

LUIS HIDALGO, III,

CASE NO. 67640

Appellant.

v.

THE STATE OF NEVADA,

Respondent.

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MOTION FOR LEAVE TO FILE OVERSIZED
APPELLANT'S OPENING BRIEF

COMES NOW, Appellant, Luis Hidalgo, III, and moves this Honorable Court for an Order approving the filing of the tendered Opening Brief, even though it is oversized as 17,625 words.

The undersigned is very well aware of NRAP 32(a)(7)(A)(ii) and that an Opening Brief must contain no more than 14,000 words. The undersigned is also very well of NRAP 32(a)(D)(i), that this Court looks with disfavor on motions to exceed the applicable page (or word) limit, such motions are not routinely granted, and that the undersigned must show diligence and good cause for the granting of this Motion.

The “diligence and good cause” in this case is based upon the following:

1. This is a high profile and very controversial case, being “The Palomino Club murder” case. In this case, Luis Hidalgo, Jr., the owner of The Palomino Club in North Las Vegas, and this Appellant, his son, were both convicted of second degree murder relative to the death of one T.J. Hadland - even though the killer was one Kenneth Counts and neither Hidalgo had ever met or communicated with Counts. When the case was last before the Court on direct appeal, Appellant lost not withstanding apparent sympathy to his legal positions at that time from Justices Saitta and Cherry.

2. After Appellant was unsuccessful, the undersigned received the balance of the monies obtained from the sale of the Palomino Club for legal fees in the representation of Luis Hidalgo III. At the time the undersigned was retained, the thought was that the undersigned would be filing a Petition for Writ of *Habeas Corpus* in the United States District Court for the District of Nevada per 28 U.S.C. §2254. However, as the undersigned reviewed the extensive record in this case, the undersigned was of the professional opinion that Mr. Hidalgo would be better served by filing a Petition for Writ of *Habeas Corpus* under NRS 34.724 et. seq. in the Eighth Judicial District and litigating the Petition to full and final judgment before filing a federal *habeas* petition.

The original Petition in this case contained three pleaded grounds for relief, and was 34 pages in length. The Supplemental Petition for Writ of *Habeas Corpus* contained five pleaded grounds for relief, and was 43 pages in length. The Reply to the State's Response to the Supplemental Petition is 37 pages in length.

3. As a result of the complicated nature of the case - evidenced by the fact that the Appellant's Appendix filed with the Opening Brief is 12 volumes, 2,893 pages in length - and the fact of an evidentiary hearing, the undersigned earned the entire amount of retainer and as of May 1, 2015 has billed Mr. Hidalgo the amount of \$1,614.75. However, the undersigned utilized the balance of the retainer in preparing the Opening Brief.

Mr. Hidalgo is now indigent. Thus, the undersigned filed a motion to be appointed as counsel of record to the court below. At this dictation the court has not ruled upon it.

4. Because of the complex nature of the issues involved, and because of the possibility that the undersigned if not appointed would be "working for free" relative to the Reply Brief, the undersigned felt that it would be in Mr. Hidalgo's best interest if the undersigned wrote as comprehensive an Opening Brief as possible. That is the principal reason that the Brief is oversized. The undersigned is not interested in working for free; and if the court below does not appoint the

undersigned as counsel, it is unlikely that the undersigned will prepare a Reply Brief. The Opening Brief rebuts every argument made by Respondent to date, as well as the Findings and Conclusions of the court below. Given the thorough nature in which the case has been vetted, it seems unlikely that the State will come up new arguments in support of its positions. Thus, as a condition of granting this Motion the Court could order that a Reply Brief, if filed, shall be no longer than 3,357 words (i.e., 7,000 less the 3,625 words by which the Opening Brief is oversized.)

5. That said, if the Court sets the case down for oral argument, the undersigned will certainly comply and prepare, even if that means that the undersigned would be “working for free” in that instance.

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6. The Opening Brief maintains the five issues raised in the Supplemental Petition for Writ of *Habeas Corpus*. It does not abandon any issues, nor does it raise any new issues.

DATED this 29 day of May, 2015.

Respectfully submitted,

LAW OFFICES OF RICHARD F. CORNELL
150 Ridge Street, Second Floor
Reno, NV 89501

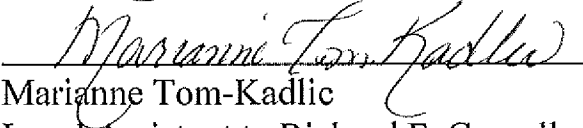
By: 
Richard F. Cornell

CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of
LAW OFFICES OF RICHARD F. CORNELL, and that on this date I caused to
be , deposited for mailing in the United States Mail a true and correct copy of the
foregoing document, addressed to:

Mark DiGiacomo
Deputy District Attorney
Regional Justice Center
200 Lewis Avenue
Las Vegas, Nevada 89155-2211

DATED this 29th day of May, 2015.


Marianne Tom-Kadlic
Legal Assistant to Richard F. Cornell