#### IN THE SUPREME COURT OF THE STATE OF NEVADA

1

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

2 ALFRED C. HARVEY, 3 Electronically Filed Appellant,, Jan 17 2018 12:41 p.m. 4 Elizabeth A. Brown Case No. 72829 vs. Clerk of Supreme Court 5 STATE OF NEVADA, 6 Respondent. 7

#### APPELLANT'S MOTION TO WITHDRAW COUNSEL

COMES NOW the Appellant, ALFRED C. HARVEY, by and through counsel TIMOTHY R. TREFFINGER, ESQ., and hereby requests that TIMOTHY TREFFINGER, be withdrawn and removed as attorney of record pursuant to NRAP 46(d)(3).

Attorney Treffinger was retained on this matter, though due to financial constraints only a partial retainer was paid to counsel.

Appellant has discharged counsel, and wishes to proceed with prior representation, following substitution of the current attorney of record communication between prior counsel and defendant improve. After learning of the substantial investigative work done by prior counsel, which was not communicated to Appellant prior to seeking new representation, Appellant realized that he would be face significant delays if the investigation would have to be re-initiated and completed by

new counsel. Appellant would not have sought new representation had the actions of the Public Defender been communicated to him at his and his family's request during the proceedings occurring prior to the substitution being filed. (See attached Declaration of Counsel and Statement of Appellant)

Due to his financial condition, the Appellant does qualify for the appointment of counsel, the Appellant previously qualified for the appointment of the public defender.

This motion is based on the papers and pleadings on file, and the attached Declaration of Counsel. This motion is not made for the purposes of delay.

Dated this 17<sup>th</sup> day of January, 2018.

14 Timothy R. Treffinger
Timothy R. Treffinger, Esq.

Nevada Bar No.: 12877
Attorney for Appellant

### STATEMENT OF ALFRED HARVEY

I, ALFRED HARVEY, Appellant in the above-captioned matter, do hereby confirm that I have discharged TIMOTHY R. TREFFINGER, ESQ., as my attorney, and wish to have him removed as my attorney of record from this case.

After having little communication from the Public

Defender's Office, who was my prior counsel, aside from being

told the case was being continued, I sought new counsel. I did

not know about the investigative and legal work that was being

done on my case, until I received a call from the Public

Defender following Mr. Treffinger's substitution. Had I known

what was going on, I would not have sought new counsel.

Additionally, I am unable to afford to pay the remaining retainer for Mr. Treffinger's representation, and I continue to qualify for the services of an appointed attorney.

I believe keeping Mr. Treffinger on my case will cause delays as he is required to repeat the investigative and other work I was unaware was completed by the Public Defender, and I wish to resolve my appellant case as quickly and efficiently as possible.

I wish to go back to an appointed attorney, and move forward with my appellant case.

//

Due to the time constraints on filing this withdrawal, I have authorized Attorney Treffinger to affix my electronic signature to this document. Dated this  $17^{th}$  day of January, 2018. /x/ Alfred Harvey Alfred Harvey, Appellant 

## DECLARATION OF TIMOTHY R. TREFFINGER, ESQ.

Declarant hereby declares as follows:

- 1. That I am an attorney duly licensed to practice law in the State of Nevada, holding Bar License Number 12877.
- That on November 15<sup>th</sup>, I filed a substitution of counsel to become attorney of record on Nevada Supreme Court Case Number 72829, for Appellant Alfred Harvey.
- 3. Within a few weeks of the filing of that Substitution I was contacted by both my client, and his wife, who informed me that they were contacted by the Public Defender's Office regarding the investigation that they were in the midst of when my substitution was filed, and that they were told that grounds had been uncovered to possibly overturn the conviction.
- 4. In late November 2017 I was again contacted by Mr. Harvey and informed that after several conversations with the public defender's office, he had decided he wanted them to remain on his case.
- 5. On December 5<sup>th</sup>, 2017, I was contacted by prior counsel of record Sharon Dickinson regarding obtaining the file from the Public Defender.
- 6. On December 7<sup>th</sup>, 2017, I responded to that message and noted the conversation I had with Mr. Harvey, and asked how Ms.

Dickinson wished me to proceed as far as withdrawal or substitution off of the case to allow her to regain the case. It was noted that a motion to withdraw would be most appropriate.

- 7. Around this time counsel was undergoing medical issues that kept him in and out of the office, and resulted in the delay of filing this withdrawal, through no fault of Mr. Harvey.
- 8. Because of whatever was discussed between the Public

  Defender's Office and Mr. Harvey following the filing of
  the substitution of counsel, it is counsel's belief that

  Mr. Harvey is only comfortable with the Public Defender's

  Office proceeding with this appellate action.
- 9. This motion to withdraw is not made for the purpose of delay.

The declarant makes the proceeding declaration under the penalties of perjury pursuant to the laws of the State of Nevada.

Dated this  $18^{th}$  day of January, 2018.

Timothy R. Traffinger. Esq.

Nevada Bar No.: 12877 Attorney for Appellant

# CERTIFICATE OF SERVICE

2	I hereby certify that this document was filed
3	electronically with the Nevada Supreme Court on the 2 <sup>nd</sup> day of
4	January, 2018. Electronic Service of the foregoing document
5	shall be made in accordance with the Master Service List as
6	follows:
7	NEVADA ATTORNEY GENERAL
8	STEVEN S. OWENS
9	TIMOTHY TREFFINGER
10	HOWARD S. BROOKS.
11	I further certify that I served a copy of this document
12	by mailing a true and correct copy, postage prepaid to:
13	Alfred C. Harvey NDOC No. 1174900
14	P.O. Box 650 Indian Springs, NV 89018
15	Dated this 18 <sup>th</sup> day of January, 2018.
16	aced ents to day of canaary, zoro.
17	
18	Time of the O Trading and
19	Timothy R. Treffinger Timothy D. Treffinger, Esq Nevada Bar No.: 1287
20	Attorney for Appellan
21	
22	
23	