

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

BENJAMIN B. CHILDS

Petitioner,

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: 82967

District Court No: A-18-785917-C  
Electronically Filed  
Jun 08 2021 02:24 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**PETITIONER'S REPLY TO**  
**RESPONSE TO MOTION**  
**FOR STAY**

The Response filed by Real Parties in Interest, who were the defendants in district court, argues that Petitioner failed to comply with NRAP 8(a)(1)(A) by not filing a motion in district court. Interested Parties provide no authority that Petitioner, who is not a party to in the district court case, could have filed a motion, other than citing to the rules which Petitioner cited in the Motion, NRCP 62 and NRAP 8. In the Motion, Petitioner addressed the reasons why relief cannot be sought in the district court, but because this appears to be sole basis for the Response, Petitioner addresses the issue in more detail herein.

#### ATTORNEY IS NOT A PARTY TO THE CASE AND CANNOT APPEAL

Petitioner was not a party to the district court case. Simply, an attorney who is not a party to an action does not have standing to appeal

an order. See Albert D. Massi, Ltd. v. Bellmivre, 111 Nev. 1520, 1521, 908

P.2d 705, 706 (1995) (holding that an attorney had no standing to appeal

from an order determining an attorney's lien). Additionally, Beury v.

State of Nevada, 107 Nev. 363. 367, 812 P.2d 774, 776 (1991) held that an

attorney was "not an aggrieved party and therefore lack[ed] standing" to

appeal an order relating to attorney fees. Albany v. Arcata Associates.

106 Nev. 688, 690, 799 P.2d 566. 567 (1990) holds that an attorney "ha[d]

no right of appeal because he [wa]s not a party to the underlying civil

action" . An attorney who was not a party to the underlying action does

not have an adequate remedy in the ordinary course of law and, thus,

"[our] discretionary review of the . . . order . . . may be appropriately

invoked by a properly documented petition for extraordinary relief."

Albany, 106 Nev. at 690.n.1. 799 P.2d at 568 n.1; see also Beury, 107

*Nev. at 367, 812 P.2d at 776* (noting the same).

Not being a party, Petitioner did not have standing to appeal the Order. Likewise, Petitioner could not file a motion in district court.

### COURT SHOULD ISSUE A SUMMARY REVERSAL

Interested Parties do not dispute that Petitioner will prevail on his petition. This absence is telling. The violations documented in the Petition are flagrant and extreme. The Petition evidences that a judgment was entered with entirely no compliance with the requirements of Rule 11.

Since Interested Parties do not even dispute that Petitioner will prevail on his petition, either the stay should issue promptly or this Court should obviate the need for issuing the stay by reviewing the Petition and summarily reversing the Order [Exhibit 1] as it pertains to Petitioner.

The overwhelming authority, indeed no contradictory authority was found by Petitioner, indicates that the district court abused its discretion on multiple levels and, thus, had no authority to enter the Order against Petitioner.

Most authority is from the federal courts. The Nevada Supreme Court has often used the federal rules and federal court interpretations as authoritative models for the Nevada Rules of Civil Procedure. See State Dept. Of Taxation v. Eighth Judicial District Court, 136 Nev.\_\_\_\_, 466 P.3d 1281, 1284 (2020) , “Because these provisions mirror their federal counterparts, we turn to federal authority for guidance.” See, also, Exec. Mgmt., Ltd. u. Ticor Title Ins. Co., 118 Nev. 46, 53, 38 P.3d 872, 876 (2002), explaining that federal case law interpreting and applying the Federal Rules of Civil Procedure provides strong persuasive authority for

this court when interpreting parallel provisions of the Nevada Rules of Civil Procedure.

Failure to comply with the Rule 11 procedure is a due process violation. Baffa v. Donaldson, Lufkin & Jenrette Sec. Corp, 222 F3d 52, 57 (2<sup>nd</sup> Cir 2000).

Even with a party, before acting sua sponte to impose sanctions under Rule 11, a court must first issue order to allegedly offending party to show cause why sanctions should not be imposed and give the party opportunity to respond before imposition of sanctions, as required by Rule 11. Johnson v. Waddell & Reed, 74 F.3d 147 (7th Cir. 1996).

When a district court itself initiates a Rule 11 sanction proceeding, it must enter a show cause order that describes specific conduct for which it proposes sanctions. Thornton v. GMC, 136 F.3d 450 (5th Cir. 1998).

Rule 11 sanctions imposed by a district court on its own initiative must be reversed where court failed to comply with proper procedures which required issuance of show cause order and reasonable opportunity for sanctioned party to contest sanction. Hutchinson v. Pfeil, 208 F.3d 1180 (10<sup>th</sup> Cir, 2000)

Other authority is contained in the Petition. But all authority is that the Rule 11 procedures require strict compliance.

## CONCLUSION

A \$128,166.78 judgment [Exhibit 1, Page 4] was entered against Petitioner pursuant to NRCP 11 without compliance with any of the requirements of that rule. Real Parties in Interest don't contest that Petitioner will prevail, yet they ask for a bond of 150% of the wrongfully

entered judgment amount. It's illogical that Petitioner should be required to post a bond for a judgment which the judgment debtors do not dispute the Order was entered based on Rule 11, but without compliance with any with the requirements of that rule. Especially when the rule involves due process issues and, thus, strict compliance is required for Rule 11 proceedings.

At a minimum a stay should issue prohibiting Defendants collectively or individually or by assignment, or the successors or assignees, from enforcing or attempting to execute against Petitioner on the Order, specifically the \$128,166.78 money judgment.

/s/ Benjamin B. Childs

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BENJAMIN B. CHILDS, ESQ.  
Nevada Bar # 3946  
Petitioner

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## CERTIFICATE OF MAILING

I hereby certify that on this June 8, 2021, I served this  
PETITIONER'S REPLY TO RESPONSE TO MOTION FOR STAY upon the  
following parties by placing a true and correct copy thereof in the United  
States Mail, in Las Vegas, Nevada with first class postage fully prepaid:

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/s/ Benjamin B. Childs  
Benjamin B. Childs