

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

2
3 ELAINE P. WYNN,

4 Petitioner,
5 vs.

6 THE EIGHTH JUDICIAL DISTRICT
7 COURT OF THE STATE OF
8 NEVADA, IN AND FOR THE
9 COUNTY OF CLARK; AND
10 THE HONORABLE ELIZABETH
11 GONZALEZ, DISTRICT JUDGE,

12 Respondent,

13 WYNN RESORTS, LIMITED, a
14 Nevada Corporation,

15 Real Party in Interest.

Case No. 71432

Electronically Filed
Jun 29 2017 08:40 a.m.

**NOTICE OF INTENT TO
RESPOND TO PETITIONER'S
MOTION TO VOLUNTARILY
DISMISS WRIT PETITION**

16 Real Party in Interest, Wynn Resorts Limited ("Wynn Resorts") gives notice
17 of its intent to respond, pursuant to NRAP 27(a)(3), to Petitioner's Motion to
18 Voluntarily Dismiss Writ Petition. Through her motion, Petitioner Elaine P. Wynn
19 ("Ms. Wynn") seeks the unconditional dismissal of her writ petition after full briefing
20 and this Court's announced intent to hold oral argument. NRAP 42(b) provides that
21 an appeal may be dismissed only "on terms agreed to by the parties or fixed by the
22 court." Although not disclosed in her Motion, Wynn Resorts proposed reasonable
23 terms for a dismissal so as to protect it from prejudice. Those terms were met with
24 Ms. Wynn's present Motion which seeks dismissal without any terms so as to permit
25 her to strategically re-advance the very same positions when more opportune for her.

26 Wynn Resorts intends to brief the propriety of such strategic voluntary
27 dismissals as well as the terms contemplated by Rule 42 so as to protect Wynn
28 Resorts from prejudice in the event of dismissal. *See Alberts v. Eli Lilly & Co.*, 354
F.3d 644, 646 (7th Cir. 2004) (Voluntary dismissal of appeal is not automatic,
particularly where the dismissal is sought late in the process as part of strategic

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1 maneuvering); *see also In re Nexium Antitrust Litig.*, 778 F.3d 1, 2 (1st Cir. 2015)
2 (party not allowed to voluntarily dismiss interlocutory appeal after significant
3 investment of resources so as to be free to reassert the position later in a different
4 forum).

5
6 DATED this 28th day of June, 2017.

7 PISANELLI BICE PLLC

8
9 By: /s/ Todd L. Bice
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of PISANELLI BICE PLLC, and that on this 28th day of June, 2017, I filed and served via the Court's eFlex electronic filing system and via United States mail, a true and correct copy of the above and foregoing **NOTICE OF INTENT TO RESPOND TO PETITIONER'S MOTION TO VOLUNTARILY DISMISS WRIT PETITION** properly addressed to the following:

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The Honorable Elizabeth Gonzalez
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/s/ Shannon Dinkel
An employee of Pisanelli Bice PLLC