

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

2                                   \*\*\*\*\*

3 NOLA HARBER, as Distribution Trustee  
4 of the ERIC L. NELSON NEVADA  
5 TRUST dated May 30, 2001

6                                   Petitioners,

7 vs.

8 EIGHTH JUDICIAL DISTRICT COURT  
9 OF THE STATE OF NEVADA, CLARK  
10 COUNTY, and THE HONORABLE  
11 FRANK P. SULLIVAN, DISTRICT  
12 JUDGE

13                                   Respondents,

14 and

15 ERIC L. NELSON and LYNITA S.  
16 NELSON, individually, and LSN  
17 NEVADA TRUST dated May 30, 2001,  
18 LARRY BERTSCH

                                  Real Parties in Interest.

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**CASE NO. 63432**

19                                   **REPLY TO ANSWER TO PETITION FOR WRIT OF PROHIBITION**

20  
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1                   **REPLY TO ANSWER TO PETITION FOR WRIT OF PROHIBITION**

2   **I.**

3   **INTRODUCTION**

4                   Real Party in Interest, Lynita Nelson (“Lynita”), has done a masterful job of  
5                   ignoring the simple issue raised in the Petition for Writ of Prohibition, which is  
6                   “whether the District Court exceeded its jurisdiction and erred as a matter of law  
7                   by ordering the ELN Trust to pay Eric’s spousal support obligation and child  
8                   support arrearages based upon statutes from other jurisdictions and in  
9                   contravention of Nevada law.” *See* Petition for Writ of Prohibition at 8:15-20,  
10                  previously filed on June 21, 2013. Lynita’s failure to respond to the sole issue  
11                 raised in the Petition for Writ comes as no surprise because she is undoubtedly  
12                 aware that the District Court exceeded its jurisdiction by directing the Eric L.  
13                 Nelson Nevada Trust dated May 30, 2001 (“ELN Trust”) to pay Eric L. Nelson’s  
14                 (“Eric”) spousal support obligation and child support arrearages. Indeed, Lynita’s  
15                 Counsel of Record, Robert Dickerson, Esq., acknowledged before the Nevada  
16                 Senate Committee on Judiciary, that Nevada “has no statutory language allowing  
17                 for a spouse or child to be an exception creditor of the [spendthrift] trust” and that  
18                 “there has never been an effort to address the effect of this type of trust on  
19                 domestic support obligations.” *See* document entitled “Memorandum from Robert  
20                 21                 22                 23                 24                 25                 26                 27                 28

1 P. Dickerson in Support of AB378 dated May 7, 2013, attached as Exhibit 8 to the  
2 Appendix, previously filed on June 21, 2013.<sup>1</sup>  
3

4 For these reasons, Lynita's Answer raises or misrepresents numerous  
5 irrelevant findings contained within the Divorce Decree, and erroneously raises  
6 numerous technical arguments, all of which lack merit. For the reasons set forth  
7 below, and those raised in the Petition for Writ of Prohibition, the ELN Trust  
8 respectfully requests that this Court enter its writ prohibiting the District Court's  
9 enforcement of the June 19, 2013, Order and portions of the Divorce Decree in  
10 which the District Court orders the ELN Trust to make the aforementioned  
11 payments.  
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## 15 II.

### 16 STATEMENT OF FACTS AND PROCEDURAL HISTORY

17  
18 Lynita has taken great liberty with what occurred at the trial and pertinent  
19 provisions of the Divorce Decree in an attempt to shift the focus away from the  
20 simple question raised in the Petition for Writ of Prohibition. Lynita's most  
21 egregious misrepresentations are as follows:  
22

23  
24 First, the District Court never referred to the ELN Trust as a "sham" or the  
25 "alter ego" of Eric, nor did it find that the "actual formalities of the ELN Trust  
26

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27 <sup>1</sup> The Appendix previously filed on June 21, 2013, will hereinafter be referred  
28 to as "1 Appendix," and the Appendix filed concurrently with the instant Reply  
will be referred to as "2 Appendix."

1 were never followed.” Indeed, the District Court did not use the term “sham” or  
2 “alter ego” in the Divorce Decree. To the contrary, the District Court confirmed  
3 that both the ELN Trust and LSN Trust were “established as a self-settled  
4 spendthrift trust in accordance with NRS 166.020,” *see* 1 Appx., Ex. 1 at 4:25, and  
5 that the ELN Trust was funded with assets that were previously owned by a  
6 separate property trust that had been established by Eric in or around 1993, *see id.*  
7 at 4:16-17, and the LSN Trust was funded with assets that were previously owned  
8 by a separate property trust that had been established by Lynita in or around 1993.  
9 *See id.* at 5:2-3. Although the District Court did mistakenly find that it could  
10 “invalidate” both the ELN Trust and LSN Trust, *see id.* at 29: 14-18, a finding that  
11 the ELN Trust adamantly disagrees with, the District Court did not do so.

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17 Second, Lynita’s contention that the Petition for Writ of Prohibition is an  
18 attempt to ensure that she “receives nothing from the underlying divorce action,”  
19 is simply not true. Indeed, the Divorce Decree confirms that prior to the District  
20 Court improperly leveling off the ELN Trust and LSN Trust in the Divorce  
21 Decree, that the LSN Trust, of which Lynita is a beneficiary, possessed assets with  
22 a cumulative value in excess of \$4,000,000.00. *See id.* at 47:14-26. Further,  
23 although not mentioned in the Divorce Decree, the Special Master, Larry Bertsch,  
24 identified that Lynita possessed over \$2,000,000.00 in cash prior to the initiation  
25 of the Divorce Proceedings. See Notice of Filing Income and Expense Reports for  
26  
27  
28



1 Lynita Nelson for the Period of January 1, 2011, through March 31, 2013,  
2 attached as Exhibit 1 to 2 Appendix. Consequently, Lynita's contention that the  
3 ELN Trust seeks to ensure that she receives "nothing" does not comport with  
4 evidence or reality.  
5

### 6 III.

#### 7 LEGAL ARGUMENT

8  
9 **1. The District Court exceeded its jurisdiction and erred as a matter of  
10 law by ordering the ELN Trust to distribute its assets to pay Eric's  
11 child and spousal support in contravention of NRS Chapter 21,  
12 Nevada's self-settled spendthrift trust statutes.**

13 Lynita contends, without citation to any legal authority, that the District  
14 Court did not err in ordering that Eric's spousal support obligation and child  
15 support arrearages be paid from the ELN Trust because the District Court found  
16 that it could have invalidated the ELN Trust."<sup>2</sup> Herein lies the problem: the  
17 District Court did not invalidate the ELN Trust. Consequently, the ELN Trust is  
18 afforded the protections contained within NRS Chapter 21 and Nevada's self-  
19 settled spendthrift trust statutes.  
20  
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23  
24 <sup>2</sup> In so doing, Lynita completely ignores the numerous cases and statutes cited  
25 in the Petition for Writ of Prohibition, including Mr. Dickerson's Memorandum to  
26 Nevada Senate Committee on Judiciary, that Nevada "has no statutory language  
27 allowing for a spouse or child to be an exception creditor of the [spendthrift] trust"  
28 and that "there has never been an effort to address the effect of this type of trust on  
domestic support obligations." See document entitled "Memorandum from Robert  
P. Dickerson in Support of AB378 dated May 7, 2013, attached as Exhibit 8 to the  
Appendix.

1           Lynita would also have this Court believe that the ELN Trust is not entitled  
2 to any protection under Nevada’s self-settled spendthrift trust statutes because  
3  
4 “the District Court essentially found that the ELN and LSN Trusts were Eric’s  
5 alter egos.” This contention is not true and unsupported by the record. First, as  
6  
7 indicated *supra*, the District Court never found that either the ELN or LSN Trust  
8 were the alter ego of Eric and it never even used those words in the 50 page  
9 Divorce Decree. More importantly, however, is the fact that the District Court did  
10 not invalidate the ELN Trust or LSN Trust because: “invalidation of the Trusts  
11 could have serious implications for both parties in that it could expose the assets  
12 to the claims of creditors, thereby, defeating the intent of the parties to  
13 “supercharge” the protection of the assets from creditors.” *See* 1 Appx., Ex. 1 at  
14 29:15-18. Simply put, the District Court wanted to protect the ELN Trust and  
15 LSN Trust, for reasons, including, but not limited to, protecting trust assets from  
16 the claims of creditors.  
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21           Notwithstanding the foregoing, Lynita also contends that even if the District  
22 Court erroneously relied upon foreign statutes, which it clearly did, *see, e.g.*, 1  
23 Appx., Ex. 1 at 40:6-41:19, “such errors would be clearly harmless and should not  
24 provide a basis for relief to Petitioner” under NRCP 61. Lynita’s position that any  
25 errors by the District Court did not “affect the substantial rights of the Parties”  
26  
27 defies logic. Indeed, not only did the District Court rely upon foreign statutes, but  
28

1 it completely disregarded/ignored numerous Nevada statutes, including, but not  
2 limited to, NRS 21.080, NRS 163.147, NRS 166.120 and NRS 166.130, all of  
3 which affect the substantial rights of the ELN Trust, including its beneficiaries,  
4 Eric and Lynita's children. For these reasons, and those set forth in the Petitioner  
5 for Writ of Prohibition, the District Court exceeded its jurisdiction and erred as a  
6 matter of law by directing the ELN Trust to pay Eric's spousal support obligations  
7 and child support arrearages.  
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11 **2. Nola Harber, the Successor Distribution Trustee of the ELN Trust has**  
12 **standing to maintain the instant Petition for Writ of Prohibition.**

13 Instead of directly responding to the question presented in the Petition for  
14 Writ of Prohibition, Lynita spends the bulk of her 28 page Answer making a  
15 technical argument that Nola Harber, the current Distribution Trustee of the ELN  
16 Trust, lacks standing to maintain the instant Petition, and as such, the Petition  
17 should be denied. Lana Martin, the prior Distribution Trustee of the ELN Trust,  
18 resigned on or around June 10, 2013. *See* Notice of Substitution of Distribution  
19 Trustee, attached as Exhibit 2 to the 2 Appendix. Pursuant to the Change of  
20 Trusteeship for the ELN Trust dated June 8, 2011, Jeffrey Burr, Esq. appointed  
21 Ms. Harber to serve as the Successor Distribution Trustee of the ELN Trust in the  
22 event that Ms. Martin became "deceased, unable or unwilling to serve as the  
23 current Distribution Trustee." *See id.* Ms. Harber accepted the appointment of  
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1 Distribution Trustee, and Eric, the Investment Trustee of the ELN Trustee,  
2 authorized and delegated Ms. Harber to defend, maintain and pursue any and all  
3 actions on behalf of the ELN Trust. *See id.* A Notice of Substitution of  
4 Distribution Trustee was filed with the District Court on July 16, 2013. *See id.*  
5

6  
7 Since Ms. Martin resigned as Distribution Trustee, Ms. Harber is the only  
8 one authorized to bring the Petition for Writ of Prohibition as she is the real party  
9 in interest. *See, e.g.,* NRCP 17(a) (“Real Party in interest. Every action shall be  
10 prosecuted in the name of the real party in interest. An executor, . . . trustee of an  
11 express trust, . . . may sue in that person’s own name without joining the party for  
12 whose benefit the action is brought; . .”). As Lynita recognized in her Answer, “it  
13 is the trustees, rather than the trust itself that is entitled to bring suit.” *Causey v.*  
14 *Carpenters So. Nev. Vacation Trust*, 95 Nev. 609, 610, 600 P.2d 244, 245 (1979).  
15  
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17  
18 Contrary to Lynita’s contention, a motion for substitution pursuant to  
19 NRCP 25(c) is unnecessary in the context of a trust because there has been no  
20 “transfer of interest” because the Distribution Trustee of the ELN Trust, is still the  
21 party to the litigation, albeit the person serving in the capacity of Distribution  
22 Trustee has changed. The resignation of Ms. Martin is akin to when a public  
23 officer “dies, resigns, or otherwise ceases to hold office,” *see* NRCP 25(d)(1), at  
24 which time the “officer’s successor is automatically substituted as a party.”  
25  
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28 (Emphasis Added). No motion is required. Although “[a]n order of substitution

1 may be entered at any time, [] the omission to enter such an order shall not affect  
2 the substitution.” *See id.*

3  
4 The fact that Ms. Harber has substituted as Distribution Trustee is of no  
5 consequence to any of the Parties in the litigation because “[a] successor takes  
6 over without any other change in the status of the case.” *Brook, Weiner, Sered,*  
7 *Kreger & Weinberg v. Coreq, Inc.*, 53 F.3d 851, 852 (7th Cir. 1995). Indeed, Ms.  
8 Harber’s status in the litigation, tracks the positions of Ms. Martin.<sup>3</sup> *See id.* For  
9 these reasons, Ms. Harber has standing to file the instant Petition for Writ of  
10 Prohibition.<sup>4</sup>

11  
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14 **3. This ELN Trust satisfied the requirements for issuance of the Petition**  
15 **for Writ of Prohibition.**

16 Despite the fact that this Court has already stated that after reviewing the  
17 Petition for Writ of Prohibition, “it appears that petitioners have set forth issues or  
18 arguable merit and petitioners have no adequate remedy in the ordinary course,”

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21 <sup>3</sup> As such, Lynita’s contention that “Eric could have the Distribution Trustee  
22 of the ELN Trust changed continuously to avoid compliance with the District  
23 Court’s Decree” is simply not true.

24 <sup>4</sup> In the event that Lynita is correct in the ELN Trust was required to file a  
25 formal motion of substitution, the Petition for Writ of Prohibition should not be  
26 dismissed because NRCP 17(a) specifically provides that: “No action shall be  
27 dismissed on the ground that it is not prosecuted in the name of the real party in  
28 interest until a reasonable time has been allowed after objection for ratification of  
commencement of the action by, or joinder or substitution of, the real party in  
interest; and such ratification, joinder, or substitution shall have the same effect as  
if the action had been commenced in the name of the real party in interest.”

1 see June 21, 2013, Order Directing Answer and Granting Temporary Stay, Lynita  
2 erroneously contends that the ELN Trust has not satisfied the requirements for  
3 issuance of a writ because the ELN Trust: (1) has failed to demonstrate that the  
4 District Court exercised judicial functions “in excess” of its jurisdiction; and (2)  
5 has a plain, speedy and adequate remedy in the ordinary course of law: an appeal.  
6  
7 Contrary to Lynita’s contention, the ELN Trust has demonstrated that  
8 extraordinary relief is warranted.  
9

10  
11 First, the Petition for Writ of Prohibition specifically demonstrates that the  
12 District Court exceeded its jurisdiction because it was contrary to Nevada law for  
13 the District Court to direct the ELN Trust to pay Eric’s personal obligations; NRS  
14 166.120 makes the beneficiary’s interest unreachable by legal process; and NRS  
15 21.080 provides that the beneficiary’s interest is not subject to execution. Lynita’s  
16 Counsel conceded this fact in his memorandum to the Nevada Senate Committee  
17 on Judiciary. See 1 Appendix, Ex. 8. “A writ of prohibition serves to stop a  
18 district court from carrying on its judicial functions when it is acting outside its  
19 jurisdiction.” *Sonia F. v. Eighth Judicial Dist. Court*, 125 Nev. 495, 498, 215  
20 P.3d 705, 707 (2009) citing *Westpark Owners' Ass'n v. Dist. Ct.*, 123 Nev. 349,  
21 356, 167 P.3d 421, 426 (2007). Here, a writ should issue because the District  
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1 Court clearly exceeded its jurisdiction to direct the ELN Trust to pay Eric's  
2 personal obligations.<sup>5</sup>  
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4 Second, the ELN Trust does not have a plain, speedy or adequate remedy.  
5 The fact that an appeal will eventually be available from the final judgment does  
6 not preclude issuance of the writ, *G. & M. Properties v. Second Judicial Dist.*  
7 *Court In & For Washoe Cnty.*, 95 Nev. 301, 304, 594 P.2d 714, 715-16 (1979)  
8 citing *Public Service Comm. v. Court*, 61 Nev. 245, 123 P.2d 237 (1942) (writ  
9 issued because right to appeal was not speedy nor adequate), particularly in  
10 circumstances where the court has exceeded its jurisdiction and the challenged  
11 order is not appealable. *Id.* citing NRAP 3A(b); *Clack v. Jones*, 62 Nev. 72, 140  
12 P.2d 580 (1943). The cases cited by Respondents stand for the proposition that a  
13 right to appeal "is generally an adequate legal remedy that precludes writ relief"  
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19 <sup>5</sup> Lynita seems to contend that the District Court could disregard/ignore  
20 Nevada's self-settled spendthrift statutes because the Distribution Trustee  
21 voluntarily appeared in the divorce proceeding. Such contention defies logic and  
22 is unsupported by fact or law. The ELN Trust was forced to make an appearance  
23 because the District Court sought the adjudicate the assets of the ELN Trust  
24 without affording it an opportunity to defend itself. Indeed, as admitted by the  
25 Parties: "complete relief cannot be accorded among the parties without the [ELN  
26 Trust and LSN Trust] being named a party and the disposition of the action in the  
27 absence of the [ELN Trust and LSN Trust] will impair or impede its ability to  
28 protect its interests and add risk of incurring double, multiple, or otherwise  
inconsistent obligations." *See* Stipulation and Order dated August 9, 2011 at 2:23-  
3:9, attached as Exhibit 2 to the 1 Appendix.

1 because the parties could currently file an appeal or do so within a relatively short  
2 time-frame;<sup>6</sup> however, the facts in this matter establish that an appeal is not either  
3  
4 a plain, speedy or adequate remedy.

5           Since the Divorce Decree is not a final judgment it is not appealable. To  
6  
7 make matters worse, it is unclear when Petitioners will be afforded the right to file  
8 an appeal because Respondents are seeking to re-open discovery and have another  
9  
10 trial on the Wyoming Downs transaction:

11           . . . Lynita requests this Court re-open this case and permit discovery  
12 concerning the transaction involving Dynasty Development  
13 Management, LLC, Wyoming Racing, LLC, and the purchase an  
14 interest in Wyoming Racing, LLC a horse racing track and RV park  
15 for \$440,000.00 which occurred in or about January 2013, as well as  
16 the current status of this asset, so that a separate trial date can be set to  
17 make a determination as to the disposition of this asset. *See*  
18 Defendant’s Motion to Amend or Alter Judgment, for Declaratory and  
19 Related Relief at 10:23-11:5, attached as Exhibit 4 to the Appendix.

20 If such relief is granted, it could be another year before the Divorce Decree  
21 becomes final and Petitioner is afforded the opportunity to file an appeal.

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22 <sup>6</sup> *Pan v. Eight Judicial Dist. Court ex rel. Cnty. of Clark*, 120 Nev. 222, 225,  
23 88 P.3d 840, 841 (2004) (“Because this petition challenges a district court order  
24 that dismissed petitioners complaint, which is a final, appealable judgment under  
25 NRAP 3A(b)(1), writ relief is inappropriate”); *Bowler v. First Judicial Dist. Court*  
26 *of State, in & for Churchill Cnty.*, 68 Nev. 445, 234 P.2d 593 (1951) (since action  
27 should be subject to speedy determination and since jurisdiction to appoint a  
28 receiver was not clearly lacking, issuance of writ of prohibition was not required,  
particularly since appeal would lie from order appointing receiver or from order  
refusing to vacate order of appointment).



1 If the Petition for Writ of Prohibition is denied the ELN Trust will not have  
2 an adequate remedy at law. Indeed, if the ELN Trust is successful on appeal and  
3 this Court confirms that the District Court exceeded its jurisdiction by ordering a  
4 Nevada self-settled spendthrift trust to repay the debts of a beneficiary, then the  
5 money will have been consumed by Lynita, whose assets are all in the LSN Trust  
6 and not subject to her liabilities. For these reasons, this Court should grant the  
7 Petition for Writ of Prohibition.  
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11 **4. The District Court rejected Lynita’s judicial estoppel argument and so**  
12 **should this Court.**

13 Lynita seeks to have this Court apply judicial estoppel even though she  
14 concedes that the District Court did not apply the doctrine in its Divorce Decree.  
15 “[J]udicial estoppel is an extraordinary remedy that should be cautiously applied.  
16 *Mainor v. Nault*, 120 Nev. 750, 765, 101 P.3d 308, 318 (Nev. 2004). In Nevada,  
17 judicial estoppel applies when the following five criteria are met:  
18  
19

20 (1) the same party has taken two positions; (2) the positions were  
21 taken in judicial or quasi-judicial administrative proceedings; (3) the  
22 party was successful in asserting the first position (*i.e.*, the tribunal  
23 adopted the position or accepted it as true); (4) the two positions are  
24 totally inconsistent; and (5) the first position was not taken as a result  
25 of ignorance, fraud, or mistake.<sup>7</sup>

26  
27 <sup>7</sup> *Marcuse v. Del Webb Communities, Inc.*, 13 Nev. 278, 287, 163 P.3d 462,  
28 468-469 (Nev. 2007) (judicial estoppel was applied because party took “totally  
inconsistent positions in separate judicial proceedings.”)

1 Here, judicial estoppel cannot apply because: (1) the same party has not  
2 taken two positions; and (2) the Court did not accept and/or adopt Eric's prior  
3 testimony. Eric and the ELN Trust are not the same party, and as such, testimony  
4 elicited by Eric in his individual capacity cannot and does not bind the ELN Trust.  
5 Further, Eric's testimony regarding the character of property owned by the ELN  
6 Trust is incompetent and irrelevant because the personal opinion of either spouse  
7 as to separate or community character of property is of no moment whatsoever in  
8 determining legal status of that property. Since his prior testimony is  
9 incompetent, Eric has not taken inconsistent positions.  
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14 Lynita's reliance on judicial estoppel also fails because this Court has not  
15 adopted or accepted Eric's prior testimony as true. The Court has not made a  
16 determination as to whether the property owned by the ELN Trust was  
17 community, separate or neither. To the contrary, the District Court made it clear  
18 that Eric's "opinion as to whether property is community or separate is not  
19 controlling."<sup>8</sup> As such, judicial estoppel cannot apply.  
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23 Lynita's reliance upon collateral estoppel is similarly misplaced, as the  
24 issue(s) decided in the Bankruptcy Petition are not identical to the District Court's  
25 ruling in the Divorce Decree. Indeed, the U.S. Bankruptcy Court, District Court of  
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27 <sup>8</sup> See Findings of Fact and Order previously filed on January 31, 2012 at  
28 6:25-26, attached as Exhibit 3 to the 2 Appendix.

1 Nevada, never addressed whether the \$1,568,000.00 could be used to satisfy the  
2 personal obligations of Eric in contravention of NRS 21.080, NRS 163.147, NRS  
3 166.120 and NRS 166.130. To the contrary, the issues decided by the U.S.  
4 Bankruptcy Court, District Court of Nevada, were limited solely to whether: (1)  
5 the \$1,568,000.00 was property of the bankruptcy estate; and (2) the District  
6 Court had jurisdiction over said funds. Since the issues are not identical,  
7 collateral estoppel does not apply.

11 **5. The ELN Trust has not accepted any benefits of the Divorce Decree.**

12 Lynita's contention that the ELN Trust is not entitled to post-judgment  
13 because it purportedly accepted certain benefits of the Divorce Decree in order to  
14 gain an unfair advantage also lacks merit as the ELN Trust has not accepted any  
15 benefit. Pursuant to the Divorce Decree, the \$1,568,000.00 that was previously  
16 being held in an enjoined blocked account was released to the ELN Trust, as the  
17 Divorce Decree confirmed that the funds belonged to the ELN Trust. *See Appx. 1*  
18 *at 48:6-9.* Indeed, the funds were the sale proceeds of an asset that was wholly  
19 owned by the ELN Trust.  
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24 Although unclear, it appears that Lynita's position is because the District  
25 Court dissolved the injunction pertaining to the \$1,568,000.00 and such funds  
26 were released to the ELN Trust, is somehow inconsistent with the issue raised in  
27 the ELN Trust's Petition for Writ of Prohibition. The ELN Trust's position has  
28


1 always been that such funds were neither the community nor separate property of  
2 Eric or Lynita, but rather the assets of the ELN Trust. The fact that the funds were  
3 released to the ELN Trust after the injunction was dissolved is not inconsistent  
4 with its position in the Petition of Writ of Prohibition.  
5

6  
7 **VI.**

8 **CONCLUSION**

9  
10 For the reasons set forth below, and those raised in the Petition for Writ of  
11 Prohibition, the ELN Trust respectfully requests that this Court enter its writ  
12 prohibiting enforcement of the June 19, 2013, Order and portions of the Divorce  
13 Decree in which the District Court orders the ELN Trust to pay the personal  
14 obligations of its beneficiary.  
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16  
17 Respectfully submitted this 22<sup>nd</sup> day of July, 2013.

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20   
21 \_\_\_\_\_  
22 MARK A. SOLOMON, ESQ., NSB 0418  
23 E-mail: [msolomon@sdfnlaw.com](mailto:msolomon@sdfnlaw.com)  
24 JEFFREY P. LUSZECK, ESQ., NSB 9619  
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26 **SOLOMON DWIGGINS & FREER, LTD.**  
27 9060 W. Cheyenne Avenue  
28 Las Vegas, Nevada 89129  
Telephone: (702) 853-5483  
Attorneys for Petitioner, Nola Harber as  
Distribution Trustee of the ELN Nevada Trust

1 VERIFICATION BY AFFIDAVIT

2 STATE OF NEVADA )  
3 ) SS:  
4 COUNTY OF CLARK )

5 Dana A. Dwiggins, Esq. hereby deposes and states under penalty of perjury:

6  
7 1. I am a partner at the law firm of Solomon Dwiggins & Freer, Ltd.,  
8 Counsel for Petitioner. I am over the age of 18 years and have personal  
9 knowledge of the facts stated herein, except for those stated upon information and  
10 belief, and as to those facts, I believe them to be true.  
11

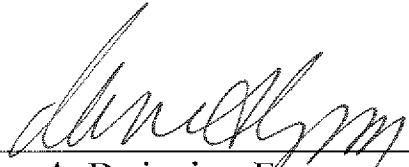
12 2. This Petition for Writ of Prohibition addresses the issue of whether  
13 the District Court erred as a matter of law and exceeded its jurisdiction by  
14 ordering the ELN Trust to pay Eric's spousal support obligation and child support  
15 arrearages based upon statutes from other jurisdictions and in contravention of  
16 Nevada law.  
17  
18

19 3. Since there is a NRCP 59(e) motion pending, an appeal is premature  
20 thereby leaving no other plain, adequate, and speedy remedy available to  
21 Petitioner.  
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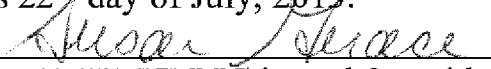
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4. I certify and affirm that this Petition for Writ of Prohibition is made in good faith and not for purposes of delay.

Dated this 22<sup>nd</sup> day of July, 2013.

  
\_\_\_\_\_  
Dana A. Dwiggin, Esq.

SUBSCRIBED and SWORN to before me this 22<sup>nd</sup> day of July, 2013.

  
\_\_\_\_\_  
NOTARY PUBLIC in and for said County and State

