

In the Supreme Court of the State Of Nevada

Donte Johnson,

Petitioner/Appellant,

vs.

William Gittere, *et al.*,

Respondents/Appellees.

Case No. 83796

Electronically Filed
May 16 2022 03:51 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**Request for Extension of Time to
File Appellant's Opening Brief
(Second Request)**

DEATH PENALTY CASE

Appellant, Donte Johnson, hereby requests an extension of time of fifteen (15) days, up to and including May 31, 2022, within which to file his Opening Brief. SCR 250 (7)(d); NRAP 31 (a)(4), (b)(3). This request is supported by the attached declaration of counsel and the entire file herein.

Dated this 16th day of May, 2022.

Respectfully submitted,

/s/ Randolph M. Fiedler

Randolph M. Fiedler
Assistant Federal Public Defender
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Counsel for Appellant

Declaration of Randolph M. Fiedler

I, Randolph M. Fiedler, hereby declare as follows:

1. I am an attorney at law, admitted to practice before this Court, and employed in the Capital Habeas Unit of the Federal Public Defender's Office. I represent Appellant, Donte Johnson, in this matter.

2. Mr. Johnson's opening brief is currently due May 16, 2022. Counsel seeks an extension of time of fifteen (15) days, up to and including May 27, 2022, to file and serve the opening brief. This is Mr. Johnson's second request for an extension of time. This Court granted in part, and denied in part, Johnson's first request, and further indicated, "No further extensions will be granted except upon a showing of extraordinary circumstances and extreme need." Order (Mar. 29, 2022). Undersigned appreciates the import of this Court's order, but extraordinary circumstances and extreme need are present.

3. In November of last year, my wife suffered a serious medical episode; since then she has required regular doctor's appointments, including during the time since this Court granted, in part, Johnson's request for an extension of time. In addition to regular doctor's visits, household responsibilities—and childcare in particular—have become

an extra burden, making it extremely difficult for me to perform legal work outside of regular business hours. These challenges have constrained my ability to devote the time, resources, and attention to Mr. Johnson's case that would have been required to complete this brief by the May 16, 2022 deadline.¹

4. Though I have devoted a substantial majority of my time to Mr. Johnson's case since this Court's last order, I have had other case responsibilities that have prevented me from devoting all of my time to Mr. Johnson's case. Specifically, beginning on May 18, 2022, I am conducting an evidentiary hearing in a federal capital habeas matter, *Williams v. Gittere*, No. 2:98-cv-56-APG-VCF (D. Nev.). This hearing has required a tremendous amount of preparation, which I have been juggling with Mr. Johnson's opening brief.

5. Nonetheless, I want to emphasize that the time since this Court issued its order has not been wasted: I, and co-counsel, have completed a first draft of this brief. However, the brief is not in an

¹ These challenges were anticipated at the time of Mr. Johnson's first request for an extension of time. Insofar as undersigned should have explained these circumstances in that request, undersigned apologizes for the inconvenience to the Court.

appropriate state for filing. Because of the lengthy procedural history of this case—including three penalty hearings, multiple appeals, and a number of writs before this Court—compiling the appendix proved to be unusually complicated. As a result, in addition to requiring editing and revision, the brief still needs record citations to be inserted.

6. The 15-day extension requested here will allow me sufficient time to complete drafting Mr. Johnson’s opening brief, and comply with my responsibility to provide competent representation to Mr. Johnson. The request is not lightly made.

7. On March 16, 2022, I contacted counsel for the Appellees, Alexander Chen, via email, and he indicated no opposition to this request.

8. The request is not made for purposes of delay, or for any other improper purpose, but only to ensure that this office provides competent representation. Nev. R. Prof. Conduct 1.1.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on May 16, 2022.

Respectfully submitted,

/s/ *Randolph M. Fiedler*
Randolph M. Fiedler
Assistant Federal Public Defender

CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2022, I electronically filed the foregoing document with the Nevada Supreme Court by using the appellate electronic filing system. The following participants in the case will be served by the electronic filing system:

Alex Chen
Chief Deputy District Attorney
Clark County District Attorney's Office

/s/ Celina Moore
An Employee of the
Federal Public Defender