

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

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4 Electronically Filed
Jun 17 2010 04:14 p.m.
Tracie K. Lindeman

5 MICHAEL DAMON RIPPO,)

Case No. 53626

6)
7)
 Appellant,)
8)
 vs.)
9)
 E.K. McDANIEL, Warden, Ely State)
10)
 Prison, CATHERINE CORTEZ)
 MASTO, Attorney General of Nevada,)
11)
 Respondents.)
12)

13 **REQUEST TO TAKE JUDICIAL NOTICE**

14 Appellant Michael Damon Rippo hereby moves this Court to take judicial notice of
15 the following records under Nev. Rev. Stat. § 47.130. These court records are necessary to
16 respond to arguments made by the state for the first time in its answering brief, and this
17 Court's consideration of this evidence is required in order to provide Mr. Rippo with a full
18 and fair opportunity to litigate the constitutional claims contained in the instant appeal.

19 Exhibit 1 is a Post-Hearing Memorandum filed by the state in Lopez v. McDaniel,
20 Case No. C068946, Eighth Judicial District Court, on 4/22/2010. This document is a public
21 record contained in a court file which is capable of accurate and ready determination by
22 resort to sources whose accuracy cannot reasonably be questioned.

23 Exhibit 2 is a Motion to Dismiss filed by the state in Echavarria v. McDaniel, Case
24 No. C95399, Eighth Judicial District Court, on 07/23/2007. Exhibit 3 is the transcript of a
25 hearing that occurred in Leonard v. McDaniel, Case No. C126285, Eighth Judicial District
26 Court, on 03/13/2008. These documents are public records contained in a court file which
27 is capable of accurate and ready determination by resort to sources whose accuracy cannot
28 reasonably be questioned. The representative for the state in the instant appeal was the same
individual who represented the state's interests in the aforementioned pleadings.

1 All of the attached exhibits have been included in the instant appeal because they are
2 necessary to respond to the state's answering brief. Specifically, the state argues for the first
3 time in its answering brief that Mr. Rippo's allegation of good cause based on the ineffective
4 assistance of post-conviction counsel is untimely despite the fact that the underlying petition
5 was filed within one year of this Court's denial of Mr. Rippo's prior post-conviction appeal.
6 The attached exhibits are necessary to answer this newly minted argument and demonstrate
7 that the State has heretofore represented in numerous cases that one year is a presumptively
8 reasonable time within which to bring claims of ineffective assistance of post conviction
9 counsel.

10 Nev. Rev. Stat. § 47.130(2)(b) provides, in pertinent part, that judicial notice is proper
11 for evidence that is "capable of accurate and ready determination by resort to sources whose
12 accuracy cannot reasonably be questioned." This Court has consistently found that judicial
13 notice is warranted for public records that are relevant to the issues before the Court. See,
14 e.g., Whitehead v. Nevada Commission On Judicial Discipline, 110 Nev. 380, 419 n.35, 873
15 P.2d 946, 970 n.35 (1994) (minutes of Committee on Judicial Discipline); Jory v. Bennight,
16 91 Nev. 763, 766, 542 P.2d 1400, 1402-03 (1975) (business records maintained at Secretary
17 of State's office); Cannon v. Taylor, 88 Nev. 89, 92, 493 P.2d 1313, 1314-15 (1972)
18 (attorney general advisory opinion). The documents presented here are court records, whose
19 "accuracy cannot reasonably be questioned." Appellant therefore respectfully requests that
20 this Court take judicial notice of the materials attached to this motion.

21 DATED this 17th day of June, 2010.

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CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 17th day of June, 2010. Electronic Service of the foregoing **REQUEST TO TAKE JUDICIAL NOTICE** shall be made in accordance with the Master Service List as follows:

Steven Owens, Deputy District Attorney

Katrina Manzi,
An Employee of the Federal Public Defender