

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

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Mar 23 2021 09:36 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

NUVEDA, LLC,

Petitioner,

VS

EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF  
NEVADA, IN AND FOR THE  
COUNTY OF CLARK, THE  
HONORABLE ELIZABETH  
GONZALEZ, DISTRICT JUDGE,

Respondent,

SHANE TERRY, PHIL IVEY, AND  
DOTAN Y. MELECH, receiver for  
CWNEVADA, LLC, a Nevada limited  
liability company,

Real Parties in Interest.

Supreme Court Case No. TBD

Case: A-20-817363-B

Lead Case: A-17-755479-B

Other Consolidated Cases with Lead  
Case:  
A-19-791405-C and A-19-796300-B

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**PETITION FOR WRIT OF PROHIBITION OR, IN THE ALTERNATIVE,  
PETITION FOR WRIT OF MANDAMUS**

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LAW OFFICE OF MITCHELL STIPP  
MITCHELL STIPP, ESQ. (Nevada Bar No. 7531)  
1180 N. Town Center Drive, Suite 100  
Las Vegas, Nevada 89144  
Telephone: 702.602.1242  
[mstipp@stipplaw.com](mailto:mstipp@stipplaw.com)  
*Counsel for Petitioner*

## DISCLOSURE STATEMENT

### NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal:

1. NuVeda, LLC is a private, Nevada limited liability company, which owns CWNV LLC and CWNV1 LLC
2. Dr. Pejman Bady is a resident of the State of Nevada and manager of NuVeda, LLC, CWNV LLC and CWNV1 LLC
3. Mitchell Stipp, Nevada Bar No. 7531, of the Law Office of Mitchell Stipp, represents NuVeda, LLC.

DATED this 22th day of March, 2021.

LAW OFFICE OF MITCHELL STIPP



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MITCHELL STIPP, ESQ.

Nevada Bar No. 7531

1180 N. Town Center Drive  
Suite 100

Las Vegas, Nevada 89144

Telephone: (702) 602-1242

mstipp@stipplaw.com

*Counsel for Petitioner*

## **I. Jurisdictional/Routing Statement.**

Pursuant to Article 6, Section 4 of the Nevada Constitution: “[t]he court shall also have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus and also all writs necessary or proper to the complete exercise of its appellate jurisdiction.” NRS 34.160 provides that “[t]he writ [of mandamus] may be issued by the Supreme Court ... to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station ...” For more than a century, the Nevada Supreme Court has interpreted Nevada’s constitutional and statutory law to vest original jurisdiction in the Supreme Court to issue writs of mandamus. See State v. Dist. Ct., 116 Nev. 127, 994 P.2d 692 (2000) (citing State ex rel. Curtis v. McCollough, 3 Nev. 202 (1867)). Thus, the court has the constitutional and statutory authority to issue a writ of mandamus when, in the court’s discretion, circumstances warrant.

A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust or station, or to control a manifest abuse of discretion. See Beazer Homes, Nev., Inc. v. Dist. Ct., 120 Nev. 575, 97 P.3d 1132, 1135 (2004); NRS 34.160. An abuse of discretion occurs if the district court’s decision is arbitrary and capricious or if it exceeds the bounds of

law or reason. Crawford v. State, 121 P.3d 582, 585 (Nev. 2005) (citation omitted).

Petitions for extraordinary writs are addressed to the sound discretion of the Nevada Supreme Court and may only issue where there is no “plain, speedy, and adequate remedy” at law. See NRS 34.330; State ex rel. Dep’t Transp. v. Thompson, 99 Nev. 358, 662 P.2d 1138 (1983). However, “each case must be individually examined, and where circumstances reveal urgency or strong necessity, extraordinary relief may be granted.” See Jeep Corp. v. Dist. Ct., 98 Nev. 440, 443, 652 P.2d 1183, 1185 (1982) (citing Shelton v. Dist. Ct., 64 Nev. 487, 185 P.2d 320 (1947)). The Nevada Supreme Court will exercise its discretion to consider writ petitions, despite the existence of an otherwise adequate legal remedy, when an important issue of law needs clarification, and this Court’s review would serve considerations of public policy, sound judicial economy, and administration. See Dayside Inc. v. Dist. Ct., 119 Nev. 404, 407, 75 P.3d 384, 386 (2003), overruled on other grounds by, Countrywide Home Loans, Inc. v. Thitchener, 124 Nev. Adv. Op. No. 64, 192 P.3d 243 (2008).

This petition for a writ concerns the objection by Petitioner and refusal of Judge Elizabeth Gonzalez in Department 11 of the Eighth Judicial District Court, State of Nevada, to recuse herself from presiding over an evidentiary hearing on contempt, as required pursuant to NRS 22.020(3). NRS 22.020(3) provides as follows:

3. Except as otherwise provided in this subsection, if a contempt is not committed in the immediate view and presence of the court, the judge of the court in whose contempt the person is alleged to be *shall not preside at the trial of the contempt over the objection of the person*. The provisions of this subsection do not apply in:

(a) Any case where a final judgment or decree of the court is drawn in question and such judgment or decree was entered in such court by a predecessor judge thereof 10 years or more preceding the bringing of contempt proceedings for the violation of the judgment or decree.

(b) Any proceeding described in subsection 1 of [NRS 3.223](#), whether or not a family court has been established in the judicial district.

(emphasis added). There is no dispute that (a) and (b) of Sub-section 3 above do not apply in this case. Further, there is no dispute NuVeda has objected to Judge Gonzalez presiding over the evidentiary hearing.

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## **II. Petitioner's Requested Relief.**

For the reasons set forth in this Petition, the Petitioner seeks the following relief:

1. An order disqualifying Judge Gonzalez from presiding over the evidentiary hearing on contempt currently scheduled for April 5, 2021.
2. An order to the Chief Judge of Eighth Judicial District Court to randomly assign the responsibility of presiding over the evidentiary hearing to another district court judge.

## **III. Statement of the Issue Presented for Review.**

1. Whether Judge Gonzalez has discretion to deny the exercise of Petitioner's rights under NRS 22.020(3) to have another district court judge preside over an evidentiary hearing on contempt?

2. If Judge Gonzalez has discretion to deny Petitioner its rights under NRS 22.020(3), whether Judge Gonzalez abused her discretion by denying Petitioner its rights on the basis of erroneous facts?

## **IV. Statement of Facts.**

Petitioner is a defendant in Case No. A-20-817363-B. The Real Parties-in-Interest, which are Shane Terry, an individual, Phil Ivey, an individual, and the receiver for CWNevada, LLC, a Nevada limited liability company (the "Receiver"

and “CWNebraska,” respectively), filed a motion which the court in Department 11 granted seeking to revive previously dissolved limited liability companies, CWNV, LLC and CWNV1, LLC (“Predecessor Entities”). See Appendix 0004-0006 (Volume No. 1).

CWNebraska’s interest in the Predecessor Entities was terminated at the time it filed for chapter 11 bankruptcy protection (April 16, 2019—Case No. 19-12300-MKN/Chapter 11, United States Bankruptcy Court, District of Nebraska). Under the operating agreements for these Predecessor Entities, bankruptcy is a withdrawal event, which triggers the dissolution of the Predecessor Entities unless the members agree to continue their business. The termination of CWNebraska’s membership interests in and dissolution of the Predecessor Entities occurred **prior to the appointment of the Receiver** in Case No. A-18-773230-B (June 13, 2019) (“CIMA Case”), as amended by the order in Case No. A-17-755479-C (June 26, 2019) (“Receivership Action”) and again in the Receivership Action on July 10, 2019.

The order in the CIMA Case is a temporary order, which was replaced by the orders in the Receivership Action. The order in the CIMA Case included CWNV, LLC (one of the Predecessor Entities) as part of the receivership estate. See Appendix 0007-0037 (Volume No. 1). The first order in the Receivership

Action permanently appointed the Receiver but clarified that the estate consisted only of CWNevada and its assets. The second order in the Receivership Action re-appointed the Receiver and clarified that the estate consisted of CWNevada and all of its assets including ownership interests of CWNevada in any subsidiaries and affiliated entities (expressly including interests in CWNV, LLC (one of the Predecessor Entities)). See Appendix 0038-0070 (Volume No. 1). In short, CWNV, LLC (one of the Predecessor Entities) may have been “subject” to receivership between June 13, 2019 and June 26, 2019—thirteen (13) days. However, the Predecessor Entities were dissolved, and membership interests were terminated effective, as of April 16, 2019—two (2) months **before** CWNevada became subject to receivership.

The court in Department 11 has issued other orders in this case related to the Predecessor Entities. At a hearing on August 18, 2020, the court announced that the Predecessor Entities were already under the “jurisdiction of the Receiver.” See Appendix 0071-0076 (Volume No. 1) (paragraphs 5 and 6). Upon NuVeda’s motion for clarification, the court determined that the Receiver “has authority over the entities in which CWNevada is the majority interest holder.” Id. at 0076. However, the court expressly determined that actions taken by NuVeda as purported trustee “may ultimately be determined to be valid.” Id.



The court granted the Receiver permission to apply to the Nevada Secretary of State to revive the Predecessor Entities in accordance with NRS 86.580. See Appendix 0004-0006 (Volume No. 1) (paragraph 1; note use of the term “may”). Until the Predecessor Entities were revived, the court determined that Dr. Bady as manager of NuVeda “shall continue to act as trustee for [the Predecessor Entities].” Id. (paragraph 2). Predictably, the Receiver contended he had “exclusive authority” over the Predecessor Entities, and Dr. Pejman Bady as manager of NuVeda continued to assert his statutory authority as trustee under NRS 86.541(2). The court never resolved the conflict.

Dr. Bady as manager of NuVeda--trustee of the Predecessor Entities--revived the entities in accordance with NRS 86.580 on or about January 15, 2021 and merged them into two (2) entities with similar names, CWNV LLC and CWNV1 LLC (“Surviving Entities”). The Real Parties-in-Interest filed a motion for an order to show cause, but the court in Department 11 ruled that “cause was shown” why NuVeda should not be held in contempt related to actions after the revival of the Predecessor Entities (specifically the mergers). See Appendix 0077-0079 (Volume No. 1). The court in Department 11 also noted at the same time that the court had no issues with NuVeda reviving the Predecessor Entities. Id.

## **VI. Points and Authorities.**

NuVeda has objected to Department 11 presiding over the evidentiary hearing on contempt under NRS 22.020(3). See Appendix 0080-0093 (Volume No. 1) (specifically 0088-0089); see also Appendix 0097-0110 (Volume 2) (same as status check but with order shortening time). Regardless, the court in Department 11 refuses to recuse itself from presiding over the evidentiary hearing. The court determined that NuVeda waived its rights under NRS 22.020(3). See Appendix 0111-0113 (Volume 2). Even if the right to object in NRS 22.020(3) could be waived, NuVeda did not waive it by asking for a continuance as asserted by the court. NuVeda has attempted to address directly with Department 11 its erroneous findings and conclusions with no success. See Appendix 0114-0125. Again, the court still refuses to recuse itself. See Appendix 0126-0127.

Dr. Bady has not entered an appearance in the case. The Surviving Entities are **not** parties to the case. The Receiver previously asked the court to dismiss the Predecessor Entities from the case, which the court granted. See Appendix 0128-0130 (Volume No. 2). Further, the court has informed the parties that as a remedy for contempt the court may order the Nevada Secretary of State (who is also not a party) to unwind the mergers. Appendix 0111-0113 (Volume 2). The effective

date of the mergers was January 15, 2021. The mergers were not conditional. Accordingly, the mergers **cannot** be terminated under NRS 92A.175.

CWNevada does not own any membership interests in the Predecessor Entities. If CWNevada disputes that, then CWNevada can pursue its rights and remedies. There is no law to support the Receiver reviving dissolved limited liability companies in which CWNevada does not have any interest. The order permitting the Receiver to revive the Predecessor Entities is not an exclusive mandate to do so. If NuVeda's revival of the Predecessor Entities on January 15, 2021 does not violate any orders of the court, then there cannot be a violation of any court order **as a result of the mergers**. The Predecessor Entities were revived, Dr. Bady was the manager appointed by NuVeda, and NuVeda was the sole member of those entities. **NuVeda has the right under NRS 22.020(3) to have an alternative district court judge president over the evidentiary hearing.**

NuVeda is not asking the Nevada Supreme Court to set aside the minute order determining cause was shown (since that matter is not typically subject to a petition for a writ). However, the decision by the court in Department 11 to refuse to recuse itself under NRS 22.200(3) is a matter which requires the intervention of this court.

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#### **IV. Conclusion**

For the reasons set forth in this Petition, Petitioner seeks the following:

1. An order disqualifying Judge Gonzalez from presiding over the evidentiary hearing on contempt currently scheduled for April 5, 2021.
2. An order to the Chief Judge of Eighth Judicial District Court randomly to assign the responsibility of presiding over the evidentiary hearing to another district court judge.

DATED this 22nd day of March, 2021.

LAW OFFICE OF MITCHELL STIPP



MITCHELL STIPP, ESQ.

Nevada Bar No. 7531

1180 N. Town Center Drive

Suite 100

Las Vegas, Nevada 89144

Telephone: (702) 602-1242

mstipp@stipplaw.com

*Counsel for Petitioner*

## CERTIFICATE OF COMPLIANCE AND VERIFICATION

1. The petition has been prepared in a proportionally spaced typeface using Microsoft Word, Version 16.11.1, in 14 point, Times New Roman.
2. The petition does not exceed 15 pages.
3. I hereby certify that I have read the petition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this petition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 21. I understand that I may be subject to sanctions in the event that the petition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

LAW OFFICE OF MITCHELL STIPP



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MITCHELL STIPP, ESQ.  
Nevada Bar No. 7531  
1180 N. Town Center Drive  
Suite 100  
Las Vegas, Nevada 89144  
Telephone: (702) 602-1242  
mstipp@stipplaw.com  
*Counsel for Petitioner*

## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 22nd day of March, 2021, I filed the foregoing **PETITION FOR WRIT OF PROHIBITION OR, IN THE ALTERNATIVE, PETITION FOR WRIT OF MANDAMUS, and APPENDIX** using the court's electronic filing system.

Notice of the filing of the Petition and Appendix was made upon acceptance by the Nevada Supreme Court using the District Court's electronic filing system to the following e-service participants in District Court Case No. A-17-755479-B and by mail to the addresses as indicated:

**Judge Elizabeth Gonzalez:**

Dept11lc@clarkcountycourts.us

Regional Justice Center  
200 Lewis Ave.  
Las Vegas, NV 89155

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**Shane Terry, Phil Ivey, and Dotan Y Melech (Receiver) as Real Parties-in-Interest:**

Michael R. Mushkin, Esq.  
Nevada Bar No. 2421  
L. Joe Coppedge, Esq.  
Nevada Bar No. 4954  
MUSHKIN & COPPEDGE  
6070 S. Eastern Avenue, Suite 270  
Las Vegas, Nevada 89128  
Telephone: (702) 454-3333  
Fax: (702) 386-4979  
michael@mushlaw.com  
jcoppedge@mccnvlaw.com

By:   
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An employee of Law Office of Mitchell Stipp