

1 IN THE  
2 SUPREME COURT OF THE STATE OF NEVADA

3 ESTATE OF MICHAEL DAVID  
4 ADAMS, BY AND THROUGH HIS  
5 MOTHER JUDITH ADAMS,  
6 INDIVIDUALLY AND ON BEHALF  
7 OF THE ESTATE,

8 Petitioner,

9 v.

10 FIFTH JUDICIAL DISTRICT  
11 COURT, NYE COUNTY, NEVADA,

12 Respondent,

13 and

14 SUSAN FALLINI,

15 Real Party in Interest.

Supreme Court No.:

District Court Case No.: CV2014-00000  
Electronically Filed  
Nov 03 2014 03:56 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

**RESPONSE TO ORDER TO SHOW  
CAUSE**

16 Petitioner, Estate of Michael David Adams, by and through his mother Judith  
17 Adams (hereinafter "Petitioner" or "Adams"), by and through its attorney of record,  
18 John P. Aldrich, Esq., of the Aldrich Law Firm, Ltd., hereby files this response to the  
19 Order to Show Cause issued on October 9, 2014, requiring Petitioner to show cause  
20 why this writ petition should not be summarily denied.

21 Petitioner respectfully submits this response.

22 Dated this 3<sup>rd</sup> day of November, 2014.

**ALDRICH LAW FIRM, LTD.**

23  
24 /s/John P. Aldrich  
25 John P. Aldrich, Esq.  
26 Nevada Bar No. 6877  
27 1601 S. Rainbow Blvd., Suite 160  
28 Las Vegas, Nevada 89146  
(702) 853-5490  
*Attorneys for Petitioner*



1 Finally, the District Court erred when it made findings and conclusions that  
2 were contrary to the admissions made by Fallini pursuant to NRCPC 36 nearly seven  
3 years before the hearing on Fallini's Motion to Set Aside Judgment Pursuant to  
4 NRCPC 60(b). Those admissions were made in 2007 and remain as admissions in this  
5 case, as affirmed by the Nevada Supreme Court.

6 **B. This Court Should Exercise Its Inherent Power, and Both Consider and  
7 Grant This Writ Petition**

8 This Court has the constitutional prerogative to entertain the writ petition, even  
9 if there is the availability of an adequate legal remedy. Ashokan v. Nevada Dep't of  
10 Ins., 109 Nev. 662, 667, 856 P.2d 244, 247 (1993)(citing NEV. CONST. art. 6, § 4;  
11 Jeep Corp. v. District Court, 98 Nev. 440, 443, 652 P.2d 1183, 1185 (1982) (where  
12 circumstances reveal urgency or strong necessity, extraordinary relief may be  
13 granted); State of Nevada v. McCullough, 3 Nev. 202, 214-15 (1867)). "The decision  
14 as to whether a petition [for a writ] will be entertained lies within the discretion of  
15 this court." Id. (quoting State ex rel. Dep't Transp. v. Thompson, 99 Nev. 358, 360,  
16 662 P.2d 1338, 1339 (1983)).

17 A writ of mandamus may be issued to compel the performance of an act that  
18 the law requires as a duty resulting from an office, trust or station, or to control an  
19 arbitrary or capricious exercise of discretion. See State ex rel. Dep't Transp. v.  
20 Thompson, 99 Nev. 358, 662 P.2d 1338 (1983); Round Hill Gen. Imp. Dist. v.  
21 Newman, 97 Nev. 601, 637 P.2d 534 (1981). A writ of prohibition, in turn, is the  
22 "proper remedy to re-strain a district [court] from exercising a judicial function  
23 without or in excess of its jurisdiction." Smith v. District Court, 107 Nev. 674, 677,  
24 818 P.2d 849, 851 (1991).

25 The Ashokian case is instructive for the Court's consideration of this writ  
26 petition. In Ashokian, the petitioner was an anesthesiologist who sought to prohibit  
27 the use of a confidential report that said he had used "very poor" judgment during a  
28 procedure. 109 Nev. at 664. The plaintiff/respondent had attached the report to a

1 complaint filed before the Medical-Legal Screening Panel. Id. The Panel declined  
2 to strike the report and the petitioner later petitioned the district court to issue a writ  
3 of mandamus ordering the panel to strike the report. Id. The district court denied the  
4 petition. Id. The petitioner did not file a notice of appeal. Rather, forty-nine days  
5 after the district court denied his writ petition, the petitioner filed an original  
6 proceeding before the Nevada Supreme Court seeking a writ of mandamus or  
7 prohibition. Id.

8 The Court specifically found that the then-current versions of NRS 2.090(2)  
9 and NRAP 3A(b)(1) conferred direct appellate jurisdiction over the district court's  
10 order, stating:

11 Therefore, we conclude that the district court did have jurisdiction to  
12 hear [petitioner]'s claim that the sub-committee report was privileged,  
13 and the proper procedure for bringing the issue before this court was via  
14 appeal of the district court order denying the writ.

15 Id. at 666-67. The respondent argued that the Court should not consider the petition  
16 because the petitioner "could have secured adequate legal redress in the ordinary  
17 course of law simply by appealing the district court's denial of a writ." Id. at 665. On  
18 the other hand, the petitioner argued that he "was not required to appeal the order of  
19 the district court because the district court did not have jurisdiction to entertain the  
20 original petition for mandamus." Id. at 666. The Court further explained the  
21 petitioner's argument:

22 If the district court did not have jurisdiction to entertain the petition for  
23 mandamus, proceedings before the district court would be a nullity, and  
24 [petitioner] would not be required to appeal from a void order. Under  
25 this view, [petitioner]'s only recourse would have been to bring original  
26 proceedings for prohibition or mandamus in this court.

27 Id. Finally, the Court noted the following in a footnote:

28 Assuming that the district court did not have jurisdiction to entertain the  
writ, an appeal to this court would have been fruitless because this court  
would merely have acknowledged that a writ could not issue from the  
district court.

Id. at fn 1. The Court then considered the petition. The District Court did not have

1 jurisdiction to consider Fallini's motion to set aside judgment. Consequently, the  
2 order granting the Motion is void, and this writ petition is proper. Id. at 667-70.

3 Another case in which this Court exercised its discretion to consider a writ  
4 petition where there was a direct right of appeal is Diaz v. District Court, 116 Nev.  
5 88, 993 P.2d 50 (2000). In Diaz, a reporter invoked the protections of Nevada's news  
6 shield statute to protect against compelled disclosure of information he gathered  
7 while investigating a car accident. Id. at 90. After noting that this Court could  
8 conclude that petitioner had a plain, speedy and adequate remedy at law, "where an  
9 important issue of law needs clarification and public policy is served by this court's  
10 invocation of its original jurisdiction, . . . consideration of a petition for extraordinary  
11 relief may be justified." Id. at 93 (citing Business Computer Rentals v. State Treas.,  
12 114 Nev. 63, 67, 953 P.2d 13, 15 (1998)). Because the Diaz case provided "a unique  
13 opportunity to define the precise parameters of [a] privilege' conferred by a statute  
14 that this court has never interpreted," the court considered the petition. Diaz, 116  
15 Nev. at 93 (quoting Ashokan, supra).

16 Finally, the Business Computer Rentals case presented another scenario that  
17 justified this Court exercising its discretion to consider a writ petition due to the  
18 pressing constitutional and public policy issues involved in the petition. Business  
19 Computer Rentals, 114 Nev. at 67. Despite the fact that the petitioner could have  
20 "pursued alternative avenues of relief," this Court accepted and considered the  
21 petition. Id.

22 The constitutional issue in Business Computer Rentals was whether a computer  
23 lease entered into by the State Treasurer created a "public debt" under the Nevada  
24 Constitution. A similar constitutional concern exists in this case. As explained in the  
25 Petition, Real Party in Interest Fallini had already litigated the issues upon which the  
26 District Court based its ruling at least twice already – once on direct appeal and once  
27 before a different department in Nye County. The District Court also erred by setting  
28 aside the judgment against Fallini for a myriad of substantive reasons, despite the fact

1 that this Court had already ruled on them and the District Court had no jurisdiction.

2 In short, the District Court did not have jurisdiction to overrule the Nevada  
3 Supreme Court's Order Affirming in Part, Reversing in Part, and Remanding, entered  
4 on March 29, 2013 or to set aside the judgment that this Court affirmed. Having done  
5 so, the District Court violated the Nevada Constitution. NEV. CONST. art. 6, § 4  
6 This Court has entertained writs when jurisdictional (i.e., the power of the court to act  
7 in a case) issues are involved. See Budget Rent-A-Car, 108 Nev. 483, 835 P.2d 17  
8 (1992)(Supreme Court issued writ of prohibition restraining the district court from  
9 exercising jurisdiction over petitioner).

10 Further, there is a strong public policy that parties not be allowed to intimidate  
11 judges. As explained in the Petition, Fallini brought a slew of "friends" (60-70  
12 ranchers) to the hearing on her Motion to Set Aside for the sole purpose of  
13 intimidating the District Court in an election year. Fallini and her counsel should not  
14 be permitted to exert power or influence on the Court through such shenanigans.  
15 There is a strong public policy that this type of activity be stopped.

16 **C. Petitioner's Attorney, a Non-Party, Is Also Affected by the District  
17 Court's Ruling**

18 The writ petition is also appropriate because the District Court's finding is  
19 actually a finding against Petitioner's counsel, and Petitioner's counsel, as a non-  
20 party, has no appeal rights. The District Court granted Fallini's motion to set aside  
21 default judgment and set aside Petitioner's four-year-old judgment based on an  
22 allegation of fraud on the court by Petitioner's counsel – when there was no fraud  
23 whatsoever – despite the fact that the issue had already been argued and decided by  
24 this Court as part of Real Party in Interest Fallini's first appeal. Petitioner's counsel  
25 did not commit fraud, and his reputation has been harmed, yet he has no appellate  
26 rights. Further, there could be monetary and other consequences that result from such  
27 a finding. Finally, the stigma that accompanies a finding of fraud on the court is very  
28 real, and is akin to – and at least as serious as – monetary sanctions. Because

1 Petitioner's counsel is a non-party, this writ petition is proper and the Court should  
2 exercise its discretion to consider and then grant the Petition. Albany v. Arcata  
3 Assoc., Inc., 106 Nev. 688, 799 P.2d 566 (1990)(noting that an attorney who had  
4 been sanctioned by the district court "may have no speedy, adequate remedy in the  
5 ordinary course of law").

6 **CONCLUSION**

7 For the foregoing reasons, the Supreme Court should consider and grant this  
8 Writ Petition.

9 DATED this 3<sup>rd</sup> day of November, 2014.

10 **ALDRICH LAW FIRM, LTD.**

11  
12 /s/John P. Aldrich  
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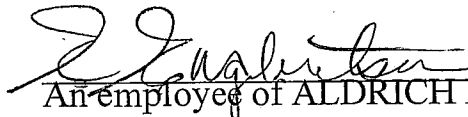
1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 3<sup>rd</sup> day of November, 2014, I mailed a  
3 copy of the foregoing **RESPONSE TO ORDER TO SHOW CAUSE**, in a sealed  
4 envelope, to the following address and that postage was fully paid thereon:

5 The Honorable Robert W. Lane  
6 Fifth Judicial District Court, Dept. 2  
7 1520 East Basin Avenue, #105  
8 Pahrump, NV 89060  
9 *Respondent*

10 John Ohlson, Esq.  
11 275 Hill Street, Suite 230  
12 Reno, NV 89501  
13 *Attorney for Real Party in Interest*

14 David R. Hague, Esq.  
15 FABIAN & CLENDENIN  
16 215 S. State Street, Suite 1200  
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An employee of ALDRICH LAW FIRM, LTD.