

MICHAEL T. BOTELHO # 80837

P.O. Box 607

NEVADA STATE PRISON

CARSON CITY, NV. 89702

PROPER PERSON
RECEIVED/ENTERED

OCT 09 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL T. BOTELHO,)

APPELLANT,)

V.S.)

THE STATE OF NEVADA,)

RESPONDENT.)

CASE NO. 49586

FILED

OCT 31 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

NOTICE OF MOTION AND MOTION
FOR WITHDRAWAL OF ATTORNEY OF RECORD
AND MOTION AND LEAVE TO FILE SUPPLI-
MENTAL APPEAL IN FORMA PAUPERIS/
PRO-SE' TO NEVADA SUPREME COURT

COMES NOW, MICHAEL T. BOTELHO, IN PRO SE,
AND SUBMITS HIS NOTICE OF MOTION AND MOTION
FOR WITHDRAWAL OF ATTORNEY OF RECORD AND
MOTION AND REQUEST OF PERMISSION AND LEAVE
TO FILE SUPPLEMENTAL APPEAL IN FORMA PAUPERIS/
PRO SE' TO NEVADA SUPREME COURT, MOVING
THIS COURT TO ORDER THAT MARY LOU WILSON,
COUNSEL OF RECORD IN THE ABOVE-EN-
TITLED ACTION, BE WITHDRAWN AS COUNSEL

RECEIVED

OCT 09 2007

JANETTE M. BLOOM
CLERK OF SUPREME COURT
DEPUTY CLERK

OF RECORD HEREIN, AND THAT SAID COUNSEL DELIVER TO APPELLANT ALL DOCUMENTS, PLEADINGS, PAPERS AND TANGIBLE PERSONAL PROPERTY IN COUNSEL'S POSSESSION AND CONTROL TO APPELLANT, ACTING IN PRO SE' AT COUNSEL'S EXPENSE, TO THE ABOVE ADDRESS.

THIS MOTION IS BASED UPON NRS 7.055, NEVADA SUPREME COURT RULES 46 & 166, AS WELL AS THE ATTACHED POINTS AND AUTHORITIES AND AFFIDAVIT SUPPORTING SAME.

POINTS AND AUTHORITIES

ALTHOUGH AN ATTORNEY MAY NOT WITHDRAW AS COUNSEL OF RECORD IF DOING SO WOULD ADVERSELY AFFECT THE CLIENT'S INTEREST, MADRID V GOMEZ, 150 F.3d 1030, 1038-39 (9th 1998), THE CLIENT MAY TERMINATE HIS COUNSEL'S REPRESENTATION AT ANY TIME, KASHEFI-ZAHAGH VS. INS, 791 F.2d 708, 711 (9th 1986) SEE ALSO NRS 7.055(1) (EMPHASIS ADDED). SEE ALSO NEVADA SUPREME COURT RULE (SCR) 46 & 166; SECOND JUDICIAL DISTRICT COURT RULE 23(1); AND EIGHTH JUDICIAL DISTRICT COURT RULE 7.40(b)(2)(ii),

AS THE OPENING BRIEF OF APPEAL TO THE NEVADA SUPREME COURT HAS BEEN PARTIALLY PERFECTED AND INCOMPLETE, COUNSEL'S SERVICES

ARE NO LONGER NEEDED, NOR APPRECIATED IN THIS CRIMINAL MATTER.

COUNSEL HEREIN HAS NO LEGAL BASIS FOR WITHHOLDING APPELLANTS PAPERS IN THIS MATTER, AS APPELLANT OWES COUNSEL NO FEES WHICH WOULD PERMIT COUNSEL TO MAINTAIN SAID PAPERS UNDER A GENERAL RETAINING LIEN.

FIGLIUZZI VS. DISTRICT COURT, 111 NEV. 338, 340-41, 890 P.2d 798, 800-02 (1995).

THEREFORE, THIS HONORABLE COURT IS MOVED TO EXERCISE ITS JURISDICTION IN THIS MATTER AND ORDER COUNSEL TO BE WITHDRAWN AS COUNSEL OF RECORD AND TO DELIVER THE ENTIRETY OF DOCUMENTATION GENERATED IN THIS INSTANT CASE, AS DEFENDANT (APPELLANT) HAS NO OTHER REMEDY AT LAW TO COMPEL COUNSEL TO DO SO.

DATED THIS 2ND DAY OF OCTOBER, 2007

Michael T. Botelho
MICHAEL T. BOTELHO # 80837
BOX 607
N.S.P.
CARSON CITY, NV. 89702

DEF. (APPELLANT) IN PRO-SE

MICHAEL T. BOTELHO # 80837

P.O. Box 607

NEVADA STATE PRISON

CARSON CITY, NV. 89702

IN THE SUPREME COURT OF THE STATE OF NEVADA

MICHAEL T. BOTELHO,)

APPELLANT,)

CASE NO. 49586

VS.)

THE STATE OF NEVADA,)

RESPONDENT.)

AFFIDAVIT IN SUPPORT OF MOTION FOR WITH-
DRAWAL OF ATTORNEY OF RECORD AND TRANSFER
OF RECORDS AND MOTION TO PROCEED IN FORMA
PAUPERIS / IN PRO SE TO FILE SUPPLEMENTAL
APPEAL TO NEVADA SUPREME COURT IN PRO SE

COMES NOW, MICHAEL T. BOTELHO, APPELLANT ACT-
ING IN PRO SE, WHO BEING FIRST DULY SWORN
AND UNDER THE PENALTY OF PERJURY, DO HEREBY
DEPOSE AND STATE THE FOLLOWING:

(1) I AM THE APPELLANT IN THE ABOVE ENTITLED
ACTION.

(2) I HAVE RECEIVED NO RESPONSE FROM COUNSEL
IN REGARDS TO MY CASE AND HER SUB-
SEQUENT DISREGARD FOR APPELLANTS GROUNDS

WHICH COUNSEL INEXPLICITLY WAIVED, AS WELL AS
GROUNDS PURPOSELY LEFT OUT OF THE PENDING
SUPREME COURT APPEAL IN THE STATE OF NEVADA

(3) COUNSEL TRIED TO CAUSE APPELLANT TO LOSE
HIS GROUNDS BY NOT ADDRESSING THEM AND THUS
CAUSING THE INEXHAUSTION OF HIS ORIGINAL POST-
CONVICTION PETITION FOR WRIT OF HABEAS CORPUS.

(4) COUNSEL HAS WITHHELD CRUTIAL INFORMATION
FROM APPELLANT (CLIENT)

(5) COUNSEL HAS FACTUALLY LIED TO APPELLANT
(CLIENT) AND IS PROVABLE

(6) COUNSEL HAS MISDIRECTED CLIENT IN REGARDS
TO THIS INSTANT APPEAL AS WELL AS FAILING TO
DISCUSS CRUTIAL POINTS BEFORE PETITIONERS STATE
EVIDENTIARY HEARING, THEN ACTING WITHOUT CLIENTS
KNOWLEDGE AND PERMISSION TO ACTS SHOCKING
TO PETITIONER,

(7) PETITIONER (APPELLANT/CLIENT) HAD SEVERAL
GROUNDS WAIVED BY SAID COUNSEL AT EVIDENT-
IARY HEARING WITH TOTAL DISREGARD FOR CLIENT'S
GROUND'S AND APPEAL. IN ADDITION, THIS AGAIN
WAS DONE WITHOUT PERMISSION AND PRIOR KNOW-
LEDGE OF HER CLIENT (PETITIONER/APPELLANT),
AND WITHOUT PETITIONER'S ENTITLEMENT TO DUE
PROCESS,

(8) COUNSEL WAITED TIL ALMOST THE VERY LAST DAY TO FORWARD APPEAL & OPENING BRIEF, A BRIEF WHEREIN SHE FAILS TO FEDERAL PROPERLY THE (1) GROUND SHE ACTUALLY DEFENDED.

(9) TO MAKE MATTERS WORSE, COUNSEL WAS ARGUING IN HER SUPPLEMENTAL TO PETITIONERS PRO SE WRIT OF HABEAS CORPUS. THE WRIT SPECIFICALLY ADDRESSED HER SOLE ISSUE IN GROUND NINE(9) OF ORIGINAL PETITION, IF COUNSEL HAD READ GROUNDS, SHE WOULD HAVE KNOWN THIS. COUNSEL FILED A SUPPLEMENTAL TO THE ORIGINAL PETITION ARGUING THE SAME VERY THING. STRANGELY ENOUGH, THE COURT DENIED THIS GROUND IN PETITIONERS WRIT BUT HEARD IT WHEN ADDRESSED IN HER SUPPLEMENTAL. AGAIN BY THE SAME PREJUDICIAL, BIASED JUDGE WHO DISREGARDED THE PETITIONERS MOTION TO THE COURT FOR JUDGE'S RECUSAL WHEREIN JUDGE POLAHA VIOLATED DISTRICT COURT AND STATE AND FEDERAL RULES BY HEARING AND DENYING PETITIONERS MOTION PROPERLY BEFORE THE COURT. COUNSEL DIDNT CARE TO ARGUE THIS IN THE APPEAL TO THE NEVADA SUPREME COURT AS WELL.

I AM THEREFORE SUBMITTING THE INSTANT MOTION AND AFFIDAVIT IN GOOD FAITH, AS I HAVE NO OTHER REMEDY THAN THIS COURT'S POWER TO ENFORCE MY STATUTORY RIGHTS AND

(3)

CAUSE COUNSEL TO BE WITHDRAWN AND PROCEED IN
PRO SE IN THIS INSTANT ACTION.

DATED THIS 2ND DAY OF OCTOBER 2007

Michael T Botelho #80837
MICHAEL T. BOTELHO
Box 607 NSP
CARSON CITY, NV 89702
APPELLANT IN PRO SE'

VERIFICATION UNDER PENALTY OF PERJURY:

I DO VERIFY UNDER PENALTY OF PERJURY THAT THE
ABOVE AFFIDAVIT IS TRUE AND CORRECT AND IS STATED
TO THE BEST OF MY OWN PERSONAL KNOWLEDGE, AND IS
MADE WITHOUT BENEFIT OF A NOTARY PURSUANT TO
NRS 208.165, AS I'M AN INCARCERATED PERSON:

Michael T Botelho #80837
APPELLANT IN PRO-SE'

CERTIFICATE OF SERVICE BY MAILING:

I DO CERTIFY THAT I MAILED A TRUE AND
CORRECT COPY OF THE FOREGOING "MOTION FOR
WITHDRAWAL OF COUNSEL, FORWARD OF RECORDS
AND MOTION TO FILE APPEAL IN PRO SE"
TO FILE SUPPLEMENTAL APPEAL TO DENIAL
OF EVIDENTIARY HEARING ~~AND~~ GROUNDS AND
WRIT TO NEVADA SUPREME COURT, TO THE
ADDRESSES BELOW ON THIS 2ND DAY OF
OCTOBER 2007, BY PLACING SAME INTO

(4)

THE U.S. MAIL (VIA) PRISON LAW LIBRARY STAFF, IN COMPLIANCE WITH N.R.C.P. 5 (b):

JANETTE BLOOM
CLERK-NV. SUPREME COURT
201 SOUTH CARSON ST.
CARSON CITY, NV 89701

ATTORNEY GENERAL
100 NORTH CARSON ST
CARSON CITY, NV. 89701-4717

JUDGE POLAHA
SECOND JUDICIAL DIST. COURT
DEPT. #3
BOX 30083
RENO, NV 89520

TERRANCE McARTHUR
APPELLATE DEPUTY D.A.
WASHOE COUNTY DISTRICT ATTY OFFICE
BOX 30083
RENO, NV. 89520

MARY LOU WILSON, ESQ
333 MARSH AVE.
RENO, NV. 89509

Respectfully Submitted
Michael T. Botelho #80837
MICHAEL T. BOTELHO
BOX 607
N.S.P.
CARSON CITY, NV 89702

APPELLANT IN PRO-SE

CC: FILE

(5)

**SUPREME COURT OF THE STATE OF NEVADA
OFFICE OF THE CLERK**

MICHAEL TODD BOTELHO,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

Supreme Court No. 49586

District Court Case No. CR032156

RECEIPT FOR DOCUMENTS

TO: Mary Lou Wilson
Michael Todd Botelho #80837
Attorney General Catherine Cortez Masto/Carson City
Washoe County District Attorney Richard A. Gammick

You are hereby notified that the Clerk of the Supreme Court has received and/or filed the following:

10/09/07 Received Proper Person Motion.
Notice of Motion and Motion for Withdrawal of Attorney of Record and Motion and Leave to
file Supplemental Appeal in Forma Pauperis/Pro-Se to Nevada Supreme Court.

DATE: October 09, 2007

Janette M. Bloom, Clerk of Court

By: _____



Deputy Clerk