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Tracie K. Lindeman
Clerk of Supreme Court

OPPOSITION TO MOTION FOR LEAVE TO SUBMIT BRIEF AS AMICUS CURIAE

Dated this 13th day of March, 2012

STEVEN B. WOLFSON
Clark County District Attorney

STEVEN S. OWENS
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Regional Justice Center
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POINTS AND AUTHORITIES

This is an appeal from the denial of a post-conviction petition after a verdict for Voluntary Manslaughter with Deadly Weapon and Sexual Penetration of a Dead Human Body. This Court granted a motion for full briefing and then authorized, over objection, an opening brief which contains more than twice the word count allowed in a typical appeal. One week after the opening brief was filed, Attorney Dustin Dingman as counsel for “ The Justice Institute” has filed a motion for leave to file an amicus curiae brief which the State now opposes.

Per NRAP 29(c), a motion for leave to file an amicus brief shall state: (1) the movant’s interest; and (2) the reasons why an amicus brief is desirable. The instant motion does neither and must be denied for that reason alone. Furthermore, Amicus should not be permitted to correct this deficiency in a reply which would deprive the State of an opportunity to respond. As to the contents and form of the amicus brief as required by NRAP 29(d)-(e), the State reserves the right to raise any objections if and when it has been served with the amicus brief.¹

Amicus status is typically granted when a party has a special interest in a particular case, that interest is not represented competently or at all in the case, the proffered information is timely and useful, and the amicus is not partial to a particular outcome in the case. U.S. v. Alkaabi, 233 F.Supp 2d 583 (D.N.J. 2002); Sciotto v. Marple Newtown School Dist., 70 F.Supp. 2d 553 (E.D. Pa. 1999). Furthermore, courts often consider the nature of the litigation and the issues presented and the nature of the person or the organization seeking amicus status. State ex rel. Com’r of Transp. v. Medicine Bird Black Bear White Eagle, 63 S.W.3d 734 (Tenn.Ct.App. 2001). Intervention by an amicus is only justified when

¹ Amicus has apparently submitted its proposed brief to the Court, but because it has not yet been filed the State has not been electronically served with the amicus brief and is unaware of its contents.

1 they can show a court that such aid as an amicus is necessary or advisable.
2 Froehler v. North American Life Ins. Co. of Chicago, 373 Ill. 17, 27 N.E.2d 833
3 (1940).

4 Sister jurisdictions are in accordance with such understanding:

5 Historically amicus curiae was defined as one who
6 interposes in a judicial proceeding to assist the court by
7 giving information or otherwise or who conduct[s] an
8 investigation or other proceeding on request or
9 appointment therefore (sic) by the court. Its purpose
10 was to provide *impartial* information on matters of law
11 about which there was doubt especially in matters of
12 public interest. The orthodox view of amicus curiae
13 was and is that of an *impartial* friend of the court- *not*
14 *an adversary party in interest in the litigation*. The
15 position of classical amicus in litigation was not to
16 provide a highly partisan account of the facts but rather
17 to aid the court in resolving doubtful issues of law.

18 State v. Ross, 272 Conn. 577, 611, 863 A.2d 654, 673 (2005), *citing* United States
19 v. Michigan, 940 F.2d 143, 164-65 (6th Cir. 1991).

20 Of concern to the State is that Amicus, “The Justice Institute,” is apparently
21 the same as that affiliated with Michelle Ravell and Hans Sherrer, both of whom
22 have participated substantially in Lobato’s post-conviction proceedings below. A
23 website identifies Justice Denied as a “trade name of The Justice Institute,” and
24 recognizes Hans Scherrer and Michelle Ravell as author and co-author of a book
25 about Kirstin Lobato’s case on sale for \$20. See
26 http://justicedenied.org/kbl_habeas.htm; see also 9 AA 1871-73. Apparently,
27 “Justice Denied” or “The Justice Institute” is actively engaged in raising money for
28 Lobato’s defense which has then been used to investigate and employ experts for
use in the post-conviction proceedings below. 10 AA 2171, 2173; 11 AA 2198.
Hans Sherrer, as President of The Justice Institute, sought to assist Lobato’s
defense attorneys with strategy, expert assistance, and arguments for DNA testing.
9 AA 1791-95. Michelle Ravell actively sought to gather records and files on
Lobato’s behalf. 9 AA 1869, 1899-1910. Michelle Ravell also appears to have
participated in the drafting and/or co-signing of Lobato’s post-conviction petition

1 below as well as at least three motions even though she is not a licensed attorney.
2 See Exhibits 1-3 attached hereto. This, coupled with her attempted appearance in
3 court, resulted in Michelle Ravell being reported to the State bar and being
4 considered for criminal charges for the unauthorized practice of law. Id.

5 Of further concern is that the address for counsel for Amicus, Attorney
6 Dustin Dingman, at 540 E. St. Louis, Las Vegas, Nevada, is the same address as
7 that listed for Lobato's counsel Travis Barrick of Gallian, Wilcox, Welker, Olson
8 & Beckstrom, LC. Furthermore, a recent telephone call to Attorney Dingman at
9 his listed phone number, (702) 529-1414, was met by a recorded message and
10 subsequently a live person both indicating the caller had reached the law firm of
11 Gallian, Wilcox, Welker, Olson & Beckstrom, LC. Attorney Dingman's website
12 lists several areas of practice, none of which include criminal law.

13 Amicus is plainly biased and partial in favor of Lobato's innocence and has
14 no "special interest" or information useful to this Court that can not be competently
15 represented by Lobato's own counsel. Amicus has been an active litigant in this
16 case so closely aligned with the Lobato's defense counsel that the two are
17 indistinguishable. Instead of an impartial friend of the court, the Justice Institute is
18 an adversary party in interest in the litigation. Lobato's position has already been
19 abundantly represented in the over-size opening brief and needs no assistance from
20 Amicus.

21 WHEREFORE, the State respectfully requests that the motion for leave to
22 submit brief as amicus curiae be denied.

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1 Dated this 13th day of March, 2012.

2 Respectfully submitted,

3 STEVEN B. WOLFSON
4 Clark County District Attorney
5 Nevada Bar # 001565

6 BY */s/ Steven S. Owens*

7 STEVEN S. OWENS
8 Chief Deputy District Attorney
9 Nevada Bar #004352

10 Attorney for Respondent
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify and affirm that this document was filed electronically with
3 the Nevada Supreme Court on March 13, 2012. Electronic Service of the
4 foregoing document shall be made in accordance with the Master Service List as
5 follows:

6 CATHERINE CORTEZ MASTO
7 Nevada Attorney General

8 TRAVIS BARRICK, ESQ.
9 Counsel for Appellant

10 DUSTIN DINGMAN, ESQ.
Attorney for Amicus Curiae

11 STEVEN S. OWENS
12 Chief Deputy District Attorney

13
14 /s/ *jennifer garcia*
15 _____
Employee, Clark County
16 District Attorney's Office
17
18
19
20
21
22

23 SSO/jg
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25
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EXHIBIT 1

EXHIBIT 1


CLERK OF THE COURT

OPPS

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781
TYLER D. SMITH
Deputized Law Clerk
Nevada Bar #011870
200 Lewis Avenue
Las Vegas, Nevada 89155-2212
(702) 671-2500
Attorney for Plaintiff

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,)	
)	CASE NO: 01C177394-1
Plaintiff,)	
)	DEPT NO: II
-vs-)	
)	
KIRSTIN BLAISE LOBATO,)	
#1691351)	
)	
Defendant.)	

**STATE'S MOTION TO STRIKE OR, IN THE ALTERNATIVE,
OPPOSITION TO IMPROPER MOTIONS FOR RECUSAL OF JUDGE VEGA,
EXPEDITED HEARING AND EXTENSION OF TIME,
AND ASSIGNMENT OF CIVIL CASE NUMBER**

DATE OF HEARING: 09-17-10
TIME OF HEARING: 9:00 A.M.

COMES NOW, the State of Nevada, by DAVID ROGER, District Attorney, through TYLER D. SMITH, Deputized Law Clerk, and hereby submits the attached Points and Authorities in Support of its Motion to Strike or, In the Alternative, Opposition to Defendant's Motions for Recusal of Judge Vega, for Expedited Hearing and Extension of Time, and Assignment of a Civil Case Number.

This motion and opposition is made and based upon all the papers and pleadings on file herein, the attached points and authorities in support hereof, and oral argument at the time of hearing, if deemed necessary by this Honorable Court.

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1 **POINTS AND AUTHORITIES**

2 **STATEMENT OF THE CASE**

3 On August 9, 2001, Kirstin Blaise Lobato, hereinafter "Defendant," was charged by
4 way of Information with Murder With Use of a Deadly Weapon (Open Murder) and Sexual
5 Penetration of a Dead Human Body. Defendant's jury trial began on May 7, 2002. On May
6 18, 2002, Defendant was found guilty of First Degree Murder With Use of a Deadly Weapon
7 and Sexual Penetration of a Dead Human Body. On August 27, 2002, Defendant was
8 sentenced as follows: Count 1 - First Degree Murder With Use of a Deadly Weapon, to a
9 maximum of fifty (50) years and a minimum parole eligibility of twenty (20) years plus an
10 equal and consecutive term for use of a deadly weapon; Count 2 – Sexual Penetration of a
11 Dead Human Body, to a maximum of fifteen (15) years and a minimum parole eligibility of
12 five (5) years, to run concurrently with Count 1; further, a Special Sentence of Lifetime
13 Supervision imposed to commence upon release of any term of probation, parole, or
14 imprisonment; two hundred thirty-three (233) days credit for time served. A Judgment of
15 Conviction (Jury Trial) was filed September 16, 2002.

16 Defendant filed a Notice of Appeal on October 15, 2002. On September 3, 2004, the
17 Nevada Supreme Court reversed Defendant's conviction and remanded for a new trial.
18 Lobato v. State, 120 Nev. 512, 96 P.3d 765 (2004). Remittitur issued on September 24,
19 2004.

20 Defendant's second trial began on September 11, 2006. On October 6, 2006,
21 Defendant was found guilty of Voluntary Manslaughter With Use of a Deadly Weapon and
22 Sexual Penetration of a Dead Human Body. On February 2, 2007, Defendant was sentenced
23 as follows: Count 1 – Voluntary Manslaughter With Use of a Deadly Weapon, to a
24 maximum of one hundred twenty (120) months with a minimum parole eligibility of forty-
25 eight (48) months, plus an equal and consecutive term for the use of a deadly weapon; Count
26 2 – Sexual Penetration of a Dead Human Body, to a maximum of one hundred eighty (180)
27 months with a minimum parole eligibility of sixty (60) months, Count 2 to run consecutive
28 to Count 1, with one thousand five hundred forty-four (1,544) days credit for time served. It

1 was further ordered that a special sentence of lifetime supervision be imposed upon release
2 from any term of imprisonment, probation, or parole. Additionally, Defendant was ordered
3 to register as a sex offender upon any release from custody.

4 Defendant filed a Notice of Appeal on March 12, 2007. On February 5, 2009, the
5 Nevada Supreme Court affirmed Defendant's conviction. Defendant filed a petition for
6 rehearing which was denied on March 27, 2009. Defendant filed a petition for en ban
7 reconsideration which was denied on May 19, 2009. Remittitur issued on October 14, 2009.

8 Defendant filed a Petition for Writ of Habeas Corpus (Post-Conviction) on May 5,
9 2010. The State filed its Response to Defendant's Petition for Writ of Habeas Corpus (Post-
10 Conviction) on August 20, 2010. Defendant's petition is currently on calendar for September
11 30, 2010. Ms. Michelle Ravell filed the instant motions on Defendant's behalf on September
12 7, 2010.

13 **ARGUMENT**

14 **I**

15 **MS. RAVELL'S MOTIONS ARE FUGITIVE DOCUMENTS**

16 **AND SHOULD BE STRICKEN**

17 The motions currently before the court have not been properly filed and must be
18 stricken as fugitive documents. Ms. Michelle Ravell continually prepares, signs, and files
19 documents on Defendant's behalf.¹ The instant motions are signed "Kirstin Lobato, by
20 Michelle Ravell, Attorney in Fact." Ms. Ravell also went so far as attempting to make an
21 appearance on Defendant's behalf on July 10, 2010. Res. Ex. A. Ms. Ravell is not licensed to
22 practice law in the State of Nevada. "Although a person is entitled to represent himself or
23 herself in the district court...no rule or statute permits a person to represent any other person,
24 a company, a trust, or any other entity in the district courts." Salman v. Newell, 110 Nev.
25 1333, 1336, 885 P.2d 607, 608 (1994). Moreover, NRS 7.285 states:

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27
28 ¹ It is apparent that Ms. Ravell drafted, signed, and filed Defendant's Petition for Writ of Habeas Corpus (Post-Conviction) as well.

1 1. A person shall not practice law in this state if the person:
2 (a) Is not an active member of the State Bar of Nevada or otherwise authorized
3 to practice law in this state pursuant to the rules of the Supreme Court; or
4 (b) Is suspended or has been disbarred from membership in the State Bar of
5 Nevada pursuant to the rules of the Supreme Court.

6 2. A person who violates any provision of subsection 1 is guilty of:
7 (a) For a first offense within the immediately preceding 7 years, a
8 misdemeanor.
9 (b) For a second offense within the immediately preceding 7 years, a gross
10 misdemeanor.
11 (c) For a third and any subsequent offense within the immediately preceding 7
12 years, a category E felony and shall be punished as provided in NRS 193.130.

13 3. The State Bar of Nevada may bring a civil action to secure an injunction and
14 any other appropriate relief against a person who violates this section.

15 Ms. Ravell's actions clearly constitute the unauthorized practice of law. "The practice
16 of law is not limited to the conduct of cases in court, but embraces the preparation of
17 pleadings and other papers incident to actions, the management of such actions, and in
18 general all advice to clients and all action taken for them in matters connected with the law."
19 Ohio State Bar Association v. Lienguard, Inc., -- N.E.2d --, 2010 WL 3362927 (Ohio 2010);
20 see also In re Discipline of Lerner, 197 P.3d 1067, 1074 (Nev. 2008) (holding that preparing
21 and signing demand letters constituted the practice of law).

22 The mere fact that Ms. Ravell may have "power of attorney" over Defendant's affairs
23 does not authorize her to practice law in the courts of this state. While this issue has not been
24 directly addressed by the Nevada courts, other jurisdictions have held that "lay persons
25 cannot insulate themselves from responsibility for engaging in the unauthorized practice of
26 law by using powers of attorney." Lienguard, supra. In Estate of Friedman, 126 Misc.2d .44,
27 482 N.Y.S.2d 686 the court found that an "attorney in fact" was not authorized as a layman
28 to proceed pro se on behalf of his principal. As the court correctly stated:

[N]otwithstanding the broad sweep of these powers, no authority has been
presented which would permit a lay person by virtue of his capacity as
attorney-in-fact for his principal to appear on his principal's behalf and act as
legal counsel in a court of law unless admitted to so practice. Under the
applicable statutes of this state, only those persons duly admitted to practice

1 before the courts of this state may act as a legal representative of another
2 person in a court proceeding or in the further capacity of a practicing attorney.
3 The seriousness with which the legislature views this requirement is manifest
4 since a violation of the statutory proscription is punishable as a misdemeanor.
5 Moreover, the potential problems created by the use of this device as a means
6 of encouraging the unauthorized practice of law is obvious. Of course, if
7 petitioner's principal wishes to proceed pro se, she may do so. However, she
8 cannot use a power of attorney as a device to license a layman to act as her
9 attorney in a court of record. To sanction this course would effectively
10 circumvent the stringent licensing requirements of attorneys by conferring
11 upon lay persons the same right to represent others by the use of powers of
12 attorney.

13 Id. at 345, 482 N.Y.S.2d at 687. The laws of this State regarding the practice of law are
14 substantially the same as those of New York. As such, the analysis laid out in Friedman
15 applies to the instant situation. All documents prepared and signed by Ms. Ravell are the
16 result of the unauthorized practice of law and should be stricken.

17 Additionally, EJDCCR 7.42 states in relevant part:

18 Rule 7.42. Appearances in proper person; entry of appearance.

19 (a) Unless appearing by an attorney regularly admitted to practice law in
20 Nevada and in good standing, no entry of appearance or pleading purporting to
21 be signed by any party to an action may be recognized or given any force or
22 effect by any district court unless the same is signed by the party, with the
23 signer's address and telephone number, if any. (Emphasis added).

24 The instant motions have clearly not been signed by Defendant. They have been signed by
25 Ms. Ravell who is not licensed to practice law in this State. The documents she has filed are
26 fugitive documents, and they must be stricken.

27 Finally, Defendant's Motion for Recusal of Judge Valorie Vega does not comply with
28 NRS 1.235 which states in relevant part:

4. At the time the affidavit is filed, a copy must be served upon the judge
sought to be disqualified. Service must be made by delivering the copy to the
judge personally or by leaving it at the judge's chambers with some person of
suitable age and discretion employed therein.

The certificate of mailing attached to Defendant's motion indicates it was not served upon
Judge Vega. Since it does not comply with NRS 1.235, it must be stricken.

1 It is clear that the instant motions are not properly before this court. They are the
2 result of the unauthorized practice of law, and they do not conform to EJDRC 7.42(a) or
3 NRS 1.235. Therefore, they should not be considered. However, in the event the court elects
4 to consider Ms. Ravell's motions, the State responds to each on the merits below.

5 II

6 MS. RAVELL'S MOTION TO DISQUALIFY JUDGE VEGA IS WITHOUT MERIT

7 Ms. Ravell has filed a Motion for Recusal of Judge Valorie Vega on Defendant's
8 behalf. As discussed above, this motion is not properly before the court and should be
9 stricken. Moreover, the arguments laid out in Ms. Ravell's motion are completely without
10 merit.

11 A district court judge may be disqualified on the grounds of bias or prejudice. NRS
12 1.235. Defendant² carries the burden of providing sufficient grounds for the judge's recusal.
13 Sonner v. State, 112 Nev. 1328, 1335, 930 P.2d 707, 712. (1996). Moreover, there is a
14 presumption that a district court judge can preside over a case fairly and impartially. Id.; see
15 also Goldman v. Bryan, 104 Nev. 644, 764 P.2d 1296 (1988).

16 First, Ms. Ravell claims that Judge Vega is somehow a "material witness." A Judge is
17 not a material witness when it comes to his or her evidentiary rulings while presiding over a
18 case. Judge Vega's rulings on these issues are a part of the record. Moreover, "To disqualify
19 a judge based on personal bias, the moving party must allege bias that '**stem[s] from an**
20 **extrajudicial source** and result [s] in an opinion on the merits on some basis other than what
21 the judge learned from his participation in the case.'" Rivero v. Rivero, 216 P.3d 213,
22 233 (2009) (emphasis added). No extrajudicial sources have been alleged.

23 Second, Ms. Ravell claims Judge Vega failed to report alleged professional
24 misconduct. However, no such professional misconduct occurred. Ms. Ravell has only put
25 forth baseless and bare allegations unsupported by any evidence. "Disqualification must be
26 based on facts, rather than mere speculation." Rippo v. State, 113 Nev. 1239, 1248, 946 P.2d

27
28 ² While the State may reference Defendant in this motion, it is clear it is not Defendant's motion. Ms. Ravell has drafted, signed, and filed all of the instant motions.

1 1017, 1023 (1997).

2 Third, the claim that Judge Vega will be “acting as a judge in her own cause” is
3 absolutely absurd. The proceeding currently before Judge Vega is an original post-conviction
4 petition for writ of habeas corpus and not some sort of an appeal. None of the grounds in
5 “Defendant’s” petition are challenging Judge Vega’s rulings;³ rather they are all ineffective
6 assistance of counsel claims. Judge Vega is not conflicted and is qualified to rule on such
7 claims.

8 Finally, Judge Vega has not shown any lack of impartiality or bias against the
9 defendant in this case. On June 28, 2010, the State filed a motion for an extension of time in
10 which to file its response to the over 700-page Petition for Writ of Habeas Corpus (Post-
11 Conviction) that was drafted, signed, and filed by Ms. Ravell on Defendant’s behalf. Res.
12 Ex. B. The State served the Defendant by mail on June 25, 2010. Id at 3. The Defendant did
13 not file any opposition or motion for transport to be present at the hearing. During the
14 hearing, Ms. Ravell again engaged in the practice of law by attempting to appear pro se on
15 Defendant’s behalf. Res. Ex A. Judge Vega ultimately granted the State’s motion. Id.

16 Judge Vega did not engage in any inappropriate actions. EJDRCR 3.20(c) states,
17 “Within 7 days after the service of the motion, the opposing party must serve and file written
18 opposition thereto. Failure of the opposing party to serve and file written opposition may be
19 construed as an admission that the motion is meritorious and a consent to granting of the
20 same.” Due to the facts that the State provided proof that it had served the motion on
21 Defendant and no written opposition was filed and served on the State, Judge Vega exercised
22 her authority to grant the motion based on EJDRCR 3.20(c). Res. Ex. A.

23 Judge Vega did not entertain any arguments from the State; she only asked that the
24 State show proof that Defendant was served with the motion. Since Defendant was properly
25 served and Judge Vega ruled on the motion without entertaining argument from the State, no
26

27 ³ Moreover, any claims challenging Judge Vega’s evidentiary rulings that were not raised on direct appeal have been
28 waived. NRS 34.810(b)(2).

1 *ex parte* communication occurred. Moreover, Ms. Ravell has completely failed to put forth
2 any cogent arguments that the simple granting of a motion for an extension of time shows
3 bias. The mere fact that a district court judge has ruled for or against a party does not
4 establish bias. See Cameron v. State, 114 Nev. 1281, 968 P.2d 1169 (1998).

5 Finally, Ms. Ravell claims that Judge Vega's statement during sentencing constitutes
6 grounds for disqualification. "Neither bias nor prejudice refer[s] to the attitude that a judge
7 may hold about the subject matter of a lawsuit. That a judge has a general opinion about a
8 legal or social matter that relates to the case before him or her does not disqualify the judge
9 from presiding over the case." Cameron v. State, 114 Nev. 1281, 1283, 968 P.2d 1169,
10 1170 (1998). Judge Vega's comments fall precisely into this category. In fact, the Judge in
11 Cameron before sentencing the defendant stated, "I, like Mr. Berrett [the prosecutor] and like
12 the Wheelers, happen to be the father of a three year old daughter, and I also have a daughter
13 who is seven years old. And I've asked myself what I would do if somebody would have
14 done this to my daughter." Id. The Nevada Supreme Court held that these remarks were not
15 indicative of bias. Id. Judge Vegas's comments were no different. Defendant has plainly
16 failed to provide adequate grounds for disqualification.

17 III

18 DEFENDANT MUST DEMONSTRATE GOOD 19 CAUSE FOR AN EXTENSION OF TIME

20 As stated above, the court should strike Ms. Ravell's Motion for an Extension of
21 Time as it is not properly before the court. However, should the court decide to entertain the
22 motion, a continuance may be granted upon a showing of good cause. State v. Nelson, 118
23 Nev. 399, 46 P.3d 1232 (2002). The decision to grant a continuance is a discretionary ruling.
24 Id. at 1234-1235, 46 P.3d at 403. As such, it is within the court's sound discretion whether or
25 not to grant a continuance and give Defendant additional time to draft her own reply to the
26 State's response.

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IV

**DEFENDANT'S PETITION FOR WRIT OF HABEAS CORPUS WAS PROPERLY
FILED UNDER CASE NO. C177394**

Again, the court should strike Ms. Ravell's Motion for the Clerk to Assign a Civil Case Number. However, should the court decide to entertain the motion, her arguments are without merit as the petition was properly filed and assigned to Judge Vega by the clerk. NRS 34.730(3) states:

Except as otherwise provided in this subsection, the clerk of the district court shall file a petition as a new action separate and distinct from any original proceeding in which a conviction has been had. If a petition challenges the validity of a conviction or sentence, it must be:

(a) Filed with the record of the original proceeding to which it relates; and

(b) Whenever possible, assigned to the original judge or court.

Defendant's petition was filed under case no. C177394 which is the original proceeding to which it relates. Moreover, it was assigned to the original judge. As such, it was properly filed, and Ms. Ravell's motion is without merit.

CONCLUSION

Based on the foregoing arguments, the court should grant the State's Motion to Strike. Ms. Ravell is engaging in the unauthorized practice of law contrary to the laws of this State, and her motions fail to comply with the applicable statutes and/or Eighth Judicial District Court Rules. Moreover, should the court entertain the motions, they are without merit and must be denied.

DATED this 14th day of September, 2010.

Respectfully submitted,

DAVID ROGER
Clark County District Attorney
Nevada Bar #002781

BY /s/ Tyler D. Smith

TYLER D. SMITH
Deputized Law Clerk
Nevada Bar #0011870

EXHIBIT 2

EXHIBIT 2

ORIGINAL

FILED

SEP 22 11 32 AM '10

John F. Quinn
CLERK OF THE COURT

1 **ORDR**

2 DAVID ROGER
3 Clark County District Attorney
4 Nevada Bar #002781
5 TYLER D. SMITH
6 Deputized Law Clerk
7 Nevada Bar #0011870
8 200 Lewis Avenue
9 Las Vegas, NV 89155-2212
10 (702) 671-2500
11 Attorney for Plaintiff

8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

01C177394
ORDR
Order
945202



11 THE STATE OF NEVADA,
12 Plaintiff,

13 -vs-

14 KIRSTIN LOBATO,
15 #1691351

16 Defendant.

Case No. 01C177394-1
Dept No. II

17 ORDER SUA SPONTE STRIKING DEFENDANT'S PRO PER MOTIONS AND
18 GRANTING THE STATE'S MOTION TO STRIKE

19 DATE OF HEARING: 09-17-10
20 TIME OF HEARING: 9:00 A.M.

21 THIS MATTER having come on for hearing before the above entitled Court in
22 chambers on the 17th day of September, 2010, the Defendant not being present, IN PROPER
23 PERSON, the Plaintiff being represented by DAVID ROGER, District Attorney, through
24 TYLER D. SMITH, Deputized Law Clerk, also not being present, and the Court having not
25 heard the arguments of counsel and good cause appearing therefor,

26 ///
27 ///
28 ///

CLERK OF THE COURT

RECEIVED
SEP 22 2010

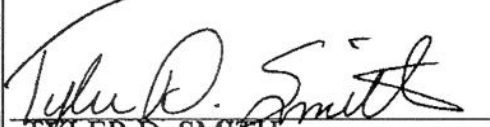
1 The Court finds that the Defendant's motions are neither signed by a member of the
2 State Bar of Nevada nor by the Defendant herself: IT IS HEREBY ORDERED that the
3 Court sua sponte STRIKES Defendant's pro per Motion for the Recusal of Judge Vega, pro
4 per Motion for the Court Clerk to Assign a Civil Case Number as Required by the NRS, and
5 pro per Motion for an Expedited Hearing and Motion for an Extension of Time to File an
6 Answer to the State's Response pursuant to EJDRC 7.42(a);

7 IT IS FURTHER ORDERED that the State's Motion to Strike is GRANTED pursuant
8 to Salman v. Newell, 110 Nev. 1333 (1994).

9 DATED this 21st day of September, 2010.

10
11 
12 DISTRICT JUDGE 

13
14 DAVID ROGER
15 DISTRICT ATTORNEY
16 Nevada Bar #002781

17 
18 TYLER D. SMITH
19 Deputized Law Clerk
20 Nevada Bar #0011870
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CASE No. 01C177394

1. **Introduction**
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Case Type: Felony/Gross
Misdemeanor
Date Filed: 08/09/2001
Location: Department 2
Case Number: C177394
Scope ID #: 1691351
Case Number: 01F12209
The Court No.: 58913
59147

Retained

702-892-3500(W)

Plaintiff	State of Nevada	Steven B Wolfson 702-671-2700(W)
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Charges: Lobato, Kirstin B	Statute	Level	Date
1. VOLUNTARY MANSLAUGHTER	200.050	Felony	01/01/1900
1. DEGREES OF MURDER	200.030	Felony	01/01/1900
1. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
2. SEXUAL PENETRATION OF DEAD HUMAN BODY	201.450	Felony	01/01/1900

EVENTS & ORDERS OF THE COURT

10/20/2010 | All Pending Motions (8:30 AM) (Judicial Officer Smith, Douglas E.)

Minutes

10/20/2010 8:30 AM

- Court stated motion alleges bias by Judge Vega and noted motion is not coherent. Court further noted motion was filed by Michelle Ravell, who is not a licensed attorney. Def. present. Court advised Def. he was going to have Ms. Ravell placed in front of the State Bar. Def. advised she gave Ms. Ravell power of attorney. Court stated there being no showing of bias on the part of Judge Vega as she is a fine judge, ORDERED, motion DENIED. FURTHER, pending status checks and motions are to be in front Judge Vega. Def. advised she in between counsel at this time. COURT SO NOTED. NDC

Parties Present

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EXHIBIT 3

EXHIBIT 3

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Location : District Courts Images Help

REGISTER OF ACTIONS**CASE NO. 01C177394****The State of Nevada vs Kirstin B Lobato**§
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Case Type: **Felony/Gross
Misdemeanor**
 Date Filed: **08/09/2001**
 Location: **Department 2**
 Conversion Case Number: **C177394**
 Defendant's Scope ID #: **1691351**
 Lower Court Case Number: **01F12209**
 Supreme Court No.: **58913
59147**

PARTY INFORMATION**Defendant Lobato, Kirstin B****Lead Attorneys
Travis N. Barrick***Retained*

702-892-3500(W)

Plaintiff State of Nevada**Steven B Wolfson
702-671-2700(W)****CHARGE INFORMATION**

Charges: Lobato, Kirstin B	Statute	Level	Date
1. VOLUNTARY MANSLAUGHTER	200.050	Felony	01/01/1900
1. DEGREES OF MURDER	200.030	Felony	01/01/1900
1. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
2. SEXUAL PENETRATION OF DEAD HUMAN BODY	201.450	Felony	01/01/1900

EVENTS & ORDERS OF THE COURT07/15/2010 **Motion (9:00 AM) ()****Minutes**

07/15/2010 9:00 AM

- Ms. Jackson advised Deft was represented by the Special Public Defender and neither she nor Deft have been served with State's motion; in the meantime, the Special Defender's Motion to Withdraw has been put on hold. Ms. Jackson stated the Special Public Defender cannot represent Deft post conviction. Statement by Michelle Kabell, who has power of attorney to handle Deft's affairs including filing the petition on Deft's behalf. Mr. Kephart explained he is not attorney of record in this case and will contact the State's appellate division. MATTER TRAILED. MATTER RECALLED: Deputy District Attorney Law Clerk Smith appeared and advised Deft was served by mail on 6/25/10. COURT ORDERED, Special Public Defender's motion to withdraw GRANTED; State's motion GRANTED pursuant to EDCR 3.20; 7/22/10 date for Deft's Petition for Habeas Corpus VACATED and RESET; State to file return or motion to dismiss by 8/23/10. NDC 09/30/10 10:30 AM DEFT'S PETITION FOR WRIT OF HABEAS CORPUS CLERK'S NOTE: A copy of this minute order has been distributed to: Kirstin Blaise Lobato, #95558, Florence McClure Women's Correctional Center, 4370 Smiley Road, North Las Vegas, Nevada 89115.

Parties PresentReturn to Register of Actions

REGISTER OF ACTIONS**CASE NO. 01C177394****The State of Nevada vs Kirstin B Lobato**§
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Case Type: **Felony/Gross
Misdemeanor**
 Date Filed: **08/09/2001**
 Location: **Department 2**
 Conversion Case Number: **C177394**
 Defendant's Scope ID #: **1691351**
 Lower Court Case Number: **01F12209**
 Supreme Court No.: **58913
59147**

PARTY INFORMATION

Defendant Lobato, Kirstin B	Lead Attorneys Travis N. Barrick <i>Retained</i> 702-892-3500(W)
Plaintiff State of Nevada	Steven B Wolfson 702-671-2700(W)

CHARGE INFORMATION

Charges: Lobato, Kirstin B	Statute	Level	Date
1. VOLUNTARY MANSLAUGHTER	200.050	Felony	01/01/1900
1. DEGREES OF MURDER	200.030	Felony	01/01/1900
1. USE OF A DEADLY WEAPON OR TEAR GAS IN COMMISSION OF A CRIME.	193.165	Felony	01/01/1900
2. SEXUAL PENETRATION OF DEAD HUMAN BODY	201.450	Felony	01/01/1900

EVENTS & ORDERS OF THE COURT09/17/2010 | **All Pending Motions** (3:00 AM) (Judicial Officer Vega, Valorie J.)**Minutes**

09/17/2010 3:00 AM

- Defendant's pro per motion for recusal of Judge Valorie Vega...Defendant's pro per motion for the Court Clerk to assign a Civil Case number as required by the NRS...Defendant's pro per motion for an expedited hearing and motion for an extension of time to file an answer to the State's response....State's motion to strike or, in the alternative, opposition to improper motions for recusal of Judge Vega, expedited hearing and extension of time, and assignment of Civil Case number Court advised the three pro per motions were all filed on 9/7/10 and calendared for 9/21/10. Upon reviewing them, this Court learned and observed that they were neither signed by a member of the Nevada Bar nor by the Defendant herself. All three pro per motions are signed as follows: "Kirsten Blaise Lobato by Michelle Ravell attorney in fact." Ms. Ravell had been present in court on 7/15/10 at which time she advised that she was not a licensed attorney. This Court then placed the three pro per motions on this chamber's calendar in order to sua sponte strike the three rogue documents pursuant to EDCR 7.42(a). In the interim the State filed its motion to Strike these three documents as fugitive documents. This Court hereby ORDERED, Sua sponte Strike the three pro per motions pursuant to EDCR 7.42 (a) and also GRANTS the State's motion to Strike pursuant to *Salman v. Newell*, 110 Nev. 1333 (1994). Deft's Petition set for 9/30/10 STANDS. State to prepare a global order addressing both rulings. NDC

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