IN THE SUPREME COURT OF THE STATE OF NEVADA

ALFRED P. CENTOFANTI III,

Petitioner,

vs.

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE LEE A GATES, DISTRICT JUDGE,

Respondents,

And

THE STATE OF NEVADA,

Real Party in Interest.

Case No. 52994

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IN THE SUPREME COURT OF THE STATE OF NEVADA

ALFRED P. CENTOFANTI III, Petitioner, vs. EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK, AND THE HONORABLE LEE A GATES, DISTRICT JUDGE, Respondents, And THE STATE OF NEVADA, Real Party in Interest.	Case No. 52994

SUPPLEMENTAL POINTS AND AUTHORITIES IN SUPPORT OF THE PETITIONER'S WRIT OF MANDAMUS

COMES NOW, Petitioner, Alfred P. Centofanti, III, by and through his counsel of record, Carmine J. Colucci, Esq. of the law firm of Carmine J. Colucci, Chtd., and submits his Supplemental Points and Authorities in Support of the Petitioner's Writ of Mandamus.

This supplement is brought pursuant to NRAP 31(d) and is supported by the following Memorandum of Points and Authorities all papers and pleadings on file

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/ / / / /

/ / / / /

herein.

DATED this 14th day of May, 2009.

CARMINE J. COLUCCI CHTD.

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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Respondents, through the Clark County District Attorney's Office have filed an Answer to Petitioner's Writ of Mandamus. In response thereto and in light of additional research, Petitioner submits these supplemental points and authorities.

Petitioner has asserted that Respondent's Answer virtually concedes that disqualification is warranted, so the Clark County District Attorney's Office should be disqualified from the representation of the State in this and all future proceedings involving Petitioner including the defense related to the Petitioner's pending Petition for Writ of Habeas Corpus (Post-Conviction). In the alternative, if this Court has any doubts as to the factual basis for Petitioner's claims, the Court should remand this case to the District Court and grant leave for the Petitioner to propound discovery and then schedule an evidentiary hearing during which Petitioner can submit the necessary proof in the form of witnesses, documents and other evidence so the Court can grant him the relief he seeks.

Originally, Petitioner's petition in this matter was denied without an evidentiary hearing despite the representation of unproven facts by the State and a documented prima facia showing by Petitioner at the time of the original hearing.

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SUPPLEMENTAL FACTS, ARGUMENT AND AUTHORITY

1. Additional supplemental case law in support of Petition.

Petitioner has located additional case law which supports the relief he is requesting from this Court. Specifically, other states have examined this issue and have announced guidelines Petitioner is urging this Court to adopt and make the law in Nevada.

In People v. Chavez, 139 P.3d 649 (Col. 2006), the Colorado Supreme Court lists 12 steps which must be considered in evaluating if a proper screen is in place. Those 12 steps are as follows:

The policy provides:

> 1. This policy pertains to any employee of the Office of the District Attorney for the Tenth Judicial District Attorney who formerly represented clients in criminal cases now pending prosecution in this office. This member shall be referred to in this policy as 'employee.' It also applies to all staff of the Office of the District Attorney for the Tenth Judicial District insofar as they are involved in carrying out the provisions of this policy.
>
> 2. The employee shall be barred from any participation whatsoever in the prosecution of his/her former client's case(s).
>
> 3. The employee shall not access the file of the former client.
>
> 4. The employee shall not consult with the prosecutor for the Tenth Judicial District regarding the former client.
>
> 5. The employee shall not access any of the photographs, documents, recorded interviews, recorded surveillance activities, tangible evidence, criminal charges, criminal records, motions filed by either party, orders of the court, or any other matter related to any case involving his/her form client.
>
> 6. The employee shall not relate any confidential information revealed to the employee during his/her representation of the former client to any member of the Office of the District Attorney for the Tenth Judicial District.
>
> 7. The employee shall not be called upon to attend, nor represent the Office of the District Attorney for the Tenth Judicial District, any court dates, no matter how minor in nature, regarding his/her former client.
>
> 8. Whenever an attorney, who represents clients with pending criminal cases, or an employee of such an attorney is hired by the

Office of the District Attorney for the Tenth Judicial District, a list of the cases the employee has handled shall be posted by email to all members of the office, and posted at the mailbox area where it is openly visible for the inspection of all employees.

9. This policy has been distributed to all employees of the Office of the District Attorney for the Tenth Judicial District, and forms part of their expected duties as an employee thereof.

10. This policy will be provided to every former client of such an employee of the Office of the District Attorney for the Tenth Judicial District as said clients become known. It shall be the duty of every attorney in this office to provide any former client this policy.

11. This policy is available to any judicial officer and attorney handling cases of the employee's former clients.

12. Every member of the Office of the District Attorney for the tenth Judicial District shall act independently of the employee in judgment and discretion regarding the prosecution of former clients. If the employee is in a supervisory position within the Office of the District Attorney for the Tenth Judicial District, the subordinates of the employee shall look to the next highest member of the office for review of any issues that office policy otherwise requires regarding cases of his/her former client. IF the next highest member of the office is the District Attorney, he may designate either the Chief Deputy Attorney or another supervisor to perform such review.

Id. At 655.

See, also Hart v. State, 62 P.3d 566 (Wyoming 2003) discussing their 6 steps.

See, also, In People v. Mazanares, 139 P.3d 655 (Colo. 2006) [Properly drafted screening policy in district attorney's office is relevant to disqualification determination; but despite screening policy, assertions of members of district attorney's office, *without more*, cannot justify the conclusion that no confidential information was shared.] (Emphasis added).

In the instant case, there was absolutely no corroboration for the bald assertions by the arguing deputy district attorney that any actual screening procedures were in place. Merely saying they are does not make it so especially when the deputy making the assertions does not have personal knowledge that the representations that he is making are true.

See also, U.S. v. Phillip Morris, 312 F. Supp. 2d. 27 (D.D.C. 2004)

[Requirement that notification is made under the Rules of Professional Conduct to all parties *before* appearing in the action]. (Emphasis added)

2. Disqualification is mandated under the doctrine of judicial estoppel.

The Clark County District Attorney's Office has misrepresented the facts regarding the disqualification to this Court. Specifically, this Court should be aware that in the State's Opposition to Petitioner's Petition for Writ of Habeas Corpus (Post-Conviction), Chief Deputy District Attorney James Sweetin wrote:

> The Defendant's contention that he received ineffective assistance of counsel for 'failing to understand and apply Nevada law in the preparation and trial of this matter' is completely negated by the fact that he associated competent local counsel in this case. Gloria Navarro graduated from Arizona State University School of Law and was admitted to the Nevada Bar over a decade ago in 1994, and she was an experienced criminal defense attorney at the time of trial. She assisted in nearly all phases of the case and was there to advise counsel on the application of Nevada law. The Defendant's rights were not violated and he was entitled to and received competent Nevada counsel throughout the representation of his case.
>
> Id. at p.22, ll. 16-24.

In the State's Answer to the Petition for Writ of Mandamus, Chief Deputy District Attorney Steven S. Owens wrote something quite different:

> Gloria Navarro was only involved in the case because the Special Public Defender's Office was the locally associated counsel for trial attorney Allen Bloom.
>
> Id. At p. 2, ll. 13-15.

He went on further to write:

> The record shows that Navarro, although present, did not question any of the witnesses at trial or participate in arguing the case to the jury...
>
> Id. at p. 4, ll. 12-15.

And concluded:

> Locally associated counsel's role in Centofanti's representation was minimal and certainly not the same as that of trial counsel Allen Bloom.
>
> Id. at p. 8, ll. 1-3.

So which one is it? Did she assist "in nearly all phases of the case and was there to advise counsel on the application of Nevada law" or was her "role in Centofanti's representation...minimal?"

Further, there were times during the trial when Ms. Navarro was out of the court room and another attorney from the Special Public Defender's Office was present, in her place, and who had virtually no knowledge of the facts of the case nor had she participated in the preparation for trial. However, that has little or no bearing on this proceeding due to the apparent conflict of interest which is created by Ms. Navarro's position and lack of notice thereof as required by law.

The Ninth Circuit, in the recent decision of Sechrest v. Ignacio, 549 F.3d 789 (2008), examined the practice of taking inconsistent positions by the State of Nevada in criminal proceedings. The Court held the "doctrine of judicial estoppel prevents the state. . . from gaining an advantage by asserting one position and then later seeking an advantage by taking a clearly inconsistent position. Id. At p. 9. This is exactly what the District Attorney's Office has done in this matter by asserting inconsistent positions in the Opposition to the Writ of Habeas Corpus (Post-Conviction) filed in the District Court and in the Answer to the Writ of Mandamus filed with the Nevada Supreme Court.

Therefore, this Court should grant Petitioner's Writ of Mandamus, and the District Attorney's Office should be disqualified.

3. The District Attorney's Office has admitted the merits of the Petition.

The next issue which must be addressed with regard to both the Opposition and the Answer filed by the District Attorney's Office, is that neither Chief Deputy District Attorney Sweetin, nor Chief Deputy District Attorney Owens consulted with Ms. Navarro, then how is it they were able to take the positions they asserted and to make the purported factual assertions made in each of their respective filed pleadings? Again, you cannot have it both ways. If they consulted with her,

the unidentified "screening" procedures were and are not in place or were and are not adequate. If the State did not consult with her then the factual assertions made to the Court are mere speculation and do not support the arguments for which they are purported to be applicable. The State did not explain to the District Court what "screening" procedures were supposedly in place. In either scenario, they have admitted the merits of Petitioner's arguments, and the Writ of Mandamus should be granted and the District Attorney's Office disqualified.

4. The District Attorney's waiver argument is not valid as it would violate the Rules of Professional Conduct.

In the Answer to the Petition for Writ of Mandamus, the District Attorney's Office takes a position that can best be characterized as the "so what if we did" defense to the failure of both they and Ms. Navarro to follow the rules. Specifically, Chief Deputy District Attorney Owens cites to NRS 34.735(6), entitled, "Petition: Form" and the following:

> (6) You must allege specific facts supporting the claims in the petition you file seeking relief from any conviction or sentence. Failure to allege specific facts rather than just conclusions may cause your petition to be dismissed. If your petition contains a claim of ineffective assistance of counsel, that claim will operate to waive the attorney-client privilege for the proceeding in which you claim your counsel was ineffective.

While this provision may act as a waiver of the attorney-client privilege with regards to presently litigating a claim of habeas corpus, there is no additional provision which allows this to act as an *after the fact remedy* or excuse for the failure to follow the rules of professional responsibility. Interestingly enough, at least one Court, when confronted with this very situation, rejected such an attempt to "get around" the rules of professional responsibility.

Whether this attempted waiver "cures" the violation argument is exactly the problem that the Court in the case of Tucker v. George, 569 F. Supp. 2d 834 (W.D. Wis. 2008) was confronted with and ruled against. In Tucker the Court held:

> As harsh as this result is for plaintiff, to allow Lawton & Cates to remain on this case would effectively write the screening requirement out of Rule 20.1.11 and send a message to attorneys practicing in this court that the court does not take the Rules of Professional Conduct seriously. I am not willing to endorse such a result.
>
> Excerpt from pp. 569 F. Supp.2d 841.

Furthermore, and as a matter of record, this Court should be aware that the Clark County District Attorney's Office took the rather unusual step, in this case, of having prepared and filed an Answer to the Petition for Writ of Habeas Corpus without first being ordered to do so by the District Court or in compliance with NRS 34.745, entitled, "Judicial order to file answer and return" which provides, in pertinent part, as follows:

> 1. If a petition challenges the validity of a judgment of conviction or sentence and is the first petition filed by the petitioner, the judge or justice shall order the district attorney or the Attorney General, whichever is appropriate, to:
>
> (a) File:
> (1) A response or an answer to the petition; and
> (2) If an evidentiary hearing is required pursuant to NRS 34.770, a return, within 45 days or a longer period fixed by the judge or justice; or
> (b) Take other action that the judge or justice deems appropriate.
>
> ...

It was in this "Answer" that the District Attorney's Office, perhaps realizing for the first time its and Ms. Navarro's failure to comply with the Rules of Professional Conduct, first sought to "notify" Petitioner and his counsel of Ms. Navarro's employment with their office. It should also be noted that the rogue "Answer" contains many references, both veiled and not so veiled, to information and positions relative to the allegations of ineffective assistance of counsel which could only have come from having discussed the same, or consulted with Ms. Navarro and/or from reviewing her files.

In addition to all of the above, it is also worth noting that Ms. Navarro's husband is also employed by the District Attorney's Office. This too adds yet

another factor to be considered in deciding the propriety of the District Attorney's Office representing the State in this matter as there was never an allegation that he was somehow "screened" from this case or otherwise precluded from obtaining or disseminating information to anyone connected with this case.

5. There is no evidence of any screening or timely screening.

Assuming that there is screening in place and it was done in a timely manner, this Court now and certainly the District Court at the time of the initial hearing did not have any facts, documents or evidence before it to support such a claim by the District Attorney's Office. The Answer contains a plethora of references to screening but with no evidentiary support, such as an affidavit from Navarro, the person who hired her, or from someone (if there is such a person) who is responsible for screening, implementing and supervising the process. Those references to the Answer are:

Page 2 ". . . but where screening measures are in place" (ll. 25-26)

Page 3 "The record shows . . . the protection of privileged communications through screening." (ll. 24-26)

Page 4 cites to cases which discuss "effectively was screened from the case" with no cite to the record to support such claims (ll. 19-21).

Page 6 "She is Chinese-walled off this pending case." (ll. 15-16).

This one line from the hearing was not supported by any reference to any evidence, it was a mere unsupported statement made at the time by the Deputy District Attorney covering the hearing and who probably did not have any personal knowledge whether this statement was true. An evidentiary hearing would resolve this issue.

This failure to specify what the steps were that were taken, if any, and when they were supposedly implemented is crucial. Even though Ms. Navarro was "off the case" in May of 2004, she was still in contact with Petitioner as reflected in

the letter she sent to Petitioner in June of 2004 regarding the issue of the felon juror.

Did she reveal any information to the District Attorney's Office on the jury issue? On the issue of when was she hired by the Clark County District Attorney's Office and in what capacity, the district court should have held an evidentiary hearing on this and the other issues that were raised.

Without having produced any evidence of the screen, the District Attorney's Office's position falls into the holding of Tucker v. George 569 F. Supp. 2d 834 (W.D. Wis. 2008):

> In this case, plaintiff has **failed to demonstrate that Lawton & Cates employed a timely screening device** to prevent the inadvertent disclosure of information from Lautenschlager and Bach. Notably, although plaintiff asserts that Lautenschlager and Bach 'were, in fact, screened from the matter,' it is unclear when that screen was put in place or what procedures were implemented. **It appears that, in asserting that Lautenschlager and Bach were 'screened,' plaintiff is referring merely to the fact that neither lawyer has had any involvement with the case or access to the file and that both have denied disclosing any information about George to anyone at Lawton & Cates. However, the rule clearly contemplates the implementation of some formal mechanism to isolate the tainted attorney, not merely, not merely a de facto screen that occurred by happenstance.** Accord Craig A. Peterson, Rebuttable Presumptions and Intra-Firm Screening: The New Seventh Circuit Approach to Vicarious Disqualification of Litigation Counsel, 59 Notre Dame L. Rev. 399, 411 (1984) (concluding from review of Seventh Circuit cases that **mere informal understanding as to nonparticipation and uncontradicted affidavits denying past or future disclosure of confidences within targeted law firm are insufficient to rebut presumption of intra-firm knowledge.** What is striking is that from all appearances, Lawton & Cates took no steps to institute such formal procedures with respect to this case when Lautenschlager and Bach jointed the firm. Arellano has averred that he did not think that there was any conflict of interest, but he does not explain the basis for this belief. From the court's perspective, someone at Lawton & Cates ought to have recognized that because Lautenschlager and Bach served as the state's top law enforcement officials at the time George was under investigation, they had a potential conflict of interest that required formal screening in any case the firm had against George. **The firm's failure to institute formal screening measures at the time Lautenschlager and Bach joined the firm mandates disqualification.** (Emphasis added)

Excerpt from pp. 569 F. Supp. 2d 840-1

6. The District Attorney failed to comply even with the rule they cited (RPC 1.11).

RPC 1.11 provides in pertinent part as follows:

> (a) Except as law may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:
>
> (1) Is subject to Rule 1.9(c); and
> (2) Shall not otherwise represent a client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.
> (b) When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:
> (1) The disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and
> (2) Written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule.

There is no indication, at any point, in any of the pleadings filed or in the record of the hearing, or in any documents presented to either the District Court or the Nevada Supreme Court, that the District Attorney's Office notified the Special Public Defender's Office that Ms. Navarro was hired so that the Special Public Defender would be put on notice and could consent in writing and "enable it to ascertain compliance with the provision of this Rule." This is at the heart of the State's argument against the disqualification and the heart of Petitioner's argument that disqualification is mandated.

Therefore, even if Rule 1.11 is the one deemed to apply (and it is not a "certainty") then there was no compliance, and therefore disqualification is warranted.

7. There is further evidence Navarro's loyalties are divided.

Realistically, can Navarro refuse to cooperate with her employer or is the Chinese Wall in effect only until such time as any privilege is deemed waived by the district attorney's office? If they honestly feel the filing of the Petition for Writ

of Habeas Corpus (Post-Conviction) by Petitioner somehow waived any privilege that existed, did the so called "Chinese Wall" come crashing down because of non-compliance in the first instance with the Rules of Professional Conduct or obtaining a ruling by the Court? Unbeknownst to Petitioner, the violation of the Rules of Professional Conduct occurred long before this Petition was filed. The compliance with Rule 1.11 was required when Ms. Navarro initially went to work for the State. This was long before the Petition for Writ of Habeas Corpus (Post-Conviction) was even filed.

In this instance, should the district attorney's office be the one to decide whether any privilege is waived or should the Court, in the first instance, do so in a properly conducted hearing? As the Ninth Circuit recently stated, although the issue concerned Brady material, it is equally analogous to the present situation:

> Moreover, we reject the Inspectors' attempt to dismiss their Brady duty by downplaying the importance of the evidence. '[I]f there were questions about the reliability of the exculpatory information, it was the prerogative of the defendant and his counsel–and not of the prosecution–to exercise judgment in determining whether the defendant should make use of it, **"because" [t]o allow otherwise would be to appoint the fox as henhouse guard.'** DiSimone v. Phillips, 461 F.3d 181, 195 (2d Cir. 2006). (Emphasis added)
>
> Tennison v. City and County of San Francisco, 548 F. 3d 1293, 1306 (C.A. 9 (Cal.) 2008)

8. The case law cited by the District Attorney's Office is distinguishable.

In Andric v. California, 55 F. Supp. 2d 1056, 1066 (C.D. Cal. 1999), the Court criticized the decision and reasoning of the Court in the case of In the Matter of the Grand Jury Investigation of Targets, 918 F. Supp. 1374 case which is relied upon by the district attorney (cited to on page 5, line 18 of the Answer). Specifically, the Andric Court held:

> This Court declines to adopt the results in Targets, for several reasons. First, it is not correct that the Ninth Circuit has established a rigid rule that imputed disqualification "does not apply to government attorneys." As to Weiner, see footnote 11. As to United States v. Mapelli, supra, the individual AUSA was subject to disqualification only because he had heard the defendant's immunized grand jury testimony. Id. At 287-88. Where there is the

claimed basis for the disqualification of a lawyer, it is typically unnecessary to disqualify the rest of the prosecuting office, because in federal criminal practice the very concept of an AUSA obtaining immunized testimony from a suspect is based on the understanding that if the case proceeds to trial other AUSA's, who had no access to the immunized testimony, will try it. In short, it is contemplated that ethical walls will be erected. Unlike that scenario, when speaking to Semien, plaintiffs had no basis to suspect that he would go to work for the very entity they expected to sue and for the very Legal Unit that would represent it.

Next, the Targets court declined to consider California cases involving disqualification of private attorneys, because 'California law recognized that different disqualification rules apply to prosecutors than to private attorneys.' Targets, supra, at 1379 n. 1. While that is an ambiguous observation–se below–it is inapplicable here. Although a government agency, DIR is not a prosecuting office. A prosecutor's office is deemed to be–or at least required to be–more balanced in its advocacy than other governmental lawyers. In Berger v. United States, 295 U.S. 78, 88, 55 S.Ct. 629, 633, 79 L.Ed. 1314 (1935), the Supreme Court noted,

[The prosecutor] is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done.

Here, in contrast to the typical function of a prosecutor, the DIR is the very party to the dispute and its Legal Unit has displayed great zeal in carrying out its duty of advocacy. There is no doubt that is out to win this case, which has involved incendiary accusations (i.e., corruption) against the DIR.

Finally, another major factual distinction that renders Targets unpersuasive here is that the U.S. Attorney's Office had 75 lawyers, and it was undisputed that almost none of them had any connection to the investigation. Here, in contrast, the Legal Unit's entire, statewide legal staff has only 30 attorneys. Low contends that this is the 'hottest, most talked about case in the office.' Id. Who can doubt it? Two fired Workers Compensation judges claim there is office-wide corruption and take on the Presiding Judge. Any Legal Unit lawyer who didn't follow the course of the ensuing donnybrook surely would be a candidate for the see-no-evil, hear-no-evil, speak-no-evil annual award. Thus, while under the facts in Targets the result is sensible and sound, it would be naive and unrealistic to apply that court's view about large government agencies here.

Andric v. California, 55 F. Supp. 2d 1056, 1066 (C.D. Cal. 1999)

The U.S. v. Goot, 894 F.2d 231 (7th Cir. 1990), decision cited by the District Attorney's Office (at p. 5 of the Answer) is also distinguishable from the set of facts presented to this Court. Specifically, in Goot, "[B]oth the disqualified attorney and

others [in the office] affirmed the facts under oath." Id. At p. 236. Here, there are no affirmations offered by Chief Deputy District Attorney Sweetin, who prepared the rogue Opposition to the Writ of Habeas Corpus; no affirmation by Chief Deputy District Attorney Owens, who prepared the Answer to the Writ of Mandamus; no affirmation by Gloria Navarro; and no affirmation by "others in the office."

The Collier v. Legakes, 98 Nev. 307, 646 P.2d 1219 (1982), decision is similarly distinguishable (cited to p. 7 of the Answer). Collier was a consolidated case consisting of three instances of disqualification in three separate instances. In case one, Collier's request for disqualification was denied but only *after testimony was received at an evidentiary hearing;* in case two, Crews' request for disqualification was denied based upon affidavits submitted in both support and opposition to the request; in case three, Cardarelli, the district judge granted the motion to disqualify without holding an evidentiary hearing, which was held to be a failure to exercise discretion. As argued above, since the district judge refused to hold an evidentiary hearing in the instant matter, and no affidavits were submitted by the State, both Collier and Crews are distinguishable, and at best Cardarelli is the closest, since the denial was ordered by Judge Gates in that case without having conducted a hearing, which is the same process that he followed in this case and is admitted to by Respondent's in the Answer.

Finally, the Respondents argue that Petitioner is seeking disqualification only on the "extreme circumstance" of the "appearance of impropriety" when in fact that is not the case. Petitioner has presented evidence of not only the "appearance of impropriety" but also the failure to follow the Rules of Professional Responsibility which includes the failure to notify, failure to screen and/or timely screen and the failure to submit any evidence in support of any of their factual contentions about the screening process being in place.

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II.

CONCLUSION

WHEREFORE, based upon all of the above states reasons, Petitioner respectfully request this Honorable Court:

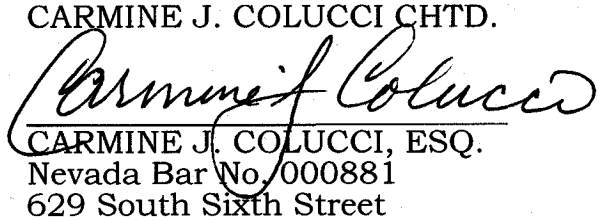
1. Grant Petitioner's Writ of Mandamus;

2. Disqualify the Clark County District Attorney's Office from this case; and

3. For such other relief as the court deems appropriate under the facts and circumstances of this matter.

DATED this 14th day of May, 2009.

CARMINE J. COLUCCI CHTD.



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CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 14th day of May, 2009, I deposited in the United States Mail at Las Vegas, Nevada, a true and correct copy of the foregoing SUPPLEMENTAL POINTS AND AUTHORITIES IN SUPPORT OF THE PETITIONER'S WRIT OF MANDAMUS enclosed in a sealed envelope upon which first class postage has been fully prepaid, addressed to:

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