

THE PARIENTE LAW FIRM, P.C.  
MICHAEL D. PARIENTE, ESQ.  
Nevada Bar No. 9469  
JOHN G. WATKINS, ESQ., OF COUNSEL  
3960 Howard Hughes Parkway, Suite 615  
Las Vegas, Nevada 89169  
(702) 966-5310  
Attorneys for Defendant

Electronically Filed  
Jun 20 2019 03:43 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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

JACK BANKA,  
  
Petitioner,  
  
vs.  
  
EIGHT JUDICIAL DISTRICT  
COURT JUDGE CAROLYN  
ELLSWORTH,  
  
Respondents.  
  
STATE OF NEVADA,  
  
Real Party In  
Interest.

Case No.: 79014

District Court Case No.: C-18-  
333254-1  
Dept. No.: 5

**EMERGENCY MOTION UNDER NRAP 27(e)**

TRIAL IS TO BEGIN MONDAY, JUNE 24, 2019 AT 1:00 PM AND  
JACK BANKA IS REQUESTING A STAY OF THE TRIAL WHEREAS HE  
CAN BE REPRESENTED BY MICHAEL D. PARIENTE, ESQUIRE AND  
JOHN G. WATKINS, ESQUIRE AT TRIAL.

**A.**

MICHAEL D. PARIENTE,  
ESQUIRE  
COUNSEL FOR PETITIONER

Nevada Bar Number 9469

JOHN G. WATKINS, ESQUIRE

OF COUNSEL

Las Vegas, Nevada

89101

Nevada Bar Number 1574

3960 Howard Hughes Parkway,  
Suite 615

Las Vegas, Nevada 89169

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CAROLYN ELLSWORTH  
DISTRICT COURT JUDGE

200 Lewis Street

Department 5, Courtroom 16C

Las Vegas, Nevada 89101

Telephone (702) 671-4360

Facsimile (702) 671-4359

STEVEN WOLFSON, CLARK  
COUNTY DISTRICT  
ATTORNEY

MARIA LAVELL,  
DEPUTY DISTRICT  
ATTORNEY

200 Lewis Street, Third Floor  
Las Vegas, NV 89101

Telephone: 702-671-2700

Facsimile: 702-385-1687

**B.**

The jury trial is set to commence on June 24, 2019 at 1:00 pm for charges  
of DUI felony (serious bodily injury) and felony leaving the scene. Both

1 offenses are non-probationable offenses, 2 to 20 years and 2 to 20 years,  
2 respectively. A material irreconcilable conflict arose between the Defendant  
3 Jack Banka and his counsel, Thomas Boley, Esquire regarding the handling of  
4 the defense to the charges. As a result of this conflict, Thomas Boley, Esquire  
5 indicated to Jack Banka that he could not effectively represent him which  
6 caused Jack Banka to retain Michael D. Pariente, Esquire and John Glenn  
7 Watkins, Esquire. A Substitution of Attorneys was filed in the District Court on  
8 June 19, 2019. *See Exhibit A* attached hereto. Attorney Boley then represented  
9 to Judge Ellsworth that he “cannot effectively represent Jack Banka” *See*  
10 *Exhibit B*. Despite Jack Banka’s execution of a Substitution of Attorneys, Judge  
11 Carolyn Ellsworth refused allow the substitution and ordered the trial to  
12 proceed with Thomas Boley, Esquire as counsel on Monday, June 24, 2019 and  
13 1:00 pm.

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15 The basis of Judge Ellsworth’s refusal to allow the substitution of  
16 counsel was her opinion that EDCR 7.40(c)<sup>1</sup> was mandatory, thus eliminating  
17 any discretion for her decision. Interpreting EDCR 7.40(c) as mandatory “runs”  
18 afoul of the Sixth Amendment right to counsel of choice and Nevada case law.  
19 Court rules do not serve as a basis to deny or violate ones Sixth Amendment  
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27 1. EDCR 7.40(c) states, “[n]o application for withdrawal or substitution [of  
28 counsel] may be granted if a delay of the trial or of the hearing of any other  
matter in the case would result.”

1 right to counsel but serves to “promote and facilitate the administration of  
2 justice.” *See*, EDCR 1.10.  
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5 **C.**  
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7 A telephone call by Chris Barden, Office Manager and Paralegal for the  
8 Pariente Law Firm, P.C., telephoned Judge Ellsworth department and spoke  
9 with Jada Cook on June 20, 2019 at 11:39 am advising that Jack Banka was  
10 filing an emergency motion with the Supreme Court of Nevada requesting a  
11 stay of his trial whereas Michael D. Pariente, Esquire and John Glenn Watkins,  
12 Esquire can be his counsel. A telephone call was made by Michael D. Pariente,  
13 Esquire to Deputy District Attorney Maria Lavell on June 19, 2019 at 6:05 pm  
14 advising that Jack Banka was filing an emergency motion with the Supreme  
15 Court of Nevada requesting a stay of his trial whereas Michael D. Pariente,  
16 Esquire and John Glenn Watkins, Esquire can be his counsel.  
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20 A copy of Jack Banka’s Emergency Motion under NRAP 27(e) was  
21 served on Judge Ellsworth and the District Attorney.  
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25 **D.**  
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27 All grounds set forth in paragraph B supra were submitted to the District  
28 Court orally on June 19, 2019.

1 Therefore, Jack Banka respectfully requests a stay of the trial on  
2 Monday, June 24, 2019 at 1:00 pm so he can have Michael D. Pariente, Esquire  
3 and John Glenn Watkins, Esquire be his counsel at trial.  
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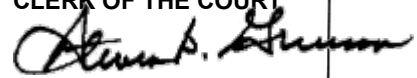
5  
6 DATED this 20th day of June, 2019.  
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8 

9 MICHAEL D. PARIENTE, ESQ.  
10 Nevada Bar No. 9469  
11 JOHN G. WATKINS, ESQ., OF  
12 COUNSEL  
13 3960 Howard Hughes Parkway, Suite  
14 615  
15 Las Vegas, Nevada 89169  
16 (702) 966-5310  
17 Attorneys for Defendant  
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**EXHIBIT A**



SUBT  
PARIENTE LAW FIRM, P.C.  
MICHAEL D. PARIENTE, ESQ.  
JOHN G. WATKINS, ESQ. OF COUNSEL  
Nevada Bar No. 9469  
3960 Howard Hughes Parkway, Suite 615  
Las Vegas, Nevada 89169  
(702) 966-5310  
Attorney for Defendant

EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

JACK BANKA,

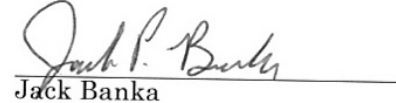
Defendant

Case No: C-18-333254-1  
Dept No: 5

SUBSTITUTION OF ATTORNEY

I hereby appoint MICHAEL D. PARIENTE, ESQ., with JOHN G. WATKINS, ESQ., (Of Counsel) of the PARIENTE LAW FIRM, P.C. to represent Defendant JACK BANKA in connection with the above-entitled action, in place and instead of THOMAS BOLEY, ESQ.

DATED this 19th day of June, 2019.

  
Jack Banka


I hereby consent to the substitution of MICHAEL D. PARIENTE, ESQ., with JOHN G. WATKINS, ESQ., (Of Counsel) of the PARIENTE LAW FIRM, P.C. to represent Defendant Jack Banka in connection with the above-entitled action, in my place and stead.

DATED this 19th day of June, 2019.

  
Thomas Boley, Esq.

I, hereby accept the substitution to represent Defendant Jack Banka in connection with the above-entitled action.

DATED this 19th day of June, 2019.

  
Michael D. Pariente, Esq.

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**EXHIBIT B**



# AFFIDAVIT

Date 6/19/19 Case No.: C-18-333254-1

Thomas Boley, Esq.

THOMAS BOLEY came and appeared before me, the undersigned Notary, the within named THOMAS BOLEY, who is a resident of CLARK County, State of Nevada, and makes this his statement and General Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct:

1. That I, Thomas Boley was the attorney of record for Jack Banka regarding a felony substantial bodily injury DUI in the above-entitled case.
2. That an irrevocable material conflict has occurred between Jack Banka and myself regarding how to defend against the allegation of proximate cause. Based upon the irreconcilable conflict, Jack Banka told me that he did not want my representation.
3. That Jack Banka hired the law firm of Michael D. Pariente, Esq., with John Glenn Watkins, Esquire, (Of Counsel) on June 18, 2019.
4. That the jury trial in Jack Banka's case is set for Monday, June 24, 2019 at 1:00 pm.
5. That I represented to Judge Carolyn Ellsworth that there was an irreconcilable conflict between myself and Jack Banka.
6. That Judge Ellsworth refused to allow Mr. Pariente and Mr. Watkins to substitute as Jack Banka's counsel.
7. That based on the irrevocable conflict, I cannot effectively represent Jack Banka.
8. That Judge Ellsworth denied my request to be removed and have Mr. Pariente and Mr. Watkins represent Jack Banka.

DATED this 19<sup>th</sup> day of June, 2019

THOMAS BOLEY, ESQ.

SUBSCRIBED and SWORN to before me

this 19<sup>th</sup> day of June, 2019.



NOTARY PUBLIC in and for said CLARK County and State of NEVADA

**CERTIFICATE OF ELECTRONIC TRANSMISSION**

I hereby certify that service of the above and foregoing, was made this  
20th day of June, 2019, by email transmission to:

**JUDGE CAROLYN ELLSWORTH**  
**dept05lc@clarkcountycourts.us**  
200 Lewis Street  
District Court Department 5  
Las Vegas, Nevada 89101

and

**Maria Lavell – District Attorney**  
**maria.lavell@clarkcountyda.com**  
200 Lewis Avenue  
Third Floor  
Las Vegas, Nevada 89101

\_\_\_\_\_  
Chris Barden,  
an employee of  
Michael D. Pariente, Esquire