

ADAM MICHAEL SOLINGER,

). CASE NO.:

(District Court Case No. _____)

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**EMERGENCY PETITION FOR
WRIT OF PROHIBITION OR
IN THE ALTERNATIVE
MANDAMUS PURSUANT TO
NRAP 21 and 27(e)**

**ACTION REQUIRED:
IMMEDIATELY**

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

2 _____
3 ADAM MICHAEL SOLINGER,)

4 Petitioner,)

5 vs.)

6)
7 CLARK COUNTY DISTRICT)
8 COURT, FAMILY DIVISION,)
9 THE HONORABLE JUDGE,)
MARY PERRY, DEPT. P,)

10 Respondent ,)

11)
12 and)
13)

14 CHALESE MARIE SOLINGER,)

15 Real Party in Interest.)
16 _____)

17
18 The undersigned Petitioner certifies that the following are persons and
19 entities as described in NRAP 26.1(a) and must be disclosed. These
20 representations are made in order that the judges of this Court may evaluate
21 possible disqualification or recusal.
22

23 **Attorney of Record for Appellant:** Adam M. Solinger, Esq.
24

25 **Corporation:** N/A
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1 **Law Firm(s) appearing in District Court:** Las Vegas Defense Group, LLC.;
2
3 Abrams Law Firm, LLC; Pecos Law Group; Louis Scheinder, Esq.; and Alex
4 Ghibaud, PC.

5 Dated this 31st day of May, 2022.
6

7 By:

8 /s/ Adam Solinger
9 ADAM M. SOLINGER, ESQ.
10 Nevada Bar Number 13963
11 In Proper Person
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1 **EMERGENCY WRIT/MOTION UNDER NRAP 21/NRAP 27(e) ACTION**

2 **NEEDED IMMEDIATELY**

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4 **ROUTING STATEMENT:**

5 This case is appropriately assigned to the Court of Appeals pursuant to
6
7 NRAP 17(b)(10).

8 **INTRODUCTION**

9
10 The Petitioner requests the Court to issue a writ of mandamus to Mary Perry,
11 District Court Judge of the Eighth Judicial District Court, vacating her May 31,
12 2022, Order denying Petitioner's Emergency Motion To Stay Judgment pending
13
14 Appeal.

15 **I. Issues Presented**

16
17 1. Whether the Eighth Judicial District Court (the Honorable Mary
18 Perry) manifestly abused its discretion or exercised it arbitrarily or
19 capriciously in denying Petitioner's Emergency Motion to Stay
20
21 Judgment Pending Appeal.

22 **RELIEF SOUGHT**

23
24 Petitioner prays that this Court grant the instant Emergency Petition for Writ
25 of Prohibition or in the Alternative a Writ of Mandamus pursuant to NRAP
26 21(a)(6) and NRAP 27(e) as the only option to protect the Petitioner's statutory
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28 right to a stay of judgment pending appeal.

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Under penalty of perjury, the undersigned declares that he is the Petitioner named in the foregoing petition and knows the contents thereof, that the pleading is true of his own knowledge, except as to those matters stated on information and belief, and that as to such matters he believes them to be true. This verification is made by the undersigned attorney, pursuant to NRS 15.010, on the ground that the matters stated and relied upon, in the foregoing petition are all contained in the prior pleadings and other records of the Court and district court, true and correct copies of which have been included in the appendix submitted with the petition.

/s/ Adam Solinger
ADAM M. SOLINGER
Nevada Bar No. 13963
In Proper Person

REASONS WHY WRIT SHOULD ISSUE

I. Introduction

On or about May 25, 2022, Judge Perry issued a final decree of divorce in *Solinger v. Solinger* in case number D-19-582245-D. *See* Petitioner's Appendix, hereinafter PA, at 0028-0083. Part of the decree required that the Petitioner's former counsel (Mayo), who was safeguarding funds remaining from the sale of the former martial home in his trust account, disburse those funds directly to the real party in interest within 5 days of service of the decree. *See* PA at 0079.

Petitioner then filed an emergency motion to stay the judgment on May 27, 2022. PA at. 0008-0027. Concurrently, Petitioner filed a ex parte request to shorten time. PA at 0001-0007. Petitioner also emailed the district court and opposing counsel to let them know of his intent to seek emergency relief pursuant to NRAP 27(e) in the event that the district court was unable to hear the motion before the deadline or in the event that the district court denied the stay. PA at 0089.

On May 31, 2022, the district court summarily denied the request to stay disbursal of funds pending appeal. PA at 0084-0088. The district courts order was based on the Petitioner's outlined argument under NRAP 8 regarding the factors this Court looks at in granting a stay. However, the district court's order did not address NRCP 62(d)(2).

1 This writ follows to request that this Court either stay the disbursal as
2 ordered under the decree or alternatively mandate that the district court enter an
3 order staying that portion of the decree under NRCP 62(d)(2).
4

5 **II. Argument**

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7 NRCP 62(d)(2) provides that “[i]f an appeal is taken, a party is entitled to a
8 stay by providing a bond or other security.” In deciding whether to grant a stay, the
9 Nevada Rules of Appellate Procedure examine four factors. First, the Court
10 considers (1) whether the object of the appeal will be defeated in the absence of a
11 stay, (2) whether the appellant will suffer irreparable or substantial harm in the
12 absence of a stay, (3) whether the respondent will suffer irreparable or substantial
13 harm if a stay is granted, and (4) whether the appellant is likely to prevail on the
14 merits of the appeal. NRAP 8(c).
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18 In *Nelson v. Heer*, the Nevada Supreme Court held that in determining what
19 security is necessary for a stay pending appeal, the focus should be on what
20 security will maintain the status quo and protect the judgment creditor pending
21 appeal. 121 Nev. 832, 835 (2005) (the version of NRCP 62 in effect at the time of
22 the decision made stays discretionary rather than mandatory and thus invited the
23 district court to allow for other security that was not a bond for the entire amount
24 of the judgment).
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28 **Standard for Mandamus**

1 The Court may issue a writ of mandamus to enforce “their performance of
2 an action which the law enjoins as a duty especially from an office ... or to compel
3 the admission of a party to the use and enjoyment of a right ... to which he is
4 entitled and from which he is unlawfully precluded by such inferior tribunal.” NRS
5 34.160.
6
7

8 Mandamus will not lie to control discretionary action unless it is manifestly
9 abused or is exercised arbitrarily or capriciously. *Office of the Washoe County*
10 *District Attorney v. Second Judicial District Court*, 5 P.3d 562, 566 (2000). Thus a
11 writ of mandamus will issue to control a court’s arbitrary or capricious exercise of
12 its discretion.” *Id.* (citing *Marshal v. District Court*, 108 Nev. 459, 466 (1992));
13 *City of Sparks v. Second Judicial District Court*, 998 P.2d 1190, 1193 (2000). It is
14 within the discretion of the court to determine if such a writ will be considered. *Id.*;
15 *see also State ex. Rel. Dep’t Transportation v. Thompson*, 99 Nev. 358 (1983). The
16 Court may entertain district court denials of motion dismiss an action pursuant to
17 clear authority under statute or rule.” *State v. Eighth Judicial District Court ex.*
18 *rel.*, 42 P.3d 233, 238 (2002).
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24 **Standard for Prohibition**

25 Nev. Rev. Stat. 34.320 states:

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27 The writ of prohibition is the counterpart of the writ of
28 mandate. It arrests the proceedings of any tribunal,
corporation, board or person from exercising judicial

1 functions, when such proceedings are without or in
2 excess of the jurisdiction of such tribunal, corporation,
3 board or person.

4
5 A writ of prohibition does not serve to correct errors, its purpose is to
6 prevent courts from transcending the limits of their jurisdiction in the exercise of
7 judicial but not ministerial power. *Olsen Family Trust v. District Court*, 110 Nev.
8 548, 551 (1994); *Low v. Crown Point Mining Co.*, 2 Nev. 75 (1866). However, “a
9 writ of prohibition must issue when there is an act to be ‘arrested’ which is without
10 or in excess of the jurisdiction’ of the trial judge.” *House Gen. Ins. Co. v. District*
11 *Court*, 94 Nev. 247, 248 (1978); *Ham v. Eighth Judicial District Court*, 93 Nev.
12 409, 412 (1977); *see also Goicoechea v. District Court*, 96 Nev. 287 (1980);
13 *Cunningham v. District Court*, 102 Nev. 551 (1986).

14
15 The object of a writ of prohibition is to restrain inferior courts from acting
16 without authority of law in cases whether wrong, damage, and injustice are likely
17 to follow such action. *Olsen Family Trust*, 110 Nev. at 552; *Silver Peaks Mines v.*
18 *Second Judicial District*, 33 Nev. 97 (1910). Petitions for extraordinary writs are
19 addressed to the sound discretion of the Court, and may only issue when there is no
20 plain, speedy, and adequate remedy at law. NRS 34.330; *Jeep Corp. v. Second*
21 *Judicial Dist. Court*, 98 Nev. 440, 442-43 (1982).

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27 **A. THE DISTRICT COURT WAS REQUIRED TO STAY THE**
28 **DISBURSAL PENDING APPEAL UNDER NRCP 62(d)(2).**

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2 NRCP 62(d)(2) requires a stay pending appeal if a bond or other security is
3 posted. Indeed, if the district court approves the bond or other security, the stay
4 immediately takes effect.
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6 Here, the district court has ordered that all of the money in Mayo's trust
7 account be disbursed in the next five days which falls on today May 31, 2022 per
8 the district court order. This request to stay seeks to stop the disbursement pending
9 appeal. The security that maintains the status quo is to keep the money in Mayo's
10 trust account and order the stay as required under NRCP 62(d)(2).
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13 The district court did not address this issue in the order denying Petitioner's
14 motion in district court. PA at 0084-0088. As the Petitioner is entitled to a stay in
15 these circumstances under NRCP 62(d)(2), the district court abused its discretion
16 and a stay should be granted.
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19 **B. THIS COURT SHOULD ENTER A STAY PENDING APPEAL**
20 **UNDER NRAP 8.**

21 **I. STATEMENT OF FACTS**

22 The following summary of the district court's decree is provided for
23 purposes of evaluating the request to stay and the likelihood of success in
24 appealing attorney's fees on the merits. As it relates to the procedural history
25 section, this district court attempts to summarize the procedural history going by
26 the docket entries. PA at . The district court completely neglected to mention that
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1 the Petitioner was awarded attorney's fees by the previous judge assigned to the
2 case twice. Specifically, the Petitioner was awarded fees as a discovery sanction
3 for the real party in interests failure to respond to discovery in the amount of
4 \$3,888.50. *See* February 19, 2019 Order. Judge Moss likewise ordered that she
5 would normally award attorney's fees for the Petitioner defending the real party in
6 interest's countermotion to restore joint custody but deferred the issue to the time
7 of trial. The decree is silent as to this deferral.
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11 The district court also failed to note that Judge Bell denied the real party in
12 interest's request for attorney's fees for her opposition to the Petitioner's motion to
13 disqualify because she was not entitled to fees as she did not have to respond. It is
14 unclear whether the district court's award of fees takes this denial into account.
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17 The real party in interest was previously represented by Louis Schiender.
18 Schiender filed an attorney's lien that was reduced to a judgment against the real
19 party by Judge Moss. The real party sought to appeal that award of attorney's fees
20 through Pecos as she believed that the award was unjustified given the work that
21 he has done. That appeal was dismissed by the Nevada Supreme Court as the Court
22 found the order awarding attorney's fees was not an appealable order. *See Solinger*
23 *v. Schneider, Esq.*, No. 81787, 2021 WL 1326846 (Nev. April 8, 2021).
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27 Finally, throughout the procedural history section, the issue of whether
28 attorney's fees are deferred is only noted twice and both of those deferrals were by

1 this Court. It appears this is due to the fact that Judge Moss did not award the real
2 party attorney's fees. Indeed, the only fees that Judge Moss deferred was an award
3 of \$10,000 under *Sargeant* for purposes of the real party going to trial.
4

5 As is relates to the decree awarding attorney's fees specifically, this the
6 district court found a "large disparity of income" that necessitated an award of
7 attorney's fees. The district court then proceeds to attempt to justify the award of
8 attorney's fees on the basis that the district court did not like how the Petitioner
9 litigated this case. However, this appears to potentially retroactively sanction the
10 Petitioner which is grossly inappropriate. The district court never mentions the
11 filings by the real party, nor does the district court even acknowledge that the real
12 party had not been granted fees by Judge Moss.
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17 The district court notes that the Petitioner benefited from "the financial
18 generosity of his parents." The district court makes no mention of the financial
19 generosity of the real party's mother. This crucial, unstated premise, is necessary to
20 understand how the real party was able to pay her legal fees that were generated by
21 her own actions. For example, the district court can disagree with Judge Moss
22 modifying custody in June of 2019, but the district court cannot go back in time
23 and change that. The Petitioner was the prevailing party, not the real party. The
24 real party's inability to put the safety of the children first is what caused Judge
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1 Moss to change custody. Custody was not changed to punish the real party, but to
2 protect the children.
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4 The district court also does not mention that the real party necessitated the
5 withdrawal of her prior attorneys due to actions that were so prejudicial, this
6 district court could not even hear them as it would forever taint the real party in the
7 district court's eyes.
8

9 **II. LAW AND ARGUMENT**

10

11 In deciding whether to grant a stay, the Nevada Rules of Appellate
12 Procedure examine four factors. First, the Court considers (1) whether the object of
13 the appeal will be defeated in the absence of a stay, (2) whether the appellant will
14 suffer irreparable or substantial harm in the absence of a stay, (3) whether the
15 respondent will suffer irreparable or substantial harm if a stay is granted, and (4)
16 whether the appellant is likely to prevail on the merits of the appeal. NRAP 8(c).
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19 **a. Whether The Object Of The Appeal Will Be Defeated In The Absence** 20 **Of A Stay.** 21

22 The appeal of the decree will involve several issues of law. As relevant to
23 this motion to stay, the Petitioner is seeking to stay the order that Vince Mayo turn
24 over all of the money being held in his trust account to the real party and one of her
25 former attorneys while the Petitioner appeals the award of attorney's fees.
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1 The object of the appeal, as it relates to this motion is to reverse the award of
2 attorney's fees. If the Petitioner prevails on appeal and the real party has spent the
3 money, then the Petitioner would get a judgment in his favor for the amount of
4 money wrongly disbursed from Mayo's trust account. As noted by the district court
5 in granting attorney's fees, the district court believes the real party has very little
6 ability to earn more money and is a children's hair stylist. Thus, the Petitioner
7 would have no way to collect on any judgment he receives if he is successful and
8 his appeal would be illusory. Thus, this factor favors a stay.

12 **b. Whether The Appellant Will Suffer Irreparable Or Substantial Harm**
13 **In The Absence Of A Stay.**

15 If the Petitioner is successful, he would suffer irreparable harm if the real
16 party is transferred all of the money that is disputed and then spends it. This factor
17 favors a stay.

19 **c. Whether The Respondent Will Suffer Irreparable Or Substantial Harm**
20 **If A Stay Is Granted.**

22 The real party will suffer no harm if a stay is granted. As it stands, the
23 Petitioner will be paying child support. Additionally, the real party's attorney's
24 fees have been paid in full, with the exception of Louis Schneider. However, as
25 discussed in more detail below, this Court's unilateral grant of attorney's fees
26 completely abridges the real party's desire to contest this fee and the Petitioner is
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1 in no position to appeal the grant of fees. Thus, part of this request would be to stay
2 the award of fees to Schiender until such time as the real party appeals the award
3 as part of the underlying appeal.
4

5 **d. Whether The Appellant Is Likely To Prevail On The Merits Of The**
6 **Appeal.**
7

8 The Petitioner will prevail on appeal. The district court's order awarding
9 attorney's fees is facially and fatally deficient to the point that it must be set aside
10 for the reasons set forth below.
11

12 The district court makes no reference to the fact that the real party's mother
13 paid her attorney's fees. The real party's fees to Pecos and Cramer/Ghibaudo have
14 been paid in full and the district court went to great lengths to describe the income
15 disparity between the parties. The district court does however mention that the
16 Petitioner's parents paid for his attorney's fees. It's unclear how the district court
17 can use the Petitioner's parents' generosity against him while remaining silent on
18 the real party's mother's generosity.
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22 The district court cites to *Logan v. Abe* for the proposition that a party can
23 recover attorney's fees despite a third party's payment of those fees. However, that
24 case is distinguishable in several regards. First, that case involved an insurance's
25 company paying the fees for its insured which was required under the terms of the
26 insurance contract and not a gesture of goodwill. Additionally, the case had to do
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1 with a grant of fees because the Plaintiff did not beat the offer of judgment made
2 by the Defendant. Neither of those facts are present here. Additionally, it does not
3 account for the real party's choice of one of the most expensive family law firms in
4 town. The district court makes no attempt to distinguish what fees the real party
5 incurred that she was "required" to incur.
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8 For example, the real party was required to seek new counsel after her
9 actions caused Pecos to withdraw, but to award her those fees seems to be
10 completely devoid of logic.
11

12 Additionally, the Petitioner was not the only one that filed motions in this
13 case. The real party filed several herself. One example, when the real party was
14 represented by Schiender, she filed a motion to get money from the trust account
15 after the sale of the former martial house in order to buy a new house for herself
16 and her boyfriend that she bought in violation of the joint preliminary injunction.
17
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19 The district court cannot just categorize all attorney's fees as necessary
20 expenses without an examination as to who is relatively responsible for the fees.
21 To hold otherwise is just absurd. If the roles were reversed and the real party filed
22 every single motion in this case and the Petitioner merely opposed them, then the
23 district court's blanket grant of fees would require the spouse in the worse financial
24 position to accede to every single demand or have to pay the other side's fees for
25 their actions.
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1 Thus, the district court cannot do a blanket grant of fees without an analysis
2 of the necessity of those fees. The district court is well aware of this requirement as
3 the district court laid out the *Brunzell* factors, but the district court utterly failed to
4 conduct an analysis under *Brunzell*. This failure alone will result in the award
5 mandates overturning the fees.
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8 Additionally, the district court cannot effectively use a time machine to go
9 against the law of the case. Judge Moss did not award the real party attorney's fees.
10 She even deferred the \$10,000 grant of *Sargeant* fees until the time of trial because
11 the real party's mother was paying her expenses. By blanket granting the real party
12 fees for every single thing her attorneys did, the district court is effectively going
13 back in time and retroactively awarding fees over what the previous judge did in
14 this case. This is a direct violation of the law of the case doctrine. Previous
15 decisions must be respected.
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19 Additionally, and just as troubling, the district court's decree gives the
20 impression that fees are being awarded as a litigation sanction. Sanctions are to be
21 done on a graduated scale and not done retroactively. This unjust punitive measure
22 cannot be explained.
23
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25 On the same topic of a blanket award of fees and law of the case, Pecos
26 opposed the Petitioner's request to disqualify this Court and asked for fees for
27 responding. Judge Bell denied the request for fees as the real party was not
28

1 required to respond to the motion to disqualify. The memorandum of costs
2 submitted by Pecos shows that the real party was billed for the time spent
3 preparing the opposition. The Petitioner acknowledges that the district court
4 awarded the real party \$180,000 for Pecos' representation while the actual fees
5 billed were just over \$207,000. However, this underscores the likelihood of
6 success on appeal as the district court has not delineated its thinking in this regard.
7
8 This Court cannot overrule Judge Bell's denial of fees.
9
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11 Additionally, the Petitioner will prevail on ordering him to pay Schiender's
12 attorney's fees. The real party objected to his fee, believed it was unwarranted and
13 appealed Judge Moss' order. But for it being dismissed for jurisdiction and not
14 being a final order, her position would be that the fees awarded were unreasonable.
15 The Petitioner is in no position to appeal that award of fees because the real party
16 has the information necessary for appeal. The real party has no incentive to appeal
17 this fee now as she is not responsible for it and the Petitioner is no position to be
18 able to effectively prosecute the appeal in that regard.
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22 In sum, the district court erroneously awarded the real party the entirety of
23 her legal fees without any attempt to justify awarding the entire amount. The real
24 party's fees were paid by her mother. As a result, attorney's fees were
25 inappropriate and should not be considered in this case.
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1 Even assuming *arguendo* that the *Logan* decision is extended to cover this
2 situation, the district court cannot square the facial bias of holding the Petitioner's
3 parents' financial help against him, but not accounting for the real party's mother's
4 help. Additionally, *Logan* allows for the recovery of **reasonable** attorney's fees.
5

6
7 The district court has taken no steps to justify the reasonableness of real
8 party's fees other than a blanket statement about the reasonableness of the work
9 performed. One example is the Petitioner's award of attorney's fees for the real
10 party's discovery violation in the amount of \$3,888.50, which is not mentioned
11 anywhere in the decree. The real party obviously incurred fees defending against
12 that motion. While the district court's ruling on the emergency motion to stay
13 argues that it was accounted for, it appears to be an after the fact explanation.
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17 The motion to disburse disputed funds held in trust in July and August of
18 2019 was likewise necessitated by the real party violating the joint preliminary
19 injunction and buying a house without court permission. Yet, the Petitioner now
20 has to pay for the real party's attorney's fees.
21

22 The grant of attorney's fees in this case is substantively incorrect because
23 the fees were paid by the real party's mother as a gift to her, not a loan. Therefore,
24 the real party cannot recover those fees. Even if that were not the case, the district
25 court's failure to analyze the reasonableness of the real party's attorney's fees is
26 fatal to the award and will be overturned on appeal. The district court devotes no
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1 time to analyzing what were the real party's reasonable attorney's fees that were
2 occasioned and necessary in order to meet the Petitioner in the courtroom on an
3 equal basis and that is why the Petitioner will prevail on appeal as it relates to fees.
4

5 **III. CONCLUSION**

6
7 The district court erred in not granting the request to stay the disbursal
8 portion of the decree pending appeal as the Petitioner is entitled to a stay under
9 NRCP 62(d)(2). Alternatively, the stay factors under NRAP 8 warrant a stay in
10 these circumstances.
11

12 Respectfully submitted this the 31st day of May, 2022.
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14

15 /s/ Adam Solinger
16 ADAM M. SOLINGER
17 Nevada Bar No. 13963
18 In Proper Person
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This petition has been prepared in a proportionally spaced typeface using Microsoft Word Version 16.9.1 (2017) in size 14 font, Times New Roman.

Finally, I hereby certify that I have read this 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 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.

///

1 Dated this 31st day of May, 2022.

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3 ADAM M. SOLINGER
4 Nevada Bar No. 13963
5 2970 W. Sahara Avenue
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Alex B. Ghibaud, Esq.
197 E. California Ave., Suite 250
Las Vegas, Nevada 89101
(702) 217-7442
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Counsel for the Real Party in Interest

By /s/ Adam Solinger
Adam M. Solinger

1 **NRAP 27(e) CERTIFICATE**

2 Pursuant to NRAP 27(e), I hereby certify that I am counsel to Petitioner and
3 further certify:
4

5 1. The Contact information for the attorneys for the Real Party in Interest is:

6 Alex B. Ghibaud
7 197 E. California Ave., Suite 250
8 Las Vegas, Nevada 89101
9 (702) 217-7442
alex@glawvegas.com
10

11 2. The facts showing the nature and cause of the emergency are set forth in the
12 Points and Authorities in Support of Emergency Petition for Writ of Prohibition
13 or in the Alternative of Mandamus. These facts include the following:

- 14 a. On May 26, 2022, the district court ordered that money being held in
15 trust pending the outcome of the divorce case be immediately disbursed
16 to the real party and one of her former attorney's within 5 days. I
17 immediately moved for a stay on an emergency basis. The opposing party
18 filed an opposition.
19
20 b. The district court denied the stay today, May 31, 2022, and while it did
21 not explicitly order attorney Mayo to disburse the funds today, stated that
22 today was the deadline under the district court's decree.
23
24 c. I notified Respondent and the real party in interest of my intent to file this
25 Emergency Writ Petition within my emergency motion to stay, by
26 separate email on that same day, May 27, 2022, and via text message and
27 email today May 31, 2022.
28
d. I will email a copy of this Emergency Writ Petition immediately after
filing it.

1 Respectfully submitted this the 31st day of May, 2022.

2
3 /s/ Adam Solinger
4 ADAM M. SOLINGER
5 Nevada Bar No. 13963
6 In Proper Person
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