

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANN NYGREN, BRUCE NYGREN, AND  
LYNN NYGREN ("RESIDUAL HEIRS"),  
AND WEULE, BROYLES & MONDO,  
LLP, ATTORNEYS FOR RESIDUAL  
HEIRS OF THE ESTATE OF RAY  
HUNTER NYGREN, DECEASED,  
Petitioners,

vs.

THE THIRD JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CHURCHILL, AND THE HONORABLE  
DAVID A. HUFF, DISTRICT JUDGE,  
Respondents,  
and  
SCOTT NYGREN,  
Real Party in Interest.

No. 40082

FILED

MAR 05 2003

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *J. Richards*  
CLERK OF DISTRICT COURT

ORDER GRANTING PETITION FOR WRIT OF MANDAMUS

This petition for a writ of mandamus challenges Judge David A. Huff's (1) determination that the attorney representing the residual heirs in the underlying probate action is in apparent violation of [former] SCR 42(13), (2) refusal to consider documents filed on behalf of the residual heirs by the attorney after the court found him to be in apparent violation of the rule, and (3) order directing the residual heirs to re-file a document after complying with the rule.<sup>1</sup>

We have considered the petition and subsequently filed supplement to the petition, and respondents' answer, and we conclude that this court's intervention by way of extraordinary writ is warranted.

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<sup>1</sup>We direct the clerk of this court to remove Scott Nygren, designated as real party in interest, from the caption on this court's docket.

Although district court judges are responsible for controlling the conduct of attorneys practicing before them, and may disqualify an attorney from participating in a case when appropriate, their discretion is not unlimited.<sup>2</sup> Here, during an April 2002 hearing, Judge Huff queried attorney Samuel G. Broyles Jr. about his Reno office, advised Broyles that he was apparently in violation of [former] SCR 42 and stated that he intended to report the apparent violation to the State Bar. Judge Huff did not enter any findings of fact and conclusions of law on the issue, did not order Broyles to prove compliance and did not order Broyles to cease representing the residual heirs in the underlying probate action; however, Judge Huff did file a grievance with the State Bar. Broyles continued to represent the residual heirs, and filed an opposition on their behalf to the opposing party's motion to alter or amend the court's May 8, 2002 judgment. Judge Huff then ordered the residual heirs to file another opposition, one that is in compliance with SCR 42, despite the lack of any court order or State Bar disciplinary finding that Broyles was not in compliance with the rule.

Because Broyles had not been found in non-compliance by either the court or the State Bar, Judge Huff's order was arbitrary and capricious. Judge Huff's order noted that he had advised Broyles at the April hearing that he was apparently in violation of [former] SCR 42, and although there had been no subsequent show cause proceeding or evidentiary hearing, the order provided that pleadings filed after the April hearing would not be considered by the Court because "Mr. Broyles has yet to comply with SCR 42."

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<sup>2</sup>SCR 39; SCR 99(2); Cronin v. District Court, 105 Nev. 635, 640, 781 P.2d 1150, 1152; Boyd v. Second Judicial District Court, 51 Nev. 264, 274 P. 7 (1929).

Although little of the authority cited by the parties is helpful, one case provides some guidance. In Ford Motor Credit Co. v. Crawford,<sup>3</sup> the district court dismissed appellants' actions and sanctioned appellants and their attorneys substantial monetary penalties under NRCP 11 for the attorneys' violations of SCR 42(10), which was later renumbered SCR 42(13). This court held that NRCP 11 could not be used to impose sanctions for violations of other rules, and reversed the sanctions on appellants due to their attorneys' violations of SCR 42. In doing so, this court observed that violating a Supreme Court Rule is misconduct that may warrant discipline under SCR 101 and 102, but not sanctions under NRCP 11 absent a violation of NRCP 11 itself.<sup>4</sup> Here, Judge Huff did not impose NRCP 11 sanctions, but he—in effect—punished the residual heirs by refusing to consider their opposition and ordering them to file a new one.

Then, after being presented with evidence that the State Bar had resolved his grievance in Broyles' favor, Judge Huff refused to reconsider his order at least in part because the rule was being changed by this court. The rule change does not support Judge Huff's pre-change order, however. In April 2002, when Judge Huff conducted his inquiry, SCR 42(13) did not expressly prohibit the use of a mail drop location as a Nevada office. Since the State Bar resolved the grievance in Broyles' favor and did not find that he had violated the rule, Judge Huff should have reconsidered his order.

Accordingly, we grant the petition and direct the clerk of this court to issue a writ of mandamus directing the district court to vacate its

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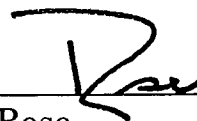
<sup>3</sup>109 Nev. 616, 855 P.2d 1024 (1993).

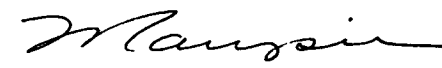
<sup>4</sup>Id. at 621, 855 P.2d at 1026.


June 21, 2002 order and to file the documents submitted by Broyles on his clients' behalf.<sup>5</sup>

We remind attorney Broyles that SCR 42.1(1) now expressly prohibits the use of a mail drop location as an office and that he must in fact maintain a Nevada office, or associate or designate an appropriate attorney as required by the rule.

It is so ORDERED.<sup>6</sup>

  
\_\_\_\_\_, J.  
Rose

  
\_\_\_\_\_, J.  
Maupin

  
\_\_\_\_\_, J.  
Gibbons

cc: Hon. David A. Huff, District Judge  
R. Clay Hendrix.  
Weule, Broyles & Mondo, LLP  
Attorney General Brian Sandoval/Carson City  
Hale Lane Peek Dennison Howard & Anderson/Reno  
Law Office of Kenneth V. Ward  
Mackedon & McCormick  
Churchill County Clerk

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<sup>5</sup>When petitioners have no plain, speedy and adequate remedy in the ordinary course of law, a writ of mandamus is available to control an arbitrary or capricious exercise of discretion. NRS 34.170; Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981).

<sup>6</sup>We deny petitioners' request for costs, interest and attorney fees.