

1 Kirstin Blaise Lobato 95558
2 Petitioner Pro Per
3 FMWCC
4 4370 Smiley Rd
5 Las Vegas, NV 89115-1808

6 EIGHTH JUDICIAL DISTRICT COURT
7 CLARK COUNTY, NEVADA

8 KIRSTIN BLAISE LOBATO,)
9)
10) Petitioner,)
11) CASE NO. C177394
12) vs.)
13) DEPT. NO. II
14)
15) WARDEN OF FMWCC,)
16) and THE STATE OF NEVADA,)
17)
18) Respondents.)
19 _____)

20 **SUPPLEMENT TO PETITIONER LOBATO'S MOTION FOR RECUSAL OF**
21 **JUDGE VALORIE VEGA**

22 Date of Hearing: _____

23 Time of Hearing: _____

24 COMES NOW Petitioner Kirstin Blaise Lobato, in *pro per*, and hereby submits the
25 attached SUPPLEMENT TO PETITIONER LOBATO'S MOTION FOR RECUSAL OF JUDGE
26 VALORIE VEGA.

27 This Supplement is made and based upon all the papers and pleadings on file herein, the
28 attached points and authorities in support hereof, and oral argument at the time of hearing, if
deemed necessary by the Court.

1 **POINTS AND AUTHORITIES**
2 **SUPPLEMENT TO PETITIONER LOBATO'S MOTION FOR RECUSAL OF JUDGE**
3 **VALORIE VEGA**

4 This Supplement that incorporates the attached Exhibit 1 details additional Grounds
5 supporting recusal of Judge Valorie Vega from the above entitled case, including but not limited to
6 the following five grounds.

7 1. Judge Vega conducted a proceeding on September 17, 2010, regarding three of the
8 Petitioner's motions that the Petitioner had not been notified by Judge Vega or the Court was going
9 to occur, the Petitioner had not been served with a copy of the State's Motion Judge Vega considered
10 during that proceeding and that she Granted, the Petitioner did not have any opportunity to object or
11 be heard regarding the State's Motion or otherwise be heard regarding the issues Judge Vega was
12 considering, and consequently Judge Vega's conduct of that proceeding violated the Petitioner's
13 fundamental due process rights to notice and opportunity to be heard before a neutral and detached
14 judge, *Hamdi v. Rumsfeld*, 124 S.Ct. 2633, 542 U.S. 507, 159 L.Ed.2d 578 (U.S. 06-28-2004). By
15 issuing her Order during the proceeding on September 17, 2010, to strike the Petitioner's three
16 motions and Granting the STATES MOTION TO STRIKE OR, IN THE ALTERNATIVE,
17 OPPOSITION TO IMPROPER MOTIONS FOR RECUSAL OF JUDGE VEGA, EXPEDITED
18 HEARING, AND EXTENSION OF TIME, AND ASSIGNMENT OF CIVIL CASE NUMBER,
19 Judge Vega acted contrary to and undermined the Petitioner's fundamental due process rights as
20 mandated by the United States Supreme Court in the *habeas corpus* case of *Hamdi v. Rumsfeld*, 124
21 S.Ct. 2633, 542 U.S. 507, 159 L.Ed.2d 578 (U.S. 06-28-2004):

22 "Due process requires a 'neutral and detached judge' .. For more than a century the
23 central meaning of procedural due process has been clear: 'Parties whose rights are
24 to be affected are entitled to be heard; and in order that they may enjoy that right
25 they must first be notified.' It is equally fundamental that the right to notice and an
26 opportunity to be heard 'must be granted at a meaningful time and in a meaningful
27 manner.' ... These essential constitutional promises may not be eroded." *Id.* at ¶75.

28 It is black letter law in the United States that the mere appearance of impropriety
disqualifies a judge from a case. The U.S. Supreme Court's ruled in *Concrete Pipe and Products*

1 *California v. Construction Laborers Pension Trust For Southern California*, 113 S. Ct. 2264 (U.S.
2 06-14-1993):

3 “Justice,” indeed, “must satisfy the appearance of justice, and **this stringent rule**
4 may sometimes bar trial by judges who have no actual bias and who would do their
5 very best to weigh the scales of justice equally between contending parties.” *Id.* at
¶53. (emphasis added to original)

6 In 2009 the U.S. Supreme Court reaffirmed the fundamental principle regarding recusal of a
7 judge that ‘justice must satisfy the appearance of justice,’ and that for the legal system to maintain
8 its legitimacy and protect a litigant’s constitutional rights “the Due Process Clause has been
9 implemented by objective standards that do not require proof of actual bias.” *Caperton et al v. A. T.*
10 *Massey Coal Co.*, 556 US. ___, No 08-22 (06-08-2009), at ¶65. The *Caperton* decision cited the
11 Supreme Court case of *In re Murchison*, in which the Court ruled regarding recusal of a judge, “...
12 our system of law has always endeavored to prevent even the probability of unfairness.” *In re*
13 *Murchison*, 349 U.S. 133, 136 (1955).

14 Judge Vega’s conduct underlying this new recusal Ground is documented on pages 17-24 in
15 the attached Exhibit 1 – Petitioner Lobato’s Notice of Motion And Motion For Reconsideration
16 And Vacating Of The Court’s Order Striking Three Motion’s By Petitioner, And Petitioner’s
17 Response To The State’s Motion To Strike Or, In The Alternative Opposition To Improper
18 Motions For Recusal Of Judge Vega, Expedited Hearing, And Extension Of Time, And
19 Assignment Of Civil Case Number). Judge Vega’s conduct depriving the Petitioner of her
20 fundamental due process rights of notice and opportunity to be heard provides evidence of her
21 actual bias against the Petitioner. Judge Vega’s conduct that “bum rushed” the Petitioner not only
22 mandates her recusal under the Due Process Clause of the federal constitution that requires “a
23 neutral and detached judge,” but her conduct constitutes a violation of at least the following rules
24 of The Revised Nevada Code of Judicial Conduct (RNCJC) that became effective January 19,
25 2010:

26 Rule 2.2. Impartiality and Fairness.

27 Rule 2.3. (A) and (B) Bias, Prejudice, and Harassment.

28 Rule 1.2. Promoting Confidence in the Judiciary.

1 Judge Vega's conduct in this recusal Ground individually, and cumulative with other
2 Grounds for Recusal in this Supplement (including Exhibit 1) and in PETITIONER LOBATO'S
3 MOTION FOR RECUSAL OF JUDGE VALORIE VEGA require Judge Vega's recusal under
4 RNCJC Rule 2.11. Disqualification.

5 (A) A judge shall disqualify himself or herself in any proceeding in which the
6 judge's impartiality might reasonably be questioned, including but not limited to the
7 following circumstances:

8 (1) The judge has a personal bias or prejudice concerning a party or a party's
9 lawyer,...

10 Furthermore, Judge Vega's recusal is required under Rule 2.11. Disqualification.
11 "Comment [1] Under this Rule, a judge is disqualified whenever the judge's impartiality might
12 reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1)
13 through (6) apply." (emphasis added to original)

14 2. Judge Vega conducted a proceeding on September 17, 2010, regarding three of the
15 Petitioner's motions that the Petitioner had not been notified by Judge Vega or the Court was going
16 to occur, the Petitioner had not been served with a copy of the State's Motion Judge Vega
17 considered during that proceeding and that she Granted, the Petitioner did not have any opportunity
18 to object or be heard regarding the State's Motion or otherwise be heard regarding the issues Judge
19 Vega was considering, and consequently Judge Vega's conduct of that proceeding violated at least
20 seven (7) rules of The Revised Nevada Code of Judicial Conduct (ADKT 427). Those are
21 documented in the attached Exhibit 1 on pages 17-24.

22 Judge Vega's violation of Rule 2.9 (A). Ex Parte Communications. is documented in the
23 attached Exhibit 1 on pages 20-21.

24 Judge Vega's violation of Rule 2.6. (A) Ensuring the Right to Be Heard. is documented in
25 the attached Exhibit 1 on page 21.

26 Judge Vega's violation of Rule 2.2. Impartiality and Fairness. is documented in the attached
27 Exhibit 1 on page 21.

28 Judge Vega's violation of Rule 2.3. (A) and (B) Bias, Prejudice, and Harassment. is
documented in the attached Exhibit 1 on page 21-22.

1 Judge Vega's violation of Rule 2.4. (B) and (C) External Influences on Judicial Conduct. is
2 documented in the attached Exhibit 1 on page 22-23.

3 Judge Vega's violation of Rule 1.2. Promoting Confidence in the Judiciary. is documented
4 in the attached Exhibit 1 on page 23.

5 Judge Vega's violation of Rule 2.11. Disqualification. is documented in the attached
6 Exhibit 1 on page 23-24.

7 Judge Vega's conduct in this recusal Ground individually, and cumulative with other
8 Grounds for Recusal in this Supplement (including Exhibit 1) and in PETITIONER LOBATO'S
9 MOTION FOR RECUSAL OF JUDGE VALORIE VEGA require Judge Vega's recusal under
10 RNCJC Rule 2.11. Disqualification.

11 (A) A judge shall disqualify himself or herself in any proceeding in which the
12 judge's impartiality might reasonably be questioned, including but not limited to the
following circumstances:

13 (1) The judge has a personal bias or prejudice concerning a party or a party's
14 lawyer,... (emphasis added to original)

15 Furthermore, Judge Vega's recusal is required under Rule 2.11. Disqualification.
16 "Comment [1] Under this Rule, a judge is disqualified whenever the judge's impartiality might
17 reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1)
18 through (6) apply." (emphasis added to original)

19 **3.** Judge Vega's misstating of EDCR 7.42(a) in her Minutes ruling of September 17, 2010,
20 provided a justification for her to strike the Petitioner's three motions, by substituting the words
21 "by the Defendant herself" for the rules actual wording of "signed by the party," thereby creating
22 the appearance she attempted to circumvent the Petitioner's General Power of Attorney dated
23 October 18, 2009, and the Nevada Supreme Court's precedent in *Maynard v. Mercer*, 10 Nev. 33
24 (1875) that was restated in *Seigworth v. State*, 91 Nev. 536, P.2d 464 (Nev. 8-26-1975) that
25 mandate "The act done by the agent being within the scope of his authority was binding upon his
26 principal." (*Maynard*, 10 Nev. at 36); and, "The extent of a power of attorney must be determined
27 by the language employed in the document aided by the situation of the parties and surrounding
28 circumstances." *Seigworth*, 91 Nev. at 538. The above conduct by Judge Vega is documented in

1 the attached Exhibit 1 on pages 2-8 and 17-20.

2 Furthermore Judge Vega's above described conduct on September 17, 2010, regarding
3 EDCR 7.42(a) attempted to undermine the Petitioner's General Power of Attorney dated October
4 18, 2009, and it is assignment of authority under the Contract Clause of the U.S. Constitution.

5 Judge Vega's conduct underlying this new recusal Ground is documented in the attached
6 Exhibit 1 on pages 2-8 and 17-20. That conduct constitutes a violation of the following rules of The
7 Revised Nevada Code of Judicial Conduct (RNCJC) that became effective January 19, 2010:

8 Rule 2.2. Impartiality and Fairness.

9 Rule 2.3. (A) and (B) Bias, Prejudice, and Harassment.

10 Rule 1.2. Promoting Confidence in the Judiciary.

11 Judge Vega's conduct in this recusal Ground individually, and cumulative with other
12 Grounds for Recusal in this Supplement (including Exhibit 1) and in the PETITIONER
13 LOBATO'S MOTION FOR RECUSAL OF JUDGE VALORIE VEGA require Judge Vega's
14 recusal under RNCJC Rule 2.11. Disqualification.

15 (A) A judge shall disqualify himself or herself in any proceeding in which the
16 judge's impartiality might reasonably be questioned, including but not limited to the
following circumstances:

17 (1) The judge has a personal bias or prejudice concerning a party or a party's
18 lawyer,... (emphasis added to original)

19 Furthermore, Judge Vega's recusal is required under the federal constitution's Due Process
20 Clause ("Due process requires a 'neutral and detached judge,'" *Hamdi v. Rumsfeld*, 542 U.S. 507 *Id.*
21 at ¶75.), and RNCJC Rule 2.11. Disqualification. "Comment [1] Under this Rule, a judge is
22 disqualified whenever the judge's impartiality might reasonably be questioned, regardless of
23 whether any of the specific provisions of paragraphs (A)(1) through (6) apply." (emphasis added to
24 original)

25 **4.** Judge Vega conducted a proceeding on September 17, 2010, regarding three of the
26 Petitioner's motions that the Petitioner had not been notified by Judge Vega or the Court was going
27 to occur, the Petitioner had not been served with a copy of the State's Motion Judge Vega
28 considered during that proceeding and that she Granted, the Petitioner did not have any opportunity

1 to object or be heard regarding the State’s Motion or otherwise be heard regarding the issues Judge
2 Vega was considering, and Judge Vega’s conduct during and that preceded that proceeding creates
3 the appearance she colluded with the Clark County District Attorney’s Office to grant the State’s
4 Motion to strike the Petitioner’s three motions. It is stated on page 19 of the attached Exhibit 1:

5 The Petitioner has been informed by Ms. Ravell that she was informed by Judge
6 Vega’s clerk on September 13, 2010, that she wasn’t going to sign the Order to
7 transport the Petitioner to the hearing that had been scheduled for September 21,
8 2010, and that instead the judge was going to decide the Petitioner’s three motions
9 in chambers on July 17, 2001. The State’s Motion to strike or in the alternative
10 opposing the Petitioner’s three motions was filed the next day, on September 14,
2010. The State filed a Supplemental Motion on September 16, 2010. The
Petitioner, an incarcerated *pro per* petitioner, was not informed by Judge Vega that
she had cancelled the hearing scheduled for September 21, 2010. (Exhibit 1, 19)

11 Judge Vega describes in her Minutes Order of September 17, 2010, that on September 13
12 “This Court then placed the three pro per motions on this chamber’s calendar in order to sua sponte
13 strike...” Then magically, the next day, September 14, 2010, the State filed the STATES MOTION
14 TO STRIKE OR, IN THE ALTERNATIVE, OPPOSITION TO IMPROPER MOTIONS FOR
15 RECUSAL OF JUDGE VEGA, EXPEDITED HEARING, AND EXTENSION OF TIME, AND
16 ASSIGNMENT OF CIVIL CASE NUMBER. The filing of the State’s Motion to strike
17 conveniently allowed Judge Vega to grant that motion to strike consistent with her decision a day
18 earlier to strike the Petitioner’s three motions. Since it is known that on September 13, 2010, Judge
19 Vega’s clerk contacted Ms. Ravell, who the Petitioner has authorized to act on her behalf by the
20 General Power of Attorney dated October 18, 2009, then it is reasonable to assume that she also
21 contacted on the same day the Clark County District Attorney’s Office and relayed the information
22 that Judge Vega intended to strike the Petitioner’s three motions that had been scheduled for a
23 public hearing on September 21, 2010. Thus the “coincidence” that the next day the Clark County
24 District Attorney’s Office conveniently filed the “STATES MOTION TO STRIKE” that Judge
25 Vega in fact Granted during the proceeding on September 17, 2010.

26 It is black letter law in the United States that the mere appearance of impropriety
27 disqualifies a judge from a case. The U.S. Supreme Court’s ruled in *Concrete Pipe and Products*
28 *California v. Construction Laborers Pension Trust For Southern California*, 113 S. Ct. 2264 (U.S.

1 06-14-1993):

2 “Justice,” indeed, “must satisfy the appearance of justice, and **this stringent rule**
3 may sometimes bar trial by judges who have no actual bias and who would do their
4 very best to weigh the scales of justice equally between contending parties.” *Id.* at
¶53. (emphasis added to original)

5 In 2009 the U.S. Supreme Court reaffirmed the fundamental principle regarding recusal of a
6 judge that ‘justice must satisfy the appearance of justice,’ and that for the legal system to maintain
7 its legitimacy and protect a litigant’s constitutional rights, “the Due Process Clause has been
8 implemented by objective standards that do not require proof of actual bias.” *Caperton et al v. A. T.*
9 *Massey Coal Co.*, 129 S.Ct. 2252, 173 L.Ed.2d 1208, 556 US. ____, (2009), at ¶65. The *Caperton*
10 decision cited the Supreme Court case of *In re Murchison*, in which the Court ruled regarding
11 recusal of a judge, “... our system of law has always endeavored to prevent even the probability of
12 unfairness.” *In re Murchison*, 349 U.S. 133, 136 (1955).

13 That the Clark County District Attorney’s Office filed a motion to strike the Petitioner’s
14 motions a day after Judge Vega decided to strike the Petitioner’s three motions was very
15 convenient for Judge Vega and creates the “appearance of injustice” that it wasn’t a coincidence
16 that the DA’s Office filed the motion to strike – but did so specifically for the convenience of
17 Judge Vega to Grant that motion. Of course, the “injustice” of what reasonably appears to have
18 been collusion between Judge Vega and the DA’s Office is magnified by the fact that the Petitioner
19 was not served with the State’s motion to strike and had no opportunity to respond to it prior to
20 Judge Vega granting it on September 17, 2010, during the proceeding that the Petitioner had not
21 even been notified would take place. The U.S. Supreme Court held in the *habeas corpus* case of
22 *Hamdi v. Rumsfeld*, 124 S.Ct. 2633, 542 U.S. 507, 159 L.Ed.2d 578 (U.S. 06-28-2004):

23 “Due process requires a ‘neutral and detached judge’ .. For more than a century the
24 central meaning of procedural due process has been clear: ‘Parties whose rights are
25 to be affected are entitled to be heard; and in order that they may enjoy that right
26 they must first be notified.’ It is equally fundamental that the right to notice and an
27 opportunity to be heard ‘must be granted at a meaningful time and in a meaningful
28 manner.’ ... **These essential constitutional promises may not be eroded.**” *Id.* at
¶75. (emphasis added to original)

Judge Vega’s conduct underlying this new recusal Ground is documented in the attached

1 Exhibit 1 on pages 17-20, esp. 19, and in Exhibit 2 thereto (Judge Vega’s Minutes Order of
2 September 17, 2010.) Judge Vega’s conduct creates the appearance of her active collusion with the
3 Clark County District Attorney’s Office and that she is actually biased against the Petitioner. Judge
4 Vega’s conduct and the appearance of her conduct not only mandates her recusal under the Due
5 Process Clause of the federal constitution that requires a “neutral and detached judge,” but her
6 conduct constitutes a violation of at least the following rules of The Revised Nevada Code of
7 Judicial Conduct (RNCJC) that became effective January 19, 2010:

8 Rule 2.2. Impartiality and Fairness.

9 Rule 2.3. (A) and (B) Bias, Prejudice, and Harassment.

10 Rule 1.2. Promoting Confidence in the Judiciary.

11 Judge Vega’s conduct in this recusal Ground individually, and cumulative with other
12 Grounds for Recusal in this Supplement (including Exhibit 1) and in the PETITIONER
13 LOBATO’S MOTION FOR RECUSAL OF JUDGE VALORIE VEGA require Judge Vega’s
14 recusal under RNCJC Rule 2.11. Disqualification.

15 (A) A judge shall disqualify himself or herself in any proceeding in which the
16 judge’s impartiality might reasonably be questioned, including but not limited to the
following circumstances:

17 (1) The judge has a personal bias or prejudice concerning a party or a party’s
18 lawyer,... (emphasis added to original)

19 Furthermore, Judge Vega’s recusal is required under Rule 2.11. Disqualification.
20 “Comment [1] Under this Rule, a judge is disqualified whenever the judge’s impartiality might
21 reasonably be questioned, regardless of whether any of the specific provisions of paragraphs (A)(1)
22 through (6) apply.” (emphasis added to original)

23 5. Judge Vega’s recusal is required because she is ethically and legally required by the
24 Revised Nevada Code of Judicial Conduct (ADKT 427) Rules 2.15(B) and (D) to report to the
25 Nevada Bar Association the dishonest and unethical conduct by Tyler D. Smith in the STATES
26 MOTION TO STRIKE OR, IN THE ALTERNATIVE, OPPOSITION TO IMPROPER MOTIONS
27 FOR RECUSAL OF JUDGE VEGA, EXPEDITED HEARING, AND EXTENSION OF TIME,
28 AND ASSIGNMENT OF CIVIL CASE NUMBER filed with the Clark County District Court

1 Clerk on September 14, 2010. In that motion Mr. Smith makes at least five false statements that
2 Ms. Ravell drafted or prepared documents for the Petitioner submitted for filing by the Court Clerk
3 without even attempting to provide an offer of proof (STATES MOTION OF STRIKE, 3 line 18-
4 19, 3 fn 1, 5 line 11, 6 fn 2, 7 line 10-11), and Mr. Smith twice makes false statements that Ms.
5 Ravell signed the Petitioner's petition for writ of *habeas corpus*, which is provably false by looking
6 at pages 7 and 8 of that document (STATES MOTION OF STRIKE, 3 fn 1, 7 line 10-11). Mr.
7 Smith's seven dishonest statements to the Court (and Judge Vega) in the State's motion are
8 material because they were intended to provide justification for Judge Vega to grant the State's
9 motion, when telling the truth would have lessened the basis for Judge Vega to have legitimately
10 had reason to do so.

11 The Nevada Rules Of Professional Conduct (Amendments Through February 1, 2010)
12 regulate the conduct of attorney's in Nevada. It states in Rule 8.4. Misconduct. It is professional
13 misconduct for a lawyer to:

- 14 (a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist
15 or induce another to do so, or do so through the acts of another;
16 (b) Commit a criminal act that reflects adversely on the lawyer's honesty,
17 trustworthiness or fitness as a lawyer in other respects;
18 (c) **Engage in conduct involving dishonesty, fraud, deceit or misrepresentation;**
19 (d) **Engage in conduct that is prejudicial to the administration of justice;**
(emphasis added to original)

20 The Petitioner believes that Mr. Smith's dishonest and deceitful conduct misrepresented the
21 truth and was prejudicial to the administration of justice, and thus violated Rules 8.4(c) and (d).

22 Revised Nevada Code of Judicial Conduct (ADKT 427) Rule 2.15(B) and (D) state:

23 Rule 2.15. Responding to Judicial and Lawyer Misconduct.

24 (B) A judge having knowledge that a lawyer has committed a violation of the
25 Nevada Rules of Professional Conduct that raises a substantial question regarding
26 the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects shall
27 inform the appropriate authority.

28 ...

(D) A judge who receives information indicating a substantial likelihood that a
lawyer has committed a violation of the Nevada Rules of Professional Conduct shall
take appropriate action. (emphasis added to original)

1 Mr. Smith's documented conduct goes far beyond "a substantial likelihood" he committed
2 violations of the Nevada Rules of Professional Conduct Rules 8.4(c) and (d). Consequently, Judge
3 Vega is mandated by Revised Nevada Code of Judicial Conduct Rule 2.15(B) and (D) that she
4 "shall inform the appropriate authority" about Mr. Smith's unprofessional conduct in the State's
5 motion to strike filed in the Petitioner's *habeas corpus* case. Judge Vega is a material witness who
6 has personal knowledge of the facts involving Mr. Smith's documented dishonest conduct, and she
7 will be a witness in subsequent proceedings involving Mr. Smith's conduct in the Petitioner's
8 *habeas corpus* case. RNCJC states in Rule 2.11. Disqualification.

9 (A) A judge shall disqualify himself or herself in any proceeding in which the
10 judge's impartiality might reasonably be questioned, including but not limited to the
11 following circumstances:

12 (1) The judge has a personal bias or prejudice concerning a party or a party's
13 lawyer, or personal knowledge of facts that are in dispute in the proceeding.
(emphasis added to original)

14 Judge Vega is a material witness with "personal knowledge of facts" at the heart of Mr.
15 Smith's dishonest conduct before the Court. Consequently, she is disqualified from presiding over
16 the Petitioner's *habeas corpus* case.

17 Conclusion

18 1. Judge Vega conducted a proceeding on September 17, 2010, that violated the Petitioner's
19 fundamental due process rights of notice and opportunity to be heard, and her conduct creates the
20 appearance of injustice and that she is actually biased against the Petitioner, and thus she does not
21 meet the constitutional requirement of "a neutral and detached judge." Consequently, Judge Vega's
22 recusal is mandated by the Due Process Clause of the federal constitution and her violations of the
23 Revised Nevada Code of Judicial Conduct documented in new recusal Ground 1.

24 2. Judge Vega conducted a proceeding on September 17, 2010, that the Petitioner had not
25 been provided notice would occur, the Petitioner had not been served with a copy of the State's
26 Motion Judge Vega considered during that proceeding and that she Granted, the Petitioner did not
27 have any opportunity to object or be heard regarding the State's Motion or otherwise be heard
28 regarding the issues Judge Vega was considering. Consequently Judge Vega's recusal is required

1 by her conduct that violated at least seven (7) rules of The Revised Nevada Code of Judicial
2 Conduct documented in new recusal Ground 2.

3 3. Judge Vega's misstatement of EDCR 7.42(a) in her Minutes ruling of September 17,
4 2010, provided justification for her to strike the Petitioner's three motions by making it appear that
5 the Petitioner's General Power of Attorney dated October 18, 2009, does not bestow the authority
6 that it does under Nevada Supreme Court's precedent and the Contract Clause of the U.S.
7 Constitution. Consequently Judge Vega's recusal is mandated by the federal constitution's Due
8 Process Clause and required by her violation of at least three (3) rules of The Revised Nevada
9 Code of Judicial Conduct documented in new recusal Ground 3.

10 4. Judge Vega conduct of deciding on September 13, 2010, to strike three motions by the
11 Petitioner, and having her clerk notify the Petitioner's attorney-in-fact Michelle Ravell and the
12 Clark County District Attorney's Office that the scheduled public hearing of September 21, 2010,
13 was being rescheduled to a chambers proceeding on September 17, 2010, and the Clark County
14 District Attorney's Office filing a motion the next day on September 14, 2010, to strike the
15 Petitioner's three motions that Judge Vega Granted on September 17, 2010, creates the appearance
16 of collusion between Judge Vega and the Clark County District Attorney's Office that they made
17 their motion to strike "to order" for her to sign. Consequently, Judge Vega's recusal is mandated
18 under the Due Process Clause of the federal constitution and her conduct that violated at least three
19 (3) rules of The Revised Nevada Code of Judicial Conduct is documented in new recusal Ground 4.

20 5. Judge Vega's is a material witness to Tyler D. Smith's dishonest and unethical conduct in
21 the STATES MOTION OF STRIKE that Judge Vega granted on September 17, 2010, and she is
22 mandated by the Revised Nevada Code of Judicial Conduct to report Mr. Smith's conduct to the
23 Nevada Bar Association, and as a material witness for any subsequent proceedings her recusal is
24 mandated by the Revised Nevada Code of Judicial Conduct as documented in new recusal Ground 4.

25 It will obliterate any appearance of justice, deprive the Petitioner of her due process right to
26 "a neutral and detached judge," and violate numerous rules of the Revised Nevada Code of Judicial
27 Conduct for Judge Vega to preside over the Petitioner's civil writ of *habeas corpus* case.
28 Consequently, Judge Vega must be recused from the Petitioner's writ of *habeas corpus* case.

Dated this 28 day of September 2010.

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~~Kirstin Blaise Lobato~~ 95558
Kirstin Blaise Lobato 95558
Petitioner Pro Per
FMWCC
4370 Smiley Rd
Las Vegas, NV 89115-1808

EXHIBIT

1

1 Kirstin Blaise Lobato 95558
2 Petitioner Pro Per
3 FMWCC
4 4370 Smiley Rd
5 Las Vegas, NV 89115-1808

6 EIGHTH JUDICIAL DISTRICT COURT
7 CLARK COUNTY, NEVADA

8 KIRSTIN BLAISE LOBATO,)
9)
10) Petitioner,)
11) CASE NO. C177394
12) vs.)
13) DEPT. NO. II
14)
15) WARDEN OF FMWCC,)
16) and THE STATE OF NEVADA,)
17)
18) Respondents.)
19)

20 **PETITIONER LOBATO’S NOTICE OF MOTION AND MOTION FOR**
21 **RECONSIDERATION AND VACATING OF THE COURT’S ORDER STRIKING THREE**
22 **MOTION’S BY PETITIONER, AND PETITIONER’S RESPONSE TO THE STATE’S**
23 **MOTION TO STRIKE OR, IN THE ALTERNATIVE, OPPOSITION TO IMPROPER**
24 **MOTIONS FOR RECUSAL OF JUDGE VEGA, EXPEDITED HEARING, AND**
25 **EXTENSION OF TIME, AND ASSIGNMENT OF CIVIL CASE NUMBER.**

26 Date of Hearing: _____

27 Time of Hearing: _____

28 COMES NOW Petitioner Kirstin Blaise Lobato, in *pro per*, and hereby submits the
attached PETITIONER’S MOTION FOR RECONSIDERATION OF THE COURT’S ORDER
STRIKING THREE MOTIONS BY PETITIONER, AND PETITIONER’S OPPOSITION TO
THE STATES MOTION TO STRIKE OR, IN THE ALTERNATIVE OPPOSITION TO
IMPROPER MOTIONS.

This Motion and Response is made and based upon all the papers and pleadings on file
herein, the attached points and authorities in support hereof in response the State’s Response, and
oral argument at the time of hearing, if deemed necessary by the Court.

1 Because the Court on September 17, 2010, had available for consideration the STATES
2 MOTION TO STRIKE OR, IN THE ALTERNATIVE, OPPOSITION TO IMPROPER MOTIONS
3 FOR RECUSAL OF JUDGE VEGA, EXPEDITED HEARING, AND EXTENSION OF TIME,
4 AND ASSIGNMENT OF CIVIL CASE NUMBER and in fact on September 17, 2010, granted the
5 State's Motion prior to the Petitioner even being served with the State's Motion, she is combining
6 her Motion for Reconsideration of the Court's action in striking the Petitioner's three motions with
7 her opposition to the State's above entitled motion.

8 **POINTS AND AUTHORITIES**

9 **PETITIONER'S OPPOSITION TO THE STATES MOTION TO STRIKE OR, IN THE**
10 **ALTERNATIVE OPPOSITION TO IMPROPER MOTIONS**

11 Anyone who wonders how the Petitioner was convicted of committing crimes against
12 Duran Bailey in Las Vegas when at the time those events occurred she was in fact 170 miles north
13 in Panaca, need only read the STATES MOTION TO STRIKE OR, IN THE ALTERNATIVE,
14 OPPOSITION TO IMPROPER MOTIONS FOR RECUSAL OF JUDGE VEGA, EXPEDITED
15 HEARING, AND EXTENSION OF TIME, AND ASSIGNMENT OF CIVIL CASE NUMBER
16 (hereinafter refereed to as State's Motion).

17 The author of that Motion, who identifies himself as Tyler D. Smith, Deputized Law Clerk,
18 asserts without any evidence that Michelle Ravell has drafted legal documents for the Petitioner and
19 is practicing law without a license. Anyone gullible enough to accept Mr. Smith's claims at face
20 value without inquiring what his factual basis is can be hoodwinked. That is exactly what Detective
21 Thomas Thowsen did when he received a telephone call from Laura Johnson who relayed third-hand
22 information that didn't match the details of Duran Bailey's murder, but that didn't stop Detective
23 Thowsen from making the hasty snap judgment the Petitioner murdered Mr. Bailey before he had
24 made any attempt to discover relevant facts that actually excludes the Petitioner from the crime.

25 **Regarding Argument I of the State's Motion**

26 Ms. Ravell has not prepared any document related to the Petitioner's Petition For Writ Of
27 Habeas Corpus submitted to the Court Clerk for filing. Consequently, Tyler Smith is misstating the
28 truth to the Court every time he asserts in the State's Motion that Ms. Ravell has prepared those

1 documents, and he is further misstating the truth every time he asserts that Ms. Ravell is practicing
2 law without a license. Instead of taking the time to learn the very mundane truth, Mr. Smith chose
3 to make sensational and unfounded accusations in the State's Motion, while ignoring and
4 misstating the actual important and critical issues that are the subject of the Petitioner's three
5 Motions filed by the Clerk of the Court on September 7, 2010.

6 The Petitioner, Kirstin Blaise Lobato, signed a General Power of Attorney on October 18,
7 2009, that appointed Ms. Ravell as her attorney-in-fact. A copy is attached as Exhibit 1. A copy of
8 that General Power of Attorney is also attached to Exhibits 94 and 95 of the Petitioner's Petition
9 For Writ Of Habeas Corpus filed by the court clerk on May 5, 2010, which makes that General
10 Power of Attorney a matter of public record. As the Petitioner's duly appointed attorney-in-fact
11 Ms. Ravell performs administrative functions that the Petitioner's incarceration makes very
12 difficult if not impossible for her to perform for herself.

13 Ms. Ravell's legal authority to act on behalf of the Petitioner is very broad and inclusive
14 under the General Power of Attorney that states in part:

15 **My Agent shall have full power and authority to act on my behalf. This**
16 **power and authority shall authorize my Agent to manage and conduct all of my**
17 **affairs and to exercise all of my legal rights and powers**, including all rights and
18 powers that I may acquire in the future. **My Agent's powers shall include**, but not
19 be limited to, the power to:

18 5. Enter into binding contracts on my behalf.

19 10. **Prepare, sign, and file documents with any governmental body or**
20 **agency**, including, but not limited to, authorization to:

21 a. **Prepare, sign and file income and other tax returns with federal, state,**
22 **local, and other governmental bodies.**

23 b. **Obtain information or documents from any government or its agencies,**
24 and negotiate, compromise, or settle any matter with such government or agency
25 (including tax matters).

26 c. Prepare applications, provide information, and perform any other act
27 reasonably requested by any government or its agencies in connection with
28 governmental benefits (including military and social security benefits). (emphasis
added to original)

29 Since 1875 it has been black letter law in Nevada that the extent of a power of attorney is
30 determined by the language employed in the document. *Maynard v. Mercer*, 10 Nev. 33 (1875). In
31 *Maynard* the Court ruled that the attorney-in-fact was authorized to do something even though it

1 wasn't specified in the General Power of Attorney because, "There was no restriction to any
2 specific kind of business or species of property, **nor any limit of power.**" (*Id.* at 35) And, "**The act**
3 **done by the agent being within the scope of his authority was binding upon his principal.**" (*Id.*
4 at 36) (emphasis added to original) Similarly, the Petitioner's General Power of Attorney
5 authorizes Ms. Ravell to "have full power and authority to act on my behalf."

6 The principle of *Maynard* was restated by the Nevada Supreme Court in 1975 in the case of
7 *Seigworth v. State*, 91 Nev. 536, P.2d 464 (Nev. 8-26-1975), "The extent of a power of attorney
8 must be determined by the language employed in the document aided by the situation of the parties
9 and surrounding circumstances." *Seigworth*, 10 Nev. at 538. One of the parties involved in both the
10 *Maynard* and *Seigworth* case was designated as a true and lawful "attorney-in-fact." *Maynard*, 10
11 Nev. at *Id.* at 34, and *Seigworth*, 10 Nev. at 537, 539.

12 The Nevada Supreme Court has twice stated with no qualifications whatsoever, first in
13 1875 and then in 1975, that the authority of a person empowered by a "power of attorney must be
14 determined by the language employed in the document." There is no question that based on Nevada
15 Supreme Court precedent the Petitioner authorizes that without any limitation whatsoever Ms.
16 Ravell "**shall have full power and authority to act on my behalf. This power and authority**
17 **shall authorize my Agent to manage and conduct all of my affairs and to exercise all of my**
18 **legal rights and powers.**" There can be no question that under Nevada law Ms. Ravell's authority
19 includes the specific power to: "10. **Prepare, sign, and file documents with any governmental**
20 **body or agency ...**" and that includes the Internal Revenue Service. (10.(a.) "Prepare, sign and file
21 income and other tax returns with federal, state, local, and other governmental bodies."))

22 There is no question under the Nevada Supreme Court's precedents in the *Maynard* and
23 *Seigworth* cases that the Petitioner's General Power of Attorney legally authorizes Ms. Ravell to sign
24 **any** document the same as if the Petitioner herself had signed the document, and that the Petitioner is
25 legally bound by Ms. Ravell's signature when she signs a document "Kirstin Lobato, by Michelle
26 Ravell, Attorney in Fact," or "Kirstin Blaise Lobato, by Michelle Ravell, Attorney in Fact."

27 Ms. Ravell is duly empowered by precedents of the Nevada Supreme Court that she "**shall**
28 **have full power and authority to act on [the Petitioner's] behalf**" by signing any document, and

1 that includes her specific power under the General Power of Attorney to sign the Petitioner's name to
2 any sort of local, state or federal tax return, to sign her name to a binding contract, and to sign her
3 name and file documents "**with any governmental body or agency.**" When Ms. Ravell signs any
4 document it is the legal equivalent of the Petitioner signing that document. It isn't the Petitioner
5 saying that Ms. Ravell has the powers to act on the Petitioner's behalf, it is the Nevada Supreme
6 Court in their *Maynard* and *Seigworth* rulings. Those rulings implicitly recognize the General Power
7 of Attorney of October 18, 2009, creates a contractual relationship between the Petitioner and Ms.
8 Ravell, and that contract is protected from impairment by any state law by the U.S. Constitution's
9 Contract Clause. See, *Energy Reserves Group v. Kansas Power & Light Co.*, 103 S. Ct. 697, 459
10 U.S. 400, 411-413 (U.S. 01/24/1983) (That sets out a three part test for impairment of a contract by a
11 non-federal law.) The Petitioner's General Power of Attorney is even more insulated from
12 impairment because the Petitioner's due process rights are implicated because of her imprisonment.

13 Exercising her lawful authority, at the Petitioner's direction Ms. Ravell signed three Motions
14 as her duly empowered attorney-in-fact that were submitted to the Court Clerk, and filed on
15 September 7, 2010. Those are the Motion's the State filed a Motion to strike or in the alternative to
16 oppose, which Judge Vega granted in her Minutes on September 17, 2010. (See attached Exhibit 2.)

17 Mr. Smith need not have looked to Ohio and New York for cases regarding Ms. Ravell's
18 duly authorized signing of the Petitioner's three motions, because he need not have looked any
19 further than the Nevada Supreme Court's *Maynard* and *Seigworth* rulings that are the controlling
20 authority for determining Ms. Ravell's legal authority under the General Power of Attorney signed
21 on October 18, 2009, two copies of which are attached to the Petitioner's writ of *habeas corpus*.
22 The *Maynard* and *Seigworth* rulings recognized the principle that has the force of law in Nevada
23 that the words of a power of attorney document dictate the authority of an attorney-in-fact to act,
24 and thus any document has the same legal force and effect as if signed by the Petitioner, when it is
25 signed "Kirstin Lobato, by Michelle Ravell, Attorney in Fact."

26 Mr. Smith has not presented any evidence that Ms. Ravell has engaged in any activity that
27 can even by the most remote stretch of the wildest imagination by construed as not authorized by
28 the Petitioner's General Power of Attorney dated October 18, 2009. Ms. Ravell has only engaged

1 in duly authorized activities on the Petitioner’s behalf that are as legal for her to do as breathing
2 under the U.S. Constitution’s Contract Clause and the Nevada Supreme Court’s *Maynard* and
3 *Seigworth* rulings.

4 Mr. Smith does not cite a single authority in the State’s Motion that when Ms. Ravell signs
5 ANY document as she signed the three Motions that were submitted to the Clerk of the Court and
6 filed by the Clerk on September 7, 2010, that it is not the same legally as if the Petitioner herself
7 had signed it, and that it has the same legal force and effect. In fact, the authority for an attorney-at-
8 law to act on a client’s behalf and sign and file documents is based on a very limited power of
9 attorney, while in the General Power of Attorney dated October 18, 2009, the Petitioner authorized
10 that Ms. Ravell “shall have full power and authority to act on my behalf. This power and authority
11 shall authorize my Agent to manage and conduct all of my affairs and to exercise all of my legal
12 rights and powers, ...”

13 Mr. Smith attempts in the State’s Motion to conflate and treat two different legal
14 relationships – attorney-in-fact and attorney-at-law – as if they are the same. Consequently Mr.
15 Smith is deceptively misstating the truth every time he states, suggests, or intimates that Ms. Ravell
16 is acting as the Petitioner’s attorney-at-law – because he knows as the self-identified author of the
17 State’s Response to the Petitioner’s writ of *habeas corpus* that the Petitioner’s General Power of
18 Attorney dated October 18, 2009, is included in Exhibits 94 and 95 and that it empower Ms. Ravell
19 to lawfully act on the Petitioner’s behalf as her attorney-in-fact.

20 Consequently, Mr. Smith’s numerous assertions – “The motions currently before the court
21 have not been properly filed and must be stricken as fugitive documents.” (State’s Motion, 3), “All
22 documents prepared and signed by Ms. Rave11 are the result of the unauthorized practice of law
23 and should be stricken.” *Id.* at 5, “The documents she has filed are fugitive documents, and they
24 must be stricken.” *Id.* at 5 – are false and have no basis in fact or law. Mr. Smith’s additional false
25 statements in footnote 1 on page 3, footnote 1 on page 6, and on page 7 lines 10-12 that the
26 Petitioner has drafted documents and signed the writ of *habeas corpus* have no factual basis and
27 are figments of his imagination. As stated previously, Ms. Ravell has not drafted any document
28 related to the Petitioner’s writ of *habeas corpus* filed by the court clerk. Furthermore, the

1 Petitioner's signature is plain as day on pages 7 and 8 of her writ of *habeas corpus*, so Mr. Smith's
2 multiple statements (page 3 footnote 1 and page 7 lines 10-12) that Ms. Ravell signed it are
3 obviously false.

4 Mr. Smith's looseness with the truth is also evidenced by the fact that he lists a number next
5 to the Petitioner's name in the caption on page one that is not her Nevada DOC identification
6 number. Mr. Smith doesn't even care about telling the truth about that. As an officer of the court
7 Mr. Smith is obligated to be truthful with the court, but as evidenced by the State's Motion he does
8 not take that obligation seriously.

9 Ms. Ravell has not prepared any documents filed with the Court, and she exercised her
10 lawful authority under the General Power of Attorney dated October 18, 2009, at the Petitioner's
11 direction to sign the three Motions filed by the Court Clerk on September 7, 2010. There is nothing
12 in EJDRCR 7.42(a) that alters or otherwise interferes with the constitutionally protected contractual
13 relationship created by the General Power of Attorney signed on October 18, 2009, and that
14 establishes it is legally indistinguishable when the Petitioner signs a document as when Ms. Ravell
15 signs a document on her behalf as her attorney-in-fact. The State's Motion is completely silent
16 about that, and that silence constitutes confessed error. That silence is consistent with the fact that
17 the State would have to argue that the federal constitution's Contract Clause and the precedents of
18 the *Maynard* and *Seigworth* cases are invalid that the authority of an attorney-in-fact is derived
19 from the powers bestowed by the power of attorney document, and that those lawful powers are to
20 be interpreted in light of the words of the document. See *Maynard v. Mercer*, 10 Nev. at 35-6, and
21 *Seigworth v. State*, 91 Nev. at 538.

22 Furthermore, the Petitioner's three Motions were served by the Court Clerk, and it is known
23 that Judge Vega was "served" with copies because she states in her ruling in the Minutes of
24 September 17, 2010, "That upon reviewing them, this Court learned and observed ..." (See
25 attached Exhibit 2.) Consequently, Mr. Smith's assertion that the Motions weren't served on Judge
26 Vega (State's Motion, 5) – fails from the words of Judge Vega herself.

27 There is no basis in fact or law for the Petitioner's three motions filed by the Court Clerk on
28 September 7, 2010 to have been stricken and the State's Motion doesn't set forth any valid basis

1 for the striking of those three motions. Consequently, Judge Vega should reconsider and vacate her
2 ruling of September 17, 2010, striking those three motions.

3 **Regarding Argument II of the State's Motion**

4 Regarding the State's opposition to PETITIONER LOBATO'S NOTICE OF MOTION
5 AND MOTION FOR RECUSAL OF JUDGE VALORIE VEGA. (See attached Exhibit 2.)

6 The State's Motion misstates and fails to meaningfully respond with relevant legal or
7 logical argument regarding the Ground for Judge Vega's recusal based on JUDGE VEGA IS A
8 MATERIAL WITNESS FOR GROUND FIFTY-TWO (52) of the Petitioner's writ of *habeas*
9 *corpus*. As thoroughly explained in that recusal Ground, Judge Vega is a material witness for
10 Ground 52 because of her factual knowledge of the issues involved in that Ground, and her trial
11 notes are also material evidence in that ground and will be subpoenaed, and she will have to
12 authenticate and testify about her notes. The Revised Nevada Code of Judicial Conduct (RNCJC)
13 that became effective January 19, 2010. Rule 2.11 states in part:

14 Rule 2.11. Disqualification.

15 (A) A judge shall disqualify himself or herself in any proceeding in which the
16 judge's impartiality might reasonably be questioned, including but not limited to the
17 following circumstances:

18 (1) The judge has a personal bias or prejudice concerning a party or a party's
19 lawyer, or personal knowledge of facts that are in dispute in the proceeding.
(emphasis added to original)

20 As a material witness who has "personal knowledge of facts that are in dispute in the
21 proceeding." Judge Vega is disqualified by RNCJC Rule 2.11 from presiding over the Petitioner's
22 writ of *habeas corpus*. The State's Motion only defense is to attempt distraction by raising an issue
23 that isn't even in this recusal Ground and thus is completely irrelevant ("A Judge is not a material
24 witness when it comes to his or her evidentiary rulings..." (State's Motion, 6) because this recusal
25 ground is solely based on Judge Vegas status as a material witness because of her "personal
26 knowledge of facts that are in dispute in the proceeding." RNCJC Rule 2.11.

27 This recusal Ground also explains that Judge Vega is also disqualified because she is required
28 by RNCJC Rule 2.15(B) and (D) "to report the dishonest, unethical and possibly criminal conduct by
Kephart and DiGiacomo in her courtroom described in Ground fifty-two to the appropriate oversight

1 and law enforcement authorities, and she will be a material witness in any proceedings initiated by
2 those authorities.” The recusal Ground sets out in specific detail Judge Vega’s “personal knowledge
3 of facts” that make her a material witness required by RNCJC 2.15(B) and (D) to make the
4 appropriate reports about ADAs Kephart and DiGiacomo’s conduct to the appropriate authorities.
5 Consequently the State’s citation of *Rippo v. State* has no relevance to this recusal ground. The
6 State’s Motion doesn’t meaningfully respond to Judge Vega’s disqualification based on RNCJC Rule
7 2.15(B) and (D) except to state without any evidence or legal or logical argument whatsoever, “no
8 such professional misconduct occurred.” (State’s Motion, 6)

9 The State’s Motion is so completely silent in responding to the substance of this Ground’s
10 multiple basis’s for Judge Vega’s recusal that it doesn’t even mention the Revised Nevada Code of
11 Judicial Conduct that this recusal Ground alleges Judge Vega violated. The failure of the State to
12 meaningfully respond to this Ground with relevant legal or logical argument constitutes “confessed
13 error.” *Polk v. State*, 233 P.3d 357, 126 Nev. 19 (Nev. 06/03/2010) (“we ... consider the State's
14 silence to be a confession of error on this issue.” *Id.* at ¶28). See also, *Bates v. Chronister*, 100
15 Nev. 675, 691 P.2d 865 (Nev. 12/7/1984) (“failure to respond to this argument in the three pages of
16 argument in their answering brief as a confession of error.” *Id.* at ¶27) See also, *Moore v. State*, 93
17 Nev. 645, 572 P.2d 216, 217 (1977) (The failure to provide “argument, legal or logical, to support”
18 its position constitutes “confession of error” because the Respondent had “in effect filed no brief at
19 all.” *Id.* at 647.)

20 The State’s Motion is also deceptive by its silence of the extreme conflict of interest that
21 ADA Kephart is involved in opposing the Petitioner’s petition for a writ of *habeas corpus* and he
22 in fact signed the State’s Response, when he is the person documented in Ground 52 (and Ground
23 18) as having repeatedly lied on the record to Judge Vega. So it is logical that ADA Kephart is
24 improperly using his position defend himself personally by the State’s Motion opposing the recusal
25 of the judge he is alleged to have lied to – Judge Vega.

26 The State’s Motion also misstates and fails to meaningfully respond with relevant legal or
27 logical argument regarding the Ground for Judge Vega’s recusal based on JUDGE VEGA
28 WOULD BE ACTING AS A JUDGE IN HER OWN CAUSE IN GROUNDS FORTY-SIX,

1 SIXTY, SIXTY-ONE AND SEVENTY-FIVE of the Petitioner’s writ of *habeas corpus*. It is not a
2 defense for the State’s Motion to calling this recusal claim “absurd” without a meaningful defense
3 based on relevant legal and logical argument. The State’s Motion is deceptive and falsely states
4 that the substance of this recusal ground does not involve rulings Judge Vega made at trial, because
5 in fact this recusal Ground states:

6 Grounds forty-six, sixty, sixty-one and seventy-five all implicate the Petitioner’s
7 state and federal constitutional due process rights. **Those ineffective assistance of**
8 **counsel grounds are based on the failure of Petitioner’s counsel to object to, or**
9 **otherwise challenge rulings Judge Vega made, and for the Petitioner to prevail**
10 **on those grounds she must establish prejudice. The prejudice alleged in those**
11 **ineffective assistance of counsel grounds is Judge Vega’s rulings deprived the**
12 **Petitioner of one or more constitutional rights.**

13 The trial related issues in Grounds forty-six, sixty, sixty-one and seventy-five
14 have not been adjudicated. Consequently, Judge Vega would be acting as an
15 “appellate” reviewer of her own rulings if she were to preside over the Petitioner’s
16 writ of *habeas corpus*. **It is a state and federal constitutionally impermissible**
17 **conflict of interest for Judge Vega to be in a position to affirm her own trial**
18 **court rulings that have never been reviewed by any other court.** (PETITIONER
19 LOBATO’S NOTICE OF MOTION AND MOTION FOR RECUSAL OF JUDGE
20 VALORIE VEGA, 5) (emphasis added to original)

21 This entire recusal ground concerns Judge Vega’s trial rulings that Petitioner’s counsel
22 prejudicially did not object to and that have never been adjudicated by any court. For the Petitioner
23 to prevail on her ineffective assistance of counsel claims she must show she was prejudiced by
24 Judge Vega’s rulings, which means Judge Vega will be in the position of conducting the first post-
25 verdict judicial review of her own trial court rulings. Mr. Smith’s statement on page 7 lines 4-5 of
26 the State’s Motion is not only deceptive and false, but it ignores the difference between a direct
27 appeal and a *habeas corpus* proceeding in which the Petitioner must establish Judge Vega’s rulings
28 were prejudicial to prevail on her ineffective assistance of counsel claims. (“None of the grounds in
“Defendant’s petition are challenging Judge Vega’s rulings; rather they are all ineffective
assistance of counsel claims.” State’s Motion, 7)

 The State’s Motion completely ignores that:

 Furthermore, Judge Vega has a pre-judgment about the issues underlying
Grounds forty-six, sixty, sixty-one and seventy-five because they involve her trial
rulings.

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It will violate the Petitioner’s state and federal constitutional right to due process and her right to a fair, impartial, and disinterested judge if a judge with a conflict of interest and/or pre-judgment in the proceedings presides over the Petitioner’s writ of habeas corpus and makes any ruling related to the writ.

Furthermore, Revised Nevada Code of Judicial Conduct (ADKT 427) Rule 2.11 (A) states in part: “A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned ...” *Id.* at 5.

The State’s Motion is so completely silent in responding to the substance of this Ground’s basis for Judge Vega’s recusal that it doesn’t even mention the Revised Nevada Code of Judicial Conduct that the Ground alleges Judge Vega violated. The failure of the State to meaningfully respond to this Ground with relevant legal and logical argument constitutes “confessed error.” *Polk v. State*, 233 P.3d 357, 126 Nev. 19 (Nev. 06/03/2010) (“we ... consider the State's silence to be a confession of error on this issue.” *Id.* at ¶28). See also, *Bates v. Chronister*, 100 Nev. 675, 691 P.2d 865 (Nev. 12/7/1984) (“failure to respond to this argument in the three pages of argument in their answering brief as a confession of error.” *Id.* at ¶27) See also, *Moore v. State*, 93 Nev. 645, 572 P.2d 216, 217 (1977) (The failure to provide “argument, legal or logical, to support” its position constitutes “confession of error” because the Respondent had “in effect filed no brief at all.” *Id.* at 647.)

The State’s Motion also misstates and fails to meaningfully respond with relevant legal and logical argument regarding the Ground for Judge Vega’s recusal based on JUDGE VEGA’S LACK OF IMPARTIALITY AND FAIRNESS, AND MANIFEST BIAS AGAINST PETITIONER IS EVIDENT FROM THE HEARING ON JULY 15, 2010.

The Petitioner sets forth in that recusal ground specific details that Judge Vega violated at least seven (7) rules of the Revised Nevada Code of Judicial Conduct (RNCJC) and the Petitioner’s state and federal due process rights in her conduct of the hearing of July 15, 2010, concerning a “Motion For Extended Briefing Schedule.” The State’s Motion does not meaningfully respond to any of those RNCJC or due process recusal grounds.

The Petitioner was never served with the State’s motion for extended briefing and to date she has not seen it. It is impossible for a motion to be “served” that is never received by the opposing party, and thus that opposing party has no opportunity to respond to the motion or even be notified that a hearing has been scheduled for the motion to be heard. It was impossible for the

1 Petitioner to respond and be heard regarding the State’s motion for extended briefing or arrange for
2 transport to the hearing because she had not been served with a copy of the motion, and thus she
3 was blindsided by the hearing on July 15, 2010.

4 The State’s motion for extended briefing was not served on the Petitioner, and consequently
5 it is contrary to reality for the State to assert EJDRC 3.20(c) as a defense when it is not applicable.

6 Ms. Ravell has informed the Petitioner that she learned of the hearing on July 15, 2010, after
7 looking on the Clark County District Court’s website. Since the Petitioner had not been served with the
8 State’s motion and had no opportunity to respond and be heard or to submit a transport order for Judge
9 Vega to sign, and the Petitioner is incarcerated and could not inform the court of the above facts herself,
10 Ms. Ravell attended the hearing as a Friend of the Court under her authority as the Petitioner’s attorney-
11 in-fact to inform the Court of the above facts. So the Court could have information otherwise
12 unavailable to it, Ms. Ravell simply sought to relate the above information to the Court that the
13 Petitioner was unable to relate herself. If the State had actually served the motion for extended briefing
14 there would have been no need for Ms. Ravell to have considered it prudent to inform Judge Vega of
15 relevant evidence she was not aware of. The State bears full responsibility for Ms. Ravell at the hearing
16 on July 15, 2010, and with unclean hands the State cannot now complain of what they instigated by
17 their failure to serve their motion on the Petitioner. Ms. Ravell made no effort to argue law or do
18 anything else that could be construed as acting like a lawyer. She was functioning as a witness relating
19 relevant information. It is a false statement that has no basis in fact and there is no evidence supporting
20 the State’s Motion where it states, “During the hearing Ms. Ravell again engaged in the practice of law
21 by attempting to appear pro se on Defendant's behalf.” (State’s Motion, 7) It would have been
22 appropriate under the circumstances for Judge Vega to have had Ms. Ravell sworn in so she could have
23 testified under oath to formalize her status at the hearing as a witness seeking to provide the Court with
24 relevant facts. Judge Vega did not elect to do that and she summarily granted the State’s Motion
25 without seeking to learn the truth during what constituted an *ex parte* proceeding.

26 The State’s defense that the hearing was not an *ex parte* communication fails because their
27 defense proves it was. That State’s Motion states, “she only asked that the State show proof that
28 Defendant was served with the motion.” (State’s Motion, 7) Judge Vega only heard the State’s

1 claim the Motion had been served, and did not even attempt to inquire into or consider relevant
2 evidence that the State had in fact not served the Motion for extended briefing. Revised Nevada
3 Code of Judicial Conduct (ADKT 427) Rule 2.9(A) states in part:

4 Rule 2.9. Ex Parte Communications.

5 (A) **A judge shall not initiate, permit, or consider ex parte communications,**
6 or consider other communications made to the judge outside the presence of the
7 parties or their lawyers, concerning a pending or impending matter, except as
8 follows: (emphasis added to original)

9 Judge Vega initiated the *ex parte* communication with the State, and the Petitioner was not
10 present to respond and inform her that what the State was telling it was a misrepresentation of the
11 truth. Since Judge Vega did not have Ms. Ravell sworn in as a witness to provide her relevant
12 information exposing their was another side to what the State was telling her, she willfully chose to
13 only consider what the State told her.

14 The State's Motion doesn't deny or even challenge the following argument in this Ground
15 for Judge Vega's recusal:

16 "the Petitioner's state and federal due process rights were violated by Judge Vega's
17 conduct of the hearing on July 15, 2010. Due process fundamentally requires notice
18 of a proceeding, the opportunity to be heard during the proceeding, and an impartial
19 decision maker presiding over the proceeding. The Petitioner was not provided
20 notice of the July 15, 2010, hearing, she was not provided the opportunity to be
21 heard during the hearing because she was not present, and as explained above,
22 Judge Vega acted with partiality favoring the Respondents. Consequently, Judge
23 Vega's recusal is required from the Petitioner's writ of *habeas corpus* case."
(PETITIONER LOBATO'S NOTICE OF MOTION AND MOTION FOR
24 RECUSAL OF JUDGE VALORIE VEGA, 9-10)

25 The United States Supreme Court ruled in the *habeas corpus* case of *Hamdi v. Rumsfeld*,
26 124 S.Ct. 2633, 542 U.S. 507, 159 L.Ed.2d 578 (U.S. 06-28-2004):

27 "Due process requires a 'neutral and detached judge' .. For more than a century the
28 central meaning of procedural due process has been clear: 'Parties whose rights are
to be affected are entitled to be heard; and in order that they may enjoy that right
they must first be notified.' It is equally fundamental that the right to notice and an
opportunity to be heard 'must be granted at a meaningful time and in a meaningful
manner.' ... These essential constitutional promises may not be eroded." *Id.*

1 The Petitioner was not served with a copy of the State’s motion for extended briefing, she
2 was not notified about the hearing, she was not given an opportunity to be heard at all, much less
3 “in a meaningful manner” by “a neutral and detached judge,” and consequently the hearing Judge
4 Vega conducted on July 15, 2010, didn’t comport with any of the Supreme Court’s requirements
5 for according the Petitioner her due process rights. It bears repeating, the State’s Motion doesn’t
6 even deny or challenge that the hearing on July 15, 2010, constituted a gross violation of the
7 Petitioner right to due process of law.

8 The State’s Motion is so completely silent in responding to the substance of this Ground’s
9 basis for Judge Vega’s recusal that it doesn’t even mention the Revised Nevada Code of Judicial
10 Conduct that this recusal Ground alleges Judge Vega violated. The failure of the State to
11 meaningfully respond to this Ground with relevant legal or logical argument constitutes “confessed
12 error.” The failure of the State to meaningfully respond to this Ground with relevant legal or
13 logical argument constitutes “confessed error.” *Polk v. State*, 233 P.3d 357, 126 Nev. 19 (Nev.
14 06/03/2010) (“we ... consider the State's silence to be a confession of error on this issue.” *Id.* at
15 ¶28). See also, *Bates v. Chronister*, 100 Nev. 675, 691 P.2d 865 (Nev. 12/7/1984) (“failure to
16 respond to this argument in the three pages of argument in their answering brief as a confession of
17 error.” *Id.* at ¶27) See also, *Moore v. State*, 93 Nev. 645, 572 P.2d 216, 217 (1977) (The failure to
18 provide “argument, legal or logical, to support” its position constitutes “confession of error”
19 because the Respondent had “in effect filed no brief at all.” *Id.* at 647.)

20 The State’s Motion also misstates and fails to meaningfully respond with relevant legal and
21 logical argument regarding the Ground for Judge Vega’s recusal based on JUDGE VEGA’S LACK
22 OF IMPARTIALITY AND FAIRNESS, AND MANIFEST BIAS AGAINST PETITIONER IS
23 EVIDENT FROM HER PUBLIC STATEMENTS THAT SHE BELIEVES THE PETITIONER IS
24 GUILTY. This ground for recusal that states:

Judge Vega’s conduct of the hearing on July 15, 2010, was consistent with the fact
that she has publicly stated she believes the Petitioner is guilty of the murder of
Duran Bailey. (PETITIONER LOBATO’S NOTICE OF MOTION AND MOTION
FOR RECUSAL OF JUDGE VALORIE VEGA, 10)

1 The State's lone defense is to cite *Cameron v. State*, 114 Nev. 1281, 968 P.2d 1169 (Nev.
2 12/14/1998). The cited passage about general feelings of the judge is not only irrelevant to Judge
3 Vega's opinion that the Petitioner is guilty, but the State leaves out the most relevant sentence of
4 that decision that reveals **it supports** the recusal of Judge Vega:

5 Nothing in this case suggests that the district Judge had any personal feelings of
6 animosity toward appellant. *Cameron v. State, Id.* at 1283.

7 That is precisely the point of this Ground for recusal of Judge Vega. She has publicly
8 expressed her opinion that the Petitioner is guilty, and that establishes she is manifestly biased
9 against the Petitioner and is unable to be a "neutral and detached judge" of the Petitioner's *habeas*
10 *corpus* petition. Judge Vega has a direct interest in denying the Petitioner's *habeas corpus* petition,
11 because she has pre-judged the Petitioner to be guilty. Judge Vega is so prejudiced against the
12 Petitioner that it would probably be meaningless to her if the Petitioner had the new evidence of a
13 time and date stamped video proving she was in Panaca the entire day of July 8, 2001 – the day of
14 Duran Bailey's murder. The injustice of the Petitioner circumstance of having Judge Vega assigned
15 her *habeas corpus* petition when it is known that she is actually biased against the Petitioner
16 violates the principle recognized by the U.S. Supreme Court since 1927:

17 "That officers acting in a judicial or quasi-judicial capacity are disqualified by their
18 interest in the controversy to be decided is, of course, the general rule." *Tumey v.*
Ohio, 273 U.S. 510, 522, 71 L. Ed. 749, 47 S. Ct. 437 (1927)

19 Based solely on the appearance of bias by Judge Vega, her recusal is mandated by the U.S.
20 Supreme Court's ruling in *Concrete Pipe and Products California v. Construction Laborers*
21 *Pension Trust For Southern California*, 113 S. Ct. 2264 (U.S. 06-14-1993):

22 "Justice," indeed, "must satisfy the appearance of justice, and this stringent rule may
23 sometimes bar trial [even] by judges who have no actual bias and who would do their
24 very best to weigh the scales of justice equally between contending parties." *Id.* at ¶53.

25 A logical reason for the State to vigorously oppose Judge Vega's recusal is because they
26 know she is predisposed to have the scales of justice tipped in the State's favor. Otherwise the State
27 would simply say 'We don't care who the judge is,' and join with the Petitioner on the logical basis
28 that if the Petitioner doesn't think Judge Vega can judge her writ of *habeas corpus* fairly, then a

1 different judge **should** be assigned to her case to remove any possible taint from the proceedings.

2 The State’s Motion is so devoid of a meaningful response to the substance of this Ground’s
3 basis for Judge Vega’s recusal that it cites a case that **supports** her recusal. The failure of the State
4 to meaningfully respond to this Ground with relevant legal or logical argument constitutes
5 “confessed error.” The failure of the State to meaningfully respond to this Ground with relevant
6 legal or logical argument constitutes “confessed error.” *Polk v. State*, 233 P.3d 357, 126 Nev. 19
7 (Nev. 06/03/2010) (“we ... consider the State's silence to be a confession of error on this issue.” *Id.*
8 at ¶28). See also, *Bates v. Chronister*, 100 Nev. 675, 691 P.2d 865 (Nev. 12/7/1984) (“failure to
9 respond to this argument in the three pages of argument in their answering brief as a confession of
10 error.” *Id.* at ¶27) See also, *Moore v. State*, 93 Nev. 645, 572 P.2d 216, 217 (1977) (The failure to
11 provide “argument, legal or logical, to support” its position constitutes “confession of error”
12 because the Respondent had “in effect filed no brief at all.” *Id.* at 647.)

13 The Petitioner concludes her Motion For Recusal of Judge Valorie Vega with the following
14 paragraph that nothing in the State’s Motion refutes:

15 It will obliterate any appearance of justice, deprive the Petitioner of due process,
16 and violate the Revised Nevada Code of Judicial Conduct for Judge Vega to preside
17 over the Petitioner’s civil *habeas corpus* case. Consequently, Judge Vega must be
18 recused from the Petitioner’s *habeas corpus* case. (PETITIONER LOBATO’S
19 NOTICE OF MOTION AND MOTION FOR RECUSAL OF JUDGE VALORIE
20 VEGA, 13)

21 **Regarding Argument III of the State’s Motion**

22 The State’s Motion doesn’t oppose the granting of PETITIONER LOBATO’S NOTICE OF
23 MOTION FOR AN EXPEDITED HEARING AND MOTION FOR AN EXTENSION OF TIME
24 TO FILE AN ANSWER TO THE STATE’S RESPONSE that requests a 28-day extension of time to
25 file her Answer to the State’s Response. The Petitioner restates the fact that the State had 105 days to
26 draft their Response, including a 60 day extension of time. The State has dozens of lawyers whose
27 expertise can be drawn on to provide advice about different arguments. In contrast the Petitioner is
28 representing herself *pro per*, and is requesting a total of 48 days to file her Answer to the State’s
Response that with all their resources took them 105 days to draft. Under the circumstances of the
Petitioner’s *pro per* status and the complexity of the issues involved in her case, the Petitioner

1 believes she has good cause that in the interests of justice she be granted a 28-day extension that will
2 provide her with a total length of time less than half that requested and granted to the State

3 **Regarding Argument IV of the State’s Motion**

4 The State’s Motion doesn’t meaningfully address or logically and legally challenge a single
5 argument in PETITIONER LOBATO’S NOTICE OF MOTION AND MOTION FOR THE COURT
6 CLERK TO ASSIGN A CIVIL CASE NUMBER AS REQUIRED BY THE NRS. The State’s only
7 quasi defense is defeated by NRS 34.730(3) that the State’s Motion cites. The State’s Motion states
8 the Petitioner’s criminal case number was assigned to her civil habeas corpus petition, and NRS
9 34.730(3) that the State cites unequivocally states: “the clerk of the district court shall file a petition
10 as a new action separate and distinct from any original proceeding in which a conviction has been
11 had.” That is exactly the Petitioner’s contention. The “clerk of the district court” erred by assigning
12 the Petitioner’s criminal case number to her civil writ of *habeas corpus*, because the clerk had no
13 authority under Nevada law to do so. The State does not deny the applicability of the NRS provisions
14 cited by the Petitioner mandating the assigning of a civil case number to the Petitioner’s *habeas*
15 *corpus* case. The State’s failure to meaningfully respond to this Ground with relevant legal or logical
16 argument constitutes “confessed error.” The failure of the State to meaningfully respond to this
17 Ground with relevant legal or logical argument constitutes “confessed error.” *Polk v. State*, 233 P.3d
18 357, 126 Nev. 19 (Nev. 06/03/2010) (“we ... consider the State's silence to be a confession of error
19 on this issue.” *Id.* at ¶28). See also, *Bates v. Chronister*, 100 Nev. 675, 691 P.2d 865 (Nev.
20 12/7/1984) (“failure to respond to this argument in the three pages of argument in their answering
21 brief as a confession of error.” *Id.* at ¶27) See also, *Moore v. State*, 93 Nev. 645, 572 P.2d 216, 217
22 (1977) (The failure to provide “argument, legal or logical, to support” its position constitutes
23 “confession of error” because the Respondent had “in effect filed no brief at all.” *Id.* at 647.)

24 **POINTS AND AUTHORITIES**

25 **PETITIONER’S MOTION FOR RECONSIDERATION OF THE COURT’S ORDER**

26 **STRIKING THREE MOTIONS BY PETITIONER**

27 On September 17, 2010, Judge Vega issued the Minutes of her ruling striking the
28 Petitioner’s Motions for recusal of Judge Valorie Vega, for the Court Clerk to assign a Civil Case

1 number as required by the NRS, and for an expedited hearing and motion for an extension of time
2 to file an answer to the State’s response. The motions were filed by the Clerk of the Court on
3 September 7, 2010.

4 Judge Vega’s ruling was contrary to the law and the facts related to those three motions,
5 and in making her ruling Judge Vega violated numerous rules of the Revised Nevada Code of
6 Judicial Conduct and deprived the petitioner of her constitutionally guaranteed right to due process.

7 Judge Vega ruled on September 17, 2010, to “*Sua sponte* Strike the three pro per motions
8 pursuant to EDCR 7.42(a).” (See attached Exhibit 2) That ruling was contrary to law because as
9 extensively explained above in the section: OPPOSITION TO THE STATES MOTION TO
10 STRIKE OR IN THE ALTERNATIVE OPPOSITION TO IMPROPER MOTIONS – Regarding
11 Argument I of the State’s Motion. EDCR 7.42(a) was not violated under the Nevada Supreme
12 Court precedent in *Maynard v. Mercer*, 10 Nev. 33 (1875) that was restated in *Seigworth v. State*,
13 91 Nev. 536, P.2d 464 (Nev. 8-26-1975). Judge Vegas was unaware of that because she ruled prior
14 to the Petitioner being notified of the proceedings that took place on September 17, 2001, and
15 before she was served with the State’s Motion or supplemental motion and thus she had no notice
16 or opportunity to be heard and provide Judge Vega with the truth and the applicable law.

17 Judge Vega also ruled on September 17, 2010, “and also GRANTS the State’s motion to
18 Strike pursuant to *Salman v. Newell*, 110 Nev. 1333 (1994).” (See attached Exhibit 2) However,
19 *Salman v. Newell* has no applicability whatsoever to the Petitioner’s case so there was no legal
20 basis to grant the State’s Motion to strike. In *Salman v. Newell* a man acted like a lawyer while
21 actively represented himself as the lawyer for two trusts. The Court’s ruling states: “Salman
22 claimed that because the companies are trusts he could represent them, even though he is not an
23 attorney.” *Id.* at 1334-5. On its face that ruling has no applicability to the Petitioner’s writ of
24 *habeas corpus* case because she is representing herself *pro per*, and her right to do so is
25 guaranteed by the Sixth Amendment to the Constitution and U.S. Supreme Court precedents. The
26 Petitioner’s writ of *habeas corpus* is a public document and it states plain as day on page one
27 “PETITIONER IN PROPER PERSON.” It is extensively explained above in the section:
28 OPPOSITION TO THE STATES MOTION TO STRIKE OR IN THE ALTERNATIVE

1 OPPOSITION TO IMPROPER MOTIONS – Regarding Argument I of the State’s Motion, that
2 the State has presented nothing but unsubstantiated innuendo and numerous provably false
3 statements (cited in this motion) that any person has acted improperly in regards to the
4 Petitioner’s case – particularly in light of the Nevada Supreme Court precedent in *Maynard v.*
5 *Mercer*, 10 Nev. 33 (1875) that was restated in *Seigworth v. State*, 91 Nev. 536, P.2d 464 (Nev.
6 8-26-1975).

7 The following explains the circumstances surrounding Judge Vega’s ruling on September
8 17, 2001, that was in violation of numerous rules of the Revised Nevada Code of Judicial Conduct
9 and deprived the Petitioner of her constitutionally guaranteed right to due process of law.

10 The Petitioner has been informed by Ms. Ravell that she was informed by Judge Vega’s
11 clerk on September 13, 2010, that she wasn’t going to sign the Order to transport the Petitioner to
12 the hearing that had been scheduled for September 21, 2010, and that instead the judge was going
13 to decide the Petitioner’s three motions in chambers on July 17, 2001. The State’s Motion to strike
14 or in the alternative opposing the Petitioner’s three motions was filed the next day, on September
15 14, 2010. The State filed a Supplemental Motion on September 16, 2010. The Petitioner, an
16 incarcerated *pro per* petitioner, was not informed by Judge Vega that she had cancelled the hearing
17 scheduled for September 21, 2010.

18 The Petitioner was not served with the State’s Motion or the State’s Supplemental Motion
19 on or before September 17, 2010, which is when Judge Vega issued her ruling in the Minutes
20 striking the Petitioner’s three motions and granting the State’s Motion to strike that had not even
21 been served on the Petitioner. (See attached Exhibit 2).

22 Consequently, on September 17, 2010, Judge Vega made a ruling in secret in her chambers
23 on the Petitioner’s three motions that the Petitioner had not been informed was going to be decided
24 on that day, but which she expected would be decided on September 21, 2010, on the record in
25 open court with her present, and the Judge relied on and in fact granted the State’s Motion that had
26 not been served on the Petitioner.

27 The Petitioner was not provided notice the hearing of September 21, 2010 had been
28 canceled and the rescheduling to September 17, 2010, she was not served with a copy of the State’s

1 motions, she had no knowledge of those motion's contents, she did not have the opportunity to file
2 or argue any possible objections to the State's motions, Judge Vega took it upon herself to waive
3 the Petitioner's right to be present even though she is *pro per* and thus she was not present or
4 legally represented during any part of the process of Judge Vega deciding about the State's
5 motions, and Judge Vega only considered the Respondents' position on their motion's before
6 deciding against the Petitioner and granting the State's Motion to strike.

7 It is known that on September 17, 2010, Judge Vega relied on the State's Motion and
8 arguments without the Petitioner being served with the State's Motion, she wasn't notified by
9 Judge Vega of the proceedings that took place in her chambers on September 17, 2010, that only
10 involved Judge Vega and the State, and she didn't have any opportunity to object or be heard.

11 Revised Nevada Code of Judicial Conduct (ADKT 427) Rule 2.9(A) states in part:

12 Rule 2.9. Ex Parte Communications.

13 (A) A judge shall not initiate, permit, or consider ex parte communications, or
14 consider other communications made to the judge outside the presence of the parties
15 or their lawyers, concerning a pending or impending matter, except as follows:
(emphasis added to original)

16 Judge Vega did "initiate, permit, or consider ex parte communications" on September 17,
17 2010, with the State. The Petitioner was not provided notice of the proceeding, she was not served
18 with a copy of the State's Motion or supplemental motion, she had no knowledge of those motion's
19 contents, she did not have the opportunity to file or argue any possible objections to the State's
20 motions, only the Respondents were legally represented on September 17, 2010, either in person or
21 via their motions that had not been served on the Petitioner, and Judge Vega only considered the
22 Respondents' position on the State's Motion before granting it.

23 The Petitioner is *pro per* and she has not waived her state and federal constitutional rights
24 to be present during any hearing or other proceeding related to her writ of *habeas corpus*, and she
25 has not agreed to permit any *ex parte* communication of any kind between Judge Vega and the
26 Respondents. Consequently, Judge Vega engaged in *ex parte* communications prohibited by Rule
27 2.9. by the manner in which she conducted the proceedings on September 17, 2010 in which only
28

1 the State was a participant either in person or by their written communications the Petitioner had
2 not been notified about and was unaware of.

3 Revised Nevada Code of Judicial Conduct (ADKT 427) Rule 2.6.(A) states:

4 Rule 2.6. Ensuring the Right to Be Heard.

5 (A) A judge shall accord to every person who has a legal interest in a
6 proceeding, or that person's lawyer, the right to be heard according to law.
(emphasis added to original)

7 Judge Vega did not just deny the Petitioner her “right to be heard according to law” by her
8 manner of conducting the proceeding on September 17, 2010, but since she is a *pro per* petitioner,
9 Judge Vega did not allow any person “to be heard” representing the Petitioner’s “legal interest.”
10 Only the Respondents were legally represented during the proceedings because the State’s Motion
11 and supplemental motion had not been served on the Petitioner, and Judge Vega only considered
12 the Respondents’ position on their motion before granting it. Consequently, Judge Vega violated
13 the Nevada Code of Judicial Conduct’s mandate that the Petitioner “shall” be accorded “the right to
14 be heard” during her conduct of the proceeding on September 17, 2010.

15 Revised Nevada Code of Judicial Conduct (ADKT 427) Rule 2.2. states:

16 Rule 2.2. Impartiality and Fairness. A judge shall uphold and apply the law, and
17 shall perform all duties of judicial office fairly and impartially. (emphasis added to
original)

18 Judge Vega conducted an *ex parte* proceeding on September 17, 2010, that the Petitioner
19 had not been notified by Judge Vega would take place, she conducted that proceeding without the
20 *pro per* Petitioner being served with the State’s Motion and supplemental motion and thus she did
21 not have any opportunity to object or be heard regarding the issues Judge Vega was deciding,
22 Judge Vega allowed only the Respondent’s to be legally represented either in person or by the
23 State’s motions, and she only considered the Respondents’ position on the State’s Motion before
24 granting it. Consequently, Judge Vega conduct of the proceeding on September 17, 2010, did not
25 “uphold and apply the law,” nor did she perform the duties of her “judicial office fairly and
26 impartially” as mandated without exception by the Nevada Code of Judicial Conduct.

27 Revised Nevada Code of Judicial Conduct (ADKT 427) Rule 2.3. (A) and (B) states:
28

1 Rule 2.3. Bias, Prejudice, and Harassment.

2 (A) A judge shall perform the duties of judicial office, including administrative
3 duties, without bias or prejudice.

4 (B) A judge shall not, in the performance of judicial duties, by words or conduct
5 manifest bias or prejudice. (emphasis added to original)

6 Judge Vega conducted an *ex parte* proceeding on September 17, 2010, that the Petitioner
7 had not been notified by Judge Vega would take place, she conducted that proceeding without the
8 *pro per* Petitioner being served with the State's Motion and supplemental motion and thus she did
9 not have any opportunity to object or be heard regarding the issues Judge Vega was deciding,
10 Judge Vega allowed only the Respondent's to be legally represented either in person or by the
11 State's motions, and she only considered the Respondents' position on the State's Motion before
12 granting it. Consequently, Judge Vega exhibited "by words or conduct manifest bias or prejudice"
13 against the Petitioner and favoring the Respondents that violated the Nevada Code of Judicial
14 Conduct's mandate without exception that she act without "bias or prejudice."

15 Revised Nevada Code of Judicial Conduct (ADKT 427) Rule 2.4. (B) and (C) state:

16 Rule 2.4. External Influences on Judicial Conduct.

17 (B) A judge shall not permit family, social, political, financial, or other interests
18 or relationships to influence the judge's judicial conduct or judgment.

19 (C) A judge shall not convey or permit others to convey the impression that any
20 person or organization is in a position to influence the judge. (emphasis added to
21 original)

22 Judge Vega conducted an *ex parte* proceeding on September 17, 2010, that the Petitioner
23 had not been notified by Judge Vega would take place, she conducted that proceeding without the
24 *pro per* Petitioner being served with the State's Motion and supplemental motion and thus she did
25 not have any opportunity to object or be heard regarding the issues Judge Vega was deciding,
26 Judge Vega allowed only the Respondent's to be legally represented either in person or by the
27 State's motions, and she only considered the Respondents' position on the State's Motion before
28 granting it. Consequently, Judge Vega's Respondent favoring conduct during the proceeding on
September 17, 2010, directly conveyed the impression that she is influenced by the Respondents
and/or the Clark County District Attorney's Office which represented the Respondents. Judge
Vega's conduct during the proceedings on September 17, 2010, is barred without exception by the

1 Nevada Code of Judicial Conduct’s mandate that “A judge shall not permit family, social, political,
2 financial, or other interests or relationships to influence the judge’s judicial conduct or judgment.”
3 (Rule 2.4. (B)) and, “A judge shall not convey or permit others to convey the impression that any
4 person or organization is in a position to influence the judge.” Rule 2.4. (C)).

5 Revised Nevada Code of Judicial Conduct (ADKT 427) Rule 1.2. states:

6 Rule 1.2. Promoting Confidence in the Judiciary. A judge shall act at all times in a
7 manner that promotes public confidence in the independence, integrity, and
8 impartiality of the judiciary and shall avoid impropriety and the appearance of
9 impropriety. (emphasis added to original)

10 Judge Vega conducted an *ex parte* proceeding on September 17, 2010, that the Petitioner
11 had not been notified by Judge Vega would take place, she conducted that proceeding without the
12 *pro per* Petitioner being served with the State’s Motion and supplemental motion and thus she did
13 not have any opportunity to object or be heard regarding the issues Judge Vega was deciding,
14 Judge Vega allowed only the Respondent’s to be legally represented either in person or by the
15 State’s motions, and she only considered the Respondents’ position on the State’s Motion before
16 granting it. Consequently, during the proceeding on September 17, 2010, Judge Vega did not act
17 “in a manner that promotes public confidence in the independence, integrity, and impartiality of the
18 judiciary,” and her conduct did not “avoid impropriety and the appearance of impropriety” as
19 mandated by the Revised Nevada Code of Judicial Conduct.

20 Revised Nevada Code of Judicial Conduct (ADKT 427) Rule 2.11 (A) states in part:

21 Rule 2.11. Disqualification.

22 (A) A judge shall disqualify himself or herself in any proceeding in which the
23 judge’s impartiality might reasonably be questioned, including but not limited to the
24 following circumstances:

25 (1) The judge has a personal bias or prejudice concerning a party or a party’s
26 lawyer, or personal knowledge of facts that are in dispute in the proceeding.
27 (emphasis added to original)

28 Judge Vega conducted an *ex parte* proceeding on September 17, 2010, that the Petitioner
had not been notified by Judge Vega would take place, she conducted that proceeding without the
pro per Petitioner being served with the State’s Motion and supplemental motion and thus she did
not have any opportunity to object or be heard regarding the issues Judge Vega was deciding,

1 Judge Vega allowed only the Respondent's to be legally represented either in person or by the
2 State's motions, and she only considered the Respondents' position on the State's Motion before
3 granting it. Consequently, Judge Vega's "impartiality might reasonably be questioned" by
4 conducting a proceeding that lacked "impartiality and fairness" towards the Petitioner, and that
5 exhibited "actual bias" favoring the Respondents and against the Petitioner. Consequently, under
6 the mandate of the Revised Nevada Code of Judicial Conduct Judge Vega "shall disqualify ...
7 herself" from the Petitioner's writ of *habeas corpus* civil proceeding because her "impartiality
8 might reasonably be questioned."

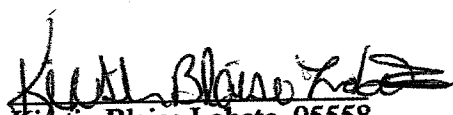
9 Furthermore, the Petitioner's state and federal due process rights were violated by Judge
10 Vega's conduct of the proceeding on September 17, 2010. Due process fundamentally requires
11 notice of a proceeding, the opportunity to be heard during the proceeding, and an impartial decision
12 maker presiding over the proceeding. The Petitioner was not provided notice of the September 17,
13 2010, proceeding, she had not been served the State's Motion or supplemental motion and thus she
14 did not have any opportunity to object or be heard regarding the issues Judge Vega was deciding,
15 and as explained above, Judge Vega acted with partiality favoring the Respondents. Judge Vega
16 even used words in her Minutes of September 17, 2010, that were lifted from the State's Motion.
17 (See attached Exhibit 2)

18 The U.S. Supreme Court's *Hamdi v. Rumsfeld* ruling that mandates due process requires at
19 a minimum notice and opportunity to be heard before a neutral and detached judge, specifically
20 related to the fact Mr. Hamdi had been denied the opportunity "to rebut the Government's factual
21 assertions." *Hamdi v. Rumsfeld*, 542 U.S. 507 at ¶75. As explained in the section of this motion
22 opposing the State's Motion to strike (Regarding Argument I Of The State's Motion), there are
23 numerous assertions in the State's Motion reflected in Judge Vega's ruling on September 17, 2010,
24 that are not just false, but fabrications by Mr. Smith.

25 Consequently, in the interests of justice Judge Vega's Minutes ruling on September 17,
26 2010, must be reconsidered and vacated during an open public hearing that is on the record, so that
27 proper consideration can be given to the important issues that are in the Petitioner's three motions,
28 and which Judge Vega gave no consideration when making her ruling on September 17, 2010.

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Dated this 24 day of September 2010.

 95558
Kyrstin Blaise Lobato 95558
Petitioner Pro Per
FMWCC
4370 Smiley Rd
Las Vegas, NV 89115-1808

EXHIBIT

1

GENERAL POWER OF ATTORNEY

I, Kirstin Blaise Lobato, residing at 4370 Smiley Rd.; Las Vegas, NV 89115, hereby appoint Michelle Ravell of 5813 Santa Catalina Ave; Las Vegas, NV 89108, as my Attorney-in-Fact ("Agent").

I hereby revoke any and all general powers of attorney that previously have been signed by me. However, the preceding sentence shall not have the effect of revoking any powers of attorney that are directly related to my health care that previously have been signed by me.

My Agent shall have full power and authority to act on my behalf. This power and authority shall authorize my Agent to manage and conduct all of my affairs and to exercise all of my legal rights and powers, including all rights and powers that I may acquire in the future. My Agent's powers shall include, but not be limited to, the power to:

1. Open, maintain or close bank accounts (including, but not limited to, checking accounts, savings accounts, and certificates of deposit), brokerage accounts, and other similar accounts with financial institutions.
 - a. Conduct any business with any banking or financial institution with respect to any of my accounts, including, but not limited to, making deposits and withdrawals, obtaining bank statements, passbooks, drafts, money orders, warrants, and certificates or vouchers payable to me by any person, firm, corporation or political entity.
 - b. Perform any act necessary to deposit, negotiate, sell or transfer any note, security, or draft of the United States of America, including U.S. Treasury Securities.
 - c. Have access to any safe deposit box that I might own, including its contents.
2. Sell, exchange, buy, invest, or reinvest any assets or property owned by me. Such assets or property may include income producing or non-income producing assets and property.
3. Purchase and/or maintain insurance, including life insurance upon my life or the life of any other appropriate person.
4. Take any and all legal steps necessary to collect any amount or debt owed to me, or to settle any claim, whether made against me or asserted on my behalf against any other person or entity.
5. Enter into binding contracts on my behalf.
6. Exercise all stock rights on my behalf as my proxy, including all rights with respect to stocks, bonds, debentures, or other investments.
7. Maintain and/or operate any business that I may own.
8. Employ professional and business assistance as may be appropriate, including attorneys, accountants, and real estate agents.
9. Sell, convey, lease, mortgage, manage, insure, improve, repair, or perform any other act with respect to any of my property (now owned or later acquired) including, but not limited to, real estate and real estate rights (including the right to remove tenants and to recover possession). This includes the right to sell or encumber any homestead that I now own or may own in the future.
10. Prepare, sign, and file documents with any governmental body or agency, including, but not limited to, authorization to:
 - a. Prepare, sign and file income and other tax returns with federal, state, local, and other governmental bodies.
 - b. Obtain information or documents from any government or its agencies, and negotiate, compromise, or settle any matter with such government or agency (including tax matters).
 - c. Prepare applications, provide information, and perform any other act reasonably requested by any government or its agencies in connection with governmental benefits (including military and social security benefits).
11. Make gifts from my assets to members of my family and to such other persons or charitable organizations with whom I have an established pattern of giving. However, my Agent may not make gifts of my property to the Agent.
12. Transfer any of my assets to the trustee of any revocable trust created by me, if such trust is in existence at the time of such transfer.
13. Disclaim any interest which might otherwise be transferred or distributed to me from any other person, estate, trust, or other entity, as may be appropriate.

This Power of Attorney shall be construed broadly as a General Power of Attorney. The listing of specific powers is not intended to limit or restrict the general powers granted in this Power of Attorney in any manner.

Any power or authority granted to my Agent under this document shall be limited to the extent necessary to prevent this Power of Attorney from causing: (i) my income to be taxable to my Agent, (ii) my assets to be subject to a general power of appointment by my Agent, and (iii) my Agent to have any incidents of ownership with respect to any life insurance policies that I may own on the life of my Agent.

My Agent shall not be liable for any loss that results from a judgment error that was made in good faith. However, my Agent shall be liable for willful misconduct or the failure to act in good faith while acting under the authority of this Power of Attorney.

I authorize my Agent to indemnify and hold harmless any third party who accepts and acts under this document.

My Agent shall be entitled to reasonable compensation for any services provided as my Agent. My Agent shall be entitled to reimbursement of all reasonable expenses incurred in connection with this Power of Attorney.

My Agent shall provide an accounting for all funds handled and all acts performed as my Agent, if I so request or if such a request is made by any authorized personal representative or fiduciary acting on my behalf.

This Power of Attorney shall become effective immediately and shall not be affected by my disability or lack of mental competence, except as may be provided otherwise by an applicable state statute. This is a General Power of Attorney. This Power of Attorney may be revoked by me at any time by providing written notice to my Agent.

Dated October 18th, 2009 at Las Vegas, Nevada.

Kirstin Blaise Lobato
Kirstin Blaise Lobato

Witness Information

I have witnessed the principal's signature or the principal's acknowledgment of the signature designating power of attorney. I am an adult at least 18 years old and not the attorney-in-fact. My signature certifies that the principal is known to me and is the same person who signed and dated this affidavit.

Lisa M. Kinsey
Signature of Witness 1

Lisa M. Kinsey
Name of Witness 1 (printed)

4370 Smiley Rd.
Address

Las Vegas NV 89115
City, State and Zip

Georgina Gonzalez
Signature of Witness 2

Georgina Gonzalez
Name of Witness 2 (printed)

4370 Smiley Rd.
Address

LAS VEGAS, NV 89115
City, State and Zip

EXHIBIT

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09/17/2010 | **All Pending Motions** (3:00 AM) (Judicial Officer Vega, Valorie)

Minutes

09/17/2010 3:00 AM

- Defendant's pro per motion for recusal of Judge Valorie Vega...Defendant's pro per motion for the Court Clerk to assign a Civil Case number as required by the NRS...Defendant's pro per motion for an expedited hearing and motion for an extension of time to file an answer to the State's response....State's motion to strike or, in the alternative, opposition to improper motions for recusal of Judge Vega, expedited hearing and extension of time, and assignment of Civil Case number Court advised the three pro per motions were all filed on 9/7/10 and calendared for 9/21/10. Upon reviewing them, this Court learned and observed that they were neither signed by a member of the Nevada Bar nor by the Defendant herself. All three pro per motions are signed as follows: "Kirsten Blaise Lobato by Michelle Ravell attorney in fact." Ms. Ravell had been present in court on 7/15/10 at which time she advised that she was not a licensed attorney. This Court then placed the three pro per motions on this chamber's calendar in order to sua sponte strike the three rogue documents pursuant to EDCR 7.42(a). In the interim the State filed its motion to Strike these three documents as fugitive documents. This Court hereby ORDERED, Sua sponte Strike the three pro per motions pursuant to EDCR 7.42(a) and also GRANTS the State's motion to Strike pursuant to *Salman v. Newell*, 110 Nev. 1333 (1994). Deft's Petition set for 9/30/10 STANDS. State to prepare a global order addressing both rulings. NDC