

Respondent.

Case No: 77002

MEMORANDUM

Nevada Attorneys for Criminal Justice (NACJ) respectfully seeks leave to file a brief as amicus curiae in support of Appellant's Petition for Rehearing of the en banc court's published decision in Chappell v. State, 137 Nev. Adv. Op. 83 (Dec. 30, 2021).

NACJ is a state-wide, non-profit organization of criminal defense attorneys in Nevada. NACJ's mission is to ensure that accused persons receive effective, zealous representation through shared resources, legislative lobbying, and intra-organizational support. This includes the filing of amicus curiae briefs pertaining to (1) state and federal constitutional issues; (2) other legal matters with broad applicability to accused persons; and (3) controversies with potential to impact our members' ability to advocate effectively for accused persons.

The “classic role of amicus curiae” is to assist in a case of “general public interest, supplementing the effort of counsel, and drawing attention to law that escaped consideration.” Miller-Wohl Co. v. Com'n of Labor and Industry, 694 F.2d 203, 204 (9th Cir. 1992). An amicus brief should be allowed “when the amicus has an interest in some other case that may be affected by the decision in the present case . . . or when the amicus has unique information or perspective that can help the court beyond the help

that the lawyers for the parties are able to provide.” Ryan v. Commodity Futures Trading Com’n, 125 F.3d 1062, 1063 (7th Cir. 1997) (Posner, J., in chambers) (citations omitted).

NACJ has a material interest in rehearing this Court’s published opinion in Chappell. In the opinion, this Court established the new rule that, when a petitioner gets penalty phase relief on their first postconviction petition, they are required to raise their ineffective assistance of postconviction counsel claims (otherwise known as Crump¹ claims) in a postconviction petition within one-year of the remittitur on the first postconviction appeal while the new penalty phase proceedings are pending, even if those Crump claims challenge the performance of the attorney who is currently representing the petitioner in the new penalty phase proceedings. Slip Op. at 9-10.

NACJ is concerned about the deleterious impact the Court’s published decision will have on capital postconviction petitioners. In the proposed amicus brief, NACJ offers a position different from the parties, but one which NACJ believes is the far more reasonable approach. Rather than the rule created by this Court, NACJ proposes the following rule: **in the situation where a petitioner has obtained penalty phase relief on the**

¹ Crump v. Warden, 113 Nev. 293, 304-05, 934 P.2d 247, 253-54 (1997).

first postconviction petition, a petitioner must raise the guilt-phase Crump claims in the first postconviction petition filed after the new judgment has become final.

As discussed in more detail in the brief, NACJ believes this rule is more consistent with the plain language of Chapter 34. This rule also avoids the serious conflict of interest issues inherent in the Court's new rule. This rule avoids unnecessary piecemeal litigation and will not trap unwary pro se capital litigants, who will not be aware from looking at the plain language of the statute that postconviction claims should be raised before they have even been sentenced.

NACJ has "unique information or perspective" to offer this Court on this question as members of the organization handle much of the capital postconviction litigation in this State. Further, NACJ offers a different position from that of the parties in the litigation, and one which NACJ believes will be beneficial to the Court. See Nevada Power Co. v. Haggerty, 115 Nev. 353, 356, 989 P.2d 870, 872 (1999) (addressing argument first raised by an amicus curiae).

NACJ therefore respectfully seeks leave to file an amicus brief to assist the Court in resolving Petitioner's petition for rehearing. A proposed amicus brief is being filed along with this motion.

NACJ also submits that the length of the proposed amicus brief, which contains 2,744 words, falls within the word limit for amicus briefs. See NRAP 29(e) (“an amicus brief may be no more than one-half the maximum length authorized by these Rules for a party’s brief.”). Nevertheless, to the extent that this Court believes the proposed amicus brief exceeds the word limit, NACJ respectfully requests this Court grant permission for amicus to file an oversized amicus brief. See Id. (court has “permission” to allow an oversized amicus brief).

CONCLUSION

Based upon the foregoing, Nevada Attorneys for Criminal Justice respectfully requests this Court grant leave and accept the Amicus Curiae Brief in support of Petitioner’s petition for rehearing.

DATED this 22nd day of February, 2022.

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CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 22nd day of February, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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