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

WILLIS T. BROWN,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK; AND THE HONORABLE  
WILLIAM D. KEPHART, DISTRICT  
COURT JUDGE,  
Respondents,


And

THE STATE OF NEVADA,  
Real Party in Interest

Supreme Court No.:72950

**FILED**

NOV 14 2017

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY  DEPUTY CLERK

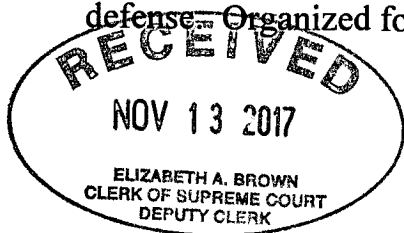
**MOTION TO REISSUE ORDER AS AN OPINION**

Pursuant to NRAP 36(f), nonparty Nevada Attorneys for Criminal Justice (NACJ) hereby moves the court to reissue the unpublished dispositional Order granting petition in part and denying petition in part (filed on October 24th, 2017) as a Published Opinion of the Nevada Supreme Court.

**1. NACJ's Interest**

Pursuant to NRAP 36(f), a motion to reissue an order as opinion may be filed by or on behalf of a nonparty, but the motion must identify the movant's interest in obtaining publication as well as the factors in NRAP 36(c).

NACJ is a volunteer organization of Nevada attorneys who practice criminal defense. Organized for approximately 20 years, NACJ is composed of hundreds of



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members throughout the State of Nevada. NACJ members include public defenders, appointed indigent defense counsel and private defense counsel. NACJ members represent criminal clients in courts throughout the State of Nevada at all levels, from trial through post-conviction relief. In the course of representing their clients, NACJ Members can seek and have sought *Widdis* funds for clients that have become indigent or lack sufficient resources to retain experts or investigators. NACJ members have requested and the Board of NACJ has authorized the undersigned counsel to prepare and submit this motion to reissue order as an opinion. NACJ is interested in obtaining a published opinion on these issues which would provide guidance to individual courts and practitioners. A published opinion would assist courts and practitioners in properly making and reviewing *Widdis* motions filed in the future and provide much needed direction to district courts in resolving *Widdis* related issues. This motion is timely pursuant to NRAP 36(f)(1).

## **2. Relative Ease of Reissuance As An Opinion**

The unpublished dispositional Order granting petition in part and denying petition in part, is comprehensive and complete. The order provides a sufficient recitation of the factual background of the case, and a thorough evaluation of the legal issues. Additionally, reissuing the order as a published opinion would not require the court to discuss additional issues that were not included in the original

disposition. See NRAP 36(f)(4). NACJ respectfully contends that reissuing the order as a published opinion would not be unreasonably burdensome, particularly when balanced against the need for precedent on the issues discussed.

### **3. Issues For Which Published Opinion Would Be Appropriate**

Pursuant to NRAP 36(c)(1)(A)-(C), a motion to reissue an unpublished disposition or order as a published opinion must be based on one or more of the following criteria: (A) there is an issue of first impression; (B) the decision alters, modifies, or significantly clarifies a rule of law previously announced by the court; or (C) there is an issue of public importance that has application beyond the parties. As discussed below, the unpublished order in this case satisfies both NRAP 36(c)(1)(B) and NRAP 36(c)(1)(C).

#### **a. Clarification of Case Law Involving Widdis Requests**

The unpublished order significantly clarifies a rule of law announced in Widdis v. Second Judicial Dist. Court, 114 Nev. 1224, 968 P.2d 1165 (1998). The unpublished order clarifies that there is no third prong to the *Widdis* analysis for a sum certain for the experts sought, but that it is a component of the district court inquiry. Brown v. Eighth Judicial Dist. Court in & for Cty. of Clark, No. 72950, 2017 WL 4838427, at \*2 (Nev. Oct. 24, 2017). The order clarifies the definition of an indigent person through the use of ADKT 411, which did not exist at the time of the *Widdis* decision itself. Brown at \*2. This Court also clarified the quality of the

demonstration of need necessary to support a successful *Widdis* request and helps to define “reasonably necessary”. Brown at \*2.

Finally, the clarification and reaffirmation of the *Widdis* decision in Brown is consistent with other states that have reached similar conclusions when confronted with analogous issues. *See, e.g., Ex parte Sanders*, 612 So.2d 1199, 1201 (Ala.1993) (holding indigent defendant has right to public funds to hire expert although represented by counsel retained by family); Dubose v. State, 662 So.2d 1189, 1191 (Ala.1995) (*following Sanders* ); People v. Worthy, 109 Cal.App.3d 514, 167 Cal.Rptr. 402, 406 (1980) (concluding that, upon a proper showing of necessity, trial court must provide an indigent defendant expert services, without regard to whether his counsel is appointed or pro bono); People v. Evans, 271 Ill.App.3d 495, 208 Ill.Dec. 42, 648 N.E.2d 964, 969 (1995) (concluding that indigent defendant entitled to expert witness funding although represented by private law firm where services provided on pro bono basis); English v. Missildine, 311 N.W.2d 292, 293-94 (Iowa 1981) (holding Sixth Amendment authority for furnishing investigative services at public expense without regard to whether indigent represented by private counsel); State v. Jones, 707 So.2d 975, 977–78 (La.1998) (holding although indigent defendant was represented by counsel retained by defendant's father, he was eligible for state funded necessary services); State v. Huchting, 927 S.W.2d 411, 419

(Mo.Ct.App.1996) (noting retention of private counsel does not cause a defendant to forfeit his eligibility for state assistance in paying for expert witness or investigative expenses); State v. Manning, 234 N.J. Super. 147, 163, 560 A.2d 693, 698-99 (App. Div. 1989) *abrogated by* State v. Hill, 182 N.J. 532, 868 A.2d 290 (2005) (holding indigent defendant could not be denied state-funded expert services because he was represented by private counsel, whether counsel was pro bono or paid by third party); State v. Burns, 2000 UT 56, 4 P.3d 795, 800-02 (holding statutory right to publicly funded expert assistance under statute could not be conditioned upon accepting court-appointed counsel in lieu of private counsel retained at father's expense); State ex rel. Rojas v. Wilkes, 193 W.Va. 206, 455 S.E.2d 575, 577 (1995) (holding that funds with which defendant's family retained private counsel irrelevant to defendant's right as indigent to have necessary expert assistance provided at state's expense).

**b. Importance of The Order Beyond The Parties**

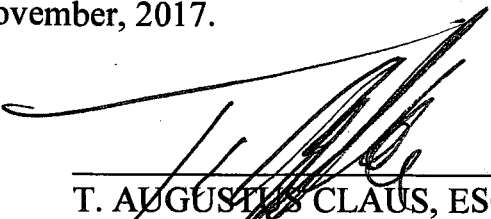
The significant clarification offered by the unpublished order in this case will promote judicial economy if reissued as a published opinion by making the holdings more readily available to future practitioners. However, if the unpublished order is not reissued as a published opinion, the unpublished order will provide only persuasive value and may necessitate further litigation on the precise issues presented in this case. This concern is not hypothetical, as can be

seen from the various unpublished opinions addressing similar issues to those at bar. *See generally*, Lopez v. Eighth Judicial Dist. Court of State ex rel. Cty. of Clark, No. 62754, 2013 WL 3305380, at \*1 (Nev. May 14, 2013 Unpublished Disposition). Moreover, counsel's lack of awareness concerning the availability of *Widdes* resources for indigent defendants has resulted in findings of ineffective assistance of counsel. Donat v. Hashemi, No. 61265, 2013 WL 5719098, at \*2 (Nev. Oct. 16, 2013 Unpublished Disposition). These cases are not offered for legal authority, but rather to factually underscore the actual importance of this order beyond the named parties.

#### 4. Conclusion

For the foregoing reasons, NACJ requests the court to reissue its unpublished order as a published opinion

DATED this 7<sup>th</sup> day of November, 2017.



T. AUGUSTUS CLAUS, ESQ.  
Nevada Bar No. 10004  
President, Nevada Attorneys for Criminal  
Justice  
205 N. Stephanie St., Suite D221  
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## **CERTIFICATE OF SERVICE**

Pursuant to NRAP 4(b) and NRAP 25(d)(1)(B), I hereby certify that I am an employee of **LEGAL RESOURCE GROUP, LLC.**, and that on the <sup>th</sup>7 day of November, 2017, I caused the MOTION TO REISSUE ORDER AS AN OPINION to be served as follows by placing a true and correct copy of the same in the U.S. Mail at Las Vegas, Nevada, enclosed in a sealed envelope upon which first class postage was fully prepaid to the attorneys listed below:

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