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3 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

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Electronically Filed
Jan 06 2014 10:10 a.m.
Tracie K. Lindeman
Clerk of Supreme Court

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6 ERNESTO MANUEL GONZALEZ

Case No. 64249

7 Appellant,

8 vs.

9 THE STATE OF NEVADA,

10 Respondent.

11 **MOTION FOR LEAVE TO BE RELIEVED AS APPOINTED COUNSEL**
12 **AND TO APPOINT THE WASHOE COUNTY PUBLIC DEFENDER**

13 COMES NOW, David R. Houston, Esq., Kenneth C. Lyon, III, Esq., the
14 Law Office of David R. Houston and the Law Office of Kenneth C. Lyon, III,
15 moves this Honorable Court for an Order relieving them as appointed counsel of
16 record and appointing the Washoe County Public Defender's Office as appointed
17 counsel.

18 This Motion is based upon the accompanying Memorandum of Points and
19 Authorities and the points made in the Order Denying Motion filed December 20,
20 2013.

21 DATED this 2nd day of January, 2014.

22 Respectfully submitted,

23 LAW OFFICE OF DAVID R. HOUSTON
24 432 Court St.
25 Reno, NV 89501

26 By: s/ David R. Houston
27 David R. Houston

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 The undersigned can appreciate that the counsel who files the Notice of
3 Appeal remains counsel of record and is obligated to comply with this Court's
4 rules and orders unless and until he is relieved by this Court.

5 However, this Court must appreciate that the Second Judicial District Order
6 appointing the undersigned for purposes of streamlining Mr. Gonzalez's appeal
7 **was illegal.**

8 NRS 7.115 specifically states:

9 "A magistrate, master or a district court **shall not appoint an attorney**
10 **other than a Public Defender to represent a person charged with any**
11 **offense** or delinquent act by petition, indictment or information unless the
12 magistrate, master or district court makes a finding, entered into the record
13 of the case, that the public defender is disqualified from furnishing the
14 representation and sets forth the reason or reasons for the disqualification."

15 In this case, the Washoe County Public Defender's Office represented Mr.
16 Gonzalez pre-trial, and quite vigorously. Friends and family of Mr. Gonzalez
17 retained the undersigned, who substituted in for the Public Defender. The
18 undersigned represented Mr. Gonzalez for the balance of the pre-trial
19 proceedings, for trial and for sentencing. At the time of sentencing, it was very
20 clear that there would be an appeal. The Second Judicial District appointed the
21 undersigned for purposes of making sure that the appeal was being processed in a
22 timely and appropriate manner.

23 Technically, that Order was illegal per the above and bold in section NRS
24 7.115.

25 However, the undersigned certainly did not want to jeopardize Mr.
26 Gonzalez's appeal by protesting the illegality of the Order. The undersigned did
27 what he was told to do. Nevertheless, because this Court is determined that only
28 it may relieve counsel, this Court must follow the statutory dictate and relieve this
counsel. This Court must appoint the Washoe County Public Defender as Mr.

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1 Gonzalez's counsel of record, unless and until such time as Mr. Gonzalez's
2 friends and family retain appellate counsel.

3 DATED this 2nd day of January, 2014.

4 Respectfully submitted,

5 LAW OFFICE OF DAVID R. HOUSTON
6 432 Court St.
7 Reno, NV 89501

8 By: s/ David R. Houston
9 David R. Houston

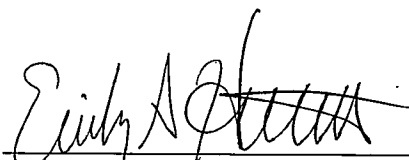
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CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5(b), I certify that I am an employee of David R. Houston, Esq. and that on this date I caused an electronic filing with the Nevada Supreme Court a true and correct copy of the foregoing document, addressed to:

Washoe County District Attorney's Office
Appellate Division
One South Sierra Street
Reno, Nevada 89501

DATED this 3rd day of January, 2014.



Emily A. Heavrin