

IN THE SUPREME COURT OF THE STATE OF NEVADA

ROCHELLE MEZZANO

Petitioner,

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, In and For the County of
Washoe, and the Honorable BRIDGET
ROBB and Honorable CYNTHIA LU

Respondent.

And

JOHN TOWNLEY

Real Party in Interest

Case No.

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District Court Case No. DV19-01564

ORIGINAL PETITION FOR WRIT OF PROHIBITION OR MANDAMUS

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NRAP 26.1 Disclosure

I hereby certify that the following are the persons and entities described in NRAP 26.1(a) and must be disclosed. These representations are made in order that Judges of this Court may evaluate possible disqualifications or recusal:

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There are no applicable disclosures regarding parent corporations or stock ownership. There are no corporations or other entities with any ownership interest in The O'Mara Law Firm, P.C.

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TABLE OF CONTENTS

NRAP 26.1 DISCLOSUREi

TABLE OF CONTENTS..... ii

TABLE OF AUTHORITIES iii

I. ROUTING STATEMENT 1

II. RELIEF SOUGHT2

III. ISSUES PRESENTED.....2

IV. PROCEDURAL AND FACTUAL HISTORY2

V. STATEMENT OF LEGAL REASONING FOR ISSUANCE OF WRIT4

 A. Writ of Mandamus is appropriate because the peremptory
 challenge was timely because there are no rulings on
 contested matters7

 B. Writ of Prohibition is warranted because the district court
 loses jurisdiction over the matter once the challenge is filed9

VI. CONCLUSION.....11

VERIFICATION12

CERTIFICATE OF COMPLIANCE13

CERTIFICATE OF SERVICE14

TABLE OF AUTHORITIES

CASES

<i>Barnes v. District Court</i> , 103 Nev. 679, 682, 748 P.2d 483 (1987).....	5
<i>Beazer Homes Nevada, Inc. v. Dist. Ct.</i> , 120 Nev. 575, 579–80, 97 P.3d 1132, 1135 (2004).....	7
<i>Bolt v. Smith</i> , 594 So.2d 864, 864 (Fla.Ct.App.1992)	9
<i>Browning v. Dixon</i> , 114 Nev. 213, 218, 954 P.2d 741, 744 (1998)	8
<i>Byrd v. Brown</i> , 613 S.W.2d 695, 699–700 (Mo.Ct.App.1981)	10
<i>C.H.A. Venture v. G. C. Wallace Consulting</i> , 106 Nev. 381, 794 P.2d 707 (1990).....	8
<i>Cote H. v. Dist. Ct.</i> , 124 Nev. 36, 175 P.3d 906, 908 (2008)	6
<i>Dobson v Dobson</i> , 108 Nev 346 (1992)	8
<i>El Fenix de Puerto Rico v. The M/Y Johanny</i> , 36 F.3d 136, 142 (1st Cir.1994).....	9
<i>Ferguson v. Pony Express Courier Corp.</i> , 898 S.W.2d 128, 130 (Mo.Ct.App.1995)	10
<i>Foster v. Lewis</i> , 78 Nev. 330, 337, 372 P.2d 679, 682 (1962).....	8
<i>Goicoechea v. Dist. Ct.</i> , 96 Nev. 287, 289-290, 607 P.2d 1140 (1980).....	5
<i>Hickey v. District Court</i> , 105 Nev. 729, 731, 782 P.2d 1336 (1989)	5

<i>International Game Tech. v. Dist. Ct.</i> , 124 Nev. 193, 197, 179 P.3d 556, 558 (2008).....	5, 7
<i>Koza v. District Court</i> , 99 Nev. 535, 541, 665 P.2d 244 (1983)	5
<i>Mezzano v. Townley</i> , 497 P.3d 624 (2021).....	3, 7, 8
<i>Pueblo of Laguna v. Cillessen & Son, Inc.</i> , 101 N.M. 341, 682 P.2d 197, 199 (1984).....	10
<i>Round Hill Gen. Imp. Dist. v. Newman</i> , 97 Nev. 601, 637 P.2d 534 (1981).....	5
<i>Russell v. Thompson</i> , 96 Nev. 830, 619 P.2d 537 (1980).....	5
<i>State Engineer v. Truckee–Carson Irrig.</i> , 116 Nev. 1024, 1029, 13 P.3d 395, 398 (2000).....	5
<i>State ex rel. Johnson v. Mehan</i> , 731 S.W.2d 887, 888 (Mo.Ct.App.1987)	10
<i>State of Nevada ex rel. v. Culinary Workers Union v. Dist. Ct.</i> , 66 Nev. 166, 170, 207 P.2d 990 (1949)	6
<i>State of Nevada v. Dist. Ct. (Ducharm)</i> , 118 Nev. 609, 614, 55 P.3d 420 (2002).....	6
<i>State of Nevada v. Dist. Ct. (Epperson)</i> , 120 Nev. 254, 258, 89 P.3d 663 (2003).....	5
<i>State of Nevada v. Dist. Ct. (Garcia)</i> , 108 Nev. 1030, 1033, 842 P.2d (1992).....	5

<i>State v. Evans</i> , 187 Ga.App. 649, 371 S.E.2d 432, 433 (1988).....	10
<i>Stringer v. United States</i> , 233 F.2d 947, 948 (9th Cir.1956).....	9, 11
<i>Stromberg v. Dist. Ct.</i> , 200 P.3d 509, 511 (2009)	5
<i>Townley v. Mezzano</i>	10, 11
<i>Townley v. Mezzano</i> , DV19-01564.....	1, 2

STATUTES

NRS 34.160	5
NRS 34.320	5

RULES

NRAP 26.1(a).....	i
NRAP 32(a)(4).....	13
NRAP 32(a)(5).....	13
NRAP 32(a)(6).....	13
NRAP 32(a)(7).....	13
SCR 48.1	2, 3, 6

PETITION

TO: THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE
NEVADA SUPREME COURT:

Petitioner, Rochelle Mezzano, by and through her counsel of record, The O'Mara Law Firm, P.C., through David C. O'Mara, Esq., hereby petitions this Honorable Court to issue a writ of mandamus, for reasons that the Honorable Cynthia Lu, a Judge in the Second Judicial District Court of the State of Nevada, has transferred the matter known as case *Townley v. Mezzano*, DV19-01564, to the Honorable Bridget Robb, after Ms. Mezzano filed a timely peremptory challenge. Petitioner requests that Writ of Mandamus direct Judge Robb immediately transfer the case, *Townley v. Mezzano*, DV19-01564 back to the Honorable Cynthia Lu. Additionally, Petitioner seeks a writ of prohibition arresting the *Townley v. Mezzano* proceedings because Judge Robb is exercising the judicial functions that are in excess of her jurisdiction after the timely challenge.

I. Routing Statement

While this matter is one of first impression, it does not involve the Nevada or United States Constitution or common law. As such, the matter falls in one of the categories of cases presumptively assigned to the Nevada Court of Appeals pursuant to NRAP 17(b)(10).

II. Relief Sought

1. Order directing the District Court or Clerk of the Court to transfer case number DV19-01564 back to the Honorable Cynthia Lu.
2. Arrest the proceedings of Judge Robb exercising the judicial functions, because moving forward with these proceedings are in excess of the jurisdiction of the district court.

III. Issues Presented

1. Did the Honorable Cynthia Lu, District Court Judge, Second Judicial District Court, error when she misapplied SCR 48.1 which then resulted in the transfer of the *Townley v. Mezzano*, DV19-01564 case back to the Honorable Bridget Robb, after the filing of a peremptory challenge
2. Does the Honorable Bridget Robb have jurisdiction over the action after she has been properly challenged under SCR 48.1?

IV. Procedural and Factual History

On September 24, 2019, Real Party in Interest, Mr. John Townley, filed a Complaint for Divorce in the 2nd Judicial District Court. *See* Petitioner's Appendix ("PA") PA0001-PA0005. The matter was assigned to a judge in Department 2, however, that judge recused herself. PA0006 and PA0007-0008. The matter was then reassigned to Department 11, where the judge recused himself. PA0009-0014. The matter was then reassigned to Department 12; however, Mr. Townley then filed a

peremptory challenge of Department 12, PA0013-0014 and on October 1, 2019, the matter was then assigned to Department 13. PA0015-0016.

On October 27, 2021, the Nevada Supreme Court “Order[ed] the judgment of the district court REVERSED AND REMAND” back to the “district court for proceedings consistent with this order.” *Mezzano v. Townley*, 497 P.3d 624 (2021). The Supreme Court found that “the district court abused its discretion by denying Mezzano’s motion because *the judgment was void* for lack of service.” *Id.* (emphasis added)

On December 28, 2021, Ms. Mezzano, through undersigned counsel, filed a Notice of Peremptory Challenge seeking to change Judge Robb pursuant to SCR 48.1. PA0017-0018. On the same day, Mr. Townley filed an Objection to Invalid Peremptory Challenge claiming that Judge Robb has “ruled on multiple contested motions, including Ms. Mezzano’s motion to set aside the decree of divorce.” PA0019-0021. Mr. Townley did not inform the Court of the recent Supreme Court decision which resulted in voiding Judge Robb’s previous orders because of lack or proper service. *Id.*

On January 3, 2022, the filing office filed a Case Assignment Notification randomly reassigning this matter to Department 5, the Honorable Cynthia Lu. PA0022-0033.

Upon receiving the reassignment, and without allowing Petitioner to address the objection, Judge Lu determined that the district court's review of the record clearly shows that the judge in Department 13 issued several rulings on contested matters, and thus, ruled the challenge as untimely. PA0024-0026; PA0027-0028. However, Judge Lu failed to recognize that Judge Robb did not have jurisdiction over Ms. Mezzano at the time she rendered her decisions, and thus, any order issued by the district court was void. The decisions are a nullity and have no legal effect. The matter is now scheduled for a Status Hearing based on an *Ex Parte* Motion filed by Mr. Townley. PA0029-0030; PA0031-0032.

Petitioner now seeks a writ of mandamus directing the district court to transfer this matter back to Judge Lu and/or a writ of prohibition to precluding Judge Robb from moving forward with the district court divorce proceedings.

V. Statement of Legal Reasoning for the Issuance of a Writ.

This writ petition involves an issue of first impression whether a void judgment by the district court judge is a contested matter for the purpose of filing a peremptory challenge.

A writ of mandamus is an appropriate procedure for review of the proceedings below and the relief requested herein. 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 estate, or to control an arbitrary or capricious exercise of discretion." *See* NRS

34.160, *see also International Game Tech. v. Dist. Ct.*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008); *Hickey v. District Court*, 105 Nev. 729, 731, 782 P.2d 1336 (1989), *citing, Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 637 P.2d 534 (1981); *Barnes v. District Court*, 103 Nev. 679, 682, 748 P.2d 483 (1987); *Koza v. District Court*, 99 Nev. 535, 541, 665 P.2d 244 (1983)(recognizing jurisdiction to grant a writ of mandamus when the petitioner is able to show that the lower tribunal acted arbitrarily or capriciously); *See Russell v. Thompson*, 96 Nev. 830, 619 P.2d 537 (1980)(noting that while mandamus may not be used to review discretionary acts of a trial court, it will lie to correct judicial abuses of discretion.) Finally, this Court may grant mandamus where an important issue of law requires clarification. *See State of Nevada v. Dist. Ct. (Epperson)*, 120 Nev. 254, 258, 89 P.3d 663 (2003); *see also Stromberg v. Dist. Ct.*, 200 P.3d 509, 511 (2009). Extraordinary writ petitions are the appropriate means to challenge district court decisions concerning peremptory challenges. *State Engineer v. Truckee–Carson Irrig.*, 116 Nev. 1024, 1029, 13 P.3d 395, 398 (2000).

Alternatively, a writ of prohibition will lie to “arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the jurisdiction of the district court.” *See NRS 34.320, see also, State of Nevada v. Dist. Ct. (Garcia)*, 108 Nev. 1030, 1033, 842 P.2d (1992); *Goicoechea v. Dist. Ct.*, 96 Nev. 287, 289-290, 607 P.2d 1140 (1980)(recognizing that the purpose of a writ of

prohibition is to prevent courts from “transcending the limitation of their jurisdiction in the exercise of judicial power”); *State of Nevada ex rel. v. Culinary Workers Union v. Dist. Ct.*, 66 Nev. 166, 170, 207 P.2d 990 (1949) (“[t]he Writ of Prohibition is unquestionably appropriate as a remedy to hold proceedings in an inferior court which are not within the jurisdiction of the court.”).

Additionally, this Court will exercise its discretion to intervene “under circumstances of urgency or strong necessity, or where an important issue of law needs clarification and sound judicial economy and administration favor the granting of the petition.” *See Cote H. v. Dist. Ct.*, 124 Nev. 36, 175 P.3d 906, 908 (2008), quoting, *State of Nevada v. Dist. Ct. (Ducharm)*, 118 Nev. 609, 614, 55 P.3d 420 (2002).¹

As there is potential for the district courts to inconsistently apply SCR 48.1 and to assume jurisdiction over a matter that was subject to a proper preemptory challenge, Petitioner requests that the Nevada Supreme Court elect to exercise its discretion to entertain the merits of this writ petition and to clarify this issue of law.

¹ Even if an appeal was available, where, as here, the trial court is alleged to have exceeded its jurisdiction, a writ is appropriate. *G & M Properties v. Dist. Ct.*, 95 Nev. 301, 304, 595 P.2d 714 (1979) (citations omitted).

A. Writ of Mandamus is appropriate because the peremptory challenge was timely because there are no rulings on contested matters.

“Statutory interpretation is a question of law that we review de novo, even in the context of a writ petition.” *International Game Tech.*, 124 Nev. at 198, 179 P.3d at 559. When a rule is clear on its face, the Nevada Supreme Court will not look beyond the rule's plain language. *See Beazer Homes Nevada, Inc. v. Dist. Ct.*, 120 Nev. 575, 579–80, 97 P.3d 1132, 1135 (2004).

As a matter of right, each side is entitled to one change of judge by peremptory challenge in any civil action pending in a district court, which has not been appealed from a lower court. Indeed, Mr. Townley exercised his right when he filed a peremptory challenge against Department 12 on October 1, 2019. PA0013-0014; PA0017-0018. Mr. Townley claims that Ms. Mezzano does not have the same right because Judge Robb had ruled on multiple contested motions, even though all of Judge Robb’s decisions are void and with no legal effect. PA0019-0021. The Court, Honorable Cynthia Lui thereafter ruled that “[a] notice of peremptory challenge may not be filed against any judge who has made any ruling on a contested matter or commenced hearing on any contested matter in the action.” PA0024-0026.

The district court erred because it failed to consider the Supreme Court’s decision in *Mezzano v. Townley*, 497 P.3d 624 (2021) which was issued on October 27, 2021. The Supreme Court held that “the district court [Honorable Bridget Robb]

abused [her] discretion by denying Mezzano's motion because the judgment was *void* for lack of service. *See Mezzano v. Townley*, 497 P.3d 624 (2021); *citing Browning v. Dixon*, 114 Nev. 213, 218, 954 P.2d 741, 744 (1998)(concluding that when a party obtains a default judgment through improper service of process, the judgment is void and must be set aside.) (emphasis added).

The Nevada Supreme Court has consistently held that any order issued by a district court without proper jurisdiction is void, a nullity, and without legal effect. Since the default judgment was null and void and is of no legal effect whatsoever from its inception, there have been no issues raised by the complaint that have been disposed of or otherwise determined. *See e.g. Dobson v Dobson*, 108 Nev 346 (1992)(Steffen, dissenting); *See also C.H.A. Venture v. G. C. Wallace Consulting*, 106 Nev. 381, 794 P.2d 707 (1990) (judgment reversed because service was not properly effected, jurisdiction did not attach and the district court had no power to enter a valid judgment); *Foster v. Lewis*, 78 Nev. 330, 337, 372 P.2d 679, 682 (1962) (a judgment that is based on a void order of publication is void); Additionally, when the district court does not have jurisdiction, any orders issues are also void and are a nullity without legal effect.

Because the district court did not have jurisdiction over Ms. Mezzano when the void orders where issued, those orders are a nullity, of no legal effect, and thus, the district court, the Honorable Bridget Robb, has not made any rulings on a contested

matter. Accordingly, Ms. Mezzano's peremptory challenge was timely and as a matter of right, she is entitled to change the judge.

B. Writ of Prohibition is warranted because the district court loses jurisdiction over the matter once the challenge is filed.

On December 28, 2021, Petitioner filed a timely peremptory challenge to change Judge Robb and instead move forward with the divorce action after Judge Lu was randomly assigned. A Writ of Prohibition is warranted in this case because Judge Lu has incorrectly transferred this matter back to Judge Robb who has currently set a status hearing for April 6th, 2022. PA0029-0030; PA0031-0032.

Judge Robb's actions and attempt to move this case forward are in excess of her jurisdiction. Judge Robb was properly changed as the presiding judge in this case and thus, Judge Robb is confined to performing only the "mechanical duties of transferring the case to another judge or other essential ministerial duties short of adjudication." *Stringer v. United States*, 233 F.2d 947, 948 (9th Cir.1956), *See also El Fenix de Puerto Rico v. The M/Y Johanny*, 36 F.3d 136, 142 (1st Cir.1994) (general rule that recused judge "should take *no further action* except to enable administrative reassignment of the case").

More importantly, any actions taken by Judge Robb once the timely challenge was filed and originally reassigned are also void. *See e.g. Bolt v. Smith*, 594 So.2d 864, 864 (Fla.Ct.App.1992) ("Florida case law is well settled that once a trial judge has recused himself, further orders of the recused judge are void and have no effect");

State v. Evans, 187 Ga.App. 649, 371 S.E.2d 432, 433 (1988) (“A disqualified judge can take no judicial action in the case and any attempt at such action is a mere nullity”); *Ferguson v. Pony Express Courier Corp.*, 898 S.W.2d 128, 130 (Mo.Ct.App.1995) (“It is true that a judge who disqualifies himself or who has been disqualified by one of the parties has no further right to hear the case”); *State ex rel. Johnson v. Mehan*, 731 S.W.2d 887, 888 (Mo.Ct.App.1987) (“Once a change of judge has been entered and the case transferred to another judge the disqualified judge has no further authority in the case and any orders made after the disqualification are void”); *Byrd v. Brown*, 613 S.W.2d 695, 699–700 (Mo.Ct.App.1981) (“Judge Moore's disqualification was effective upon the docket entry and the case was transferred to Judge Northern. Judge Moore had no further authority in the case. Therefore, the orders made after the initial docket entry of disqualification ... were void”) (footnotes omitted); *Pueblo of Laguna v. Cillessen & Son, Inc.*, 101 N.M. 341, 682 P.2d 197, 199 (1984) (“Since the district court was properly disqualified, it had power only to perform mere formal acts subsequent to the disqualification. After the affidavit of disqualification was filed, the judge had no jurisdiction to act in matters involving the exercise of his discretion.”)

Accordingly, a writ of prohibition is warranted to preclude Judge Robb from moving forward with the underlying district court action, *Townley v. Mezzano*, save and except for her participation in having the case transferred back to Judge Lu.

VERIFICATION

I, David C. O'Mara, Esq., being first duly sworn, deposes and says:

1. Pursuant to NRS 15.010, NRS 34.030, NRS 34.170 and NRAP 21(a)(5), and under penalty of perjury, I declare that I am counsel for Petitioner, Rochelle Mezzano, and know the contents of this writ petition.
2. This petition is true and correct to the best of my own knowledge or based on information and belief. I make this verification because the relevant facts are procedural or found within the district court filings and within my knowledge as the Petitioner's attorney.
3. Notice of the filing of this writ petition is being served on the district court and counsel of record.

Dated: February 14, 2022

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STATE OF NEVADA)
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SUBSCRIBED and SWORN to before me
this 14th day of of February, 2022.

NOTARY PUBLIC



ATTORNEY'S CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), and 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 Microsoft Word from the Office 2016 Suite with so in Times New Roman type style size 14.

I further certify that this brief complies with the page or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it does not exceed 15 pages.

Finally, I hereby certify that I have read this Original Writ of Mandamus or Prohibition, 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 applicable 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 requirements of the Nevada Rules of Appellate Procedure.

DATED: February 14, 2022.

THE O'MARA LAW FIRM. P.C.

/s/ David C. O'Mara
DAVID C. O'MARA

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of The O’Mara Law Firm, P.C., 311 E. Liberty Street, Reno, Nevada 89501, and on this date I served a true and correct copy of the foregoing document on all parties to this action by:

- Depositing in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, following ordinary business practices
- Personal Delivery
- Email
- Federal Express or other overnight delivery
- Messenger Service
- Certified Mail with Return Receipt Requested
- Electronically through the Court’s ECF system

addressed as follows:

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