

***Byford v. State*, 123 Nev. Adv. Op. 9 (April 12, 2007)<sup>1</sup>**

**ADMINISTRATIVE LAW – PROPOSED ORDERS**

**Summary**

Byford appeals an order of the Eighth Judicial District Court, Clark County, denying a postconviction writ of habeas corpus.

**Disposition/Outcome**

The Court vacated the order of the district court and remanded the matter for further review consistent with its opinion. The district court should have reconsidered Byford’s claims, held evidentiary hearings if necessary, issued a new ruling, and either prepared its own findings of fact and conclusions of law, or announced those findings and conclusions to the parties with specific guidance for drafting a proposed order.

**Factual and Procedural History**

In 2000, the Court affirmed both the first-degree murder conviction and the death sentence of Robert Byford.<sup>2</sup> Byford then sought habeas relief and appointment of counsel by filing a timely postconviction petition. The district court appointed Byford counsel, who filed a supplement to the petition. The petition was denied without first conducting an evidentiary hearing.

On appeal, the Nevada Supreme Court held that the district court did not adequately address Byford’s claims of ineffective trial and appellate counsel.<sup>3</sup> The Court held that in the absence of an evidentiary hearing, the district court lacked specific findings of fact and conclusions of law in support of its decision. The Court vacated the district court’s order and remanded the matter with instructions to “at a minimum, enter an order that sets forth specific findings of fact and conclusions of law to support its decision.”<sup>4</sup> Additionally, the Court reminded the district court that “a post conviction habeas petitioner is entitled to an evidentiary hearing on any claims that if true would warrant relief as long as the claims are supported by specific factual allegations which the record does not belie or repel.”<sup>5</sup>

After the vacatur and remand, the case was never placed on the district court’s calendar, the parties did not reappear before the court, and the court did not notify the parties it had reconsidered Byford’s claims. The State submitted a new proposed order to the district court

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<sup>1</sup> By Joshua Woodbury.

<sup>2</sup> *Byford v. State*, 116 Nev. 215, 994 P.2d 700 (2000).

<sup>3</sup> *Byford v. State*, No. 44215 (Nev. Nov. 16, 2005).

<sup>44</sup> *Id.* at 4.

<sup>5</sup> *Id.* at 3-4.

without obtaining a new ruling or contacting Byford. The district court then signed and filed the State's proposed order without advising Byford or bringing the parties before it.

### **Discussion**

The Court found that the district court acted improperly for four reasons. First, although a party may submit a proposed order to the court within ten days after being notified of the ruling, the State was never notified of a new ruling after the vacatur and remand.<sup>6</sup> The district court must make a ruling and state its findings of fact and conclusions of law before the State may draft a proposed order. Therefore, the State's proposed order was unfounded.

Second, under the Nevada Code of Judicial Conduct a district court must "accord to every person who has a legal interest in the proceeding, or that person's lawyer, the right to be heard."<sup>7</sup> Although this code also allows for a party to submit a proposed order, it requires that the other parties are notified and given an opportunity to respond to the proposed findings and conclusions.<sup>8</sup> The district court did not follow this procedure, and failed to give Byford the opportunity to respond to the State's proposed order.

Third, although Byford never objected to the proposed findings and conclusions and never sought to have them changed after the district court filed the order, Byford was under no obligation to do so. Neither the Nevada Rules of Civil Procedure nor the Eighth Judicial District Court Rules require a party to seek modifications to an order before appealing the order.

Finally, the district court did not satisfy the Court's directions following vacatur and remand that it reconsider Byford's ineffective assistance of counsel claims. At a minimum, the district court was obligated to advise both parties that it had reconsidered the claims, to state its ruling, and to explain its findings and conclusions.

### **Conclusion**

The Court held that the district court erred in signing and filing a proposed order written by the State. The order itself was unfounded because the State drafted it without being advised of the district court's findings of law or conclusions of fact. Additionally, Byford was never accorded his opportunity to respond to the order. Furthermore, the district court did not satisfy the direction of the Court on remand. Accordingly, the Court vacated the district court's order and remanded for proceedings consistent with the opinion.

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<sup>6</sup> Eighth Judicial Dist. Ct. Rul. 7.21.

<sup>7</sup> Nev. Code of Judicial Conduct § 3B(7).

<sup>8</sup> *Id.*