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SFP 05 2008

THASER R. LINDEMAN  
CLERK OF SUPREME COURT  
BY A. [Signature]  
DEPUTY CLERK

LACY L. THOMAS,  
Petitioner,  
vs.  
EIGHTH JUDICIAL DISTRICT  
COURT,  
Respondent,  
and  
STATE OF NEVADA,  
Real Party in Interest.

Docket No. 52351

Dist. Ct. Case No. C241569  
Dept. No. XVII

Petitioner, Lacy L. Thomas, by and through his attorney Daniel J. Albregts, Esq., hereby petitions this Court for a writ of mandamus, or in the alternative, a writ of certiorari, pursuant to NRAP 21, Article 6 §4 of the Nevada Constitution, and NRS 34.010 and 34.020. Petitioner satisfies the procedural requirements of verification and proof of service. (See Exhibits 1 and 2)

The Petitioner contends that the District Court erred in denying his Motion to Disqualify the District Attorney's Office acting as the prosecutor on behalf of the State of Nevada and that this Court should overrule the District Court and disqualify the District Attorney's Office from prosecuting this case. This petition is based upon the attached Memorandum of Points and Authorities and Exhibits together with any other information requested by the Court or further argument if the Court deems a hearing necessary on this issue.

08-22968

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1 In the alternative, this Court would have jurisdiction over this matter pursuant to NRS  
2 34.020(2) which governs the granting of a writ of certiorari. This section states "the writ shall be  
3 granted in all cases when an inferior tribunal, board or officer, exercising judicial functions, has  
4 exceeded the jurisdiction of such tribunal, board or officer and there is no appeal, nor, in the  
5 judgment of the court, any plain, speedy and adequate remedy." In this case the District Court  
6 exceeded its jurisdiction in concluding that no conflict of interest existed when the same law office  
7 which represented Thomas is now prosecuting him for offenses directly related to his employment  
8 with UMC. There is no appeal, nor plain, speedy or adequate remedy in the ordinary course of law.  
9 Thus, this issue is appropriately considered by this Court.

### 10 **STATEMENT OF THE CASE**

11 On February 20, 2008 a ten count Indictment was returned against Lacy Thomas charging  
12 him with five counts of Theft in violation of NRS 205.0832, 205.0835, and five counts of  
13 Misconduct of a Public Officer in violation of NRS 197.110. The allegations involve five contracts  
14 negotiated by Lacy Thomas in his capacity as CEO of UMC for work to be performed on behalf of  
15 UMC by five different entities. In their Indictment the District Attorney's office listed their  
16 witnesses including one district attorney. Additionally, during the course of litigation the District  
17 Attorney's office indicated that it would call at least one other district attorney as a witness in their  
18 case.

19 Prior to any activity occurring on the case besides the arraignment and plea, Thomas filed  
20 a Motion to Disqualify the District Attorney's office on April 7, 2008. On April 23, 2008 the State  
21 filed its response to the Motion to Disqualify. On May 17, 2008 Thomas filed a Reply to the State's  
22 Response to the Motion to Disqualify the District Attorney's office. After various continuances an  
23 evidentiary hearing was scheduled for June 16, 2008.

24 Prior to the evidentiary hearing defense counsel contacted the court requesting a continuance  
25 of the evidentiary hearing because of the unavailability of at least one witness and the fact that  
26 another witness had just recently been located but not yet served a subpoena for the hearing. The  
27 court denied the request and ordered the matter to proceed to hearing, indicating that the court would  
28 reconsider whether it would continue the hearing for the remainder of the witnesses after hearing

1 evidence and argument. At the hearing four attorneys from the Clark County District Attorney's  
2 office testified. At the conclusion of the evidentiary hearing defense counsel again requested that  
3 the court continue the hearing one more time so that three additional witnesses could be brought to  
4 testify, one who was out of town at the time of the hearing, one who had only been located just prior  
5 to the hearing and had not been served, and a third who could offer testimony relevant to the court's  
6 consideration of the motion. The court indicated that it would consider the defense's request in the  
7 context of a decision on the merits of the motion. On June 19, 2008 the District Court entered a  
8 written order which denied both the Motion to Disqualify the District Attorney's office and the  
9 defense's request to present additional evidence.

10 On July 2, 2008 the defense filed a Motion to Reconsider the Court's Order Denying the  
11 motion and additional evidentiary hearing providing the court with further information as to why  
12 additional evidence should be presented prior to ruling on the motion. As a result of the clerk's  
13 office failing to calendar the matter the defense filed an amended motion to reconsider the court's  
14 order on July 22, 2008 with a request that the matter be set on for a hearing. On August 1, 2008 the  
15 District Attorney's office filed an opposition to the amended motion to reconsider the court's order  
16 and the matter was scheduled for a hearing on August 5, 2008. After hearing arguments by counsel  
17 at the hearing, the court stated its findings and denied Thomas' motion to reconsider its prior order  
18 denying the motion to disqualify the district attorney's office. The court filed its written order  
19 denying the motion to reconsider on August 26, 2008. This petition followed. For the reasons  
20 outlined below, Thomas would request that this Court disqualify the Clark County District  
21 Attorney's office from prosecuting this matter and remand the case back to the District Court with  
22 an order appointing a special prosecutor to pursue the case.

### 23 **STATEMENT OF FACTS**

24 The facts necessary for the determination of this motion are as follows. Thomas was hired  
25 in November of 2003 to be the Chief Executive Officer of the University Medical Center of Southern  
26 Nevada. Thomas was hired pursuant to an employment agreement which gave him broad authority  
27 to conduct the affairs of the hospital as outlined in the agreement. The contract provided that  
28 "Thomas shall provide total management services for the hospital in a manner consistent with and

1 subject to the responsibilities of UMC as the hospital licensee and holder of the medicare provider  
2 number.” Other specific duties of the CEO were outlined within the employment contract. The  
3 contract further provided that “The Clark County District Attorney shall be legal counsel for the  
4 hospital and all its operations and agencies until otherwise authorized by the District Attorney. Any  
5 expenditure of funds for outside legal services may be approved or authorized by UMC or by express  
6 operation of the laws of the State of Nevada”.

7 During the course of his employment with UMC, Thomas interacted with deputies from the  
8 District Attorneys office on nearly a weekly basis. Thomas was also informed by the District  
9 Attorneys office that they were the sole attorneys allowed to give legal advice to Thomas in his  
10 capacity as the CEO of UMC. The District Attorneys office advised Thomas on a broad array of  
11 issues, including the contracts at issue in the Indictment. At the evidentiary hearing Deputy District  
12 Attorney Holly Gordon testified that she provided Thomas legal advice, and that he followed her  
13 advice. Given this, an attorney-client relationship existed between UMC, Thomas as the Chief  
14 Executive Officer of UMC, and the deputy district attorneys handling the civil matters on behalf of  
15 the hospital.

16 There were occasions during the course of his employment that Thomas sought legal advice  
17 from outside counsel on behalf of UMC in his capacity as the CEO of the hospital and was informed  
18 by attorneys from the District Attorneys office that their office was the sole provider of legal advice  
19 to Thomas and UMC. This became an issue during the course of Thomas’ employment with UMC  
20 and the circumstances surrounding this issue will become relevant during the course of the litigation  
21 of this case. Anytime the issue of the attorney-client relationship between the District Attorneys  
22 office, UMC and Thomas arose, the District Attorney’s office made it clear to Thomas that they were  
23 his attorney thus clearly establishing an attorney-client relationship between not only UMC and the  
24 District Attorneys Office, but with Lacy Thomas in his capacity as the Chief Executive Officer of  
25 UMC.

26 There is no question that the District Attorney prosecuting this case is a part of the same law  
27 firm as the very witnesses he has noticed, Maryann Miller and Holly Gordon. There is also no  
28 question that Lacy Thomas is a former client of the law firm of the District Attorneys office taking

1 into consideration his employment contract and his position at UMC. Thus, a conflict of interest  
2 clearly exists when the same law firm that previously represented Thomas is now prosecuting him  
3 on ten very serious felony charges. As outlined below, this is a conflict that absolutely requires this  
4 Court to disqualify the District Attorneys office from prosecuting this case.

### 5 LEGAL ARGUMENT

6 **A. THE DISTRICT COURT ERRONEOUSLY DENIED**  
7 **THOMAS' MOTION TO DISQUALIFY THE CLARK**  
8 **COUNTY DISTRICT ATTORNEY'S OFFICE DESPITE THE**  
9 **FACT THAT THEY ARE THE SAME OFFICE WHICH**  
10 **REPRESENTED HIM DURING THE SCOPE OF HIS**  
11 **EMPLOYMENT AS THE CEO OF UMC WHEN THE**  
12 **CHARGES THEY ARE NOW PROSECUTING ARE**  
13 **DIRECTLY RELATED TO OFFICIAL ACTS COMMITTED**  
14 **BY THOMAS IN THAT CAPACITY.**

15 Nevada Rules of Professional Conduct 3.7(b) states that "A lawyer may act as advocate in  
16 a trial in which another lawyer in the lawyers firm is likely to be called as a witness unless precluded  
17 from doing so by Rule 1.7 or Rule 1.9." Nevada Rules of Professional Conduct 1.9(a) states that "A  
18 lawyer who has formally represented a client in a matter shall not thereafter represent another person  
19 in the same or a substantially related matter in which that person's interest are materially adverse to  
20 the interests of the former client unless the former client gives informed consent, confirmed in  
21 writing." Nevada Rules of Professional Conduct 1.10(a) is the imputation of the conflict of interest  
22 rule stating in relevant part, "While lawyers are associated in the firm, none of them shall knowingly  
23 represent a client when any one of them practicing alone would be prohibited from doing so by Rules  
24 1.7, 1.9, or 2.2, ...". There is no question that the prosecutor in this case intends to call other lawyers  
25 in his firm as witnesses in this case. Additionally, there is no question that these lawyer witnesses  
26 formerly represented Lacy Thomas and their interests are materially adverse to Lacy Thomas'  
27 interests. Finally, there is no question whatsoever that Thomas has not given informed consent  
28 confirmed in writing that he would waive any conflict of interest to allow the current prosecutor to  
handle the prosecution of this case. Thus, the Nevada Rules of Professional Conduct plainly prohibit  
the District Attorneys office from prosecuting this case.

There does not appear to be any Nevada cases specifically addressing the issue of the district  
attorneys office prosecuting a public official for acts committed in connection with his official duties



1 when that same district attorneys office provided legal advice, counsel and representation to the same  
2 individual. Thus, this case appears to be a case of first impression. There is, however, at least one  
3 civil case in which this Court previously provided guidance as to how the disqualification  
4 determination should be made. In Waid v. Eighth Judicial Dist. Court Ex Rel., County of Clark, 121  
5 Nev. 605, 119 P.3d 1219 (2005) the Nevada Supreme Court denied a writ of mandamus challenging  
6 the district court's disqualification of an attorney from representing guarantors in a suit by the  
7 lenders assignees. While the Waid court considered the issue in the context of old Supreme Court  
8 Rule 159, it also correctly noted that old Rule 159 is essentially the same as new Nevada Court Rule  
9 1.9.

10 In upholding the disqualification of the attorney, this Court noted that the district court has  
11 broad discretion in attorney disqualification matters which would not be overturned absent an abuse  
12 of discretion. Waid at p. 609. This Court also noted that disqualification under the rule is warranted  
13 only if a prior representation and the current representation are substantially related. Id. While the  
14 burden of proving that two matters are substantially related falls on the party seeking  
15 disqualification, the moving party is not required to divulge the confidences actually communicated  
16 during the prior representation nor should the court inquire into whether an attorney actually acquired  
17 confidential information in the prior representation which is related to the current representation.  
18 Waid at p. 610. This Court adopted a Seventh Circuit three part test for determining when a former  
19 and present matter are substantially related for the purposes of disqualification. This test requires  
20 the trial court to (1) make a factual determination concerning the scope of the former representation,  
21 (2) evaluate whether it is reasonable to infer that the confidential information allegedly given would  
22 have been given to a lawyer representing a client in those matters, and (3) determine whether that  
23 information is relevant to the issues raised in the present litigation.

24 In this case, there clearly is no question that the prior representation of UMC and Thomas  
25 by the District Attorneys office is substantially related to the present litigation. The District  
26 Attorneys office provided a broad array of representation for Thomas and the hospital, including  
27 reviewing and approving some of the contracts at issue here. Thus, there clearly is far greater than  
28 a superficial similarity between the prior representation and the present case sufficient to warrant

1 disqualification.

2 Thomas acknowledges that generally, a lawyer representing a corporate entity represents only  
3 the entity, not its officers, directors, or shareholders, and not any related entity such as parents,  
4 subsidiaries, or sister companies. Restatement (3<sup>rd</sup>) of the Law Governing Lawyers §131 Cmt. b  
5 (2000). However, as this Court correctly noted in the Waid decision, the inquiry into whether an  
6 attorney-client relationship has been established is very fact-specific, and so in various situations  
7 courts have found sufficient connection to warrant a lawyers disqualification notwithstanding the  
8 fact that the prior attorney may have technically represented the corporation and not the individual.  
9 Waid at p. 611. Clearly a fact-specific analysis in this case reflects that disqualification should not  
10 be denied simply because the District Attorneys office represented UMC as a corporate entity. There  
11 is no question whatsoever that given Thomas' employment contract, together with the District  
12 Attorney's position regarding their representation of the hospital, that the attorney-client relationship  
13 extended beyond the corporation and directly to Thomas in his capacity as the CEO of the hospital.  
14 Thus, there is a sufficient connection between Thomas and the District Attorney's office to warrant  
15 the disqualification of their office from prosecuting this case.

16 While Waid considered the application of the relevant rules in the context of a civil case, this  
17 Court must consider the rules in the context of a criminal case. There is no question that a criminal  
18 defendant is afforded far greater constitutional rights than individuals in civil actions. Thomas is  
19 protected by both the United States Constitution and the Nevada Constitution, each guaranteeing him  
20 the right to a fair trial and due process throughout the course of this proceeding. Any determination  
21 on the disqualification of the District Attorney's office must be considered in this context and would  
22 warrant greater scrutiny of the actual conflict or even the potential of a conflict of interest given the  
23 dual representation of the District Attorneys office in this matter. Thomas would submit that if there  
24 is any doubt whatsoever as to whether this motion should be granted, that doubt should be resolved  
25 in favor of Thomas' constitutional due process rights to a fair trial. In this context disqualification  
26 is most certainly warranted taking into consideration the relevant rules and the facts of this case.

27 There is no question under the facts of this case that the District Attorneys office's Civil  
28 Division represented UMC and Lacy Thomas during the course of his employment as the CEO of

1 the hospital. There is equally no question that the District Attorney's Criminal Division is now  
2 prosecuting this case, and that the Criminal Division and the Civil Division are a part of the same  
3 law firm. Finally, the matters are identical, far beyond the substantially similar standard required.  
4 Under Nevada Rules of Professional Conduct Rule 1.10, all of the lawyers within the District  
5 Attorneys office would be prohibited from prosecuting this case given their prior representation of  
6 Thomas. As such, this Court is left with no choice but to disqualify the District Attorneys office  
7 from the prosecution of this case.

8 For the foregoing reasons, Thomas would ask that this Court disqualify the District Attorneys  
9 office and remand the case to the District Court for a determination as to what other agency or  
10 special prosecutor would be available to handle this matter after the disqualification.

11 **B. THE DISTRICT COURT ERRONEOUSLY DENIED THOMAS**  
12 **A FULL AND COMPLETE EVIDENTIARY HEARING TO**  
13 **ESTABLISH THE CONFLICT OF INTEREST WHEN IT**  
14 **DENIED HIM A BRIEF EXTENSION TO LOCATE AND**  
15 **OBTAIN TWO CRITICAL WITNESSES NECESSARY TO**  
16 **THE DETERMINATION OF THE ISSUE RAISED IN HIS**  
17 **MOTION.**

18 Shortly prior to the evidentiary hearing set by the court on the motion to disqualify the district  
19 attorney's office, defense counsel contacted the court indicating that three witnesses were  
20 unavailable. Counsel informed the court that one witness had only recently been located given that  
21 he had retired from UMC and moved to Northern Nevada. As a result, the witness had not been  
22 subpoenaed and was not available to testify. A second witness who worked at UMC and was  
23 involved in meetings between Lacy Thomas and attorneys from the District Attorney's office had  
24 been located but was out of town at the time of the hearing on a preplanned summer vacation and  
25 therefore was unavailable for the hearing. The defense conceded that the third witness probably  
26 should have been subpoenaed for the hearing but given the unavailability of the other two witnesses  
27 could be subpoenaed for a continued hearing and testify at the same time as the two unavailable  
28 witnesses. At the time that defense counsel requested the continuance the court indicated that it  
would proceed with the evidentiary hearing and listen to the testimony of the witnesses who were  
available. The court further indicated that it would decide thereafter whether it would continue the  
hearing or whether it would decide the motion on the evidence presented at the time of the hearing.

1       The court's only basis for not granting the defense the additional time was that the defense  
2 was well aware at the start of the case that it would be filing the motion and should have had the  
3 witnesses available for the evidentiary hearing. There was absolutely no prejudice to the court, the  
4 State, or any of the parties if additional time was given to the defense to present these witnesses.  
5 Moreover, given that the trial date was well over five months away a brief continuance would not  
6 have effected the court's calendar. Finally, defense counsel notified the court that the testimony for  
7 these witnesses could be completed within one to two hours and therefore the court's schedule would  
8 not be adversely effected by granting a short continuance. Notwithstanding these facts the court later  
9 denied the defense the additional time and simply denied the motion. Clearly that was an abuse of  
10 discretion and at the very least warrants reversal so that additional testimony can be taken for the  
11 record and the lower court can consider that testimony in deciding the motion.

12       This Court has made it clear that a district court, in exercising its discretion to disqualify the  
13 prosecutor's office, should consider all of the facts and circumstances and determine whether the  
14 prosecutorial function could be carried out impartially and without the breach of any privileged  
15 communications. *Collier vs. Legakes*, 98 Nev. 307, 310, 646 P.2d 1219, 1220 (1982). See also,  
16 *Attorney General vs. Eighth Judicial District Court*, 108 Nev. 1073, 844 P.2d 124. The district  
17 court's denial of the defense's request for a brief extension of time to obtain additional witnesses  
18 critical to the determination clearly denied the defense the right to present evidence which resulted  
19 in the trial judge not considering all the facts and circumstances necessary to the determination.  
20 Moreover, there simply was no good reason for the court to deny the defense the opportunity to  
21 present this evidence.

22       There was absolutely no prejudice to any of the parties if the court were to give the defense  
23 a brief extension to obtain the witnesses in question. The court's calendar would not have been  
24 effected, the trial date would not have been effected, and the amount of time requested by the defense  
25 to present this evidence was minimal. The defense clearly demonstrated that the witnesses in  
26 question were essential to the court's determination regarding the motion to disqualify. Two of the  
27 witnesses were employees of UMC and according to testimony from witnesses who did testify at the  
28 evidentiary hearing, these witnesses were present during meetings in which issues were discussed

1 between Thomas and attorneys from the District Attorney's office. Thus, these witnesses had  
2 relevant evidence to this determination which included the nature of the discussions, the nature of  
3 the advice Thomas received, and other facts relevant to whether or not an attorney-client relationship  
4 existed between Thomas and attorneys from the District Attorney's office. While counsel could not  
5 provide the court with an exact proffer as to what the testimony would be, clearly the defense  
6 provided the court with enough information that the court could determine that the evidence these  
7 witnesses would provide was relevant to the determination of the defense's motion.

8 Finally, at the conclusion of the evidentiary hearing the court indicated that it would decide  
9 the issue of the continuance when it considered the merits of the motion to disqualify. Given this  
10 representation, the defense decided not to call Thomas as a witness based upon the incorrect  
11 assumption that the court would at least allow the defense enough time to present all the relevant  
12 evidence to the determination of the issue. Thereafter, when the court denied the request for an  
13 additional evidentiary hearing and then denied the motion, Thomas was denied the opportunity to  
14 testify and present evidence regarding his understanding of the attorney-client relationship. Given  
15 this, the defense filed a motion to reconsider the decision, raising this issue and requesting that the  
16 court at least allow a brief hearing for Thomas to testify as to this issue. The court denied this  
17 request in a brief opinion, again citing only the fact that the defense had enough time to prepare for  
18 the hearing and the failure to do so supported the court's denial of his request for an additional  
19 evidentiary hearing to present this evidence.

20 The District Court simply had no good reason to deny Thomas' request for an additional brief  
21 evidentiary hearing to present further evidence to convince the court to disqualify the district  
22 attorney's office, or at the very least to make a complete record so that this Court could consider the  
23 issue on appeal. If this Court is not inclined to grant Thomas' request that the Clark County District  
24 Attorney's office be disqualified from prosecuting this case, then at the very least this Court should  
25 remand the case back to the District Court with an order directing it to allow a brief evidentiary  
26 hearing to further supplement the record so that this Court can consider all of the evidence necessary  
27 to the determination of this issue.

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**CONCLUSION**

For the reasons outlined herein, Thomas would request that this Court remand this case to the District Court with an order directing the District Judge to disqualify the district attorney's office from prosecuting this case. In the alternative, Thomas would request that this Court remand this case to the District Court with an order directing the court to allow Thomas to present additional evidence regarding this issue so that a complete record can be made for this Court to determine whether or not the Motion to Disqualify the Clark County District Attorney's office should be granted.

DATED this 3<sup>rd</sup> day of September, 2008.

DANIEL J. ALBREGTS, LTD.

By: 

\_\_\_\_\_  
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Attorney for Petitioner



EXHIBIT 1



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Executed this 3<sup>rd</sup> day of September, 2008.


  
Daniel J. Albrechts

EXHIBIT 2

**CERTIFICATE OF SERVICE**

I hereby certify that I caused to be hand-delivered to the District Attorney's Office, and caused to be hand-delivered to the office of Honorable Michael P. Villani, Eighth Judicial District Court, a true and correct copy of this PETITION FOR WRIT OF MANDAMUS OR IN THE ALTERNATIVE, WRIT OF CERTIORARI addressed to:

Scott S. Mitchell  
Chief Deputy District Attorney  
200 Lewis Avenue,  
Las Vegas, Nevada 89155

The Honorable Michael P. Villani  
Eighth Judicial District Court, Dept. XVII  
200 Lewis Avenue  
Las Vegas, Nevada 89155

  
An Employee of Daniel J. Albregts, Ltd.

EXHIBIT 3

FILED

DISTRICT COURT JUN 19 4 03 PM '08

CLARK COUNTY, NEVADA  
CLERK OF THE COURT

THE STATE OF NEVADA,  
Plaintiff,

-vs-

LACY L. THOMAS,  
Defendant.

CASE NO: C241569

DEPT NO: XVII

ORDER

DATE OF HEARING: 06/16/08  
TIME OF HEARINGS: 10:00 A.M.

On June 16, 2008 Defendant's Motion to Disqualify the District Attorney's Office came on for evidentiary hearing before this Court. The State of Nevada was represented by Scott S. Mitchell, Chief Deputy District Attorney. Defendant, Lacy L. Thomas, was represented by Daniel J. Albregts, Esq. This Court having reviewed the pleadings and papers on file herein and heard the arguments of counsel and, good cause appearing, it is hereby ordered as follows:

On February 20, 2008, a True Bill was returned by the Clark County Grand Jury. The Grand Jury Transcript was filed on February 21, 2008.

On February 28, February 29, 2008, March 20, 2008, Thomas' counsel brought to the Court's attention that he intended to file a Motion to Disqualify the District Attorney's office since it had allegedly provided Thomas with legal representation. On April 7, 2008, Thomas

1 filed his Motion to Disqualify the District Attorney's Office. Said Motion was scheduled to  
2 be heard on April 17, 2008. On April 17, 2008 the matter was continued to May 1, 2008.  
3 On May 1, 2008 the matter was continued to May 15, 2008. Thereafter, on May 15, 2008,  
4 the Court scheduled an evidentiary hearing for June 16, 2008.

5 On June 13, 2008, the court received a letter from Thomas' counsel requesting yet  
6 another continuance of the hearing, so that Thomas' counsel could bring forward three  
7 additional witnesses.

8 On June 16, 2008, an evidentiary hearing was held to address the issues regarding  
9 Thomas' pending motion. The following witnesses were called by Thomas: Clark County  
10 District Attorney David Roger, Deputy District Attorneys Mark Wood and Holly Gordon  
11 and County Counsel Mary Ann Miller.

12 Prior to and at the close of the evidentiary hearing, Thomas' counsel requested that he  
13 be allowed to continue a portion of the evidentiary hearing so that he could call three  
14 additional witnesses: Don Haight, Mike Hayes and Thom Reilly. When asked for a proffer  
15 of their expected testimony, Thomas' counsel stated that he had not spoken with any of the  
16 witnesses at length. In fact it appeared that it was just supposition as to their expected  
17 testimony.

18 MR. ALBREGTS: ... I cannot as an officer of the court tell you that I give you an  
19 offer of proof as to what they are going to say...

20 In his pleadings, Thomas alleges that during the course of his employment at UMC,  
21 he interacted with deputies from the district attorneys office and had "substantial contact  
22 with District Attorney David Roger on a number of issues." However, Thomas does not  
23 back up this allegation with any testimony-even his own.

24 At the evidentiary hearing, District Attorney Roger specifically testified that he has  
25 never met with or spoke to Thomas. District Attorney Roger further testified that while the  
26 District Attorney's office does represent the various county agencies, that District Attorney  
27 Roger himself has little no contact with individual County Managers and did not attend any  
28 of their meetings.

1 Mark Wood testified his work involved review of UMC's contracts, and that he  
2 would primarily interact with Don Haight, Annette Bradley, representatives of the collection  
3 and medical staff offices. Mr. Wood was unfamiliar with Thomas' employment contract  
4 Mr. Wood had only interacted with Thomas in meetings where Mr. Wood's function was to  
5 ensure that proper procedures were followed with respect to UMC contracts and the placing  
6 of items on the agenda for County Commission meetings. Thus, Mr. Wood's interactions  
7 with Thomas himself were very limited and impersonal, since these meetings typically  
8 involved 5 - 8 other individuals present. Mr. Wood specifically testified that he did not  
9 provide personal legal advice to anyone during his assignment to UMC matters.

10 Holly Gordon testified that she took over the handling of UMC since she had more  
11 experience handling government contracts. Ms. Gordon's main duties included handling  
12 hearings involving hospital medical staff, and review of UMC contracts and collection  
13 matters. Ms. Gordon's work with UMC contracts involved nothing more than her general  
14 determination that the contracts complied with relevant regulations and did not violate any  
15 laws. At no time did Ms. Gordon provide private legal advice to Thomas. In fact, Ms.  
16 Gordon testified that Thomas was dismissive and barely civil toward her, and that Thomas  
17 did not welcome the general legal advice that she provided regarding UMC contracts.

18 Mary Ann Miller testified that her office provides legal advice to a minimum of 40  
19 county agencies. She recalls meeting with a county manager and Thomas on only a handful  
20 of times. Ms. Miller does not recall ever having a private meeting with Thomas. Ms.  
21 Miller's only involvement with county contracts was to determine whether a contract was in  
22 the county's best interests, and whether the contract was legal, i.e., whether proper  
23 procedures were followed.

24 The District Attorneys office has the primary responsibility to prosecute offenses  
25 involving county officers and employees. See NRS 228.177 and NRS 252.080. The Nevada  
26 Supreme Court has indicated that disqualification of a prosecutor's office may be warranted  
27 in "*extreme* cases where the appearance of unfairness or impropriety is so great that the  
28 public trust and confidence in our criminal system could not be maintained without such

1 action." Collier v. Legakes, 98 Nev. 307, 310, 646 P.2d 1219 (1982). Disqualification under  
2 Collier requires a full evidentiary hearing and consideration of all facts and circumstances.  
3 The trial judge, in exercising his discretion, should consider all the facts and circumstances  
4 and determine whether the prosecutorial function could be carried out impartially and  
5 without any breach of privileged communication. Id. at 310-311.

6 Here, Thomas has not even alleged having any specific privileged communication  
7 with the District Attorney's office, nor has Thomas presented or even proffered any  
8 testimony to support the existence of an attorney-client relationship between the District  
9 Attorney's office and Thomas in his individual capacity.

10 In light of fact that Thomas' counsel for over 3 ½ months had voiced his intention to  
11 pursue the issue of disqualification there was ample opportunity to locate and have in  
12 attendance his additional witnesses. Further, what little proffer of their testimony was given  
13 would be insufficient under the best scenario to disqualify the District Attorney's office.

14 The testimony on record establishes that the District Attorney's office did not give  
15 Thomas personal advice and that all meetings between representatives of the District  
16 Attorney's and Thomas involved other persons. Thomas did not testify at the hearing nor  
17 did he submit any documentary evidence tending to justify disqualification. The Court does  
18 not find an "extreme case where the appearance of unfairness or impropriety is so great" as  
19 to warrant disqualification of the District Attorney's office.

20 Thomas' request to continue the hearing and his Motion To Disqualify The District  
21 Attorney's office is DENIED.

22 DATED this 19 day of June, 2008.

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26 MICHAEL P. VILLANI  
27 DISTRICT COURT JUDGE  
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CERTIFICATE OF SERVICE

I hereby certify that on the date filed, I mailed and/or placed a copy of the attached Findings of Fact and Conclusions of Law in the attorney folders in the Clerk's Office to the parties involved as follows:

**Scott S. Mitchell, Esq., Chief Deputy District Attorney**

**Daniel J. Albregts, Esq.**

  
Cindy DeGree  
Judicial Executive Assistant

EXHIBIT 4

1 **ORDR**

2 **DAVID ROGER**

3 **Clark County District Attorney**

4 **Nevada Bar #002781**

5 **SCOTT MITCHELL**

6 **Chief Deputy District Attorney**

7 **Nevada Bar #000346**

8 **200 Lewis Avenue**

9 **Las Vegas, NV 89155-2212**

10 **(702) 671-2500**

11 **Attorney for Plaintiff**

**FILED**

**AUG 26 2 34 PM '08**

*Chief Clerk*  
**CLERK OF THE COURT**

12 **DISTRICT COURT**  
13 **CLARK COUNTY, NEVADA**

14 **THE STATE OF NEVADA,**

15 **Plaintiff,**

16 **-vs-**

17 **LACY L. THOMAS,**  
18 **#2676662**

19 **Defendant.**

**Case No. C241569**  
**Dept No. XVII**

20 **ORDER DENYING AMENDED MOTION TO RECONSIDER THE COURT'S ORDER**  
21 **DENYING DEFENDANT'S MOTION TO DISQUALIFY THE DISTRICT ATTORNEY'S**  
22 **OFFICE AND DENYING A BRIEF EVIDENTIARY HEARING TO FURTHER**  
23 **SUPPLEMENT THE RECORD IN THIS CASE**

24 **DATE OF HEARING: 08/05/2008**

25 **TIME OF HEARING: 8:00 A.M.**

26 **THIS MATTER having come on for hearing before the above entitled Court on the**  
27 **5th day of August, 2008, the Defendant not being present, but being represented by DANIEL**  
28 **J. ALBREGTS, ESQ., the Plaintiff being represented by DAVID ROGER, District Attorney,**  
29 **through SCOTT MITCHELL, Chief Deputy District Attorney, and the Court having heard**  
30 **the arguments of counsel and good cause appearing therefor,**

31 **///**

32 **///**

**RECEIVED BY**  
**DEPT. 17 ON**

**AUG 20 2008**

**I:\GRNDJURY\THOMAS, LACY\ORDR DENYING DEFENSE MTN.doc**

1 IT IS HEREBY ORDERED that the Defendant's amended motion, shall be, and  
2 hereby is Denied.

3 DATED this 25 day of August, 2008.

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6 DISTRICT JUDGE KD

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8 DAVID ROGER  
9 DISTRICT ATTORNEY  
10 Nevada Bar #002781

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12 SCOTT MITCHELL  
13 Chief Deputy District Attorney  
14 Nevada Bar #000346

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**SUPREME COURT OF THE STATE OF NEVADA  
OFFICE OF THE CLERK**

LACY L. THOMAS,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF  
NEVADA, IN AND FOR THE COUNTY OF CLARK, AND, THE  
HONORABLE MICHAEL VILLANI, DISTRICT JUDGE,

Respondents,

and

THE STATE OF NEVADA,

Real Party in Interest.

**Supreme Court No. 52351**

District Court Case No. C241569

**RECEIPT FOR DOCUMENTS**

TO: Michael Villani , District Judge  
Daniel J. Albregts, Ltd. and Daniel J. Albregts  
Attorney General Catherine Cortez Masto/Carson City  
Clark County District Attorney David J. Roger and Scott S. Mitchell, Chief  
Deputy District Attorney

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

09/05/08	Returned Filing Fee. Check No.9562 returned to Daniel J. Albregts, Ltd.
09/05/08	Filed Petition for Writ. Petition for a Writ of Mandamus or in the Alternative Writ of Certiorari.

DATE: September 05, 2008

Tracie Lindeman, Clerk of Court

By:                     *AL*                      
Deputy Clerk