

Case No: 27CV-WR1-2025-0198

Pursuant to NRS 239B.030, the undersigned affirms that this document does not contain social security numbers.

IN THE ELEVENTH JUDICIAL DISTRICT COURT OF THE
STATE OF NEVADA IN AND FOR COUNTY OF PERSHING

JOHNNY E. McMAHON,
Petitioner,

VS.

THE STATE OF NEVADA, et al.
Respondents.

PETITIONER'S MOTION FOR
COURT TO DECLARE THE
PETITIONER'S POST-CONVICTION
FIRST-DIRECT APPEAL AS
CONSTITUTIONALLY NULL AND
VOID UNDER THE FIFTH AND
FOURTEENTH AMENDMENTS.

COMES NOW, McMahon, Petitioner, Pro se, moves this Honorable Court to Grant the above captioned Petitioner's Motion For Court to Declare the Petitioner's Post-Conviction First-Direct Appeal as Constitutionally Null and Void under the Fifth and Fourteenth Amendments. This motion is based upon the compelling and overwhelming evidence on file with the Clerk of the Court to support the State Respondents abuse of power to force a retained legally discharged trial attorney back onto the case to prosecute the Petitioner's first-direct appeal, creating a clear conflict of interest to deny the Petitioner of a procedurally full and fair first-direct appeal, in violation of both case law and authority and Petitioner's due process and equal protection rights.

STATEMENT OF CASE/FACTS

Mr. McMahon strongly asserts that the prima facie evidence on file clearly demonstrates that Mr McMahon fired / legally discharged retained trial attorney, Paul Wommer, at sentencing in colloquy with Eighth Judicial District Court, Judge, David Barker, Mr McMahon fired attorney, Wommer, as legal counsel. Pursuant to controlling standards and Nevada State Bar Assn. Model Rules of Professional Conduct Rule 8.4, attorneys are contractually obligated when retained as legal counsel and legally discharged to return all legal material back to client enabling client to retain new counsel.

Notwithstanding the fact that Mr. McMahon put the court on notice of attorney Wommer's legal discharge as counsel for cause, Mr McMahon filed (3) three timely pro se motions for the court to withdraw attorney Wommer as appellate counsel, based upon a clear conflict of interest; appoint a conflict-free counsel; or, allow Mr McMahon to proceed pro se in a Faretta setting. The court stayed the motions and forced attorney Wommer, back onto the case, to prosecute the first-direct appeal, creating a clear conflict of interest.

(1). Judge Barker abused his discretion and power in forcing an unwanted lawyer, attorney Wommer, back onto the case to prosecute Mr McMahon's first-direct appeal of right. The court was put on notice at sentencing and timely motions to: (1) Order withdraw of retained trial attorney, Wommer as counsel for conflict of interest; (2) For court to appoint a conflict-free counsel to prosecute petitioner's first-direct appeal; or (3) Allow petitioner to proceed pro se

(1). (Cont): in a Faretta setting. The court stayed the timely filed motions, forcing attorney Wommer back onto the case, creating a clear conflict of interest. (See Ex #47).

(2). Not only reflective of court minutes, attorney Wommer failed to appear on (3) three scheduled hearing dates, the court appointed attorney Drew Christianson, then rescinded the appointment, allowing attorney Wommer, who motioned the court for Appointment of Counsel, back onto the case. Attorney Wommer committed fraud upon the court in claiming that he was appointed counsel at the lower level, which is clearly false, as Mr McMahon retained attorney Wommer for \$25,000 on Dec. 12, 2005, and prior to that, as SVP of Starfish Capital Partners, retained attorney Wommer as corporate legal counsel. (See Exs # 47 and 86).

(3). Attorney Wommer constructively hijacked Mr. McMahon's first-direct appeal of right, and also committed fraud upon Nevada Supreme Court, in his Filing forms, claiming that he was retained as counsel at the lower level, which is true, yet in stark contrast to what he told the district court, then attorney Wommer lied claiming that the defendant retained him as appellate counsel, again in stark contrast in his motion, to Dist. court, for appointment of counsel. (See Ex #46).

(4). Based upon the district court failing to stay the case, Mr McMahon filed timely prose motions to the Nevada Supreme

(4). (Cont): Court to arrest the case and take jurisdiction, based upon the courts conflict of interest, and attorney Wommer's failure to withdraw as counsel. The court refused to address the pro se motions, declaring them as fugitive documents under Rule 46(b) returning them back to petitioner, advising Mr McMahon to contact attorney Wommer, to resolve the matter, which runs afoul of the Nevada Supreme Courts Order ADKT #411, mandating that all appellate attorneys communicate and correspond with the defendant to correct and perfect the appeal favorable to the defendant.

(5). Mr. McMahon additionally filed complaints on attorney Wommer with the Nevada State Bar Assn., to no avail, and the Commission on Judicial Discipline on Judge Baker, again to no avail. (See Ex's # 52-53).

(6). During the pendency of Wommer's unauthorized first-direct appeal, Wommer failed to challenge the want of subject-matter jurisdiction ground; the faulty DNA evidence and fraud upon the court; or judicial bias on behalf of Judge Barker, rendering the claims ripe for adjudication, yet as a ground raised the claim of retroactive enjoinder, failing to preserve the record at the lower level to sever the misjoined cases, as addressed by Judge, Elizabeth Halverson. In Wommer's ground he alleged that jurisdiction was proper at one point, then later became improper, which was fatally flawed and erroneous as enjoinder was never proper to begin with.

(7). The State filed their answering brief and failed in their Certificate of Service to serve a copy of their brief on attorney Wommer, or Mr McMahon, by design, to bar Wommer from rebutting their erroneous \$20 dollar bill theory to overcome enjoinder, State served a copy of their answering brief on the law firm of Christalli & Saggese, who had absolutely nothing to do with the case or appeal, rendering the States ex parte brief as inoperable and void, a violation of the NRAP, which equally attaches to the Nevada Supreme Courts Order of Affirmance as being null and void procedurally and constitutionally. (See Ex # 57).

(8). Mr McMahon again motioned the court to Order Wommer to withdraw as counsel, and forwarded numerous letters for Wommer to withdraw and return my case file. When attorney Wommer finally forwarded back the case file several documents were missing, yet Wommer's postit notes confirmed again that he committed fraud upon the district court in claiming that he did not receive copies of my motions or correspondence. (See Ex's # 47, 60-61 and 65).

CASE LAW AND AUTHORITY

Mr McMahon strongly asserts that no court, since 1803, has ever held that it is legally proper for a court to force an unwilling retained lawyer back onto the case, after being fired / legally discharged by the client, to prosecute the first direct appeal of right. Not only is this a constitutional structural error, for

any court to hold that Judge Barker did not abuse his power and discretion, would constitute a case of first impression and not pass constitutional scrutiny in the federal courts. Thus far, as opposed to the district courts, court of appeals and Nevada Supreme Court, addressing the meritorious ground, they have collectively invoked inapplicable AEDPA provisions to bar judicial review, which again, is the only defense the State courts and respondents can use when there is no defense, especially when the vehicle is driven by pro se prisoner petitioners who are treated as second class citizens in Nevada State courts.

Once Mr. McMahon put the district court on notice, Judge Barker had a duty to conduct a Curcio hearing to determine if a conflict of interest exists. In *U.S. v. Curcio*, 680 F2d 881 (2nd Cir 1982). (... after a court is put on notice of the conflict of interest, and fraud upon the court, a hearing is warranted). A trial judge "has an independent duty to ensure that criminal defendants receive a trial that is fair and does not contravene Sixth Amendment". *Cook*, 45 F3d at 393 (quoting *United States v. Levy*, 25 F3d 146, 153 (2nd Cir 1994)). (This right extends to the critical stage of a first direct appeal). See also *U.S. v. Grieg*, 967 F2d 1018 (5th Cir 1992). (The trial court must conduct a Garcia hearing once it has been alerted of the existence of IAC this extends to the first direct appeal of right being an integral part of the process under Sixth Amendment.

In *Crandell v. Bunnell*, 23 F3d 754 (9th Cir 1994) (per curiam). A defendant cannot be forced to choose between incompetent unauthorized counsel who was legally discharged of his duties, or proceed pro se, implicates the fundamental fairness and accuracy

of the criminal proceeding and a showing of prejudice is therefore not required. See also *Pazden v. Mauder*, 424 F3d 303 (CA3 2005). Therefore a reviewing court must be confident the defendant is not forced to make a choice between incompetent counsel or appearing pro se. See also *United States v. Taylor*, 113 F3d 1135, 1140 (10th Cir 1997). In *United States v. Brown*, 785 F3d 1337 (9th Cir 2015). A defendant enjoys a constitutional right to discharge his retained counsel for any reason unless a contrary result is compelled by the purposes inherent in the fair, efficient and orderly administration of justice... the governing question is whether the conflict between client and counsel is so extreme as to constitute a "constructive denial of counsel" altogether. To determine if the conflict is severe enough to warrant substitution under these circumstances, the court considers: (1) the timeliness of the substitution motion and the extent of resulting inconvenience or delay; (2) the adequacy of the district court's inquiry into the defendant's; and (3) whether the conduct was so great that it prevented an adequate defense. As held in *Wilson v. Mintzes*, 761 F2d 275, 278-79 (6th Cir 1985). (The denial of an accused's right to counsel of his choice offends the concept of the basic requirements of a fair hearing as to amount to a denial of due process of law contrary to the Fourteenth Amendment). As held by the 9th Circuit Court of Appeals in *United States v. Moreland*, 604 F3d 1058, 1066 (9th Cir 2010). (A court cannot force counsel on an unwilling defendant. In *United States v. Romano*, 849 F2d 812, 820 (3rd Cir 1988). (Reversible error when court appointed counsel over defendant's objection after revoking defendant's right to pro se representation. Mr McMahon requested

Faretta hearing, in one of his three prose motions, which were stayed by Judge Barker. The Court in *Faretta v. California*, 422 US 808, 95 Sct 2525 (1975) held (In forcing Faretta, under the circumstances, to accept, against his will, a State appointed counsel the California courts deprived him of his Constitutional right to conduct his own defense, which equally attaches to the critical stage of a denial of first right of direct appeal. See also *U.S. v. Peppers*, 302 F3d 120 (CA 3 2002). As Justice Brennan and Marshall joined in dissent in *Jones v. Barnes*, 463 US 745 (1983). (I cannot accept the notion that lawyers are part of the punishment a person receives merely for being accused of a crime). Attorney Wommer couldn't find his ass with a guide dog, for Mr McMahon to even raise a 6th Amendment IAC is an exercise in futility, as Wommer was protected up and down the appellate road and the cumulative effect of his 30 plus reversible errors and omissions could have resulted in a new trial or complete exoneration had a fair-minded neutral impartial jurist were assigned to the case at any point in the proceedings.

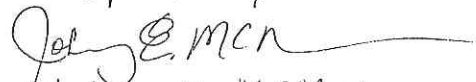
Accordingly, the Petitioner's Motion for Court to Declare the Petitioner's Post-Conviction First-Direct Appeal as Constitutionally Null and Void Under the Fifth and Fourteenth Amendments is warranted as Eighth Judicial District Court Judge, David Barker, clearly violated Mr McMahon's right to counsel of choice and created a clear conflict of interest in forcing an unwanted legally discharged Attorney Wommer back onto the case to prosecute the first-direct appeal. Whereas, there is simply no case law or authority, State or Federal, whereby the courts have held that judges have such discretion to force a legally discharged lawyer

back onto the case, to both profit and cover up his multiple errors and omissions in the lower level, or to prosecute Mr McMahon's First-direct appeal of right for any reason.

IT IS SO PRAYED.

Dated: day of January, 2026.

Respectfully submitted



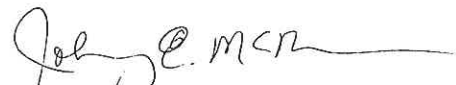
Johnny E. McMahon

Pro se

VERIFICATION/AFFIRMATION NRS 239B.030

Mr. McMahon declares under penalty of perjury that the following and foregoing statements, evidence and pleading is true and accurate to the best of his ability and possesses first-hand knowledge of the truth and accuracy of the events and that no document contains the social security number of anyone.

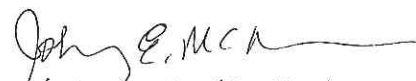
Dated: day of January, 2026.


Johnny E. McMahon

CERTIFICATE OF SERVICE

Mr McMahon declares that a true and correct copy of Petitioner's Motion for Court to Declare the Petitioner's Post-Conviction First-Direct Appeal as Constitutionally Null and Void Under the Fifth and Fourteenth Amendments, was placed in U.S. mail postage pre-paid on day of January, 2026 to:

Aaron Ford
Attorney General
State of Nevada
100 N. Carson St.
Carson City, NV 89701


Johnny E. McMahon
Pro se