

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHARATH CHANDRA,  
ADMINISTRATOR, NEVADA REAL  
ESTATE DIVISION,

Appellant,

vs.

MELANI SCHULTE; AND WILLIAM R.  
SCHULTE,

Respondents.

Electronically Filed  
Supreme Court No. 75477  
Jun 28 2018 03:57 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**RESPONSE TO ORDER TO SHOW CAUSE**

Appellant, the Administrator of the Real Estate Division, Department of Business & Industry, State of Nevada (“Division”), hereby responds to this Court’s June 21, 2018 Order to Show Cause.

**INTRODUCTION**

This Court has ordered the Division to show cause why this appeal should not be dismissed based on potential jurisdictional defects. Specifically, this Court has ordered the Division to address four queries of concern:

1. Whether the Orders Directing Payment Out of the Education Research and Recovery Fund (“Fund Orders”) are appealable as final judgments under NRAP 3A(b)(1).

2. Whether the Division was a party to the underlying case such that it may file an appeal from the Fund Orders.
3. Whether the Division is aggrieved by the monetary judgments against respondent William R. Schulte.
4. Whether the Division's Notice of Appeal was timely filed.

While recognizing that this may not be a typical appeal due the statutory scheme set forth in NRS 645.841 to 645.8494, the Division contends that the above questions should be answered in the affirmative.

### **STATEMENT OF THE CASE**

The Division operates the Real Estate Education, Research and Recovery Fund ("Fund"), which allows limited recovery by a person who has been financially harmed by a real estate licensee's fraud, misrepresentation or deceit with reference to any transaction for which a license is required pursuant NRS 645.

On or about October 25, 2017, respondent Melanie Schulte ("Ms. Schulte") filed nine Verified Petitions for an Order Directing Payment Out of the Education Research and Recovery Fund Pursuant to NRS 645.841 to 645.8494 Inclusive ("Petitions") based on judgments she had obtained against respondent William R. Schulte ("William"), her former spouse. Ms. Schulte served the Division with her Petitions, which the Division opposed in writing and at the November 30, 2017 hearing on the Petitions.

On February 20, 2018, the District Court issued nine Fund Orders, with each Fund Order corresponding to one of the nine Petitions. In each Fund Order, the District Court found that that Ms. Schulte “has met the requirements of NRS 645.841 et seq.,” granted each Petition, and *directed the Division to pay* Ms. Schulte approximately \$94,045.46 from the Fund. The District Court also specified that each Fund Order “is a final order.” On March 22, 2018, the Division filed its appeal with this Court.

## **RESPONSE**

### **I. Fund Orders are Appealable as Final Judgments**

Pursuant to NRS 645.844(1), Ms. Schulte was required to obtain “a final judgment” against William *before* she could apply for Fund relief. The Division did not become involved in (or even aware of) the underlying action until the Division was served with Ms. Schulte’s Petitions on or about November 2, 2017, which was *after* the entry dates of the divorce decrees referenced in this Court’s Order to Show Cause.

As this Court points out in the Order to Show Cause, “the petitions for orders directing payment from the fund are arguably new proceedings, and the orders resolving the petitions appealable as the final judgments in those new proceedings.” Order to Show Cause, p. 2 (citing *Rawson v. Ninth Judicial Dist. Court*, 133 Nev. Adv. Op. 44, 396 P.3d 842 (2017)). That is indeed the Division’s

position: in contrast to the Schultes' divorce proceedings, the Fund proceedings are new proceedings *under NRS 645*.

The Fund Orders resolving the Petitions are appealable as the final judgments in those new proceedings as they are the orders that disposed of the issues presented against the Division and left nothing for the future consideration of the District Court. Consequently, this appeal should *not* be dismissed for lack of jurisdiction.

## **II. The Division was a Party to the Underlying Case**

NRS 645.845(1) provides that the Administrator of the Division "may answer and defend any such action against the Fund on behalf of the Fund ...." Here, as referenced by this Court in the Order to Show Cause, Ms. Schulte *served* the Division with a copy of the Petitions, and the Division filed an opposition and appeared at the hearing on the Petitions. Moreover, the District Court ruled against the Division on the Petitions and *ordered the Division* to pay Ms. Schulte out of the Fund. The Division respectfully requests that its appeal be allowed to proceed.

## **III. The Division is Aggrieved by the Monetary Judgments**

The divorce decrees begot the monetary judgments against William, which begot the Petitions, which begot the Fund Orders. While the Division was not *initially* aggrieved by those monetary judgments, those judgments were a necessary

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prerequisite to Ms. Schulte obtaining the Fund Orders against the Division. *See* NRS 645.844(1) and (3)(b).

Because of the interrelated chains of events, in which each entry of each judgment or order was dependent on the entry of the prior order(s), the Division listed *all* those judgments and orders in its Notice of Appeal. Division counsel apologizes for any confusion this caused. Nonetheless, even if the Division was not aggrieved by the judgments against William in the manner that allowed the Division to file an appeal of those judgments, the Division was directly aggrieved by the Fund Orders. *Cf. Lee v. GNLV Corp.*, 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (“post-judgment order awarding attorney’s fees and/or costs may be appealed as a special order made after final judgment”). The appeal should therefore proceed at least as to the appeal of the Fund Orders.

#### **IV. The Notice of Appeal Was Timely Filed**

The District Court’s Fund Orders were entered on February 20, 2018, and notices of the entry of those orders were served by mail on February 21, 2018. Consequently, even if the notice of appeal was untimely as to the monetary judgments against William, the notice of appeal was timely filed on March 22, 2018, as to the Fund Orders. NRAP 4(a)(1).

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## CONCLUSION

For the foregoing reasons, the Division respectfully requests that this Court find that there is no jurisdictional defect in the proceedings or lack of jurisdiction (at least as to the appeal of the Fund Orders), and that this Court entertain the Division's appeal.

Dated: June 28, 2018.

ADAM PAUL LAXALT  
Attorney General

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## CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing *Response to Order to Show Cause* in accordance with this Court's electronic filing system and consistent with NEFCR 9 on June 28, 2018.

Participants in the case who are registered with this Court's electronic filing system will receive notice that the document has been filed and is available on the court's electronic filing system.

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The following participants in this case are not registered electronic filing systems users and will be served via United States mail, first class, postage prepaid:

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/s/ Danielle Wright  
Danielle Wright, an employee of  
the Office of the Attorney General