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Attorneys for Petitioner  
Dale Edward Flanagan

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

\* \* \*

**DALE EDWARD FLANAGAN,**

**Appellant,**

**v.**

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

**Respondents.**

Case No. 40232

Death Penalty Case

**FILED**

**JUL 25 2005**

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

**APPELLANT'S MOTION FOR LEAVE TO**

**FILE OVER-LENGTH BRIEF**

Appellant Dale Edward Flanagan respectfully moves this Court for permission to file his opening brief in excess of the 30-page limit set forth in Nevada Rule of Appellate Procedure 29(g). Appellant's brief is filed concurrently with this Motion.

**POINTS AND AUTHORITIES**

The motion is necessitated by the complexity of the issues raised in this case. This is a death penalty case, which has involved three separate trials. The crime at issue in this

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Page 1 – APPELLANT'S MOTION FOR LEAVE TO FILE OVERLENGTH BRIEF  
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1 case occurred in November, 1984, and Appellant was arrested approximately one month later.<sup>1</sup>  
2 He has been incarcerated ever since. The case was tried originally in 1985 and resulted in a  
3 guilty verdict and a sentence of death. This Court reversed the sentence, and a new penalty trial  
4 was held in 1989. The United States Supreme Court reversed that sentence and this Court  
5 reconsidered and remanded for yet a third penalty hearing, which occurred in 1995. His direct  
6 appeals ran out in May of 1998 with the denial by the United States Supreme Court of his  
7 petition for certiorari. These habeas proceedings commenced within days thereafter.

8 The issues presented in this case are numerous and complex. The Supplemental  
9 Petition for Writ of Habeas Corpus sets forth 36 claims, and the truncated record on appeal  
10 comprises 34 volumes. The original trial was rife with prosecutorial misconduct and ineffective  
11 assistance of counsel. Flanagan has gathered substantial evidence in support of his claims, all of  
12 which is a part of the record and must be addressed on appeal since the trial court denied the  
13 petition, Flanagan's motions for discovery and an opportunity to fully develop his claims.

14 As this Court is well aware, it is essential for Flanagan to address each issue in  
15 this case in order to preserve his claims for review by a federal court. As a consequence, it is  
16 impossible to provide this Court with an adequate basis upon which to review his claims in the  
17 30 pages allowed by Nevada Rules of Appellate Procedure. The page limit provided by the rules  
18 would allow Flanagan less than one page for each of his claims in this matter. Appellant could  
19 not cite the applicable case law, let alone explain the factual basis for the application of that law,  
20 in such a limited space.

21 Indeed, Flanagan has already heavily edited his opening brief to the point where  
22 many of the issues presented receive only cursory treatment. A full and complete analysis of  
23 each of the claims would require a substantially longer brief than the one Flanagan has filed.

24  
25 <sup>1</sup> Six teenage boys were arrested for the murder of Appellant Flanagan's grandparents.  
26 Two pled to charges and four went to trial. Each was separately represented.

1 For all of the foregoing reasons, Appellant Dale Edward Flanagan respectfully  
2 requests that this Court accept his opening brief as filed.

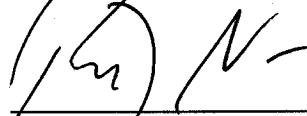
3 DATED this 18<sup>th</sup> day of July, 2005.

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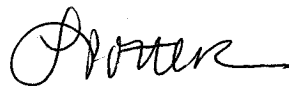
17 Attorneys for Appellant Dale Flanagan  
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1 **CERTIFICATE OF MAILING**

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 APPELLANT'S MOTION FOR LEAVE TO FILE OVER-LENGTH BRIEF addressed to:

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

11 Dated this 20<sup>th</sup> day of July, 2005.

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13 \_\_\_\_\_  
14 Employee of Potter Law Offices  
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