

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

2 MATT KLABACKA AS
3 DISTRIBUTION TRUSTEE OF THE
4 ERIC L. NELSON NEVADA TRUST
5 DATED MAY 30, 2001;

6 Petitioner,

7 vs.

8 EIGHTH JUDICIAL DISTRICT COURT
9 OF THE STATE OF NEVADA, CLARK
10 COUNTY; THE HONORABLE
11 REGINA M. MCCONNELL,

12 Respondents,

13 LYNITA SUE NELSON, individually,
14 and in her capacity as Investment Trustee
15 of the Lynita S. Nelson Nevada Trust,
16 dated May 30, 2001,

17 and

18 ERIC L. NELSON,

19 Real Parties in Interest.

Electronically Filed
Nov 27 2023 01:53 PM
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Ct. No.:

District Ct. No: D-09-411537-D

20 **EMERGENCY WRIT UNDER NRAP 27(e)**

21 **PETITION FOR WRIT OF MANDAMUS**

22 **SOLOMON DWIGGINS FREER & STEADMAN, LTD.**

23 JEFFREY P. LUSZECK, ESQ., NSB #9619

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26 Las Vegas, Nevada 89129

27 Telephone: (702) 853-5483

28 *Attorney for Petitioner*

1 **I. NRAP 27(e) Certificate**

2 Petitioners respectfully certify that this writ is filed on an emergency basis
3 requiring relief on or before December 8, 2023 to avoid irreparable harm.
4 Immediate relief is necessary as the district court entered judgments in favor the
5 ELN Trust against Lynita S. Nelson and the LSN Trust in the cumulative amount
6 of \$1,748,279.06, and Lynita S. Nelson has transferred a substantial amount of real
7 property titled in the name of the LSN Trust to a number of entities that she created
8 without the knowledge or consent of Eric and/or the ELN Trust. The ELN Trust
9 is informed and believes that Lynita S. Nelson will continue to sell and transfer
10 assets, the majority of which is real property, in order to ensure that the ELN Trust
11 cannot collect on the outstanding judgments.

12 The relief sought in the Writ of Mandamus is akin to the relief requested in
13 a Motion for Reconsideration filed by Eric L. Nelson, individually, on November
14 21, 2023.

15 A. NRAP 27(e)(3)(a) Telephone Numbers and Office Addresses of the
16 Attorneys for the Parties.

17 Stacy Howlett, Esq. 18 Michaelson Law 19 1746 W Horizon Ridge Parkway 20 Henderson, Nevada 89012 stacy@michaelsonlaw.com 21 Telephone: 702-731-2333 <i>Attorneys for Lynita Nelson,</i> 22 <i>Individually and as investment Trustsee</i> 23 <i>of the Lynita S. Nelson Trust dated May</i> <i>30, 2001</i>	24 Curtis R. Rawlings, Esq. 25 Pecos Law Group 26 8925 S. Pecos Road, Suite 14A 27 Henderson Nevada 89074 curtis@pecoslawgroup.com 28 Telephone: 702-388-1851 <i>Attorney Lynita Sue Nelson and LSN</i> <i>Trust in an "Unbundled Capacity"</i>
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25 / / /

26 / / /

27 / / /

1 C. Notification of Parties pursuant to NRAP 27(e)(3)(c)

2 Counsel for the ELN Trust notified the Parties of the filing of this Writ of
3 Mandamus. This notification was made by Jeffrey P. Luszeck, Esq. via email on
4 November 22, 2023. Service of the Writ will take place by email and e-service
5 upon all parties' counsel and by mail to the other interested parties, if any.

6 Dated this 27th day of November, 2023.

7 Respectfully Submitted,

8 SOLOMON DWIGGINS FREER & STEADMAN,
9 LTD.

10 */s/ Jeffrey P. Luszeck*

11 JEFFREY P. LUSZECK, ESQ.
12 Nevada Bar No. 9619

13 *Attorney for Petitioner*
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CERTIFICATE OF COMPLIANCE

1
2 1. I hereby certify that this brief complies with the formatting
3 requirements of NRAP 32(a)(4), the requirements of NRAP 32(a)(5) and the type
4 style requirements of NRAP (32)(a)(6) because:

5 This brief has been prepared in a proportionally spaced typeface using Times
6 New Romon in Microsoft Word in 14-point font.

7 2. I further certify that this brief complies with the page- and type-
8 volume limitation of NRAP 32(a)(7), because, excluding the parts of the brief
9 exempted by NRAP 32(a)(7)(C), because it does not exceed 30 pages.

10 3. Finally, I hereby certify that I have read this Writ, and to the best of
11 my knowledge, information, and belief, it is not frivolous or interposed for any
12 improper purpose. I further certify that this Writ complies with all applicable
13 Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires
14 every assertion in the Writ regarding matters in the record to be supported by a
15 reference to page and volume number, if any, of the transcript or appendix where
16 the matter relied on is to be found. I understand that I may be subject to sanctions
17 in the event that the accompanying Writ is not in conformity with the requirements
18 of the Nevada Rules of Appellate Procedure.

19 Dated this 27th day of November, 2023.

20 Respectfully Submitted,

21 SOLOMON DWIGGINS FREER & STEADMAN,
22 LTD.

23 /s/ Jeffrey P. Luszeck

24 JEFFREY P. LUSZECK, ESQ.
25 Nevada Bar No. 9619

26 *Attorney for Petitioner*
27
28

1 **NRAP 26.1 DISCLOSURE**

2 Pursuant to Rule 26.1 of the Nevada Rules of Appellate Procedure,
3 Petitioner states that they have no parent corporations and no publicly held
4 company owns 10% or more of the stock of Petitioner. The undersigned Counsel
5 of Record certifies that the following are persons and entities, as described in
6 NRAP 26.1(a), which must be disclosed. These representations are made in order
7 the honorable judges of this Court may evaluate possible disqualification or
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recusal.

Counsel for Matt Klabacka, Distribution Trustee of the Eric L. Nelson Nevada Trust dated May 30, 2001:

SOLOMON, DWIGGINS FREER & STEADMAN, LTD.
Jeffrey P. Luszeck, Esq.

Counsel for Eric Nelson, individually, and in his individual capacity as Investment Trustee of the Eric L. Nelson Nevada Trust dated May 30, 2001:

HAUSER FAMILY LAW
Michelle A. Hauser, Esq.

Counsel for Lynita Nelson individually, and in her capacity as Investment Trustee of the Lynita S. Nelson Nevada Trust, dated May 30, 2001:

MICHAELSON LAW
Stacy Howlett, Esq.
Michael Whittaker, Esq.

TABLE OF CONTENTS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS..... i
CERTIFICATE OF COMPLIANCE iv
ATTORNEY’S CERTIFICATE OF COMPLIANCE..... v
NRAP 26.1 DISCLOSURE vi
NRAP 21(a)(1) ROUTING STATEMENT vii
TABLE OF CONTENTS vii
TABLE OF AUTHORITIES viii
REQUEST FOR RELIEF 1
ISSUES PRESENTED 1
FACTS NECESSARY TO UNDERSTAND THE
ISSUES PRESENTED 1-8
REASONS WHY RELIEF SHOULD ISSUE..... 6-9
 A. The District Court Erred By Finding That It Lacked
 Jurisdiction To Consider Pending Issues Merely Because
 A Party Filed An Appeal 6
 B. Should a Stay Issue A Supersedeas Bond Should
 Be Required 9
CONCLUSION 8-9
VERIFICATION BY DECLARATION 10
CERTIFICATE OF COMPLIANCE 11
VERIFICATION BY DECLARATION 12

1 **TABLE OF AUTHORITIES**

2 **CASES**

3 *Foster v. Dingwall*, 126 Nev. -----, -----, 228 P.3d 453 (2010) 7, 8

4 *Huneycutt v. Huneycutt*, 94 Nev. 79, 80, 575 P.2d 585, 585 (1978) 7

5 *Klabacka v. Nelson*, 133 Nev. 164, 394 P.3d 940 (2017) 1, 2, 5

6 *Mack-Manley v. Manley*, 122 Nev. 849, 138 P.3d 525 (2006)..... 7

7 *Myers v. Haskins*, 381 P.3d 644 (Nev. 2012) 7

8 *Rust v. Clark Cty. School District*, 103 Nev. 686, 688,

9 747 P.2d 1380, 1382 (1987)..... 7

10 *Smith v. Emery*, 11 109 Nev. 737, 740, 856 P.2d 1386, 1388 (1993)7

11 *State ex rel. P.C. v. District Court*, 94 Nev. 42, 574 P.2d 272 (1978) 7

12 **COURT RULES AND STATUTES**

13 NRAP 8 5

14 NRAP 8(a)(2)(E)..... 8

15 NRAP 28(e)(1)..... 12

16 NRAP 32(a)(5)..... 12

17 NRAP 32(a)(7)..... 12

18 NRAP 32(a)(7)(C)..... 12

19 NRCp 62 6

20 NRCp 62(c)..... 8

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I.

RELIEF SOUGHT

Petitioner seeks a writ of mandamus directing the district court to rule on the pending issues before it, specifically, the ELN Trust’s Motion for Order Allowing Examination of Judgment Debtor, Lynita S. Nelson, Individually, and in her Capacity as Investment Trustee of the LSN Trust, and Motion to Convey Properties Titled in the Name of Pink Peonies, LLC/Pink Peonies Wyoming, LLC and Southern Magnolia, LLC.

II.

ISSUES PRESENTED

1. Did the district court err by finding that it lacked jurisdiction to consider pending issues because a party has appealed some, but not all, of a monetary judgment?

2. If it was appropriate for the district court not consider pending issues, did the district court err by not requiring a supersedeas bond be posted.

III.

FACTS NECESSARY TO UNDERSTAND THE ISSUES PRESENTED

This Court is intimately familiar with the facts and circumstances regarding the Parties in this matter as they have been involved in four (4) separate appeals, namely 66772, 68292, 77254 and 87234, and numerous writs. *See* 53432. 63545, 66772, 66772, 68292, 77254, 77473, and 81564.

Notwithstanding, the basic facts relating to the instant Writ, many of which come directly from this Court’s Opinion in *Klabacka v. Nelson*, 133 Nev. 164, 394 P.3d 940 (2017), are as follows.

In 1993, Eric L. Nelson (“Eric”) an Lynita S. Nelson (“Lynita”), husband and wife, entered into a separate property agreement in order to transmute their community assets into each Parties’ respective separate property. *Klabacka*, 133

1 Nev. at 166, 394 P.3d at 943. Said separate property ultimately funded each
2 Parties’ respective separate property trust (*i.e.* Eric funded his separate property
3 trust with his separate property and Lynita funded her separate property trust with
4 her separate property). *See id.*

5 On May 30, 2001, Eric created a self-settled spendthrift trust named the Eric
6 L. Nelson Nevada Trust dated May 30, 2001 (“ELN Trust”) and funded said trust
7 with the assets contained within his separate property trust. Conversely, on the
8 same day, and Lynita created the Lynita S. Nelson Nevada Trust dated May 30,
9 2001 (“LSN Trust”) and funded said trust with the assets contained within her
10 separate property trust. *See id.*

11 Eric filed for divorce on May 6, 2009, and on August 9, 2011, both the ELN
12 Trust and LSN Trust were added as necessary parties to the divorce action.
13 *Klabacka*, 133 Nev. at 167, 394 P.3d at 944.

14 On June 3, 2013, the district court issued its Decree of Divorce, which was
15 ultimately appealed by the ELN Trust. Said appeal resulted in this Court issuing
16 its opinion in *Klabacka v. Nelson*, 133 Nev. 164, 394 P.3d 940 (2017), wherein it:
17 “affirm[ed] in part and vacate[d] in part the district court’s decree of divorce” . . .
18 and remand[ed] this matter for further proceedings consistent with this opinion.”
19 *Klabacka*, 133 Nev. at 182, 394 P.3d at 954.

20 On remand, the parties were tasked with “tracing the assets contained within
21 the [ELN Trust and LSN Trust] either through a reliable expert or other available
22 means” in order to determine whether there was any community property in either
23 the ELN Trust or LSN Trusts. *Klabacka*, 133 Nev. at 174, 394 P.3d at 949. A trial
24 on the tracing and other issues relating to the remand occurred on March 28-31,
25 2022, April 1, 2022, April 6-7, 2022, April 27, 2022 and April 28, 2022. (Five
26 years post-remand)

1 On June 29, 2022, the district court entered its Decision and Order wherein
2 it concluded/found as follows: “[i]n conclusion, this Court has found that based
3 upon the expert testimony and report by Anthem Forensics, and other testimony
4 and exhibits presented before this Court, that Lynita has not met her burden of
5 proof to establish by clear and convincing evidence that any community property
6 exists with the parties respective SSSTs.” *See* Decision and Order entered June
7 29, 2022. PAPP V1:1-22. As such, the district court ordered that “the separate
8 property within the [ELN Trust} and [LSN Trust] from the period of May 30, 2001,
9 to June 3, 2013, is not subject to an equitable distribution between Eric and Lynita
10 pursuant to this Court’s Decree of Divorce.” *Id.* Notwithstanding, the district court
11 requested additional evidence and testimony regarding an issue that is impertinent
12 to the instant Writ.

13 On June 8, 2023, the district court entered an Order Granting in Part Motion
14 for Immediate Payment of Funds Belonging to ELN Trust in favor of the ELN
15 Trust against Lynita, individually, and the LSN Trust, in the amount of
16 \$493,216.00. *See* June 8, 2023 Order. PAPP V1:23-30.

17 On July 27, 2023, the district court entered an Order After Hearing Denying
18 Lynita S. Nelson’s Motion to Retax Costs; and Order Awarding ELN Trust’s
19 Memorandum of Costs in favor of the ELN Trust against Lynita, individually, and
20 the LSN Trust, in the amount of \$62,935.08. *See* July 27, 2023 Order. PAPP
21 V1:31-34.

22 On July 27, 2023, the district court entered an Order After Hearing Granting
23 ELN Trust’s Request for an Award of Attorney’s Fees in favor of the ELN Trust
24 against Lynita, individually, and the LSN Trust, in the amount of \$239,772.30. *See*
25 July 27, 2023 Order. PAPP V1:68-84.

26 On August 2, 2023, the district court entered an Order After Hearing
27 Granting ELN Trust’s Request for an Award of Attorney’s Fees in favor of the
28

1 ELN Trust against Lynita, individually, and the LSN Trust, in the amount of
2 \$952,355.86 (BANONE, LLC: \$435,260 in principal and \$177,601.10 in interest;
3 Lindell Office: \$147,667.90 in principal and \$60,253.58; Repayment of
4 \$324,000.00: \$132,203.13 in interest). *See* August 2, 2023 Order. PAPP V1:68-
5 84.

6 In summary, the ELN Trust has judgments in the cumulative amount of
7 \$1,748,279.06 (plus statutory interest) against Lynita, individually, and the LSN
8 Trust, which is broken down as follows:

- 9 • \$493,216.00, *see* June 8, 2023 Order;
- 10 • \$62,935.08, *see* July 27, 2023 Cost Order;
- 11 • \$239,772.30, *see* July 27, 2023 Attorneys' Fees Order; and
- 12 • \$952,355.68, *see* August 2, 2023 Order.

13 **TOTAL: \$1,748,279.06¹**

14 On August 25, 2023, Lynita, individually, and as trustee of the LSN Trust
15 filed her Notice of Appeal on the July 27, 2023 Order and August 2, 2023 Order.
16 *See* Notice of Appeal. PAPP V1:85-87. It is important to note that the LSN Trust
17 did not appeal the June 8, 2023 Order (in the amount of \$493,216.00) or the July
18 27, 2023 Cost Order (in the amount of \$62,935.08). Further, although the LSN
19 Trust technically appealed the August 2, 2023 Order, said appeal is limited to the
20 interest in the amount of \$370,057.81, not principal in the amount of \$582,928.05,
21 that Lynita/the LSN Trust were ordered to pay.

22 As such, even though there are judgments against Lynita/the LSN Trust in
23 favor of the ELN Trust in the cumulative amount of \$1,748,279.06, the LSN Trust
24 has only appealed \$609,830.11 of said judgments (\$239,772.30 in attorneys' fees,
25 *see* July 27, 2023 Order, and \$370,057.81 in interest, *see* August 2, 2023 Order).
26 Therefore, even if successful on appeal, Lynita/the LSN Trust will still owe the

27 ¹ This does not include monies awarded to Eric in his individual capacity.
28

1 ELN Trust \$1,138,448.95 pursuant to the June 8, 2023 Order and July 27, 2023
2 Cost Order, neither of which were appealed, and the principal amount identified in
3 the August 2, 2023 Order that is not being appealed.

4 In light of the fact that Lynita/the LSN Trust admittedly owes the ELN trust
5 at least \$1,138,448.95, on September 18, 2023, the ELN Trust filed a Motion for
6 Order Allowing Examination of Judgment Debtor, Lynita S. Nelson, Individually,
7 and in her Capacity as Investment Trustee of the LSN Trust (“Motion for Debtor
8 Examination”).

9 Further, on September 22, 2023, the ELN Trust also filed a Motion to
10 Convey Properties Titled in the Name of Pink Peonies, LLC/Pink Peonies
11 Wyoming, LLC and Southern Magnolia, LLC (“Motion to Convey”). The Motion
12 to Convey was intended to address the fact that the LSN Trust, during the pendency
13 of the appeal in *Klabacka*, had transferred the majority of its real property to a
14 number of entities that Lynita/the LSN Trust created without the knowledge or
15 consent of Eric and/or the ELN Trust. Upon information and belief, Lynita/the
16 LSN Trust transferred said assets to impede the ELN Trust’s ability to collect on
17 any judgment that it may ultimately receive against the LSN Trust. As such, the
18 ELN Trust requested in its Motion to Convey that the Court compelling Lynita, in
19 her capacity as Investment Trustee of the LSN Trust, to transfer said real property
20 back to the LSN Trust.

21 On October 2, 2023, and October 6, 2023, respectively, the LSN Trust filed
22 an opposition to the Motion for Debtor Examination and Motion to Convey. The
23 LSN Trust’s Opposition to the Motion for Debtor Examination also contained a
24 Countermotion to Stay Execution of Judgment Pursuant to NRAP 8. Even though
25 the LSN Trust failed to articulate why a stay of the entire judgment should be
26 granted (in light of the fact that Lynita/the LSN Trust admittedly owe the ELN trust
27 at least \$1,138,448.95), it conceded that should the stay of execution be granted
28

1 “Ms. Nelson will post a supersedeas bond pursuant to NRCP 62.” See Opposition
2 to Motion for Debtor Examination at 5:21-22.

3 On November 13, 2023, two (2) days before the hearing on the Motion for
4 Debtor Examination, Motion to Convey and Motion for an Equitable Offset that
5 was filed by Eric, individually, the district court entered an Order Vacating Hearing
6 for Jurisdiction, which provides, in part:

7 The COURT FINDS that this matter is currently before the Supreme
8 Court of Nevada. The Defendant filed her Notice of Appeal on August
9 25, 2023, and Case Appeal Statement on August 25, 2023; Cross-
10 Claimant filed his Notice of Appeal on September 2, 2023, and Case
11 Appeal Statement on September 2, 2023, and as a result, which the
12 case is pending before the Supreme Court of Nevada, this Court lacks
13 jurisdiction to consider the pending issues.

14 THEREFORE THIS COURT ORDERS that all hearings presently set
15 for November 15, 2023 shall be VACATED.

16 THIS COURT FURTHER ORDERS that, following the completion of
17 the appellate process, Plaintiff, Defendant and Cross-Claimant may
18 file a Re-Notice of Hearing.

19 The district court’s Order Vacating Hearing for Jurisdiction is contrary to
20 Nevada law as a district court does in fact have jurisdiction to entertain pending
21 motions despite the filing of an appeal. As such, the ELN Trust respectfully
22 requests that this Court enter a Writ of Mandamus authorizing and instruction the
23 district court to hear the outstanding issues.

24 IV.

25 **REASONS WHY RELIEF SHOULD ISSUE**

26 A. The District Court Erred By Finding That It Lacked Jurisdiction To Consider
27 Pending Issues Merely Because A Party Filed An Appeal.

28 This court does have jurisdiction to entertain the pending motions despite
the filing of an appeal. A common misconception by parties is that filing a Notice

1 of Appeal automatically stays any further District Court action. The Nevada
2 Supreme Court has repeatedly held this is not the case. In *State ex rel. P.C. v.*
3 *District Court*, 94 Nev. 42, 574 P.2d 272 (1978), the Nevada Supreme Court held:

4 ... not required to post a bond, is entitled to a stay of judgment
5 upon the mere filing of the notice of appeal. Not only here would such
6 a result torture our prevailing rules of court, but such a determination
7 would render the language meaningless and would do untold mischief
8 to the effective administration of justice.

9 In *Mack-Manley v. Manley*, 122 Nev. 849, 138 P.3d 525 (2006), the Nevada
10 Supreme Court held the District Court maintains jurisdiction to enforce its orders
11 pending an appeal.²

12 In *Foster v. Dingwall*, 228 P.3d 453 (2010) the Nevada Supreme Court held:

13 We have further held that when an appeal is perfected, the district court
14 is divested of jurisdiction to revisit issues that are pending before this
15 court, [but] the district court retains jurisdiction to enter orders on
16 matters that are collateral to and independent from the appealed
17 order, *i.e.*, matters that in no way affect the appeal's merits. *Citing to*
18 *Mack-Manley*, 122 Nev. At 855, 138 P.3d at 529-30.

19 In *Myers v. Haskins*, 381 P.3d 644 (Nev. 2012) the Nevada Supreme Court
20 in a footnote, denoted:

21 In *Myers v. Haskins*, 381 P.3d 644 (Nev. 2012) the Nevada Supreme
22 Court in a footnote, denoted: In light of this order. We deny as moot
23 respondent's motion for temporary remand, in which he contends that
24 the underlying proceedings are halted whenever appellant files a notice
25 of appeal. We remind the parties and the district court that after a notice
26 of appeal is filed, the district court retains jurisdiction to decide matters
27 collateral to or independent from the issues on appeal, to enforce orders
28 that are before this court on appeal, and to hold hearings concerning
29 matters that are pending before this court. *Foster v Dingwall* 126 Nev.
30 -----, -----, 228 P.3d 453, 455 (2010); *Mack-Manley v. Manley*, 122

31 ² See also *Rust v. Clark Cty. School District*, 103 Nev. 686, 688, 747 P.2d
32 1380, 1382 (1987); *Smith v. Emery*, 11 109 Nev. 737, 740, 856 P.2d 1386, 1388
33 (1993); and *Huneycutt v. Huneycutt*, 94 Nev. 79, 80, 575 P.2d 585, 585 (1978)

1 Nev. 894, 855, , 858, 138 P.3d 525, 531, 532 (2006) (providing that the
2 district court has the authority to resolve matters that are collateral to
3 and independent of the issues on appeal, “i.e., matters that in no way
4 affect the appeal’s merits,” and explaining that a “district court is
5 simply without jurisdiction to enter an order that modifies or affects the
6 order being challenged on appeal. *Foster* 126 Nev. -----, -----, 228
7 P.3d

8 The relevant case law makes it clear, that the District Court retains
9 jurisdiction to enforce its court’s orders pending an appeal.

10 **B. Should A Stay Issue A Supersedeas Bond Should Be Required**

11 NRCP 62(c) provides:

12 **Injunction Pending an Appeal.** While an appeal is pending from an
13 interlocutory order or final judgment that grants or refuses to grant, or
14 dissolves or refuses to dissolve, an injunction, the court may stay,
15 suspend, modify, restore, or grant an injunction on terms for bond or
16 other terms that secure the opposing party’s rights.

17 This Court may condition a party’s request for a stay of judgment on the
18 party’s filing of a bond or appropriate security in the district court. NRAP
19 8(a)(2)(E)

20 As shown herein, the LSN Trust has already transferred a substantial amount
21 of its assets to entities that may or not be owned by the LSN Trust. Absent a bond,
22 it is likely that the ELN Trust will never be able to recover the substantial judgment
23 awarded regarding of the outcome of this writ proceeding or the pending appeal.

24 **V.**

25 **CONCLUSION**

26 In light of the foregoing, Petitioner respectfully requests that this Court enter
27 a writ of mandamus directing the district court to rule on the pending issues before
28 it, specifically, the ELN Trust’s Motion for Order Allowing Examination of
Judgment Debtor, Lynita S. Nelson, Individually, and in her Capacity as
Investment Trustee of the LSN Trust, and Motion to Convey Properties Titled in

1 the Name of Pink Peonies, LLC/Pink Peonies Wyoming, LLC and Southern
2 Magnolia, LLC.

3 Dated this 27th day of November, 2023.

4 Respectfully Submitted,

5 SOLOMON DWIGGINS FREER & STEADMAN,
6 LTD.

7
8 */s/ Jeffrey P. Luszeck*

9 _____
10 JEFFREY P. LUSZECK, ESQ.
11 Nevada Bar No. 9619

12 *Attorney for Petitioner*
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CERTIFICATE OF SERVICE

Pursuant to NRAP 21(a)(1), I hereby certify that I am an employee of the law firm of Solomon Dwiggin & Freer, Ltd., and that on November 27th, 2023, I served a true and correct copy of the foregoing **PETITION FOR WRIT OF MANDAMUS**, via Hand Delivery and U.S. Mail, Postage Prepaid, to the following:

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Eighth Judicial District Court
Family Division, Department O
Judge Regina M. McConnel
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*Attorney Lynita Sue Nelson and
LSN Trust in an "Unbundled
Capacity"*

/s/ Sherry J. Curtin-Keast

An Employee of SOLOMON DWIGGINS
FREER & STEADMAN, LTD.