverage, and striking the instructions to not answer. The District Court further ordered the continuation of Mr.

Dumont's deposition that very day, denying a request to stay the District Court's ruling while Mr. Dumont filed a written motion on the subject. The District Court also threatened Mr. Dumont's counsel with withdrawing his pro hac admission if he instructed Mr. Dumont not to answer again. While Mr. Dumont's deposition did go forward that day, and without instructions not to answer, Mr. Dumont also filed this Motion for Transfer Issue.[1]

Significantly, during that hearing, the District Court implicitly conceded the validity of Mr. Dumont's concern regarding the District Court ruling on any questions that "may involve other communications with media related to the litigation, [as it] underst[ood] [the] concern." Therefore, the questions should be heard by another judge. In fact, immediately following the hearing, the District Court issued an email ruling to this effect. (Attached hereto as **Exhibit "1"**.) Specifically, the email ruling provided:

> This morning after meeting with counsel and dealing with an improper instruction not to answer by out of state counsel, I referred issues related to questions during the deposition on the narrow subject of:
>
> Dumont's communication with third parties (including the media) about the litigation.
>
> If they can't get a hold of you or disagree with you, Judge Togliatti has agreed to be back up.
>
> I will continue to deal with issues on all other areas including Dumont's communication with third parties (including the media) about Jacobs and other witnesses Including DOJ and SEC)."

Although this Order's distinction between communications with the media regarding the litigation versus communications about Jacobs is a distinction without a difference, ironically, the District Court failed to follow its own procedure. During the hearing, the District Court explicitly denied Mr. Dumont's counsel's request to have the issue of the appropriateness of his instructions not to answer questions on media coverage (both regarding the litigation and Jacobs) ruled on by a different judge - one not involved in the media coverage by its own doing. Thus, clearly, the District Court did not follow its own procedure. Had the District Court followed its own procedure, the issues would have been sent to a different judge. Instead, the District Court ***ruled on the propriety***

[1] Although the deposition ended that day, Jacobs' counsel has threatened a continuation of the deposition at some point.

of the instructions not to answer that occurred the previous day. The District Court should not have so ruled. Any further issues related to *any* media coverage in this matter and Mr. Dumont's involvement, if any, need to be heard by another judge.

First, the District Court willingly inserted itself into the media coverage by granting interviews to reporters with *Time* magazine and the *Las Vegas Review-Journal,* and actively seeking out and inquiring of a *Las Vegas Review-Journal* journalist in its courtroom. (*See, e.g.,* Mot., at 9:13 – 26.) Second, the District Court's conflict of interest (or at least personal interest in the answers to the deposition questions posed to Mr. Dumont) eliminates the District Court's ability to be neutral in the evaluation of the appropriateness of those questions. **Thus, in this case, under the totality of the circumstances, a reasonable person could believe that the District Court has a *personal* interest in learning the answers to questions blocked by an instruction not to answer and thus the Court should not be ruling on those issues.**

II. LEGAL ARGUMENT

"Judges who covet publicity, or convey the appearance that they do, lead any objective observer to wonder whether their judgments are being influenced by the prospect of favorable coverage in the media." *United States v. Microsoft Corp.*, 253 F.3d 34, 115 (D.C. Cir. 2001). The D.C. Circuit continued,

> Judge Learned Hand spoke of "this America of ours where the passion for publicity is a disease, and where swarms of foolish, tawdry moths dash with rapture into its consuming fire...." LEARNED HAND, THE SPIRIT OF LIBERTY 132-33 (2d ed. 1953). Judges are obligated to resist this passion. Indulging it compromises what Edmund Burke justly regarded as the "cold neutrality of an impartial judge." Cold or not, [all] judges must maintain the appearance of impartiality. What was true two centuries ago is true today: "Deference to the judgments and rulings of courts depends upon public confidence in the integrity and independence of judges." CODE OF CONDUCT Canon 1 cmt. Public confidence in judicial impartiality cannot survive if judges, in disregard of their ethical obligations, pander to the press.

Id.

It is in the context of this high standard placed upon the judiciary that Mr. Dumont requested the District Court transfer the issues of the propriety of certain instructions not to answer questions relating to the media coverage. These instructions stemmed from Jacobs' decision to pose irrelevant, harassing questions about the media coverage during Mr. Dumont's deposition. Mr. Dumont's

request was not only denied, but Mr. Dumont was instructed to proceed back to his deposition under the threat that the ability of the counsel of his choosing to continue practicing in Nevada would be revoked should Mr. Dumont seek to protect himself from Jacobs' counsel's harassing, irrelevant questions. (*See* Transcript, at 34:5 – 9 ("To the extent you attempt to instruct a witness, sir, not to answer a question it is inappropriate under Nevada law. And regardless of whether you are appearing for a party or not, you may be subject to sanctions which may include the withdrawal of your permission to appear pro hac.").)

Jacobs' Opposition to Mr. Dumont's Motion to Transfer does not discuss the merits of the requested transfer of the discrete issues discussed herein. Instead, Jacobs attempts to rely solely on Chief Judge Barker's Order issued in this case on January 29, 2016 on LVSC's Motion to Recuse the Judge from the case. (*See* Opposition to Motion for Transfer of Issue ("Opp."), at 1:26 – 28, 2:8 – 9 (claiming, "Chief Judge Barker's Order denying Defendant Las Vegas Sands Corp.'s ("LVSC") Motion to Disqualify confirms the propriety of the transfer procedure that this Court previously adopted.").) Based on Judge Barker's Order, Jacobs claims this Motion is moot. (*See id.*, at 1:21 – 22.) Not so. Jacobs ignores the fact that Chief Judge Barker's Order does not discuss the relief request herein, i.e., transfer of issues concerning questions asked of Mr. Dumont related to media coverage. *Compare* Chief Judge Barker's Order, on file herein, at 5:14 – 16 (recognizing that Judge Gonzalez would continue to "handle disputes involving questions on Mr. Dumont's communications with third parties (including the media) about the Plaintiff (and other witnesses).")

Additionally, Jacobs' Opposition does not discuss how, rather than follow her own procedure, the District Court substantially *ruled on the propriety of the instructions not to answer and denied any subsequent protective order issued during the first day of Mr. Dumont's deposition.* (*See* Opp.); *see also,* Transcript, at 43:34 – 44:4 ("And, Your Honor, if I might just to make sure the record's clear, our position is that in light of the fact that we have reluctantly advised the Court that we're filing a motion to recuse on this issue, the Court should not be hearing and ruling on the appropriateness of the instructions[.]"). Instead, Jacobs' Opposition argues the substantive issues – i.e., the irrelevant questions he asked of Mr. Dumont during the second day of his deposition. (*See* Opp., at 2:15 – 3:23.). Again, that is not the issue in this Motion; the District Court should not be

ruling on that issue.

Transfer of the issue in this matter is warranted to protect the public confidence in the judiciary. In fact, because questions relating to media of the litigation versus media relating to Jacobs is a difference without a distinction,[2] Mr. Dumont is requesting a transfer of the consideration of *any* questions related to the media coverage in this case, not simply those questions that deal with the "litigation." (*See* Transcript of Jan. 12, 2016 Hearing, at 33:19 – 34:4 (referring "issues that relate to the litigation, as opposed to Mr. Jacobs" to the Discovery Commissioner and any appeals on such decisions referred to Judge Togliatti, but retaining those questions "relating to Mr. Jacobs.").) Finally, Mr. Dumont is not responsible for creating the situation which requires recusal from the issue; both the District Court's insertion into the media and Jacobs' questioning about that media make this motion necessary. The District Court should transfer the issue of the propriety of the instructions not to answer and of a protective order preventing Jacobs' harassing, irrelevant questioning.

A. TRANSFER OF THE ISSUE IS WARRANTED

"A judge shall act at all times in a manner that promotes public confidence in the independence, integrity and impartiality of the judiciary and shall avoid impropriety and the appearance of impropriety." NCJC 1.2. If "the conduct would create in reasonable minds a perception that the judge violated the Code or engaged in other conduct that reflects adversely on the judge's honesty, impartiality, temperament or fitness to serve as a judge[,]" then the appearance of impropriety is implicated. NCJC 1.2, at Comment 5; *see, also, Caperton v. A.T. Massey Coal, Co.*, 556 U.S. 868 (2009) (standard is whether there is an influence on the judge under all the circumstances that would offer a possible temptation to the average judge to lead her not to hold the judicial balance "nice, clear, and true."). Here, because the District Court willingly inserted itself into the media coverage of this matter, the District Court has, at least, a personal interest in the

[2] Questions, and objections thereto, about the media so long as Jacobs' name is *specifically* mentioned appear to reside with the District Court, but if a question references the litigation *generally*, then it is transferred to another judge. It is entirely unclear why mentioning Jacobs' name in a question instead of generally using terms as "lawsuit" or "litigation" would remove any fear of the appearance of partiality in this case. Instead, the procedure evidences the fact that *any* media related questions and objections thereto should be handled by a different court.

answers to the questions being propounded, which eliminates its ability for a neutral oversight in balancing whether Mr. Dumont should be compelled to provide such answers.

1. The District Court Willingly Inserted Itself into the Media Coverage

As fully set forth in Mr. Dumont's Motion, the District Court inserted itself in the media coverage surrounding this case, and such media coverage is the subject matter about which Mr. Dumont should not be compelled to testify to by the District Court. The District Court, in its interview with *Time* magazine, demonstrated its interest in the media coverage of this case, and thus, its interest in learning more about what Mr. Dumont might have to say about the same, irrespective of the propriety of whether Jacobs should question Mr. Dumont about such media coverage. (*See* Mot., at 16:8 – 20 ("Yet the judge thought it surprising when she spotted a reporter from the Las Vegas Review-Journal in attendance at a decidedly mundane court proceeding in November. ***So she approached him***.").) (emphasis added). As the United States Supreme Court has explained, "[i]mpartiality is not a technical conception. It is a state of mind." *United States v. Wood*, 299 U.S. 123, 145 (1936). An average person would view the District Court's curiosity about the media coverage and Mr. Dumont's involvement, if any, as a motivating factor, that "would be difficult, if not impossible, to set aside[]" while ruling on the propriety of instructions to not answer questions about such media coverage. *See Del Vecchio v. Illinois Dep't of Corrections*, 31 F.3d 1363, 1373 (7th Cir. Ill. 1994). This is further demonstrated by the District Court's statement on the record:

> [...] I don't know about Mr. Dumont, because I know, as we said in our papers, that he is very active with the company to close out the end of the year, whether he can go that week. But I think Mr. Solomon could probably go.
>
> THE COURT: ***I read in the paper he was busy on other things***.
>
> MR. PEEK: That's what I said, Your Honor. He's busy on other things. Well, I understand that, you know, Counsel thinks that this is funny. We don't think this is funny.
>
> THE COURT: Well, but what I'm trying to tell you is being busy on other business ventures doesn't mean to get to say, I'm not showing up for a depo.

(*See* Mot., at 20:17 – 22 (citing H'rg. Tr., Dec. 24, 2015, at pp. 33-34) (emphasis added).

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2. *The District Court's Interest in the Subject Matter of the Questions Propounded Requires Transfer of the Issue*

For obvious reasons, the District Court is instructed to decide "close calls" in favor of removing itself from the case. *New York City Housing Develp. Corp. v. Hart*, 796 F.2d 976, 980 (7th Cir. 1986); *In re Chevron U.S.A., Inc.*, 121 F.3d 163, 165 (5th Cir. 1997). The District Court is instructed to transfer the issue as a result of the mere *appearance* of partiality, "[e]ven [if] no actual partiality exists because the judge does not recall the facts, because the judge actually has no interest in the case or because the judge is pure in heart and incorruptible." *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 860 (1988). So important is protecting the public's perception of the judiciary that "[t]he cumulative effect of a judge's individual actions, comments and past associations could raise some question about impartiality, even though none (taken alone) would require recusal." *In re Martinez-Catala*, 129 F.3d 213, 221 (1st Cir. 1997). All that is required is showing "a bent of mind that may prevent or impede impartiality of judgment." *Berger v. United States*, 255 U.S. 22, 33-34 (1921).

Here, the District Court's own Order reserving for itself certain media-related questions but not others demonstrates the issue is more than close; certain media issues the District Court concedes it should not handle. First, those issues are so intertwined with the issues it has decided to retain that all of them should be transferred away from the District Court. Second, the District Court has not even followed its own procedure.

Jacobs' response is that this issue is an "attempt to delay" (*see* Opp., at 4:1 – 2). As stated by the Seventh Circuit Court of Appeals, however:

> [I]f a judge proceeds in a case when there is (only) an appearance of impropriety in his doing so, ***the injury is to the judicial system as a whole*** and not to the substantial rights of the parties. The parties in fact receive a fair trial, even though a reasonable member of the public might be in doubt about its fairness, because of misleading appearances.

United States v. Balistrieri, 779 F.2d 1191, 1204-05 (7th Cir. 1985) (emphasis added). In a case that has received so much media coverage, it becomes ever more important to act in such a way as to protect the public's confidence in the judiciary. **Speedy injustice is not justice at all.**

Jacobs claims that the cases are "legion," and that therefore the District Court should deny

Mr. Dumont's request that the District Court avoid the appearance of partiality. (*See* Opp., at 4:27 – 5:3 (citing *Ex Parte Monsanto Co.*, 862 So. 2d 595, 631-32 (Ala. 2003)).) Jacobs relies on *Ex Parte Monsanto* for the proposition that "public remarks by a trial judge concerning the factual or procedural aspects of a case [...] provide no basis for recusal." (*See id.* (citing *Ex Parte Monsanto*, 862 So. 2d at 631-32).) Jacobs fails to acknowledge that although that case does discuss judges conferring with the media about ongoing litigation, it does *not* discuss a judge's decision to rule on matters relating to such media coverage after intentionally inserting itself in such media coverage. (*See id.*); *compare* Mot., at 9:13 – 26 (discussing the January 7, 2016 *Time* magazine article in which the District Court was interviewed and describing how the District Court actively sought out the *Las Vegas Review-Journal* journalist in its courtroom).) The issue in *Ex Parte Monsanto Co.* was whether a judge's conduct and public remarks about a corporate party could lead a reasonable person to question whether the judge was biased against the corporation or lacked impartiality. Thus, the issue in *Ex Parte Monsanto Co.* was whether the *substance* of the remarks to the media required recusal. *See Ex Parte Monsanto,* 862 So. 2d at 633 (noting the judge's comments did not require recusal because they "indicate merely that Judge Laird will consider the issues, research the law, and issue rulings in accordance with the law.").

The issue in this case is different than in *Ex Parte Monsanto Co.* Although, under *Ex Parte Monsanto Co.*, the Court's decision to speak with the media did not warrant recusal, *Ex Parte Monsanto* (and the cases discussed therein) does not stand for the proposition that the same court should rule on issues relating to that media coverage and the propriety of instructions not to answer questions concerning same. *Compare Ex Parte Monsanto Co.*, 862 So. 2d at 631-32 (holding that mere public remarks on factual and procedural aspects of the case do not require recusal in certain circumstances); *with In re Murchison,* 349 U.S. 133, 135 (1955) (explaining that although a disqualifying interest "cannot be defined with precision[,]" if such interest "'would ***offer a possible temptation to the average ... judge*** ... not to hold the balance nice, clear and true[,]'" it is a disqualifying interest). The cases cited by Jacobs are inapposite to the issue presented.

As evidenced by the District Court's own procedural ruling that some media related discovery issues should go to another judge, a reasonable person could believe that the District Court

could have (or demonstrates an appearance of) a *"bent of mind"* that may lead it to rule one way or the other on issues about which the District Court has demonstrated a curiosity and a desire to be directly involved. In acknowledging the reality that there is at least the appearance of partiality in this case on the issue of media coverage and Mr. Dumont's instructions to not answer, the District Court must transfer the issue to another court to allow Mr. Dumont the fair and neutral arbiter to which he is entitled. *See, e.g., People for the Ethical Treatment of Animals v. Bobby Berosini, Ltd.*, 111 Nev. 431, 436-437 (1995) (granting the motion to disqualify a judge "to avoid even the appearance of impropriety and to promote public confidence in the integrity of the judicial process."). Thus, in this case, under the totality of the circumstances, a reasonable person could believe that the District Court has a *personal* interest in learning the answers to questions blocked by an instruction not to answer.

B. MR. DUMONT IS NOT RESPONSIBLE FOR CREATING THE SITUATION REQUIRING TRANSFER OF THE ISSUE

Jacobs asserts Mr. Dumont is responsible for this situation. Not so. Mr. Dumont's deposition notice was delivered to his employer on December 18, 2015 at approximately 4:30 PM. By that time, Mr. Dumont's involvement in the sale and purchase of the *Las Vegas Review-Journal* or in any involvement with media coverage about which Jacobs seeks to question him had come and passed. Yet, Jacobs claims that Mr. Dumont is attempting to benefit from a situation he created. (*See* Opp., at 4:23 – 26.) Jacobs created this situation, however, by focusing his deposition questions of Mr. Dumont on media coverage, as opposed to Mr. Dumont's knowledge of facts concerning the termination of Jacobs' employment. Jacobs' irrelevant and harassing line of questioning squarely placed the District Court in the awkward position of ruling on the appropriateness of that questioning, on which it should recuse itself from hearing.

Jacobs ignores that "[c]ounsel for a party who believes a judge's impartiality is reasonably subject to question has not only a professional duty to his client to raise the matter, but an independent responsibility as an officer of the court . . ." to do so. *In re Bernard*, *supra*, 31 F.3d at 847. Counsel for Mr. Dumont was ethically obliged to request that the District Court transfer the issue of the propriety of counsel's instructions once Jacobs sought to inquire into media coverage

into which the District Court had inserted itself.

Even if the District Court were to agree with Jacobs that non-party Mr. Dumont, before receiving his deposition notice, acted in a way to cause the media coverage in this matter, and was responsible both for Jacobs' questioning about the media coverage and the District Court's decision to insert itself in the media coverage, more would be required to hold that Mr. Dumont is attempting to "judge shop." Jacobs' assertion that Mr. Dumont was responsible for the subject matter requiring transfer of the issue does not meet the high standard required for showing that a party is engaging in deliberate conduct properly considered "judge-shopping." *Cf. City of Las Vegas Downtown Redevelopment Agency v. Hecht*, 113 Nev. 644, 654 (1997) (holding that to countenance efforts by a single attorney to disqualify a particular judge on every case "after a disagreement or an interaction" between the two, "the court is allowing unjustified judge-shopping.").

In this case, a review of the totality of the circumstances mandating transfer of the issue is required. In order to hold that the movant requesting recusal is improperly attempting to benefit from the subject matter requiring recusal, it is not enough that the movant is merely associated with, or even directly involved with, the subject matter requiring recusal. For example, the United States Supreme Court has required disqualification in the face of a litigant's direct personal insults to a judge. In *Mayberry v. Pennsylvania*, 400 U.S. 455, 27 L. Ed. 2d 532, 91 S. Ct. 499 (1971), the defendant during the course of his trial called the judge, among other epithets, a "dirty [S.O.B.]," a "dirty tyrannical old dog," a "stumbling dog," and a "fool," had charged the judge with running a "Spanish Inquisition," and had told the judge to "Go to hell." *Id.* at 466. According to the Court, the litigant's insults were "apt to strike 'at the most vulnerable and human qualities of a judge's temperament.'" *Id.* (quoting *Bloom v. Illinois*, 391 U.S. 194, 204 (1968)); *see also Taylor v. Hayes*, 418 U.S. 488 (1974) (judge who had become embroiled in a "running controversy" with an attorney that resulted in "marked personal feelings . . . on both sides," and during which the judge had displayed an "unfavorable personal attitude" toward the attorney, could not try the attorney for contempt).

Jacobs also cites *United States v. Bayless*, 201 F.3d 116 (2d Cir. 2000), for the proposition that parties who are "sophisticated in their dealings with the press" might be able to "engineer" a

judge's recusal. (*See* Opp., 4: 24 – 26 (citing *Bayless*, 201 F.3d at 129).) The issue in *Bayless*, as with *Monsanto*, *supra*, was whether recusal is required based upon the substance of the commentary in the press. The court in *Bayless* discussed several cases in which recusal was unnecessary based upon critical news reports. *See Bayless*, 201 F.3d at 129 (citing *United States v. Martorano*, 866 F.2d 62, 67-68 (3rd Cir. 1989) (finding no basis for recusal where a newspaper article was critical of a judge for serving as a character witness in the tax evasion trial of defendant's attorney); *United States v. Greenough*, 782 F.2d 1556, 1558-59 (11th Cir. 1986) (finding a critical newspaper article insufficient grounds for recusal); *In re United States*, 666 F.2d 690, 695 (1st Cir. 1981) ("Although public confidence may be as much shaken by publicized inferences of bias that are false as by those that are true, a judge considering whether to disqualify himself must ignore rumors, innuendos, and erroneous information published as fact in the newspapers. To find otherwise would allow an irresponsible, vindictive or self-interested press informant . . . to control the choice of judge."). Again, Mr. Dumont is not relying on the substance of the media coverage in this case, which as the First, Second, Third and Eleventh Circuits discuss in the cases cited by Jacobs. Instead, the issue in this case is the fact that the District Court has actively monitored and inserted itself into the media coverage of this litigation and should not rule on issue pertaining to such media coverage, including instructions to not answer questions that – but for such instructions – block answers that a reasonable person would believe the District Court is interested in knowing.

Jacobs decided to focus his deposition questions of Mr. Dumont on media coverage that occurred five years after the alleged wrongful termination that is the core of Jacobs' allegations in this case. These topics should not have been inquired into for a number of reasons, including that: (i) Mr. Dumont was noticed (not subpoenaed) as an employee of LVSC, (ii) the questions are irrelevant, and (iii) the questions are designed solely to harass Mr. Dumont, a family member of one of the parties. Jacobs cannot contend that Mr. Dumont created the situation.[3] Mr. Dumont simply

[3] Although Jacobs contends the instructions to not answer were not appropriate (*see* Opp., at 5:4 – 9), that issue is not before the District Court, and in any event, the instructions to not answer were appropriate. Pursuant to NRCP 30, an attorney may instruct a deponent to not answer when necessary to preserve a privilege, enforce a limitation directed by the court, or to file a motion to terminate or limit the deposition. As explained by at least one federal court, "[i]t [has long been] settled that counsel should never instruct a witness not to answer a question during a deposition unless the question seeks privileged information or unless counsel ***wishes to adjourn the deposition***

seeks a neutral arbiter to decide whether he should be compelled to answer questions that relate to the District Court.

III. CONCLUSION

The District Court decided to insert itself into the media coverage in this matter. The District Court has, at least, a personal interest in the answers to the questions propounded by Jacobs in response to which Mr. Dumont was instructed to not answer. As a result, the District Court cannot remain a neutral arbiter of the propriety of such instructions, and should transfer the issues regarding the same. For the foregoing reasons, in seeking to uphold the public confidence in the judiciary, Mr. Dumont, by and through his attorneys of record, seeks disqualification, on a limited basis, of the District Court for the reasons stated above.

Respectfully submitted by,

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for the purpose of seeking a protective order from what he or she believes is annoying, embarrassing, oppressive, or bad faith conduct by opposing counsel." *First Tennessee Bank v. Federal Deposit Ins. CM.*, 108 F.R.D. 640 (E.D. Tenn. 1985) (emphasis added). As explained by counsel for Mr. Dumont, the purpose of instructing Mr. Dumont to not answer questions concerning Mr. Dumont's interactions with the media appeared to implicate privileges held by members of the media under Nevada and Connecticut law, and appeared designed to annoy, embarrass and oppress Mr. Dumont.

Discovery has its limits, and "courts need not condone the use of discovery to engage in 'fishing expedition[s].'" *Rivera v. NIBCO, Inc.*, 364 F.3d 1057, 1072 (9th Cir. 2004) (quoting *Exxon Corp. v. Crosby-Mississippi Resources, Ltd.*, 40 F.3d 1474, 1487 (5th Cir. 1995)). "Discovery into matters not relevant to the case imposes a *per se* undue burden." *White v. Deere & Company*, 2015 WL 1385210, at *9 (D. Col. Mar. 23, 2015). Simply put, the questions about Mr. Dumont's interactions and awareness of certain media coverage is irrelevant and designed solely to harass and oppress Mr. Dumont and his family. *Id.* ("when a discovery request does not have relevance on its face, the party seeking discovery has the burden to show relevancy.").

CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2016 a true and correct copy of **REPLY IN SUPPORT OF MOTION FOR TRANSFER OF THE ISSUE** was served by electronic filing via the Wiznet Electronic Service system with the Clerk of the Court, and serving all parties with an email address on record at that time, pursuant to Administrative Order 14-2 and Rule 9 of the Nevada Electronic Filing and Conversion Rules.

/s/ Jana Dailey
Jana Dailey, an employee of Duane Morris LLP

EXHIBIT 1

EXHIBIT 1

Gonzalez, Betsy

From: Bulla, Bonnie
Sent: Tuesday, January 12, 2016 9:53 AM
To: Gonzalez, Betsy
Cc: Togliatti, Jennifer; Kutinac, Daniel; Rose, Laura
Subject: RE: Jacobs Dumont depo

No problem.

From: Gonzalez, Betsy
Sent: Tuesday, January 12, 2016 9:33 AM
To: Bulla, Bonnie
Cc: Togliatti, Jennifer; Kutinac, Daniel; Rose, Laura
Subject: Jacobs Dumont depo

This morning after meeting with counsel and dealing with an improper instruction not to answer by out of state counsel, I referred issues related to questions during the deposition on the narrow subject of:

Dumont's communication with third parties (including the media) about the litigation.

If they can't get a hold of you or disagree with you, Judge Togliatti has agreed to be back up.

I will continue to deal with issues on all other areas including Dumont's communication with third parties (including the media) about Jacobs and other witnesses including DOJ and SEC) .

Elizabeth Gonzalez
District Judge, Department XI
Eighth Judicial District Court
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155
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DISTRICT COURT
CLARK COUNTY, NEVADA

STEVEN C. JACOBS,

Plaintiff,

v.

LAS VEGAS SANDS CORP., a Nevada corporation; SANDS CHINA LTD., a Cayman Islands corporation; SHELDON G. ADELSON, in his individual and representative capacity; DOES I-X; and ROE CORPORATIONS I-X,

Defendants.

AND ALL RELATED MATTERS.

CASE NO.: A627691-B
DEPT NO.: XI

REPLY IN SUPPORT OF SAND'S CHINA, LTD.'S MOTION TO COMPEL PLAINTIFF TO SIGN CONSENT TO TRANSFER PERSONAL DATA OTHERWISE PROTECTED BY THE MACAU PERSONAL DATA PROTECTION ACT

Date of Hearing: _____
Time of Hearing: _____

Consistent with his strategy of avoiding the merits (or lack thereof) of his allegations and to focus on manufacturing discovery torts, Plaintiff Steven C. Jacobs's ("Jacobs") opposition does little beyond rehashing prior sanctions proceedings to incite the Court to condemn and punish the Defendants for seeking his cooperation in discovery. Plaintiff has strenuously resisted every effort to examine the merits of his wrongful termination claim. The

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Court should not countenance him using the MPDPA as both sword and shield in denying the privacy rights of those he supervised (albeit briefly) in Macau and asserting his own privacy rights in communications during the limited term of his employment to avoid scrutiny limited to his employment record in Macau that reflects his performance (or lack thereof) as the CEO of Sands China, Ltd. ("Sands China").

Jacobs's opposition at no point addresses his utter failure to cooperate with efforts to have certain terms of the consent form rephrased to protect legitimate claims of privacy, as he said he wanted done before he would sign the consent.

Sands China has provided ample authority for the proposition that when a plaintiff puts private matters in issue, he cannot refuse discovery on the basis of privacy. See Mot. to Compel MPDPA Consent at 6 – 7. For the reasons set forth in its motion and this reply, Sands China respectfully asks that Jacobs be ordered to provide a consent to search for and produce in this litigation, without the redaction of his name, the communications he sent or received during his brief employment in Macau, which may be relevant to his claims.

A. Jacobs's Effort to Hide Behind the Sanctions Proceedings Should be Rejected.

Jacobs brings up the sanction proceedings only to further his effort to smear the Defendants and influence the Court by that shabby tactic. The sanctions proceedings should, at this point, be irrelevant except as a point of reference. Jacobs was asked to sign a consent on October 1, 2014. He declined to do so on October 15, 2014, and Sands China accepts the explanation he now presents (which was not perfectly clear from his 2014 letter): that his rejection to consent in 2015 was based on the Court's order that for jurisdictional purposes, Sands China could not invoke the MPDPA.

Following the 2015 jurisdictional hearing, however, Jacobs's 2014 reason for declining an MPDPA consent was inapplicable. On October 5, 2015, he was again asked to sign an MPDPA consent and his counsel orally agreed to the request in principle, but stated he wanted certain terms of the consent form rephrased, yet he ultimately refused to suggest the changes he believed were needed. That was many months ago.

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Jacobs was no doubt emboldened by his prior success in refusing to cooperate in discovery. As this Court recalls, Jacobs refused to sign the medical release the Court ordered him to provide, and rather than discuss alleged concerns about the breadth of it with counsel, as Rule 2.34 requires, he avoided compliance altogether. He then raised the alleged "over breadth" of the release he had been ordered to sign. This tactic paid handsome dividends for him: the Court excused his contempt by creating a secret review process to protect his medical records. See Dec. 17, 2015 Hr'g Tr. on Mot. for Reconsideration at 16:20 - 25:7.

Neither Jacobs's effort to hide behind the sanctions order or his refusal to cooperate should be rewarded. He has no reasonable argument that discovery of communications he was a party to during the course of his employment are not relevant to this wrongful termination action and would not lead to admissible evidence. See NRS 48.015 (Relevant evidence includes any evidence which tends to make the existence of any fact of consequence to the determination of the action more or less probable than it would be without the evidence). He should be compelled to sign the consent form proposed by Sands China, which is **the same form** signed by other company executives to facilitate discovery in this case. See NRCP 37(a)(2)(A) authorizing courts to compel discovery that is discoverable pursuant to NRCP 16.1(a).

B. Sands China's Lawful Report of Jacobs's Extortion Efforts Do Not Excuse His Withholding Consent.

Jacobs's shameful mischaracterization of a lawful report of what a Sands China affiliate believed is an extortion claim as an excuse to refuse to sign an MPDPA consent is a tactic that the Court should denounce, not endorse. He initiated this case. Over Sands China's well-founded objections to this forum's lack of jurisdiction, Jacobs **chose** to place his performance as an employee in Macau at issue in a Nevada lawsuit. He cannot now complain of, nor should he be permitted to obstruct, the production of documents that evidence his interactions with others during the course of his employment.

Notably, Jacobs's opposition says nothing about **why** the subject report to Macanese authorities has any bearing on his refusal to sign a consent to permit the documents to be produced in Nevada. To the extent the documents are needed by Macau authorities, they exist

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and can be reviewed there. The purpose of Sands China seeking his consent is to produce communications he sent or received during his employment in Macau. He cannot reasonably contend they are irrelevant since **he insists they must be produced**, without redacting his name, but without his consent in violation of Macau law! His efforts to request that Sands China violate the law of Macau to produce documents that could be lawfully produced if Jacobs merely signs the same consent obtained from other Sands China executives.

C. Jacobs Can and Should be Compelled to Sign the MPDPA Release to Permit Sands China to Unredact Plaintiff's Name from His Employment Communications.

It is hornbook law that a party cannot invoke privacy interests[1] to shield from discovery important evidence he or she possesses and has put at issue. See Mot. at 6 – 7, (citing, e.g., Schlatter v. Eighth Jud. Dist. Ct. In and For Clark County, 561 P.2d 1342, 1343 (Nev. 1977); Ambac Assur. Corp. v. DLJ Mortg. Capital, Inc., 939 N.Y.S.2d 333, 335 (N.Y. App. Div. 1st Dept. 2012); Potter v. W. Side Transp., Inc., 188 F.R.D. 362, 365 (D. Nev. 1999)). Jacobs cannot prevent Defendants from accessing his employment records by refusing to sign a release that will allow the records to be produced identifying him as the employee.

Jacobs's reliance of the Nevada Supreme Court's decision in Las Vegas Sands v. Eighth Judicial District Court, 130 Nev. Adv. Op. 61, 331 P.3d. 876, 877 (2014) is condemnable given his position that Sands China must produce the documents with his name, in violation of Macau law while he can withhold the consent Sands China needs to lawfully produce the documents. The Supreme Court in Las Vegas Sands was addressing whether the district court properly considered the dual obligations imposed by her December 18, 2012 oral ruling to produce documents, which Sands China reasonably understood could be redacted, to meet Sands China's obligations under the MPDPA. Because the district court at that time had scheduled, but not yet held, a hearing to determine what sanctions, if any, should be imposed on Sands China for its effort to balance dual obligations in two forums, which the district court's March 27, 2013

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[1] And as addressed in the Motion at p. 8, n.1, documents received are still protected by the Stipulated and Confidentiality Agreement, which Jacobs has repeatedly pointed to in insisting on access to Defendants' confidential information.

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Order said she would do, the Supreme Court reiterated that "the mere existence" of the foreign privacy statute "does not itself preclude . . . [compliance with] Nevada discovery rules." Las Vegas Sands, 331 P.3d. at 877. Jacobs ignores the fact that the Nevada Supreme Court did not fully embrace the Tenth Circuit's view regarding recognition of foreign privacy statutes or that the Supreme Court expressly declared that it was not holding "that Nevada courts should never consider a foreign privacy statute in issuing a discovery order." Id. at 880 n.4. Furthermore, the Supreme Court did not say, as Jacobs would like the Court to believe, that a plaintiff, like him, who initiates litigation in Nevada and places foreign facts at issue will be shielded from discovery in Nevada of those facts.

Nevada law requires Jacobs to execute a release when a release is necessary to discover facts he has put in issue. See Mot. at 6 - 7 (citing Schlatter v. Eighth Jud. Dist. Ct. In and For Clark County, 561 P.2d 1342, 1343 (Nev. 1977); Ambac Assur. Corp. v. DLJ Mortg. Capital, Inc., 939 N.Y.S.2d 333, 335 (N.Y. App. Div. 1st Dept. 2012); Potter v. W. Side Transp., Inc., 188 F.R.D. 362, 365 (D. Nev. 1999)). Requiring Jacobs to sign a MPDPA consent is no different than requiring countless other plaintiffs to sign medical releases when their claims put the their medical conditions at issue. See Schlatter, 561 P.2d at 1343 ("Where . . . a litigant's physical condition is in issue, a court may order discovery of medical records . . . related thereto); Potter, 188 F.R.D. at 365 (recognizing that medical records are relevant where a plaintiff has placed their emotional or mental health in issue); Adams v. Ardcor, 196 F.R.D. 339, 344 (E.D. Wis. 2000) (same); Williams v. NPC Int'l, 224 F.R.D. 612, 613 (N.D. Miss 2004) (where plaintiff has placed emotional state at issue, defendant is entitled to discovery of "any mental or physical conditions which could have led to the claimed damages, including conditions which preexisted the period at issue in this case"). Courts may also compel plaintiffs to sign tax releases when plaintiffs put their finances at issue. Lischka v. Tidewater Servs., Case No. 96-296, 1997 Lexis 538, *3 (E.D. La., 1997).

Plaintiff's contention that it is "widely recognized that Rules of Civil Procedure do not 'expressly authorize a court to order a party to sign a release concerning any kind of record'" (Opp'n at 4) is dead wrong. Courts routinely order plaintiffs to sign releases for the discovery

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of their medical records. See Lischka, Case No. 96-296, 1997 Lexis 538, *5 (recognizing there is "a large body of case law that addresses [court's authority to order plaintiff to sign releases]. The cases almost universally hold, explicitly or implicitly, that Rule 34, along with Rule 37, empowers federal courts to compel parties to sign written authorizations consenting to the production of various documents.");[2] see also Filas v. Kevin Thomas Culpert & Efficient Design, No. 317972, 2015 Lexis 489, *11-12 (Ct. App. Mich., Mar. 10, 2015) (affirming dismissal of plaintiff's claim as a sanction for not signing medical releases). The motion should be granted and Jacobs should be ordered to provide the consent requested.

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[2] Even the cases cited by Jacobs disprove his contention that "it is widely recognized that the [civil rules] do not . . . authorize a court to order a party to sign a release" as he says on page 4 of his opposition. The cases he relies on to support that flawed proposition expressly recognize a split between courts on whether courts have authority under Rule 34 to compel a party to sign a medical release. Morris v. City of Colo. Springs, 2009 Lexis 122239, *5-6, 2009 WL 4927618 (D. Colo., 2009) (adopting the view that court do not have authority but recognizing that these records, where relevant, should be obtained from third parties, who may be compelled under Rule 45 or the court's inherent authority if they do not produce them); Bouchard v. Whetstone, No. 09-cv-01884, 2010 Lexis 46776, *4-5, 2010 WL 1435484 (D. Colo. 2010) (citing Morris, supra as basis for refusing to compel plaintiff to sign release where effort to obtain records from third-party had not yet been made). This is not a case where Sands China may obtain the documents from third parties. It has the documents, but cannot lawfully produce without redacting personal data. Macanese law requires redaction of personal data, and unless Jacobs provides his consent, his name must be redacted from his own employment records which he put in issue in this case.

D. Conclusion.

Jacobs's excuses for not cooperating in discovery do not provide a credible basis for permitting him to obstruct Sands China's use of relevant evidence in the case. For the reasons set forth here and in its motion, Sands China respectfully requests that the Court enter an order compelling Jacobs to execute and return the MPDPA consent form attached to its motion.

DATED this 11th day of February, 2016.

/s/ J. Randall Jones
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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of February, 2016, the foregoing **REPLY IN SUPPORT OF SANDS CHINA, LTD.'S MOTION TO COMPEL PLAINTIFF TO SIGN CONSENT TO TRANSFER PERSONAL DATA OTHERWISE PROTECTED BY THE MACAU PERSONAL DATA PROTECTION ACT** was served on the following parties through the Court's electronic filing system:

James J. Pisanelli, Esq.
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/s/ Angela Embrey
An employee of Kemp, Jones & Coulthard, LLP

AFFT

DISTRICT COURT
CLARK COUNTY, NEVADA

STEVEN JACOBS, Plaintiff(s), vs LAS VEGAS SANDS CORP, ET AL, Defendants.	**Case No.** 10 A 627691 **Dept. No.** XI Hearing Date: 02/17/16 (Barker)

DECLARATION OF ELIZABETH G. GONZALEZ

I, Elizabeth G. Gonzalez, declare as follows:

1. Your declarant is Elizabeth Gonzalez, District Court Judge, Department XI of the Eighth Judicial District Court, and has personal knowledge of all matters stated herein; and is competent to testify to the matters set forth herein.

2. I am aware of Las Vegas Sands Corp.'s ("LVSC") Motion for Withdrawal and Reconsideration of Order Prematurely Denying Its Motion to Disqualify Judge (the "Second Motion") that was filed in the case entitled Steven C. Jacobs v. Las Vegas Sands Corp., et al., case number A627691, and supplements the basis for which it seeks to disqualify me from hearing the case alleging my lack of impartiality and bias toward LVSC.

3. This declaration only addresses the new issues raised in the Second Motion and does not repeat those items addressed in my declaration filed in response to LVSC's Motion for Disqualification (the "Motion").

4. Since my assignment of this case, I have held over 100 hearings in court and by telephonic conference to address issues with counsel. Rather than address each snippet from a transcript identified in the Second Motion, I have addressed those issues which appear to relate to LVSC's assertion that I am partial or biased against it or have treated it differently than other litigants.

5. As in any case, the rulings I have made in A627691 have been the result of critical legal and factual analysis based upon extensive evidentiary proceedings, motion practice, and the written and oral comments of counsel, and not the result of partiality or personal bias in favor of any party. These rulings and information provided by counsel continue to form the basis of my knowledge of the case and the backdrop for the handling of the matter. In this case, that work has been extensive and has involved many days of evidentiary hearings.

6. In the Second Motion, LVSC contends that findings I made in connection with the evidentiary hearing conducted on September 10 through 12, 2012 ("First Sanctions Hearing"), exhibit partiality, prejudice or bias and that I improperly drew inferences based upon the assertion of the attorney client privilege. Those findings were reduced to a written order entered on September 14, 2012. Exhibit 1. As indicated in footnote 1 of the Decision and Order, my findings following the First Sanctions Hearing were based upon the evidence presented during that hearing and argument presented in briefing and leading up to the hearing.[1] Those sanctions were only imposed for purposes of the jurisdictional hearing.

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[1] No appellate review of the order from the First Sanctions Hearing was sought by LVSC. The Nevada Supreme Court noted this in one of the opinions.

"Sands did not challenge the sanctions order in this court."

130 Nev. Adv. Op. 61 (2014) at page 4. Exhibit 2.

7. Following the First Sanctions Hearing, as an ameliorative sanction, I ordered that "[f]or jurisdictional discovery and the evidentiary hearing related to jurisdiction, LVSC and SCL will be precluded from raising the MDPA[2] as an objection or as a defense to admission, disclosure or production of any documents." See Exhibit 1 at page 8, lines 20-23.

8. The finding that management was involved in the issues which resulted in the First Sanctions Hearing is specifically identified in the Decision and Order from the First Sanctions Hearing[3] Finding of Fact 15, Conclusion of Law 29 and is based in part upon the testimony of Manjit Singh.[4]

9. On February 8, 2013, Jacobs sought sanctions in his Renewed Motion for NRCP 37 Sanctions including the striking of Sands China's jurisdictional defense, as a result of a continued reliance upon the MDPA as a basis for refusing to produce documents in violation of the order from the First Sanctions Hearing.[5] An evidentiary hearing was conducted on additional Rule 37 sanctions beginning on February 9, 2015 ("Second Sanctions Hearing"). Following that hearing, a Decision and Order was entered on March 6, 2015. Exhibit 4. Those sanctions were only imposed for purposes of the jurisdictional hearing.[6]

10. The jurisdictional hearing has been completed, an Amended Decision and Order entered on May 28, 2015, Exhibit 6, and a decision from the Nevada Supreme Court on those

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[2] The Macau Personal Data Protection Act is abbreviated in this Declaration as MDPA.

[3] Exhibit 1.

[4] Exhibit 3 is the portion of the Third Day of the First Sanctions Hearing containing Mr. Singh's testimony. See page 97-104.

[5] The Court granted the motion and set an evidentiary hearing, SCL sought extraordinary relief and obtained a stay pending the Nevada Supreme Court's decision published on August 7, 2014. 130 Nev. Adv. Op 61 (2014). Exhibit 2.

[6] The Nevada Supreme Court issued its decision on that order on April 2, 2015. Exhibit 5.

issues entered on November 4, 2015, Exhibit 7. The matter is set for a jury trial on June 27, 2016.

11. LVSC claims that there has been disparate treatment between it and Wynn, a litigant in another case, A656710. The MDPA is a common thread between the two cases.

12. The issues related to discovery and the MDPA are very different between the two cases. In part, because of the necessity of the parties conducting discovery prior to the jurisdictional hearing and facts detailed in the orders from the First Sanctions Hearing and Second Sanctions Hearing different factual issues have arisen in each of those cases. Some of those facts include those detailed in the Decision and Order from the Second Sanctions Hearing[7] included in Findings of Fact 46-48[8] and Findings of Fact 49-51.[9]

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[7] Exhibit 4.

[8] Those findings are:

46. After the September 2012 Order, Macau's OPDP informed SCL that its request to transfer data concerning this litigation was incomplete and was based upon the wrong provisions of the MDPA. (Ex. 102; Day 2, pp. 176-78.) OPDP informed SCL that its request to transfer could not be considered absent corrections and additional information being provided. (*Id.*)

47. Fleming concedes that he knew that OPDP considered SCL's requests to be incomplete. Yet, no action was taken to remedy the deficiencies that OPDP noted. (*Id.*) Fleming claimed that there was insufficient time in light of the deadlines set by this Court. Even though SCL was still producing documents as late as January 2015 in redacted form, Fleming concedes SCL had taken no action to address the inadequacies that OPDP had noted in 2012.

48. The OPDP also informed SCL that it could pursue available remedies in the Macau courts concerning its desire to transfer data. (Ex. 102.) Fleming acknowledged that he knew of available avenues but he took no action in that regard. This is despite the fact that one of the means in which the MDPA expressly authorizes a transfer of data "for compliance with a legal obligation" "or for the . . . exercise of defence [sic] of legal claims." (Ex. 341.)

[9] Those findings are:

13. The comment that a privilege log was "crappy" is true. See Transcript of September 9, 2014 conference call.[10] The privilege log submitted by LVSC for the "Jacobs" data transferred from Macau by Jacobs and stored on the Advanced Discovery website did not comply with the long standing practice for preparation of privilege logs in the Eighth Judicial District Court. See Discovery Commissioner Order #10, Exhibit 9. A copy of that privilege log is currently lodged in the clerk's vault as a Court's Exhibit 2 pursuant to the minute order entered on September 9, 2014. As that version of the privilege log is over 1500 pages, it is not attached.

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49. SCL concedes that it did not seek consents from any of its Macau personnel. Fleming's only explanation was to claim that it would be too cumbersome to do so. In prior arguments to this Court, SCL has insisted it could face potential liability if it even sought consents because it could be accused of having put pressure on personnel in order to obtain the consent.

50. Raphaelson's revelation that "a number of consents" were obtained when LVSC and SCL wanted access to information to address the United States' investigation contradicts the rationale SCL has given for its inaction here. As Toh even acknowledged, he believed that he had granted consent for LVSC to access his personal data pursuant to his employment arrangement. Even though Toh and other SCL executives were the custodians that SCL had been ordered to search for jurisdictional discovery, not a single such consent was sought.

51. The fact that consents were later obtained from four Nevada residents – Adelson, Goldstein, Leven and Kay – nearly two years after the ordered production is not evidence of good faith. These four executives are United States residents. Their emails are located in Nevada and not even subject to the MDPA, a fact that SCL and LVSC have conceded. Obtaining consents from United States residents while knowingly not seeking consents from Macau personnel – several of whom were actual custodians – is further evidence as to SCL's lack of good faith relative to this Court's orders and its discovery obligations.

[10] A portion of that transcript provides:

MR. JONES: . . . And all I could tell you is in hindsight we apologize and we wish -- and part of this we understand
having not been involved at the time, that it was due to some of the -- the way the protocol was set up that Munger Tolles wasn't able to provide all that information at the time they created the log. But I understand that doesn't help you now.
THE COURT: Well, the log's pretty awful. . . .

Exhibit 8, page 5, line 17-23.

14. Rather than grant the Plaintiff's Motion on Deficient Privilege Log, first heard on September 18, 2014, and the relief requested by Jacobs for a waiver of all privileges, the Court permitted LVSC to supplement the woefully inadequate (aka crappy) privilege log prior to completing the in camera review and ruling on privilege issues. Exhibit 10. This resulted in the removal, after review by supplementing counsel, of about a quarter of the documents for which a claim of privilege had previously been made.

15. I do not have a bias toward or prejudice against LVSC or any of its officers, directors, or employees.

16. I have been and will continue to be fair and impartial toward all parties in this case.

17. While I strive to be consistent in my rulings from case to case and motion to motion, the particular facts presented on each motion must be considered before I make a ruling.

18. Any rulings I have made in A627691 have been the result of critical legal and factual analysis based upon extensive evidentiary proceedings, motion practice, and the written and oral comments of counsel, and not the result of partiality or personal bias in favor of any party.

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

Dated this 12th day of February 2016.

ELIZABETH G. GONZALEZ

Certificate of Service

I hereby certify, that on the date filed, this Order was served on the parties identified on Wiznet's e-service list.

J. Stephen Peek, Esq. (Holland & Hart)

Randall Jones (Kemp Jones Coulthard)

Steve Morris (Morris Law)

Todd Bice (Pisanelli Bice)

Dominica Anderson (Duane Morris)

Dan Kutinac

EXHIBIT 1

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CLERK OF THE COURT

FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

STEVEN JACOBS,

Plaintiff(s),

vs

LAS VEGAS SANDS CORP, ET AL,

Defendants.

Case No. 10 A 627691
Dept. No. XI

Date of Hearing: 09/10-12/12

DECISION AND ORDER

This matter having come on for an evidentiary hearing before the Honorable Elizabeth Gonzalez beginning on September 10, 2012 and continuing day to day, based upon the availability of the Court and Counsel, until its completion on September 12, 2012; Plaintiff Steven Jacobs ("Jacobs") being present in court and appearing by and through his attorney of record, James Pisanelli, Esq., Todd Bice, Esq., and Debra Spinelli, Esq. of the law firm of Pisanelli Bice; Defendant Las Vegas Sands appearing by and through its counsel J. Stephen Peek, Esq. of the law firm of Holland & Hart and counsel for purposes of this proceeding, Samuel Lionel, Esq. and Charles McCrea, Esq., of the law firm of Lionel Sawyer & Collins; Defendant Sands China appearing by and through its counsel J. Stephen Peek, Esq. of the law firm of Holland & Hart, Brad D. Brian, Esq., Henry Weissman, Esq., and John B. Owens, Esq. of the law firm of Munger Tolles & Olson and counsel for purposes of this proceeding, Samuel Lionel, Esq. and Charles McCrea, Esq., of the law firm of Lionel Sawyer & Collins; the Court having read and considered the pleadings filed by the parties and the transcripts of prior hearings; having reviewed the evidence admitted during the trial; and having heard and carefully considered the testimony of the witnesses called to testify; the Court having considered the oral and written arguments of counsel, and with the intent of deciding the limited issues before the Court related to lack of candor and nondisclosure of information to

the Court and appropriate sanctions pursuant to EDCR 7.60. The Court makes the following findings of fact and conclusions of law:

I.
PROCEDURAL POSTURE

On August 26, 2011, the Nevada Supreme Court issued a stay of proceedings in this matter pending the conduct of an evidentiary hearing and decision on jurisdictional issues related to Sands China. The Court granted Jacobs request to conduct jurisdictional discovery prior to the evidentiary hearing. The order granting the jurisdictional discovery was ultimately entered on March 8, 2012.

II.
FINDINGS OF FACT[1]

1. Prior to litigation, in approximately August 2010, a ghost image of hard drives of computers used by Steve Jacobs in Macau[2] and copies of his outlook emails were transferred by way of electronic storage devices (the "transferred data") to Michael Kostrinsky, Esq., Deputy General Counsel of Las Vegas Sands.[3]

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[1] Counsel for Las Vegas Sands objected on the basis of attorney client privilege to a majority of the questions asked of the counsel who testified during the evidentiary hearing. Almost all of those objections were sustained. While numerous directions not to answer on the basis of attorney client privilege and the attorney work product were made by counsel for Las Vegas Sands, sustained by the Court, and followed by the witnesses, sufficient information was presented through pleadings already in the record and testimony of witnesses without the necessity of the Court drawing inferences related to the assertion of those privileges. See generally, Francis v. Wynn, 127 NAO 60 (2011). The Court also rejects Plaintiff's suggestion that adverse presumptions should be made by the Court as a result of the failure of Las Vegas Sands to present explanatory evidence in its possession and declines to make any presumptions which might arguably be applicable under NRS Chapter 47.

[2] There is an issue that has been raised regarding the current location of those computers and hard drives from which the ghost image was made. The Court does not in this Order address any issues related to those items.

[3] According to a status report filed by Las Vegas Sands on July 6, 2012, there were other transfers of electronically stored data. Based upon testimony elicited during the evidentiary hearing, counsel was unaware of those transfers prior to the preparation and filing of the status report.

2. Kostrinsky requested this information in anticipation of litigation with Jacobs after learning of receipt of a letter by then general counsel for Las Vegas Sands from Don Campbell.

3. This transferred data was placed on a server at Las Vegas Sands and was initially reviewed by Kostrinsky.

4. The attorneys for Sands China at the Glaser Weil firm were aware of the existence of the transferred data on Kostrinsky's computer from shortly after their retention in November 2010.

5. The transferred data was reviewed in Kostrinsky's office by attorneys from Holland & Hart.

6. On April 22, 2011, in house counsel for Sands China, Anne Salt, participated in the Rule 16 conference by videoconference and responded to inquiry by the Court related to electronically stored information and confirmed preservation of the data.

7. At no time during the Rule 16 conference did Ms. Salt or anyone on behalf of Sands China advise the Court of the potential impact of the Macau Personal Data Privacy Act (MDPA) upon discovery in this litigation.

8. Following the Rule 16 conference with the Court, the parties filed a Joint Status Report on April 22, 2011, in which they agreed that the initial disclosure of documents pursuant to NRCP 16.1 would be made by Sands China and Las Vegas Sands prior to July 1, 2011. The MDPA is not mentioned in the Joint Status Report as potentially affecting discovery in this litigation.

9. Following the Rule 16 conference, no production or other identification of the information from the transferred data was made.

10. Beginning with the motion filed May 17, 2011, Sands China and Las Vegas Sands raised the MDPA as a potential impediment (if not a bar) to production of certain documents.

11. At a hearing on June 9, 2012, counsel for Sands China represented to the Court that the documents subject to production were in Macau; were not allowed to leave Macau; and, had to be reviewed by counsel for Sands China in Macau prior to requesting the Office of Personal Data Protection in Macau for permission to release those documents for discovery purposes in the United States.

12. At the time of the representation made on June 9, 2012, the transferred data had already been copied; the copy removed from Macau; and reviewed in Las Vegas by representatives of Las Vegas Sands.

13. The transferred data was stored on a Las Vegas Sands shared drive totaling 50 – 60 gigabytes of information.

14. Prior to July 2011, Las Vegas Sands had full and complete access to documents in the possession of Sands China in Macau through a network to network connection.

15. Beginning in approximately July 2011, Las Vegas Sands access to Sands China data changed as a result of corporate decision making.

16. Prior to the access change, significant amounts of data from Macau related to Jacobs was transported to the United States and reviewed by in house counsel for Las Vegas Sands and outside counsel, and placed on shared drives at Las Vegas Sands.

17. At no time did Las Vegas Sands or Sands China disclose the existence of this data to the Court.[4]

18. At no time did Las Vegas Sands or Sands China provide a privilege log identifying documents which it contended were protected by the MDPA which was discussed by the Court on June 9, 2011.

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[4] While Las Vegas Sands contends that a disclosure was made on June 9, 2011, this is inconsistent with other actions and statements made to the Court including the June 27, 2012 status report, the June 28, 2012 hearing and the July 6, 2012 status report.

19. For the first time on June 27, 2012, in a written status report, Las Vegas Sands and Sands China advised the Court that Las Vegas Sands was in possession of over 100,000 emails and other ESI that had been transferred "in error".

20. In the June 27, 2012 status report, Las Vegas Sands admits that it did not disclose the existence of the transferred data because it wanted to review the Jacobs ESI.[5]

21. Any finding of fact stated hereinabove that is more appropriately deemed a conclusion of law shall be so deemed.

III.
CONCLUSIONS OF LAW

22. The MDPA and its impact upon production of documents related to discovery has been an issue of serious contention between the parties in motion practice before this Court since May 2011.

23. The MDPA has been an issue with regards to documents, which are the subject of the jurisdictional discovery.

24. At no time prior to June 28, 2012, was the Court informed that a significant amount of the ESI in the form of a ghost image relevant to this litigation had actually been taken out of Macau in July or August of 2010 by way of a portable electronic device.

25. EDCR Rule 7.60 provides in pertinent part:

* * *

(b) The court may, after notice and an opportunity to be heard, impose upon an attorney or a party any and all sanctions which may, under the facts of the case, be reasonable, including the imposition of fines, costs or attorney's fees when an attorney or a party without just cause:

* * *

(3) So multiplies the proceedings in a case as to increase costs unreasonably and vexatiously.

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[5] The Court notes that there have also been significant issues with the production of information from Jacobs. On appropriate motion the Court will deal with those issues.

26. As a result of the failure to disclose the existence of the transferred data, the Court conducted needless hearings on the following dates which involved (at least in part) the MDPA issues:

May 26, 2011

June 9, 2011

July 19, 2011

September 20, 2011[6]

October 4, 2011[7]

October 13, 2011

January 3, 2012

March 8, 2012

May 24, 2012

27. The Court concludes after hearing the testimony of witnesses that the 100,000 emails and other ESI were not transferred in error, but was purposefully brought into the United States after a request by Las Vegas Sands for preservation purposes.

28. The transferred data is relevant to the evidentiary hearing related to jurisdiction, which the Court intends to conduct.

29. The change in corporate policy regarding Las Vegas Sands access to Sands China data made during the course of this ongoing litigation was made with an intent to prevent the disclosure of the transferred data as well as other data.[8]

30. The Defendants concealed the existence of the transferred data from this Court.

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[6] This hearing was conducted in a related case, A648484.

[7] This hearing was conducted in a related case, A648484.

[8] While the Court recognizes that several other legal proceedings related to certain allegations made by Jacobs were commenced during the course of this litigation including subpoenas from the SEC and DOJ, this does not excuse the failure to disclose the existence of the transferred data; the failure to identify the transferred data on a privilege log, or the failure produce of the transferred data in this matter.

31. As the transferred data had already been reviewed by counsel, the failure to disclose the existence of this transferred data to the Court caused repeated and unnecessary motion practice before this Court.

32. The lack of disclosure appears to the Court to be an attempt by Defendants to stall the discovery, and in particular, the jurisdictional discovery in these proceedings.

33. Given the number of occasions the MDPA and the production of ESI by Defendants was discussed there can be no other conclusions than that the conduct was repetitive and abusive.

34. The conduct however does not rise to the level of striking pleadings as exhibited in the Foster v. Dingwall, 227 P.3d 1042 (Nev. 2010) or the entry of default as in Goodyear v. Bahena, 235 P.3d 592 (Nev. 2010) cases.[9]

35. After evaluating the factors in Ribiero v. Young, 106 Nev. 88 (1990), the Court finds:

a. There are varying degrees of willfulness demonstrated by the Defendants and their agents in failing to disclose the transferred data to Plaintiff ranging from careless nondisclosure to knowing, willful and intentional conduct with an intent to prevent the Plaintiff access to information discoverable for the jurisdictional proceedings;[10]

b. There are varying degrees of willfulness demonstrated by the Defendants and their agents ranging from careless nondisclosure to knowing, willful and intentional conduct in concealing the existence of the transferred data and failing to disclose the transferred data to the Court with an intent to prevent the Court ruling on the discoverability for purposes of the jurisdictional proceedings;

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[9] The Court recognizes no factors have been provided to guide in the evaluation of sanctions for conduct in violation of EDCR 7.60, but utilizes cases interpreting Rule 37 violations as instructive.

[10] As a result of the stay, the court does not address the discoverability of the transferred data and the effect of the conduct related to the entire case.

c. The repeated nature of Defendants and Defendants' agents conduct in making inaccurate representations over a several month period is further evidence of the intention to deceive the Court;

d. Based upon the evidence currently before the Court it does not appear that any evidence has been irreparably lost;[11]

e. There is a public policy to prevent further abuses and deter litigants from concealing discoverable information and intentionally deceiving the Court in an attempt to advance its claims; and

f. The delay and prejudice to the Plaintiff in preparing his case is significant, however, a sanction less severe than striking claims, defenses or pleadings can be fashioned to ameliorate the prejudice.

36. The Court after evaluation of the evidence and testimony, weighing the factors and evaluating alternative sanctions determines that evidentiary and monetary sanctions are an alternative less severe sanction to address the conduct that has occurred in this matter.

37. Any conclusion of law stated hereinabove that is more appropriately deemed a finding of fact shall be so deemed.

IV.

ORDER

Therefore the Court makes the following order:

a. For purposes of jurisdictional discovery and the evidentiary hearing related to jurisdiction, Las Vegas Sands and Sands China will be precluded from raising the MDPA as an objection or as a defense to admission, disclosure or production of any documents.[12]

---

[11] There is an issue that has been raised regarding the current location of those computers and hard drives from which the ghost image was made. The Court does not in this Order address any issues related to those items.

[12] This does not prevent the Defendants from raising any other appropriate objection or privilege.

b. For purposes of jurisdictional discovery and the evidentiary hearing related to jurisdiction, Las Vegas Sands and Sands China are precluded from contesting that Jacobs ESI (approx. 40 gigabytes) is not rightfully in his possession.[13]

c. Defendants will make a contribution of $25,000 to the Legal Aid Center of Southern Nevada.

d. Reasonable attorneys' fees of Plaintiff will be awarded upon filing an appropriate motion for those fees incurred in conjunction with those portions of the hearings related to the MDPA identified in paragraph 26.

Dated this 14th day of September, 2012

ELIZABETH GONZALEZ
District Court Judge

Certificate of Service

I hereby certify that on or about the date filed, this document was copied through e-mail, or a copy of this Order was placed in the attorney's folder in the Clerk's Office or mailed to the proper person as follows:

J. Stephen Peek, Esq. (Holland & Hart)

Samuel Lionel, Esq. (Lionel Sawyer & Collins)

Brad D. Brian Esq. (Munger Tolles & Olson)

James J. Pisanelli, Esq. (Pisanelli Bice)

Dan Kutinac

[13] This does not prevent the Defendants from raising any other appropriate objection or privilege.

EXHIBIT 2

130 Nev., Advance Opinion 61

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS SANDS CORP., A NEVADA CORPORATION; AND SANDS CHINA LTD., A CAYMAN ISLANDS CORPORATION,
Petitioners,
vs.
THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE ELIZABETH GOFF GONZALEZ, DISTRICT JUDGE,
Respondents,
and
STEVEN C. JACOBS,
Real Party in Interest.

No. 62944

FILED

AUG 07 2014

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY
CHIEF DEPUTY CLERK

Original petition for a writ of prohibition or mandamus challenging a district court order finding that petitioners violated a discovery order and scheduling an evidentiary hearing to determine appropriate sanctions.

Petition denied.

Morris Law Group and Steve L. Morris and Rosa Solis-Rainey, Las Vegas; Kemp, Jones & Coulthard, LLP, and J. Randall Jones and Mark M. Jones, Las Vegas; Holland & Hart LLP and J. Stephen Peek and Robert J. Cassity, Las Vegas,
for Petitioners.

Pisanelli Bice PLLC and Todd L. Bice, James J. Pisanelli, and Debra L. Spinelli, Las Vegas,
for Real Party in Interest.

BEFORE THE COURT EN BANC.[1]

OPINION

By the Court, GIBBONS, C.J.:

In this opinion, we consider whether a Nevada district court may properly issue a discovery order that compels a litigant to violate a foreign international privacy statute. We conclude that the mere existence of an applicable foreign international privacy statute does not itself preclude Nevada district courts from ordering foreign parties to comply with Nevada discovery rules. Thus, civil litigants may not utilize foreign international privacy statutes as a shield to excuse their compliance with discovery obligations in Nevada courts. Rather, the existence of an international privacy statute is relevant to a district court's sanctions analysis if the court's discovery order is disobeyed. Here, the district court properly employed this framework when it found that the existence of a foreign international privacy statute did not excuse petitioners from complying with the district court's discovery order. And because the district court has not yet held the hearing to determine if, and the extent to which, sanctions may be warranted, our intervention at this juncture would be inappropriate. We therefore deny this writ petition.

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[1]The Honorable Kristina Pickering and the Honorable Ron Parraguirre, Justices, voluntarily recused themselves from participation in the decision of this matter.

FACTS AND PROCEDURAL HISTORY

This matter arises out of real party in interest Steven C. Jacobs's termination as president and chief executive officer of petitioner Sands China. After his termination, Jacobs filed a complaint against petitioners Las Vegas Sands Corp. (LVSC) and Sands China Ltd., as well as nonparty to this writ petition, Sheldon Adelson, the chief executive officer of LVSC (collectively, Sands). Jacobs alleged that Sands breached his employment contract by refusing to award him promised stock options, among other things.

Almost three years ago, this court granted a petition for a writ of mandamus filed by Sands China and directed the district court to hold an evidentiary hearing and issue findings as to whether Sands China is subject to personal jurisdiction in Nevada. *See Sands China Ltd. v. Eighth Judicial Dist. Court*, Docket No. 58294 (Order Granting Petition for Writ of Mandamus, August 26, 2011). Due to a string of jurisdictional discovery disputes that have arisen since that order was issued, the district court has yet to hold the hearing.

Throughout jurisdictional discovery, Sands China has maintained that it cannot disclose any documents containing personal information that are located in Macau due to restrictions within the Macau Personal Data Protection Act (MPDPA). Approximately 11 months into jurisdictional discovery, however, Sands disclosed for the first time that, notwithstanding the MPDPA's prohibitions, a large number of documents contained on hard drives used by Jacobs and copies of Jacobs's emails had been transported from Sands China in Macau to LVSC in the

United States.[2] In response to Sands's revelation, the district court sua sponte ordered a sanctions hearing. Based on testimony at that hearing, the district court determined that the transferred documents were knowingly transferred to LVSC's in-house counsel in Las Vegas and that the data was then placed on a server at LVSC's Las Vegas property. The district court also found that both in-house and outside counsel were aware of the existence of the transferred documents but had been concealing the transfer from the district court.

Based on these findings, the district court found that Sands's failure to disclose the transferred documents was "repetitive and abusive," deliberate, done in order to stall jurisdictional discovery, and led to unnecessary motion practice and a multitude of needless hearings. The district court issued an order in September 2012 that, among other things, precluded Sands from raising the MPDPA "as an objection or as a defense to admission, disclosure or production of any documents." Sands did not challenge this sanctions order in this court.

Subsequently, Sands filed a report detailing its Macau-related document production. Sands's report indicated that, with respect to all of the documents that it had produced from Macau, it had redacted personal data contained in the documents based on MPDPA restrictions prior to providing the documents to Jacobs. In response to Sands's redactions

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[2]Sands stated that the presence of the documents in the United States was not disclosed at an earlier time because the documents were brought to the United States mistakenly, and Sands had been seeking guidance from the Macau authorities on whether they could be disclosed under the MPDPA.

based on the MPDPA, Jacobs moved for NRCP 37 sanctions, arguing that Sands had violated the district court's September 2012 order.

The district court held a hearing on Jacobs's motion for sanctions, at which the court stated that the redactions appeared to violate the September 2012 order. In its defense, Sands argued that the September 2012 order had prohibited it from raising the MPDPA as an objection or defense to "admission, disclosure or production" of documents, but not as a basis for *redacting* documents. The district court disagreed with Sands's interpretation of the sanctions order, noting:

> I certainly understand [the Macau government has] raised issues with you. But as a sanction for the inappropriate conduct that's happened in this case, in this case you've lost the ability to use that as a defense. I know that there may be some balancing that I do when I'm looking at appropriate sanctions under the Rule 37 standard as to why your client may have chosen to use that method to violate my order. And I'll balance that and I'll look at it and I'll consider those issues.

Based on the above findings, the district court entered an order concluding that Jacobs had "made a prima facie showing as to a violation of [the district] [c]ourt's orders which warrants an evidentiary hearing" regarding whether and the extent to which NRCP 37 sanctions were warranted. The district court set an evidentiary hearing, but before this hearing was held, Sands filed this writ petition, asking that this court direct the district court to vacate its order setting the evidentiary hearing.

DISCUSSION

A writ of mandamus is available to compel the performance of an act that the law requires or to control an arbitrary or capricious exercise of discretion. *Aspen Fin. Servs., Inc. v. Eighth Judicial Dist.*

Court, 128 Nev. ___, ___, 289 P.3d 201, 204 (2012). A writ of prohibition may be warranted when the district court exceeds its jurisdiction. *Id.* Although a writ of prohibition is a more appropriate remedy for the prevention of improper discovery, writ relief is generally unavailable to review discovery orders. *Id.*; *see also Valley Health Sys., L.L.C. v. Eighth Judicial Dist. Court*, 127 Nev. ___, ___, 252 P.3d 676, 679 (2011) (providing that exceptions to this general rule exist when (1) the trial court issues a blanket discovery order without regard to relevance, or (2) a discovery order requires disclosure of privileged information). Nevertheless, "in certain cases, consideration of a writ petition raising a discovery issue may be appropriate if an important issue of law needs clarification and public policy is served by this court's invocation of its original jurisdiction . . . ." *Aspen Fin. Servs., Inc. v. Eighth Judicial Dist. Court*, 129 Nev. ___, ___, 313 P.3d 875, 878 (2013) (internal quotation marks omitted). "The burden is on the petitioner to demonstrate that extraordinary relief is warranted." *Valley Health*, 127 Nev. at ___, 252 P.3d at 678.

In its writ petition, Sands argues generally that this court's intervention is warranted because the district court has improperly subjected Sands to discovery sanctions based solely on Sands's attempts to comply with the MPDPA. Sands has not persuasively argued that either of this court's two generally recognized exceptions for entertaining a writ petition challenging a discovery order apply. *See Valley Health*, 127 Nev. at ___, 252 P.3d at 679. Nevertheless, the question of whether a Nevada district court may effectively force a litigant to choose between violating a discovery order or a foreign privacy statute raises public policy concerns and presents an important issue of law that has relevance beyond the

parties to the underlying litigation and cannot be adequately addressed on appeal. Therefore, we elect to entertain the petition. *See Aspen Fin. Servs.*, 129 Nev. at ___, 313 P.3d at 878.

Foreign international privacy statutes cannot be used by litigants to circumvent Nevada discovery rules, but should be considered in a district court's sanctions analysis

The intersection between Nevada discovery rules and international privacy laws is an issue of first impression in Nevada. The Nevada Rules of Civil Procedure authorize parties to discover any nonprivileged evidence that is relevant to any claims or defenses at issue in a given action. NRCP 26(b)(1). On the other hand, many foreign nations have created nondisclosure laws that prohibit international entities from producing various types of documents in litigation. *See generally* Note, *Foreign Nondisclosure Laws and Domestic Discovery Orders in Antitrust Litigation*, 88 Yale L.J. 612 (1979).

The United States Supreme Court has evaluated the intersection between these two competing interests and determined that such a privacy statute does not, by itself, excuse a party from complying with a discovery order. *See Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Court*, 482 U.S. 522, 544 n.29 (1987) ("It is well settled that such statutes do not deprive an American court of the power to order a party subject to its jurisdiction to produce evidence even though the act of production may violate that statute." (citing *Societe Internationale Pour Participations Industrielles et Commerciales, S.A. v. Rogers*, 357 U.S. 197, 204-06 (1958))). Generally, courts in similar situations have considered a variety of factors, including (1) "the importance to the investigation or litigation of the documents or other information requested"; (2) "the degree of specificity of the request"; (3) "whether the information originated in the

United States"; (4) "the availability of alternative means of securing the information"; and (5) "the extent to which noncompliance with the request would undermine important interests of the United States, or compliance with the request would undermine important interests of the state where the information is located." Restatement (Third) of Foreign Relations Law § 442(1)(c) (1987); *see also Linde v. Arab Bank, PLC*, 269 F.R.D. 186, 193 (E.D.N.Y. 2010). But there is some disagreement as to when courts should evaluate such factors.

Some jurisdictions, including the United States Court of Appeals for the Second Circuit, generally evaluate these factors both when deciding whether to issue an order compelling production of documents located in a foreign nation and when issuing sanctions for noncompliance of that order. *Linde,* 269 F.R.D. at 196.[3]

The United States Court of Appeals for the Tenth Circuit has espoused an approach in which a court's analysis of the foreign law issue is only relevant to the imposition of sanctions for a party's disobedience, and not in evaluating whether to issue the discovery order. *Arthur Andersen & Co. v. Finesilver*, 546 F.2d 338, 341-42 (10th Cir. 1976). The Tenth Circuit noted that in *Societe Internationale*, the Supreme Court

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[3]Even within the Second Circuit, there is some uncertainty as to when a court should apply these factors. *See In re Parmalat Sec. Litig.*, 239 F.R.D. 361, 362 (S.D.N.Y. 2006) ("'[T]he modern trend holds that the mere existence of foreign blocking statutes does not prevent a U.S. court from ordering discovery although it may be more important to the question of sanctions in the event that a discovery order is disobeyed by reason of a blocking statute.'" (quoting *In re Auction Houses Antitrust Litig.*, 196 F.R.D. 444, 446 (S.D.N.Y. 2000))).

stated that a party's reasons for failing to comply with a production order "'can hardly affect the fact of noncompliance and are relevant only to the path which the [d]istrict [c]ourt might follow in dealing with [the party's] failure to comply.'" *Id.* at 341 (quoting *Societe Internationale*, 357 U.S. at 208). Based on this language, the Tenth Circuit determined that a court should only consider the foreign privacy law when determining if sanctions are appropriate. *Id.*; *see also* Wright, *Discovery*, 35 F.R.D. 39, 81 (1964) ("The effect of those laws is considered in determining what sanction to impose for noncompliance with the order, rather than regarded as a reason for refusing to order production").

In our view, the Tenth Circuit's approach is more in line with Supreme Court precedent.[4] *See, e.g.*, *Arthur Andersen*, 546 F.2d at 341-42; *In re Westinghouse Elec. Corp. Uranium Contracts Litig.*, 563 F.2d 992, 997 (10th Cir. 1977); Timothy G. Smith, Note, *Discovery of Documents Located Abroad in U.S. Antitrust Litigation: Recent Developments in the Law Concerning the Foreign Illegality Excuse for Non-Production*, 14 Va. J. Int'l L., 747, 753 (1974) (noting that Second Circuit cases failed to observe the Supreme Court's distinction between a court's power to compel discovery and the appropriate sanctions if a party failed to comply). We

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[4]That is not to say that Nevada courts should never consider a foreign privacy statute in issuing a discovery order. Certainly, a district court has wide discretion to consider a number of factors in deciding whether to limit discovery that is either unduly burdensome or obtainable from some other sources. NRCP 26(b)(2). Thus, it would be well within the district court's discretion to account for such a foreign law in its analysis, but we decline to adopt the Second Circuit's requirement of a full multifactor analysis in ordering the production of such documents.

are persuaded by the Tenth Circuit's approach, and conclude that the mere presence of a foreign international privacy statute itself does not preclude Nevada courts from ordering foreign parties to comply with Nevada discovery rules. Rather, the existence of an international privacy statute is relevant to the district court's sanctions analysis in the event that its order is disobeyed. *Arthur Andersen*, 546 F.2d at 341-42.

Here, Sands argues that the district court never purported to balance any of the relevant factors before concluding that its MPDPA redactions were sanctionable. But in our view, the district court has yet to have that opportunity. The district court has properly indicated that it would "balance" Sands's desire to comply with the MPDPA with other factors at the yet-to-be-held sanctions hearing. Thus, Sands has not satisfied its burden of demonstrating that the district court exceeded its jurisdiction or arbitrarily or capriciously exercised its discretion. *Aspen Fin. Servs.*, 128 Nev. at ___, 289 P.3d at 204; *Valley Health*, 127 Nev. at ___, 252 P.3d at 678. Because we are confident that the district court will evaluate the relevant factors noted above in determining what sanctions, if any, are appropriate when it eventually holds the evidentiary hearing, we decline to preempt the district court's consideration of these issues by entertaining the additional arguments raised in Sands's writ petition.[5]

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[5]The majority of Sands's briefing argues that the district court improperly (1) ordered discovery of documents that had no relevance to the issue of personal jurisdiction, and (2) concluded that Sands violated the technical wording of the September 2012 sanctions order. Although this first contention arguably falls within *Valley Health*'s first exception, *see* 127 Nev. at ___, 252 P.3d at 679, the documentation accompanying Sands's writ petition does not clearly support the contention. *Id.* at ___,

continued on next page . . .

CONCLUSION

Having considered the parties' filings and the attached documents, we conclude that our intervention by extraordinary relief is not warranted. Specifically, we conclude that the mere presence of a foreign international privacy statute does not itself preclude Nevada district courts from ordering litigants to comply with Nevada discovery rules. Rather, the existence of such a statute becomes relevant to the district court's sanctions analysis in the event that its discovery order is disobeyed. Here, to the extent that the challenged order declined to excuse petitioners for their noncompliance with the district court's previous order, the district court did not act in excess of its jurisdiction or arbitrarily or capriciously. And because the district court properly indicated that it intended to "balance" Sands's desire to comply with the foreign privacy law in determining whether discovery sanctions are warranted, our intervention at this time would inappropriately preempt

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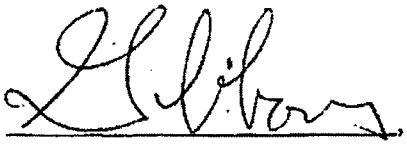
. . . continued

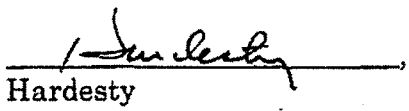
252 P.3d at 678 ("The burden is on the petitioner to demonstrate that extraordinary relief is warranted."). In fact, the district court specifically noted that Sands may withhold all documents that were only relevant to merits discovery and thus irrelevant to the district court's jurisdiction over Sands China. Sands's second contention does not fall within either of *Valley Health*'s two exceptions, and Sands does not argue otherwise. *Id.* at ___, 252 P.3d at 679. Further, neither issue raises public policy concerns or presents an important issue of law that has relevance beyond the parties to the underlying litigation. *Aspen Fin. Servs.*, 129 Nev. at ___, 313 P.3d at 878. As a result, we decline to entertain Sands's remaining arguments.

the district court's planned hearing. As a result, we deny Sands's petition for a writ of prohibition or mandamus.

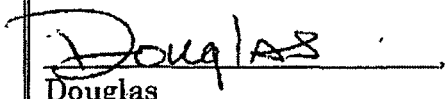


_____, C.J.
Gibbons

We concur:



_____, J.
Hardesty



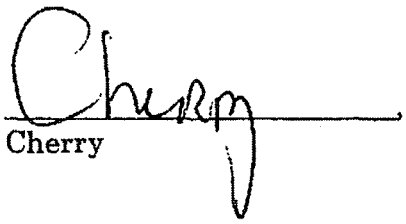
_____, J.
Douglas

_____, J.
Saitta

CHERRY, J., concurring in the result:

I agree with the majority that our intervention by extraordinary relief is not warranted at this time. However, I do not believe that a lengthy opinion by four members of this court on the conduct leading up to the sanctions hearing, or on the factors that the district court should consider when exercising its discretion in imposing future sanctions, is necessary or appropriate at this juncture of this case, when a thorough and fact-finding evidentiary hearing has not yet been conducted by the district court.

It is premature for this court to anticipate, project, or predict the totality of findings that the district court may make after the conclusion of any evidentiary hearing. At such time as findings of fact and conclusions of law are finalized by the district court, then—and only then—should an appropriate disposition be rendered in the form of a published opinion and made public.



Cherry, J.

Cherry

EXHIBIT 3

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT
SEP 13 2012
BY, BILLIE JO CRAIG, DEPUTY

STEVEN JACOBS

Plaintiff

vs.

LAS VEGAS SANDS CORP., et al.

Defendants

CASE NO. A-627691

DEPT. NO. XI

Transcript of Proceedings

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

COURT'S SANCTION HEARING - DAY 3

WEDNESDAY, SEPTEMBER 12, 2012

APPEARANCES:

FOR THE PLAINTIFF:	JAMES J. PISANELLI, ESQ. DEBRA SPINELLI, ESQ. TODD BICE, ESQ.
FOR THE DEFENDANTS:	J. STEPHEN PEEK, ESQ. BRAD D. BRIAN, ESQ. HENRY WEISSMAN, ESQ. JOHN OWENS, ESQ.
FOR HOLLAND & HART	CHARLES McCREA, ESQ. SAMUEL LIONEL, ESQ.
FOR MR. KOSTRINSKY:	JEFFREY A. GAROFALO, ESQ.
COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS District Court	FLORENCE HOYT Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript produced by transcription service.

MR. BRIAN: Yes. I understand.

THE COURT: Multitask.

MR. BRIAN: That's what we're going to do.

MR. PISANELLI: Your Honor, at Jill's request we're going to have one available for her when it -- the tape starts playing.

THE COURT: Jill loves to have help.

MR. PEEK: But she doesn't need it, Your Honor.

THE COURT: She is very efficient.

All right. Is there anything else before we resume with our next live witness, Mr. Singh?

Hearing none, Mr. Singh, if you'd come up, please.

MANJIT SINGH, COURT'S WITNESS, SWORN

THE CLERK: Thank you. Please be seated. State your name, and spell it for the record.

THE WITNESS: Manjit Singh, M-A-N-J-I-T S-I-N-G-H.

DIRECT EXAMINATION

BY THE COURT:

Q Good morning, sir. I have a --

MR. BICE: Apologize, Your Honor.

THE COURT: I get to go first.

MR. BICE: You do.

BY THE COURT:

Q All right. I have some questions for you. Hopefully my questions will make sense to you. I don't -- I'm

not computer savvy, but you are. That's what you do for a living.

A I appreciate that assumption.

Q If I use any terms that you think I'm not using correctly or they're confusing to you, please let me know. I'm not going to be offended by that. And I will try and work through what it is that I'm really asking you about, okay.

A Okay, Your Honor.

Q When was the first time that electronically stored information was transferred from Sands China operations in Macau to the United States?

A In relation to this case?

Q No. Ever.

A My understanding would be that in the ordinary course of business there were emails exchanged on a frequent basis.

Q And that was beginning when?

A That I do not know the answer to.

Q Okay. Does it predate your employment?

A I believe it does, yes.

Q And when did your employment start?

A I started August 30th of 2010.

Q Okay. And so at the time you started working at the Sands there was already an exchange of electronic information occurring with the Macau groups?

A That's correct.
Q Okay. Do you know how frequent those transfers were at the time you first started?
A I do not.
Q Okay. Did the frequency of the transfers ever change?
A I don't have a context to be able to answer that question.
Q Okay. You knew there were exchanges of information that were occurring when you first started?
A Right.
Q Did those exchanges of information ever stop?
A Not to my knowledge, no.
Q Okay. So they still go on today?
A To the best of my knowledge, yes.
Q All right. Are you aware that a ghost or mirror image -- and if I'm using the terms incorrectly, please feel free to correct me -- was made of the hard drive of a computer that Mr. Jacobs had used in Macau?
A Yes.
Q How did you become aware of that?
A As part of these proceedings I was made aware of that.
MR. McCREA: Your Honor, may I make a statement?
THE COURT: Absolutely.

MR. McCREA: Mr. Singh, as the Court knows, was designated as a 30(b)(6) witness, and he was deposed as such. As part of his preparation for that task he met with a number of attorneys to be briefed on areas that he would be -- that he was designated to testify on. I'm not going to object to the general subject matter of what was discussed, but I will object to specific -- if there's a question that calls for a specific communication from or to the attorney involved, I will object. I --

THE COURT: Let me tell you how I've ruled on this in the past.

MR. McCREA: Okay.

THE COURT: Because this issue is not the first time somebody has prepped a 30(b)(6) witness by using a lawyer to do that preparation.

MR. McCREA: I'm sure.

THE COURT: And I think the last time this was problematic was a case that Mr. Peek was involved in along with Mr. Hejmanowski of your law firm.

MR. McCREA: I'm not surprised.

MR. PEEK: Why am I always the poster child, Your Honor?

THE COURT: Because you're here a lot, just like Lionel Sawyer's here a lot. So, I mean, it's -- the firms that are here in Business Court are here the same ones over

and over again, so I see you all.

My position has been historically, and I'm not saying you won't be able to change my mind if you brief it and give me some convincing arguments, is that if an attorney preps someone to be a 30(b)(6) witness, what the attorney told the 30(b)(6) witness is fair game to be explored, because that was the preparation method that was chosen, as opposed to the more laborious process of preparation of a witness to become a 30(b)(6) of reviewing a pile of 6 feet of documents. That's been my ruling in the past. I'm not married to it, I'm just telling you Mr. Hejmanowski convinced me that was the correct one last time.

MR. McCREA: All right.

THE COURT: Sorry, Mr. Lionel. He's a very bright lawyer, and he's very good. Paul Hejmanowski, not his son.

MR. McCREA: Your Honor, we're going to allow him to, you know, testify pretty freely because of that, but if I do feel that he's going to far afield and violating the attorney-client privilege, I will lodge an objection.

THE COURT: Well, I'm just -- I understand. And if you need to object, it's not going to bother me.

MR. McCREA: All right.

THE COURT: We'll brief it. I mean, I understand the legal issues are rather complicated in this particular circumstance, which is why I'm trying to make sure you guys

understand what I think the issues are, as opposed to what I think the ruling should be, because I haven't decided what the ruling should be yet. But I want you to be able to approach the legal issues appropriately.

MR. McCREA: Thank you.

BY THE COURT:

Q All right. Are you ready?

A Yes.

Q So let's go back. How did you become aware that the ghost or mirror image was made of the hard drive the computer that Mr. Jacobs had used in Macau?

A I was informed by one of our counsel in preparation for my testimony.

Q And what were you told?

A I was told that there was a ghost image made of Mr. Jacobs's hard drive and that there was also a hard drive that was sent over from Macau.

Q Okay. And did you to any examination of those data storage devices at that time?

A I did not.

Q Okay. Have you ever?

A I have not, no.

Q Okay. So I take it, since those came over prior to you starting with the Sands, that you were not involved in the decision to make the initial ghost or mirror image of the hard

drive that was on the computer of Mr. Jacobs in Macau.

A That would be correct.

Q Okay. So hold on. Let me check off several questions now.

Do you know what happened to the data storage device when it arrived here in the United States from Macau?

A In terms of how it was handled?

Q Yes.

A My belief is that copies of some of the data was placed on some file shares, or on a file share, rather, and then the storage device was placed in a vault.

Q Okay. And when you refer to file shares, that a drive that other people can access?

A That would be correct.

Q And did it allow for remote access?

A That's --

Q When I say remote I mean somebody like one of the lawyers who was in say New York could sign onto the Sands system, onto the server using an appropriate identifier and password, and then be provided access to that drive.

A It would be possible. I do not know whether or not that was actually done in this case.

Q Okay. For any of the subsequent data transfers that were made -- because you've been sitting through the proceedings and heard about some other data that was brought

over on storage devices --

A I have.

Q -- were you involved in the decision on how those storage -- how the formatting or the information was to be placed onto the storage devices that were transported from Macau?

A I was not involved in those decisions.

Q Once those storage devices arrived in the United States were you involved at all and then doing something with that data?

A I was not.

Q Okay. Do you know who had access to the information that was put on the shared drive?

A In the course of my preparation for the testimony what I was able to do was determine whether or not that -- any of those files existed on the file servers today, and took a look to see who had access to that information.

Q Okay. Can you tell me who had access to that information?

A It was essentially the IT group which would normally have access and Mr. Kostrinsky.

Q Was there anyone else who had access other than the IT group and Mr. Kostrinsky?

A The best of my recollection, no. But there was another IT individual who was -- who was on the one files, as

far as I recollect.

Q Okay. You've heard some testimony of some of the outside lawyers, I think Mr. Ma, about this ability to sign in but having a problem with a password?

A Yes.

Q Were you aware that there was an attempt to provide that type of access to any of the outside lawyers?

A I was made aware of that, yes.

Q How were you made aware of that?

A Again, in preparation for my initial deposition testimony that was shared with me by counsel.

Q And what were you told?

A I was told that VPN access were provided to specifically Holland Hart and potentially Glaser Weil.

Q And were you able to confirm that VPN access had in fact been provided to Holland & Hart and Glaser Weil to the shared file drive or shared drive?

A I was able to confirm that Holland Hart had VPN access and was able to access some information that Mr. Kostrinsky made available. I was not able to determine what information that necessarily was.

Q Okay.

A I was not able to determine or validate that Glaser Weil was given was given access.

Q Now, when you say it was shared information Mr.

Kostrinsky had made available, what do you mean by that?

A There was apparently -- my understanding is that there was a location that was made available to external counsel through this VPN connection that contained various documents. I do not know what documents those were and what information was available there.

Q Okay. And I would take it that then you wouldn't know if any changes had made to the data that was on that location, either.

A That would be correct.

THE COURT: All right. That's all the questions I had for you. That was quick.

Mr. Bice.

He won't be as quick as I was.

CROSS-EXAMINATION

BY MR. BICE:

Q Let's just clarify a couple of points, if we might, about the Judge's questions.

You'd indicated -- the Judge had asked you who had access to the shared drives. Do you recall her asking you that?

A I recall that question.

Q And you had indicated that the IT personnel and Mr. Kostrinsky; right?

A That's correct.

Q All right. But, to be fair, you only looked for drives that Mr. Kostrinsky had access to; correct?

A That would be correct.

Q So you never looked -- despite the fact that you were the designated 30(b)(6) deponent, you actually never looked to determine whether or not all those emails or other data from Macau was stored on other drives that other people had access to; correct?

A In the context of what I had been prepared for and what information I had -- was my understanding was relevant I did attempt to make a search of locations for other information, and I -- as indicated in my deposition, I did find a few locations.

Q Okay. But in terms of for -- you searched -- when you ran your records to determine who had access to this data, you only searched on the drives that Mr. Kostrinsky had previously had access to; correct?

A That would be a correct statement.

Q Okay. You didn't search any drives that only, for example, Mr. Rubenstein had access to; correct?

A Well, that would assume that Mr. Rubenstein would have different access, which I do not know if that's a valid statement.

Q Okay. Well, Mr. Rubenstein might have access to documents that Mr. Kostrinsky didn't have access to; correct?

A It's possible.

Q Okay. And the same would be true for Ms. Hyman; correct?

A It might be possible.

Q And the same would also be true for the current general counsel, Mr. Raphaelson; correct?

A It could be.

Q All right. And you have not searched -- despite you being the designated 30(b)(6) witness, you did not search to determine who else in the company would have had access to all of these documents; correct? Potentially had access to them.

A Again, that would presume that those documents exist in another location other than the ones that I had identified.

Q Okay. And if they do, you don't know it?

A That would be correct.

Q Okay. Because you couldn't determine -- as I recall, at your deposition you couldn't determine whether or not all of those emails or the Macau data was stored on other drives that people had access to; correct?

A That is correct.

Q All right. You'd also indicated to Her Honor when she asked you about the transfer of electronic data between Las Vegas and Macau -- did I understand you correctly to tell Her Honor -- and if I misunderstood, you will correct me or Her Honor will correct me -- that the policy today is the same

as it was when you started at the company.

A I'm not aware that a policy exists.

Q Okay. You're not aware that a policy exists; is that right?

A That's what I said.

Q And are you -- and you're unaware that there was ever any change in the transfer of data between Las Vegas and Macau?

A Again, I'd have to ask you for some clarification. I don't want -- don't know what you mean by change.

Q Okay. Well, do you recall at your deposition telling me that in April of 2011 there was a change?

A Again, are we talking specifically to what I was referencing during the deposition?

Q Okay. It's a simple question. Do you recall telling us at your deposition that there was a change in the -- what sort of data could be transferred or could be access in Macau?

A Yes, there was a change in the access of certain information in Macau.

Q Okay. Prior to -- and that was in April of 2011; correct?

A It would be became aware of an issue around April-May.

Q Okay.

A To be clear, subsequent to my deposition when I took a look back to determine date, time frame of when access was removed it was more around the July time frame.

Q Okay. But you -- so you're saying access was removed in the July of 2011 time frame?

A That there was action taken in Macau in July 2011 in order to make sure that there was compliance with our current understanding of the data privacy issue.

Q Do you recall telling me that what prompted this decision was a Securities and Exchange Commission subpoena that had been issued to Las Vegas Sands Corp.?

A I recall mentioning I wasn't quite clear on what the exact trigger was, that it could have been the SEC.

Q Okay. And do you recall telling us that it was your understanding that the time frame in which the change in policy and the discussion was occurring was when you overheard discussions within the company about the Securities and Exchange commission subpoenaing records?

A Again, I would want to correct that I would not characterize it as a change in policy, because there was no policy.

Q All right. Well, let's go to --

MR. BICE: Your Honor, may I publish --

THE COURT: Already started the process.

MR. BICE: Thank you.

THE COURT: Hold on a second.

Sir, here's your original deposition transcript. Counsel will refer you to a page. Please feel free to read before or after to give yourself context.

THE WITNESS: Thank you, Your Honor.

BY MR. BICE:

Q If you would, please, Mr. Singh, let's turn to page 122 of your deposition.

THE COURT: 122?

MR. BICE: Yes.

THE COURT: Thank you.

BY MR. BICE:

Q Actually, let's start on the bottom of page 121 -- I apologize.

MR. PISANELLI: See if Her Honor wants a copy.

THE COURT: No, thank you.

MR. PISANELLI: No, thank you?

THE COURT: No, thank you.

MR. BICE: I'm disappointed.

THE COURT: Sorry.

BY MR. BICE:

Q All right. I'll start on the bottom, and I'll read along. Make sure -- you make sure I'm reading correctly for the record. Line 23 is a question to you.

"Did you see written documents?"

And your answer was, "There was information exchanged around the fact that the SEC subpoena came in April of 2011, and that was what really started the conversation around access to Macau data."

Question, "So it was in direct response -- is it fair to say that this change in policy was prompted by the SEC subpoena?"

Your answer was, "Again, I can't answer the question. The time frame is all I can provide you with."

My next question, "All right. But the time frame of the change in policy and the discussions that you overheard about it were in direct reaction to the SEC subpoena?"

And your answer was, "That would be a valid statement."

Correct?

A The best of my knowledge at the time, yes.

Q Okay. And my point was I'd asked you specifically about a change in policy, right, and there was a change in policy, was there not?

A Well, again, I wouldn't characterize it as a policy, and perhaps I should have clarified that during my deposition. But I would not characterize it as a policy.

Q All right. It was a change in access?

A Yes.

Q Okay. Do you recall testifying that there were two changes that occurred? If you'd go to page 118. Actually, let's start on page 117 so that we have the context of the questions and answers. And I'll read it, and you follow along with me again.

Line 9, question, "Were there any restriction -- or restraints," I apologize, "as far as you know upon the physical ability from an executive here in Las Vegas to access any records -- any records at Macau?"

Answer, "Not that I'm aware of."

Question, "The only restrictions would be restrictions that might be on access levels by the person's rank; is that fair?"

Answer, "Are we talking electronically, or physically?"

Question, "Electronically."

Answer, "Electronically, yes."

Question, "And then -- and that then changed, you said, in April of 2011; correct?"

Or the answer you gave was, "Correct."

And the next question was, "Okay. Do you know, did it change after Sands was asked to respond to a subpoena by the Securities and Exchange Commission,

or did the change occur before Sands was asked to respond to the Securities and Exchange Commission?" Answer, "I don't know the answer to that." Question, "So describe for me what the change was that occurred."

Okay? You're following me along?

A Yes.

Q Okay. So now, if you would, read to the Court what your answer was to that question.

A I indicated there were two changes, one was a clarification that no data in Macau should be accessed unless approval was granted explicitly by Macau. There was access that some individuals had to some systems in Macau that were removed.

Q Okay. So now, prior to April of 2011 and prior to this Securities and Exchange Commission subpoena being issued Las Vegas Sands had a network-to-network connection with Macau; correct?

A Correct.

Q And that connection, does it still exist today?

A Yes, it does.

Q But restrictions have now been imposed upon it; correct?

A That is correct.

Q And those restrictions were not imposed by the

government of Macau, but they were imposed by Las Vegas Sands; correct?

A Well, the action -- excuse me. The steps to restrict access was taken by us in Macau.

Q Okay. And those were -- and that access restriction occurred at the direction of executives here in Las Vegas, did it not?

A I don't believe that that's an accurate statement.

Q Okay. You believe that it was at the direction of executives in Macau?

A That is my understanding.

Q And where did you acquire that understanding?

A I would assume that it occurred that way because there were discussions with my group or the folks in Macau that indicated in their conversations with other executives in Macau that the determination was that some steps need to be taken.

Q Okay. Because if steps weren't taken, documents were going to have to be supplied to the Securities and Exchange Commission, weren't they?

A I would not have knowledge about whether or not that was their context.

Q All right. But the time frame in which this restriction, this turning off of the data flow occurred at exactly -- from your understanding, at exactly the same time

the discussion accrued about responding to the Securities and Exchange Commission?

A Well, again, I can only provide you with the context that I recall, and that is the context in which I recall the discussions taking place.

Q All right. Now, you say that you recall the discussions in Macau. Do you recall attending a meet -- let's clarify for the Court what your role in the company is. Can you tell Her Honor what your title is.

A Sure. I'm the chief information officer.

Q And the chief information officer for whom?

A Las Vegas Sands Corporation.

Q All right. Chief information officer, what does that mean to us lawyers?

A I provide the strategy and overall direction, if you will, for the information technology groups.

Q All right. And the -- each property then has it's own information technology officer?

A Correct.

Q All right. And they all report to you, except for one or two of them; right?

A The leaders in Singapore and Macau do not report directly to me, nor does --

Q I apologize.

A Nor does the leader in Pennsylvania.

Q Okay. The leader in Macau indirectly reports to you; correct?

A You could make that statement.

Q Well, do you recall that you made that statement in your deposition?

A Yeah.

Q Okay. I just wanted to make sure. And it's an indirect report, as you'd indicated at your deposition, because it's a publicly traded company; correct?

A That's my understanding.

Q Okay. But you are still overall responsible for the IT oversight of all of the properties, both in the United States and worldwide; correct?

A And if I could clarify --

Q Okay.

A -- I don't know what you mean by the term of "oversight." For me it's strategic direction.

Q Okay.

A And guidance on say day-to-day issues.

Q All right. And you provide that also to the properties in Macau; correct?

A In a more limited capacity.

Q All right. But you provide it also to the properties in Singapore?

A Again, more limited capacity.

Q All right. And also here in Las Vegas?

A Yes.

Q Okay. So while those -- the information technology officers onsite in Macau and Singapore don't report directly to you, you do have -- they indirectly report to you, and you provide them oversight concerning the IT operations for those properties; is that true?

A That would be correct.

Q Now, do you recall -- going back a little bit now that we sort of understand what your role is, do you recall being summoned to a meeting in the spring of 2011 concerning the reduction, or however one wants to use the word -- actually, let me strike that, use this.

You were present for the testimony of Ms. Glaser. Do you recall that?

A Yes.

Q Okay. Do you recall there being some questions about her and she had used the word "stone wall." Do you recall that?

A I do recall that.

Q That a stone wall was erected. Do you recall that?

A I do.

Q Okay. And that stone wall was erected in the spring of 2011; correct?

A I believe that was her testimony.

Q Okay. And that stone wall was erected by Las Vegas Sands; correct?

A I don't recall whether she mentioned that that was done by Las Vegas or Sands China.

Q Well, when you were summoned to a meeting to discuss this data flow or what Ms. Glaser called the stone wall, that occurred here in Las Vegas; correct?

A That meeting did take place in Las Vegas.

Q All right. And there were lawyers there from the O'Melveny & Myers law firm, were there not?

A There were.

Q Okay. And Mr. Kaye, the Las Vegas Sands chief financial officer, was also present, was he not?

A I believe that he was.

Q Okay. And Mr. Adelson even came into that meeting for a period of time, did he not?

A I believe he came in at the end of that meeting.

Q All right. And Mr. Leven, the company's chief executive or CEO, I'm not sure actually. Maybe he's COO. I always get those acronyms a little confused. COO I think is his title. He was not present; is that right?

A I don't recall completely whether or not he was present or he was not. He may have attended, you know, when Mr. Adelson joined, but I can't recall specifically.

Q All right. Now, is it fair to say that when this

stone wall was erected it was erected because the United States had asked for information?

A Again, I don't know what the context was for why we were having the discussion.

Q All right. But you knew that that was the timing of it; correct?

A It was around that time frame.

Q Okay. So let's deal with prior to the United States asking for information. Prior to that -- I think you've already -- we read from your deposition testimony, and if I think I'm wrong, you'll correct me -- there was a free flow of data in this network-to-network system that existed between Macau and Las Vegas; correct?

A I wouldn't characterize it necessarily as free flow. I mean, information was exchanged. The nature of that information I'm not specifically aware of.

Q Okay. Well, as I recall asking at your deposition, and if I'm wrong you'll have to correct me, I recall asking you whether there were any restrictions on the types of data that could flow between the properties. Do you recall that?

A I do recall the question.

Q All right. And you were designated as the company's representative to tell us what the restrictions were; correct?

A Correct.

Q Okay. And you were prepared by the lawyers

representing these defendants; correct?

A Correct.

Q And do you recall telling me that you as the company's representative were unaware of any restrictions on data flow prior to the spring of 2011?

A And I did make that comment --

Q All right.

A -- or I did make that statement, rather, and if I can -- if I can explain or clarify it, there was -- my intention in answering the question was there was no documented restrictions on that.

Q All right. What happened was there were some people of a certain rank in the company that could access certain data, and others couldn't; right?

A Well, that is normally the case.

Q Right. That's true. But -- and that's true here in Las Vegas; right?

A That's correct.

Q Okay. And so the types of data that could be accessed in Macau from Las Vegas or even sent over to Las Vegas was really controlled by the rank of the person either accessing it or requesting it or sending it; right?

A Or a party who created that data and chose whether or not to give access to various individuals.

Q Understood. And so -- but there were no physical