

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

In re

CURTIS F. PRICE,

On Habeas Corpus.

CAPITAL CASE

S069685
(Related Case
S004719)

**SUPREME COURT
FILED**

AUG 11 2000

Frederick K. Ohlrich Clerk

DEPUTY

**OPPOSITION TO PETITIONER'S MOTION FOR PERMISSION TO FILE
DOCUMENTS EX PARTE AND UNDER SEAL, AND FOR OTHER RELIEF**

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Respondent hereby files its opposition to petitioner's Application, dated July 25, 2000, which requested this Court to "file ex parte and under seal a declaration and attached exhibit that petitioner's counsel are submitting with this application but not serving on opposing counsel." Petitioner's "Application" also requested four other items of relief, namely, release from the Order of July 12, 2000, a ruling recusing the Attorney General's Office from this case, appointment of a monitor to take all steps necessary to ensure that all material related to petitioner's case that are in the possession of the California Attorney General's Office are preserved, and for an Order to Show Cause. Respondent hereby requests that this Court refuse to file the documents proffered on an ex parte basis unless and until those documents are served on respondent.

While we can understand petitioner's desire to litigate this case without the inconvenience of having to address and respond to arguments by representatives of his opposing party, the application herein gives absolutely no citation to authority, nor any reasoned argument, why such an extraordinary procedure should be utilized in

this case. We have argued forcefully, both in our opposition to petitioner's motion to recuse counsel for respondent, as well as in our substantive opposition to appellant's Petition for Writ of Habeas Corpus, that petitioner has shown absolutely no prima facie case of any significant misconduct on the part of counsel for respondent, either recently, or in the distant past. Further, our advocacy and investigation has allowed us to inform the court, for instance, that certain of petitioner's accusations of misconduct on the part of an attorney during the *Price* trial were being made by an individual that petitioner had failed to identify as a self-admitted alcoholic, who has a memory that he has admitted was unreliable at best. In other instances, we have been able to inform the court that accusations that certain documents were withheld were palpably contradicted by on-the-record hearings both before and during the *Price* trial.

Despite energetic protestations, petitioner has given absolutely no evidence to this Court which would indicate that counsel for respondent, either at the *Price* trial itself, or in the current phase of the litigation, has been anything but forthright and honorable with the Courts below or with this Court. In our opposition to the recusal motions, we have cited numerous case authorities which authoritatively refute any claim that petitioner's showing thus far is sufficient to justify any action by this Court which differ from a completely routine course of adversarial litigation in this matter. Petitioner's current filing in no way changes this reality.

Petitioner certainly has the right to investigate any claims he believes exist in this case. However, this *ex parte* application is not merely in aid of further investigation, but, given the relief sought, plainly attempts to place material before this Court for substantive

consideration in support of his request of substantive relief in the recusal motion and in the habeas corpus petition itself. Placing such substantive material before the court in an ex parte manner is plainly improper, unnecessary, and should not be countenanced by this Court.

We briefly mention two other points. First, petitioner's "fourth" request for relief is worded in a manner which could be misunderstood. Petitioner requests an "independent monitor" to take all steps necessary to preserve materials relevant to the case in the possession of respondent, "as has been ordered by the federal court. . . ." We presume that petitioner does not mean that a monitor has been appointed in federal court, but rather, only intends to accurately state that the federal court has found it sufficient to order such materials be preserved. As officers of the court, respondent's counsel obviously would not act in any way so as to disobey that order. Finally, petitioner mentions that certain materials should not be disclosed to respondent because they are "privileged attorney work product material." Given that petitioner has placed those materials before the court in a substantive manner in order to persuade the court to grant substantive relief, it is elementary law that such work product claims have been waived. (*BP Alaska Exploration, Inc. v. Superior Court* (1988) 199 Cal.App.3d 1240; *Wells Fargo Bank v. Superior Court* (2000) 22 Cal.4th 201, 214 et seq.)

WHEREFORE, respondent requests this Court to deny the Application to file materials ex parte and under seal, and to deny petitioner all other relief requested in the Application discussed herein.

Dated: August 10, 2000

Respectfully submitted,

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DECLARATION OF SERVICE

Case Name: **In re Curtis F. Price**

No.: **S069685**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the Bar of this Court at which member's direction this service is made. I am 18 years of age or older and not a party to the within entitled cause; I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On **August 10, 2000**, I placed the attached **OPPOSITION TO PETITIONER'S MOTION FOR PERMISSION TO FILE DOCUMENTS EX PARTE AND UNDER SEAL, AND OTHER RELIEF** in the internal mail collection system at the Office of the Attorney General, 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102, for deposit in the United States Postal Service that same day in the ordinary course of business, in a sealed envelope, postage thereon fully prepaid, addressed as follows:

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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **August 10, 2000**, at San Francisco, California.

GLORIA MILINA

Typed Name



Signature