IN THE SUPREME COURT OF IOWA

No. 23-1115

JEFFREY PETERZALEK and MOLLY WEBER,

Certiorari Plaintiffs,

vs.

IOWA DISTRICT COURT FOR POLK COUNTY,

Certiorari Defendant.

Petition for Certiorari from the Iowa District Court
Polk County Case No. LACL152080
Honorable Robert Hanson, District Judge

APPELLEE FINAL BRIEF

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Did the District Court exceed its jurisdiction or otherwise act illegally when it declined to quash deposition subpoenas of two attorneys who represent or represented a party but do not represent the party in this action.

ROUTING STATEMENT

This appeal should be routed to the Iowa Court of Appeals because it involves issues of well-settled law and no issues of first impression.

STATEMENT OF THE CASE

In November 2020, Plaintiff Charis Paulson made internal complaints of sexual discrimination and harassment which were investigated by the Iowa Department of Administrative Services (DAS). When conditions failed to improve, Paulson filed a complaint with the Iowa Civil Rights Commission, and later a petition in the Iowa District Court for Polk County, alleging sexual discrimination, harassment, and retaliation.

During the discovery phase of Paulson's lawsuit against the Department of Public Safety, she sought to depose two attorneys: Assistant Attorney General Jeff Peterzalek (Peterzalek) and Assistant Attorney General Molly Weber (Weber).[1] Peterzalek has represented the Department for many years in a variety of matters.

Additionally, since 2013, Peterzalek has also represented Paulson in her individual capacity as a named Defendant in the case of *Hedlund v. State of Iowa* (Polk County Case No. LACL128372). Weber has also represented the Department in various matters, including Paulson's complaint filed with the Iowa Civil Rights Commission. Importantly, *neither Peterzalek nor Weber represent the Department in Paulson's current lawsuit filed in the Iowa District Court for Polk County.*

[1] "Department" as used herein includes DPS, the State of Iowa, and attorneys Peterzalek and Weber.

Peterzalek and Weber sought to quash Paulson's deposition subpoenas and Paulson resisted. A hearing was held on June 28, 2023. The Court denied the motion to quash but granted the alternate relief requested by Peterzalek and Weber by entering a protective order. Thereafter, Peterzalek and Weber filed this Petition for Certiorari seeking to overturn the district court order.

STATEMENT OF FACTS

Plaintiff Charis Paulson has been employed as a certified law enforcement officer by the Iowa Department of Public Safety (Department or DPS) for over twenty-five years. (App. 5). Paulson is the highest- ranking sworn female in the Department and currently serves as the Director for the Division of Professional Development and Support Services. (App. 6, 16).

On March 6, 2020, Paulson met with DPS Commissioner Stephan Bayens to discuss her treatment within the Department. (App. 10-11). She provided him with a list of concerns showing how she, as a female Director within the executive leadership team, was being treated differently than male counterparts and subordinates. (App. 10-11). On October 9th and October 28, 2020, Paulson again met with Bayens to discuss (in part) an upcoming vacancy that would occur for the Director of Investigative Operations. (App. 12). Once again, she expressed her interest in a lateral transfer for the position. By that time, Paulson had already been a Director for eight years. (App. 13). Bayens refused to grant her request for a lateral transfer, and instead stated that he would be posting the position for lateral transfer or promotion. (App. 12).

During the October 28 meeting, Bayens also stated that he was considering creating a new director position to oversee CALEA, PDB,

Academy, Peer Support, and PSB and asked whether Paulson would be interested in that position. (App. 12). She reminded him of a prior conversation when she stated that it was her desire to move back into an investigative division. (App. 12). It was clear to Paulson that Bayens did not want to consider her as a candidate for the Director of Investigative Operations despite her qualifications and experience. (App. 12). Soon after that conversation, it became widely known that the Commissioner wanted to promote a male with less supervisory experience than Paulson. (App. 12).

On November 19, 2020, Paulson emailed Bayens her request, in writing, for a lateral transfer for the Director of Investigative Operations position. (App. 13). Her email correspondence restated her concerns from the March 6, 2020 meeting that she was being treated differently than her male counterparts, including some subordinates. (App. 13). Paulson further explained that, while a few of the issues identified in the meeting had been addressed, many continued and were ongoing. Bayens sent her concerns to the Iowa Department of Administrative Services (DAS) for investigation. (App. 13).

Paulson met with DAS representative Andrea Macy on November 30, 2020 to provide Macy with information related to Paulson's disparate treatment as a female Director. (App. 13). After several months,

Paulson finally received an email from Macy on February 26th, 2021 stating that the investigation was closed. (App. 13). Paulson was provided with no other information, including whether her complaints were founded and, if so, how they would be remedied moving forward. (App. 14). Meanwhile, Paulson continued to be excluded from emails, files, meetings and other matters, and in other ways, compared to her male counterparts.

After making complaints to Bayens and Macy in November 2020, the position for Director of Investigative Operations was not posted, contrary to prior statements that it would be done "soon". (App. 14). On March 19th, 2021, an Interest Order was finally issued for this position, requiring a response no later than April 2, 2021. (App. 14).

On March 25th, just days after the Interest Order was issued, Paulson received an email from Bayens with her annual evaluation. (App. 14). This was a departure from procedure that required Paulson's immediate supervisor to perform the evaluation (not Bayens). (App. 14-15). While, overall, Paulson exceeded expectations, the evaluation stated that her "responsiveness to inquiries and effective interpersonal communication could be "improved upon". (App. 15).

The evaluation also stated that "Director Paulson will need to continue to grow her interpersonal communication and leadership skills and strive to eliminate the occasional gaps in responsiveness." (App. 15). Until

receiving this evaluation, no person had ever mentioned or discussed with Paulson that she was unresponsive, lacked personal communication skills, or needed to improve upon her leadership abilities. (App. 15). In fact, prior evaluations show that she exhibited exceptional leadership and communication skills. (App. 15). Paulson believed these derogatory remarks were unwarranted, unsupported, and designed to diminish her qualifications for the Director of Investigative Operations position so that the position could be offered to a male. (App. 15).

After the Interest Order was issued on March 19, 2021 for the Director of Investigative Operations, Paulson applied for the position. (App. 15). The three other applicants were all *male assistant directors*. (App. 15-16). The candidates participated in a writing assignment and three separate interviews. On May 10, 2021, the rumors proved true when Commissioner Bayens announced that Assistant Director Paul Feddersen would be the new Director. (App. 16).

Several months later, Bayens created a new Division of Professional Development and Support Services within the Department. On September 20, 2021 he reassigned Paulson to this position despite her request that she be transferred to an investigative division. (App. 16-17). No other candidates were considered, and the position was not posted for transfer or promotion, unlike the Director of Investigative Operations vacancy. As a

result, Paulson's duties continue to be administrative, and she is denied the opportunity to perform investigative responsibilities and other traditional law enforcement functions.

ARGUMENT

I. Public Policy Does Not Preclude Deposing Agency Counsel.

A. Error Preservation.

Attorneys Peterzalek and Weber (hereinafter "Attorneys") ask this Court to declare that public policy precludes deposing opposing counsel unless absolutely necessary. However, they did not raise a "public policy" issue before the district court.[2] (App. 73-84). By neglecting to raise this argument before the district court, the Attorneys failed to preserve it for review. "It is a fundamental doctrine of appellate review that issues must ordinarily be both raised and decided by the district court before we will decide them on appeal." *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). Error- preservation rules are not meant to be hypertechnical, but do "require that the nature of any alleged error be timely brought to the attention of the district court." *Mitchell v. Cedar Rapids Cmty. Sch. Dist.*, 832 N.W.2d 689, 695 (Iowa 2013). Because the Attorneys did not raise a public policy issue/argument before the district court, the Court should decline to do so now.

B. The Shelton Test has not been adopted by Iowa courts and is inapplicable in this case.

[2] The Attorneys' brief also does not identify this as an issue presented to the Court for review but nonetheless attempts to argue it at length.

The Attorneys ask this Court to adopt a new standard recognized by the Eighth Circuit. In *Shelton v. American Motors Corp.*, the Eighth Circuit discouraged the practice of forcing opposing counsel to testify as a witness, because it disrupts the adversarial system, lowers the standards of the profession, and adds to the costs of litigation. *Shelton v. American Motors Corp., 805 F.2d 1323, 1327 (8th Cir. 1986).* As a result, the court in *Shelton* developed a test to determine when a deposition of opposing counsel could occur, stating a party seeking to depose opposing counsel must satisfy these three elements:

1. No other means exist to obtain the information than to depose opposing counsel;
2. The information sought is relevant and non-privileged;
3. The information sought is crucial to the preparation of the case. *Id.*

Should the Court determine the *Shelton* test must be adopted, it nonetheless is inapplicable here. Paulson is not seeking to depose "opposing counsel" because neither Peterzalek nor Weber are counsel for the Department of Public Safety in this case. The Eighth Circuit has had ample opportunity to weigh in on whether *Shelton* applies to attorneys who are <u>not</u> litigation counsel in the case at issue. In *Pamida v. E.S. Originals, Inc.*, the Court explained that the *Shelton* test was intended to protect against deposing opposing counsel in a pending case to avoid disclosure of the attorney's litigation strategy but was "not intended to provide heightened protection to attorneys who represented a

client in a completed case." *Pamida v. E.S. Originals, Inc.,* 281 F.3rd 726, 300 (8th Cir. 2002).

More recently, in *Thomas v. Marshall Public School,* the US District Court for Minnesota addressed the very question presented here. There, a defendant school district sought to prevent the plaintiff from deposing the district's attorney regarding a prior matter, arguing the information was privileged and plaintiff could not meet the *Shelton* test. The Minnesota court rejected these arguments, holding *Shelton* was inapplicable because it was strictly limited to opposing trial counsel in the current case. *Thomas v. Marshall Pub. Sch.*, 2023 U.S. Dist. LEXIS 156933 (D. Minn. September 6, 2023). Because the attorney sought to be deposed was not current litigation counsel, *Pamida* was controlling, just as it should be here.

C. Paulson can satisfy the elements of Shelton.

However, even if the *Shelton* test is applied to this case, Paulson meets the three criteria necessary to allow the depositions to be ordered. During discovery, Paulson requested information related to sexual harassment and discrimination claims made against the Department by other employees. On December 14, 2022, the Department responded that Peterzalek was the person who could provide the most complete information relating to Paulson's discovery request. (Resistance to Petition for Writ p. 10-11, Ex. 2).

One month later the Department acknowledged that Peterzalek was likely the *only* person who could provide a complete response to this discovery request. On January 11, 2023, the Department wrote:

> To fully answer Plaintiff's Interrogatory No. 16, we need Mr. Peterzelek's assistance in gathering information about other legal actions and/or complaints brought by employees or former employees against the Department of Public Safety. We attempted to gather this information via other means, but were unsuccessful. (Plaintiff Resistance to Petition for Writ, Ex. 3).

One way Paulson can support her claims is by showing the Department has had prior claims of sexual harassment/discrimination or that such claims have created a culture or atmosphere of discrimination toward women. When Paulson attempted to obtain the information by other means, the Department admitted that Peterzalek is likely the only person with information about prior claims.

Weber also has knowledge that is crucial, relevant and not privileged, and cannot be obtained any other way. Weber previously represented the Department related to Paulson's complaint filed with the Iowa Civil Rights Commission. There, the Department (through Weber) took the unusual step of filing an *ex-parte* motion to conceal and limit access to an extensive investigative report documenting Paulson's claims of discrimination and harassment and identifying numerous witnesses. (App. 107). Paulson has alleged in her petition that the Department's handling of her civil rights

complaint was discriminatory and retaliatory. (App. 18-19). Weber would have relevant comparator information, including knowledge of whether other civil rights complaints were treated similarly by the Department. These are facts, not legal advice or mental impressions of Weber. Paulson attempted to obtain this information from the Commission directly but was unsuccessful. Therefore, a deposition of Weber is necessary.

II. The District Court Properly Denied the Attorneys' Motion to Quash.

A. *Error Preservation.*

Once again, the Attorneys failed to properly preserve error. Original certiorari proceedings may be commenced by parties claiming that a district court judge exceeded its jurisdiction or otherwise acted illegally. *Iowa R. Civ. Pro. 6.107(1)(a)*. In their motion to quash before the district court, Peterzalek and Weber never argued the court lacked jurisdiction or that it would be acting illegally if the depositions were ordered to proceed. Likewise, the Attorneys neglected to make any arguments that the district court would be abusing its discretion. Instead, the Department simply argued that privilege applied.

Now, apparently unsatisfied with the district court's decision, the Attorneys have petitioned this Court to *change* the law by adopting a new

standard of analyzing when opposing counsel may be deposed. Such a request is not appropriate for certiorari proceedings, which specifically requires a showing that the district court exceeded its jurisdiction or acted illegally under existing law. While all comers can submit their petitions and let the proverbial cards fall where they may, "**relief through certiorari is *strictly limited* to questions of jurisdiction or illegality of the challenged acts**." *French v. Iowa Dist. Ct. for Jones Cnty.*, 546 N.W.2d 911, 913 (Iowa 1996). (Emphasis added.)

The Attorneys' failure to make the appropriate arguments means those issues were never decided by the district court and requires a denial of certiorari. The Iowa Supreme Court has repeatedly affirmed it is a court of *review* and will not decide an issue the district court did not decide first. *33 Carpenters Constr. Inc. v. State Farm Life and Cas. Co.*, 939 N.W.2d 69, 75 (Iowa 2020).

B. *Standard of Review.*

When a party has filed a petition for writ of certiorari, the Court reviews the district court's decision for the correction of errors at law. *Wellmark, Inc. v. Iowa Dist. Ct.*, 890 N.W.2d 636, 642 (Iowa 2017). "A writ of certiorari lies when a lower court 'has exceeded its jurisdiction or otherwise acted illegally.'" *Id.* Illegality exists when the court's findings lack substantial evidentiary support, or when the court has not properly applied the law. *Id.*

On review of a district court's ruling on a discovery matter, the Court affords the district court wide latitude. *Martin v. B.F. Goodrich Co.*, 602 N.W.2d 343, 345 (Iowa 1999). The Court will reverse a ruling on a discovery matter only for an abuse of discretion. *Shook v. City of Davenport*, 497 N.W.2d 883, 885 (Iowa 1993). An abuse of discretion may constitute an illegality. *Parrish v. Denato*, 262 N.W.2d 281, 286 (Iowa 1978). "Abuse of discretion may be shown . . . where the decision is grounded on reasons that are clearly untenable or unreasonable. A ground or reason is untenable . . . when it is based on an erroneous application of the law." *Office of Citizens' Aide/Ombudsman v. Edwards, 825 N.W.2d 8, 14 (Iowa 2012)* (citations and internal quotations omitted). When reviewing the district court's action, the Court will either sustain [the writ] or annul it. No other relief may be granted. *Ostergren v. Iowa Dist. Ct.*, 863 N.W.2d 294, 297 (Iowa 2015).

C. *The district court did not exceed its jurisdiction when denying the motion to quash and allowing depositions of Peterzalek and Weber to proceed.*

The philosophy underlying the rules of discovery is that "litigants are entitled to every person's evidence, and the law favors full access to relevant information." *Mediacom Iowa, L.L.C. v. Incorporated City of Spencer*, 682 N.W.2d 62, 66 (Iowa 2004) (quoting *State ex rel. Miller v. Nat'l Dietary Research, Inc.*, 454 N.W.2d 820, 822–23 (Iowa 1990)). For this reason, district court judges are instructed to construe the rules of discovery liberally. *Mitchell v. City of Cedar*

Rapids, 926 N.W.2d 222, 228 (Iowa 2019). When making rulings on discovery, District Courts are to be granted wide discretion. *Willard v. State*, 893 N.W.2d 52, 62 (Iowa 2017).

The scope of discovery is limited to "any matter, not privileged, which is relevant to the subject matter involved in the pending action." *Iowa R. Civ. P. 1.503*. However, a party resisting discovery by asserting privilege has the ultimate burden of demonstrating that the privilege exists and applies to the material sought. *Willard,* 893 N.W.2d at 63. This Court should construe asserted privileges narrowly, as they are an exception to the liberal approach to discovery. *Id.* If a party fails to meet their burden of demonstrating a narrowly construed privilege applies, a district court judge is within their discretion to compel disclosure of the material. District court discovery rulings are only to be reviewed for an abuse of discretion. *Id.* at 58.

Iowa Rules of Civil Procedure permit discovery through depositions. Specifically, the rule states (in relevant part) that "parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions…" *Iowa R. Civ. P. 1.501(1).* The rules also provide instruction to the district court when considering discovery disputes, stating that "discovery and inspection should be liberally construed, administered, and employed" by the court to provide the parties with "access to all the relevant facts". *Iowa R. Civ. P. 1.501(2).*

When a party or person seeks to avoid a properly noticed deposition, a protective order is required. If good cause can be established by a person or party seeking a protective order, the court has a variety of options at its disposal. Pursuant to Iowa R. Civ. P. 1.504(1)(a), the district court may order:

> (1) That the discovery not be had.
> (2) That the discovery may be had only on specified terms and conditions, including a designation of the time or place, or the allocation of expenses.
> (3) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery.
> (4) That certain matters not be inquired into, or that the scope of the discovery be limited to certain matters.
> (5) That discovery be conducted with no one present except persons designated by the court.
> (6) That a deposition after being sealed be opened only by order of the court.
> (7) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way.
> (8) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

Here, the district court was acting within its jurisdiction when it followed the rules of discovery. The court considered the facts and arguments and determined that Peterzalek and Weber may have relevant information that is not privileged. (App. 122-123). But the court did not stop there. It entered a protective order to ensure confidential attorney-client communications remain privileged. (App. 122-123). This was well within the authority of the district court, as recognized by Rule 1.504(1)(a). Importantly, as more fully explained

below, nothing in the district court's order required any privileged information to be disclosed to Paulson or the court.

Also telling is that Peterzalek and Weber have never argued the district court lacked jurisdiction to order the depositions of Peterzalek and Weber or that it would be acting illegally if it did so. To the contrary, they *anticipated* that the motion to quash might be denied, asking for alternate relief in such a circumstance. (App. 84). If they believed the Court lacked jurisdiction or authority to order the depositions, they should have raised those concerns in the underlying motion to quash. They did not and, as a result, should be precluded from doing so now.

D. *The district court did not act illegally when denying the motion to quash and allowing depositions of Peterzalek and Weber to proceed.*

A lower court acts illegally when its "findings lack substantial evidentiary support, or when the court has not properly applied the law." *State Pub. Def.*, 747 N.W.2d at 220 (quoting *Christensen v. Iowa Dist. Ct.*, 578 N.W.2d 675, 678 (Iowa 1998)). The district court enjoys broad discretion in matters related to discovery. Discovery rulings are "committed to the sound discretion of the trial court." *State v. Ary*, 877 N.W.2d 686, 702 (Iowa 2016). "A district court abuses its discretion 'when the grounds underlying a district court order are clearly untenable or unreasonable.'" *Sioux Pharm, Inc. v. Eagle Labs., Inc.*, 865

N.W.2d 528, 535 (Iowa 2015) (quoting *Mediacom Iowa, L.L.C. v. Inc. City of Spencer,* 682 N.W.2d 62, 66 (Iowa 2004)).

a. The district court did not abuse its discretion because its ruling was supported by the record.

Peterzalek has worked with Paulson for decades. He has observed her work environment, interactions with co-workers, personality, and leadership skills. (App. 106). He has personal knowledge of her responsibilities, qualifications, and work ethic. In 2021, Peterzalek even wrote a letter of recommendation for Paulson. (App. 93-94).

Peterzalek has represented the Department in a variety of legal matters for over twenty years. In this capacity, he has undoubtedly provided legal advice to the Department and participated in communications with Department employees that are legally privileged. But he does not represent the Department in *this case*. Further, it does not follow that *every* communication with Peterzalek over the course of twenty years is legally privileged or that the source of any information he may have was obtained under circumstances giving rise to privilege. For example, Paulson offered evidence that Peterzalek provided sexual harassment training to DPS academy staff and drill instructors in June 2022. The type of training provided to DPS employees regarding sexual harassment is obviously relevant to Paulson's

claims of the very same nature.

Questions also exist regarding who had access to the report and Paulson's allegations contained therein. Weber, who was representing DPS, obtained a copy of the confidential DAS investigative report. (App. 100-101). How the report was obtained and to whom it was distributed are relevant to the Department's knowledge of Paulson's allegations and complaints of retaliation and discriminatory treatment.

b. The district court did not abuse its discretion because it properly applied the law regarding attorney-client privilege.

In cases which one party seeks to protect information under the premise it is privileged, "the party seeking to assert the privilege bears the burden to show an attorney-client relationship existed and the communication was made in confidence." *Keefe v. Bernard*, 774 N.W.2d. 663, 669 (Iowa 2009). To determine whether the testimony to be elicited should be protected by privilege, the Court must answer the following questions: (1) did an attorney-client relationship exist, (2) the scope of the attorney's representation, and (3) whether the testimony being sought falls within the scope. *Hutchinson v. Smith Labs, Inc.* 392 N.W. 2d 139, 141 (Iowa 1986). For an attorney client relationship to exist, it is the Department's burden to prove that: (1) DPS sought legal advice, (2) the advice sought pertained to matters within

Peterzalek and Weber's professional competence, and (3) the Peterzalek and Weber expressly or impliedly agreed to, or actually gave, the advice sought. *Comm. on Pro. Ethics & Conduct of the Iowa State Bar Ass'n v. Wunschel*, 461 N.W.2d 840 (Iowa 1990).

Attorney Peterzalek does not, and in fact *cannot*, have privileged information that is relevant to this case. Since September 25, 2013, Assistant Attorney General Jeff Peterzalek has represented Plaintiff Charis Paulson because she is a named defendant in a different civil case, *Hedlund v. State of Iowa, et al.* (LACL 128372, Polk County). Due to Peterzalek's existing representation of Paulson, Iowa Rules of Prof. Conduct 32:1.7 specifically prohibit him from simultaneously representing DPS in any matters directly adverse to Paulson when Paulson did not consent. Rule 32:1.7 states:

> (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involved a concurrent conflict of interest. A concurrent conflict exists if…. (1) the representation of one client is directly adverse to another client.

The comments to this rule are instructive, stating "[l]oyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other

matter, even when the matters are wholly unrelated." (Emphasis added). *See* Iowa R. Prof. Conduct, Comment [6].[3]

There is little disagreement that Peterzalek has represented DPS in a variety of cases and capacities throughout his career, but he does not represent DPS in the current case where the Department's interests are directly adverse to Paulson's. As it relates to this case, he has been prohibited from providing legal advice to DPS at any time after September 25, 2013 related to any matter that was adverse to Paulson. It is difficult to understand how Peterzalek could possess privileged information related to this case or Paulson's allegations without simultaneously violating his ethical obligations to Paulson.

In the present case, the Department relies on nothing more than its own self-serving assertions that privilege applies because Peterzalek and Weber have served as attorneys for the department. Such generalized statements are insufficient to meet the burden necessary to establish privilege applies. Communications are not privileged simply because they are made by or to a

[3] Attorneys have admitted that Peterzalek was ethically screened from Paulson's discrimination and harassment claims. (App. 105). DPS General Counsel Catherine Lucas admitted knowing that Peterzalek "had a conflict" because he represented Paulson in the *Hedlund* case. (App. 105). The record is clear that both DPS and Peterzalek were aware Peterzalek could not provide legal advice to the Department related to Paulson's discrimination and harassment claims.

person who happens to be a lawyer. *Diversified Industries Inc.,* 572 F.R.D. at 447 (citing 8 Wright & Miller, Federal Practice and Procedure, § 2017, p. 133). For a communication to be privileged, "the attorney must have been engaged or consulted by the client for the purpose of obtaining legal services or advice that a lawyer may perform or give in his capacity as a lawyer, not in some other capacity." *Meighan v. Transguard Ins. Co. of Am.,* 298 F.R.D. 436, 447 (N.D. Iowa, March 24, 2014) (citing *Diversified Industries, Inc. v. Meredith*, 572 F.2d 596, 602 (8th Cir. 1978) (rehearing en banc)).

Recognizing this, the district court sought to strike a proper balance between Paulson's need to access to relevant information and the Department's interest in preventing disclosure of potentially privileged communications. Contrary to the bulk of the Department's arguments, the district court's denial of the motion to quash is not an order for Peterzalek or Weber to violate attorney-client privilege or disclose privileged information. Each are entitled to have counsel present at their respective depositions to provide advice and object to any line of inquiry that may divulge privileged information. (App. 122). There will be no shortage of attorneys available to object to any questions believed to be eliciting privileged information.

It should also be recognized that the district court provided the precise alternative relief sought by Peterzalek and Weber. On April 21, 2023,

Peterzalek and Weber filed a motion to quash deposition subpoenas issued by Paulson. In their prayer for relief, they requested the district court quash the deposition subpoenas **or, in the alternative, fashion an appropriately restrictive protective order to govern their deposition testimonies**. (Emphasis added.) (App. 71). This is exactly what the court did. In ordering the depositions to proceed, the district court was careful to explain that objections based on privilege could be maintained throughout the depositions. Nothing in the court's order can even remotely be construed as requiring Peterzalek and Weber to divulge any information protected by privilege.

CONCLUSION

The district court has wide discretion in ruling on a motion to quash. *In re T.O.*, Case No. 17-1926 (Iowa Ct. App., Jan. 24, 2018) (citing *Morris v. Morris*, 383 N.W.2d 527, 529 (Iowa 1986)); *In re A.H.*, 815 N.W.2d 410 (Iowa Ct. App. 2012). A district court's decision on whether to quash a subpoena is for an abuse of discretion. *State v. Cole*, Case No. 07-0832, 2008 WL 4876993, at *2 (Iowa Ct. App. Nov. 13, 2008) (citing *Morris*, 383 N.W.2d 527, 529 (Iowa 1986)); *State v. Cashen*, 789 N.W.2d 400, 405 (Iowa 2010), superseded by statute on other grounds by Iowa Code § 622.10; *In re A.H.*, 815 N.W.2d 410 (Iowa Ct. App. 2012). A district court abuses its discretion by relying on an unsupported fact

finding or erroneously applying the law. *State v. Parker*, 747 N.W.2d 196, 203 (Iowa 2008), quoting *State v. Rodriquez*, 636 N.W.2d 234, 239 (Iowa 2001). In discovery disputes, "(a)n abuse of discretion is rarely found." *Hutchinson v. Smith Laboratories, Inc.*, 392 N.W.2d 139, 141 (Iowa 1986).

The district court, after reviewing the record and considering arguments of the parties and affected persons, correctly determined that Peterzalek and Weber had relevant information related to Paulson's claims in this case and properly applied the law. The court thoughtfully considered the rights and concerns of all sides, crafting an order that permits Paulson access to relevant information while affording the Department the ability to maintain the confidentiality of privileged information. The Attorneys have failed to even argue that the district court exceeded its jurisdiction or acted illegally in any way, instead urging this Court to *change* the law in its favor. Such a proposal exceeds the allowable limits of certiorari and must be denied.

Respectfully submitted,

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REQUEST FOR NON-ORAL ARGUMENT

Appellee Charis Paulson does not request to be heard orally on this matter.

CERTIFICATE OF FILING

The undersigned hereby certifies that I, or someone acting on my behalf, filed the foregoing Appellee Final Brief via the Iowa Judicial Branch EDMS system on December 12, 2023.

/s/ Kellie Paschke
Kellie Paschke

CERTIFCATE OF SERVICE

The undersigned hereby certifies that on December 12, 2023, a copy of the foregoing Appellee Final Brief was served via the Iowa Judicial Branch EDMS system to the attorneys of record to this appeal.

/s/ Kellie Paschke
Kellie Paschke

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1). This brief contains 5,038 words, excluding the parts exempted by Rule 6.903(1)(g)(1).

This brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the type-style requirements of Iowa R. App. P. 6.903(1)(f) because this brief has been prepared in a proportionally spaced typeface using Microsoft Office Word in font size 14, Garamond font.

Dated: December 12, 2023

/s/ Kellie Paschke
Kellie Paschke