

ORIGINAL

RECEIVED  
Las Vegas Dist. Ct.  
CLERK OF SUPREME COURT

2012 SEP 14 PM 3:47

*Unsealed per 12/27/12  
opinion.*

FILED

SEP 18 2012

TRACIE K. LINDEMAN  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

**S  
E  
A  
L  
E  
D**

Federal Public Defender  
411 E. Bonneville Ave., Ste. 250  
Las Vegas, NV 89101  
(702) 388-6577  
Fax (702) 388-6261

12-40881

ORIGINAL

RECEIVED  
CLERK OF COURT  
JULY 2012

2012 SEP 14 PM 3:47

IN THE SUPREME COURT OF THE STATE OF NEVADA

\*\*\*\*\*

SAMUEL HOWARD

Appellant,

vs.

RENEE BAKER, WARDEN, and  
CATHERINE CORTÉZ MASTO,  
ATTORNEY GENERAL FOR THE  
STATE OF NEVADA,

Respondents.

Case No. 57469

EX-PARTE MOTION FOR SUBSTITUTION OF COUNSEL  
FILED UNDER SEAL

Appellant, Samuel Howard, through undersigned counsel, files this Ex-Parte Motion for Substitution of Counsel, filed under seal. This Motion is based upon the attached points and authorities and all pleadings and papers in file herein.

Dated this 14th day of September, 2012.

LAW OFFICES OF THE  
FEDERAL PUBLIC DEFENDER

LORI C. TEICHER

LORI C. TEICHER  
First Assistant Federal Public Defender  
Nevada State Bar No. 6143

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  
Counsel for the Appellant

1 **POINTS AND AUTHORITIES**

2 **I.**

3 **PROCEDURAL HISTORY**

4 Mr. Howard is in the custody of the State of Nevada at the Ely State Prison in  
5 Ely, Nevada, pursuant to a state court judgment of conviction and sentence of death  
6 entered on May 6, 1983, in the Eighth Judicial District Court, Clark County, Nevada,  
7 by the Honorable John F. Mendoza, Case No. C53867. 7 AA 1572-1573, 1592.<sup>1</sup>

8 Mr. Howard has appealed from an order by the district court dismissing his  
9 amended petition for writ of habeas corpus (post-conviction) challenging his  
10 conviction and death sentence. 14 AA 3366-3401. Notice of entry of the order was  
11 filed on December 6, 2010. 14 AA 3402. Mr. Howard filed a timely notice of appeal.  
12 14 AA 3404-3405. Mr. Howard's opening brief was filed on May 12, 2011, the State  
13 answered on September 12, 2011 and Mr. Howard replied on November 9, 2011. The  
14 case is submitted for argument (at the request of this Court) and decision.

15 The Supreme Court decided two important § 2254 habeas opinions last term.  
16 The Court decided Maples v. Thomas, 132 S.Ct. 912 (January 18, 2012) and shortly  
17 thereafter, issued Martinez v. Ryan, 132 S. Ct. 1309, 1315 (March 20, 2012). Both  
18 cases present procedural rulings that offer the potential for new litigation of  
19 significant state post-conviction counsel issues. Our capital habeas unit quickly  
20 convened after the issuance of each opinion and developed an appropriate course of  
21 action to investigate and fully explore how each opinion may be relevant to every  
22 client's case.

23 Our investigation led to the discovery of a compelling conflict of interest  
24 preventing the ability of the Office of the Federal Public Defender to continue as  
25 counsel in this case. In short and discussed more fully below, current and former

---

26  
27 <sup>1</sup> Citations to "AA" refer to the Appellant's Appendix recently filed with  
28 this Court. The undersigned counsel respectfully refers the Court to the Statement of  
the Case presented in Mr. Howard's Opening Brief for a full procedural history. See  
Opening Brief at 1-4.

1 employees of this office bolstered Howard's previous post-conviction counsel,  
2 Patricia Erickson's reputation as a qualified death penalty attorney before the courts  
3 and bar, despite their close personal relationship with Ms. Erickson and knowledge  
4 of her inability to effectively represent her clients.

5 The undersigned counsel and Federal Defender Rene Valladares spent  
6 substantial hours analyzing the potential conflict of interest, including consultation  
7 with outside counsel regarding the ethical implications of the conflict. The difficult  
8 decision was made that this office could no longer represent Mr. Howard due to the  
9 conflict of interest. Mr. Valladares immediately notified the courts of the conflict as  
10 soon as the final decision was made that it would be necessary for this office to  
11 withdraw as counsel. Next, Federal Defender Services for Idaho agreed to substitute  
12 and accept representation of Mr. Howard's case. This substitution was promptly  
13 presented and approved by the Administrative Office of the Courts in Washington  
14 D.C., as well as by Chief Judge Kozinski of the Ninth Circuit Court of Appeals.

15 A new attorney team from the Idaho office was assembled and traveled with  
16 the undersigned counsel and members of this office to the Northern Nevada  
17 Correctional Center to meet with Mr. Howard on May 24, 2012. Both current and  
18 new counsel fully discussed and explained the need to substitute counsel with Mr.  
19 Howard. Mr. Howard agreed to the proposed substitution request. The process of  
20 transferral of Mr. Howard's case has taken time to deliberately and thoroughly ensure  
21 that Mr. Howard's rights are protected.

22 A motion for substitution has been granted in the Ninth Circuit Court of  
23 Appeals, allowing for the substitution of Assistant Federal Public Defenders Teresa  
24 Hampton and Brady Ward King to represent Mr. Howard in his Ninth Circuit Court  
25 of Appeals case, No. 10-99003, Docket Entry 43.<sup>2</sup> It is imperative that this case

---

26  
27 <sup>2</sup> The Office of the Federal Public Defender for the District of Nevada  
28 has been removed from a total of five capital cases due to this conflict, with Federal  
(continued...)

1 continue to be litigated by unconflicted counsel.

## 2 II.

### 3 ARGUMENT

4 Effective assistance of counsel carries with it “a correlative right to  
5 representation that is free from conflicts of interest.” Wood v. Georgia, 450 U.S. 261,  
6 271 (1981); Holloway v. Arkansas, 435 U.S. 475 (1978). An actual conflict of  
7 interest negates the unimpaired loyalty that a defendant is entitled to expect and  
8 received from his attorney. Cuyler v. Sullivan, 446 U.S. 335, 356 (1980). When  
9 counsel labors under a conflict of interest that adversely affects counsel’s  
10 performance, there is an “actual conflict” for Sixth Amendment purposes, not merely  
11 a potential conflict, and reversal must ensue without any need for an inquiry into  
12 prejudice. Id. at 349-50. “Conflict of interest and divided loyalty situations can take  
13 many forms, and whether an actual conflict exists must be evaluated on the specific  
14 facts of each case. In general, a conflict exists when an attorney is placed in a  
15 situation conducive to divided loyalties. Smith v. Lockhart, 923 F.2d 1314, 1320 (8th  
16 Cir. 1991).

#### 17 A. Duties of Capital Counsel

18 Under the ABA Guidelines, capital counsel is required to investigate and  
19 present all arguably meritorious issues. See, e.g., Guidelines 10.7, 10.8, 10.11 and  
20 10.15.1, ABA Guidelines for the Appointment and Performance of Defense Counsel  
21 in Death Penalty Cases, (rev. ed. 2001), reprinted in 31 Hofstra L.Rev. 913, 1015-  
22 (2003). These guidelines recognize the unique nature of a capital case, and that [d]ue  
23 to the extraordinary and irrevocable nature of the penalty, at every stage of the  
24

25 \_\_\_\_\_  
26 <sup>2</sup>(...continued)

26 Defender offices in the Central District of California and Arizona appointed to  
27 represent the four other clients. See Curtis Guy v. Renee Baker et al., 2:11-cv-01809-  
28 GMN-RJJ; Rodney L. Emil v. Renee Baker et al., 3:00-cv-0654-KJD-VPC; Patrick  
Charles McKenna v. Renee Baker et al., 2:11-cv-0191-JCM-PAL; Charles Robins v.  
Renee Baker et al., 2:99-cv-0412-LRH-PAL.

1 proceedings counsel must make 'extraordinary efforts on behalf of the accused.'" 31  
2 Hofstra L.Rev. at 923, citing ABA Standards for Criminal Justice: Defense Function,  
3 Standard 4-1.2(c), in ABA Standards for Criminal Justice: Prosecution Function and  
4 Defense Function (3d ed. 1993). Specifically, Guideline 10.8(A) concerns the duty  
5 to assert legal claims, outlining that counsel should

6  
7 consider all legal claims potentially available; and thoroughly  
8 investigate the basis for each potential claim before reaching a  
9 conclusion as to whether it should be asserted...evaluating each potential  
10 claim in light of...the near certainty that all available avenues of post-  
11 conviction relief will be pursued in the event of conviction and  
imposition of a death sentence; and the importance of protecting the  
client's rights against later contentions by the government that the claim  
has been waived, defaulted, not exhausted or otherwise  
defaulted....Counsel who decide to assert a particular legal claim should  
present the claim as forcefully as possible.

12 Further, Guideline 10.8(C) states that "[c]ounsel at all stages should keep under  
13 consideration the possible advantages to the client of: 1) asserting legal claims whose  
14 basis has only recently become known or available to counsel; and 2) supplementing  
15 claims previously made with additional factual or legal information."

16 Counsel also must adhere to the standards of conduct prescribed by the Nevada  
17 Rules of Professional Conduct, except as modified by this Court. Local Rule 10-7.  
18 Rules of Professional Conduct that may be applicable where a conflict of interest is  
19 at issue include:

20 NRPC 1.7(a)(2) provides that:

21 a lawyer shall not represent a client if the representation involves a  
22 concurrent conflict of interest. A concurrent conflict of interest exists  
23 if...[t]here is a significant risk that the representation of one or more  
clients will be materially limited by...the lawyer's responsibilities to a  
third person or by a personal interest of the lawyer.

24 NRPC 1.10(a) provides that:

25 while lawyers are associated in a firm, none of them shall knowingly  
26 represent a client when any one of them practicing alone would be  
27 prohibited from doing so by Rule 1.7...unless the prohibition is based on  
28 a personal interest of the prohibited lawyer and does not present a  
significant risk of materially limiting the representation of the client by  
the remaining lawyers of the firm.

1 NRPC 1.16(a)(1) provides that a lawyer “shall withdraw from the  
2 representation of a client if the representation will result in violation of the Rules of  
3 Professional Conduct or other law.” NRPC 1.16(b)(1) provides that “a lawyer may  
4 withdraw from representing a client if [w]ithdrawal can be accomplished without  
5 material adverse effect on the interests of the client.” Finally, NRCP 3.7(a) provides  
6 that “[a] lawyer shall not act as advocate at a trial in which the lawyer is likely to be  
7 a necessary witness....”

8 **B. Conflict of Interest**

9 **1. Legal Standards**

10 The right to effective assistance of counsel carries with it “a correlative  
11 right to representation that is free from conflicts of interest.” Wood v. Georgia, 450  
12 U.S. 261, 271 (1981); Holloway v. Arkansas, 435 U.S. 475 (1978). An actual conflict  
13 of interest negates the unimpaired loyalty that a defendant is entitled to expect and  
14 received from his attorney. Cuyler v. Sullivan, 446 U.S. 335, 356 (1980). When  
15 counsel labors under a conflict of interest that adversely affects counsel’s  
16 performance, there is an “actual conflict” for Sixth Amendment purposes, not merely  
17 a potential conflict, and reversal must ensue without any need for an inquiry into  
18 prejudice. Id. at 349-50. “Conflict of interest and divided loyalty situations can take  
19 many forms, and whether an actual conflict exists must be evaluated on the specific  
20 facts of each case. In general, a conflict exists when an attorney is placed in a  
21 situation conducive to divided loyalties. Smith v. Lockhart, 923 F.2d 1314, 1320 (8th  
22 Cir. 1991).

23 This office has an ethical obligation to avoid conflicts of interest and advise the  
24 court promptly when a conflict exists. Cuyler, 446 U.S. at 335. “A trial court must  
25 be able to rely upon the good faith and judgment of counsel, for they are in the best  
26 position to know when a conflict exists. . . . Likewise, the trial court must be able to  
27 rely upon counsel’s representations concerning conflict between clients.” United  
28 States v. Linton, 502 F.Supp. 871 (Nev. 1980) (citations omitted).

1 Every client is entitled to the right of undivided loyalty by his attorney. “[T]he  
2 right to counsel guaranteed by the Constitution contemplates the services of an  
3 attorney devoted solely to the interests of his client.” Von Moltke v. Gilies, 332 U.S.  
4 708, 725 (1948). This Court has “an obligation to apply the principle whenever  
5 counsel is so situated that the caliber of his services may be substantially diluted.  
6 Competition between the client’s interests and counsel’s own interests plainly  
7 threatens the result, and we have no doubt that the conflict corrupts the relationship  
8 when counsel’s duty to his client calls for a course of action which concern for  
9 himself suggests that he avoid.” See United States v. Hurt, 543 F.2d 162, 167 (D.C.  
10 Cir. 1976) (court erred in not appointing new counsel for post-conviction hearing  
11 where trial counsel had brought libel suit against appellate counsel regarding  
12 ineffective assistance claims and suit created dilemma for appellate counsel to  
13 aggressively proceed due to worry of civil suit).

14 A defendant “should also expect that [his] lawyer will use every skill, expend  
15 every energy, and tap every legitimate resource in the exercise of independent  
16 professional judgment on behalf of the client and in undertaking representation on the  
17 client’s behalf.” Thomas v. Municipal Court, 878 F.2d 285, 289-90 (9th Cir. 1989).  
18 See also United States v. Rewald, 889 F.2d 836 (9th Cir. 1989) (court did not err in  
19 removing counsel from successive representation of clients as notwithstanding the  
20 court’s opinion of counsel’s integrity, the potential for conflict was determinative  
21 where attorney’s representation of one client could be viewed as basis for obtaining  
22 information that could be used to another client’s detriment and that client’s benefit).  
23 In a situation with conflicting interests, “the evil . . . is in what the advocate finds  
24 himself compelled to *refrain* from doing.” Holloway v. Arkansas, 435 U.S. 475, 490  
25 (1978)(emphasis in original). The assistance of counsel must be unimpaired by any  
26 influence of conflicting interests. Confidence in the integrity of the criminal justice  
27 system and avoidance of impropriety is essential. See People v. Jackson, 213 Cal.  
28 Rptr. 521 (Ca. Ct. App. 3d 1985)(appointed counsel’s failure to inform defendant of



1 dating relationship with prosecutor required reversal).

2 The general rule of vicarious disqualification provides that if a lawyer is  
3 ineligible to represent a particular client, all members of the firm are also ineligible.  
4 Model Rules of Professional Conduct Rule 1.10(a) (1989) provides that “while  
5 lawyers are associated in a firm, none of them shall knowingly represent a client  
6 when any one of them practicing alone would be prohibited from doing so.” The  
7 basis for this premise is the presumption of shared confidences, which seeks to  
8 prevent disclosure of client confidences, preserve loyalty and avoid the appearance  
9 of impropriety. See, e.g., Fund of Funds, Ltd. v. Arthur Anderson & Co., 567 F.2d  
10 225 (2d Cir. 1977).

11 A potential solution to vicarious disqualification of the entire office is a  
12 screening mechanism or construction of a “conflict wall.” Ethical and public policy  
13 concerns dictate that screening of lawyers may be used to rebut the presumption of  
14 shared confidences or avoid a conflict to be necessarily imputed to an entire law firm.  
15 See Ryan’s Express Transportation Services, Inc. v. Amador Stage Lines, Inc., 128  
16 Nev. Adv. Rep. 27, 279 P.3d 166 (2012). However, Nevada Rule of Professional  
17 Conduct 1.10(e)(1) permits screening only where a disqualified lawyer did not have  
18 a “substantial role in or primary responsibility for the matter that causes the  
19 disqualification.” Factors to be considered as to whether adequate screening  
20 measures could be implemented include: (1) instructions given to ban the exchange  
21 of information between the disqualified attorney and other members of the firm; 2)  
22 restricted access to files and other information about the case; 3) the size of the law  
23 firm and its structural divisions; 4) the likelihood of contact between the quarantined  
24 lawyer and other members of the firm; and 5) the timing of the screening. Ryan’s  
25 Express, 128 Nev. Adv. Rep. at 12.

26 Implementation of a screening mechanism allowing for this office’s continued  
27 representation of Mr. Howard raises substantial concerns. Any appearance of a  
28 breach of the lawyer’s duty of undivided loyalty may have adverse effects on the

1 judicial system, as well Mr. Howard's case. A central foundation in representation  
2 is that every attorney will, within the bounds of legal and ethical norms, engage in  
3 zealous, uninhibited representation of their client's positions. When loyalties to  
4 another impair a client's representation, it undermines the legitimacy of the system.  
5 This is especially true with the stakes at issue here, the ultimate penalty imposed of  
6 death.

7 Finally, even if a screening mechanism could effectively be put into place,  
8 withdrawal is necessary when the client's lawyer has the potential to become a  
9 witness. See United States v. Basham, 561 F.3d 302, 322-26 (4th Cir. 2009)(trial  
10 court did not abuse discretion removing appointed counsel due to prosecution's intent  
11 to call defense counsel as a witness to defendant's inculpatory statement. Court  
12 removed counsel "out of an abundance of counsel" due to potential of attorney  
13 testifying at trial and potential future argument that defense counsel tried case to  
14 avoid testifying in a way that would be prejudicial to client.); State v. Regan, 177  
15 P.3d 783, 789 (Wash. Ct. App. 2008)(State intended on calling defense counsel to  
16 testify regarding bail jumping charge at trial. Trial court should have removed  
17 counsel as "putting defense counsel in position of a prosecution witness is something  
18 that should be avoided whenever possible."(citations omitted)).

19 Courts "generally presume that the lawyer is fully conscious of the overarching  
20 duty of complete loyalty to his or her client." Burger v. Kemp, 483 U.S. 776, 784  
21 (1987). While it is recognized that disqualification of an attorney or office is a  
22 "drastic measure which courts should hesitate to impose except when absolutely  
23 necessary, . . . there are obviously are situations where [withdrawal] is legitimate and  
24 necessary." Freeman v. Chicago Musical Instrument Co., 689 F.2d 715, 721-22 (7th  
25 Cir. 1982). This is the unfortunate situation here; there is no practicable solution to  
26 allow for the continued representation of Mr. Howard. A situation akin to that noted  
27 by the Supreme Court in Maples v. Thomas, whereby conflicted counsel continued  
28 representation of Maples after the default and the Court noted the implausible

1 continued representation after discovery of the firm's negligence. See Maples, 132  
2 S. Ct. 912, 925 n.8. Withdrawal of this office as counsel is legitimate and necessary  
3 to protect Mr. Howard's statutory right to counsel in this capital case.

## 4       **2.     Analysis**

### 5           **a.     Nature of Conflict of Interest**

6           The conflict of interest at issue stems from the relationship  
7 between Mr. Howard's former post-conviction counsel, Patricia Erickson, and certain  
8 previous and current employees of this FPD office. As previously indicated, Ms.  
9 Erickson represented Mr. Howard in his state (and federal) habeas proceedings during  
10 the years of 1994 to 2007. Recent investigation by this office has determined that  
11 upon knowledge, information and belief, Ms. Erickson has effectively abandoned and  
12 provided ineffective representation to many of her capital clients (including Mr.  
13 Howard) throughout these years. Ms. Erickson repeatedly failed to file pleadings in  
14 a timely manner, failed to file pleadings at all, and was repeatedly chastised and  
15 sanctioned by this Court for these failings and unprofessional conduct. Ms. Erickson  
16 was referred to the State Bar by this Court in 2010 due to this course of conduct.

17          Recent investigation has also revealed that upon knowledge, information and  
18 belief, both former Federal Defender Franny Forsman and current Chief of the Capital  
19 Habeas Unit, Michael Pescetta have repeatedly vouched through testimony and  
20 affidavits regarding Ms. Erickson's effectiveness and fitness to practice law. This  
21 vouching and ratification of Ms. Erickson's abilities occurred before this Court, the  
22 federal district court and before the Nevada State Bar. Investigation suggests that  
23 both Ms. Forsman and Mr. Pescetta knew of Ms. Erickson's problems and were given  
24 information from other professionals that Ms. Erickson was not performing  
25 effectively on her death penalty cases. Further investigation has determined that Ms.  
26 Forsman may have failed to recognize Ms. Erickson's failings due to their personal  
27 friendship, and Mr. Pescetta may have failed to recognize the same due to his  
28 romantic and personal relationship with Ms. Erickson.

1 This conflict is fatal and must be imputed to all other members of the office.  
2 This is not a conflict where a screening mechanism could sufficiently allow for  
3 continuation of representation by other members of the office. No matter how well  
4 intentioned this office is in carrying out its legal responsibilities to Mr. Howard,  
5 counsel may be subject to subtle influences manifested in a reluctance to engage in  
6 confrontation with counsel's past (Forsman) superior and current immediate superior  
7 (Pescetta) or to fully investigate the issues. The mere perception that the attorneys  
8 assigned to Mr. Howard's case may not engage in aggressive oral argument,  
9 discovery, examination and presentation of appropriate Martinez or Maples issues  
10 that may alienate or embarrass present or former management in the office proves that  
11 the only reasonable solution is substitution of counsel. Isolation of the attorney will  
12 not solve these problems. Continued representation will result in insurmountable  
13 problems of line drawing in this capital case. An adequate screening process is  
14 impractical and impossible because the conflict involves the capital habeas chief, who  
15 manages every attorney and staff member within the unit.

16 **b. Implications in Post-Maples,<sup>3</sup> Martinez<sup>4</sup> World**

17 The Supreme Court has recently elevated the importance of  
18 counsel in state post-conviction proceedings, particularly in capital cases. The Court  
19 previously held that a defense attorney's ignorance or inadvertent mistake in state  
20 court proceedings did not qualify as "cause" to excuse a procedural default in federal  
21 habeas proceedings. Coleman v. Thompson, 501 U.S. 722, 757 (1991). However,  
22 the Court has recently qualified its position in Coleman to protect petitioners with  
23 potentially legitimate claims that would otherwise be barred, where the performance  
24 of counsel in "initial-review collateral proceedings" is inadequate. Martinez, 132  
25 S.Ct. at 1309. "Inadequate assistance of counsel at initial review collateral  
26

---

27 <sup>3</sup> Maples v. Thomas, 132 S.Ct. 912, 922-23 (2012).

28 <sup>4</sup> Martinez v. Ryan, 132 S.Ct. 1309 (2012).

1 proceedings may establish cause for a prisoner's default of a claim of ineffective  
2 assistance at trial." Id. at 1315. Similarly, where abandonment of a client by his  
3 attorney, or other "extraordinary circumstances" beyond the prisoner's control, have  
4 resulted in the default, that default may be excused as the abandonment severed the  
5 normal principal-agent relationship whereby the principal-agent is bound by the  
6 agent-attorney's decisions. Maples, 132 S.Ct. at 922-23. Thus, review of the  
7 performance of state habeas counsel is now clearly sanctioned in federal habeas  
8 proceedings to determine whether counsel's performance may have given rise to a  
9 default, by failing or preventing potentially legitimate claims from being raised in  
10 state court.

11 This office has filed Mr. Howard's briefing. There is the potential for oral  
12 argument as well as, if deemed appropriate by unconflicted counsel, a request for  
13 additional briefing because of these cases. Both will necessitate Mr. Howard's  
14 assertion of Maples and Martinez relief as to each and every applicable claim and  
15 issue throughout this briefing and the pendency of his habeas proceedings. See  
16 Opening Brief at 4, 50. As such, the nature and quality of Ms. Erickson's  
17 performance will be at issue.

18 This office is unable to continue to represent Mr. Howard as key supervising  
19 employees have vouched for her abilities and professionalism. Further, even the  
20 appearance that this office may not zealously investigate and present evidence of Ms.  
21 Erickson's ineffectiveness, due to the embarrassing nature of our office's involvement  
22 in the alleged previous vouching and other conduct suggests that withdrawal is  
23 necessary to effectively guarantee Mr. Howard's right to vigorous and unconflicted  
24 counsel.

### 25 III.

### 26 CONCLUSION

27 Any client is entitled to nothing less than an attorney's absolute, unimpaired  
28 and undivided loyalty. His attorney is obligated to exercise professional judgment

1 solely for the benefit of his client, divorced from any competing influences,  
2 considerations or interests. Counsel respectfully submits that the interests of justice  
3 warrant the granting of this motion. The undersigned counsel regrettably requests that  
4 this Court permit the Office of the Federal Public Defender to withdraw from its  
5 representation of Mr. Howard in this matter. Further, it is respectfully requested that  
6 this Court approve the substitution of the Office of the Federal Defender Service for  
7 Idaho as Petitioner's attorney of record in the place and stead of the Office of the  
8 Federal Public Defender for the District of Nevada. Upon approval by this Court, that  
9 office will immediately submit and move for their appointment of counsel and submit  
10 a pro hac vice application.

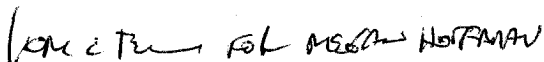
11 It is necessary to ensure that the rights of Mr. Howard are protected in this  
12 death penalty habeas corpus case and that nothing is waived in his litigation. It is  
13 imperative that Mr. Howard be represented by conflict-free counsel throughout these  
14 proceedings. Due the above-stated reasons, undersigned counsel and Petitioner  
15 Howard respectfully ask that this Court grant the requested relief therein.

16 Respectfully submitted this 14th day of September, 2012.

17  
18 LAW OFFICES OF THE  
19 FEDERAL PUBLIC DEFENDER

20 

21 LORI C. TEICHER  
22 First Assistant Federal Public Defender  
23 Nevada State Bar No. 6143

24 

25 MEGAN C. HOFFMAN  
26 Assistant Federal Public Defender  
27 Nevada State Bar No. 9835  
28 411 E. Bonneville Ave., Suite 250  
Las Vegas, Nevada 89101  
(702) 388-6577  
Counsel for the Appellant