## IN THE SUPREME COURT OF THE STATE OF NEVADA

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Petitioner,

ALFRED P. CENTOFANTI III,

vs.

EIGHTH JUDICIAL DISTRICT COURT IN AND FOR THE COUNTY OF CLARK, STATE OF NEVADA, AND THE HONORABLE DONALD M. MOSLEY, DISTRICT COURT JUDGE,

Respondents.

CASE NO. 43895

FILED

OCT 06 2004

CLERK OF SUPREME COURT
BY DEPUTY CLERK

# MOTION TO ALLOW PETITIONER LEAVE TO FILE REPLY TO RESPONDENTS' ANSWER TO PETITION FOR WRIT OF MANDAMUS/FOR WRIT OF PROHIBITION

COMES NOW Petitioner, ALFORD P. CENTOFANTI III, by and through his attorney, CARMINE J. COLUCCI, ESQ., of the law firm of CARMINE J. COLUCCI, CHTD., and moves this Honorable Court for leave for Petitioner to file a reply to respondents' Answer to Petition for Writ of Mandamus/for Writ of Prohibition.

This motion is made and based on the Points and Authorities submitted herewith and the Affidavit of Carmine J. Colucci, attached hereto, together with all pleadings and papers on file herein.

DATED this 5<sup>TH</sup> day of October, 2004.

CARMINE J. COLUCCI, CHTD.

CARMINE J. COLUCCI, ESQ.

Nevada Bar No. 000881 629 South Sixth Street

Las Vegas, Nevada 89101

(702) 384-1274

Attorney for Petitioner



## **POINTS AND AUTHORITIES**

Petitioner filed his Petition for Writ of Mandamus/for Writ of Prohibition and Motion for Emergency Stay of Proceedings on September 8, 2004. On September 8, 2004, this Court issued an Order Directing Answer and Granting Temporary Stay. On September 28, 2004, the Respondents filed their Answer to Petition for Writ of Mandamus/for Writ of Prohibition.

Petitioner requests permission to file a Reply to the Respondents' answer to Petition for Writ of Mandamus/for Writ of Prohibition in order to address false and misleading statements of fact made by Respondents at page 16 of their reply. Petitioner seeks to show that these statements are clearly repelled by the record before this Court.

Rule 27 of the Nevada Rules of Appellate Procedure states in pertinent part as follows:

#### Rule 27. Motions.

(a) Content of motions; response; reply. Unless another form is elsewhere prescribed by these Rules, an application for an order or other relief shall be made by filing a motion for such order or relief with proof of service on all other parties. The motion shall contain or be accompanied by any matter required by a specific provision of these Rules governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. . . .

Petitioner seeks this opportunity in order to assist this Court in ascertaining from the record the true facts which are contained in the record and which have not been refuted by any evidence. Further, Petitioner seeks the opportunity to specifically show in the record that the state had the notice and opportunity to confirm the truth of Petitioner's allegations and that they chose to ignore the opportunity or made statements of fact in total disregard of their truthfulness in order to refute Petitioner's factual assertions which were verifiable by a couple of telephone calls which the state chose not to make.

This request is made solely in order to afford this Court with specific references to the record already before it and to correct the misleading statements of asserted fact which have been offered to it by the state.

DATED this 5<sup>TH</sup> day of October, 2004.

CARMINE J. COLUCCI, CHTD.

CARMINE J. COLUCCI, ES Nevada Bar No. 000881 629 South Sixth Street Las Vegas, Nevada 89101 Attorney for Petitioner (702) 384-1274 

## AFFIDAVIT OF CARMINE J. COLUCCI

STATE OF NEVADA ) ss: COUNTY OF CLARK)

CARMINE J. COLUCCI, being first duly sworn, deposes and says:

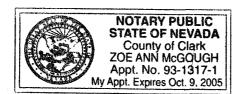
- 1. That your Affiant is an attorney duly licensed to practice law in the State of Nevada, is the attorney of record for petitioner, and has personal knowledge of the following facts except for those stated upon information and belief and is competent to testify thereon.
- 2. That the statements made at page 16, lines 22 through 25 by the state in their Answer to Petitioner for Writ of Mandamus/for Writ of Prohibition are false and affiant fears that these statements might mislead this Court.
- 3. That affiant painstakingly gathered the information and evidence which is contained in the record before this Court and has documented the proof contained therein.
- 4. That affiant believes that the state could have easily verified the veracity of the information provided to the District Court and this Court by Petitioner but affiant believes that the Respondent's failed to do so.
- 5. That affiant seeks the opportunity to set the record straight by being allowed to show in the record where the respondent's assertions are repelled and not merely contradicted.
  - 6. That this motion is made in good faith and not for the purposes of delay.

SUBSCRIBED and SWORN to before

me this John day of October, 2004.

NOTARY PUBLIC in and for said

County and State



### **CERTIFICATE OF MAILING**

I HEREBY CERTIFY that on the 5th day of October, 2004, I deposited in the United States Mail at Las Vegas, Nevada, a true and correct copy of MOTION TO ALLOW PETITIONER LEAVE TO FILE REPLY TORESPONDENT'S ANSWER TO PETITION FOR WRIT OF MANDAMUS/FOR WRIT OF PROHIBITION enclosed in a sealed envelope upon which first class postage has been fully prepaid, addressed to:

DAVID ROGER DISTRICT ATTORNEY 200 South Third Street, Suite 701 Post Office Box 552212 Las Vegas, Nevada 89155-2212

BRIAN SANDOVAL Nevada Attorney General 100 North Carson Street Carson City, Nevada 89701-4717

Attorneys for Respondent

an eniployee of CARMINE J. COLUCCI, CHTD.