

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

2 * * * * *

3 SAMUEL HOWARD

4 Appellant,

5 vs.

6 RENEE BAKER, WARDEN, and
7 CATHERINE CORTEZ MASTO,
8 ATTORNEY GENERAL FOR THE
9 STATE OF NEVADA,

 Respondents.

Case No. 57469

Electronically Filed
Sep 26 2012 01:43 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

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11 **EMERGENCY MOTION UNDER NRAP 27(e) FOR THIS COURT TO SEAL**
12 **ALL PLEADINGS AND DOCUMENTS RELATED TO THE EX-PARTE**
13 **MOTION FOR SUBSTITUTION OF COUNSEL FILED IN THIS MATTER**

14 As set more fully forth in the attached certification of counsel, Appellant
15 Samuel Howard files this Emergency Motion pursuant to Nevada Rule of Appellate
16 Procedure 27(e) for this Court to Seal any and all pleadings and documents related
17 to Mr. Howard's ex-parte motion for substitution of counsel, filed on September 18,
18 2012. This motion specifically requests the sealing of any pleadings or other
19 documents filed since September 14, 2012 and includes any future documents related
20 to the motion for substitution of counsel.

21 Dated this 26th day of September, 2012.

22 LAW OFFICES OF THE
23 FEDERAL PUBLIC DEFENDER

24 /s/ Lori C. Teicher
25 LORIC. TEICHER
26 First Assistant Federal Public Defender
27 Nevada State Bar No. 6143

28 /s/ Megan C. Hoffman
 MEGAN C. HOFFMAN
 Assistant Federal Public Defender
 Nevada State Bar No. 9835
 411 E. Bonneville Ave., Suite 250
 Las Vegas, Nevada 89101
 (702) 388-6577

1 **CERTIFICATION OF COUNSEL**

2 I, Megan C. Hoffman, do certify as follows:

3 1. I am filing this certification as counsel currently appointed to represent
4 Appellant, in the above-entitled matter before this Court. I have either personal
5 knowledge of the matters contained herein and, in some instances I am making
6 representations on information and belief. I am competent to testify thereto.

7 2. As explained to this Court in the Ex-Parte Motion for Substitution of Counsel
8 Filed Under Seal, appropriately and correctly submitted on September 14, 2012,
9 Appellant's counsel respectfully requested relief from this Court based upon the
10 presentation of privileged information concerning the attorney-client relationship
11 between Mr. Howard and the Office of the Federal Public Defender. This motion was
12 to be filed ex-parte and under seal.

13 3. Due to a filing error admitted to by the Clerk of the Nevada Supreme Court,
14 and through no fault of the Office of the Federal Public Defender, the Ex-Parte and
15 Sealed motion to withdraw was neither filed under seal nor was it filed ex-parte and
16 was instead filed as a public record and electronically served upon the Respondents,
17 Catherine Cortez Masto, the Attorney General of Nevada as well as Chief Deputy
18 Steven Owens at the Clark County District Attorney's Office.

19 4. Respondents at the Clark County District Attorney's Office, through Attorney
20 VanBoskerck, admitted contacting this Court to confirm that Mr. Howard's motion
21 was to have been filed under seal. Upon learning the motion was erroneously not filed
22 under seal, on September 24, 2012, Mr. VanBoskerck nevertheless filed an unsealed
23 "Opposition to Ex-Parte Motion for Substitution of Counsel Filed Under Seal; Motion
24 to Unseal". Counsel for Respondents also ignored the "Ex-Parte" notation on Mr.
25 Howard's motion when they chose to intervene. Further, Respondents' unsealed
26 opposition and motion to unseal improperly cited Mr. Howard's sealed, ex-parte
27 motion at length.

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1 5. Upon review of the Respondents' opposition and motion, Mr. Howard
2 immediately filed an emergency motion for this Court to seal the Respondents'
3 opposition and motion to unseal. The motion noted that Mr. Howard "intends to fully
4 and quickly reply to Chief Deputy District Attorney Vanboskerck's unsealed motion
5 which quotes at length the ex-parte sealed motion seeking appropriate relief.
6 However, it remains obvious that due to the improper (for many reasons) filing on
7 September 24, 2012 at 11:35 a.m., Respondents' opposition is presently unsealed."
8 This Court granted the motion on September 25, 2012 in an order signed by Chief
9 Justice Michael Cherry.

10 6. On September 25, 2012, Respondents filed another unsealed pleading, entitled
11 "Motion for Reconsideration by Full Court." Despite this Court's order sealing the
12 information contained within the opposition, Respondents' unsealed motion for
13 reconsideration continues to refer at length by reference and insinuation to
14 confidential and privileged information contained within Mr. Howard's original
15 motion for substitution of counsel.

16 7. Due to this Court's filing error, a sealed, ex-parte motion, which contained
17 privileged and confidential information having a direct impact upon the attorney-
18 client relationship between Mr. Howard and the Office of the Federal Public
19 Defender, was served upon the district attorney and attorney general. Mr. Howard
20 intends to file a response to Respondents' arguments no later than September 27,
21 2012. However, in the meantime, due to Respondents' repeated misconduct and
22 unwillingness to comply with this Court's order, Mr. Howard is petitioning this Court
23 to seal any and all pleadings related to his motion for substitution of counsel. This
24 includes any documents, pleadings, etc. filed by any party since September 14, 2012
25 and includes any future documents related to this motion.

26 8. Mr. Howard submits his constitutional rights under the Fifth, Sixth and
27 Fourteenth Amendments to the United States Constitution to due process and to the
28 effective assistance of counsel, including the right to be represented by conflict-free

1 counsel, are in jeopardy as a result of the prosecutorial misconduct and procedural
2 errors which have occurred in the last week in this matter.

3 9. For the above-stated reasons, undersigned counsel, on behalf of Appellant, Mr.
4 Howard, respectfully ask that this Court grant the emergency requested relief therein
5 so that this issue can be appropriately handled by this Court.

6 10. Although Mr. Howard continues to assert that Respondents are not a party to
7 the ex-parte motion for substitution of counsel and are instead interfering in an
8 attorney-client privileged matter, until this issue is resolved by the Court and in
9 compliance with Nevada Rule of Appellate Procedure 27(e)(3)(C), Mr. Howard
10 advises he has served counsel for Respondents electronically with this motion.

11
12 Dated September 26, 2012.

13 I certify the foregoing is true and correct.

14 /s/Megan C. Hoffman
15 MEGAN C. HOFFMAN
16 Assistant Federal Public Defender
17 Nevada State Bar No. 9835
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Jonathan E. VanBoskerck
Chief Deputy District Attorney

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