## ORIGINAL

## IN THE SUPREME COURT OF THE STATE OF NEVADA

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Appellant, vs.

WILLIAM LESTER WITTER,

E.K. McDANIEL, Warden, Ely State Prison, CATHERINE CORTEZ MASTO, Attorney General of the State of Nevada,

Respondents.

No. 50447

FILED

NOV 2 1 2008

TRACIE K. LINDEMAN CLERK OF SUPREME COURT BY DEPUTY CLERK

MOTION FOR EXTENSION OF TIME WITHIN WHICH TO FILE APPELLANT'S REPLY BRIEF

Appellant William Lester Witter, through counsel, requests an extension of ten (10) days within which to file his reply brief in this matter, which is currently due to be filed on November 19, 2008. Nev. R. App. P. 27(b); 31(3); Nev. Sup. Ct. Rule 250(7)(d). This request is based on the attached declaration of counsel.

Dated this 19th day of November, 2008.

Respectfully submitted FRANNY/A. FORSMAN Federal Public Defender

Gary A. Taylor

Assistant Federal Public Defender

Nevada Bar No.11031C

411 E. Bonneville Ave., #250 Las Vegas, Nevada 89101

Gerald J. Bierbaum

Assistant Federal Public Defender Nevada Bar No. 11024C

411 E. Bonneville Ave., #250 Las Vegas, Nevada 89101

Attorneys for Petitioner/Appellant

NOV 2 1 2008

TRACIE K. LINDEMAN CLERK OF SUPREME COURT DEPUTY CLERK

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**DECLARATION** 

Gary A. Taylor and Gerald J. Bierbaum declare as follows:

- 1. We are attorneys at law, admitted to practice before this Court, employed as an Assistant Federal Public Defenders. We represent appellant William Lester Witter in this appeal.
- 2. Gary Taylor and Gerald Bierbaum are working diligently to prepare and file Mr. Witter's Reply Brief in this matter. Counsel are currently researching and drafting this Reply Brief. Mr. Witter's Reply Brief is due November 19, 2008, and it is necessary for this office to request an extension of ten (10) days within which to complete and file the Reply Brief. Counsel intend to complete this Reply Brief early, if at all possible.
- 3. In addition to the instant case, Gary Taylor and Gerald Bierbaum participated in the following: drafted and filed a reply brief in Rodney Emil'v. McDaniel, Case No. 50044 on September 5, 2008 in the Nevada Supreme Court; drafted a reply to respondents' answer to third amended petition in John Valerio v. E.K. McDaniel, Case No. 3:96-cv-0362-RLJ-RAM in the United States District Court, which was filed on September 9, 2008; and prepared and presented an argument in a hearing in Kitrich Powell v. E.K. McDaniel, Case No. C092400 in the Eighth Judicial District Court of Clark County, Nevada on September 15, 2008; prepared and filed a reply to response to petition for writ of habeas corpus in William Witter v. E.K. McDaniel, Case No. C117513 in the Eighth Judicial District Court of Clark County, Nevada on September 26, 2008; drafted a reply to the Attorney General's response to petitioner's response to the District Court's Order regarding the exhaustion status of claims in the amended petition and supplement in Roger Libby v. E.K. McDaniel, Case No. 3:04-cv-0038-LRH-RAM, which was filed on October 15, 2008; drafted and filed a second amended petition for writ of habeas corpus in Paul Browning v. E.K. McDaniel, Case No. 3:05-cv-00087-RCJ-RJM on November 5, 2008 in the United States District Court; and drafted and filed an opening brief in Rodney Emil v. E.K. McDaniel, Case No. 51474 in the Nevada Supreme Court on November 17, 2008.
- 5. In addition, Gerald J. Bierbaum was out of the jurisdiction in Guantanamo Bay, Cuba from September 15, 2008 through September 19, 2008 and again in Yemen for one week

commencing on November 8, 2008 regarding a challenge to the confinement of a detainee at Guantanamo Bay Naval Station, Cuba. Gary Taylor took three days of annual leave during this time period.

- This request is made solely in order to allow this office to provide Mr. Witter with competent representation under Nev. Sup. Ct. Rule 151, see Local Rule IA 10-7(a), and not merely for the purpose of delay or for any other improper purpose.
- 7. We would be competent to testify to the matters stated in this declaration if called upon to do so.
- 8. On November 18, 2008 Gary Taylor contacted Steven Owens' office to discuss the requested extension. Mr. Owens was unavailable and Taylor spoke with Eileen Davis an assistant in the District Attorneys' office. On November 19, 2088, Taylor again spoke with Ms. Davis who stated that the District Attorneys' office is NOT OPPOSED to this request.
- 9. We declare under the penalty of perjury that the foregoing is true and correct to the best of our knowledge and that this declaration was executed in Las Vegas, Nevada on the 19<sup>th</sup> day of November, 2008.

GARY A. TAYLOR Assistant Federal Public Defender Nevada Bar No. 11031C 411 E. Bonneville Ave., #250 Las Vegas, Nevada 89101

GERALD J. BIERBAUM Assistant Federal Public Defender Nevada Bar No. 11024C 411 E. Bonneville Ave., #250 Las Vegas, Nevada 89101

Attorneys for Appellant

## **CERTIFICATE OF SERVICE**

I certify that on the 19<sup>th</sup> day of November, 2008, I served a copy of the MOTION FOR EXTENSION OF TIME WITHIN WHICH TO FILE APPELLANT'S REPLY BRIEF completed docketing statement upon all counsel of record:

by mailing it by first class mail with sufficient postage prepaid to the following address(es):

David Roger Clark County District Attorney Steven S. Owens Chief Deputy District Attorney Office of the District Attorney Regional Justice Center, Third Floor 200 Lewis Avenue Las Vegas, Nevada 89155

Catherine Cortez Masto Attorney General John M. Warwick, IV Deputy Attorney General Attorney General's Office 100 North Carson Street Carson City, Nevada 89701-4717

Dated this 19th day of November, 2008.

In employee of the Federal Public Defender

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