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

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Electronically Filed  
Jan 12 2012 03:40 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

DIPAK KANTILAL DESAI, )

Petitioner, )

vs. )

No.

(District Court No. C265107)

THE EIGHTH JUDICIAL DISTRICT )  
COURT OF THE STATE OF NEVADA, )  
COUNTY OF CLARK, THE )  
HONORABLE KATHLEEN DELANEY, )  
DISTRICT COURT JUDGE, )

Respondent. )

and )

THE STATE OF NEVADA, )  
Real Party In Interest. )

**EMERGENCY MOTION UNDER NRAP 27(e)**  
**FOR STAY OF DISTRICT COURT PROCEEDINGS**  
**for event scheduled on January 27, 2012**

COMES NOW, the Petitioner, DIPAK KANTILAL DESAI, by and through his  
attorney, Richard A. Wright, WRIGHT STANISH & WINCKLER, respectfully  
moves this Honorable Court, pursuant to NRAP8(a) and NRS 34.160, for an Order  
granting a stay of competency proceedings in District Court while this Court

1 issues a ruling in the Petition for Writ of Mandamus Directing the District Court to  
2  
3 Allow the Defense to Present Evidence at Competency Hearing, which is filed  
4 simultaneously with this Emergency Motion.

5 DATED this 12<sup>th</sup> day of January, 2012.  
6

7 **WRIGHT STANISH & WINCKLER**

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9  
10 BY 

11 Richard A. Wright, Esq.  
12 Nevada Bar No.: 0886  
13 300 South Fourth Street, Suite 701  
14 Las Vegas, NV 89101  
15 P. (702) 382-4004  
16 F. (702)382-4800  
17 wsw@wswlawlv.com  
18 Attorneys for Petitioner Dipak K. Desai  
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STATE OF NEVADA )  
 ) SS:  
COUNTY OF CLARK )

I, Richard A. Wright, being first duly sworn, deposes and says:

1. That Affiant is an attorney duly licensed to practice law in the State of Nevada and represents the Petitioner Dipak K. Desai in this matter.

2. Acting pursuant to Nevada Supreme Court Rule 1.14, I am filing the Petition for Writ of Mandamus Directing the District Court to Allow the Defense to Present Evidence at Competency Hearing and the instant Emergency Motion for Stay to protect the interests of my client who I reasonably believe suffers from a diminished capacity.

3. The Petition for Writ of Mandamus is filed simultaneously with this Emergency Motion for Stay of District Court Proceedings. Both documents are timely filed.

4. In anticipation of the filing of the Petition for Writ of Mandamus, I caused to be filed a Petition to Stay Proceedings in the Eighth Judicial District Court, Department 25, moving for a stay of competency proceedings, currently set on January 27, 2012, pending a ruling by the Supreme Court.

5. Following the filing of the petition to stay the proceeding , my staff made

1 several periodic telephone calls to learn the status of the petition. On January 11,  
2 2012, my staff learned from the law clerk in Department 25, that Judge Delaney had  
3 issued a minute order the prior day denying our petition. To date, my office has not  
4 received a copy of the minute order. On January 11, 2012, my staff verbally notified  
5 the District Court's clerk that we would file the instant Emergency Motion for Stay.  
6  
7 The following day my staff verbally notified the clerk of the Supreme Court,  
8 Department 25, and the State of the intent to file this Emergency Motion on this date.  
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11 6. The Petition for Writ of Mandamus seeks extraordinary relief from the  
12 District Court's ruling made in open court on December 13, 2011, which substantially  
13 restricted Petitioner's due process right to a fair competency hearing. More  
14 particularly, Petitioner seeks relief from the district court's ruling, which arbitrarily  
15 and capriciously restricted Petitioner's due process right to present independent  
16 evidence of incompetency or otherwise contest the competency determination of  
17 Lake's Crossing. Tthe district court misinterpreted NRS 178.460 and this Court's  
18 precedent on procedural due process in competency hearings by limiting the defense  
19 to cross-examining the Lake's Crossing doctors and allowing only one expert witness,  
20 if any, whose testimony about Desai's competency must be limited to an evaluation  
21 conducted after his return from Lake's Crossing. The district court arbitrarily  
22 excluded any other independent evidence to contest the competency determination  
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of Lake's Crossing or otherwise establish his incompetency.

7. If the competency hearing on January 27, 2012, were to be go forward, the purpose of the Petition for Writ of Mandamus would be frustrated and Petitioner's due process rights will be substantially impaired.

8. That in order to avoid irreparable harm relief is needed in less than 14 days.

9. Extraordinary relief is sought because the district court failed to provide adequate procedural safe guards to determine Petitioner's current ability to assist counsel in the preparation and trial of a complex prosecution.

10. Without a stay of the competency hearing and extraordinary relief, the defense will not be able to fully explore the Petitioner's current mental status under the arbitrary and capricious restrictions ordered by the District Court. Accordingly, Petitioner has no other legal remedy in this case.

11. This case presents an important legal question as to what process is due in a competency hearing under NRS 178.460. Public policy would best be served by clarifying this procedural due process issue so that the fair trial rights of other defendants whose competency is in doubt may be protected.

12. Any inconvenience or prejudice to the State is minimal when balanced against Petitioner's Due Process right to a fair competency hearing, as well as the

1 public interests in clarifying the appropriate procedural due process in competency  
2 hearings under NRS 178.460.

3  
4 13. The NRAP 27(e) Certificate is attached hereto.


5 14. Petitioner respectfully requests the competency hearing, now set for  
6 January 27, 2012, in the Eighth Judicial District Court, Department 25, be stayed  
7 while the Supreme Court rules on the Petition for Writ of Mandamus.  
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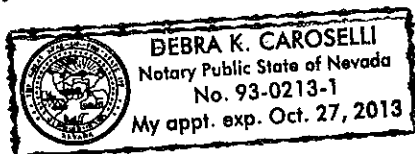
9 I declare under penalty of perjury that the foregoing is true and correct. (NRS  
10 53.045).  
11

12   
13 Richard A. Wright  
14

15 SUBSCRIBED and SWORN to before me

16 This 12<sup>th</sup> day of January, 2012  
17

18   
19 NOTARY PUBLIC in and for said  
20 County and State.



1 **NRAP 27(e) CERTIFICATE**

2 I, Richard A. Wright, certify the following:  
3

4 **Office Addresses and Telephone numbers for Attorneys for the Parties**

5 Richard Wright  
6 Nevada Bar. 0886  
7 WRIGHT STANISH & WINCKLER  
8 300 South Fourth Street, Suite 701  
9 Las Vegas, NV 89101  
10 (702) 382-4004

11 Honorable Kathleen Delaney  
12 District Court Judge  
13 Eighth Judicial District Court  
14 Department 25  
15 200 Lewis Ave.  
16 Las Vegas, NV 89155  
17 (702) 671-0850

18 Michael V. Staudaher  
19 Chief Deputy District Attorney and  
20 Mary Ann Miller  
21 Interim Clark County District Attorney  
22 200 Lewis Ave.  
23 Third Floor  
24 Las Vegas, NV 89101  
25 (702) 671-2830

26 Catherine Cortez Masto  
27 Attorney General  
28 100 North Carson Street  
Carson City, NV 89701-4717  
(775) 684-1100

1 **Facts**

2 Petitioner Dipak K. Desai, through his attorney, Richard A. Wright, filed with  
3 the Supreme Court a Petition for Writ of Mandamus to seeking relief from the district  
4 court's oral ruling on December 13, 2011, which arbitrarily and capriciously  
5 restricted the defendant's due process right to present independent evidence of  
6 incompetency or otherwise contest the competency determination of Lake's Crossing.  
7 That the relief sought in the Writ of Mandamus is based upon the Due Process clauses  
8 of the Fifth and Fourteenth Amendments and the Right to Counsel clause in the Sixth  
9 Amendment to the United States Constitution and the similar clauses in Article 1,  
10 Section 8 of the Nevada Constitution and related case law.  
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15 Petitioner is set for competency hearing before the district court on the 27<sup>th</sup> day  
16 of January, 2012.  
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18 **Notice to the parties**

19 The parties were notified by filing and service of a Petition to Stay Proceedings  
20 in District Court filed with the Clerk of the Court on December 30, 2011 and the State  
21 was duly served with a copy of said motion on that same date. Subsequently the State  
22 filed an opposition to that motion on January 4, 2012, which shows their awareness  
23 of the Petitioner filing of a Writ and the Petition to Stay.  
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EXECUTED this 12 day of January, 2012.

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## DECLARATION OF MAILING

DEBBIE CAROSELLI, an employee with WRIGHT STANISH & WINCKLER, hereby declares that she is, and was when the herein described mailing took place, a citizen of the United States, over 21 years of age, and not a party to, nor interested in, the within action, that on the 12th day of January, 2012, declarant deposited in the United States mail at Las Vegas, Nevada, a copy of the MOTION FOR STAY OF DISTRICT COURT PROCEEDINGS in the case of DIPAK KANTILAL DESAI, V. THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, COUNTY OF CLARK, THE HONORABLE KATHLEEN DELANEY, DISTRICT COURT JUDGE, Case No. C265107, enclosed in a sealed envelope upon which first class postage was fully prepaid, hand delivered or e-filed addressed to:

Honorable Kathleen Delaney  
District Court Judge  
Eighth Judicial District Court, Department 25  
200 Lewis Ave.  
Las Vegas, NV 89155  
(702) 671-0850

1 Michael V. Staudaher  
2 Chief Deputy District Attorney and  
3 Mary Ann Miller  
4 Interim Clark County District Attorney  
5 200 Lewis Ave.  
6 Third Floor  
7 Las Vegas, NV 89101  
8 (702) 671-2830

9 Catherine Cortez Masto  
10 Attorney General  
11 100 North Carson Street  
12 Carson City, NV 89701-4717

13 That there is a regular communication by mail between the place of mailing and the  
14 place so addressed.

15 I declare under penalty of perjury that the foregoing is true and correct.

16 EXECUTED on the 12<sup>th</sup> day of January, 2012.

17  
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19 DEBBIE CAROSELLI