

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

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4   McDONALD CARANO WILSON  
5   LLP, a Nevada limited liability  
6   partnership,

7                   Appellant,  
8                                   vs.

9   THE BOURASSA LAW GROUP,  
10   LLC, a Nevada limited liability  
11   corporation; OASIS LEGAL  
12   FINANCE, LLC, an Illinois limited  
13   liability company; CALIFORNIA  
14   BACK SPECIALISTS MEDICAL  
15   GROUP, INC., a California  
16   corporation; CALIFORNIA  
17   MINIMALLY INVASIVE  
18   SURGERY CENTER, INC., a  
19   California corporation;  
20   THOUSAND OAKS SPINE  
21   MEDICAL GROUP, INC., a  
22   California corporation; CONEJO  
23   NEUROLOGICAL MEDICAL  
24   GROUP, INC., a California  
25   corporation; and MEDICAL  
26   IMAGING MEDICAL GROUP  
27   INC., a California corporation,  
28

                    Respondents.

Case No. 64658

Electronically Filed  
Oct 14 2015 01:02 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

**McDONALD CARANO WILSON LLP'S  
MOTION TO REISSUE  
ORDER OF REVERSAL AS A  
PUBLISHED OPINION**

          Pursuant to Rule 36(f) of the Nevada Rules of Appellate Procedure,  
Appellant McDonald Carano Wilson LLP ("McDonald Carano") respectfully  
requests that the Court reissue, as a published opinion, the Order of Reversal

1 (“Order”) that was recently entered in this matter. The Order is appropriate for  
2 publication because it resolves an issue of first impression and one that many  
3 Nevada attorneys frequently encounter. Currently no published opinion on the  
4 issue exists. By publishing this opinion, the Court will settle an issue of law in  
5 Nevada, and prevent future appeals, thereby saving itself and Nevada attorneys  
6 from unnecessary time and expense.

## 7 **I. Relevant Facts**

8 The Court entered the Order on September 29, 2015. The sole issue in this  
9 case was whether a law firm’s withdrawal for good cause prevented it from later  
10 enforcing a charging lien under NRS 18.015. *See* Order at p. 2. The Court noted  
11 that it had not yet determined this novel issue, and that the district court’s reliance  
12 on *Argentina Consol. Mining Co. v. Jolley Urga Wirth Woodbury & Standish* to  
13 rule on the issue was incorrect. *See id.* at pp. 2-3. Thus, the Court clarified that  
14 “NRS 18.105’s plain language makes no distinction between attorneys who  
15 worked on a case before recovery and those that were working on a case at the  
16 moment of recovery.” *Id.* at p. 4.

17 The Court also stated that *Argentina*, perhaps the most prominent  
18 published decision on charging liens, has no application regarding whether  
19 withdrawn attorneys can enforce charging liens. *See id.* at pp. 3-4. Instead, as the  
20 Order illustrates, the Court held that the question was purely one of statutorily  
21 interpreting NRS 18.015. *See id.* at p. 4.

## 22 **II. Argument**

### 23 **A. Legal Standard**

24 “Any interested person” may file a motion for publication of an  
25 unpublished order in the Nevada Reports if, among other things, the order  
26 presents an issue of first impression or involves an issue of public importance that  
27 has application beyond the parties. *See* NRAP 36(f)(3) (*citing* NRAP 36(c)(1))  
28

1 and (3)). The motion must be filed within 15 days from the date of entry of the  
2 order. NRAP 36(f)(1).

3 **B. The Order definitively resolves an issue of first impression.**

4 As the Court stated, the influence of an attorney's withdrawal on the  
5 enforceability of his or her charging lien was a matter of first impression for the  
6 Court. *See* Order at p. 2 ("This court has not yet determined whether an  
7 attorney's withdrawal prevents him from enforcing a charging lien under NRS  
8 18.015."). A published opinion on this novel issue would greatly assist Nevada's  
9 district courts in determining the appropriate result in similar cases moving  
10 forward because there is currently no citable opinion on which they can rely.

11 Indeed, in this matter alone, a published opinion likely would have caused  
12 the district court to reach the proper conclusion in interpreting NRS 18.015.  
13 Specifically, the district court was aware of an unpublished order that appeared to  
14 address the issue.<sup>1</sup> *See* Joint Appendix ("J.A.") at p. 369. So that the district  
15 court could rely on it, McDonald Carano filed a motion asking this Court to  
16 reissue that unpublished order as a citable opinion. However, the Court declined  
17 that invitation.<sup>2</sup>

18 After this denial, and although the district court in this matter recognized  
19 the unpublished order seemed "almost directly on point," it did not rely on the  
20 order because of Nevada Supreme Court Rule 123. *See* J.A. at p. 369 ("And I  
21 would like to hear from the Supreme Court if they are going to.") and 372 ("It  
22 does appear to be on point except . . . I was reticent to read the opinion because  
23 it's not supposed to be considered precedent."). Instead, the district court  
24 incorrectly but in good faith relied on *Argentina* as the only published opinion  
25 purportedly discussing charging liens after an attorney's withdrawal. *See* J.A. at  
26

27 <sup>1</sup> The Court issued this unpublished order in the matter of *Robert W. Hoff, et al. v. Nik V. Walters, et al.*, Case No. 57759.

28 <sup>2</sup> On November 20, 2013, the Court issued an order in *Hoff v. Walters* denying McDonald Carano's motion for publication.

1 380 (noting the district court’s reliance on *Argentina* to deny McDonald Carano’s  
2 lien) and Order at p. 3 (“The district court’s reliance on *Argentina* is  
3 misplaced.”). A published opinion on this matter would prevent similar future  
4 errors.

5 Moreover, the Order implicitly recognizes that no decision addressing the  
6 issue has been published because the Court had not yet offered a statutory  
7 interpretation of NRS 18.015 regarding attorney withdrawal. Thus, without a  
8 published decision, district courts still do not have a case upon which they can  
9 rely in statutorily interpreting NRS 18.015’s application to withdrawing attorneys.  
10 Publishing the Order will harmonize interpretation of NRS 18.015 across the  
11 various district courts, preventing both the time and expense of unnecessary  
12 appeals for this Court and future Nevada litigants.

13 **C. The Order involves an issue that a large number of Nevada**  
14 **attorneys frequently encounter and its protections incentivize them**  
15 **to continue serving low- and moderate-income Nevadans.**

16 As discussed by the Court and both parties’ counsel at oral argument,  
17 resolving this issue under NRS 18.105 is impactful for a number of practicing  
18 Nevada attorneys and the low- or moderate-income clients who hire them.  
19 Specifically, attorneys in the areas of personal injury, family law, criminal  
20 defense, civil rights, domestic violence, children’s rights, and education law,  
21 among others, often use contingency fee agreements similar to the one in this  
22 case.<sup>3</sup> Without the protections which the Order’s publication would afford them,  
23 these attorneys (who make up a significant portion of the Nevada Bar) may not be  
24 able to enforce charging liens after withdrawal through no fault of their own.  
25 Undeniably, as the district court recognized in this case, that is an unforgiving  
26 result. *See* J.A. at 332 (“It’s very harsh when you’ve done considerable work and  
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28 <sup>3</sup> This withdrawal is sometimes voluntary and sometimes mandatory because  
of the attorney’s ethical obligations under the Nevada Rules of Professional  
Conduct. *See, e.g.*, NRPC 1.16.

1 certainly [*Argentina*] doesn't take that into account. But based on the case, I  
2 don't have any choice . . . .").

3 Moreover, because of the nature of the legal practices discussed above,  
4 attorneys in these areas are more likely to serve low and moderate-income  
5 Nevadans who are trying to defend their fundamental rights. Publishing the Order  
6 and ensuring that these attorneys can enforce charging liens after withdrawal  
7 incentivizes them to continue serving low and moderate-income clients who  
8 otherwise may not be served without the Order's protections.<sup>4</sup> Publication thus  
9 guarantees access to justice for those of "limited means," which is rightly the  
10 focus of Nevada Supreme Court Rule 15.

11 **D. The Order's text does not need to be revised for publication.**

12 NRAP 36(f)(4) states that publication "is disfavored if revisions to the text  
13 of the unpublished dispositions will result in discussion of additional issues not  
14 included in the original decision."

15 In this matter, the Order does not require textual revisions for publication.  
16 It succinctly describes the case's background facts and procedural history, and the  
17 issue on appeal was a narrow one of statutory interpretation that the Court directly  
18 and effectively answers in the Order. Therefore, no need for discussion of any  
19 additional issues not included in the Order exists, and publication should be a  
20 straightforward matter.

21  
22 <sup>4</sup> Specifically, if an attorney cannot enforce a charging lien even after  
23 mandatory withdrawal, her only other remedy is to maintain an action for breach  
24 of contract against her former client. In fact, the district court in this matter  
suggested this precise option to McDonald Carano to recover from its former  
client. See J.A. at 308 (noting a withdrawing attorney may seek adjudication of  
the fee dispute in a separate proceeding).

25 But low-income clients are often judgment proof in separate breach of  
26 contract actions to recover attorney's fees. Knowing this, the economically  
27 rational attorney will avoid serving low-income clients because of the  
28 unascertainable risk of withdrawal, which would leave the attorney with a  
judgment proof former client and uncertainty regarding the enforceability of his or  
her attorney's lien. Publishing the Order resolves this uncertainty and guarantees  
that withdrawing attorneys can enforce their charging liens, thereby incentivizing  
them to continue serving low-income clients.

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Respectfully submitted on October 14th, 2015.

By: /s/ George F. Ogilvie III  
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2. I further certify that this motion complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the motion exempted by NRAP 32(a)(7)(C), it does not exceed 10 pages.

3. Finally, I hereby certify that I have read this motion, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this motion complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the motion regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied upon is to be found. I understand that I may be subject to sanctions in the event that this motion is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 14th day of October 2015.

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/s/ Sally Wexler  
An employee of McDonald Carano Wilson LLP