

1
2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**
3

4 THOMAS RANDOLPH

5 Petitioner,

6 vs.

7 THE EIGHTH JUDICIAL DISTRICT
8 COURT OF THE STATE OF NEVADA,
9 IN AND FOR THE COUNTY OF CLARK
and THE HONORABLE STEPHANIE
MILEY, District Judge,

10 Respondent.

11 THE STATE OF NEVADA,

12 Real Party in Interest.
13

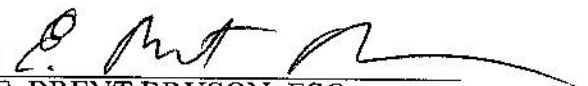
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Case No. 60014 Jan 31 2012 09:43 a.m.
Tracie K. Lindeman
Clerk of Supreme Court
District Court Case No. C250966

14 **REPLY IN SUPPORT OF EMERGENCY WRIT OF MANDAMUS**
15 **AND ANSWER TO ORDER TO SHOW CAUSE**

16 COMES NOW Petitioner Thomas Randolph (by and through his counsel, E. Brent
17 Bryson, Esq. and Yale Galanter, Esq. for the limited purpose of filing this Reply and Answer)
18 and files their Reply in Support of Emergency Writ of Mandamus and Answer to Order to Show
19 Cause. This Reply and Answer are made and based upon the following Points and Authorities
and the papers and pleadings on file herein.

20 DATED this 30 day of January, 2012.

21 E. BRENT BRYSON, LTD.

22
23 By 
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26 ...
27 ...
28 ...
...

POINTS AND AUTHORITIES

I. HISTORY.

As this Court is aware, Petitioner filed an Emergency Writ of Mandamus on three issues.

Issue No. 1 Does a criminal Defendant on trial for capital murder have the right to fire privately retained counsel prior to trial?

Issue No. 2 Did the District Court commit error in ordering privately retained counsel previously fired to continue to represent a criminal defendant facing the death penalty?

Issue No. 3 Did the District Court err in analyzing the defendant's right to fire privately retained counsel using an improper test?

Petitioner and the State appropriately previously briefed the facts and law supporting their respective positions. (See Emergency Petition and Answer). In its Answer, the State advanced the argument that the extraordinary relief requested by way of a writ should be denied because the trial date of January 17, 2012 had been vacated as a result of this Court requesting that the State answer Petitioner's Writ, thus making the necessity for this Court to grant relief via a Writ moot.

In advancing that argument, the State misstates the analysis performed by the Honorable Stephanie Miley, District Court Judge, by stating:

The only reason the oral motion to dismiss counsel was denied was because of its timing on the eve of trial after having announced ready at calendar call and because of the prejudice that would ensue from vacating the trial date yet again.

(See p. 5, ll. 9-12 of State's Answer)

The Court's actual ruling and rationale for its ruling is found on p. 3, ll. 5-28; p. 4 ll. 1-28; and p. 5, l. 1 of Petitioner's Emergency Writ. Thus, it is quite evident that there were multiple factors the District Court considered in denying Petitioner Randolph's motion. Petitioner concedes that one factor relied upon by the District Court was the timing of Petitioner Randolph's oral motion. However, as can be seen, that was but one factor the District Court relied upon in rendering its decision. Thus, the necessity for a ruling from this Court on an

1 emergency basis to stop the trial from going forward on the 17th be rendered moot, but the overall
2 issues presented by Petitioners for resolution by this Court still need resolution. Apparently the
3 State recognizes that Petitioner Randolph has the right to fire his retained counsel at his choosing
4 by making the following statement in its Answer.

5 No one is disputing Randolph's right to retain counsel of his
6 choosing including his right to dismiss retained counsel with or
without cause.

7 (See p. 5, ll. 15-17 - State's Answer)

8 This Court intimated in its Order to Show Cause, since the District Court has vacated the
9 former trial date and no trial date has currently been set, that Petitioner Randolph has an
10 opportunity to file a timely request to discharge retained counsel and appoint substitute counsel
11 should he continue to desire to do so. Thus, if this Court is looking at Petitioner's Emergency
12 Writ and the relief requested therefrom as solely a trial timing issue, then Petitioner concedes that
13 there is time for him to file a formal written motion before the Honorable Stephanie Miley to
14 discharge his current retained counsel and seek appointed counsel. However, Petitioner does not
15 agree that the basic premise of the Writ is resolved (which is the fact that there has been such a
16 breakdown of the attorney-client relationship that is irreparable to the extent current retained
17 counsel can no longer adequately represent the interests of Petitioner Randolph nor can Petitioner
18 Randolph adequately assist retained counsel in preparing for trial which leads to the ultimate
19 result of an ineffective defense being mounted on behalf of Petitioner Randolph).

20 In its Order to Show Cause this Court referred to the case of *U.S. v. Rivera-Corona*, 618
21 F.3d 976 (9th Cir. 2010) cited by the Petitioner's in the Writ, quoting a section:

22 . . . we have mentioned, a defendant can fire his retained or appointed
23 lawyer and retain a new attorney for any reason or no reason. Conflict
24 between the defendant and his attorney enters the analysis only if the court
is required to balance the defendant's reason for requesting substitution
against the scheduling demands of the court. *Id.* at 979, 980.

25 Thus, it would appear that both the State and this Court are in agreement with Petitioner that he
26 can discharge his current retained counsel (as he has already done) and seek appointed counsel as
27 long as it does not interfere with the scheduling demands of the trial court.

28 . . .

1 Petitioner Randolph and his current counsel are willing to concede that from a strictly
2 trial timing aspect regarding the former trial date, Petitioner's Writ is moot, but Petitioner does
3 not waive the substantive argument regarding the breakdown of the attorney-client relationship
4 ultimately resulting in ineffective assistance of counsel at trial.

5 Petitioner does not contest this court remanding this matter back to the District Court for
6 further proceedings to allow the lower Court to undertake an analysis now that the trial date has
7 been vacated if Mr. Randolph desires to still discharge his retained counsel. However, Petitioner
8 Randolph is not waiving his right regarding the substantive issues presented in the instant Writ,
9 and specifically and respectfully reserves his right to bring another Writ on the issue of attorney-
10 client communication breakdown and ineffective assistance of counsel in the event the
11 Honorable Stephanie Miley does not allow Petitioner Randolph to discharge his retained counsel
12 should he continue to assert that position.

13 **A. Petitioner's Procedure in Filing Sealed Portions of Emergency Writ.**

14 The State asserted in its Answer that Petitioner:

15 . . . voluntarily disclosed and served the contents of those sealed
16 transcripts upon the State by attaching them as exhibits to his Petition. It
17 was irresponsible for the State in this position without advanced warning
18 or without expressly waiving the privilege or otherwise seeking protection.
One has to wonder if such was not done purposely in an effort to
disqualify the District Attorney's office.

19 (See p. 6, ll. 23-28 of the State's Answer)

20 It must be stated that Petitioner followed the exact procedures required to have the
21 exhibits sealed in this matter. Petitioner e-filed the original Petition and sent by way of federal
22 express Exhibit "A" and the "Sealed Exhibit "B" to the body of the Petition in a separate
23 envelope with the sealed portion of the transcript clearly marked "SEALED" as directed by the
24 Supreme Court Clerk's office. Thus, Petitioner was in no way the cause of any of the exhibits
25 being placed in a position where they could be seen by the State, and thus the State's comment
26 that Petitioner may have strategically attempted to disqualify them as counsel is misplaced.

27 . . .

28 . . .

1 Petitioner clarifies this issue only because this is a death penalty case and in the event that
2 Petitioner Randolph is convicted all transcripts and proceedings will be strictly scrutinized by
3 appellate counsel for error.


4 CONCLUSION

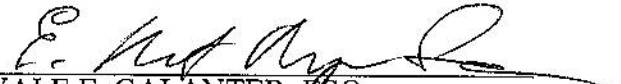
5 From a strict trial timing standpoint, Petitioner Randolph and his current counsel for a
6 limited purpose concede that the extraordinary relief of a Writ being issued to prohibit a vacated
7 trial from going forward is moot. Petitioner does not believe the underlying substantive issues,
8 as articulated in the original Petition and the Answer to Order to Show Cause, have been
9 resolved by this Court. Additionally, Petitioner and his current counsel specifically reserve their
10 right to seek relief from this Court should this Court decide to remand this matter back to the
11 District Court for further proceedings and Petitioner Randolph thereafter files a written motion to
12 discharge his counsel and the District Court denies that motion.

13 DATED this ____ day of January, 2012.

14 E. BRENT BRYSON, LTD.

YALE . GALANTER, P.A.

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