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ROBERT D. NEWELL, ESQ.  
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Portland, Oregon  
(503) 241-2300

Attorneys for Appellant

IN THE  
SUPREME COURT OF THE STATE OF NEVADA

\* \* \*

DALE EDWARD FLANAGAN,  
AppellantPetitioner,

vs.

CASE NO.: 40232

THE STATE OF NEVADA, and E.K.  
McDaniel, Warden, Ely State Prison,

Respondents.

FILED

JUL 13 2004

IANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY *[Signature]*  
DEPUTY CLERK

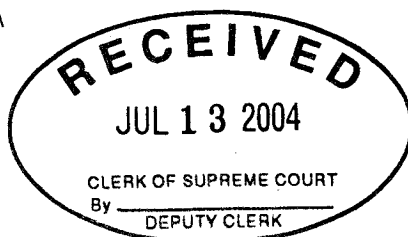
SECOND MOTION TO EXTEND REMAND TO DISTRICT COURT

COMES NOW, Appellant's attorneys ROBERT D. NEWELL, ESQ. of DAVIS WRIGHT  
TREMAINE LLP and CAL J. POTTER, III, ESQ. of POTTER LAW OFFICES, and moves this  
Honorable Court for an order granting extension of time of sixty (60) days of the remand to  
District Court.

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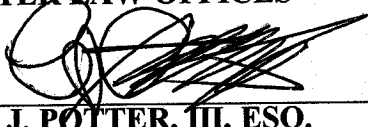


04-12758

1 This Motion is made and based on the Points and Authorities and the within Affidavit of  
2 Robert D. Newell, Esq., attached hereto.

3 DATED this 12<sup>th</sup> day of July, 2004.

4 **POTTER LAW OFFICES**

5   
6 By **CAL J. POTTER, III, ESQ.**  
7 Nevada Bar No. 001988  
8 1125 Shadow Lane  
9 Las Vegas, Nevada 89102  
10 Attorneys for Appellant

11 **POINTS AND AUTHORITIES**

12 This Honorable Court entered an order on or about March 2, 2004, of limited remand  
13 pursuant to SCR 250(8)(b). The Appellant requests that this Honorable Court further extend the  
14 remand an additional sixty (60) days in order to allow time for the District Court to decide  
15 disputes between Appellant and the District Attorney's office over documents that the District  
16 Attorney has refused to provide to Appellant.

17 The District Court issued its order on April 22, 2004, requiring the District Attorney's  
18 office to turn over its file to Appellant for inspection. The District Attorney refused to do so. At  
19 a hearing on June 22, 2004, Judge Leavitt once again ordered the District Attorney to turn over  
20 all non-privileged documents in its file and to prepare a privilege log. While the District Attorney  
21 has provided some documents from its file, it has not provided a privilege log and Appellant  
22 anticipates the need for a further hearing before Judge Leavitt to resolve these issues.  
23 In addition, Appellant's counsel will be on a long-scheduled, pre-paid vacation during the last two  
24 weeks of July.


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1       WHEREFORE, the Appellant requests an enlargement of time of sixty (60) days for  
2 remand to the District Court, so that the remaining issue of production of the District Attorney's  
3 file can be resolved.

4                               Respectfully submitted,  
5                               **POTTER LAW OFFICES**

6                               By   
7                               **CAL J. POTTER, III, ESQ.**  
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9                               1125 Shadow Lane  
10                              Las Vegas, Nevada 89102  
11                              Attorneys for Appellant  
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**Steven S. Owens**  
Deputy District Attorney  
Clark County District Attorney's Office  
200 South Third Street, 7<sup>th</sup> Floor  
Las Vegas, Nevada 89155

  
Employee of Potter Law Offices

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3 Las Vegas, Nevada 89102

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5 Oregon State Bar No. 79091

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7 Telephone (503) 241-2300

8 Attorneys for Petitioner

9 Dale Edward Flanagan

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

11 \* \* \*

12 **DALE EDWARD FLANAGAN,**

Case No. 40232

13 **Appellant,**

14 **v.**

15 **THE STATE OF NEVADA, and E.K.**  
16 **McDANIEL, Warden, Ely State Prison,**

17 **Respondents.**

18  
19 **AFFIDAVIT OF ROBERT D. NEWELL**

20 I, Robert D. Newell, being duly sworn, depose and say:


21 1. This Court, by order dated March 2, 2004, remanded to the District Court  
22 for completion of the record for appeal. The State did not comply with the requirements set out  
23 in that order, and on April 22, 2004, Judge Leavitt issued an order requiring that the State turn  
24 over its file to Appellant for inspection to allow for the completion of the record on appeal. The  
25 State did not comply with that order. Appellant moved the Court to compel the State to turn over  
26 its file and on June 22, 2004, the Court held a hearing on that motion. Judge Leavitt reiterated

1 her ruling that the State turn over all non-privileged documents in its file and prepare a privilege  
2 log of those documents being withheld.

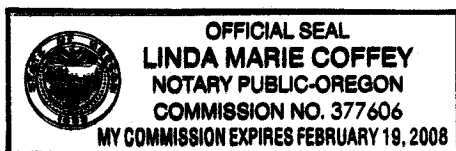
3 2. On behalf of Appellant, I have completed a review of the District Court  
4 file. In addition, the District Attorney's office allowed me to examine portions of its file. Those  
5 portions contained documents which were not in the District Court file and which were not in  
6 Appellant's file. The portion of the District Attorney's file which was made available to me  
7 contained notes which I asked to be copied but were not, as were the other documents I  
8 designated for copying. It appears that any privilege that may have been available at least as to  
9 those notes has been waived, but until I receive the privilege log from the District Attorney's  
10 office, that matter will not be ripe for resolution.


11 3. To date, I have not received the privilege log that Judge Leavitt ordered  
12 the District Attorney to prepare. Once it has been received, I anticipate filing a motion to require  
13 further production from the District Attorney's office, which will then have to be decided by  
14 Judge Leavitt. I expect that this process will take an additional sixty (60) days.

15 4. During the last two weeks of July, I will be away from my office on a  
16 long-scheduled, pre-paid vacation.

17  
18   
19 ROBERT D. NEWELL

20 SUBSCRIBED and SWORN to before me this 9<sup>th</sup> day of July, 2004.



  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: 2-19-08

1 **CERTIFICATE OF MAILING**

2 Pursuant to NRCP 5(b), I certify that I am an employee of POTTER LAW  
3 OFFICES, and that, on this date, I deposited for mailing at Las Vegas, Nevada, a true copy of the  
4 **AFFIDAVIT OF ROBERT D. NEWELL** addressed to:

5 Steven S. Owens  
6 Deputy District Attorney  
7 Clark County District Attorney's Office  
8 200 South Third Street, 7<sup>th</sup> Floor  
9 Las Vegas, Nevada 89155

Dated this 12<sup>th</sup> day of July, 2004.

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Employee of Potter Law Offices  
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