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 Pro Bono Counsel for Appellant:
 SAMUEL HOWARD

FILED

SUPREME COURT STATE OF NEVADA

JUN 02 2004

SAMUEL HOWARD,

Appellant,

vs.

THE STATE OF NEVADA,

Respondents.

Case No.: 42593

JANETTE M. BLOOM
 CLERK OF SUPREME COURT
 BY *S. Young*
 DEPUTY CLERK

**MOTION TO LATE FILE APPELLANT'S
 OPENING BRIEF**

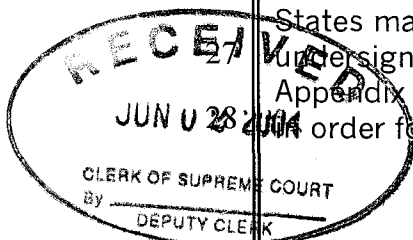
COMES NOW the Appellant, SAMUEL HOWARD, by and through his pro bono counsel, Patricia M. Erickson, and respectfully requests this Court enter an permitting the late filing of Appellant's Opening Brief and Appendix.¹ The Opening Brief was due to be filed on May 20, 2004.

This motion is based upon the following facts:

1. This is an appeal from a District Court's order denying a Petition For Writ of Habeas Corpus (Post Conviction) in a capital case in which Appellant HOWARD was sentenced to be executed for the crime of first degree murder with use of a deadly weapon.

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¹ The Appendix (Volumes One, Two and Three) were placed in the United States mail on May 20, 2004 and should be considered timely filed. However, undersigned counsel received a message from the Clerk's Office stating that the Appendix was considered late and that a motion to late file would have to be submitted in order for the Clerk's office to file the Appendix.



04-10087

1 2. Undersigned counsel is a sole practionner who employed a secretary
2 and now employees a part time file clerk.

3 3. On April 14, 2004, undersigned counsel's secretary unexpectedly quit
4 working for counsel. Counsel's secretary was responsible for all of the
5 bookkeeping, accounts receivable, billing, calendaring, and daily tasks required to
6 run undersigned counsel's office.

7 4. Since April 14, 2004, undersigned counsel has been required to
8 attend to all of the tasks that had previously been completed by her secretary.
9 Additionally, undersigned counsel has had to expend time on the task of trying to
10 find a new employee to complete all of the secretarial tasks associated with the
11 successful operation of the law office.

12 5. Undersigned counsel informed this Honorable Court of the forgoing
13 facts when she requested an extension of time within which to file the Opening
14 Brief. Unfortunately at the time of the filing of the Motion For Extension of Time,
15 undersigned counsel did not realize how much time she would have to expend on
16 the tasks and duties previously completed by her secretary. Additionally,
17 undersigned counsel was unaware that her part time file clerk was also going to be
18 unable to work during most of the month of May due to having to complete finals
19 at her college. Thus, undersigned counsel under estimated the amount of time
20 that she would need to finalize the Opening Brief, and Appendix in the case at bar
21 while completing all of the tasks required to keep her office operational.

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6. Based upon the forgoing, undersigned counsel was not able to finalize preparation of Appellant's Opening Brief by May 20, 2004 and respectfully requests this Honorable Court enter an order permitting the late filing of Appellant's Opening Brief, which is being submitted simultaneously with this motion under separate cover, and permitting the late filing of the Appendix which has already been received by the Clerk of the Court.

DATED this 29 day of May, 2004.

Respectfully Submitted:


PATRICIA M. ERICKSON, ESQ.
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Pro Bono Counsel for Appellant:
SAMUEL HOWARD

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of June, 2004, a true and correct copy
of the **MOTION TO LATE FILE APPELLANT'S OPENING BRIEF** was hand delivered
to:

James Tufteland, Esq.
Chief Deputy District Attorney - Appellate Division
200 South Third Street
Las Vegas, Nevada 89155



Patricia M. Erickson