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*Attorneys for Petitioner
Dale Edward Flanagan*

IN THE SUPREME COURT OF THE STATE OF NEVADA

DALE EDWARD FLANAGAN,

Petitioner-Appellant,

Supreme Court Case No.: 63703

v.

THE STATE OF NEVADA and JACK
PALMER, Warden, Northern Nevada
Correctional Center,

DEATH PENALTY CASE

Respondents-Appellees.

_____ /

MOTION FOR SECOND EXTENSION OF TIME TO FILE

APPELLANT'S OPENING BRIEF AND THE APPENDIX

COMES NOW, Petitioner-Appellant DALE EDWARD FLANAGAN, by
and through his counsel of record CAL J. POTTER, III., ESQ., and requests an
extension of twenty-one (21) days up to and including Tuesday, February 18,
2014, within which to file his Opening Brief and the Appendix, which currently
are due on Tuesday, January 26, 2014.

...

...

Appellant brings this motion pursuant to NRAP 26(b), 27(b), and 31(b)(3). This is Appellant's second request for an extension. This request is based on the papers and pleadings filed herein, the points and authorities submitted herewith, and the following Affidavit of Michael Laurence, Esq.

DATED this 22nd of January, 2014.

POTTER LAW OFFICES

By /s/ Cal J. Potter, III, Esq.

CAL J. POTTER, III, ESQ.

Nevada Bar No. 1988

1125 Shadow Lane

Las Vegas, Nevada 89102

MICHAEL LAURENCE, ESQ.

California Bar No. 121854

303 Second Street

Suite 400 South Tower

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Attorneys for Petitioner-Appellant

AFFIDAVIT OF MICHAEL LAURENCE, ESQ. IN SUPPORT OF
MOTION

STATE OF CALIFORNIA)
COUNTY OF SAN FRANCISCO) ss.

MICHAEL LAURENCE, ESQ., being first duly sworn upon oath, deposes and states:

1. Your Affiant is the attorney of record on behalf of the Petitioner-Appellant in this matter, and as such, your Affiant is competent to testify as to the matters set forth herein;
2. That your Affiant is an attorney admitted to practice in the State of California and was permitted to practice pro hac vice before the District Court for Clark County as counsel for Petitioner-Appellant;
3. That your Affiant currently is employed as the Executive Director of the Habeas Corpus Resource Center, an agency in the Judicial Branch of the State of California that represents indigent men and women under sentence

1 of death in state and federal habeas corpus proceedings and in executive
2 clemency proceedings;

3 4. That your Affiant's appearance in this matter, however, is conducted solely
4 in my capacity as a private attorney and on your Affiant's own time. As
5 such, it is not part of your Affiant's responsibilities at the Habeas Corpus
6 Resource Center and is without the use of any state or other institutional
7 resources;

8 5. That your Affiant is responsible for drafting the Opening Brief and
9 compiling the Appendix in this matter. This Court previously granted
10 Affiant's request for an extension for filing the Opening Brief and
11 Appendix until and including January 28, 2014;

12 6. That your Affiant took leave from work at the Habeas Corpus Resource
13 Center and planned to complete the majority of the drafting of Opening
14 Brief from December 21, 2013, through January 5, 2014. On December 23,
15 2013, your Affiant was in an accident as a pedestrian and sustained
16 multiple injuries to the head, face, and body. As a result, your Affiant was
17 unable to work on Appellant's Opening Brief during the period that had
18 been set aside. Since returning work, your Affiant have attempted to draft
19 Appellant's Opening Brief, but previously scheduled briefing deadlines and
20 commitments in other pending capital cases and responsibilities as the
21 Executive Director of the Habeas Corpus Resource Center have prevented
22 your Affiant from doing so. After completing these commitments, your
23 Affiant will be able to take additional leave from the Habeas Corpus
24 Resource Center during the week of February 11, 2014, and finalize
25 Appellant's Opening Brief and compile the Appendix for filing or before
26 Tuesday, February 18, 2014;

27 8. That your Affiant requests an extension of twenty-one (21) days in which
28 to file the Opening Brief and Appendix in this matter up to and including

1 Tuesday, February 18, 2014;

2 9. That granting an extension will not unnecessarily delay the prompt
3 adjudication of this matter because this appeal raises similar legal issues
4 that this Court will address in *Brown v. McDaniel*, Case No. 60065, in oral
5 argument was conducted on January 6, 2014. After reviewing the briefing
6 in *Brown* and listening to the argument, your Affiant believes that the
7 issues to be decided in *Brown* will directly affect the resolution of this
8 matter, and therefore supplemental briefing likely will be necessary
9 following the issuance of the decision in *Brown*;

10 11. That for the reasons stated above, your Affiant requests an additional
11 twenty-one (21) days in which to file the Opening Brief and Appendix in
12 this matter up to and including Tuesday, February 18, 2014;

13 12. That your Affiant has contacted Respondents' counsel by email regarding
14 this request for additional time to file the Opening Brief and Appendix.
15 Respondents' counsel does not object to the granting of this extension
16 request;

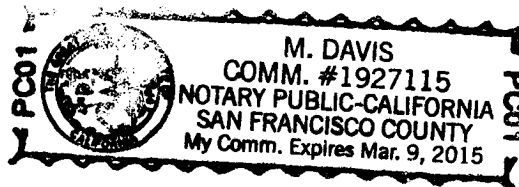
17 13. That your Affiant files this enlargement of time in good faith and not for
18 the purposes of delay.

19 Further Affiant Sayeth Naught.

20 
21 MICHAEL LAURENCE, ESQ.

22 SUBSCRIBED and SWORN to before
23 me this 22st day of January, 2014.

24 
25 NOTARY PUBLIC



1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **FACTS**

4 Petitioner-Appellant's Opening Brief currently is due on January 28, 2014.
5 Michael Laurence, Esq., is responsible for drafting the Opening Brief.

6 On May 7, 2013, the District Court granted the Application of Michael
7 Laurence, Esq. to appear as counsel pro hac vice, in the Petitioner-Appellant's
8 habeas corpus proceedings. Mr. Laurence is the Executive Director of the Habeas
9 Corpus Resource Center, an agency in the Judicial Branch of the State of
10 California that represents indigent men and women under sentence of death in
11 state and federal habeas corpus proceedings and in executive clemency
12 proceedings. Mr. Laurence's appearance in this matter, however, is conducted
13 solely in his capacity as a private attorney and on his own personal time.

14 This extension is requested because counsel for Petitioner-Appellant took
15 leave from work at the Habeas Corpus Resource Center and planned to complete
16 the majority of the drafting of Opening Brief from December 21, 2013, through
17 January 5, 2014. On December 23, 2013, counsel for Petitioner-Appellant was in
18 an accident as a pedestrian and sustained multiple injuries to his head, face, and
19 body. As a result, he was unable to work on Appellant's Opening Brief during
20 the period that had been set aside. Since returning work, counsel for Petitioner-
21 Appellant has attempted to draft Appellant's Opening Brief, but previously
22 scheduled briefing deadlines and commitments in other pending capital cases and
23 his responsibilities as the Executive Director of his office have prevented him
24 from doing so.

25 Counsel requests an extension of twenty-one (21) days in which to file the
26 Opening Brief and Appendix in this matter up to and including Tuesday, February
27 21, 2014.

28 ...

1 Counsel has notified Respondents' counsel of this request for an extension
2 of time. Respondents' counsel has no objection to the granting of this extension
3 request.

4 This request for an additional twenty-one (21) days in which to file the
5 Opening Brief and Appendix up to and including Tuesday, February 18, 2014, is
6 made in good faith and not for the purposes of delay. Moreover, granting an
7 extension will not unnecessarily delay the prompt adjudication of this matter
8 because this appeal raises similar legal issues that this Court will address in
9 *Brown v. McDaniel*, Case No. 60065, in which oral argument was held on
10 January 6, 2014.

11 II.

12 ARGUMENT

13 NRAP 31(b)(3) governs motions for extension of time and provides as
14 follows:

15 (3) Motions for Extensions of Time. A
16 motion for extension of time for filing a
17 brief may be made no later than the due
18 date for the brief and must comply with the
19 provisions of this Rule and Rule 27.

18 (A) Contents of Motion. A motion for extension
19 of time for filing a brief shall include the
20 following:

21 (I) The date when the brief is due;

22 (ii) The number of extensions of time
23 previously granted (including a 5-day
24 telephonic extension), and if extensions
25 were granted, the original date when the
26 brief was due;

27 (iii) Whether any previous requests for
28 extensions of time have been denied or
denied in part;

(iv) The reasons or grounds why an
extension is necessary; and

...

...

1 (v) The length of the extension requester
2 and the date on which the brief would
3 become due.

4 **III.**

5 **CONCLUSION**

6 For the reasons stated, and in accordance with NRAP 31(b)(3), the
7 Appellant respectfully requests an extension of twenty-one (21) days to file the
8 Opening Brief and Appendix, through and including Tuesday, February 18, 2014.

9 DATED this 22nd of January, 2014.

10 POTTER LAW OFFICES

11 By /s/ Cal J. Potter, III, Esq.
12 CAL J. POTTER, III, ESQ.
13 Nevada Bar No. 1988
14 1125 Shadow Lane
15 Las Vegas, Nevada 89102

16 MICHAEL LAURENCE, ESQ.
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I HEREBY CERTIFY that pursuant to NRAP 25(1)(d) on the 22nd of
 ry, 2014, I did serve at Las Vegas, Nevada a true and correct copy of

APPELLANT'S OPENING BRIEF AND THE APPENDIX, on all parties to
this action by:

X U.S. Mail

X Electronic Filing

Steven B. Wolfson
District Attorney
Steven S. Owens
Deputy District Attorney
200 Lewis Avenue
Las Vegas, Nevada 89155

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