

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

STEVEN L. DAY and STEVEN L.  
DAY, PC dba DAY & NANCE,

Petitioners,

v.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF  
NEVADA, IN AND FOR THE  
COUNTY OF CLARK, THE  
HONORABLE ADRIANA ESCOBAR,

Respondents,

WLAB INVESTMENT, LLC, TKNR,  
INC., a California Corporation, and  
CHI ON WONG aka CHI KUEN WONG,  
an individual, and KENNY ZHONG LIN,  
aka KEN ZHONG LIN aka KENNETH  
ZHONG LIN aka WHONG K. LIN aka  
CHONG KENNY LIN aka ZHONG LIN,  
an individual, and LIWE HELEN CHEN  
aka HELEN CHEN, an individual and YAN  
QIU ZHANG, an individual and  
INVESTPRO LLC dba INVESTPRO  
REALTY, a Nevada Limited Liability  
Company, and MAN CHAU CHENG, an  
individual, and JOYCE A. NICKRANDT,  
an individual, and INVESTPRO  
INVESTMENTS LLC, a Nevada Limited  
Liability Company, and INVESTPRO  
MANAGER LLC, a Nevada Limited  
Liability Company and JOYCE A.  
NICKDRANDT, an individual and does 1  
through 15 and roe corporation I-XXX,

Real Parties in Interest

Supreme Court No:

District Court No: A-18-785917-C  
Electronically Filed  
May 03 2021 08:24 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**STEVEN L. DAY AND STEVEN L.  
DAY, PC'S PETITION FOR  
WRIT OF MANDAMUS**

Steven L. Day, Esq.  
Nevada Bar No. 3708  
Day & Nance  
1060 Wigwam Parkway  
Henderson, NV 89074  
Telephone: 702-309-3333  
Facsimile: 702-309-1085  
*Attorneys for Petitioners*

### **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 justices of this court may evaluate possible disqualification or recusal.

1. All parent corporations and publicly-held companies owning 10 percent or more of the party's stock: None.
2. Names of all law firms whose attorneys have appeared for the party or amicus in this case (including proceedings in the district court of before an administrative agency) or are expected to appear in this court: Day & Nance; Michael B. Lee, P.C.; Benjamin B. Childs, Esq.
3. If litigant is using a pseudonym, the litigant's true name: n/a

DATED this 30<sup>th</sup> day of April, 2021.

DAY & NANCE

/s/ Steven L. Day  
Steven L. Day, Esq.  
Nevada Bar No. 3708  
1060 Wigwam Parkway  
Henderson, NV 89074  
Telephone: 702-309-3333  
*Attorneys for Petitioners*

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## **RELIEF SOUGHT**

Petitioner hereby petitions for a writ of mandamus requiring the district court to vacate its order of April 7, 2021, in the case of *WLAB Investments, LLL v. TKNR, Inc.*, Nevada Eighth Judicial District Court Case No. A-18-785917-C. The order awarded Defendants Rule 11 sanctions against counsel for Plaintiff which includes this Petitioner, Steven L. Day and Steven L. Day PC.

This petition is based upon the grounds that the district court's order is without legal or factual basis and Respondent manifestly abused her discretion by awarding Rule 11 sanctions against these Petitioners. This petition is based upon the ground that Petitioner does not have a plain, speedy and adequate remedy in the ordinary course of law. *Marquis & Aurbach v. Eighth Judicial District Court*, 122 Nev. 1147, 1154, 146 P.3d 1130, 1135 (2006).

## **ROUTING STATEMENT**

This matter is presumptively assigned to the Nevada Court of Appeals pursuant to NRAP 17(b)(5). The Petition for Writ of Mandamus ("Petition") concerns the awarding of Rule 11 sanctions against, among others, Petitioners.

## **ISSUES PRESENTED**

1. Writ of Mandamus Standard.
2. The Respondent abused its discretion in awarding Rule 11 sanctions in the form of attorneys' fees against Petitioners who made an appearance in the case the day prior to the hearing on Defendants' Motion for Summary Judgment and simply argued at the hearing on behalf of Plaintiff.
3. The Respondent cannot award Rule 11 sanctions without Defendants filing a separate motion for sanctions apart from their Motion for Summary Judgment.

## **STATEMENT OF FACTS**

### **A. Procedural History**

Petitioners are counsel for Defendant WLAB INVESTMENT, LLC, in Nevada Eighth Judicial District Court Case No. A-18-785917-C styled *WLAB Investment, LLC v. TKNR, Inc., et al.* Respondent, the Honorable Adriana Escobar, is the Department 14 judge of the Eighth Judicial District Court, in and for the County of Clark, State of Nevada, assigned to this case. Plaintiff WLAB Investment, LLC, and Defendants TKNR, INC., Chi On Wong, Kenny Zhong Lin, Liwe Helen Chen, Yan Qiu Zhang, InvestPro, LLC, Man Chau Cheng, Joyce A. Nickrandt, InvestPro Investments, LLC, and InvestPro Manager, LLC are the Plaintiff and Defendants in Case No. A-18-785917 and are the real parties in interest herein.

The Complaint in Case No. A-18-785917 was filed on December 11, 2018. The Second Amended Complaint was filed November 23, 2020. This case arises out of the sale of the triplex to Plaintiff and includes allegations of fraud and breach of contract. Specifically, Plaintiff WLAB Investment, LLC alleges that Defendants failed to disclose conditions that materially affected the value of the triplex as required by NRS 113.130 and that Defendants made fraudulent statements to Plaintiff to entice Plaintiff to purchase the subject real property. (*See* Plaintiff's Second Amended Complaint, Petitioners' Appendix Vol. I, No. 1, pp. 2-39).

Defendants filed their Motion for Summary Judgment on December 15, 2020. Plaintiff filed an Opposition on December 29, 2020. Defendants' Reply was filed January 21, 2021. (*See* Defendants' Motion for Summary Judgment. Petitioners' Appendix Vol. I, No. 2, pp. 41-73, Plaintiff's Opposition. Petitioners' Appendix Vol. I, No. 3, pp. 74-93) and Defendants' Reply. Petitioners' Appendix Vol. I, No. 4, pp. 94-110).

**B. Respondent's Order Giving Rise to Petition**

Petitioner substituted into the case as counsel for Plaintiff **the day prior to the hearing on March 10, 2021.** (*See* Substitution of Attorneys. Petitioners' Appendix Vol. I, No. 5, pp. 111-114). The hearing on Defendants' Motion for Summary Judgment was held March 11, 2021, during which Petitioner Steven L.



Day represented the Plaintiff. (*See* hearing transcript, Petitioners’ Appendix Vol. I, No. 6, pp.115-154). The district court granted Defendants’ Motion for Summary Judgment and awarded Defendants Rule 11 sanctions in the form of attorneys’ fees and costs. Defendants had requested Rule 11 sanctions in the body of their Motion for Summary Judgment. (*See* Petitioners’ Appendix, Vol. I, No. 2, pp. 70-71). Specifically in the Court’s amended order, the Court concluded that: “Sanctions are warranted against Plaintiff and its counsel, which includes an award of attorneys’ fees to Defendant.”

The Court awarded Defendants attorneys’ fees and costs pursuant to Rule 11. (*See* District Court order dated April 7, 2021, ¶ 78, p. 40, ll. 7-8, Petitioners’ Appendix, Vol. I, No. 7, pp. 195) and hearing transcript, p. 30, ll. 11-14 Petitioners’ Appendix, Vol. I, No. 6, pp. 145). It was not until Petitioner received the Court’s order that it was discovered the Rule 11 sanctions applied to counsel as well. (*See* Petitioners’ Appendix, Vol. I, No. 7, pp. 195, ¶ 78, p. 40, ll. 7-8). While the District Court may have intended that Rule 11 sanctions apply to prior counsel, this Writ of Mandamus is necessary in light of the wording of the District Court’s order.

### **STATEMENT OF REASONS THE WRIT SHOULD ISSUE**

#### **A. Writ of Mandamus Standard.**

A writ of mandamus is an extraordinary remedy that may be issued to

compel an act that the law requires. *Cote H. v. Eighth Judicial Dist. Court*, 175 P.3d 906, 907-08 (Nev. 2008). A writ of mandamus may also issue to control or correct a manifest abuse of discretion. *Id.* A writ shall issue when there is no plain, speedy and adequate remedy in the ordinary course of law. Nev Rev. Stat. § 34.170; *Sims v. Eighth Judicial Dist. Court*, 206 P.3d 980, 982 (Nev. 2009). This Court has complete discretion to determine whether a writ will be considered. *Halverson v. Miller*, 186 P.3d 893 (Nev. 2008). (“the determination of whether to consider a petition is solely within this court’s discretion.”); *Sims*, 206 P.3d at 982 (“it is within the discretion of this court to determine whether these petitions will be considered.”). Extraordinary writs are a proper avenue for attorneys to seek a review of sanctions as there as Petitioners are not parties in the underlying action and, therefore, cannot appeal the court’s order. *Watson Rounds v. Eighth Jud. Dist. Ct.*, 131 Nev 783, 787, 358 P.3d 228, 231 (2015).

**B. The Respondent abused its discretion in awarding Rule 11 sanctions in the form of attorneys’ fees against Petitioners who made an appearance in the case the day prior to the hearing on Defendants’ Motion for Summary Judgment and simply argued at the hearing on behalf of Plaintiff.**

Petitioners were counsel for the Plaintiff for one day prior to the hearing during which the District Court awarded Rule 11 attorneys’ fees. Petitioners had not signed or filed any pleadings. They simply made an appearance and argued on behalf of the Plaintiff. “The court reviews sanctions for attorneys’ fee for an abuse of discretion.” *Id.* at 787, 231. The court must further describe the conduct

it determined violated Rule 11 and “explain the basis for the sanction.” NRC P 11(c)(3); *Iorio v. Check City Partnership, LLC*, 2015 WL 3489309, 3 (Nev. 2015).

Rule 11 sanctions should only be imposed “to deter repetition of the conduct or comparable conduct by others similarly situated.” NRC P 11(c)(4). Petitioners are not aware of the specific conduct on Petitioners’ part the District Court is attempting to deter. There are further limitations on monetary sanctions as the court has ordered in this case “against a represented party for violating Rule 11(b)(2).

Since Petitioners were Plaintiff’s counsel at the time of the hearing having substituted in for prior counsel the day prior to the hearing, the Order seems to include Petitioner and Petitioner’s firm for simply arguing (advocating) on behalf of the Plaintiff. Again, Petitioners substituted into the case the day prior to the hearing on Defendants’ Motion for Summary Judgment. Petitioners filed no motions prior to the hearing.

Having reviewed Plaintiff’s case, Petitioner does not believe Plaintiff’s case is frivolous as the Respondent contends. Plaintiff has alleged sufficient grounds to support his claim and there was no indication that the claim, as alleged, was unwarranted by existing law and there was no reason to believe that counsel filed the complaint for an improper purpose. Sanctions were not warranted in this case. Sanctions should further not be used to “chill an attorney’s enthusiasm or creativity

in reasonably pursuing factual or legal theories.” *Lewis v. Second Judicial Dist. Court of the State of Nev., In and For County of Washoe*, 113 Nev. 106, 113, 930 P.2d 770, 775 (1997).

Petitioners simply appeared and advocated for the Plaintiff and anticipate continuing to advocate for the Plaintiff. There is nothing in the order describing the specific conduct of Petitioners which constituted the alleged violation of Rule 11. Petitioners find nothing in Plaintiff’s case or the facts alleged in Plaintiff’s case that would constitute frivolous allegations unsupported by law.

**C. The Respondent cannot award Rule 11 sanctions without Defendants filing a separate motion for sanctions apart from their Motion for Summary Judgment.**

Rule 11 requires that any motion for sanctions be made “separately from another other motion and must describe the specific conduct that allegedly violates Rule 11(b).” NRCP 11(c)(2). As stated, Defendants included their request for Rule 11 sanctions within the body of their Motion for Summary Judgment. (*See* Petitioners’ Appendix Vol. I, No. 2, pp. 41-73) Defendants’ Motion for Summary Judgment (w/o exhibits).

There was no separate motion made requesting Rule 11 sanctions and further describing what specific conduct as to these Petitioners violated Rule 11(b). The imposition of a Rule 11 sanction is not a judgment on the merits of the action but rather requires the determination of a collateral issue which should be made after

the principal suit has been terminated. *Cooter & Gell v. Hartmarx Corporation*, 496 U.S. 384, 396, 110 S.Ct. 2447, 2456 (1990).

### **CONCLUSION**

In accordance with the above, Petitioner respectfully requests that this Court grant their Petition for Writ of Mandamus and order Respondent to withdraw the granting of Rule 11 sanctions as to these Petitioners.

DATED this 30<sup>th</sup> day of April, 2021.

DAY & NANCE

/s/ Steven L. Day  
Steven L. Day, Esq.  
Nevada Bar No. 3708  
1060 Wigwam Parkway  
Henderson, NV 89074  
Telephone: 702-309-3333  
*Attorneys for Petitioners*

**AFFIDAVIT OF VERIFICATION IN SUPPORT OF PETITION FOR  
WRIT OF MANDAMUS**

STATE OF NEVADA     )  
                                  ) SS:  
COUNTY OF CLARK    )

STEVEN L. DAY, being first duly sworn upon his oath, deposes and says:

1.     That affiant is the Petitioner in the Writ of Mandamus filed with this verification.

2.     The affiant is counsel for Plaintiff/Real Party in Interest WLAB INVESTMENT, LLC in Nevada Eighth Judicial District Court Case No. A-18-785917-C.

3.     That affiant verifies that the facts stated within the Petition of Mandamus are within the knowledge of Petitioner.

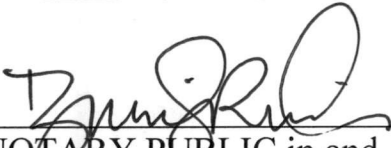
4.     All documents contained in the Petitioners' Appendix filed herewith are true and correct copies of the pleadings and documents they are represented to be in the Petitioners' Appendix and as cited herein.

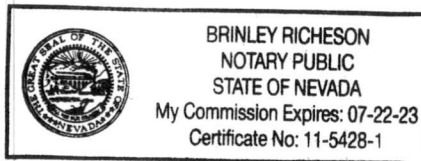
5. This Petition complies with Nev. R. App. 21(d) and Nev. R. App. P.  
32(e)(2).

FURTHER AFFIANT SAYETH NAUGHT.

  
STEVEN L. DAY

SUBSCRIBED AND SWORN to before me  
this 30 day of April, 2021.

  
NOTARY PUBLIC in and  
for said County and State.



## **CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

This brief has been prepared in a monospaced typeface using Word in Times Roman, font size 14.

I further certify that this brief complies with the page or type-volume limitations of NRAP 32(a)(7), it is proportionately spaced, has a typeface of 14 points or more and contains 1,617 words.

Finally, I hereby certify that I have read this petitioners' brief 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 brief complies with all application Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1) which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirement of the Nevada Rules of Appellate Procedure.



DATED this 30<sup>th</sup> day of April, 2021.

DAY & NANCE

/s/ Steven L. Day  
Steven L. Day, Esq.  
Nevada Bar No. 3708  
1060 Wigwam Parkway  
Henderson, NV 89074  
Telephone: 702-309-3333  
*Attorneys for Petitioners*

**CERTIFICATE OF MAILING**

I hereby certify that on this 30<sup>th</sup> day of April, 2021, I served the foregoing  
STEVEN L. DAY AND STEVEN L. DAY'S PETITION FOR WRIT OF  
MANDAMUS upon the following parties by placing a true and correct copy  
thereof in the United States Mail in Henderson, Nevada with first class postage  
fully prepaid:

Michael B. Lee, Esq.  
Michael Mathis, Esq.  
Michael B. Lee, P.C.  
1820 E. Sahara Ave., Suite 110  
Las Vegas, NV 89104  
*Attorneys for Defendants*

Benjamin B. Childs, Esq.  
318 S. Maryland Pkwy.  
Las Vegas, NV 89101

Honorable Adriana Escobar  
Nevada Eighth Judicial District Court  
Department 14  
200 Lewis Ave.  
Las Vegas, NV 89155  
*Respondent*

Aaron Ford  
Attorney General  
Nevada Department of Justice  
100 North Carson Street  
Carson City, NV 89701  
*Counsel for Respondent*

\_\_\_\_\_  
*/s/ Brinley Richeson*  
An Employee of Day & Nance