

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF NEVADA

DALE EDWARD FLANAGAN,

Appellant,

v.

THE STATE OF NEVADA,

Respondent.

Case No. 40232

FILED

JUL 28 2005

**OPPOSITION TO MOTION FOR LEAVE
TO FILE OVER-LENGTH BRIEF**

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

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JUL 28 2005

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JANETTE M. BLOOM
CLERK OF SUPREME COURT
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1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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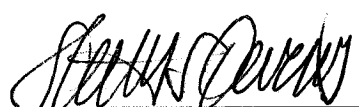
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13 COMES NOW the State of Nevada, by DAVID ROGER, Clark County District
14 Attorney, through his Chief Deputy, STEVEN S. OWENS, respectfully moves for
15 leave to file an Opposition to Motion for Leave to File Over-Length Brief.

16 Dated July 26, 2005.

17 Respectfully submitted,

18 DAVID ROGER
Clark County District Attorney
19 Nevada Bar # 002781

20
21 BY


22 STEVEN S. OWENS
Chief Deputy District Attorney
23 Nevada Bar #004352

24 Attorney for Respondent
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1 **OPPOSITION TO APPELLANT'S MOTION**
2 **FOR LEAVE TO FILE OVER-LENGTH BRIEF**

3 **Procedural History**

4 The instant action is an appeal from the denial of post-conviction relief in a
5 capital case. Flanagan's initial Petition for Writ of Habeas Corpus was filed in district
6 court on May 28, 1998. After a limited evidentiary hearing, detailed Findings of Fact
7 were filed on August 9, 2002, denying the petition.

8
9 After numerous extensions of time from this Court including a remand to
10 reconstruct parts of the record, Appellant has now submitted a 126-page Opening
11 Brief and requests leave to file it. The State opposes the request and asks that the
12 Opening Brief be limited to 80-pages in length in accord with the practices of this
13 Court.

14
15 **POINTS AND AUTHORITIES**

16 Pursuant to NRAP Rule 28, briefs are not to exceed 30 pages in length except
17 by permission of the court. This Court has recognized that there may be a need for
18 briefs longer than 30 pages in special cases, such as in a direct appeal from a death
19 sentence where the issues are complex. Hernandez v. State, 117 Nev. 463, 24 P.3d
20 767 (2001). However, the Court has also recognized that reasonable limitations on
21 briefs are "necessary for the functioning of this court" and "are ordinary practices
22 employed by courts to assist in the efficient management of the cases before them."
23 Id. In Hernandez, after reviewing the proposed 124-page brief and considering the
24 seriousness and complexity of the issues, this Court authorized the filing of only an
25 80-page brief.

26 Although the present case involves a death sentence, the issues are not
27 particularly complex. A limited evidentiary hearing was held below on the single
28 issue of ineffective assistance of counsel with regards to communication, while the

1 remaining claims were all denied as being without merit or procedurally barred. The
2 same concerns about brevity and conciseness in briefs that are necessary for this Court
3 to function efficiently are the same for the prosecutors who must read and respond to
4 the verbose and excessive filings of opposing counsel. 80-pages is a reasonable
5 limitation imposed by this Court in other capital cases. To deviate from that now will
6 invite further attacks and challenges to the Court's efforts to manage its caseload
7 efficiently.


8 WHEREFORE, the State respectfully opposes Appellant's Motion for Leave to
9 File 80 Page Opening Brief.

10 Dated July 26, 2005.

11 Respectfully submitted,

12 DAVID ROGER
13 Clark County District Attorney
14 Nevada Bar # 002781

15 BY

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17 STEVEN S. OWENS
18 Chief Deputy District Attorney
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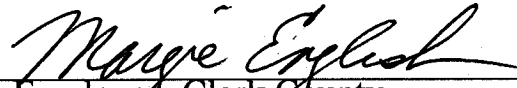
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CERTIFICATE OF MAILING

I hereby certify and affirm that I mailed a copy of the foregoing Opposition to Motion for Leave to File Over-Length Brief to the attorneys of record listed below on July 26, 2005.

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OWENS/none/english